

**EL PELIGRO DE SER IGUAL:
THE DANGER OF BEING THE “SAME”**

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This Comment examines the legal intersections of Latino culture, social stereotypes, sexual orientation, and assimilation. Through this Article, I begin with a look at Mendez v. Westminster, the first desegregation case successfully tried in California. Looking closely at the Mendez legal strategy, I focus on the argument of “sameness,” that Latino children were not explicitly codified in California education statutes to be segregated like Asian and Native American children, so they should be considered Caucasian under the eyes of the law. I continue looking at the argument of “sameness,” in not only Mendez, but Gong Lum v. Rice, Brown v. Board of Education, and Obergefell v. Hodges, and the effects this sometimes-successful argument has on the people of color arguing it.

I proceed with a personal narrative and investigate social stereotypes of Latino students today, years after integration was implemented in all schools. I explore the costs of being a successful Latino student may involve, acculturation where their Latino culture and heritage is sacrificed for success in culturally white middle class coded classroom. I think critically of the consequences of the victory of Mendez in today’s society and how it has affected students of color everywhere. I include proposed remedies to the demands of assimilation on Latino students. Concluding with a look at Obergefell, a case tried recently with routes of its success planted in the “sameness” arguments that may be doing injustice to people of color in the long run but provides success in our contemporary setting.

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*Brown boy looked into the mirror and saw his cinnamon skin
 Like that of the Aztec kings before him . . .
 At school he spoke words of his mother's land
 He was punished with a ruler against the hand
 For that is the tongue of the savage man his teacher would tell him . .*

*And soon he learned to suffocate
 To mask,
 To shrink,
 To supplicate,
 To shed his skin,
 Withhold his name until the mirror showed no face
 Brown boy, brown boy
 The sun smiled upon your orphaned face
 -Adrian Nunez, Falling for Angels²*

INTRODUCCIÓN – INTRODUCTION

A *love child*, is what my parents called me, a byproduct of a love so unsurmountable not even years of distance could dim it³. My father worked hard in a foreign land while my mother remained in their quaint village of Huanímaro, Guanajuato, Mexico, taking care of their three young and rambunctious boys. A *hope child*, my parents shouted as they celebrated my birth within the pristine halls of an American hospital, a privilege no one else in my family could claim, a chance for one of their own to become President of the United States.

A *strange child* is who I became—successful at school, a passionate learner. Yet, the very success my parents had hoped and prayed for created a stranger in their own home - a Güero among the

² *Falling for Angels: Boyle Heights* (HERE Publishing Inc. television broadcast Dec. 1, 2017).

³ This article begins with a personal narrative of my life because I strongly identify with some of the issues of identity negotiation and acculturation resultant of the assimilation demands of Latino students explored at length later in the article. See Martha Minow, *The Young Adulthood of a Woman's Law Journal*, 20 HARV. WOMEN'S L.J. 1, 2 (1997)

mestizo of my family's heritage. Unbeknownst to my parents and myself, success in America meant success in a white culturally coded classroom which would result in the inevitable acculturation of their Mexican son, a process further explored in Part IV.

A culturally coded classroom is an educational environment structured by the dominant culture to reflect white, middle-class values as the standard of proper education.⁴ These classrooms are culturally specific white spaces that require assimilation and acculturation from minorities in order to succeed.⁵ Acculturation is the process of modification of the principal culture of a group or an individual as a result of contact with a different culture.⁶ Mexican Americans who desire to and subsequently succeed in white culturally coded classrooms must perform in accordance to the white, middle-class identity that is valued in academic settings.⁷ In part, this article speaks to assimilation demands on the Latino community and how it has continued to shape social and legal change.

These white middle-class values, explored further below, sparked for me an internal struggle. They fueled my individual desire to succeed in the classroom, cultivating a propensity for competitiveness and an unrelenting need for affirmation from my educators and school officials. Contrastingly, being *bien educado* in a Latino household

⁴ Andrés L. Carrillo, *The Costs of Success: Mexican American Identity Performance within Culturally Coded Classrooms and Educational Achievement*, 18 S. CAL. REV. L. & SOC. JUST. 641, 651 (2009) (discussing acculturation and identity performance for the successful Latino student).

⁵ *Id.*

⁶ *Id.* at 665.

⁷ *Id.* at 656.

requires a level of selflessness where success is measured by what we can do for the family and where lessons are best learned listening to our elder's *consejos* over a steaming plate of *carne asada* and *arroz*.

Being born in America meant my parents believed my future was inherently more promising than that of my three older brothers. My parents were indoctrinated to believe that success in this foreign country would require education. They instilled in me from an early age a goal of pursuing higher education. With both of my parents sitting by my side, not letting me leave the dinner table until I learned my basic arithmetic, it was clear that success in the classroom was not only chosen by me, but for me.

In my life I have understood the typical Latino identity to complexly tie to various aspects of their familial origin country. Typically, one who boasts a strong Latino identity places a priority in familial ties, has successfully preserved cultural values and traditions, and has retained some form of Spanish speaking or writing ability. When I, a Latino, aspired to succeed in the classroom, I found myself compromising my sense of identity in order to maximize my opportunities in school, going through a form of acculturation to "fit in."⁸ In many ways this involved silencing anything that seemed different from the other students, from the food I ate to the language I spoke. Subsequently, it is this very effect that has inspired me to take active steps in taking back my culture through self-education of Latino history

⁸ *Id.* at 657-58.

in law and its lasting effects on the children and grandchildren of those affected by years of segregation and discrimination. In part, this paper serves as a form of atonement for my acculturation. As I grow and learn, I realize that I turned my back on my culture and my racial identity in pursuit of higher education and social acceptance. Now, I use these very successes as tools to explore the very identity that I masked growing up.

In Part II, this essay explores the history of Latino desegregation through the historic landmark case of *Mendez v. Westminster*. *Mendez* was the first desegregation case resulting in a victory in California, albeit initially only resulting in a local application. Part III explores the *Mendez* attorney's strategy of arguing that Latinos were in fact "white" and could not be discriminated against without igniting national origin discrimination. Further, I continue by exploring the pitfalls of this very same argument of "Sameness" in the context of the famous Chinese American case, *Gong Lum v. Rice*. I then compare and contrast these arguments of "Sameness" by Latinos and Asians to that of the subsequent victory of African-American advocates for desegregation, concluding with an analysis of the legal ramifications and attitudes following each change. Part IV explores the successful Latino student and the type of identity negotiations that must take place in order to succeed in a culturally coded classroom. I briefly explore some suggestions in response to this assimilation problem. In Part V, I look at the lingering effects of the "Sameness" arguments made in *Mendez* through a glance of the Latino demographic at schools in Westminster

today. Further, I look to “Sameness” arguments made today in the courts by the LGBT community.

