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A Call for Fairness: The Historical and Continuing Exclusion of Latinos from Public Housing in Chicago

Alicia Alvarez†

This article will discuss the problems faced by the Latino population of the City of Chicago ("City") in accessing public and subsidized housing programs administered by the Chicago Housing Authority and the United States Department of Housing and Urban Development. Latinos have historically been excluded from these programs in Chicago. This article will describe the extent of the problem, some of the causes for this historic exclusion, some potential solutions and the obstacles that may have arisen from efforts to remedy the situation.

Before beginning any discussion of the problems faced by Latinos in Chicago with public housing, some background regarding Latino poverty and demographics in Chicago is appropriate.

Chicago is a city of neighborhoods. The city is comprised of 77 community areas, as the neighborhoods are officially called. At times, community areas are broken down into smaller neighborhoods. Twenty five community areas have a Latino population of 20% or more or have more than 10,000 Latinos living in them. In 1990, 90% of Chicago’s Latinos lived in these 25 community areas.

The 1990 census counted almost 2.8 million people in the city of Chicago. Of this population, more than one-half million are Latinos. Thus 19.6% of the City’s residents as of the 1990 census were of Hispanic origin.

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1. Throughout this article, I will use the words Latino and Hispanic interchangeably, especially using the term Hispanic when another author has done so.

2. GREGORY D. SQUIRES ET. AL., CHICAGO: RACE, CLASS, AND THE RESPONSE TO URBAN DECLINE 137 (1987). One might say that this is an euphemism for the fact that Chicago is a segregated city.


4. Id.


6. The exact figure is 545,852. Id.

7. Id.
Almost two-thirds of the Latinos in Chicago are of Mexican origin.8 Puerto Ricans comprise the next largest group of Latinos in the city, making up 22% of the Latino population.9 Cubans and other Hispanics comprised the remaining 14% of the City's Latino population. The Latino population in Chicago is interesting for its diversity, among other reasons. In that sense, the Latino population in Chicago mirrors that of the country,10 but is more diverse than that of most cities in the country. The Latino population is projected to continue to grow at a faster rate than the overall U.S. population.11

Over one fifth of the residents of the City of Chicago lived in poverty in 1989.12 Almost one quarter of all Latinos in the City live at or below the poverty level.13 The City's poverty rate for Latinos mirrors that of the nation. The 1991 poverty rate for Latino families in the U.S. was 26.5%.14

Latinos face a number of obstacles in the housing market and these problems are exacerbated for poor Latinos. The shortage of affordable housing makes public housing access even more crucial to the Latino community. The most severe housing problem confronting poor households in Chicago is affordability. Over 50% of poor Latinos in the metropolitan

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8. The census counted 352,560 people of Mexican origin in Chicago, comprising 64% of the Latino population in the City and 12.7% of the city's overall population. Id.

9. The census counted 119,866 people of Puerto Rican origin in 1990, comprising 4.3% of the overall city population. Id.


13. Specifically, in 1990, 23% of Latinos in the City (125,545) lived in poverty. LATINOS UNITED, supra note 3 at 11. In 1979, 24% of the Latino population lived beneath the poverty line. Because Latino families tend to be larger on the average, the per capita income of Latinos is lower in many cases than black or white families with similar income. Id. at 17. See also LATINO INST., LATINOS IN METROPOLITAN CHICAGO: A STUDY OF HOUSING AND EMPLOYMENT 18. (Gary Orfield & Ricardo M. Tostado, eds., 1983) [hereinafter “LATINOS IN METROPOLITAN CHICAGO”].

14. Robert Aponte, Hispanic Families in Poverty: Diversity, Context, and Interpretation. FAMILIES IN SOCIETY: THE J. OF CONTEMP. HUMAN SERVICES. November, 1993 at 527. In 1990, one quarter of Mexican families were living in poverty in the U.S., while 37.5% of Puerto Rican families were living in poverty (the highest among all racial and ethnic groups for whom data exist). Id. at 528. See also George Galster and Anna M. Santiago, Explaining the Growth of Puerto Rican Poverty, 1970-1980. 30 URB. AFF. Q. 259 (1994).
area spent at least 50% of their income on housing in 1987.\textsuperscript{15} In the City, the Latino poor spend an average of 74% of their income on housing.\textsuperscript{16} One of the reasons poor households spend such large percentages of income on housing costs is the substantial shortage of affordable housing.\textsuperscript{17} The supply of unsubsidized low rent housing declined in Chicago and many other metropolitan areas throughout the country in the 1970's and 1980's.\textsuperscript{18} The trend has continued. From 1980 to 1990, the city suffered a net loss of 41,667 housing units, with 46% (19,078) of those being in the 25 community areas where 90% of Latinos live.\textsuperscript{19}

Latinos own their own homes at a lower rate than the rest of the population.\textsuperscript{20} In 1990, 31.7% of Latinos in the City of Chicago owned their own homes, while 43% of non-Latinos were homeowners.\textsuperscript{21} In addition, housing units with a Latino householder in Chicago are far more likely to be overcrowded than housing units with non-Latino householders.\textsuperscript{22} In 1990, 25.8% of Latino housing units were overcrowded, compared to only 6.1% of non-Latino housing units.\textsuperscript{23} Chicago's Latinos are disproportionately living in the City's oldest housing.\textsuperscript{24} Many of the units available to the poor are also substandard.\textsuperscript{25} As a result of these housing problems, coupled with a

