

# The EEOC and Immigrant Workers

By WILLIAM R. TAMAYO\*

I WANT TO THANK Professor Maria Ontiveros<sup>1</sup> for inviting me to participate in this evening's event. I am honored to be on the program with Professor Juan Perea,<sup>2</sup> one of this country's leading experts on labor law and national origin discrimination. He gave me quite a compliment when he cited one of my law review articles<sup>3</sup> in one of his articles.<sup>4</sup>

I am especially honored to speak today since I was appointed Regional Attorney for the U.S. Equal Employment Opportunity Commission ("EEOC") in San Francisco in Spring 1995, succeeding Jack Pemberton.<sup>5</sup> Just days before I started the job in 1995, I visited Jack at his office at the University of San Francisco School of Law and lo and behold, Bill Brown, the first chair of the EEOC, was visiting him. I

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\* Regional Attorney, U.S. Equal Employment Opportunity Commission, San Francisco (1995–present). Mr. Tamayo directs the EEOC's litigation in Northern California, Northern Nevada, Oregon, Washington, Alaska, Idaho, and Montana. Prior to 2006, his jurisdiction covered Northern and Central California, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Prior to joining the EEOC, Mr. Tamayo was a Staff and Managing Attorney at the Asian Law Caucus (1979–1995), where he emphasized the practice of immigration and nationality law, employment discrimination, and other civil rights matters. Mr. Tamayo received his J.D. from the University of California Davis School of Law, and his B.A. from San Francisco State University. These comments were presented as part of the University of San Francisco School of Law Jack Pemberton Lecture series held at the U.S. Court of Appeals for the Ninth Circuit on February 26, 2009. This Article does not reflect official EEOC policy and is solely written by the author.

1. Professor of Law, University of San Francisco School of Law.
2. Professor of Law, University of Florida Levin College of Law.
3. William R. Tamayo, *When the "Coloreds" Are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 *ASIAN L.J.* 1 (1995).
4. Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 *CAL. L. REV.* 1213, 1214 (1997).
5. Regional Attorneys are appointed by the Chairman of the EEOC with the concurrence of the General Counsel. 42 U.S.C. § 2000e-4(b)(1) (2006). John de J. "Jack" Pemberton previously served as the Acting General Counsel of the EEOC (1971–1972) and as Regional Attorney of the EEOC San Francisco (1988–1994). Jack also served as the Executive Director of the ACLU (1962–1970). I served on the Board of Directors of the ACLU Northern California with his daughter, Nancy Pemberton (1985–1992).

appreciated Chairman Brown's and Jack's good wishes and expressions of confidence in my ability to lead the office.

While employed at the Asian Law Caucus,<sup>6</sup> I was one of several attorneys<sup>7</sup> who represented Alicia Castrejon, the plaintiff-intervenor, in *EEOC v. Tortilleria La Mejor*,<sup>8</sup> a pregnancy discrimination case in which the employer argued that, because Ms. Castrejon had been undocumented at the time of hire, she was not protected by Title VII<sup>9</sup> since the Immigration Reform and Control Act of 1986 ("IRCA")<sup>10</sup> barred the hiring of undocumented workers.<sup>11</sup> I had the privilege to litigate this case with Jack and other EEOC lawyers from 1987 to 1991. Fortunately, the federal court in Fresno, California agreed with the plaintiffs and held Title VII covered undocumented workers despite the IRCA.<sup>12</sup>

I have been asked this evening to describe how the EEOC continues to represent immigrant workers in an extremely challenging climate of xenophobia. It is a challenge getting immigrant communities to trust us and to believe that we will help them with their problems. Many perceive the government as untrustworthy, ineffective, and frankly, part of the problem. Many come from countries where seeking help from the government may be unheard of or suicidal. But in the true spirit of international human rights, the EEOC is a government agency whose principal mission is to investigate, litigate, and eradicate employment discrimination and vindicate the civil rights of

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6. The Asian Law Caucus is a non-profit, public interest law firm in San Francisco, established in 1972. It is the oldest Asian-American legal organization and conducts litigation and advocacy in the areas of immigrant rights, housing, employment/labor, and general civil rights. Among its many accomplishments, the Caucus served as co-counsel in *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984), setting aside on petition for writ of *coram nobis* the conviction upheld in *Korematsu v. United States*, 323 U.S. 214 (1944), which found that Fred Korematsu violated Civilian Exclusion Order No. 34, which prohibited those of Japanese ancestry from being in certain areas. *Korematsu*, 323 U.S. 214. In his remarks to the EEOC San Francisco District Office staff at the May 1998 Asian Pacific American Heritage luncheon, Fred described his termination, just weeks after Pearl Harbor, from his four-year welder job in Oakland. He noted, "If there was an EEOC, this might not have happened." Fred Korematsu, Address at Asian Pacific American Heritage Luncheon (May 7, 1998) (notes on file with author).

7. Co-counsel included Francisco Garcia-Rodriguez of the Mexican American Legal Defense and Education Fund and Maria Blanco of Equal Rights Advocates.

8. *EEOC v. Tortilleria La Mejor*, 758 F. Supp. 585 (E.D. Cal. 1991).

9. Civil Rights Act of 1964, tit. VII, 42 U.S.C. §§ 2000e-2000e-17 (2006).

10. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in 8 U.S.C. § 1324a (1988)).

11. *Id.*; see also Katherine Bishop, *Judge Upholds Job Rights of Undocumented Aliens*, N.Y. TIMES, Mar. 6, 1991, at A22.

12. *Tortilleria La Mejor*, 758 F. Supp. 585.

victims.<sup>13</sup> As a former deportation defense and political asylum lawyer, this work serves as a continuation of my international human rights practice, and the breadth of our work reminds me to maintain this perspective.

I speak tonight as an EEOC Regional Attorney whose office has dealt with many workers from the Philippines,<sup>14</sup> Bangladesh, Nepal, and China in the Commonwealth of the Northern Mariana Islands;<sup>15</sup> Africans in Hawaii; thousands of Asians, Latinos, and indigenous Mexicans in the Northwest and in California; and now potentially Somalis, Salvadorans, Mexicans, and Koreans in Alaska. But this is not surprising.

According to the International Organization for Migration, nearly 200 million people have left their homelands to seek work in other countries.<sup>16</sup> The United Nations High Commissioner for Refugees announced that forty-two million displaced people roam the globe because of wars, famine, destruction, and persecution.<sup>17</sup> The trafficking of thousands of men, women, and children from Eastern Europe, Africa, Asia, and Latin America has escalated to become the twenty-first century slave trade.

There are some twelve million undocumented people in the United States, of which eight million are in the workforce.<sup>18</sup> These workers do not leave, in part, because the United States has made it harder for them to re-enter. Consequently, they are a permanent part of the cultural and economic life of communities and definitely have rights in the workplace.<sup>19</sup>

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13. 42 U.S.C. § 2000e-5 (2006).

