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Cover Art: 22% of deportees have U.S. Citizen Children

Description: The piece depicts a mother and child separated from a father. The father is depicted as an alien, alluding to the way in which inhumane immigration policy dehumanizes people. Using words like “illegal” and “alien”, all words used by the Department of Homeland Security, criminalizes migrants and sets the stage for anti-migrant hate.

About the Artist: Favianna Rodriguez is a celebrated printmaker and digital artist based in Oakland, California. Using high-contrast colors and vivid figures, her composites reflect literal and imaginative migration, global community, and interdependence. Whether her subjects are immigrant day laborers in the U.S., mothers of disappeared women in Juarez, Mexico, or her own abstract self portraits, Rodriguez brings new audiences into the art world by refocusing the cultural lens. Through her work we witness the changing U.S. metropolis and a new diaspora in the arts.



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Former Editors

A special thanks to the former editors of the Harvard Journal of Hispanic Policy whose legacy continues to be a source of inspiration for Latino and Latina students at the John F. Kennedy School of Government at Harvard University.

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Editor's Note

THE 2012 PRESIDENTIAL ELECTION REPRESENTED a watershed moment for Latinos in the United States. The exercise of the Latino vote symbolized the coming of age of a community traditionally marginalized in U.S. electoral politics. In 2013, the spotlight given to policy issues of importance to many Latinos, such as comprehensive immigration reform, generated a sense of optimism that our political process and institutions can be responsive to the needs of the community. However, that sense of optimism has given way to frustration as gridlock and bitter partisanship in Congress have stalled action on immigration reform and limited the scope of major policy initiatives such as the Affordable Care Act.

The 26th volume of the *Harvard Journal of Hispanic Policy (HJHP)* is composed of a series of articles, commentaries, and interviews that outline the shortcomings of current policy initiatives and in some instances provide recommendations for improvements. This volume delves into a wide range of topics, from the deficiencies with the Affordable Care Act that exclude segments of the Latino population from health care coverage, to the flaws in our immigration detention system that is currently absent in the public debate on immigration reform. We also briefly explore the reauthorization of the Elementary and Secondary Education Act (ESEA) and the role of principal accountability in yielding improved student outcomes. In addition, a selection of our new HJHP PolicyCast Series highlights the efforts of former Mayor of Los Angeles Antonio Villaraigosa and Congressman Luis Gutierrez in advocating for comprehensive immigration reform.

Our selection of content is meant to challenge policy makers to think beyond the current framework of policy initiatives and to strongly consider its limitations and the hurdles they impose on the Latino community. Many of these articles provide constructive criticism and thoughtful perspectives that question the status quo and provide an alternative to other popular forms of policy discourse.

Furthermore, the printed journal will be accompanied with a redesigned Web site to assist with our digital transition and serve as our online platform, readily accessible to a wider audience. Our new Web presence provides readers with access to our past content; new articles and commentaries; and streaming of our PolicyCast Series, including exclusive interviews with prominent policy makers and scholars.

It is important to note that the 26th volume of the *HJHP* is one component of a larger effort to build community and create policy relevant discussions for Latinos and students interested in Latino policy issues at Harvard. As in countless other higher education institutions in the United States, Harvard University

continues to struggle with issues of diversity and adequate Latino representation. Given the projected growth of the Latino community in the United States and the demographic shifts already taking place, it begs the question: Are our policy leaders of tomorrow being adequately prepared to serve the needs of a more diverse America? Today, as in its inception in 1985, *HJHP* has taken on a strong advocacy role to not only promote relevant scholarship but also to harness the passion and energy of students to create a vibrant community on campus that challenges the university on its policies related to diversity and inclusiveness.

Finally, I would like to acknowledge the individuals who were instrumental to the work of the *HJHP* editorial team and made the 26th volume a success. I'm deeply grateful to our publisher Martha Foley and our Faculty Advisor Professor Richard Parker, who oversaw our transition to a digital platform. Both were invaluable assets throughout our editing process. I also extend my deep appreciation to all the members of our Executive Advisory Board, which was integral in supporting our staff as we widened the scope of our work from an academic print publication to a more proactive and fluid organization. It is their support that allowed us to host policy forums and establish our new online presence to further the mission of *HJHP*. Critical to all these efforts is Board Chair Jim Carr whose thoughtful advice, patience, and dedication to the journal pushed us to succeed. I also want to acknowledge our previous Editor-in-Chief, Octavio Gonzalez, for his guidance and commitment to sustaining the institutional memory of the journal that allowed our team to set an ambitious agenda and hit the ground running. Finally, I need to express my sincere gratitude to our journal staff. Your tireless efforts, positive attitude, and sense of humor created thought-provoking dialogue and fostered a strong sense of community. Your work is one of many reasons *HJHP* continues to be the flagship policy journal of the Harvard Kennedy School.

Please find more information about the *Harvard Journal of Hispanic Policy* on our new Web site www.harvardhispanic.org.

Sincerely,

Juan M. Salazar
Editor-in-Chief
Cambridge, MA
January 2014

Immigration Detention in America: Civil Offense, Criminal Detention

By LUZ C. GONZÁLEZ FERNÁNDEZ

Luz González is a recent Berkeley Law graduate and is currently working as a Legal Bridge Fellow at the ACLU of Northern California. González received her bachelor's degree from the University of California, Berkeley, where she majored in international political economy. Having graduated a semester early, she went to work in the Netherlands, where she was a court monitor for the Charles Taylor Case at the Special Court of Sierra Leone. When she returned from the Netherlands, González worked for Teach for America for two years and was the cofounder of TFA Bay Area Latino Association. Her work at the American Civil Liberties Union started as a field fellow, an ongoing position that entails informing Latino communities of their rights before the police and immigration officials.

LATINOS VOTED FOR BARACK OBAMA in throngs in the 2008 U.S. presidential election.¹ The landslide turnout of Latino voters for Mr. Obama was due in large part to the promise of comprehensive immigration reform. I was among those Latinos. Many of us knew that change would not come easily given the political landscape, but we did not expect the plight of immigrants to actually worsen—especially with the radical expansion of the federal program Secure Communities.

The United States Immigration and Customs Enforcement (ICE) agency describes Secure Communities as a “biometric information sharing capability” program.² In essence, Secure Communities enables local law enforcement agents to help facilitate deportations by assisting ICE in identifying individuals who have committed crimes, regardless of gravity, as well as by providing records of individuals who have been stopped, fingerprinted, and found not to have committed any crime.

Secure Communities was created post-9/11, with the goal of facilitating collaboration between local law enforcement and the Federal Bureau of Investigation to better detect national security threats. However, Secure Communities’ form and function have radically changed under the Obama administration. In 2008, when the program began, Secure Communities was implemented in fourteen U.S. jurisdictions; today, implementation stands at 97 percent.³ By the end of 2013, Secure Communities was expected to be active in 100 percent of U.S. jurisdictions.⁴ Another significant difference in the current form of the program is that whereas before states and local jurisdictions could “opt out”⁵ of participating, the program is now projected to be mandatory across the United States.⁶ The legal rationale for the mandatory nature of the program, however, is tenuous at best.⁷

THE CURRENT STATE OF DEPORTATIONS IN THE U.S.

Since President Obama came to office in 2008, deportation numbers in the United States have reached historic highs, rising to approximately 400,000 per year since 2009.⁸ During Obama’s first term in office, approximately 1.5 million people were deported,⁹ prompting many to refer to Obama as “Deporter-in-Chief.”¹⁰

Since 1996, annual deportations have increased more than 400 percent; and since ICE’s creation in 2002, deportation figures have more than doubled.¹¹ Secure Communities’ expansion—which advances ICE’s goal of executing 400,000 deportations per year—as well as a little-known congressional directive, the so-called “bed mandate” of holding an average of 34,000 detainees per day¹² have funneled many more people into our nation’s broken immigration detention system. Today, immigrant detention facilities are the fastest growing incarceration system in the country, and the U.S. Department of Homeland Security (DHS) now detains more people on an annual basis than any other state or federal agency.¹³ This mass immigration incarceration comes at a great cost not only to the thousands of negatively impacted families and individuals, but also, quite literally, to taxpayers, cities, counties, and states.

OUR INEFFECTIVE IMMIGRATION SYSTEM COSTS THE COUNTRY BILLIONS PER YEAR

Although the budget for detention centers has increased rapidly in recent years, the funding of these centers remains highly contentious. Various states, such as Texas and Arizona, have complained that they are being forced to cover the costs of incarcerating undocumented persons for ICE.¹⁴ The cost of enforcing Secure Communities—specifically, of holding undocumented immigrants who would be released if not for “detainer requests” from ICE—to Los Angeles County alone is \$26 million per year.¹⁵ In 2012, DHS incarcerated over 429,000 non-citizens who were waiting for an immigration hearing or to be deported, costing taxpayers more than \$2 billion that year.¹⁶

In 2012, the Obama administration spent approximately \$18 billion on immigration enforcement, “significantly more than it is spending on all the other major federal law enforcement agencies combined”¹⁷ and approximately fifteen times greater than what was spent on immigration enforcement in 1986.¹⁸

WHAT DOES SECURE COMMUNITIES HAVE TO DO WITH OUR BROKEN IMMIGRATION SYSTEM?

The dramatic surge in deportations, which has burdened cities, states, and taxpayers, is due in large part to Secure Communities, which has not only accelerated the funneling of people into the immigrant deportation system, but has also furthered the criminalization of immigration violations in the United States. Today, under the Secure Communities regime, something as simple as a traffic stop can serve to jumpstart the deportation machinery.

Secure Communities has raised many troubling concerns. A report by the Earl Warren Institute on Law and Social Policy at Berkeley Law School has found that: (1) more than one-third of those arrested under Secure Communities have a U.S.-citizen spouse or child; (2) 88,000 estimated families with U.S. citizens have been impacted by Secure Communities deportations; and (3) approximately 3,600 individuals detained under Secure Communities were U.S. citizens.¹⁹

However, Secure Communities has not come without resistance from some states and localities. For example, in October 2013, California Governor Jerry Brown signed the Trust Act, which authorizes local police departments to detain noncitizens for ICE only in specific instances, such as if they have been convicted of serious and violent crimes. The signing of the legislation dealt a harsh blow to the legitimacy of Secure Communities.

DETENTION CONDITIONS

The dramatic surge in deportations not only has important political implications, it also raises serious practical concerns. An important question regarding the thousands of detainees awaiting deportation or an immigration hearing is where to house these individuals, and under what conditions.

A detention center can range from a massive privately run facility, to a couple of beds in a county jail. According to the Detention Watch Network, about 50 percent of all immigration detention beds are run by private organizations, the same organizations that lobby state and federal legislators regarding immigrant detention laws.²⁰ In the past decade, approximately 3 million immigrants have been detained in detention centers.²¹

Individuals can be held in detention facilities for a myriad of reasons—being, for instance, a person caught crossing the border, an asylum seeker, a person with or without a criminal record that was stopped by ICE and found to be unlawfully in the country, and even for being a “legal permanent resident detained on suspicion of being in the country illegally.”²² Individuals detained by ICE for immigration violations are in “civil detention,” meaning that they are incarcerated to ensure their presence at their deportation hearing and to assure they comply with the hearing’s order(s). Once behind bars, individuals can spend anywhere from months to years locked away, many of them torn from their families at a moment’s notice (and many times away from their U.S. citizen children and family members), while awaiting their deportation hearing. Today, detention is not used as a last resort, and detention conditions neither respect the sanctity of family nor ensure taxpayers that their money is not being wasted.

Deplorable conditions in immigration detention centers are sadly the rule and not the exception. Locking up immigrants behind bars, as opposed to employing detention alternatives, has led to a long list of human rights violations in immigration detention centers all around the country.²³ Often, immigration detention facilities do not even meet the United States’ own minimum standards for correctional facilities.²⁴ Both men and women report various instances of sexual and physical abuse while in detention.²⁵ Complaints of racial epithets and discrimination are common.²⁶ Asylum seekers, people who often come to the United States fleeing violence and persecution, are often faced with many of the conditions that led them to flee from their country in the first place.²⁷ Almost all immigrant detainees said that they were afraid that if they spoke up or complained about their living conditions, there would be some retaliation or their case would suffer.²⁸

Because the response to immigration law violations is technically civil and not criminal, individuals caught up in the immigration system are not able to benefit from the many rights and protections that have been built into the criminal law system throughout our country's history.²⁹ However, even though noncitizens caught up in the immigration system apparatus are devoid of the constitutional safeguards that protect defendants in the criminal system, the terms and conditions of their detention are uncannily similar to those of the criminal justice system.³⁰ ICE itself has acknowledged that most of the facilities it uses for immigration detention are "largely designed for penal, not civil, detention."³¹

ALTERNATIVES TO INCARCERATION

There are a number of alternatives to detention that are more humane and more economical. Examples include home arrest, check-in by telephone, electronic tracking, wrist or ankle bracelets, movement restrictions, and community supervision. Alternatives such as these cost approximately \$14 or less per person per day, compared to the current cost of \$80-\$120 per detainee per day.³²

Secure Communities is part of a larger push for "smart and effective enforcement" via the enhancement of infrastructure and technology.³³ DHS, through its enhanced information capabilities, now allows for local law enforcement to make more accurate and reliable risk assessments of civil immigration detainees. When assessing risk, ICE considers an individual person's risk of flight from immigration proceedings as well as the danger he/she may pose to society.³⁴ ICE's improved risk-assessment capability should enable the creation of a system that utilizes detention only as a last resort, that respects the sanctity of family, and that ensures taxpayers that their money is being used in the most cost-effective way.

LACK OF ACCESS TO LEGAL COUNSEL

Access to legal assistance often has a substantive impact on the outcome of one's case. Yet, the vast majority of individuals caught up in immigration detention have to navigate the overwhelmingly complex system of immigration law without any access to legal counsel.³⁵ The U.S. Department of Justice reported that in 2007, about 58 percent of individuals in deportation proceedings did not have an attorney.³⁶ This figure rises to a shocking 84 percent for those in detention.³⁷

Although immigration courts are obligated to provide a list of *pro bono* attorneys and low-cost nongovernmental services to unrepresented immigrants,

these lists are often unhelpful.³⁸ Since legal representation often costs thousands or tens of thousands of dollars, and immigrants tend to earn wages that are well below the national average (around \$25,000 a year³⁹), the majority of immigrants in detention are effectively on their own when navigating the immigration legal system.⁴⁰

Even when a person is able to secure the funds necessary to hire an attorney, a myriad of obstacles may still obstruct his or her access to legal counsel. For one, many detention centers are located in very remote places, and so attorneys must drive for hours in order just to visit their clients.⁴¹ Additionally, visiting times are often at very inconvenient hours, making it incredibly difficult for attorneys to be able to speak to their clients.⁴² In other instances, when individuals are detained in local jails, attorneys are sometimes turned away and immigrant detainees told that they cannot speak to their lawyer. This happens most often in places used for purposes other than detention and where the facility's staff are untrained on how to handle immigration detentions. Additionally, concerns have been raised regarding the rise in the use of video-conferencing hearings, which have gained popularity given the geographic isolation of many detention facilities.⁴³

By contrast, in the criminal law context, hundreds of years of jurisprudence have resulted in a system where defendants benefit from various constitutional safeguards. These safeguards “attach” early on in the process of a defendant's interaction with the justice system and continue to be present throughout the entire process. Unfortunately, because of the legal distinction between criminal and civil, many, if not most, of these protections are not available for those caught in the immigration detention system.⁴⁴

HOW DO WE RECONCILE SECURE COMMUNITIES WITH COMPREHENSIVE IMMIGRATION REFORM?

The Latino community has seen a glimmer of hope in the increased prospects for comprehensive immigration reform. Although the immigration reform bill is currently stalled in the House of Representatives, many Latinos across the nation have viewed the progress earlier in 2012—as well as the intense lobbying efforts by both immigrant rights activists and the business community—as signs that there may be light at the end of the tunnel for our nation's 11 million undocumented immigrants.

However, despite the optimism surrounding comprehensive immigration reform, it is alarming that Secure Communities—and the criminal nature of our country's broken immigration detention system—has been absent from the reform dialogue. The Senate's bipartisan reform bill, S. 744, is a clear

example of this troublesome fact. The Border Security, Economic Opportunity, and Immigration Modernization Act does not mention Secure Communities at all, which is problematic given that the federal government intends for Secure Communities to become mandatory in all U.S. jurisdictions. This bill also ignores the criminal nature of detention in America, as well as detention conditions generally.

As the country moves forward with comprehensive immigration reform, we must urge policy makers to address the flaws of Secure Communities and the broken state of our immigration detention system. If done right, we have the opportunity to utilize Secure Communities' enhanced information capabilities to create a detention system that is more effective, more economical, and more aligned with our nation's values.

ENDNOTES

1. Lopez, Mark Hugo. The Hispanic Vote in the 2008 Election. Pew Research Center Hispanic Trends Project, 5 November 2008.
2. United States Immigration and Customs Enforcement (ICE) Secure Communities. “Nationwide Cumulative Numbers,” *Activated Jurisdictions*, 22 August 2012.
3. Ibid.
4. Ibid.
5. ICE. “Opt Out” Background. ICE FOIA 10-2674.0002927.
6. Ramlogan, Riah. Memorandum re: Secure Communities—Mandatory in 2013. ICE, U.S. Department of Homeland Security, 2 October 2010.
7. Memorandum of Law in Support of Plaintiffs’ Motion for Preliminary Injunction Compelling Defendants to Produce Limited “Opt-Out” Records Responsive to Plaintiffs’ FOIA Requests. *National Day Laborer Organizing Network (NDLON), the Center for Constitutional Rights (CCR), and the Immigration Justice Clinic of the Benjamin N. Cardozo School v. United States Immigration and Customs Enforcement Agency*. Case 1:10-CV-3488 (SAS)(KNF). Filed 28 October 2010.
8. ICE Total Removals Through August 25th, 2012. ICE.
9. Ibid.
10. Llenas, Bryan. “Ad Paints Obama as ‘Deporter-in-Chief,’” *Fox News Latino*, 8 August 2012; see also “Deporter-in-Chief” video, *Huffington Post* Web site, August 2012.
11. Kohli, Aarti, Peter L. Markowitz, and Lisa Chavez. Secure Communities by the Numbers: An Analysis of Demographics and Due Process. The Chief Justice Earl Warren Institute on Law and Social Policy—University of California, Berkeley Law School, October 2011.
12. Consolidated Appropriations Act of 2012, Pub. L. 112 - 74, 125 Stat. 9 66, p. 166, 23 December 2011; Hsu, Spencer S., and Andrew Becker. “ICE Officials Set Quotas to Deport More Illegal Immigrants,” *Washington Post*, 27 March 2010; Smith, Jeff. “Filling Quotas or Setting Priorities? ICE Announcement to Increase Deportations Raises Concerns.” Grand Rapids Institute for Information Democracy, 29 January 2013; New York Civil Liberties Union. “ICE Scandal of the Week—400,000 Deportations Goal in FY10, New York Civil Liberties Union.” New York Civil Liberties Union Web site.
13. Koulisch, Robert, and Mark Noferi. “Unlocking Immigrant Detention Reform,” *Baltimore Sun*, 20 February 2013.
14. Foley, Elise. “Janet Napolitano: Deportation Numbers Will Be ‘Very

- Robust' Under New Policy," *Huffington Post*, 30 August 2011.
15. Greene, Judith A. "The Cost of Responding to Immigration Detainers in California—Preliminary Findings," *Justice Strategies*, 22 August 2012; see also Foley, Elise. "Secure Communities Costs Los Angeles County More Than \$26 Million A Year: Report," *Huffington Post*, 23 August 2012.
 16. Koulisch and Noferi, "Unlocking Immigrant Detention Reform."
 17. Preston, Julia. "Huge Amounts Spent on Immigration, Study Finds," *New York Times*, 7 January 2013.; see also Migration Policy Institute. "U.S. Spends More on Immigration Enforcement than on FBI, DEA, Secret Service & All Other Federal Criminal Law Enforcement Agencies Combined." Migration Policy Institute press release, 7 January 2013.
 18. Ibid.
 19. Kohli, Markowitz, and Chavez, *Secure Communities by the Numbers*.
 20. Detention Watch Network. *Expose and Close*. Detention Watch Network, 2012, 4.
 21. U.S. Department of Homeland Security (DHS). *DHS' Progress in 2011: Smart and Effective Enforcement*. Department of Homeland Security Web site.
 22. Gavett, Gretchen. "Map: The U.S. Immigration Detention Boom," *Frontline*, 18 October 2011.
 23. Due to the civil versus criminal distinction, due process rights are said to not apply. It has been argued, and I believe, that the criminal nature of the punishment for immigration law violations should make due process protections apply as well.
 24. Detention Watch Network, *Expose and Close*.
 25. Ibid; Frontline. "Lost in Detention," *Frontline*, 18 October 2011.
 26. Inter-American Commission on Human Rights. *Report on Immigration in the United States: Detention and Due Process*. Inter-American Commission on Human Rights, December 2010, 32; Detention Watch Network, *Expose and Close*; Frontline, "Lost in Detention."
 27. Human Rights First. *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison*. Human Rights First, June 2009, 13; Detention Watch Network, *Expose and Close*.
 28. Detention Watch Network, *Expose and Close*.
 29. The result is often mandatory deportation, without the possibility of review or appeal, even in the case of minor violations. See Altman, Heidi. "Prosecuting Post-Padilla: State Interests and the Pursuit of Justice for Noncitizen Defendants," *Georgetown Law Review* 101(1), 2012.
 30. Amnesty International. *Jailed Without Justice: Immigration Detention in the US*. Amnesty International, 2009.

