

COMMENTARY

SILENT VICTIMS NO MORE?: MORAL INDIGNATION AND THE POTENTIAL FOR LATINO POLITICAL MOBILIZATION IN DEFENSE OF IMMIGRANTS

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* Professor of Law, William S. Boyd School of Law. J.D., Harvard Law School. I am grateful to Kevin R. Johnson for the great honor of commenting on his paper, *Hurricane Katrina: Lessons about Immigrants in the Administrative State*, during the Twelfth Annual *Houston Law Review* Frankel Lecture. I also thank Michael Olivas for his warm hospitality and his persistence in having Latino issues addressed. The students of the *Houston Law Review*, especially Symposium Editor Jamie Miller and Chief Articles Editor Stephany LeGrand, have been spectacular. Thank you so much for everything, down to the smallest details, which did not escape notice.

I. INTRODUCTION

Media reports identified at least 50 of the 130 victims of the recent California fires as undocumented immigrants;¹ some of them suffered severe burns or burned to death.² Paralleling similar language employed by Professor Kevin Johnson's characterization of immigrants as "the silent victims of the deadly [Hurricane Katrina],"³ a news report labeled this group "The Unseen Victims of California's Wildfires."⁴ This same account criticized the relief efforts in the Southern California fires, otherwise praised as effective, as "miss[ing] a population that has long been in the shadows: undocumented workers living along San Diego's hillsides and canyons."⁵ These "essential [farm] workers," an estimated 1,600 of them, the sympathetic report continued, "have slipped through the cracks in the county's relief and evacuation efforts—so much so that Mexican government officials are filling in the gaps."⁶ Immigrant advocacy groups complained that evacuation orders restricted access to the migrant workers, impeding their efforts to assist them.⁷ In addition to these imposed physical barriers, workers' distrust in rescue efforts or fear of being fired meant that many chose to stay close to the farms where they worked, without electricity, water supply, or sanitation.⁸ And again, much in the same way as described by Johnson about the immigrant hurricane victims,⁹ these workers could likely be "left out of the Federal Emergency Management Agency (FEMA)'s relief aid because, without papers, they have very limited access to FEMA funds."¹⁰

1. *Undocumented Immigrants Victims of California Fires*, NEW AMERICA MEDIA, Nov. 1, 2007, http://news.newamericamedia.org/news/view_article.html?article_id=46a62875f444fc2abe4969db0c1f2bdf.

2. *See Immigrants Faced "Climate of Intimidation" in California Fires*, WORLD WAR 4 REPORT, Nov. 5, 2007, <http://www.ww4report.com/node/4639> (reporting instances in which undocumented migrants suffered fatal and nonfatal burn injuries).

3. Kevin R. Johnson, *Hurricane Katrina: Lessons About Immigrants in the Administrative State*, 45 HOUS. L. REV. 11, 14 (2008).

4. Amanda Martinez, *The Unseen Victims of California's Wildfires*, NEW AMERICA MEDIA, Oct. 26, 2007, http://news.newamericamedia.org/news/view_article.html?article_id=d70074999a1b81cef632488c949812aa.

5. *Id.*

6. *Id.*

7. *Id.*

8. *See id.* (describing conditions faced by undocumented immigrant workers); *see also* Jim Avila et al., *Dangerous Dilemma for Illegal Immigrants*, ABC NEWS, Oct. 24, 2007, <http://abcnews.go.com/2020/story?id=3769989&page=1> (reporting that despite evacuation orders some employers made the agricultural workers stay to save the crops).

9. *See* Johnson, *supra* note 3, at 53 (chronicling undocumented workers' inability to gain access to meaningful hurricane relief aid).

10. Martinez, *supra* note 4.

Mistreatment of immigrants in these California fires¹¹ was unfortunately reminiscent of the Hurricane Katrina story.¹² Despite reports that immigrants caught in the fire were too afraid to seek help, the San Diego County Office of Emergency Management called upon 300 U.S. Border Patrol agents to help with emergency relief.¹³ For safety control, Border Patrol agents were directed to watch for looters and monitor neighborhoods affected by the fires.¹⁴ Yet, despite assurances from the federal government that immigration raids would stop,¹⁵ Border Patrol continued to enforce immigration laws during the local relief efforts.¹⁶ More than 200 immigrants were apprehended during the fires, reportedly while trying to cross into the United States.¹⁷ The reality is, however, that an estimated two million undocumented immigrants live and work in the California hills where the fires occurred,¹⁸ and it is unclear how Border Patrol could (or would) distinguish between old and new immigrants.

Immigration enforcement and racial profiling also occurred at Qualcomm Stadium, where volunteers questioned evacuees about their immigration status.¹⁹ The *Los Angeles Times* reported that U.S. Border Patrol agents arrested six Mexican nationals at Qualcomm Stadium for allegedly stealing food and water.²⁰ The brief story, however, failed to investigate whether any of the

11. See generally Randal C. Archibold, *Residents Flee Wildfires in Southern California*, N.Y. TIMES, Oct. 23, 2007, at A20 (providing an overview of the California wildfires).

12. See Johnson, *supra* note 3, at 54 (documenting the immigration raids that took place at Hurricane Katrina's relief centers).

13. See Martinez, *supra* note 4 (reporting on the help of U.S. Border Patrol with emergency relief efforts).

14. *Id.*

15. See Avila et al., *supra* note 8 (describing government immigration enforcement activities during wildfire relief efforts).

16. See Martinez, *supra* note 4 (recounting the arrest of six undocumented immigrants at Qualcomm Stadium, for reportedly "stealing from the people in need").

17. *Id.* (describing Border Patrol activities along the U.S.-Mexican border during the fires).

18. Avila et al., *supra* note 8 (noting estimated population of illegal workers living in areas affected by the fires).

19. See *Immigrants Faced "Climate of Intimidation" in California Fires*, *supra* note 2 (relaying ACLU charges that immigrants faced a hostile environment at the stadium).

20. Anna Gorman, *Six Illegal Immigrants Arrested at Qualcomm*, L.A. TIMES: BLOGS: BREAKING NEWS, <http://latimesblogs.latimes.com/breakingnews/2007/10/six-undocumente.html> (Oct. 24, 2007, 02:12 PM) (relating account of immigrants' arrest). Anti-immigrant bloggers immediately responded to the story to praise the treatment of immigrants as outsiders: "[T]hese people respect nothing . . . I have compassion for my own and will not sacrifice this great nation for a pathetic unevolved culture that has no intention of [assimilating] into this nation." Posting of John MacIntosh to United for a Sovereign America (USA), <http://immigrationbuzz.com/?p=1335> (Oct. 26, 2007, 7:36 PM).

persons involved in the alleged theft were victims of the fire.²¹ Another incident more clearly involved the deportation of fire victims. On October 24, San Diego police arrested an evacuated Mexican family of seven—four adults with three children ages two, eight, and thirteen—as they tried to leave Qualcomm Stadium.²² The police turned the family over to Border Patrol agents, who deported all of them that evening.²³ The family from Tijuana reported that a volunteer at Qualcomm Stadium called the police, “claiming that the family was taking more than their share of material aid.”²⁴ At least five police officers aggressively questioned the family regarding their immigration status and called Border Patrol, despite the San Diego Police Department’s official policy not to collaborate with the immigration agency.²⁵ At Qualcomm Stadium, not only was the Border Patrol invited to set up an informational tent regarding the fire locations, but “San Diego city police walked around the stadium, waking up families and checking for identification” to verify that every person came from an evacuated zone.²⁶ The homeless and immigrants without identification were particularly affected by these procedures, and many were apprehensive of being subject to an immigration inspection.²⁷

These stories of theft are eerily similar to the depictions of the mostly black victims of Hurricane Katrina who were portrayed as criminals, rather than as victims, for trying to get food from abandoned stores in the hurricane’s aftermath.²⁸ Unfortunately, the criminalization of immigrants is all too common, even in circumstances that should evoke empathy, not disdain. The illegality of immigrants often has justified the viewpoints of immigration agencies about who is to blame for their victimization. Such agency attitudes are evident in examples that include the Immigration and Customs

21. See Gorman, *supra* note 20 (excluding any report about whether the alleged theft was committed by a victim of the fires).