14. See, e.g., *EEOC v. Pacific Micronesia Corp.*, No. CIV.A.02-0015, 2003 WL 22997246 (D. N. Mar. I. Oct. 10, 2003).

15. See, e.g., *EEOC v. Sako Corp.*, No. C-04-0025 (D. N. Mar. I. Apr. 19, 2005) (\$1,087,337 default judgment for national origin discrimination and discharge). In a recent major victory led by the EEOC Los Angeles District Office (the Office obtained jurisdiction over the Commonwealth of the Northern Mariana Islands in January 2006), EEOC obtained a \$1.7 million settlement with L&T Group of Companies, Ltd. and three other organizations. *EEOC v. L&T Group of Companies, Ltd.*, No. C-06-0031 (D. N. Mar. I. 2006) (consent decree signed July 28, 2009).

16. INT'L ORG. FOR MIGRATION, *WORLD MIGRATION REPORT 2005: COSTS AND BENEFITS OF INTERNATIONAL MIGRATION* 3 (2005).

17. U.N. High Commissioner for Refugees, *2008 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons* (June 16, 2009), available at <http://www.unhcr.org/4a375c426.pdf>.

18. JEFFREY S. PASSEL & D'VERA COHN, PEW HISPANIC CENTER, *PORTRAIT OF UNAUTHORIZED IMMIGRANTS IN THE UNITED STATES* (2009), available at <http://pewhispanic.org/reports/report.php?ReportID=107>.

19. See, e.g., *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984) (extending the National Labor Relations Act to undocumented workers); *Patel v. Quality Inn South*, 846 F.2d 700

I was a comic book junkie as a kid, and I find it ironic that many of those today who advocate for tough immigration restrictions during their youth had, as their hero, Superman—an “illegal alien” who entered without inspection,<sup>20</sup> who claimed to be born in Smallville, USA, who attended public schools,<sup>21</sup> who worked without authorization, who obtained a driver’s license under the alias “Clark Kent,” and who claimed to have been “found abandoned on a farm” by Jonathan and Martha Kent.<sup>22</sup> This begs the question: why were they not arrested for harboring an illegal alien who lay in swaddling clothes in a rocket ship?<sup>23</sup> Superman—an illegal alien who could fly in and out of the United States without presenting a visa or passport while claiming that he stood for truth, justice, and the American way. Since he was drawn as a white male wearing an aerobic outfit of blue tights and red shorts, instead of a dark man with baggy pants and a flannel shirt standing on a corner looking for work, probable cause to arrest never became an issue<sup>24</sup> and, therefore, he never had to marry Lois Lane.<sup>25</sup>

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(11th Cir. 1988) (extending the Fair Labor Standards Act to undocumented workers); *EEOC v. Tortilleria La Mejor*, 758 F. Supp. 585 (E.D. Cal. 1991) (extending Title VII of the Civil Rights Act of 1964 to undocumented workers).

20. “Entry without inspection,” i.e., crossing the border without being inspected by an immigration officer, violates the Immigration and Nationality Act, 8 U.S.C. § 1325 (2006).

21. See generally *Plyler v. Doe*, 457 U.S. 202 (1982) (striking down Texas law that would have prohibited the use of public funds to educate undocumented children).

22. *SUPERMAN: THE MOVIE* (Warner Brothers 1978). The original Superman story involved a planet, Krypton, which explodes due to major seismic shifting. A scientist, Jor-El, planned for the anticipated destruction of Krypton and sent his son, Kal-El, to Earth so that he could survive. Kal-El’s rocket landed in the farm of Jonathan and Martha Kent, an older, childless couple, near “Smallville, USA.” The Kents heard the crash and drove to the wreckage only to find the baby Kal-El crying amidst blankets that eventually became his Superman uniform. They then claimed the baby was found abandoned on their farm, adopted him, and gave him the name “Clark Kent.” *Id.*

23. Harboring illegal aliens constitutes a violation of the Immigration and Nationality Act, 8 U.S.C. § 1324 (2006). The Kents, knowing that the rocket ship came from outside the United States, and knowing that Kal-El had unnatural super powers, hid the rocket ship in their barn, and made up the story referenced in the previous footnote. They also provided food and housing to Kal-El and represented him as having been born somewhere in the United States. *SUPERMAN*, *supra* note 22.

24. The Ninth Circuit upheld an injunction barring Immigration & Naturalization Service (“INS”) agents from seizing and arresting workers without probable cause during immigration raids conducted in 1982 in Northern California. *Int’l Molders & Allied Workers Local 164 v. Nelson*, 799 F.2d 547 (9th Cir. 1986).

25. Lawful permanent resident status can be obtained, inter alia, through marriage to a U.S. citizen. 8 U.S.C. § 1101 (2006). Lois Lane, Superman’s girlfriend, was a reporter at the *Daily Planet* newspaper where Clark Kent also worked. Surprisingly, she did not know that Superman and Clark Kent (who acted meek and timid to disguise his powers and for whom Lois found no attraction) were the same person. She often wondered, however, why Kent disappeared, ran an errand, or feigned illness just before Superman appeared on the scene. *SUPERMAN*, *supra* note 22.

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All kidding aside, this issue is complex, and it is only in this complexity that we can discuss defending this vulnerable population's rights in the twenty-first century. For most of this country's history, it was perfectly legal for an employer to sexually harass an employee and fire her if she complained about it; it was legal to deny a job to a black man simply because he was black; it was legal to fire a person who could not speak English, even if she did the job for years without incident; and it was legal to prevent a Muslim from praying during work breaks or from wearing a hijab.<sup>26</sup> Title VII of the Civil Rights Act of 1964<sup>27</sup> prohibits these practices. Thus, its passage was a revolutionary victory for the civil rights movement. Moreover, it continues to be a powerful tool for the government, for employees, and for other advocates of civil rights. But not until 1967 was age discrimination outlawed under federal law,<sup>28</sup> and not until 1992 was discrimination based on disability prohibited in the private sector.<sup>29</sup>

The civil rights movement also led to the passage of the Immigration Act of 1965.<sup>30</sup> That Act undid the racist 1924 National Origins Act,<sup>31</sup> which had virtually limited all immigration to the United States from around the world except from Western Europe.<sup>32</sup> Under the 1924 law, for example, Great Britain had only two percent of the world's population, yet it was given forty-three percent of the immigrating visas.<sup>33</sup>

The Immigration Act of 1965 was also revolutionary and *an aberration* when placed against the nation's history of racist immigration laws. President Lyndon Johnson and Congress realized that a nation that espoused civil rights should no longer further racism through its immigration laws.<sup>34</sup>

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26. A hijab is "[t]he headscarf worn by Muslim women, sometimes including a veil that covers the face except for the eyes." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2009).

27. Civil Rights Act of 1964, tit. VII, 42 U.S.C. §§ 2000e–2000e-17 (2006).

28. Age Discrimination in Employment Act, 29 U.S.C. § 621 (2006).

29. Americans with Disabilities Act, tit. I, 42 U.S.C. § 12101 (2006). Title I became effective for employers with twenty-five or more employees on July 26, 1992, and for employers with fifteen or more employees on July 26, 1994.

30. Immigration Act of 1965, Pub. L. No. 89-236, 79 Stat. 911.

31. Immigration Act of 1924, ch. 190, 43 Stat. 153 (limiting visas to two percent of each nationality group residing in the United States according to the 1890 census and excluding citizens from the Western Hemisphere from this quota system).

32. U.S. COMM'N ON CIVIL RIGHTS, THE TARNISHED GOLDEN DOOR: CIVIL RIGHTS ISSUES IN IMMIGRATION 9–10 (1980).

33. William Tamayo, *Asian Americans and the McCarran Walter Act*, in ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY (1992).