31. ICE. Fact Sheet: 2009 Immigration Detention Reforms. U.S. Immigration and Customs Enforcement Web site.
32. Koulish and Noferi, “Unlocking Immigrant Detention Reform.”
33. U.S. DHS. DHS’ Progress in 2011
34. Bernstein, Nina. “U.S. to Reform Policy on Detention for Immigrants,” *New York Times*, 5 August 2009.
35. Altman, “Prosecuting Post-Padilla.”
36. U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR). FY 2007 Statistical Yearbook. DOJ EOIR, April 2008, Figure 9, G1.
37. Amnesty International, Jailed Without Justice, footnote 116, 51
38. Amnesty International, Jailed Without Justice, 31.
39. Amnesty International, Jailed Without Justice, footnote 114, 51.
40. Amnesty International, Jailed Without Justice, 31.
41. Human Rights First. Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review. Human Rights First, 2011, 31; see also United States Commission on International Religious Freedom (USCIRF). USCIRF Expedited Removal Study Report Card: Two Years Later. USCIRF, 6 February 2007, 240.
42. Human Rights First, Jails and Jumpsuits, 38.
43. Human Rights First, Jails and Jumpsuits; Human Rights First, U.S. Detention of Asylum Seekers, 59-61; see also *Rusu v. Immigration Naturalization Service*, 296 F.3d 316, 323 (4th Cir 2002), and Walsh, Frank M., and Edward M. Walsh. “Effective Processing or Assembly-Line Justice? The Use of Teleconferencing in Asylum Removal Hearings,” *Georgetown Immigration Law Journal* 22(2): 259, 271, Winter 2008.
44. Kohli, Markowitz, and Chavez, Secure Communities by the Numbers; Inter-American Commission on Human Rights, Report on Immigration in the United States, 32; Detention Watch Network, Expose and Close; Frontline, “Lost in Detention.”

Latinos Seek Environmental Justice and Public Discourse for Underserved Communities in the United States

By DON ALBERTO ANQUE and CHRISTOPHER NEIL DOVAL

Don Alberto Anque is a law graduate of Syracuse University's College of Law with a passion for environmentalism and business. His photographic and journalism work has been featured with the University of California, Syracuse University, Free Speech Radio News, and Pacifica Radio. He has been a guest speaker and panelist in over a dozen university education events and business conferences. Anque is the author of several publications ranging from legal pedagogy to human rights violations. He has lobbied the California State Legislature for education reform and environmental initiatives. He is also the creator and director of a documentary entitled The Affected Others: An Examination of Race, Class, and Gender at UC Riverside.

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I think a lot of people assume that we, as Latinos, don't really care much about the environment, but I find the opposite is true . . . It's a cultural value we carry with us. —Adrianna Quintero, Senior Lawyer for the National Resources Defense Council

WHILE IMMIGRATION HAS REMAINED AT the forefront of Latino political issues in the United States, one of the most overlooked topics is environmental justice. According to the United States Environmental Protection Agency (EPA), environmental justice is defined as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”² Low-income, minority, underserved, and particularly Latino communities in the United States have suffered the externalities of unethical business practices and pollution for decades. Environmental pollution and hazardous conditions for Latino communities in the United States receive little attention from the media and politicians alike. Environmental justice for Latino communities in the United States should be part of this nation’s dialogue.

Many nongovernmental organizations conducted environmental studies within Latino communities to understand the effects of environmental pollution. While many environmental studies within Latino communities have predominantly focused on air quality, water quality still sees little attention. For instance, many Latino communities affected by environmental injustice suffer from a lack of clean water, like ground and waste water, which leads to a variety of health conditions such as hepatitis A.³ Latino communities also deal with being in dangerously close proximity to hazardous waste sites.⁴ In response to the overwhelming imbalance of power between major corporate leaders and disenfranchised community interests, environmental groups included environmental justice within their umbrella of responsibilities and have been lobbying for policy changes at the state and federal levels.⁵ In February 1994, U.S. President Bill Clinton signed Executive Order 12898, which directed federal agencies to make environmental justice part of their respective missions:

Each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions . . .⁶

Since the signing of Executive Order 12898, many agencies created regulations to comply with the goals of environmental justice, which are being commemorated and strengthened with Plan EJ 2014 from the EPA.⁷ For instance, the United States Department of Agriculture (USDA) created Departmental Regulation 5600-2 to ensure that environmental justice considerations are incorporated into the USDA's programs and activities.⁸ Departmental Regulation 5600-2 requires that environmental justice be addressed in all policy, procedures, and guidelines.⁹ Similarly, the EPA continually began to study the best methods and policies to enact environmental justice. Plan EJ 2014 focuses on three key areas to address environmental justice: protect health in communities overburdened by pollution; empower communities to take action to improve their health and environment; and establish partnerships with local, state, tribal and federal organizations to achieve healthy and sustainable communities.¹⁰ Although the EPA created several environmental justice strategies and studies, many members of impacted communities have criticized the EPA for not taking action, especially in Latino communities.

There's no cause for celebration. All the executive order has really done to date is spawn more bureaucracies that give false hope to communities with promises and words. — Suzie Canales, cofounder of the advocacy group Citizens for Environmental Justice¹¹

In light of several EPA studies conducted as a result of Executive Order 12898, many independent research organizations have also conducted their own studies about environmental hazards on Latino communities. In 2004, the National Resources Defense Council (NRDC) published "Hidden Danger: Environmental Health Threats in the Latino Community," which examined the effects of poor environmental regulations in Latino communities in the United States.¹² The comprehensive report outlines every major environmental hazard facing Latinos, from poor water quality to pesticide poisoning. Since then, there has been no significant Latino specific research regarding environmental protection as large as the NRDC study. This study focused on the largest American Latino communities. According to the NRDC, approximately 9.8 million Hispanic households in the United States believed that their primary sources of water were unsafe to drink, which in many cases was true.¹³ In 2000, the EPA reported that thirty-one drinking water supplies in Arizona did not meet EPA health standards for minimum clean water content. Further, seventy-three water supplies exceeded the allowed EPA threshold on bacteria in Arizona.¹⁴ Many Latinos are simply unaware of the environmental injustices occurring in

their communities, while others are rather concerned about attaining water altogether.

In 2004, the Latino Issues Forum estimated that more than 85,000 Latino households in California did not have complete plumbing facilities, including a sewage connection to protect drinking water sources.¹⁵ In Texas's Colonias Communities, approximately 340,000 people have substandard water.¹⁶ For many Latinos living in these rural communities, approximately 24 percent use untreated water for cooking and drinking.¹⁷ Unfortunately, environmental issues in Latino communities in the United States have failed to gain mainstream media attention, despite evidence of widespread contamination. The Commission for Racial Justice found in 1987 that three out of five African Americans and Latinos live in communities that are also home to Superfund sites.¹⁸ A Superfund site is an area that contains an abandoned hazardous waste site that falls under the EPA's Superfund cleanup process. Even though Congress established various programs to locate and clean up these toxic waste sites, thousands still remain. Many Latinos still live near toxic waste sites that often reach and contaminate groundwater tables, an area between water-saturated soil and unsaturated ground.¹⁹

For example, in New Mexico's Albuquerque Valley, industrial dumping led to fifty-two known areas of groundwater contamination.²⁰ It also contains New Mexico's largest Superfund cleanup priority.²¹ The population of Albuquerque Valley is 86 percent Latino, making them disproportionately impacted by contamination.²² The Centers for Disease Control and Prevention has released several documents about waterborne diseases that are likely to occur as a result of contaminated water.²³ In Los Angeles and New York City, Latinos ranked higher than Asians and African Americans when it came to cases of microbial contamination due to environmental factors.²⁴ For farmworkers, field sanitation is a major problem and they are likely to contract parasitic infections and hepatitis A, among other diseases.²⁵ These large cases of infection occur because the Occupational Safety and Health Administration (OSHA) has a statutory limit on what farms they are allowed to regulate.²⁶ Congress only granted OSHA the power to regulate occupational safety in farms where there are eleven or more employees.²⁷ Overall, only 36 percent of farms are covered by OSHA regulations.²⁸ The other farms that have eleven or fewer employees follow their state's respective laws, which may be less stringent in their occupational safety rules. California is the first state to require that each farm with more than one employee must provide field sanitation protections, such as toilets, drinking water, and hand washing water.²⁹ Still, other states have yet to follow California's farmworker rights protections, and thousands of farmworkers continue to suffer.³⁰

In order to improve poor water supplies and similar environmental hazards for Latino communities in the United States, many programs were created around the country. Mexico and the United States have invested more than \$3.1 billion to improve living conditions along the border.³¹ However, the United States' Government Accountability Office (GAO) estimates that billions more are needed to fix the problem of water treatment.³² The Clean Water in Homes program and the Clean Water in Border Municipalities program reduced thousands of gastrointestinal disease cases since they were created in 1999.³³ In spite of these victories over water conditions, these programs have not gained the widespread recognition they deserve.³⁴

In 2012, the Sierra Club published their findings regarding environmentalism and voting trends within Latino communities around the United States.³⁵ The two top environmental concerns among Latino voters nationwide are air quality and water quality.³⁶ Eric Rodriguez of the National Council of La Raza commented that the findings of the survey illustrate that Latinos throughout the country want “quality jobs, quality air and water, and quality of life” and these are goals that can and should be achieved simultaneously.³⁷ More than 72 percent of Latino voters agree that “environmental regulations protect our health and our families by lowering toxic levels of mercury, arsenic, carbon dioxide and other life-threatening pollution in our air and water.”³⁸

In conclusion, low-income Latino families are especially impacted by environmental regulations and disproportionately suffer the negative impact of pollution, unlike their wealthier counterparts. Increased public debates about immigration and the influence of the Latino vote have become important current topics, but we have not yet made a significant effort to improve the quality of living for the countless Latino communities throughout the nation—citizen or not. This concern for a clean environment can become a powerful voice for advocacy, especially as politicians seek support from Latino communities.³⁹ In the 2012 US presidential election, a record 11.2 million Latinos voted.⁴⁰ In the 2008 US presidential election, 9.8 million voters were Latino.⁴¹ According to the Pew Research Center Hispanic Trends Project, the growth in Latino voters was driven by Latino youth.⁴² As time goes by, we hope that Latino voters continue to register to vote and become more critically involved in the arena of environmental justice. It is not just enough, however, to write on a ticket for legislators to take interest in the Latino community's health and safety. The citizens of these communities need to ensure their environmental justice by cleaning up their neighborhoods and meeting with large corporations. We implore members of these communities facing these injustices to not just hope for change, but to catalyze it.

It's getting bad out there when it comes to pollution, global warming and clean water. We are destroying our world little by little. I have a little brother and two nephews and worry about their future. —Elizabeth Olivares of Stockton, California, age 24⁴³

ENDNOTES

1. Puga, Kristina. "Six Figures: Founder of Voces Verdes Speaks Her Mind to Save the Environment," *NBC Latino*, 28 January 2013.
2. United States Environmental Protection Agency (EPA). Environmental Justice—Basic Information. EPA Web site, 24 May 2012.
3. Quintero-Somaini, Adrianna et al. Hidden Danger: Environmental Health Threats in the Latino Community. National Resources Defense Council, October 2004.
4. Ibid.
5. Chavis, Benjamin, and Charles Lee. Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites. Commission for Racial Justice, 1987.
6. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. 11 February 1994.
7. EPA. Plan EJ 2014. EPA Web site, 20 March 2013.
8. United States Department of Agriculture. Departmental Regulation 5600-2—Natural Resource and Environment. 15 December 1997.
9. Ibid.
10. EPA. Plan EJ 2014.
11. McArdle, John, and Gabriel Nelson. "Environmental Justice Activist Urges EPA Chief 'to Roll Up Your Sleeves' at Tense W.H. Forum," *New York Times*, 16 December 2010.
12. Quintero-Somaini et al. Hidden Danger.
13. Ibid, 23-24.
14. Ibid.
15. Ibid, 24.
16. Ibid.
17. Ibid.
18. Chavis and Lee. Toxic Wastes and Race in the United States.
19. Water table, encyclopedic entry. *National Geographic*, n.d.
20. Quintero-Somaini et al. Hidden Danger.
21. Ibid.
22. Ibid.
23. Ibid, 27.
24. Ibid, 28.
25. Ibid.
26. Ibid, 30.
27. Ibid.

28. Ibid.
29. Ibid.
30. Ibid.
31. Ibid, 29
32. Ibid.
33. Ibid.
34. Ibid.
35. Sierra Club and the National Council of La Raza. New National Survey: Nearly 90 Percent of Latino Voters Support Clean Energy. Sierra Club and the National Council of La Raza, 1 August 2012.
36. Ibid.
37. Ibid.
38. Ibid.
39. Yarnold, David. "Green Groups Must Embrace Latinos' Concern for Environment," *Huffington Post*, 29 January 2013.
40. Lopez, Mark Hugo, and Ana Gonzalez-Barrera. Inside the 2012 Latino Electorate. Pew Research Center Hispanic Trends Project, 3 June 2013.
41. Ibid.
42. Ibid.
43. Sahagun, Louis. "Latinos, Asians More Worried About Environment Than Whites, Poll Finds," *Los Angeles Times*, 20 November 2010.

Inclusion and Exclusion of Latinos in the Affordable Care Act: Challenges and Opportunities for Achieving Health Equity

By JUDY LUBIN

Judy Lubin is a policy analyst, communications strategist, and sociologist with research interests in the politics of health, health disparities, and social inequality. A PhD candidate in sociology at Howard University, Lubin's dissertation focuses on the interaction of racial politics and health reform efforts starting with the New Deal through the ongoing debate on the Affordable Care Act. She has more than ten years of experience raising awareness and support for some of today's most pressing women's, health, and social issues as principal of Public Square Communications and in leadership positions with national organizations. She is a former Congressional Black Caucus Foundation Public Health Fellow and previously served as grassroots advocacy coordinator for the National Minority AIDS Council and communications director for two national women's health organizations. Lubin is a recipient of the Harry S. Truman Library Dissertation Research Grant. She earned her master of public health from Emory University and bachelor's degree in psychology at Florida State University. A first-generation Haitian American, Lubin grew up in the rich cultural milieu of immigrants in Miami. She is a contributor to the Huffington Post and has been featured on local and national media including the Wall Street Journal, PBS.org, Ebony Magazine, theRoot.com, XM Satellite Radio, and Diverse Issues in Higher Education.

ABSTRACT

The growth of the Latino population underscores the need for the elimination of social, cultural, and economic barriers to quality health care. The Affordable Care Act includes a number of provisions that will facilitate this goal. Notwithstanding the Affordable Care Act's many benefits, variations in the states' expansion of Medicaid and the continuation of the 1996 welfare reform policy making some legal immigrants ineligible for the program will limit the extent to which Latinos gain access to quality, affordable, and culturally appropriate care and treatment. This article examines the political environment that shaped the Affordable Care Act and its implications for Latino health. The inclusive and exclusionary aspects of some of the health care law's provisions and implementation is explored within the context of the United States' commitment to the elimination of health disparities and international consensus on a right to medical care regardless of race, ethnicity, religion, age, income, or legal status.

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WHILE THE PATIENT PROTECTION AND Affordable Care Act (Affordable Care Act) moves the nation closer to achieving universal health coverage, the United States has yet to fully embrace a right to health framework guaranteeing access to health care for all residents.^{1,2} As a result, millions of individuals and families will remain on the margins of our health care system. Given disparities in health and health care among communities of color, racial and ethnic minorities are particularly disadvantaged by the absence of a universal health care program. The devolution of federal responsibility for health care and other social welfare programs to state governments, antigovernment rhetoric, and anti-immigrant sentiment have contributed to a "social context of exclusion" that undermines efforts to achieve health equity.^{3,4,5} This article explores how this social context has restricted access to health care and its impact on insurance coverage for the Latino population under the Affordable Care Act. I conclude with a discussion of how the right to health framework, which the United States has recognized through its participation in international bodies such as the United Nations, serves as a useful approach to achieving a more inclusive health care system for the Latino and general population in the United States.

LATINO DISPARITIES IN HEALTH AND HEALTH CARE

Health disparities are avoidable differences in health experienced by socially disadvantaged groups.^{6,7} These differences are inherently unjust given that these

disparities are linked with discrimination or marginalization of members of disadvantaged groups.^{8,9} While nonmedical social determinants (e.g., poverty, neighborhood characteristics, racial discrimination, housing, social isolation) are increasingly recognized as underlying drivers of health disparities experienced among racial and ethnic minorities, lack of access to quality health care remains a significant contributor to increased morbidity and mortality among communities of color.^{10,11}

Latinos are especially at risk for the ill effects associated with being uninsured and marginalized, including limited access to health care services, poorer-quality medical care, and delays in diagnosis and treatment of chronic conditions. The U.S. Latino population is diverse and some health conditions affect ethnic subgroups differently; however, higher levels of obesity and phys-

The devolution of federal responsibility for health care and other social welfare programs to state governments, antigovernment rhetoric, and anti-immigrant sentiment have contributed to a “social context of exclusion” that undermines efforts to achieve health equity.

ical inactivity in addition to excess mortality rates due to diabetes, certain types of cancers (cervical, stomach, and liver), HIV, liver disease, homicide, and work-related injuries have been observed among Latinos compared to the general population.^{12,13} Latinos receive fewer health screenings and preventive care such as mammograms, Pap and HIV tests, influenza vaccinations, and prenatal care.¹⁴ Moreover, Latino farmworkers and their children have worse health care outcomes compared to individuals and families not involved in agricultural work.¹⁵ In assessing the quality of care received, Latinos report financial limitations, their race or ethnicity, and accent as factors that have colored their interactions with health care providers. In a national survey of over four thousand Latinos conducted by the Pew Hispanic Center and Robert Wood Johnson Foundation in 2008, among those who received care in the past five years, 23 percent report receiving poor-quality medical treatment; of those, 31 percent attribute their financial limitations while 29

percent perceived their race or ethnicity as the reason for the poor treatment, and another 23 percent reported that their accent or how they spoke English contributed to their poor treatment.¹⁶ Other studies have also shown that Latino Spanish-only speakers report significantly less patient satisfaction than their English-speaking counterparts.¹⁷

Latinos have the highest uninsurance rate (32 percent), compared to Whites (13 percent), Asian Americans (18 percent), African Americans (21 percent), and Native Americans (27 percent).¹⁸ Several factors contribute to the difference in health coverage among Latinos. For many Latino individuals and families, the cost of health coverage is simply out of reach. More than 25 percent of Latinos live in poverty.¹⁹ Latino workers are least likely to hold jobs where employers provide health insurance; fewer than 40 percent of Latino workers receive health care coverage from an employer compared to an estimated 45 percent of African Americans and 67 percent of Whites.²⁰ Cultural barriers and citizenship status contribute to Latinos' limited access to care.

