

U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON THE CONSTITUTION  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS  
SECOND SESSION

—————  
JULY 26, 2012  
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**Serial No. 112-150**

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Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

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U.S. GOVERNMENT PRINTING OFFICE

75-312 PDF

WASHINGTON : 2013

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**U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION**

**THURSDAY, JULY 26, 2012**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON THE CONSTITUTION,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 9:38 a.m., in room 2141, Rayburn Office Building, the Honorable Trent Franks (Chairman of the Subcommittee) presiding.

Present: Representatives Franks, Chabot, King, Jordan, Nadler, Conyers, and Scott.

Staff present: (Majority) Dan Huff, Counsel; Sarah Vance, Clerk; (Minority) David Lachmann, Subcommittee Staff Director; and Veronica Eligan, Professional Staff Member.

Mr. FRANKS. Good morning, and we welcome you to this Constitution Subcommittee Civil Rights Division oversight hearing.

Without objection the Chair is authorized to declare a recess of the Committee at any time.

Last year marked the 150th anniversary of the Civil War. It was a chance not only to reflect on the horror of institutionalized slavery, but a reminder to all free people never to cast doubt on the humanity of any of our fellow human beings. And to take solace in at least the redeeming recognition that we fought our bloodiest war to end that tragedy.

Today our soldiers again risk their lives for human freedom beyond our borders. As election 2012 nears, the division's voting section must ensure that those defending democracy abroad can participate in it at home.

There are approximately two million military voters, many in combat zones with limited access to ballots. Accordingly, in 2009, Congress passed the Military and Overseas Voter Empowerment Act, the MOVE Act, which requires States to mail absentee ballots to all military voters at least 45 days before a Federal election. In an April 18 hearing before this Subcommittee, the non-partisan Military Voter Protection Projects expert testified that inadequate enforcement of the MOVE Act in 2010 disenfranchised thousands of service members.

This year, it is imperative that the Justice Department address violations early, negotiate strong settlements that deter repeat offenses, and work with the Defense Department to ensure military recruitment centers and bases offer opportunities to register or request ballots, as required by law.

Unfortunately, the Justice Department seems unconcerned about low registration rates at military recruiting centers, even though it has aggressively sued States it thinks registers insufficient numbers of people at welfare offices. Similarly, it must demand better results from voter assistance offices on military installations.

In North Carolina, there are 110,000 active duty military and spouses in the State, but only 1,860 requests for absentee ballots have been processed. A hundred and ten thousand active duty military spouses, but 1,860 requests for absentee ballots have been processed. In Virginia, out of 140,000, there have been only 874 requests processed. Either the military voting rate averages 1 percent or there is a systemic problem evident that almost certainly falls on the Civil Rights Division.

The Justice Department should also insist on express mail where necessary to ensure military ballots are returned in time. The voting section regularly imposes far heavier costs on jurisdictions, for example, demanding bilingual ballots even for naturalized citizens who identify speaking English well. The voting section needs to make a first priority of protecting service members' right to vote for those who have expressed and demonstrate a first priority in protecting all of us.

Indeed, it is seeking headlines opposing voter ID laws that an overwhelming majority of Americans support. The Civil Rights Division is so desperate to block these laws, it has embarrassed itself in court. DOJ's case against the Texas voter ID law is based on data provided by a Democratic data firm, whose stated mission is to cater to progressives. It seems progressive means Democrat. Then at the trial, the judges expressed shock that DOJ forbade its expert from counting passports or military IDs in estimating how many Texas voters lacked photo ID.

There is no excuse for failing to accept a government-issued military ID, and the public deserves an answer for this today.

Further, partisan bias is clear in the division's National Voter Registration Act enforcement. It aggressively sues States under the NVRA for not registering enough voters at welfare offices, but it has not brought a single case to enforce NVRA's requirement that States maintain accurate voter lists to fight fraud.

When Florida tried to comply voluntarily by removing non-citizens from its voter rolls, DOJ rushed to court to stop them. DOJ, of course, lost. Over the local NAACP's objections, DOJ forced Dayton, Ohio to lower the passing score on its police recruitment exam to increase diversity, even though Federal law explicitly prohibits altering the results of employment-related tests on the basis of race. It appears the division is breaking the law.

Further, the Civil Rights Division reads Section 4(e) of the Voting Rights Act as requiring taxpayers to pay for costly bilingual ballots, even though the legislative history is clear that 4(e) merely exempts voters educated in Puerto Rico from once prevalent literacy tests.

I guess I could go on, but I will stop there and look forward to your explanation of why laws do not appear to be faithfully executed at DOJ as required by law.

And with that, I would now yield to the Ranking Member for his opening statement.

Mr. NADLER. I thank the Chairman. Today the Subcommittee continues its oversight of the Civil Rights Division of the Department of Justice. With the authority to enforce this Nation's civil rights laws, the division is the guardian of our fundamental values—freedom of religion, the right to be treated fairly, the right to cast a vote in a free and fair election, the right to a job, the right to a home, the right to an education, and with the enactment of the Hate Crimes Prevention Act, the right to live one's life free from the threat of violent hate crimes.

It is especially auspicious that we are meeting today on the 22nd anniversary of the enactment of the Americans with Disabilities Act. That legislation was the result of a bipartisan commitment to the rights of the disabled, and I am pleased to note the work of the Disability Rights Section in making the promise of the ADA a reality.

As our Subcommittee has documented, the division was deeply troubled during the Bush years. As with other parts of the Justice Department, career civil rights attorneys were routinely overruled on legal matters by political appointees. Hiring was illegally politicized. Enforcement was, in some key areas, grossly neglected. And morale was as bad at any time since the division's establishment. The loss of dedicated career staff was alarming.

President Obama signaled a new era by appointing as Assistant Attorney General Tom Perez. He is a career civil rights lawyer, and he has been working hard to rebuild a division that had lost many of its dedicated career attorneys, and that had become dangerously politicized.

In addition to the historically challenging work of the Civil Rights Division, he has been rebuilding a decimated and demoralized office, and he has done so while dealing with such monumental tasks as the decennial redistricting.

The division has an important story to tell, and I hope that we will have the opportunity to review that work. Whatever the politics, the career staff of the Justice Department has worked hard to meet the civil rights challenges of today.

What is most distressing is that some of the same people who undermined and discredited the Civil Rights Division while they were there have now made a career of making false allegations against the division. The allegations all have the same subtext, that the division is being used to favor minorities to the detriment of Whites. What they really mean is that the division is now making an honest effort to enforce in an evenhanded manner our civil rights laws, laws which they really do not like. It is a Willie Horton campaign pure and simple.

I am especially concerned about efforts around the country to rob duly qualified Americans of their right to cast a vote in a free and fair election and to have their vote counted. We have seen the enactment of various devices having the purpose and effect of preventing people from exercising their right to vote under the pretext of protecting the integrity of elections.

These efforts are not without precedent in our country. In the past, literacy tests, grandfather clauses, and poll taxes have been used to keep out of the polls citizens whose voices those in power did not particularly want to hear. In our day, purges of voter rolls,

which include the removal of voters we know for a fact are qualified, the requirement of particular voter IDs that we know some segments of the population are less likely to possess, and other such devices are being implemented around the country.

The pretext, and there is no other word for it, that we are interested in preventing fraud has never stood up to scrutiny. Even now where a voter ID law is being challenged in Pennsylvania, the State has already admitted in court that, and I am quoting here, "There have been no investigations or prosecutions of in-person voter fraud in Pennsylvania. The parties do not have direct personal knowledge of such investigations or prosecutions in other States. The parties are not aware of any incidence of in-person voter fraud in Pennsylvania, and do not have direct personal knowledge of in-person voter fraud elsewhere. Pennsylvania will not offer any evidence in this action that in-person voter fraud has, in fact, occurred in Pennsylvania or elsewhere. The Commonwealth will not offer any evidence or argument that in-person voter fraud is likely to occur in November 2012 in the absence of the voter ID law."

I ask unanimous consent to place the July 12, 2012 stipulation from *Vivian Applewhite v. Commonwealth of Pennsylvania* into the record.

Mr. FRANKS. Without objection.

[The information referred to follows:]

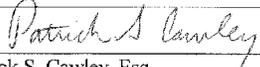
IN THE COMMONWEALTH COURT  
OF PENNSYLVANIA

Viviette Applewhite, et al.,	)	
	)	
Petitioners,	)	
v.	)	
	)	Docket No. 330 MD 12
The Commonwealth of Pennsylvania, et al.,	)	
Respondents.	)	

**STIPULATION**

Petitioners and Respondents, by and through their undersigned counsel, hereby stipulate as follows:

1. There have been no investigations or prosecutions of in-person voter fraud in Pennsylvania; and the parties do not have direct personal knowledge of any such investigations or prosecutions in other states;
2. The parties are not aware of any incidents of in-person voter fraud in Pennsylvania and do not have direct personal knowledge of in person voter fraud elsewhere;
3. Respondents will not offer any evidence in this action that in-person voter fraud has in fact occurred in Pennsylvania or elsewhere;
4. The sole rationale for the Photo ID law that will be introduced by Respondents is that contained in Respondents' Amended answer to Interrogatory 1, served June 7, 2012.
5. Respondents will not offer any evidence or argument that in person voter fraud is likely to occur in November 2012 in the absence of the Photo ID law.
6. Neither the Governor nor the Attorney General will testify at the hearing on this matter.

By: 	By: 
Patrick S. Cawley, Esq. Senior Deputy Attorney General Civil Litigation Section 15th Floor, Strawberry Square Harrisburg, PA 17120 Attorney for Respondents	Jennifer R. Clarke Public Interest Law Center of Philadelphia 1709 Benjamin Franklin Parkway, 2nd Floor Philadelphia PA 19103 Attorney for Petitioners

Date: July 12, 2012

Mr. NADLER. Thank you. So why have the voter ID at all? The answer comes from the Pennsylvania House Republican Leader Mike Turzai, who recently told the Republican State Committee to raucous cheers that voter ID will allow Governor Romney to win Pennsylvania. In rattling off a laundry list of accomplishments made by the GOP run legislature, he said, "Voter ID, which is going to allow Governor Romney to win the State of Pennsylvania, done." Can we go to the video, please?  
[Video shown.]

Mr. NADLER. So I do not think it goes too far to demand the Civil Rights Division give close and careful scrutiny to any voting changes likely to or intended to disenfranchise votes.

There is clearly a national strategy to disenfranchise voters for partisan political purposes, and it is the most widespread and aggressive such campaign since the Jim Crow era. If our civil rights laws mean anything, and I know that not all Members joined the overwhelming bipartisan majority in voting to extend the Voting Rights Act, then it must be that we have an obligation to protect the right to vote. Too many Americans have given their lives around the world and here at home for us to allow it to be taken away.

I am also concerned about the use of police power in cities around the country, including my own city of New York. The police must use all the tools available to make our communities safe, and I can report that New York's finest do an outstanding job under sometimes very difficult circumstances. But they must obey the law and the Constitution and respect the rights of the communities they are sworn to serve.

Policies such as NYPD's stop and frisk policy would seem to have crossed that line. The vast majority of individuals who are stopped have done nothing wrong and are sent on their way. These people are also disproportionately from communities of color, and those communities now feel that they are under siege rather than being protected.

I know that the Department of Justice just announced a historic settlement with the New Orleans Police Department. It is very much to the division's credit that it has seen this important case through to its resolution. I hope to hear from Assistant Attorney General Perez about the division's efforts to ensure that those charged with enforcing the law all around the country are themselves complying with it.

I am pleased to join you, Mr. Chairman, in welcoming Assistant Attorney General Perez, and I look forward to his testimony. Thank you. I yield back.

Mr. FRANKS. I thank the gentleman. And without objection, other Members' opening statements will be made part of the record.

Assistant Attorney General Thomas Perez is here today to testify before the Constitution Subcommittee, and, Mr. Perez, I thank you for being here with us this morning.

Mr. PEREZ. It is an honor to be here.

Mr. FRANKS. Mr. Perez became the Assistant Attorney General for the Civil Rights Division on October 8th, 2009. Prior to becoming the Assistant Attorney General, he served as the Secretary of Maryland's Department of Labor, Licensing, and Regulation.

Mr. PEREZ has spent his entire career in public service, serving as a career prosecutor in the Civil Rights Division, and then as a deputy assistant attorney general for the division. He went on to serve as director of the Office for Civil Rights at the Department of Health and Human Services. In addition to his extensive Justice Department service, he has also served as special counsel to the late Senator Edward Kennedy.

Mr. PEREZ is a graduate of the Harvard Law School and holds a bachelor's degree from Brown University and a master's in public

policy from the Kennedy School of Government. He resides in Maryland with his wife and 3 children.

Assistant Attorney General Perez, we look forward to hearing your testimony today. And again, I welcome you to the hearing.

Mr. Perez's written statement will be entered into the record in its entirety. And I would ask you, Mr. Perez, to summarize your testimony in 5 minutes or less. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you will have 1 minute to conclude your testimony, and when the light turns red, it signals that your 5 minutes have expired.

Before I recognize the witness, it is the tradition of this Subcommittee that he be sworn. So if you would stand, sir, to be sworn.

[Witness sworn.]

Mr. FRANKS. Thank you. Now I recognize Mr. Perez for 5 minutes, and do not forget that microphone button. Everybody has trouble with that.

**TESTIMONY OF THE HONORABLE THOMAS E. PEREZ, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE**

Mr. PEREZ. Thank you very much, Chairman Franks, Ranking Member Nadler, and Members of the Subcommittee. Thank you for allowing me to come and testify before this Committee.

