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Elia Diaz-Yaeger, Editor-in-Chief

Elia Diaz-Yaeger is a Shareholder in the law firm of Lugenbuhl, Wheaton, Peck, Rankin and Hubbard. Her primary areas of practice are industrial employment/long-latency lung disease litigation, insurance defense and coverage, environmental law, commercial litigation, and Board Governance/Cybersecurity. In the last twenty years, Ms. Diaz-Yaeger has successfully defended thousands of occupational exposure claims, including exposure to asbestos and silica-containing products. Mrs. Diaz-Yaeger’s extensive litigation experience enables her to provide clients with an early strategic plan, vigorous defense, and efficient litigation.

As an AV-rated attorney, Mrs. Diaz-Yaeger was selected for the inaugural edition of the Martindale-Hubbell® Bar Register of Preeminent Women Lawyers™. Her recent professional credentials include the 2014-2015 Recipient of the Louisiana State Bar Association Human Rights Award. She is also a 2015 CityBusiness “Women of the Year” recipient and honoree. Mrs. Diaz-Yaeger actively promotes diversity and inclusion of women and Hispanics in the legal professions through various professional organizations. She is a long standing member of the Hispanic National Bar Association, where she currently serves as the National Secretary. Mrs. Diaz-Yaeger is also a member of International Association of Defense Counsel, Defense Research Institute, American Bar Association, and Louisiana State Bar Association. She is a frequent speaker and CLE presenter. Her recent professional engagements include: presenting at the 2015 DRI Asbestos Medicine Seminar; 2015 LSBa presenter on professionalism; speaker at the 2012 American Bar Association mid-year meeting and 2011 HNBA National Corporate Conference; leading round-table discussions at several in-house corporate meetings; serving as a diversity facilitator for the LSBa; participating in the LSBa's diversity and inclusion video.

In addition to her professional pursuits, Mrs. Diaz-Yaeger also serves on the Board of Directors of ASI Federal Credit Union, a Community Development Financial Institution, whose mission is to strengthen the financial health of underserved communities through financial service and education. Mrs. Diaz-Yaeger also volunteers and participates in a number of social and community programs including, Taking Steps for Crohn's and Colitis, New Orleans Ballet, Kingsley House “friendraising,” and New Orleans Opera Association. Additionally, she is a founding member of Candy Girls/Life Savers of New Orleans, a non-profit group that supports and provides services to families in need.

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It’s Too Late for Isolationism

The forces of populism and nationalism that surged during last year’s presidential election have fed the misguided perception that the American people are no longer interested in thinking beyond our nation’s land and maritime borders. Fear of foreigners and international cooperation seems to be the new (or not-so-new) vogue.

Unfortunately for American isolationists, it’s too late. Esó ya no está de moda. The United States and the vast majority of both developing and industrialized nations have become so interconnected, reversing that trend—or even putting a pause on it—would be profoundly difficult, not to mention detrimental.

According to the U.S. Chamber of Commerce, more than 41 million American jobs are dependent on trade. At a surplus of $248 billion in 2016, the United States is a net exporter of services, a sector that continues to grow, particularly in the realms of intellectual property, technology, and financial and legal services.

The growing community of Latino lawyers that make up the Hispanic National Bar Association understands this environment on two fronts. As attorneys and legal advisors, our performance is often influenced by our ability to anticipate and outmaneuver the competition, wherever they may be, to more effectively advocate for our clients. As the descendants of Latin American migrants, or as immigrants ourselves, we know what it means to call one nation home, but have deep connections to another.

Which is why more than a thousand of us—Latino attorneys, judges, law professors, and law students—are congregating in Miami this week for the HNBA’s Corporate Counsel Conference, to help build our national and international networks in an increasingly global business environment. Firms, organizations, and businesses continue to look to cities like Miami to engage a global audience or to access markets across the world. Our goal during this year’s convening is to drive important discussions on how international issues can impact local businesses, open opportunities here in the United States and abroad, and build meaningful and long-lasting connections here and around the world.

But those experiences shouldn’t be limited to cities with palm trees and clear blue water. Even for those not directly involved in international law or business, the actions of others, the current state of technology, broad access to top talent, and the ease of travel substantially impact everyone’s bottom line. For those looking to expand their reach, showing a prospective international client that you understand their needs, idiosyncrasies and culture can be the difference between landing the pitch and missing it completely. Ignoring those opportunities isn’t simply foolish, it puts you at an economic disadvantage.

We should embrace our international networks the same way we Americans embrace our diversity: as a source of strength rather than division. America is at its best when it authentically engages its partners for mutual benefit. As individuals, we should do the same.

So this year, let’s give it a shot. Tírate al charco. Jump in the water. Don’t worry, I promise you it’s warm. And we will be there to catch you.

Pedro J. Torres-Díaz
HNBA National President
When I was a little girl, I wanted to be just like Claire Huxtable from The Cosby Show. She was a smart, confident, fashionable, and successful attorney, with a biting wit and the ability to maintain the balance between family and work like no other. She epitomized class while somehow staying down-to-earth and relatable. Her circle of friends was inclusive. She was also, sadly, a fictional character, something my husband loved to point out every time that I lamented that we were not more like the Huxtables. But, like many young children of color, she was the only attorney I’d ever “known” up to that point in my life, so she was my attorney role model, fictitious or not.

In recent years I found a new attorney role model in First Lady Michelle Obama. She is, in many ways, like Claire Huxtable, loving husband and children to boot. Even better, she is real. And when she declared the now famous speech, “When they go low, we go high!” I got chills. Because despite the criticism leveled at her over the 8 years of her husband’s Presidency, Mrs. Obama still saw and represented the best in us, and could state, unequivocally and convincingly that the best was yet to come for our country. In doing so, she encouraged the rest of us to maintain our dignity and to be better people, even in the face of unfairness, bigotry, and even outright racist rhetoric and behavior.

I have carried her words with me as HNBA President-Elect as we forge into uncharted territory as a bar organization under a President who has unfairly characterized many in our community as “killers,” “rapists,” and “bad hombres”; who maintained that a U.S.-born federal judge of Latino descent was incapable of performing his job fairly and impartially. A President whose statements about women, African-Americans, Muslims, LGBTQ, disabled citizens, veterans, and judges (all of whom are represented in our membership) have been perceived by many as unfair and divisive. The call to action from our members and communities has been deafening. HNBA leadership has fielded countless emails and calls, asking us to do more, to speak out, to act. We have done our best to answer that call, and to continue to “go high” when others go low.

The ways we have done so are numerous and impressive. First, in November 2016, one of President Torres-Díaz’s first major initiatives was to partner with national affinity sister bars (Lamba Legal, NAPABA, NAWL, NBA, and NNABA) to issue a press release denouncing the recent spike in hate-motivated violence and harassment, to send a letter to all members of Congress asking them to do the same, and to publish a “Hate Crimes Toolkit,” a 50-state resource for individuals who have been the victim of a hate crime, including information on how to report a hate crime, find pro bono legal resources, and other support services. The need for cooperation and coalition-building with other minority groups has never been more pressing than now, and our collective voices on issues of importance cannot and will not be ignored. I am proud of the HNBA’s swift action on the issue of hate crimes and our increasingly close relationship with our sister bars.

Second, during inauguration week, President Torres-Díaz and I traveled to Washington, D.C. to meet with leaders in the House and Senate to make our presence and positions known, and to make clear that the HNBA is a non-partisan organization, which will work with any elected official, from any party, whose interest align with ours, or who, at the very least, is willing to hear us out and find common issues on which we can agree and work together. I was encouraged by the warm reception we received from members of House Speaker Ryan’s and Senate Majority Leader McConnell’s staff, as well as many other Republican and Democratic leaders and Caucuses.