\begin{thebibliography}{99}
\bibitem{15} Paul A. Leonard and Edward B. Lazere, \textit{A PLACE TO CALL HOME: THE LOW INCOME HOUSING CRISIS IN 44 MAJOR METROPOLITAN AREAS}. Center on Budget and Policy Priorities (1992).
\bibitem{16} Poor Blacks spend 79% of their income on rent and poor Whites spend 69% of their income on rent. Sylvia Puente and Alejandrina Basquez, \textit{The Condition of Latino Housing in Chicago} 1 (May 29, 1989) (unpublished manuscript, on file with author).
\bibitem{17} In 1987, there were 273,400 low income renter households, but just 126,400 low cost rental units. The area's affordable housing shortage had nearly doubled since 1975. \textit{See} Leonard, \textit{supra} note 15. Thus, there are more than two low income households for every low cost rental unit.
\bibitem{18} \textit{See} id.
\bibitem{19} \textit{LATINOS UNITED, supra} note 3, at 11.
\bibitem{20} The owner occupancy rate for Latinos nationally was 43% in 1980, while the U.S. average was 64%. \textit{JOHN S. ADAMS, HOUSING AMERICA IN THE 1980s} 91 (1987).
\bibitem{21} \textit{LATINO INST., KEYS TO IMPROVED LATINO HOUSING: AN AGENDA FOR CHANGE} 1 (September, 1994) [hereinafter "\textit{KEYS TO IMPROVED LATINO HOUSING}""]; \textit{LATINO INST., PUB.NO.1, LATSTAT: LATINO STATISTICS AND DATA, LATINO HOUSING} 92 (March, 1994) [hereinafter "\textit{LATSTAT}""].
\bibitem{22} An overcrowded housing unit is considered to be a unit having more than one person per room. \textit{See} LATSTAT, \textit{supra} note 21, at 4.
\bibitem{23} \textit{LATSTAT, supra} note 21, at 4. Nationally, units occupied by Latinos had fewer rooms on average, and the person-per-unit ratio were 50% higher than national averages. \textit{ADAMS, supra} note 20, at 91.
\bibitem{24} In 1990, more than half of Latino residences (53.7%) were built before 1940, versus 42.2% of non-Latino residences. \textit{KEYS TO IMPROVED LATINO HOUSING, supra} note 21, at 2.
\end{thebibliography}
high poverty rate, the Latino population in the City is in desperate need of subsidized housing.

The Chicago Housing Authority (hereinafter "CHA") is Chicago's largest provider of public housing services. The CHA operates a variety of housing programs, ranging from its own buildings to programs that subsidize rent in privately owned residences.26 CHA administers three principal housing subsidy programs—the conventional family program,27 the conventional elderly/disabled program28 and the Section 8 program.29 The conventional family program provides apartment units to poor families. Most of the units are in high rise apartment buildings, though some units are in low-rise developments and town-house developments. The CHA currently has 30,812 units in the conventional family program.30 The conventional elderly/disabled program provides apartment units to the poor elderly and disabled, mostly in high-rise buildings.31 Under the Section 8 "existing housing" program, the housing authority subsidizes the rent of an elderly or disabled person or a family in a private market unit.32 The CHA currently subsidizes 14,567 units under the Section 8 "existing housing" program.33

CHA maintains four principal waiting lists for these programs—the conventional family, the conventional elderly/disabled, the Section 8 family and the Section 8 elderly/disabled. Instead of maintaining one waiting list for the conventional family program and one for the conventional senior program, CHA maintains separate waiting lists for each of its conventional developments.34 As a result, prospective tenants wishing to move to the more desirable developments are placed on long waiting lists, while those willing to move into one of the less desirable developments could

26. See KEYS TO IMPROVED LATINO HOUSING, supra note 21, at 16.
31. See id. CHA has a total of 40,702 units in 1,479 buildings, with 9,890 of those units in the senior program. CHA has a population of 86,547 in its family and senior programs.
34. When a person registers for the conventional housing program with CHA, they list the developments they would consider living in. CHA then places them on the waiting list in each of these developments. (Conversation of author with CHA personnel.)
conceivably do so rather quickly.\textsuperscript{35} The Section 8 family waiting list, closed since 1985,\textsuperscript{36} has approximately 50,000 people on it,\textsuperscript{37} and CHA is only now giving vouchers and certificates to people who applied for the Section 8 program sometime in the early 1980’s.\textsuperscript{38}

Latino participation in the various CHA programs is abysmal.\textsuperscript{39} As of 1992, Latinos comprised slightly over 1\% of the tenants in the conventional family program and less than 3\% of the tenants in the conventional elderly/disabled program.\textsuperscript{40} In the Section 8 program, Latinos hold 1.5\% of the family certificates and vouchers and 2\% of the elderly/disabled certificates and vouchers, making up only 1.67\% of the holders of all vouchers and certificates.\textsuperscript{41} Given the underrepresentation of Latinos on the waiting lists, we cannot expect greater access in the foreseeable future. As of 1990, Latinos comprised 5.88\% of the people on the conventional family waiting list and 3.21\% of the people on the elderly/disabled conventional waiting list, for a total of 5.4\%.\textsuperscript{42} Latinos comprise 1.16\% of the families on the Section 8 waiting list and 0.76\% of the elderly/disabled on the list, for a total of 1.08\%.\textsuperscript{43} Since the Section 8 family waiting list is closed, the number and percentage of Latinos getting housed under this program is likely to decrease.

A number of barriers prevent the Latino community from having access to public housing in Chicago, among them, 1.) the long history of discrimination against minority communities by the CHA; 2.) site selection; 3.) language barriers; and 4.) the failure of the CHA to market its programs in the Latino communities.

CHA has a long history of discriminating against minority communities. In 1966, a group of African-Americans challenged the CHA’s site selection

\textsuperscript{35} In 1991, the vacancy rate in some of the developments was as high as 45\% (the Henry Homer Homes) and the CHA average was 17\%. Patrick T. Reardon, \textit{CHA Reeling from Years of Maintenance Neglect}, CHI. TRIB., Nov. 2, 1992, § 2, at 1.

\textsuperscript{36} See \textit{LATINOS UNITED}, supra note 3.

\textsuperscript{37} See McRoberts, supra note 33.

\textsuperscript{38} Interview with Joyce Wade and other CHA Section 8 staff, in Chicago, Illinois (July 14, 1994). At the time CHA was giving certificates and vouchers to people who registered in 1981.

\textsuperscript{39} A statistical overview describing Latino participation in the housing market is contained in \textit{LATINOS UNITED}, supra note 3, at 9-11. In 1990, 5.4\% of Latino households were found within public housing authority buildings or were receiving some form of federal, state or local rent subsidy. See \textit{KEYS TO IMPROVED LATINO HOUSING}, supra note 21, at 15.

\textsuperscript{40} \textit{LATINOS UNITED}, supra note 3, at 9.

\textsuperscript{41} \textit{Id.} at 10.

\textsuperscript{42} \textit{Id.} at 9.