In the year since I last appeared before the Subcommittee, the Civil Rights Division has continued our vigorous fair and independent enforcement of civil rights law. It is indeed fitting that I come to you today on the 22nd anniversary of the ADA, a landmark law that represents a bipartisan tradition of even-handed civil rights law enforcement. Twenty-two years ago, I was proudly working in the Civil Rights Division as a career attorney under Attorney General Thornburgh.

I want to thank the former Chairman of this distinguished Committee, Chairman Sensenbrenner of Wisconsin, and his wife's unwavering commitment to disability rights. I also commend him for his leadership in the most recent reauthorization of the Voting Rights Act.

Civil rights indeed has a strong bipartisan history and tradition in this Committee, in this Congress, and across America. Thanks to the talented career attorneys, professionals, and support staff who work in the division, we continue to achieve great successes in protecting the civil rights of all individuals. And let me give you a few examples.

Two days ago in New Orleans, the AG announced the filing of a compliant and consent decree in the most sweeping police reform case in the department's history. This decree serves as a comprehensive blueprint for a sustainable reform, and we are handling more cases of this nature than at any time in our history.

In the last Fiscal Year, the division filed hate crime charges that resulted in the convictions of 39 defendants, which was the largest number in more than a decade. In the last 4 Fiscal Years, we brought more human trafficking cases than in any other 4-year period in the department's history. In the last 4 Fiscal Years, our ap-

pellate section has filed more amicus briefs than any other 4-year period that I am aware of.

We handled 27 new voting cases in the last Fiscal Year. We have never handled more new cases in one Fiscal Year, that is until this Fiscal Year, which is not yet done, in which we have handled 36 new cases.

In the last 3 years, we participated in over 40 disability matters in 25 States to assist people with disabilities to live in community-based settings. We have worked with Republican and Democratic governors in Georgia, Virginia, and Delaware to dramatically expand opportunities for qualified individuals with disabilities to thrive in community-based settings.

We achieved the department's largest recovery in a sexual harassment lawsuit under the Fair Housing Act. In the last 8 months, the division has resolved the 3 largest residential lending discrimination cases in the department's history, including a \$335 million settlement with Countrywide Financial, a \$175 million settlement with Wells Fargo, and a \$21 million settlement with SunTrust Mortgage.

We reached an agreement with Colorado to provide interpreter services in court proceedings for individuals with limited English proficiency so they can meaningfully access the justice system. We are working with other States on this issue as well.

We have protected the rights of individuals to worship and assemble in accordance with their religious beliefs. Just last week, we obtained a court order under the Religious Land Use and Institutionalized Persons Act, or RLUIPA, directing Rutherford County, Tennessee to allow a mosque in the city of Murfreesboro to open. A few weeks earlier, a grand jury indicted an individual for making a threat against that mosque.

We aggressively enforce laws that protect the rights of service members. Since 2009, we filed 43 cases under the Uniform Services Employment and Reemployment Rights Act, USERRA, which exceeds the 32 cases filed under the previous Administration. And we obtained record relief under the Service Members Civil Relief Act for service members who have been victims of unlawful foreclosures.

We protected the voting rights of service members through the enforcement of the MOVE Act and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). We filed more cases in the 2010 election cycle than any other time in the enforcement of UOCAVA—14 matters, either lawsuits or settlements. This year, we have already filed for more—Alabama, California, Wisconsin, and Georgia—for noncompliance with the MOVE Act. And we have legislative proposals that we have offered to strengthen those protections.

I am very proud of these accomplishments which represent only a small fraction of our work. These cases are about real people and communities across this country who have been denied access to equal opportunity.

It is about the students in Anoka-Hennepin School District in Minnesota, or South Philadelphia High School, who were victims of pervasive bullying. One of the basic rights of every parent and student is that their student should be safe in school and have a safe,

nurturing learning environment. As a result of our landmark agreement, these students who have been subject to harassment can now feel safe and focus their energies on learning.

It is about helping the worker who was fired after telling her employer that it was wrong to deny jobs to U.S. citizens and workers with permanent work authorizations and give those jobs instead to people with temporary work visas. In some cases, we expand opportunity for a few people, while in others it may be hundreds, thousands, or even more. In all cases, we enforce the fairly, independently, and even-handedly.

This job is a sacred trust, and I am exceedingly proud of the work of the dedicated career professionals in the division. We have made great strides in expanding opportunity in a number of critical ways. Civil rights, however, remains the unfinished business of America, and we will continue to use all the tools in our arsenal so that all individuals enjoy the rights guaranteed by the Constitution and laws of the United States.

Thank you for this opportunity to be here, and I look forward to your questions.

[The prepared statement of Mr. Perez follows:]



## **Department of Justice**

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**STATEMENT OF  
THOMAS E. PEREZ  
ASSISTANT ATTORNEY GENERAL  
CIVIL RIGHTS DIVISION**

**BEFORE THE  
SUBCOMMITTEE ON THE CONSTITUTION  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES**

**OVERSIGHT HEARING ON THE U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION**

**PRESENTED  
JULY 26, 2012**

**Statement of Assistant Attorney General Thomas E. Perez**  
**Civil Rights Division**  
**United States Department of Justice**  
**Before the Subcommittee on the Constitution**  
**House Committee on the Judiciary**  
**July 26, 2012**

Chairman Franks, Ranking Member Nadler, and members of the Subcommittee, thank you for the opportunity to discuss the critical work of the Civil Rights Division of the Department of Justice. The Division's fundamental mission is to uphold the civil and constitutional rights of all Americans. In the year since I last appeared before this Subcommittee, we have continued to fulfill the promise of equal justice under law for all by vigorously and fairly employing the laws we are charged with enforcing. I am pleased to come before you today to discuss the accomplishments of the Division and its dedicated, hard-working corps of career lawyers and other professionals. It is especially fitting that I am appearing before you today – July 26 – the 22<sup>nd</sup> anniversary of the enactment of the Americans with Disabilities Act of 1990, the ADA. Not only is the Department of Justice fully engaged in enforcing this landmark law – efforts that I will discuss in my testimony – but, in addition, the Department's implementation and enforcement of the ADA and the ADA Amendments Act exemplify a proud, bipartisan tradition of fair and vigorous enforcement of the Nation's civil rights laws.

When I first appeared before this Subcommittee nearly three years ago, I emphasized the centrality of that tradition in my own career. I first came to the Civil Rights Division as a summer clerk under Attorney General Edwin Meese, and served as a career attorney during both Republican and Democratic administrations. I learned then what is now my solemn duty to uphold; no matter the President or the party, the mandate of the Civil Rights Division is clear: to enforce all – and I underscore all – of the civil rights laws under our jurisdiction fairly, independently, and in a nonpartisan fashion.

Our work is grounded in three basic principles:

- We expand opportunity in a number of ways through the enforcement of civil rights laws – the opportunity to learn; the opportunity to earn; the opportunity to live where one chooses, access the American dream, and move up the economic ladder of success.
- We preserve the fundamental infrastructure of democracy by protecting the right to vote and by ensuring that communities have effective and accountable policing; and
- We protect Americans so they can live without fear of exploitation, discrimination or violence.

I am very proud of the Division's work. We have stepped up enforcement in a wide range of critical areas. We do not measure our progress simply by the quantity of cases, although I am very proud that we have indeed set enforcement records in a number of areas. In addition, we have been involved in a host of cases that have enabled us to assist thousands of people for whom access to opportunity was elusive, and to effect systemic reform in a number of vital areas.

To take just a few examples:

- Last fiscal year, the Division obtained the convictions of 39 defendants on hate-crimes charges, the largest annual number in more than a decade. And in each of the last three fiscal years, the Division has brought more human-trafficking cases than in any prior year, with a total of 137 cases filed.
- In Fiscal Year 2011, the Voting Section handled 27 new cases, matching the 1994 level as the most new cases in a single fiscal year in 35 years. As of last week, the Voting Section has already exceeded that number for Fiscal Year 2012, handling 36 new cases.
- Last month, the Department obtained its largest-ever disability-based housing discrimination settlement: a \$10.5 million settlement to resolve allegations that a construction company based in Irving, Texas discriminated on the basis of disability in the design and construction of multifamily housing complexes throughout the United States.
- In May, the Department announced the largest recovery ever in a sexual harassment suit brought by the Department under the Fair Housing Act: three Manhattan landlords will pay \$2 million to their sexual harassment victims.
- In the past eight months, the Division has settled the three largest fair-lending cases in its history that addressed conduct during the housing boom. In December 2011, the Department announced its largest fair-lending settlement ever: a \$335 million settlement with Countrywide Financial Corporation (now owned by Bank of America) to resolve allegations of a widespread pattern or practice of discrimination against qualified minority borrowers. Earlier this month, the Department reached a settlement with Wells Fargo in which Wells Fargo agreed to pay at least \$175 million to resolve claims that it discriminated against qualified African Americans and Latinos in its mortgage lending. And in May, the Department reached a \$21 million settlement with SunTrust Mortgage to resolve allegations that it engaged in a pattern or practice of discrimination that increased loan prices for qualified African-American and Hispanic borrowers.

- In March 2012, the Division announced a major settlement to protect children from school bullying in the Anoka-Hennepin School District, Minnesota. The settlement provides compensation for the student plaintiffs and establishes a comprehensive plan for sustainable reforms that will ensure that students in the district are free from sex-based harassment.
- Under the current Administration, 43 cases have been filed under the Uniformed Services Employment and Reemployment Rights Act (USERRA), already exceeding the 32 USERRA cases filed in the entire four years during the previous Administration when the Division had USERRA jurisdiction.
- In addition to aggressively enforcing existing statutes – the Servicemembers Civil Relief Act (SCRA), and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) – that protect the civil rights of the men and women in uniform who serve our nation with great honor and dignity, the Division has developed legislative proposals that the Administration has submitted to Congress to strengthen these statutes so as to better protect the rights of our servicemembers.
- In the past year, we've resolved several investigations to ensure that limited English proficient individuals seeking state court services have meaningful access to language assistance services. In response to our investigations, both Rhode Island and Colorado have agreed to take important steps toward providing free and competent interpreter services in all criminal and civil proceedings and court operations.
- In January 2012, the Division reached agreement with the Commonwealth of Virginia to transform Virginia's system for serving people with intellectual and developmental disabilities from one that relies heavily on large, expensive institutions to one that is focused on safe, individualized, and cost-effective community-based services that promote integration and independence and enable individuals to live, work, and participate fully in community life. This is the latest of several systemic agreements implementing the Americans with Disabilities Act's integration mandate as articulated by the Supreme Court in *Olmstead v. L.C.* The agreement will provide relief for more than 5,000 Virginians with developmental disabilities and will have an impact on thousands more individuals who receive developmental disability services. The agreement will provide services through Virginia's home and community-based service Medicaid waiver to approximately 4,200 individuals who are on waitlists for community services and individuals transitioning from institutional settings over a ten-year period.

These accomplishments underscore our commitment to the fair, vigorous, and evenhanded enforcement of all of the laws under our jurisdiction. The talented, dedicated career attorneys, professionals, and support staff who work in the Division are committed to these principles, and they have done extraordinary work. My testimony represents only a fraction of this work, and the numbers themselves, while important, tell only a part of the story. The full

range of the Division's activities – which are conducted through a variety of means, including litigation, technical assistance, mediation and negotiation, monitoring, and outreach to stakeholders – are critical to protecting the civil rights of all individuals.

## **CRIMINAL ENFORCEMENT AND LAW ENFORCEMENT MISCONDUCT**

### *Hate Crimes*

Hate crimes enforcement is among the earliest of our responsibilities in the Civil Rights Division, and it remains one of the Administration's and the Department's top civil rights priorities. Regrettably, hate crimes remain all too prevalent in communities across the country today, but the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 has strengthened the Department's ability to prosecute hate crimes at the federal level.

As of the end of June, the Division has brought 11 cases involving 38 defendants under the Shepard-Byrd Act. Of those 38 defendants, 16 have been convicted and the other 22 are awaiting trial. But Shepard-Byrd is not the only hate crimes law under the Division's jurisdiction. In total, in Fiscal Year 2011 the Division obtained convictions of 39 defendants on hate-crimes related charges, the largest annual number in more than a decade. In the past three fiscal years (FY 2009-2011), the Division has prosecuted 15 percent more criminal civil rights cases than in the previous three fiscal years.

To give examples of the persistence of hate-fueled violence, in March of this year, I traveled to Jackson, Mississippi, to participate in the announcement of guilty pleas by three men convicted under Shepard-Byrd Act in connection with a brutal racially motivated murder of James Craig Anderson, an African-American man. In this tragic case, the defendants were driving around the streets of Jackson looking for unsuspecting African-Americans to assault. They observed Mr. Anderson in a hotel parking lot and proceeded to attack him, knocking him to the ground with a punch and continuing to assault him after he fell. One defendant yelled "White Power!" and then deliberately ran over Anderson with his truck, causing fatal injuries. This was not the defendants' first assault; they admitted that, on numerous occasions, they had used beer bottles, sling shots, and motor vehicles to injure African-Americans, targeting those they believed to be drunk or homeless and least likely to report an assault. Through close collaboration among the Department, the FBI, and local law enforcement, we put an end to the defendants' spree of racial violence, and brought Mr. Anderson's assailants to justice.

In April 2012, the Department indicted two men for kidnapping and assaulting a gay man because of his sexual orientation. This indictment marked the first charges for a violation of the sexual orientation provision of the Shepard-Byrd Act. The indictment alleges that on April 4, 2011, the two defendants enlisted two women to trick Kevin Pennington to get into their car, then kidnapped and assaulted Pennington because of his sexual orientation. If convicted, the defendants face a maximum penalty of life in prison for each charge.