In February 2017, in response to recent immigration-related Executive Actions, President Torres-Díaz, VP of External Affairs Juan Sempertegui, and Immigration Law Section, Co-chaired by Christine and Arnulfo Hernandez, created the HNBA’s “ImmiGRANT Legal Defense Task Force.” Through this Task Force, the HNBA has launched a Pro Bono Immigration Services Directory and a grant program to which attorneys defending individuals and families impacted by these actions can apply for funding to help defray the cost of immigration-related legal representation. We have also secured complimentary access for our members to the Practicing Law Institute’s wide array of CLE and training courses related to immigration law. Our brilliant Amicus Brief Committee, led by Peter Karajia, has also analyzed and issued reports on the Administration’s immigration-related Executive Orders and the legality and potential impact of the same.

The reality is that our leaders’ words and actions matter, and have had, and will continue to have, a real and lasting impact on our organization, members, and community. Corporate support (including law firms) for diversity related activities seems to be harder than ever to obtain. Perhaps some feel that it is no longer necessary to pretend to care about diversity or support organizations, such as the HNBA, that are aimed at leveling the playing field and creating a more inclusive legal profession and society. Or perhaps “uncertainty” has caused companies to “tighten their belts,” as we have been told. Either way, this trend is alarming. Now, more than ever, the HNBA needs sponsors and supporters to fund our very important mission, initiatives, and programs. But I am proud to report that the HNBA has continued to thrive and “go high,” in spite of the unprecedented challenges that we, and our communities, face.

As a bar association, we have a unique opportunity, and a duty, to serve as voices for individuals and communities who are targeted based on their race, religion, gender, gender identity, veteran or immigration status, national origin, sexual orientation, or disability. We must protect the Constitution, stand up for our judiciary, and do everything in our power to preserve the rule of law. We must continue to fight the fight, walk the walk, and talk the talk. The HNBA and its members represent the best and brightest this nation has to offer and the many members who have stepped up to the plate to address these numerous challenges continue to inspire me and remind me that the future is bright, and the best is yet to come. I hope that you will join us!

Erica V. Mason
HNBA National President-Elect
Cicero said it best: *Non nobis solum nati sumus* (not for ourselves alone are we born). This is the spirit under which the Hispanic National Bar Association (“HNBA”) was founded—Latinos/as from different national heritages coming together to carry each other’s burdens, and to ensure better paths and opportunities for others. This spirit is at the core of everything the HNBA does. Our members and supporters understand that we do not exist “for ourselves alone.” We must be the voice for the voiceless and for those who can only whisper. We must tackle the concerns and challenges that affect our communities, nationally and abroad, no matter the obstacles, misconceptions or even attacks.

By Alba Cruz-Hacker, HNBA COO & Executive Director

Everything we do as an organization—our programs, events, and initiatives—is a direct reflection of who we are: a group of passionate and dedicated current and future legal professionals engaging in the best exercise for the soul, reaching out to lift others up. We are committed to being helpful, to being useful, and to strive each day so our work has a positive and transformational impact on the lives of not only Latinos/as in the United States, but around the globe.

The HNBA has come a long way from those first days in California. Our work and influence have expanded beyond the borders of the United States. The HNBA has become one of the most influential professional associations in the nation. Our membership is comprised of thousands of Latino lawyers, law professors, law students, legal professionals, state and federal judges, legislators, and bar affiliates operating across the country and now around the world. Today the HNBA has attorney members in Mexico, Argentina, Dominican Republic, Nicaragua, Ecuador, Canada, and El Salvador, among others. We have international affiliate organizations in France and Canada, and are working with different “Colegios de Abogados” (bar organizations) throughout Latin America so they can join us in our important and necessary purpose, as stated in the HNBA Bylaws:

...to serve as the voice for the concerns and opinions of Hispanics in the community generally, and the legal profession in particular, to serve the public interest by cultivating the science of jurisprudence, promoting reform in law and policy, facilitating the administration of justice, fostering respect of the law, advancing the standing of the legal profession, [and] encouraging the advancement of Hispanic students... [by] establishing a network among Hispanic lawyers, and cooperating with bar associations, other legal and non-legal organizations, nationally and internationally[.]

Year after year, the HNBA advances the cause of Latino/a students and young lawyers, as well as mid- and senior level legal professionals, while “preserving high standards of integrity, honor, and professional courtesy.” We do because we know that despite our forty-four years of accomplishments, we have much work ahead. Continue to join us in our noble endeavors. We need you.
Supporting diversity in the legal profession.

Microsoft is proud to join the Hispanic National Bar Association in its mission to enrich and diversify the legal profession and create opportunities for Hispanic communities.

By Madeleine B. Kadas, Russell N. Fraker and Hana V. Vizcarra

If your company produces consumer products for global distribution, you may have encountered an increase in “product stewardship” measures that affect your access to markets around the world. Product stewardship refers to an array of initiatives intended to reduce a product’s environmental impact—for example, by imposing recyclability or other sustainable design criteria, banning or restricting the use of toxic substances, requiring energy efficiency labeling and certification, or obligating those who sell a product to recover it at the end of its useful life. Although we may think of the United States as having the most developed environmental regulatory regime, many other countries outpace the U.S. in some areas of product regulation. Consequently, emerging product stewardship requirements may be unfamiliar to U.S.-trained attorneys with international compliance responsibilities.

What types of measures are you likely to see? Some current examples from Latin America, a hub for these measures in recent years, include newly proposed chemical regulations, extended producer responsibility for end-of-life products, and mandatory energy efficiency testing, certification, and labeling.

Regulation of Chemicals. Existing and proposed substance bans and restrictions under global environmental agreements impact the chemical, agricultural, and electronics industries. Brazil’s government is working on the first law in Latin America to establish a registry of chemical production and imports, a risk assessment process, and a risk management program authorized to regulate uses of substances in products. It recently sought public comments on its draft bill, and is expected to introduce the revised bill in Congress this year. Colombian legislators are considering two proposals that would establish hazardous substance inventories, and Peru recently adopted a framework for regulating so-called “specialty chemicals,” an undefined but potentially broad category of materials now subject to further regulation.

Producer Responsibility for Product Wastes. Extended producer responsibility regimes are intended to incentivize
environmentally friendly design by transferring the costs of collecting and managing end-of-life products to the producer. Such requirements can range from making collection bins publicly available to stricter buy-back or take-back programs. In most cases, manufacturers, importers, and sometimes distributors are required to establish and operate waste management programs that prioritize reuse and recycling, allowing for disposal only upon a showing that no other option is feasible. Brazil, Chile, Costa Rica, Ecuador, Mexico and Peru have all enacted general waste laws that establish extended producer responsibility as a principle to be implemented for a wide array of products, including batteries, electronics, lamps, medicines, and various types of packaging. Each of these countries is moving along its own path at its own pace to establish enforceable obligations for particular product categories, creating a complex and dynamic patchwork of requirements across the region. Major cities in several countries, including Argentina, Brazil, Colombia and Mexico, have adopted plastic bag bans, a vanguard waste issue in Latin America, and a likely precursor to widespread restrictions on packaging.

**Energy Efficiency Requirements.** Heightened public awareness of climate change, impending international commitments to curtail carbon intensity, and strained electrical grids are driving energy efficiency requirements around the world. Some of these include specific efficiency requirements for products, while others focus on energy use by sector that may increase demand for energy efficient products. Chile and Mexico continue to expand the sets of products subject to energy efficiency standards, imposing unique testing, certification and labeling requirements. In most cases, country-specific requirements have no impact on the efficiency of products manufactured for a global market, but merely add to the administrative burden. Colombia has published a new draft action plan that would establish energy savings goals for the transport, industrial, service, and residential sectors, and calls for equipment standards that regulate standby modes.