I. *MENDEZ V. WESTMINSTER: UN CAPÍTULO DE SEGREGACIÓN AMERICANA – MENDEZ V. WESTMINSTER: A CHAPTER OF AMERICAN SEGREGATION*

a. *El Principio – The Beginning*

To truly convey the reality of what Latino segregation was, it is best to look at the landmark case of *Mendez v. Westminster*, the first successful Latino desegregation case in California. However, the narrative told by history books, films, and spoken words are often only black and white, though the full story of segregation in America, and specifically in California, certainly includes shades of brown. Turning to the early twentieth century, the Southwest practiced extensive segregation in regards to Mexican Americans’ attendance in public schools.⁹ In California during the 1940s, the statutory *de jure* segregation, included groups of children who were Indian (Native Americans) and those of Japanese, Chinese, and Mongolian descent.¹⁰ These codes read, “for Indian . . . Chinese, Japanese, or Mongolian [children] . . . any school district may establish separate schools.”¹¹ Additionally, “when separate schools are established for Indian . . . Chinese, Japanese or Mongolian [children] . . . [they] may not be

⁹ Marie C. Scott, *Resegregation, Language, and Educational Opportunity: The Influx of Latino Students into North Carolina Schools*, 11 HARV. LATINO L. REV. 123, 126 (2008) (discussing the legal history of legal education).

¹⁰ Frederick P. Aguirre, *Mendez v. Westminster School District: How it Affected Brown v. Board of Education*, 47 ORANGE CTY. LAW. 30, 31 (2005) (discussing the Education codes).

¹¹ Cal. Educ. Code § 8003 (repealed 1997).

admitted to any other school.”¹² The statute was silent, and therefore did not call for any required exclusion of Latino children in California’s public school system, which ultimately ended up being a key point leading to *Mendez*’s victory.

The beginning of the end of segregation started in Westminster, California, where two young children with the surname Mendez were denied enrollment into their nearby school.¹³ Shortly after moving to Westminster, the Mendez children, along with their aunt and cousins, attempted to enroll into their local school, with differing degrees of success. The Mendez children’s cousins faced no obstacles enrolling, school officials taking no issue with their French-sounding last names (Vidourri) or their light complexion.¹⁴ However, the Mendez children themselves did not encounter such a warm welcome. At the first sight of their Mexican-sounding name and mestizo complexion, the school officials denied them enrollment opportunities in their school.¹⁵ The office informed them that they had to go to the “Mexican” school instead.¹⁶

In 1934, although Mexican American children made up one-fourth of the total student population in Orange County, an overwhelming seventy percent were forced to attend “Mexican” segregated elementary

¹² Cal. Educ. Code § 8004 (repealed 1997).

¹³ Frederick P. Aguirre, Kristi L. Bowman, Gonzalo Mendez, Sylvia Mendez, Sandra Robbie & Philippa Strum, *Mendez v. Westminster: A Living History*, 2014 MICH. ST. L. REV. 401, 403 (2015) (discussing this facts of the case).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

schools.¹⁷ A truth understood throughout the Latino community, was that these subjective denials of Mexican-Americans aimed to exclude non-citizens and non-English speakers from the public educational system. Ironically, the school officials failed to realize that the Mendez family was far from what they perceived a typical Mexican family would be. Mr. Mendez was a naturalized U.S. citizen who had attended integrated public schools in the early 1920s.¹⁸ His wife was also an American citizen, and their three children were all born in the U.S. and spoke fluent English.¹⁹ Although it is the author's belief that education opportunities should not be awarded due to the privilege of citizenship or English ability, the denial of the "qualified" Mendez family lends to prove the discriminatory intent of the segregation policy and its lack of effectiveness. Understanding that Mr. Mendez received his education in the very same county, in an integrated school, in the early 1920s illuminates the motivation for his actions in response to the school's rejection of his children. Mr. Mendez could not reconcile that he had received an education in Westminster before yet, his children could not have the same education he had – or better.²⁰ It is at this point Mr. Mendez realized that he had come from a position of privilege, where segregated schools for Mexicans had not been created, where his access to equal schooling as other races was the norm, and not a revolutionary concept. As his daughter Sylvia Mendez describes, "I think this is the first time my father realized the blatant discrimination in Orange

¹⁷ Aguirre, *supra* note 9, at 30.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Aguirre, *supra* note 12, at 406.

County.”²¹ However, it is the privilege, experience, and familiarity with the California education system that guides him through his first steps in trying to remedy this unjust situation. The day following his children’s rejection, Mr. Mendez sought to speak to the principal and then to the Superintendent of the Schools, believing that the rejection had been all but an administrative mistake that higher-ups could address.²² He was nothing more than a father who wanted his kids to be educated and be able to compete with others in life.²³

Ultimately, it is Mr. Mendez’s experience in school that instilled him the strength, confidence, and conviction to pursue legal remedies for this injustice, because he knew what having an equal education meant to him and how its rejection would undeniably disadvantage his children. With the money he had, Mr. Mendez sought a Latino lawyer, named David Marcus, in Los Angeles, California who had just secured victory for the Latino community by desegregating public pools in San Bernardino.²⁴ Marcus believed that in order to be the most persuasive, any suit brought to face segregation of Mexican-Americans would require support from the whole community and best be done in a class action suit.²⁵ When Mr. Mendez approached the members of the Mexican community in his city with what he believed to be a great injustice plaguing the community, much to his disbelief, people were satisfied with the separate Mexican school in their Mexican district.²⁶ The Mexican community was

²¹ *Id.* at 403.

²² *Id.*

²³ *Id.* at 406.

²⁴ Aguirre, *supra* note 9, at 31.

²⁵ *See* Aguirre, *supra* note 12, at 405.

²⁶ *Id.*

complacent with the Mexican schools; the Mendez children themselves admitted to not wanting to change schools because they wanted to be playing marbles at the same school as their friends.²⁷ However, this sense of complacency did not deter Mr. Mendez. In line with Marcus's strategy to have a class action suit, new families began to join such as the Ramirez family from El Modena (Orange), the Palomino family from Garden Grove and the Guzman and Estrada families from Santa Ana.²⁸ The class suit was based on the 14th Amendment's guarantee of the "equal protection of the laws" which gave Marcus the platform to demand that the school districts be enjoined from maintaining public schools for Mexican American children.²⁹

At the hearing, Marcus presented evidence of the segregation policies through varying mediums, such as testimonies from local community members, including children recanting tales of segregations and how it made them feel out casted and inferior.³⁰ Parents testified about the specific instances of transfer denials for their Mexican children and the alternately-inferior facilities that were provided for them at the "Mexican" schools.³¹ One of Marcus's most persuasive pieces of evidence demonstrating an intentional and discriminatory motive behind the rejection of Latino students was a master's thesis written by James Kent, the superintendent of Garden Grove school district, one of the defendants in the case.³² Kent wrote that segregating Mexican children

²⁷ *Id.* at 406.

²⁸ Aguirre, *supra* note 9, at 31.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Aguirre, *supra* note 12, at 407.

was doing them a favor since there was no way they could ever compete with white children as they were inferior in every way—morally, socially, hygienically, and physically.³³ Further, Santa Ana School District Superintendent Frank Henderson testified that students were assigned to the city’s then fourteen elementary schools solely on the basis of their last names with exceptions being made only for Latino children who “looked” white or had European names.³⁴ This exemplified Marcus’s point that children were being put into schools based solely on their last names and complexion without actually being given tests to gauge their language abilities, which could be better recognized as legitimate reason for separation.³⁵ The evidence showed that school officials believed that because a child was Mexican or had brown skin, he or she would not be able to succeed in a “white” school, and therefore should not be mixed in with white students so as to prevent burdening their educational environment.³⁶

At the district court level, Marcus and the defendants stipulated that there was no question of race discrimination in this action, a strategy explored further in the following section.³⁷ This was essential because with the element of race not being taken into account, it allowed space for a national origin claim, where the discrimination was based between two parties of a single Caucasian race. The *Mendez* suit ended in a

³³ *Id.*

³⁴ Aguirre, *supra* note 9, at 32.