*Human Trafficking*

Human trafficking – which is an affront to human dignity and goes against everything our country stands for – is a hidden crime that victimizes the most vulnerable among us. Like drug trafficking or gun trafficking, human trafficking also frequently involves complex international cartels. The Division continues to vigorously prosecute trafficking cases, and the Division brought more trafficking cases in each of the three fiscal years from FY 2009 through FY 2011 than in any prior year, with a total of 137 cases filed.

Just two weeks ago, a trafficker in Philadelphia whom we prosecuted was sentenced to prison for holding men and women in forced labor on commercial cleaning crews, using violence and threats to hold the victims under the control of this organized criminal network. Earlier this year, in Chicago, we obtained the conviction of a trafficker who preyed on young Eastern European women, using tattoos to brand them as his property, and then forcing them into service in massage parlors, extorting them with threats, and compelling some of them into prostitution.

We have also, in recent months, secured convictions of Mexican sex traffickers who preyed on young, undocumented women and girls on both sides of the U.S.-Mexico border, luring them with false promises, and then compelling them into sex slavery through beatings and threats. Through strong partnerships with the Department of Homeland Security and our Mexican law enforcement colleagues, we have been able to dismantle trafficking rings at their roots, using both U.S. and Mexico law.

The strength of our anti-trafficking efforts lies in the strength of our partnerships both within and outside of the federal government. For example, across the country, United States Attorneys are leading task forces that bring together federal, state, and local law enforcement partners and NGOs to increase our capacity to identify and assist victims and bring their traffickers to justice.

*Law Enforcement Misconduct*

We have great respect for the dedicated work of law enforcement officials who perform heroic service in the difficult job of protecting their communities. However, when officers abuse their power, they must be held accountable. Last August, the Division won convictions in a landmark case against five New Orleans police officers involved in shootings of civilians and an extensive cover-up that occurred in the wake of Hurricane Katrina. Five additional officers had previously pled guilty to charges related to the incident. To address systemic problems in the New Orleans Police Department, the Division conducted an extensive review of the department and is now working with city officials, the police department, and the community to develop a comprehensive blueprint for sustainable reforms.

Our work in New Orleans was just one of several efforts the Division has launched throughout the country to address systemic misconduct in police departments. We have 18 pattern or practice investigations underway nationwide, and are doing more work in this area

than at any time in the Division's history. Recently, we completed reviews of the Puerto Rico Police Department, the Seattle Police Department, and the East Haven (CT) Police Department. Our police pattern or practice work is guided by a commitment to protecting constitutional rights, promoting public safety, and increasing public confidence in law enforcement, and we will continue to pursue these aims.

We are now working with the jurisdictions to determine a path forward that ensures constitutional policing. A Division investigation is often not an easy thing for a police department to undergo, but across the nation the benefits have been real. In places such as New Orleans and Seattle our investigations have been catalysts for reform. Where we have identified a pattern of police misconduct, we have typically sought to negotiate agreements pre-suit with the departments involved. Less finger pointing and more problem-solving, fixing the problem and not fixing the blame has been our approach.

Law enforcement misconduct is a priority for this Division and our results show that we are continuing to make great progress. We have already exceeded the number of criminal "color-of-law" cases from the number we brought in FY 2011. We are also working on a record number of civil pattern or practice cases, presently 19. Seeing the benefit of our thorough and independent work, police departments and local government officials have been increasingly reaching out to us asking for us to determine whether their departments are engaged in constitutional policing.

#### **VOTING RIGHTS**

The Division is continuing to work vigilantly to enforce an array of critical voting rights laws. The Division's voting enforcement program seeks to ensure access to democratic participation for all legally qualified voters, and ensures equal opportunity to participate in the democratic process free from discrimination. We are pursuing those goals of ensuring access and guaranteeing non-discrimination through a comprehensive effort to enforce, among other statutes:

- Section 5 of the Voting Rights Act, and its pre-clearance provision, one of the most critical tools to combat discrimination in voting;
- The National Voter Registration Act (NVRA), which was passed by Congress to increase the number of eligible citizens who register to vote and to ensure accurate and current registration lists;
- The language minority protections of the Voting Rights Act, to ensure that language barriers do not exclude citizens from the electoral process;
- UOCAVA and the MOVE Act, protecting the right to vote for members of the armed services, their families, and overseas citizens; and

- Section 2 of the Voting Rights Act, and its protections against vote denial and vote dilution.

Our comprehensive approach towards these and other critical voting rights protections involves not simply litigation, but all the tools at our disposal, including guidance, public education, and outreach with a diverse array of stakeholders. Across multiple measures, the Division has amassed a prodigious record of fair and vigorous voting rights enforcement.

As of mid-July, the Division's Voting Section had already handled more new cases than in any fiscal year during at least the last 35 years, handling 36 cases including affirmative and defensive cases and amicus participation. This exceeds the high-water mark reached in Fiscal Year 2011, when the Division handled 27 new cases and matched the 1994 level. The Section opened 172 new investigations in Fiscal Year 2011, exceeding the number of investigations opened in any fiscal year during at least the last two dozen years.

In Fiscal Year 2011, the Division received 4,604 submissions for review under Section 5, including 660 redistricting plans. Overall, we anticipate that more than 2,700 plans will be submitted between the release of the 2010 Census data and the end of FY 2012. The Division has objected under Section 5 in 14 separate instances over the last ten months, including objections to the Texas and South Carolina voter ID laws, the Texas statewide redistricting plans, and other city- and county-level redistricting plans and election practices.

Section 5 of the Voting Rights Act has been subject to more constitutional challenges over the last two years than ever before – nine lawsuits in total, with four lawsuits now pending, including those filed by Florida and Texas. The Department recently achieved a significant victory when the D.C. Circuit Court upheld the statute. These cases are continuing and we will continue to defend the statute vigorously in each case.

In addition, the Division continues to review requests from covered jurisdictions for “bailout” from the requirements of Section 5. Under the statute, covered jurisdictions that believe their record of nondiscrimination in voting entitles them to be removed as a covered entity can petition for “bailout.” There have been 36 bailout cases filed with the D.C. court since the current bailout provision became effective in 1984; of those 36 cases, 18 – fully half of the total – have been filed in the past three years. These 18 cases include the first-ever bailouts from jurisdictions in Alabama, California, Georgia, and Texas; the first bailout from a jurisdiction in North Carolina since 1967; and the largest-ever bailout, in terms of population, in Prince William County, Virginia.

In short, we have seen, through our recent objections, that Section 5 remains relevant and necessary. At the same time, our bailout activity demonstrates that Section 5 is not overinclusive, and that the Division fully supports the use of bailouts to enable jurisdictions to terminate their pre-clearance obligations when appropriate.

The Division is actively working to investigate and enforce all provisions of the NVRA. States covered by the NVRA must follow its requirements to make voter registration available to applicants at all driver license offices, at all public assistance offices and disability offices, and through the mail.

States must also follow the requirements of Section 8 of the NVRA to ensure that eligible voters who submit a timely application are timely added to the voter registration list, to conduct a general program of list maintenance that removes voters who are ineligible, and to ensure that voters not be removed from the list for moves without following all of the protections in the NVRA, including the notice and timing requirements.

Congress has tasked DOJ with the critical responsibility of ensuring that these mandates are met, and we will continue to devote significant resources to promoting access to voter registration and the accuracy of the rolls through comprehensive enforcement of the NVRA.

For example, since March 2011, the Division has filed two lawsuits under Section 7 of the NVRA, which requires that voter registration opportunities be made available at state offices providing public assistance or disability services. These are the first NVRA Section 7 lawsuits filed by the Department in seven years. One suit, against Rhode Island, was settled with a consent decree that requires the state to offer registration opportunities to all applicants for public assistance and disability services, and also to implement a range of training, auditing, monitoring, and reporting requirements. The impact of these changes has been dramatic. In the two-year reporting period before the lawsuits, 457 voter registration forms were submitted by the four affected Rhode Island social service agencies. In the four months after the settlement, 4,171 forms were received, nearly ten times as many new voters in one-sixth the time. The second lawsuit, against Louisiana, is in active litigation.

The Department also recently filed a lawsuit against the State of Florida to enforce Section 8 of the NVRA and, in particular, to ensure that the state's list maintenance activities are conducted in compliance with the requirement that all such measures be uniform, non-discriminatory, and appropriately timed.

And our comprehensive NVRA effort is not limited to litigation. In the past year, the Division has filed five amicus briefs in district courts and federal courts of appeals on critical NVRA issues that arise under Sections 6, 7, and 8 of the law. And we published NVRA guidance on our website two years ago to advise state and local officials, as well as the public, how all requirements of the NVRA are to be implemented.

Finally, the Division continues its active election monitoring program and continually evaluates the need to monitor elections conducted across the country, throughout the year. In Fiscal Year 2011, the Division sent more than 800 federal observers and Department personnel to monitor 55 elections in 20 states.

The Division's authority and responsibility to enforce the federal voting rights laws – which were enacted with overwhelming bipartisan support – is a sacred trust. The Division will continue to review all of the matters that come within our authority – from state and local redistricting plans, to absentee ballot procedures for servicemembers and overseas citizens, to state laws governing voter identification and registration – to make sure that all eligible citizens are being protected and are included in our democratic processes.

#### **DISABILITY RIGHTS**

Over the last three years, the Division has launched an aggressive effort to address the unjustified segregation of people with physical, mental, intellectual, and developmental disabilities by enforcing the Supreme Court's ruling in the 1999 case *Olmstead v. L.C.*, which held that such segregation can be a form of discrimination under the ADA. Often called the *Brown v. Board of Education* of the disability rights movement, this decision has changed the lives of many who would otherwise be unable to live in the community. While many states have made significant progress in the thirteen years since *Olmstead*, too many individuals with disabilities still sit on waiting lists for home and community-based services or remain unnecessarily in segregated settings.

The Division has joined or initiated litigation to ensure community-based services in more than 40 matters in 25 states over the past three years, and we have filed over 30 statements of interest or amicus briefs in litigation raising *Olmstead* issues in more than 20 states addressing a wide range of issues, including the unnecessary institutionalization of individuals in state-operated and private institutions and cuts to community services that place people at risk of institutionalization.

We have reached landmark settlement agreements with the states of Virginia, Delaware, and Georgia that will allow thousands of individuals with disabilities to receive services in community settings, and will serve as models for comprehensive agreements with other states going forward. The Georgia agreement was signed by the state, the HHS Office for Civil Rights and the Division after the state had failed to comply with a voluntary resolution agreement with HHS OCR. The Virginia agreement, announced in January, expands and improves a range of community-based services for more than 5,000 people with developmental disabilities in, or at risk of entering, institutions. The agreement will shift Virginia's developmental disabilities system from one that relies heavily on large, expensive, state-run institutions to one that is focused on safe, individualized, and cost-effective community-based services that promote integration, independence, and full participation by people with disabilities in community life.

We have also significantly expanded our collaborations with other federal agencies, including the Departments of Health and Human Services, Housing and Urban Development, and Labor, because community integration can only be successful if people have access to necessary community services, employment opportunities and housing.

**EQUAL EDUCATIONAL OPPORTUNITY**

The Division continues to work aggressively to combat racial segregation in schools and ensure that school districts are delivering equal access to a high-quality education in safe schools for all students.

Last month, the Division reached a settlement with the Fort Payne City School District in Alabama and private plaintiffs in a longstanding school desegregation case, which was initially filed in 1963. If approved, the proposed consent order would declare the 3,100-student school district partially unitary in the areas of extracurricular activities, school facilities and transportation, and would dismiss the case in those areas. If approved, the U.S. will monitor and enforce the district's compliance with the order.

In March, the Division announced a major settlement to protect children from school harassment and bullying in the Anoka Hennepin School District, the largest in Minnesota. The Division, along with the U.S. Department of Education, had undertaken a lengthy investigation of repeated instances of sex-based harassment of students who did not conform to gender stereotypes. The consent decree, which was approved by a federal court, provides a comprehensive blueprint for sustainable reform of the policies and practices of the district that will ensure that students in the district are free from sex-based harassment.

The Department of Justice has been instrumental in advancing educational equality by enforcing and strengthening the protections of Title IX of the Education Amendments of 1972, striving to ensure that all members of the school community are protected from discrimination based on sex. To commemorate this work and celebrate the 40th anniversary of Title IX, the Division published a report last month providing examples of the Department's enforcement of Title IX and other federal laws that prohibit discrimination on the basis of sex. Over the past forty years, the enforcement of these laws has greatly expanded educational opportunities for women, and has protected both women and men from discrimination on the basis of sex in the educational context.

Under Title IX, the Department has worked to support access to justice for individual victims and hold schools liable for discrimination, prevent retaliation against those who exercise their rights, eliminate discriminatory school policies that deny women admission, ensure equal opportunities for men and women in sports, and hold schools liable for addressing and preventing sex-based harassment. In addition to our enforcement work, the Department drafted new Title IX regulations; created a Title IX legal manual to assist public understanding of the law and its procedural requirements; and worked with other federal agencies to create a Title IX Science, Technology, Education, and Math in Higher Education Initiative.

In conjunction with the Office for Civil Rights at the Department of Education, the Division issued two policy documents to provide guidance to school districts and to institutions of higher education about the compelling interests of attaining diversity and reducing racial

isolation in their student bodies, as well as on permissible means to consider the race of students in an effort to meet these goals. The Division has also been actively working to address the school-to-prison pipeline, investigating numerous complaints of disparate discipline in schools and co-hosting, with the Department of Education, a first-of-its-kind convening of researchers, advocates and policy makers to address best practices for keeping students in school.