**Non-Regulatory Social and Environmental Responsibility Pressures.** Even in jurisdictions without product stewardship regulation, pressures from corporate responsibility, environmental, and human rights interest groups, or disclosure requirements encourage companies to take more active roles in improving their sustainability profiles. Concerns over reputational risks and brand loyalty are prompting companies to re-examine how they can best manage social and environmental impacts across the life cycles of their products. Disclosure requirements promoting transparency in supply chains specific to labor or human trafficking have been proposed or enacted in various jurisdictions around the world. For example, California’s Transparency in Supply Chains Act requires large manufacturers and retailers to publicly disclose efforts to address human trafficking in the supply chain and the UK’s Modern Slavery Act requires certain organizations doing business in the UK to produce an annual “slavery and human trafficking statement.”

Shareholder resolutions relating to environmental, social, and governance issues that require companies to publish annual reports or tie executive compensation to particular metrics are cropping up as well. Likewise, non-governmental organizations have targeted specific companies and industries with campaigns focusing on the labor and environmental practices in the supply chains behind their products. Companies doing business around the globe can face daunting legal and cultural challenges in developing consistent, cost-effective stewardship programs that enable them to retain the value and marketability of their products. Some companies seeking to go “beyond compliance” have discovered unanticipated competitive or confidentiality costs or have become targets for interest groups seeking more aggressive measures despite their efforts.

**What does this mean for you?**

Tracking regulatory developments in the markets in which you operate becomes increasingly important as producer responsibility concepts spread across regions, along with disclosure requirements and non-regulatory pressures. It is also important to keep in mind that strict rules on paper sometimes reflect high aspirations that do not always reach full implementation in some jurisdictions. There may be a breakdown between the good intentions of a law expressing the attitudes and desires of the citizenry and the practical reality of achieving the goal. Familiarity with enforcement and implementation challenges across jurisdictions can help your company tailor its compliance program to evolving legal requirements. The rise of disclosure rules and corporate responsibility policies may lead to situations in which compliant activities in one jurisdiction trigger disclosure requirements or an inconsistent advocacy position elsewhere. Consulting knowledgeable counsel who track these developments up front could save on compliance and other costs down the line.

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Third-Party Due Diligence Procedures: A Critical Element for an Effective Compliance Program

By Richard Montes de Oca, Lauren Bengochea and Claudia Herbello

Companies today operate in an environment of ever-increasing U.S. and foreign laws, regulations, and enforcement. Companies that wish to operate in a global market must understand those risks associated with the growing accessibility of doing business in other countries. Accordingly, companies are strongly encouraged, and often required to develop Compliance Programs that will enable them to detect, deter and prevent violations of law and misconduct. An effective Compliance Program consists of various elements, including conducting effective due diligence and adopting a program, policy, or procedures (“Due Diligence Procedures”) critical to “know” their agents, partners and other third parties. Due Diligence Procedures, allow companies to have better controls and understand who they are doing business with and to comply with the U.S. Foreign Corrupt Practices Act (“FCPA”), U.K. Bribery Act, and other regulations or agreements.

Companies that associate with third parties and adopt appropriate Due Diligence Procedures mitigate the risk of a violation, an investigation or enforcement actions. Effective Due Diligence Procedures should include a thorough questionnaire for business partners to complete, which puts the business partner “on the record” regarding key issues. Some of the questions should include: (1) company background, such as identifying and registration information; (2) ownership and management and the relationship of these with government officials and company interactions; (3) disclosure of civil, criminal, and regulatory matters; (4) knowledge of anti-corruption and compliance; and (5) references from individuals who know the business partner and can provide verification of experience. Due Diligence Procedures should also include background checks on the company and individuals, interviews, site visits, and an inquiry of any negative media coverage. The adoption of an appropriate Due Diligence Procedures program enables a company to adequately ensure that a uniform standard or guideline is established upon which the company’s management, employees, counsel and consultants can rely on and be held accountable for conducting due diligence. It also provides the board of directors, regulators and other stakeholders with certain assurances and an objective measure that investigations are being conducted in compliance with applicable laws and the company’s internal policies.

A. A Risk Based Approach
As a cost effective measure, companies can classify business partners into three categories: high-risk, medium-risk, and
low-risk, with high-risk parties getting the most thorough vetting. When assessing the risk level of a third party, agent, partner, or intermediary, the following factors should be considered: type of relationship, corruption risk associated with the jurisdiction, interaction with government officials, compliance regime, monetary value of the transaction, and known adverse information about the business partner. For example, a high-risk business partner would be someone who is located in a country with high levels of corruption, has significant interaction with government officials, has a role allowing them to act in an official capacity for the company, and the transaction between the company and the third party is of high monetary value. Transparency International's 2016 corruption perception index gives an accurate overview of the most corrupt countries world-wide and is a valuable resource when determining the corruption level of certain jurisdictions. The risk the company faces is highest as the corruption risk associated with the jurisdiction and the monetary value of the transaction rises. Therefore, the highest level of scrutiny should be applied when conducting due diligence on these high-risk business partners. Medium-risk business partners could be those who are involved with the government to a lesser degree, such as lawyers or accountants, yet they may be located in a high-risk jurisdiction and the monetary value of the transaction may be moderate. Finally, low-risk business partners might be vendors of goods and services that are not acting in an official capacity for the company and, therefore, are not in a position to act corruptly on behalf of the company. Low-risk third parties should receive the least vetting and, therefore, the least amount of company resources should go into due diligence at this level.

B. Due Diligence Pitfalls

Having a Due Diligence Procedures program in place is not sufficient if the procedures are not correctly followed. Common pitfalls include: failing to conduct timely inquiries or failing to ask sufficient questions to form an accurate picture of who you are going to conduct business with. For example, companies may rely on their own employees to conduct due diligence when dealing with foreign business partners, but do not follow the Due Diligence Procedures or request specific information for review. At times companies have engaged a business partner, and thereafter conducted the due diligence. Obtaining questionnaires is only the first part; companies must also verify that the information presented is true. Lastly, failing to act on identified red flags is another pitfall companies should be aware of.

Conducting effective due diligence on international agents, partners, intermediaries and other third parties is critical to maintaining an effective Compliance Program. Establishing Due Diligence Procedures help maintain consistency and completeness when vetting those who you plan to do business. Therefore, it is important to ensure that each of the Compliance Program elements is properly tailored and implemented to each company’s particular business, and regularly updated to address changes in an organization’s governance, operations, and applicable regulations.

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4 Id.
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7 Id.
The End of NAFTA
As We Know It?

By Patricio Grane Labat and Mallory B. Silberman

There is justified anxiety in the business community regarding the future of America’s international trade program. On 1 February 2017, Mexican President Nieto announced the commencement of a 90-day consultation period, which the “negotiation [of NAFTA] will properly open to update our free trade agreement.” 1 Precisely what changes to NAFTA the Trump Administration seeks is anyone’s guess, but the fact that there will be changes to the international trade and investment rules that NAFTA put in place more than two decades ago seems inevitable. The White House has warned that if change cannot be accomplished through renegotiation, “the President will give notice of the United States’ intent to withdraw from NAFTA.” 2 The investors, importers, and exporters who have come to rely on NAFTA, and the stability and predictability that it creates, should be concerned. More generally, the trading community and foreign investors should be equally concerned about other international agreements that may be substantially revised or from which the United States may withdraw.