\textsuperscript{43} \textit{Id.} at 10.
and tenant assignment plans as discriminating against African-American tenants and applicants for public housing. The plaintiffs alleged in the lawsuit that CHA's tenant assignment plan discriminated against African-Americans by imposing quotas at four white family developments to keep the number of African-American families to a minimum level. At the time, African Americans comprised 90% of the tenants in the conventional family program and approximately 90% of the people on the waiting list. In addition, the plaintiffs alleged that CHA discriminated in its site selection—public housing was being built only in African-American communities and proposed sites in white communities were vetoed by the City Council. As of 1969, 99.5% of the CHA family units were located in areas which were or were soon to become almost exclusively African-American.

At the time the case was brought, the CHA was preventing the construction of additional sites in white areas. The court found that no criterion, other than race, could plausibly explain the fact that almost no housing units were being located in the white communities. The court found that one result of this historic discrimination was that the image of CHA as an "all black" agency, which in reality it was, discouraged non-blacks from applying for CHA programs.

The Gautreaux case was resolved with the institution of a new tenant assignment plan, the development of the scattered site program and the development of a special Section 8 certificate program. As a result, CHA was limited in its ability to build new public housing in certain areas of the City ("limited" areas with non-white population), was required to build in

45. Id. at 909.
46. Id. at 910. This fact has not changed much in the more than twenty-seven years that have elapsed since the Gautreaux decision.
47. See id. at 912.
48. Id. at 912, 914.
49. A result of "CHA's participation in a policy of maintaining existing patterns of residential separation of the races", ruled the Court, was that "the 188,000 White families eligible for public housing have understandably chosen in the main to forego their opportunity to obtain low cost housing rather than to move into all Negro projects in all Negro neighborhoods. This is an ironic but predictable result of the segregationist policy of protecting Whites from less than half as many (76,000) eligible Negro families." Id. at 915.
50. See Gautreaux v. Chicago Housing Authority, 304 F. Supp. 736 (N.D. Ill. 1969), and Gautreaux v. Landrieu, 523 F. Supp. 665 (N.D. Ill. 1981). The scattered site program provided that CHA would no longer build high-rise family developments. All new family units were to be low-rise, limited density buildings "scattered" throughout the City's neighborhoods. The Section 8 certificate program provides subsidies for private market apartment units. See generally Warren and Reardon, supra note 30.
other ("general") areas, and new construction was limited in density. In addition, 50% of the units in new buildings were to go to community residents, 25% to tenants transferring from the developments and 25% to people on the CHA conventional waiting list. Neither the 1969 opinion nor the 1981 consent decree mention the Latino population of the City, which comprised 7% of the city's population in 1970 and 14% of the city's population by the time the consent decree was entered in 1980.

Until recently, CHA did not build many units under the Gautreaux program. In 1987, the program was placed under receivership. The receiver has recently begun building units in the Latino communities as inexpensive land in the other parts of the City became unavailable. Since Latinos do not make up any noticeable number of the tenants or applicants (people on the waiting lists) and since until 1990 CHA interpreted "community resident" to mean people who were on the CHA waiting list and were community residents, few of the new units went to Latinos. Without access to the units, Latinos in some communities objected to the units being built in their communities.

There is a delicate balance to be achieved. The only way Latinos will have access to units is through the community preference (50% of the units that go to community residents), since they neither live in the developments.

51. See Gautreaux v. Chicago Housing Authority, No. 66-C-1459 and 1460 (E.D. Ill. Oct. 1, 1990) (order amending CHA tenant assignment plan). Until an addendum to the CHA Tenant Assignment Plan was approved in 1990, CHA interpreted the 50% requirement of community residents to mean community residents who happen to be on the CHA waiting list. See Tenant Assignment Plan, (on file with LA RAZA L. J.).


53. Id.; Gautreaux v. Chicago Housing Authority, 304 F. Supp. at 736. See also MIGUEL DEL VALLE, ET. AL., MAYOR'S ADVISORY COMMISSION ON LATINO AFFAIRS ADDRESSING CITY-SPONSORED HOUSING PROGRAMS FOR CHICAGO'S LATINOS, at 6 (Jan. 16, 1984).


55. See Gautreaux v. Landrieu. See also Order, supra note 51.

56. Some of the City's Latino communities have a fair amount of vacant land. In addition, many of the communities are in Gautreaux designated "general" areas, thus allowing for the construction of scattered-site housing. Beginning in 1990, the Gautreaux receiver bought numerous lots owned by the City in the Humboldt Park community, which under the 1990 census was close to 50% Latino. Though the Gautreaux scattered-site program limited density, the receiver was planning to build 404 units in the neighborhood around the Humboldt Park community, with 130 of those units just west of the park. The neighborhood opposition centered primarily around the concentration of scattered-site units in one community. In fact, 905 of the 1,398 units the receiver had built or had plans to build were in five of the 77 community areas in the city--the Humboldt Park community being one of those five. See Patrick T. Reardon, Gutierrez, Solis Spar on Housing for Poor, CHI. TRIB., Jan. 21, 1994, § 2, at 3; Patrick T. Reardon, Scattered-site Housing is Kept from its Promise, CHI. TRIB., Jan. 23, 1994, § 1, at 1; Robert Davis & Patrick T. Reardon, Alderman Hits Scattered-site Concentration Near Humboldt Park, CHI. TRIB., Jan. 25, 1994, § 2, at 4.
(25%) nor are on the waiting list (the other 25%). Yet, if the community argues that public housing units should not be placed in a Latino community because Latinos have no access to them, there is no access at all by Latinos.

The underrepresentation of Latinos in CHA's housing program is not accidental, but stems from CHA's historic racially discriminatory site selection practices, which were well documented in the Gautreaux case. These discriminatory site selection practices created CHA's image and reality as an "all black" program. This image, in turn, discouraged Latinos from applying for the agency's programs and required CHA to make serious outreach efforts in order to attract Latinos to its programs. However, despite United States Department of Housing and Urban Development (hereinafter "HUD") regulations requiring CHA to conduct outreach, CHA plans indicated that there was no need for outreach, as the waiting list for Section 8 housing was already full. The inevitable result of this stance was that prospective Latino applicants were not reached.