#### **EQUAL EMPLOYMENT OPPORTUNITY**

The Division continues its work to enforce Title VII of the Civil Rights Act of 1964 to ensure that all individuals have equal access to employment opportunities. Since the beginning of the current Administration, the Division has opened 148 employment discrimination investigations, including 41 “pattern-or-practice” investigations. Even though Fiscal Year 2012 is not yet over, the 124 consent decrees we have so far entered into in the four fiscal years from FY 2009 through FY 2012 is more than double the number entered into in the previous four fiscal years

To cite just one example, last month the Division announced a consent decree with the town of Davie, Florida to resolve allegations that Davie engaged in a pattern or practice of intentional discrimination against pregnant firefighters employed by its fire department. If approved by the court, Davie would adopt policies to protect its employees from sex discrimination, including pregnancy discrimination, and train its fire department personnel to ensure that they properly handle future complaints of discrimination.

Last August, the Division announced a settlement with the State of New Jersey to resolve allegations that the state’s written examinations for promotion to police sergeant have the effect of discriminating against African-American and Hispanic candidates. Under the terms of the settlement, New Jersey will develop new selection procedures for police sergeant positions, and pay \$1 million into a settlement fund to provide back pay for those who were harmed by the discriminatory test.

Finally, the Division continues to work with the New York Fire Department after a court found that the City’s use of two written examinations had a discriminatory effect on African-Americans and Latinos. The court has ordered priority hiring relief for 293 rejected applicants and mandated the implementation of new, lawful hiring practices.

In addition, the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) enforces the anti-discrimination provision of the Immigration and Nationality Act (INA), which prohibits citizenship status discrimination, unfair documentary practices during the employment eligibility verification, Form I-9, process, and retaliation or intimidation. In FY 2011 and FY 2012, OSC has filed 8 complaints, more than in the previous 8 fiscal years combined. In FY 2011 and FY 2012, OSC has collected more than \$1 million in civil penalties through settlements, nearly triple the amount collected over the previous 8 years combined. OSC has also strengthened its relationship with DHS-USCIS’s Verification Division under a Memorandum of Agreement signed in April 2010, which provided for the cross-referral of cases

related to E-Verify. In FY 2012, OSC has received approximately 50 referrals from USCIS of potential discrimination. Since entering into the MOA, OSC has referred about 100 cases to USCIS of potential misuse or abuse of E-Verify. OSC continues to work on an ongoing, collaborative basis with USCIS on policy and guidance issues, seeking to minimize E-Verify's adverse effect on work-authorized individuals.

OSC maintains a strong commitment to its statutory duty to educate the public about the anti-discrimination provision, focusing on its hotline program and its direct outreach. OSC has directly handled nearly 3,500 hotline calls in FY 2012 so far. OSC has also continued its innovative intervention program – informal mediation effectuated by OSC attorneys and other professionals that seeks to prevent discrimination from occurring by providing employers and employees with information via the hotline. This occurs without necessity of a filed charge or formal investigation. In FY 2011 and FY 2012, OSC has conducted 208 and 174 interventions, respectively. In addition, despite the suspension of OSC's grant program in FY 2012, OSC's staff of only 17 attorneys and investigators has conducted 223 and 229 outreach events in FY 2011 and FY 2012, respectively (including 20 cost-effective webinars in 2012), at less than 10 percent of the annual cost of the grant program.

#### **FAIR LENDING AND FAIR HOUSING**

##### *Fair Lending*

The housing crisis has touched a great many communities across the country. Communities of color, in particular African-Americans and Latinos, have been hit particularly hard by lending practices under which they have been judged by the color of their skin rather than their creditworthiness. For too many years, accountability was lacking and enforcement was spotty at best. That is why, in the wake of the housing and foreclosure crisis, the federal government has responded forcefully.

Since the Attorney General established the Fair Lending Unit with the Civil Rights Division in early 2010, it has filed a complaint in or resolved 19 matters. By way of contrast, from 1993 to 2008, the Department filed or resolved 37 lending matters, an average of just over 2 cases per year.

The three largest fair lending settlements in the Division's history have been reached in the past eight months. In December 2011, the Department reached a \$335 million settlement with Countrywide, the largest residential fair lending discrimination settlement in U.S. history. Our complaint against Countrywide alleged that its systemic discrimination over a four-year period violated the Equal Credit Opportunity Act and the Fair Housing Act, and impacted more than 200,000 African-American and Latino families by steering those borrowers into subprime loans or charging them higher fees and costs.

Earlier this month, the Division reached the second largest settlement in history when Wells Fargo agreed to pay at least \$175 million in a case involving allegations of discrimination against African American and Latino borrowers. The settlement provides \$125 million in compensation for wholesale borrowers who were steered into subprime mortgages or who paid higher fees and rates than white borrowers because of their race or national origin. It also provides \$50 million to borrowers for down payment assistance in communities that were hit hard by the bank's discriminatory practices. Further, Wells Fargo has agreed to conduct an internal review of its retail mortgage lending and will compensate African-American and Hispanic retail borrowers who were placed into subprime loans when similarly qualified white retail borrowers received prime loans. Wells Fargo agreed to compensate those improperly placed borrowers in addition to the \$125 million compensation.

In May 2012, a \$21 million settlement was reached with SunTrust Bank in another large lending discrimination case. The complaint alleged that SunTrust engaged in a pattern or practice of discrimination that increased loan prices for many of the qualified African-American and Hispanic borrowers who obtained loans between 2005 and 2009 through SunTrust Mortgage's regional retail offices and national network of mortgage brokers. If approved by a federal court, the proceeds of the settlement will be used to compensate the victims of SunTrust's discrimination, who were located in 34 states and the District of Columbia when the discrimination occurred.

Our settlements seek to expand opportunities for minority communities and individuals to access credit in areas where a lender had previously denied such services. However, our settlements never require a lender to make a loan to unqualified borrowers. The Department's settlement agreements repeatedly refer to the extension of credit to "qualified applicants" only. Further, the Department makes clear that no provision in any redlining settlement agreement, including any special loan program or loan subsidy fund commitment, requires the bank to make any unsafe or unsound loan.

#### *Fair Housing*

In June, the Division obtained a landmark \$10.5 million settlement – its largest-ever disability-based housing discrimination settlement fund – to resolve allegations that JPI Construction L.P. and six other JPI entities based in Irving, Texas discriminated on the basis of disability in the design and construction of multifamily housing complexes throughout the U.S. Under the court-approved settlement, JPI is required to pay a \$250,000 penalty – the largest civil penalty the Department has obtained in any Fair Housing Act case.

In May, the Department announced an historic settlement for victims of sexual harassment by three Manhattan landlords. Per the court entered consent decree, the landlords will pay more than \$2 million to the victims of sexual harassment and will pay \$55,000 in a civil penalty. The \$2,058,000 agreement represents the largest recovery ever in a sexual harassment suit brought by the Department under the Fair Housing Act.

## CIVIL RIGHTS OF SERVICEMEMBERS

The Division enforces several statutes enacted specifically to protect the rights of our servicemembers and their families, and our work on behalf of servicemembers spans multiple sections of the Division. When servicemembers place their lives on the line to serve their country, they should be able to focus fully on their military duties, without having to worry that their right to vote will be denied, that their homes will be wrongfully foreclosed without their knowledge, or that their civilian jobs back home will be lost.

### *Voting Rights for Servicemembers*

The Division is committed to ensuring that all servicemembers, and other citizens living overseas, are not denied the right to have their voices heard on Election Day. The Division has aggressively enforced the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as amended by the Military and Overseas Voter Empowerment (MOVE) Act of 2009. So far this year, the Department has sued four states (Alabama, California, Wisconsin, and Georgia) for noncompliance with the MOVE Act during their primary and runoff elections.

Apart from these four new lawsuits, we have recently sought further relief in several of the lawsuits we filed in 2010. For example, we won a significant victory this year in our 2010 lawsuit against New York. In January, the district court agreed with our request to advance New York's federal primary election date, starting with the 2012 election, to a date sufficiently early to provide enough time for absentee ballots to be prepared and mailed in compliance with the MOVE Act. We have also entered into supplemental consent decrees this year in the 2010 lawsuits we filed against Illinois and Guam to remedy widespread UOCAVA violations in that state and territory.

In addition, in January 2012, the Division filed a statement of interest before the federal three-judge court in the Western District of Texas that was considering the interim redistricting maps and election schedule that should be ordered for Texas's 2012 elections. Our statement urged the court to reject proposals to the election calendar that would impede MOVE Act compliance, and instead to ensure that any election schedule allows for ballots to be transmitted 45 days before elections for federal office. The court ultimately adopted an election schedule consistent with this request.

This work builds on our accomplishments in the 2010 cycle, during which the Division ensured that thousands of military and overseas voters had a reasonable opportunity to cast their ballots. The Division obtained court orders, court-approved consent decrees, or out-of-court letter or memorandum agreements in 14 jurisdictions (11 states, two territories, and the District of Columbia). Each of these resolutions either ensured that the military and overseas voters would have at least 45 days to return their ballots or provided expedited mailing or other procedures to allow sufficient opportunity for ballots to be returned by the jurisdiction's ballot receipt deadline. We will continue enforcing these critical protections during the upcoming 2012 general election cycle.

*Mortgage Rights for Servicemembers*

The Division has worked to ensure that our Nation's servicemembers can serve their country without having to worry that their home will wrongfully be foreclosed. The Division enforces the Servicemembers Civil Relief Act (SCRA), which prohibits mortgage lenders from foreclosing on an active duty servicemember without a court order if the mortgage was taken out prior to the servicemember's entering active duty, and requires the lender to follow special procedures. When I last appeared before this Subcommittee, the Division had recently announced two multi-million dollar settlements with mortgage lenders resolving allegations of violations of the SCRA. One of these settlements, requiring that Bank of America/Countrywide pay at least \$20 million to servicemembers, was the largest SCRA settlement ever reached. Under these settlements, the banks agreed not to pursue any remaining amounts owed under the mortgages; to take steps to remedy negative credit reporting; and to implement enhanced measures including monitoring, training, and checking loans against the Defense Manpower Data Center's SCRA database during the foreclosure process.

This past February, the Nation's five largest mortgage loan servicers (Bank of America; JPMorgan Chase & Co.; Wells Fargo & Company; Citigroup, Inc.; and Ally Financial, Inc.) agreed to similar terms and additional compensation as part of the broader \$25 billion consent judgment reached with Federal and state attorneys general. These servicers will conduct full reviews of whether servicemembers have been illegally foreclosed on since 2006, and each identified victim will be compensated a minimum of \$116,785, plus any lost equity with interest. All five servicers have agreed to put in place better policies, procedures, and employee training to ensure full compliance with the SCRA.

*Employment Rights for Servicemembers*

The Division has also been vigilant in protecting the employment rights of our men and women in uniform under the Uniformed Services Employment and Reemployment Rights Act (USERRA), which ensures that servicemembers returning from active duty are not penalized by their civilian employers. Our servicemembers make great sacrifices for our country, and they should not have to sacrifice their civilian employment. To date in the current Administration, 43 cases have been filed under USERRA, already exceeding the 32 USERRA cases filed in the entire four years that the previous Administration had USERRA jurisdiction.

In May, the Division announced a settlement with Home Depot U.S.A. over allegations that the company violated USERRA when it terminated the employment of an Army National Guard soldier in Flagstaff, Arizona because of his military service obligations. If approved by a federal court, Home Depot will provide the soldier with \$45,000 in monetary relief and make changes to its Military Leaves of Absence policy.

In April, the Division announced a settlement with Pittsfield, Massachusetts to resolve allegations that the city violated USERRA by failing to promote a navy reservist and Pittsfield firefighter, and by retaliating against him after he invoked his rights. The settlement requires the

city to provide the reservist with over \$22,000 in back pay, pension contributions, and interest.

Finally, in March, the Division successfully defeated the first Eleventh Amendment challenge to USERRA in an appeal before the Eleventh Circuit. The case marked the first time the Division took a USERRA case to trial. We secured back pay and injunctive relief against the Alabama Department of Mental Health for its failure to promptly reemploy a servicemember upon his return from active duty service in Iraq.

#### *Servicemembers Legislative Proposals*

Through our enforcement work, the Division has identified ways that the SCRA, USERRA, and UOCAVA could be strengthened to better protect the rights of our servicemembers. This past September, the Division developed legislative proposals to strengthen these statutes, and the Administration formally submitted them to Congress. Proposed changes include an explicit private right of action to enforce UOCAVA, increasing civil penalties under the SCRA, and granting the Attorney General independent authority to investigate and file suit to challenge employment policies or practices that establish a pattern or practice of violating USERRA. In June 2012, Senator Sherrod Brown, along with nine original cosponsors, introduced legislation drawn from our legislative package. The Department would welcome the introduction of a companion bill in the House as well.

#### **RELIGIOUS FREEDOM**

Our nation has long cherished religious freedom as one of our most basic and fundamental civil rights, and the Division continues to enforce the rights of individuals and congregations to practice the faith of their choosing in a variety of contexts.

Unfortunately, we continue to see violence and threats of violence directed at individuals or congregations because of their religion. For example, last winter the last of three defendants was sentenced to prison for federal civil rights violations under the Church Arson Prevention Act in connection with the burning of the Macedonia Church of God in Christ in Springfield, Massachusetts. In the early morning hours the day after the election of President Obama, the defendants doused the predominantly African-American church with gasoline and set a fire that completely destroyed the building. The church was under construction at the time and was 75-percent complete. The three defendants were sentenced for terms of imprisonment ranging from 54 months to 14 years, and ordered to pay restitution to the church for the damage they caused.