Why does NAFTA matter?
When NAFTA entered into force in January 1994, it created the world’s largest free trade area. 3 As of August 2015, NAFTA was responsible for “link[ing] 444 million people producing $17 trillion worth of goods and services.” 4 By facilitating U.S. exports to Canada and Mexico, NAFTA supports more than three million American jobs, and more than 140,000 small and medium-sized business. 5 The United States Trade Representative (“USTR”) reports that, since NAFTA’s entry into force, U.S. manufacturing exports to the other NAFTA countries have increased 258%, and “American exports of computer and electronic products, furniture, paper, and fabricated metals have all more than tripled . . . .” 6 At present, because of NAFTA, Canada and Mexico are among the leading export markets for most of the U.S. States. 7

In addition to establishing a regime for trade in goods and services that regulates market access according to basic principles of non-discrimination, NAFTA establishes substantive rights for foreign investors (namely, U.S. investors in Canada and Mexico, and Mexican and Canadian investors in the United States), and creates a mechanism for the investors to enforce such rights. Specifically, NAFTA Chapter 11: (1) protects foreign investors and their investments from arbitrary, discriminatory, unfair, inequitable, and expropriatory government conduct; and (2) authorizes foreign investors to sue the “host” government directly, in a neutral international forum, for such conduct. To date, scores of investors have exercised this right, and obtained monetary compensation from the host State as reparation for the harm suffered.

What steps would the United States need to take to withdraw from NAFTA?
If the Trump Administration ultimately were to decide to withdraw from NAFTA, it could do so by taking two simple steps: first, it would have to provide written notice to Canada and Mexico; second, it would have to wait six months. 8 If the United States were to take those two steps, at the end of the six-month waiting period, NAFTA would cease to bind the
United States, and cease to protect U.S. investors in Canada and Mexico. Nevertheless, NAFTA would continue to apply to Canada and Mexico, to Canadian investors in Mexico, and to Mexican investors in Canada.9

What would it mean for traders and investors if the United States withdrew from NAFTA?

For the consumer, the impact from the United States withdrawing from NAFTA and increasing import tariffs. For traders, there likely would be a loss of market access and diminished price competitiveness. Are there “winners” in this sort of protectionist trade war? Not really. The “benefits” of protectionism through increased tariffs are dubious and, in the long-term, self-defeating. In theory, some U.S. manufacturers who compete directly in the United States with like products imported from Mexico and Canada might benefit from raised tariff barriers. But this assumes that the Mexican and Canadian manufacturers would increase their prices in order to pass the increased import tariffs on to the consumer, and that increased prices would, in turn, prompt consumers to switch to U.S. products. Accordingly, even this potential “benefit” is neither immediate nor guaranteed.

For Canadian and Mexican investors in the United States, and for U.S. investors in Canada and Mexico, the withdrawal of the United States from NAFTA would mean losing the protection under Chapter 11 from any future unfair, arbitrary, discriminatory, or expropriatory government action. It also would mean losing the right to assert an international claim directly against the NAFTA State that has taken such wrongful action. Absent such a right, it can be difficult for an aggrieved investor to assert claims against a foreign government. In theory, the foreign investor could: (1) sue the foreign government in the government’s own courts for breaches of national law (assuming national law allows the investor to seek financial compensation), and face the possibility of an inefficient or even compromised judiciary; (2) sue the government in the courts of the investor’s “home” country, with the great complication that raises in terms of jurisdiction and sovereign immunity; or (3) seek espousal or diplomatic protection from its home country. However, the foregoing options pale in comparison to the right to sue the State directly under international law, before a neutral international tribunal with the authority to order monetary compensation that may be enforced in 156 sovereign States under the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”). In sum, withdrawal from NAFTA likely will lead to a simultaneous increase in political risk and protectionism, and decrease in predictability and protection. To compound the problem, investors will be left without direct recourse to international justice to redress the harm inflicted by arbitrary and protectionist government measures.

What steps can investors take in anticipation of a possible withdrawal from NAFTA by the Trump Administration?

If an investor already is considering bringing a NAFTA claim, it should begin taking the formal steps needed to commence a NAFTA Chapter 11 arbitration as soon as possible. If the United States eventually decides to withdraw from NAFTA, once the withdrawal takes effect, U.S. investors in Canada and Mexico will no longer have the right to bring claims directly against the Canadian and Mexican governments, and Canadian and Mexican investors in the United States will no longer have the right to bring claims against the United States. To ensure protection going forward, a prudent course of action would be to structure the investment in a way that would allow the investor to claim the protection offered by another treaty. At present, the United States has 13 other free trade agreements, and more than 40 bilateral investment treaties in force that offer protection similar to NAFTA. Before restructuring, however, the investor should bear in mind that in some circumstances, restructuring an investment in order to gain the protection of an investment treaty or free trade agreement is considered abuse of right on the part of the investor.

One can only speculate what the future may hold for NAFTA and the other treaties like it. Those who rely on the existing international trade and investment regime should be prepared to act.


6 See id.
7 See id.
8 NAFTA, Art. 2205.
9 See NAFTA, Art. 2205 (“If a Party withdraws, the Agreement shall remain in force for the remaining Parties”).
For the last few months, discussion of international trade under the Trump administration has focused on potential U.S. renegotiation or withdrawal from NAFTA. The administration also recently raised the possibility of a border adjustment tax, which may result in higher duties on U.S. imports. From a practical perspective, if NAFTA is renegotiated or terminated, what are duty savings alternatives for U.S. importers? Also, while NAFTA’s prospects remain to be seen, what does all of this mean for U.S. importers from a compliance perspective? Accordingly, companies who import into the U.S. should continue to dedicate sufficient resources to their import compliance programs. Whether you are seeking alternative duty savings opportunities or maintaining your existing import program, below are some practical issues for companies to consider in the current climate on trade.

1. **Total Landed Cost**
   In reviewing alternatives to sourcing from a NAFTA country, total landed cost is perhaps the most important consideration. Total landed cost is the actual end-to-end cost of goods, not just the base purchase price on the invoice. Before importing a product, you will want to know the costs of foreign and domestic inland shipping, customs duties, taxes, brokerage fees, insurance, packaging, and other costs. There is no single way of calculating total landed cost, but the more cost data available, the better. It is also a good idea to include administrative costs of overseeing international transactions and ensuring compliance with applicable international trade rules and regulations.

2. **Chapter 98 of U.S. Tariff Schedule**
   There are several duty free provisions in Chapter 98 of the Harmonized Tariff Schedule of the United States. For example, products of the U.S. that are exported and then returned to the U.S. without being advanced in value or improved in condition while outside the U.S. may be returned duty-free. Products of any origin meeting these conditions are also duty-free as long as they are exported and returned within three years. Additionally, implements, instruments, and tools of the trade, when returned to the U.S. after having been exported for use temporarily abroad, if imported by or for the account of the person who exported such items are also duty-free. To rely on duty free provisions such as Chapter 98, it is important that importers have written policies and procedures for claiming and documenting duty free treatment. Unsubstantiated claims for duty free treatment can lead to significant fines and penalties by U.S. Customs and Border Protection (“CBP”).