³⁵ Aguirre, *supra* note 12, at 407. (the court seemed willing to accept language efficiency as legitimate reasons for segregation)

³⁶ *Id.*

³⁷ Daniel Rochmes, *Blinded by the White: Latino School Desegregation and the Insidious Allure of Whiteness*, 13 TEX. HISP. J. L. & POL’Y 7, 13 (2007) (discussing the strategy of the *Mendez* suit).

victory in favor of Mendez in both the district court and the Ninth Circuit, finding that California Law did not explicitly include the segregation of Mexican children in school children.³⁸ The Ninth Circuit did not address the party's constitutional criticism of separate but equal, nor did it declare the segregation of the distinct groups already outlined in the Education code (Indians and Asians) as unconstitutional. Rather, the court reasoned that the segregation of Latinos was without authority of law and therefore cannot be enforced.³⁹ After the victory of the *Mendez* case Californians focused on the California laws mandating separate schools for Indian and Asian children, resulting in then Governor Warren's proposed legislature to repeal Education codes §§8003 and 8004, which succeeded and was completed on June 14, 1947, just a year following *Mendez*.⁴⁰

**b. *Desegregación de el "Otro Blanco" –
Desegregation of the "Other White"***

As mentioned above, Marcus's argument in *Mendez* was a novel one. However, the intricacies of his argument are often not explored, overshadowed by the persuasively powerful evidence of discrimination from the superintendent of Garden Grove's school district. Latinos' school desegregation litigation strategy was not to form coalitions with other minorities, but to argue that they were "white" and could not be singled out and segregated from "other whites."⁴¹ This argument finds its

³⁸ *Id.* at 13-14.

³⁹ *Id.*

⁴⁰ Aguirre, *supra* note 9, at 33.

⁴¹ Rochmes, *supra* note 36, at 8.

foundation in a case entitled, *Alvarez v. Lemon Grove*, where a judge ruled that Mexican Americans were considered “part of the Caucasian race” and therefore could not be arbitrarily separated from the “other white children.”⁴² In *Alvarez*, the trustees of the Lemon Grove School District built a special school for the Mexican children, to address the overcrowding and the purported sanitary and moral disorders that were engendered by Mexican children.⁴³ The Court declared that the separation of Mexican children was a blatant act of segregation, and moreover, the Mexican children legally were entitled to attend on the basis of being equal to the White children.⁴⁴ This ruling ultimately defeated the Bliss Bill⁴⁵ in the California Legislature which attempted to reclassify “Mexicans” as “Indians” so they could legally be separated from white students under California law at that time.⁴⁶ In *Alvarez*, the argument that Mexican children were part of the Caucasian race, preemptively protected Latino children from being statutorily segregated like Indian and Asian children were, resulted as a vital distinction that played a large part in *Mendez*’s success.

Scholars argue that “whiteness” is not a predetermined biological truth but includes cultural and social markers beyond having European

⁴² Aguirre, *supra* note 9, at 34.

⁴³ E. Michael Madrid, *The Unheralded History of the Lemon Grove Desegregation Case*, 16-17 (2008), <https://files.eric.ed.gov/fulltext/EJ793848.pdf>

⁴⁴ *Id.* at 18.

⁴⁵ Robert R. Alvarez Jr., *The Lemon Grove Incident*, 32 J. S.D. HIST. (1986). <https://www.sandiegohistory.org/journal/1986/april/lemongrove/> (California Assemblyman George R. Bliss successfully established the “Indian School” for Indian, Chinese, Japanese, and Mongolian ancestry. The Bliss Bill attempted to extend the Indian clause to include Mexican and Mexican American children in order to segregate them.)

⁴⁶ *Id.*

descendants. It is the privilege of being born in America, fluency in English, the lightness of one's skin, and an identifiable separation from other races. Since race is a phenomenon always in flux, then whiteness - like other racial constructs - is subject to contest and change.⁴⁷ Whiteness is historically located, malleable, and capable of being transformed.⁴⁸ Thus, "whiteness" as an identity includes characteristics that other races can closely obtain and claim as their own for their inherent benefits within American society.

Accepting the socially constructed nature of whiteness, members of the League of United Latin American Citizens (LULAC) stated, "we are very proud of our racial origins and we do not wish to give impression that we are ashamed of being called Mexicans. Nevertheless, we have always resented the inference that we are not white."⁴⁹ The LULAC representative further stated, "making any distinction between Latin Americans and whites, was a slur, an insult to all Latin Americans of Spanish descent."⁵⁰ Mendez argued both that they were being denied equal protection of the laws solely because of their ancestry, and that they were deprived of benefits accorded to other white children.⁵¹ With this argument, the *Mendez* case was not a direct attack on *Plessy's* "separate but equal doctrine," but rather a claim of equal protection for

⁴⁷ Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659, 1660 (1995) (discussing the social construction of whiteness).

⁴⁸ *Id.*

⁴⁹ Ariela J. Gross, *The Caucasian Cloak: Mexican Americans and the Politics of Whiteness in the Twentieth-Century Southwest*, 95 GEO. L.J. 337, 362 (2007) (discussing LULAC's involvement in desegregation).

⁵⁰ *Id.* at 364.

⁵¹ *Id.* at 378.

national origin.

Although there is more to be discussed about the ramifications of masking ethnicity with “whiteness” in order to win battles, the truth of the matter is that the *Mendez* case was successful and ushered in the age of Latino desegregation in California. However, a tension forms when Mexican-Americans seek both “difference” and “sameness” by pursuing these on distinct planes: difference in terms of culture and heritage, but sameness regarding civil rights and civic participation.⁵² Latinos may have been drawn to this strategy due to the racial sentiments of the 1920s, which was both distinct and mirrors today’s sentiments. In her essay *On the Back of Blacks*, Toni Morrison explains that for immigrants confronted with the Black-White hierarchical binary, the move into mainstream America always means buying into the notion of American Blacks as the real aliens.⁵³ To become “white” and American, a hostile posture toward resident Blacks must be struck at the Americanizing door before it will open.⁵⁴ Secondly, Latinos were drawn to this strategy to avoid and/or deter anti-immigration sentiments. Succeeding in arguing whiteness on a legal level allows for an institutionalized and authority-backed movement for “Americans” to no longer see Mexicans and Mexican Americans as “outsiders” or “aliens” but as “insiders.”

Lastly, Latinos may have been drawn to this strategy because it was impactful and showed a promise of victory in a judicial setting further than claims to end African-American segregation. At the time

⁵² *Id.* at 361.

⁵³ Rochmes, *supra* note 36, at 20.

