

## *Hernandez v. Texas: The Fight for Mexican American Rights*

by Lucas E. Espinoza and Luis E. Espinoza

The fight for civil rights in the South has a history of conflict and racialization based on the idea that minorities were not allowed equal protection of the law. Legal scholars have found that Mexican Americans and Latinos have had to walk the razor's edge of racialization in which they did not fit the categories of White or Black. They have had to fight to secure their own voice and agency. In 1954, the case of *Hernandez v. Texas* framed the situation of racial pressures in the South in terms of other minorities serving on court juries. The literature provides an analysis to aid minorities who have lived in the context of oppression, though there are still racially based issues. Many people are not aware of the case of *Hernandez v. Texas*, which brought about changes to the segregated South prior to the landmark case of *Brown v. Board of Education*.<sup>1</sup> This paper uses a Critical Race perspective using the intersections of race, law, and power to demonstrate how fighting for one's rights created social change for Mexican Americans and allowed them to gain access to equality measures in Texas.

The South itself had a culture of prejudice and discrimination to the racialized other of racial-ethnic minorities. The discrimination experienced by Mexican Americans was an issue that gained a spotlight in the early 1950s in which Mexican Americans were relegated to second-rate citizen status.<sup>2</sup> In addition to this, the case of receiving separate but equal services along one's racial category by the legal doctrine 'separate but equal' created a situation in which minorities received other forms of oppression in Texas. While Mexican Americans from the 1930s to the 1960s attempted to claim their whiteness, the law failed to afford them any rights.<sup>3</sup> Whiteness is a social construction based on the ideology of one's social class and/or status, which perpetuates and sustains privilege beyond what is given the racialized other.<sup>4</sup> Mexican Americans attempted to fight for their rights and equal access in the South.

The case of *Brown v. Board of Education* was one of the first successes under which the Jim Crow South practices started to lose their hold; the case for the actual success for dismantling segregation falls to *Hernandez v. Texas* two weeks prior to *Brown v. Board of*

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<sup>1</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

<sup>2</sup> Kevin R. Johnson, "Hernandez v. Texas: Legacies of Justice and Injustice." *Chicano-Latino L. Rev.* 25 (2005), 153.

<sup>3</sup> Marcos Guerra, "Hernandez v. Texas: A 50th Anniversary Celebration." *Texas Hispanic Journal of Law & Policy* 11 (2005), 10-42.

<sup>4</sup> Ruth Frackenberg, *White Women, Race Matters*. Minneapolis: University of Minnesota Press, 1993.

*Education*.<sup>5</sup> The Hernandez case was the first actual decision under Chief Justice Warren.<sup>6</sup> Though both cases similarly were concerned with race and the question 'of separate, but equal,' they were in opposition at the same time. With the case of *Brown v Board of Education*, the U.S. Supreme Court accepted the 14<sup>th</sup> Amendment provided protection for Blacks and questioned whether school segregation was equal. However, with *Hernandez v. Texas*, the court acknowledged the Constitution prohibited discrimination as far as jury selection, but it questioned whether Mexican Americans were worthy of this protection.<sup>7</sup> This was given the fact that during this time there was a distinction between Whites and people of Mexican descent even being treated differently at the county courthouse in their usage of the restroom-toilet access. One toilet was unmarked and the other was marked for Colored men and *Hombres aqui* (Men Here). The sign in Spanish was directed toward persons of Mexican descent. This demonstrated that Mexican Americans were being discriminated against just as Blacks even though they were considered 'White'.<sup>8</sup>

### The Case

In an attempt to situate equality, we must examine the inequality context of the case. Mr. Pedro "Pete" Hernandez was convicted of first-degree murder for killing his employer Caetano "Joe" Espinosa in 1951 in racially divided Edna, Texas<sup>9</sup>. An all-White jury sentenced Hernandez to life in prison for the crime. The murder itself took place in front of witnesses during a bar room fight in Edna, Texas, Jackson County.<sup>10</sup> When this murder occurred, the Hernandez family turned to Houston area based lawyer, John Herrera, who was in the process of litigating a jury exclusion case in Fort Bend County. Mr. Herrera, the defendant's lawyer, appealed the ruling to the Texas Court of Criminal Appeals claiming Mr. Hernandez experienced racial-based discrimination during his indictment as none of the jurors were of Mexican descent.<sup>11</sup> When the preliminary case did not go as planned, Herrera and his law firm sought out The League of United Latin

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<sup>5</sup> Ibid., 1; Carlos K Blanton. "George I. Sánchez, Ideology, and Whiteness in the Making of the Mexican American Civil Rights Movement, 1930-1960." *The Journal of Southern History* (2006), 569-604.