Despite decades of efforts to reduce racial and ethnic disparities in health, little progress has been made in key areas. Cultural and language barriers, citizenship status, stigma, and exclusionary health care policies and rhetoric continue to reduce access to care and influence how health care providers treat Latinos.

According to the Pew Hispanic Center and Robert Wood Johnson Foundation study, “foreign-born and less-assimilated Latinos—those who mainly speak Spanish, who lack U.S. citizenship, or have been in the United States for a short time” are more likely to report not having a regular source for medical treatment or advice.²¹ Respondents stated the primary reason for not having a usual health care provider was the infrequency of illness. The absence of a usual source of care limits health care seeking, hinders access to preventive screenings, and contributes to delays in the diagnosis of health problems that benefit from early detection and treatment.²² Indeed, health care providers report that many immigrants, often out of fear of being deported or a

change, avoid seeking medical treatment until faced with an emergency or acute situation.²³

The Latino population's access to health care is also affected by policies that restrict eligibility for public benefits based on immigration status. These policies contribute to the stigmatization of certain groups of immigrants as "undeserving."²⁴ Moreover, restrictive policies can have a chilling effect, resulting in a decline in coverage among those eligible for nutrition and health programs such as food stamps and Medicaid.²⁵ Restrictive policies can cause confusion among eligible citizens and legal immigrants as well as among health care providers. This is especially true for the estimated 16 million people who live in mixed-status families comprising both citizens and undocumented immigrants.²⁶ Mixed-status families may be unsure of eligibility for public programs and fear that their use or their children's use of public benefits may invite unwanted scrutiny by immigration officials. Chilling effects occurred following the passage of the Personal Responsibility Work Opportunity and Reconciliation Act of 1996 (PRWORA, or welfare reform) and the Deficit Reduction Act of 2005 (DRA). Both policies were designed to limit the number of immigrant beneficiaries of safety-net programs through exclusionary criteria (PRWORA) and requirements for documentation of citizenship (DRA). In Los Angeles County, for example, the Urban Institute reported a 71 percent drop in approved applications of legal noncitizen families for Medi-Cal and Temporary Assistance for Needy Families (TANF) between January 1996 and January 1998.²⁷ Researchers noted "the drop occurred even though there was no change in legal immigrants' eligibility for these programs in California and denial rates in the county remained steady during the period examined."²⁸ (Details on PRWORA's restrictions and their effects on health care access for Latinos are discussed in later sections of this article.) With the upsurge in anti-immigrant laws in states, similar trends are likely. In 2011, public health officials in Alabama raised concern that fewer Latinos were visiting county health clinics and emergency rooms following passage of the state's illegal immigration law.²⁹

The growth of the Latino population underscores the need for an inclusive health care system capable of delivering care to an increasingly diverse patient population. Progress on eliminating health care disparities is a key indicator of the ability of the U.S. health care system to meet this challenge. Unfortunately, despite decades of efforts to reduce racial and ethnic disparities in health, little progress has been made in key areas.³⁰ Cultural and language barriers, citizenship status, stigma, and exclusionary health care policies and rhetoric continue to reduce access to care and influence how health care providers treat Latinos.³¹

LATINO INCLUSION IN THE AFFORDABLE CARE ACT

Health care advocates have long argued for universal coverage as the path to eliminating health inequities. The Affordable Care Act includes a number of provisions that will facilitate this goal and improve access to quality care among Latinos.

Medicaid Expansion and Subsidized Private Health Insurance Plans

Latinos and other racial and ethnic minorities will benefit from several aspects of the law, including improved health insurance coverage through an expansion of Medicaid and subsidies to purchase private plans in the new health insurance exchanges. Individuals with incomes between 100 and 400 percent of poverty that do not have employer-provided coverage will be eligible for these subsidies. Approximately 23 percent of uninsured Latinos will qualify for subsidies in the form of tax credits, according to a report by Families USA.³²

Prevention Services and Provisions to Reduce Health Disparities

A number of other elements of the law will also benefit the Latino community and potentially facilitate a reduction in health disparities. These include provisions for free preventative services, new directives to improve care coordination and the quality of data on health disparities, increases in funding for community health centers, initiatives to improve the diversity and cultural competence of the health care workforce, and the creation of Offices of Minority Health within the U.S. Department of Health and Human Services' six agencies.

Community health centers are an important source of primary care for low-income and uninsured populations, especially undocumented immigrants. Under the Affordable Care Act, community health centers were expected to receive an additional \$11 billion in federal funds over five years to support new facilities and expansion of primary and preventive care at existing sites and to accommodate new Medicaid patients. Recent budget cuts, including those imposed by sequestration and the limited Medicaid expansion, have dampened the prior positive outlook for health centers.³³

Enrollment and Outreach to Latinos

Key to the viability of the Affordable Care Act is enrollment of young healthy individuals in the plans offered through the health insurance marketplaces. With the prohibition against preexisting conditions, encouraging young healthy people

to purchase insurance is critical to preventing adverse selection. Adverse selection occurs when a preponderance of sick patients enter the risk pool, thereby driving up costs. Having more healthy people in the pool spreads the risks and costs among everyone and stabilizes insurance premiums.³⁴ Latinos are a natural audience for targeted enrollment efforts given the high rate of uninsurance and age structure of Latino communities. The median age for the Latino community is 27.6 compared to 42.3 for Whites and 32.9 for African Americans.³⁵

The Obama administration has recognized the importance of Latino participation to the success of the Affordable Care Act and has implemented a number of outreach strategies to assist Latino individuals and families in obtaining coverage. These efforts include funding for community-based organizations to provide one-on-one enrollment assistance, training of *promotoras* or lay health workers, and a Spanish-language Web site comparable to the main healthcare.gov site that serves as a portal for information on benefits and links to individual state health insurance marketplaces. Other efforts include television, radio, Web, and mobile campaigns sponsored by Univision, Telemundo, and Impre-Media.³⁶ Additionally, the U.S. Immigration and Customs Enforcement (ICE) agency issued a memo in October 2013 stating that the agency will not use data provided to determine eligibility for health coverage as a basis for immigration enforcement action.³⁷ Immigrant advocates, however, remain concerned that the request for information on citizenship status as part of the application process will hinder enrollment efforts among Latinos.³⁸

LATINO EXCLUSION IN THE AFFORDABLE CARE ACT

Notwithstanding the aforementioned benefits, variations in states that will expand Medicaid and the continuation of the 1996 welfare reform policy making legal immigrants ineligible for the program will limit the extent to which Latinos can gain access to health care. Moreover, anti-immigrant rhetoric was a common feature in arguments against health reform during Congressional debates and public discourses. Similar to the debate around welfare reform in 1996, this rhetoric cast immigrants as undeserving of health benefits. In the following sections, I discuss each of these exclusionary methods and their implications for improving the health of Latinos.

A Tenuous Basis for Exclusion

Latinos currently make up nearly 17 percent of the U.S. population. By 2050, one in three Americans will be Latino. Approximately half of the estimated 52

million Latinos in the U.S are immigrants.³⁹ Restricting immigrant access to health care has been used to discourage immigration, notwithstanding evidence that immigration is more affected by changes in immigration policy, political instability, or natural disasters in immigrants' home countries and direct economic incentives (i.e., jobs, higher wages, ability to send money home) than social benefits.⁴⁰ Immigrants are in better health and have lower medical costs and utilization rates than U.S.-born citizens.^{41,42,43} Medical costs for insured immigrants are actually 14 to 20 percent lower than insured U.S.-born citizens.⁴⁴ Despite higher poverty rates, Latinos experience higher life expectancy and lower mortality rates than non-Hispanic Whites.^{45,46}

Differences in health status between U.S.-born and immigrant populations have been attributed to selectivity (the "healthy migrant effect"), level of acculturation, and differences in cultural and lifestyle factors.⁴⁷ Despite these realities, public opinion and political rhetoric continue to reflect a view that immigrants and the poor are undeserving of public benefits. A joint study by the Pew Center for People & the Press and Pew Hispanic Center reported more than half of Americans believe immigrants are a burden because they take jobs and housing and strain the health care system; these concerns have steadily increased from 38 percent in 2000 to 52 percent of the population in 2006 expressing such sentiments.⁴⁸ At the same time, the public has mixed feelings on the impact of immigration and policy proposals to address the status of the estimated 11 million undocumented immigrants. Restrictions on immigration and public benefits enacted under PRWORA in 1996 and the later Illegal Immigration Reform and Immigrant Responsibility Act set the tone for policy decisions that reduced poor and immigrant Latino families' access to health and social services including food and cash assistance.⁴⁹ While the Latino population is generally younger and healthier than other groups, lack of access to health care, as outlined above, is associated with disparities among the uninsured and racial and ethnic minorities. Policies restricting access to health care only serve to aggravate these disparities and place the Latino community on a track for poorer health and health outcomes.

Anti-Immigrant Rhetoric and the Health Care Debate

The extent to which conservative opponents objected to providing health care to undocumented immigrants was encapsulated in the unprecedented breach of decorum by South Carolina Republican Congressman Joe Wilson during a September 2009 joint session of Congress on President Obama's health care proposal. During his address, Obama stated that the new law would not be

extended to undocumented immigrants. In response, Wilson shouted, “You lie!” in protest. Other examples of more explicit anti-immigrant rhetoric abound with the debate on the Affordable Care Act. For example, Republican Congressman Dana Rohrabacher of California argued during the 7 November 2009 floor debate that “this bill cuts healthcare for our seniors by hundreds of billions of dollars while providing subsidized health care of illegal immigrants, which will draw more illegals into our country.”⁵⁰ In an analysis of the 17 November 2009 House floor debate on H.R. 3962 (Affordable Health Care for America Act), Susanne Beechey found that “seventeen Republicans argued that illegal immigrants were not deserving of health insurance provided through the bill. The undeserving of illegal immigrants was constructed in opposition to ‘hard working,’ ‘law-abiding,’ and presumably deserving ‘Americans’ and solidified through claims of unlawful activity on the part of immigrants, who were linked to hardships experienced by U.S. citizens.”⁵¹ This was exemplified in remarks by Representative Mark Souder (R-Indiana):

*What are we doing today? We are not going to require identification for illegal immigrants. We are going to hope that they self-report. With 1,990 pages of ignoring the voices of American people, you get higher taxes, fewer jobs, an unconstitutional takeover of 17 percent of our economy, a trillion dollars of debt, and free health care for the illegals who took your jobs.*⁵²

Beechey also notes that Democrats did not challenge the assumptions that undocumented immigrants were unworthy of health care.⁵³ Similarly, Vinita Andrapalliyal concludes in his review of the floor debate on 7 November 2009 that while Democrats often referred to health care for “all” or “everyone,” the implicit understanding was that “all” did not include undocumented immigrants. In contrast, opponents to the law explicitly expressed concern that undocumented immigrants would benefit from health reform. Only one Democrat, Representative Mike Honda of California, argued against the exclusion of immigrants. Honda stated that Congress should “lift the five-year bar on legal immigrant participation in Medicaid. Legal immigrants are tax paying [sic] citizens in waiting who work hard and contribute. It is only fair that we afford them equal access to the benefits of Medicaid.”⁵⁴

State Medicaid Expansion Decisions

Medicaid is a vital lifeline for Latino communities. Given higher rates of poverty, Latinos are two times more likely to rely on Medicaid for health coverage compared to Whites.⁵⁵ Thus, the Affordable Care Act’s expansion of Medicaid

eligibility to adults with incomes at or below 138 percent of the federal poverty level (approximately \$33,000 for a family of four) could significantly reduce uninsurance rates among Latinos and other communities of color. Unfortunately, the U.S. Supreme Court's decision to make the Medicaid expansion voluntary will disproportionately impact racial and ethnic minorities in states that are not extending Medicaid eligibility. One in six, or 59 percent of African Americans who would qualify for Medicaid under the Affordable Care Act's

Communities with the most need for expanded coverage options are being left out of benefits that others will receive in states that are moving forward with the expansion.

expanded eligibility guidelines reside in states not participating in the expansion. Because of the higher distribution of uninsured Latinos across key states (New York, California, Arizona, Illinois) that have decided to expand Medicaid, the impact on the Latino community is smaller yet still presents a significant gap in coverage.⁵⁶ According to the Henry J. Kaiser Family Foundation, 44 percent of Latinos who would be newly eligible for Medicaid under the Affordable Care Act reside in states (Texas, Florida, Georgia) not participating in the expansion. In each of the southern states, the uninsurance rate among Hispanics exceeds 30 percent.⁵⁷ As of October 2013, with the exception of Arkansas, Kentucky, and West Virginia, southern states have declined the Medicaid expansion. As a result, communities with the most need for expanded coverage options are being left out of benefits that others will receive in states that are moving forward with the expansion. As it is currently written, the law does not provide subsidies to purchase private plans on state exchanges for those who would have qualified through the Medicaid expansion. Leaving the Medicaid expansion up to state politics will likely contribute to an increase in disparities given the pattern of states choosing not to participate and the distribution of minority populations in those states.

Restrictions on Undocumented and New Immigrants

Prior to enactment of PRWORA in 1996, the United States provided equal access to public assistance to U.S. citizens and legal residents.^{58,59} This changed

with a provision of the PRWORA that made legal immigrants ineligible for public benefits such as Medicaid coverage and cash assistance for the first five years of residence in the States.⁶⁰ PRWORA also shifted determination of low-income immigrants' eligibility for health and welfare benefits from the federal government to states, which introduced greater complexity and variation in health coverage for immigrants across the country.⁶¹ Additionally, while undocumented immigrants were not previously eligible for Medicaid and other means-tested programs, PRWORA made it explicit that state governments would be responsible for providing services to unauthorized immigrants.⁶² With the exception of access to emergency Medicaid, community health centers, and special programs set up in some states to provide for their care, undocumented immigrants and some legal immigrants (e.g., students, temporary workers) are effectively locked out of securing health care for nonacute conditions.

The Deficit Reduction Act of 2005 further reduced access to Medicaid by requiring proof of U.S. citizenship and identity when applying or renewing eligibility for the program. Prior to DRA, citizens could verbally confirm, while legal residents were required to provide written documentation certifying their legal status. Together, these policies were intended to curb illegal immigration and alleviate financial stress on public programs. However, the restrictions on

The restrictions on provisions of health services to undocumented workers have placed undue financial, legal, and administrative burdens on community health centers, public hospitals, and state and local governments.

provisions of health services to undocumented workers have placed undue financial, legal, and administrative burdens on community health centers, public hospitals, and state and local governments.⁶³ Illinois, for example, estimated \$16-\$19 million in increased staffing costs the first year. Similarly, Arizona estimated \$10 million for staffing, training, and payments for birth records.⁶⁴ According to the U.S. Government Accountability Office, 22 of the 44 states that provided complete responses to the agency's survey on the implementation

of DRA reported declines in Medicaid enrollment among eligible citizens and increased administrative costs. The GAO estimated that “for every \$100 spent by federal taxpayers to implement the new requirements in six states, only 14 cents in Medicaid savings can be documented.”⁶⁵ Additionally, DRA’s requirements were found to disproportionately impact low-income citizens eligible for the program, such as African Americans who had difficulty obtaining birth certificates.⁶⁶ Moreover, these changes, along with efforts such as Proposition 187 in California, signaled a shift in the portrayal of immigrants and “raised the tenor of anti-immigrant rhetoric” in the United States.⁶⁷ While the Affordable Care Act likely would not have passed without them, the law continues these exclusionary policies. Legal immigrants within five years of obtaining legal residency are ineligible for benefits under Medicaid and subsidies to purchase

The notion that health care is a right conflicts with the general premise that underlies the organization of health care in the United States. The private employer-based health care system is grounded in the belief that access to health care is earned through work and best left to market forces rather than government imposition of a social right.

private insurance in the marketplaces.

The five-year waiting period for legal immigrants and barring of public benefits to undocumented immigrants have reduced participation of eligible immigrants in Medicaid and other programs. Mixed-status families are less likely to sign up for programs such as Medicaid and the Children’s Health Insurance Program (CHIP)⁶⁸ out of confusion regarding eligibility of family members and fear that applying could lead to deportation.⁶⁹ A case study examining the impact of PRWORA in New Mexico found that the exclusionary policies affected the attitudes and perceptions of frontline health care and social welfare providers.⁷⁰ According to an analysis of the effects of PRWORA, “a

child's citizenship has become a critical (and statistically important) risk factor for the child having no health care coverage."⁷¹

In addition to the ethical and moral concerns that denying access to health care presents, limiting medical care only to emergencies for legal residents and undocumented immigrants is a costly policy when considering the toll on an individual's health and efficient use of public resources.⁷² Diabetes, for instance, is one of the most costly chronic diseases, accounting for 23 percent of all hospital spending.⁷³ Latinos are 55 percent more likely to report having diabetes than Whites and 70 percent more likely to suffer kidney failure as a result of the condition. Adults with diabetes who have health insurance are more likely to receive the recommended screenings and treatment and avoid hospitalization.⁷⁴ Effective prevention and management of chronic diseases can reduce the need for costly emergency services associated with these conditions. By investing in prevention and treatment of the seven most common chronic diseases (cancer, diabetes, hypertension, stroke, heart disease, pulmonary conditions, and mental disorders), the United States could decrease treatment costs by \$218 billion per year and reduce the economic impact of disease by 27 percent or \$1.1 trillion annually.⁷⁵

With prospects for immigration reform bleak and given that the current proposals on the table propose a ten-year path to citizenship, keeping undocumented immigrants in a state of limbo and potentially without access to health care for nearly a decade may have long-term financial consequences on state and local budgets and implementation of the Affordable Care Act.⁷⁶ Because undocumented immigrants are ineligible for public insurance or private health insurance plans in the marketplaces created under the Affordable Care Act, Stephen Zuckerman and colleagues note that "doing nothing to provide coverage to undocumented immigrants means that they will gradually become a larger share of the uninsured population."⁷⁷ Nearly two-thirds of undocumented workers are employed by firms with fewer than 100 employees.⁷⁸ As small employers move to comply with the employer mandate, some may drop coverage or provide employees with stipends to purchase coverage on their own through the health insurance marketplaces. With requirements that citizenship status be confirmed prior to purchasing health insurance on the marketplaces, it is likely that the share of undocumented immigrants without health care coverage will increase.⁷⁹

THE RIGHT TO HEALTH CARE: AN INCLUSIVE PATH TO HEALTH EQUITY

The right to health refers to the responsibility of governments in providing public health services such as sanitation and ensuring that everyone—regardless of race, ethnicity, religion, age, income, or legal status—has access to quality medical

care. Enshrined in many international human rights documents, including the World Health Organization's 1946 Constitution and the United Nation's 1948 Declaration of Human Rights, the idea of a right to health rests on the notion that health is a "basic and essential asset" that is required for daily life and full participation in society.^{80, 81}

As members of the United Nations, the 191 member states have universally recognized this right to health.⁸² Notwithstanding this broad agreement that health protections are an essential part of human rights, countries differ on the extent to which these protections are guaranteed or enforced at the national level. The United States is no exception. The notion that health care is a right conflicts with the general premise that underlies the organization of health care in the United States. The private employer-based health care system is grounded in the belief that access to health care is earned through work and best left to market forces rather than government imposition of a social right.⁸³ This, of course, is an oversimplification of how the employer-based system evolved; however, these ideas permeate opposition to universal health care. Take for instance, this statement by Dick Armey, former House Republican leader from Texas in the 1990s and chairman of FreedomWorks, which has coordinated the highly publicized Tea Party protests against the Affordable Care Act:

Obviously, we would hope everybody would enjoy health care but . . . health is a commodity just like bread and just like housing and everything else. Once you claim it's a right, then the next thing is, therefore, the government must control the health care system. We believe universal coverage is just a euphemism for the welfarization of health care.⁸⁴

Armey made the statement in the midst of the debate on then U.S. President Bill Clinton's health reform effort in 1993. The themes in Armey's characterization of health care reform in the 1990s were, as previously outlined, also present in the debate over the Affordable Care Act. The framing of health care reform as a "big government program" or "welfarization" is no accident. A well-established body of research underscores the power of framing and language in public policy debates. Social welfare policies are often framed by the opposition to evoke biases about race and gender rather than the policy under consideration.⁸⁵ Among the general public, phrases such as "government spending" and "welfare" are implicitly associated with programs that assist disadvantaged groups and garner less support.⁸⁶ Indeed, an August 2013 *Washington Post* article discusses the tactics employed by FreedomWorks and other Tea Party groups, which position the Affordable Care Act as a welfare program in which the young and middle class should find shame in enrolling in its health care

benefits. FreedomWorks has sponsored training programs for opponents of the law and has included a fake “Obamacare card” as part of its protests to drive home its underlying message. Several Tea Party activists quoted in the article echoed and embraced the effort to stigmatize those who enroll in Medicaid and the private insurance plans under the Affordable Care Act:

As soon as you mention a government program and Medicaid, you don't have to talk that long. I like that there is still a stigma [around Medicaid]. That people want to stand on their own feet. When you need help, you should go to your neighbors and church. It's the American way of doing charity.⁸⁷

Discrimination and exclusion are often drivers of inequities experienced by marginalized groups; thus, nondiscrimination is a key consideration of the right to health concept.^{88,89} Thus rendering certain groups such as new immigrants ineligible for public health insurance programs serves to further stigmatize members of these communities and conflicts with the U.S. commitment to reducing and eliminating racial and ethnic disparities. Additionally, the variation in eligibility and administration of programs at the state level disproportionately affects Latinos and other communities that are more vulnerable to policy changes affecting health and public assistance programs.⁹⁰ The complexity and variation in providing health care for low-income communities places economic pressures on community organizations, public institutions, and local and state budgets, while leaving millions uninsured.⁹¹ Simplification and greater federal involvement—not less—is needed to ensure access for the uninsured.

