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It is with great humility that I present Volume 34 of the Harvard Kennedy School Journal of Hispanic Policy. This year's volume marks a year of transition for so many, with Harvard students, faculty, and staff having made their way back to in-person classes after a year of virtual studies and leaves of absence. While we are grateful for a return to some semblance of normalcy, we are also cognizant of the sacrifices and great loss faced by our communities over the last two years.

According to the Pew Research Center, about half of U.S. Latinos say they or someone close to them faced health or financial hardship during the pandemic, yet most remain optimistic about their futures. We know hope in the midst of adversity is part of the fabric of our community; it is what has allowed us to reach our present and is certainly what will shepherd us into our future.

We dedicate this year's annual publication to the resilience shown by the U.S. Latinx community throughout the pandemic. In assembling this year's volume, our goal was to both acknowledge the pain and loss incurred over the last few years while also demonstrating the strength that will push generations forward. Learning and growing from the experience of the living through the pandemic will require public servants to think critically about what policies to reform, who to engage, and where we should refocus our resources. Such a task will require remarkable ingenuity and a careful consideration of those commonly left out of the conversation.

Through articles, commentary, and artwork showcased in Volume 34, this year's contributors bring to light longstanding and emerging policy issues in the United States. From analyzing the proliferation of technologies used at the U.S. border to exploring hunger issues in the U.S. Latino population, the curation of knowledge and opinions in Volume 34 will certainly advance the effort to rebuilding and strengthening our communities.

Of course, this year's volume would not be possible without the countless hours of labor by our journal staff. Their passion for and commitment to amplifying the voices of Latinx leaders is truly admirable.

I also want to express my gratitude to Professor Nancy Gibbs and Assistant Director of Student Services Martha Foley, who offered words of encouragement and guidance during a unique and challenging year for student journals. Their guidance has in part contributed to the journal making its permanent transition to an all-digital format. This transition will offer a more strategic pathway for reaching targeted audiences and ensure the success of the journal in the digital era.

Many thanks to our executive advisory board for sharing invaluable institutional knowledge and words of wisdom. We appreciate all that you have contributed to promoting the success and sustainability of the Journal of Hispanic Policy, and we look forward to working with you to advance the journal to its next chapter.

Sincerely,

Thomas Franco
Editor-in-Chief, 2021-2022
Harvard Journal of Hispanic Policy

Pandemic-EBT in California: Lessons and Opportunities to End Hunger for Latino Families



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Abstract

Drawing on data from a statewide survey and interviews with Pandemic-EBT (P-EBT) recipients and stakeholders conducted in partnership with the California Association of Food Banks, this research examines the lessons learned and opportunities from the P-EBT program from the recipients' perspectives. It specifically analyzes Latino P-EBT recipient respondents' survey responses to understand their experience with food insecurity and P-EBT use. The research confirms that the chilling effects of public charge are still prevalent as P-EBT recipients hesitate to use their cards or apply for CalFresh, federally known as the Supplemental Nutrition Assistance Program (SNAP), and confirms that school meals play a critical role in improving food se-

cure. The research has important implications for federal and state policy to improve P-EBT and similar programs and enact a range of policy improvements to create a hunger-free future for Latino children and families.

Acknowledgments

I want to acknowledge the parents across California who shared their experiences with P-EBT. This research would not have been possible without them. I also want to thank the following individuals for their expertise and project advising: Jessica Bartholow, Former Policy Advocate of the Western Center on Law & Poverty; the Food Research and Action Center and Center for Budget and Policy Priorities; Second Harvest Food Bank of Silicon Valley and San Francis-

co-Marin Food Bank; the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA); and the UCLA Latino Policy and Politics Initiative.

Introduction

The ongoing COVID-19 pandemic has revealed and exacerbated the inequities experienced by Latino and other marginalized communities. During the early months of the pandemic, the U.S. social safety net became overwhelmed with the immediate public health need and economic crisis unfolding.¹ In particular, food banks were overwhelmed with a demand for food, school closures left many low-income children without access to reliable meals, and high unemployment rates sent families into financial instability. In response to COVID-19 related school and childcare closures, California received approval from the U.S. Department of Agriculture to operate a Pandemic Electronic Benefits Transfer (P-EBT program).² Under the guidance of USDA Food and Nutrition Service, the California Department of Social Services, and the California Department of Education, used a data matching system with existing case data to identify eligible children. Eligible children included those that received free and reduced-price meals and who were enrolled in other public benefits including CalFresh, CalWORKs, income-qualifying Medi-Cal, or were

homeless or in foster care. Children not already enrolled in these public benefits programs but were still eligible for free and reduced-price meals were required to submit an online application (available in English, Spanish, and Chinese). Once eligible children were identified, P-EBT cards were mailed to addresses on file. P-EBT cards could be used at any retailer accepting EBT and did not prevent children from also receiving “grab and go” meals from schools that were distributed during the pandemic.³ By September 2020, California issued nearly \$1.4 billion in benefits to 3.7 million school-aged children.⁴

A primary concern for Latino families was the possibility of being considered a public charge for using P-EBT. Under the Trump administration, an immigrant applying for a green card can be deemed a public charge if the Department of Homeland Security concludes that they will be dependent on government services including Medicaid, SNAP, and/or Section 8 housing.⁵ The Trump administration also considered factors such as income, education, and English proficiency – factors that disproportionately hurt immigrants from poorer countries.⁶ Alongside general disinformation and a lack of clarity regarding what is a public charge and what immigrant groups

are considered under a public charge, there was also confusion around whether P-EBT would be considered under a public charge test. Studies have already shown the chilling effects of public charge among immigrant and mixed-status families. For instance, an analysis of the American Community Survey (ACS) data for 2016 to 2019 found that SNAP and Medicaid enrollment declined faster for noncitizens when compared to U.S. citizens.⁷ These worrisome effects are also felt by children in immigrant and mixed-status households. Across states, the announcement of public charge on average was associated with a decrease of 260,000 in child Medicaid enrollment.⁸ In California alone, one in four low-income immigrant adults reported avoiding using public programs out of fear that their enrollment and or usage will negatively impact their immigration status or the status of their family members.⁹ Under the current administration, the public charge definition was modified back to the 1999 field guidance that does not include non-emergency federally funded Medicaid, Supplemental Nutrition Program (SNAP), Section 8 housing assistance, or public housing.¹⁰

Drawing on data from a statewide survey and interviews with P-EBT

recipients and stakeholders conducted in partnership with the California Association of Food Banks, this research examines the lessons learned and opportunities from the Pandemic EBT program from the recipients' perspectives.¹¹ It specifically analyzes Latino P-EBT recipient respondents' survey responses to understand their food insecurity experience and P-EBT usage. The research has important implications for federal and state policy to improve the P-EBT program and enact a range of policy improvements to create a hunger-free future for Latino children.

Latino Economic and Food Insecurity

When discussing the impact of P-EBT benefits for Latinos, it is important to consider the socio-economic context of Latino families receiving P-EBT to fully understand the program's importance. Barriers to a pathway to citizenship, legal status, or work authorization exacerbated existing structural inequalities such as health, economic, and employment disparities for Latino families.¹² Prior to the pandemic, 19.4% of Latinos live below the U.S. poverty line.¹³ Income for Latino households was on average \$47,675 compared to a \$65,041 income for white households.¹⁴ More specifically, 30% of Latinos live in households with annual incomes of less than \$25,000.¹⁵ Considering that

Latinos are overrepresented in low-wage service-sector jobs with almost no option for remote work, Latinos had higher rates of full-time job loss and reduced work hours compared to any other group during the early months of the pandemic.¹⁶ Unstable financial security paired with a sudden loss of income due to COVID contributed to Latino families falling behind on bill payments, inability to pay rent, and inability to afford food.¹⁷ Even by January 2021, when the economy had somewhat recovered from the pandemic, Latinos still represented 8.6% of job losses within unemployment rates.¹⁸

Contingent with financial instability, food insecurity also worsened. Pre-pandemic, one in five Latino households had at least one person experiencing food insecurity compared to one in ten white households.¹⁹ During the early months of the pandemic, food insecurity in Latino households rose from almost 16% in 2019 to more than 19% in 2020.²⁰ The situation is much more dire when looking at Latino households with children where 35% of these households experienced food insecurity in 2020.²¹ Considering that Latino families are more likely to be low-income and live in poorer neighborhoods with fewer options for nutritious foods and supermarkets, it is imperative that food benefits reach Latino families so that they have the resources to purchase

nutritious foods.²²

Financial stability and food insecurity go hand in hand when discussing families' well-being, and policymakers at the state and federal levels must identify ways to assist them. Discrimination based on race, ethnicity, gender, status, and income has affected Latinos in society's social, political, and economic aspects. It has created conditions that do not allow for upward mobility and keeps Latinos living in poverty with access to few resources. The following research reflects on the opportunity P-EBT represents for policymakers to assist Latino low-income, immigrant, and mixed-status families in accessing food.

Research Method

Conducted in partnership with the California Association of Food Banks (CAFB) and the Congressional Hunger CENTER (CHC), this research draws on data from a statewide survey and interviews with P-EBT recipients and stakeholders.²³ Based on the gaps in the literature, this study sought to understand the impacts of P-EBT on Latino families' food insecurity and its effect in conjunction with other food programs such as school meals and CalFresh. We used a mixed-methods design of two phases. The first phase consisted of a 30-question survey available in English, Spanish, and Chinese regarding experience with

using P-EBT cards, socio-economic factors of Latino P-EBT families, and an option to opt in to an interview to further share about their experience using P-EBT. The second phase consisted of 30-45 minute interviews via Zoom with P-EBT recipients in the languages mentioned. Factors in determining selected participants included whether children were enrolled in free or reduced-price meals (FRPM) under the National School Lunch Program, Medi-cal, or CalFresh and whether parents received Disaster Relief Assistance for Immigrants (DRAI) among other factors. To incentivize and help compensate potential survey respondents, we promoted on social media and through coalition listservs that all participants would be entered into a raffle where randomly selected winners would win a \$50 Visa gift card. To enter the raffle, survey respondents had to provide their email addresses as a form of contact. A total of 100 randomly selected winners were sent \$50 gift cards.

In the interest of protecting respondents' identity while seeking to specifically understand the experience of people from immigrant and mixed-status households, we did not directly ask about immigration status because we did not want it to be a barrier or concern in responding to the survey. Instead, we used three proxies as a way to disaggregate the data:

- Language in which the survey was

completed: We understand that the language survey respondents selected to complete the survey is not a determining factor of immigration status. Survey respondents could be fluent in other languages aside from the language they chose to complete their survey. However, given the limitations of not directly asking about immigration status, we considered language as a factor for potentially identifying P-EBT recipient respondents who are part of an immigrant or mixed-status household.

- Disaster Relief Assistance for Immigrants (DRAI) related responses: We used the question and responses related to DRAI, a one-time state-funded cash assistance disaster relief stimulus payment for undocumented immigrants, to identify respondents who are undocumented or part of a mixed-status household.²⁴
- Voluntary disclosure of status: We used survey responses and interviews where survey respondents voluntarily disclosed their status.

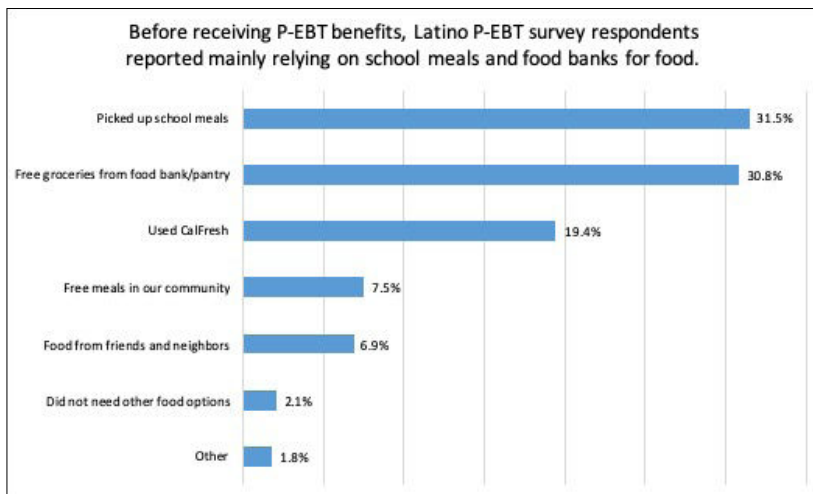
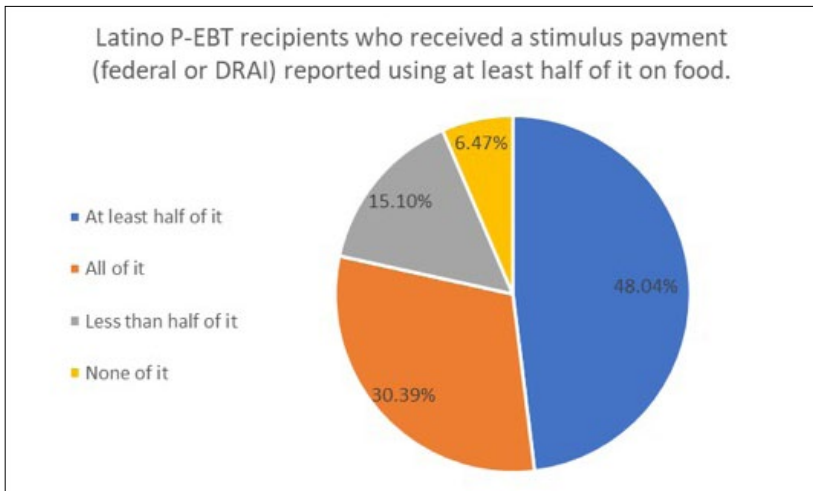
Findings

Financial and Food Resources for Latino P-EBT households

According to survey results, Latino households had at least one parent working odd hours or no parents working. About 50 percent of Latinos

surveyed reported that their income “went down by a lot” during the early months of the pandemic. The financial strain brought by the loss of income and additional responsibilities such as supporting online schooling forced families to ration food and fall behind on bill payments (including rent).²⁵ As one recipient states: “[P-EBT] changed my life because we made

less income, and although we lived paycheck to paycheck, the pressure [from the pandemic] was different. I don’t know where I am going to get the money.... I can’t pay bills this month...” Many Latino respondents reported relying on their COVID-19 stimulus check, using their savings, and borrowing money from family and friends to make ends meet.



Latino respondents that received federal or state DRAI assistance reported using about half of it to buy food. In May 2020, California enacted the Disaster Relief Assistance to Immigrants, providing one-time \$500 debit cards for immigrant families excluded from the CARES Act. However, this was limited to approximately 150,000 participants.²⁶ Latino respondents who fall into this category are most likely immigrants living in mixed-status households who were excluded from federal government relief.²⁷

Inadequate resources forced Latino respondents to search for and access government and charitable food resources. Before receiving or applying for P-EBT, Latino respondents stated that they picked up school meals from their child's school or groceries from a food bank to supplement their food budget. A P-EBT recipient shared, "My husband is the main income earner, and we have been using our savings, but they are quickly depleting. We have been going to food banks – my friends bring me food [milk and vegetables], and I get boxes of food from my son's school."

School meals remained a primary food source before receiving P-EBT benefits, while using P-EBT benefits, and after using P-EBT benefits. Waivers issued under the Families First Coronavirus Response Act allowed flexibility for school districts to distribute school meals outside

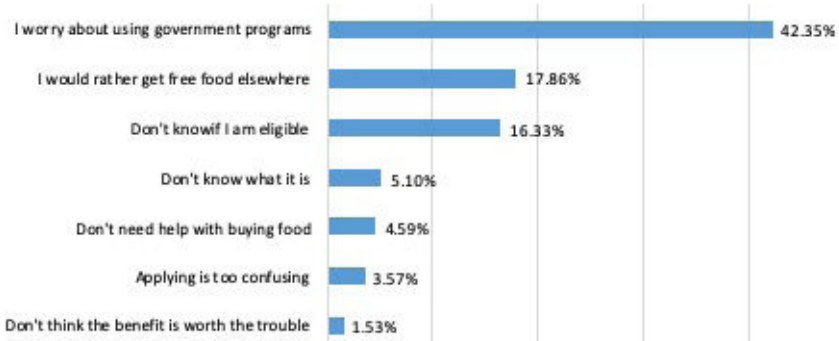
of typical settings (i.e., creating bus routes for delivering school meals, drive through, and grab and go) and to students not enrolled in their district.²⁸ This flexibility allowed parents and guardians to pick up meals on behalf of their children instead of requiring their children to be present. During a time of crisis, school meals and P-EBT assisted families in acquiring food.

P-EBT represented a temporary sense of security amidst great uncertainty that allowed families to stretch their food budget, reduce their worries about paying household expenses, and afford meals throughout the day. The combination of P-EBT and other food assistance resources proved vital for families needing flexibility in accessing groceries and alleviating financial strains.

Cal-Fresh and Public Charge Concerns

The fear of deportation and concerns over potential repercussions of receiving food benefits on gaining citizenship prevented many Latino immigrant and mixed-status families from applying to critical safety net programs like CalFresh. Across both English and Spanish-speaking Latino respondents, more than half were not already on CalFresh at the time they received P-EBT benefits.²⁹ In other words, P-EBT was able to reach families not enrolled in CalFresh and extend this crucial benefit. However,

Latino P-EBT recipients not enrolled in CalFresh reported being worried about using government programs.



Latino respondents that responded ‘not on CalFresh’ cited public charge concerns as their primary reason for not using a government program.