⁵⁴ *Id.*

Mendez was brought, civil rights groups like the NAACP, were looking for cases that would further their quest to end segregation of African-American children.⁵⁵ However, their strategy focused on higher education facilities, starting with law schools and colleges, with the belief that they would not find success in focusing on grade schools given the intense prejudices present when dealing with younger children.⁵⁶ The NAACP and the *Mendez* litigation team understood that people were afraid that their little white girls would have to go to school with overgrown black boys, a claim that the NAACP thought our nation would never be able to overcome.⁵⁷

A few race-based presumptions shaped the hypersexualizing of little black boys during this time that meant society saw these boys as sexual threats to their white daughters. First, race shapes perceptions of maturity, such that children of color may not be given the same privilege of innocence as their white counterparts.⁵⁸ Black boys are seen as more mature, not in need of sympathy, protection, or guidance.⁵⁹ Secondly, this sexualizing of young black boys is influenced by the attitude that men always desire sex regardless of the circumstances, because the nature of masculinity is that even young boys must want sex.⁶⁰ This

⁵⁵ Aguirre, *supra* note 12, at 407-08.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Priscilla A. Ocen, *(E)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. REV. 1586, 1627 (2015) (discussing innocence privilege)

⁵⁹ *Id.* at 1628.

⁶⁰ Brenda V. Smith, *Uncomfortable Places, Closes Spaces: Female Correctional Workers' Sexual Interactions with Men and Boys in Custody*, 59 UCLA L. REV. 1690, 1722 (2012) (discussing how men and boys always "want" sex).

understanding of racial perceptions was what kept civil right groups away from elementary schools and focused on higher education institutions in hopes of victory with adults.

What was needed in California during this time was a victory for desegregation. Although the argument that Mexican's were just the "other white" may not be the victory people of color wanted, it may have been, realistically, the only way to win the day during its respective time period. Writer-Activist, Carey McWilliams, asserted that the exclusion of race as an issue in the case was actually advantageous because with the racial issue not directly involved, unable to create an immediate prejudicial haze in the minds of jurors, judges, and litigators alike, the court was compelled to examine the social and educational consequences of segregated schools in a realistic manner.⁶¹

c. *Sin Color* – Not Colored

One case fading into the dusty shelves of old constitutional law cases is *Gong Lum v. Rice*, where the U.S. Supreme Court ruled a Mississippi school board had not violated the Fourteenth Amendment's Equal Protection Clause when it classified a student of Chinese descent as "colored" and barred her from attending a white high school.⁶² Similar to the unique arguments in *Mendez*, the *Gong Lum* attorney argued the Lums were not a member of the colored race, but of Chinese descent.⁶³

⁶¹ Toni Robinson & Greg Robinson, *Mendez v. Westminster: Asian-Latino Coalition Triumphant?*, 10 ASIAN L.J. 161, 175 (2003) (discussing public comments on Mendez).

⁶² See generally *Gong Lum v. Rice*, 275 U.S. 78 (1927).

⁶³ G. Edward White, *The Lost Episode of Gong Lum v. Rice*, 18 GREEN BAG 2D 191, 197-98 (2015).

Since there was no school maintained in the District for the education of children of Chinese descent, Martha Lum, the student in question, should have been admitted to the Rosedale school (the white-specified school).⁶⁴ Counsel did not argue that it was a violation of the Equal Protection Clause for Mississippi to have separate schools for white and Chinese, but that it was a violation to classify Chinese as members of the Colored race.⁶⁵ Here, a similar argument occurs as in *Mendez*, where a minority is attempting to succeed under a “separate but equal” regime. Due to *Plessy*’s direct roots in anti-Black sentiment, ethnic minorities desperate for their own equality turned their back on coalitions with the Black community by distinguishing themselves from the racial pariah of society.

The Counsel for *Lum* explained that the white race was the “law-making race;” that it had created separate schools for white students to avoid mixing with black students and thus reasoned that if there was danger in the association with blacks, it was a danger from which one race was entitled protection just the same as another.⁶⁶ Counsel further argued that the district was conceding discriminatory practices by allowing the white race to create a privilege for itself that it denied to other races.⁶⁷ In other words, they claimed it was a violation of the Equal Protection Clause for districts to segregate blacks from white children in fear that the former would contaminate the latter, and then expose

⁶⁴ *Id.*

⁶⁵ *Id.* at 198.

⁶⁶ *Id.* at 199.

⁶⁷ *Id.*

Chinese children to that same “contamination” by classifying them as “colored” and forcing them to attend “colored” schools.⁶⁸ Although this argument ultimately failed, unpersuasive to the ears of the Supreme Court Justices, it serves as a clear illustration that the need for assimilation is often overpowering to a disenfranchised race. There is a belief that success is often found alongside those children of fair skin, blue eyes, and sandy blonde hair, not because of an inherent superiority, but because of the resources available to those children. Here, the Lums fell victim to the pursuit of the white middle-class standard, a normativity often longed for, but never truly attainable due to a race’s complexion, name, or birthplace not already associated with those classified as “white.”

The legal arguments addressed above built their foundation on the premise that these people of color wish to undeniably categorize themselves as white, believing to an extent that they did fit within the realm of whiteness rather than color. However, an almost “loophole” to the person of color’s exclusion from whiteness, are those narratives experience by white-passing individuals. The idea of white-passing describes people of color, who out of sheer genetic chance, are born with fair skin, straight hair, aquiline features, and other Eurocentric qualities that allow them to present as white to others at a glance.⁶⁹ Passing is a survival tactic where becoming white increases the possibility of controlling critical aspects of one’s life rather than being the object of

⁶⁸ *Id.*

⁶⁹ Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1710 (1993) (discussing white-passing).

racial subordination.⁷⁰ The privileges, benefit, and social status that accompany being white have become a valuable asset that whites seek to protect and that those who pass seek to attain – by fraud if necessary.⁷¹ Due to the nature of white-passing privilege, it can be used as a tool by people of color, who do not attempt to be redefined, only misinterpreted as white in order to reap its benefits and security. Passing has not found its way to the courts and is undefined by any legal measure, rather it is a societal privilege that allows people of color to present as racial insiders in the marketplace, work force, and academia while returning at the end of the day to their homes filled with their outsider family and friends. Passing privilege most often manifests in physical attributes, but can also be described by mannerisms and choices which will be discussed in part three.

d. *Desegregación de Personas de Color* - Desegregation of People of Color

When the majority of Americans think about the desegregation movement, we often think about *Brown v. Board of Education*. *Brown* involved a challenge to racially-segregated school systems that prevailed in many states in the early 1950s.⁷² Originally, in the lower courts of *Brown*, they found that segregated schools harmed black children but refused to order desegregation because the white and black schools were

⁷⁰ *Id.* at 1713.

⁷¹ *Id.*

⁷² Joel K. Goldstein, *Approaches to Brown v. Board of Education: Some Notes on Teaching a Seminal Case*, 49 ST. LOUIS U. L.J. 777, 779 (2005) (discussing civil right cases).

substantially equal.⁷³ At the time of the first hearings, Chief Justice Fred Vinson and Justices Stanley Reed and Tom Clark seemed disposed to reaffirm *Plessy*'s separate but equal doctrine.⁷⁴ However, the death of Chief Justice Vinson arguably changed the course of history on September 8, 1953, because President Eisenhower had previously promised California Governor Earl Warren the first Supreme Court Opening.⁷⁵

The Court carefully weighed considerations involving adherence to legal precedent, social-science findings on the negative effects of segregation, and the marked inferiority of the schools that African Americans were forced to attend.⁷⁶ One of the key pieces of evidence that shed a light to the lasting effect segregation was having on children was Dr. Kenneth Clark's "Doll Test." In the test, psychologists used four dolls identical in characters aside from skin color and when told to choose their preference, almost all of the children preferred the white doll and attributed positive characteristics to it.⁷⁷ Clark concluded that prejudice, discrimination, and segregation caused black children to develop a sense of inferiority and self-hatred.⁷⁸ It was evident that "separate but equal" harmed black children; that to separate them from other similar- aged and qualified students solely because of their race generated a feeling of inferiority as to their status in the community that

⁷³ *Id.* at 780.