34. See generally U.S. COMM'N ON CIVIL RIGHTS, *supra* note 32.

California is often perceived as being culturally diverse, innovative, and cutting edge. Many immigrants have come and made their fortunes while making contributions in academia, science, sports, politics, business, the arts, *body building*, and even in state government.<sup>35</sup> However, we must not forget that California is the birthplace of the Chinese Exclusion Act of 1882<sup>36</sup>—a law that was extended indefinitely<sup>37</sup> after the Statue of Liberty was dedicated in 1886<sup>38</sup> to welcome western European immigrants. As Professor of Law Bill Hing<sup>39</sup> says, “It’s no accident that the Statue of Liberty faces Europe and has her back to Asia and Latin America.”<sup>40</sup> Ironically, Lady Liberty, with broken shackles at her feet, was a gift from France to the United States for ending the Civil War and slavery.<sup>41</sup> Yet, racism continued to drive U.S. immigration policy.<sup>42</sup> Although the Chinese Exclusion Act was repealed in 1943,<sup>43</sup> the Immigration Act of 1924 allowed a quota of only 105 visas to China.<sup>44</sup>

35. An immigrant from Austria, Arnold Schwarzenegger, was a champion bodybuilder before becoming an actor. See Governor Arnold Schwarzenegger: About Arnold, Biography, <http://gov.ca.gov/about/arnold> (last visited Nov. 4, 2009); see also TRUE LIES (20th Century Fox 1994); TOTAL RECALL (TriStar Pictures 1990); TERMINATOR (Orion Pictures 1984); CONAN THE BARBARIAN (Universal Pictures 1982). In 2003, Arnold Schwarzenegger became Governor of California through a “total recall” of the prior governor, Gray Davis. Carla Marinucci & John Wildermuth, *Schwarzenegger Leads Voter Revolt Davis Recalled*, S.F. CHRON., Oct. 8, 2003, at A1.

36. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, *repealed by* Act of Dec. 17, 1943, ch. 344, § 1, 57 Stat. 600.

37. Act of Apr. 27, 1904, ch. 1630, 33 Stat. 428.

38. Statue of Liberty, Statue of Liberty History, [http://www.statueofliberty.org/Statue\\_History.html](http://www.statueofliberty.org/Statue_History.html) (last visited Oct. 9, 2009).

39. Professor of Law, University San Francisco School of Law. Bill Ong Hing was one of my mentors throughout my practice of immigration law. His advice, legal acumen, counsel, and humor have been invaluable to me and to many others in the ongoing quest to defend immigrants’ rights. We are forever grateful for that help.

40. Statement of William R. Tamayo, EEOC Regional Attorney, San Francisco District Office, Meeting of Feb. 28, 2007: Washington D.C. to Launch E-Race Initiative (Apr. 9, 2007), <http://www.eeoc.gov/abouteeoc/meetings/2-28-07/tamayo.html>.

41. See James I. Neuson, *The Black History of the Statue of Liberty*, Jan. 24, 2002, <http://www.blackwebportal.com/wire/DA.cfm?ArticleID=529> (last visited Nov. 4, 2009). (There is some controversy as to whether the Statue of Liberty was built to commemorate the friendship of the French and American collaboration during the Revolutionary War, or was created to commemorate the end of slavery. The statue’s creator, Edouard-Rene Lefebvre de Laboulaye, was an internationally renowned jurist and a historian on the United States. Laboulaye was also the chairman of a French anti-slavery society. CARA SUTHERLAND, *THE STATUTE OF LIBERTY* 9 (2003)).

42. See U.S. COMM’N ON CIVIL RIGHTS, *supra* note 32.

43. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, *repealed by* Act of Dec. 17, 1943, ch. 344, § 1, 57 Stat. 600.

44. Immigration Act of 1924, ch. 190, 43 Stat. 153.

California is the birthplace of the Gentlemen's Agreement of 1907,<sup>45</sup> which limited Japanese immigration; the birthplace of the Tydings-McDuffie Act of 1934<sup>46</sup> (Philippine Independence Act of 1934), which, inter alia, limited Filipino immigration to fifty visas per year; and the birthplace of the anti-miscegenation laws which barred Filipinos from marrying white women at a time when the ratio of Filipino men to Filipino women was fourteen to one.<sup>47</sup> California is also the birthplace of the World War II internment of 120,000 Japanese Americans, and of the Chinese confession program of the 1950s, which led to the deportation of many long-time residents.<sup>48</sup> This helps explain why, in 2009, while persons of Asian descent are over fifty percent of the world's population,<sup>49</sup> they are approximately only five percent of the U.S. population<sup>50</sup>—*a statistical disparity created by clear racial intent.*

California was the site of mass deportations of Mexicans and U.S. citizens of Mexican descent without any due process in the 1930s;<sup>51</sup> a site of the slave-like "bracero" program, which exploited Mexican farm workers for over twenty years and built the multi-billion dollar agricultural industry;<sup>52</sup> the site of immigration roundups of the 1950s,

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45. ROGER DANIELS, *THE POLITICS OF PREJUDICE: THE ANTI-JAPANESE MOVEMENT IN CALIFORNIA AND THE STRUGGLE FOR JAPANESE EXCLUSION* 31–78 (Milwood 1980); *see generally* U.S. COMM'N ON CIVIL RIGHTS, *supra* note 32, at 9; U.S. DEP'T OF STATE, *PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES 1924*, at 339 (1939).

46. DAVID M. REIMERS, *OTHER IMMIGRANTS: THE GLOBAL ORIGINS OF THE AMERICAN PEOPLE* 69 (2005); *see generally* Philippine Independence Act of 1934, ch. 84, 48 Stat. 456 (codified as amended at 48 U.S.C. § 1238) [hereinafter Tydings-McDuffie Act]. This divestiture of non-citizen national status was challenged unsuccessfully in *Rabang v. Boyd*, 353 U.S. 427, 433 (1957), and in *Cabebe v. Acheson*, 183 F.2d 795, 799 (9th Cir. 1950).

47. William Tamayo, *Asian Americans and Present U.S. Immigration Policies: A Legacy of Asian Exclusion*, in *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY* 1105 (1992).

48. *Id.*

49. U.N. Econ. & Soc. Comm'n for Asia & the Pacific, *Statistical Y.B. for Asia & the Pacific 2008*, at xv, U.N. Doc. ST/ESCAP/2531, available at <http://www.unescap.org/stat/data/syb2008/Overview.asp>.

50. U.S. Census Bureau, *USA QuickFacts*, <http://quickfacts.census.gov/qfd/states/00000.html> (last visited Nov. 4, 2009); *see also* *Asian American Population Surpasses 15 Million*, *ASIAN WEEK*, May 1, 2008 ("The nation's Asian American population increased by 434,000 to surpass 15.2 million, or 5 percent of the estimated total U.S. population of 301.6 million, according to Census statistics released today.").

51. *See* DAVID E. HAYES-BAUTISTA, *LA NUEVA CALIFORNIA: LATINOS IN THE GOLDEN STATE* 17–18 (2004).