Last fall, Steven Scott Cantrell of Crane, Texas was sentenced to 450 months in prison for hate crime charges stemming from a series of racially-motivated arsons in December 2010. Cantrell admitted that he set fire to Faith in Christ Church, a predominantly African-American church, in an effort to kill a disabled African-American man whom he believed lived at a shelter within the church. In addition to the church, Cantrell admitted that he set fire to the house of another man in the community because he believed that man to be Jewish. Cantrell was also ordered to pay more than half-a-million dollars in restitution to the victims.

In 2010, we marked a decade of enforcement of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and we continue to pursue cases involving religious discrimination in land use. In September 2011, we reached a consent decree with the City of Lilburn, Georgia, to resolve allegations that the city violated RLUIPA when it twice denied an Islamic Center's application for rezoning in order to build a mosque, despite regularly allowing similar rezoning requests for non-Muslim religious groups. The city has agreed to allow construction of the mosque. Less than a month later, we obtained a consent decree in a similar suit against the County of Henrico, Virginia. During that same year, the Department obtained a consent decree permitting the continued operation of a "Shabbos house" next to a hospital in a New York village. The facility provides food and lodging to Sabbath-observant Jews to enable them to visit sick relatives at the hospital on the Sabbath. Also in 2010, we obtained a consent decree resolving claims that the town of Walnut, California had improperly denied a Buddhist congregation the ability to construct a temple on its property, and successfully argued as amicus in the Ninth Circuit Court of Appeals that a Baptist church in Yuma, Arizona was improperly excluded from operating in a commercial zone.

We also continue to work to ensure that individuals are not forced to choose between their jobs and the requirements of their faith. In May 2012, we reached a settlement in a Title VII lawsuit against the New York City Transit Authority over its refusal to permit Muslim and Sikh bus drivers, subway drivers, and other transit workers to wear religious head coverings with their uniforms. Under the settlement, New York will adopt a religious accommodation policy that will protect the religious rights of transit workers of all faiths.

Additionally, we remain vigilant in cases of religious discrimination against institutionalized persons. Last year, the Division intervened in a lawsuit filed by a Sikh prisoner in California who was permitted to maintain an unshorn beard while in a medium-security facility as required by his religious tradition. After the prisoner was transferred to a minimum-security facility, the state required him to shave his beard or suffer disciplinary sanctions. After we intervened, the State agreed to modify its beard-length policy to permit the prisoner to comply with his religious convictions. We also intervened in a suit against a jail in Berkeley County, South Carolina, in which the jail restricted access to religious books and materials to prisoners of all faiths. After several months of litigation, the county agreed to change its policies to permit access to these books and materials.

Meanwhile, a decade after the attacks of 9/11, we continue to see a backlash against individuals who have faced discrimination based on their actual or perceived religion or national origin. We have stepped up our outreach to the Muslim community, ensuring not only that we learn about potential civil rights violations that merit further investigation, but also that we build relationships with the community to enhance trust and understanding. I have met with local Muslim, Arab, Sikh and South Asian leaders in communities across the country, and the Division sponsored a conference focused on addressing the post-9/11 backlash throughout the decade after the 9/11 attacks in October 2011. We will continue our efforts to reach out to Muslim communities, and all faith communities, to ensure they know their rights under federal law and

understand how to contact us when violations occur.

#### **LANGUAGE ACCESS IN STATE COURTS**

Ensuring that limited English proficient individuals (LEP individuals) can access state court proceedings is of critical importance, not only to protect the fundamental rights of the parties, but also to allow courts and juries to make decisions based on the most accurate record. A number of the statutes we enforce – including Title VI of the Civil Rights Act of 1964, and the Safe Streets Act of 1968 – require full and free language assistance services in all court proceedings and for many court offices, programs, and services. This requirement includes the provision of interpreters for court proceedings and operations, as well as the translation of vital written documents. Failing to provide language services can undermine the provision of justice by causing reversals, delays, denial of due process, extended incarceration, lack of compliance with court orders, fund termination or suspension, and time spent responding to complaints.

The Federal Coordination and Compliance Section of the Civil Rights Division has created a comprehensive Courts Language Access Initiative to ensure that all who need to access state court services and proceedings are able to do so without regard to their national origin or language ability. In addition to providing technical assistance to specific state courts and state-court associations, we have several open investigations of complaints regarding discriminatory practices in state court systems. In March 2012, we sent a Letter of Findings to the North Carolina Administrative Office of the Courts, concluding after an exhaustive investigation that North Carolina had failed to provide meaningful access to LEP individuals in the state court system. The investigation identified such harms as longer incarcerations; conflicts of interest involving prosecutors interpreting for defendants; and indigent litigants proceeding with domestic violence, child custody, eviction, and other important proceedings without any language assistance or ability to understand those proceedings.

We have also in the past year reached an agreement with Colorado to improve its language access practices, and have worked closely with Rhode Island as that state has moved to improve its language access procedures in response to our investigation. Both states are on their way to becoming national models in the provision of free and competent interpreter services in all criminal and civil proceedings and court operations.

#### **AMICUS PARTICIPATION AND STATEMENTS OF INTEREST**

Amicus participation continues to be a critical part of the Division's efforts to defend and promote civil rights protections. In the last three years of this Administration, the Division's Appellate Section has achieved record levels of amicus filings in significant civil rights cases, and already has submitted 21 amicus briefs in this fiscal year.

The Division filed successful briefs in *Ojo v. Farmers Group*, which held that the Fair Housing Act prohibits racial discrimination in both the denial and pricing of homeowner's

insurance. The Division also filed an amicus brief in *Fisher v. University of Texas*, in which the Fifth Circuit agreed with our argument that the University has a compelling interest in achieving a diverse student enrollment and that its limited use of race in freshman admissions is narrowly tailored to further that interest. The U.S. Supreme Court has granted certiorari in that case.

An amicus brief in support of plaintiffs-appellees in *Oster v. Wagner* argued that institutionalization is not a prerequisite for asserting an integration claim under Section 504 of the Rehabilitation Act of 1973 and Title II of the ADA. The Division also filed amicus briefs in the court of appeals in two other important ADA cases, *Armstrong v. Schwarzenegger* and *Chapman v. Pier 1 Imports*. And we have filed amicus briefs in significant cases brought under the RLUIPA (*Centro Familiar Cristiano Buenas Nuevas v. City of Yuma* and *Islamic Center of North Fulton, Inc. v. City of Alpharetta*) and the SCRA (*Gordon v. Pete's Auto Service*).

The Division has also substantially increased its filings of amicus briefs and statements of interest at the trial-court level, to provide courts and litigants our views on important legal issues. For example, the Division has filed eleven statements of interest or amicus briefs regarding disability rights issues in FY 2012, as well as eight briefs regarding voting rights issues and one on housing discrimination. These are just a few examples of the numbers of trial-court amicus briefs and statements of interest filed during the Administration, but they represent the Division's commitment to using all of the tools available to ensure the Nation's civil rights laws are enforced to the fullest extent possible.

#### **COLLABORATION WITH FEDERAL AND STATE PARTNERS**

We know that much of our work can be done more efficiently and effectively when we work collaboratively with our partners across the federal government. For this reason, we have worked over the last three years to establish and strengthen partnerships to improve enforcement.

In the lending context, the Division's ability to bring a record number of enforcement actions is a direct result of close collaboration with federal and state partners. Almost all of the Division's lending discrimination cases in 2011 involved work with other government agencies and other offices within the Department, including the U.S. Attorneys' Offices and state attorneys general. For example, the *Countrywide* case was done in close coordination with the Illinois Attorney General's office.

In addition, the interagency Financial Fraud Enforcement Task Force has been instrumental in fostering these enhanced collaborative efforts. The Task Force, chaired by the Attorney General, brings together an unprecedented number of federal agencies and state and local partners to share information and resources and ensure aggressive, coordinated enforcement. The Division's collaborative work was bolstered in July 2011 by the addition of the Consumer Financial Protection Bureau (CFPB). The CFPB is a critical partner, which has supervisory and enforcement authority under ECOA over all banking institutions with assets of more than \$10 billion, as well as certain non-bank lenders.

In the criminal civil rights context, the Division's vigorous hate crimes enforcement record would not be possible without our close partnerships with the U.S. Attorneys' Offices, with the FBI, and with local law enforcement. The Division has helped plan and has participated in dozens of training conferences throughout the country, bringing together federal, state, and local law enforcement along with community stakeholders in order to educate them about the Shepard-Byrd Act and its implementation.

In the human trafficking context, two years ago the Department of Justice joined the Departments of Homeland Security and Labor to launch a nationwide Human Trafficking Enhanced Enforcement Initiative designed to streamline federal criminal investigations and prosecutions of human trafficking offenses. As part of the initiative, specialized Anti-Trafficking Coordination Teams have been convened in select pilot districts around the country. The teams, comprising federal prosecutors and federal agents from multiple federal enforcement agencies, are working to combat identified human trafficking threats.

Meanwhile, in the employment context, the Division has engaged in unprecedented levels of collaboration with our partner federal agencies in order to more effectively combat pay discrimination and other forms of employment discrimination. This includes the establishment of a pilot program to work with EEOC field offices earlier in investigations to ensure the most efficient and effective application of each agency's resources.

In the disability rights context, we recognize that individuals with disabilities can have true equal opportunity only if they have equal access in all aspects of life, such as housing, employment and health care. We have been working closely with the Department of Health and Human Services and other partners to establish pathways to opportunity in a host of contexts for individuals with disabilities.

And finally, nearly all of our work benefits from our strengthened partnerships with U.S. Attorney's Offices around the country. In both the criminal and civil contexts, our partnerships with U.S. Attorneys' Offices have reached unprecedented levels of cooperation and engagement. Many U.S. Attorneys' Offices now have established dedicated civil rights units, and we are closely coordinating with and supporting their efforts. The renewed commitment of U.S. Attorneys' Offices to robust civil rights enforcement has enabled us to step up our civil rights enforcement efforts throughout the nation.

## **CONCLUSION**

Under the leadership of Attorney General Holder, we have made substantial progress in the restoration and transformation of civil rights enforcement. I am very proud of the hard work of the dedicated career professionals in the Division. We have also expanded our partnerships with sister agencies, and our state and local partners in a number of key areas. Despite these many accomplishments, civil rights remains the nation's unfinished business. The Civil Rights Division takes our obligation to protect the rights of all individuals very seriously, and we will continue to use all of the tools in our arsenal aggressively, independently, and evenhandedly so

that all individuals can enjoy the rights guaranteed by our Constitution and federal laws. Thank you for the opportunity to testify before you today about the work of the Division. I look forward to answering your questions.

Mr. FRANKS. Well, thank you, Mr. Perez, and I appreciate your testimony.

I will now begin the questioning by recognizing myself for 5 minutes.

Protecting the right of those who protect us to vote seems to be something that the American people strongly support. But some States consistently fail to get ballots to deployed military members in elections, systemically disenfranchising military voters, breaking Federal law, and disenfranchising again those who protect us.

In 2010, 14 States had counties that failed to get their ballots out to their State's deployed military. New York alone failed to meet their agreement deadline for 43,000 military voters.

The settlements DOJ reached with some of these States for these violations only perpetuated the problem since they did not provide sufficient time for ballots to be received before the election and mailed back in time. Worse, Mr. Perez, you have opined that ballots filled out after the election, which is when many military members receive their ballots under your settlements, are invalid, ensuring that their vote is still not counted.

This Administration's settlements continue to disenfranchise voters. Is that perhaps because the military tends to vote heavily Republican? I would think you would suggest not. So what is your staff doing right now in July to ensure that all States meet their deadlines for getting deployed military voters their ballots in time to count.

Mr. PEREZ. Thank you for your question, Mr. Chairman. I categorically disagree with your characterization of the work that we have done. When the MOVE Act passed in 2009, we immediately went to work working with States. And if you look at the work that was done in the 2010 cycle, that was the most aggressive enforcement of laws protecting military and overseas voters in the history of the division.

There were 14 matters that we brought either through lawsuits or through out of court settlements. Some cases, there were dozens of people who were deprived. In New York, as you correctly point out, there were tens of thousands. It did not matter if it were dozens or tens of thousands. Every military and overseas voter has the right to receive their ballot in a timely fashion, and we were able to get that relief.

And we continued that work because this year we have already filed 4 additional lawsuits, and we will continue to aggressively enforce those laws.

And after the 2010 cycle, we had I think a very productive hearing in another Committee of the House in which we debated lessons learned from 2010.

Mr. FRANKS. So what commitment do you—forgive me. What commitment can you give this Subcommittee that you are going to take proactive actions against jurisdictions who fail to meet their deadlines for getting ballots to the deployed service members who request them and who are completely at the mercy of the States to receive them? What commitment will you give us?

Mr. PEREZ. We have been working very proactively on that issue, and we will continue to do so. And we will also work in partnership with the FVAP Office, the Voter Assistance Program in the Department of Defense, who plays a very important role in ensuring that military and overseas voters can exercise their right to vote.

I completely agree with what you said, Mr. Chairman. This debate in this country—what we should be doing in this country is continuing to have this debate about the soul and the future of our Nation.

And then what we should be doing is making sure that every eligible person has that right to vote. And that is why we have put so much time into the MOVE Act enforcement, and that is why

when somebody says, well, someone might be a Republican or a Democratic, that is offensive. That is irrelevant. And that will never play into the work that we do.

Mr. FRANKS. But there is a systemic issue. So let me move on here if I can in time here. I am going to read an opening paragraph of a Daily Caller article from October 1st, 2011. "Top Justice Department officials convened a meeting Wednesday where invited Islamist advocates lobbied them for cutbacks in terror funding, changes in agent's training manuals, additional curbs on investigators, and a legal declaration that U.S. citizens' criticism of Islam constitutes racial discrimination. 'The Department's "civil rights lawyers" are top of the line. I say this with utter honesty. I know they can come up with a way.'"