⁷⁴ *Id.* at 781.

⁷⁵ *Id.*

⁷⁶ *Brown v. Board at Fifty: "With an Even Hand"*, <https://www.loc.gov/exhibits/brown/brown-brown.html> (last visited April 6, 2018).

⁷⁷ *Id.*

⁷⁸ *Id.*

may have affected their hearts and minds in a way unlikely ever to be undone.⁷⁹

Here, unlike *Mendez*, it is clear that blacks did not have the privilege to ignore race as a reason for discrimination because inherently, “whiteness” is set by boundaries in direct contrast to what is perceived to be “blackness.” *Brown* could only have been won with racial issues in the direct limelight. The privilege of arguing “whiteness” by parties like *Mendez* and *Gong Lum*, are supported by a few truths. First, *Mendez*’s foundation, as mentioned before, was based on legal precedence where a court found validity in Mexicans not to be considered as Indians but part of the Caucasian race. This was a vital argument for *Mendez*. On the flip side, there was no similar case for *Brown*’s attorneys to rely on. Secondly, both *Mendez* and *Gong Lum* relied on the silence of desegregation policies to shape their arguments. In *Mendez* the education code did not include Mexicans, whereas in *Gong Lum*, there was no Chinese-designated schools made specifically to segregate students of this descent. The absence of regulation and mandated separation allowed space for the argument of “sameness” and therefore “the race exception” to form in both *Mendez* and *Gong Lum*. These same spaces never existed for blacks because segregation policies and colored schools were created with the intention of separating black students from white students. Therefore, their lack of rights were always proscribed directly in the four corners of all educational policies, leaving no room for arguments that

⁷⁹ Goldstein, *supra* note 71, at 783.

did not directly attack those explicit race segregation policies.

Despite the inability to argue the legal strategy of “Sameness” in *Brown* Chief Justice Warren still announced the Supreme Court’s decision stating that, “in the field of public education the doctrine of separate but equal had no place”⁸⁰ and thus giving minorities the victory, they direly needed. The victory of *Brown* meant that there would be all-encompassing change in how minorities would be treated if counties followed the Supreme Court’s ruling.

Latinos’ uncritical demand for “whiteness” and concomitant disassociation from blacks left them unable to challenge racial injustice in other areas such as jury selection.⁸¹ This racial loophole allowed for courts to find that Latinos were judged by a jury of the peers when the jury was completely made up of white jury members, which understandably did not always result in just sentences for Latino defendants.⁸² *Mendez* was important because it was a win, the first win for desegregation for Latinos, but *Brown* is essential because it was a win for all - the win American needed to begin healing the wounds created by the Jim Crow laws.

e. *Un Espejo de Mendez* – A Mendez Mirror

Those who know of *Mendez* know it to be the very first successful desegregation case in California. However, *Mendez* often falls by the wayside because there is no mention of it when discussing

⁸⁰ *Id.*

⁸¹ Rochmes, *supra* note 36, at 15.

⁸² *See Id.* at 16.

desegregation as a result of *Brown*, which does not mention *Mendez* at all. *Mendez*, however is vital to the sculpting of the *Brown* decision, in both a literal sense and subdued influential manner.

Earl Warren landing himself the Chief Justice spot was a fortuitous outcome for desegregation advocates, because he was the Governor of California during the time of the *Mendez* case. Warren's part in the chapter of segregation is one often glossed over and somewhat surprising since in 1941 as he was spearheading the building of Japanese internment camps, and yet, was the same Governor of California who signed into law a bill that repealed school segregation.⁸³ In 1947, just two months after the date the *Mendez* case was won, Warren made California the first state in the nation to end school segregation by repealing the school segregation statutes.⁸⁴ Seven years later, he was on the Supreme Court, and was ruling on the arguments that were related to the friends-of-the-court briefs that he had read and known about from *Mendez* in *Brown*. With Chief Justice Warren now sitting on the bench, he was determined to forge a unanimous Court around a brief and forceful opinion because he knew that only if the justices spoke with one voice, in words American people could understand, would the Court be able to help the nation heal its racial wounds.⁸⁵

There is a direct and traceable connection to the briefs submitted in *Mendez* that were later relied on in *Brown*. It was under *Mendez* where organizations like the Japanese American Citizens League (JACL)

⁸³ Aguirre, *supra* note 12, at 409.

⁸⁴ *Id.* at 410.

⁸⁵ Aguirre, *supra* note 9, at 35.

and the National Association for the Advancement of Colored People (NAACP) first drafted briefs that would later be used as foundations for their briefs in *Brown*. However, the reason that *Brown* does not cite *Mendez* is because the case did not deal with state-mandated segregated schools.⁸⁶ Marcus, the *Mendez* attorney, argued in federal court because he believed if they were to bring the suit to state court, that the state legislature could just change the state statute and include Mexican-Americans.⁸⁷ Due to Marcus's choice of forum, the *Mendez* case was not quite directly related enough to be addressed in *Brown*.

Looking forward from *Mendez*, Chief Justice Warren's forceful, yet easily understood ruling in *Brown* mirrored the language and sentiment of Judge McCormick's decision in *Mendez*.⁸⁸ Some examples of language that mirrors *Mendez*'s language include:

Mendez: "the evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation."⁸⁹

Brown: "segregation with the sanction of law therefore had a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in racially integrated school system."⁹⁰

Mendez: "A paramount requisite in the American system of

⁸⁶ *Id.* at 415.

⁸⁷ See generally Robinson, *supra* note 60.

⁸⁸ Aguirre, *supra* note 9, at 36.

⁸⁹ *Id.*

⁹⁰ *Id.*

public education is social equality. It must be open to all children by unified school association regardless of lineage.”⁹¹

Brown: “In these days, it is doubtful that any child may reasonably be expected to succeed in life if he denied the opportunity of an education. . . . it is a right which must be made available to all on equal terms.”⁹²

Warren’s deliverance suggests that he relied on the language of the *Mendez* case in authoring the *Brown* decision. Further, the *Mendez* decision helped shape Warren’s sense of fairness and equity which manifested itself in the *Brown* case. The impact does not show up in the legal court documents, but can be found in Warren’s personal experiences.⁹³

f. *Vida Después de Mendez y Brown – Life After Mendez and Brown*

As a result of the different strategies, circumstances, and severity of discrimination, the unfolding of the desegregation action plans looked very different in respects to *Mendez* and *Brown*. For instance, after *Mendez*, school districts in California began voluntarily shutting down their “Mexican” schools.⁹⁴ A small town near Riverside, citing *Mendez*, petitioned school authorities to open up the “white” school in the area and on September 16, 1946, the Superintendent instructed his staff that “if there is as much as one segregated Mexican American pupil see to it

⁹¹ *Id.*

⁹² *Id.*

⁹³ Aguirre, *supra* note 12, 410.

