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## Latinx Defendants, False Convictions, and the Difficult Road to Exoneration

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### ABSTRACT

The National Registry of Exonerations (the Registry) reports all known exonerations in the United States since 1989. Of the more than 2,400 exonerated defendants currently in the database, 281 are classified as Latinx. In many ways, their cases resemble those of other exonerees. The same factors that produced false convictions of non-Latinx defendants—including mistaken eyewitness identification, misconduct by police and prosecutors, and perjury—were also at work in Latinx defendants' cases.

There are, however, differences both in the types of crimes for which Latinx exonerees were convicted and in the ways in which they were vulnerable to the errors and misconduct that produce false convictions. Moreover, the consequences of a false conviction—though calamitous for anyone—may be more pronounced for Latinx defendants with precarious immigration status.

In this Article, we present what we know about Latinx defendants who have been exonerated—the nature of the crimes, the factors that contributed to their wrongful convictions, and how their cases compare to non-Latinx exonerees. We discuss the particular ways in which Latinx defendants may be vulnerable to wrongful convictions, using case studies to explore how language barriers, racial profiling, and immigration concerns can be exploited in their cases. Finally, we consider barriers to exoneration, and how falsely convicted Latinx defendants may be particularly disadvantaged when seeking to overturn their convictions.

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## INTRODUCTION

The National Registry of Exonerations (the Registry) reports all known exonerations in the United States since 1989. Of the more than 2,400 exonerated defendants currently in the database, 281 are classified as Latinx.<sup>1</sup> In many ways, their cases resemble those of other exonerees. The same factors that produced false convictions of non-Latinx defendants—mistaken eyewitness identification, false confessions, forensic error, misconduct by police and prosecutors, and perjury—were also at work in Latinx defendants’ cases.<sup>2</sup>

For example, Vicente Benavides Figueroa spent twenty-five years on California’s death row after being wrongfully convicted and sentenced to death for the rape, sodomy, and murder of a twenty-one-month-old girl.<sup>3</sup> His convictions were vacated and the charges were dismissed after experts concluded that the forensic medical evidence used to convict Benavides was wrong.<sup>4</sup>

Benavides’s postconviction petition alleged that “[v]irtually every medical observation and conclusion that the prosecution presented—from the cause of death to the ‘evidence’ of rape and sodomy—was manufactured and false.”<sup>5</sup> Evidence showed that the pathologist’s finding as to cause of death was medically impossible, and that “the numerous medical personnel who administered her care immediately upon her arrival at the hospital emphatically deny” that she arrived

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1. *Detailed View of Exonerations of Hispanic Exonerees*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Race&FilterValue1=Hispanic> [https://perma.cc/DK8M-UZ83] (last visited Feb. 28, 2019) (showing a detailed view of National Registry of Exonerations database limited to Latinx exonerees). Throughout this Article, the numbers presented from the Registry are current as to the date last visited, but the numbers change as new cases are added to the Registry.
  2. These are the five categories of contributing factors tracked by the Registry. All five have contributed to wrongful convictions of Latinx defendants. Dustin Cabral, *U.S. Exonerations Dashboard*, NAT’L REGISTRY EXONERATIONS (Nov. 12, 2019), <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> [https://perma.cc/ZHQ6-78BD].
  3. See Maurice Possley, *Vicente Benavides Figueroa*, NAT’L REGISTRY EXONERATIONS (Apr. 29, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5315> [https://perma.cc/CW9L-AVBY].
  4. See *id.* Two doctors reviewed the report of the pathologist who testified that the child’s death was the result of sodomy, and they stated that the pathologist’s findings were “anatomically impossible” because the organs between the anus and the upper abdomen were undamaged. *In re Benavides Figueroa*, 412 P.3d 356, 361 (Cal. 2018).
  5. Corrected Amended Petition for Writ of Habeas Corpus at 9, *In re Benavides Figueroa*, 412 P.3d (No. S111336), <https://www.courts.ca.gov/documents/1-s111336-petitioner-amended-pet-writ-hc-042208.pdf> [https://perma.cc/ZF8M-4VSA] [hereinafter Benavides Figueroa Amended Petition].

displaying signs of having been raped or sodomized.<sup>6</sup> In fact, the evidence suggested that the injuries were caused by the invasive and sustained medical efforts to address the girl's rapidly deteriorating condition.<sup>7</sup>

The California Supreme Court based its decision to grant Benavides a new trial on the grossly incompetent and false forensic evidence presented in his case because that evidence contributed directly to the jury's verdict.<sup>8</sup> It did not address, however, the extent to which limitations of language or cultural competencies contributed to the wrongful conviction of a monolingual Spanish speaker.<sup>9</sup> Yet those issues played a significant role in his case, and they contribute to the risk of false convictions in others.<sup>10</sup>

This Article presents what we know about Latinx defendants who have been exonerated, discusses the limits of that knowledge, and calls for increased attention to the particular issues they face. In Part I, we discuss factors that contribute to false convictions and consider the relevance of race and ethnicity to understanding how the system fails. We posit particular ways in which Latinx defendants may be vulnerable to wrongful convictions, using case studies to explore how language barriers and immigration concerns can be exploited in their cases. In Part II, we discuss the process of exoneration. In particular, we consider the barriers that wrongly convicted Latinx defendants face in that process, as well as the additional challenges they face upon exoneration.

## I. LATINX DEFENDANTS AND FALSE CONVICTIONS

Race and ethnicity matter in the criminal justice system at all levels—in a police officer's decision to stop and search someone on the street,<sup>11</sup> in the

6. See Possley, *Vicente Benavides Figueroa*, *supra* note 3.

7. *In re Benavides Figueroa*, 412 P.3d at 361.

8. *Id.* at 365–68.

9. See Shiv Narayan Persaud, *Is Color Blind Justice Also Culturally Blind? The Cultural Blindness in Justice*, 14 BERKELEY J. AFR.-AM. L. & POL'Y 23, 33 (2012) (discussing the importance of cultural competency to accuracy in the justice system and noting that developing cultural competency would require that policymakers and practitioners have a mutual understanding of cultural and linguistic variations and interpretations among society's ethnic groups).

10. See *infra* Part I.E for a discussion of Benavides's claims regarding the court's failure to provide a competent interpreter at his trial.

11. See, e.g., *Utah v. Strieff*, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting) (explaining that race and ethnicity matter in who officers stop); RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* (1997); I. Bennett Capers, *Race, Policing, and Technology*, 95 N.C. L. REV. 1241, 1242–44 (2017) (collecting and citing documentation on the risks and costs of being black when it comes to policing); Angela J. Davis, *Prosecution and Race: The Power and Privilege of Discretion*, 67 FORDHAM L. REV. 13, 16 (1998) (“At every step of the criminal process, there is evidence that African Americans are not treated as well as whites—both as victims of crime and as criminal defendants.”) (citations omitted).

prosecutor's decision to bring charges<sup>12</sup> or to exercise a peremptory strike against a potential juror,<sup>13</sup> and so on.<sup>14</sup> It should therefore come as no surprise that they play a role in the conviction of innocent defendants, as well.<sup>15</sup>

Most of the research examining how racial and ethnic bias undermines the fairness of the system focuses on discrimination against African American suspects and defendants, and for good reason.<sup>16</sup> The ways in which the system is biased against African Americans often resemble the ways in which it is biased

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12. NAZGOL GHANDNOOSH, BLACK LIVES MATTER: ELIMINATING RACIAL INEQUITY IN THE CRIMINAL JUSTICE SYSTEM, THE SENTENCING PROJECT 11–12 (2016), <http://sentencingproject.org/wp-content/uploads/2015/11/Black-Lives-Matter.pdf> [<https://perma.cc/4SER-ZHBS>] (presenting statistics on racial disparities in charging decisions following traffic stops); ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING 51–59 (2018) (explaining that low-level enforcement has had a concentrated impact on minority communities); Barbara O'Brien, Catherine M. Grosso, George Woodworth & Abijah Taylor, *Untangling the Role of Race in Capital Charging and Sentencing in North Carolina, 1990–2009*, 94 N.C. L. REV. 1997, 2030–36 (2016) (finding that North Carolina prosecutors were significantly more likely to seek death in a death-eligible case when at least one victim was white).
  13. David C. Baldus, George Woodworth, David Zuckerman, Neil Alan Weiner & Barbara Broffitt, *The Use of Peremptory Challenges in Capital Murder Trials: A Legal and Empirical Analysis*, 3 U. PA. J. CONST. L. 3, 10 (2001); Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials*, 97 IOWA L. REV. 1531 (2012); Samuel R. Sommers & Michael I. Norton, *Race-Based Judgments, Race-Neutral Justifications: Experimental Examination of Peremptory Use and the Batson Challenge Procedure*, 31 LAW & HUM. BEHAV. 261, 266–67 (2007); Samuel R. Sommers & Michael I. Norton, *Race and Jury Selection: Psychological Perspectives on the Peremptory Challenge Debate*, 63 AM. PSYCHOLOGIST 527, 533 (2008).
  14. See Radley Balko, *There's Overwhelming Evidence That the Criminal-Justice System Is Racist. Here's the Proof.*, WASH. POST (Sept. 12, 2018), [https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/?utm\\_term=.160b6995f165](https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/?utm_term=.160b6995f165) [<https://perma.cc/2HPM-FJDV>] (collecting studies on the pernicious effects of race in the criminal justice system).
  15. See SAMUEL R. GROSS, MAURICE POSSLEY & KLARA STEPHENS, NAT'L REGISTRY OF EXONERATIONS, RACE AND WRONGFUL CONVICTIONS IN THE UNITED STATES (2017) [http://www.law.umich.edu/special/exoneration/Documents/Race\\_and\\_Wrongful\\_Convictions.pdf](http://www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf) [<https://perma.cc/8NGB-2U7G>].
  16. See *id.* (documenting disparities in the rates at which African American defendants are wrongfully convicted of homicide and experience official misconduct in the handling of their cases compared to defendants of other races); Balko, *supra* note 14 (documenting disparities in the rates at which African American defendants are wrongfully convicted of homicide and experience official misconduct in the handling of their cases compared to other races). See also SAUNDRA TRUJILLO & MARÍA B. VÉLEZ, *Ethnicity and Crime*, in THE HANDBOOK OF RACE, ETHNICITY, CRIME, AND JUSTICE 39, 39 (Ramiro Martínez et al. eds., 2018) (documenting and discussing the serious absence of criminological research on Latinos and policing); Ramiro Martínez, Jr., *Incorporating Latinos and Immigrants Into Policing Research*, 6 CRIMINOLOGY & PUB. POL'Y 57, 57 (2007) (documenting and discussing the serious absence of criminological research on Latinos and policing).

against Latinx defendants.<sup>17</sup> Moreover, many of the flaws in the system that produce false convictions seem to be present regardless of the race of the defendants or victims. Nevertheless, Latinx defendants face unique vulnerabilities in the criminal adjudication process that can both increase the risk of false conviction and hurt their chances at exoneration.

In this Part, we discuss some of the ways in which Latinx defendants may be particularly vulnerable to the types of errors and misconduct associated with false convictions. Part I.B presents some of the methodological challenges that researchers face in analyzing Latinx defendants as a unique population. The remaining Subparts address specific problems that contribute to false convictions generally and discuss how Latinx defendants may be uniquely vulnerable to them. Part B examines false confessions, and Part C turns to mistaken eyewitness identifications. Part I.D evaluates risks to accuracy arising from threats of deportation or other immigration concerns. Finally, Part E explores how language barriers may disproportionately place Latinx defendants at risk of false convictions in ways that are more difficult to detect and quantify than other known risk factors. Throughout Part I, this Article considers the role that official misconduct plays in these errors.