To redefine criticism as—I am sorry. "To redefine criticism as discrimination," says Sahar Aziz, a female Egyptian-American lawyer. You then responded, 'We must continue to have the open, and honest, and critical dialogue that you saw in the robust debate.' Perez responded in an enthusiastic closing speech minutes after Ms. Aziz made her demands at the event. 'I sat here the entire time taking notes.' Perez said, 'I have some very concrete thoughts in the aftermath of this.'"

What were the concrete thoughts after the meeting with, among others, a leader of an unindicted co-conspirator organization in the largest terror finance trial in history, after hearing a blatantly unconstitutional proposal to destroy First Amendment free speech rights of Americans by outlawing criticism of a religion? According to the article, no one at Justice, including you, objected to this call to abrogate free speech.

You know, Americans would be shocked to learn that their Justice officials and unindicted co-conspirators in a terrorism trial huddled together to discuss ways to take away Americans' freedom of speech. Will you tell us here today—and I apologize for having to hurry. Will you tell us here today that this Administration's Department of Justice will never again entertain or advance a proposal that criminalizes speech against any religion?

Mr. PEREZ. Sir, I am not familiar with the context that you described in the article. I have not seen that article.

Mr. FRANKS. You are not familiar with the meeting here at all.

Mr. PEREZ. Pardon me?

Mr. FRANKS. You are not familiar with the meeting that the article—

Mr. PEREZ. I would need to read the article in order the context of the article. What I can tell you is that the Department of Justice aggressively enforces all of the civil rights laws, including laws that protect religious minorities. And we will—

Mr. NADLER. Point of order, Mr. Chairman.

Mr. FRANKS. My time has expired.

Mr. NADLER. Point of order, Mr. Chairman.

Mr. FRANKS. The gentleman will state his point.

Mr. NADLER. We have not seen that article either, and I think it behooves us that before scurrilous accusations are made or at least at the same time scurrilous accusations are made, we see the article and the context so we know what we are talking about.

Mr. FRANKS. Fair enough. I would place this in the record without objection. The Daily Caller article that we mentioned, I will place that in the record without objection.  
[The information referred to follows:]

Progressives, Islamists huddle at Justice Department « » Print The Daily C... <http://dailycaller.com/2011/10/21/progressives-islamists-huddle-at-justic...>

## **DAILY CALLER**

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### **Progressives, Islamists huddle at Justice Department**

12:37 AM 10/21/2011

Top Justice Department officials convened a meeting Wednesday where invited Islamist advocates lobbied them for cutbacks in anti-terror funding, changes in agents' training manuals, additional curbs on investigators and a legal declaration that U.S. citizens' criticism of Islam constitutes racial discrimination.

The department's "civil rights lawyers are top of the line — I say this with utter honesty — I know they can come up with a way" to redefine criticism as discrimination, said Sahar Aziz, a female, Egyptian-American lawyer.

"I'd be willing to give a shot at it," said Aziz, who is a fellow at the Michigan-based Muslim advocacy group, the Institute for Social Policy & Understanding.

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The audience of Islamist advocates and department officials included Tom Perez, who heads the department's division of civil rights.

"We must continue to have the open and honest and critical dialogue that you saw in the robust debate," Perez responded in an enthusiastic closing speech a few minutes after Aziz made her demands at the event.

"I sat here the entire time, taking notes," Perez said. "I have some very concrete thoughts ... in the aftermath of this."

The meeting at George Washington University showcased the expanding alliance between American progressives and Islamists, said Andrew McCarthy, a former federal prosecutor in New York.

Progressives "are making these Islamist groups into the [political] representatives of Muslims in the United States," he told The Daily Caller. That elevation of Islamists to a leadership role sidelines the majority of American Muslims who don't want Islamist leaders, as well as American Muslims who are female or gay, he said.

McCarthy investigated and prosecuted Egyptian-born Imam Omar Abdel-Rahman, dubbed "the blind sheik," for urging Muslims to kill New Yorkers. Abdel-Rahman was sentenced to life imprisonment in 1996.

Progressives ally with the Islamic lobby because "they think it will be a political voting bloc that will be reliably Democratic," said Robert Spencer, an author and expert on Islam.

None of the Islamist advocates or the civil rights officials in attendance, including Perez, objected to Aziz's call for free-speech restrictions.

The event did not include Zuhdi Jasser, an Arizona Muslim, former naval officer and a co-founder of a coalition of modernist Muslim groups, the American Islamic Leadership Coalition. "The Islamist groups' victimology feeds into the left's propaganda that the right is anti-minority and anti-Muslim, so there's a mutual political benefit there," said Jasser, who clashes with Spencer over rival responses to the Islamist groups.

Nor did the conference include any influential critics, such as McCarthy and Spencer, who argue that Islamist terror attacks are partly motivated by Islamic texts. These texts include the Koran's verse 9:5, which says "when the sacred months have passed away, then slay the idolaters wherever you find them."

Aziz, however, used her invitation to argue that Americans' fear of Islamists' bombs has evolved into racism towards dark-skinned men.

The word "Muslim," she said, "has become racialized. ... I don't accept this formalistic cop-out that this is all about religion."

Aziz did not offer any evidence for her claim, which she said justifies the use of Title VI anti-discrimination laws against institutions and individuals who argue that Islamic texts spur Islamic violence.

This legal redefinition, she said, would also "take [federal] money away from local police departments and fusion centers who are spying on all of us."

Aziz also argued against the commonplace police practice of informally talking with people in communities, including Muslim communities. "This has been a real problem with this outreach stuff," she said. Muslims "are acting in good faith, and then they find their imams, who were going to outreach meetings, were being spied on," she complained. "Some have been deported. Some have been prosecuted."

In March, Afghan-born New York Imam Ahmad Wais Afzali was ordered deported after he admitted he lied to the FBI about warning a suspected Muslim terrorist that he was being investigated. That terrorist, Najibullah Zazi, admitted that he was planning to place bombs in the New York City subway. The imam learned about the investigation because he had offered to work with local police to help identify potential terrorists in his congregation.

"People are going in good faith" to talk with police, Aziz said. "They're being very honest about what their grievances are. They're telling the government, 'This what we want you to do ... [and] we want you not to spy on our community.'"

Dwight Holton, a Justice Department legal counsel based in Oregon, said the threat of criminal gangs or terror attacks justifies routine police contacts with locals. "When we go to a barber shop to talk to the community, we don't tell them you can have a lawyer," he said.

"You should," Aziz immediately replied.

Aziz's advocacy was supported by a second Islamist advocate, Islamic Society of North America president Mohamed Magid. He argued that "teaching people that all Muslims are a threat to the country... is against the law and the Constitution."

Magid asked Perez to change the federal government's rules governing terror investigations, for more private meetings with top justice department officials, for the reeducation of FBI agents, and for more people to oppose criticism of Islam, which he labelled "religious bigotry and hate."

In 2009 the federal government named Magid's organization an unindicted co-conspirator in the successful 2009 trial of three Muslims who smuggled \$12 million to the Islamist terror group Hamas. Two of the smugglers received life sentences.

During his speech, Perez applauded the Islamist lobbyists for persuading government officials to end extra security checks on airline passengers from Nigeria and 12 Islamic countries. The checks were adopted in 2010 after a Nigerian Muslim tried to blow up a passenger aircraft on Christmas Day.

"What did we hear in the aftermath of that? We heard a lot of feedback from people in this room and from leaders across the country that we could be doing a better job [by ending the checks]... and a few months later, and thanks to you, we did just that," Perez told the Islamist advocates.

McCarthy, the former prosecutor, said few people recognize the expanding alliance between progressives and Islamists.

Americans "don't realize that Islamist ideology is collectivist and redistributionist, so it works seamlessly with the left," he said.

"They disagree over gay rights and women's rights, [but] on many big items they're on the same page," McCarthy added, citing Islamist groups' support for the administration's health sector law as an example.

Perez did not promise to meet any of the demands made by the Islamists, but he repeatedly promised extensive consultations and flattered the attendees, while speaking in a style that blended the cadences of an academic lecturer and a rural preacher. "There will be times where we have honest differences of opinion, but if we don't talk and don't actively listen and if we don't reflect and recalibrate where necessary, then we won't be doing our job, and you have our continuing commitment to that end," Perez declared.

Progressives, including Holton and Perez, choose to ignore the Islamists' stated goals, Spencer said. "They assume — and force us to assume on pain of charges of 'Islamophobia' — that all Muslims are moderate, peaceful and have no intentions of bringing Sharia [Islamic law] here," said Spencer. "No amount of evidence to the contrary, no amount of jihadi plots, and no number of demands for accommodation of Sharia's provisions, ever disabuses them of this dogma."

Justice Department officials declined to comment to The Daily Caller.

When the session ended, Perez — a Maryland resident, a progressive and a former staffer to Sen. Ted Kennedy — climbed the stage to embrace Imam Magid, who was born in Sudan and trained at a Saudi fundamentalist seminary.

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Mr. FRANKS. And with that, my time has expired. Thank you, Mr. Perez.

Mr. PEREZ. Thank you, sir.

Mr. FRANKS. And I now recognize the Ranking Member.

Mr. NADLER. Thank you. Mr. Assistant Attorney General, the New York Civil Liberties Union conducts an annual analysis of the New York Police Department stop and frisk procedures. Last year, the NYPD stopped and interrogated over 685,000 times, a more than 600 percent increase in street stops since 2002 when there were only 97,000 stops.

Nine out of 10 people stopped were innocent, meaning they were neither arrested nor ticketed. About 87 percent of those stopped were Black or Latino. Young Black and Latino men were the targets of a hugely disproportionate number of stops.

Last month, a group of community advocates and elected officials traveled from New York City to advocate for Federal review of these practices. Can we expect some Federal review of stop and frisk practices and of their alleged—and I would say definite violations and systematic violations—of the civil rights of people in New York City? Can we expect some Federal review of these practices?

Mr. PEREZ. Ranking Member Nadler, we are certainly aware of those allegations. I was in New York as recently as a week ago, and we have received a number of requests to investigate this matter. And we are in the process of reviewing those requests.

As I think you also know, we have a very active police practices program. We have more civil police practices investigations that are currently under way than at any time in our division's history. I mentioned New Orleans, and we have open matters north, south, east, and west.

Mr. NADLER. I noted you mentioned New Orleans. Last December, 34 Members of Congress, myself included, wrote to the Department of Justice urging an investigation. And do you have any time frame as to when we may hear about that?

Mr. PEREZ. It remains under active review. I cannot give you a specific response date. Obviously we have a lot of components in the department with whom we are consulting.

Mr. NADLER. All right, thank you. A number of years ago, I think it was 4 or 5 years ago, when Mr. Sensenbrenner was Chairman of the Committee, we held I do not know, many, many hours of public hearings on the question of renewal of the Voting Rights Act, and specifically of Section 5 of the Voting Rights Act. Some people said, and Congress decided to the contrary, that Section 5 was no longer necessary because nobody discriminated anymore. States and localities did not discriminate. And that Section 5 was unfair in that it only covered certain local jurisdictions based on their record of discrimination prior to enactment of the Voting Rights Act, and did not cover others, and that this was all ancient history and of no current relevance.

I note that there are a number of people saying the same thing again. And, of course, after those many hours of hearings, we came up with voluminous evidence of current discrimination and of current necessity for Section 5. And both houses on a bipartisan basis passed a renewal, and President Bush signed it.

Could you comment on the current necessity of Section 5? I know there are some pending lawsuits against it. Could you comment on the current necessity of it and on the fairness of singling out some, but not all, jurisdictions?

Mr. PEREZ. Sure. Thank you for your question. And at the outset of my testimony, I acknowledged on this anniversary of the ADA the important contributions of the former Chair of this Committee. As you know, Congressman Sensenbrenner, and I have read his testimony in connection with the reauthorization of Section 5. And if my memory serves me, he said something like it was one of the

voluminous records ever developed in his 25 plus year history in serving in the United States Congress.

And that record that the Congress so vigorously and thoroughly developed is a record that continues to be borne out. In short, Section 5 continues to be necessary. I look at simply the period of time since last September where we have interposed 14 objections, whether in the context of an administrative review process or in the context of cases that were filed before a three-judge panel. And some cases involved statewide. In some cases they involve local jurisdictions. And it continues to be necessary.

And the other thing, Congressman Nadler, that is very important to underscore is that not only is it necessary, but if there is a jurisdiction that believes that it should no longer be—

Mr. NADLER. They can bail out.

Mr. PEREZ. There is a bailout. There have been 36 bailouts, I believe, since 1984, 18 of which have been in the last 3 years.

Mr. NADLER. Thank you. I just want to have one more question before my time expires. Today is the 22nd anniversary of the enactment of the ADA, and I applaud the Disability Rights Section for its tremendous work toward making the ADA's promise of equality in access more of a reality.

In the past several Congresses, there have been proposals, such as H.R. 3356, the so-called Access Act, in this Congress that would require a private party to notify a public accommodation before bringing a lawsuit under Title 3 of the ADA.

What is the Department of Justice's position in requiring pre-suit notification for Title 3, and what would the impact of such a law be on compliance with and enforcement of the law, in your opinion?

Mr. PEREZ. The department's position on that has been that, obviously as you correctly point out, we are very committed to protecting the rights of people with disabilities. However, in those particular cases that are giving rise to that legislation, we believe that it would burden people with disabilities seeking full access to the courts.

Title 3 of the ADA is the public accommodation provision, and we think that as currently written, it strikes the right balance. And so this particular proposal is unnecessary.