When food insecurity was at an all-time high, concerns over being considered a public charge were pervasive enough to prevent many Latinos that were likely eligible for benefits from accessing aid, thus jeopardizing their health and well-being.³⁰ For instance, Latino survey respondents who were part of an immigrant or mixed-status household reported viewing applying for and using CalFresh as a necessary risk for their family’s well-being. A Latina P-EBT recipient who is an immigrant mother shared, “I worry about being considered a public charge..... maybe I’ll regret it later, but for now, I need any help I can get.” Another respondent shared, “I was receiving

CalFresh, but since I was told that it could be a public charge and that it would affect future immigration proceedings, my husband told me to discontinue receiving CalFresh.” This is consistent with previous research documenting chilling effects across public benefit programs.³¹

Specific to P-EBT, one recipient shared, “I asked my neighbors and other parents who also had received P-EBT cards because while I was afraid to use it, my children needed food. I needed to get food for them.” Since P-EBT cards were registered under their children’s name, parents called their children’s school with questions and concerns because they trusted and felt safe asking for P-EBT related information from schools. A few Latino parents shared that if the card were issued under their name,

they would have instead not used it out of fear of being considered a public charge and instead use other food resources to get food. This reflects the paralyzing effect public charge concerns can have on Latino families accessing food. By directly issuing P-EBT benefits to children, it indirectly assisted Latino parents who would have rather avoided government assistance. Nonetheless, they expressed gratitude for being able to support their family through P-EBT benefits.

Due to the quick rollout of P-EBT, lack of federal guidance, and limited funding and support for states to implement P-EBT, information on how P-EBT relates to public charge did not reach Latino immigrant and mixed-status families in time to answer their concerns. Schools and immigrant community organizations acted as trusted sources of information and support for Latino families who received P-EBT and the broader Latino community.

Conclusion

As noted throughout the findings, the first implementation of P-EBT provided critical temporary relief but was limited in its impact due to existing conditions and structures that created economic and food insecurity. Latino respondents expressed feeling less anxious, stressed, and or worried about buying groceries

and paying for bills after receiving P-EBT.³² P-EBT managed to reach families not enrolled in CalFresh and extended a crucial food resource to families who, due to their status, have been excluded from government relief and experienced one of the highest rates of food insecurity.³³ For instance, Latino immigrant and mixed-status households reported public charge concerns and hesitancy to use P-EBT benefits.

The program's impact was somewhat limited, however, due to the deeply disparate rates of economic and food insecurity that the program could not fully address given the benefit levels set by federal rules. For example, Latino P-EBT recipients shared that they used their benefits during the first two weeks upon receiving them and resorted to food resources available to them before receiving P-EBT benefits.³⁴ This reflects the reality that without long-term solutions, one-time benefits like P-EBT are insufficient to alleviate food insecurity among families. It further underscores the need for food programs to have benefit levels adequate to meet families' needs.

Since the publication of the original report, there have been several federal and state policy improvements to Pandemic EBT and other child nutrition programs, that should be further bolstered to address the hunger rates: two years into the COVID-19

pandemic and still more than one in four (26.1%) of households with children reported food insecurity, with stark inequities for Black (37.1%) and Latino (33.4%) compared to white households with children (20.1%).³⁵

First, the United States Department of Agriculture expanded P-EBT eligibility for children under six in households that received CalFresh at any time since October 1, 2020, and lived in a county where at least one school or child care facility closed or operated with reduced hours.³⁶ This was a critical expansion considering that overall P-EBT survey respondents with more than one to two children reported having newborns or children under the age of five who were ineligible for P-EBT benefits at the time.³⁷

Second, as part of the American Rescue Plan signed by President Joe Biden, a 15% boost to P-EBT benefits was implemented, bringing in approximately \$200 million more for P-EBT benefits to 3.7 million California children.³⁸ In tandem with the eligibility expansion for the next distribution of P-EBT cards in California, the daily reimbursement rate increased to \$5.86 per child, effectively giving P-EBT recipients more benefits to use for food, extending their benefits for a longer time, and reducing worries about financial instability. As the survey responses showed, Latino P-EBT recipients paired their benefits with other food resources creating more

sustainable food sources.

Third, Governor Newsom made history by signing a package of legislation in California's 2021-22 budget that establishes a universal meal program in California by requiring schools to serve K-12 students' meals regardless of their eligibility for free or reduced-priced meals.³⁹ This will be implemented beginning in the 2022-23 school year, ensuring that there is not a school meals cliff for California children once federal waivers that were temporarily allowed free school meals, all expire.⁴⁰ Additionally, Senator Skinner (D-CA) has introduced SB 364 School Meals for All pending referral to the next policy committee, which would simplify the paperwork requirements for enrolling their children in free and reduced-price meals and would establish an Electronic Benefit Transfer (EBT) program to ensure that children have access to food when schools are closed during breaks and prolonged disasters.⁴¹ Confirmed by our findings, P-EBT complimented food resources like school meals by filling the gaps when families need flexibility in accessing food.

Finally, H.R. 3519 S.1831 The Stop Child Hunger Act of 2021 was recently introduced in Congress by Rep. Mike Levin (D-CA) and Senator Murray (D-WA), which would make –

a program that provides families with children eligible for FRPM an EBT card with \$30 or \$60 in monthly food benefits – a permanent nationwide program.⁴² This resource has proven to reduce childhood hunger in the summer months when schools are closed as it replaces the school meals that children would have received in school.⁴³ It would also provide grants for states to support their development and implementation of Summer EBT. Confirmed by our findings, P-EBT has demonstrated the necessity of having out-of-school time EBT, such as Summer EBT, as an additional food resource during periods when school campuses are closed. This is particularly important considering research has shown that childhood hunger increases over the summer.⁴⁴

Latino P-EBT recipients overwhelmingly spoke about the need for permanent, year-round solutions for child hunger that are available to all California communities regardless of immigration status. The survey and interview responses inform the following federal and state policy recommendations to both improve the P-EBT program and enact a range of policy improvements to create a hunger-free future for California's children.

Improve the P-EBT Experience for Families

1. In partnership with community

organizations, invest in clear messaging about P-EBT eligibility and public charge for immigrant communities: The complexities of public charge have created fear and confusion among immigrant and mixed-status families, even extending into the pandemic. P-EBT recipients cited schools and immigrant community organizations as trusted messengers of a government food program. The California Department of Social Services and California Department of Education should continue to clarify any confusion regarding who is considered a public charge and what programs are considered under a public charge determination.

Leverage Other Anti-Hunger Programs

2. Create strong avenues to connect P-EBT recipients to existing food programs such as CalFresh: The need for connecting eligible low-income families to food programs has never been more critical. Low-income Latino families eligible for public health benefits are either preemptively disenrolling from CalFresh or hesitant to use any government food assistance. Seamless and easy avenues created by the California Department of Social Services and California Department of Education can con-

nect P-EBT recipients to CalFresh and other existing food programs. It is important to create a safe and welcoming atmosphere for families to understand, enroll in, and use food programs.

3. Implement out-of-school-time EBT: P-EBT has demonstrated the necessity of having an additional food resource when school campuses are closed. The Stop Child Hunger Act 2021 would implement Summer EBT as a permanent, nationwide meal replacement EBT option when school meals are not available, including regularly scheduled breaks as well as unforeseen natural or human-made disasters, so food aid is available when children need it most. Out-of-school-time EBT like Summer EBT would assist the social safety net system to respond and lower food insecurity among families.

Policymakers at all levels of government have a responsibility to work together towards ending hunger and poverty for historically marginalized communities. The ongoing COVID-19 pandemic has revealed that the status quo was harmful to Latinos and other communities of color as many were living in food insecurity, lacking health care access, and living in poverty.

Policymakers and advocates should apply the lessons learned from the pandemic to form equitable policy solutions for all.

Bio

Rocio Perez is a first-year Master of Public Policy student at the UCLA Luskin School of Public Affairs, graduating in 2023. She is a first-generation Latina, born and raised in the Westlake McArthur Park neighborhood of Los Angeles. Prior to graduate school, Rocio interned for the Center for American Progress and was an Emerson Hunger Fellow for the California Association of Food Banks and Center for Law and Social Policy (CLASP), where she conducted research on immigration and health policy. Rocio has previous experience across the policy-making process, including staffing a bill aimed at protecting low-income workers under CalFresh and CalWORKs and contributing to detention research with the California Collaborative for Immigrant Justice (CCIJ) to successfully secure \$4.7 million in state funding for legal defense services. Most recently, Rocio authored and led a legislative briefing on her report, “Pandemic EBT in California: Lessons and Opportunities to End Childhood Hunger,” which analyzed the impact of P-EBT on recipient families including public charge concerns, the role of schools as trusted messengers, and P-EBT customer service. Moreover, Rocio has been published in the LA Times where she shares her family’s story

navigating the pandemic to urge policy makers to protect immigrant workers and families. Rocio is currently a LPPI Fellow with the UCLA Latino Policy and Politics Initiative where she is researching Latino integration in education, health, housing among other issue areas across 14 states. After completing her MPP, Rocio plans to return to Washington D.C to pursue a policy analyst role researching immigration policy issues including immigrant detention, health access, and asylum.

Endnotes

- 1 Aaron, Henry J. "The Social Safety Net: The Gaps That Covid-19 Spotlights." Brookings. Brookings, June 23, 2020. <https://www.brookings.edu/blog/up-front/2020/06/23/the-social-safety-net-the-gaps-that-covid-19-spotlights/>.
- 2 "Pandemic EBT." n.d. California Department of Social Services. Accessed March 1, 2022. <https://www.cdss.ca.gov/home/pandemic-ebt>.
- 3 Pandemic- EBT Communications Toolkit." Food Research & Action Center, January 2021. <https://frac.org/wp-content/uploads/PEBT-Comm-Toolkit.pdf>
- 4 "Pandemic EBT 1.0 Outcomes Report." California Department of Social Services, September 2020. <https://www.cdss.ca.gov/Portals/9/EBT/Pandemic-P-EBT-Outcomes-Report.pdf>
- 5 American Council on Education. "Trump Administration Releases Final Public Charge Rule." News Room, August 12, 2019. <https://www.acenet.edu/News-Room/Pages/Trump-Administration-Releases-Final-Public-Charge-Rule.aspx>.
- 6 "Trump Administration Releases Final Public Charge Rule," August 2019.
- 7 Randy Capps, Michael Fix. "Anticipated 'Chilling Effects' of the Public-Charge Rule

Are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families." [migrationpolicy.org](https://www.migrationpolicy.org), January 14, 2021. <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real>.

- 8 Barofsky, Jeremy, Rebecca Gale, and Arturo Vargas Bustamante. "Spreading Fear: The Announcement of the Public Charge Rule Reduced Enrollment in Child Safety-Net Programs: Health Affairs Journal." Health Affairs, October 1, 2020. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00763>.
- 9 Babey, Susan H., Joelle Wolstein, Riti Shimkhada, and Ninez A Ponce. "One in 4 Low-Income Immigrant Adults in California Avoided Public Benefit Programs, Likely Worsening Food Insecurity and Access to Health Care." UCLA Center for Health Policy Research, March 1, 2021. <https://healthpolicy.ucla.edu/publications/search/pages/detail.aspx?PubID=2072>.
- 10 "Public Charge Rule Changes, Explained." Community Service Society of New York. Accessed March 1, 2022. <https://www.cssny.org/pages/public-charge-immigration-explainer>.
- 11 Perez, Rocio. "Pandemic-EBT in California: Lessons and Opportunities to End Childhood Hunger." Pandemic-EBT in California - California Association of Food Banks. Congressional Hunger Center, March 2021. https://www.cafoodbanks.org/wp-content/uploads/2021/03/2021_CAFB_Pandemic-EBT_ExecSummary.pdf.
- 12 "Inequality and Covid-19 Food Insecurity- " 2021.
- 13 Bread for the World. "Hunger and Poverty in the Latino Community ." Fact Sheet: Hunger and Poverty in the Latino Community, September 15, 2019. <https://bread.org/sites/default/files/pennsylvania.pdf>.
- 14 "Hunger and Poverty in the Latino Community."2019
- 15 "Hunger and Poverty in the Latino Community."2019

- 16 “The Price of Being ‘Essential’: Latino Service Workers Bear Brunt of Coronavirus.” Los Angeles Times. Los Angeles Times, May 17, 2020. <https://www.latimes.com/california/story/2020-05-17/latino-essential-workers-coronavirus>; Zamarripa, Ryan, and Lorena Roque. “Latinos Face Disproportionate Health and Economic Impacts from Covid-19.” Center for American Progress, November 7, 2021. <https://www.americanprogress.org/article/latinos-face-disproportionate-health-economic-impacts-covid-19/>.
- 17 Ong, Paul, Tom Larson, and Don Mar. “Inequality and Covid-19 Food Insecurity.” eScholarship, University of California, February 18, 2021. <https://escholarship.org/uc/item/8sc4g4n1>.
- 18 “Latinos Face Disproportionate Health and Economic Impacts from Covid-19.” November 2021.
- 19 “Hunger and Poverty in the Latino Community.” 2019
- 20 “Latino Communities Experience Hunger at a Much Higher Rate.” Feeding America. Accessed March 1, 2022. <https://www.feedingamerica.org/hunger-in-america/latino-hunger-facts>.
- 21 “Pandemic-EBT in California: Lessons and Opportunities to End Childhood Hunger.” 2021
- 22 Ohri-Vachaspati P; DeWeese RS; Acciai F; DeLia D; Tilloch D; Tong D; Lorts C; Yedidia M; “Healthy Food Access in Low-Income High-Minority Communities: A Longitudinal Assessment-2009-2017.” International journal of environmental research and public health. U.S. National Library of Medicine, July 3, 2019. <https://pubmed.ncbi.nlm.nih.gov/31277250/>.
- 23 “Pandemic-EBT in California: Lessons and Opportunities to End Childhood Hunger.” 2021
- 24 Coronavirus (COVID-19) Disaster Relief Assistance for Immigrants.” The California Department of Social Services. Accessed March 1, 2021. <https://www.cdss.ca.gov/inforesources/immigration/covid-19-drai>
- 25 “Tracking the COVID-19 Recession’s Effects on Food, Housing, and Employment Hardships.” Center on Budget and Policy Priorities, January 2021. <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and>
- 26 Lorraine Tamburrino. “Forgotten During COVID: An Assessment of Immigrant Needs in the Pandemic.” CHIRLA, Summer 2020. <https://www.chirla.org/wp-content/uploads/2020/12/Forgotten-During-Covid-Report-FINAL.pdf>
- 27 “Fact Sheet: Mixed-status Families and COVID-19 Economic Relief.” National Immigration Forum. August 12, 2020. March 1, 2021. <https://immigrationforum.org/article/mixed-status-families-and-covid-19-economic-relief/>.
- 28 “School Meals.” U.S Department of Agriculture, Accessed March 1, 2021. <https://www.usda.gov/coronavirus/school-meals>.
- 29 “Pandemic-EBT in California: Lessons and Opportunities to End Childhood Hunger.” 2021
- 30 Bernstein, Hamutal, Michael Karpman, Dulce Gonzalez, and Stephen Zuckerman. “Immigrant Families Continued Avoiding the Safety Net during the ... - Urban.” Urban Institute, February 2021. <https://www.urban.org/sites/default/files/publication/103565/immigrant-families-continued-avoiding-the-safety-net-during-the-covid-19-crisis.pdf>.
- 31 “Amid Confusion over the Public Charge Rule, Immigrant ...” Urban Institute, May 2020. https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_2.pdf
- 32 “Pandemic-EBT in California: Lessons and Opportunities to End Childhood Hunger.” 2021
- 33 Carney, Megan, and Teresa Mares. “Op-Ed:

- How the Pandemic Made It Harder for Immigrants to Access Food.” Civil Eats, September 13, 2021. <https://civileats.com/2021/04/29/op-ed-how-the-pandemic-made-it-harder-for-immigrants-to-access-food/>.
- 34 “Pandemic-EBT in California: Lessons and Opportunities to End Childhood Hunger,” March 2021.
- 35 Schanzenbach, Diane. Northwestern University Institute for Policy Research. <https://www.ipr.northwestern.edu/state-food-insecurity.html>. Accessed May 5, 2022.
- 36 USDA. “P-EBT Guidance for Schools and Child Care.” P-EBT Guidance for Schools and Child Care | Food and Nutrition Service, January 29, 2021. <https://www.fns.usda.gov/disaster/pandemic/covid-19/ebt-state-plans-2020-2021>.
- 37 “Pandemic-EBT in California: Lessons and Opportunities to End Childhood Hunger.”2021
- 38 USDA. “Biden Administration Expands P-EBT to Benefit Millions of Low-Income and Food Insecure Children during Pandemic.” USDA, January 22, 2021. <https://www.usda.gov/media/press-releases/2021/01/22/biden-administration-expands-p-ebt-benefit-millions-low-income-and>.
- 39 California Department of Education. “AB 130, Universal Meals.” AB 130, Universal Meals - Nutrition (CA Dept of Education), July 27, 2021. <https://www.cde.ca.gov/ls/nu/ab130universalmeals.asp>.
- 40 “AB 130, Universal Meals” July 2021.
- 41 Skinner, Sen. Nancy. “SB-364 Pupil Meals.” Bill Text - SB-364 Pupil meals, February 10, 2021. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB364
- 42 “H.R.3519 - 117th Congress (2021-2022): Stop Child Hunger.” Accessed March 1, 2022. <https://www.congress.gov/bill/117th-congress/house-bill/3519>.
- 43 “The Summer Electronic Benefit Transfer Program (SUMMER EBT).” Food Research & Action Center, July 13, 2021. <https://frac.org/research/resource-library/the-summer-electronic-benefit-transfer-program-summer-ebt>.
- 44 “The Longest Summer.” No Kid Hungry, July 2020. <https://www.nokidhungry.org/longestsummer>.