#### A. Methodological Limitations in Analyzing False Convictions of Latinx Defendants

Examining Latinx defendants as a distinct class among exonerees poses particular challenges. National criminal justice statistics often fail to include Latinx as a demographic category or use varying criteria for inclusion.<sup>18</sup> The

17. See RAMIRO MARTÍNEZ, JR., *LATINO HOMICIDE: IMMIGRATION, VIOLENCE, AND COMMUNITY* 95–112 (2002) (presenting by race and ethnicities and demonstrating that comparative research is complicated).

18. For instance, the FBI did not include Latinx/Hispanic as a category in arrest data collection until 2013. Roque Planas, *FBI to Track Latino Arrests for Uniform Crime Report*, HUFFINGTON POST (June 25, 2013, 11:56 AM), [https://www.huffingtonpost.com/2013/06/25/fbi-latino-arrests\\_n\\_3492521.html](https://www.huffingtonpost.com/2013/06/25/fbi-latino-arrests_n_3492521.html) [<https://perma.cc/WMG9-FDHS>]. According to the U.S. Department of Justice, “The determination of race and Hispanic origin differs across states. In some states [Departments of Corrections], inmates are asked to self-identify race and ethnicity at time of admission, some rely on information in the arrest or court documents accompanying the prisoner at admission, in others prison officials classify the inmates visually upon entrance to the facility. Based on comparisons of race and ethnicity data recorded on administrative records from the [National Prisoner Statistics] and inmate self-identification data obtained from inmate surveys, Hispanic inmates and inmates identifying as more than one race are underrepresented in the [National Prisoner Statistics].” U.S. DEP’T. OF JUSTICE, BUREAU OF JUSTICE STATS., NATIONAL PRISONER STATISTICS, 1978–2012: CODEBOOK 6, <https://www.bjs.gov/nps/resources/documents/34981-0001-Codebook.pdf> [<https://perma.cc/QZ7V-7ZLK>].

Registry collects information about exonerees' race and includes Hispanic as a category, but its data are only as good as the records on which it relies.<sup>19</sup>

In addition, while all racial and ethnic categories are socially constructed, Latinx or Hispanic poses additional challenges because of the diverse experiences and origins of potential members of this ethnic category.<sup>20</sup> The Registry uses no separate coding category for Afro-Latino, Indigenous, Mestizo, or White Hispanics, to name a few. Even if it did, each of these categories would be broad and diverse. Latinx combines people with ancestry in nearly every non-English speaking North and South American country in one broad category.<sup>21</sup>

Furthermore, the study of false convictions is challenging by its nature. We have no reliable estimate of their frequency because we only know about the mistakes that have been discovered and corrected.<sup>22</sup> The process of exoneration itself distorts the sample. Innocent defendants convicted of serious crimes with substantial sentences are more likely to garner the resources and support necessary to exonerate them.<sup>23</sup>

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19. The Registry variables for race are limited to White, Black, Hispanic, Native American, Asian, and Other. This reflects the complexity of gathering the information. Our coding is based primarily on court records, which are not uniform from jurisdiction to jurisdiction. Court records are also subject to error in that determinations of race or ethnicity can be made by the arresting officer, the court, or the prosecutor. It is certainly possible that people who identify as Afro-Latino are subsumed into the category of Black, while some people who identify as Hispanic White might be coded White. Where possible, we code based on how the exoneree self-identifies.

20. As Trujillo and Vélez explain:

[E]thnic identity is voluntary, and ethnicity, unlike racial identity, also encompasses attachment to various cultural characteristics (e.g., language and customs) . . . [therefore] in academic discussions of ethnicity and crime, an empirical endeavor should examine the possibility of any unique cultural mechanisms or differential structural positions that may exist between Hispanic or Latino residents who also remain committed to distinctions based on nationality (i.e., Puerto Rican, Cuban, Mexican).

TRUJILLO & VÉLEZ, *supra* note 16, at 40–41 (citations omitted); see also Helen Marrow, *To Be or Not to Be (Hispanic or Latino)*, 3 ETHNICITIES 427, 430–31 (2003) (studying and demonstrating the way that official categorization as non-Hispanics/Latinos works in conjunction with Brazilians' own self-identifications as non-Hispanics).

21. JOSÉ LUIS MORÍN, *Introduction*, in *LATINOS AND CRIMINAL JUSTICE: AN ENCYCLOPEDIA* xxii (José Luis Morín ed., 2016).

22. See Samuel R. Gross, *What We Think, What We Know and What We Think We Know about False Convictions*, 14 OHIO ST. J. CRIM. L. 753, 764 (2017).

23. See *id.* at 767; see also Brandon L. Garrett, *Judging Innocence*, 108 COLUM. L. REV. 55, 128–29 (2008) [hereinafter *Judging Innocence*] (discussing the ineffectiveness of the direct appeals process, which is often a noncapital defendant's only posttrial proceeding with the assistance of counsel and does not allow for the introduction of new evidence to remedy false convictions).

In addition, the nature of the evidence matters. Achieving exoneration is never easy, but a defendant whose innocence can be proven through DNA testing may find it easier to secure representation from an innocence organization and ultimately be exonerated than one whose case does not turn on relatively straightforward, conclusive evidence.<sup>24</sup> A consequence of these distortions is that the universe of exonerations does not necessarily reflect the universe of false convictions, which limits researchers' ability to draw conclusions about false convictions generally.

Lacking a reliable estimate of the frequency of false convictions or a complete understanding of the types of cases in which they occur, we cannot make definitive assertions about the frequency and pervasiveness of their causes.<sup>25</sup> The best we can do is to identify the types of errors that occurred in cases resulting in exonerations. Our understanding of those cases is limited to what we know about what went wrong.<sup>26</sup> Moreover, the primary factors associated with false convictions vary for different types of crimes.<sup>27</sup> There may be other factors that we overlook because they happen in the types of cases where they are harder to spot and less likely to result in exoneration.<sup>28</sup>

We can say something about the causal factors commonly seen in false convictions that result in exoneration. False confessions, mistaken eyewitness identification, false or misleading forensic science, perjury, and official misconduct are often present in cases that resulted in false convictions.<sup>29</sup> Our review of the cases in the Registry suggests that cases with Latinx defendants seem

24. *Id.* at 129–30.

25. Gross, *supra* note 22, at 773–74 (discussing how the process of exoneration highlights certain types of errors in the investigative and adjudicative process over others, limiting our understanding of what types of errors occurred); *see generally* BRANDON L. GARRETT, CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG (2011) [hereinafter CONVICTING THE INNOCENT] (presenting close analyses of false convictions where multiple, interdependent factors led to the error).

26. Gross, *supra* note 22, at 773–74.

27. *See % Exonerations by Contributing Factor and Type of Crime*, NAT'L REGISTRY EXONERATIONS (Dec. 10, 2019), <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> [https://perma.cc/7XCV-6NUC] (presenting graphs of the Registry exonerations by contributing factor generally and by type of crime).

28. Gross, *supra* note 22, at 773 (cautioning that “[b]reaking down exonerations by type of crime helps us understand what we do know about the causes of false convictions, but it doesn’t address a bigger problem: There are whole provinces of this territory about which we know little or nothing at all. Our ignorance comes in several flavors.”).

29. Ineffective assistance of defense counsel is also a common factor, but the Registry does not tabulate or present data on ineffective assistance of counsel because making a determination that counsel was inadequate is difficult, at best. *See id.* at 773–74, for a discussion of this issue.



to manifest the same causal factors as other cases in the Registry at about the same rate, with some exceptions.<sup>30</sup>

## B. False Confessions

In Denver on New Year's Day in 2000, a young woman was found severely beaten on her patio.<sup>31</sup> She later died. Fourteen-year-old Lorenzo Montoya and two sixteen-year-old cousins, Lloyd and Nicholas Martinez, were arrested for the crime. Montoya's interrogation by police officers was videotaped. The videotape showed officers pounding on the table, threatening him with life in prison, and ultimately asking Montoya's mother to leave. At that point, Montoya confessed, but when he made mistakes—such as saying they entered through the front door instead of the back door—police asked him if he was sure until he changed his story. Montoya's confession was ultimately suppressed, but not before it (wrongly) convinced prosecutors that they had the right person. He was convicted of felony murder in November of 2000, largely because prosecutors insisted a jacket found at the scene was his. In 2014, Montoya was exonerated when DNA tests performed on the jacket showed it was not his.<sup>32</sup>

Confessing to a crime—whether the suspect is innocent or guilty—is almost always against that suspect's best interests.<sup>33</sup> Nonetheless, people do confess, and contrary to long-held assumptions, they sometimes confess to crimes they did not

30. Latinx exonerees, like Black exonerees, faced much higher rates of mistaken witness identifications than White exonerees. See *Detailed View of Exonerations of Cases with Mistaken Witness Identification*, NAT'L REGISTRY EXONERATIONS, [http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=MWID&FilterValue1=8\\_MWID](http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=MWID&FilterValue1=8_MWID) [https://perma.cc/MC4X-SE6C] (last visited May 1, 2019). On the other hand, Latinx cases were somewhat less likely to include faulty forensic evidence as a factor contributing to the convictions. See *Detailed View of Exonerations of Cases with False or Misleading Forensic Evidence*, NAT'L REGISTRY EXONERATIONS, [http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=F\\_x002f\\_MFE&FilterValue1=8\\_F%2FMFE](http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=F_x002f_MFE&FilterValue1=8_F%2FMFE) [https://perma.cc/FXP5-D5Y7] (last visited May 1, 2019).

31. Maurice Possley, *Lorenzo Montoya*, NAT'L REGISTRY EXONERATIONS (June 19, 2014), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4446> [https://perma.cc/C55E-4XS6].

32. *Id.*

33. Allison D. Redlich, Shi Yan, Robert J. Norris & Shawn Bushway, *The Influence of Confessions on Guilty Pleas and Plea Discounts*, 24 PSYCHOL. PUB. POL'Y & L. 147, 147 (2018) ("Confession evidence is referred to as both the king and queen of evidence in the courtroom precisely because it tends to be synonymous with convictions.") (citations omitted); Yueran Yang, Max Guyll & Stephanie Madon, *The Interrogation Decision-Making Model: A General Theoretical Framework for Confessions*, 41 LAW & HUM. BEHAV. 80, 80 (2017) (collecting evidence that a confession "typically leads to legal sanctions").

commit.<sup>34</sup> Latinx exonerees like Lorenzo Montoya are no different. Of the more than 2,400 exoneration in the Registry, 291 exonerees (12 percent) confessed to a crime they did not commit.<sup>35</sup> Similarly, of the 281 wrongly convicted Latinx defendants, twenty-nine (10 percent) falsely confessed.<sup>36</sup>

Many factors come into play when an innocent person falsely confesses, including his or her personal characteristics. Youth is one important characteristic.<sup>37</sup> In the Registry, 210 exonerees were under eighteen when the crime for which they were incarcerated was committed.<sup>38</sup> Of those, seventy-six confessed (36 percent). Of 2,190 adult exonerees, 215 confessed (10 percent). Children, in other words, are three times more likely than adults to confess falsely.<sup>39</sup> The other most common personal characteristic of exonerees who falsely confessed is what we will loosely group under the heading “cognitive disabilities or mental illnesses.”<sup>40</sup> A supermajority, 69 percent, of the exonerees in this group