Mr. NADLER. I thank you. I yield back.

Mr. FRANKS. And I now yield to Mr. Jordan.

Mr. JORDAN. And I thank the Chairman. I would be happy to yield to the Chairman. I have to get another venue.

Mr. FRANKS. Thank you, sir.

Mr. Perez, I apologize. I am trying to beat the clock here. And the last question I am afraid that I—

Mr. PEREZ. No, not at all.

Mr. FRANKS. So let me just recap here on that one. Will you tell us here today simply that this Administration's Department of Justice will never entertain or advance a proposal that criminalizes speech against any religion?

Mr. PEREZ. Sir, as I said before, you referenced as context for your question an article from—

Mr. FRANKS. Well, there is no context on this question. I am just asking you—

Mr. PEREZ. Well, there actually was.

Mr. FRANKS. I am just asking you. Well, all right, let me ask a new question. Will you tell us here today that this Administration's Department of Justice will never entertain or advance a proposal that criminalizes speech against any religion?

Mr. PEREZ. Well, again, sir—

Mr. FRANKS. That is not a hard question.

Mr. PEREZ. Well, actually it is a hard question in the sense that when you make threats against someone, I am going to—

Mr. FRANKS. No, I am asking you here today, will you tell us here today that this Department of Justice will never entertain or advance a proposal to criminalize speech against any religion.

Mr. PEREZ. Again, sir, if you have a proposal that you are considering, we will actively review that proposal and offer our—

Mr. FRANKS. Okay, here is my proposal. Here is my proposal. I am asking you to answer a question. That is my proposal. I am proposing that you answer this question. Will you tell us here today that this Administration's Department of Justice will never entertain or advance a proposal that criminalizes speech against any religion?

Mr. PEREZ. Again, sir, if you give the context of the question—

Mr. FRANKS. All right.

Mr. NADLER. Will the gentleman yield for a second?

Mr. PEREZ [continuing]. To conduct the—

Mr. FRANKS. I will not yield, but I will let—

Mr. NADLER. I think we can straighten this out.

Mr. FRANKS. I will not yield.

Mr. NADLER. Well, you are not interested in an answer then.

Mr. FRANKS. I have tried to get an answer 4 times.

Mr. NADLER. I rephrase the question, you may get an answer.

Mr. FRANKS. I appreciate that, but I am asking my own questions. I will certainly allow you to ask yours.

Mr. NADLER. If the Chairman is taking a second round, could I ask a question then of Mr. Perez?

Mr. FRANKS. If we take a second round.

Mr. NADLER. We just did.

Mr. FRANKS. No, we did not. I am yielded time.

Mr. NADLER. Oh.

Mr. FRANKS. Yeah. Anyway, I want to get an answer to a fairly basic question here. If the Department of Justice cannot even answer the question whether they will entertain or advance a proposal that criminalizes speech against any religion, then it is pretty late in the day.

So I am going to change questions here. Mr. Perez, this House passed the Federal hate crimes legislation in October of 2009. How many hate crimes prosecutions has your division brought since the passage of the Act 2 years ago?

Mr. PEREZ. Since the passage of the Act in 2009, 11 cases have been brought involving 38 defendants under the Shepard-Byrd law. Sixteen have been convicted; 22 are awaiting trial.

Mr. FRANKS. All right. That seems to contradict some information we got from CRS.

Mr. PEREZ. I am happy to work with you to provide you the specifics—

Mr. FRANKS. Could you give us your report showing the numbers of cases and parties and courts for these cases that were brought, including ongoing cases with docket numbers and a short maybe one paragraph summary of each case?

Mr. PEREZ. I would be happy to do so.

Mr. FRANKS. And how soon could you get that to us?

Mr. PEREZ. We will do it as soon as possible.

Mr. FRANKS. Any estimation?

Mr. PEREZ. Again, we will do it as soon as possible, sir.

Mr. FRANKS. All right. Well, All right. I will just tell you that our staff did contact CRS to call DOJ and to get this information in advance of this hearing. And the DOJ rep told CRS that there were approximately 300 hate crimes cases brought in just 2 years, but they refused to give the information to CRS. Now this, again, may be correct or incorrect information, I do not know. But it is public record, that much I know. And they urged us to file a FOIA.

Now asking Congress conducting oversight or CRS to file a FOIA request to get public information seems outrageous to me. Do you think this was an appropriate response to that request?

Mr. PEREZ. Again, sir, our staff, I am confident, would be happy to work with your staff. The Hate Crimes Prevention Act, the Shepard-Byrd law, is a critically important law. We welcome congressional inquiries about the work we have done. We have had many investigations. I have described the number of prosecutions. We are very proud of those cases. And we would be happy to work with your staff to get you the necessary information so that you can make assessments based on the facts.

Mr. FRANKS. Well, thank you for coming, Mr. Perez, today.

Mr. PEREZ. Thank you.

Mr. FRANKS. And I will yield now to the Ranking Member of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. FRANKS. Good morning.

Mr. CONYERS. And I am very pleased that you are here, Mr. Assistant Attorney General. I am going to yield the Ranking Member of the Subcommittee, Jerry Nadler, briefly.

Mr. NADLER. Thank you. I will be very brief. I want to rephrase question the Chairman asked a little differently.

First of all, hate speech and hate crimes are very different topics. My question to you is, I assume that the department would make a commitment that you are not going to offer a proposal to criminalize protected speech, to criminalize criticism of religion or of anybody else other than in the context of a direct threat.

Mr. PEREZ. Right. We will do this work, as we always have, in a way that is consistent with the Constitution.

Mr. NADLER. Which means you cannot criminalize—

Mr. PEREZ. Hate speech.

Mr. NADLER. Hate speech.

Mr. PEREZ. Correct. And we have—

Mr. NADLER. Other than with a direct threat of violence or something like that.

Mr. PEREZ. And as a matter of fact, our hate crimes laws say whoever by force or threat of force intimidates or attempts to in-

timidate someone on the basis of race, color, all the protected classes, will—

Mr. NADLER. So short of intimidation and threats of violence and so forth, you are not endorsing a concept that says you cannot criminalize—I am sorry. You cannot criticize someone's religion or anything else.

Mr. PEREZ. We strongly support the First Amendment, and at the same time we strongly support the prosecution of people who use threats of violence to undermine and tear communities apart on racial lines, sexual orientation lines, religious lines.

Mr. NADLER. Thank you. And I yield back. And I thank the gentleman.

Mr. CONYERS. You are welcome. This is an important discussion. And in a way, we sort of started off on this rapid fire back and forth, and sometimes some of the finer and more substantive parts of what we are talking about get lost.

I would like to talk with you about two areas in the few minutes that we have. But for me, Mr. Assistant Attorney General, this is an ongoing discussion that we are having. I am not racing to get all my questions into you. Your office and the whole department have been available to me, and I assume other Members of the Committee for whatever purposes that we want.

So this is not a race against the clock to see how many questions and answers we can get in in a 5-minute period of time, which is a little unrealistic when we are talking constitutional rights.

My two subject matters are the voter protection issues and the attempts at the State level on part of a number of States about making voting more difficult. And I would like to get your impression of what is going on in this climate leading up to the important November vote of 2012.

Could we discuss that a bit, and give me an idea of how your part of the department and the whole Department of Justice is approaching this subject?

Mr. PEREZ. Sure. And, again, our philosophy and our approach here has been very straightforward. We want to enforce the laws, and we are enforcing the laws. And we are doing in a fair and independent way. And I said to the Chair before, there is obviously a robust debate in this country, and we welcome that debate. That is the essence of democracy.

And what we think needs to happen is we continue to have that debate, and then we make sure that we do our level best at the department to ensure that every eligible voter on the first Tuesday in November can cast his or her ballot and they have access to the ballot. That is why we have done more work than ever on behalf of military and overseas voters and will continue to aggressively enforce that.

That is why when the facts call for them, we will interpose objections on the voter ID laws in Texas and South Carolina, because in our judgment the facts supported them.

I agree wholeheartedly with the views of former Attorney General Mukasey, who talked about voter identification laws and said earlier this year, "The Supreme Court," referring to Indiana, "adopted the department's views that voter ID laws are not facially unconstitutional. As the Supreme Court held, such laws serve sev-

eral compelling interests, including the interest in preventing voter fraud and the interest in safeguarding public confidence in representative government. At the same time, the Court acknowledged the undeniable fact that voter ID laws can burden some citizens' right to vote. It is important for States to implement and administer such laws in a way that minimizes that possibility. And it is important for the department to do its part to guard against this possibility. We will not hesitate to use the tools available to us, including the Voting Rights Act, if these laws, important though they may be, are used improperly to deny the right to vote."

That is not Attorney General Holder. That was Attorney General Mukasey. And I completely and utterly agree with him. And that embodies the approach we have taken, Congressman Conyers.

Mr. CONYERS. I will continue our discussion outside of this important hearing. And I thank you for your coming.

Mr. PEREZ. Thank you for your time.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. FRANKS. I thank the gentleman. Mr. Scott, you are now recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Perez, in the 1960's in southern States, hospitals were routinely segregated, and they were integrated because President Johnson conditioned receipt of Medicare and Medicaid on a policy of non-discrimination.

Is the policy of non-discrimination without exception as a condition of receiving Federal money still a good idea?

Mr. PEREZ. Again, I am very familiar with Title 6, which prohibits non-discrimination on the basis of race, color, and national origin. And we have a section that aggressively enforces Title 6.

Mr. SCOTT. What about religious discrimination?

Mr. PEREZ. As I think we have discussed before, the Administration continues to be committed to ensuring that we partner with organizations in ways that are consistent with both the laws and our values. And we will continue to evaluate issues that arise on a case by case basis.

Mr. SCOTT. From 1965 to 2001, there could be no religious discrimination when you are receiving and spending Federal money. Was that a good idea or a bad idea?

Mr. PEREZ. Well, again, we respect the judgments of Congress, and we enforce the judgments and the laws and regulations that are in place. And so that is the job of the Department of Justice.

Mr. SCOTT. If Congress had said it is a good idea to be able to discriminate, do you agree with that?

Mr. PEREZ. Well, again, as I said before, in the context—and I think we have had this conversation a few times, and we will continue to have this conversation—we will continue to make sure that we enforce the laws in a manner that is consistent with both the Constitution and our values. And we will continue to evaluate these questions, and they are undoubtedly important questions and challenging questions. And we will continue to evaluate how the facts apply to laws in a particular context.

Mr. SCOTT. If a faith-based organization were running a government program, could they have as an articulated policy we do not hire Catholics and Jews with the Federal money?

Mr. PEREZ. Well, again, we have had many conversations with you about anti-discrimination laws. And we have enforced cases involving discrimination based on religion in the employment context and in other contexts.

We have a case actually in Arizona that we have brought involving discrimination.

Mr. SCOTT. I am a little confused. Can an organization have as an articulated policy we do not hire Catholics and Jews with Federal money?

Mr. PEREZ. Again, we are having this conversation with you about how to treat the issues of ensuring that we partner with faith-based organizations in ways that are consistent with all of our laws and all of our values. And we will continue to evaluate—

Mr. SCOTT. Do the laws that you are enforcing prohibit discrimination or allow discrimination with Federal money? I mean, could an organization have an articulated policy we do not hire Catholics and Jews with Federal money?

Mr. PEREZ. Again, every situation is fact specific. We have, in fact, prosecuted—or not prosecuted. We have brought civil suits in cases involving discrimination based on religion, and we will continue to evaluate specific facts of particular cases. And if the facts—

Mr. SCOTT. Well, I just gave you a fact situation. If a faith-based organization is running a Federal program with Federal money and has an articulated policy we do not hire Catholics and Jews, can they get Federal money?

Mr. PEREZ. Well, again, we will evaluate the full context of every case that we have, and we will make the appropriate judgment. And when the facts demonstrate that there is, in fact, discrimination occurring, we will not hesitate to take appropriate action. And if you look at the cases—

Mr. SCOTT. Is it not true that your policy is that a faith-based organization can, in fact, have an articulated policy we do not hire Catholics and Jews, and still receive Federal money?

Mr. PEREZ. Well, again, sir, we look at particular situations, and we evaluate the specific facts in a particular situation, and make the appropriate judgment as to the application of the facts to the law in that particular case.

Mr. SCOTT. Are you ashamed of saying, yes, they can, in fact, discriminate legally with the laws that you are enforcing?

Mr. PEREZ. Every case is fact specific. Just as when the Chairman asked me about threats cases, every threats case is very fact specific.

Mr. SCOTT. What is the barrier to discrimination by a faith-based organization? What law prevents them from discriminating?

Mr. PEREZ. I am not sure I understand your question.

Mr. SCOTT. If a faith-based group is taking Federal money, what law can you apply that prevents them from discriminating, from having articulated policy we do not hire Catholics and Jews?

Mr. PEREZ. Well, again, we would have to look at the particular circumstances of a specific case to determine whether there is either a reg from a department so that an agency of that particular

office might be able to take a look at that, or whether there is a law of more general application.

Mr. SCOTT. Thank you, Mr. Chairman. I yield back.

Mr. FRANKS. Thank you, Mr. Scott. And I recognize the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

I recognize and appreciate the testimony, Mr. Perez. I cannot help but reflect back on some dialogue that took place in this Committee between a former Member of this Committee from New York when he asked along the lines of the gentleman from Virginia, is there a particular Christian way to ladle soup. And I thought, yes, there is. That is ham and beans soup. It is particularly Christian within the context of the gentleman from Virginia's. And I know that in the vein that it is delivered.