22. *Immigrants Faced “Climate of Intimidation” in California Fires*, *supra* note 2.

23. *Id.*

24. *Id.*

25. *Id.*

26. *The Forgotten Victims of the California Wildfires: Undocumented Migrant Workers* (Democracy Now! broadcast Oct. 29, 2007), available at http://www.democracynow.org/2007/10/29/the_forgotten_victims_of_the_california (interviewing Andrea Guerrero, Chair of San Diego Immigrant Rights Consortium).

27. See *id.* (explaining reasons for immigrants’ apprehension in seeking wildfire relief).

28. See, e.g., *Looters Take Advantage of the New Orleans Mess*, MSNBC.COM, Aug. 30, 2005, <http://www.msnbc.msn.com/id/9131493> (describing various items, including food and clothing, taken from stores by Katrina victims).

Enforcement's views on family separation during raids²⁹ and the pattern of victim blaming in human trafficking cases,³⁰ not to mention the treatment of immigrants as undeserving victims—or even criminals—during Hurricane Katrina and the California fires.³¹

Quite appropriately, therefore, Johnson draws broader lessons from Hurricane Katrina on the treatment of immigrants by the modern administrative state.³² Johnson characterizes much of the troubles that plague the immigration bureaucracy as “symptomatic of a more general failure of American democracy—the lack of political accountability of the immigration bureaucracy to the persons most directly affected by its actions.”³³ More specifically, he questions the application of the judicial deference logic of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*³⁴ to administrative agencies' interpretation of statutes, particularly as applied to immigration agencies that lack political accountability.³⁵ In drawing this conclusion, Johnson considers but rejects the possibility that “virtual representation” by other citizen voters and activists could be sufficient to protect the rights of immigrants.³⁶ Ultimately, he is not arguing to extend immigrants the right to vote, although his position appears to rest on legal and pragmatic impediments rather than normative judgments.³⁷ Thus, when more directly addressing “how we can make agencies more accountable to the needs of noncitizens,”³⁸ Johnson concludes that “[a]t a minimum,

29. See Oskar Garcia, *Study: Raids Risk Kids' Mental Health*, ABC NEWS, Oct. 31, 2007, <http://abcnews.go.com/US/wireStory?id=3802560> (cataloguing negative effects on children caused by the arrest of immigrant parents).

30. See Marisa Silenzi Cianciarulo, *Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Human Trafficking*, 7 NEV. L.J. 826, 832–33 (2007) (suggesting that current immigration enforcement policies may encourage bias *against* human trafficking victims).

31. See *supra* notes 19–28 and accompanying text (discussing racial profiling by authorities).

32. See Johnson, *supra* note 3, at 19 (arguing that the government's treatment of immigrants during Hurricane Katrina exemplifies the government's system-wide poor treatment of immigrants).

33. *Id.*

34. *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–45 (1984) (setting forth explicitly what has now been termed “*Chevron* deference”).

35. See Johnson, *supra* note 3, at 20 (positing that *Chevron* deference logic is inappropriately applied to immigration agency decisions).

36. *Id.* at 40 (stating that “virtual representation” cannot equate to direct representation).

37. *Id.* at 42 (arguing that while the vote need not be extended to immigrants, the faulty rationale for application of *Chevron* deference to immigration decisions demands stricter judicial review).

38. *Id.* at 57.

careful judicial review of agency decisions pertaining to immigrants is necessary to ensure some modicum of a check of bureaucratic error and abuse in our system of checks and balances.”³⁹

Johnson is not looking to the courts as the sole solution to the plight of immigrants at the hands of the administrative state, but he is making the strong moral claim that courts must step up to protect them: “One could forcefully argue that careful judicial review is *most* necessary when the agency’s competence, independence, and impartiality have been seriously questioned. Especially in instances involving critically important decisions affecting a discrete and insular (and disenfranchised) minority, basic due process concerns militate in favor of meaningful judicial review.”⁴⁰ An underlying basis for Johnson’s position appears to be a strong disillusionment with a political climate that is increasingly hostile to immigrants. The article’s description of the legal landscape plaguing immigrants includes Congress’s passage of laws that treat immigrants in “draconian fashion.”⁴¹ Additionally, Congress recently failed to pass legislation remedying the extreme vulnerability and uncertainty of approximately twelve million undocumented immigrants who live in the United States.⁴² In June 2007, the comprehensive immigration reform bill that would have offered undocumented persons a path to legalization⁴³ failed to get the sixty votes needed to end the debate in the Senate and have it pass for a vote.⁴⁴ Then, in October 2007, came the more surprising defeat of the DREAM Act of 2007,⁴⁵ which similarly fell short of receiving the votes needed. The DREAM Act would have provided a path to legalization for undocumented youth brought as children to the United States who pursued an education or joined the military in the United States.⁴⁶

39. *Id.* at 71.

40. *Id.* at 31.

41. *Id.* at 22.

42. See JEFFREY S. PASSEL, PEW HISPANIC CTR., THE SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S.: ESTIMATES BASED ON THE MARCH 2005 CURRENT POPULATION SURVEY i (2006), available at <http://pewhispanic.org/files/reports/61.pdf> (estimating current U.S. population of unauthorized immigrants).

43. Comprehensive Immigration Reform Act, S. 1348, 110th Cong. (2007).

44. Klaus Marre, 46–53, *Immigration Bill Goes Down in Defeat*, THE HILL, June 28, 2007, <http://thehill.com/leading-the-news/immigration-bill-goes-down-in-defeat-2007-06-28.html>.

45. Development, Relief, and Education for Alien Minors (DREAM) Act, S. 2205, 110th Cong. (2007).

46. *Id.* (providing a path to potential legal permanent residence for anyone who, among other requirements, came to the United States prior to his or her sixteenth

Professor Johnson's moral call upon the courts to protect immigrant rights seems obviously urgent in this climate of anti-immigrant political hostility. Yet, in this very same political climate, the judiciary is unlikely to respond to the plight of immigrants in the absence of substantial political backing of a pro-immigrant civil rights movement. Political scientists have time and again deemed courts as part of the national political coalition.⁴⁷ Indeed, courts' decisionmaking "is strongly influenced by national political majorities and national public opinion"⁴⁸ This point has not escaped consideration by Johnson when writing about the struggle for Latino civil rights.⁴⁹ Specifically on the role of courts in immigration, he has expressed reserved enthusiasm that judicial review can truly advance immigrant rights.⁵⁰ While citing studies finding that judicial review of executive implementation of immigration laws in the 1980s overturned a significant number of cases in favor of immigrants, courts largely left intact the deep structural flaws in the immigration bureaucracy.⁵¹ Professor Johnson recently made this point more emphatically when he and Professor Bill Ong Hing reflected on the Immigration Rights Marches of 2006. They wrote:

Although the courts at times have facilitated social change, today's courts are not especially prone to do so. . . . Leading Democrats and civil rights advocates have expressed distress and pessimism about the future of a conservative judiciary. . . . Such a judiciary will make legal change more

birthday and has either attained a high school diploma or its equivalent, or been admitted to an institution of higher learning).

47. Jack M. Balkin, *What Brown Teaches Us About Constitutional Theory*, 90 VA. L. REV. 1537, 1538 (2004) (citing Robert A. Dahl, *Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker*, 6 J. PUB. L. 279, 279 (1957)); see also Gregory C. Sisk et al., *Charting the Influences on the Judicial Mind: An Empirical Study of Judicial Reasoning*, 73 N.Y.U. L. REV. 1377, 1387–88 (1998) (concluding that party affiliation is a more salient factor in judicial decisionmaking than gender or race).