Given the fierce opposition to the Affordable Care Act and a political environment in which Democrats and Republicans appear to accept the premise that some groups should not have access to health care outside of a medical emergency, the idea of a right to health care in the United States may be implausible in the near future. Reform advocates must be willing to challenge the assumption that certain groups should be excluded from health insurance coverage. It may not be politically expedient, but just as the opponents have beat the drum against “big government” health care, progressives should speak more loudly and clearly about the moral obligations and the potential benefits in productivity and reduced costs with a guaranteed right to health care.

ENDNOTES

1. Heymann, Jody et al. "Constitutional Rights to Health, Public Health and Medical Care: The Status of Health Protections in 191 Countries," *Global Public Health: An International Journal for Research, Policy and Practice* 8(6): 639-653, 2013.
2. Hoffman, Beatrix. *Health Care for Some: Rights and Rationing in the United States Since 1930*. University of Chicago Press, 2012.
3. Cacari-Stone, Lisa, and Magdalena Avila. "Rethinking Research Ethics for Latinos: The Policy Paradox of Health Reform and the Role of Social Justice," *Ethics & Behavior* 22(6):445-460, 2012.
4. Kim, Rebecca Y., Younghee Lim, and Wonik Lee. "A Study of Health Care Coverage Among Children in Immigrant Families in the Post Welfare-Reform Era," *Journal of Poverty* 10(3): 93-118, 2006.
5. Kullgren, Jeffrey. "Restrictions on Undocumented Immigrants' Access to Health Services: The Public Health Implications of Welfare Reform," *American Journal of Public Health* 93(10):1630-1633, 2003.
6. Whitehead, Margaret. "The Concepts and Principles of Equity in Health," *International Journal of Health Services* 22(3): 429-445, 1992.
7. Braveman, PA et al. "Health Disparities and Health Equity: The Issue Is Justice," *American Journal of Public Health* 101(S1):S149-55, 2011.
8. Whitehead, "The Concepts and Principles," 429-445.
9. Braveman et al., "Health Disparities and Health Equity," S149-55.
10. Braveman, Paula, Susan Egerter, and David R. Williams. "The Social Determinants of Health: Coming of Age," *Annual Review of Public Health* 32: 381-398, 2011.
11. U.S. Agency for Healthcare Research and Quality. National Healthcare Disparities Report 2012. AHRQ Publication No. 13-0003, May 2013.
12. Pérez-Escamilla, Rafael. "Health Care Access Among Latinos: Implications for Social and Health Care Reforms," *Journal of Hispanic Higher Education* 9(1): 43-60, January 2010.
13. Vega, William A., Michael A. Rodriguez, and Elisabeth Gruskin. "Health Disparities in the Latino Population," *Epidemiologic Reviews* 31: 99-112, 2009.
14. Sanchez, Gabriel R. et al. "The Impact of Ethnicity on Attitudes Toward Health Care Reform in New Mexico," *Social Science Journal* 47(2): 326-343, 2010.
15. Pérez-Escamilla, Rafael, Jonathan Garcia, and David Song. "Health Care Access Among Hispanic Immigrants: ¿Alguien Está Escuchando? [Is Anybody Listening?]," *NAPA Bulletin*, 34(1): 47-67, 2010.

16. Livingston, Gretchen, Susan Minushkin, and D’Vera Cohn. *Hispanics and Health Care in the United States: Access, Information and Knowledge*. Pew Hispanic Center and Robert Wood Johnson Foundation, 2008.
17. Ibid.
18. Kaiser Commission on Medicaid and the Uninsured. *Health Coverage by Race and Ethnicity: The Potential Impact of the Affordable Care Act*. Kaiser Family Foundation, 2013.
19. DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith. *Income, Poverty, and Health Insurance Coverage in the United States: 2010*. U.S. Census Bureau, Current Population Reports, P60-239. 2011.
20. Gould, Elise. *A Decade of Declines in Employer-Sponsored Health Insurance Coverage*. Briefing Paper 337. Economic Policy Institute, 23 February 2012.
21. Livingston, Minushkin, and Cohn, *Hispanics and Health Care*, 5.
22. Xu, K Tom. “Usual Source of Care in Preventive Service Use: A Regular Doctor Versus a Regular Site,” *Health Services Research* 37(6):1509-1529, 2002.
23. Okie, Susan. “Immigrants and Health Care—At the Intersection of Two Broken Systems,” *New England Journal of Medicine* 357: 525-529, 9 August 2007.
24. Derose, Kathryn Pitkin, José J. Escarce, and Nicole Lurie. “Immigrants and Health Care: Sources of Vulnerability,” *Health Affairs* 26(5): 1258-1268, September 2007.
25. Fix, Michael E., and Jeffrey S. Passel. *Trends in Noncitizens’ and Citizens’ Use of Public Benefits Following Welfare Reform 1994-97*. Urban Institute, March 1999.
26. Gaynor, Tim. 2013. “For Mixed-Status Families, U.S. Immigration Reform Would End Anxiety.” *Reuters*, 10 August 2013.
27. Zimmermann, Wendy, and Michael E. Fix. *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County*. Urban Institute, July 1998.
28. Fix and Passel. *Trends in Noncitizens’ and Citizens’ Use*.
29. Reeves, Jay. “State Immigration Law Sparks Public Health Worries,” *Gadsden Times*, 28 October 2011. Over the past few years, several states including Alabama have passed laws requiring police to check the immigration status of people detained during the course of enforcing other laws if there is “reasonable suspicion” that a person is undocumented. According to the *Washington Post*, at least seventeen other states considered such measures in 2011. HB 56, the Hammon-Beason Alabama Taxpayer and Citizen Protection Act enacted that year, was considered to be one of the toughest

in the nation given its other restrictions including penalties against anyone who employs, houses, or assists undocumented immigrants and verification requirements for schools. The law was revised in 2012 after a federal court blocked certain provisions, including the one requiring officials to check the immigration status of children in public schools.

30. Voelker, Rebecca. "Decades of Work to Reduce Disparities in Health Care Produce Limited Success," *Journal of the American Medical Association* 299(12): 1411-1413, 26 March 2008.
31. Cacari-Stone and Avila, "Rethinking Research Ethics for Latinos," 445-460; and Pérez-Escamilla, Garcia, and Song, "Health Care Access Among Hispanic Immigrants," 47-67.
32. Families USA. Help Is at Hand: New Health Insurance Tax Credits for Americans. Families USA, April 2013.
33. Kaiser Commission on Medicaid and the Uninsured. Community Health Centers in an Era of Health Reform: An Overview and Key Challenges to Health Center Growth." Kaiser Family Foundation, 2013.
34. Gostin, Lawrence O., and Elenora E. Connors. "Health Care Reform in Transition: Incremental Insurance Reform Without an Individual Mandate," *Journal of the American Medical Association* 303(12): 1188-1189, 24 March 2010.
35. Passel, Jeffrey S., Gretchen Livingston, and D'Vera Cohn. Explaining Why Minority Births Now Outnumber White Births. Pew Research Center Social & Demographic Trends, 17 May 2012.
36. Gold, Jenny. "Health Exchange Outreach Targets Latinos." *All Things Considered*, National Public Radio, 25 June 2013.
37. U.S Immigration and Customs Enforcement (ICE). 2013. Clarification of Existing Practices Related to Certain Health Care information. U.S Department of Homeland Security, 23 October 2013.
38. Guild, Alexis. "Why Are Insurance Enrollment Numbers Low for Farmworkers and Their Families?" Farmworker Justice Web site, 17 December 2013.
39. U.S. Census Bureau. "Hispanic Heritage Month 2012: Sept. 15—Oct. 15." Facts for Features, U.S. Census Bureau Web site, 6 August 2012.
40. Garg, Megha. "It Pays to Provide Health Care: A Case for Including Undocumented Immigrants," *Harvard Kennedy School Review* 10: 25-28, 2010.
41. Vega, Rodriguez, and Gruskin, "Health Disparities in the Latino Population," 99-112.
42. Muennig, Peter, and Marianne C. Fahs. "Health Status and Hospital Utilization of Recent Immigrants to New York City," *Preventive Medicine* 35:

- 225-231, 2002.
43. Ku, Leighton. "Health Insurance Coverage and Medical Expenditures of Immigrants and Native-Born Citizens in the United States," *American Journal of Public Health* 99(7): 1322-1328, July 2009.
 44. Ibid.
 45. Arias, E. et al. "The Hispanic Mortality Advantage and Ethnic Misclassification on US Death Certificates," *American Journal of Public Health* 100(Suppl 1): S171-S177, April 2010.
 46. Ruiz, John M., Patrick Steffen, and Timothy B. Smith. "Hispanic Mortality Paradox: A Systematic Review and Meta-Analysis of the Longitudinal Literature," *American Journal of Public Health* 103(3): e52-60, March 2013.
 47. Dey, Achintya N., and Jacqueline Wilson Lucas. "Physical and Mental Health Characteristics of U.S. and Foreign-Born Adults: United States, 1998–2003," *Advance Data from Vital and Health Statistics* 369. National Center for Health Statistics, 1 March 2006.
 48. Pew Research Center for the People & the Press and Pew Hispanic Center. No Consensus on Immigration Problems or Proposed Fixes: America's Immigration Quandary. Pew Research Center for the People & the Press and Pew Hispanic Center, 30 March 2006.
 49. Cordero-Guzmán, Hector R., and Victoria Quiroz-Becerra. "Cracking the Safety Net: Latina/o Access to Health and Social Programs in the Post-Welfare Era" in *Latinos in a Changing Society*, ed. Martha Montero-Sieburth and Edwin Meléndez. Praeger, 2007.
 50. Andrapalliyal, Vinita. "Healthcare for All? The Gap Between Rhetoric and Reality in the Affordable Care Act," *UCLA Law Review* 61(1): 58-77, 2013. Relevant quotations and Congressional Record citations can be found in notes 52 and 54.
 51. Beechey, Susanne. Quality Health Coverage for All Americans? Distinctions of Deservingness in the Health Care Reform Debates. Paper presented at Western Political Science Association 2010 annual meeting, 30 March 2010. See pgs. 7-8 for quotations.
 52. Ibid.
 53. Ibid.
 54. Andrapalliyal, "Healthcare for All"?, 58-77.
 55. Hernández-Cancio, Sinsi, Kim Bailey, and Dee Mahan. Medicaid: A Lifeline for Blacks and Latinos with Serious Health Care Needs. Families USA, 2011.
 56. Kaiser Family Foundation. Status of State Action on the Medicaid Expansion Decision (as of 22 October 2013). Kaiser Family Foundation.
 57. U.S. Census Bureau. Small Area Health Insurance Estimates (SAHIE):

- 2011 Highlights. U.S.Census Bureau Social, Economic and Housing Statistics Division, Small Area Estimates Branch, August 2013.
58. Kim, Lim and Lee, "A Study of Health Care Coverage," 93-118.
 59. Viladrich, Anahí. "Beyond Welfare Reform: Reframing Undocumented Immigrants' Entitlement to Health Care in the United States, A Critical Review," *Social Science & Medicine* 74(6): 822-829, March 2012.
 60. Ibid.
 61. Kim, Lim, and Lee, "A Study of Health Care Coverage," 93-118.
 62. Viladrich, "Beyond Welfare Reform," 822-829.
 63. Kullgren, "Restrictions on Undocumented Immigrants' Access," 1630-1633.
 64. Cohen Ross, Donna. New Medicaid Citizenship Documentation Requirement Is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up. Center on Budget and Policy Priorities, 13 March 2007.
 65. U.S. Government Accountability Office. States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens. Report No. GAO-07-889. June 2007.
 66. Viladrich, "Beyond Welfare Reform," 823.
 67. Kullgren, "Restrictions on Undocumented Immigrants' Access," 1631-1632.
 68. Viladrich, "Beyond Welfare Reform," 822-829.
 69. Feld, P., and B. Power. Immigrants' Access to Health Care After Welfare Reform: Findings from Focus Groups in Four Cities. Kaiser Commission on Medicaid and the Uninsured, November 2000.
 70. Cacari-Stone and Avila, "Rethinking Research Ethics for Latinos," 445-460.
 71. Kim, Lim, and Lee, "A Study of Health Care Coverage," 114.
 72. Zuckerman, Stephen, Timothy A. Waidmann, and Emily Lawton. "Undocumented Immigrants, Left Out of Health Reform, Likely to Continue to Grow As Share of the Uninsured," *Health Affairs* 30(10): 1997-2004, October 2011.
 73. Briody, Blaire. "Diabetes: Hospital Bills Cost U.S. \$83 Billion a Year," *Kaiser Health News*, 19 August 2010.
 74. Hernández-Cancio, Bailey, and Mahan, Medicaid: A Lifeline for Blacks and Latinos.
 75. DeVol, Ross, and Armen Bedroussian. An Unhealthy America: The Economic Burden of Chronic Disease. Milken Institute, October 2007.
 76. Capps, Randy, and Michael Fix. "Immigration Reform: A Long Road to

- Citizenship and Insurance Coverage,” *Health Affairs* 32(4): 639-642, April 2013.
77. Zuckerman, Waidmann, and Lawton, “Undocumented Immigrants Left Out.”
 78. Capps and Fix, “Immigration Reform: A Long Road.”
 79. Ibid.
 80. Office of the United Nations High Commissioner for Human Rights and World Health Organization. The Right to Health, Fact Sheet No. 31. June 2008.
 81. Braveman, Egerter, and Williams, “The Social Determinants of Health.”
 82. Heymann et al, “Constitutional Rights to Health.”
 83. Hoffman, *Health Care for Some*, xviii-xxiii.
 84. Service Employees International Union Web site.
 85. Winter, Nicholas J.G. *Dangerous Frames: How Ideas About Race and Gender Shape Public Opinion*. University of Chicago Press, 2008.
 86. Jacoby, William G. “Public Attitudes Toward Government Spending,” *American Journal of Political Science* 38(2): 336-361, May 1994. See discussion of study results on pgs. 347-348. Jacoby’s findings suggest that “government spending” has symbolic meaning that trigger deeply held political attitudes that override the objective content of a policy. Other forms of public spending such as law enforcement and national defense are viewed as separate and distinct and do not elicit similar responses.
 87. Kliff, Sarah. “Inside the Obamacare Resistance,” *Washington Post*, 1 August 2013.
 88. Office of the United Nations High Commissioner for Human Rights and World Health Organization, The Right to Health, 5.
 89. Braveman, Egerter, and Williams, “The Social Determinants of Health,” 381-98.
 90. Cordero-Guzmán and Quiroz-Becerra, “Cracking the Safety Net,” 200-228.
 91. Holahan, John, Alan Weil, and Joshua M. Wiener. “Which Way for Federalism and Health Policy?” *Health Affairs* Web exclusive, 2003.

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Tolerance in Schools for Latino Students: Dismantling the School-to- Prison Pipeline

By JENNIFER CASTILLO

Jennifer Castillo is a Dominican American from Lawrence, Massachusetts. She received her undergraduate degree from Boston College, where she majored in international studies. In college, Castillo dedicated her time to advocating and working on behalf of vulnerable populations, including refugees, special education students, and victims of domestic violence.

While at Boston College Law School, Castillo served on the community service board for the Law Student Association and on the diversity committee for the Latin American Law Student Association. During her third year, she was a student clinician in the Juvenile Rights Advocacy Project Clinic, where she advocated on behalf of special education students as their Guardian ad Litem. Castillo was recognized with the Association of Corporate Counsel Law Student Ethics Award for Boston College Law School and the Susan Grant Desmarais Award for outstanding work in a clinical program. During her time at the Congressional Hispanic Caucus Institute, she had the opportunity to do clerkship with Judge Marisa Demeo, for whom she is now working as a law clerk in Washington, DC.

ABSTRACT

The school-to-prison pipeline refers to the practice of pushing students out of educational institutions, primarily via zero-tolerance and harsh disciplinary policies, and into the juvenile and adult criminal justice systems. The pipeline has emerged in part as a response to the media panic over youth violence and the need to keep dangerous students out of schools. To curtail the alleged surge in youth violence, school districts have adopted zero-tolerance policies, which impose harsh disciplinary penalties and sanctions and are applied regardless of the seriousness of the infraction or mitigating circumstances. Research shows that these policies have failed to make schools safer and have been linked to an increased likelihood of academic underperformance as well as increased suspensions and expulsions rates and elevated dropout rates. Latinos and African American students are disproportionately represented at every stage of the school-to-prison pipeline. For example, these students are far more likely than their White peers to face suspension, expulsion, or arrests for the same school-based infraction. This article addresses the history of the school-to-prison pipeline, the negative impacts of zero-tolerance policies on students, particularly African American and Latino students, alternatives to zero-tolerance policies, and both practice and policy recommendations.

*

INTRODUCTION

Schools have imposed harsher sanctions on students for minor disruptive behavior, causing a systematic pushing out of students from schools and into the juvenile justice and criminal justice system.¹ This trajectory is often referred to as the school-to-prison pipeline. The pipeline is facilitated by several trends in education that negatively impact students of color, particularly African American and Latino students. Some of these trends include growing poverty rates and declining school funding, high-stakes testing, and overrepresentation in special education tracks.² The focus of this article is on school administrators' reliance on zero-tolerance and exclusionary policies, which play an integral role in feeding the school-to-prison pipeline.

Zero-tolerance policies are the most severe forms of school discipline today. These policies strip school administrators of discretion and impose predetermined penalties for a given infraction, without consideration of mitigating circumstances or unique situations that may have led to the incident.³ The dramatic increase of the use of these extremely severe disciplinary practices has resulted in too many arrests and referrals of students to the juvenile and criminal justice system each year.⁴ School districts nationwide have adopted these policies because of a

perceived rise in crime and violence in primary and secondary schools.⁵ Through the application of zero-tolerance policies, schools indirectly drive children into the juvenile justice system by criminalizing a wide variety of student behavior, including behavior as minor as tardiness, absences, noncompliance, and disrespect.⁶

HISTORY OF ZERO-TOLERANCE AND HARSH DISCIPLINARY POLICIES

Over the past twenty years, the rate of violence among K-12 youth in the United States has steadily declined.⁷ Schools also remain one of the safest places for the nation's children.⁸ Between 1992 and 2005, the U.S. Bureau of Justice Statistics found that annual rates of serious violent crimes were lower at school than away from school.⁹ Despite schools remaining one of the safest places for children, schools have adopted many of the punitive policies of the criminal and juvenile justice systems as a means of disciplining students.