52. *See* ANTONIO JOSE RIOS-BUSTAMANTE, *MEXICAN IMMIGRANT WORKERS IN THE U.S.* 24–26 (1981) ("The renewed interest in securing Mexican labor gave rise to the Emergency Farm Labor Program known as the Bracero Program, it was established through the 1942 Bilateral Agreement between the United States and Mexico. It gave U.S. business and government more regulation over Mexican labor. In June 1942, the State Department and

dubbed “Operation Wetback”;<sup>53</sup> and the site of immigration raids of 1982, dubbed “Operation Jobs,” which were ultimately found unconstitutional by the federal court in San Francisco.<sup>54</sup> California’s Proposition 187,<sup>55</sup> which sought to ban undocumented aliens from public services<sup>56</sup> and schools,<sup>57</sup> illustrated how the state in 1994 was deeply fractured as white voters overwhelmingly supported Proposition 187, while Blacks, Latinos, and Asians resoundingly voted against it despite baiting from some sectors who blamed the high unemployment rate of African Americans on Asian and Latino immigrants.<sup>58</sup> Yet, *Black unemployment has always been twice that of white unemployment throughout U.S. history, and of the approximately 80,000-plus charges the EEOC receives annually—and we received over 95,000 in 2008 alone—over thirty-five percent are race discrimination charges filed largely by African Americans with the main form of discrimination being termination from jobs not dominated by immigrants.*<sup>59</sup>

The EEOC continues to litigate cases of racial discrimination against Blacks—harassment that includes hangmen’s nooses,<sup>60</sup> the most vile racial slurs, and planned terminations of Black employees on Martin Luther King, Jr.’s birthday.<sup>61</sup> Last year, my office settled a case for \$2.5 million on behalf of a Black avionics technician—a Gulf War veteran—who had been harassed, threatened with lynching, and retaliated against by his co-workers and supervisors at Lockheed Martin in

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the Mexican government signed an agreement for the importation of 50,000 Mexican workers.”).

53. U.S. COMM’N ON CIVIL RIGHTS, *supra* note 32, at 10–11.

54. *Int’l Molders & Allied Workers Local 164 v. Nelson*, 799 F.2d 547 (9th Cir. 1986).

55. The State of California was enjoined from enforcing provisions of Proposition 187 in *League of United Latin Am. Citizens v. Wilson*, 997 F. Supp. 1244 (C.D. Cal. 1997).

56. CAL. WELF. & INST. CODE § 10001.5 (West Supp. 1995); CAL. HEALTH & SAFETY CODE § 130 (West Supp. 1995).

57. CAL EDUC. CODE § 48215 (West Supp. 1995).

58. Tamayo, *When the “Coloreds” Are Neither Black nor Citizens*, *supra* note 3, at 31–32.

59. Charge Statistics: FY 1997 Through FY 2008, EEOC, <http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm> (last visited Nov. 8, 2009).

60. *See, e.g.*, *EEOC v. WRS Infrastructure & Env., Inc.*, No. 09-CV-04272 (N.D. Ill. filed July 15, 2009) (referring to lawsuit’s investigation that found the constant use of the “N” word by white workers, nooses, and a white employee who stood up for black workers being labeled a “n—— lover” and subjected to derogatory comments and treatment); *EEOC v. Conectiv*, No. 2:05-CV-03389 (E.D. Penn. filed July 1, 2005) (consent decree signed May 5, 2008) (case involved graffiti of hangmen’s nooses, Ku Klux Klan, and “white power” references, and the constant use of the “N” word).

61. *EEOC v. Lithia Motors, Inc.*, No. 05-CV-01901 (D. Colo. filed March 8, 2006) (consent decree signed Mar. 16, 2006); Press Release, EEOC, Lithia Car Dealership to Pay \$562,500 for Race Bias Against Black Salesmen Targeted by Manager (Mar. 16, 2006), <http://www.eeoc.gov/eeoc/newsroom/release/archive/3-16-06.html>.

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Kaneohe, Hawaii; Jacksonville, Florida; Whidbey Island, Washington; and Greenville, South Carolina.<sup>62</sup>

In 1999, EEOC made it a national priority to assist low-wage workers, particularly immigrant workers, because of their vulnerability. In Monterey County, California, we have filed several cases alleging sexual harassment against farm worker women. Ten years ago in February, my office announced the settlement of *EEOC v. Tanimura & Antle*,<sup>63</sup> a case in which Blanca Alfaro, a native of El Salvador and single mother, told us that she was forced to have sex with the hiring official at the beginning of two different seasons in Yuma, Arizona and in Salinas, California in order to pick crops and put food on the table for her three-year-old daughter. After she protested further harassment, she was fired. Her story was consistent with the stories we heard from farm worker advocates about the commonly occurring sexual assaults of farm workers by male supervisors and co-workers. Women farm workers described workplaces as “*fields de calzon*” or “fields of panties” or the “Green Motel” because women were raped there by supervisors.<sup>64</sup> After months of negotiation, the largest lettuce grower in the world paid \$1.855 million dollars to Blanca Alfaro and a class of women who had been harassed.<sup>65</sup> That settlement resulted in the EEOC receiving hundreds of sexual harassment and other discrimination charges from farm workers against various agricultural employers, sending shockwaves in an industry long ignored by the EEOC. Since then, we have recovered millions of dollars for these victims.<sup>66</sup>

62. *EEOC v. Lockheed Martin*, 05-CV-00479 (D. Haw. filed Aug. 1, 2005) (consent decree signed Jan. 2, 2008); Press Release, EEOC, Lockheed Martin to Pay \$2.5 Million to Settle Racial Harassment Lawsuit (Jan. 2, 2008), <http://www.eeoc.gov/eeoc/newsroom/release/archive/1-2-08.html>.

63. *EEOC v. Tanimura & Antle*, C99-20088 (N.D. Cal. 1999); Press Release, EEOC, EEOC and Tanimura & Antle Settle Sexual Harassment Case in the Agricultural Industry (Feb. 23, 1999), <http://www.eeoc.gov/eeoc/newsroom/release/archive/2-23-99.html>; see also William R. Tamayo, *The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 U.C. DAVIS L. REV. 1075 (2000) (EEOC attorneys working on this case included William R. Tamayo, Jonathan Peck, Sanya Hill, and Cindy O'Hara.).

64. Rebecca Clarren, *The Green Motel*, MS. MAG., Summer 2005; see also Tamayo, *The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, *supra* note 63.

65. Press Release, EEOC, EEOC and Tanimura & Antle Settle Sexual Harassment Case in the Agricultural Industry, *supra* note 63.