Federal regulations applicable to all federally funded housing programs require recipients of federal funds to take affirmative action to overcome the effects of any prior discrimination on the basis of race or national origin and to take affirmative action to overcome the effects of any conditions which resulted in limiting the participation of members of a particular race or ethnic group in such programs. In addition, the Section 8 program regulations specifically require CHA to take affirmative steps to provide opportunities for participation to persons, such as Latinos, who are less likely to apply due to ethnic barriers. The HUD Section 8 Handbook suggests ways to reach minority families, particularly those that did not speak English, and the Handbook specifically identifies Hispanics. CHA is


60. See 43 Fed. Reg. 61,240 (1976) and HUD, PUBLIC HOUSING AGENCY ADMINISTRATIVE PRACTICES HANDBOOK FOR THE SECTION 8 EXISTING HOUSING PROGRAM, (November 1979) [hereinafter "Section 8 Handbook"]. The regulations require each public housing authority ("PHA") to publish and disseminate information regarding the availability and nature of housing assistance. 43 Fed. Reg. 61,253. Further, the regulations require each PHA to "make known to the public, through publication in a newspaper of general circulation as well as through minority media and other suitable means, the availability and nature of housing assistance...." 43 Fed. Reg. 61,256-57. Each PHA is required to take "affirmative action" to provide opportunities to persons who, "because such factors as race, ethnicity, sex of household head, age, or source of income, are less likely to apply...." 43 Fed. Reg. 61,257.

61. The HUD Section 8 Handbook speaks of special outreach, stating that a PHA must take "affirmative action in marketing its programs to insure that opportunities for program participation are adequately publicized to ... families identified by the PHA as least likely to apply." Section 8 Handbook at §3-4c.

The Manual goes on to suggest outreach techniques, such as public service announcements on radio and TV; pamphlets, brochures and the provision of flyers to agencies for distribution to their
also required to file an annual Equal Opportunity Housing Plan for the Section 8 program with HUD. As one of the required components of the report, CHA must state how it intends to market its programs to those least likely to apply.

Despite these regulations and mandates, CHA failed to take any steps to overcome the effects of discrimination against the Latino community. CHA had historically ignored the Latino community and has failed to take any steps to overcome the historic exclusion of Latinos from its housing programs. CHA additionally violated the requirements of the Section 8 program by failing to conduct marketing to the Latino community as required by the regulations and the Section 8 Handbook. CHA relied primarily on word of mouth to reach potential registrants for the program. CHA consistently failed to conduct outreach in the Latino community, as required by the Handbook and regulations, even though it recognized that Latinos were less likely to apply. Its failure began with the implementation of the program in 1976 and has persisted until today, though the period from 1976 (when the agency began to take registrations for the program) until 1985 (when the waiting list was closed) is the most problematic. Given that Latinos cannot now be added to the Section 8 family waiting list, there is no easy way to begin to redress this past discrimination.

The CHA has also failed to market its scattered site program in the Latino communities. The scattered site program was never intended to address discrimination in the Latino communities. From its inception, the Gautreaux case was an African-American discrimination case. The remedies, including the scattered site program and the certificate program, were seen as ways to integrate the African-American community into the white areas of the city. CHA never conducted any outreach for the clients; church bulletins; oral presentations to senior citizen groups and such organizations to reach "special segments of the locality's population"; posters in grocery stores and governments agencies; and supportive outreach assistance provided by social service organizations, religious organizations, housing counseling agencies, etc. The Manual suggests that the PHA should especially solicit referrals from agencies that deal with those families the PHA finds are less likely to apply. Id. at §3-4(d).

The Manual further stated that the "message should be presented in a manner suitable for the different segments of the eligible population, taking into account special ethnic or cultural circumstances, such as the use of the Spanish language in reaching families in Hispanic neighborhoods". Id. at §3-5(c). The Manual continues that "PHAs should also contact community organizations that may be able to provide interpreters for the application-taking process, if necessary." Id. at §3-6(c).

Finally, the Manual provided that the "PHA's best efforts must also be made to reach families identified as less likely to apply. Internal review procedures should be established which enable the PHA to analyze the effectiveness of each of its outreach procedures." Id. at §3-7 (emphasis added).

63. See text accompanying supra note 58.
64. Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907 (N.D. Ill. 1969). All of this happened when the world was seen by many, as it is still seen by many, as black and white.
65. Gautreaux v. Landrieu, 523 F. Supp. at 672. In fact the discussion in the opinion is of white
scattered site program; after all, 25% of the people to be housed by the program were project transfers who were already living in CHA housing, 25% were to come from the CHA conventional waiting list and 50% were people on the CHA waiting list that happened to live in the community where CHA was building its new units. CHA was ordered to begin conducting outreach for its community waiting list in 1990, which led it to change the definition of that list. At that time, a number of community groups began putting pressure on CHA to contract with community groups to do its outreach. CHA had agreed to change its definition of the community waiting list after receiving pressure from Latino community groups, specifically Latinos United and Latino elected officials. Many in the Latino community saw it as the only way to get Latinos housed in the scattered site units that were beginning to be built in the Latino communities.

Until recently, with the exception of a few instances, CHA conducted the marketing and rental of most of these units. Even when it began contracting with more private developers to manage and rent the units, CHA failed to take into consideration the need to market the units to Latinos and others underrepresented in the agency’s housing programs. However, some positive developments occurred in the scattered site program when CHA began contracting the management of a few of the scattered site units to Latino housing organizations.

and non-white areas, but an analysis of the census tracts reveals that the term “minority” is used to mean African-American.

66. Gautreaux v. Chicago Housing Authority, supra note 51.

67. Meeting of August 16, 1990 with Vince Lane, Executive Director of CHA, legal counsel for CHA, representatives from Hispanic Housing Development Corporation, Latin United Community Housing Association, Latinos United, counsel for plaintiffs in Latinos United suit and Gautreaux suit, then Alderman Luis Gutiérrez, Illinois State Senator Jesus Garcia, and author. See also sources cited supra note 3.

68. See sources cited supra note 56.

69. Some of CHA’s scattered site units have been managed by the Housing Resource Center, a non-profit community organization, for some time. See Chicago Tonight (television broadcast, July 24, 1990). See also HUD FINAL INVESTIGATIVE REPORT for period of Nov., 1969-June 21, 1991, at 21 [hereinafter “HUD FINAL INVESTIGATIVE REPORT”]. Other units had been privately managed, but some of these units had not been well-managed. In 1990, CHA began contracting with other private managers to market and manage its scattered site program.

