

**YOU CAN'T WIN IF YOU DON'T PLAY:
THE SURPRISING ABSENCE OF LATINO ATHLETES
FROM COLLEGE SPORTS**

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Practically everywhere in American cultural, political, and social life, Latinos own the moment. For eight years and counting, persons of Hispanic origin have comprised our largest¹ and fastest-growing² minority group. Since the last U.S. Census, their numbers have grown in every corner of the nation—for example, in North Carolina, the state's 18 percent population growth was led by 400,000 new Latino residents.³ The influence of *la raza cosmica* (i.e., “the cosmic race”) has been credited with putting President Barack Obama in the White House,⁴ shoring up the low-wage economy,⁵ transforming the American Catholic Church,⁶

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1. Lynette Clemetson, *Hispanics Now Largest Minority, Census Shows*, N.Y. TIMES, Jan. 22, 2003, at A1, available at <http://www.nytimes.com/2003/01/22/us/hispanics-now-largest-minority-census-shows.html?pagewanted=print&src=pm>.

2. PEW HISPANIC CTR., *HISPANICS: A PEOPLE IN MOTION* 1–2, 4 (2005), available at <http://pewhispanic.org/files/reports/40.pdf>.

3. Mike Baker & Tom Breen, *Latinos Lead N.C.'s Population Surge Over Decade*, BLOOMBERG BUSINESSWEEK (Mar. 3, 2011, 9:55 AM), <http://www.businessweek.com/ap/financialnews/D9LNQNP01.htm>.

4. See, e.g., Martin Kemp, *The Hispanic Vote Shaped the Contours of This Election*, GUARDIAN (London), Nov. 6, 2008, <http://www.guardian.co.uk/commentisfree/2008/nov/07/barack-obama-south-west-hispanic>.

5. See generally Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 U. MIAMI L. REV. 1089, 1094–98 (1999) (arguing that Hispanics will play a key role in North America's long-term economic stability because they often work in the manufacturing sector, an area critical to the continent's economic well-being).

and boosting military recruitment.⁷ A Latina now sits on the Supreme Court of the United States⁸ and more than 6,000 Latino officials—elected and appointed—serve in all levels of state and federal government.⁹ For better or worse, Latino immigration occupies a central focus in the ongoing debate over our national identity.¹⁰ Latino actors, authors, musicians, and other artists enjoy unprecedented attention.¹¹ While some pundits called the 1980s “the Decade of the Hispanic,”¹² Soledad O’Brien’s 2009 documentary, *Latino in America*,¹³ showed that the 1990s and 2000s were also “Hispanic decades.” And the Latino moment is going to last awhile.

By 2050, the Latino population is projected to triple, ensuring that almost 30 percent of Americans will be *Hispanic-*

6. Laurie Goodstein, *Hispanics Reshaping U.S. Catholic Church*, N.Y. TIMES, Apr. 25, 2007, available at <http://www.nytimes.com/2007/04/25/us/25cnd-hispanic.html> (citing PEW HISPANIC CTR., CHANGING FAITHS: LATINOS AND THE TRANSFORMATION OF AMERICAN RELIGION (2007)); see also PEW HISPANIC CTR., CHANGING FAITHS: LATINOS AND THE TRANSFORMATION OF AMERICAN RELIGION (2007), available at <http://www.pewhispanic.org/files/reports/75.pdf> (describing the same finding in further detail).

7. See *Fact Sheet: Hispanics in the Military*, PEW HISPANIC CENTER (Mar. 27, 2003), <http://pewhispanic.org/files/reports/17.pdf>.

8. See Adam Liptak, *Sotomayor Takes Her Seat*, N.Y. TIMES (Sept. 8, 2009, 2:58 PM), <http://thecaucus.blogs.nytimes.com/2009/09/08/sotomayor-takes-her-seat/?pagemode=print>.

9. See *2011 Directory of Latino Elected Officials*, NAT’L ASS’N LATINO ELECTED & APPOINTED OFFICIALS (NÁLEO), <http://www.naleo.org/directory.html> (last visited Feb. 28, 2012).

10. See, e.g., KEVIN R. JOHNSON, THE “HUDDLED MASSES” MYTH: IMMIGRATION AND CIVIL RIGHTS 1–6 (2004).

11. One example: a September 2011 search on *Amazon* for books containing the word “Latino” produced 10,961 results, the top three of which were LEO R. CHAVEZ, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENSHIP, AND THE NATION* (2008); MYLES PINKNEY & SANDRA L. PINKNEY, *I AM LATINO: THE BEAUTY IN ME* (2007); and ARLENE M. DÁVILA, *LATINO SPIN: PUBLIC IMAGE AND THE WHITEWASHING OF RACE* (2008).

12. The phrase is frequently attributed to Cuban American writer Maria Elena Toraño, who was speaking of Latino and Latina appointees working in the administration of President Carter. See, e.g., Angelo Falcón, Commentary, *From Civil Rights to the “Decade of the Hispanic”: Boricuas in Gotham, 1960–1990*, in *BORICUAS IN GOTHAM: PUERTO RICANS IN THE MAKING OF NEW YORK CITY* (Gabriel Haslip-Viera, Felix M. Matos Rodriguez & Angelo Falcon eds., 2005) (citing *Hispanics Make Their Move*, U.S. NEWS & WORLD REP., Aug. 24, 1981, at 60); Frank del Olmo, Commentary, *Latino “Decade” Moves into ’90s*, L.A. TIMES, Dec. 14, 1989, Neustro Tiempo Section at 1, available at http://articles.latimes.com/1989-12-14/news/ti-1_1_latino-community; Katherine Roberts & Richard Levine, *Ideas and Trends: Coors Extends a \$300 Million Peace Offering*, N.Y. TIMES, Nov. 4, 1984, at 23; U.S. CENSUS BUREAU, *WE, THE AMERICAN . . . HISPANICS* (1993).

13. Soledad O’Brien, *CNN Presents: Latino in America* (CNN television broadcast Oct. 21–22, 2009), <http://www.cnn.com/2009/LIVING/10/21/lia.credits/index.html>.