<sup>6</sup> Ian Haney Lopez, and Michael A. Olivas, "*Jim Crow, Mexican Americans, and the Anti-Subordination Constitution: The Story of Hernandez v. Texas*," in *Race Law Stories*, ed. Rachel F. Moran and Devon W. Carbado (New York: Foundation Press, 1999, 273-310.

<sup>7</sup> Ibid., 3; 1; Lopez, Ian F. Haney. *Racism on Trial: The Chicano Fight for Justice*. Harvard University Press, 2009.

<sup>8</sup> Chicago-Kent College of Law at Illinois Tech. "Hernandez v. Texas." Oyez. <https://www.oyez.org/cases/1940-1955/347us475> (accessed May 1, 2016).

<sup>9</sup> *A Class Apart*. DVD. Directed by Carlos Sandoval and Peter Miller. Arlington, VA: PBS, 2009.

<sup>10</sup> Ibid., 6.

<sup>11</sup> Gilbert Bradshaw, "Who's Black, Who's Brown, and Who Cares: A Legal Discussion of Hernandez v. Texas." *Brigham Young University Education & Law Journal* (2007), 351-382.

American Citizens (LULAC) for support once the lawyers lost the appeal based on the exclusion claim in 1952.

While this system of race was in question, Mexican Americans held onto their own cultural and political ideologies. Mexican Americans of this area were: Tejano, Mexican American, Chicanos/as, and Latinos/as.<sup>12</sup> Mr. Hernandez identified as Mexican American; however, he went to court before a jury of Whites.<sup>13</sup> The jury did not comprise of his Mexican American peers though the county itself held a high amount of them. Historically in 1930s Texas, the courts excluded both Mexican Americans and Blacks from serving on juries. When the Texas Courts were challenged, they called for defendants to provide evidence of discrimination, which was beyond the case of socioeconomic statistics and mapping of residential areas.<sup>14</sup>

### Issues with the Case

Attorney John Herrera and LULAC turned to state attorneys Gus Garcia and Carlos Cadena in 1951 when the district court rejected the allegations of discrimination. In October of 1951, Mr. Hernandez was convicted of murder with malice and sentenced to life in prison.<sup>15</sup> His lawyers set about to prove their case of discrimination within the racial grouping, while the Texas courts held their claims. A major opinion with the *Hernandez v. Texas* case came from the Texas appellate court in 1952.<sup>16</sup> The court made the claim that Mr. Hernandez's rights were not violated based on the stance that Mexican Americans fell under the racial category of White. The jury was comprised of people of his race, and with this fact, no proof of discrimination could be found or demonstrated.

Prior to the Hernandez ruling, the state of Texas counsel applied the 14<sup>th</sup> Amendment solely to Blacks and not to other races.<sup>17</sup> Cases at the time attempted to argue that discrimination based on racial segregation, though no burden of proof could be provided to extend the claim.<sup>18</sup> The case of *Norris v. Alabama* resulted in the U.S. Supreme Court highlighting the rule of exclusion, which violated the rights of African Americans to be jurors when they held qualifications.<sup>19</sup> A similar murder case, *Sanchez v. State of Texas*, occurred several counties away from Jackson County in which Mr.

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<sup>12</sup> Ibid., 3, 13.

<sup>13</sup> Ibid., 6.

<sup>14</sup> Thomas A. Saenz, "Mendez and the Legacy of Brown: A Latino Civil Rights Lawyer's Assessment." *Berkley La Raza Legal Journal* 15 (2004), 67-73.

<sup>15</sup> Ibid., 7.

<sup>16</sup> Laura E. Gomez, "Off-White in an Age of White supremacy: Mexican Elites and the Rights of Indians and Blacks in Nineteenth-century New Mexico." *Chicano-Latino Law Review* 9(2005), 21-45.

<sup>17</sup> Ibid., 7.

<sup>18</sup> Ibid., 10.

<sup>19</sup> *Norris v. Alabama*, 294 U.S. 587 (1935).

Aniceto Sanchez was convicted of murder by an all-White jury and given 10 years of prison.<sup>20</sup> Sanchez told his lawyers he refused to appeal the ruling for fear of a harsh retrial and getting the death penalty or a longer sentence in prison.