The Hispanic/Latino Case Against Kaldor-Hicks Cost-Benefit Analysis in Risk Regulation



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Cost-Benefit Analysis in Risk Regulation

Kaldor-Hicks based cost-benefit analysis (CBA) is a methodology employed in regulatory policy to assess whether a regulatory decision is efficient—i.e., increases aggregate social welfare. CBA attempts to measure the impact of a regulatory decision on the status quo to estimate whether there would be a *Kaldor-Hicks* improvement—where the decision produces more benefits than costs, assuming a hypothetical lump sum compensation from those who benefitted to those who are worse off due to the decision. Supporters of this methodological framework contend that the use of CBA promotes a better state of affairs for the majority. There is intuitive appeal to this claim. However, the question of who benefits and who

is burdened by regulatory decisions matters greatly in risk reduction policy, potentially becoming an issue of life and death.

In the context of air quality standards, Hispanic/Latino populations—similar to low-income groups—have been consistently exposed to higher average levels of air pollution than white populations.¹ CBA, however, ignores these findings because the methodology is unable to capture information related to risk distribution and equity values. As a result, the output of the economic analysis myopically ignores the value of accruing significant regulatory benefits to Hispanic/Latino populations with a lower baseline of air quality.

Occupational risk data also unveils pronounced health inequities. Information from the Bureau of Labor

Statistics reveals that Hispanic/Latino workers experience the highest risk of occupational injuries, illnesses, and fatalities.² Further, new research suggests that the racial and ethnic disparity of Covid-19 infection is largely explained through the disproportionate distribution of high occupational risks experienced by foreign and US born Hispanics.³ CBA would be unable to account for this important information to better protect an increasingly diverse workforce.

Choosing to use CBA to evaluate or justify decisions in multiple areas of risk regulation implies that uncompensated *Kaldor-Hicks* Hispanic/Latino “losers” are the price to pay for an inequitable pursuit of efficiency. Voicing our case to policymakers against such an implication and urging for a granular assessment and management of risk will be crucial to alleviate the disproportionate health burdens of the Hispanic/Latino population.

The Policy and Legal Deficiencies of CBA in Risk Regulation

Justifying the use of CBA is difficult from a policy and legal perspective. The regulatory tool assumes equal footing among stakeholders and that risk regulations are distributionally neutral. Studies refuting the latter assumption are well-established in the context of environmental, health,

and safety risk regulations. Regarding the former, assuming equal footing disregards the consensus among welfare economists that monetary value is subject to a diminishing marginal utility—dictating that an additional dollar to a person facing water insecurity provides more welfare value than an additional dollar to a billionaire.⁴ Ignoring this economic principle runs afoul of CBA’s own policy maxim of welfare maximization, in disproportionate detriment to vulnerable groups such as the Hispanic/Latino population.

From a legal perspective, employing CBA defies the administrative principles of reasoned decision-making and environmental justice. The principle of reasoned decision-making under the Administrative Procedure Act constrains agency discretionary behavior to decisions based on consideration of all the relevant factors, as shown by the administrative record. A relevant factor for administrative agencies is the disproportionately high and adverse human health or environmental effects of their actions on marginalized communities pursuant to Executive Order 12898.⁵

The use of a welfarist methodology that arbitrarily ignores the polestar welfarist principle of diminishing marginal utility becomes legally suspect. The arbitrariness becomes more obvious when its effects are framed in the context of risk regulation and

environmental justice. For instance, agencies should consider that air quality protection is more valuable to disadvantaged individuals with a lower baseline of air quality. Thus, when deciding whether to establish a 2,500 health setback between fossil fuel productive operations and communities in close proximity, a holistic economic analysis should account for the informational granularities related to disproportionate exposure to pollution and local demographics.⁶ Unfortunately, CBA is incapable of processing those granularities to ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to environmental protection.

Together, the principles of reasoned decision making and environmental justice caution against the use of CBA because policy makers are ignoring valuable data that would better inform them when making complex decisions in risk regulation.⁷

Policy Alternatives to CBA in Risk Regulation

CBA was once conceived as the yardstick of rationality for regulators.⁸ Now, enthusiasm has dwindled, but it is still supported by some as the best available tool to evaluate and guide environmental, health, and safety policy. Extensive policy research on the subject, however, suggests there

are various qualitative and quantitative alternatives to CBA that promote regulatory stability, welfare, and equity in a more holistic manner.⁹

A quantitative alternative to CBA that accounts for distributional considerations is known as the social welfare function (SWF). SWF applies distributional weights to derive value as a cost or benefit of regulation, favoring the worse off through a reflection of the principle of diminishing marginal utility. Drawing on scholarly literature in welfare economics, Professor of Law and Economics Matthew D. Adler has published substantial work on the mechanics of SWF and how the framework is a better welfarist alternative to CBA.¹⁰ At the government level, the United Kingdom mandates the use of this appraisal method to evaluate regulatory health policy.¹¹

Supporters of qualitative alternatives to CBA generally endorse a ‘totality-of-the-circumstances’ or ‘dashboard’ approach where cost is considered through feasibility or cost-effectiveness analyses and complemented with a detailed narrative on how regulatory alternatives affect income groups differently.¹² This approach merges methodological tools that have been widely used in the U.S. to account for quantifiable costs with a qualitative report on risk distribution, equity, and other findings that is given due weight during decision-making. This “dashboard approach,”

as Professor of Law Daniel Farber calls it, “would provide information such as estimates of the severity of the risk being regulated; projections of compliance costs; quantifiable benefits of the regulation; impact of the regulation on social inequality; unquantifiable benefits; impacts on jobs,” among others.”¹³ Supporters of this alternative are skeptical about a methodological commitment to quantification and monetization due to data gaps relative to environmental and health benefits.¹⁴

Hispanic/Latino Voices to Promote Equitable Alternatives to CBA

On January, 2021, signaling that aggregate-only economic analyses yields inequitable outcomes, the Biden administration directed the Office of Management and Budget (OMB) to identify and “propose procedures that take into account the distributional consequences of regulations, including as part of any quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities.”¹⁵ As a result, OMB sought public input until July 6, 2021 on the development of public policy strategies that advance equity and the use of data to inform equitable public policy strategies.¹⁶

OMB is expected to provide new measures sensitive to distribution through the agency’s Equity Action Plan this year.

From a Hispanic/Latino perspective, it is imperative to understand the role a methodological tool that shapes risk reduction policy has in neglecting, at a minimum, or exacerbating, at a maximum, systemic bias in a landscape already afflicted with structural disparities. Adding our collective voices into this narrative to demand the government not to depreciate the value of Hispanic/Latino lives can be instrumental to the development of an equitable alternative to CBA in risk regulation.

The voices of the Hispanic/Latino community involved in regulatory policy could help the federal government in the successful adoption and implementation of a post-*Kaldor-Hicks* CBA approach to regulation. Federal agencies engaging in this type of policy evaluation, like OMB, should consider this when building its portfolio of career staffers.

Bio

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Endnotes

- 1 Jbaily, Abdulrahman, Xiaodan Zhou, Jie Liu, Ting-Hwan Lee, Leila Kamareddine, Stéphane Verguet, and Francesca Dominici. “Air Pollution Exposure Disparities across US Population and Income Groups.” *Nature* 601, no. 7892 (2022): 228–33. <https://doi.org/10.1038/s41586-021-04190-y>.
- 2 Seabury, Seth A., Sophie Terp, and Leslie I. Boden. “Racial and Ethnic Differences in the Frequency of Workplace Injuries and Prevalence of Work-Related Disability.” *Health Affairs* 36, no. 2 (2017): 266–73. <https://doi.org/10.1377/hlthaff.2016.1185>; Steege, Andrea L., Sherry L. Baron, Suzanne M. Marsh, Cammie Chaumont Menéndez, and John R. Myers. “Examining Occupational Health and Safety Disparities Using National Data: A Cause for Continuing Concern.” *American Journal of Industrial Medicine* 57, no. 5 (2014): 527–38. <https://doi.org/10.1002/ajim.22297>.
- 3 Schnake-Mahl, Alina S., Mariana Lazo, Kristina Dureja, Nahian Ehtesham, and Usama Bilal. “Racial and Ethnic Inequities in Occupational Exposure across and between US Cities.” *SSM - Population Health* 16 (2021): 100959. <https://doi.org/10.1016/j.ssmph.2021.100959>.
- 4 Adler, Matthew D. *Measuring Social Welfare: An Introduction*. New York: Oxford University Press, 2019.
- 5 Executive Order 12898 of February 11, 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” Code of Federal Regulations, title 3 (1994). <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.
- 6 Bono, James, Clair Brown, and Julia Walsh. “Recommendations to CalGEM for Assessing the Economic Value of Social Benefits from a 2,500 Buffer Zone Between Oil & Gas Extraction Activities and Nearby Communities” (2020).” <https://www.fractracker.org/a5ej20sjfwe/wp-content/uploads/2021/02/Recommendations-to-CalGEM-for-Assessing-the-Economic-Value-of-Social-Benefits-from-a-2500-Buffer-Zone-Between-Oil-Gas-Extraction-Activities-and-Nearby-Communities.pdf>.
- 7 Roman-Romero, Jorge, and Mariana Muñoz. “Unweighted Cost-Benefit Analysis Under Arbitrariness & Environmental Justice Principles,” *Vermont Journal of Environmental Law EcoPerspectives Blog* (2021). <https://vjel.vermontlaw.edu/unweighted-cost-benefit-analysis-under-arbitrariness-environmental-justice-principles>.
- 8 Sunstein, Cass R. *Risk and Reason: Safety,*

- Law, and the Environment. Cambridge: Cambridge Univ. Press, 2008; Sunstein, Cass R. Cost-Benefit Revolution. MIT Press, 2019.
- 9 Institute for Policy Integrity. “Comments on Avenues to Promote Equity and Advance Environmental Justice Through Rulemaking and Regulatory Analysis.” (2021). https://policy-integrity.org/documents/Comments_on_Advancing_Equity_and_Supporting_Under-served_Communities.pdf.
 - 10 Adler, Matthew D., and Koen Decancq. “Well-Being Measurement.” University of Antwerp Herman Deleeck Centre for Social Policy Working Paper No. 21/05 (2021). <https://medialibrary.uantwerpen.be/files/57001/30788099-3fd7-477e-8127-f2e-59bc262ed.pdf>; Adler, Matthew D. Measuring Social Welfare: An Introduction. New York: Oxford University Press, 2019; Adler, Matthew D. “Cost-Benefit Analysis and Distributional Weights: An Overview.” Duke Environmental and Energy Economics EE 13-04 (2014). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2467673.
 - 11 The Green Book: Central Government Guidance on Appraisal and Evaluation (2020). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf.
 - 12 Sinden, Amy. “A Cost-Benefit State? Reports of Its Birth Have Been Greatly Exaggerated.” Temple University Legal Studies Research Paper No. 2016-57 (2016). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2869832; Sinden, Amy. “The Shaky Legal and Policy Foundations of Cost-Benefit Orthodoxy in Environmental Law.” Law and Political Economy Symposium on Cost-Benefit Analysis (2021). <https://lpeproject.org/blog/the-shaky-legal-and-policy-foundations-of-cost-benefit-orthodoxy-in-environmental-law/>.
 - 13 Farber, Daniel. “Staying Within the Guardrails: Costs, benefits, risk, and equity are but a few of the inputs into a ‘dashboard approach,’ allow-

Commentary

It's Not Just About The Border: Mental Health Interventions In U.S. Immigrant Detention Facilities



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After multiple trips to immigrant detention facilities along the U.S.-Mexico border, a delegation of United States congresspeople recognized the need for mental health intervention in immigrant detention facilities.^{1,2} Immigrant detention facilities exist as a part of the U.S.'s overall immigration system, holding thousands of migrants each day and employing thousands of personnel. The U.S. Immigration and Customs Enforcement (ICE) currently lists 132 facilities in its national network and in fiscal year (FY) 2019, ICE reported an average daily population of 50,165 immigrants held in detention.^{3,4} In FY 2020, the daily census was reduced to an average of 33,724 detainees.^{5,1}

Members of the congressional delegation realized that the long-term, detrimental mental health consequences for migrants held in detention facilities and Customs and Border Patrol (CBP) personnel working in these facilities warranted legislative action.

Accordingly, on April 13, 2021, the Immigrants' Mental Health Act of 2021 (S.1100, H.R.2480) was introduced in the Senate by Senator Jeff Merkley from Oregon and the House of Representatives by Representative Grace F. Napolitano from California's 32nd district.^{6,7} Since the legislation's reintroduction to Congress last year, it has seen little to no movement.⁸ Almost a year has passed since its initial proposal, and this proposed legislative action requires immediate attention.

1 This reported 33% decrease in population size between FY 2019 and FY 2020 is thought to be a function of U.S. border closures and travel bans of the COVID-19 pandemic.

Over the last two decades, the United States has taken a range of actions targeting immigrants, including extensive deportation tactics and family separation policies. Between 2008 and 2016, over 2.7 million immigrants were deported.⁹ In 2018, the federal government adopted a punitive immigration policy of ‘zero tolerance’ whereby unauthorized immigrant parents traveling with their children were separated, detained in immigration facilities across the country, and criminally prosecuted by U.S. attorneys.¹⁰ While parents were held in federal jails or deported, children were detained in child detention facilities or released to sponsors without contact with their loved ones or knowledge that they were alive.

During the short-lived ‘zero tolerance’ policy era, the United States separated over 3,900 children from their families and detained and deported thousands of parents, causing severe and long-lasting psychological trauma on an already vulnerable and traumatized population.^{11,12} In November 2019, after a federal district court in California found that the ‘zero tolerance’ policy intentionally caused psychological trauma and distress, the judge ordered the government to provide mental health screenings and treatment for mental health conditions exacerbated by the policy.¹³

After the United States federal government was ordered to provide

mental health services to immigrants affected by the ‘zero tolerance’ policy and subsequent family separation, they contracted a California-based non-profit organization, Seneca Family of Agencies, to fulfill this directive. Since March 2020, the organization’s *Todo Por Mi Familia* program has located 1,300 released, eligible immigrant families and coordinated their mental health referrals including payment and interpretation services. By partnering with local clinics and legal organizations across the country, *Todo Por Mi Familia* built a national network of 540 trauma-informed, culturally responsive service providers and created a program remotely, during a pandemic. Similarly to the vision of the Immigrants’ Mental Health Act of 2021, the organization provides client-centered, trauma-informed, culturally-informed care to reunified immigrant families. In contrast to *Todo Por Mi Familia*’s service of migrants released from detention and reunified with their families, the proposed legislation intervenes directly within detention centers to serve both immigrants and officers. While this program differs slightly from the programming and goals proposed in the Immigrants’ Mental Health Act, *Todo Por Mi Familia* introduces a foundation that the bill’s sponsors can utilize to their advantage. *Todo Por Mi Familia*’s infrastructure serves as a guide to support the Immigrants’

Mental Health Act's future implementation by modeling a successful trauma-informed care approach and national network of mental and behavioral health experts.¹⁴

During his campaign, President Joe Biden released his plan for the U.S. immigration system if elected president. In summary, he promised to “take urgent action to undo Trump’s damage and reclaim America’s values, modernize America’s immigration system, welcome immigrants in our communities, reassert America’s commitment to asylum-seekers and refugees, tackle the root causes of irregular migration, and implement effective border screening.”¹⁵ His campaign website details dozens of more promises to deconstruct and revitalize immigration policies and practices and a handful of these promises have been addressed through executive orders and bills proposed to Congress.¹⁶ Yet, to “implement effective border screening,” the federal government should consider the directives proposed in the Immigrants’ Mental Health Act.¹⁷

As the country sees the mental health effects of trauma on recent immigrant populations who were separated from their families and held in detention facilities, revisiting the Immigrants’ Mental Health Act is crucial when discussing and implementing various immigration system reforms. Even though providing mental health screenings for

newly arrived immigrants is common protocol, there are several innovations in the proposed legislation. This legislation fills the detention system’s gap for effective and supportive mental health screenings and services for its immigrant detainees.

Initially, President Biden requested that Congress play an active role in addressing the country’s immigration system when he sent his U.S. Citizenship Act of 2021 to Congress on the first day of his presidency.¹⁸ However, the U.S. Citizenship Act has no explicit provision for immigrant mental health intervention. The Immigrants’ Mental Health Act is an attempt to correct this gap and help fulfill President Biden’s campaign promises.^{19,20} The bill is split into three main sections with clear, concise missions: (1) train CBP personnel on mental health issues and interventions, (2) staff border facilities and detention centers with mental and behavioral health specialists, and (3) prohibit the sharing of an immigrant’s mental health information during asylum determinations, immigration hearings, or deportation proceedings.^{21,22} This innovative piece of legislation would be a step towards remedying historical inefficiencies, modernizing our immigration system, and implementing effective border screenings.