Americans.¹⁴ So it is somewhat surprising to learn that there is still an important place in American life where Latinos own neither the moment, nor a watch to measure it by: the world of college athletics. Sports are important in higher education for many reasons: they grant access to students who otherwise would not attend college;¹⁵ they draw favorable attention to institutions of higher learning;¹⁶ and, of course, they are big businesses.¹⁷ Close to half a million athletes participate in sports sanctioned by the National Collegiate Athletic Association (“NCAA”) each year,¹⁸ yet, barely 4 percent of them are Latino.¹⁹ During the 2009–2010 academic year, low participation rates persisted across the board.²⁰ In Division I athletics, 4.2 percent of male athletes were Latinos and 4.2 percent of female athletes were Latinas;²¹ in Division II athletics, 5.9 percent were Latinos and 5.5 percent were Latinas;²² and in Division III athletics, 3.6 percent were Latinos and 2.9 percent were Latinas.²³

These figures are quite low compared to Latino representation in the general population, the higher education population, and the professional sports workforce. As to the general population, of the 308.7 million Americans who were counted during the 2010 U.S. Census, 50.5 million (16.3 percent)

14. JEFFREY S. PASSEL & D’VERA COHN, PEW RESEARCH CTR., U.S. POPULATION PROJECTIONS: 2005–2050, at 1, 24 (2008), *available at* <http://pewhispanic.org/files/reports/85.pdf>.

15. Taylor Branch, *The Shame of College Sports*, THE ATLANTIC, Oct. 2011, at 82, *available at* <http://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/8643/>.

16. *Id.*

17. Lowell Bergman, *Frontline: Money & March Madness* (PBS television broadcast Mar. 29, 2011), <http://www.pbs.org/wgbh/pages/frontline/money-and-march-madness/#>.

18. NCAA ELIGIBILITY CTR., 2009–2010 GUIDE FOR THE COLLEGE BOUND STUDENT ATHLETE 3 (2009), <http://www.ncaapublications.com/productdownloads/CB10.pdf> (statement of Myles Brand, NCAA President).

19. ERIN ZGONC, NCAA, NCAA STUDENT ATHLETE ETHNICITY REPORT: STUDENT ATHLETE ETHNICITY 1999–2000 – 2009–10, at 7, 55 (2010), *available at* <http://www.ncaa.com/productdownloads/SAEREP11.pdf> [hereinafter NCAA ETHNICITY REPORT 2009–2010].

20. *Id.*

21. *Id.* at 56.

22. *Id.* at 57.

23. *Id.* at 58.

were Hispanics.²⁴ In higher education, of the 15.4 million students attending colleges and universities during the late 1990s, 1.3 million (8.4 percent) were Hispanics.²⁵ According to the Hispanic Pew Center in 2002, this 15.4 million cohort was projected to increase by 20 percent and include “a sizeable and growing number of Hispanics” by 2010.²⁶ Latinos were the third-largest group of students, after eleven million whites and two million African Americans.²⁷ In professional sports, Latino athletes are as well-known for dominating Major League Baseball (“MLB”), championship boxing, and Major League Soccer (“MLS”),²⁸ as African American athletes are known for dominating the National Basketball Association (“NBA”) and the National Football League (“NFL”).²⁹ Albert Pujols,³⁰ Oscar de la Hoya,³¹ and Carlos Bocanegra,³² respectively, are household names to diehard fans of each of those sports.

24. JEFFREY PASSEL & D'VERA COHN, PEW HISPANIC CTR., HOW MANY HISPANICS? COMPARING CENSUS COUNTS AND CENSUS ESTIMATES (2011), available at <http://pewhispanic.org/reports/report.php?ReportID=139>.

25. RICHARD FRY, PEW HISPANIC CTR., LATINOS IN HIGHER EDUCATION: MANY ENROLL, TOO FEW GRADUATE 3 (2002), available at <http://pewhispanic.org/files/reports/11.pdf>.

26. *Id.*

27. *Id.*

28. See Paul Ruffins, *Game Delay: Latinos Not Yet Scoring with College Athletics*, DIVERSE ISSUES HIGHER EDUC., Oct. 5, 2010, available at <http://diverseeducation.com/article/14216/> [hereinafter *Game Delay*].

29. Palash R. Ghosh, Opinion, *Super Bowl 2012: The Racial Gulf Between Fans and Athletes*, INT'L BUS. TIMES (Feb. 4, 2012, 12:04 PM), <http://www.ibtimes.com/articles/293067/20120204/super-bowl-2012-nfl-mlb-nba-racism.htm> (“According to reports, while blacks account for only 13 percent of the U.S. population, they represent about 76 percent of the players in the NBA, and 66 percent of the NFL.”).

30. Dave Sheinin, *Albert Pujols: Angels Shock Baseball with 10-year, \$250 Million Deal*, WASH. POST (Dec. 8, 2011), http://www.washingtonpost.com/blogs/baseball-insider/post/albert-pujols-angels-shock-baseball-with-10-year-deal/2011/12/08/gIQArsAOfo_blog.html; *Albert Pujols, Angels Agree to Deal*, ESPN.COM (Dec. 9, 2011, 9:30 AM), http://espn.go.com/los-angeles/mlb/story/_/id/7330066/st-louis-cardinals-albert-pujols-join-los-angeles-angels (describing Albert Pujols as the best player of his generation and discussing his \$250 million contract with the Los Angeles Angels, the second-highest in baseball history).

31. See Lance Pugmire, *Highlights of Oscar de la Hoya's Career*, L.A. TIMES (Apr. 15, 2009), <http://articles.latimes.com/2009/apr/15/sports/sp-boxing-oscar15>; *About Us*, GOLDEN BOY PROMOTIONS, <http://www.goldenboypromotions.com/about-us/> (last visited Feb. 19, 2012) (highlighting Oscar de la Hoya's career as the most lucrative boxer in history and the first Hispanic to own a national boxing promotional company).

32. Ryan Rosenblatt, *2010 World Cup Player Profile: Carlos Bocanegra, Captain America*, SB NATION (May 28, 2011), <http://www.sbnation.com/2010/5/28/1491607/2010-world-cup-player-profile>; Luis Gomez, *U.S. Soccer Captain Carlos Bocanegra No Longer Just a Face in*

Why do Latinos remain *los olvidados*—the forgotten ones—of American college athletics? This Article tries to answer that question in two parts. Part I analyzes the data confirming the relatively low sports participation by Latino college athletes. Part II offers some theories explaining why that participation is low.