### **What Would Happen and Segregation**

With the *Sanchez* case, some concern arose whether Hernandez's legal counsel should appeal Hernandez's court ruling given the similar nature of the case. Specifically, they were making a claim of systematic exclusion towards Mexican American's presence on juries. In 1952, the Texas Court of Criminal Appeals re-affirmed the murder conviction maintaining Mr. Hernandez's life sentence.<sup>21</sup> Hernandez's lawyers weighed their options to appeal for Supreme Court Review. Mexican Americans absence on juries is surprising because in the 1930s the US Census noted that people of Mexican descent outnumbered Mexican immigrants in the US.<sup>22</sup> Mexican Americans were gaining a consciousness, claiming an identity of being Chicano, and having a call for their rights as U.S. Citizens.<sup>23</sup>

As a process, segregation allowed Whites to oppress Mexican Americans and other minorities in the U.S.<sup>24</sup> The Jim Crow laws were enacted toward Mexican Americans in the Southwest region of the U.S.<sup>25</sup> Approximately 117 Texas towns during the 1950s and 1960s enacted segregation against Mexican Americans; these towns even went so far to require laws concerning segregation.<sup>26</sup> Many manual laborers and farmers were mostly Mexican Americans. These people experienced segregation through economic and class means that made it difficult for these people's children to receive a quality education.<sup>27</sup>

### **Turning to the U.S. Supreme Court**

In debating whether to seek the U.S. Supreme Court Review there were some issues: would the original verdict be thrown out, could the case could be retried, and would the verdict be worse than life in prison. An additional fear was failure of the Supreme Court to hear the case and decentralization of LULAC, meaning there would be no financial power to support the cause. There were advantages to seeking court

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<sup>20</sup> *Sanchez v. State of Texas*, 243 S.W.2d 700 (1951); *Ibid.*, 17.

<sup>21</sup> *Ibid.*, 6, 351, 279

<sup>22</sup> *Ibid.*, 6.

<sup>23</sup> *Ibid.*, 3, 4.

<sup>24</sup> James W. Loewen, *Lies my Teacher Told Me: Everything Your American History Textbook Got Wrong*. The New Press, 2008.

<sup>25</sup> *Ibid.*, 17.

<sup>26</sup> Arnoldo De León and Robert A. Calvert, "Segregation," *Handbook of Texas Online* . <http://www.tshaonline.org/handbook/online/articles/pks01> (accessed January 7, 2016).

<sup>27</sup> *Handbook of Texas Online*, Arnoldo De León, "Mexican Americans". <http://www.tshaonline.org/handbook/online/articles/pqmue> (accessed January 15, 2016).

review; the Supreme Court gave The National Association for the Advancement of Colored People (NAACP) several victories to the legal system in terms of the education system admittance of Blacks to the University of Texas and Oklahoma State University.

For the *Hernandez* legal counsel to garner support for their case they turned to LULAC, the GI Forum and the Marshall Trust-Trustee in order to file the case in October 1952. In 1953, they were granted a calendar session for January 1954 in Washington, D.C.<sup>28</sup> The legal counsel turned to their best orator, Gus Garcia to voice their cause before the U.S. Supreme Court.<sup>29</sup> Thus, with this plan set out by Herrera, both Garcia and fellow colleague Carlos Cadena went before the court to plead their case. Though no court transcripts can be found due to misplacement and/or loss, only legal history knows based on the decision brief and the second-hand account of persons present during the court hearings.<sup>30</sup>

Under Chief Justice Warren, a unanimous decision was granted in May 1954 overturned the Texas court decision as it fell under the 14<sup>th</sup> amendment that required equal protection to be passed onto any grouping shown to be experiencing changing prejudices, discrimination, and segregation. The court cited "other differences," which may define the group needing protection.<sup>31</sup> The court also outlined a 'test' in which the US Constitution required intervening. In this 'test', there needed to be a distinct class that was in effect and they needed to receive different treatment.<sup>32</sup> This added to their own understanding of dealing with racism, and its usage with other people.<sup>33</sup>

### **Latino/a Critical Race Theory Examination**

Within the field of Latino/a Critical Race, the *Hernandez* case provides an examination of how Latinos/as have gained their rights and protections by the 14<sup>th</sup> Amendment. Mexican Americans have struggled for equality and a sense of self-identity within the mainstream community. They have garnered a place within the master's house by using the tools of power and agency to transition and claim a place at the table. Through socio-political discourse as a people, they have dealt and battled with the racial hierarchy in place.<sup>34</sup>

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<sup>28</sup> Ibid., 3, 6; Lopez, Ian F. Haney. "Race, Ethnicity, Erasure: The Saliency of Race to LatCrit Theory." *California Law Review* (1997), 1143-1211.