70. See HUD FINAL INVESTIGATIVE REPORT at 33-41, supra note 69. This report on the Chicago Housing Authority was conducted in response to conversations between Latinos United and HUD over the lack of access by the City’s Latino community to the CHA’s housing programs. See also LATINOS UNITED supra note 3, at 6.

71. There was a general perception that the Housing Resource Center units were well-managed. There was also probably some pressure from the Gautreaux lawyers to have the units privately managed. Generally, there was a perception that CHA was not a very good property manager. In the early 1990’s, CHA chose Hispanic Housing Development Corporation, one of the housing developers working in the
The most significant source of CHA's problems with outreach in the Latino community is the conventional housing program, which encompasses a large number of units and is the oldest of these programs. As discussed above and decided in Gautreaux, CHA's discrimination against the African-American community has contributed to the perception in the City that the agency's housing is only available to the African-American community. Since an overwhelming percentage of the conventional housing developments for families are in African-American communities, and because of the CHA's historic neglect of the Latino community, the Latino community sees the programs of the CHA as only for the African-American community. Under the regulatory approach advanced by HUD, CHA had a legal, as well as a moral, obligation to market its programs to other communities. CHA's failure to market its programs within the Latino communities has further contributed to the Latino community's perception that CHA focuses exclusively on the housing needs of the African-American community.

Another factor that exacerbates this perception is the segregated nature of the City. Chicago has one of the greatest degrees of racial segregation among major metropolitan areas. In 1980, over 80% of the public housing units were located in just eleven community areas (out of 77). Of these units, 69% were located in 16 areas with populations over 73% African-American. Very few Latinos live in even those CHA developments that are in close proximity to Latino neighborhoods. In 1980, six conventional family developments were situated close to Latino neighborhoods and four of those had a fair number of Latino residents. No Latinos lived in the other two developments, though the authors of the Latino Institute study

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73. SQUIRES, supra note 2, at 106.

74. LATINOS IN METROPOLITAN CHICAGO, supra note 13.

75. Id.

76. Id.

77. Lathrop Homes, Lawndale Gardens, Bridgeport and Trumbull Homes had Latino populations of about 25%. Id.
suggested the possibility of Latinos living in these developments since Latinos live nearby. These statistics provide further evidence of how the lack of outreach efforts, the lack of visibility and housing information in the community furthers the lack of participation by the Latino community.

Access by Latinos to public housing has also been hampered by language barriers. The CHA does not translate its applications, forms, pamphlets, letters or any of its other documents. None of its publications are in Spanish or target the Latino community. The agency communicates with all of its tenants and prospective tenants only in English. It has no way to designate whether an applicant is limited-English proficient. It has no policy to employ bilingual telephone operators; it has no policy to provide bilingual communication for registrants, applicants or tenants. As a result, anyone who is limited-English proficient must get an interpreter every time she or he wants to deal with the CHA or any time she or he receives any correspondence from the CHA. Even purges of the various waiting lists are conducted in English. These facts make the agency inaccessible to those Chicagoans who cannot communicate well in English.

In its recent investigative report, HUD found that CHA violated Title VI by failing "to provide Spanish-speaking persons to conduct eligibility and suitability interviews with limited or non-English-speaking Hispanic persons, and placing the burden on these applicants to provide their own interpreters or run the risk that their inability to give or receive information may impede their opportunity to obtain housing." HUD also found that CHA’s “failure to provide adequate Spanish language telephone services” to non-English-speaking Latinos was a violation of Title VI. Finally, HUD found that CHA’s failure to provide written materials, letters, notices and other forms of written communication in Spanish violated Title VI.

78. Id.

79. See HUD Final Investigative Report, supra note 69. This is as true today as it was in 1976. CHA acknowledged its failure to provide materials in Spanish and target the Latino community, but has agreed to do so in a consent decree with Latinos United of June 21, 1996. Latinos United v. Chicago Housing Authority, No. 94-C-1229 (N.D. Ill. July 13, 1995) (order approving consent decree).

80. Of the 2.5 million people over age 5 living in Chicago in 1990, 446,598 spoke Spanish and 238,389 did not speak English very well. Almost 10% of the City’s population spoke Spanish and did not speak English well. This does not include people who did not speak English well and spoke other languages, such as Polish, any Asian language, etc. 1990 U.S. Bureau of the Census, Census of Population and Housing, Selected Social Characteristics: City of Chicago, Illinois.


82. HUD Final Investigative Report at 33, supra note 69, at 33.

83. Id.

84. Id.
Finally, another factor contributing to the lack of Latino access to public housing units is employment at the Authority. Few of the agency’s employees are Latino.\(^{85}\) The agency also has no policy to place bilingual employees in positions that have contact with current tenants (for example, security, janitors or management offices for the developments) or potential tenants (offices that take registrations or interview registrants).\(^{86}\)

What then are some possible ways to resolve the lack of access by Latinos to government-funded public and subsidized housing programs in the City of Chicago? In 1994, a group of Latino individuals and community organizations sued the Chicago Housing Authority and the U.S. Department of Housing and Urban Development in federal court.\(^{87}\) The plaintiffs allege that CHA and HUD discriminated against Latinos in the administration of the various housing programs. Almost immediately after the lawsuit was filed, settlement negotiations started between the plaintiffs and HUD and CHA. Negotiations with HUD proceeded at a faster pace.

A consent decree was entered into by the plaintiffs and HUD, and was approved by the District Judge on July 13, 1995.\(^{88}\) The consent decree provides, among other things, for a special allocation of 500 five-year Section 8 vouchers to be used by Latinos. The consent decree further provides for $1.1 million to fund outreach and counseling.

The Latinos United/HUD consent decree, although increasing Latino participation in the Section 8 program by 500 households, from the approximately 170 households in 1990,\(^{89}\) does not approach the magnitude of the Gautreaux consent decree. The Gautreaux decree provided for the

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85. Only 4.2% of CHA employees were Latino in 1992. KEYS TO IMPROVED LATINO HOUSING, supra note 21, at 17.

86. CHA admits this as well, and agreed to do this in the consent decree with Latinos United. See Order, supra note 79. See also note 3 supra, at 5.