I. LATINO PARTICIPATION IN COLLEGE ATHLETICS

During the 2009–2010 academic year, a total of 435,767 athletes participated in thirty-one separate sports sanctioned by the NCAA in Divisions I, II, and III.³³ But only 18,215 (4.2 percent) of these athletes were Hispanic.³⁴ Overall, just 4.3 percent of NCAA athletes were Latinos and 4 percent were Latinas.³⁵ The good news is that, compared to ten years earlier, Hispanic athletic participation is up.³⁶ The bad news is that the gains have been quite modest; they do not come close to keeping up with the recent Latino gains in the general population, college and university enrollments, or certain professional sports. Moreover, Latino participation rates vary considerably by sport and gender. In some sports they enjoy growing numbers, and in others they remain all but invisible.³⁷

Table A compares overall participation rates for athletes, looking at ethnicity (i.e., Hispanic, white, or black) and gender in six selected sports sanctioned by the NCAA in Divisions I, II, and III: baseball (for men) and softball (for women), basketball, football (men only), soccer, tennis, and volleyball (for men and women).³⁸

the Crowd, CHI. TRIB. (Oct. 7, 2010), <http://leisureblogs.chicagotribune.com/about-last-night/2010/10/us-soccer-captain-carlos-bocanegra-no-longer-just-a-face-in-the-crowd.html> (discussing Carlos Bocanegra's popularity as the captain of the U.S. soccer team).

33. See ERIN ZGNOC, NCAA, NCAA SPORTS SPONSORSHIP AND PARTICIPATION REPORT: STUDENT ATHLETE PARTICIPATION 1981–1982–2009–2010, at 67–68 (2010), available at <http://www.ncaapublications.com/productdownloads/PR2011.pdf>.

34. See NCAA ETHNICITY REPORT 2009–2010, *supra* note 19, at 104.

35. *Id.* at 55.

36. *Id.* at 12.

37. See, e.g., *id.* at 110–20 (showing the percentage of Latino players by sport in Divisions I, II, and III from 1999 through 2010).

38. To emphasize the breadth of Latinos' underrepresentation, this Article treats participation in thirty-one sports across all three divisions of the NCAA. The numbers would appear more dramatic, but less reflective of the complete college athletic picture, if this Article focused on participation in Division I men's basketball and football, the so-called "revenue-producing" sports. For example, during the ten-year study period,

TABLE A³⁹OVERALL SPORTS PARTICIPATION BY ETHNICITY
IN NCAA DIVISIONS I, II & III(A) 1990–2000 (B) 2009–2010 (Δ) Change

		Baseball*	Basketball	Football	Soccer	Tennis	Volleyball	Overall	
Black	♂	A	4.6	37.8	28.1	5.6	4.9	5.8	16.3
		B	4.1	45.6	34.5	8.0	4.8	5.3	18.7
		Δ	-0.5	+7.8	+6.4	+2.4	-0.1	-0.5	+2.4
	♀	A	6.0	22.4	–	2.4	5.2	8.3	8.4
		B	5.8	32.8	–	3.8	7.0	9.8	10.6
		Δ	-0.2	+10.4	–	+1.4	+1.8	+1.5	+2.2
Hispanic	♂	A	4.1	2.4	2.2	5.5	3.6	14.4	3.0
		B	5.6	2.5	2.9	9.5	7.8	11.7	4.3
		Δ	+1.5	+0.1	+0.7	+4.0	+4.2	-2.7	+1.3
	♀	A	3.1	2.2	–	2.6	2.8	3.1	2.4
		B	5.6	2.5	–	5.0	5.5	4.0	4.0
		Δ	+2.5	+0.3	–	+2.4	+2.7	+0.9	+1.6
White	♂	A	85.2	52.0	63.1	76.3	68.6	59.3	71.6
		B	86.1	46.7	57.4	74.6	70.8	70.7	70.4
		Δ	+0.9	-5.3	-5.7	-1.7	+2.2	+11.4	-1.2
	♀	A	84.0	67.7	–	86.5	74.0	79.4	78.1
		B	83.3	58.9	–	84.9	73.6	79.9	77.2
		Δ	-0.7	-8.8	–	-1.6	-0.4	+0.5	-0.9

*♀ = Softball

Hispanic participation in Division I men's basketball rose from 1.6 percent to 1.9 percent (an increase of just 0.3 percent); in Division I football, it rose from 1.8 percent to 2.4 percent (an increase of just 0.6 percent). *Id.* at 128, 131.

39. *Id.* at 12, 55.

As demonstrated by Table A, overall Latino participation in NCAA college sports is still in the low single digits. It barely increased during the past decade. For Hispanic men, overall participation rose from 3.0 percent to 4.3 percent (an increase of 1.3 percent); for Hispanic women, it rose from 2.4 percent to 4 percent (an increase of 1.6 percent). By contrast, black athletes started with a greater share of the market and posted greater gains. For black men, overall participation rose from 16.3 percent to 18.7 percent (an increase of 2.4 percent); for black women, it rose from 9.4 percent to 11.6 percent (an increase of 2.2 percent). White athletes, for whom overall participation dipped slightly, remained the dominant percentage of players. Their participation accounted for over 70 percent of all athletes in Divisions I, II, and III. The rate at which white athletes participated in NCAA-sanctioned sports continued to be more than triple that of Hispanic and black athletes *combined*. White women were especially dominant. They continued to make up over 78 percent of all female athletes.

Furthermore, the closer one looks at college sports participation by Latinos, the less impressive it seems. Basketball ranks sixth among the NCAA's ten most-participated-in college sports⁴⁰ with 17,008 men and 15,423 women having participated in the 2009–2010 academic year. Of these, only 429 were Hispanic men and 392 were Hispanic women. In the past decade, for Hispanic men, overall participation rose from 2.4 percent to 2.5

40. In rank order, for men and women combined, the eleven most-participated-in NCAA college sports are as follows:

Rank	Sport	Participants
1	Football	66,313
2	Outdoor Track	49,377
3	Baseball/Softball	48,091
4	Soccer	45,420
5	Indoor Track	44,138
6	Basketball	32,431
7	Cross Country	28,027
8	Swimming/Diving	20,794
9	Lacrosse	17,527
10	Tennis	16,835

Note: Volleyball, the eleventh most-participated-in sport, had 16,500 participants. *Id.* at 104.

percent (an increase of just 0.1 percent); for Hispanic women, it rose from 2.2 percent to 2.5 percent (an increase of just 0.3 percent). By contrast, black athletes once again started with a greater share of the market and posted greater gains. For black men, overall college basketball participation rose from 37.8 percent to 45.6 percent (an increase of 7.8 percent); for black women, it rose from 22.4 percent to 32.8 percent (an increase of 10.4 percent). In fact, black men's participation achieved near parity with that of white men, whose participation decreased from 52 percent to 46.7 percent.