3. **Tariff Engineering**
   Companies may be able to reduce Customs duties through a tool known as tariff engineering. Where there is a difference in duties between similar products, companies can modify or re-tool their products to take advantage of the savings. This tool can be especially useful when developing new products. However, importers must exercise caution to avoid a potential fraud claim by CBP. The product must be a commercial reality at the time of import, not a temporary product created to avoid duty. Companies should obtain a formal ruling from CBP before re-organizing its supply chain around a tariff engineered product.
4 Other Free Trade Agreements

Even if NAFTA is renegotiated or withdrawn, the U.S. is party to 13 additional international trade agreements with 18 different countries. Some sourcing changes may permit companies to take advantage of those free trade agreements (“FTAs”) and associated duty savings. At this time, however, it is unclear whether these additional FTAs will also be subject to renegotiation or withdrawal under the new administration.

5 Foreign Trade Zones

A Foreign Trade Zone (“FTZ”) is an area within the U.S. that is not considered part of the U.S. Customs territory and is outside of the commerce of the U.S. This means an import into the FTZ is not an import into the U.S. It is only an import into the U.S. (where duties are triggered) when it is moved from the FTZ into U.S. territory. One of the benefits of an FTZ is that it allows importers to defer duty payments. Companies can import goods into a FTZ and store them, re-export them, or manufacture them into assembled goods. When the assembled goods are imported into the U.S., you can choose to pay the duty on the unassembled goods, or the duty rate on the finished assembled product. Establishing operations in a FTZ is no small matter. Companies must conduct a cost-benefit analysis to determine whether use of a FTZ makes economic sense.

6 First Sale Rule

When purchasing goods internationally, there is often a middleman involved. For example, a manufacturer in China sells an item to a middleman in Indonesia (at price A). The middleman in Indonesia in turn marks up the price and sells it to the U.S. importer (at price B). With proper documentation, the U.S. importer may pay duties based on the lower price A rather than price B. This is called the First Sale Rule. Reliance on the First Sale Rule requires careful review and documentation to ensure compliance. Companies should be aware that costs associated with setting up a First Sale program can be high and in some cases the duty savings may not be enough to justify the costs.

7 Purchase Contract Drafting

The relative roles and responsibilities for the import transactions between the parties should be clearly outlined in your purchase contracts. In order to minimize risk, companies should ensure contract provisions are tailored to the way a company’s importations are structured. We frequently see import compliance provisions within purchase or manufacturing agreements that do not reflect how a company is actually handling its import transactions.

8 Incoterms Matter

Incoterms often get overlooked in the contract review process. Incoterms are shipping terms that define the responsibilities between the parties for transporting, insuring, exporting and importing of products. The terms require companies to identify the physical location at which these responsibilities shift from seller to buyer. We frequently review purchase contracts in which the designated Incoterm is inconsistent with the way a transaction has been structured, or the parties simply misunderstand how the Incoterm will apply in practice. For example, assume a foreign supplier agrees to ship a product to a customer in the U.S. from abroad using the Incoterm Delivered Duty Paid. This means the foreign supplier agrees to handle Customs formalities all the way to the buyer’s doorstep. However, the supplier may be unable to handle the Customs formalities because the supplier is not an importer of record in the U.S. and the company may not be able to find a Customs broker in the U.S. willing to act as importer on behalf of the supplier. If this happens, the import is delayed and the U.S. buyer must hire its own Customs broker to clear the shipment.

9 Customs Enforcement Remains a Priority

Since the 1993 passage of the Customs Modernization Act importers are required to exercise “reasonable care” to meet the requirements of the Customs laws. Violations may result in significant fines and penalties. Customs penalties are up to four times the duties owed, or up to the dutiable value of the merchandise. In February 2016, Congress passed the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”) with the objective of ensuring a “fair and competitive trade environment.” It provides additional support for CBP’s existing efforts in three key areas: (1) protection of U.S. economic security through trade enforcement, (2) collaboration with the private sector and (3) streamlining and modernization processes through business transformation initiatives. The government’s focus on trade enforcement under TFTEA should remind importers that compliance programs should remain a priority in the years to come. As part of TFTEA, Congress enhanced CBP’s measures targeting high-risk imports. Increased automation through the Automated Commercial Environment has enhanced CBP’s ability to monitor imports and seize high-risk goods at the border. We have already seen CBP directing letters to targeted importers. The Trump administration’s focus on imports could lead to more administrative penalties proceedings, seizures of goods, and inspections at the border. Under the Trump administration, we expect CBP will continue its investment and enforcement efforts on imports (and importers) in these areas.

10 Increased Enforcement of Antidumping Orders

In order to protect domestic industries, the U.S. imposes Anti-Dumping Duties (“ADD”) on goods imported into the U.S. at less than fair value. TFTEA established a new administrative procedure for investigating allegations of evasion of antidumping duty (and countervailing) orders, including an ability to draw adverse inferences for failing to provide information. This enhanced CBP effort on ADD aligns with Trump’s administration’s campaign promises to ensure a level playing field for U.S. goods, especially with regard to China. Importers should ensure their compliance programs have adequate procedures to detect imports of goods subject to ADD orders.

Elsa Manzaneres is a Partner at Gardere Wynne Sewell, in Dallas, Texas. Manzaneres is Co-Chair of the International Trade Group. She advises clients on U.S. and international regulations governing export of dual-use commodities, defense articles, software and technology. Kim Carlson is an experienced international trade and compliance attorney who practices in Gardere’s corporate practice area.
“Empowering Leaders,” the theme of the 2016 HNBA Annual Convention in Chicago, manifested itself each day through the impressive speakers, panelists, and future leaders whose combined efforts resulted in an outstanding Convention. The Latina Leadership Academy and the HNBA/NACD Corporate Board Training commenced the Convention by providing training, practical tools, and resources for Latino/a leaders of today and tomorrow, including a Ted Talk networking lunch. Later that evening, Linda A. Klein, President of the ABA, and Governor Bruce Rauner both delivered remarks at the Wednesday Welcome Reception, and Jenner & Block generously hosted the VIP President’s Reception with views of Lake Michigan and a valuable fireside chat.

On Thursday, the prestigious Ohtli Award, presented by Instituto de los Mexicanos was awarded to HNBA Past President, The Honorable Judge Peter M. Reyes. Julie C. Rodriguez from the Obama White House presented a keynote address at the first plenary of the day discussing executive appointments. The second plenary, How the Media Shapes the National Debate, opened with a speech by Ana Navarro, Republican Strategist & Political Commentator and a Fellow of the Institute of Politics at Harvard University, and included a plethora of esteemed members of the media on the panel.

Thursday’s lineup also comprised a bustling exhibit hall, informative CLE’s, and the rewarding first ever HNBA/MetLife’s Young Lawyers and Law Students Speed Mentoring Program. The National Awards Ceremony held beneath the translucent Tiffany Dome inside the Chicago Cultural Center, recognized those who have devoted their life to serving the legal community and the HNBA, with Henry Solano, Partner at Wilson Elser Moskowitz Edelman & Dickler LLP, receiving the HNBA “Lifetime Achievement” Award. The accomplishments of each award recipient were celebrated and enjoyed amidst empanadas, tacos, and mini Margaritas, cumulating with a video medley of messages.

Friday’s networking breakfast was packed full with remarks by Amanda Renteria, then National Political Director for Hillary for America, and a keynote address from U.S. Senator Dick Durbin. The all-day HNBA Career Fair matched a wide range of employers looking to hire HNBA members with both students and laterals. To close the Convention, former Secretary of Labor, Thomas E. Perez, delivered an inspiring keynote address at the Friday night gala dinner, rousing the audience with his commitment to diversity in the workforce. Also, in fitting with the Convention’s theme, eighteen past presidents of the HNBA were honored with awards for their exemplary leadership of the organization. After a passing of the gavel and a swearing in of the new National President and President-Elect, the dancing commenced with judges, lawyers, and law students alike shimmying to the beat of a rewarding week alongside newfound friends and colleagues.