This bill aims to expand and improve access to trauma-informed, culturally competent mental health

screenings and interventions for newly arrived immigrants in a couple of ways. First, border agents will receive proper education and training to work with immigrants, enabling them to “identify the risk factors and warning signs in immigrants and refugees of mental health issues relating to trauma” and deliver trauma-informed crisis interventions. Second, there will be “at least one qualified mental or behavioral health expert to each U.S. Customs and Border Protection facility.” These experts will be recruited and hired based on their bilingual language capacity, ability to execute culturally appropriate and trauma-informed interventions, and expertise in child and family mental health. If the bill progresses, the federal government ought to request the expertise of experienced clinicians, like those at *Todo Por Mi Familia*, as they begin to evaluate candidates to fill these positions. Notably, this bill also affirms the safety and privacy of immigrant individuals, families, and children as they express their traumatic experiences to mental health providers.^{23,24}

Furthermore, this bill will address the severe, toxic stress and trauma that CBP personnel face at the border. Historically, CBP struggles to recruit, hire, and retain agents and officers due to the difficulty and danger of the job, poor federal benefits, and work environment.²⁵ There was a marked

decrease in agents between FY 2018 and FY 2019.²⁶ In FY 2018, U.S. Border Patrol had 23,645 agents, but in FY 2019, the agency employed 19,648 agents. In FY 2019, there were 16,731 U.S. Border Patrol agents deployed at the U.S.-Mexico border, with an additional 2,073 agents stationed at the U.S.-Canada border.²⁷ Even though former President Donald Trump signed an executive order for the hiring of thousands more CBP agents, the job remains unpopular. Some argue that the low recruitment levels are due to the harsh policies adopted between 2017-2020.²⁸ As the U.S. Border Patrol struggles to recruit and retain agents, current CBP agents may be overextended and experience additional stress and be overwhelmed. Without proper training in mental health interventions, screenings, and personal wellness tools, agents run the risk of harming both themselves and the immigrants in their custody at ICE facilities. In an effort to humanize and provide better conditions for immigrants in custody, this bill also humanizes the individuals tasked with securing and protecting the border.

Treating the mental health concerns of both newly arriving immigrants and federal government agents while maintaining confidentiality and security should capture the attention of the American public and all government officials. Instead of separating the health and wellbeing

of immigrants and border officers, the Immigrants' Mental Health Act of 2021 understands that this is a collective trauma experienced by both groups within and outside of immigrant detention facilities.

Bio

Julia Hernandez Nierenberg is a dual-degree Master of Social Welfare and Master of Public Policy student at the UCLA Luskin School of Public Affairs, graduating in 2023. Julia is grew up between San Francisco and Oakland, never thinking she would relocate to Southern California. She serves as the co-chair of Luskin's Latinx Caucus, and as an advisory board member of Jewtina y Co., an organization serving the global Latinx-Jewish community. She holds a B.A. in International Studies and Spanish Studies from American University in Washington, DC. Prior to graduate school, Julia worked at Seneca Family of Agencies as a Wraparound Support Counselor for youth and families affected by the foster care and juvenile (in)justice systems and a Todo Por Mi Familia program Outreach Coordinator for immigrant families separated at the border seeking mental health services. Since beginning graduate school in Los Angeles, Julia has completed clinical internships at The Karsh Family Social Service Center and at the Wellnest Life Learning Center. Julia is curious about how historical decisions, policies, and laws premeditated by government institutions affect people's life

choices and opportunities. She is currently a Graduate Fellow at the UCLA Latino Policy and Politics Institute, where she is pursuing her interests in the intersections of immigration, mental health, education, and social welfare policy. After completing her graduate degrees, Julia plans to work as an immigrant social worker, obtaining licensure and advocating for families in her community.

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Endnotes

- 1 "Rep. Napolitano & Sen. Merkley Re-introduce Immigrants' Mental Health Act" (press release), April 14, 2021, <https://napolitano.house.gov/media/press-releases/rep-napolitano-sen-merkley-re-introduce-immigrants-mental-health-act>.
- 2 "Rep. Napolitano & Sen. Merkley Re-introduce Immigrants' Mental Health Act" (press release), April 14, 2021, <https://www.merkley.senate.gov/news/press-releases/rep-napolitano-and-sen-merkley-re-introduce-immigrants-mental-health-act-2021>.
- 3 U.S. Immigration and Customs Enforcement, Ice Detention Statistics, 2022, <https://www.ice.gov/detain/detention-management>.
- 4 U.S. Immigration and Customs Enforcement, *U.S. Immigration and Customs Enforcement Fiscal Year 2020 Enforcement and Removal Operations Report*, 2020, <https://www.ice.gov/doclib/news/library/reports/annual-report/eroReportFY2020.pdf>.
- 5 U.S. Immigration and Customs Enforcement, *U.S. Immigration and Customs Enforcement*

- Fiscal Year 2020 Enforcement and Removal Operations Report.*
- 6 U.S. Congress, House, *Immigrants' Mental Health Act of 2021*, H.R.2480, 117th Cong., 1st sess., introduced in House April 14, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/2480>.
 - 7 U.S. Congress, Senate, *Immigrants' Mental Health Act of 2021*, S.1100, 117th Cong., 1st sess., introduced in Senate April 14, 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/1100>.
 - 8 U.S. Congress, House, *Immigrants' Mental Health Act of 2021*, H.R.2480, 117th Cong., 1st sess., introduced in House April 14, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/2480>.
 - 9 American Immigration Council Staff, "President Obama's Legacy on Immigration," *Immigration Impact* (blog), January 20, 2017, <https://immigrationimpact.com/2017/01/20/president-obamas-legacy-immigration/>.
 - 10 "Q&A: Trump Administration's 'Zero-Tolerance' Immigration Policy," *Human Rights Watch* (blog), August 16, 2018, <https://www.hrw.org/news/2018/08/16/qa-trump-administrations-zero-tolerance-immigration-policy>.
 - 11 U.S. Department of Homeland Security, *Initial Progress Report: Interagency Task Force on the Reunification of Families*, June 2, 2021, https://www.dhs.gov/sites/default/files/publications/21_0602_sl_family-reunification-task-force-120-day-progress-report.pdf.
 - 12 Miriam Jordan, "U.S. Must Provide Mental Health Services to Families Separated at Border," *New York Times*, November 6, 2019, <https://www.nytimes.com/2019/11/06/us/migrants-mental-health-court.html>.
 - 13 Jordan, "U.S. Must Provide Mental Health Services to Families Separated at Border."
 - 14 "Todo Por Mi Familia," Seneca Family of Agencies, accessed February 20, 2022, <https://senecafoa.org/todopormifamilia/>.
 - 15 "The Biden Plan for Securing Our Values as a Nation of Immigrants," Joe Biden for President Official Campaign Website, accessed February 15, 2022, <https://joebiden.com/immigration/>.
 - 16 The White House Briefing Room, "Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System," *The White House* (press release), January 20, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/>.
 - 17 "The Biden Plan for Securing Our Values as a Nation of Immigrants."
 - 18 The White House Briefing Room, "Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System."
 - 19 U.S. Congress, House, *Immigrants' Mental Health Act of 2021*, H.R.2480.
 - 20 U.S. Congress, Senate, *Immigrants' Mental Health Act of 2021*, S.1100.
 - 21 U.S. Congress, House, *Immigrants' Mental Health Act of 2021*, H.R.2480.
 - 22 U.S. Congress, Senate, *Immigrants' Mental Health Act of 2021*, S.1100.
 - 23 U.S. Congress, House, *Immigrants' Mental Health Act of 2021*, H.R.2480.
 - 24 U.S. Congress, Senate, *Immigrants' Mental Health Act of 2021*, S.1100.
 - 25 Ted Hesson, "The Border Patrol's recruiting crisis," *POLITICO*, February 10, 2019, <https://www.politico.com/story/2019/02/10/border-patrol-recruitment-crisis-1157171>.
 - 26 U.S. Customs and Border Protection, *U.S. Border Patrol Fiscal Year Staffing Statistics (FY 1992-FY2019)*, January 29, 2020, <https://www.cbp.gov/document/stats/us-border-patrol-fiscal-year-staffing-statistics-fy-1992-fy-2019>.
 - 27 U.S. Customs and Border Protection, *U.S. Border Patrol Fiscal Year Staffing Statistics (FY 1992-FY2019)*.
 - 28 Hesson, "The Border Patrol's recruiting crisis."

Commentary

Competition in Cyberspace: Water Infrastructure of Rural America



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In an era of strategic competition, the United States finds itself ever more on the defensive in cyberspace, desperately playing catch up to strengthen its digital infrastructure. The COVID-19 pandemic saw an extraordinary rise in cyber incidents as offices turned virtual and Americans shifted to online services to work remotely. Further, while media outlets fixate on cyber threats to the energy sector, our critical water infrastructure is ripe for disruption and degradation by cyber actors. Specifically, water infrastructure in rural America is at significant risk because most water systems service populations under 3,300, placing them in the unregulated territory by the EPA with little funding for local governments to purchase state-of-the-art cybersecurity systems. Our blind spot leaves our rural water supply suscep-

tible to ransomware or degradation by contamination or a disruption of service to agriculture sectors and disadvantaged Hispanic communities that supply the labor. This brief offers three policy recommendations: 1) expand the USDA's technical assistance program for rural America's water infrastructure to include cybersecurity assistance 2) Establish a Water and Wastewater Infrastructure Cybersecurity Program at the Environmental Protection Agency to enhance cybersecurity in the water sector 3) Mandate the self-monitoring of small rural community water network systems.

Introduction:

During the COVID-19 pandemic, the United States experienced two catastrophic infrastructure scenarios: A loss of the electrical grid in Texas

and a disruption to our oil pipeline. The loss of electricity by the Texas grid proved fatal, with 700 people passing because they lacked the energy to heat their homes.¹ The loss of electricity was due to an unexpected winter storm because of climate change. However, the reality is that this could happen because of a disagreement with a geopolitical rival. In 2016 Russia retaliated against Ukraine in cyberspace and effectively took down their electrical grid signaling their resolve in the ongoing civil war.² The downing of Ukraine's electrical grid serves as an example of our rivals' cyber power and the danger they pose to the critical infrastructure of the United States. Turning to the Colonial pipeline incident, this was not an action by a nation-state but rather a criminal organization using ransomware that successfully received a payday of \$5 million.³ The immediate effect of the ransomware hack was the complete shutdown of the pipeline that delivers 2.5 million barrels of petrol products across the east coast of the United States, which caused fuel shortages.⁴ The attack on our energy operators is alarming. However, there is a different sector, less regulated and underfunded, but if disrupted, could contaminate an essential resource to our economic prosperity and health more than oil and electricity. This is our critical water infrastructure in rural America, and not only will

infrastructure be at risk of disruption, but the population relying on services might face disproportional public health and economic burdens.

A Paradigm Shift: From Land, Sea, Air, and Space to Cyberspace

In the aftermath of the September 11, 2001, terrorist attacks in the United States, the Department of Homeland Security (DHS) was created to secure the nation's critical infrastructure from catastrophic attacks.⁵ The DHS feared a terrorist attack on our water infrastructure, either through biological and chemical agents or physical destruction.⁶ Under these scenarios, the federal government feared that attacks could lead to flooding, contamination, and disruption of economic activities. However, in the decade following 9/11, a growing fear of a "Cyber Pearl Harbor" against our nation's critical infrastructure prompted the federal government to consider the risk to critical infrastructure by cyber-attacks.⁷ Real-world examples include the attempted destruction of networks that managed oil production at Saudi Arabia's Aramco and the WannaCry ransomware attacks.⁸ The attack on Saudi Arabia's oil conglomerate was a show of force by Iran to signal its cyber power and provides an additional tool for statecraft by any nation that seeks another pressure point versus a rival. On the other hand, ransomware

is mainly used by non-state actors seeking lucrative earnings. The difference was the WannaCry ransomware attack pioneered by North Korea to steal millions and circumvent international financial sanctions. Enough was enough, and on November 13, 2018, Congress passed the CISA Act to create the Cybersecurity & Infrastructure Security Agency (CISA). The creation of CISA by the U.S. formally recognized that threats to our nation's infrastructure evolved from physical to virtual.

Water as Systemically Important Critical Infrastructure

Moving to secure our digital infrastructure, CISA designated Water and Wastewater as one of sixteen Critical Infrastructure sectors because both physical and virtual assets, systems, and networks by water and wastewater treatment systems are vital for life and economic activity.⁹ There are two types of water systems at risk of cyberattacks. The first type is community water systems (CWS), and these systems range from schools to hospitals or mobile home communities. More broadly, they are public water systems that supply water to the same population year-round.¹⁰ The second type of water system at risk is publicly owned treatment works (POTW) which operate as treatment centers that process sewage and wastewater before it is discharged to water bodies,

land, or reused.¹¹ Due to a lack of data availability on POTWs, they are excluded from this analysis.¹² Here on after, both CWS and POTW will be referred to collectively as community water systems.

Legislation and oversight

The protocols governing cybersecurity for our water infrastructure were updated in 2018 by America's Water Infrastructure Act (AWIA).¹³ The AWIA empowers the Environmental Protection Agency to oversee over 140,000 community water systems. Regarding security, the AWIA directs community water systems serving more than a population of over 3,300 to develop and update risk assessment and emergency response plans. In addition, operators of community water systems must certify risk assessments through the EPA. So, what is water cybersecurity? It starts with Supervisory Control and Data Acquisition (SCADA) systems.

Operations, tradeoffs, and vulnerabilities

The control and oversight of day-to-day operations for critical infrastructure, from energy to water, use a standard system known as Supervisory Control and Data Acquisition (SCADA). A SCADA system provides a visual into the different operations of community water systems and their distribution network. The SCADA system offers

a graphical overview of reservoirs, filter plants, valve stations, chemical levels, and the pipe distribution network.¹⁴ In addition, it provides notification to management whenever there are failures, malfunctions, or unbalanced levels of treatment chemicals. At scale, SCADA systems work efficiently to manage onsite within a control room or remote. However, SCADA systems are scaled down on their features to be more affordable for rural community water systems. Maintenance is a critical tradeoff of SCADA systems, both for urban and rural community water systems. Inherently, SCADA systems are expensive to maintain, and on average, hardware needs a change every five years for compatibility with software updates.¹⁵ Changing equipment is not feasible for rural community water systems, so operators are left using legacy systems that are no longer supported with updates to patch bugs or plug unknown backdoors developers leave by mistake. Operating on legacy systems is a problem that the federal government oversees, but only if a community water system serves a population of 3,300 or more, which leaves smaller systems vulnerable and on their own with little financial support or incentive to upgrade their systems.

Funding for SCADA

A clear divide between urban and rural

regions on funding for community water systems impacts the technology available to safeguard, monitor, and meet EPA requirements. For example, this year, a community water system in the California Bay Area was a target and penetrated, providing access to the hacker.¹⁶ Fortunately, this facility had the funding and staff to actively monitor its network system, isolate, and remove intruders. This is because California spends roughly \$37 billion on community water systems funded through fees and local taxes.¹⁷ However, this is not the case in rural America, where community water systems consolidate and attempt to spread debt among a larger group of customers to fund operations.¹⁸ There is a difference in funding availability to fund operations between urban and rural community water systems, leading to legacy network systems and understaffed operations. The lack of funding and no federal certifications for water utilities serving less than 3,300 populations is a blind spot for CISA to monitor this critical infrastructure.

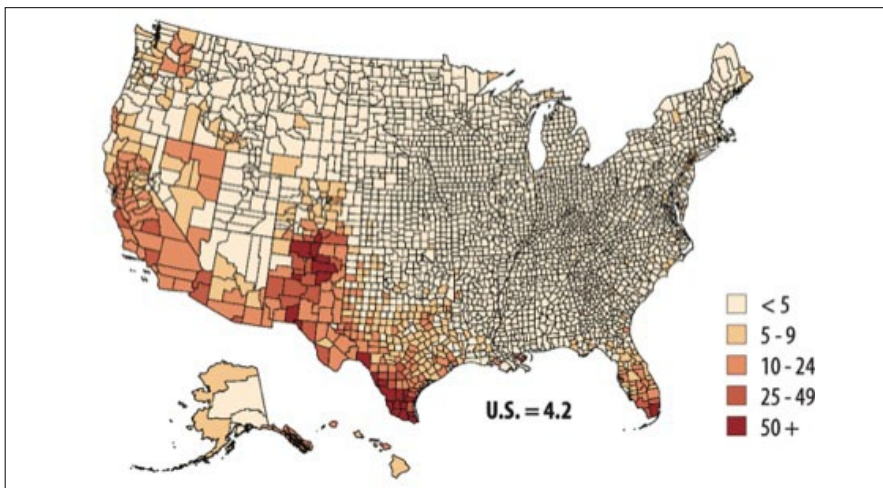
More importantly, criminals and cyber-state actors are aware of this blind spot because it is already being exploited. For example, ten years ago, Reuters reported the first rural community water system hack through an outdated SCADA system that shut down a critical pump, stopping water flow.¹⁹ Luckily, the hacker lost access

the next day, and the facility reactivated the pump. In a scenario where access was encrypted and the system offline, thousands of customers would not receive water to cook, shower, or drink. On a larger scale, any business that relies on water delivery, be it a flower shop, farm, or industrial manufacturing, would see its economic activities disrupted. This incident occurred ten years ago, before the colonial pipeline hack and the rise of ransomware. Now the environment is primed for disruption, yet the federal

government still has not addressed the insecurity of rural community water systems. This is a critical weakness for heavily water-intensive industries and disproportionately places an additional economic burden on its labor force. Let us consider vulnerable farming communities in Texas as a case example.