In football, which ranks first among NCAA sports in overall student participation, 66,313 men participated in the 2009–2010 academic year. Of these participants, only 1,940 were Hispanic men. In the past decade, for Hispanic men, overall participation rose from 2.2 percent to 2.9 percent (an increase of just 0.7 percent). By contrast, the participation rate of black men rose from 28.1 percent to 34.5 percent (an increase of 6.4 percent).

Even in sports for which Latinos participate in relatively greater numbers, the news was mixed. For example, in men's volleyball, the one sport in which Latinos enjoy double-digit participation rates, overall participation by Hispanics actually fell, from 14.4 percent to 11.7 percent (a decrease of 2.7 percent). In women's volleyball, overall participation by Hispanics rose modestly, from 3.1 percent to 4 percent (an increase of 0.9 percent). In men's baseball, overall participation by Hispanics also rose modestly, from 4.1 percent to 5.6 percent (an increase of 1.5 percent). In women's softball, overall participation by Hispanics rose a bit more substantially, from 3.1 percent to 5.6 percent (an increase of 2.5 percent). But even the increased numbers for baseball and softball participation seem puny compared to those in professional baseball, which boasts numbers about five times higher for its percentage of Latino ballplayers⁴¹ and eight times higher for its percentage of Latino fans.⁴²

41. See, e.g., *Study: MLB Gets 'A' for Racial Hiring*, ESPN.COM (Apr. 29, 2010, 5:30 PM), <http://sports.espn.go.com/mlb/news/story?id=5146934> (citing study by Professor Richard Lapchick finding that Latinos comprise 27 percent of MLB players).

42. See, e.g., Dylan Hernandez, *Fernando Valenzuela Was a Game-Changer for the Dodgers, Baseball, and Los Angeles*, L.A. TIMES (Mar. 30, 2011), <http://articles.latimes.com/2011/mar/30/sports/la-sp-0331-fernanomania-20110331> (reporting surveys by the Los Angeles Dodgers estimating about 40 percent of team's fan base is comprised of Latinos).

The college sport in which Latino participation has enjoyed its greatest overall success is soccer. In soccer, which ranks fourth among NCAA sports, 21,770 men and 23,650 women participated in the 2009–2010 academic year. Of these, 2,067 were Hispanic men and 1,177 were Hispanic women. In the past decade, for Hispanic men, overall participation rose substantially, from 5.5 percent to 9.5 percent (an increase of 4 percent); for Hispanic women, it rose from 2.6 percent to 5 percent (an increase of just 2.4 percent). By contrast, black athletes posted more modest gains. For black men, overall college soccer participation rose from 5.6 percent to 8 percent (an increase of 2.4 percent); for black women, it rose from 2.4 percent to 3.8 percent (an increase of 1.4 percent). White participation fell somewhat, but whites continued to dominate participation in the sport, with nearly 75 percent participation by white men and nearly 85 percent participation by white women.

II. REASONS FOR LOW LATINO COLLEGE SPORTS PARTICIPATION

Little if any published empirical research is available to explain why Latinos participate in college athletics at low rates. Despite the lack of empirical data, some theories can be proposed, such as those offered below. In offering these theories, however, it should be made clear that no particular claims are made as to which, if any, are correct.

At least four theories could plausibly explain the absence of Latinos from NCAA college sports. None of these is mutually exclusive, and in some cases they tend to reinforce each other. These theories include: (1) kinks in the educational pipeline that divert Latinos from transitioning from high school to college; (2) restrictive academic eligibility rules; (3) cultural and familial expectations about going to work; and (4) the absence of sports participation from Latinos' group success narrative.⁴³

43. In the interest of brevity, this Article does not consider the full treatment of two other potential theories: anti-immigration sentiment, which might deter Latino athletes from attending certain colleges, and the lack of Latino professional role models in the NBA and NFL.

As to the former, a rich literature critiques legal regimes that make even lawful immigrants feel unwelcome. See, e.g., Kevin R. Johnson, *The New Nativism: Something Old*,

A. Kinks in the Educational Pipeline

Among academics who study diversity in higher education—not to mention professionals who promote diversity in business—it has become fashionable to speak of the path to higher education as a “pipeline.”⁴⁴ The wider the pipeline is at the beginning of the educational journey, the more graduates of color it can carry to the end of that journey. Conversely, the narrower the pipeline is at the beginning, the fewer graduates of color it can carry to the end. For the most part, athletes follow the same educational pipeline that other students do: from middle school to high school to college—and, in the case of an elite few—to the professional world. If, however, the pipeline develops kinks along the way, then the flow of students from one stage of the pipeline to the next can be slowed or cut off.

Something New, Something Borrowed, Something Blue, in IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 165 (Juan F. Perea ed., 1997); George A. Martinez, *Immigration and the Meaning of United States Citizenship: Whiteness and Assimilation*, 46 WASHBURN L.J. 335 (2007).

As to the latter, I observe here that by my estimate fewer than fifty players who are identified as Latino appear on club rosters in both leagues combined. In the NBA, where each of thirty teams must keep a minimum of twelve, but no more than fifteen, active players on the roster, the total number of players ranges from 360 to 450 men. In 2010, only twenty-four players—a range of 5.3 percent to 6.7 percent—were identified as Latino. By contrast, in 2007, about 80 percent of NBA players were African American. See *NBA Sets Record for Minority VPs, League Personnel*, ESPN.COM (May 9, 2007, 5:01 PM), <http://sports.espn.go.com/nba/news/story?id=2865338>.