The ideological origins of punitive policies such as zero tolerance can be traced to the late 1980s and throughout the 1990s when youth of color were viewed as violent predators, which became a widely accepted stereotype.¹⁰ During this time,

Zero-tolerance policies are the most severe forms of school discipline today. These policies strip school administrators of discretion and impose predetermined penalties for a given infraction, without consideration of mitigating circumstances or unique situations that may have led to the incident.

the media focused on youth gangs and the rise of the teen “superpredators” that would come of age by 2010. Many of these teen superpredators were urban African Americans and Latinos, who were described as “relentlessly violent.” Media coverage exaggerated the extent of gang membership and gang violence among youth. According to “Framing Children in the News: The Face and Color of Youth Crime in America,” two-thirds of violent crimes covered focused on youth under the age of twenty-five.¹¹

The rhetoric of the rise of the teen superpredator set the stage for substantive policy changes in the area of student discipline.¹² In 1994, U.S. Congress passed the Federal Gun-Free Schools Act (GFSA) in response to school shootings and an alleged surge in adolescent violence.¹³ The act mandated that every state enact a law requiring districts to expel students for at least one year for bringing a firearm to school.

The GFSA paved the way for more punitive disciplinary policies. The National Center for Education Statistics found that during the 1996-1997 school year, 91 percent of public schools imposed zero-tolerance policies for weapons other than firearms; 87 percent of schools used zero-tolerance policies for alcohol offenses and 88 percent had such policies for drugs; 79 percent of schools had zero-tolerance policies for violence; and 79 percent also employed harsh policies for tobacco violations.¹⁴

ZERO-TOLERANCE POLICIES TODAY

The original goal of the GFSA was to impose harsh punishments for serious violations involving weapons. Currently, school districts have expanded zero-tolerance policies beyond expulsions for firearms. According to the American Bar Association, zero-tolerance policies do not distinguish between serious and nonserious offenses and they fail at adequately separating intentional troublemakers from those with behavioral disorders.¹⁵ Students can now receive immediate suspension, expulsion, or referrals to the juvenile justice system for a myriad of infractions, which range from weapons violation to disrespecting a teacher. The following are examples from the field.

- In Louisiana, a twelve year old diagnosed with a hyperactive disorder warned classmates in the lunch line not to eat all the potatoes or “I’m going to get you.” The student was turned in by the lunch monitor and suspended for two days. He was then referred to the police by the principal and was charged with making “terroristic threats.” He was incarcerated for two weeks while awaiting trial.¹⁶
- In Florida, a six year old was handcuffed, arrested, and driven away from school after throwing a tantrum in her kindergarten class. Because of her small stature, the handcuffs were placed around her biceps. She was subsequently taken to county jail, fingerprinted, had a mug shot taken, and was charged with a felony and two misdemeanors.¹⁷
- Two ten-year-old boys from Arlington, Virginia, were suspended for three days for putting soapy water in a teacher’s drink. The police charged the boys with a felony, which carried a maximum sentence of twenty years in

prison. The children were formally processed through the juvenile justice system before the case was dismissed.¹⁸

The incidents cited above are just a few examples of the unforgiving nature of zero-tolerance policies. Zero-tolerance policies are also associated with an increased presence of police officers in schools, metal detectors, security cameras, and locker and body searches. Violators, disproportionately African American and Latino, are suspended, expelled, and increasingly arrested and charged in juvenile court as a result of school-based behavior.¹⁹

For example, a student from Meridian, Mississippi, cannot recall the number of times he has been shuffled between school and the juvenile justice system. A youth court judge placed him on probation for getting into a fight when he was in the eighth grade. From that point on, additional school-based infractions were cited, such as tardiness and breaking the school dress code. These minor infractions counted as violations of the student's probation and led to his immediate suspension and incarceration into the local juvenile detention center.²⁰ A U.S. Department of Justice lawsuit filed in October 2012 against the Meridian school district suggests that this student is not alone.²¹ According to the Justice Department, the Meridian juvenile justice system has operated a school-to-prison pipeline that takes students out of school and thrusts them into the juvenile justice system. The arrests of the Meridian school children happened automatically, regardless of the type of offense—even if it did not merit an arrest. The police therefore behaved in such a way that it appeared as if it were protocol to arrest all children referred to the agency.

FEEDING THE PIPELINE: RATES OF REFERRALS TO THE CRIMINAL JUSTICE SYSTEM

Across the nation, police make 2.2 million juvenile arrests, 1.7 million cases are referred to juvenile courts, an estimated 400,000 kids pass through juvenile detention centers, and almost 100,000 youth are confined in juvenile jails, prisons, boot camps, and other residential institutions on any given night.²² One-quarter of all children placed in secure confinement after being adjudicated juvenile delinquent were charged with violent offenses, 22 percent were incarcerated as a result of a technical violation, and 6 percent were confined due to a status offense.²³ A growing number of children are being referred to the system directly by their schools. For example, in South Carolina the single most common offense resulting in a juvenile court referral during the 2007–2008 school year was “disturbing schools.”²⁴

NEGATIVE IMPACTS OF ZERO TOLERANCE AND OTHER PUNITIVE DISCIPLINE MEASURES

Harsh disciplinary policies have failed to make schools safer and have been linked to an increased likelihood of academic underperformance. Champions of zero-tolerance policies argue that these measures create safer school environments. However, evidence-based research refutes this point. In 2006, the American Psychological Association released a ten-year study of zero-tolerance policies and found that the presence and use of exclusionary zero-tolerance policies did not improve school safety.²⁵ Interestingly, schools that employed zero-tolerance policies had higher rates of suspensions and expulsions and had less satisfactory ratings regarding overall school climate.²⁶ Rather than promoting a safe and secure educational atmosphere, harsh disciplinary policies create a culture of fear as students are in constant fear of being suspended or arrested.²⁷ Moreover, research shows

Students of color account for a large number of school-enforced punishment and the majority of arrests for school-related infractions.

During the 2009-2010 school year, more than 70 percent of students arrested in schools were African American or Latino.

a negative relationship between the use of school suspension and expulsion and schoolwide academic achievement, even when controlling socioeconomic status demographics.²⁸

Supporters of harsh disciplinary policies also believe that zero-tolerance policies deter future misconduct, however, the antithesis is true; evidence shows that instead of reducing the likelihood of disruption, school suspension appears to predict higher future rates of misbehavior and suspension among those students who are suspended. School suspension is the top predictor of contact with the justice system for students who become incarcerated by the ninth grade.²⁹ In the long term, school suspension and expulsion are associated with a higher likelihood of school dropout and failure to graduate on time.³⁰ The American Academy of Pediatrics found that suspensions and expulsions not only jeopardize children's

health and safety but they also may exacerbate academic failure.³¹ The Centers for Disease Control and Prevention found that expelled or suspended youth are “more likely to be retained a grade, drop out of school, become teen parents, and engage in delinquent behavior.”³² For children of color, particularly Latinos and African Americans, the effects associated with zero-tolerance policies multiply the barriers to academic and career success that are already present in their lives.³³ Students who have experienced suspension or expulsion are more than eight times as likely to be incarcerated as those who graduate. Dropouts are far more likely to face reduced job and income opportunities, chronic unemployment, or require government assistance.³⁴

RACIAL DISPARITIES IN THE PIPELINE

As the number of students who are disciplined has increased, disciplinary disparities between racial groups have become starker.³⁵ According to the NAACP Legal Defense Fund, historical inequalities in the education system, particularly segregated schools, concentrated poverty, and entrenched stereotypes influence how school officials and law enforcement label and treat students who misbehave.³⁶ Notably, “racially isolated schools that primarily educate students of color are more likely to be among the nation’s ‘dropout factories’ and also among those that utilize the harshest, most exclusionary means of discipline.”³⁷

Students of color account for a large number of school-enforced punishment and the majority of arrests for school-related infractions. During the 2009-2010 school year, more than 70 percent of students arrested in schools were African American or Latino.³⁸ A 2001 review of more than four hundred elementary and middle schools from across the country found that African American and Latino students received harsher punishments for similar misbehavior than their White peers.³⁹ Students of color are disproportionately disciplined for subjective offenses like disrespect, while their White peers are disproportionately disciplined for objective offenses like smoking.⁴⁰ This trend has resulted in the disparate treatment of African American and Latino students. Under zero-tolerance policies, Latino youth are three times more likely to be suspended, expelled, and referred to the criminal justice system than their White peers that commit the same infraction.⁴¹

According to the Children’s Defense Fund, in 2011 every seven seconds a Latino public school student was suspended, every twenty-seven seconds a Latino high school student dropped out, and every fifty-eight seconds a Latino public school student was corporally punished.⁴² Additionally, Latino students are 1.5 times more likely to be suspended and twice as likely to be expelled than their White peers.⁴³ In 2006, Latino boys comprised only 10 percent of the country’s

student population but accounted for 14 percent of all suspended students, while White males made up 29 percent of the nation's student population and accounted for 28 percent of all suspended students.⁴⁴

ALTERNATIVES TO ZERO-TOLERANCE POLICIES AND CLOSING THE SCHOOL-TO-PRISON PIPELINE

Thus far, this article has highlighted the devastating affects of zero-tolerance policies. The goal of any effective disciplinary system must be to ensure a safe school environment while avoiding practices that suspend and expel students and facilitate their entry into the criminal justice system. The following practices and policies are alternatives to zero-tolerance policies and should be considered by school districts in lieu of existing zero-tolerance policies.

RESTORATIVE JUSTICE

Restorative justice is based on the following core principles: repairing the harm, stakeholder involvement, and transforming community relationships.⁴⁵ When implemented in educational facilities, the concept of restorative justice develops to meet the needs of the whole school community.⁴⁶ The underlying assumption of restorative justice models is that when a student misbehaves, their behavior breaches the social contract between the student and the school community. Under these circumstances, it is the school community's responsibility to ensure the student is held accountable. This approach reintegrates the student into the community instead of deferring to the juvenile justice system to resolve a school-based issue.⁴⁷

Several cities have incorporated restorative justice principles in student codes of conduct. The City of Chicago Board of Education's Student Code of Conduct specifically provides for the use of peacemaking or circles of understanding, community service, peer juries, restorative group conferencing, victim impact panels, and victim offender conferencing. The city of Peoria, Illinois, has replaced zero-tolerance policies and referrals to law enforcement with a restorative approach to conflict.⁴⁸ The schools in Peoria implemented Community Peace Conferencing, with great success.⁴⁹ As of 2008, detention referrals dropped by 35 percent in those schools, and the percentage of referrals dropped more dramatically among African American students with a decrease of 43 percent.⁵⁰ The Children's Home Association of Illinois implemented peacemaking circles at the Children's Home Kiefer School, an alternative school for children with severe emotional and behavioral problems. Peacemaking circles help set the standard for classroom behavior and provide a means of resolving classroom disputes.

Positive Behavioral Interventions and Supports (PBIS), also known as School Wide Positive Behavior Support (SWPBS), is a three-tiered prevention model focused on prevention, multi-tiered support, and data-based decision making.⁵¹ According to Daniel Losen, the author of “Discipline Policies, Successful Schools, and Racial Justice,” the goal of PBIS is “to ensure a safe and effective learning environment by emphasizing appropriate student behavior and simultaneously working to reduce punitive disciplinary measures.” According to Jeffrey R. Sprague and Robert H. Horner from the University of Oregon, the “evidence shows that [PBIS] can change the “trajectory of at-risk children toward destructive outcomes, and prevent the onset of risk behavior in typically developing children. It is expected that effective and sustained implementation of [PBIS] will create a more responsive school climate.”⁵²

At the first tier, the prevention level, the focus is on establishing safe and effective learning environments in which behavioral expectations for students are “predictable, directly taught, consistently acknowledged, and actively monitored.”⁵³ At this tier, there is frequent monitoring of disciplinary referrals and emphasis on reducing the number of these referrals. Similar to the restorative justice model, at the prevention level, PBIS is intended to shift the focus from the individual student who is misbehaving to the whole school.

The second level, multi-tiered support, is designed for students with at-risk and antisocial behavior who require additional support beyond the prevention level. For these individuals, “the greater the student’s need for support the more intense the support provided.”⁵⁴ Lastly, data-based decision making, the third level, is premised on the assumption that school administrators, family, and students will be most effective in the design of a preventative disciplinary model if they have accurate information about the behavior of students.

The Los Angeles Unified District, through a board resolution, issued a directive mandating the development of a SWPBS and discipline plan.⁵⁵ The plan outlines the responsibilities of students, parents, teachers, administrators, staff, and community members. It also mandates that school administrators must consistently apply reasonable alternatives to student suspension, expulsion, and opportunity transfers. Some alternatives include restitution, community service, negotiation, and problem-solving techniques. PBIS are a welcome change from zero-tolerance policies that strip school administrators of discretion and impose predetermined penalties for a given infraction.

Curtail Referrals to Juvenile Courts

Schools should only reserve referrals to the juvenile justice system for the most serious and severe disruptive behaviors. In Clayton County, Georgia, members of the juvenile justice system, law enforcement, the school system, and social services groups joined forces to draft a cooperative agreement aimed at limiting the overall number of school referrals to the juvenile courts. The Clayton Cooperative Agreement ensures that misdemeanor delinquent acts, such as fighting, disrupting the public school, disorderly conduct, obstruction of police, and criminal trespass, do not result in a criminal complaint unless the student commits a third or subsequent similar offense during the same school year.⁵⁶ Moreover, once the misbehaving student has committed their third or similar offense, the principal is required to conduct a review of the student's behavior plan to determine appropriate action before filing a criminal complaint.⁵⁷ Students with one offense are referred to mediation, and students with a second offense are directed to a conflict-training program along with their parents.⁵⁸

In addition, the Clayton Cooperative Agreement recognizes that the intermingling of elementary age children with adolescent youth is not the best practice. Thus, under the agreement, elementary school-aged children cannot be referred to law enforcement if they commit misdemeanor delinquent acts on school premises, because other interventions within the school or other social services agencies are more effective at dealing with the behavior than the juvenile justice system.

The agreement was implemented in 2004, and since that time, the presence of dangerous weapons on school grounds has decreased by 70 percent.⁵⁹ According to the Clayton County Public Schools Blue Ribbon Commission, after the cooperative went into effect, there was an 87 percent decrease in fighting offenses and a 36 percent decrease in disorderly conduct.⁶⁰ The relationship between officers and students has also improved. Students are more willing to engage with officers when their cooperation is needed to solve serious school-based offenses. Lastly, since the implementation of the agreement, graduation rates have increased by 20 percent.⁶¹

Similar to the Clayton Cooperative Agreement, *Padres & Jóvenes Unidos*, a Latino advocacy group from Denver, Colorado, recently reached an agreement with the Denver Public Schools and Denver Police Department.⁶² The new agreement will attempt to distinguish between misbehaviors that should be addressed by schools officials and those that constitute a crime. Dialogue between police officers and school administrators will also increase as the agreement calls for the two parties to convene multiple times a year to discuss school discipline.⁶³

In 2000, *Padres & Jóvenes Unidos* began to push the Denver school district to pay attention to zero-tolerance policies and their negative impacts. As a result of

their efforts, during the 2003-2004 academic year, school suspensions dropped 44 percent, expulsion dropped 75 percent, and students referred to police or arrested while in schools dropped 63 percent.⁶⁴ The advocacy group was still not satisfied, as African American and Latino students were still overrepresented within the number of school-based arrests. In 2008, the district implemented a number of policy changes, which included tracking the racial disparities in student suspensions, expulsions, and arrests.⁶⁵ Stakeholders believe the current agreement will help keep more children in school and out of jail.⁶⁶

Federal Efforts

On 21 July 2011, during a meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention, U.S. Attorney General Eric Holder and Secretary of Education Arne Duncan announced the launch of the Supportive School Discipline Initiative (SSDI). SSDI encourages “effective disciplinary practices that ensure safe, supportive, and productive learning environments and promotes evidence-based practices that keep students in schools and out of the courts.”⁶⁷ The initiative will be implemented in coordination with the efforts of other nonprofits and philanthropic communities that are also working to reduce the use of zero-tolerance policies. During the meeting, Holder acknowledged that “ensuring that our educational system is a doorway to opportunity—and not a point of entry to our criminal justice system—is a critical and achievable goal.”⁶⁸ He emphasized that the goals of the initiative are the following:

- Build consensus for action among federal, state, and local education stakeholders
- Collaborate on research and data collection that may be needed to inform this work, such as evaluations of alternative discipline policies and interventions
- Develop guidance to ensure that school discipline policies and practices comply with the nation’s civil rights laws and to promote positive disciplinary options to both keep kids in school and improve the climate for learning
- Promote awareness and knowledge about evidence-based and promising policies and practices among educators and justice stakeholders⁶⁹

The alliance of key federal government stakeholders is a step forward toward closing the school-to-prison pipeline. Though there have been no reports or statistics released on the effectiveness of the SSDI, it is noteworthy that the federal government recognizes that encouraging community organizations, educators, and nonprofits to come together is the best way to dismantle the school-to-prison pipeline.

The Department of Justice is also attempting to dismantle the school-to-prison pipeline through law enforcement and policy work.⁷⁰ In schools, the Department of Justice tackles racially discriminatory student discipline through enforcement of Title IV of the Civil Rights Act of 1964, which prohibits discrimination against students in public schools based on race and national origin, among other bases.⁷¹ The Department is dealing with complaints of racially discriminatory discipline, including discriminatory referrals to law enforcement agencies, as part of its enforcement of existing school desegregation orders, as well as new investigations under Title IV.

CONCLUSION

This article has sought to describe the negative impacts of zero-tolerance policies on students, particularly African Americans and Latinos, and how these policies funnel students into the juvenile and criminal justice system. School administrators rely on zero-tolerance policies because they believe these policies are an effective means of maintaining student safety and encouraging productive learning environments. The evidence shows that zero-tolerance policies have failed to make schools safer and are not effective at handling disciplinary issues. Because schools have relied on zero-tolerance policies for years, effectuating reform will require policy makers, community advocates, and school administrators to work together to change existing policies and practices. The following recommendations balance the needs of schools to maintain safety while reducing the number of school-based referrals to the juvenile justice system.

First, school districts should establish a policy that clearly outlines disciplinary actions and consequences based on the severity of the misbehavior. This will ensure that only those students who pose a serious safety threat are suspended or arrested. This practice will also ensure that school administrators are not stripped of discretion when disciplining students and that unique and mitigating circumstances are considered before punishment is imposed.

Also, following the example of school districts like Denver and Clayton, schools should draft agreements between police officers and school officials for the purpose of limiting the overall number of school-based referrals to the juvenile justice system.

Schools should also strive to incorporate restorative justice principles into their disciplinary codes in order to appropriately address a student's misconduct. By incorporating restorative justice principles, schools can prevent or deal with conflict before it escalates. Following the lead of districts like Chicago and Peoria, restorative justice program models can include peacemaking circles, mediation and conferencing, and peer juries.

Dismantling the school-to-prison pipeline and implementing alternatives to zero-tolerance policies will take time. However, if school districts make a concerted effort to implement the aforementioned strategies, and community advocates and parents keep schools accountable, schools can cease producing inmates and instead prepare students to succeed.