48. Balkin, *supra* note 47, at 1538.

49. In 1995, for example, Professor Johnson contrasted *Brown v. Board of Education*, 347 U.S. 483, 495 (1954), which mandated the desegregation of public schools, with *Plyler v. Doe*, 457 U.S. 202, 230 (1982), which granted undocumented students the right to K–12 public education, "[to demonstrate] the need for political action to accompany a litigation strategy in order to successfully bring about social change." Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 44 (1995). He noted then that "[w]hile *Brown* was a part of a much larger social movement, *Plyler* was not." *Id.* As a result, the aftermath of *Plyler* faced a great deal of post anti-immigrant organizing to try to overturn its ruling in the absence of a concerted strong political base to counter those efforts. *Id.* at 48.

50. Johnson, *supra* note 49, at 46–47.

51. *Id.* at 47.

difficult but may simultaneously open the door to a broad-based political coalition of progressive forces.⁵²

In a post-9/11 world, Professor Johnson is correct about the limited role courts are willing to take on behalf of immigrants. Prior to September 11, immigration scholars were predicting the demise of the plenary power doctrine, which grants Congress discretion to regulate immigration in the absence of meaningful constitutional scrutiny.⁵³ This position changed radically after September 11, and that political tide remains. For example, the conflation of national security and immigration⁵⁴ led the U.S. Supreme Court to issue rulings shortly after 9/11 that reaffirmed the strength of Congress's plenary power to control immigration.⁵⁵ At the same time, political actors in the federal and local governments moved to solidify their unfettered power over immigrants. Congress legislated not only to further restrict judicial review over its immigration powers⁵⁶ but also to expand these powers beyond the border into the regulation of the lives of ordinary citizens within the border.⁵⁷ Additionally, the executive branch seized the opportunity to employ and expand its

52. Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 HARV. C.R.-C.L. L. REV. 99, 130 (2007).

53. See, e.g., Gabriel J. Chin, *Is There a Plenary Power Doctrine? A Tentative Apology and Prediction for Our Strange but Unexceptional Constitutional Immigration Law*, 14 GEO. IMMIGR. L.J. 257, 285 (2000) (describing factual circumstances that lead to cases that undermine the plenary power doctrine); Peter J. Spiro, *Explaining the End of Plenary Power*, 16 GEO. IMMIGR. L.J. 339, 339 (2002) (naming *Nguyen v. INS*, 533 U.S. 53 (2001), and *Zadvydas v. Davis*, 533 U.S. 678 (2001), as two Supreme Court decisions that pointed toward an end of the plenary power doctrine).

54. See Jennifer M. Chacón, *Unsecured Borders: Immigration Restrictions, Crime Control and National Security*, 39 CONN. L. REV. 1827, 1830–31 (2007) (discussing the national security rhetoric used in calls for immigration reform).

55. See Jennifer Korte Doucleff, *Demore v. Kim: Upholding the Unnecessary Detainment of Legal Permanent Residents*, 94 J. CRIM. L. & CRIMINOLOGY 625, 625 (2004) (contrasting the Court's denial of the indefinite detention of aliens three months prior to September 11, 2001, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), with *Demore v. Kim*, 538 U.S. 510 (2003), in which the Court upheld Congress's power to impose mandatory detention post-removal); Kevin R. Johnson, *Latinas/os and the Political Process: The Need for Critical Inquiry*, 81 OR. L. REV. 917, 919 (2002) (discussing the Supreme Court decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), to deny back pay remedies to an undocumented worker for NLRB violations).

56. See Daniel Kanstroom, *The Better Part of Valor: The REAL ID Act, Discretion, and the "Rule" of Immigration Law*, 51 N.Y.L. SCH. L. REV. 161, 163–66 (2006–07) (discussing the judicial stripping provisions of the REAL ID Act).

57. See Raquel Aldana & Sylvia R. Lazos Vargas, *"Aliens" in Our Midst Post-9/11: Legislating Outsiderness within the Borders*, 38 U.C. DAVIS L. REV. 1683, 1711 (2005) ("Our key concern . . . is that when the Real ID Act's driver's license provisions are implemented in May 2008, they will become the vehicle for legislating the outsiderhood of noncitizens within our borders.").

immigration powers to conduct law enforcement,⁵⁸ while local police became immigration law enforcers.⁵⁹ Finally, local governments passed hundreds of anti-immigrant measures restricting immigrants' access to basic necessities such as housing and drivers' licenses.⁶⁰

In short, immigrants live in a hostile climate. Certainly, judicial intervention is still desirable and does make a difference in some areas. For example, the Second and Ninth Circuits have reviewed many immigration decisions after the Board of Immigration Appeal's streamlining reforms introduced deep flaws in the administrative process.⁶¹ But immigrants need much more to reverse the tide. A strong civil rights movement including both electoral and nonelectoral engagement is essential—whether changes come from the political process at the local or federal level, or from the courts.

In this brief response, I explore the potentials and limits of this civil rights struggle on behalf of immigrants in this current climate. More specifically, I focus on two areas: (1) the role of electoral politics and Latina/o voters and (2) the role of nonelectoral civil engagement by Latinos, including noncitizen immigrants. These are not the only political avenues for mass mobilization on behalf of immigrants, nor are these alone sufficient to improve the plight of noncitizens. Johnson and Hing are correct about the need to broaden the agenda and increase participation beyond immigration and immigrants respectively to improve the moral legitimacy and effectiveness of any new civil rights movement.⁶² Nevertheless,

58. See Raquel Aldana, *The September 11 Immigration Detentions and Unconstitutional Executive Legislation*, 29 S. ILL. U. L.J. 5, 6–11 (2004) (tracking the Attorney General's increase in immigration enforcement and promulgation of immigration regulations); Raquel Aldana, *Of Katz and "Aliens": Privacy Expectations and the Immigration Raids*, 41 U.C. DAVIS L. REV. (forthcoming 2008) (manuscript at 3, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=993969) (stating that the lack of congressional action has left the executive branch to intensify immigration raids).

59. See Michael M. Hethmon, *The Chimera and the Cop: Local Enforcement of Federal Immigration Law*, 8 UDC/DCSL L. REV. 83, 85 (2004) (describing local enforcement of federal immigration law as encouraged by the federal government).

60. Raquel Aldana, *On Rights, Federal Citizenship, and the "Alien"*, 46 WASHBURN L.J. 263, 283–85 (2007); see also Kevin R. Johnson, *Driver's Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 NEV. L.J. 213, 216–17 (2004) (arguing that the limitation of access to driver's licenses is a civil rights issue).

61. See John R.B. Palmer et al., *Why Are So Many People Challenging Board of Immigration Appeals Decisions in Federal Court? An Empirical Analysis of the Recent Surge in Petitions for Review*, 20 GEO. IMMIGR. L.J. 1, 77–80 (2005) (tracking the reversal rates of the Second, Ninth, and Eleventh Circuits).

62. Johnson & Hing, *supra* note 52, at 101; see also Richard Delgado, *Locating Latinos in the Field of Civil Rights: Assessing the Neoliberal Case for Radical Exclusion*, 83 TEX. L. REV. 489, 516 (2004) (reviewing GEORGE YANCEY, WHO IS WHITE?: LATINOS, ASIANS, AND THE NEW BLACK/NONBLACK DIVIDE (2003)) (critiquing the black–white

Latinos are crucial to this struggle, and the potential for their mobilization deserves scrutiny. To do this, I have consulted Professor Johnson's insightful and prolific assessment of the issue of a civil rights movement and immigration,⁶³ as well as the writings of other scholars.⁶⁴ I focus specifically on whether more recent changes in the demographics and attitudes among Latinos living in the United States could improve the cautious outlook toward immigrant rights that has accompanied much of the literature on Latinos and political change. For example, is there hope for increased electoral participation by Latinos? With the recent anti-immigrant climate, are Latinos more likely to align in greater numbers behind the plight of immigrants, at least in their demands for greater civil rights protections? What lessons can be drawn from the potential for sustained nonelectoral civic engagement among Latinos beyond the 2006 immigration marches?

paradigm for locating Latinos in the civil rights struggle and arguing for expansion of the civil rights discourse to improve coalitions among minority groups that move us beyond the race-based equal protection paradigm); Kevin R. Johnson, *The Struggle for Civil Rights: The Need for, and Impediments to, Political Coalitions Among and Within Minority Groups*, 63 LA. L. REV. 759, 766 (2003) (recognizing the inherent barriers to the formation of such coalitions).