34. See generally Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891 (2004) (analyzing 125 cases in which indisputably innocent individuals confessed to crimes they did not commit); Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051 (2010) [hereinafter *Substance of False Confessions*] (studying the factual statements in forty false confessions).
35. See *Detailed View of Exonerations of Cases with False Confessions*, NAT'L REGISTRY OF EXONERATIONS, [http://www.law.umich.edu/special/exoneration/Pages/detail.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=FC&FilterValue1=8\\_FC](http://www.law.umich.edu/special/exoneration/Pages/detail.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=FC&FilterValue1=8_FC) [https://perma.cc/H4AU-YGU2] (last visited Feb. 28, 2019).
36. See *Detailed View of Exonerations of Hispanic Exoneree Cases with False Confessions*, NAT'L REGISTRY OF EXONERATIONS, [http://www.law.umich.edu/special/exoneration/Pages/detail.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=FC&FilterValue1=8\\_FC&FilterField2=Race&FilterValue2=Hispanic](http://www.law.umich.edu/special/exoneration/Pages/detail.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=FC&FilterValue1=8_FC&FilterField2=Race&FilterValue2=Hispanic) [https://perma.cc/VJH3-2CLJ] (last visited Feb. 23, 2019).
37. See Drizin & Leo, *supra* note 34, at 945 (reporting that a “suspect’s age is strongly correlated with the likelihood of eliciting a false confession”).
38. This includes both cases where a crime was alleged to have taken place and where no crime was committed at all. In 40 of the 210 cases, no crime was committed at all.
39. Drizin & Leo, *supra* note 34, at 900 (“The Central Park Jogger case is representative of many of the trends we have observed in the cohort, including issues of youth, mental disability, multiple false confessions in a single case, and the utility of DNA testing in overcoming resistance to the notion of false confession.”); *Substance of False Confessions*, *supra* note 34, at 1064 (noting juveniles are “long known to be vulnerable to coercion and suggestion” and, therefore, to falsely confess, and reviewing the literature); see also NAT'L REGISTRY OF EXONERATIONS, AGE AND MENTAL STATUS OF EXONERATED DEFENDANTS WHO CONFESSED (2019), <http://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20of%20Exonerated%20Defendants%20Who%20Falsely%20Confess%20Table.pdf> [https://perma.cc/4N7T-RFG8].
40. The designation of cognitive disabilities applies to people with extremely low IQ or learning disabilities. Cognitive disabilities and some mental illnesses make it more difficult to understand and operate within the criminal justice system. For the Registry’s purposes, we consider a learning disability—an otherwise broad category—as present when there is evidence of the disability in the documents on which we rely to code the case. Because such information is unlikely to be mentioned in case documents unless it has some relevance to the

(102/147) falsely confessed.<sup>41</sup> In these respects, Latinx exonerees resemble the general population of exonerees. Five of the twenty-six underaged Latinx exonerees, including Montoya, falsely confessed (19 percent).<sup>42</sup> Finally, nine of the eleven Latinx exonerees with cognitive disabilities or mental illnesses falsely confessed (81 percent).

In addition to characteristics of the exoneree, the nature of the interrogation can induce a false confession, whether from unconstitutional misconduct or legally permissible but problematic manipulation.<sup>43</sup> Common permissible tactics include lying to the suspect and feeding them details of the crime, present in 25 percent and 54 percent of interrogations that led to false confessions, respectively.<sup>44</sup> Unconstitutional misconduct in interrogation includes offers to plea bargain by police, violence or the threat of violence, and threats to arbitrarily arrest or otherwise punish the suspect's family members.<sup>45</sup> Latinx defendants appear to face these tactics to the same extent as the wider exoneree population. Detectives in Lorenzo Montoya's interrogation, for example, used both tactics. They threatened Montoya with life in prison if he refused to confess (unconstitutional misconduct) and signaled to him when he needed to "correct" his statement (legally permissible).<sup>46</sup>

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case, there is minimal risk that we will code an exoneree as suffering from a cognitive disability based on a narrow and unrelated learning disability. See Drizin & Leo, *supra* note 34, at 970–71 (noting that the vulnerability of developmentally disabled defendants to false confessions is “well-documented in the false confession literature”) (citing Morgan Cloud, George B. Shepherd, Alison Nodvin Barkoff & Justin V. Shurt, *Words Without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects*, 69 U. CHI. L. REV. 495 (2002) (arguing that developmentally disabled people do not understand Miranda warnings, nor do they understand the context in which interrogation occurs and the consequences of confessing)); Gisli H. Gudjonsson & Lucy Henry, *Child and Adult Witnesses with Intellectual Disability: The Importance of Suggestibility*, 8 LEGAL & CRIMINOLOGICAL PSYCHOL. 241, 249 (2003) (arguing that suspects and witnesses who suffer from learning disabilities may be more susceptible to heightened suggestibility).

41. See *supra* note 39, NAT'L REGISTRY OF EXONERATIONS, AGE AND MENTAL STATUS OF EXONERATED DEFENDANTS WHO CONFESSED (of the 147 exonerees with cognitive disabilities, 102 confessed (69 percent); of the 2,253 exonerees without cognitive disabilities, 189 confessed (8 percent)).

42. Of the 254 Latinx exonerees who were adults when the crime was committed, 24 confessed (9 percent).

43. A designation of misconduct is based on case law and professional ethical standards. For more information, see Klara Stephens, *Misconduct in and Bad Practices in False Confessions: Interrogations in the Context of Exonerations*, 11 NE. L. REV. 593, 599–601.

44. *Id.* (reviewing the permissible tactics).

45. *Id.* (citing *Rogers v. Richmond*, 365 U.S. 534 (1961); *Blackburn v. Alabama*, 361 U.S. 199 (1960); *Brown v. Mississippi*, 297 U.S. 278 (1936)).

46. Maurice Possley, *Lorenzo Montoya*, *supra* note 31.

In instances of misconduct, interrogations of Latinx exonerees did not differ significantly from the wider exoneree population. Misconduct occurred in 53 percent (156/291) of all interrogations that resulted in false confessions, and 62 percent (18/29) of interrogations resulting in false confessions by Latinx exonerees.<sup>47</sup> These high figures are due partly to the outsized influence of false confessions from specific episodes of grievous misconduct in Cook County, Illinois.<sup>48</sup> After excluding Cook County from the analysis, misconduct in interrogation occurred about 45 percent of the time, and 47 percent of the time for Latinx defendants specifically.<sup>49</sup>

Latinx defendants, however, differ from other exonerees in their vulnerability to tactics that induce false confessions in one important respect. Specifically, Latinx suspects who face language barriers may be at a particular disadvantage.<sup>50</sup> Twelve of the twenty-nine Latinx exonerees who falsely confessed did not fully understand spoken English.<sup>51</sup> The inability to understand

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47. See *Detailed View of Exonerations of Hispanic Exoneree Cases with Official Misconduct*, NAT'L REGISTRY EXONERATIONS, [http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=County\\_x0020\\_of\\_x0020\\_Crime&FilterValue1=Cook&FilterField2=FC&FilterValue2=8\\_FC](http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=County_x0020_of_x0020_Crime&FilterValue1=Cook&FilterField2=FC&FilterValue2=8_FC) [https://perma.cc/2TA2-4VYA] (last visited Feb. 28, 2019). All further discussions of misconduct in interrogations are limited to interrogations that resulted in false confessions, unless otherwise noted.
  48. Seventy-four of the Registry's false confession cases took place in Cook County, and 56 of those involved some misconduct during interrogation. See *id.* This is due to many exonerations being the result of the discovery of a pattern of physical abuse and torture during interrogations, perpetrated by a few key detectives and their subordinates, most notably Jon Burge (who was later imprisoned as a result) and Reynaldo Guevara. Each of these detectives and their subordinates have more than a dozen exonerations to their name. Detective Reynaldo Guevara, whose beat included predominantly Latinx neighborhoods, was discovered to have beaten or otherwise manipulated the defendants or witnesses in four of the nine Cook County Latinx exonerees. See Jason Meisner, *Former Chicago Detective Takes the Fifth More Than 200 Times in Wrongful Conviction Trial*, CHI. TRIB. (June 12, 2018, 6:10 PM), <https://www.chicagotribune.com/news/local/breaking/ct-met-wrongful-conviction-trial-reynaldo-guevara-20180612-story.html> [https://perma.cc/GZT6-7L7X] (describing testimony of Reynaldo Guevara); Rosemary Sobol et al., *Disgraced Ex-Chicago Police Cmdr. Jon Burge, Accused of Presiding Over Decades of Brutality and Torture, Has Died*, CHI. TRIB. (Sept. 19, 2018, 9:05 PM), <https://www.chicagotribune.com/news/local/breaking/ct-met-jon-burge-dead-20180919-story.html> [https://perma.cc/98SX-S6ZE].
  49. See *Detailed View of Exonerations of Hispanic Exoneree Cases with Official Misconduct*, NAT'L REGISTRY OF EXONERATIONS, [http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=County\\_x0020\\_of\\_x0020\\_Crime&FilterValue1=Cook&FilterField2=FC&FilterValue2=8\\_FC](http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=County_x0020_of_x0020_Crime&FilterValue1=Cook&FilterField2=FC&FilterValue2=8_FC) [https://perma.cc/2TA2-4VYA] (last visited Feb. 28, 2019).
  50. See discussion *infra* Part I.E.
  51. For a list of cases in which Latinx defendants had falsely confessed, see *Detailed View of Exonerations of Hispanic Exoneree Cases with Official Misconduct*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Race&FilterValue1>

interrogators' questions may make an already stressful situation even more so, and may prevent the suspect from understanding fully the facts to which he is confessing.

Consider, for instance, what happened to Victor Rosario.<sup>52</sup> In March of 1982, a fire broke out in a building in Lowell, Massachusetts. Eight people—three adults and five children—perished. Fire marshals at the time determined the fire had been deliberately set. They focused on Rosario because he was treated at the scene for cuts on his hands. Police first interrogated him at the home of his girlfriend, and her fourteen-year-old daughter Luz served as translator. At the time, he said he attempted to break into the house when he heard screaming and saw smoke coming from inside. Rosario was later taken to the police station, where he was interrogated overnight.<sup>53</sup>

Rosario gave three different statements through an interpreter, each one after the police told him they knew that there was more to the story. The third statement he signed said that he and two others threw Molotov cocktails through the windows. He was convicted of murder and arson in 1983. In 2014, a hearing was held to show that the fire was not a result of arson; during this hearing, Rosario's attorneys presented a sworn affidavit from Ramon Nieves, who was the translator during Rosario's interrogation. Nieves said that Rosario never said he acted as a lookout for others who set the fire and never said he threw a Molotov cocktail into the building. According to Nieves, a detective made up those allegations during the interrogation and included them in the written statements that Rosario signed. He was exonerated in 2017.<sup>54</sup>

Likely a significant factor in Rosario signing the statements was that, at the time, he was suffering from severe alcohol withdrawal and was experiencing hallucinations, some of them auditory. But his limited ability to understand the statement he was signing undoubtedly exacerbated the situation.<sup>55</sup> Here the detectives took advantage of Rosario's inability to understand what he was signing by including additional damaging details in the signed confession.

Other exonerees suffered similarly. Omar Aguirre—a Spanish speaker—unwittingly signed a confession after he was given papers in English to sign so he

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=Hispanic&FilterField2=FC&FilterValue2=8\_FC [https://perma.cc/J4S5-QT23] (last visited June 30, 2019).

52. Maurice Possley, *Victor Rosario*, NAT'L REGISTRY EXONERATIONS (Sept. 18, 2017), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5196> [https://perma.cc/M7DH-N9F6].

53. *Id.*

54. *Id.*

55. *Id.*

could “go home.”<sup>56</sup> Gabriel Solache, a recent immigrant from Mexico, was given a statement in English to sign. When later presented with its translation, he said he had never given the statement.<sup>57</sup>

### C. Mistaken Eyewitness Identification

Mistaken eyewitness identification, which was present in 28 percent of exonerations in the Registry, occurs when an eyewitness to the crime affirmatively and mistakenly identifies the exoneree as the person who committed the crime.<sup>58</sup> Ninety-six of the 281 (34.2 percent) Latinx exonerees were mistakenly identified.<sup>59</sup>

Take, for instance, the case of Luis Diaz.<sup>60</sup> Between 1977 and 1979, 25 women were sexually assaulted in Coral Gables, Florida, in a series of attacks attributed to the “Bird Road Rapist.” One of the victims, a white woman, described her attacker as a “Latin male, about 200 pounds, six foot to six foot two inches tall, who spoke good English with a Latin accent.” Four days after she was attacked, she saw Luis Diaz—a man who was five foot three inches tall, weighed 134 pounds, and spoke no English—at a gas station and thought he resembled her attacker. She called police and identified Diaz from a photographic array. At the time, no charges were filed. When more attacks occurred, however, Diaz was brought in and put in a lineup. Five of the victims—all white—positively identified him. In 1980, he was convicted by a jury and sentenced to life in prison for seven of the rapes. In 2005, Diaz was exonerated when a rape kit from one of the seven cases as well as one from

56. See CTR. ON WRONGFUL CONVICTIONS, *Omar Aguirre*, NAT’L REGISTRY EXONERATIONS (Nov. 11, 2016), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=2986> [https://perma.cc/UZ6F-CZNX]; *Aguirre v. City of Chicago*, 382 Ill. App. 3d 89, 94 (2008) (noting that Aguirre testified that he signed a statement he could not understand because it was written in English, a language in which Aguirre is not fluent).