Defend Hispanic Farming Communities

Figure 1: Hispanic-operated Farms as Percent of Total Farms



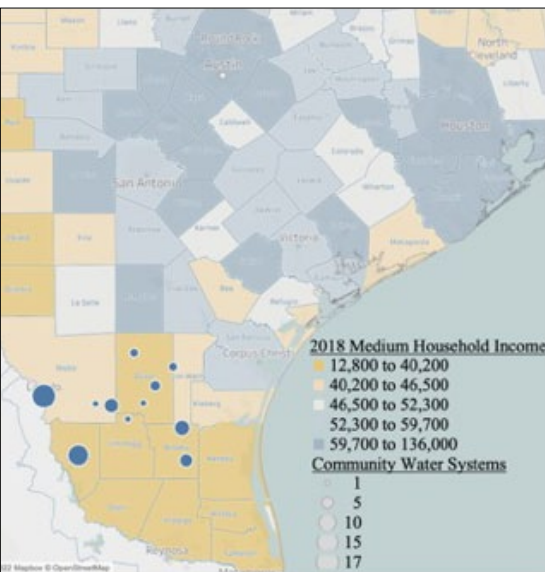
Source: United States Department of Agriculture, National Agricultural Statistics Service 2017²⁰

Our agriculture industry is heavily susceptible to disruption or degradation should a water utility be compromised. This is because farms in Texas are concentrated in rural communities and are heavily reliant on water flow-

ing from utilities that use legacy systems.²¹ As such, crops are vulnerable to disruption or contamination, as are the Hispanic farming communities that contribute the manual labor. The United States Department of Agriculture, National Agricultural Statistics Service conducts a census every five years and identifies Hispanic farming communities. The last cen-

sus in 2017 identified four southern Texas counties, where 80 percent or more of farms were Hispanic operated. In Figure 1, we can observe a heavy concentration in Zapata (94 percent), Brooks (88 percent), Duval (81 percent), and Webb (80 percent) counties.²² However, these communities also find themselves burdened by socioeconomic conditions.

Figure 2: CWS In Texas Hispanic Farming Communities²³



Data Source: For Community Water Systems, see EPA and SDWA 2021 at <https://echo.epa.gov/tools/data-downloads/sdwa-download-summary>. Tableau’s connection to the U.S. Census layered the Population and Income data.

Figure 2 highlights the population, median household income, and community water systems in Hispanic communities making up the top farming counties in Texas. In all, 14 community water systems serve an average of 847 people across the four counties. Without further insight into the cybersecurity status of these community water systems, these communities are at risk of disruption to their way of life. A service disruption or degradation would harm and set back a community that already suffers from lower income. On average, Hispanic households across the six counties make a median of \$35,974, which is \$13,286 lower than the Texas Household Income for Hispanic households at \$49,260.²⁴ By not addressing the cybersecurity of rural community water systems, we leave already disadvantaged Hispanic communities more vulnerable once cyber actors find a path into SCADA systems and disrupt or degrade their water supply.

Policy Action and Recommendations

The rising threat of cyber incidents highlights the need to improve our digital defense in rural America. Three recommendations exist that policymakers can introduce to help improve the cybersecurity of rural community water systems. The Cyberspace Solarium Commission authors

two of the three proposals; The first recommendation is to include cybersecurity within an existing technical assistance program called the circuit rider program in the U.S. Department of Agriculture (USDA) to provide technical assistance to rural water and wastewater infrastructure providers. Whenever a CWS contacts the circuit rider program for help, the USDA dispatches a technical assistance team to the site for support. This proposal focuses on the USDA because the USDA is the agency with jurisdiction specific to rural water systems serving a population smaller than 3,300.²⁵ Further, this recommendation is modeled after a current technical assistant program within USDA and has a proven track record of understanding the needs of rural America. The second proposal calls for creating a Water and Wastewater Infrastructure Cybersecurity Program at the Environmental Protection Agency to enhance cybersecurity in the water sector. This program would perform risk assessments and provide advisory support regarding developing and implementing policies, plans, and procedures for cybersecurity readiness and resilience targeted at water systems serving populations less than 100,000. Implementing these proposals could improve the digital defense of our water infrastructure in rural America and keep Hispanic communities safe from disruption

and degradation. The final recommendation relies on two parts, 1) mandate the self-regulation of CWS through network monitoring software, and 2) the federal government shall collaborate with industry partners to provide free monitory software for CWS that serve a population size smaller than 3,300.

Bio

Jose Macias is a first-generation Chicano and is originally from a small border town in southern California but currently resides in Washington DC as a Public Policy Fellow (PPF) for the Congressional Hispanic Caucus Institute (CHCI). Prior to joining CHCI, Jose focused on national security by taking courses centered on drivers of political grievances at the heart of interstate and intrastate conflicts. Jose built on this curriculum by interning for the U.S. Mexico Embassy and studying abroad at Universidad Nacional Autónoma de Mexico (UNAM) in Mexico City to specialize in emerging threats in Latin America. Then, he returned to serve as a public policy intern for the California Governor's Office of Planning & Research (OPR) and California Strategic Growth Council (SGC). Under OPR and SGC, he worked on projects to remedy political grievances through inclusive grants and programs. After graduating, he pivoted to cyber conflict research by interning for the U.S. Department of Defense and Army Cyber Command to cultivate conceptual

models of cyberspace using open-source, dyadic datasets, and academic journals. In his first placement as a PPF, Jose advanced cybersecurity by assisting in the passage of Senator King's Defense against U.S Infrastructure Act (DUSI) out of its committee of jurisdiction. He also wrote a provision in DUSI to expand a cyber threat sharing information environment between federal agencies and improve intelligence sharing on cyber threat actors. In the Spring of 2022, Jose was placed with the Center for Strategic and International Studies (CSIS) and conducted research on emerging technology and the threats they posed under great power competition.

Jose graduated from the University of California, Davis with degrees in Political Science and International Relations.

Endnotes

- 1 Simon, Madeleine. "Texas Power Outage Deaths: Is Cruelty and Neglect Our New Energy Policy?" *The Hill*, June 28, 2021. <https://thehill.com/changing-america/opinion/560540-texas-power-outage-deaths-is-cruelty-and-neglect-our-new-energy>.
- 2 Sanger, David E. "Utilities Cautioned about Potential for a Cyberattack." *The New York Times*. *The New York Times*, March 1, 2016. <https://www.nytimes.com/2016/03/01/us/politics/utilities-cautioned-about-potential-for-a-cyberattack-after-ukrains.html>.
- 3 Sanger, David E., and Nicole Perloth. "Pipeline Attack Yields Urgent Lessons about U.S. Cybersecurity." *The New York Times*. *The New York Times*, May 14, 2021. <https://www.nytimes.com/2021/05/14/us/politics/pipeline-hack.html>.
- 4 Bordoff, Jason. "The Colonial Pipeline Crisis Is a Taste of Things to Come." *Foreign Policy*, May 17, 2021. <https://foreignpolicy.com/2021/05/17/colonial-pipeline-crisis-cyber-attack-ransomware-cybersecurity-energy-electricity-power-grid-russia-hackers/>.
- 5 The White House. "Homeland Security Presidential Directive 7: Critical Infrastructure Identification, Prioritization, and Protection." *Cybersecurity and Infrastructure Security Agency CISA*. Accessed December 7, 2021. <https://www.cisa.gov/homeland-security-presidential-directive-7>.
- 6 Copeland, Claudia. "Terrorism and Security Issues Facing the Water Infrastructure Sector." *Congressional Research Service*, December 15, 2010. <https://sgp.fas.org/crs/terror/RL32189.pdf>.
- 7 Bumiller, Elisabeth, and Thom Shanker. "Panetta Warns of Dire Threat of Cyberattack on U.S." *The New York Times*. *The New York Times*, October 12, 2012. <https://www.nytimes.com/2012/10/12/world/panetta-warns-of-dire-threat-of-cyberattack.html>.
- 8 See: Reuters. "Aramco Says Cyberattack Was Aimed at Production." *The New York Times*, December 9, 2012. <https://www.nytimes.com/2012/12/10/business/global/saudi-aramco-says-hackers-took-aim-at-its-production.html>.
- 9 Sanger, David E. "U.S. Accuses North Korea of Mounting WannaCry Cyberattack." *The New York Times*. *The New York Times*, December 19, 2017. <https://www.nytimes.com/2017/12/18/us/politics/us-north-korea-wannacry-cyber-attack.html>, <https://www.opswat.com/blog/massive-ransomware-attack-hits-critical-infrastructure-plants-and-organizations-worldwide>.
- 10 CISA. "Critical Infrastructure Sectors." *Cybersecurity and Infrastructure Security Agency (CISA)*. Accessed December 7, 2021. <https://www.cisa.gov/critical-infrastructure-sectors>.
- 10 EPA. "Information about Public Water Systems." *EPA. US Environmental Protection Agency*. Accessed December

- 7, 2021. <https://www.epa.gov/dwreginfo/information-about-public-water-systems>.
- 11 EPA. "Publicly Owned Treatment Works (POTW): National Emission Standards for Hazardous Air Pollutants (NESHAP)." EPA. US Environmental Protection Agency. Accessed December 7, 2021. <https://www.epa.gov/stationary-sources-air-pollution/publicly-owned-treatment-works-potw-national-emission-standards>.
 - 12 A national US dataset on the location of POTW's could not be located. This could be due to the sensitive nature of POTW's as targets for an attack of some form of physical disruption.
 - 13 US Congress. "America's Water Infrastructure Act." Congress.gov. Accessed December 7, 2021. <https://www.congress.gov/115/plaws/publ270/PLAW-115publ270.pdf>.
 - 14 Sagues, Paul. "Why SCADA Has Failed Rural Water and How Cloud Technology Is Fixing the Failure." California Water Journal, 2018. <https://y0bq54dlmjxyjult3melv1vx-wpengine.netdna-ssl.com/wp-content/uploads/2019/04/xio-california-water-journal.pdf>. Pg. 8
 - 15 Ibid Pg. 8
 - 16 Collier, Kevin. "A Hacker Tried to Poison a Calif. Water Supply. It Was as Easy as Entering a Password." NBCNews.com. NBC Universal News Group, June 17, 2021. <https://www.nbcnews.com/tech/security/hacker-tried-poison-calif-water-supply-was-easy-entering-password-rcna1206>.
 - 17 Chappelle, Caitrin, Ellen Hanak, and Annabelle Rosser. "Paying for California's Water System." Public Policy Institute of California. Public Policy Institute of California, October 5, 2021. <https://www.ppic.org/publication/paying-for-californias-water-system/>.
 - 18 See EPA. "Small Drinking Water Systems Research." EPA. US Environmental Protection Agency. Accessed December 7, 2021. <https://www.epa.gov/water-research/small-drinking-water-systems-research>.
 - And CoBANK. "When Rural Water Systems Combine Report - Earth & Water Law." Earth and Water Group, October 2017. <https://www.earthandwatergroup.com/wp-content/uploads/2017/09/When-Rural-Water-Systems-Combine-Report.pdf>.
 - 19 Finkle, Jim. "U.S. Probes Cyber Attack on Water System." Reuters. Thomson Reuters, November 21, 2011. <https://www.reuters.com/article/us-cybersecurity-attack/u-s-probes-cyber-attack-on-water-system-idUSTRE7AH2C320111121>.
 - 20 Figure 1 was originally feature in: USDA. "2017 Census Hispanic Producers - USDA." USDA. Accessed December 7, 2021. https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Hispanic_Producers.pdf.
 - 21 Western Growers. "National Coalition Pushes for Investment in Aging Water Infrastructure." Western Growers, January 12, 2021. <https://www.wga.com/press-releases/national-coalition-pushes-investment-aging-water-infrastructure>.
 - 22 USDA. "2017 Census Hispanic Producers - USDA." USDA. Accessed December 7, 2021. https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Hispanic_Producers.pdf.
 - 23 For an interactive map see: https://public.tableau.com/views/CWSIn-TexasHispanicFarmingCommunities/MapTexasCommunityWaterSystemsByIncome?:language=en-US&publish=yes&display=count=n&origin=viz_share_link
 - 24 Bureau, US Census. "American Community Survey 5-Year Data (2009-2019)." Census.gov, October 8, 2021. <https://www.census.gov/data/developers/data-sets/acs-5year.html>.
 - 25 USDA. "Circuit Rider Program - Technical Assistance for Rural Water Systems." Rural Development. US Department of Agriculture, August 4, 2021. <https://www.rd.usda.gov/programs-services/water-environmental-programs/circuit-rider-program-technical-assistance-rural-water-systems>.

Serie VIu the Blue Angel



Luis Pegut

Luis Pegut, is a full-time documentary photographer, activist, and cultural manager in the creative industry, publishing,

and visual arts. He holds more than 25 years of developing artistic, journalistic, documentary, and scenic photography at a professional level. Pegut's name is in the international registry of photographers at the New York Public Library. In 2018, the Mexican Air Force recognized Pegut for his outstanding career, commitment, and dedication to art. He has also been recognized by The Rockefeller Foundation's 100 Resilient Cities for his artistic contribution to the development, design, and publication of Resilience Strategy-Ciudad Juárez.



Silvia M.

Chavez-Baray

Silvia M. Chavez-Baray, holds a Ph.D. in clinical psychology and a Master's in Child Psychology and Interventions. She received a Post Doc Fellowship and serves as Adjunct Faculty and Associate Researcher at the Department of Social Work, College of Health Sciences and Chicano Studies at The University of Texas at El Paso. In 2010, Chavez-Baray founded the psychoeducational group "Breaking the cycle of violence" for victims and survivors of violence against women in El Paso, TX. From 2012 to 2015, she worked as Ventanilla de Salud Coordinator for the Mexican Consulate of El Paso and has served as Gender Advisor (2012-2016) for the Instituto de Los Mexicanos en el Exterior. Her research and publications have focused on migration, tuberculosis, gender, violence, sexual and reproductive health, and inequalities.



The artist, being in confinement, takes his house as a character and makes a self-portrait, because he has no one to portray; builds Vlu through his self-portrait as a way of expressing his emotions in the face of the COVID-19 pandemic. Vlu is an earthly Angel, where death can annihilate him.

Vlu 1. Vlu appears crying with his back to death, hiding his face so that death does not recognize him. He cries out of desperation to live in isolation. The leaves around him represent the people who have died due to the pandemic

Vlu 2. Vlu has a confrontation with death despite still having his face hidden.

Vlu 3. Vlu seems to be calm, trying to take refuge in religion to seek peace, to stop being afraid and for death to stop stalking him.

Undocumented and Uninsured: Access to Medicaid for Undocumented Immigrants



Omar Alejandro Ibarra,
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Fellow

There are currently an estimated 11 million undocumented immigrants in the United States,¹ and it is crucial to note that approximately 78% of them are Latinos.² Most of this vulnerable population has very little to no access to affordable healthcare services. This means the systemic health inequalities and persistent health disparities that plague the undocumented community are also prevalent among U.S. Latinos. The Latino community, and by extension undocumented immigrants, are being disproportionately affected by the ongoing COVID-19 pandemic due to historical racism that has created systems that perpetuate inequities among Latinos and the undocumented. In fact, undocumented immigrants are three times more likely to live in poverty when compared to the national rate,³ and

45% of them live close to or under 138% of the Federal Poverty Level.⁴ However, federal policy prohibits undocumented immigrants from qualifying for Medicaid due to their immigration status, even if they are income-eligible. This federal exclusion and policies such as the public charge rule fuel discrimination and increase fears of deportation among undocumented immigrants, forcing them to wait until their health is considered an emergency to access emergency Medicaid funds.⁵ Without access to preventive care, undocumented immigrants may be more susceptible to infectious diseases,⁶ and this is increasingly concerning during the ongoing COVID-19 pandemic. This is a serious public health threat to both undocumented and documented individuals. Further, the restriction

that only allows emergency Medicaid services is putting a tremendous financial strain on hospitals to pay for emergency services. To combat this financial struggle and help curb the COVID-19 pandemic, federal and state governments must take action by expanding Medicaid programs to include undocumented immigrants. From amending federal policy to implementing a Medicaid buy-in program, there are options available to expand Medicaid and ensure this vulnerable population is given equitable and just access to healthcare in the United States. Though there are multiple avenues to health insurance in the U.S., such as the Affordable Care Act marketplaces and employer insurance, this policy brief specifically explores Medicaid for undocumented immigrants.