In the NFL, where each of thirty-two teams is entitled to maintain an active roster of fifty-three players, the total number of players, not counting practice squad players, is 1,696. As recently as 2007, only twenty-four players—1.4 percent—were identified as Latino. See *NFL Celebrates Hispanic Heritage Month*, NFL.COM (Sep. 19, 2007), <http://www.nfl.com/news/story?id=09000d5d80282851&template=without-video&confirm=true>. By contrast, during the same year, about 65 percent of NFL players were African American. See William C. Rhoden, *NFL Players Evaluate Their Coaches*, N.Y. TIMES, Oct. 25, 2008, at SP4, available at <http://www.nytimes.com/2008/10/26/sports/football/26rhoden.html>.

44. See TARA YOSSO, CRITICAL RACE COUNTERSTORIES ALONG THE CHICANO/CHICANA EDUCATIONAL PIPELINE (2005); Jerlando F.L. Jackson, *Toward Administrative Diversity: An Analysis of the African-American Male Educational Pipeline*, 12 J. MEN'S STUD. 43 (2003); Kent Lollis & Frank Burtnett, *New Initiative Builds Diversity Pipeline to Law School*, DIVERSE ISSUES HIGHER EDUC., Apr. 16, 2009, <http://diverseeducation.com/article/12486/> (explaining the initiative developed jointly by the American Bar Association and the Law School Admission Council called the “Pipeline Diversity Directory”).

Perhaps the biggest kink for would-be Latino college athletes is not graduating from high school. Of all ethnic or racial groups, Latinos—whether they play sports or not—drop out of secondary school at the highest rates in the country.⁴⁵ Recently, the national dropout rate among Latinos was about 18 percent, which is double the dropout rate of the next highest group, African Americans.⁴⁶ The figures are even higher in Latino-rich states such as California⁴⁷ and Latino-dominated public school districts such as those in Los Angeles.⁴⁸ Of course, fewer high school graduates means fewer college-eligible students, and with them, fewer college-eligible student-athletes.

Another kink in the educational pipeline for Hispanics is the tendency to matriculate at two-year colleges rather than four-year colleges or universities. Hispanic students are overrepresented in two-year institutions of higher learning; according to the American Association of Community Colleges, 53 percent of Latino undergraduates attend these schools.⁴⁹ There is nothing wrong with attending two-year colleges, except that two-year colleges are much less likely to offer full sports programs and athletic scholarships than Division I, II, or III schools affiliated with the NCAA.⁵⁰

A last kink worth mentioning is the lack of incentive for elite Latino athletes to play college sports if their goal is to play professionally. Although U.S. colleges and universities remain the

45. See NAT'L CTR. FOR EDUC. STAT., DIGEST OF EDUCATION STATISTICS (2010) (showing the number of Hispanic graduates and the percentage of Hispanic dropouts during the 2007–2008 school year).

46. See U.S. DEP'T OF EDUC., THE CONDITION OF EDUCATION 2010 IN BRIEF 13 (Susan Aud et al. eds., 2010), <http://nces.ed.gov/pubs2011/2011033.pdf> (providing the status dropout rates of sixteen through twenty-four year olds in the civilian, non-institutionalized population, by race/ethnicity).

47. See *California Graduation Rate Increases but so do Dropouts*, U-T SAN DIEGO (Dec. 7, 2010), <https://www.utsandiego.com/news/2010/dec/07/calif-graduation-rate-increases-but-so-do-dropouts/?ap> (noting that the dropout rate for Hispanics in the 2008–2009 school year was 26.9 percent, which was 3 percent higher than it was during the previous school year).

48. Tim Rutten, *By All Accounts, a Failure: State Figures on LAUSD Student Dropout Rates Are Stunning and Shameful*, L.A. TIMES, July 19, 2008, at 19, available at <http://articles.latimes.com/2008/jul/19/opinion/oe-rutten19>.

49. See Matthew Dembicki, *Focusing on Latinos to Reach National Completion Goals*, COMMUNITY C. TIMES (May 5, 2011), <http://www.communitycollegetimes.com/Pages/Workforce-Development/Focusing-on-Latino-to-reach-national-goals.aspx>.

50. See *Game Delay*, *supra* note 28 (noting that 53 percent of Latino undergraduates attend two-year institutions).

principal recruitment grounds for the NBA and NFL⁵¹—leagues in which Latinos have made limited headway, as noted above—college is not part of the pipeline for the two professional sports in which Latinos participate the most: boxing and soccer.⁵² Even MLB maintains a minor league system that does not require future ballplayers to attend college.⁵³

B. Restrictive Academic Eligibility Rules

Kinks in the educational pipeline may contribute to a related reason why so few Latinos participate in college sports: the NCAA's minimum academic eligibility requirements codified in Proposition 16.⁵⁴ No matter how gifted a student is on the playing field, an entering college freshman failing to meet these requirements in the classroom will not be permitted to play sports.

Professor Timothy Davis, who has written about Proposition 16 and eligibility rules more broadly, previously examined various perspectives on whether academic eligibility rules could be the product of unconscious racism manifested in a disparate impact on black athletes. He concluded that there exists a strong suggestion by Proposition 16's critics that eligibility rules are not race-neutral.⁵⁵ The inference is that were it not for their

51. See Heather Robinson, *Athletes Find Booming Businesses Off the Courts*, HILLTOP (Sept. 9, 2009), http://www.thehilltoponline.com/athletes-find-booming-businesses-off-the-courts-1.1870759#.Tzsj_ZgrhVg (explaining that in 2008 less than 0.00007 percent of the 400,000 student-athletes successfully made it into the NBA and that only one out of every 460,000 African American athletes had the opportunity to establish a career in the NFL, NBA, or MLS).

52. See *Game Delay*, *supra* note 28.

53. See *id.*

54. See *Court Backs N.C.A.A. on Proposition 16*, N.Y. TIMES, Dec. 23, 1999, at D5, available at <http://www.nytimes.com/1999/12/23/sports/colleges-court-backs-ncaa-on-proposition-16.html> (stating that Proposition 16 "dictate[s] minimum eligibility guidelines for freshman in the association's 302 Division I schools. . . . includ[ing] minimum scores of 820 on the SAT or 16 on the ACT, a core group of high school courses and a minimum grade-point average in that core"); *NCAA Bylaw 14.3—Initial Eligibility Requirements*, NCAA, available at http://grfx.cstv.com/photos/schools/sacl/genrel/auto_pdf/ncaa-requirements.pdf (explaining what constitutes a qualifier, partial qualifier, and a non-qualifier).