66. See *EEOC v. Wilcox Farms*, No. 08-CV-1141 (D. Or. filed Sept. 30, 2008) (consent decree for \$260,000 settlement signed Oct. 9, 2008); *EEOC v. Grimmway Enterprises, Inc.*, No. CV-06-00561 (E.D. Cal. filed May 10, 2006) (consent decree for \$175,000 settlement signed Nov. 19, 2007); *EEOC v. Kovacevich 5 Farms*, No. CV-06-00165 (E.D. Cal. filed Feb. 6, 2006) (consent decree for \$1.68 million settlement signed Dec. 3, 2008); *EEOC v. Rivera Vineyards, Inc.*, No. 03-CV-01117 (C.D. Cal. filed Sept. 5, 2003) (consent decree for \$1,050,000 settlement signed June 15, 2005) (litigated by the EEOC Los Angeles District

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Soon after, other EEOC offices around the country were similarly announcing six-figure and seven-figure dollar settlements for immigrant workers. We obtained notable settlements for Chinese, Filipino, Nepalese, and Bangladeshi contract workers in the Commonwealth of the Northern Mariana Islands,<sup>67</sup> Haitian workers in Florida, \$2.4 million for harassed Latino university workers in San Antonio,<sup>68</sup> \$2.1 million for Filipino nurses on H-1 visas paid far less than U.S.-born white nurses in a Kansas City suburb,<sup>69</sup> and \$1 million for Latinas sexually harassed at a food processing plant in Maryland.<sup>70</sup> In Phoenix, the EEOC obtained a \$3 million judgment on behalf of Latinas who were sexually harassed and threatened with termination and deportation for complaining.<sup>71</sup> And in 2005, my office obtained a \$1 million jury verdict after a six-week trial in federal court in Fresno, California for a Spanish-speaking farm worker who had been brutally raped in the fields by her supervisor at gunpoint and retaliated against at Harris Farms in Coalinga.<sup>72</sup> But a telling situation that illustrates part of the challenge occurred when one juror commended our team for doing a good job but added, “these people (the charging party and fourteen Spanish-speaking witnesses) have got to learn English.” Further, a 2008 study by Texas Tech University’s Rawls College of Business confirmed that Spanish speakers who relied on a translator during court

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Office); *EEOC v. Harris Farms, Inc.*, No. C-F-02-6199 (E.D. Cal. filed Sept. 2002) (\$994,000 jury verdict on Jan. 21, 2005); *EEOC v. Prima Frutta Packing, Inc.*, No. 03-CV-04237 (N.D. Cal. filed Mar 11, 2004 and Apr. 19, 2004) (consent decree for \$235,000 settlement signed Apr. 29, 2004).

67. *EEOC v. L&T Group of Cos., Ltd.*, No. C-06-0031 (D. N. Mar. I. July 28, 2009) (\$1.7 million settlement against largest garment manufacturer in Saipan).

68. Press Release, EEOC, EEOC Settles English-Only Suit for \$2.44 Million Against University of Incarnate Word (Apr. 20, 2001), <http://www.eeoc.gov/eeoc/newsroom/release/archive/4-20-01.html>.

69. Press Release, EEOC, EEOC Announces \$2.1 Settlement of Wage Discrimination Suit for Class of Filipino Nurses (Mar. 2, 1999) (discussing case against Woodbine Healthcare Center), <http://www.eeoc.gov/eeoc/newsroom/release/archive/3-2-99.html>.

70. Press Release, EEOC, Combined Annual Reports Fiscal Years 1999–2001 (2000) (discussing settlement against Grace Culinary Sys., Inc.).

71. Press Release, National Immigration Law Center, *EEOC v. Quality Art, LLC*: EEOC Settles Suit Against Arizona Company for \$3.5 Million on Behalf of Low-Wage Immigrant Workers (Aug. 31, 2001), <http://www.nilc.org/immsemplymnt/emprights/emprights034.htm>.

72. Press Release, EEOC, Sexual Harassment Verdict Upheld in Favor of EEOC Against Ag. Industry Giant Harris Farms (Apr. 25, 2008), <http://www.eeoc.gov/eeoc/newsroom/release/archive/4-25-08.html>; *see also* *EEOC v. Harris Farms*, 274 F. App’x 511 (9th Cir. 2008); *EEOC v. Harris Farms*, 2006 WL 1881236 (E.D. Cal. 2006) (order denying Defendant’s Rule 62(c) motion); *EEOC v. Harris Farms*, No. F 02-6199, 2005 WL 2071741 (E.D. Cal. 2005) (order denying renewed Motion for Judgment as a Matter of Law); *see also* Clarren, *supra* note 64.

testimony were fifteen percent less likely to obtain a jury verdict that exceeded their last settlement offer than were English speakers.<sup>73</sup> The authors concluded that the lower civil awards are a result of juror bias, rather than a misunderstanding of the plaintiff's testimony as translators were found to be accurate.

Late one night in 2000, I received a disturbing call from the Iowa Coalition Against Domestic Violence telling me that several Mexican women had been trafficked into the United States to work in the poultry plants of DeCoster Farms. These women were repeatedly raped by co-workers and supervisors and had little recourse as they were threatened with termination and deportation if they complained. The EEOC promptly sent a team of investigators to Iowa. But the victims were scared to cooperate with the federal investigation since they had also been threatened with physical harm, including more rapes, if they cooperated. The EEOC quickly filed papers for a preliminary injunction to stop the retaliation so we could investigate. After months of investigation and negotiations, the EEOC announced a \$1.525 million settlement in September 2002.<sup>74</sup> Then EEOC Chair Cari Dominguez stated, "Protecting immigrant workers from illegal discrimination has been, and will continue to be, a priority for the EEOC."<sup>75</sup>

In late 2006, we announced a nearly \$350,000 settlement in a sexual harassment case of three Latinas employed at a Bay Area Kentucky Fried Chicken franchise.<sup>76</sup> That same fall, my office filed four cases, including one against Sizzler Restaurants, for the explicitly targeted harassment of Mexican women by non-Mexican men.<sup>77</sup> The *Sizzler* case, which involved threats of violence combined with propositions

73. Bradley T. Ewing, Angel L. Reyes III & James C. Wetherbe, Estimating the Effect of Non-English Speaking Hispanic on Personal Injury Trial Outcomes (Aug. 2008) (working paper, on file with Texas Tech University, Rawls College of Business).

74. EEOC v. Iowa AG, LLC dba DeCoster Farms, No. 01-CV-3077 (N.D. Iowa filed Aug. 2001) (consent decree for \$1,525,000 settlement signed Sept. 30, 2002); William R. Tamayo, *Immigration Status, Threats to Deport and Employment Discrimination: The EEOC's Approach to Litigation*, Handouts to Washington Coalition of Sexual Assault Programs at Annual Conference (2009).

75. Press Release, EEOC, EEOC and DeCoster Farms Settle Complaint for \$1,525,000 (Sept. 30, 2002), <http://www.eeoc.gov/eeoc/newsroom/release/archive/9-30-02-b.html>.

76. EEOC v. Harman-Chiu, Inc. dba KFC/Taco Bell, No. 05-CV-3615 (N.D. Cal. filed Sept. 27, 2006).

77. EEOC v. First Watch Rest., Inc., No. 06-CV-6143 (N.D. Cal. filed Sept. 29, 2006) (consent decree for \$230,000 settlement signed Dec. 10, 2006); EEOC v. Hammon Plating Corp., No. 06-CV-6140 (N.D. Cal. filed Sept. 29, 2006) (consent decree for \$115,000 settlement signed Oct. 29, 2007); EEOC v. La Mexicana, Inc., No. 06-CV-1359 (W.D. Wash. filed Sept. 29, 2006); EEOC v. Sizzler USA Rest., Inc., No. 06-CV-6142 (N.D. Cal. filed Sept. 29,

for sex, settled for \$300,000 in 2008. In those cases, Latinas were targeted as “Mexican bitches only good for sex,” physically and verbally harassed on a constant basis and/or told “go back to where you came from if you don’t like it.” Soon after these filings, I described these phenomena as the “Legacy of Little Latin Lupe Lu”<sup>78</sup> and the “Intersection of Sexual and National Origin Harassment,” and asked, “*When sexual assault in the workplace is rationalized or minimized by ‘racialized patriotism,’ what do we do?*”<sup>79</sup>

Fortunately, in the ongoing struggle against sexual harassment of low-wage workers—especially in the fields and the service industry—we have developed critical and indispensable partnerships with the Esperanza Project of the Southern Poverty Law Center,<sup>80</sup> California Rural Legal Assistance,<sup>81</sup> National Sexual Violence Resource Center, ACLU Women’s Project, Oregon Law Center, Northwest Justice Project, *Organizacion en California de Lideres Campesinas*,<sup>82</sup> and many other similar organizations. They are effectively the “eyes and ears” of the EEOC. *They understand that in the disparity of power that governs sexual*

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2006) (consent decree for \$300,000 settlement for the sole charging party signed Dec. 4, 2008).