⁹⁴ Aguirre, *supra* note 9, at 33.

that he gets unsegregated immediately.”⁹⁵ In Texas, the Attorney General of the State, issued an advisory opinion which forbade “blind” segregation of its Mexican-descended students.⁹⁶ It is important to recognize that *Mendez* allowed for space for other districts and states to desegregate on their own accord even though its victory was only a local one. Subsequent threats of litigation against the schools by Latino families were a natural and foreseeable consequence of the *Mendez* victory which resulted in a mass voluntary desegregation by many school districts in hopes of avoiding future litigation. Further, it may be suggested that because the victory was not a direct attack on racial prejudices that many in society held at the time, the order was an easier pill to swallow. In *Mendez*, the change was implemented on an almost voluntary nature, where people had the choice to follow suit - coming to terms at their own pace on their opinions of whether or not Mexicans could go to school with their white children - rather than being forced to accept it under a mandated order.

The *Brown* decision handed down on May 17, 1954, determined that segregation was unconstitutional though it remained silent on the issue of how to implement desegregation.⁹⁷ The Court believed that the states were competent enough to handle their desegregation programs with minimal federal judicial supervision, so on May 31, 1955, the Supreme Court ordered in *Brown II* that desegregation proceed “with

⁹⁵ *Id.*

⁹⁶ *Id.* at 33-34.

⁹⁷ Karl A. Cole-Frieman, *The Ghosts of Segregation Still Haunt Topeka, Kansas: A Case Study on the Role of the Federal Courts in School Desegregation*, 6-FALL KAN. J.L. & PUB. POL’Y 23, 28 (1997) (discussing segregation plans).

deliberate speed.”⁹⁸ The city of Topeka, Kansas misleadingly reported there was no legally sanctioned policy of segregation after 1956, but the 1955 desegregation plan provided that all vestiges of racial privilege would not be removed until 1961,⁹⁹ illuminating the school board’s intention to not fully desegregate their elementary schools until several years after *Brown*.¹⁰⁰ Widespread desegregation demands on schools not eager or willing to desegregate interpreted the language of “with deliberate speed” to allow them room for a “deliberate,” though slow change. What *Brown* could have done differently in order to spark quicker implementation of the law will never truly be known, for if the language of “with deliberate speed” was altered to “immediately,” it may have resulted in a drastic uprising from people that could have resulted in crime, injuries, and overall general chaos.

Mendez was only a local victory but had rippling effects across the Southwest at a time when real change felt unimaginable due to strongly-held prejudices against the mixing of black and white children in public schools. However, it is important to note that *Mendez*’s efficient desegregation compliance, was only so because the defendants were not black. The attorneys in *Mendez* were not by any means disproportionately better than those in *Brown* and the power of *Brown*’s judicial order far exceeded that of *Mendez*. However, since *Mendez*’s arguments involved a direct avoidance of any association of “blackness” to the Latino identity, they benefitted from a form of “other white”

⁹⁸ *Id.* at 28-29.

⁹⁹ *Id.* at 30.

¹⁰⁰ *Id.* at 30-31.

privilege where the dominant community (Whites) actively participated in remedying wrongs to the subordinate community (Latinos). *Mendez* may have had a quicker effect, but only due to the pitfalls of the larger racial issues in society at the time.

II. EL NIÑO EXTRAÑO – THE STRANGE CHILD

a. *Que Cuesta?* – What does it Cost?

Although Latinos represent a large portion of the student population in the US, the percentage almost doubling from 1981 to 2001, educational success has not come easy to them.¹⁰¹ For example, grim statistics show that only 22.9% of Latino 12th graders met either the University of California or California State University admissions requirements in the 2000 to 2001 school year compared to 40.6% of white students.¹⁰² Yet, some Latinos armed with sufficient skills, discipline, and drive are able to reach high levels of educational success.

It is my experience that growing up Latino and/or growing up a child of an immigrant, parents places a high value on education because it is advertised as the great equalizer, providing people opportunities regardless of their heritage or complexion. For the Latino student with an affinity for school and a desire to succeed in education, a certain amount of cultural negotiation must take place, often resulting in a large amount of successful Latinos becoming acculturated, adopting the American culture as their own in order to navigate the public education system.¹⁰³

¹⁰¹ Carrillo, *supra* note 3, at 641.

¹⁰² *Id.* at 642.

¹⁰³ *Id.*

Latinos may practice strategic passing; as Kenji Yoshino explains, “to pass” means to be misjudged, to be held or accepted as a member of a group other than one’s own.¹⁰⁴ Mexican Americans were viewed as backward because of their indigenous background- a view that some would argue is still prevalent today.¹⁰⁵ Latino students must learn to succeed in an educational system structured by and for the dominant culture, resulting in their acculturation as they accept social mobility and educational achievement that require the adoption of the majority’s cultural traits. In short, they accept the burden of acting white.¹⁰⁶ Classrooms since the implementation of desegregation have been culturally coded, holding white, middle-class knowledge as the standard where proper education only occurs within this structure.¹⁰⁷ The Eurocentric curriculum, and acting “white,” reflects the European-American belief of the “rugged individual,” prevalent in school instruction, who rises to the top by breaking away from the constraints of family and community.¹⁰⁸

In the United States, Mexican American culture has been historically viewed by schools as damaging because Latino culture socializes children to become lazy, resigned, passive, shy, emotional, unreliable, limited in cognitive ability, untrustworthy, and non-achievement oriented.¹⁰⁹ Therefore, school officials do not associate Mexican

¹⁰⁴ Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 813 (2002) (discussing identity passing).

¹⁰⁵ Carrillo, *supra* note 3, at 644.

¹⁰⁶ *Id.* at 642.

¹⁰⁷ *Id.* at 650.

¹⁰⁸ *Id.* at 656.

¹⁰⁹ *Id.* at 653.

American's failure in school with the teachers, the curriculum, or the school itself, but instead blame the Mexican Americans themselves for aligning with their culture.¹¹⁰ Under this premise, Mexican American students cannot receive the language or skills necessary for educational success at home because minority parents have different native languages and experiences and the net effect is that schools teach children to be ashamed of being Mexican.¹¹¹

A second theory Yoshino discusses is "covering," which requires that an individual's modulate their conduct to make their differences easy for those around them to disassociate from their known stigmatized trait.¹¹² For example, in order to counter the stereotype that Latinos are lazy, a Latino student may turn work in ahead of time or ask for extra credit work; in order to comport with English only rules, Latinos may pronounce their Spanish name with an English accent, or adopt a nickname.¹¹³

As a son of immigrants from Mexico, my parents always included college in discussions about my future and my "responsibility" to the family - how I was predetermined to succeed, make a large salary, and then give back to my family. However, both my parents have no further than a third-grade education and around second to third grade they no longer were able to help me in my studies. My identity quickly began to form with an inherent sense of inadequacy. This inadequacy was rooted

¹¹⁰ *Id.*

¹¹¹ *Id.* at 653-54.

¹¹² Yoshino, *supra* note 103, at 837.