55. See Timothy Davis, *Racism in Athletics: Subtle Yet Persistent*, 21 U. ARK. L. REV. 881, 888 (1999) ("NCAA's use of scores on standardized college-admissions tests in deciding eligibility was 'determined, implemented, and enforced by the NCAA without proper validation studies and with disregard for the unjustifiable disparate impact that the minimum test-score requirement would have on African American student-athletes.'"); Timothy Davis, *The Myth of the Superspade: Persistence of Racism in College Athletics*, 22

unjustified exclusion by Proposition 16, black athletes would participate in college sports in even greater numbers.

If this argument is valid, then it is a short stretch to make the case that the same academic eligibility rules may have a disparate impact on Hispanic athletes. Like black athletes, Latino athletes tend to perform less well on standardized tests than whites.⁵⁶ So Latinos, too, are likely to be disparately impacted by being excluded from college eligibility. Under current law, however, such an impact likely would go without remedy. A short-lived victory in a class action lawsuit challenging Proposition 16 under Title VI of the Civil Rights Act, which was brought by African American student-athletes against the NCAA, was reversed by the U.S. Court of Appeals for the Third Circuit.⁵⁷

C. Cultural and Familial Expectations About Going to Work

Labor is the lifeblood of human societies across the world. Without someone willing to do the work, of course, nothing gets done. But few cultures place more emphasis than Hispanic culture on the importance of hard work from a young age. From personal observation, this is especially true of Mexican Americans. Innumerable *dichos* (or sayings), folk tales, family stories, and parental lectures all attest to the central role of getting a job and going to work as soon as possible.⁵⁸

FORDHAM URB. L.J. 615, 664–66 (1995) (contrasting the views of opponents of then “Proposal 16,” who argued that eligibility rules would disparately impact African American student-athletes and suggesting that they could be the result of unconscious racial bias, with those of proponents, who considered the measure a means of achieving academic reform); see also Matthew J. Mitten & Timothy Davis, *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities*, 8 VA. SPORTS & ENT. L.J. 71, 120–21 (2008) (noting that college athletics eligibility rules, due to the private and voluntary nature of the NCAA, receive judicial deference and escape scrutiny under due process principles); see generally Alfred D. Mathewson, *The Eligibility Paradox*, 7 VILL. SPORTS & ENT. L.J. 83, 83–125 (2000) (critiquing the NCAA’s role in crafting and enforcing its own rules).

56. See Marcela Muñiz, *Latinos and Higher Education: Snapshots from the Academic Literature* (June 2006) (unpublished thesis, The College Board) (on file with organization), available at http://advocacy.collegeboard.org/sites/default/files/latinos-and-highered_snapshots.pdf (stating that the standardized test scores of Latino students, on average, are “consistently lower” than those of white and Asian students).

57. *Cureton v. Nat’l Collegiate Athletic Ass’n*, 252 F.3d 267 (3d Cir. 2001).

58. See Muñiz, *supra* note 56, at 11 (stating that in a nationwide study, over 75 percent of Latinos who were surveyed said they did not attend college because they needed to work and earn money).

The expectation that Hispanics should join the work force early and stick with it is reflected in the data. For example, in 2009, among U.S. residents age sixteen to nineteen, Latinos had the highest rate of work force participation of any non-white ethnic group at 23.7 percent.⁵⁹ Only whites had a higher participation rate with 31.7 percent.⁶⁰ Among adult men age twenty and over, Latinos had the highest rate of work force participation at 73.5 percent. Whites ranked third with 68.7 percent.⁶¹

In a book called *It's All in the Frijoles*,⁶² Yolanda Nava collected scores of these *dichos*, folk tales, family stories, and parental lectures. These traditions may help explain the expectation of, if not pressure exerted by, many Latino parents who want their children to go to work instead of college, where they might “waste” their time doing less productive things, like playing sports.

As for *dichos*, the impetus to work may be traced to Latinos' Roman Catholic heritage. Over 1,400 years ago, St. Benedict wrote in Latin, *laborare est orare*, “to labor is to pray.”⁶³ From the same vein have sprung such Mexican American sayings as *el trabajo es virtud*, “work is a virtue”;⁶⁴ *la ociosidad es la madre de todos los vicios*, “idleness is the mother of all vice”;⁶⁵ *del trabajar nace el descansar*, “rest is born from work”;⁶⁶ and *el trabajo de los niños es poco y él que no lo aprovecha es loco*, “the work of children is little, but anyone who fails to cultivate it is crazy.”⁶⁷ From an early age, many of us were treated to these sayings, in English if not in Spanish, by parents and grandparents who were busy reminding us to do our household chores.

As for folk tales, sculptor Luis Jiménez shared one that his father used to tell. The tale was about a pious man whose ox cart

59. See U.S. BUREAU OF LABOR STATISTICS, LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY, 2009, at 5 tbl.1 (2010).

60. See *id.*

61. See *id.*

62. YOLANDA NAVA, *IT'S ALL IN THE FRIJOLE: 100 FAMOUS LATINOS SHARE REAL-LIFE STORIES, TIME-TESTED DICHOS, FAVORITE FOLKTALES, AND INSPIRING WORDS OF WISDOM* (2000).

63. *Id.* at 58.

64. *Id.* at 77.

65. *Id.* at 55.

66. *Id.* at 58.

67. *Id.* at 57.

got stuck in the mud when he tried to cross the river.⁶⁸ The man fell to his knees and prayed.⁶⁹ A second man who tried to go around the pious man got his ox cart stuck in the mud too.⁷⁰ But the second man did not stop to pray.⁷¹ Instead, he grabbed a stick and whacked his animal, then got behind his cart and started pushing.⁷² As he did so, this second man let fly a storm of curses: “*chinga* this,” “*y chinga* that!”⁷³ He blamed God for the trouble and took the Lord’s name in vain.⁷⁴ Pretty soon he got his ox cart out of the mud and across the river.⁷⁵ The pious man, who had been praying along, saw this and cried to the heavens, “I’m a pious man. I’ve always lived an upright life.⁷⁶ I just don’t understand how you can help this cursing *pelado*, [or] peasant, who just crossed here [without helping] me!”⁷⁷ In a booming voice, God replied, “*Sí, pero no estaba ayudando*”—“Yes, but you weren’t helping.”⁷⁸

As for family stories, when it comes to work, the stories collected by Yolanda Nava follow a pattern. In the chapter about *trabajo duro*, or “hard work,” one story after another begins practically the same way: “My parents were not afraid of hard work” (U.S. Representative Loretta Sanchez);⁷⁹ “I think that, in my family, hard work was one of the most important virtues” (author Victor Villaseñor);⁸⁰ “My father loved work. He said there was fulfillment in it” (film and television producer Moctezuma Esparza);⁸¹ and “My father used to work very hard” (Los Angeles County Supervisor Gloria Molina).⁸²

As for parental lectures, I remember something that my great-grandmother, who was called “Mama Cuca,” said to me the summer after I graduated from law school. Sitting in her living room one afternoon, I was describing all my legal “temp” work:

68. *Id.* at 60.