But I would like to take this to the opening video that you viewed that was delivered by Mr. Nadler, another gentleman from New York. And the statement that if there is voter ID, then Romney wins the presidency. And make this point that what that really says is if you have an election that is a legitimate election, where you have a higher assurance that the people going to the polls actually are American citizens and are legitimate voters, then the Republican side of this wins, and the Democrat side of this loses. That is how I heard and saw that video.

That is my statement. I am not going to ask you to comment on that. But I would ask you to comment on something else that we have seen, and that is the video of the young gentleman going into the polls in Virginia and asking for the Attorney General's ballot. And did you see that video, Mr. Perez?

Mr. PEREZ. No, I have not. I read about it in the newspaper, but I have not seen the video.

Mr. KING. Does it trouble you?

Mr. PEREZ. Again, first of all, I believe it is in the District of Columbia. I think the Attorney General lives in the District of Columbia. You referenced Virginia.

Mr. KING. I am happily corrected with that detail. Does it trouble you that a young man, I think 23 years old, could walk in and be offered the ballot of the Attorney General of the United States? Does that trouble you?

Mr. PEREZ. What is interesting about that is the individual did not vote, and really the question presented is, what is the extent of voter fraud in the United States? I can tell you, Congressman—

Mr. KING. If I could just ask a question. My time is—

Mr. PEREZ [continuing]. That in the context of the litigation—and I comment too much other than what is in the public record—in South Carolina—

Mr. KING. Let me point out that we know why the individual did not vote is because he did not want to break the law.

Mr. PEREZ. And that is why voter fraud—

Mr. KING. And so my point is that there are a lot of individuals out there that do not mind breaking the law. They maybe do not even understand it does violate the law. They are offered a motor voter sign up here and a little checkbox, are you a citizen. Maybe they cannot even read that in English. Maybe they cannot even un-

derstand it in whatever language it is offered in. But it is offered to them, and we are seeing voter registration fraud, and we are seeing voter fraud.

In fact, we know that ACORN admitted to at least 440,000 false or fraudulent voter registrations. So that is pretty prevalent out there, and I cannot imagine that none of those 440,000 actually went and voted. And we have evidence to the contrary.

So one more point. Do you know Donna Brazile?

Mr. PEREZ. I am sorry?

Mr. KING. Do you know Donna Brazile?

Mr. PEREZ. I do not know her personally. I know of her.

Mr. KING. You know of her, and know that she was managing Al Gore's campaign in the year 2000?

Mr. PEREZ. I do not recall that, but—

Mr. KING. I just say that is my recollection. And recall this statement when it was pointed out to her that her campaign was four and a half points down in the polls. And this is from memory, so it could be refined to precision. Her answer to that was, I am not worried about being down four and a half points in the polls. I can pick up 6 points on the street.

I happened to think of that when I saw the gentleman from New York's video that he put out here. He sees the world from an entirely different view than I do, at least on this subject. And so we are interested legitimate voters, and I would make the point to you that there is a bedrock underneath our Constitution, and that is America's confidence in legitimate elections. It really is not whether or not we have legitimate elections. If they believe they are legitimate elections, then they will have confidence in them, and they will accept the decisions made by their elected officials with this constitutional republic that we have.

And we have secretaries of state around the country that are working to try to clean up the voter registration rolls, and they have had great difficulty in getting access to the SAVE Act, the Systemic Alien Verification Entitlement, that is by law to be provided to them. And they are looking to Justice for recommendation, particularly Iowa. And I would ask if you are prepared to make that list available to the Secretary of State Matt Schultz, who has been working diligently to have legitimate voter registration rules in Iowa, as you for a recommendation.

Mr. PEREZ. As I understand it, DHS is working with the Secretary of State. And DHS—

Mr. KING. But asking you for a recommendation. They have kicked it off to you. They pass it over to—

Mr. PEREZ. No, actually I believe, as I understand the program, it is a DHS decision, and DHS will indeed make that decision.

Mr. KING. DHS has announced—if you do not mind, the clock is running down. But DHS has announced that they are looking for guidance from DOJ. Is that not you?

Mr. PEREZ. Well, I would love to see that reference that they are looking from DOJ. I can tell you that in the State of Arizona, we pre-cleared an arrangement, I think 6 years ago, so that the State of Arizona is actually making use of the SAVE database in their verification process.

Now, of course, if in the course of making use of that SAVE database they do so in a manner that impacts or implicates the voting rights laws, then we would step in.

Mr. KING. Okay. But Iowa is not a covered district.

Mr. PEREZ. Arizona is, in fact, doing that.

Mr. KING. So could you list any reason that in Iowa that does not have a covered district in it, that simply wants to use the SAVE list in order to clean up their voter registration rolls to provide legitimate elections, can you imagine any reason why DOJ would recommend to the Department of Homeland Security not to provide that list?

Mr. PEREZ. Well, again, as I understand that process, the SAVE database, the key thing—and Arizona does that, as I understand it—is you have to have the requisite underlying data, including alien registration numbers of the individual. If you are not collecting the requisite underlying data, then the SAVE database will not be helpful. The State of Arizona has done it that—

Mr. KING. Could you cite the statute that prohibits that?

Mr. PEREZ. Pardon?

Mr. KING. Could you cite the statute that prohibits?

Mr. PEREZ. Again, the Department of Homeland Security, sir, is the Department that administers the SAVE database.

Mr. KING. I understand, and they look to DOJ for recommendations.

Mr. PEREZ. Well, again, the Department of Homeland Security is the entity that administers that database. And as I understand it, if you do not collect the requisite data, then the database is useless. Arizona collects the data.

Mr. FRANKS. The gentleman can finish the answer. Go ahead. You are finished on that?

Mr. PEREZ. Yes.

Mr. FRANKS. Okay, all right.

Mr. KING. In which case then, Mr. Chairman, I would just point out that this has been passed back and forth between DHS and DOJ for too long. And it is time to get a resolution to this matter. And I would yield back.

Mr. FRANKS. I thank the gentleman. And without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, for the witness in this case, which will be forwarded. And we will ask the witness to respond as promptly as he can so that the answers may be made part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

And with that, Mr. Perez, thank you and those that have attended you today for coming to the hearing. And thank the Members and observers.

And this hearing is now adjourned.

Mr. PEREZ. Thank you, Mr. Chairman.

[Whereupon, at 10:35 a.m., the Subcommittee was adjourned.]

A P P E N D I X

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**Post-Hearing Questions submitted to the Honorable Thomas E. Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice\***

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August 22, 2012

The Honorable Thomas E. Perez  
Assistant Attorney General  
Civil Rights Division  
U.S. Department of Justice  
Washington D.C. 20530

Dear Assistant Attorney General Perez,

The Judiciary Committee's Subcommittee on the Constitution held a hearing on the Civil Rights Division on July 26, 2012. Thank you for your testimony.

Questions for the record have been submitted to the subcommittee within five legislative days of the hearing and are attached. We would appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers to Sarah Vance at [Sarah.Vance@mail.house.gov](mailto:Sarah.Vance@mail.house.gov) by September 5, 2012. If you have any further questions or concerns, please contact Judiciary Committee Oversight Counsel Dan Huff at [Daniel.Huff@mail.house.gov](mailto:Daniel.Huff@mail.house.gov) or (202) 225-3951.

Thank you again for your participation in the hearing.

Sincerely,



Trent Franks  
Chairman  
Constitution Subcommittee

\*The Subcommittee had not received a response to its questions by the time this hearing record was submitted for printing on February 4, 2013.

**Questions for the Record from Mr. Franks**

1. The Department of Justice has brought suit against institutional care facilities that are home to individuals who are suffering from the most severe forms of developmental disabilities. The Committee has been informed by concerned legal guardians that the Department has brought these suits even in cases in which no resident, resident's legal representative, staff member, or federal or state inspector has requested such actions be taken.
  - a. Does the Department pursue such actions even if no issue with a facility's care for a developmentally disabled individual has been raised by that individual, their legal guardians, staff at the facility, or those that are legally authorized to inspect such facilities?
  - b. Does the Department pursue such actions even if the residents' legal guardians object to the suit being brought? If so, how does the Department account for the Supreme Court's holding in *Olmstead v. L.C.* that "transfer from institutional care to a less restrictive setting is [appropriate only in cases in which it is] not opposed by the affected individual"<sup>1</sup>?
  - c. In determining whether to pursue such actions, which in many cases result in the closure of an institutionalized care facility, how does the Department take into account the Supreme Court's holding in *Olmstead v. L.C.* that "nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings"<sup>2</sup>?
2. Is it the Justice Department's position that it has the authority to enforce in Guam the Fifteenth Amendment to the U.S. Constitution and the Voting Rights Act prohibitions with regard to discrimination in voter registration?
3. Is it the Justice Department's position that the Fifteenth Amendment and the Voting Rights Act apply to voter registration requirements for a plebiscite in Guam regarding the island's future political status?
4. Has the Justice Department investigated, is it currently investigating, or does it have plans to investigate allegations that the voter registration requirements for the plebiscite regarding Guam's future political status violate the Fifteenth Amendment and the Voting Rights Act?
  - a. If yes, what was the result, or current status, of the investigation?
  - b. If no, why has the Justice Department declined to investigate these serious allegations of discrimination?

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<sup>1</sup> 527 U.S. 581, 587 (1999).

<sup>2</sup> *Id.* at 602.

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5. Has the Justice Department formally or informally lodged any objection with the government of Guam regarding the voter registration requirements for the plebiscite regarding the island's future political status?
6. In upholding Indiana's strict voter ID law in *Crawford v. Marion County Election Board*, the Supreme Court held that states have a legitimate interest in requiring photo IDs for voters even absent evidence of widespread fraud in order to inspire public confidence in the electoral system.
  - a. Does the Department accept *Crawford v. Marion County Election Board* as binding precedent?
  - b. Does the Department believe *Crawford v. Marion County Election Board* was decided correctly?
  - c. Although *Crawford v. Marion County Election Board* was decided on constitutional grounds, does the Department take the Court's ruling into account in its enforcement of the Voting Rights Act?
  - d. Did you see the recent video of a poll worker in Washington, D.C., offering the Attorney General's ballot to a young white activist? Do you think seeing how easy it is to obtain the ballot even of a well known figure hurts or helps to inspire public confidence in the integrity of the voting system?
7. According to military voting expert Eric Eversole, the Voting Section has been more active than prior years in phoning states to see whether they will be in compliance with federal laws requiring that ballots for military voters be mailed out early enough to be completed and returned in time to count. This is encouraging. Do you think an electronic tracking system where states and localities could check in and receive DOJ updates might be more efficient and less error prone?
8. The Military and Overseas Voter Empowerment Act (MOVE) requires states to work with the Defense Department to provide voter registration at all military recruitment offices. However, registration rates from these recruitment offices remain lackluster. DOJ has mounted an aggressive campaign to force states to provide more extensive voter-registration services at welfare and social-service offices. Why has DOJ not been as aggressive at recruitment offices where registration rates are even lower?
9. Your written statement highlights settlements from the 2010 elections, which you say ensured military voters would have at least 45 days to return their ballots or sufficient opportunity to return the ballots by the jurisdiction's ballot receipt deadline.
  - a. Does a ballot count if it is filled out after Election Day, but still is returned before the jurisdiction's deadline for receiving absentee ballots?

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- b. If not, what good does extra time to return the ballots do if they are sent too late to fill out before Election Day?
10. There are reports that a supervisory test coordinator in the Civil Rights Division's Housing and Civil Enforcement Section used taxpayer funds to facilitate an inappropriate relationship with a female federal contractor in Florida. The Committee has also received information that the Section awarded contracts to the contractor's company and that cash and electronic equipment may have been misused. An Inspector General report on the employee has been prepared, but DOJ has refused to release it.
- a. Have you seen the Inspector General's report?
- b. Many are concerned that given the seriousness of the charges, the employee, who was simply bought out, was inadequately punished. Will you commit to making the report available to this Committee for oversight?
11. In *Holder v. Pine*, decided in January, a federal judge criticized the Division's FACE Act prosecution of a peaceful pro-life demonstrator. Even though DOJ lawyers visited the clinic the day after the alleged violation, they failed to ask for surveillance tapes or sign in sheets that were later destroyed. The Judge wrote:

The Court can only wonder whether this action was the product of a concerted effort between the Government and [the abortion clinic], which began well before the date of the incident at issue, to quell Ms. Pine's activities rather than to vindicate the rights of those allegedly aggrieved by Ms. Pine's conduct. . . . The Court is at a loss as to why the Government chose to prosecute this particular case in the first place.<sup>3</sup>

- a. To answer the Court's question, was there any coordination between the Government and the clinic?
- b. Has this and other similar losses, prompted any review of how potential FACE Act cases are investigated and pursued?
- c. Given these sorts of cases, can you understand why some folks agree with the Court that the Department may be using FACE Act cases, particularly civil actions with a lower standard of proof, to quell the First Amendment rights of the Pro-Life activists?
12. At the July 26, 2012, Civil Rights Division oversight hearing, Assistant Attorney General Perez committed to provide Chairman Franks information relating to the consideration and pursuit of hate crimes cases "as soon as possible." Previously, the Congressional Research Service had unsuccessfully sought this information from DOJ at Mr. Franks' request and was advised there are in excess of 300 cases. To date though, the Department has provided information only on 11 cases actually filed even though Chairman Franks explicitly

<sup>3</sup> *Holder v. Pine*, 2012 U.S. Dist. LEXIS 56183 at \*17 n.6, \*37 (S.D. Fla. Jan. 13, 2012).

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requested information on each investigation opened not just those brought to court. Mr. Franks even committed to treat any personal information proffered as confidential. Why has the Department nevertheless refused to make good on Mr. Perez's commitment and when can we expect the data?