Background

The Medicaid program was signed into law in 1965 and is one of the most sweeping pieces of health reform legislation in U.S. history. Medicaid is jointly funded and run by the federal government and states.⁷ Since its inception, Medicaid has played a pivotal role in the U.S. healthcare system. It is the country's top public insurance system for low-income people, covering an estimated 75 million individuals.⁸ The program has helped narrow longstanding racial disparities in coverage and access to

care.⁹ However, one noteworthy and disappointing aspect has been the explicit continued exclusion of millions of undocumented immigrants from Medicaid programs.¹⁰

Overview of Undocumented Immigrants

Undocumented immigrants are people residing in the U.S. without legal documentation. This includes people who entered the U.S. without inspection and proper permission from the government.¹¹ Undocumented immigrants also include immigrants who entered the country legally through a visa but overstayed their allowed time.¹² Unlike “lawfully present” immigrants, who have been legally admitted or recognized in the U.S., undocumented immigrants are ineligible for most local, state, and federal services and public programs.¹³ There are currently an estimated 11 million undocumented immigrants in the U.S.¹⁴ It is crucial to note that 78% of all undocumented immigrants in the U.S. are Latinos¹⁵ and 13% of U.S. Latinos are undocumented.¹⁶

Undocumented Immigrants and Medicaid

Historically, federal policy has excluded undocumented immigrants from accessing programs such as Medicaid. Though Medicaid is run and financed by both federal and state governments, strict regulations

have prohibited states from using federal dollars toward undocumented immigrants. States are discouraged from using their own Medicaid funds toward this vulnerable population.¹⁷ Upwards of 45% of undocumented immigrants live at or near the poverty line, and they are three times as likely to live in poverty compared to the national rate. Yet, they are not allowed to enroll in the nation's central insurance system for low-income individuals.¹⁸ Though undocumented immigrants have historically not been eligible for Medicaid, much of the targeted exclusion stems from the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) signed by President Clinton in 1996.¹⁹ This welfare reform law restricted undocumented immigrants from enrolling in Medicaid and Medicare and the Children's Health Insurance Program (CHIP). Moreover, the Affordable Care Act, signed by President Obama in 2010, further and explicitly barred undocumented people from the newly established marketplaces. This exclusion has resulted in the uninsured rate of undocumented immigrants being almost five times higher than that of citizens.²⁰ Before PRWORA, public health professionals regularly provided needed health services to people no matter their immigration status. However, PRWORA denies any Medicaid coverage to undocumented immigrants unless it is an emergency.²¹

Public Charge

The public charge rule, which the Trump Administration altered, went into effect in early 2020. This updated rule expanded the criteria of what it meant to be considered a "public charge" to the government.²² Immigrants who were seen as "likely" to rely on government assistance and benefits in the future were at an increased risk of being denied a visa or green card. Though this specific component of the change would not have affected undocumented immigrants, anti-immigrant rhetoric and policies had a "chilling effect" on the use of healthcare services by the undocumented community.²³ This may lead to undocumented immigrants avoiding testing and treatment for COVID-19 due to fears of potential deportation. Though the Biden Administration has since rescinded the updated rule,²⁴ the lingering chilling effect and massive confusion about the revised rule and who it would affect could discourage enrollment in Medicaid programs where some age-groups of undocumented immigrants do qualify, such as in states like California and Illinois.²⁵

Policy Analysis

Undocumented and Uninsured

Of the 11 million undocumented people in the U.S., roughly 46% remain uninsured – that is almost five

million people who have virtually no access to health insurance.²⁶ The other 54% of undocumented immigrants gain some access to health insurance through employer insurance, student health plans, and through certain state policies which allow non-citizens to enroll in limited access to programs, such as Medicaid for children and pregnant mothers. Though data on how undocumented people access health insurance is sparse, policy experts note that a majority of those with insurance have it through their employer.²⁷ While 54% of undocumented immigrants may have access to some form of health insurance,²⁸ it is often too expensive for them to use due to factors such as high deductibles and copays.²⁹ This would effectively lead to undocumented people being underinsured, wherein they have access to health insurance, but it is inadequate for most health needs.³⁰ It is likely that undocumented immigrants with health insurance are accessing it through their employer; however, 3 in 4 undocumented immigrants work in jobs considered essential,³¹ where being underinsured is more prevalent.³² These essential positions tend to be low-wage, and it is unlikely workers would be able to afford the insurance plan offered by their employer.³³ Throughout the COVID-19 pandemic, Medicaid has served as a significant security blanket for those who have lost their jobs, as job loss

often means loss of health insurance. In fact, Medicaid enrollment grew by 18.2% nationwide and by as much as 32% in some states.³⁴ However, this safety net has not been available to undocumented immigrants who have lost their jobs since they cannot enroll. Loss of employer insurance and no Medicaid access can have severe consequences for the undocumented worker and the entire families of those workers.

A Public Health Threat

Undocumented immigrants being barred from Medicaid is especially concerning amid the COVID-19 pandemic. Through the Congress has passed legislation to provide funding for free COVID-19 testing, there have been periods of nationwide shortages of tests which lead hospitals and providers to rely on insurance to cover testing supplies.³⁵ It is also important to note that the legislation passed only subsidizes COVID-19 testing, not treatment for it. As a result, even when undocumented individuals can access limited COVID-19 testing, they would have to incur significant out-of-pocket expenses to cover treatment due to a lack of insurance.³⁶ This lack of access to COVID-19 resources poses tremendous public health risks to the rest of the country due to the nature and transmissibility of coronavirus. Preventing such a large and vulnerable population from ac-

cessing affordable healthcare services through Medicaid creates a barrier to preventative care, and it may lead to undocumented immigrants being more susceptible to COVID-19 and the downstream health implications they will suffer if they are infected and are unable to receive treatment.³⁷ The inability to access affordable health insurance affects each undocumented immigrant and their families and those around them.

Reliance on Safety-Net & EMTALA

Due to their inability to access Medicaid or being underinsured when they do have access through their employer, undocumented immigrants have had to rely on a patchwork of safety net hospitals, federally qualified health centers, and policies to seek care. However, fears stoked by anti-immigrant rhetoric and policies, such as the public charge rule, have led many in this vulnerable population to altogether avoid health care due to fears of family separation or other consequences.³⁸ Relying on the safety net of the U.S. healthcare system is worrying as these providers have been historically underfunded and are currently under immense financial strain due to the ongoing pandemic.³⁹ Experts predict some safety net providers will have to close or be sold into the private industry in the near future.⁴⁰ Opponents of Medicaid expansion for

this population point out the billions of dollars in state funds used to treat undocumented immigrants under the Emergency Medical Treatment and Active Labor Act (EMTALA).⁴¹ Several dozens of hospitals around the country have been forced to close or file for bankruptcy due to the inability to sustain unpaid EMTALA costs, including care provided to undocumented immigrants. Opponents do not point out that these large costs cannot solely be attributed to undocumented immigrants; these costs include covering both uninsured citizens and undocumented patients. Current law requires that Medicaid pay for emergency health services,⁴² which may exacerbate the financial strain placed on hospitals to pay for the uninsured. The current overuse of emergency care costs the US healthcare system up to \$32 billion.⁴³ Expanding Medicaid to undocumented immigrants could save the US healthcare system billions of dollars per year as these individuals would be able to seek needed care sooner rather than wait until an emergency.⁴⁴ What is often left unsaid in conversations surrounding the financial impact of the health system and the country as a whole are the contributions made by the undocumented community. Undocumented immigrants pay upwards of \$11 billion each year in state and local taxes,⁴⁵ Social Security, and Medicare taxes. Their contributions

have even been found to make the social security system more solvent as they pay in but are ineligible to collect the benefits.⁴⁶ This is to say that undocumented immigrants are paying into systems that benefit all Americans, but they are purposefully excluded from the benefits due solely to their immigration status.

Medicaid Expansion Efforts

There has been an increasing movement and political will to address inequities among the undocumented in their access to care by expanding Medicaid to undocumented immigrants. Expanding Medicaid to cover the undocumented is not a novel idea. Several states are pushing this initiative. California, home to the nation's largest undocumented population, passed legislation in 2019 that will allow young undocumented individuals to enroll in Medicaid up to the age of 26,⁴⁷ and legislators in the state agreed to expand further the state's Medicaid program to cover undocumented immigrants over the age of 50 which is now in effect.⁴⁸ California is now pushing to cover undocumented immigrants between the ages of 26-49. If successful, this would make California the first and only state to achieve universal health coverage for the undocumented community.⁴⁹ Additionally, Illinois became the first state to expand its Medicaid program to undocumented seniors

over the age of 65.⁵⁰

Recommendations

Ensuring undocumented communities have access to Medicaid is essential to the public health security of the country especially amid the ongoing COVID-19 pandemic. There are several avenues towards achieving Medicaid expansion for the undocumented community. The most sweeping action remains at the federal level. The federal government should modify the eligibility requirements under PRWORA⁵¹ to allow undocumented immigrants to enroll in Medicaid. Alternatively, the federal government can allow the use of federal dollars to aid states in expanding their own Medicaid programs. On the other hand, when federal action is unlikely or not possible, states have the opportunity to pass legislation allowing the use of state Medicaid dollars for the coverage of undocumented immigrants. Though federal law prohibits U.S. tax dollars from covering undocumented individuals, states can circumvent this by using state dollars. States such as California and Illinois have used this approach for specific subgroups among the undocumented community to have access to their Medicaid programs,⁵² and several states have extended their Medicaid programs to cover undocumented children. Another option is for states to implement a Medicaid Buy-in Program. This program would

require undocumented immigrants to fully pay premiums and cost-sharing to gain coverage. This option would allow states to expand Medicaid while maintaining affordability for the state. To maintain an equitable approach, states could also set aside funding to allow undocumented immigrants to buy into the program on a sliding scale basis with plan premiums and cost-sharing options.⁵³ Lastly, states can also utilize a common incremental strategy of starting with Medicaid expansion for undocumented children only and slowly expanding to other subgroups of undocumented communities based on the program's success. Several states began with this approach and are now pushing to expand to much larger groups of undocumented immigrants.⁵⁴

Conclusion

Expanding affordable health coverage to this vulnerable population which contributes tremendously to the United States, is a just and equitable action that must be taken. COVID-19 has placed a spotlight on the inequities that have long persisted among people of color including Latinos. The Latino community has been disproportionately affected by the pandemic, and these negative impacts have only been worse for the undocumented community which is overwhelmingly Latino.⁵⁵ This is to say that achieving a more equitable

health system for Latinos means we must push for initiatives that improve the health of the undocumented. Undocumented communities have been on the frontlines of the COVID-19 pandemic. From working in the fields and meat processing plants across the country to essential construction and transportation jobs, they have long provided for us, and it is past time that we, as a nation, provide for them. While there are moral obligations to be made in expanding Medicaid to undocumented immigrants, there are also financial and public health reasons to do so. Allowing undocumented immigrants to be covered by Medicaid will allow them to seek care sooner rather than waiting until their health is considered an emergency to do so. Services provided through Medicaid, such as preventative care, could help curb the potential spread of communicable diseases, such as COVID-19. Expanding Medicaid to undocumented immigrants is instrumental to also improving the health and well-being of the Latino community. As well noted by one scholar, "In a pandemic, we are only as healthy as the most vulnerable members among us."⁵⁶

Bio

Omar Alejandro Ibarra (He/Him/El) was born in Liberal, Kansas and raised in Guymon, Oklahoma by his Mexican parents. He is the son of farmworkers

and the grandson of Braceros. As most of Omar's family in the US work in meatpacking plants and labor-intensive jobs, he has been exposed to the difficulties Latinos and undocumented communities face, particularly in the US health system. As a result, he has pushed himself to understand the fragmented US healthcare system and advocate for more equitable care for historically marginalized populations. He recently graduated with a Master of Public Health from the University of North Carolina's Gillings School of Global Public Health, focusing on health systems and policy. Prior to his current role at CHCI, Omar served as a Policy Fellow with Student Action with Farmworkers in North Carolina, where he tracked legislation affecting farmworkers and immigrant communities. In this role, he also organized grassroots lobbying efforts to push for legislation that improves farmworker health and mandates workforce protections. Previously, Omar also worked as a health policy intern for the United States of Care organization, where he brought his experience as a Latino and public health student in applying an equity lens in health policy. While there, he helped research and write two published works that focused on the inequities underrepresented populations face in the US health system and how the COVID-19 pandemic has exacerbated them. Omar's passion for creating a more equitable health system has only grown due to the disparities the pandemic has

highlighted. Throughout his academic and professional career, he has ensured his goals and motivations are community-driven and founded in equity-based principles.

Endnotes

- 1 MPI. "Profile of the Unauthorized Population - US." migrationpolicy.org, November 1, n.d.. <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>
- 2 [ht](#) Migration Policy Institute. "Profile of the Unauthorized Population - US." migrationpolicy.org, May 1, n.d.. <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.
- 3 Bread for the World. "From Hunger to Hunger: Undocumented Immigrants Face Hunger on Both Sides of the Border." Bread for the World, June 2, 2017. <https://www.bread.org/library/hunger-hunger-undocumented-immigrants-face-hunger-both-sides-border>.
- 4 MPI. "Profile of the Unauthorized Population - US." migrationpolicy.org, November 1, n.d.. <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.
- 5 Chesler. "Denying Undocumented Immigrants Access to Medicaid: A Denial of Their Equal Protection Rights?" Lexis, 2008.
- 6 Zuber, J. "Healthcare for the Undocumented: Solving a Public Health Crisis in the U.S. ." Lexis, 2012.
- 7 CMS. "Medicaid." Medicaid.gov, n.d.. <https://www.medicicaid.gov/medicaid/index.html>.
- 8 Rudowitz, Robin, Rachel Garfield, and Elizabeth Hinton. "10 Things to Know about Medicaid: Setting the Facts Straight." KFF.org, March 6, 2019.
- 9 Cross-Call, Jesse. "Medicaid Expansion Has Helped Narrow Racial Disparities in Health Coverage and Access to Care." Center on Budget and Policy Priorities, October 21,

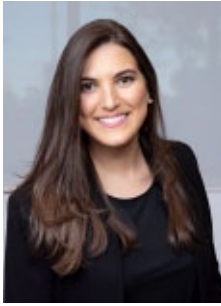
2020. <https://www.cbpp.org/research/health/medicaid-expansion-has-helped-narrow-racial-disparities-in-health-coverage-and>.
- 10 Nguyen, Quynh Chi. "State Initiatives to Expand Coverage and Access to Care for Undocumented Immigrants." *Community Catalyst*, April 2021. <https://www.community-catalyst.org/resources/publications/document/Advocacy-Guide-ImmigrantsCoverage.pdf>.
 - 11 Immigrants Rising. "Defining Undocumented." *Immigrants Rising*, n.d. <https://immigrantsrising.org/resource/defining-undocumented/>.
 - 12 Calamur, Krishnadev. "The Real Illegal Immigration Crisis Isn't on the Southern Border." *The Atlantic*. Atlantic Media Company, April 19, 2019. <https://www.theatlantic.com/international/archive/2019/04/real-immigration-crisis-people-overstaying-their-visas/587485/>.
 - 13 KFF. "Health Coverage of Immigrants." *KFF*, July 15, 2021. <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/>.
 - 14 MPI. "Profile of the Unauthorized Population - US." *migrationpolicy.org*, November 1, n.d. <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.
 - 15 Migration Policy Institute. "Profile of the Unauthorized Population - US." *migrationpolicy.org*, May 1, n.d. <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.
 - 16 Latino Donor Collaborative, Latino Corporate Directors Association, Friends of the American Latino Museum, and UnidosUS. "Perceptions of the US Latino Community," August 2021. https://uploads-ssl.webflow.com/5f2883288707ald898871825/6154e32a013a50b963677ac5_2021%20Perception%20of%20Latinos%20in%20America%20Executive%20Summary.pdf.
 - 17 Chesler. "Denying Undocumented Immigrants Access to Medicaid: A Denial of Their Equal Protection Rights?" *Lexis*, 2008.
 - 18 Bread for the World. "From Hunger to Hunger: Undocumented Immigrants Face Hunger on Both Sides of the Border." *Bread for the World*, June 2, 2017. <https://www.bread.org/library/hunger-hunger-undocumented-immigrants-face-hunger-both-sides-border>.
 - 19 ASPE. "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996." *ASPE*, 1996. <https://aspe.hhs.gov/reports/personal-responsibility-work-opportunity-reconciliation-act-1996>.
 - 20 Nguyen, Quynh Chi. "State Initiatives to Expand Coverage and Access to Care for Undocumented Immigrants." *Community Catalyst*, April 2021. <https://www.community-catalyst.org/resources/publications/document/Advocacy-Guide-ImmigrantsCoverage.pdf>.
 - 21 ASPE. "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996." *ASPE*, 1996. <https://aspe.hhs.gov/reports/personal-responsibility-work-opportunity-reconciliation-act-1996>.
 - 22 Esq. Jonathan. "What Is the Public Charge Rule and What Should You Know?" *What is the Public Charge Rule and what should you know? | ImmigrationHelp.org*, October 25, 2021. <https://www.immigrationhelp.org/learning-center/what-is-the-public-charge-rule>.
 - 23 Duncan, Whitney L., and Sarah B. Horton. "Serious Challenges and Potential Solutions for Immigrant Health during COVID-19: Health Affairs Forefront." *Health Affairs*, April 18, 2020. <https://www.healthaffairs.org/doi/10.1377/forefront.20200416.887086/full>.
 - 24 Ibid
 - 25 Duncan, Whitney L., and Sarah B. Horton. "Serious Challenges and Potential Solutions for Immigrant Health during COVID-19: Health Affairs Forefront." *Health Affairs*, April 18, 2020. <https://www.healthaffairs.org/doi/10.1377/forefront.20200416.887086/full>.
 - 26 KFF. "Health Coverage of Immigrants." *KFF*, July 15, 2021. <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/>