69. *Id.*

70. *Id.*

71. *See id.*

72. *Id.*

73. *Id.* “Chinga” translates roughly to “fuck.”

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 58.

80. *Id.* at 61.

81. *Id.* at 67.

82. *Id.* at 72.

two summers clerking for big law firms in Los Angeles; another summer clerking for a big firm in San Francisco; and soon, a one-year clerkship for a United States Circuit Judge. After that, I would take the California Bar Exam. In my view, I was kicking off my career at the highest level and getting terrific experience to boot. Mama Cuca listened patiently and then said, “*Pero mijo, ¿cuándo va a trabajar?*”—“But my son, when are you going to work?”

With so much emphasis on work, it is hardly surprising that many Latino families do not equate hard work with getting an education, or for that matter, playing sports as a means of furthering one’s education. For them, college is a symptom, a means of delaying the inevitable. The only cure is going to work.

D. Absence of Sports from the Group Success Narrative

A distinct narrative of the African American experience, reinforced by popular culture, holds that playing sports is a pathway to social and economic success, particularly for males.⁸³ True or not,⁸⁴ the narrative has great staying power.⁸⁵ But it is not to be found in the story lines of every ethnic group. Professor Richard Lapchick, one of the narrative’s most prominent skeptics,

83. Popular culture offers innumerable examples that present this narrative. Film is one. *See, e.g.*, *BOYZ N THE HOOD* (Columbia Pictures 1991) (contrasting the plans of teenagers Tré and Brandi, who study hard in hopes of going to college to escape poverty in their South Los Angeles neighborhood, with those of Ricky, who struggles to get into the University of Southern California so he can play football). Rap music is another. *See, e.g.*, *NOTORIOUS B.I.G., Things Have Done Changed, on READY TO DIE* (Bad Boy Records 1994) (“because the streets is a short stop / either you’re slinging crack rock or you got a wicked jump shot / shit, it’s hard being young from the slums . . .”).

84. A growing literature suggests that this narrative was never true. *See, e.g.*, JON ENTINE, *TABOO: WHY BLACK ATHLETES DOMINATE SPORTS AND WHY WE’RE AFRAID TO TALK ABOUT IT* (2001) (suggesting that race and genetics are significant components of the “stunning and undeniable dominance of black athletes,” not cultural factors such as the neighborhood narratives about sports providing pathways out of poverty or inner city ghettos); DAVID K. WIGGINS, *GLORY BOUND: BLACK ATHLETES IN WHITE AMERICA* (1997) (citing the work of Professor Harry Edwards, a well-known sociologist from the University of California-Berkeley who “for years has warned African Americans of the dangers of focusing exclusively on sport as the way to realize full equality in America”).

85. A thoughtful analysis of the narrative’s staying power is found in Vincent F. McSweeney, *Street-Ball: The Myth of the Ghetto Basketball Star 7* (May 1, 2008) (unpublished honors thesis, University of Connecticut), *available at* http://digitalcommons.uconn.edu/srhonors_theses/46/.

has put it this way: “Unlike African-Americans, Latinos have not been drilled from birth that sports are a way out of poverty”⁸⁶

As noted in Part I, unlike Latino athletes, African American athletes are well-represented in many college sports, including Division I men’s basketball and football, the so-called “revenue-producing sports.”⁸⁷ The presence of sports in the group success narrative of African Americans, and its absence from the group success narrative of Hispanics, helps explain why black communities have “established a deep college pipeline of sports talent ready to seize athletic opportunities,”⁸⁸ and Latinos have not. The following two examples illustrate this point.

In response to Jim Crow segregation, African Americans developed independent sports structures that paralleled those of white organizations. Historically black colleges and universities (“HBCUs”) fielded sports teams, especially in basketball, baseball, and football.⁸⁹ The top players on those teams were recruited to play professional baseball in the Negro Leagues, the black community’s response to their exclusion from MLB.⁹⁰ After World War II, when desegregation finally came to baseball,⁹¹ major universities⁹² and professional sports teams⁹³ alike could tap into a ready-made pipeline of African American athletic talent that had been primed to play.

By contrast, Latinos never developed such parallel institutions. There were no “Hispanic Leagues.” Although a number of colleges and universities are now known as “Hispanic

86. *Game Delay*, *supra* note 28. Professor Lapchick has criticized this narrative for setting unrealistic expectations among young black athletes and their families and argued for presenting realistic alternatives. *See, e.g., Prep Athletes Reach for the Sky*, CHI. TRIB., Nov. 15, 1990, at 3C, *available at* http://articles.chicagotribune.com/1990-11-15/sports/9004060253_1_college-sports-pros-richard-lapchick; *see generally* RICHARD LAPCHICK, SMASHING BARRIERS: RACE AND SPORT IN THE NEW MILLENNIUM (2001) (critiquing the politics of race in sports industries).

87. *See* NCAA ETHNICITY REPORT 2009–2010, *supra* note 19, at 55.

88. *Game Delay*, *supra* note 28.

89. *Id.*

90. *See generally* MARK RIBOWSKY, A COMPLETE HISTORY OF THE NEGRO LEAGUES, 1884 TO 1955 (1995) (providing a history of the Negro Leagues).

91. Paul Finkelman, *Baseball and the Rule of Law*, 46 CLEV. ST. L. REV. 239, 251 (1998).

92. Timothy Davis, *Race and Sports in America: An Historical Overview*, 7 VA. SPORTS & ENT. L.J. 291, 303 (2008).

93. *See id.* at 302.