ENDNOTES

1. Ross, Janell. "As School-to-Prison Pipeline Continues to Swallow Students, Denver Works to Stem Flow," *Huffington Post*, 20 February 2013.
2. Heitzeg, Nancy A. "Education or Incarceration: Zero Tolerance Policies and the School to Prison Pipeline," *Forum on Public Policy*, Summer 2009.
3. Kim, Catherine Y., Daniel J. Losen, and Damon T. Hewitt. *The School-to-Prison Pipeline: Structuring Legal Reform*. NYU Press, 2010, 79-80.
4. Advancement Project et al. Federal Policy, ESEA Reauthorization, and the School-to-Prison Pipeline. Advancement Project et al., March 2011.
5. Kim et al., *The School-to-Prison Pipeline*, 79.
6. González, Thalia. "Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline," *Journal of Law and Education* 4(2): 281-335, April 2012.
7. Ibid.
8. Advancement Project et al. *Education on Lockdown: The Schoolhouse to Jailhouse Track*. Advancement Project et al., March 2005.
9. Dinkes, Rachel, Emily Forrest Cataldi, and Wendy Lin-Kelly. Indicators of School Crime and Safety: 2007. National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, and Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. December 2007.
10. Heitzeg, "Education or Incarceration," 1.
11. Hancock, Lynnell. "Framing Children in the News: The Face and Color of Youth Crime in America," in *The Public Assault on America's Children: Poverty, Violence, and Juvenile Injustice*, ed. Valerie Polakow. Teacher's College Press, 2000.
12. Heitzeg, "Education or Incarceration," 1.
13. Kim et al., *The School-to-Prison Pipeline*, 79.
14. Ibid.

15. American Bar Association. "School Discipline 'Zero Tolerance' Policies." American Bar Association Web site, February 2001.
16. Salgado, Richard. "Protecting Student Speech Rights While Increasing School Safety: School Jurisdiction and the Search for Warning Signs in a Post-Columbine/Red Lake Environment," *Brigham Young University Law Review* 2005(5), 2005.
17. Florida State Conference NAACP, Advancement Project, and NAACP Legal Defense and Educational Fund, Inc. Arresting Development: Addressing the School Discipline Crisis in Florida. Florida State Conference NAACP, Advancement Project, and NAACP Legal Defense and Educational Fund, Inc., Spring 2006.
18. The Civil Rights Project at Harvard University and Advancement Project. Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline. The Civil Rights Project at Harvard University and Advancement Project, 1 June 2000.
19. American Bar Association, "School Discipline 'Zero Tolerance' Policies."
20. Hing, Julianne. "The Shocking Details of a Mississippi School-to-Prison Pipeline," *Colorlines*, 26 November 2012.
21. U.S. Department of Justice. "Justice Department Files Lawsuit in Mississippi to Protect the Constitutional Rights of Children." U.S. Department of Justice Web site, 24 October 2012.
22. Kim et al., *The School-to-Prison Pipeline*, 128.
23. Ibid.
24. Ibid.
25. Skiba, Russell et al. Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations. American Psychological Association Zero Tolerance Task Force, 9 August 2006.
26. González, "Keeping Kids in Schools."
27. Ibid.
28. Skiba et al., Are Zero Tolerance Policies Effective in the Schools?
29. Sallo, Marlene. School-to-Prison Pipeline: Zero Tolerance for Latino Youth. National Council of La Raza, 2011.
30. Ibid.
31. Cregor, Matt, and Damon Hewitt. "Dismantling the School-to-Prison Pipeline: A Survey from the Field," *Poverty & Race* 20(1): 5-7, January/ February 2011.
32. Ibid.
33. Sallo, School-to-Prison Pipeline.
34. Ibid.

35. NAACP Legal Defense Fund (LDF). "School to Prison Pipeline." NAACP LDF Web site.
36. Ibid.
37. Ibid.
38. Ross, "As School-to-Prison Pipeline Continues to Swallow Students."
39. Skiba, Russell J. et al. "Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline," *School Psychology Review* 40(1) 85-107, 2011.
40. Gregor and Hewitt, "Dismantling the School-to-Prison Pipeline."
41. Sallo, School-to-Prison Pipeline.
42. Children's Defense Fund. "Moments in America for Hispanic Children." Children's Defense Fund Web site, July 2011.
43. Sallo, School-to-Prison Pipeline.
44. Ibid.
45. González, "Keeping Kids in Schools."
46. Ibid.
47. Ibid.
48. Ibid.
49. Ibid.
50. Ibid.
51. Sprague, Jeffrey R., and Robert H. Horner. "School Wide Positive Behavioral Supports" in *Handbook of School Violence and School Safety: From Research to Practice*, ed. Shane Jimerson, Amanda Nickerson, Matthew J. Mayer, and Michael J. Furlong. Routledge, 2006.
52. Ibid.
53. Ibid.
54. Ibid.
55. American Civil Liberties Union Racial Justice Program, New York Law School Justice Action Center Racial Justice Project, and the New York Law School Law Review. Challenging the School-to-Prison Pipeline Symposium, 1 April 2009.
56. Clayton Cooperative Agreement, 15 June 2004.
57. Ibid.
58. Ibid.
59. *The Discipline Dish*, May/June 2011.
60. Ibid.
61. Ibid.
62. Ross, "As School-to-Prison Pipeline Continues to Swallow Students."
63. Ibid.

64. Ibid.
65. Ibid.
66. Ibid.
67. Hanes, Melodee. "Ending the School-to-Prison Pipeline." Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, presented before the Subcommittee on the Constitution, Civil Rights and Human Rights, Committee on the Judiciary, United States Senate. 12 December 2012.
68. Ibid.
69. Ibid.
70. Ibid.
71. Ibid.

Leading the Future: Rethinking Principal Preparation and Accountability Frameworks

By NICOLAS PERILLA

Nicolas Perilla is a Colombian American raised in Bogota, Colombia, and Springfield, Virginia. He attended the University of Mary Washington in Fredericksburg, Virginia, where he earned a bachelor of science degree in physics. After graduation, Perilla joined Teach for America where he taught physics and advanced placement physics in Texas, leading his students to achieve the highest test scores in the school for two years in a row. During his second year teaching, he and his students fundraised over \$25,000 to travel to Washington DC, to meet various Latino leaders—an event that was critical to shaping his future goals.

Perilla's work as a classroom teacher and school administrator opened his eyes to the inherent injustice of the American educational system. In an effort to increase his understanding and broaden his influence, he earned his master's degree in educational leadership from Columbia University in New York.

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ABSTRACT

Enhancing school principal effectiveness in our nation's lowest-performing schools is essential to improving the academic achievement of Latino students. First, 25 percent of a school's impact on its students' academic achievement is directly attributable to the principal's actions. Second, an effective principal is a prerequisite to having an effective school. Finally, the country's worst schools disproportionately serve Hispanic students. The Obama administration and the U.S. Congress should prioritize principal preparation in the reauthorization of the Elementary and Secondary Education Act (ESEA) and should incentivize states to develop rigorous evidence-based frameworks of accountability and supports for new and aspiring principals.

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INTRODUCTION

The U.S. educational system is broken. Although some gains in the achievement of the lowest-performing subgroups have been attained in the last couple of decades, a significant gap continues to exist between Latino students and their White peers. An even larger gap exists between low-income Latino students and their more affluent peers.¹ Research shows that highly effective educators are generally not working with high-need populations.² This inequity in distribution has led to findings like those from the National Center for Education Statistics (NCES), which show the gap in academic performance between Hispanic and White eighth graders has held steady over the last twenty years.³ This same report shows White twelfth graders scored twenty-three points higher than Hispanic twelfth graders in the National Assessment of Educational Progress (NAEP), which has also remained largely unchanged. This data is exacerbated by the fact that low-income Latino students disproportionately populate our country's lowest-performing schools.⁴ Figures like these raise tremendous equity and civil rights concerns.

Furthermore, we must consider the impact Latino student success in education today will have on the U.S. economy in the long term. In the last twenty years, the Latino population increased by 58 percent across the country.⁵ This accelerated growth rate is expected to continue, with Hispanics leading the national population growth for the next thirty-five years.⁶

Estimates suggest that by the year 2050, Latinos will make up 30 percent of the U.S. population, 24 percent of the U.S. workforce, and 40 percent of students in U.S. schools.⁷ Latinos will be key drivers of the American economy in the decades to come.

U.S. schools *must* do an effective job at educating Latino students. Yet, it is difficult to argue that Latino children today have the same opportunity for success as their White and more affluent peers. Based on a strong body of research that shows effective teachers and principals are the single most impactful elements of any school, policy leaders must focus on ensuring there exists an equitable distribution of effective educators across our nation's schools.⁸

With the ballooning national debt and Congress's inability to agree on a balanced approach to a long-term budget deal, the federal and state governments must find effective, efficient, and fiscally responsible ways of addressing failing schools. Federal education policy has not prioritized developing an effective workforce of educators. Although school performance is a function of multiple different elements, recent research has shown certain variables have particularly high leverage. Educational researcher Robert Marzano has shown that 60 percent of the impact a school has on its students' academic achievement is the direct result of efforts by teachers and principals, and of that, 25 percent of the school's academic achievement depends solely on the principal's actions.⁹ This means a single person can determine one-fourth of a school's overall impact on students.

Research reveals two additional important points. First, because of the principal's role in hiring teachers, evaluating teachers, guiding professional development, and developing leadership structures within the school, principal performance is inextricably linked to teacher effectiveness.¹⁰ Second, after four years of effective teaching, the achievement gap in low-income children nearly disappears. This means that in order to address the achievement gap in an effective way, there must be a systemic approach that will guarantee effective teachers year after year. In order to achieve excellent teaching, excellent leadership must be provided. With nearly 50 million public school students, more than 3.5 million public school teachers, and fewer than 100,000 school leaders, it is clear that the federal and state education policy must focus on bolstering the capacity of the school principal workforce.¹¹

After studying 180 schools across nine states, the Wallace Foundation reported, "To date we have not found a single case of a school improving its student achievement record in the absence of talented leadership."¹² Without

addressing principal effectiveness, it is unlikely that current or future policies will lead to long-term improvement of our nation's schools. Much like the demands for our schools have changed, the demands for principals have changed as well. School leaders are no longer expected to simply be effective managers of people and resources. The increased pressure for all children to meet proficiency standards and to show progress on high-stakes tests has caused the role of the principal to expand into instruction.¹³ The school reform movement has recognized and embraced this shift as evidenced by Teach for America's School Leadership Initiative, the New Leaders for New Schools Fellowship, the Building Excellent Schools Fellowship, Columbia University's Summer Principals Academy, and multiple other programs. These programs are designed specifically to identify and prepare effective school leaders that enter into the nation's lowest-performing schools and to serve those communities with the highest need. This is a great start, but with nearly half of our nation's schools identified as failing by the U.S. Department of Education, current efforts are simply not enough.¹⁴

In order to address the need for effective principals, U.S. Congress and the Obama administration should prioritize school leadership in the reauthorization of the Elementary and Secondary Education Act (ESEA) by incentivizing states to revamp their principal licensure procedures and bolster principal preparation programs. The Department of Education should also incentivize states to develop rigorous evidence-based frameworks of accountability and support for aspiring and new principals. Although improving existing principals is a necessary part of the effort, this article will focus on how to improve the current pipeline to the principalship.

THE CHARACTERISTICS OF AN EFFECTIVE PRINCIPAL

It is the work they do that enables teachers to be effective—as it is not just the traits that teachers bring, but their ability to use what they know in a high-functioning organization, that produces student success. And it is the leader who both recruits and retains high quality staff—indeed, the number one reason for teachers' decisions about whether to stay in a school is the quality of administrative support—and it is the leader who must develop this organization. —Linda Darling-Hammond¹⁵

The role of the school leader has changed drastically as the education system has evolved. Before the giant bureaucracy of public education that

exists today, schools grew out of the one-room schoolhouse model where the school leader was simply the “principal-teacher.” In this capacity, the principal took on extra duties and made sure that the school opened every day. As schools began to grow in size and complexity, the role of the principal-teacher began to shift away from teaching and more toward the management and operations side of the job. Over time, this shift led to the effective elimination of the instructional component of the principal’s job. With the increased attention to high-stakes testing and rigorous accountability measures in recent years, principals have seen their role begin to revert to the role of the instructional leader of the school. Unfortunately, as a result of this profession’s history, current school leaders simply do not have the skill set to handle this shift, and traditional preparation programs are not preparing candidates to handle these new responsibilities. Recent research shows that effective principals are reinventing the role by looking at schoolwide systems that prioritize student achievement and teacher effectiveness.¹⁶

The rush of attention to measurable gains in student academic achievement, especially in economically disadvantaged areas, has also led to a flurry of research about what effective principals do. As the overarching leader of a school, the principal serves two primary functions: to provide direction and to exercise influence.¹⁷ As a part of these two functions, a principal must accomplish five main tasks: provide the school community with a vision of academic success for students; create a climate that is safe, welcoming, cooperative, and that places student success as its top priority; develop the staff around them by distributing their leadership and thus creating buy-in; provide instructional leadership in the form of direct coaching of teachers by instituting systems that facilitate improving teachers’ instructional practice; and set up systems and processes to collect and analyze data in order to drive school improvement.¹⁸

Directing resources at improving the principal workforce is also powerful since principals can directly impact the effectiveness of the teachers in the classroom. This can happen in two ways. First, having good school leaders has shown to be a very effective way of attracting and retaining high-performing talent.¹⁹ Second, the principal is uniquely positioned to both directly and indirectly help teachers improve their practice. Principals with strong pedagogical skills can support teachers through instructional coaching, as teachers hone their practice. Principals can also establish different protocols or learning communities within the school to foster collaboration within the teaching staff. Both of these practices have shown to be important to promote effective teachers.²⁰

CHARACTERISTICS OF AN EFFECTIVE PRINCIPAL PREPARATION PROGRAM

Current principal preparation programs that focus on traditional approaches are not meeting the needs of today's new principals. Research shows that the vast majority of principal preparation programs make virtually no mention of how to use data in managing—much less improving—a school. This same research shows that only 11 percent of the surveyed programs cover material having to do with issues like curriculum development, instructional practice, classroom management, and learning theory; all of which are essential aspects of effective classroom instruction.²¹ These programs are not designed to improve struggling schools or to close the achievement gaps and continue to place Latino students and other students of color and of low socioeconomic status at a disadvantage.

Research based on years of work out of the Wallace Foundation, New Leaders for New Schools, the Alliance for Excellent Education, and several schools of education across the country has shown what needs to be done to improve principal preparation programs. This research shows that these improvements need to be driven by a combination of better talent, better andragogy methods, better support of new principals, better and more aligned curriculum, and better oversight of the programs.²² Their recommendations are quoted as follows:

1. A more selective, probing process for choosing candidates for training is the essential first step in creating a more capable and diverse corps of future principals.
2. Aspiring principals need preservice training that prepares them to lead improved instruction and school change, not just the management of buildings.
3. Districts should do more to exercise their power to raise the quality of principal training, so that graduates better meet their needs.
4. States could make better use of their power to influence the quality of leadership training through standard setting, program accreditation, principal certification, and financial support for highly qualified candidates.
5. Especially in their first years on the job, principals need high-quality mentoring and professional development tailored to individual and district needs.

POLICY RECOMMENDATIONS

This is an issue of immense complexity that must be addressed with matching urgency. It will require the federal government and state governments to work together to support change. As Congress and the Obama administration look to once again make the U.S. education system the best in the world, they should consider the following:

Create a competitive grant program that supports states, or consortia of states, in developing rigorous evidence-based leadership standards. In order to be eligible for funding, the state or consortium must agree to:

1. Use leadership standards to develop the licensing procedure and evaluation system for principals, in order to set a minimum bar across the state(s) that all school leaders must meet.
2. Include student performance data in the state's principal evaluation system. The ultimate goal of any school should be to prepare its students to be model citizens and to be college or career ready. School leaders must be held accountable for the performance of the students they serve.
3. Require that every public school principal—traditional or charter—be licensed by the state. Currently, several U.S. states, including Texas and Colorado, do not require charter school principals to be licensed by the state. If states adopt quality licensing procedures, every public school leader in the state should be expected to meet the same bar since, after all, every student is expected to meet the same standards.

Combine Title II of the Higher Education Act (HEA) into Title II of ESEA during the next ESEA reauthorization attempt to address the entire educator human capital pipeline from one source. To create the most effective system, preservice training and in-school supports must build toward the same goal: guaranteeing student performance. Combining Title II of HEA and Title II of ESEA will make it easier to address the development of effective educators as a continuum. This new title should:

1. Ensure that institutions of higher education that receive Title II funding use an evidence-based curriculum
2. Provide loan forgiveness or incentives for individuals who enroll in high-achieving principal preparation, as determined by each state, in

- return for a five-year commitment to work at a high-need school
3. Allow states the flexibility to use funds for financial incentives to increase the number of effective principals who serve in high-need schools
 4. Provide states with the option of establishing mentorship programs for new principals who serve in high-need schools

In this case, the federal government will only be able to create the basic conditions necessary for change. A tremendous amount of power to effect change is in the hands of state legislators and state educational agencies (SEAs). In order to improve principal performance in the neediest schools, state legislatures and SEAs should work to do the following:

- Establish, at minimum, a three-year probationary period for newly licensed principals after which they must reapply for their license. In order for the applicant to receive a license during reapplication, they must have demonstrated a record of success over the three years, based on the state-designed principal evaluation system.
- Create a formula grant program for local educational agencies to provide high-quality mentoring for new principals serving in high-need schools, during their first three years of service
- Tie principal preparation program accreditation to the performance on principal evaluations of their three most recent classes of graduates
- Ensure that state-accredited principal preparation programs are using an evidence-based curriculum that includes a significant amount of time dedicated to clinical practice and mentoring

CONCLUSION

By crafting standards that set a minimum bar that is meaningful and rigorous, improving the quality of the principal preparation pipeline, increasing accountability of principal preparation programs for their results, and providing incentives for talented individuals to enter the school leadership pipeline, the quality of principals in high-need schools should improve. Based on the research presented in this article, the proposed steps should create the necessary initial condition to improve those schools that are currently not serving their students.

It is important to recognize that this would just be a first step in creating a framework of high expectations and strong supports to push the principal

profession forward and improve underperforming schools. Part of the long-term goal must be to create a system that allows for comparability across state lines. Like we learned from the No Child Left Behind Act, having different standards in different states makes it very challenging to determine the effectiveness of a given state's approach and can lead to some states developing lower standards to appear high achieving.

Ultimately it is the role of the federal and state governments to be a key advocate in ensuring the well-being of its youngest and most vulnerable populations. The American education system, therefore, must not only work to create an exceptional workforce, but it must also serve as a tool for creating social equity and an avenue out of poverty. In the current time of economic austerity, when the number of Latino children and other children of color living in poverty is at an all-time high, it is not only a moral imperative but an economic necessity to make a meaningful and deliberate investment to improve the country's education system.²³ As supported by the research cited in this article, principals are an essential element to achieve this goal.

ENDNOTES

1. Carnoy, Martin, and Richard Rothstein. What Do International Tests Really Show About U.S. Student Performance? Economic Policy Institute, 28 January 2013.
2. Rice, Jennifer King. Principal Effectiveness and Leadership in an Era of Accountability: What Research Says. National Center for Analysis of Longitudinal Data in Education Research, Urban Institute, April 2010.
3. Hemphill, F. Cadelle, and Alan Vanneman. Achievement Gaps: How Hispanic and White Students in Public Schools Perform in Mathematics and Reading on the National Assessment of Educational Progress. National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC, June 2011.
4. Alliance for Excellent Education. Prioritizing the Nation's Lowest-Performing High Schools. Alliance for Excellent Education, April 2010.
5. Guzmán, Betsy. The Hispanic Population, Census 2000 Brief. US Census Bureau, May 2011.
6. Cárdenas, Vanessa, and Sophia Kerby. The State of Latinos in the United States: Although This Growing Population Has Experienced Marked Success, Barriers Remain. Center for American Progress, 7 August 2012.
7. Ibid.
8. Marzano, Robert J., Timothy Waters, and Brian A. McNulty. School Leadership that Works: From Research to Results. Association for Supervision and Curriculum Development, 2005.
9. Ibid.
10. New Leaders for New Schools. Principal Effectiveness: A New Principalship to Drive Student Achievement, Teacher Effectiveness, and School Turnarounds. New Leaders for New Schools, 2009.
11. The National Center for Education Statistics. Digest of Education Statistics: 2011. 2011.
12. Louis, Karen Seashore et al. Learning from Leadership: Investigating the Links to Improved Student Learning, Final Report of Research to the Wallace Foundation. 2010.
13. Lunenburg, Fred C. "The Principal as Instructional Leader," *National Forum of Educational and Supervision Journal* 27(4), 2010.
14. Usher, Alexandra. AYP Results for 2010-11—November 2012 Update. Center on Education Policy, 2012, 20.

