



# BEFORE *BROWN*, THERE WAS *MENDEZ*

THE LASTING IMPACT OF *MENDEZ V. WESTMINSTER*  
IN THE STRUGGLE FOR DESEGREGATION

By Maria Blanco



**MARCH 2010**

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### **ABOUT PERSPECTIVES ON IMMIGRATION**

The Immigration Policy Center's *Perspectives* are thoughtful narratives written by leading academics and researchers who bring a wide range of multi-disciplinary knowledge to the issue of immigration policy.

### **ABOUT THE AUTHOR**

**Maria Blanco** serves as the Executive Director for the Chief Justice Earl Warren Institute at Berkeley Law, University of California. She served as executive director of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. She brings more than 20 years of experience as a litigator and advocate for immigrant rights, women's rights and racial justice. As executive director of the Lawyers' Committee, Blanco launched initiatives to increase minority access to higher education, provide legal counsel for students in substandard schools, and convene African American and Latino community leaders to discuss the impact of immigration reform. She regularly contributes to national and local media on school integration, the importance of an independent judiciary, and civil rights challenges in today's security climate. Blanco is also the co-chair of the California Coalition for Civil Rights, a group dedicated to building a progressive national agenda for civil and human rights.

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### **PHOTO CREDITS**

Large: Students from Lincoln Elementary School for "Mexican" children in Orange County, California. 1930s, courtesy of "Fire in the Morning" Collection, Yolanda Alvarez and Steve Demara. Small 1: Felicitas and Gonzalo Méndez, courtesy of "Fire in the Morning" Collection, Yolanda Alvarez and Steve Demara. Small 2: Untitled, 1949, courtesy of the University of Texas at Austin. Small 3: George E.C. Hayes, Thurgood Marshall, and James M. Nabrit, following Supreme Court decision ending segregation. Prints and Photographs Division, Library of Congress (9) Reproduction # LC-USZ62-111236.

# INTRODUCTION

Years before the U.S. Supreme Court ended racial segregation in U.S. schools with *Brown v. Board of Education*, a federal circuit court in California ruled that segregation of school children was unconstitutional—except this case involved the segregation of Mexican American school children. The Ninth Circuit Court of Appeals reached this historic decision in the case of *Mendez v. Westminster* in 1947—seven years before *Brown*. Historic in its own right, *Mendez* was critical to the strategic choices and legal analysis used in arguing *Brown* and in shaping the ideas of a young NAACP attorney, Thurgood Marshall. Moreover, the *Mendez* case—which originated with LULAC but benefited from the participation of the NAACP—also symbolized the important crossover between different ethnic and racial groups who came together to argue in favor of desegregation.

From a legal perspective, *Mendez v. Westminster* was the first case to hold that school segregation *itself* is unconstitutional and violates the 14<sup>th</sup> Amendment. Prior to the *Mendez* decision, some courts, in cases mainly filed by the NAACP, held that segregated schools attended by African American children violated the 14<sup>th</sup> Amendment’s Equal Protection Clause because they were inferior in resources and quality, *not* because they were segregated.

From a strategic perspective, Thurgood Marshall’s participation in *Mendez* paid critical dividends for years to come. Marshall, who later would successfully argue the *Brown v. Board of Education* case before the U.S. Supreme Court and eventually become the first African American Justice on the Supreme Court, participated in the *Mendez* appeal. His collaboration throughout the case with the *Mendez* attorney, David Marcus, helped ensure that the case would be an important legal building block for Marshall’s successful assault on the “separate but equal” doctrine. Although Marshall and Marcus differed in aspects of their legal approach to the segregation involved in the *Mendez* case, their exchanges about the stigma attached to segregation and the psychological damage caused by it undoubtedly played a large role in the *Mendez* litigation.

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The link between Mexican Americans and African Americans in the struggle for desegregation has been obscured with time. Revisiting that link is important not only to understand the historic underpinnings of *Brown*, but also to realize one of the great truths in the struggle for equality: the consecutive and continuous movements to cast off the many varied mechanisms of subordination result from an iterative process of developing and connecting strategies and struggles between and among different peoples.

# THE HISTORY

By the 1930s, roughly 80% of California school districts placed Mexican children in separate “Mexican” schools. This was not a consistent practice until the late 1920s and early 30s, when Mexican Americans emerged as a large minority population in California. Together, with school segregation, came housing segregation and the exclusion of Mexican Americans from many public spaces. At times, depending on the city or county, the segregation of Mexican Americans was prescribed by law (for example, by restrictive real estate covenants); other times it was a practice carried out by public and private entities. In this regard, it differed from the *de jure* segregation of African Americans and the legally enforced discrimination and segregation of Asians and Native Americans.