57. See Maurice Possley, *Gabriel Solache*, NAT’L REGISTRY EXONERATIONS (Jan. 3, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5252> [https://perma.cc/U6YA-TNPE].

58. *Glossary*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/glossary.aspx#MWID> [https://perma.cc/225V-GAX4]. Mistaken witness identification differs from a knowingly wrongful witness identification. The latter is captured by the contributing factor “perjury or false accusation.” See *id.*

59. See Detailed View of Exonerations of Hispanic Exoneree Cases with Mistaken Witness Identification, NAT’L REGISTRY EXONERATIONS, [https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Race&FilterValue1=Hispanic&FilterField2=MWID&FilterValue2=8\\_MWID](https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Race&FilterValue1=Hispanic&FilterField2=MWID&FilterValue2=8_MWID) [https://perma.cc/K88S-MG75] (last visited Feb. 28, 2019).

60. *Luis Diaz*, INNOCENCE PROJECT, <https://www.innocenceproject.org/cases/luis-diaz> [https://perma.cc/BV8Y-ESEX].

an uncharged rape were tested for DNA. The tests pointed to the same person and excluded Diaz.<sup>61</sup>

Diaz was a victim of crossracial misidentification. Eyewitness misidentification occurs more often when the eyewitness is asked to identify a suspect of a different race.<sup>62</sup> But despite examples like Diaz, it is not clear precisely how often crossracial identification issues contribute to the misidentifications of Latinx defendants. One field study done in El Paso in 1988 suggests the problem may extend to the Latinx population.<sup>63</sup> In this study, Platz and Hosch established that White clerks were more likely to correctly recognize White customers (53 percent) than Black (40 percent) or Mexican American (34 percent) customers.<sup>64</sup> Black clerks were more likely to correctly recognize Black (64 percent) than White (55 percent) or Mexican American (45 percent) customers.<sup>65</sup> Mexican American clerks were more likely to correctly recognize Mexican American (54 percent) than White (36 percent) or Black (25 percent) customers.<sup>66</sup>

A single study in El Paso, Texas, provides a limited basis on which to extrapolate to the population of Latinx throughout the United States.<sup>67</sup> The cases in the Registry, however, provide additional evidence that Latinx defendants are at greater risk of mistaken crossracial identification than some other ethnic groups. Crossracial misidentifications were more common in the cases of Latinx exonerees than in those of White exonerees, but less so than in African American exonerees' cases.<sup>68</sup>

But the data are far from clear, and it is difficult to draw any conclusions about how often this occurs more generally or even how accurate the Registry data are. The Registry codes for Latinx based on court records and, occasionally, on self-identification by the exoneree. As noted, the Latinx umbrella is large and

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61. *Id.*

62. Christian A. Meissner & John C. Brigham, *Thirty Years of Investigating the Own-Race Bias in Memory for Faces: A Meta-Analytic Review*, 7 PSYCHOL., PUB. POL'Y, & L. 3, 4–13 (2001) (reviewing the evidence of own race bias in eyewitness identification across studies).

63. Stephanie J. Platz & Harmon M. Hosch, *Cross-Racial/Ethnic Eyewitness Identification: A Field Study*, 18 J. APPLIED SOC. PSYCHOL. 972 (1988) (reviewing the literature and noting the absence of research with Latinx subjects and presenting their study).

64. *See id.* at 978, tbl.1.

65. *Id.*

66. *Id.*

67. *See generally* RAMIRO MARTINEZ, JR., *LATINO HOMICIDE: IMMIGRATION, VIOLENCE, AND COMMUNITY* 33–52 (2012) (noting the important of place and context in the study of Latinx communities).

68. Mistaken crossracial identification was a factor in 30 of the 285 exonerations of Latinx defendants (10.5 percent), compared to 16 of 919 exonerations of White defendants (1.7 percent). Mistaken crossracial identification was a factor in 208 of the 1,182 exonerations of African American defendants (17.6 percent). Data on file with authors.

encompasses many races and ethnicities. Arrest reports or other court records may designate an Afro-Latinx defendant as Black and other Latinx suspects as White simply based on visual cues as they complete the required intake forms.<sup>69</sup> To the extent that such errors lead the Registry to undercount the number of Latinx exonerees, we may be missing or misidentifying instances of crossracial misidentification.

#### D. Threats of Deportation and Other Immigration Consequences

The majority of Latinx people in the United States are citizens, for whom immigration issues are of no particular concern.<sup>70</sup> But Latinx defendants who do face such concerns—or whose cases involve witnesses exposed to potential immigration consequences—can be particularly vulnerable.<sup>71</sup> Immigration matters can provide police and prosecutors with leverage to coerce confessions or pleas, and can complicate post-conviction proceedings with the threat of deportation upon release. Conversely, the threat of deportation sometimes motivates the exoneration process.

Vulnerability to deportation can play a role in the process of conviction. Duarnis Perez and Gerardo Sandoval-Gonzalez were each wrongly convicted of immigration offenses. Perez was convicted of entering the country illegally and

69. See, e.g., *DCJS Forms, Standardized Forms and Reports for Law Enforcement*, N.Y. STAT. DIVISION CRIM. JUST. SERVS., <https://www.criminaljustice.ny.gov/forms.htm> [<https://perma.cc/8HPP-XS9H>] (providing forms and instructions to complete the race information); see also Telephone Interview by Maurice Possley with Keith Satterwhite, Paralegal, Conviction Integrity Unit, Harris Cty. Dist. Attorney's Office (Feb. 15, 2019) (reporting that police there classify people based on skin color where light skin is white and dark skin is black).

70. According to the Pew Research Center, just over a third (34.4 percent) of Latinos in the United States were foreign born in 2017. Antonio Flores, *How the U.S. Hispanic Population Is Changing*, PEW RES. CTR. (Sept. 18, 2017), <http://www.pewresearch.org/fact-tank/2017/09/18/how-the-u-s-hispanic-population-is-changing> [<https://perma.cc/3CM2-Y3SX>].

71. This vulnerability has been documented in immigration law generally. See, e.g., Michael Kagan, *Immigrant Victims, Immigrant Accusers*, 48 U. MICH. J.L. REFORM 915, 930 (2015) (noting that “in many cases” accusations of serious crime by immigrants in visa proceedings are directed at other immigrants); April Paredes et al., *Domestic Violence*, 19 GEO. J. GENDER & L. 265, 272–3 (2018) (describing cases where victims and defendants are both immigrants); Rachel Gonzalez Settlage, *Status in A State of Emergency: U Visas and the Flint Water Crisis*, 20 HARV. LATINX L. REV. 121, 139 (2017) (describing factors that prevent immigrants from seeking assistance in the aftermath of a crisis, including vulnerability of undocumented immigrants in the community). Furthermore, crimes usually happen within the same ethnic or racial communities. See, e.g., Barbara O'Brien, Catherine M. Grosso, George Woodworth & Abijah Taylor, *Untangling the Role of Race in Capital Charging and Sentencing in North Carolina, 1990–2009*, 94 N.C. L. REV. 1997, 2020 tbl.1, col. E, ll.11 & 13 (2016) (reporting that 69 percent of the death eligible homicides were intraracial).



exonerated when it was established he had been a citizen all along.<sup>72</sup> Sandoval-Gonzalez—who had an unrealized right to U.S. citizenship through his father at birth—was convicted of being an alien unlawfully in the country, but was exonerated when it was discovered that the immigration agent on the case was forging his supervisor’s signature in other cases.<sup>73</sup> There are only four cases in the Registry in which a person has been wrongfully convicted of an immigration crime.<sup>74</sup> All four involve official misconduct. Undoubtedly, more cases exist where innocent defendants were wrongly convicted of immigration crimes that have not resulted in exoneration.

Prosecutors also have used the threat of deportation to induce guilty pleas. In Fidel Padilla’s case, the prosecutor threatened to file charges that could result in Padilla’s deportation if he did not plead guilty. Padilla was allowed to withdraw his guilty plea and the charges against him were dismissed when it came to light that the prosecutor had hidden crucial exculpatory evidence in his case.<sup>75</sup>

Law enforcement has also exploited the immigration status of witnesses to manipulate cases. Consider, for example, the cases of Jonathan Leal-Del Carmen and Juan Ramirez-Lopez. In separate cases, ten years apart, both men were charged with smuggling undocumented Mexican citizens into the United States.<sup>76</sup> In both cases, authorities identified about a dozen undocumented immigrants who had crossed the Southern border. Only two (Ramirez-Lopez’s case) or four (Leal-Del Carmen’s case) of the migrants were called to testify. The rest were deported despite evidence that the deported witnesses would have provided exculpatory testimony for Ramirez-Lopez and Leal-Del Carmen.<sup>77</sup> Each was

72. See Maurice Possley, *Duarnis Perez*, NAT’L REGISTRY EXONERATIONS (Sept. 11, 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3994> [https://perma.cc/5H4T-NKWB].

73. See Maurice Possley, *Gerardo Sandoval-Gonzalez*, NAT’L REGISTRY EXONERATIONS (July 15, 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3915> [https://perma.cc/CPK9-ACWZ].

74. See *Detailed View of Exonerations of Hispanic Exoneree Cases where Exoneree Was Wrongfully Convicted of an Immigration Crime*, NAT’L REGISTRY EXONERATIONS, [http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8\\_Immigration](http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8_Immigration) [https://perma.cc/BE37-FPWF] (last visited Feb. 24, 2019).

75. See Maurice Possley, *Fidel Padilla*, NAT’L REGISTRY EXONERATIONS (June 14, 2015), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4705> [https://perma.cc/M4Q5-DM4T].

76. See Maurice Possley, *Jonathan Leal-Del Carmen*, NAT’L REGISTRY EXONERATIONS (Dec. 13, 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4072> [https://perma.cc/9U9A-XZH5]; Maurice Possley, *Juan Ramirez-Lopez*, NAT’L REGISTRY EXONERATIONS (Oct. 15, 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4021> [https://perma.cc/Y5Q5-Y5NZ].

77. U visas are available to crime victims who cooperate with the government in prosecutions for

eventually exonerated when the misconduct was uncovered, but not before they spent years in prison. In Julio Ruano's case, prosecutors did not disclose that they offered their star witness a host of benefits, including special visa status for his cooperation.<sup>78</sup>

Although the immigration status of defendants and witnesses often leads to worse outcomes for innocent defendants, like in Padilla's case, the instigation of deportation proceedings has in some cases also triggered the exoneration process. In 1990, Alejandro Dominguez was convicted of rape.<sup>79</sup> The only evidence against him was the victim's identification and a serologist's testimony that the semen recovered from the victim could have come from Dominguez. At trial it was never revealed that the same inclusion applied to two-thirds of all men. Dominguez was convicted and served four years in prison. Six years after his release, Dominguez was threatened with deportation. It was then that he hired attorneys to review his conviction and request DNA testing. The result excluded Dominguez, and he was exonerated.<sup>80</sup>

Threat of deportation also began the exoneration process for three others in the Registry: Carlos Lopez-Siguenza<sup>81</sup> was able to prove the victim in his statutory rape case had lied to the court about her age; Julio Ruano,<sup>82</sup> in whose case prosecutors had not disclosed that they offered their star witness a special visa status for his cooperation; and Carlos Flores,<sup>83</sup> against whom prosecutors concealed evidence that the officer Flores was accused of assaulting had been under FBI investigation for beating people while making arrests. Four cases do not make a pattern, but they suggest that occasionally, the difficult process of exoneration can be spurred by extenuating circumstances (deportation) created by the wrongful conviction in the first place.