15. DeVita, M. Christine et al. Education Leadership: A Bridge to School Reform. The Wallace Foundation's National Conference, New York City, 22-24 October 2007.
16. New Leaders for New Schools. Principal Effectiveness.
17. Louis et al., Learning from Leadership.
18. Mendels, Pamela. "The Effective Principal," *JSD* 33(1), February 2012.
19. Shelton, Sara. Strong Leaders Strong Schools: 2010 School Leadership Laws. National Conference of State Legislatures, April 2011.
20. The Wallace Foundation. The School Principal as Leader: Guiding Schools to Better Teaching and Learning. The Wallace Foundation, January 2013.
21. Hess, Frederick, and Andrew Kelly. Learning to Lead? What Gets Taught in Principal Preparation Programs. Harvard Kennedy School, 2005.
22. The Wallace Foundation. The Making of The Principal: Five Lessons in Leadership Training. The Wallace Foundation, 2012.
23. Lopez, Mark Hugo, and Gabriel Velasco. Childhood Poverty Among Hispanics Sets Record, Leads Nation: The Toll of the Great Recession. Pew Research Center Hispanic Trends Project, 28 September 2011.

ARTIST SPOTLIGHT

ABOUT THE ARTIST

Nancy Guevara is a community designer and artist from the South Texas/Mexico border. She focuses primarily on themes of identity, Xicana consciousness, Rasquachismo, and decolonization. She has a bachelor of fine arts in design from the University of Texas at Austin, where she focused on creating educational studio based experiences and educational resources for youth of color. She spent one year in Mexico City on a Fulbright, where she coauthored and coillustrated a children's book for pediatric cancer patients that is now being used in the Hospital General de México Federico Gómez. Guevara is currently pursuing a master of arts in education at the Harvard Graduate School of Education.

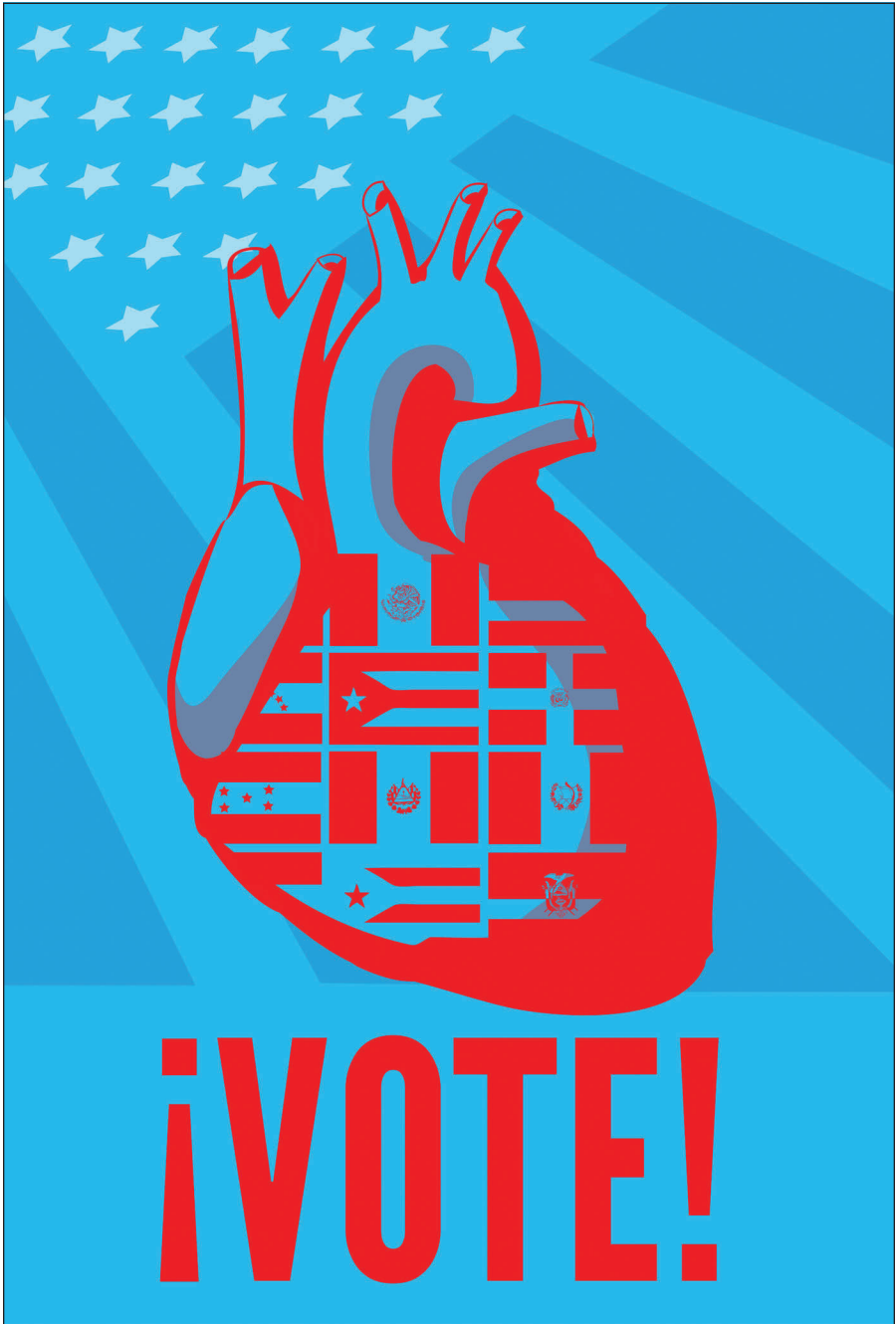
Nancy Edith Guevara Medina, nancyedithguevara.org

¡VOTE!

2012

Digital print

The Latin@ community cast their votes in the last presidential election and demonstrated their voting power despite strategic voter law regulations. As the fastest growing minority group in the United States, we will continue to be influential in taking a significant part in shaping the future of the United States of America.



ARTIST SPOTLIGHT

Estoy al Otro Lado

2013

Digital print

Massive deportations are taking place in the United States, and the Obama administration is on its way to deporting up to 2 million people by 2014. These deportations are separating families and leaving thousands of children without the core of their household, a mother or father. There are at least 5,000 children in foster care because their parents have been deported or are in detention facilities. Many of these parents attempt to come back and reunite with their family and often wind up dead. Separation for the children affects their educational success and mental health, damaging our cultural and social fabric. My intent is to humanize these large numbers of deportations with my imagery, bringing the pain of separation and depicting the strength and love between the families who face this reality.



ARTIST SPOTLIGHT

The Militarized Border

2013

Digital print

The U.S. Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act in June 2013. The bill budgets \$46 billion to border security, doubling the number of border patrol agents on the border and even adding weaponized drones. Since 2010, There have been 19 deaths on the border due to under-trained border patrol agents firing and killing innocent people on Mexican soil. The Arizona desert is now used by the government as a strategy to funnel the immigrants away from urban areas where border security is stark, in effect causing hundreds of immigrants to cross the desert every year and die from dehydration and exhaustion. There are hundreds of unidentified bodies in the morgues and families waiting to hear whether their loved ones are alive. This is not humane reform. The poster is intended to spread awareness of this militarization of the border and how increased security will increase violence and death on the border, bringing more fear, tragedy, and hardship.



Mi Madre, Mi Matria

2013

Digital print

This image reflects my struggle to reconcile my Mexican identity. Mi Madre, Mi Matria, comes from a saying in Spanish, “Si no quieres a tu patria, no quieres a tu madre,” which translates to, “If you don’t love your country, you don’t love your mother.” Nationality and ancestry also being a big part of identity, the passing down of tradition and custom. Many of us American-born Mexicans continue to fear losing touch with our culture. For me, my mother is my tie to Mexico. The umbilical cord being the bridge, the border between both of us. Mi Madre, Mi Matria reaffirms my ties to Mexico and my process in learning more about my identity through my culture and family.



No Simple Solution

2010

Digital print

In 2005, the Ministry of Foreign Affairs of Mexico reprinted a sixteen-page guidebook comprising text and images created to inform migrants of the dangers and risks of crossing the U.S.-Mexico border via unofficial means. The guide offered tips on how to survive throughout the process of crossing as well as what to do upon reaching the other side. Controversial on both sides of the border, the guide was published with the intent of lowering the mortality rate of immigrants attempting to cross the border. Around the same time, the U.S. Department of Homeland Security launched a multibillion dollar program, the Secure Border Initiative, aimed at detecting and preventing “illegal” immigration. This Secure Border Initiative consisted of detectors, sensors, radars, cameras, lighting, and extending the border fence. In response to the guidebook’s and the U.S. initiative’s failure to addressing the complex sociopolitical issues involved, I created this poster advocating for border awareness that goes beyond publishing a guide or building a wall.



ARTIST SPOTLIGHT

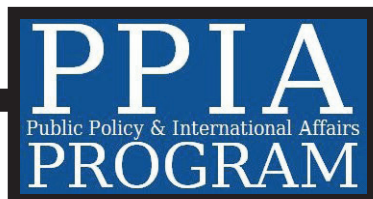
Arriba Mi Gente

2010

Digital print

Gloria Anzaldúa was a prominent and much respected writer in Mexican American, Latino, and feminist studies. Her work has empowered and inspired many Mexican Americans in U.S and Chicano literature. Her concept of “El Mundo Zurdo,” the left-hand world, is a process toward justice through advocacy. It focuses on bettering ourselves in order to improve society. In her work, she reflects upon her own experiences of cultural and social marginalization in her life on the border. Most of her contributions lay in her writing, which espoused societal healing through the acceptance and celebration of diverse linguistic and cultural traditions. I created this screen print as a tribute to her innovative, spiritual, and progressive contributions to our society.





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Getting to the Steak: An Interview with Representative Luis Gutierrez on the Way Forward for Comprehensive Immigration Reform

Interviewed by EYAL BERGMAN

*Luis Gutierrez has been representing the fourth congressional district of Illinois since 1993. He is the first Latino from the Midwest elected to Congress, rising to political prominence by way of the Chicago City Council. He has a very progressive record in the U.S. House and is well regarded amongst Latinos across the nation for his outspoken leadership in support of comprehensive immigration reform. He has a new book, *Still Dreaming*, which is an autobiographic look at his personal life and his political achievements.*

Eyal Bergman's professional experience has been in leading youth development projects aimed at building resiliency and protective factors in the lives of vulnerable Latino youth in the Maryland suburbs of Washington, DC. As a leader in the nonprofit sector, he also led statewide policy and organizing activities, including the successful passage of the Maryland DREAM Bill. Bergman is currently pursuing a masters of education at the Harvard Graduate School of Education, with a concentration in human development and psychology. He believes that schools in the United States have fallen into an unfortunate paradox: that we envision them as the social institutions that set the even playing field for anyone to access the American Dream, when in fact our schools oftentimes perpetuate the greatest inequalities of our society. Schools might come closer to accomplishing their

missions if they worked in greater harmony with the communities they serve. Originally from Argentina, Bergman was raised in California and Oregon.

He interviewed Luis Gutierrez on 5 December 2013 for the Harvard Journal of Hispanic Policy PolicyCast Series.

*

Immigration reform is unquestionably one of the most important political topics for Latinos in the United States. More than any other, our communities endure more deportations, live deeper in the shadows, and suffer most from the patchwork of laws that make up our immigration system. For twenty years, no national figure has been more vocal in his support of comprehensive immigration reform than U.S. Representative Luis Gutierrez. A native of Chicago, Illinois, he has represented Illinois's fourth district in the House of Representatives since 1993 when he became the first Latino from the Midwest to be elected to Congress. We discussed the differences between the current immigration debate and former U.S. President Ronald Reagan's amnesty bill in the 1980s, as well as Gutierrez's more favored piecemeal approach to immigration reform.

HJHP

Representative Luis Gutierrez, you've been representing Illinois's fourth district for over twenty years. You're the first Latino elected to represent the Midwest in the U.S. Congress, you're one of the primary torchbearers for the movement toward comprehensive immigration reform, and you're out with a new book *Still Dreaming*, a sort-of autobiographical retrospective written in English and in Spanish. Thank you for joining us at the *Harvard Journal of Hispanic Policy*.

Gutierrez

It's a pleasure to be with you this morning.

HJHP

You were elected to the Chicago City Council in 1986, six years before your first term as a U.S. Congressman. I'm hoping maybe you can start by taking us back to 1986, the year of [U.S. President] Ronald Reagan's Immigration Reform and Control Act.

Gutierrez

As I reflect upon that, there wasn't much of a support movement for immigrants back in 1986. It was done in much more of a natural fashion, at least in Chicago and the political environment that I lived in. People were supportive of immigrants but what we were doing was basically helping immigrants go from their undocumented status to the regularization of [their] status and then incorporation into the broader American society, whether it was English acquisition or housing or whatever the issues were.

If anything, in 1984 it was Ronald Reagan who was very forceful about immigrants and the Democrats that weren't. Now moving forward, I think we have a different Republican Party, because it's not Ronald Reagan's Republican Party—this is a much more nativist, somewhat more xenophobic Republican Party. Although there are dozens of Republicans who want to vote for comprehensive immigration reform, and my hope is that [U.S.] Speaker [of the House John] Boehner will allow that to happen and put the faculty to flourish in the House of Representatives. Immigration wasn't the kind of tool in 1986 the parties used against one another in order to beat and battle one another, and our champion was the conservative Ronald Reagan. We have conservative champions, to be clear, former President George [W.] Bush spent eight years in the White House [and] was very supportive of comprehensive immigration reform. But today it's toxic here, the kind of mean, really xenophobic kind of rhetoric. The mean, nasty rhetoric didn't exist back then. Today, prejudice and bigotry are much more tenable in the debate than they were back in the 1980s.

HJHP

Getting to the current immigration debate in Congress, Speaker John Boehner has stated that the House won't take up the Senate bill, won't go to a conference with the Senate, and he's even balked at the piecemeal approach. So, how do you expect to get something passed in the House? And in particular, how do you expect the House to pass anything that provides legal status to the eleven million undocumented immigrants currently in the United States?

Gutierrez

Well, because people won't let it die. There are people campaigning for comprehensive immigration reform, and Speaker Boehner certainly controls the schedule here in the House of Representatives but he does not control the will

of the people. They're here campaigning for it. The Speaker is going to come soon to realize that no matter whether he's having breakfast, lunch, or dinner, whether he's in Chicago or whether he's back in Ohio in his district or here in Washington, DC, he's going to find the kind of persistent and consistent demand of the people. Much like everything gets done in Washington, DC, because there's a persistent and consistent demand from outside of Washington. That's going to continue. The movement is broader and stronger than it's ever been before. It's winning, it has momentum on its side. It just won in Alabama, we're passing laws in different states granting driver's licenses for the undocumented, allowing undocumented students to have in-state tuition. These kinds of things are moving forward, and we're winning battles and victories across this country. And ultimately, we're going to win the one here because we're going to be consistent and persistent.

Republicans, as you suggest, need this. They're doomed to becoming a party of states and regions within this country, but they will never be a national party again until they take this issue off the table. Two thousand Latinos turn eighteen every day, two million more Latinos voted in 2008 than in 2004, and two million more voted in 2012 than in 2008. This is something, this demographic shift and change, is something that's only going to contribute to the changing of the American landscape. Second, the Asian community; 77 percent voted Democrat the last election—[they're the] fastest-growing immigrant community in the United States. You just can't take on the LGBTQ [lesbian, gay, bisexual, trans*, queer] community, and you can't take on immigrants, you can't take on Latinos, you can't take on women, and expect to be a national party. I think that there are Republicans that understand that this is . . . You'll keep getting beaten as you did in the last election when your candidate Mitt Romney didn't even get 22 percent of the vote. If you do that, you'll never be an electoral power in this nation ever again.

HJHP

If Democrats and progressives and immigrant progressives feel that they have the upper hand as far as the long-term strategy, why abandon the comprehensive approach?

Gutierrez

Here's the point: comprehensive immigration reform is really parts put together. I mean, there's a border security element, there's a verification of

employment element, there's a new guest worker program element, there's a legalization element, there's a DREAM [Development, Relief, and Education for Alien Minors Act] element, there's an element for agricultural workers . . . so if you take all of the parts that are comprehensive immigration reform and you pass them in part, you do have comprehensive immigration reform at the end of the day. [U.S.] President [Barack] Obama said yesterday in an interview with the *Wall Street Journal*, he doesn't care how they chop it up as long as, at the end, they have a complete plan. And that's my purpose in all of this.

Look, one thing that we need to recognize is that . . . Republicans are the majority in the House of Representatives. Let me repeat that: they're the majority. They dictate the schedule, the rules, the committee chairmanship, and what does and doesn't get debated in the House of Representatives, much like when Democrats were in charge. And you know, in 2009 and 2010, when we were the majority in the House of Representatives and controlled the Senate with fifty-nine votes and the presidency, we did not act. And now we find ourselves in a situation in which they're the majority in the House of Representatives. So we have to understand they're the majority, number one, and that's a bitter pill, but it's one you have to accept. You have to accept reality if you're going to move forward in the legislative process. And number two, the Republicans have to understand that they lost the referendum on this issue. And they'll never be a national party again. Somewhere there is a compromise for moving forward. Now, having said that, the continuing pressure of the immigrant community is going to be, at the end of the day, what really shifts the balance in our favor. So, if you do parts, I kind of look at it [like] you and I are getting together for dinner. They give us a salad, they give us coffee, they give us something to drink, at the end they give us dessert, there's a main plate in the middle. It really doesn't matter how many courses as long as in the end we have dinner, right? What I don't want is any one of those parts in the menu to make me sick, right? So we can do it in parts as long as the parts cumulatively make the whole.

HJHP

But how do you get to the steak? If the Republican establishment wants tougher border security, they're going to get the side salad. Imagine the border security is the side salad. How do you ensure that all items that we want ultimately show up at dinner?

Gutierrez

You're not going to be able to go to conference committee unless you do it that way, because then what you have is failure. Then you haven't done it. Let's remember, the Senate already approved comprehensive immigration reform. If you do not do a legalization program, then when you go to conference our rules say that you begin the conversation.

I know what Speaker Boehner says. Many things are said in the heat of battle that don't come to fruition or are abdicated or not carried out. Have you ever heard about this, not carrying out their promises in their term? Certainly that happens here all of the time, unfortunately they don't carry out their promises either. So look, let's take it one step at a time, let's move this forward because I think part of what is not always considered as part of the debate is that they're going to deport eleven hundred people today. They deported eleven hundred yesterday and tomorrow, and indeed they've deported four hundred thousand people. So look, the President of the United States, soon, very soon, you'll be broadcasting it from Harvard, two million deportations. It takes a massive infrastructure, governmental infrastructure, to detain and deport two million people, and yet that's going to be the record of this administration.

I am going to move this process forward because in the end, there are eleven million people who want their papers, who want their documents, who want a regularized status. I think we can get millions of people to American citizenship and we can legalize everyone and we can stop these deportations. We can get that done. How are we doing that? Well, there are going to be some conversations that I'm not going to discuss in this interview, that I'm not going to discuss with anybody. Those are conversations and dialogues that continue as you develop a legislative agenda moving forward.

I am going to work with the majority. Now, if Democrats were in the majority then I could say, well let's get to the vote for next week and let's get this done. That is not the case. Here's the positive thing, there are dozens of Republicans who want to get this done. The Republican party passionately understands for its own survival of future, needs to get it done and the American people broadly are with us in support and they're broadly with us whether they're conservatives, Evangelicals or Presbyterians or Catholics, whether it's the *Wall Street Journal* or the *New York Times* editorial board. Let's just think about Washington, DC:

what two groups clash and spend millions of dollars fighting about public policy issues? The AFL-CIO and the Chamber of Commerce. And yet, they are working as one to get this done. So look, there are a lot of forces the forces of our community, the immigrant groups across the country are strong, they're broad, they're strong, they're resilient and then you have economic forces at play here. We're going to get this done.