L to R: Wilfredo Ferrer, unknown, unknown, Immediate Past President Robert T. Maldonado, Juan Sempertegui, Former Secretary of Labor Thomas E. Perez, unknown, President Pedro J. Torres-Díaz, Erika LopezTello-Jones, Alba Cruz-Hacker; The Honorable Judge Peter M. Reyes receiving the Ohtli Award.
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REGIONS AND AFFILIATES ON THE MOVE

HBA GREATER KANSAS CITY
In January, as part of our pipeline efforts, Hispanic Bar Association of Greater Kansas City (HBAGKC) hosted a joint happy hour with the University of Missouri-Kansas City Law School’s Hispanic Law Student’s Association (HLSA) at Tom’s Town Distillery in Kansas City, MO. HLSA students had the opportunity to network with HBAGKC attorneys and judges in an informal atmosphere and learn about the practice of law. Everyone had a great time and the HLSA and HLSA students are excited for the opportunity to volunteer at the 2017 HNBA Annual Convention in Kansas City!

COLORADO HISPANIC BAR ASSOCIATION
In January, the Colorado Hispanic Bar Association (CHBA) held its annual conference to celebrate 2016 and transition from our past President, Arnulfo Hernandez, to the incoming President, Ruth Mackey. The CHBA 2016 Award Winners were: (1) Elizabeth Espinosa Krupa for the Chris Miranda Outstanding Hispanic Lawyer Award; (2) Luis Villareal and the Hispanic Affairs Project for the Community Service Award; and (3) Dr. Lorenzo Trujillo for the Lifetime Achievement Award. The CHBA also partnered with the Colorado Bar Association and Colorado Women’s Bar Association for a cross-cultural educational exchange in which members traveled to Cuba to learn about, among other things, the Cuban legal system and the history and development of regulations for private enterprises.

HBA-DC HOSTS 2016 EQUAL JUSTICE AWARDS RECEPTION
On Friday, November 4, 2016, Hispanic Bar Association of the District of Columbia (HBA-DC) held its 2016 Equal Justice Awards reception at the Mandarin Oriental Hotel. Over 250 members, sponsors and friends gathered to celebrate the accomplishments of our awardees: Maria E. Holleran Rivera, recipient of the Judge Ricardo M. Urbina Lifetime Achievement Award; Tahirih Justice Center, recipient of the Hugh A. Johnson, Jr. Memorial Award to an organization; James J. Sanchman, recipient of the Hugh A. Johnson, Jr. Memorial Award to an individual; and Roman Martinez, recipient of the Rising Star Award. To further its commitment to support law students, HBA-DC awarded four scholarships of $2,500 each, administered by the HBA-DC Foundation. The scholarship recipients demonstrated financial need, good standing with their respective law schools, and a commitment to the advancement of the Hispanic community. This is the largest amount that HBA-DC has committed to the Foundation’s Scholarship Program.

MINNESOTA HISPANIC BAR ASSOCIATION
HNBA affiliate, the Minnesota Hispanic Bar Association (MHBA), recently kicked off the 15th year of its mentorship program, which has become a cornerstone of the organization. The initiative is unique in that law student MHBA Board members are in charge of coordinating the program. The annual change in program leadership has allowed it to evolve and better address the concerns of student participants. Each year, the MHBA President visits all Twin Cities law schools and introduces the organization and mentorship program to the Latino/a student associations. Once registered, both students and mentors (including judges, private practitioners, in-house, and public interest attorneys) fill out a questionnaire that elicits information regarding background, career interests, and hobbies. Matches are made based on common interests, and the pairs first meet at a Mentorship Reception that is sponsored by an MHBA member’s law firm. The matches meet throughout the year for coffee and lunch to get to know each other, attend events together, and generally interact whenever the student has a question or seeks advice. The mentors provide opportunities for students to shadow them at work so the students can have a glimpse into the day-to-day lives of attorneys and judges, which is vital to generating interest in a variety of practice areas and positions in the legal field. The mentors also serve as guides to the mentees helping them become familiar with the Twin Cities legal market, provide tips on how to effectively network in the community, and keep them apprised of employment or volunteer opportunities.

REGION I
Region I is off to a fast start in 2017. All three affiliates—Massachusetts Association of Hispanic Attorneys (MAHA), Connecticut Hispanic Bar Association (CHBA) and Rhode Island Hispanic Bar Association (RIHBA)—have been very active in working collaboratively with sister affinity bar organizations and the immigration bar assisting immigrants with their concerns over the travel ban. Beginning in March, MAHA will also be partnering with the Boston Bar Association (BBA) and the Massachusetts Access to Justice Commission in an effort to expand services to housing court throughout the Massachusetts. In April, MAHA is hosting the first-ever Massachusetts Youth Symposium at Suffolk Law School,
headed at high school students. In March, the CHBA is hosting an “Almost Spring Social” for members in Hartford. RHBA had its first breakfast with Providence Mayor Elorza. RHBA also helped to organize a RI Women of Color in the Legal Profession Panel in connection with a week-long Women’s History Month celebration. Finally, in April, RHBA and HNBA are partnering to host the first-ever HNBA Region I “region-wide” Reception at the Rhode Island State House in Providence. This event is the first time that team leaders and members from all three affiliate organizations in Region I will come together in one event. Attendees will have the opportunity to discuss our shared missions and priorities for 2017, network, socialize, and be entertained by an annual “water fire” show in the Providence water basin. In addition, March 2017 events, Region II has been keeping up the momentum and creating partnerships in New York City with other organizations to work together towards our common goals and endeavors. HNBA Region II (New York) partnered with Governor Andrew M. Cuomo in his “We Are All Immigrants” initiative, and specifically with the new Empire State Immigrant Defense Project. This initiative will ensure that all New Yorkers have access to representation and due process, regardless of their citizenship status. It will be administered by the State’s Office for New Americans in partnership with advocacy organizations and local associations around the state, including the HNBA Region II.

March 2017 events include sponsoring the following: “Fashion Law in Latin America: Current Challenges for U.S.-Based Fashion Companies” at Cardozo Law School; MetroLALSA conference “Pa’Lante VII: Contra La Corriente” at PACE School of Law; and The New York/New Jersey Regional Latin American Law Student Association’s (MetroLALSA) 7th Annual “Pa’Lante” Conference.

REGION IV
In January 16, 2017, Region IV President, Lorena E. Ahumada, attended the Annual Dr. Martin Luther King, Jr. Memorial Breakfast in Philadelphia. In February, the HNBA Region IV co-sponsored the Hispanic Bar Association of Pennsylvania’s 16th Annual La Justicia Award. The award is given annually by the Hispanic Bar Association of Pennsylvania (PA) to individuals and local organizations that provide needed services and outreach to the Latino community in the Delaware Valley. During the event, the HBA-PA also recognized its new President, Juan Baez, its new Board of Directors as well as thanked the past president, Priscilla Jimenez. Region IV continues to work with national leadership to secure endorsements to the federal bench in Pennsylvania and Delaware.

REGION V
In January, Region V was honored to co-sponsor a welcome reception for the Hispanic National Bar Association (HNBA) National President, Pedro J. Torres-Díaz, with HNBA affiliates, the Hispanic Bar Association of the District of Columbia (HBA-DC), Hispanic Bar Association of Virginia and Maryland Hispanic Bar Association. In March, in conjunction with the Latin/o Alumni Association of the Washington College of Law, Region V hosted a Private Practice Panel at Norton Rose. The panel was geared toward law students who plan to enter private practice upon graduating from law school. In April, Region V will co-host a happy hour with HNBA affiliate, the Hispanic Bar Association of the District of Columbia (HBA-DC), during the 2017 HNBA Corporate Counsel Conference in Miami.