63. See generally Kevin R. Johnson, *The Continuing Latino Quest for Full Membership and Equal Citizenship: Legal Progress, Social Setbacks, and Political Promise*, in THE COLUMBIA HISTORY OF LATINOS IN THE UNITED STATES SINCE 1960, at 391 (David D. Gutiérrez ed., 2004); Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629 (1995); Johnson, *supra* note 49; Kevin R. Johnson, *Immigration, Civil Rights, and Coalitions for Social Justice*, 1 HASTINGS RACE & POVERTY L.J. 181 (2003); Johnson, *supra* note 55; Kevin R. Johnson, *Law and Politics in Post-Modern California: Coalition or Conflict Between African Americans, Asian Americans, and Latina/os?*, 4 ETHNICITIES 381 (2004); Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 BYU L. REV. 1139 (1993); Johnson & Hing, *supra* note 52; Johnson, *supra* note 62.

64. See generally *Alianza Conference: Toward a National Latino Agenda*, 6 HARV. LATINO L. REV. 91 (2003); John O. Calmore, *Race-Conscious Voting Rights and the New Demography in a Multiracing America*, 79 N.C. L. REV. 1253 (2001); Kathay Feng et al., *Voting Matters: APIAs, Latinas/os and Post-2000 Redistricting in California*, 81 OR. L. REV. 849 (2002); Sylvia R. Lazos Vargas, *The Latina/o and APIA Vote Post-2000: What Does It Mean to Move Beyond "Black and White" Politics?*, 81 OR. L. REV. 783 (2002); Gerald P. López, *Learning About Latinos*, 19 CHICANO-LATINO L. REV. 363 (1998); M. V. Hood III et al., "¿Quedate o Vente!": *Uncovering the Determinants of Hispanic Public Opinion Toward Immigration*, 50 POL. RES. Q. 627 (1997); *The Sixth Annual Harvard Latino Law and Policy Conference: Latino Leadership and Collective Power*, 7 HARV. LATINO L. REV. 75 (2004); Peter Skerry, *Citizenship Begins at Home: A New Approach to the Civic Integration of Immigrants*, 14 RESPONSIVE CMTY. 26 (2003); Louis DeSipio, *Immigrant Organizing, Civic Outcomes: Civic Engagement, Political Activity, National Attachment, and Identity in Latino Immigrant Communities* (Ctr. for the Study of Democracy, U.C. Irvine, Paper No. 02'08, 2002), available at <http://repositories.cdlib.org/csd/02-08>.

II. ELECTORAL POLITICS AND LATINA/O VOTERS

On September 15, 2007, the *Wall Street Journal*, in an article titled *Hispanic Voters Flex Political Muscle*, observed that the first Spanish-language debate among Democratic presidential candidates that aired the prior weekend on Univision, a Spanish-language television network in the United States, “underscored the growing political clout of Hispanics.”⁶⁵ The article also noted that all Republican candidates except Senator John McCain refused to attend a similar forum, which had to be cancelled, and that such nonparticipation “threatens to unravel the gains made by President Bush, who has aggressively courted Hispanic votes.”⁶⁶ The *Journal* also cautioned that Republican opposition to immigration reform could further mobilize Hispanic voters in favor of Democrats, particularly given the growing number of Hispanics in swing states, such as Florida, Nevada, Colorado, Arizona, and New Mexico.⁶⁷

On November 28, 2007, the *New York Times* followed with an article titled *Walking a Tightrope on Immigration*.⁶⁸ The article focused on the Republican and Democratic candidates’ positions on “illegal immigration,” which the author suggested was a politically divisive topic.⁶⁹ More interestingly, the article placed great emphasis on the importance of candidates’ courtship of the Latino vote in their positions on immigration: “Pollsters on both sides agree there is widespread anxiety, even anger, about the impact of illegal immigration. But an increasingly influential Hispanic electorate could be turned off by a hard line from the party they turned to in increasing numbers in the last two presidential elections.”⁷⁰

For the past decade, the growing Latino population in the United States was perceived as a tremendous source of untapped potential political power.⁷¹ Unlike recent reports in major national newspapers, however, the assessment of whether Latino

65. Nick Timiraos, *Hispanic Voters Flex Political Muscle*, WALL ST. J., Sept. 15, 2007, at A7.

66. *Id.*

67. *Id.*

68. Michael Luo, *Walking a Tightrope on Immigration*, N.Y. TIMES, Nov. 18, 2007, at WK1.

69. *Id.*

70. *Id.*

71. Compare López, *supra* note 64, at 363 (writing in 1998 that “Latinos remain most often on the outskirts of public perception” despite their large numbers), with Lazos Vargas, *supra* note 64, at 793 (writing in 2002 that the new politics of close margins plus the “explosive demographic growth of Latinas/os . . . has made them the new darlings of the major political parties”).

electoral participation could adequately safeguard the rights of immigrants has been more skeptical. Sources of skepticism have been at least two-fold.⁷² First, there are very real impediments to Latino electoral participation, including large pockets of voter disenfranchisement due to lack of citizenship status, combined with lower overall voter turnout among Latinos.⁷³ Second, Latinos, like other racial minority groups, have opinions that span the political spectrum. “[T]he great heterogeneity of the Latino community,” Johnson wrote in 1995 on this precise issue, “makes internal agenda-setting a difficult endeavor.”⁷⁴

The assessment appeared a bit more hopeful after the 2002 midterm elections. Analysts of Latino political participation and outcomes in the elections observed positive trends, evidenced by improved participatory numbers overall and Latinos’ increased visibility between the parties and among the candidates.⁷⁵ Still, many lamented that actual voter participation, as compared to increased voter eligibility based on demographic changes and increased (but insufficient) naturalization rates,⁷⁶ still lagged quite behind.⁷⁷ Moreover, on the immigration issue, the jury was still out for Latino voters. Some of these same analysts pointed to

72. Other factors include changing demographics and the resulting intergroup conflicts among minorities, and the creation of majority–minority districts. Walter C. Farrell, Jr. & James H. Johnson, Jr., *Minority Political Participation in the New Millennium: The New Demographics and the Voting Rights Act*, 79 N.C. L. REV. 1215, 1217 (2001). *But see* Leo F. Estrada, *Making the Voting Rights Act Relevant to the New Demographics of America: A Response to Farrell and Johnson*, 79 N.C. L. REV. 1283, 1285–86 (2001) (arguing that demographic change in itself will not lead to intergroup tensions without other pre-existing conditions).

73. *See* Rodolfo O. de la Garza & Louis DeSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 TEX. L. REV. 1479, 1502–03 (1993) (tracking the effects of the Voting Rights Act on Hispanic electoral participation); *see also* Johnson, *supra* note 62, at 768–70 (describing Hispanic voter disenfranchisement as a civil rights issue).

74. Johnson, *supra* note 49, at 45. In fact, at least some data in the 1990s suggested that Latinos supported restrictive immigration policies. *See* Hood III et al., *supra* note 64, at 634–42 (recounting a study which showed significant variation between Hispanic subgroups with regard to immigration issues). *But cf.* López, *supra* note 64, at 375–84 (lamenting how understudied Latinos have been as a politically relevant group, while also criticizing the 1992 Latino National Political Survey for drawing generalized but ultimately unsubstantiated conclusions regarding Latino anti-immigrant attitudes).

75. Lazos Vargas, *supra* note 64, at 793–97, 800; *see also* Johnson, *supra* note 55, at 921 (contrasting California’s passage of Proposition 187, an anti-immigrant measure, despite overwhelming opposition by Latinos, with Governor Gray Davis’s conferral of drivers’ licenses to certain undocumented immigrants, and concluding that efforts by politicians to “woo Latina/o voters have softened the political rhetoric on immigration”).