87. Latinos United v. CHA et. al., No. 94-C-1229 (N.D. Ill.). The plaintiffs alleged that CHA and HUD discriminated against Latinos in violation of the Fair Housing Act, 42 U.S.C. § 3601 et seq.; U.S. CONST. amend. V and XIV; Title VI, 42 U.S.C. § 2000d; and 42 U.S.C. §§ 1981, 1982, and 1983. The lawsuit is the culmination of efforts begun by the Latino community in the early 1980’s. In 1983, the Housing Monitoring Committee of Mayor Harold Washington’s Advisory Committee on Latino Affairs published a report highlighting the underrepresentation of Latinos in CHA’s various housing programs. In the mid-1980’s and again in the late 1980’s, members of the committee began discussions with CHA, including then directors Zirl Smith and Vincent Lane respectively, and HUD. The discussions centered around ways CHA and HUD could better promote their programs in the Latino communities. Although CHA had previously agreed to translate its documents and have bilingual employees available to deal with applicants and callers, it had failed to take even these simple steps. More important to the communities were the Section 8 waiting list, which was closed, and the marketing of the programs, including the scattered site program. Maudlyne Ihejirika, Lawsuit Says CHA Keeps Latinos Out, CHI. SUN TIMES, Feb. 28, 1994, at 6.

88. See Order, supra note 79.

89. LATINOS UNITED, supra note 3, at 10.
The Latinos United consent decree was entered into in another political climate—a time when the federal government's commitment to cities is shrinking and when there are proposals to totally eliminate HUD's role in cities.91

The HUD consent decree did not provide sufficient access to subsidized housing programs by Latinos in the City of Chicago. Other changes need to take place within CHA, HUD, and the various subsidized and public housing programs. These include site selection, employment, outreach, language issues, and the waiting lists.

With the approval of the CHA consent decree by the District Judge on June 21, 1996, the Latino community in Chicago came one step closer to meaningful access to public housing programs. The consent decree provides for translation of forms and telephone messages, bilingual staffing, updating of waiting lists, marketing, and outreach and the creation of a remedial Section 8 waiting list.

The single biggest problem with creating any change in the Section 8 program had always been the waiting list. Since the list was closed in 1985, any attempts to change the list potentially would interfere with the interests of the people whose names have been on the waiting lists for over ten years.92 The great majority of those on the list are African-Americans.93 Yet, this program also is appealing to the Latino community as it offers great flexibility by allowing participants to find an apartment wherever the certificate is accepted. Presumably, Latinos could live in affordable units in their own communities. Since so few Latinos were on the list or held certificates or vouchers, however, these programs had offered only limited alternatives. Other possible solutions were to eliminate the list altogether and start over again, to create a separate list for Latinos and intersperse them in some way, or to provide an additional allocation of certificates and/or vouchers that would be given to Latinos. All of these solutions had their own problems attached to them.

90. The Gautreaux consent decree provided, among other things, that HUD would set aside contract authority for (1) at least an additional 150 Section 8 housing units per year; (2) 350 additional Section 8 new construction and/or substantial rehabilitation units per year; and (3) not less than $3 million in reallocated Community Development Block Grant funds for the City. Gautreaux, 523 F. Supp. at 674-78.

91. See generally H.U.D. REINVENTION BLUEPRINT (Dec. 19, 1994); Mike Doming, Congress Ready to OK Public Housing Overhaul, CHI. TRIB., March 27, 1994, § 1, at 4.

92. In 1995, CHA was giving vouchers and certificates to people who registered for the list in 1981. Registration for the Section 8 program closed in 1985. Assuming no additional certificates are assigned to CHA, it would have taken about five more years before all registrants receive certificates. If Latinos have to wait until the Section 8 waiting list is re-opened, how do Latinos, who would and could have been on the list during this time and those that would have been housed by now had they been on the list, get compensated?

93. HUD FINAL INVESTIGATIVE REPORT, supra note 69, at 8-9.
CALL FOR FAIRNESS

Eliminating the list and starting over did not appeal to anyone who has been waiting for their registration number to come up for over fourteen years. This approach had some advocates, given that the list was so old, many people had moved and CHA did not know how to reach them, and the list had not been purged in a long time.94 Creating a new list of Latinos and giving them certificates or vouchers, either through a separate allocation or by bumping ahead of others on the list, had the potential of burdening those who had been waiting their turn so many years. An attempt by the Latino community to advocate for a greater share of the Section 8 program had the potential of being viewed by the African-American community as an attempt to take the most attractive program and not pay the price that the African-American community has paid by living in public housing. A special allocation of certificates and/or vouchers was unlikely to subsidize enough units to bring the Latino population in the city anywhere given the political climate during the negotiations. In addition, since the majority of those on the waiting lists were African-American, some of these proposals had the potential of creating greater tension between the Latino and African-American community. However, the Latino community did not see any other solution to remedy the long-standing exclusion of Latinos from the Section 8 program. The waiting list had to be changed if Latinos were to have any meaningful access within the foreseeable future. Even if CHA reopened the Section 8 waiting list and CHA conducted outreach to Latinos, the most that could be expected would be an increase in the proportion of Latinos on the waiting list, with no prospect of actual increased participation for some years to come.

The remedy provided in the consent decree requires that the Section 8 waiting list first be purged. Of course, this procedure will require the use of bilingual materials and access to Spanish-speaking personnel to ensure Latino registrants understand that they must respond if they wish to remain on the list. The second phase of a remedy for Latino exclusion from the Section 8 program requires the creation of a separate “Remedial Section 8 Waiting List” and the placement of these Latinos at various points on the waiting list, taking the place of those “purged” from the list. Those registrants would have to demonstrate that they were living in the City at some point during the period when the discrimination occurred—1975 to 1985—in order to show that they would have applied for the Section 8 program but for the discrimination. The registrants will be ranked according to the year in which they can demonstrate that they were in the City. A goal based on the percentage of Latinos eligible in a given year was established based on the Latino percentage of poverty-level Chicago residents for the

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94. CHA estimates that approximately 53% of those on the Section 8 waiting list that are called for appointments appear. Interview with Joyce Wade, supra note 38.
relevant year. Latinos will be slotted to fill the vacancies created by the purging of the waiting list, up to the percentage established as eligible in any given year.