REGION VIII
HNBA Region VIII kicked of this year by hosting its first monthly networking event on January 26, 2017. Nearly 30 regional members attended a Wine Tasting Event in Miracle Mile, Coral Gables. Attendees learned about several wines from South America from a local wine expert in Miami. In February, Region VIII sponsored the 13th Annual Minority Mentoring Picnic put forth by the Kozyak Minority Mentoring Foundation. The event has grown exponentially each year and this year included over 100 voluntary bar associations and law firms which sponsored the event. The picnic was well attended by many judges, established lawyers, and law students from each of the twelve (12) law schools in Florida. It offered panels on a variety of topics to assist minority students succeed in the legal field and a family-friendly atmosphere for all to enjoy while finding a mentor or mentee. By sponsoring this event the HNBA gained continued visibility and an opportunity to promote upcoming events including the Lo Nuestro en la Ley lunches, which took place on February 21 and March 23, as well as the Cheese and Chocolate Tasting, the HNBA Young Lawyers Division’s Adopt-a-Clinic and the 2017 HNBA Corporate Counsel Conference.

REGION X
2016 was a great year of growth for Region X. Throughout the year, we held networking events on-topic programming, executed a successful mentorship program between members and local law students, and raised over $20,000 at our Second Annual Gala, where we were able to award two scholarships to students from the Ohio State University Moritz College of Law and University of Cincinnati Law School.

2017 is also shaping up to be an even better year. In March we held our quarterly social networking event and are currently working on launching this year’s mentorship program, as well as hosting two panels for discussion on the current social and political climate in Venezuela and South America. We are also in the beginning stages of planning the 2017 Region X Third Annual Gala, to be held in October 2017. Our goal is to raise more funds and attract a higher attendance than last year. Finally, we are working to collaborate with a local Latino oriented organization, Our Lady of Guadalupe Center, as well as the Ronald McDonald House of Central Ohio, on volunteer efforts and building long standing collaborative relationships between Region X and these charitable organizations.

REGION XIV
In January, Supreme Court Associate Justice, Sonia Sotomayor, visited Region XIV. Justice Sotomayor was able to meet with members of HNBA and Los Abogados Hispanic Bar Association. This was a wonderful and inspiring experience for the many members that were able to attend.

In February, Region XIV hosted a welcome reception for HNBA National President, Pedro J. Torres-Díaz, National President-Elect, Erica Mason, and National Finance Director, Irene Oria. An evening reception was held at the home of Michael Silyman and Amy Gittler and was co-sponsored by Kutak Rock, Jackson Lewis, and Los Abogados Hispanic Bar
Association. A welcome luncheon for President-elect Mason and Finance Director Oria was held at Mora Italian Restaurant. This event was co-sponsored by Los Abogados Hispanic Bar Association, Lewis Roca Rothgerber Christie, Stephen Silverman Law, and Alex & Saavedra PC.

Region XIV also completed a due diligence review for Yuma County Presiding Judge Maria Elena Cruz. Judge Cruz is applying for a position on the Arizona Court of Appeals Division 1.

Congratulations to Jessica Sanchez, Ashley Villaverde-Halvorson, and Freddy Saavedra on each of them receiving the 2017 HNBA Top Lawyers Under 40 Award.

REGION XV

Region XV President, Michelle Hernandez, and chair-elect for the Albuquerque Hispano Chamber of Commerce, with New Mexico Hispanic Bar Association (NMHBA) member and New Mexico State Representative, Antonio “Moe” Maestas, along with Representative Monica Youngblood, have been actively advocating for a bill at the New Mexico State Legislature to encourage state procurement opportunities for New Mexico Minority and Women-Owned businesses.

Region XV is also planning events in the Spring in Santa Fe, and looking at other events with young professional groups. Region XV may also co-host an event in Albuquerque with the Hispanic Congressional Caucus.

The NMHBA recently hosted a seminar in Las Cruces, New Mexico on immigration and overtime laws as well as promoting a free event at the University of New Mexico School of Law, entitled, “Lawyers Without Rights: Jewish Lawyers in Germany Under the Third Reich.”

NMHBA will be hosting a five-day residential summer law camp for youth interested in exploring the world of law for New Mexico middle school students. During the camp, students will get a taste of college life and develop complex skills in research, conducting a trial, critical thinking, team-building, leadership and techniques of persuasion and debate, and participate in a mock trial. Students will meet judges and practicing attorneys and visit federal and state courthouses.

HNBA IMMIGRANT LEGAL DEFENSE TASK FORCE & FUND: IN RESPONSE TO UNPRECEDENTED ACTIONS AGAINST IMMIGRANT COMMUNITIES

By Juan M. Sempertegui

In response to President Trump’s Executive Orders related to refugees and immigrants, the Hispanic National Bar Association (HNBA) announced the establishment of an Immigrant Legal Defense Task Force (“ILDTF”). HNBA National President Pedro J. Torres-Diaz established the ILDTF because “the Trump Administration’s unprecedented actions are detrimental to the rights of immigrant communities in our Nation, including the Latino and Muslim communities. In addition, the Executive Orders are
Grants for Low Bono (Low Cost) Representation

The HNBA established the Immigrant Legal Defense Fund with an initial donation of $5,000 to help defray the costs of legal representation provided by attorneys. Grant applications must be submitted by the attorney providing “low bono” (low cost) legal services.

Case Types: The following cases are eligible for grants:

1. Detained removal cases (detainee is not eligible for bond pursuant to INA § 236(c));
2. Unaccompanied children in custody of Office of Refugee Resettlement (family member has not been identified for sponsorship); and
3. Individuals granted a bond pursuant to Rodriguez v. Robbins. 804 F.3d 1060 (9th Cir. 2015).

Eligibility: The attorney’s hourly rate must not exceed $100 and the grant must be applied to the cost for representation in an immigration case.

Grant Amount: Up to $500. Depending on availability of funds, the grant amount may change.

How to Participate: Complete a Grant Application at www.HNBA.com, upload a copy of the Retainer Agreement and one of the following documents (dependent on case type):

1. Immigration Judge Order indicating no bond pursuant to INA §236(c) or I-286 indicating “detained in custody of Department of Homeland Security”;
2. Case Status Summary from Office of Refugee Resettlement—only cases marked Code 4 are eligible for a grant.
3. Form I-830 that is notated “CR” in the top right hand corner where bond was granted pursuant to Rodriguez v. Robbins.

The application will then be reviewed by the ILDTF Committee and a decision will be rendered in 7-10 business days. Questions may arise that might require further inquiry by the Committee beyond the information contained in the application. If a grant is awarded, the check will be sent directly to the attorney for the benefit of the immigrant.

Immigration Training Courses

The HNBA ILDTF is focused on ensuring HNBA members and other attorneys receive adequate training to assist the immigrant community. Accordingly, we encourage all interested members to take advantage of Practicing Law Institute’s (“PLI”) complimentary and extensive programming in this area at www.pli.edu. PLI’s On-Demand programs cover topics including:

• Basic Immigration Law
• Defending Immigration Removal Proceedings
• Representing Children in Immigration Matter
• The Art & Science of Interviewing Pro Bono Clients

On a regular basis, PLI also provides live webcasts. The HNBA is grateful to the PLI for granting complimentary access to their training courses. In addition, the HNBA encourages attorneys and community organizations to share resources distributed by the American Civil Liberties Union in case immigrants are confronted by Immigration Custom Enforcement agents. The information is available in Spanish and English and can be accessed at www.aclu.org.