76. *See* Lazos Vargas, *supra* note 64, at 801 (“Latina/o registration lags by as much as fourteen and fifteen percentage points behind the registration rates for Whites.”).

77. *Id.*; *see also* Johnson, *supra* note 55, at 930–32 (describing the differing rates of naturalization and immigration and the effects of both on electoral participation).

evidence that deep political cleavages continued to divide the interests of Latino citizens from those of immigrants and questioned whether the former could offset the rising trend in noncitizen discrimination.⁷⁸

But, are the *New York Times* and *Wall Street Journal* correct in 2007 to predict that Latinos will impact immigration policy? New studies provide a source of some hope based on actual voting trends between 2002 and 2006, as well as on projections for future elections. These studies suggest a trend toward greater cohesion among Latino voters on issues of immigration. These indicators alone are unlikely to be sufficient to change the tide toward more favorable immigration policies, but they cannot be dismissed entirely.

A. *The Numbers: 2006 Elections and Predictions for 2008*

According to the Pew Hispanic Center, 5.6 million Latinos voted in the 2006 midterm elections.⁷⁹ This number accounted for 5.8% of all votes cast in the election, which is an increase from 5.3% in 2002.⁸⁰ This increase is largely a function of simple demographic growth among Latinos.⁸¹ Latinos represented nearly half the total population growth in the past four years with an increase in population of 5.7 million.⁸²

Despite this burst in population growth, Latinos continue to lag behind whites and blacks in voter registration and actual voting patterns. In fact, demographic factors and participation rates for 2006 reveal that 13% of the Latino population voted, as compared to 39% of whites and 27% of blacks.⁸³

Part of the explanation for lower numbers among Latinos resides in the high number of ineligible voters. Despite an increase in naturalization rates over the last four years,⁸⁴ among the new population growth, less than one-third (30%) were new eligible voters (more than one-third were too young and another

78. Lazos Vargas, *supra* note 64, at 808 (citing PEW HISPANIC CTR. & KAISER FAMILY FOUND., NATIONAL SURVEY OF LATINOS: THE LATINO ELECTORATE (2002), available at <http://pewhispanic.org/files/reports/12.pdf>).

79. PEW HISPANIC CTR., THE LATINO ELECTORATE: AN ANALYSIS OF THE 2006 ELECTION 2 (2007), available at <http://pewhispanic.org/files/factsheets/34.pdf>.

80. *Id.*

81. *Id.*

82. *Id.* at 3.

83. *Id.* at 2.

84. See Sarah Margon, *Naturalization in the United States*, MIGRATION INFO. SOURCE, May 2004, <http://migrationinformation.org/USfocus/display.cfm?id=225> (tracking the immigration trends and the characteristics of the immigrant qualified for naturalization).

one-third were noncitizen adults).⁸⁵ As such, Latino's portion in comparison with all new eligible voters was merely 20%.⁸⁶ By comparison, whites comprised 24% of the population growth, but 46% of all new eligible voters.⁸⁷ Thus, for the November 2006 elections, only 39% of all Latinos residing in the United States were eligible to vote, as compared to 76% of whites and 65% of blacks.⁸⁸

However, voter ineligibility is not the entire explanation for low Latino electoral participation. In 2006, Latinos were still registering to vote at lower rates than other groups.⁸⁹ In addition, Latino registered voters also voted in fewer percentages than other groups,⁹⁰ although foreign-born Latinos voted in higher proportions.⁹¹

One pressing question is whether more Latinos will participate in the 2008 election. There is some reason to hope, as evidenced by voter attitudes and well-organized voting campaigns by several key players, including unions, grassroots organizations, and the Latino media. The estimate is that between ten to twelve million Latinos will be registered to vote by the 2008 presidential election.⁹²

For example, in 2007 the "Ya es Hora, Ve y Vota—It's Time, Go Vote!" campaign, a coalition of Latino advocacy and media organizations, began an attempt to naturalize one million legal permanent residents.⁹³ This effort represents the first time the Latino media has come together in an integrated manner with community organizations, unions, and churches—a fact that participants believe will make a significant difference in Latino voter participation in the next election.⁹⁴ According to campaign

85. PEW HISPANIC CTR., *supra* note 79, at 3.

86. *Id.* at 2.

87. *Id.* at 4.

88. *Id.*

89. *Id.* at 5. Approximately 54% of Latinos eligible to vote registered for the November 2006 election, as compared to 71% of whites and 61% of blacks. *Id.*

90. About 60% of Latinos registered to vote did so in the 2006 election, as compared to 72% of whites and 67% of blacks. *Id.*

91. This number was 67%, which was equal to black voter participation. *Id.* at 6.

92. Press Release, League of United Latin American Citizens (LULAC), Maximizing Latino Power, Defeating Anti-Immigrant Efforts (Oct. 1, 2007), *available at* <http://www.lulac.org/advocacy/press/2007/latinocongreso.html>; *see also* Jorge Morales Almada, *Tras 10 Millones de Votos Latinos*, SECOND ANN. NAT'L LATINO CONGRESO 2007, Oct. 10, 2007, <http://latinocongreso.org/news/php?id=62>.

93. Dena Bunis, *Coalition Aims to Increase Voter Registration, Turnout*, ORANGE COUNTY REG., Nov. 14, 2007, <http://ocregister.com/news/colation-latino-voters-19222525-campaign-hispanic>.

94. *Id.*

organizers, “[b]etween January and September [2007], more than 940,000 green-card holders applied for U.S. citizenship.”⁹⁵ Moreover, these new voters are in states that could be new battlegrounds in 2008, such as Arizona, New Mexico, Nevada, and Colorado.⁹⁶ In November 2007, the “Ya es Hora, Ve y Vota” campaign unveiled new phases of their campaign that will include public service announcements in Latino television, print ads in newspapers, and a dedicated voter registration website.⁹⁷ Similarly, Telemundo, a Spanish-language television network, and mun2, the first national cable network offering bilingual programming for young U.S. Latinos, launched the “Vota Por Tu Futuro”–“Vote 4 UR Future” campaign in October 2007, which focuses on registering Latino youths.⁹⁸ Surveys of Latinos indicate that Spanish-language media and nonpartisan voter mobilization efforts are playing a crucial role mobilizing the Latino vote.⁹⁹ A notable impediment to this effort, however, is the backlog created by the increase in naturalization applications at USCIS, resulting in delays that will deny the opportunity to vote to hundreds of thousands.¹⁰⁰

In addition, in October 2007, more than 1,500 people gathered in downtown Los Angeles for the Second Annual National Latino Congreso, a national gathering of Latino leaders in the United States, to develop a united agenda on mobilizing Latino voting for the 2008 election and efforts to defeat anti-immigrant efforts nationwide.¹⁰¹ At the gathering, participants shared their ideas on community-based Latino mobilization efforts and addressed the inherent challenges involved in mobilizing a culturally and politically diverse electorate.¹⁰² The group’s goal was to have ten million voters participate in the 2008 election.¹⁰³

95. *Id.* According to a Pew Hispanic Study, in 2005, the proportion of all legal permanent residents seeking naturalization rose to 52%, the highest level in a quarter of a century. JEFFREY S. PASSEL, PEW HISPANIC CTR., GROWING SHARE OF IMMIGRANTS CHOOSING NATURALIZATION i (2007), available at <http://pewhispanic.org/reports/report.php?ReportID=74>.

96. Bunis, *supra* note 93.

97. *Id.*

98. Press Release, LULAC, Telemundo and mun2 Unveil National Multi-Platform “Vota Por Tu Futuro”–“Vote 4 Ur Future” Campaign at the National Press Club in Washington, D.C. (Oct. 3, 2007), available at <http://www.lulac.org/advocacy/press/2007/telemundo.html>.

99. *Id.*; see also Press Release, National Association of Latino Elected and Appointed Officials (NALEO), Survey Finds Immigration Issues Driving Latinos to the Polls (Nov. 7, 2006), available at <http://www.naleo.org/pr1106706.html>.