While the threat of deportation instigated the process of exoneration in these cases, it is impossible to know how many exonerations do not occur because of the

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certain types of crimes. See 8 U.S.C. § 1101 (a)(15)(U) (2018).

78. Maurice Possley, *Julio Ruano*, NAT'L REGISTRY EXONERATIONS (June 30, 2017), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5160> [https://perma.cc/EZ9S-FBBQ].

79. See CTR. ON WRONGFUL CONVICTIONS, *Alejandro Dominguez*, NAT'L REGISTRY EXONERATIONS (Oct. 19, 2018), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3184> [https://perma.cc/25QB-QWZP].

80. See *id.*

81. See Maurice Possley, *Carlos Lopez-Siguenza*, NAT'L REGISTRY EXONERATIONS (June 16, 2016), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4916> [https://perma.cc/2J89-DEFH].

82. Possley, *Julio Ruano*, *supra* note 78.

83. Maurice Possley, *Carlos Flores*, NAT'L REGISTRY EXONERATIONS (Oct. 26, 2015), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4778> [https://perma.cc/8PFE-VP79].

specter of deportation. Postconviction recantations, for example, occur in a quarter of all exonerations.<sup>84</sup> In some cases, these are recantations of lies told under oath, which would make the recanting witness subject to perjury charges. It stands to reason that people whose recantations would make them deportable—or put them in immediate danger of immigration detention—would be much less likely to recant prior false testimony, at least publicly.

Immigration status also poses unique post-exoneration challenges. Typically, the most pressing issues for exonerees concern how they will get back on their feet and if they are eligible to receive compensation.<sup>85</sup> But Latinx immigrant exonerees also may face deportation or immigration detention.

In 2000, Arturo DeLeon-Reyes and Gabriel Solache were convicted of murdering a Chicago couple and kidnapping the victims' two children.<sup>86</sup> Solache was sentenced to death and DeLeon-Reyes to life in prison without parole, based in large part on their confessions to the crimes. Solache and DeLeon-Reyes were exonerated in 2017 after new evidence showed that one of their interrogating officers had beaten dozens of suspects and witnesses into giving false confessions. Solache and DeLeon-Reyes—undocumented immigrants at the time of the crime—both agreed that they would voluntarily return home to Mexico upon release. Instead, Immigration and Customs Enforcement (ICE) immediately took them into custody, where they spent months in detention.<sup>87</sup>

Solache and DeLeon-Reyes are not unique among exonerees—they are not even unique among Detective Guevara's victims. Ricardo Rodriguez was a legal permanent resident when he was convicted of a murder he did not commit in 1997. When he was exonerated in 2018, ICE took him into custody for removal proceedings, seeking to deport him as an undocumented immigrant.<sup>88</sup> Clemente

84. See Alexandra E. Gross & Samuel R. Gross, *Witness Recantation Study: Preliminary Findings*, NAT'L REGISTRY EXONERATIONS (May 2013), [http://www.law.umich.edu/special/exoneration/Documents/RecantationUpdate\\_5\\_2013.pdf](http://www.law.umich.edu/special/exoneration/Documents/RecantationUpdate_5_2013.pdf) [<https://perma.cc/3A98-N8L9>] ("Our data set includes all the cases in the Registry as of February 28, 2013—a total of 1,068 cases, 250 of which involve recantations.").

85. See Jeffrey S. Gutman, *An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted*, 82 MO. L. REV. 369, 371 (2017).

86. Maurice Possley, *Arturo DeLeon-Reyes*, NAT'L REGISTRY EXONERATIONS (JAN. 3, 2018), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5253> [<https://perma.cc/47D8-8LMF>]; Possley, *Gabriel Solache*, *supra* note 57.

87. Possley, *Arturo DeLeon-Reyes*, *supra* note 86; Possley, *Gabriel Solache*, *supra* note 57; see also Nereida Moreno, *Attorneys: Exonerated Immigrants Blocked from Returning Home to Mexico*, CHI. TRIB. (Feb. 9, 2019, 5:40 PM), <https://www.chicagotribune.com/news/ct-met-solache-reyes-ice-0210-story.html> [<https://perma.cc/3QFT-TLXL>]; Emails between Karen Daniel, attorney for Solache, and Klara Stephens (Jan. 12, 2019 & Jan. 13, 2019) (on file with author).

88. Maurice Possley, *Ricardo Rodriguez*, NAT'L REGISTRY EXONERATIONS (Apr. 4, 2018), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5300>

Aguirre-Jarquin was, like Solache, sentenced to death.<sup>89</sup> When he was exonerated in 2018 in Florida, authorities put a hold on him for deportation. At least four additional exonerees were deported as a result of their convictions, before they could be exonerated.<sup>90</sup> No efforts were made by the State to readjust their immigration status once exonerated. Moreover, we have no way to know how many innocent defendants did not seek exoneration after being deported.<sup>91</sup> Finding someone to help in the exoneration process is difficult for any defendant but would be especially so for someone living outside the United States.<sup>92</sup>

### E. Language Barriers

While the cases of Latinx exonerees involve many of the same contributing factors as other exonerees, language limitations present unique concerns. Not all Latinx defendants face language barriers, and not all defendants who do are Latinx. Most Latinx people were born in the United States or came as children and speak English fluently.<sup>93</sup> Among Latinx who were born abroad, many speak English

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- [<https://perma.cc/W3QQ-J2RG>]; see also Gregory Pratt & Megan Crepeau, *Man Freed after Wrongful Conviction, Only to Be Taken into Custody by Immigration Authorities*, CHI. TRIB. (Mar. 29, 2018, 6:57 AM), <https://www.chicagotribune.com/news/local/breaking/ct-met-wrongful-conviction-legal-resident-20180328-story.html> [<https://perma.cc/YQR6-C8N5>].
89. Maurice Possley, *Clemente Aguirre-Jarquin*, NAT'L REGISTRY EXONERATIONS (Nov. 11, 2018), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5406> [<https://perma.cc/H5YA-CT7L>].
90. See, e.g., Maurice Possley, *Juan Caballero*, NAT'L REGISTRY EXONERATIONS (Nov. 7, 2017), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5226> [<https://perma.cc/B7GB-Q5LC>]. See also Kevin McKinnon & Maurice Possley, *Carlos Cruz Romero*, NAT'L REGISTRY EXONERATIONS (June 19, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5341> [<https://perma.cc/RDF4-WQQF>]; Maurice Possley, *Ernesto Flores, Jr.*, NAT'L REGISTRY EXONERATIONS (Mar. 5, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4646> [<https://perma.cc/476H-RPT3>]; Maurice Possley, *Olmedo Hidalgo*, NAT'L REGISTRY EXONERATIONS (Sept. 26, 2019), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3295> [<https://perma.cc/335T-EF86>].
91. The immigration consequences for contact with the criminal justice system have been explored academically at some length. See generally Jennifer M. Chacón, *Managing Migration Through Crime*, 109 COLUM. L. REV. SIDEBAR 135 (2009); Jennifer M. Chacón, *Producing Liminal Legality*, 92 DENV. U. L. REV. 709 (2015); Alina Das, *The Immigration Penalties of Criminal Convictions: Resurrecting Categorical Analysis in Immigration Law*, 86 N.Y.U. L. REV. 1669 (2011); Rebecca Sharpless, *Toward a True Elements Test: Taylor and the Categorical Analysis of Crimes in Immigration Law*, 62 UNIV. MIAMI L. REV. 979 (2008); Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367 (2006).
92. See *infra* Part II.
93. Since 2000, the primary driver of growth in the Latinx population in the United States has been births rather than immigration. Jens Manuel Krogstad & Mark Hugo Lopez, *Hispanic Nativity Shift*, PEW RES. CTR. (Apr. 29, 2014), <http://www.pewhispanic.org/2014/04/29/hispanic-nativity-shift> [<https://perma.cc/79SP-2M2N>].

proficiently, and the proportion of Latinx immigrants who do continues to rise.<sup>94</sup> A significant percentage of Latinx people, however, are not fluent English speakers. According to the Pew Research Center, about a third of Latinx people in the United States rated their own English-speaking ability as less than proficient.<sup>95</sup>

Courts typically provide interpreters for defendants who need them at trial, a practice that ostensibly levels the playing field for anyone who lacks proficiency in English.<sup>96</sup> There is no constitutional right, however, to an interpreter in interrogation.<sup>97</sup> When one is provided, the translator is often an officer who speaks Spanish, and an officer is hardly an unbiased observer.<sup>98</sup> Victor Rosario's case, presented in Part B above, illustrates the intersection between false confessions and language barriers during interrogation.

Even when a defendant is afforded a translator during interrogation or in court proceedings, providing adequate interpretation is far more complicated than simply assigning someone who speaks the defendant's language.<sup>99</sup> During trial, the defendant must have someone at counsel table to convey the witnesses'

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94. See Jens Manuel Krogstad et al., *English Proficiency on the Rise Among Latinos*, PEW RES. CTR. (May 12, 2015), <http://www.pewhispanic.org/2015/05/12/english-proficiency-on-the-rise-among-latinos> [https://perma.cc/YQ3G-KMVJ] (reporting that while the proportion of foreign born Latinx adults who speak English proficiently has remained stable since 1980, the share of foreign born Latinx children who do so has increased dramatically).

95. *Id.* ("12.5 million Hispanics in 2013 said they speak English but rate their speaking ability as less than 'very well.' And an additional 3.2 million say they do not speak English at all. Together, these groups of Hispanics make up one-third (32%) of all Hispanics ages 5 and older.").

96. Maxwell Alan Miller et al., *Finding Justice in Translation: American Jurisprudence Affecting Due Process for People with Limited English Proficiency Together with Practical Suggestions*, 14 HARV. LATINO L. REV. 117 (2011) (reviewing the statutory and constitutional rights to translation in criminal cases including interrogation); Kate O. Rahel, *Why the Sixth Amendment Right to Counsel Includes an Out-of-Court Interpreter*, 99 IOWA L. REV. 2299, 2305 (2014) ("[T]he Supreme Court has not yet recognized a constitutional right to an appointed court interpreter. Rather, the Court has merely noted that access to an interpreter 'is a matter largely resting in the discretion of the trial court' and reviewable only for abuse of discretion.") (quoting *Perovich v. United States*, 205 U.S. 86, 91 (1907)).

97. The failure to provide a translator, however, may bear on whether the suspect voluntarily waived Miranda rights. See Manuel Triano-López, *The Pre-Trial Stages of Arrest and Police Questioning: Implications for Interpreters and Translators in the United States*, 212 PROCIDIA 256, 257 (2015) (discussing cases in which non-English speaking defendants challenged the adequacy of Miranda waivers).

98. Rahel, *supra* note 96, at 2318–21 (reviewing cases where defendants were not provided interpretation or were only provided interpreters who were not independent, such as police officers); see also Rebecca Beitsch, *How Bad Translation by Court Interpreters Can Turn Misunderstanding Into Injustice*, PBS NEWSHOUR (Aug. 17, 2016, 4:19 PM), <https://www.pbs.org/newshour/nation/bad-translation-by-court-interpreters-injustice> [https://perma.cc/BD2F-8A6Y] (exploring the frequency and risk of inaccurate translation).

99. See Miller et al., *supra* note 96, at 121–22 (explaining the importance of context and cultural fluency for translation and interpretation).

testimony accurately and to help the defendant consult with counsel.<sup>100</sup> An interpreter provided during interrogation must be skilled enough to communicate nuances in language that can alter both the suspect's and investigators' comprehension of what is being asked and the answers provided.<sup>101</sup>

Statements to police during the investigation must be accurately translated to avoid mistranslations that suggest a discrepancy between the suspect's story and the physical evidence, or an off-putting demeanor, which are later presented as evidence of guilt. Moreover, even if the defendant speaks English fluently, potential defense witnesses may not. A defense investigator interviewing potential witnesses must be able to communicate effectively to assess the potential for exculpatory information they may offer.