Pro Bono Services Directory

To further assist members, the HNBA’s Immigration Law Section compiled a directory of community organizations and law firms that provide pro bono immigration services, available at www.HNBA.com. To add an organization to the directory, contact HNBA Immigration Law Section and ILD Task Force Co-Chairs Christine Hernandez (chernandez@hdezlaw.com) and Arnulfo Hernandez (chernandez@hdezlaw.com).

Get Involved!

The HNBA ILDTF is committed to participating and developing efforts to support and protect the immigrant communities of our nation. The HNBA is confident that by working together with our members, partners and friends, we can make a substantial difference in the lives of immigrants across the country. We encourage you to become involved by donating to the Immigrant Legal Defense Fund or volunteering your time.

Juan M. Sempertegui serves as HNBA VP of External Affairs and is Past President of the Hispanic Bar Association of D.C.
Latina Commission
The HNBA’s Latina Commission was created in 2008 to study, and remedy, the status of Latinas in the legal profession who then, as now, suffer the lowest representation of any racial or ethnic group as compared to their overall presence in the nation. This term, the Latina Commission is led by co-chairs Carrie Ricci and Eneida Roman, and consists of 35 Latina lawyers from across the United States and Puerto Rico, who are active within their local communities furthering the Commission’s mission to increase the presence of Latinas in the legal profession. Due to the generosity of Wal-Mart, the Latina Commission’s Premier Sponsor, the Commissioners are equipped with resources that match their dedication to hosting and partnering with local organizations and schools to offer educational training programs or workshops targeting Latinas from elementary school to law school who are interested in careers in law, and providing leadership training to Latina lawyers seeking to excel within their legal organizations and increasing their competitiveness in the market.

The Commission is already off to an exceptional start and expects 2017 to be another stellar year. In January HNBA Latina Commissioner Mina Mendez represented the Commission at a luncheon for Justice Sonia Sotomayor at Arizona State University. In February Latina Commissioners Marissa Montes and Yesenia Gallegos volunteered as “mentors” at the Latina Lawyers Bar Association’s (LLBA) Speed Mentoring Program in Los Angeles, California.

Criminal Law Section
2017 will surely be an important year for criminal-justice issues as we monitor whether Congress and the new administration will build upon prior bipartisan, sentencing-reform proposals. In the realm of criminal-justice issues, the HNBA supports efforts to address various issues, including the following:

- Sentencing reform;
- Improvement of Community/Police Relations;
- Introduction and Use of Body Cameras in a context that properly addresses privacy and fourth amendment issues, data storage and retention, open records laws, police training, and other appropriate regulations;
- Better empirical data regarding success and failures of released prisoners’ re-entry programs;
- Adequate funding for re-entry programs that have proven to be successful; and
- Support programs that allow inmates to obtain GED or high school diploma and tech training.

As part of an informal working group, the HNBA is working collaboratively with our friends at LatinoJustice in discussing and promoting criminal justice, policing and drug policy reform as it affects the Hispanic Latino population in Florida. This year, the Criminal Law Section hopes to sponsor a joint CLE with the Dade County Bar Associations Criminal Law Committee, discussing the important criminal-justice cases pending before the United States Supreme Court.

Young Lawyers Division
Over the last few months, the leadership team of the Young Lawyers Division has worked to support the local activities of the HNBA YLD Representatives, especially those that give YLD members an opportunity to connect and lead. The leadership
The Amicus Committee has continued its efforts to ensure that the Association maintains an active role in significant cases before the U.S. Supreme Court and other courts that affect the organization’s members. Building on its success last year as lead amicus in the important voting rights case Evenwel v. Abbott, the Association was lead amicus on a brief in a case currently pending before the Supreme Court, Pena-Rodriguez v. Colorado. In that case, the petitioner (a defendant in a criminal prosecution) unsuccessfully tried to introduce direct evidence that a juror exhibited racial bias during deliberations by making various inflammatory statements about the defendant—for instance, urging the jury to convict “because he’s Mexican and Mexican men take whatever they want.” Notwithstanding the defendant’s constitutional rights to a fair trial, the Colorado Supreme Court held that state evidentiary rules categorically prohibit any inquiry into jury deliberations—even for the purpose of uncovering evidence of racial bias. The HNBA’s brief—which LatinoJustice and the Anti-Defamation League joined—argued that the Colorado rule should be subject to, and cannot satisfy, strict scrutiny; as a result, it must give way to petitioner’s constitutional rights. Other noteworthy amicus efforts include:

Joining a brief prepared by the Korematsu Center in Lee v. Tam, a case before the Supreme Court that involves a First Amendment challenge to the U.S. Patent and Trademark Office’s refusal to register the “Slants” as a trademark, on the ground that it is a racial epithet that falls within the statutory category of disparaging marks ineligible for the benefits of trademark protection.

Joining a brief authored by NALEO in Texas v. Holder, a case pending before the en banc Fifth Circuit. The case involves whether Texas’ voter ID law violates Section 2 of the Voting Rights Act; whether it violates the Fourteenth and Fifth Amendments; and whether it places an unconstitutional burden on the right to vote in violation of the First and Fourteenth Amendments.

The LSD has been focusing on increasing student enrollment and involvement within the HNBA, strengthening the Division’s relationships with other national law student organizations to expand our reach, and connecting students with potential employers by establishing a national database for clerkships, fellowships, and other job opportunities. Most recently, the Division launched its Students of Service Program—an initiative designed to give back to local communities. LSD members have been coordinating events to serve the homeless, donate food and clothing to countries affected by natural disasters, and serving as translators at pop-up immigration clinics.

Above all, the Law Student Division strives to foster a respectful, collaborative and fun environment that will inspire both its existing and potential membership so that, together, they can create the next generation of leaders.

The HNBA’s Immigration Section anticipates 2017 to be a busy year! Under the joint leadership of Arnulfo D. Hernandez and Christine M. Hernandez, the Immigration Section has already been involved in the implementation of the HNBA’s Immigrants Legal Defense Task Force. The Immigration Section has been participating in the NHLA’s Latino Summit, in conjunction with HNBA President Pedro J. Torres-Diaz. The NHLA Latino Summit is focused on collaborating with other Hispanic organizations to promote common sense immigration reform, including protecting DACA applicants. The Immigration Section will also be presenting a panel during the 2017 Corporate Counsel Conference entitled “HR & Legal Considerations Impacting International Talent Management”.

President Trump announced three (3) Executive Orders on January 25 and 27, 2017, which are available at https://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders. These Executive Orders directly affect our community, as well as other foreign nationals living in or traveling to the US. The Immigration Section will be hosting a number of “Know Your Rights” presentations across the country to help our community better understand the significance of the recent Executive Orders related to immigration. The Immigration Section will be maintaining a list of organizations for attorneys who are interested in taking on a pro bono immigration case to assist detained individuals and unaccompanied minor children. The Immigration Section will be organizing webinars to update membership on current events related to immigration.

The Immigration Section is also involved in the ABA’s Immigrant Defense Project led by Hon. Shira Scheindlin, a recently retired U.S. District Judge from the Southern District of New York. The Immigrant Defense Project is focused on providing legal representation, on a national scale, to individuals targeted for raids by the current administration. Gracias Raul Ayala, HNBA member and Co-Chair of the Immigration Committee of the ABA Criminal Justice Section, for inviting HNBA to this unique project.

If you are interested in joining the Immigration Section please contact Christine M. Hernandez at chernandez@hdezlaw.com or Arnulfo D. Hernandez at ahernandez@hdezlaw.com.