100. Spencer S. Hsu, *Immigrant Paperwork Backs up at DHS: Delays may Deny Vote to Hundreds of Thousands*, WASH. POST, Nov. 22, 2007, at A01.

101. Press Release, LULAC, *supra* note 92.

102. *Id.*

103. Almada, *supra* note 92.

Furthermore, a November 2006 survey conducted by the National Council of La Raza (NCLR) and the National Association of Latino Elected and Appointed Officials (NALEO) found that half of all Latino voters surveyed (1,050) reported being “more enthusiastic” about voting than in the past.¹⁰⁴ In the November 2006 survey, 75% of voters rated their interest in the election somewhere between eight and ten, an increase from the 56% who rated their interest at those levels in September 2006.¹⁰⁵ Similarly, a 2006 Pew Hispanic Center survey found that three-quarters of Latino respondents believe that the immigration debate will drive more Latinos to vote in the Presidential election.¹⁰⁶

B. *Latino Voters on Immigration*

The next question is whether Latino voters still lack a discernible cohesion as voters on immigration issues, particularly on such matters as comprehensive immigration reform and anti-immigrant measures. Here, some data suggests that greater cohesion may be forming among Latinos in support of pro-immigration policies, in great part due to the recent fierce immigration debate and the increasingly visible mistreatment of immigrants.

Based on a 2006 national survey of 2,000 Latino adults on the immigration debate,¹⁰⁷ the Pew Hispanic Center concluded that “Latinos are feeling more discriminated against, politically energized and unified following the immigration policy debate and the pro-immigration marches this spring.”¹⁰⁸ In this survey, approximately 14% of Latinos refer to immigration “as the most important problem facing the country today, second only to the war in Iraq (22%).”¹⁰⁹ Similarly, the November 2006 NCLR/NALEO survey also found that, while only 9% of respondents reported immigration as their primary concern, “a majority of Latinos (51%), including half of young voters, reported that immigration was “the most important or one of the

104. Press Release, NALEO, *supra* note 99.

105. *Id.*

106. ROBERT SURO & GABRIEL ESCOBAR, PEW HISPANIC CTR., 2006 NATIONAL SURVEY OF LATINOS: THE IMMIGRATION DEBATE 6 (2006), available at <http://pewhispanic.org/files/reports/68.pdf>.

107. *Id.* at 1.

108. *Id.* at i.

109. *Id.* at 21. The immigration issue creates a large division between the native and the foreign born. Foreign-born Latinos are three times more likely than the native born to view immigration as the most important problem facing the nation (20% versus 6%). *Id.*

most important issues in deciding their vote.”¹¹⁰ The 2006 Pew Hispanic Latino Survey on Immigration also revealed a somewhat greater sense of solidarity among Latinos of different nationalities. Now, “58% of Latinos see fellow Hispanics from different countries working together to achieve common political goals, versus 34% who say they are not working together.”¹¹¹

But what do these numbers mean in terms of specific issues affecting immigrants? The 2006 Pew Hispanic Latino Survey on Immigration revealed that Latinos, who now as a group feel more discriminated against as a result of the immigration debate, also express somewhat more favorable views towards immigrants on two issues.¹¹² First, “[a] greater share of native-born Latinos (45%) now favors increasing the number of legal immigrants from Latin America,” although that number is higher among the foreign born, with nearly half (48%) in favor.¹¹³ Among all Latinos surveyed, the majority (72%) believes undocumented immigrants help the economy.¹¹⁴ These trends are higher than they were in 2002.¹¹⁵

In addition, 41% of Latinos opine that those “who have been in the country for at least five years should be permitted to stay.”¹¹⁶ In contrast to the general public, moreover, only 5% of Latinos believe that no undocumented immigrants should be allowed to remain and become citizens.¹¹⁷ On these issues, however, there are divisions between the foreign-born and native-born Latinos, with 61% of all foreign born saying that all undocumented should be able to stay as compared to only 51% of native born.¹¹⁸ Here, the strongest indicators of opinions and positions regarding these issues are family ties and direct experiences concerning immigration.¹¹⁹

Between 55% and 70% of surveyed Latinos favor temporary workers, while a large minority (between 30% and 40%) oppose them.¹²⁰ The opposition encompasses views that range from those

110. Press Release, NALEO, *supra* note 99.

111. SURO & ESCOBAR, *supra* note 106, at 10.

112. *Id.* at 2.

113. *Id.* at 2, 17.

114. *Id.* at 15. A minority of Latinos, 21%, say that undocumented immigrants hurt the economy by driving down wages. *Id.* The number is even higher among native-born Latinos; 28% see economic harm from undocumented immigration. *Id.* at 16.

115. *Id.* at 2.

116. *Id.* at 15.

117. *Id.*

118. *Id.* at 19.

119. *Id.*

120. *Id.*

who do not want any form of legalization to those who view such programs as impractical or insufficiently generous to immigrants.¹²¹

On enforcement issues, “[m]ost Latinos (66%) oppose building fences between the U.S.–Mexico border, and even more (70%) are against sending the National Guard.”¹²² A slight majority (51%) opposes increasing the number of border patrol agents.¹²³ Here too, however, there are greater differences between the native-born and foreign-born Latinos, with a slight majority of native born (53%) favoring additional Border Patrol agents, while a majority (59%) of foreign born oppose that increase.¹²⁴ Differences also arose on employer immigration verification databases, with about 42% of foreign-born Latinos and 70% of native-born Latinos supporting the database.¹²⁵

Unfortunately, the 2006 Pew Hispanic Latino Survey on Immigration did not ask specific questions on other key questions affecting Latinos today, particularly in regard to the hundreds of anti-immigrant measures that were adopted following 9/11. These include restrictions on undocumented immigrants’ access to drivers’ licenses, public benefits, and higher education, as well as sanctions for employers or landlords who employ or lease to the undocumented, respectively.¹²⁶ Results from local anti-immigrant measures provide some evidence that the Latino electorate overwhelmingly opposes these restrictive regulations,¹²⁷ but greater research is needed.

In general, within electoral politics, Latino demographic trends are increasing the influence of the Latino electorate, while the current immigration debate appears to be motivating greater Latino political participation. These are important trends that elected representatives and candidates cannot—and should not—ignore. Nevertheless, these trends alone cannot sufficiently turn the tide against the nation’s fierce anti-immigrant climate.

121. *Id.* at 20.

122. *Id.* at 17.

123. *Id.*

124. *Id.* at 18.

125. *Id.* at 19.

126. *See* Aldana, *supra* note 60, at 272–74, 278–84.

127. For example, 77% of Latinos voted against California’s anti-immigration Proposition 187. Jan Adams, *Proposition 187 Lessons*, ZMAGAZINE, Mar. 1995, available at <http://www.zmag.org/zmag/articles/mar95adams.htm>. More recently, however, only 53% of Latinos voted against Arizona’s anti-immigrant Proposition 200. Sam Francis, *Proposition 200, Tancredo Re-Election Not What Immigration Enthusiasts Want to Hear*, VDARE.COM, Nov. 18, 2004, http://www.vdare.com/francis/041118_election.htm.

Consider, for example, that to date, despite these trends, neither major national party, Democrat or Republican, has made a firm commitment to tackle anti-immigrant policies.¹²⁸ Their failure to do so may partly explain why Latinos are also not firmly committing to either party, despite their greater alliance around immigration issues. Analysts of the Latino electorate reveal that Latino voters are “to some extent holding the Republican Party responsible for what they perceive to be the negative consequences of the immigration debate,”¹²⁹ but they disagree more on the actual political impact of that assessment. Some see at least short-term Latino partisanship moving strongly toward the Democrats as a direct response to some Republicans’ strong opposition to comprehensive immigration reform and the perceived mean-spiritedness of the debate in the Republican-controlled House.¹³⁰ Others, however, observe that the Democratic Party has not made significant gains among Latinos and, by some measure, may have lost support.¹³¹ The 2006 Pew Hispanic Latino Survey on Immigration, moreover, reported that one out of every four Latinos believe that neither political party offers the best option on immigration issues, more than three times those who felt this way two years ago.¹³² Similarly, 37% of Latinos favor Democrats, while the same percentage sees no difference between the parties; this number, however, shifts significantly in favor of Democrats among registered Latino voters (46%) versus the 9% favoring Republicans when asked which party has more concern for Latinos.¹³³

One significant task, therefore, is to assess why political parties are not being sufficiently pro-immigrant. One explanation may reside still in the low numbers of the Latino electorate, which is estimated now to be around 9%.¹³⁴ Another explanation may be that despite greater pro-immigrant stances among Latinos in recent times, these issues still divide Latinos.¹³⁵ Nevertheless, this picture is only part of the story. The attitudes

128. See Maria Arhancet, *Platforms of Presidential Candidates Regarding Immigration Reform*, 21 GEO. IMMIGR. L.J. 507, 507–09 (2007) (providing a brief summary of 2008 Republican and Democratic presidential candidate positions on immigration reform).