78. RIGHTEOUS BROTHERS, LITTLE LATIN LUPE LU (Moonglow 1963). This 1963 song, describing a sexually attractive Latina dancing, was written by Bill Medley and recorded by the Righteous Brothers (Bill Medley and the late Bobby Hatfield, also known as the “blue-eyed soul” brothers). Rock and Roll Hall of Fame, Righteous Brothers, <http://www.rockhall.com/inductee/righteous-brothers> (last visited Nov. 8, 2009).

79. Comments of William R. Tamayo to the Latina/o Critical Race Theory Conference, University of Nevada, Las Vegas, William S. Boyd School of Law (Oct. 2006).

80. SPL Center.org, Immigrant Justice Project, <http://www.splcenter.org/legal/ijp.jsp> (last visited Nov. 8, 2009). The Esperanza Project, dubbed The Immigrant Women’s Legal Initiative, is led by SPLC attorney Mónica Ramírez, who led the effort to hold Transforming Hope Into Power: The First National Conference to End Sexual Harassment Against Farm Worker Women, June 4–5, 2007. SPL Center.org, *New Project Aims for Harassment-Free Workplace*, Mar. 14, 2006, [http://www.splcenter.org/legal/news/article.jsp?site\\_area=1&aid=169](http://www.splcenter.org/legal/news/article.jsp?site_area=1&aid=169). Several EEOC staff participated in the conference as presenters, and the conference featured Olivia Tamayo, charging party in *EEOC v. Harris Farms*, 274 F. App’x 511 (9th Cir. 2008), and Dolores Huerta, who launched United Farm Workers with Cesar Chavez and is now current president of the Dolores Huerta Foundation. Dolores Huerta Biography, Dolores Huerta Foundation, [http://dhuerta.hostcentric.com/dh\\_bio.htm](http://dhuerta.hostcentric.com/dh_bio.htm) (last visited Nov. 8, 2009). Ramírez is also co-Editor-in-Chief of REPRESENTING FARMWORKER WOMEN WHO HAVE BEEN SEXUALLY HARASSED: A BEST PRACTICES MANUAL (2007).

81. California Rural Legal Assistance has assisted farm workers for over forty years and has been a partner of the EEOC since 1995 in outreach, education, and litigation.

82. Lideres Campesinas has conducted joint outreach and training for farm workers annually with the EEOC throughout California. See Lideres Campesinas, History, <http://www.liderescampesinas.org/english/history.php> (last visited Nov. 8, 2009). Mily Trevino-Sauceda is the founding director. VICKI RUIZ & VIRGINIA SANCHEZ KORREL, LATINAS IN THE UNITED STATES: A HISTORICAL ENCYCLOPEDIA, VOL. 1 390 (2006).

*assault, the disparity in the workplace between employer and employees and between supervisor and victim is perhaps at its greatest. The federal government, through the EEOC, helps alter that severe imbalance and give victims a fighting chance.*<sup>83</sup>

Last December, our office announced the \$1.68 million settlement against a Bakersfield area grower that refused to hire women to work in the vineyards, despite hiring these women's brothers and husbands.<sup>84</sup> Ironically, these women stated that they wanted to work side-by-side with their male relatives because that protected them from sexual harassment in the fields.

Post-9/11 events pose additional challenges to the EEOC. Because of the 9/11 backlash resulting in hate crimes and employment discrimination against persons of Muslim faith and/or Middle Eastern, Arab, or South Asian descent, EEOC had to reach out to these affected communities. Post-9/11 events also spurred an aura of distrust for governmental agencies. It was admittedly awkward to walk into a Fresno, California mosque soon after the attacks on 9/11 and say that, "I'm with the federal government and I'm here to help you." Since 9/11, one thousand related charges of discrimination have been filed with termination and harassment being the main actions. We at the EEOC know these Muslim and Middle Eastern communities viewed the government with much suspicion, because they perceived the USA Patriot Act<sup>85</sup> and law enforcement practices as reflective of racial profiling and intense scrutiny without protections. Our acknowledgment of this perception was critical in gaining their trust and cooperation to fight discrimination.

In 2003, my office announced a \$1.11 million settlement on behalf of four Pakistani-Muslims severely harassed at Stockton Steel for years.<sup>86</sup> A stunned Muslim lawyer from Chicago called me screaming with joy and told me that he could not believe that the federal govern-

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83. Tamayo, *The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, *supra* note 63.

84. EEOC v. Kovacevich 5 Farms, No. CV-06-00165 (E.D. Cal. filed Feb. 6, 2006) (consent decree signed Dec. 3, 2008); Press Release, EEOC, Valley Grape Grower Pays \$1.68 Million to Settle EEOC Sex Discrimination Lawsuit (Dec. 3, 2008), <http://www.eeoc.gov/eeoc/newsroom/release/archive/12-3-08.html>.

85. United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

86. Press Release, Pakistani-American Workers to Share \$1.11 Million in Harassment Settlement with Stockton Steel (Mar. 19, 2003), <http://www.eeoc.gov/eeoc/newsroom/release/archive/3-19-03.html> (discussing settlement of case filed in January 2000 with Stockton Steel, subsidiary of Herrick Corporation).

ment would stand up for Muslims in the post-9/11 era, let alone obtain a million dollar settlement.

In 2004, my office announced a \$550,000 settlement for Afghan-Muslim finance workers at Barber Dodge in Vallejo and Fairfield Toyota who were harassed for months in early 2001 and called “terrorists,” “friends of Bin Laden,” and various slurs just after the bombing of the U.S.S. Cole in December 2000 in Yemen.<sup>87</sup> Our New York District Office filed suit against a Massachusetts museum, which fired a Muslim security guard just days after 9/11 and weeks after he had received a promotion.<sup>88</sup> That same office announced a \$525,000 settlement against the Plaza Hotel and Fairmont Hotel and Resorts, Inc. in a case where employees were called offensive and derogatory names related to the 9/11 terrorist attacks based on being Muslim, Arab, and/or South Asian.<sup>89</sup> In 2006, the EEOC Phoenix District Office obtained a \$287,640 jury award against Alamo Rent-A-Car, which had fired a Muslim employee just weeks after 9/11 when she refused to remove her scarf during Ramadan and noted that before 9/11 she had been allowed to wear it.<sup>90</sup> And, as a result of our outreach, prosecutions, and recovery of millions of dollars for these victims, the American Arab Anti-Discrimination Committee presented its “Friend in Government” award to the EEOC in October 2004, praising our efforts and reaffirming our partnership.<sup>91</sup>

A further illustration of the challenges in representing immigrant workers is the U.S. Supreme Court’s holding in *Hoffman Plastic Compounds, Inc. v. NLRB* (“*Hoffman Plastics*”),<sup>92</sup> that the National Labor Relations Board had no authority to award back pay to an undocumented worker terminated for engaging in protected activity. Soon after, several management counsel argued that undocumented work-

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87. Press Release, Relief for Afghan, Muslim Workers Harassed at Solano County Car Dealer Chain (Apr. 6, 2004), <http://www.eeoc.gov/eeoc/newsroom/release/archive/4-6-04.html> (discussing \$550,000 settlement with Barber Dodge and Fairfield Toyota).