Vicente Benavides Figueroa's case demonstrates how failing to provide adequate interpretation throughout the investigatory and trial process disadvantages a defendant and can contribute to a wrongful conviction in ways that are far more difficult to quantify than the discredited forensic findings that supplied the stated basis of the California Supreme Court's reversal of his conviction.<sup>102</sup> Benavides raised the incompetence of his interpreter in his postconviction petition,<sup>103</sup> but the court never ruled on that issue. At no point in the decision did the court even mention Benavides's inability to speak English or his claim that his interpreter at trial so incompetently translated his testimony that the prosecution, during cross-examination, was able to mischaracterize that testimony. Nor did the court address the claim that the incompetent translation of the detective's interrogation mischaracterized Benavides's responses. Instead, the court focused on the gross inaccuracies of the state's forensic evidence.<sup>104</sup> While forensic errors clearly undermined the trial, someone who read only the court's decision granting him relief would not be aware of the ways in which Benavides's inability to speak English also prejudiced him.

That prejudice may not be quantifiable, but it was significant. The prosecution alleged that the victim's injuries were the result of Benavides raping and sodomizing her. Benavides was caring for his girlfriend's twenty-one-month-

100. Rahel, *supra* note 96, at 2310–17 (discussing the importance of the right to confer with and have access to an interpreter for protecting fairness for defendants).

101. See Miller et al., *supra* note 96, at 123 (“The legal interpreter must also be able to manipulate dialect and geographic variation in his/her working languages, possess wide general knowledge, understand both the legal process and the related terminology, and also understand the various discourse styles used in the courtroom.”) (emphasis omitted) (quoting Virginia Benmaman, *Bilingual Legal Interpreter Education*, 6(1) *FORENSIC LINGUISTICS* 109, 109 (1999)).

102. *In re Benavides Figueroa*, 412 P.3d 356 (Cal. 2018).

103. Benavides Figueroa Amended Petition, *supra* note 5, at 176–88.

104. *In re Benavides Figueroa*, 412 P.3d.

old daughter when she sustained fatal internal injuries. He claimed that he lost sight of her for a short time and discovered her outside the apartment badly injured. In addition to the later-discredited medical testimony, the prosecution buttressed its case on apparent inconsistencies in Benavides's story and witnesses' reports of what they deemed his disengaged demeanor.<sup>105</sup> This is not an unusual or necessarily improper tactic because inconsistencies across a suspect's versions of events are relevant to assessing credibility. But the inconsistencies in Benavides's case were subtle, such as whether he lost sight of the child for a moment (suggesting a short, but undefined period of time) or one minute (suggesting precisely sixty seconds).<sup>106</sup> Moreover, the interrogating officer spoke to him in broken, poor quality Spanish, which often confused Benavides and caused him to appear evasive.<sup>107</sup>

At trial, Benavides had two interpreters—one who interpreted the testimony of Spanish speaking witnesses (except for Benavides) and another to translate both Benavides's testimony to the court and the witnesses' testimony to Benavides. Neither interpreter had completed basic certification requirements.<sup>108</sup> One had failed the certification exam several times and taught himself Spanish by watching television and buying books.<sup>109</sup>

The interpreter who translated Benavides's testimony provided literal but inaccurate translations.<sup>110</sup> For example, Benavides testified “me sentía mal,” which his translator interpreted literally as “I was feeling bad.” That is one possible interpretation, but it could also mean that he felt sick, upset, or worried.<sup>111</sup> While this seems like a minor point, the prosecution seized on it during cross-examination, asking Benavides whether “feeling bad” made him lie to the officers

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105. The prosecutor stated, “He is guilty. He acts guilty. His statements are inconsistent because he is guilty.” Informal Reply to the Informal Response to the Corrected Amended Petition for Writ of Habeas Corpus at 639, *In re Benavides Figueroa*, 412 P.3d (No. S111336), <https://www.courts.ca.gov/documents/3-s111336-petitioner-reply-informal-resp-122112.pdf> [<https://perma.cc/XK7B-FU64>].

106. Benavides Figueroa Amended Petition, *supra* note 5, at 71.

107. *Id.* at 155. According to the Petition:

A competent Spanish language speaker and interpreter, listening to the audiotape of petitioner's interrogation, has described Officer Valdez's Spanish as 'limited and broken' and catalogued numerous errors which resulted in miscommunication and changed the meaning of phrases, questions, and responses. There are also significant contextual errors and statements by petitioner's interrogator that are made completely unintelligible by poor grammar, poor verb conjugation, or gross mispronunciations.

*Id.*

108. *Id.* at 178.

109. *Id.* at 179–80.

110. For instance, he interpreted one statement by Mr. Benavides about turning on a fan as “I turned on the fan so it could—the air could hit the child.” *Id.* at 183.

111. *Id.* at 253.

on the day Consuelo was injured.<sup>112</sup> Benavides eventually explained that he did not feel well because he had been up all night, but by then his credibility had been undercut by the mistranslation.<sup>113</sup>

These are just a few examples of how Benavides's inability to speak English likely affected his trial; there were many more alleged in his habeas petition.<sup>114</sup> It would be difficult to persuade a court that any one of them influenced the jury to convict and ultimately sentence Benavides to death. There is no compelling, readily identifiable piece of exculpatory evidence lost in translation that might have tilted the jury in his favor. Rather, the effect was likely cumulative and contributed to the impression that Benavides was evasive and confused because he was guilty and was having trouble keeping his story straight.

The factors commonly seen as contributing to false convictions do not capture this type of prejudice. It may provide the basis for an ineffective assistance of counsel claim, but until then the errors remain invisible. It takes time and resources to evaluate and document the competence of translators as Benavides's legal team did. In most cases, the record would simply reflect that the court appointed interpreters in accordance with the law.

Even if defense counsel has doubts about an interpreter's competence, expending the substantial time and resources to identify mistranslations is probably not cost-effective, as it is unlikely to convince a court that the defendant was prejudiced.<sup>115</sup> As a result, we cannot know how often inadequate translation prejudices defendants, making them seem evasive or deceitful in a case that turns on credibility determinations. We certainly have no way to estimate how often this prejudice tips the balance against innocent defendants and results in wrongful convictions, but its potential to undermine accuracy in prosecutions of Latinx defendants who are not proficient English speakers is substantial enough to raise concerns.

112. *Id.* at 254.

113. *Id.* at 254–55.

114. *See id.* at 176–89.

115. *See generally* Lisa Santaniello, *If an Interpreter Mistranslates in a Courtroom and There Is No Recording Does Anyone Care?: The Case for Protecting LEP Defendants' Constitutional Rights*, 14 NW. J.L. & SOC. POL'Y 91 (2018) (discussing the difficulties defendants face when challenging an interpreter's mistranslation); Will Turner, *¿Qué Dijo? The Plain Error Rule's Effective Denial of Due Process to Non-English-Speaking Criminal Defendants*, 3 ALA. C.R. & C.L. REV. 141 (2013) (discussing how plain error review of claims of inadequate interpretation rarely result in relief).



## II. THE PROCESS OF EXONERATION: HOW FALSELY CONVICTED LATINX DEFENDANTS FARE

The process of exoneration is notoriously difficult. The direct appeal process is not designed to revisit questions of fact, particularly when doing so requires considering new evidence.<sup>116</sup> Collateral processes such as state postconviction and federal habeas review may allow for the introduction of new evidence of innocence, but the petitioner faces a high burden of proof to be entitled to relief.<sup>117</sup> Moreover, finding and presenting that new evidence requires substantial resources and expertise, something very few defendants have.

The very factors that put someone at risk for false conviction in the first place may impede his or her chances of exoneration. The 281 Latinx exonerees in the Registry tell us a great deal about what happened in their individual cases and provide a basis from which to hypothesize the ways in which they are uniquely vulnerable to false convictions. Likewise, their cases suggest that the process and aftermath of exoneration may differ from those of their non-Latinx counterparts.

This Part discusses the ways in which the experiences of falsely convicted Latinx defendants may differ from other exonerees. Part II.A addresses Latinx defendants' representation among exonérations and the methodological limitations inherent in that inquiry. Part II.B discusses how deportation and other immigration consequences may interfere with falsely convicted Latinx defendants' ability to secure exoneration. Finally, it addresses innocence organizations' critical role in remedying false convictions and how Latinx defendants may be less able to access their resources.

### A. Latinx Defendants' Representation Among Exonerations

According to the Bureau of Justice Statistics, between 15 percent and 25 percent of all inmates admitted to state and federal prisons since 2000 are categorized as Hispanic, well over the 12 percent represented in the Registry.<sup>118</sup>

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116. See Keith A. Findley, *Innocence Protection in the Appellate Process*, 93 MARQ. L. REV. 591, 601 (2009) (noting that "[a]ppellate courts generally do not directly address fact-bound questions like guilt or innocence, or truth."); William J. Stuntz, *The Uneasy Relationship Between Criminal Procedure and Criminal Justice*, 107 YALE L.J. 1, 37 (1997) (arguing that procedural claims dominate appellate review because they are easier to litigate than disputes of fact).

117. See *Judging Innocence*, *supra* note 23, at 109–10 (discussing the standards of review courts use in assessing import of new evidence of innocence, and noting how infrequently they result in relief).

118. Using incarceration data as a proxy for the conviction rates, we can compare the relative representation of Latinx defendants in the Registry to convictions. We cannot use conviction instead of incarceration data because the United States does not keep comprehensive statistics

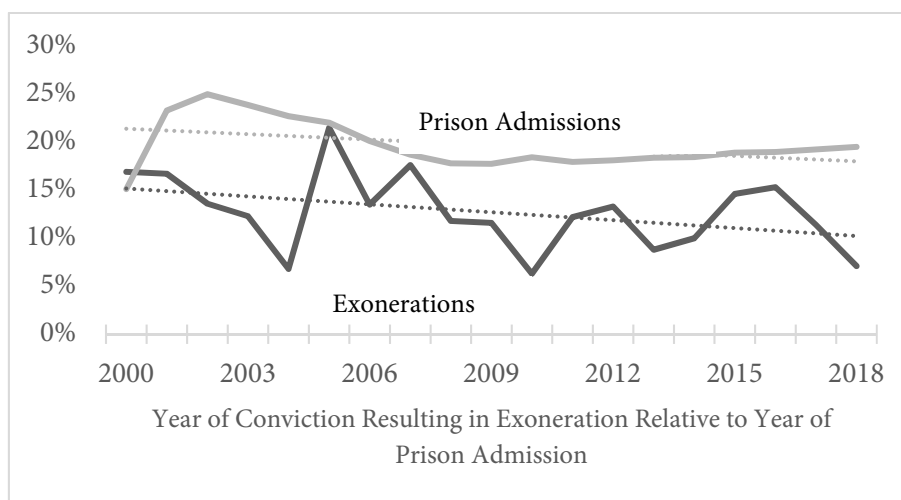
The data presented in Figure 1 likewise suggest that Latinx defendants are underrepresented among exonerees in the Registry database. Figure 1 depicts the representation rates of Latinx exonerees (dark grey line) compared to their representation among admitted prisoners at time of conviction from 1989 until 2014 (light grey line), the last year for which prison admissions data are available.<sup>119</sup> Overall, for the years depicted in Figure 1, Latinx defendants represented 12.8 percent of exonerations, compared to 18.9 percent of prison admissions.