129. SURO & ESCOBAR, *supra* note 106, at i.

130. RODOLFO DE LA GARZA & LOUIS DESIPIO, TOMÁS RIVERA POLICY INSTITUTE CONFERENCE SUMMARY, NEW DIMENSIONS OF LATINO PARTICIPATION 1–2 (2006), available at <http://www.trpi.org/PDFs/dimensions.pdf>.

131. SURO & ESCOBAR, *supra* note 106, at 12–14.

132. *Id.* at 13.

133. *Id.*

134. See Timiraos, *supra* note 65.

135. See *supra* notes 106–25 and accompanying text (describing results from a survey of Latino voters).

and activism of other voters with regard to immigration also affect the debate. For example, while small in numbers, radical anti-immigrant groups are very effective at mobilizing against pro-immigrant proposals.¹³⁶ Perhaps more importantly, the ambivalence among Latino voters on some issues, such as increased immigration or legalization proposals, is at times shared in greater numbers among groups who might otherwise be allies in the civil rights struggle.¹³⁷ While a full analysis of this issue is beyond the scope of this Article, any civil rights struggle on behalf of immigrants must address the issue of integrating into the movement other progressive voices.

III. THE PROMISE OF NONELECTORATE LATINO CIVIC ENGAGEMENT: THE 2006 IMMIGRATION MARCHES AND BEYOND

Any analysis of nonelectorate Latino civic engagement must consider the notable 2006 pro-immigration marches. For three months between March 10 and May 1, 2006, these marches attracted about five million Latino immigrants and their supporters to demand legalization for immigrants and to oppose the Sensebrenner bill,¹³⁸ which would have criminalized undocumented immigrants and those organizations that provided assistance to them.¹³⁹ In some cities, these were the largest demonstrations in their history, and nationwide, these marches constituted the largest mobilization of immigrants in U.S. history.¹⁴⁰

Professor Johnson, along with Professor Bill Ong Hing, was among the first legal scholars to analyze the prospects for a new civil rights movement based on the 2006 immigration rights marches.¹⁴¹ Their assessment, however, was tamed enthusiasm at best, and even doubtful, at least for its future prospects. Johnson and Hing acknowledged, for instance, that at the outset, the

136. See Robert Pear, *High-Tech Titans Strike Out on Immigration Bill*, N.Y. TIMES, June 25, 2007, at A16 (stating that anti-immigrant groups are well organized, making it difficult to pass immigration legislation).

137. See, e.g., Rodolfo O. de la Garza & Louis DeSipio, *Interests Not Passions: Mexican-American Attitudes Toward Mexico, Immigration from Mexico, and Other Issues Shaping U.S.-Mexico Relations*, 32 INT'L MIGRATION REV. 401, 408-16 (1998) (examining Latino attitudes on various immigration issues).

138. Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. §§ 203, 205 (2005); see Johnson & Hing, *supra* note 52, at 100.

139. Victor Narro et al., *The 2006 Immigrant Uprising: Origins and Future*, 16 NEW LAB. F. 49, 49-50 (2007).

140. *Id.*

141. See Johnson & Hing, *supra* note 52, at 101 (discussing the potential for a new, broad-based civil rights movement in the wake of the 2006 marches).

marches seemed to stall the Sensenbrenner bill.¹⁴² Ultimately, however, they conceded that not only did comprehensive immigration reform fail to pass, but Congress voted to expand the U.S.–Mexican fence.¹⁴³ In addition, Johnson and Hing highlight various shortcomings in the movement, including its narrow reactionary focus on anti-immigrant legislation,¹⁴⁴ its failure to attract a broader coalition of supporters, especially among African Americans,¹⁴⁵ and even reservations as to its sustainability.¹⁴⁶ All of these observations are fair criticisms of the March 2006 marches. However, they also overlook a host of highly significant lessons to be drawn from them and the potential contributions these could make going forward.

The sustainability of any immigrant civil rights movement should not depend alone on the continued visibility of mass mobilizations of immigrants, as it is often the efforts behind the scenes, away from the spotlight, that matter the most. These marches cannot be viewed in isolation as separate from decades-long grassroots immigrant rights movement or as sporadic reactionary mobilizations. Part of the explanation for the unprecedented and surprisingly large numbers of protesters certainly resides in spontaneous and organic mobilization from various groups, including young high school and elementary school students;¹⁴⁷ but, the marches had their roots in the work of local advocates of immigration reform, labor unions, churches, and others in the Latino community.¹⁴⁸ Not long before, in 2003, nearly 1,000 immigrants and allies rode to Washington, D.C. demanding basic rights and civil liberties for immigrant workers.¹⁴⁹ This movement, inspired by the Freedom Rides of the Civil Rights Movement, also had roots in a coalition of unions, immigrant rights groups, community organizations, and lawyer activists,¹⁵⁰ and sought to make visible on the national stage the less noticed everyday work of immigrant rights organizers locally in the workplace, schools, courts, and administrative agencies.

142. *Id.* at 104.

143. *Id.* at 100–01.

144. *Id.* at 103.

145. *Id.* at 116–20.

146. *See id.* at 100 (observing that by the summer of 2006, there were signs that the immigrant rights movement had “lost steam”).

147. *See id.* at 103 (describing the movement as reminiscent of the 1960s Civil Rights movement).

148. DE LA GARZA & DESIPIO, *supra* note 130, at 3.

149. Victor Narro & Dan Gregor, *People’s Lawyering on the Bus: How a Small Band of NLG Members Became the Legal Vanguard for Immigrant Freedom Riders*, 63 GUILD PRAC. 65, 65 (2006).

150. *Id.* at 65–66.

Thus, while the high visibility of marches or freedom rides matters, more significant are the numerous grassroots organizations promoting and creating civic engagement among Latinos living in the United States.

Across the United States, numerous churches, labor unions, and immigrant rights groups are organizing Latinos, recently arrived or not, to participate more actively in promoting change in the schools their children attend, in local elections against anti-immigrant measures, or in lobbying their local representatives in the adoption of pro-immigrant policies, and even in improving the lot of their families back home by pushing for reforms in their home countries.¹⁵¹ Studies assessing the effect of Latino participation in community-based efforts reveal that such activities spark broader civic engagement, including among the poor, and vest Latinos with resources necessary to take on individualistic forms of politics.¹⁵² Immigrants need institutional guidance to integrate into U.S. society, and of course, to encourage political participation.¹⁵³ This is particularly true in immigrant populations for whom electoral participation is not an option. A more balanced approach toward civil integration of immigrants in the United States, therefore, must move beyond simple naturalization drives. Furthermore, greater civic integration is necessary to address the challenges posed by nonparticipation of second and third generation immigrants who are eligible voters but disengaged from politics.¹⁵⁴ Nonelectoral participation, for example, has the potential to raise Latino group consciousness, which increases how much Latinos engage in political participation.¹⁵⁵

151. See, e.g., Ruth Milkman, *Introduction to ORGANIZING IMMIGRANTS: THE CHALLENGE FOR UNIONS IN CONTEMPORARY CALIFORNIA* 2–24 (Ruth Milkman ed., 2000) (observing the “cultural assimilation” and “economic integration” of immigrants achieved through union participation); Wilfredo Bolivar et al., *Unleash the Power of Immigrants . . . Organize!*, 33 SOC. POL’Y 30 (2003) (describing the requirements for the effective organization of immigrants and noting some of the achievements of PACT (People Acting for Community Together), a Miami-based immigrant organization group); Luis Escala Rabadan, *Human Rights and Mexican Migrant Associations in California*, 3 MIGRACIONES INTERNACIONALES, 84–107 (2005); Kirk Noden, *Building Power in Forty Languages: A Story About Organizing Immigrants in Chicago’s Albany Park*, 33 SOC. POL’Y 47, 47–52 (2003) (chronicling the efforts and lessons learned through organizing immigrants in one of the nation’s most ethnically diverse communities).