¹¹³ Carrillo, *supra* note 3, at 663.

in the acknowledgement that my classmates' parents could speak English, had learned the same materials that we were learning in class when they were young, and that the only reason I could not enjoy these same privileges was because my family was from Mexico and not America. At an early age, I identified being Mexican as my handicap, which I understood to mean I would have to take my educational success into my own hands, without much guidance. Regardless, this was a journey I knew I wanted to take because college and success needed to be in my future, not only for myself but for the needs of my family.

A student must negotiate between the his or her sense of self and the sense of the institutional values involved.¹¹⁴ Negotiation entails a decision to either compromise his sense of identity in order to maximize his opportunities in school, or resolve the conflict by not compromising his sense of identity and choosing his own personal happiness over the institutional values.¹¹⁵ As Latino students are in a continual process of negotiation, this interaction between classroom criteria and stereotypes about the student's identity creates an incentive system which demonstrates that Latino students subject to negative stereotypes have to put in substantially greater work than their white peers in order to succeed.¹¹⁶

Further, the demand to pass is understood to be milder and more attainable than the demand to convert.¹¹⁷ The practice of passing for a

¹¹⁴ *Id.* at 655.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 658-59.

¹¹⁷ Yoshino, *supra* note 103, at 813.

Latino student involves fooling insiders that he or she, an outsider, is one of them. This can be as simple as a light-skinned Latino passing for white.¹¹⁸ Latino students may learn to manage their identity in the classroom, making sure to present themselves in a way that is familiar to their white classmates, usually requiring a silencing of any experience tied to one's Latino culture. This may manifest in terms of the Latino student doing extra work to familiarize themselves with the appropriate movies, singers, or TV shows, even though they may not be able to watch or hear any of them in their Spanish household. It involves a student hiding facets of his life that may jeopardize his status as an "insider," resulting in students white-washing the contents of their meals, their television shows, and their family gatherings, always signaling that they are worthy of advancement and capable of performing according to the cultural codes of the classroom.¹¹⁹

For most of my life, there was a level of internalized prejudice towards those students who did not practice covering in the same sense that I did. I learned to never speak my name in Spanish, never identify with my Mexican-sounding last name, and did my part by pronouncing Spanish words that were used in an English context with an English accent. I did not understand those who boasted their Spanish last names, giving life to every accent mark in Hernández, García, Lòpez, and Rodríguez, as I allowed people to butcher my last name. At the same time, it was this easily-digestible token Latino student identity that

¹¹⁸ Carrillo, *supra* note 3, 658.

¹¹⁹ *Id.*

shaped who I was friends with, who allowed me to join their study groups, and my overall experience in school. By covering, I was a diversity factor that never threatened anyone's way of life or notions of what a quiet and shy Mexican boy was.

With the successful practice of Latino covering and white passing, a Latino student's Latino identity is left neglected and undeveloped. Latino students who constantly combat negative stereotypes through identity performance can suffer a "denial of self" whereby they reject who they are and where they came from so that the majority sees them as "not-different."¹²⁰ This very denial can lead Latinos to feel "doubly estranged": estranged from their ancestral roots, as well as from the dominant culture.¹²¹ This process leaves Latino students unknowingly losing a sense of themselves, discovering distance between the Latino identity they were born into and the identity that they built learning to navigate the United States school system. This identity transforms Latino children, to a person unrecognizable to themselves, and a person unrecognizable to their families. Families may resent the success of their children because Latino children are expected to place familial needs above their individual needs, and conversely, success may create the feeling that the family comes second or is left behind. In response, families accuse their Latino child of selling out and placing the "gringo," or white, culture above their own.¹²²

I am light-skinned, was born in America, and spoke only Spanish till

¹²⁰ *Id.* at 666.

¹²¹ *Id.*

¹²² *Id.* at 667.

I enrolled in kindergarten. Growing up, I loved reading, learning, and studying for classes and eventually my work ethic placed me in higher groups and classes, finding myself one of the few Latino students and often the only Latino male in my class. As a kid I fell victim, as many kids do, to the need to be liked by my peers and fit in. My class was made up of primarily white and Asian students, and so due to societal pressures, I left my Mexican culture go silent, learning about sailboats and kimchi - a cultural exchange where I chose to bring nothing to the table. Success in education had a nasty side effect. I was masking my heritage, putting my nose up at people who pronounced their names with a Spanish accent, and never speaking Spanish because I did not want to be seen as a “beaner.” I lost my family connection in the process; my extended family would only address me as el “gringo” or el “chinito” (Asian) and would constantly speak to me in trailer-park styled English or make hyperbolic Asian-sounding noises. Not only had I chosen to acculturate myself, but my family had decided I was no longer able to claim my Mexican heritage in the family settings.

b. *Qué se puede hacer?* – What can be done?

The pressure of assimilation is not one that will soon disappear or be resolved; I am unable to provide a solution for the estranged little Latino boys, girls, and gender non-confirming children going through this experience, but can I explore some potential changes in order to reduce the need of acculturation.

Public school officials must first face an undeniable truth — their schools and their students are integrated, and their classrooms are filled

with students with different backgrounds and different needs. A school may do its part by hiring more Latino teachers and faculty members. These staffers are familiar with the Latino culture – from recognizing different dialects of Spanish, increasing the likelihood of shared home experiences, and most importantly, physically look like the students they are serving. This level of representation serves to create a space for Latino students to be relieved of some of the pressures to present “white” when there are physical, familiar, and attainable examples of Latino success leading their classrooms and administrative offices.

School districts are not expected to singlehandedly dismantle the components of race on their own, rather today there are studies upon studies available for administrators to implement in order to educate their staff. The weight of protecting little Latino students cannot fall on the shoulders of Latino academic professionals, but of all people in academia. Schools should implement implicit bias training for all teachers and host more open discussion on race, ethnicity, privilege, and how these differences may be addressed in their teaching and disciplining methods.

Further, with Latino teachers, schools may step away from the Eurocentric style of curriculum and do work that may involve a heavier parent participation aspect. As mentioned previously, Latino culture and education is centered around the notion of family. This new approach to curriculum may include providing materials for parents that are in Spanish so as to help them understand the material without the need of their child’s translations. This way, a student’s pathway to success

becomes identifiable to parents with a minimal education background and little English skills. By simply adjusting some of the traditional ways of delivering information in the classroom, a Latino student may recognize the importance of both education and the family in public school, requiring little identity negotiation.

III. *MIRANDO A HOY* – LOOKING AT TODAY

a. *Efectos Persistentes de Mendez* – Lingerin

Effects of *Mendez*

The *Mendez* victory was well-received, and hopes were high for a fully integrated future, yet now in the 2000s, the circumstances beg the question: “does de facto de segregation still exist in public schools?” Following the heels of this case, the Mendez children, among hundreds of other little Mexican American children were able to attend the “white” schools in Orange County. Looking forward, little Sylvia Mendez is now 81 and travels speaking about civil rights cases such as *Mendez* and *Brown*, and the importance of their fight for integration so that everybody could have quality, equal education and learn about the other cultures.¹²³ Two Southern California schools are named for her parents - Gonzalo and Felicitas Mendez Fundamental Intermediate School in Santa Ana and Felicitas and Gonzalo Mendez High School in Los Angeles.¹²⁴ Ironically, the schools named after champions of desegregation are ninety-nine percent minority; the Santa Ana school is ninety-eight percent Latino and ninety-seven percent socioeconomically disadvantaged, while the Los Angeles school is ninety-six percent Latino and ninety-two percent socioeconomically disadvantaged.¹²⁵ Although we have moved past *de jure* segregation, otherwise known as segregation by law, it seems that America has found itself in de facto segregation

¹²³ Robyn Norwood, *Sylvia Mendez: De facto segregation still exists in public schools*, News and Stories at Chapman (Sept. 26, 2017), <https://perma.cc/BP3N-KD9W>.