- [health-coverage-of-immigrants/](#)
- 27 Norris, Louise. "How Immigrants Can Obtain Health Coverage." *healthinsurance.org*, December 16, 2021. <https://www.healthinsurance.org/obamacare/how-immigrants-are-getting-health-coverage/>
 - 28 KFF. "Health Coverage of Immigrants." KFF, July 15, 2021. <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/>
 - 29 Norris, Louise. "How Immigrants Can Obtain Health Coverage." *healthinsurance.org*, December 16, 2021. <https://www.healthinsurance.org/obamacare/how-immigrants-are-getting-health-coverage/>
 - 30 Shmerling, Robert. "Is Our Healthcare System Broken?" *Harvard Health*, July 13, 2021. <https://www.health.harvard.edu/blog/is-our-healthcare-system-broken-202107132542>
 - 31 Svajlenka, Nicole. "Protecting Undocumented Workers on the Pandemic's Front Lines." *Center for American Progress*, December 2, 2020. <https://www.americanprogress.org/article/protecting-undocumented-workers-pandemics-front-lines-2/>
 - 32 Levin-Scherz, Jeff, and Steve Nyce. "Making Health Care Affordable for Low-Wage Workers." *Harvard Business Review*, May 23, 2019. <https://hbr.org/2019/05/making-health-care-affordable-for-low-wage-workers>
 - 33 Ibid
 - 34 Corallo Published: Jan 10, Bradley. "Analysis of Recent National Trends in Medicaid and CHIP Enrollment." KFF, January 10, 2022. [https://www.kff.org/coronavirus-covid-19/issue-brief/analysis-of-recent-national-trends-in-medic-aid-and-chip-enrollment/#:~:text=Data%20show%20that%20Medicaid%2FCHIP,by%2012.0%20million%20or%2016.8%25.&text=Over%20this%20period%2C%20all%20states,32.0%25%20\(Figure%202\).](https://www.kff.org/coronavirus-covid-19/issue-brief/analysis-of-recent-national-trends-in-medic-aid-and-chip-enrollment/#:~:text=Data%20show%20that%20Medicaid%2FCHIP,by%2012.0%20million%20or%2016.8%25.&text=Over%20this%20period%2C%20all%20states,32.0%25%20(Figure%202).)
 - 35 National Immigration Forum. "Immigrant Access to COVID-19 Testing and Treatment." *National Immigration Forum*, July 17, 2020. <https://immigrationforum.org/article/immigrant-access-to-covid-19-testing-and-treatment/>
 - 36 Ibid
 - 37 Zuber, J. "Healthcare for the Undocumented: Solving a Public Health Crisis in the U.S. ." Lexis, 2012.
 - 38 Nguyen, Quynh Chi. "State Initiatives to Expand Coverage and Access to Care for Undocumented Immigrants." *Community Catalyst*, April 2021. <https://www.community-catalyst.org/resources/publications/document/Advocacy-Guide-ImmigrantsCoverage.pdf>
 - 39 Ochieng, Nancy, Jeannie Biniek, MaryBeth Musumeci, and Tricia Neuman. "Funding for Health Care Providers during the Pandemic: An Update." KFF.org, August 20, 2021. <https://www.kff.org/policy-watch/funding-for-health-care-providers-during-the-pandemic-an-update/>
 - 40 Advisory Board. "'The Gap Is Not Sustainable': Why Safety-Net Hospitals Especially Struggled amid Covid-19." *Advisory Board*. *Advisory Board*, May 20, 2021. <https://www.advisory.com/en/daily-briefing/2021/05/20/safety-net-hospitals>
 - 41 Zuber, J. "Healthcare for the Undocumented: Solving a Public Health Crisis in the U.S. ." Lexis, 2012.
 - 42 Department of Health Care Finance. "Emergency Medicaid." *Emergency Medicaid*, n.d.. <https://dhcf.dc.gov/service/emergency-medicaid>
 - 43 United Health Group. "18 Million Avoidable Hospital Emergency Department Visits Add \$32 Billion in Costs to the Health Care System Each Year." *United Health Group*, 2019. <https://www.2019.unitedhealthgroup.com/content/dam/UHG/PDF/2019/UHG-Avoidable-ED-Visits-citations.pdf>
 - 44 Velasquez, David. "Mass. Should Expand Medicaid to Undocumented Immigrants." *Cognoscenti*. *WBUR*, July 27, 2021. <https://www.wbur.org/cognoscenti/2021/07/27/med->

- [icaid-health-insurance-immigrants-david-velasquez](#).
- 45 King, Danae. “Undocumented Immigrants Pay Billions in Taxes Each Year - and Have Been for 25 Years.” The Columbus Dispatch. The Columbus Dispatch, March 15, 2021. <https://www.dispatch.com/story/news/2021/03/15/undocumented-ohio-immigrants-taxes-no-benefits/4628218001/>.
 - 46 King, Danae. “Undocumented Immigrants Pay Billions in Taxes Each Year - and Have Been for 25 Years.” The Columbus Dispatch. The Columbus Dispatch, March 15, 2021. <https://www.dispatch.com/story/news/2021/03/15/undocumented-ohio-immigrants-taxes-no-benefits/4628218001/>.
 - 47 State of California. “Senate Bill No. 104.” Bill Text - SB-104 Health., 2019. https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB104.
 - 48 Velasquez, David. “Mass. Should Expand Medicaid to Undocumented Immigrants.” Cognoscenti. WBUR, July 27, 2021. <https://www.wbur.org/cognoscenti/2021/07/27/icaid-health-insurance-immigrants-david-velasquez>.
 - 49 Rojas, Leslie Berestein. “Why a Plan to Open Medi-Cal to All 26-49 Year Olds Would Be Life-Changing for LA’s Undocumented Communities.” LAist, January 11, 2022. <https://laist.com/news/health/gov-newsons-push-to-expand-medi-cal-could-help-a-lot-of-undocumented-southern-californians>.
 - 50 Bruce, Giles. “Illinois Is First in the Nation to Extend Health Coverage to Undocumented Seniors.” Kaiser Health News, January 7, 2021. <https://khn.org/news/article/illinois-is-first-in-the-nation-to-extend-health-coverage-to-undocumented-seniors/>.
 - 51 ASPE. “The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.” ASPE, 1996. <https://aspe.hhs.gov/reports/personal-responsibility-work-opportunity-reconciliation-act-1996>.
 - 52 State of California. “Senate Bill No. 104.” Bill Text - SB-104 Health., 2019. https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB104.
 - 53 Nguyen, Quynh Chi. “State Initiatives to Expand Coverage and Access to Care for Undocumented Immigrants.” Community Catalyst, April 2021.
 - 54 Nguyen, Quynh Chi. “State Initiatives to Expand Coverage and Access to Care for Undocumented Immigrants.” Community Catalyst, April 2021.
 - 55 Migration Policy Institute. “Profile of the Unauthorized Population - US.” migrationpolicy.org, May 1, n.d.. <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.
 - 56 Duncan, Whitney L., and Sarah B. Horton. “Serious Challenges and Potential Solutions for Immigrant Health during COVID-19: Health Affairs Forefront.” Health Affairs, April 18, 2020. <https://www.healthaffairs.org/doi/10.1377/forefront.20200416.887086/full/>.

Interview

Lessons from a Former President: Five Questions with President Fernández, Former President of the Dominican Republic



Lynda Rodriguez, Ed.M. '22

President John F. Kennedy once said, “Leadership and learning are indispensable to each other.” It requires the ability to influence, motivate, organize and carry out actions to mobilize people and systems, but also it requires humility to learn and cope with the lessons that life has to teach us.

Being a President of a country is, certainly, one of those powerful positions that comes with great responsibility and a myriad of learning situations and experiences. I collected questions from Harvard students for President Leonel Fernández, former President of the Dominican Republic (1996-2000; 2004-2008; 2008-2012). We asked for life lessons he has learned that can serve to any person that held a position of power whether in politics or in any field.

- 1. As President, you have access to resources, people and power. What do you gain and what do you lose from stepping in and out from that position?**

President Fernández (PF):

Certainly, in exercise of the duties of the Presidency, you do have access to those three basic elements: resources, people and power. Economic means are key to any government administration. Budgeting, allocating and execution of the different official programs is what sustains the connection between government and society. Without that, everything else would collapse.

The President, of course, will also exercise authority over the military, guide international

affairs and make important appointments or recommendations in other branches of government. In a governmental structure, people are part of a large bureaucracy, composed of highly experienced officials, technicians and experts who are responsible in policy making, execution and assessment of government policies and programs.

Power comes natural to the importance of the position held. There is a legal and legitimate subordination of all government bodies, civil and military, to the office of the Presidency. There are also the rituals of power: the ceremonies, decorations, flamboyance, and magnificence that comes by holding the highest office in the land.

What a President gains by being in his position is a vast knowledge and experience on a whole array of subjects or topics, that enables him or her to make correct and wise decisions on controversial issues.

By stepping out, a former President loses access to those resources, which on an individual basis are not needed, but will always retain the knowledge and experience that otherwise would have been almost impossible to achieve.

- 2. How do you convince people to be on board with your ideas? And, conversely, as a leader, how do you create a culture where people feel empowered to challenge your ideas?**

President Fernández (PF):

To convince people to come on board, there must be shared values, goals and principles. And through permanent meetings, dialogue and critical examination of topics, people feel comfortable and empowered to participate in an environment where ideas can be freely expressed and respected.

- 3. What do you wish you knew before you assumed the Presidency that you know now? If you could go back in time to give yourself advice on the first day you came into office, what would you say?**

President Fernández (PF):

Prepare yourself for permanent warfare. It will be either with your political adversaries, with sectors of the population that will resist any change in favor of the common good, with government officials who behind your back behave with disloyalty or with your own party members who see you as an obstacle for their future political aspirations.

4. All people at some point in their lives face conflict and interpersonal challenges from colleagues, friends, even family members, and more so when one holds a position such as the President of a country. How do you cope with conflict, betrayal, and reconciliation? What lesson(s) have you learned and what advice would you give to future leaders to deal with these kinds of situations?

President Fernández (PF):

Conflict is inevitable. It is part of human nature. What one needs to cope with it, is patience, a good understanding of the cause of the conflict and trying to build different alternatives to find an adequate solution. Betrayal is painful, because it is unexpected and comes not from the enemy but from someone near you, that is trusted and held in high regards. Reconciliation should never be discarded but will depend on the magnitude of the injury caused by the person involved.

It is difficult to give advice on this matter. It is something one must live and learn on its own, through suffering, meditation, and healing.

5. What are the top three characteristics you think a leader must have?

President Fernández (PF):

1. Integrity
2. Patriotism
3. A vision for the future

President Leonel Fernández brief background:



Prominent Dominican politician, lawyer, professor and writer who has played an important role in promoting political and

ideological issues. He has been elected President of the Dominican Republic three times.

Fernández is the author of several books, including “Estados Unidos y el Caribe (United States in the Caribbean); “Raíces de un Poder Usurpado” (Roots of an Usurped Power); “El Nuevo Paradigma” (The New Paradigm); El delito de Opinión Pública (The Crime of Public Opinion); Años de Formación (Years of Formation); Años de Avance (Years of Advancement); and En Defensa de la Constitución (Defending the Constitution).

He is sitting President of the Global Democracy and Development Foundation (GFDD); the United Nations Association of the Dominican Republic (UNA-DR), the

World Federation of United Nations Associations (WFUNA), and former president of the European Union, Latin America and the Caribbean Foundation. He is also the founder and currently president of the Fuerza del Pueblo Party.

Bio

Lynda is a graduate of the master's program in Education Leadership, Organizations, and Entrepreneurship at the Harvard Graduate School of Education. In 2010, Lynda founded "Taller de Lynda Rodriguez", a leading provider of international etiquette, protocol, and leadership workshops. To date, her company has impacted thousands students in twelve cities across six countries. Lynda won the National Youth Award (Premio Nacional de la Juventud) in the Dominican Republic and was nominated in the Forum of Young Global Leaders in Switzerland. Her "Raising Leaders for the Future" community program has impacted hundreds of children from low income communities and offers free workshops in orphanages in partnership with different organizations in the United States and Latin America.

Commentary

A Smarter, More Humane Solution? Why the Digital Border Wall Warrants Bipartisan Skepticism



Charles Orta, '16, M.P.P. '21, J.D. '21, CHCI Facebook Graduate Fellow

Since FY 2017, Congress has appropriated more than \$1.52 billion for tech and surveillance to U.S. Customs and Border Protection (CBP) and the Department of Homeland Security (DHS) and its other component agencies, including more than \$780 million in FY 2021 alone. A significant portion of these funds are being spent on a digital border wall at the U.S.-Mexico border, consisting of surveillance towers, drones, sensors, biometrics, and other border security technologies. The digital border wall is billed as a “gentler,” “smarter,” and more “humane” alternative to President Donald Trump’s physical border wall, and has thus far received strong bipartisan support, including from President Joe Biden. Strong bipartisan support, however, is not a *prima facie* indicator of good policy.

Serious concerns remain, not only about the human rights implications of these technologies on migrants and border communities, particularly those of Latino heritage, but about their ability to be effective at achieving their stated purpose. These concerns, and the threat border security technologies pose to the public at large, call for Congress to introduce stronger safeguards on their deployment and require increased oversight and transparency.

Background

The U.S. federal government’s deployment of border security technologies along the U.S.-Mexico border dates back to the 1970s, when ground sensors were first installed to detect the activity of smugglers and undocumented

migrants.¹ Successive presidential administrations, Republicans and Democrats alike, have since expanded the nature and scope of these border security technologies. During the Clinton administration, for example, the government increased its collection of biographical data, fingerprints, photos, and arrest records as part of an automated biometric identification system.² It also began deploying cameras and additional sensors as part of surveillance programs along the southern border.³ Under the Bush administration, the U.S. government redoubled its efforts to enhance those surveillance capabilities through the use of drones and development of the Secure Border Initiative Network (SBIInet).⁴ SBIInet was an ambitious high-tech border fence with an integrated network of cameras, sensors, and radars meant to cover the entire southern border.⁵

- 1 Erica Hellerstein, "Between the US and Mexico, a Corridor of Surveillance Becomes Lethal," *Coda Story*, July 14, 2021, <https://www.codastory.com/authoritarian-tech/us-border-surveillance/>.
- 2 Ibid.
- 3 Ibid.
- 4 Kris Axtman, "US Border Patrol's Newest Tool: A Drone," *Christian Science Monitor*, Dec. 7, 2005, <https://www.csmonitor.com/2005/1207/p02s01-usmi.html>; "Obama Administration Ends High-Tech Border Fence," CBS News, Jan. 14, 2011, <https://www.cbsnews.com/news/obama-administration-ends-high-tech-border-fence/>.
- 5 "Obama Administration Ends High-Tech Border Fence."

While SBIInet was terminated by the Obama administration in 2011 following internal audits within DHS that revealed repeated delays, excessive waste, and serious concerns over its effectiveness,⁶ the allure of using emerging technologies to more effectively and efficiently monitor who and what crosses the U.S.-Mexico Border remained intact. Just a few years after the cancellation of SBIInet, the Obama administration developed the Integrated Fixed Tower program.⁷ The program's intent was to dot the southern border with surveillance towers, beginning with a network of 50 such towers across southern Arizona.⁸ It was bolstered by the Administration's launch of the Silicon Valley Innovation Program in 2015, which spurred tech companies to invest in border security.⁹ Funding

- 6 Julia Preston, "Homeland Security Cancels 'Virtual Fence' After \$1 Billion is Spent," *New York Times*, Jan. 14, 2011, <https://www.nytimes.com/2011/01/15/us/politics/15fence.html>.
- 7 Aaron Holmes, "Silicon Valley Startups Backed by Bill Gates and Andreessen Horowitz are Using the US-Mexico Border to Test New Surveillance Technology," *Business Insider*, Feb. 4, 2020, <https://www.businessinsider.com/echodyne-bill-gates-startup-cbp-us-mexico-border-patrol-surveillance-2020-1>.
- 8 Hellerstein, "Between the US and Mexico, a Corridor of Surveillance Becomes Lethal."
- 9 Courtney Norris, "Silicon Valley Jumps Into Biometric Gold Rush for Trump's 'Other Border Wall,'" *PBS News*, May 5, 2017, <https://www.pbs.org/newshour/politics/silicon-valley-jumps-biometric-gold-rush-trumps-border-wall>.

and deployment of border security technologies has only surged since. Congress appropriated \$743 million to CBP to fund border security technologies from FY 2017 to FY 2020 under the Trump administration.¹⁰ In FY 2021, more than \$780 million was appropriated to DHS for the same purposes.¹¹

Today, border security technologies largely consist of surveillance towers, drones, biometric databases, automated license plate readers, and sensor systems.¹² Together, they form an interconnected network of technologies designed to monitor all aspects of migration and activity along the southern border. The use of these technologies has led to references of a “digital border wall” or “smart border wall” being created along the southern border, since it is these technologies, not physical barriers made of metal or concrete, that are increasingly the government’s primary means of securing the border.¹³ The

backing of a multi-million dollar for profit industry of defense contractors and Silicon Valley start-ups and tech companies provides a powerful impetus for the continued expansion of the digital border wall.¹⁴ So too does the enduring bipartisan support this initiative enjoys.¹⁵

This support is due in part to the perception that these technologies provide a more cost-effective, efficient, and humane means of guaranteeing border security. For the majority of Democratic and Republican politicians who believe that being “soft” on border security remains politically untenable, the digital border wall is thus an attractive proposition. Proponents of a digital border wall, for example, indicate that compared to the \$24.5 million per mile that it would take to build a physical barrier, a digital border wall could be built for less than \$500,000 per mile.¹⁶ According to CBP, many of these border security technologies, namely surveillance towers and drones, also act as force multipliers.¹⁷ They enable agents to

10 Just Futures Law and Mijente, “Factsheet: The Dangers of a Tech Wall,” April 2021, at 2, <https://justfutureslaw.org/wp-content/uploads/2021/04/Factsheet-on-Tech-Wall-and-CBP-Appropriations.pdf>.

11 Ibid.

12 For a detailed list of currently deployed border security technologies see Mijente, Just Futures Law, and No Border Wall Coalition, *The Deadly Digital Border Wall*, October 2021, <https://notechforice.com/wp-content/uploads/2021/10/Deadly.Digital.Border.Wall.pdf>.

13 Ibid. at 24.

14 Ibid at 6.

15 Hellerstein, “Between the US and Mexico, a Corridor of Surveillance Becomes Lethal.”

16 Will Hurd, “We Need a Smart Border Wall, Not a 3rd Century Solution,” *USA Today*, Aug. 7, 2017, <https://www.usatoday.com/story/opinion/2017/08/07/border-security-we-need-smart-wall-will-hurd-column/53961800/>.

17 Will Parrish, “The U.S. Border Patrol and an Israeli Military Contractor are Putting a Native American Reservation Under

monitor remote areas that may be difficult or dangerous to monitor in person, reduce the need for increased manpower, and can allow for more persistent detection of potential illegal activity.¹⁸ The digital border wall has also provided Democrats with a means of supporting border security, while still denouncing President Trump’s vision of a physical barrier encompassing the border.¹⁹

Echoing these claims, and calling the digital border wall a more humane alternative to Trump’s physical border wall, President Biden has indicated he is seeking more than \$1 billion in investments for border infrastructure, including “modern border security technology” for FY 2022.²⁰ He has also included provisions for strengthening the digital border wall as part of his immigration bill, the U.S. Citizenship Act of 2021, which contains no upper limit on the amount authorized to be

appropriated for deploying border security technologies.²¹

Problem Analysis

The enduring bipartisan and corporate fervor for the digital border wall has obscured a fundamental question: whether increased reliance on border security technologies truly offers an effective and humane means of managing the southern border. By not scrutinizing the operational efficacy of these technologies and discounting their impact on migrants, border communities, and the American public at large, the U.S. government has failed to exercise due diligence in balancing human rights and security considerations related to the digital border wall.