88. EEOC v. Worcester Art Museum, No. CA 02-CV-40176 (D. Mass filed Sept. 30, 2002).

89. Press Release, The Plaza Hotel to Pay \$525,000 for Post-9/11 Backlash Discrimination Against Employees (June 8, 2005), <http://www.eeoc.gov/eeoc/newsroom/release/archive/6-8-05.html>.

90. EEOC v. Alamo Rent-A-Car, 422 F. Supp. 2d 1006 (D. Ariz. 2008).

91. Press Release, EEOC, EEOC to Receive “Friend in Government” Award from American-Arab Anti-Discrimination Committee (Oct. 1, 2004), <http://www.eeoc.gov/eeoc/newsroom/release/archive/10-1-04.html> (EEOC “processed and resolved more than 900 charges of discrimination related to 9/11, litigated 15 cases, and obtained a total of approximately \$3.2 million dollars for aggrieved individuals (between 09/11/01 and 09/11/04).”).

92. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).

ers are not entitled to any remedies, or put more bluntly, *if an undocumented worker is raped by her supervisor or terminated for refusing to have sex, she cannot receive a dime from the company.*

In *Rivera v. NIBCO, Inc.*,<sup>93</sup> a national origin termination case arising from Fresno, California on behalf of terminated Latino and Asian workers, defense counsel sought the status of the charging parties in deposition. The workers' lawyers fought back and the district court issued a protective order barring those questions.<sup>94</sup> The Ninth Circuit upheld the order and stated that (1) litigation discovery was not the place to find immigration status information, including place of birth, since employers had the duty to get that information at hiring, and (2) a chilling effect on employees who pursued their claims and undermined the civil rights laws would result if these questions were allowed. The court also noted that it is highly questionable whether *Hoffman Plastics'* interpretation of the Board's authority under the NLRA is even applicable in a Title VII proceeding in which the federal judge has wide latitude. More importantly, the court also pointed out that employers have a "perverse incentive to ignore immigration laws at the time of hiring but insist upon their enforcement when their employees complain,"<sup>95</sup> and consequently, courts must step in to protect immigrant workers.

The New York EEOC office obtained a protective order against immigration status questions during subsequent litigation by citing *NIBCO*,<sup>96</sup> while the San Francisco office was granted a motion in limine to prevent immigration status questions of the Spanish-speaking witnesses in the Harris Farms trial.<sup>97</sup> The Chicago EEOC office obtained protective orders barring the defendant from having an employee fill out an I-9 in the middle of litigation<sup>98</sup> or obtain other immigration status information.<sup>99</sup> The District Court in Minnesota noted

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93. *Rivera v. NIBCO, Inc.*, 364 F.3d 1057 (9th Cir. 2004).

94. *Rivera v. NIBCO, Inc.*, 204 F.R.D. 647 (E.D. Cal. 2001), *aff'd*, 364 F.3d 1057 (9th Cir. 2004).

95. *NIBCO*, 364 F.3d at 1072.

96. *EEOC v. First Wireless*, 225 F.R.D. 404 (E.D.N.Y. 2004); *see also* *EEOC v. First Wireless*, No. 03-CV-4990 (E.D.N.Y. filed June 15, 2004) (consent decree for \$435,000 settlement in race and national origin discrimination suit for unequal wages and retaliation against Latinos signed Nov. 3, 2008).

97. Press Release, EEOC, Sexual Harassment Verdict Upheld in Favor of EEOC Against Ag. Industry Giant Harris Farms (Apr. 25, 2008), <http://www.eeoc.gov/eeoc/newsroom/release/archive/4-25-08.html>.

98. *EEOC v. City of Joliet*, 239 F.R.D. 490 (N.D. Ill. 2006).

99. *EEOC v. The Rest. Comp. dba Perkins Rest. & Bakery*, 448 F. Supp. 2d 1085, 1088 (D. Minn. 2006); *EEOC v. Bice of Chicago*, 229 F.R.D. 581, 583 (N.D. Ill. 2005).

that no case law supported extending *Hoffman Plastics* beyond back pay and reinstatement, and raised doubt about its applicability in Title VII cases.<sup>100</sup>

In *EEOC v. Queen's Medical Center*<sup>101</sup> in Honolulu, my office alleged the hospital took steps to deport a staff doctor from Sri Lanka after he complained about national origin discrimination.<sup>102</sup> The hospital's lawyer wrote a letter to Immigration and Naturalization Services (four years after the doctor was hired) alleging discrepancies in the immigration sponsorship papers, and the hospital terminated the doctor. The timing was too coincidental. Our office sued and obtained \$150,000 for the federal retaliation claim, and the doctor resolved his state claims for undisclosed amounts.

In 2006, in *EEOC v. John Pickle Company*,<sup>103</sup> our Dallas District Office obtained a \$1.24 million judgment in a trafficking case involving Indian immigrants in Oklahoma who were harassed, given subhuman housing conditions, threatened with deportation if they complained, denied their pay, and effectively enslaved until churchgoers referred them to the authorities. That same year, the Los Angeles District Office obtained a one million dollar settlement against Trans-Bay Steel in a major national origin discrimination case that involved slavery and human trafficking.<sup>104</sup> And in 2007, the Citizenship & Immigration Services included the EEOC as an agency that can certify whether an undocumented person is assisting law enforcement when a criminal act such as sexual assault is involved, which then makes that person eligible for a U-Visa—this allows her to remain in the country

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100. See *The Rest. Comp.*, 448 F. Supp. 2d at 1087–88.

101. *EEOC v. Queen's Medical Center*, 01-CV-00389 (D. Haw. filed 2000) (EEOC investigation revealed and the court found that the hospital official who allegedly lacked authority to sign the doctor's sponsorship papers as portrayed by the hospital lawyer, had written sponsorship letters for other doctors who had not complained of national origin. Furthermore, the court found that the hospital had never written to the INS about sponsors' immigration statuses. The effect of the retaliation was tremendous. In order to re-gain permanent resident status, Dr. Premaratne "conceded" deportability as charged, but was granted "permanent resident status" under another category for which he was immediately eligible. However, he lost the four years of residency he had already accumulated towards U.S. citizenship (five years of residency required) and was forced to start all over again.).

102. *Id.*

103. *EEOC v. John Pickle Co.*, 446 F. Supp. 2d 1247 (N.D. Okla. 2006); Press Release, EEOC, Judge Orders John Pickle Co. to Pay \$1.24 Million to 52 Foreign Workers in Human Trafficking Case (May 26, 2006), <http://www.eeoc.gov/eeoc/newsroom/release/archive/5-26-06.html>.