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on conviction. Arrests are a possible proxy for convictions, but many arrests are for relatively minor crimes for which the arrestee is never incarcerated. Compare tables available under *Corrections Statistical Analysis Tool (CSAT)—Probation*, BUREAU JUST. STAT., <https://www.bjs.gov/probation> [<https://perma.cc/Y77F-RQEQ>] (last visited Feb. 28, 2019) (under “Custom Tables” tab, select “National Statistics (U.S. Total)” under Jurisdiction, “All” under Years, “Year-end population” under Population, “Total Population” under Variable, and “Supervision rate” under Type of supervision rate) with those under *Corrections Statistical Analysis Tool (CSTAT)—Prisoners*, BUREAU JUST. STAT., <https://www.bjs.gov/index.cfm?ty=nps> [<https://perma.cc/59B6-NXNW>] (last visited May 6, 2019) (under “Custom Tables” tab, select “National Statistics (U.S. Total)” under Jurisdiction, “All” under Years, “Year-end population” under Population, “Total jurisdiction population”). The Registry, in contrast, overwhelmingly includes cases in which defendants were sentenced to prison. Eighty-three percent of the exonerees in the Registry spent time in prison before exoneration. Of 2,400 exonerations, only 398 were either not sentenced, sentenced to a form of punishment that did not involve incarceration, or sentenced to less than a year in jail or prison. See Detailed View of Exonerations Sorted by Sentence, NAT’L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={faf6eddb-5a68-4f8f-8a52-2c61f5bf9ea7}&SortField=Sentence&SortDir=Asc> [<https://perma.cc/S84H-VMCR>] (last visited May 6, 2019).

119. Exoneration rates are more volatile than incarceration rates because they are based on fewer points of data. Exoneration rates include 43 to 99 exonerations per year of conviction. Prison admissions rates include hundreds of thousands of admissions per year. The average time from conviction to exoneration among Registry exonerees is 10.7 years, with a slightly lower mean for Latinx defendants of 8.4 years. Figure 1 accommodates this lag by comparing Latinx representation among prison admissions to exonerations of convictions that occurred in the same year (regardless of when that exoneration occurred). For example, the 2000 exoneration of a conviction that occurred in 1989 is reflected in the data for 1989, and a 2010 exoneration of a 2000 conviction would be reflected in the 2000 numbers. The calculations of length of time to exoneration come from a spreadsheet that can be generated upon request from the Registry. See *Spreadsheet Request Form*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/Spread-Sheet-Request-Form.aspx>, [<https://perma.cc/BXZ3-PWUT>].

**Figure 1:** Comparison of Representation Rates for Latinx Exonerees With Representation Among Admitted Prisoners at Time of Conviction, 1989–2014



This disparity must be interpreted with caution. At first glance, this graph appears to provide compelling evidence that wrongfully convicted Latinx defendants are less likely to be exonerated. However, the data—from both the Bureau of Justice Statistics and the Registry—may be too flawed or incomplete to support any inferences. As discussed above, even defining the ethnic category is complicated. Data are not collected in a consistent manner and may be derived from records that reflect the impressions of the arresting officer. This matters in assessing statistics that compare who gets convicted to who gets exonerated because these shortcomings may result in an undercount of Latinx exonerees in the Registry.

Consider, for instance, a spate of exonerations out of Harris County, Texas. In 2014 the Harris County District Attorney's Conviction Integrity Unit discovered a backlog of hundreds of cases in which, after defendants had pled guilty to drug possession, local crime labs tested the supposed "drugs" that were seized from them and found no controlled substances. In response, the District Attorney's Office developed a plan to clear that backlog and exonerate as many of the innocent defendants as possible.<sup>120</sup> That plan involved reaching out to wrongly

120. Ryan Gabrielson & Topher Sanders, *How a \$2 Roadside Drug Test Sends Innocent People to Jail*, N.Y. TIMES MAG. (July 7, 2016), <https://www.nytimes.com/2016/07/10/magazine/how-a-2-roadside-drug-test-sends-innocent-people-to-jail.html> [<https://perma.cc/8SZG-M8TM>].

convicted defendants, sending letters to their last known addresses. Many could not be located, and some failed to pursue relief.<sup>121</sup>

As of early 2019, 149 defendants who had pled guilty to drug charges had their convictions vacated through this process.<sup>122</sup> Of those, twenty-two—just under 15 percent—are categorized in the Registry based on court records as Hispanic.<sup>123</sup> According to the census, 43 percent of the population in Harris County is Hispanic or Latino.<sup>124</sup> The cases of exonerees reported to the Registry as White include a significant number of surnames such as Chavez, Recendez-Lopez, Trujillo, and Vasquez that suggest that the exoneree is misclassified.<sup>125</sup> While last name is certainly not dispositive on the question of an individual's ethnicity, the number of exonerees with traditionally Latinx surnames in a county with a substantial Latinx population who were reported to be white suggests a real risk of undercounting Latinx exonerees.<sup>126</sup>

Because of these limitations, it is difficult to determine whether Latinx defendants are represented proportionally among exonerees in the Registry. But if Latinx defendants are exonerated at a meaningfully lower rate, there are two

121. Telephone Interview by Maurice Possley with Keith Satterwhite, *supra* note 69; Emails between Keith Satterwhite and Maurice Possley (Nov. 5, 2018 & Feb. 15, 2019) (on file with author).
122. *See Detailed View of Exonerations in Harris County, Texas of Drug Possession or Sale Cases*, NAT'L REGISTRY EXONERATIONS, [http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8\\_Drug%20Possession%20or%20Sale&FilterField2=County\\_x0020\\_of\\_x0020\\_Crime&FilterValue2=Harris&FilterField3=Group&FilterValue3=P](http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8_Drug%20Possession%20or%20Sale&FilterField2=County_x0020_of_x0020_Crime&FilterValue2=Harris&FilterField3=Group&FilterValue3=P) [https://perma.cc/M6FL-KYKT] (last visited Feb. 24, 2019).
123. *See Detailed View of Exonerations in Harris County, Texas of Drug Possession or Sale Cases and Hispanic Exonerees*, NAT'L REGISTRY EXONERATIONS, [https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8\\_Drug%20Possession%20or%20Sale&FilterField2=County\\_x0020\\_of\\_x0020\\_Crime&FilterValue2=Harris&FilterField3=Group&FilterValue3=P&FilterField4=Race&FilterValue4=Hispanic](https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8_Drug%20Possession%20or%20Sale&FilterField2=County_x0020_of_x0020_Crime&FilterValue2=Harris&FilterField3=Group&FilterValue3=P&FilterField4=Race&FilterValue4=Hispanic) [https://perma.cc/MF6B-G9F2] (last visited May 6, 2019).
124. *QuickFacts: Harris County, Texas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/harriscountytexas> [https://perma.cc/5LLM-ZTYZ].
125. *See Detailed View of Cases of White Defendants in Harris County, Texas*, NAT'L REGISTRY EXONERATIONS, [http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8\\_Drug%20Possession%20or%20Sale&FilterField2=County\\_x0020\\_of\\_x0020\\_Crime&FilterValue2=Harris&FilterField3=Group&FilterValue3=P&FilterField4=Race&FilterValue4=White](http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8_Drug%20Possession%20or%20Sale&FilterField2=County_x0020_of_x0020_Crime&FilterValue2=Harris&FilterField3=Group&FilterValue3=P&FilterField4=Race&FilterValue4=White) [https://perma.cc/Y73A-DDBM] (last visited Feb. 24, 2019).
126. Additionally, information provided by Keith Satterwhite, Conviction Integrity Unity, Harris County District Attorney's Office, showed that 48 of the 151 defendants (31.8 percent) who did not have controlled substances but who have not yet sought relief were Latinx. This is more than twice the representation of Latinx defendants in the drug exonerations in Harris County (22 out of 149, or 14.8 percent). Email From Keith Satterwhite to Maurice Possley with Excel Spreadsheet Attached (Mar. 7, 2019) (on file with author).

possible sources of the disparity: Latinx defendants are falsely convicted less often than other defendants, or falsely convicted Latinx defendants are less likely to be exonerated than other defendants. These explanations are not mutually exclusive—both can be true to some degree. Nevertheless, for a number of reasons we discuss below, we believe that the latter explanation—that falsely-convicted Latinx defendants are less likely to be exonerated—is more plausible.

Some of the same factors that may increase Latinx defendants' risk of false conviction—specifically, language barriers and vulnerability to adverse immigration actions—can also impede the exoneration process. Because the Registry reports on instances in which an innocent defendant was exonerated, we do not know about the cases in which an innocent defendant was not. Cases in which a defendant secured exoneration despite extraordinary impediments provide a window into just how significant those barriers can be for similarly situated but not-yet-exonerated innocent defendants.

For instance, Juan Caballero was convicted of sexual assault in 1997 in North Dakota.<sup>127</sup> In 2004, the victim recanted, but by then, Caballero had been deported to his home country of Mexico.<sup>128</sup> That would probably have been the end of the story for Caballero but for the advocacy of his wife, Maria, who had remained in the United States. Maria Caballero hired a lawyer to pursue his exoneration, and the conviction was vacated and charges dismissed in 2008.<sup>129</sup>

Caballero's story—achieving exoneration after deportation—is noteworthy because it is unusual. There are very few cases in the Registry in which a defendant was exonerated after being deported.<sup>130</sup> The crimes in these cases were typically serious ones, for which the exonerees faced long prison sentences when the process of exoneration began. Among those exonerated after deportation, the exoneration sometimes occurred after the exoneree had reentered the country.<sup>131</sup> In other cases, the exoneration resulted not from an individual advocating for a particular exoneree, but as an afterthought to identification of systemic official misconduct.

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127. Possley, *Juan Caballero*, *supra* note 90.

128. *Id.*

129. *Id.*

130. See, e.g., McKinnon & Possley, *supra* note 90 (explaining that, after Cruz-Romero's conviction was vacated, he was deported while awaiting a retrial and only then was he exonerated when his case was dismissed by the prosecution a few days later); Possley, *Ernesto Flores, Jr.*, *supra* note 90 (detailing how Flores was deported after his conviction, filed a writ of habeas corpus claiming his defense counsel failed to advise him that he would be deported if he pled guilty, and was exonerated when this writ led to a reinvestigation of the case and a determination that he was elsewhere at the time of the crime).

131. See, e.g., Maurice Possley, *Juan Carlos Gonzales-Barboza*, NAT'L REGISTRY EXONERATIONS (Dec. 6, 2017), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5240> [<https://perma.cc/JXQ6-WNBE>]; Possley, *Carlos Lopez-Siguenza*, *supra* note 81.

In these instances, officials may reexamine the cases potentially impacted by the misconduct, including those of individuals who have been deported.<sup>132</sup>

## B. The Role of Innocence Organizations

Given the challenges a wrongly convicted defendant faces, soliciting the help of a professional with the experience and resources necessary to establish innocence is critical. Innocence organizations—nongovernmental organizations dedicated to investigating and remedying wrongful convictions—therefore play an important role in exonerations. Innocence organizations have been involved in 539 exonerations from 1989 through 2018.<sup>133</sup> Getting their help, however, is not easy for anyone, and Latinx defendants may face additional barriers that make securing representation by an innocence organization even more difficult.

Innocence organizations are a relatively recent development.<sup>134</sup> In 1983, Jim McCloskey founded the first innocence organization in the United States, Centurion Ministries, with the mission to investigate possible cases of wrongful convictions.<sup>135</sup> Innocence organizations did not begin to proliferate, however, until the advent of DNA technology.<sup>136</sup> The Innocence Project—the first DNA-focused innocence organization—was founded in 1992 by Peter Neufeld

132. For instance, Clarens Desrouleaux pled guilty in 2013 to three burglaries in Biscayne Park, a suburb of Miami, Florida. Desrouleaux was a native of Haiti and a permanent legal resident of the United States. After serving four years in prison, he was quickly deported to Haiti in 2017. Shortly after his conviction, Biscayne Park began investigating complaints that its police chief ordered his officers to make false arrests to improve the department's case closure statistics. After the investigation resulted in federal convictions of the captain and several officers for civil rights violations, Desrouleaux's convictions were vacated and the charges dismissed in 2018. Ken Otterbourg, *Clarens Desrouleaux*, NAT'L REGISTRY EXONERATIONS (Dec. 10, 2018), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5464> [<https://perma.cc/C9NY-G4EV>]. Likewise, more than 150—predominately Latinx—defendants were cleared of their convictions in 2001–2002 after an investigation in massive police corruption in the Los Angeles Ramparts district. Russell Covey, *Police Misconduct as a Cause of Wrongful Convictions*, 90 WASH. U. L. REV. 1133 (2013). Some of the defendants had been deported as a result of their convictions. *Id.* at 1168, n.162.