-serving institutions,”⁹⁴ few were established in response to Jim Crow-type segregation, or developed athletic programs on par with those developed by HBCUs.

It is true that any number of prominent, native-born Latinos have parlayed their college athletic successes into professional athletic successes, and in the process, escaped from poverty. Quarterback Joe Kapp⁹⁵ and placekicker-turned-media-mogul Danny Villanueva,⁹⁶ both raised in farmworker families, are just two who come to mind. Still, by their own accounts, most Latino student-athletes played college sports as a means of getting an education, rather than as a means of going pro.⁹⁷ The same is true of Greivis Vasquez, who was taken in the first round of the 2010 NBA draft by the Memphis Grizzlies.⁹⁸ Vasquez played basketball at the University of Maryland, where he was the Atlantic Coast Conference Player of the Year.⁹⁹ After his junior year at Maryland, Vasquez entered the NBA draft, but he withdrew his name to return for his senior year.¹⁰⁰ His mother had something to do with it:

Mom, she has no clue about basketball. All she cares is just about me getting an education. I looked straight into my mom’s eyes, and she told me, “I just want you to graduate. I don’t care about money. . . . I just want you to get an education and I want you to

94. See Higher Education Act of 1965, 20 U.S.C. §§ 1101–03 (2006) (providing support for Hispanic-Serving Institutions, or “HSIs”).

95. See, e.g., Joe Kapp with Jack Olsen, *A Man of Machismo*, SPORTS ILLUSTRATED, July 20, 1970, at 28, available at <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1083841/index.htm>.

96. Hector D. Cantu, *Calculated Risks; Danny Villanueva Has Taken What He Learned and Turned It Into a Stunning Business Career. Successful People, He Says, Take (Calculated Risks)*, L.A. TIMES MAGAZINE, June 22, 1997, at 8, available at http://articles.latimes.com/print/1997-06-22/magazine/tm-5670_1_calculated-risks.

97. See NAVA, *supra* note 62, at 64–65; see also MARIO T. GARCÍA, MEMORIES OF CHICANO HISTORY: THE LIFE AND NARRATIVE OF BERT CORONA 67 (1994) (describing the decision by union organizer and civil rights activist Bert Corona to play basketball at the University of Southern California in order to get a college education).

98. Paul Ruffins, *The Road Less Traveled*, DIVERSE ISSUES HIGHER EDUC., Sept. 16, 2010, at 10–11.

99. *Id.*

100. *Id.*

be a good gentleman.” I listened to my mom and that was the reason that I came back.¹⁰¹

The few Latinos for whom the group success narrative emphasizes playing sports as a career seem to be foreign-born. Second baseman Miguel Tejada and other major leaguers from the Dominican Republic come to mind because they escaped poverty by playing baseball.¹⁰² They jumped straight to the professional ranks without getting college educations because baseball retains the minor league farm system.¹⁰³ Under that system it is still possible to get to the majors without playing college ball.¹⁰⁴

If there is a group success narrative for Latinos, it is the same one that has been embraced by generation after generation of Americans from every background imaginable: to get ahead, you have to get an education. In this regard, the story of journalist Juan Gonzalez is much more common:

Our parents' generation rarely protested the way we were treated in school, which is understandable. After the terrible poverty they'd faced in Puerto Rico, they believed that an education—any education—was their children's only hope for progress. And if that meant putting up with a few psychological scars from Americanization, then so be it. My grandmother, who was illiterate, drove that

101. *Id.*

102. See, e.g., MARCOS BRETÓN & JOSE LUIS VILLEGAS, *AWAY GAMES: THE LIFE AND TIMES OF A LATIN BASEBALL PLAYER* 13–14 (1999). This type of success narrative is no doubt familiar to many Asian Americans who have delighted in the trailblazing success of Jeremy Lin, point guard for the New York Knicks. Midway through the 2011–2012 NBA season, Lin attracted attention due as much to his heritage—he is one of the league's few Asian American players—as to his buzzer-beating exploits. His life story emphasizes education over athletic prowess: Lin graduated from Harvard University; his brothers are college-educated; and his Taiwanese parents met while attending college in the United States (his father is an electrical and mechanical engineer and his mother is a computer scientist). See Sam Borden & Keith Bradsher, *Tight-Knit Family Shares Lin's Achievement*, N.Y. TIMES, Feb. 25, 2012, at SP1, available at <http://www.nytimes.com/2012/02/26/sports/basketball/tight-knit-family-shares-lins-achievement.html?pagewanted=1&ref=michaelluo&adxnnlx=1333768169-/MEgALjazM6OE4nba0Yr5g>.

103. See BRETÓN & VILLEGAS, *supra* note 102, at 32, 53.

104. *First-Year Player Draft Official Rules*, MAJOR LEAGUE BASEBALL, <http://mlb.mlb.com/mlb/draftday/rules.jsp> (last visited Feb. 13, 2012).

into my father, who was barely literate himself, and he pushed my sister, Elena, and me to study with a frenzy that bordered on cruelty. It was not unusual for him to beat us mercilessly with a leather strap for bringing home a poor report card. These days, he'd probably be thrown in jail for child abuse.

As time passed, the González family became a melting-pot success story by anyone's measure. One by one, each of us completed high school and joined the first college-educated generation in the family's history. My uncle Sergio and aunt Catin produced a college instructor in Greek and Latin, another son who rose to be an official in the Nixon and Reagan administrations, and a South Bronx social worker. I went to Ivy League Columbia College and eventually on to a career in journalism; my sister became a public school and later a college instructor; another cousin became a doctor; another a psychiatric social worker; another a police detective.¹⁰⁵

CONCLUSION

In this age of Latino accomplishment, it is somewhat surprising to learn that there is still an important place in American life where Latinos own neither the moment, nor a watch to measure it by: the world of college athletics. This Article has tried to explore the extent of the problem and some theories that may explain it. Perhaps it will inspire those who tend the athletic participation pipeline to come up with solutions. As the *dicho* goes, *él que persevera triunfa*, "he who perseveres triumphs."¹⁰⁶

105. JUAN GONZALEZ, HARVEST OF EMPIRE: A HISTORY OF LATINOS IN AMERICA 91 (2000).

106. NAVA, *supra* note 62, at 257.