This remedy would survive an equal protection challenge. To survive strict scrutiny, a racial classification must be a narrowly tailored measure that furthers compelling governmental interests.\textsuperscript{95} Courts have consistently held that units of local government have a "legitimate and substantial interest in ameliorating, or eliminating where feasible, the disabling effects of identified discrimination."\textsuperscript{96} This interest has been held to be compelling.\textsuperscript{97} The question becomes whether there is a "strong basis in evidence"\textsuperscript{98} for deciding that affirmative action is necessary to remedy "identified discrimination"\textsuperscript{99} by the government agency involved. Statistical disparities may demonstrate that a "strong basis in evidence" exists for concluding that remedial action is constitutionally justified.\textsuperscript{100} The statistical disparity between Latinos in CHA’s programs and eligible Latinos is prima facie evidence of discrimination.

In evaluating a proposed race-conscious remedy to determine if it is narrowly tailored, courts have considered: 1.) whether the proposed remedy is necessary to achieve the goal; 2.) what effects the proposed remedy will have on third parties; and 3.) the flexibility of the proposed remedy.\textsuperscript{101} The proposed remedy must first be the least intrusive way to accomplish the goal of eliminating past discrimination.\textsuperscript{102} There is no other way to remedy CHA’s past discrimination against Latinos in the Section 8 program—"slotting" is the least intrusive way. It is impossible to base any effort solely on marketing and recruitment because of the length of the waiting list. The effect of the remedy on third parties would also have to be considered. However, when "effectuating a limited and properly tailored remedy to cure the effects of prior discrimination, ... a sharing of the burden by innocent parties is not impermissible."\textsuperscript{103} The only burden imposed on third parties


\textsuperscript{98} Id. at 277-78.


\textsuperscript{100} See United Black Firefighters Association v. City of Akron, 976 F.2d 999, 1011 (6th Cir. 1992).

\textsuperscript{101} Paradise, 480 U.S. at 171.

\textsuperscript{102} See Wygant, 476 U.S. at 283-84.

\textsuperscript{103} Id. at 281.
by the proposed remedy is a modest increase in the amount of time such persons will have to wait for a certificate or voucher.104 No one will lose a certificate or a voucher. Similar remedies have been validated by the Sixth Circuit in the employment context.105 Finally, the remedy would have to be flexible and not impose rigid quotas. A "slotting" of Latinos in the Section 8 waiting list could thus withstand an equal protection challenge. While it does not provide full parity for Latinos, it goes a long way toward remedying past discrimination.

The scattered site program is in the best shape. According to CHA, this program has the highest participation rate by Latinos of any of the CHA programs.106 Yet, because of the way tenants are selected,107 Latinos only have access to these units when the building is located in the Latino communities. Since Latinos are under-represented in the conventional family housing program (both occupants and waiting lists), Latinos have only one way to benefit from this program. Even then, they are for all practical purposes excluded from 50% of the units. Any meaningful access, then, must address the conventional waiting list as well.

The conventional family program presents some of the greatest challenges. The conventional family developments are themselves segregated and for the most part are located in segregated communities. Even if an effort were made, it is likely that some developments will not ever have even a negligible Latino presence, and any effort expended to enlist Latinos in these developments is wasted. These developments are those that are not near any Latino community. The Robert Taylor Homes, for example, is the largest housing complex in the world, has a negative reputation, and is a very visible example of everything that has gone wrong with public housing in this country—the physical deterioration of the buildings, problems of drugs and crime, lack of jobs and education among its residents and the general concentration of poverty.108 However, other


106. LATINOS UNITED, supra note 3, at 9. Part of this may be due to the fact that a large portion of the units have been managed by private developers that had contact with community groups. In addition, units have been built in Latino communities in the recent past, increasing the likelihood that Latinos would make up a good portion of the 50% of the residents (the ones that come from the community waiting list). At least one of the private managers is a Latino housing development group with a long history of developing and managing affordable housing, Hispanic Housing Development Corp.

107. Tenants are selected according to the following formula: 50% from a community waiting list, 25% from project transfers and 25% from the conventional waiting list.

108. Taylor is so visible because its buildings form a line down the Dan Ryan Expressway, which travels south of the city's downtown area. Leon Pitt, Taylor Tenants Oppose Razing, CHI. SUN TIMES,
developments are near Latino communities and could be integrated, if there were a commitment and a plan to do so. The same can be said of elderly developments, since a number of these are in or near Latino communities. Still other developments are integrated and an effort needs to be made to keep them that way. One way to maintain this balance is to maintain bilingual employees in these developments, and to provide some of the programs outlined above.

No discussion of public housing in the City of Chicago can be complete without discussing prejudice, including that which exists between the Latino and African-American communities. While part of the reason for the lack of integration in CHA is due to the segregated nature of the City, the reality is that some of the blame must be borne by both communities as well. There is no denying that there are misunderstandings between the communities, which, after all, share different experiences. Some in the African-American community may view Latinos as wanting to benefit from the best programs without paying the price. This tension, though, is often exploited by the media and blown out of proportion.

It is troubling that Latinos are claiming their “fair share” at a time when resources appear to be shrinking, and thus the communities fight over what little is left. Energy devoted to dividing the two communities, however, is energy drained from the struggle that the two communities need to engage in


109. Working with fair housing organizations, a plan could be developed to integrate and provide services to tenants and prospective tenants in these developments. Specific buildings in these developments could be targeted. Outreach and education programs could be developed in an effort to assist the integration process.

110. Some developments, such as the Lathrop, Lawndale and Bridgeport Homes, have seen a decrease in the percentage of Latino families living in them. Compare LATINO INST., supra note 13, and Memo to Latino Coalition for Fair Housing based on data provided by CHA, by author (May 16, 1989) (on file with LA RAZA L. J.). This trend is problematic since it is near a Latino community and surrounded by areas that are revitalizing and gentrifying.

111. CHA must maintain the buildings that are integrated as well. While certain developments have been most problematic and therefore may need more attention, all developments need to be maintained.