152. See Randal C. Archibold, *Strategy Sessions Fueled Immigrant Marches*, N.Y. TIMES, Apr. 12, 2006, at A16 (describing the “snowball effect” of grassroots efforts that became a turning point, inspiring and empowering people).

153. Skerry, *supra* note 64, at 28.

154. *Id.* at 36.

155. See Atiya Kai Stokes, *Latino Group Consciousness and Political Participation*, 31 AM. POL. RES. 361, 369–71 (2003) (finding that increasing group consciousness among

Aside from promoting a culture of political participation, civic engagement by immigrants has other important benefits for political participation among already eligible voters. Studies reveal, for example, that due to education and socioeconomic levels, Latino voters generally possess a disturbingly low knowledge about political issues when they vote.¹⁵⁶ Studies also reveal that voters with low levels of information, such as Latinos, rely more heavily on candidate likeability, rather than a firm knowledge of issues, sometimes to the detriment of their own interests.¹⁵⁷ Greater civic engagement, however, increases political information capital, which allows voters to make informed decisions about voting as opposed to voting for candidates on the basis of popularity.¹⁵⁸ This is particularly important when considering immigration policy and particular issues, such as guest worker programs. While guest worker programs on their face seem pro-immigrant, division exists among immigrant advocates about whether they help or hurt immigrant workers.¹⁵⁹

The 2006 marches themselves, in fact, promoted a culture of greater political participation, increased group consciousness, and increased political information capital; all of which could translate to more positive outcomes in the local and national political landscape for immigrants. This is a benefit of the 2006 marches that Johnson and Hing acknowledge in their assessment when noting that political culture involves more than voting and registration rates, especially for noncitizen immigrants ineligible to vote.¹⁶⁰ The evidence, however, suggests that even among eligible voters, the marches could still make a difference at the urns. NALEO's 2006 survey, for example, revealed a strong linkage between likely voters and those who participated in the marches and rallies. Nearly one-third of voters said they or someone close to them participated in the marches.¹⁶¹

Latinos in turn increases their overall involvement in the political process).

156. Stephen P. Nicholson et al., *Political Knowledge and Issue Voting Among the Latino Electorate*, 59 POL. RES. Q. 259, 260 (2006).

157. *See id.* at 268–69 (arguing that uninformed Latino voters may have supported President George W. Bush in the 2000 election based on misinformation about just how Latino friendly he was, whereas more informed voters recognized that Al Gore would likely adopt policies more favorable to Latinos).

158. *Id.* at 261.

159. *See, e.g.*, Narro et al., *supra* note 139, at 51–53 (documenting labor's intragroup dissent and intergroup dissent with other immigrant rights advocates over guest worker proposals).

160. Johnson & Hing, *supra* note 52, at 127.

161. Press Release, NALEO, *supra* note 99.

The evidence also suggested greater Latino group consciousness as a result of the marches. A study conducted by the Pew Hispanic Center, for example, revealed that almost two-thirds of Latinos think the pro-immigrant marches signal the beginning of a new and lasting social movement.¹⁶² A majority of respondents also believe that Latinos are working together toward common goals.¹⁶³ Indeed, Latino mobilization against anti-immigrant measures, rather than revealing a weakness, helped to solidify greater Latino group cohesiveness on a broader antidiscrimination agenda, regardless of immigration status.¹⁶⁴ Another potential benefit of the marches was the involvement of youth, which will hopefully translate to their greater electoral participation in the future.

Thus, even if marches of the same scale do not resurface, or even if they do not actually alter immigration policy right away, this should not be the sole measurement of their success. Rather, their real legacy will be in promoting greater grassroots involvement among Latinos when they return to their communities, or a greater interest in and more informed political participation. At a minimum, the immigrant marches re-energized the immigrant rights movement.¹⁶⁵ Today, various coalitions are advancing a plan of action that focuses on voter registration, citizenship drives, community forums, and other mobilizations and rallies.¹⁶⁶ The marches allowed key groups in this movement to air out and begin to address their differences, as was the case between unions and immigrant rights advocates who parted ways on philosophical differences over certain policies and tactics.¹⁶⁷ Hopefully, this airing of conflict, which is a necessary part of any sustainable movement, will facilitate coalition building and enable the aim to be broader in the future by including, for example, the voices of African Americans. Johnson, Hing, and others see potential on the issue of workers' rights as a unifying theme of this broader coalition.¹⁶⁸

162. SURO & ESCOBAR, *supra* note 106, at 8.

163. *Id.* at 10.

164. See, e.g., S. Karthick Ramakrishnan & Thomas J. Espenshade, *Immigrant Incorporation and Political Participation in the United States*, 35 INT'L MIGRATION REV. 870, 893 (2001) (documenting that anti-immigrant legislation provokes first and second generation immigrants to coalesce politically).

165. Narro et al., *supra* note 139, at 56.

166. *Id.*; see also *supra* notes 92–101 and accompanying text (discussing recent voter registration efforts).

167. Narro et al., *supra* note 139, at 53–54.

168. Johnson & Hing, *supra* note 52, at 116–25; see also Jennifer Gordon & R. A. Lenhardt, *Citizenship Talk: Bridging the Gap Between Immigration and Race Perspectives*, 75 FORDHAM L. REV. 2493, 2516–19 (suggesting “work as a path to

IV. CONCLUSION

The anti-immigrant climate is currently strong at the local and national levels. Turning the political tide to favor immigrants will require an equally strong political response from pro-immigrant allies. The growing numbers of Latinos in the United States, many of whom are immigrants¹⁶⁹ and, among them, many of whom are undocumented,¹⁷⁰ makes them potential allies in the struggle of immigrants for greater rights in this country. There are some positive signs in this regard. In the electoral process, Latinos appear more prepared now than before to vote, and motivated to do so in great part by a desire to counter anti-immigrant policies, which they perceive as also discriminating against Latinos. There is also a trend for greater civic engagement by Latinos particularly at the local level, even among those ineligible to vote. This trend is especially important as the federal government devolves in this area, while states seize greater immigration powers. Latinos alone will not determine U.S. immigration policy, but all of these trends reveal that they are becoming an important voice in a much needed civil rights movement on behalf of immigrants in this country.

citizenship” for African Americans and Latino immigrants).

169. According to the 2000 census, at least 11% of the entire U.S. population are foreign born (approximately 31.1 million); among them, 45% are Latino. ELIZABETH GRIECO, MIGRATION POLICY INSTITUTE, CHARACTERISTICS OF THE FOREIGN BORN IN THE UNITED STATES: RESULTS FROM CENSUS 2000, *available at* <http://www.migrationinformation.org/USfocus/display.cfm?ID=71>. The Pew Hispanic Center put the figure of the foreign born at 35.7 million by 2004. JEFFREY S. PASSEL, PEW HISPANIC CTR., ESTIMATES OF THE SIZE AND CHARACTERISTICS OF THE UNDOCUMENTED POPULATION 7 (Mar. 25, 2005), *available at* <http://pewhispanic.org/files/reports/44.pdf>.

170. Moreover, by 2004, of the over ten million undocumented immigrants residing in the United States, about 81% are Latino, with 57% of them from Mexico and 24% from other Latin American nations. PASSEL, *supra* note 169, at 7.