HJHP

You recently had a bit of a falling out with the National Immigrant Youth Alliance [NIYA] after they surreptitiously recorded a conversation you were having with mothers of some of their activists, in which you allegedly attempted to undermine the credibility of one their organizers by insinuating that Mohammad Abdollahi is gay. And truthfully, that surprised me because you have a history of gay rights activism. I want to ask you why you said that? Or, what did you mean to say by that?

Gutierrez

Number one, I don't discuss private conversations that I have with my constituents. I think that my office is a sanctuary where people come to share their fears and to share their life stories. Those life stories are filled with brutality, and they need to know that this office is safe to them. And people shouldn't be taping secretly, recording, this is not a Nixonian time. I've been very, very clear. I'm not going to continue to work with people that undermine the sanctity of this office and the ability of people. People come here from all over the country. They meet with me, and they expect that their conversations and their dialogues . . . [these are] very intimate conversations with those parents. They have suffered a great deal, they've had a lot of tragedy in their lives, and that should be kept between the people that they want to talk to about this and not. And that's what I'm going to do, I'm going to honor that. You're right, I've been very, very clear. On the very first day as we write in the book, *Still Dreaming*, 1986, the first ordinance to provide rights to the LGBT community in Chicago City Council. There were only 18 of us then, you're right. And it was DOMA [Defense of Marriage Act] and only sixty people voted against [DOMA]. Now everybody's against the Defense of Marriage Act, even the Supreme Court. And I remember. So you're right, I have a long history. So don't believe as I say, everything you read. Don't believe everything you read. It has been wonderful talking to

you. I'm going to continue to tour the country and to talk to people about the book and more importantly to get comprehensive immigration reform done.

HJHP

Representative Gutierrez, thank you so much for your time, and good luck.

Should Mayors Run Local Schools? An Interview with Former Mayor of Los Angeles, Antonio Villaraigosa

Interviewed by EYAL BERGMAN

Antonio Villaraigosa served as the forty-first mayor of Los Angeles, California, from 2005 to 2013. He was only the third Mexican American to serve in the position and the first in more than 130 years. In addition to his many accolades in improving environmental and transportation policy in Los Angeles, he was also a strong advocate for education reform. He established the Partnership for LA Schools, which oversees seventeen underperforming schools in the city. The number of schools in the Los Angeles Unified School District meeting the state's academic performance goals doubled during his tenure in office.

Mayor Villaraigosa started his career in public service as a labor organizer with the United Teachers of Los Angeles and subsequently served as a member of the California State Assembly from 1994 to 2000. During his time in Sacramento, he served as Speaker of the Assembly from 1998 to 2000. More recently, as a member of the Democratic Party, he was selected as chairman of the 2012 Democratic National Convention.

Eyal Bergman's professional experience has been in leading youth development projects aimed at building resiliency and protective factors in the lives of vulnerable Latino youth in the Maryland suburbs of Washington, DC. As a leader in the nonprofit sector, he also led statewide policy and organizing activities, including the successful passage of the Maryland DREAM Bill. Bergman is currently pursuing a masters of education at the Harvard Graduate School of Education, with a concentration in human development and psychology. He believes that schools in the United States have fallen into an unfortunate paradox: that we envision them as the social institutions that set the even playing field for anyone to access the American Dream, when in fact our schools oftentimes perpetuate the greatest inequalities of our society. Schools might come closer to accomplishing their missions if they worked in greater harmony with the communities they serve. Originally from Argentina, Bergman was raised in California and Oregon.

He interviewed Antonio Villaraigosa on 13 November 2013 for the Harvard Journal of Hispanic Policy PolicyCast Series.

*

In 2013, Antonio Villaraigosa stepped down after two terms as mayor of Los Angeles, California. In a city where Hispanics have become the predominant ethnic group, making up approximately half of the city's ten million residents, he represents a watershed in the city's politics. Villaraigosa was the first Hispanic mayor in the city's modern era. He has been identified in national circles as a potential star, and rumors have it that he is eyeing a run for the governor in the near future. He came to the John F. Kennedy School of Government as a Visiting Fellow at the Institute of Politics. We caught up with Villaraigosa in the middle of a hectic week. I asked him about his vision for mayoral control of the Los Angeles schools and if he intends to be involved in the push for comprehensive immigration reform in Washington, DC.

HJHP

Antonio Villaraigosa, two-term mayor of Los Angeles, Chairman of the 2012 Democratic National Convention, and Visiting Fellow here at the Institute of Politics, welcome to the *Harvard Journal of Hispanic Policy*. Bienvenidos!

Villaraigosa

Well, gracias, it's nice to be with you. You asked me before we started what my

impressions were and I just want to say that I love coming to great universities, institutions of higher learning where you get inspired by the hope, the optimism, the idealism of young people. And in the case of a place like Harvard, also the intellect. It is very stimulating to be here.

HJHP

I want to ask you a little bit about some of your optimism when you started as mayor of Los Angeles. As you know, Los Angeles is very different from other major American cities in terms of its education policy. Much of the power for the education policy in the city is concentrated away from the Executive. You were able to get a law passed through your allies in the state legislature to give your office control but it was repealed by the courts. I am hoping you can share your thoughts about where power should be concentrated and the role of the Executive in shaping education policy.

Villaraigosa

I think great public schools should have power concentrated locally with parents, teachers, and principals at school sites that are imbedded in neighborhoods. I believe that great cities have to be anchored by great public schools, and I do believe that the mayor of a city is best poised to lead efforts to improve our schools, to set the highest standards for our schools. The reason for my effort to legislatively give me an opportunity to partner with a school district was that I really do believe that mayors have to drive that improvement; somebody has to be accountable. As you know, that law was overturned on constitutional grounds of separation of government. I wasn't deterred by that and went to plan B and raised millions to elect a school board that would support focusing on the dropout rate, on achievement levels.

That was a policy priority but also a passion. I tell people I have been blessed with the opportunity in America that I have been given. I went to public schools and Catholic schools, but mostly Catholic schools as a young boy. I ended up graduating from a public school after dropping out and getting kicked out. For me, I believe strongly that it is really important that we do everything we can to ensure the opportunities in society that I was given. So I set the path to starting at the bottom and getting to the top. You know, our public schools are not what they used to be, and so I was absolutely committed to empowering parents, teachers, and principals to help improve those schools.

HJHP

One of the major criticisms of the reform movement in America and in Los Angeles as well is that oftentimes teachers view the policy makers with a sense of antagonism. They feel that policy makers are not really on the ground and do not feel that same sense of the classroom. And we know that for education to be as effective as it can be, for our students to learn as much as possible, we need teachers on board. I am hoping you can shed some light on what it was like to work with the teachers unions, sometimes work in opposition to the teachers union. What advice would you give to other mayors as they seek the reforms that you were seeking?

Villaraigosa

As you probably know, I worked for the teachers union for eight years. I am unabashedly pro-union, pro-collective bargaining. I know that the vast majority of teachers that go into the profession are dedicated and committed professionals who want to change the world. They do not have to do what is admittedly one of the toughest jobs, particularly when you are working in communities where the schools are struggling. At the same time, I have said that, although I believe we have to empower our teachers, we have to let them teach, if you will, and not overly encumber them in that regard. We also have to hold them accountable. But I have also said that about parents, principals, and politicians. Society has to be committed to the notion that public schools have to be places of excellence for all socioeconomic classes, and when you see urban schools in poor areas, the vast majority are just not working.

What I believe is that we have to empower our parents and our teachers and our principals but we also have to hold all of them accountable. So I have said that we should evaluate teachers based on student growth over time, how the kids are doing, where they started, where they ended up. We should evaluate principals in the success of their schools. We cannot just evaluate people on whether they showed up or how long they have been in the profession, but how well their kids are doing. Are schools improving? I have also said that to our parents in my schools. I had twenty-two schools, sixteen thousand kids, the lowest-performing schools in LA; I have a parents center in every school, parent coordinators, Parent College where we teach people their rights and their responsibilities. So we are not just saying teachers have to be accountable, I have actually said parents have got to be accountable. I have gone to parents when some have said,

“Well, I’m working, I can’t go to school” I say hold on, my mother was working. She was a single mom, she took the bus, she walked to school. We have a responsibility to show up for our kids, to help them with their homework, or to make sure they are doing their homework if you don’t have the skill set to help them. To come to school when the teachers ask you to come to talk about the progress of your child. To participate where you can.

So the Parents Union started in LA, the Parent Revolution, the parent trigger, all in LA; all around much of the effort that we did. So I feel absolutely committed to the notion that we have to work with our teachers, work on developing them, both the science and the art of teaching, to helping them become more effective teachers. You have got to give them the tools and the money, but we have got to tie that money to results.

You know, that the notion that you just throw money at a problem does not really resonate, and it certainly has not resonated with the voters because they have not been interested. Now California is forty-seventh in per-pupil spending. They should be number one. But you are not going to convince the electorate to do more if we are not doing more with the money we got.

HJHP

When you say, “We need to be judging them on results,” what types of results are you looking for? How are we to measure those results? Is it test scores? Is it teacher observations? How do you draw it?

Villaraigosa

I have argued that it should be on multiple measures. Student growth over time, where did they start, where they ended up. We should measure them on test scores. We should measure them on class observation. We should measure them on participation in the school community, and a broad cross-section of factors. I am not just measuring them on a test, but let’s be honest, they have almost always, and you talked about the teachers union, they have almost always fought measures basically saying that it is difficult to measure. Well, you know, the notion that we should not evaluate people on some measure is a notion that does not resonate with the vast majority of people. It just doesn’t. I mean, you got to Harvard. You did not get here because you were not measured at some point in your life. We should also measure our city’s mayors. Are they

getting involved in the schools? Are they improving the schools? Our principals, our parents. I said to the parents wherever I go, “You have a responsibility to be involved,” as I said.

We have got to collaborate together to improve our schools because its the economic issue of our time. In California, we are going to be two and a half million down in the number of college graduates and specialized degrees that we need, simply because of their achievement gap, because not enough Latinos particularly, but also African Americans, are going out to college and getting a degree. It is a democracy issue of our time because you cannot have a functioning democracy if people are not enlightened and do not know what the issues are and are not participating in the way that they should. It is the national security issue of our time when you think about this: as we continue to drop down on the opportunity index, which is the index that says how many people can start at the bottom and go to the top, we cannot be an America where one group of people predominate the people that are serving us. Where they are really not coming to the Harvards and the Yales and the Berkeleys and the UCAs and the USCs or the state colleges. That is unacceptable. We have to all be committed to this notion that this is in our enlightened self-interest. Educate people to give them that shot that the American dream is all about, the one that has benefitted me so great.

HJHP

You are becoming a little bit more involved in Washington and in national politics. I would like to hear a little bit about where you see comprehensive immigration reform now, especially with your new position in building some more coalitions with both sides of the aisle. I know that is a priority of yours. Do you intend to be involved in the push for comprehensive immigration reform? Do you plan on working with your Republican partners specifically in the House to push the legislation?

Villaraigosa

I have been involved on behalf of immigrant rights since I was fifteen years old when I first got involved in a farm worker boycott. Since I was eighteen, I have been involved specifically in immigrant organizing from the Simpson-Mazzoli bill to the Rodino bill to the 1986 immigration fight. I have been involved in this fight my whole life. So I will continue to stay involved.

I believe this issue is very important to the economic might of the country—a \$1.5 trillion economy that will be generated from bringing these people from out of the dark and into the light. No one benefits more than LA. We're 42-percent foreign born. We have an undocumented population of, maybe two million in the LA metropolitan area. So this is a very critical issue, and yes, we have to try to work across the aisle to get Republicans to understand that immigration reform is good for America and its values, it is good for our economy, it is good for our cities and our nation, and I would hope that they would understand that. If they do not, I think what you will see over time is they are going to become the Whig Party in the next millennia. Because they are going to continue to lose the Latino community and the Asian community in numbers that will make it impossible for them to ever elect a President. Simple as that.

HJHP

Mr. Mayor Villaraigosa, thank you so much for joining us.

Villaraigosa

Thank you.

Resistance and Relationships

A review of *Black and Brown in Los Angeles: Beyond Conflict and Coalition*

Edited by JOSH KUN and LINDA PULIDO
UNIVERSITY of CALIFORNIA PRESS, 2013
Reviewed by MELISSA FLORES

Melissa Flores is a current PhD student and a Regents' Special Fellow at the University of California, Santa Barbara, in the Chicana and Chicano Studies department. Her work uses education as a site to understand the implications of mass incarceration and the prison-industrial complex in California by closely examining the intersections of race, social policy, and language in the Latino community. She is a 2013 graduate of the Harvard Graduate School of Education with a degree in arts in education and a former Senior Editor for art content for the Harvard Journal of Hispanic Policy.

Deeply rooted in a cultural studies perspective, *Black and Brown in Los Angeles: Beyond Conflict and Coalition* guides the reader through the complex historical past of an urban space that has long been oversimplified in an attempt to create and destroy relationships between these two communities within the greater Los Angeles, California, area. A timely contribution considering the ongoing demographic shift in the city, Josh Kun and Laura Pulido, professors at the University of Southern California, have come together to assemble a collection of thought-provoking essays that serve to reshape and (re)contextualize the relationship between Black and Brown Angelenos. By moving past a strict frame of “conflict, cooperation, and coalition”—major tropes often utilized to

characterize the connection between the two groups—Kun and Pulido construct a new frame in which to examine the city and its history.

This book provides a beautiful look into the greater Los Angeles area by zeroing in closely on specific places, spaces, and times to introduce a new way of understanding the city. Although the book functions as an overview of the Southern California metropolis, it is not simply another historical analysis on Los Angeles. Instead, it should be seen as a cultural studies reader that aims to redefine the process of the making, unmaking, and remaking of Black and Brown identities by examining the different intersections in which these groups negotiated their relationship with each other, from race and immigration to their forged alliances as fans of the former Los Angeles Raiders football team. As a scholarly contribution, it resituates cultural exchange beyond the usual arguments rooted in race, politics, and economics and moves toward a new understanding of this process by including the examination of sound, the body, and the infusion of art. In this way, it stays true to the more radical way of understanding cultural studies as an epistemically disobedient method for analyzing the ways of knowing and understanding the city and its people. However, although the book urges the reader to appreciate each group as distinct, the main aim of the book is a call to action that requires the reader to move beyond the typical frames of “conflict, cooperation, and coalition” and toward an understanding of how the interconnected nature of the two groups ultimately continues to influence both groups in a symbiotic process of development and growth.

Most importantly, Kun and Pulido seek to challenge the notion of a shared history solely rooted in violence, poverty, or interethnic tensions. Rather than propose an alternative history of simple coalition building, they complicate the narrative of Black and Brown Los Angeles and ask the reader to move away from the dichotomized view often presented. By highlighting the ways in that Black and Brown Angelenos coexist, Kun and Pulido, through their selection of essays, ask us to redefine how we understand the social and political constructions within this urban space. This requires more work from the reader to understand that things are not as simple as they may have seemed; it requires a deep dive far beyond the surface of racial tensions to explore the tenuous root of what has complicated relations between the two groups.

The most impressive part of the book is the nuanced layering of essays that deepen the reader’s understanding of the city and its people. Kun and Pulido constantly invoke the reader to consider how each group influenced the other’s understanding of their place and experience in the city by thoughtfully juxtaposing pieces to allow the reader to reflect on the complexities. For instance, “Race, Real Estate, and the Mexican Mafia: A Report from the Black and Latino

Killing Fields” by Sam Quinones describes the extended impacts of racially motivated gang violence toward African Americans by Latinos throughout Southern California. Quinones traces how the increase of interracial killings ordered by the Mexican Mafia led to the fraught relationship and intense racial tensions between Black and Brown Angelenos. Quinones explains that through young male Latinos’ haircut of choice, a clean-shaven bald head, the Latino male aesthetic was ultimately transformed to indicate danger and gang affiliation to Black communities who feared for their safety. Later, in “On Fallen Nature and the Two Cities,” Nery Gabriel Lemus explores the cultural exchange that takes place between the two groups by using the lined-up fade type of haircut as another site to understand the “current hostile divisions” that exist within both groups. By using art to document the process within barbershops, Lemus encourages dialogue about a shared process that contributed to each of the groups’ independent identity construction. Lemus suggests corporeal aesthetic as a starting point for discrimination and racially motivated violence. By examining the two essays together, a portrait of an interwoven and culturally connected Los Angeles begins to emerge by forcing an examination of the unique narratives that exist within each community that simply began with a haircut.

Black and Brown in Los Angeles compels us to examine the unique experience of each group rather than to create a false shared history that overlooks ethnoracial tensions. The book is separated into five parts to guide the reader in an overview of the different spaces to explore this new narrative. Kun and Pulido seem to pull from topics that provide a breadth of knowledge on the relationship between the two groups, but also allow room for deep and thoughtful investigation by introducing us to new, nontraditional sites from which to examine this relationship, like the Los Angeles County Jail offered in Ofelia Ortiz Cuevas’ piece, “Race and the L.A. Human: Race Relations and Violence in Globalized Los Angeles.” Although not entirely new materials, historians and photographers alike are creatively arranged within the five chapters: “The Economics of People and Places,” “Urban Histories,” “Community Life and Politics,” “Reporting Black and Brown L.A.: A Journalist’s View,” and “City Cultures.” However, Kun and Pulido bring a varied group of voices that come together to build a new narrative and uplift the stories of the community that make up the fabric of Los Angeles.

The power of including such diverse and dynamic perspectives challenges the reader to pause and reformulate their perceptions about the relationship between both groups. For instance, Gaye Theresa Johnson’s essay “Spatial Entitlement: Race, Displacement, and Sonic Reclamation in Postwar Los Angeles” disrupts the construct of spatial mobility—one that includes the movement through space, the places in which residents congregate, and the entitlements

the individuals seek to assert. Johnson explains her theory of sonic and spatial entitlement as the radical way in which these two groups engaged with their environment through sound to create ways to preserve their space and identities. Specifically, she points to the ways that Black and Brown youth used music to enact and defy borders of space and social membership through different modes, including lowriding or attending concerts. Furthermore, Johnson argues sonic reclamation as a revolutionary act, one that both groups share, although in distinct ways. She points us toward a shared history of resistance and calls for a deep reflection on the political forces at work that have sought to divide the Black and Brown communities.

Denise M. Sandoval also takes an interesting look at movement through space in her essay “The Politics of Low and Slow/Bajito y Suavecito.” Sandoval shows how lowrider culture was also used to reclaim space through a tradition of seeing and being seen. She also brings us back to a shared cultural aesthetic, a theme that permeates the book, that bridges the Black and Brown communities together. Sandoval, like Johnson, demonstrates how sound and movement extend beyond music on the radio or a lowrider cruising down the boulevard, how they both serve to articulate the psychosocial impacts that each group had on each other, and how they fit into the story of the greater Los Angeles area through the external forces that cut across their respective cultural domains.

As a Latina, I found that while this selection of works expanded my understanding of the history of Los Angeles, it also left me with more questions about how to seek out the positive coalition building that Kun and Pulido seem to encourage in their introduction. Black and Brown Angelenos have an identity with a rich historical past that can neither be pulled apart nor dismantled; they are inextricably tied together and their fates depend on one another. As the city continues to explore policy reform initiatives and reexamine issues of mass incarceration, public education, and poverty (issues that undeniably impact these two communities disproportionately), what can we learn from a book that demonstrates in a very unique way how the very essence of who these two groups are relies on their relationship with one another? I believe the prescription in this book is clear: we ought to appreciate the distinct histories of each group and seek to heal the conflicts in an effort to move toward the coalition building process that will be needed in Los Angeles. If we hope to push beyond a monolithic understanding of the connection between the Black and Brown communities, we must start at the beginning and thoroughly and thoughtfully examine the steps taken to arrive to where we now find ourselves. By retracing our journey through this collection of essays, I believe we have a starting point at which to enter the conversation that begins with the question, “What is next for Black and Brown Los Angeles?”

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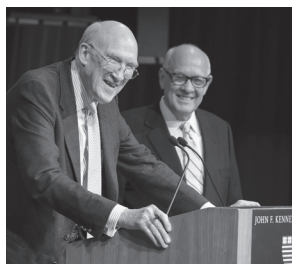


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