113. The communities share similar experiences as well.

114. Even the headlines used by the media are overblown and do not reflect the reality of what is happening in the two communities. In fact, one could say that the articles and headlines are meant to incite tensions. See Maudlyne Ihejirika, Latinos, Blacks Draw CHA Battle Lines, CHI. SUN TIMES, March 7, 1994, at 1. In reality, the Latino community had been discussing the problems with Latino under-representation in CHA with members of the African-American community for quite some time; Maudlyne Ihejirika, City Targets Latino-Black Housing Rift, CHI. SUN TIMES, March 9, 1994, at 12.
together—the elimination of discrimination and poverty. This, of course, is a complex issue that requires "frank and open dialogues and joint efforts among members of minority communities aimed at fostering greater understanding, cooperation, collaboration and collective social action."\textsuperscript{115}

It must be understood that prejudice alone cannot explain the lack of Latino participation in public and subsidized housing programs. If prejudice were the only explanation, then we would expect Latinos to have flocked to the Section 8 program, where they could live in the communities of their choice and not necessarily in areas near African-Americans.

The issue of public housing in Chicago is further complicated by two recent developments—the take-over of the CHA by HUD and plans to demolish a number of the public housing units. In May, 1995, CHA's board resigned in anticipation of a federal take-over of the agency.\textsuperscript{116} HUD was said to have grown impatient with CHA's inability to improve the bleak conditions in public housing.\textsuperscript{117} It is still unclear what long-term impact this take-over will have on CHA or public housing in the City.\textsuperscript{118} In addition, plans are under way to demolish parts of some developments.\textsuperscript{119} The demolition of these units will not require a unit-for-unit replacement. As a result, public housing units will be lost in the City. In addition, many of the tenants will be offered Section 8 certificates to relocate. These certificates are likely to come from the pool of certificates that would otherwise go to those on the Section 8 waiting list.\textsuperscript{120} This will also reduce the number of certificates that are available to those already on the list, and presumably to Latinos should the current configuration of the list ever change.

\begin{footnotesize}
\begin{enumerate}
\item[115.] John J. Betancur and Douglas C. Gill, Understanding Black/Latino Conflict and Concerns (unpublished manuscript, on file with the author).
\item[118.] At first, negotiations between Latinos United and CHA were prolonged because of the take-over. For some time, it was not clear who was in charge. The new Board and Executive Director had to be named, and they were not named immediately.
Public housing is generally under siege throughout the country. In the City of Chicago, public housing faces many problems. Many of the buildings, after many years of deferred maintenance, are in disrepair. See \textit{CHA Reeling from Years of Maintenance Neglect}, supra note 35. The perception is that crime in the developments is high.
\item[120.] Graeme Zielinski and Ben Grove, \textit{Section 8 List May Change, CHA High-Rise Tenants Could be Placed at Top}, CHI. TRIB., August 4, 1995, § 2, at 1.
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CHA's attitude toward language minorities will also have to change if Latinos are to have greater access to public and subsidized housing. HUD has found that CHA violated Title VI by communicating with non-English-speaking persons only in English.\footnote{121} In a number of instances, however, courts have found that governmental agencies are not bound to communicate in Spanish.\footnote{122} Though CHA's language inaccessibility alone may not be actionable, CHA has a moral obligation to ensure that language minorities have access to their programs.\footnote{123}

The lack of access by the Latino community to subsidized housing programs in the City of Chicago is a complex problem. The Latino community has a demonstrated need for these programs despite its historical exclusion. CHA and HUD have failed to recognize the lack of access faced by the Latino community. Substantial changes must take place within both agencies in order for there to be meaningful access in the future.

In order to maximize Latino access to public housing, future siting of public housing should place a proportionate share of units in the Latino communities. CHA will have to market its programs in the Latino communities, through Spanish-language media and community organizations. Latino employment at CHA will have to increase.\footnote{124} CHA

\footnote{121}{See HUD FINAL INVESTIGATIVE REPORT, supra note 69, at 33.}

\footnote{122}{In the public housing context, one court has found that a notice of a tenancy termination hearing did not have to be in Spanish. Vialez v. New York City Housing Authority, 783 F. Supp. 109 (S.D.N.Y. 1991). The case discusses the many decisions dealing with the language issue that were decided previously. Courts have found no equal protection violation in the Secretary of Health and Human Services' failure to provide Spanish language forms and services. Soberal-Perez v. Heckler, 717 F.2d 36 (2nd Cir. 1983). The court found the classification that is made by the failure to provide services in Spanish is one based on language—English-speaking versus Spanish-speaking persons—and not on the basis of race or national origin. \textit{Id.} at 41. The court went on to say that it is not difficult "to understand why the Secretary decided that forms should be printed and oral instructions given in the English language: English is the national language of the United States." \textit{Id.} at 42. In deciding that the Secretary's actions bore a rational relationship to a legitimate governmental purpose, the court stated that "(w)e need only glance at the role of English in our national affairs to conclude that the Secretary's actions are not irrational." \textit{Id.}

A rule placing the burden of diligence and further inquiry on the part of non-English speaking persons does not violate the due process clause. \textit{Id.} at 43. Court notices in English given to persons not literate in English have also been found not to violate due process or equal protection guaranties. Commonwealth v. Olivo, 337 N.E.2d 904 (1975). Due process and equal protection have not been found to require notice or proposed termination or reduction in AFDC (Aid to Families with Dependent Children) benefits. Guerrero v. Carleson, 109 Cal.Rptr. 201 (1973).}

\footnote{123}{The consent decree between CHA and Latinos United provide for communication in Spanish, including the translation of forms, letters and other materials. \textit{See Order, supra note 79.}}

\footnote{124}{Latino employment in CHA is further complicated by the move in government, and specifically at CHA, to privatize certain functions. Many of the scattered site units are already privately managed. CHA has already chosen a private manager for its Section 8 program and is looking at ways to privately manage other programs. Flynn McRoberts, \textit{Section 8 Manager is Chosen}, CHI. TRIB., Oct. 4, 1995, § 2, at 1. As services are privatized, it is unlikely that CHA will be adding Spanish-speaking employees. What is more likely to happen is that CHA will be laying off employees that will be replaced by the private companies.}
will have to develop a policy that every department that deals with the public will have Spanish-speaking employees. Finally, the waiting lists will have to change. Without a change in the waiting list, the fastest growing segment of the City’s population will lack the access it so desperately needs to the ever-shrinking public and subsidized housing programs. In order for the Latino community to have meaningful access to subsidized housing in the City of Chicago, CHA and HUD must realize that the Latino community in the City exists and that they have an obligation to meet the community’s housing needs.