133. See *Detailed View of Cases Investigated by Innocence Organizations*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Group&FilterValue1=IO> [<https://perma.cc/9W4V-W3J6>] (last visited Feb. 28, 2019).

134. For a comprehensive history of the innocence movement and proliferation of innocence organizations, see ROBERT J. NORRIS, *EXONERATED: A HISTORY OF THE INNOCENCE MOVEMENT* (2017).

135. *Id.* at 19. Since then, Centurion Ministries has been involved in thirty-five exonerations currently listed in the Registry, and two that occurred before 1989. NAT'L REGISTRY OF EXONERATIONS, *EXONERATIONS IN 2017* 17 (2018), <https://www.law.umich.edu/special/exoneration/Documents/ExonerationsIn2017.pdf> [<https://perma.cc/6YU5-WUJ5>].

136. See *id.* at 121–25 for a discussion of the role of DNA in spurring the innocence movement.

and Barry Scheck as a clinic at the Cardozo School of Law.<sup>137</sup> Several more followed during the 1990s.<sup>138</sup> Some began by limiting their representation solely to cases involving DNA, or restricted their assistance to defendants with long periods of incarceration still to serve on their sentences.<sup>139</sup>

Since then, the number of similar organizations has grown dramatically. As of 2017, there were fifty-two U.S.-based innocence organizations.<sup>140</sup> Many are housed in law schools in the form of legal clinics, while some are nonprofits that stand alone or partner with law schools.<sup>141</sup> Most no longer limit their representation to cases involving DNA,<sup>142</sup> but many still require that their clients have at least several years—sometimes a decade—left to serve on their sentences.<sup>143</sup> They vary greatly in size and access to resources. A few have large fulltime staffs, but most operate with only a few—and some with no—fulltime employees.<sup>144</sup>

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137. *Id.* at 55.

138. *Id.* at 17.

139. Daniel S. Medwed, *Actual Innocents: Considerations in Selecting Cases for a New Innocence Project*, 81 NEB. L. REV. 1097, 1106, 1110 (2003).

140. See NORRIS, *supra* note 134, at 91–95. Most belong to the Innocence Network, an association of organizations that provide pro bono services to people who claim that they are innocent of the crimes for which they were convicted. In 1999, there were seven innocence organizations in the United States; from 2000 through 2009, 35 new innocence organizations set up shop; another seven have been founded since the beginning of 2010 through the end of 2018. The Innocence Network also includes innocence organizations based outside the United States, and organizations that do not provide legal representation in an effort to exonerate wrongfully convicted people but instead offer services to exonerees and advocacy on issues related to wrongful convictions. *Id.* at 98–100; see also NAT'L REGISTRY OF EXONERATIONS, *supra* note 135.

141. Several other institutions serve goals similar to those of innocence organizations with different structures. Some indigent defense offices, such as Michigan State Appellate Defender Office's Wrongful Conviction Unit and the Ohio Public Defender's Wrongful Conviction Project, have units that represent defendants with claims of factual innocence. North Carolina has a unique governmental agency—the North Carolina Innocence Inquiry Commission—that is charged with reviewing and investigating postconviction claims of innocence. The Commission has the power to refer cases with evidence of factual innocence to a judicial panel. From its inception in 2007 through the end of 2018, the Commission's work has led to eleven exonerations. *Cases*, N.C. INNOCENCE INQUIRY COMM'N, <http://innocencecommission-nc.gov/cases> [<https://perma.cc/8AL8-9L3Z>].

142. NORRIS, *supra* note 134, at 100.

143. For example, the Rocky Mountain Innocence Center only accepts cases in which the prisoner has more than seven years left to serve on a prison sentence. *What We Do*, ROCKY MOUNTAIN INNOCENCE CTR., <http://rminnocence.org/what-we-do/request-help.html> [<https://perma.cc/5R32-PQFZ>]; see also *Submit a Case*, MIDWEST INNOCENCE PROJECT, <https://themip.org/submit-a-case> [<https://perma.cc/XH55-J9DG>] (requiring applicants to have more than ten years left to serve); *WIP Legal Assistance*, WIS. INNOCENCE PROJECT, <https://law.wisc.edu/fjr/clinical/ip/representation.html> [<https://perma.cc/7SHH-V2CF>] (requiring applicants to have at least seven years left to serve).

144. NORRIS, *supra* note 134, at 100.

Some produce more exonerations than others. Their success turns on a number of factors: the availability of resources, the receptivity of the local courts to innocence claims, and of course, the cooperation or resistance they encounter from prosecutors.<sup>145</sup>

The demand for the services of innocence organizations far outpaces this increase in supply.<sup>146</sup> Exonerations typically take years to complete.<sup>147</sup> Any innocence organization—even one that is relatively well funded—must be highly selective in choosing cases.<sup>148</sup> Some receive thousands of requests for assistance a year but can only take on a handful of new cases.<sup>149</sup> Moreover, innocence organizations based in law schools—innocence clinics—exist in large part to educate law students who work on cases for course credit, which limits the resources they can devote to freeing innocent defendants.<sup>150</sup>

This scarcity of resources likely puts Latinx defendants at a disadvantage in securing the assistance of an innocence organization. In particular, Latinx defendants may lack the knowledge or linguistic capacity to request assistance; and innocence organizations often lack the resources to thoroughly screen and handle such defendants when requests are made. It was this concern that led to the creation of the Latino Exoneration Initiative at the University of Wisconsin Law School. Its director, Cristina Bordé, said that the “lack of bilingual and culturally competent staff and attorneys” may contribute to the low number of Latinx inmates innocence programs serve. Moreover, she noted, “a lack of fluency in English likely means that some Latinos are not aware such programs exist.”<sup>151</sup>

145. Medwed, *supra* note 139, at 1111–12 (discussing the importance of getting prosecutors’ offices on board in the exoneration process); Steven A. Krieger, *Why Our Justice System Convicts Innocent People and the Challenges Faced by Innocence Projects Trying to Exonerate Them*, 14 NEW CRIM. L. REV. 333, 366–82, 386–87 (2011) (discussing factors associated with an innocence organization’s production of exonerations).

146. Innocence organizations get about 20,000 requests for assistance a year and reject about three quarters of them. Despite this high rejection rate, most have a large backlog of cases. NORRIS, *supra* note 134, at 100.

147. *Id.* at 151; see also Medwed, *supra* note 139, at 1107.

148. See NORRIS, *supra* note 134, at 100.

149. Medwed, *supra* note 139, at 1116.

150. See NORRIS, *supra* note 134, at 99, 147–50.

151. Pat Schneider, *UW Law’s Innocence Project Launching Latino Exoneration Initiative*, WISCNEWS (Jul. 22, 2016), [https://www.wiscnews.com/news/state-and-regional/article\\_6a206b88-d864-57cf-8cdc-c2ee6a297f1a.html](https://www.wiscnews.com/news/state-and-regional/article_6a206b88-d864-57cf-8cdc-c2ee6a297f1a.html) [https://perma.cc/9RMJ-5H9K]; see also Tamoa Calzadilla, “I Want to Defend Latinos Who Have Been Jailed in This Country”: Cristina Bordé, *The Lawyer who Gets Innocent Hispanics Out of Jail*, UNIVISION NEWS (Oct. 10, 2018, 11:54 AM), <https://www.univision.com/univision-news/united-states/i-want-to-defend-latinos-who-have-been-jailed-in-this-country-cristina-borde-the-lawyer-who-gets-innocent-hispanics-out-of-jail> [https://perma.cc/XR76-6ELL].



Innocence clinics find cases in a variety of ways: previous lawyers for the defendants pass the cases on, the media draws attention to certain cases, or innocence clinic staff hears about cases from appellate decisions.<sup>152</sup> But by far the most common way is that convicted defendants contact the innocence organization, often via the intake forms that the clinics provide.<sup>153</sup> Innocence clinics may request them from a defendant who inquires about representation, or families of the convicted defendant find them online and send hard copies to the family member in prison.

This process requires at least some familiarity with the existence of innocence organizations, and how to reach them. And of course, it requires at least some English literacy, as frequently intake forms are only provided in English. Given the overwhelming demand for the services of innocence clinics, there is also value in being able to make a persuasive case for why the clinic should take on a client. Intake forms give space to discuss facts of the crime and potential new evidence—where a clear and concise narrative can help the case get attention.<sup>154</sup> Many clinics also have a form in Spanish, but interpreting and processing such forms also requires an attorney or an investigator who speaks Spanish.<sup>155</sup>

We cannot be certain to have cataloged all of the ways that the process of exoneration may result in fewer falsely convicted Latinx defendants securing exoneration than their non-Latinx counterparts. It is not unreasonable to think, however, that when the demand for services dwarfs their availability, any impediment to accessing those services can have significant effects.

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152. See Medwed, *supra* note 139, at 1114.

153. See *id.* at 1116; Krieger, *supra* note 145, at 367.

154. See, e.g., *Screening Questionnaire*, ROCKY MOUNTAIN INNOCENCE CTR., [http://rminnocence.org/file\\_download/inline/5ea74111-cdc8-4885-8b5a-72c8d3597ef1](http://rminnocence.org/file_download/inline/5ea74111-cdc8-4885-8b5a-72c8d3597ef1) [https://perma.cc/UU5B-ZTP9]; *Application for Assistance*, OR. INNOCENCE PROJECT, <https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/59270703579fb32f7898300f/1495729925558/Oregon+Innocence+Project+Questionnaire+52517.pdf>, [https://perma.cc/QQ6M-4V7M].

155. See, e.g., *Application Process*, ARIZ. JUSTICE PROJECT, <https://www.azjusticeproject.org/process> [https://perma.cc/3RND-555U]; *What We Do*, ROCKY MOUNTAIN INNOCENCE CTR., <http://rminnocence.org/what-we-do/request-help.html> [https://perma.cc/5R32-PQFZ]; *Get Help*, N. CAL. INNOCENCE PROJECT, <http://ncip.org/get-help> [https://perma.cc/BS77-75WG]; *Get Help*, OR. INNOCENCE PROJECT, <http://www.oregoninnocence.org/get-help> [https://perma.cc/HY52-MHTA]; *Submit a Case*, INNOCENCE PROJECT OF TEX., <https://innocencetexas.org/submit-a-case> [https://perma.cc/4MTF-AK7B] (accepting letters for help in Spanish).

### CONCLUSION

Given what we know about the factors that contribute to false convictions, there is reason to believe that Latinx defendants face a greater risk of false conviction than the rest of the population. While research remains limited, evidence suggests that the ways the system is biased against African Americans resemble the ways it is biased against Latinx defendants. Moreover, many of the flaws in the system that produce false convictions are present regardless of the race of the defendants or victims.

In addition, language barriers and threats of deportation or other immigration concerns may present unique risks that enhance the possibility of false convictions for Latinx defendants. After conviction, innocent Latinx defendants may face greater difficulties gaining access to innocence organizations and other avenues of relief. This, again, could lead to a greater proportion of falsely convicted Latinx defendants never being exonerated.

This Article outlines the evidence for these possibilities and provides examples that illustrate how the risk may translate into wrongful convictions. This is only a starting point to thinking about how factually innocent Latinx defendants fare in the criminal justice system. It is also intended as an invitation to researchers to amplify efforts in this direction. As more information about false convictions is gathered, we may find ourselves in a position to detect more subtle patterns in how Latinx defendants' cases differ from those of other exonerees and to better serve their needs.