104. Press Release, EEOC, EEOC Resolves Slavery and Human Trafficking Suit Against Trans Bay Steel for an Estimated \$1 Million (Dec. 8, 2006), <http://www.eeoc.gov/eeoc/newsroom/release/archive/12-8-06.html>.

legally.<sup>105</sup> *As these examples demonstrate, my office and the EEOC as a whole want to make sure that immigration law, immigration status, and immigration officers are not weapons in the arsenal of an unscrupulous employer, and that a worker can pursue her federal civil rights claims.*

The U.S. population is over 300 million now, and it is estimated that, in 2050, it will be over 400 million.<sup>106</sup> That growth will be caused by an additional three million Whites, twenty-five million Blacks, twenty-five million Asians, and eighty-six million Latinos. Former San Antonio mayor and former Secretary of Housing and Urban Development, Henry Cisneros, recently stated the American future will represent a major demographic shift, but in order to benefit from the diversity, Americans must believe that the future is bright and understand that within that diversity is rich talent.<sup>107</sup> He added, “The best days are still ahead when we unleash all the talent, and America is an incubator of talent.” It is futile to demonize and deny rights to those who pick the crops we eat, perform the jobs that we refuse, or even potentially save our lives.

For the immigrant workers who clean our homes, who take care of our kids, who take care of our parents, who pick the crops that feed our families, who work in the slaughterhouses and poultry plants, who build our homes, or who clean our offices, these are very difficult times. *They struggle to make ends meet, but they also struggle to reconcile their important contributions to society with the retaliation, threats, and harassment they receive in the public and at work.*

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105. U.S. CITIZENSHIP AND IMMIGR. SERVICES, FACT SHEET: USCIS PUBLISHES RULE FOR NONIMMIGRANT VICTIMS OF CRIMINAL ACTIVITY (2007).

Q: What qualifies as a “certifying agency”?

A: Certifying agencies include federal, state, or local law enforcement agencies, or a prosecutor, judge, or other authority that has responsibility for the investigation or prosecution of the criminal activity. The rule also includes other agencies such as child protective services, the Equal Employment Opportunity Commission, and the Department of Labor, since they have criminal investigative jurisdiction within their respective areas of expertise.

*Id.*

106. Press Release, U.S. Census Bureau, An Older and More Diverse Nation by Midcentury (Aug. 14, 2008), <http://www.census.gov/Press-Release/www/releases/archives/population/012496.html>.

107. Comments of Henry Cisneros at the annual InterIM CDA dinner in Seattle, Washington on Oct. 19, 2006 (InterIM CDA is an organization that focuses on community development and housing in Seattle’s Chinatown/International District. Its previous executive director, Robert Santos (“Uncle” Bob), served as the Representative (Regional Director) of then Housing and Urban Development Secretary, Henry Cisneros, in the 1990s.) (notes on file with author).

Unfortunately, our nation's legacy of racism has been woven into every generation's debate about immigration policy. From the nation's founding until today, many individuals express their racist beliefs under the guise of patriotism, while others have justified their supposed patriotism through racist fears. For Asians and Latinos, the nation's immigration history and present employment discrimination are inseparable; our history is filled with virulent and violent acts committed upon people of color because of their skin color, race, national origin, and foreign-born status.

Many in the Mexican-American community cannot forget the pain and tragedy of the bracero program, which created wealth, but also subjected their communities to raids.

Many Asians will not, and cannot, forget that their families remain *literally divided by the Pacific Ocean* because of past racial quotas and current immigration quotas.

And for all these reasons, we must remain vigilant because many still attempt to revert back to the "good old days" when citizens and employers could discriminate and retaliate without fear.

To my friends in the management bar, I encourage you to make sure you give the supervisors and managers the proper advice. Remind them not to retaliate. Remind them of the valuable contributions that immigrant workers have made and the dangers of stereotyping. *Remind them that California's top industries—high-tech, agriculture, and service/tourism—have been highly dependent on immigrant labor in order to produce billions in profits.*

To those of you who, like the EEOC, work to protect individuals' civil rights, I encourage you to represent immigrant workers and gain the necessary cultural and linguistic competencies. *I have often said that to be an immigrant rights advocate you need a lot of compassion, fearlessness, an internationalist spirit, and a little craziness. After all, when you advocate for immigrants and refugees, you represent a sector of society that often is non-White, non-citizen, non-English speaking, that cannot vote, that has little money, that is unorganized, that has some of the worst paying jobs, and that often live in fear of deportation, and, if deported, may face poverty and/or persecution in their homelands. If that is not enough, it is also a sector of society that is collectively blamed for everything—drugs, disease, terrorism, crime, unemployment, pollution, and countless other problems. And yet we constantly hear that we Americans pride ourselves as a nation of immigrants. Consequently, civil rights advocates operate at this intersection of competing perceptions, or rather, in this vortex of value-based schizophrenia. No wonder we sometimes go crazy.*

But we must always “keep our eyes on the prize.” All immigrants are covered by Title VII and the federal laws against discrimination. Because of their vulnerability, *there is always a strong temptation for employers to use and abuse them, and to retaliate and intimidate them when they assert their rights under law.* The Ninth Circuit noted that it is primarily in the industries that knowingly hire immigrants where companies raise the specter of deportation to keep them from complaining and to cut off their lawsuits.<sup>108</sup>

All of our actions as advocates determine whether immigrant children will be fed, whether the rent will be paid, whether there will be clothes for the young ones, whether the rapes will stop in the fields, and whether workers can fight for their rights without fear of deportation. *The legal arguments have real faces and lives behind them. The stakes are very high. Poverty and discrimination can drive people to insanity or drive them to fight against all odds.*

Let me end by noting that every day, millions of people roam the globe, sail the oceans, swim the rivers, climb mountains, venture through jungles, crawl across dangerous deserts, or fly through the skies to seek freedom to escape such horrors as genital mutilation, torture, rape, incarceration, and forced sterilization, or to flee oppression and poverty and seek new opportunities. They leave their homes and families to share brilliant ideas, innovations, and technologies that improve the lives of their fellow human beings. They cross our borders and enter our airports with hopes of opportunity and fairness. Our task as civil rights-minded lawyers will be to meet the various challenges associated with helping our underrepresented immigrant community while always ensuring that our values of equality and fairness are present in our work. Deep down inside, we all believe profoundly in the American dream and in Dr. Martin Luther King’s dream, and so we at the EEOC work days and sometimes nights so that workers do not have to experience the nightmares of family separation, poverty, harassment, exploitation, and discrimination.

As Dr. King said, “We may all come here on different ships, but we’re in the same boat today.” And our best days as a nation are ahead

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108. *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1072 (9th Cir. 2004). (“Regrettably, many employers turn a blind eye to immigration status during the hiring process; their aim is to assemble a workforce that is both cheap to employ and that minimizes their risk of being reported for violations of statutory rights. Therefore, employers have a perverse incentive to ignore immigration laws at the time of hiring but insist upon their enforcement when their employees complain.”).

of us when we respect the diversity of talent, and when we respect the civil rights of individuals.

Thank you so much.