¹²⁴ *Id.*

¹²⁵ *Id.*

caused by poverty, district lines, politics, and by how schools are placed in certain minority areas.¹²⁶

Looking to one of the most recent U.S. Census Bureau data concerning higher education attainment, there is a difference by nativity within race and Hispanic origin groups.¹²⁷ Hispanics were the only group where the percentage of the native population with a bachelor's degree or higher was higher than the percentage of the foreign-born population with this level of education.¹²⁸ Twenty percent of native Hispanics had a college education compared to twelve percent of foreign-born Hispanics.¹²⁹ Paired with this quick glance, it is clear that an alarming low amount of Hispanic children are pursuing higher education, meaning that the important presence of students of color, specifically those of Mexican heritage and other Hispanic cultures are absent in the cultural exchange and dialogue in the halls and classrooms of higher education.

b. *La Vergüenza de Las Diferencias* – The Shame of Differences

This article explores the contours of historical race segregation and the resultant assimilation demands of integration. I wish to close this analysis with a look at assimilation in other contexts, such as the demand of assimilation to heterosexual norms in the LGBT community. Attempts to fall within the lines of what is “normal” is felt in identity expressions

¹²⁶ *Id.*

¹²⁷ Camille L. Ryan & Kurt Bauman, *Educational Attainment in the United States: 2015*, 1, 7 (2016)
<https://www.census.gov/content/dam/Census/library/publications/2016/demo/p20-578.pdf>

¹²⁸ *Id.*

¹²⁹ *Id.*

beyond race; in this section, the assimilation of gay identity is explored in a limited sense. In 1993 Andrew Sullivan wrote a manifesto that became one of the most influential gay essays of the '90s. In these essays he called on gays to abandon the notion of sexuality as cultural subversion which alienated a vast majority of gay people who wanted to avoid a "queer" identity.¹³⁰ Sullivan's main argument was extremely persuasive, relying on the basic human necessity to be "normal," knowing, of course, that even though people inherently want to express their individuality, that that very individuality must still exist within the boundaries of "normalcy." Further, if given the choice between individuality and normalcy, most would choose the latter.¹³¹ However, people who are defined by a variant set of norms commit a kind of social suicide when they begin to measure the worth of their relations and their way of life by the yardstick of normalcy.¹³² The obsession with appearing normal overlooks structural inequalities that gay people experience precisely because they are not "normal," and experience issues and challenges that other Americans do not.¹³³

Since the 1993 *March on Washington*, the topic of marriage has come to dominate the political imagination of the national gay movement in the United States.¹³⁴ Still, this marriage movement ignores the aspect wherein the gay community has developed creative ways of building community and relationships in order to survive when families turn their

¹³⁰ Michael Warner, *The Trouble with Normal: Sex, Politics, and the Ethics of Queer* 52 (The Free Press, 1999).

¹³¹ *Id.* at 53.

¹³² *Id.* at 59.

¹³³ *See Id.* at 53

¹³⁴ *Id.* at 84.

back on their children or friends once they come out as being queer.¹³⁵ This survival mechanism has historically resulted in a wider and stronger friendship network, as individuals do not have to channel all their intimacy into a single spouse.¹³⁶ However, this kinship is put at risk the moment marriage equality is placed into the conversation, because the right to marriage is coercive and confers a view of respectability, that once people can get married, it is expected that they do in order to remain respected by society.¹³⁷ However, the right to get married can often be understood as a necessary part of a society, long fought for by gay right activists, remaining the center of gay politics for the past thirty years. Finally, in 2015 in *Obergefell v. Hodges* announced, “No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family.¹³⁸ Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions.¹³⁹ They ask for equal dignity in the eyes of the law.”¹⁴⁰ This judgment solidifies a future where marriage, once offered, is expected, and therefore relationships that many LGBTQ individuals have formed and live within are put at risk of extinction.

The issue with these kinds of movements is that it is another form of respectability politics that shame people instead of providing recognition of their humanity. People shouldn't have rights because they are “normal;” rather, people deserve rights because they are human, and

¹³⁵ *See Id.*

¹³⁶ *See Id.*

¹³⁷ *Id.* at 99.

¹³⁸ *Obergefell v. Hodges*, 135 S.Ct. 2584, 2608 (2015).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

whether or not they are an “normal” human should not be in contention.¹⁴¹ *Obergefell* is reminiscent of the arguments from *Mendez* where the arguments are founded on the notion of “sameness.” Like *Mendez*, this argument resulted in a victory, but dissimilarly, *Obergefell*’s victory was far-reaching. There is a danger of arguing “sameness,” like that of the legal corner Latinos placed themselves with jury selection discrimination. Although the ramifications of this argument have yet to be seen in the recent years following *Obergefell*, one can only hope that the LGBT community has not backed themselves into a legal corner as *Mendez* did.

Understanding that being gay is a sexual identity is central to gay protection - necessary to inspire dialogue addressing the communities’ need for visible and affirmative assistance in sexual and/or mental health. By denying this identity or masking it so as to conform to hetero-normative boundaries is a disservice to the LGBT community, since without acknowledgment that the LGBT community has different needs, these such needs will not be serviced.

¹⁴¹ *See Id.*

IV. *CONCLUSIÓN* – CONCLUSION

In conclusion, *Mendez* is an important part of Latino history that is often overshadowed by the desegregation win of *Brown*. Some of this shade is cast by modern Latino activists themselves, likely due to an underlying level of hesitance to advertise a victory on a premise that would no longer be accepted today. However, though hindsight and a modern embrace of race diversity tells us that the arguments made in *Mendez* or even *Gong Lum* were a disservice to the struggle of students of color, they are a product of a greater social problem rampant in our nation's history and still not completely erased from our current vocabulary. The trouble with this single narrative that the white middle-class is "good" and anyone Black or "Color" is "bad," it is unfortunately within this narrative that shaped these arguments - those that succeeded (*Mendez*) and those that failed (*Gong Lum*) - both of which still have lasting effects on society's children. Still, these successes and losses needed to be made in order to lay a foundation for change years later in *Brown*, thus reinforcing the notion that the road to justice is not always a stagnant position of ideals, but an evolving one where past mistakes build future mistakes, which make room for successes in the long run.

Being a Latino student in higher education, I am a direct result of the winning arguments that originally ended segregation in California. Although assimilation demands weigh heavy on my shoulders, as they do on all colored and LGBTQ people, there is strength in these victories, that create pathways for more honest identity arguments to win the day.

Mendez was first, but *Brown* quickly followed. May the seeds of assimilation blossom into victories for minorities in legal and social circumstances for years to come.