**“... the *Mendez* plaintiffs did not argue that their segregated schools were unconstitutionally inferior; instead they opposed segregation *itself* as violating the 14<sup>th</sup> Amendment’s Equal Protection clause. In essence, the case challenged the doctrine of “separate but equal.”**

Gonzalo Mendez, the named plaintiff in *Mendez*, arrived in California from Mexico when he was six. His future wife, Felicitas, came to the U.S. with her family from Puerto Rico, recruited to pick cotton in Arizona by the Arizona Cotton Growers Association. Through hard work in the citrus groves of Orange County, the couple was eventually able to buy and run a restaurant in Santa Ana, California. However, in a historical turn that dramatically weaves together many stories of discrimination and bigotry, the Mendez family moved from Santa Ana to Westminster to operate a farm owned by the Minemitsu family, Japanese Americans who leased it to the Mendezes in order to prevent its loss when interned under Roosevelt’s Executive Order 9066.<sup>1</sup> The location of the Minemitsu farm placed the Mendez family within close proximity of the “White” school in Westminster, but the Mendez children—Sylvia,

Gonzalo, Jr., and Geronimo—were denied enrollment and informed they must attend the Mexican school. Unwilling to go along, the Mendez family and other parents organized protests and demanded an investigation into, and an end to, the segregation. When their efforts were unsuccessful, including a bond measure to fund an integrated school, Gustavo and Felicitas Mendez, along with the League of United Latin American Citizens (LULAC), contacted other Mexican American parents in neighboring Orange County districts—some of whom had already hired attorneys—and decided to file a class-action lawsuit. They hired David Marcus, a Los Angeles attorney who had successfully argued other public-facility desegregation cases in Southern California, to represent them.

The Mendezes and four other families filed *Mendez v. Westminster* in federal court in 1945, against the Westminster, Garden Grove, Santa Ana, and El Modena school districts on behalf of their children and 5,000 people of “Mexican and Latin descent.” In contrast to other lawsuits of that period which challenged the school segregation of African Americans, the *Mendez*

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<sup>1</sup> In 1946 the Mendez family returned to Santa Ana when the Minemitsu family came back from their internment to their farm.

plaintiffs did not argue that their segregated schools were unconstitutionally inferior; instead they opposed segregation *itself* as violating the 14<sup>th</sup> Amendment’s Equal Protection clause. In essence, the case challenged the doctrine of “separate but equal.” To do so, Marcus relied on social scientists whose testimony challenged stereotypes about Latino students and attested to the psychological damage caused by segregation.

In response to the charges of discrimination, the school districts contended that the segregation was not racially based and that the practice of placing Mexican American children in separate schools was in reality a practice of placing non-English speaking children in separate schools until they acquired proficiency in English. This argument in defense of segregation was common throughout the Southwestern U.S. In addition, the practice was justified by racist claims about the mental inferiority of Mexicans and the health dangers they presented to White children if they attended the same schools.

## THE DECISION

After a lengthy and complex trial with more than 70 witnesses—including social scientists and witnesses who testified about the impact of segregation, often students themselves—Judge Paul McCormick dismissed the linguistic rationale and held that “the clear purpose of the segregation by the school districts was to discriminate against pupils of Mexican descent.” He pointed to the fact that only students of Mexican ancestry were placed in the non-English speaking schools and he noted that many of the children spoke English, including the Mendez children. In a holding that augured the *Brown* decision, McCormick concluded that “equal protection is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to children of Mexican ancestry that are available to the other public school children ... segregation fostered antagonisms in the children and suggests inferiority among them where none exists.” A seven-member panel of the Ninth Circuit upheld the decision and, in a published opinion which lists Thurgood Marshall as counsel for the NAACP below David C. Marcus for the plaintiffs, stated that “enforcing the segregation of children of Mexican descent violated the 14<sup>th</sup> Amendment and denied them equal protection.”

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The *Mendez* case is also historically important for other connections to *Brown v. Board of Education*. In addition to the Marshall name and the innovative arguments buttressed by scientific evidence accepted by the trial court in *Mendez* and later in *Brown*, the cases also share the involvement of Earl Warren, who was Governor of California at the time. After the

Ninth Circuit struck down the segregated Mexican schools in Orange County, the California legislature passed legislation in 1947 which repealed all school segregation. That law was signed by Earl Warren, who would later become the Chief Justice of the U.S. Supreme Court and preside over the *Brown* court. Many have speculated, and it does not seem farfetched, that Warren's exposure to the *Mendez* case, and to the legislative deliberations that lead to the repeal of all school segregation in California, educated and primed him for the *Brown* challenge to *de jure* segregation and the overturning of the infamous *Plessy v. Ferguson* case which had created the deeply flawed doctrine of "separate but equal."

## CONCLUSION

Today, we take for granted *Brown v. Board of Education's* legacy that there can be no moral or legal justification for racial and ethnic segregation. At the time, however, *Brown* represented this country's most radical rupture from the history of slavery and its legal justifications and consequences. Despite the deep racial, ethnic, and economic disparities that persist in the U.S., the legal battle against racial superiority has been won. It was not easy. It took courageous parents and communities, creative and collaborative thinking, and a long view about the arc of history.

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Reminding Americans of the connective tissue that links the *Mendez* and *Brown* cases is more than just a history lesson. The story of these two cases shows how individuals from vastly different backgrounds, races, and ethnicities were brought together to overturn a history of discrimination and segregation. Neither decision would have been possible without the involvement of this broad and complex coalition of lawyers, organizations, and individuals—all devoted to advancing civil rights protections in the U.S. Throughout the process, they collaborated with each other and learned from each other. These same connective tissues exist today in issues ranging from immigration reform, educational equality, access to healthcare, and other areas where it is necessary to dismantle various forms of discrimination. Understanding the dynamic between *Mendez* and *Brown* offers a lesson in shared opportunities, where the struggles and strategies of one

group can inform and energize the next. *Mendez* and *Brown* together stand for the proposition that we must look for opportunities to share knowledge and strategies, understanding that we raise the other up in the process.