<sup>29</sup> Ibid., 3.

<sup>30</sup> Ibid., 6.

<sup>31</sup> Ibid., 6, 289.

<sup>32</sup> Ibid., 6, 290.

<sup>33</sup> Ibid., 3.

<sup>34</sup> Enid Trucios-Haynes, "Why Race Matters: LatCrit Theory and Latina/o Racial Identity." *Berkeley La Raza Law Journal* 12 (2000): 1-42.

Latinos live their lives as non-Whites as their identities (race, color, national origin, and so on) have an 'Othering' aspect.<sup>35</sup> This 'Othering' establishes a link to whiteness as it ('Othering') creates an identity away from whites as the laws attempt to categorize them as White, and places them in a place to be exploited and treated as different. As a field itself Latino/a Critical Race Theory examines the relationship of domination-subordination between races/ethnicities and assesses the case of Latinos/as in the US.<sup>36</sup>

### **The Aftermath**

With the U.S. Supreme Court's decision in place, Mexican Americans could no longer be barred from jury service.<sup>37</sup> The US Supreme Court was able to bring to light social justice implications and the sociology in the way of life that Mexican Americans lived.<sup>38</sup> The way 'separate but equal' was enacted created proof and credibility that there was no chance a jury would have no Mexican Americans. The U.S. Supreme Court was able to negotiate the Black-White paradigm to transition to a racial-subordination-group paradigm to examine racial hierarchy and other forms of oppression.<sup>39</sup> The Supreme Court framed racism in allowing and enacting equal protection to Latinos/as by acknowledging the issue of white male domination. In other words, acknowledging one person as a minority does allow for a case of equal protection.<sup>40</sup>

Lawyer John Herrera wrote about his life as a second-class citizen prior to the court decision in his memoirs.<sup>41</sup> The court case of *Hernandez v. Texas* aided Mexican Americans and minorities to reject the two-class social theory by allowing the 14<sup>th</sup> Amendment to be afforded to minorities other than Blacks. It also set a precedent to eliminate the exclusion of a race to juries, and helped with the desegregation of the education system across the board. The experience of anti-minority prejudices in the South allowed for the examination of white structural advantages, and issues that were deemed class based.<sup>42</sup>

The Hernandez case forced the nation to give Mexican Americans rights that were previously denied them and it allowed for full enactment and protection by the 14<sup>th</sup> Amendment. In 1954, the racial ethnic progress aided the social institutions of

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<sup>35</sup> Ibid., 3.

<sup>36</sup> Ibid., 6.

<sup>37</sup> Ibid., 2.

<sup>38</sup> Michael A. Olivas, "Foreword, Hernandez v. Texas Special Issue." *UCLA Chicano-Latino Law Review* (2005), 1-9.

<sup>39</sup> Jamie L. Crook "From Hernandez v. Texas to the Present: Doctrinal Shifts in the Supreme Court's Latina/o Jurisprudence." *Harvard Latino Law Review* 11(2008), 19- 83.

<sup>40</sup> Ibid., 23.

<sup>41</sup> Ibid., 3.

<sup>42</sup> Ibid., 6, 52.

government and education. The situation of racial-ethnic-group subordination supported the continued oppression of Mexican Americans within White dominant culture. Moreover, this situation was focused on one's Latino/a identity.<sup>43</sup> The case of segregation based on race extended to the school systems prior to *Brown v. Board of Education*.

### **Remembering**

Over the past six decades we find that the case of *Hernandez v. Texas* has received limited attention and credit of impacting desegregation and social change for Mexican Americans. We also find how the court previously understood and accepted the lack of racial status of Mexican Americans by utilizing community prejudices as a determinant to them.<sup>44</sup> The Mexican Americans gained political and economic rights, allowing them to become full citizens.<sup>45</sup> The *Hernandez* ruling moved the protection beyond race. With the court recognizing and resolving racism, attempts have been made to improve other forms of identity (i.e., gender, class, sexual orientation) in the courts. The social norms of these times have changed so no person can be kept from having a jury of their peers.

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<sup>43</sup> Ibid., 6.

<sup>44</sup> Ibid., 2.

<sup>45</sup> Ibid., 19