The Digital Border Wall’s Impact on Migrants

Despite its name, the digital border wall is likely to lead to significant, physical harm to migrants crossing the southern border, the majority of whom are from Latin America. This is specifically the case with surveillance

“Persistent Surveillance”, *The Intercept*, Aug. 25, 2019, <https://theintercept.com/2019/08/25/border-patrol-israel-elbit-surveillance/>.

18 Ibid.

19 Marisa Franco, “Democrats Want a ‘Smart Wall.’ That’s Trump’s Wall by Another Name,” *The Guardian*, Feb. 14, 2019, <https://www.theguardian.com/commentisfree/2019/feb/14/democrats-wall-border-trump-security>.

20 White House, “Fact Sheet: Department of Defense and Department of Homeland Security Plans for Border Wall Funds,” press release, June 11, 2021, <https://www.whitehouse.gov/omb/briefing-room/2021/06/11/fact-sheet-department-of-defense-and-department-of-homeland-security-plans-for-border-wall-funds/>.

21 White House, “Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System,” press release, Jan. 20, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/>; US Citizenship Act, S. §2302(c), 117th Congress (2021).

technology. A recent study examining the effects of SBInet found a significant correlation between the location of human remains along the southern border and that of surveillance technologies.²² Post-SBInet, migrants seem to have shifted to routes of travel outside surveillance technologies' visual range, even if those routes were more dangerous and likely to lead to death or injury through isolation, dehydration, hypothermia, or exhaustion.²³ There is no reason to suspect that newer surveillance technologies will not similarly contribute to migrant harm. On the contrary, the increased difficulty of evading such technologies might lead to heavier reliance on human smugglers, only increasing migrants' vulnerability to exploitation.

Although less tangible, there are also equally significant privacy concerns associated with the digital border wall for migrants and other border crossers. This is especially true of biometric programs that allow the CBP to collect, store, and often share with other agencies massive amounts of personally identifiable information, including DNA sam-

ples, fingerprints, and facial images.²⁴ This data is vulnerable to malicious actors, as evident when a CBP facial recognition pilot program with over 180,000 images was hacked in 2018 and 19 photos of travelers ended up on the dark web.²⁵

The human rights issues at stake are even more acute for technologies incorporating facial recognition that can later be used to identify, track, and target migrants and border crossers. In addition to concerning privacy implications, these technologies pose disproportionate harms to minority groups, who are the most frequent target of these technologies and for which these technologies are more unreliable, as documented in a 2019 federal study of over 100 commercially available facial recognition algorithms.²⁶ In the border security context, for example, inaccurate facial image matching can result in significant harm to already vulnera-

22 Samuel Norton Chambers et al., Mortality, Surveillance and the Tertiary Funnel Effect on the U.S.-Mexico Border: A Geospatial Modeling of the Geography of Deterrence, 36:3 *Journal of Borderland Studies* (2021).

23 Ibid.

24 Mijente, Just Futures Law, and No Border Wall Coalition, *The Deadly Digital Border Wall*, at 14-18.

25 Molly O'Toole, "Biden has Quietly Deployed an App for Asylum Seekers. Privacy Experts are Worried," *Los Angeles Times*, June 4, 2021, <https://www.latimes.com/politics/story/2021-06-04/asylum-bidens-got-an-app-for-that-with-privacy-risks-and-surveillance-beyond-border>.

26 National Institute of Standards and Technology, U.S. Department of Commerce, Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects (December 2019).

ble populations, including wrongful harassment, detention, and denial of asylum.²⁷

Although CBP has a privacy impact assessment process in place,²⁸ it has in the past failed to issue public privacy notice prior to the rollout of some border security technologies,²⁹ as well as implement basic privacy safeguards.³⁰

The Digital Border Wall's Impact on Border Communities

The digital border wall's stated purpose is to detect and prevent undocumented crossings of people and objects, but its reach extends beyond

migrants to American communities engaged in unrelated activity. Nowhere are these effects more prominent than in the daily lives of the predominantly Latino populations living along the border.³¹ These border communities, which also include Native American reservations,³² are subject to more persistent, extensive, and concentrated surveillance than any other part of the country.³³ Researchers have documented over 225 data points of surveillance technology use by federal and local entities along the border.³⁴ Living with little semblance of privacy in this type of militarized environment takes a heavy psychological toll on many residents, and there are anecdotal examples of community members feeling forced to change their behavior and cultural practices accordingly.³⁵

27 O'Toole, "Biden has Quietly Deployed an App for Asylum Seekers. Privacy Experts are Worried,"; David J Bier and Matthew Feeney, Drones on the Border: Efficacy and Privacy Implications, CATO Institute, May 1, 2018, at 4, https://www.cato.org/sites/cato.org/files/pubs/pdf/irpb_5.pdf.

28 O'Toole, "Biden has Quietly Deployed an App for Asylum Seekers. Privacy Experts are Worried."

29 Ibid.

30 Neema Singh and Michelle Fraling, "Congress, Don't Give DHS Unrestricted Authority to Build a 'Smart Wall,'" *ACLU*, February 1, 2019, <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/congress-dont-give-dhs-unrestricted-authority>; Department of Homeland Security Office of the Inspector General, CBP Has Not Ensured Safeguards for Data Collected Using Unmanned Aircraft Systems, September 21, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-09/OIG-18-79-Sept18.pdf>

31 Southern Border Communities Coalition, "The Southern Border Region at a Glance," https://www.southernborder.org/border_lens_southern_border_region_at_a_glance.

32 Parrish, "The U.S. Border Patrol and an Israeli Military Contractor are Putting a Native American Reservation Under 'Persistent Surveillance.'"

33 Todd Miller, "War on the Border," *New York Times*, August 18, 2013, <https://www.nytimes.com/2013/08/18/opinion/sunday/war-on-the-border.html>.

34 Electronic Frontier Foundation, "Atlas of Surveillance: Southwestern Border Communities," <https://www.eff.org/pages/atlas-de-vigilancia-comunidades-fronterizas-del-suroeste>.

35 Hellerstein, "Between the US and Mexico, a Corridor of Surveillance Becomes Lethal";

There is also at least one documented instance of border security technologies being explicitly used at the border for a purpose unrelated to preventing undocumented crossings. In 2017, CBP stationed a remote video surveillance system to monitor the emerging threat of demonstrations against the expansion of President Trump's physical border wall.³⁶

The greatest harm of border security technologies to border communities, however, perhaps comes in the implicit, significant tradeoff that occurs every time the United States government chooses to invest additional resources into these technologies. While millions of dollars continue to be appropriated each year to enhance surveillance along the southern border, these communities continue to have some of the highest poverty rates in the country and lack access to basic infrastructure, leaving them feeling marginalized.³⁷ This outcome is exacerbated by the fact that border communities are typically not consulted prior to the deployment of

new border security technologies.³⁸

The Digital Border Wall's Impact on the American Public At Large

Even communities far away from the southern border are likely to eventually feel the effects of continued funding for the border security technologies that make up the digital border wall. Not only does CBP claim jurisdiction within 100 miles of a U.S. land or coastal border, encompassing about two-thirds of the American population,³⁹ but the southern border is inherently treated as a testing ground for experimental technologies later deployed elsewhere.⁴⁰ Technologies funded, developed, and advertised for border security purposes routinely attract the interest of law enforcement agencies nationwide.⁴¹

One of the clearest examples of

Parrish, "The U.S. Border Patrol and an Israeli Military Contractor are Putting a Native American Reservation Under 'Persistent Surveillance.'"

36 Parrish, "The U.S. Border Patrol and an Israeli Military Contractor are Putting a Native American Reservation Under 'Persistent Surveillance.'"

37 Just Futures Law and Mijente, "Factsheet: The Dangers of a Tech Wall," at 2-4.

38 E'Tendayi Achiume et. al., "Technology is the New Border Enforcer, and it Discriminates," *Al-Jazeera*, Nov. 23, 2020, <https://www.aljazeera.com/opinions/2020/11/23/technology-is-the-new-border-enforcer-and-it-discriminates>.

39 Mijente, Just Futures Law, and No Border Wall Coalition, *The Deadly Digital Border Wall*, at 6.

40 Parrish, "The U.S. Border Patrol and an Israeli Military Contractor are Putting a Native American Reservation Under 'Persistent Surveillance.'"

41 Tom Dart, "Inside the US 'Border Industrial Complex': Spy Tech Meets Immigration Crackdown," *The Guardian*, April 26, 2015, <https://www.theguardian.com/world/2015/apr/26/surveillance-border-security-expo>.

the privacy threat these technologies pose to the American public at large is CBP's use of drones for purposes other than border security. In 2020, DHS surveillance aircraft were deployed to more than 15 U.S. cities during George Floyd protests.⁴² This included CBP Predator B drones in Minneapolis and elsewhere.⁴³ The use of CBP drones in this manner is no outlier – the CBP regularly loans its drones out to local and federal agencies for non-border patrol purposes, with close to 700 instances between 2010 and 2012.⁴⁴ CBP drones have also been used for surveillance of other protests in the past.⁴⁵

According to a 2014 report by the Government Accountability Office, 20 percent of CBP drone flight hours were spent outside immediate border and coastal areas.⁴⁶ There are no use or user limitations on CBP drones and limited transparency and oversight exists over their deployment nationwide.⁴⁷

Operational Efficacy of Border Security Technologies

In addition to human rights concerns, there are legitimate concerns about the ability of many of these technologies to contribute to their stated border security purpose, as repeatedly noted by reports from the Government Accountability Office (GAO) and the DHS Office of the Inspector General (IG). A 2017 report by the DHS IG

42 Zolan Kanno-Youngs, "U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance," *New York Times*, June 19, 2020, <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>.

43 Anna G. Eshoo et. al., "Letter to FBI, NG, CBP, and DEA on Government Surveillance of Protestors," United States Congress, June 9, 2020, <https://eshoo.house.gov/sites/eshoo.house.gov/files/Eshoo-Rush%20Ltr%20to%20FBI%2C%20NG%2C%20CBP%2C%20DEA%20on%20government%20surveillance%20of%20protesters%20-%2006.9.20.pdf>.

44 Craig Whitlock and Craig Timber, "Border-Patrol Drones Being Borrowed by Other Agencies More Often than Previously Known," *Washington Post*, January 14, 2014, https://www.washingtonpost.com/world/national-security/border-patrol-drones-being-borrowed-by-other-agencies-more-often-than-previously-known/2014/01/14/5f987af0-7d49-11e3-9556-4a4bf7bcb8d4_story.html?utm_term=.113befbca5f4.

45 Parrish, "The U.S. Border Patrol and an Israeli

Military Contractor are Putting a Native American Reservation Under 'Persistent Surveillance.'"

46 Government Accountability Office, "Additional Actions Needed to Strengthen Collection of Unmanned Aerial Systems and Aerostats Data," GAO-17-152, February 2017, at 9, <http://www.gao.gov/assets/690/682842.pdf>.

47 Bier and Feeney, *Drones on the Border: Efficacy and Privacy Implications*, at 3-4; Jason Paladino, "Millions Turn Out to Protest and the Government Watches from Above," *The Project on Government Oversight*, June 12, 2020, <https://www.pogo.org/analysis/2020/06/millions-turn-out-to-protest-and-the-government-watches-from-above/>; Parrish, "The U.S. Border Patrol and an Israeli Military Contractor are Putting a Native American Reservation Under 'Persistent Surveillance.'"

found that “CBP lacks strong well-defined operational requirements and an overall strategy framework” for securing the southern border.⁴⁸ A 2018 report by the GAO found that CBP had failed to “determine the contribution of surveillance technologies to CBP’s border security efforts.”⁴⁹ A 2021 report by the DHS IG reiterated these concerns, finding that CBP does not have “a standard process to assess technology effectiveness” and “cannot plan effectively for future investments,” including for border security technologies.⁵⁰

For those who endorse the digital border wall for its ability to lead to greater apprehensions or deterrence of migrants, the history of border security technologies’ deployment offers little supporting evidence.⁵¹

This is most evident when examining many of the individual border security technologies that make up the digital wall. Predator B drones, for example, cost \$17 million to purchase, \$12,255 per flight hour to operate, and an estimated \$32,000 each time it is used to apprehend individuals.⁵² Yet, they have been referred to as “dubious achievers” of border security by the DHS OIG, which found “no evidence that the drones contribute to a more secure border.”⁵³ It is unclear whether newer, smaller drones are any more effective, as no study has been conducted to that effect.⁵⁴

The case for the effectiveness of several other border security technologies is not much stronger, making a tradeoff of human rights in favor of security difficult to justify. SBInet and many of CBP’s earlier surveillance tower efforts

48 Special Report: Lessons Learned from Prior Reports on CBP’s SBI and Acquisitions Related to Securing our Border,” DHS Office of the Inspector General, OIG-17-70-SR, June 12, 2017, at 13, <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-70-SR-Jun17.pdf>.

49 Progress and Challenges with the Use of Technology, Tactical Infrastructure, and Personnel to Secure the Southwest Border, Government Accountability Office, GAO-18-397T, March 15, 2018, at 7, <https://www.gao.gov/assets/gao-18-397t.pdf>.

50 CBP Has Improved Southwest Border Technology, but Significant Challenges Remain, DHS Office of the Inspector General, OIG-21-21, February 23, 2021, at 23 and 25, <https://www.oig.dhs.gov/sites/default/files/assets/2021-02/OIG-21-21-Feb21.pdf>.

51 J Weston Phippen, “A \$10-million Scarecrow:

The Quest for the Perfect ‘Smart Wall,” *Politico*, December 10, 2021, <https://www.politico.com/news/magazine/2021/12/10/us-mexico-border-smart-wall-politics-artificial-intelligence-523918>.

52 Bier and Feeney, Drones on the Border: Efficacy and Privacy Implications, at 3.

53 CBP Drones are Dubious Achievers, Office of the Inspector General, press release, January 6, 2015, https://www.oig.dhs.gov/assets/pr/2015/oigpr_010615.pdf.

54 Shirin Ghaffary, “The ‘smarter’ wall: How Drones, Sensors, and AI are Patrolling the Border,” *Vox*, February 7, 2020, <https://www.vox.com/recode/2019/5/16/18511583/smart-border-wall-drones-sensors-ai>.

cost millions to billions of dollars but had high error rates with limited results.⁵⁵ Although new AI-powered surveillance towers claim to solve issues plaguing past surveillance towers, it would not be the first time border security contractors make operational promises they fail to deliver on in practice.⁵⁶ No measure of effectiveness exists for these towers, and history suggests deterrence is likely to be limited, as migrants and smugglers learn to adapt to them as they have to past surveillance towers.⁵⁷ Finally, facial recognition technologies, as alluded to earlier, have proven unreliable for certain demographics.⁵⁸

Conclusion and Recommendations

In light of the serious human rights and efficacy concerns associated with border security technologies, the claim that the digital border wall is smart and humane policy warrants bipartisan skepticism. At the bare minimum, these concerns suggest that additional appropriations for border security technologies should

be capped, reduced relative to previous amounts, or even frozen until these concerns are addressed. They also suggest that Congress should help members and the public better understand the ramifications of the digital border wall, potentially through public hearings that engage border communities, tech providers of border security technologies, advocacy groups, and CBP agency heads.

Aside from these preliminary actions, there are additional steps Congress can consider in a joint or piecemeal fashion to address concerns associated with the digital border wall in terms of oversight, transparency, and use and user limitations.

Oversight

Advocates against the digital border wall, for example, have called for meaningful oversight of border security technologies prior to their deployment.⁵⁹ This could involve making these technologies subject to a 60-day notice and comment period, independent pre-deployment assessments of the efficacy and potential rights violations associated with the technologies, and required consultation with, or consent from, border communities.⁶⁰ Oversight

55 Phippen, “A \$10-million Scarecrow: The Quest for the Perfect ‘Smart Wall.’”

56 Ibid.

57 Ibid.

58 National Institute of Standards and Technology, U.S. Department of Commerce, *Face Recognition Vendor Test (FRVT) Part 5: Demographic Effects* (December 2019).

59 Just Futures Law and Mijente, “Factsheet: The Dangers of a Tech Wall.”

60 Conversation between Author and Julie Mao, Deputy Director of Just Futures Law on January 7, 2021.

post-deployment is also possible in the form of periodic rights and efficacy assessments, although migrant and border community distrust of CBP is high and legitimate questions remain about the agency's willingness to engage in such oversight and to enact recommendations, particularly given its lack of accountability for past abuses.⁶¹

Transparency

Transparency over border security technologies can also take a variety of forms. One simple form is requiring disclosure of current CBP contracts and solicitations for border security technologies and of others being tested, for which a dearth of transparency currently exists.⁶² It could also include increased transparency over the algorithms used in facial recognition and artificial intelligence technologies deployed by CBP,⁶³ as

61 Sarah Turberville and Chris Rickerd, "An Oversight Agenda for Customs and Border Protection: America's Largest, Least Accountable Law Enforcement Agency," *The Project on Government Oversight*, October 12, 2021, <https://www.pogo.org/report/2021/10/an-oversight-agenda-for-customs-and-border-protection-americas-largest-least-accountable-law-enforcement-agency/>.

62 Holmes, "Silicon Valley Startups Backed by Bill Gates and Andreessen Horowitz are Using the US-Mexico Border to Test New Surveillance Technology."

63 Michaela Ross and Cheryl Bolen, "Border Agency Eye Scan Flaws Expose Government AI Risks: Report," *Blomberg*, Feb. 18, 2020,

well as increased transparency over how acquired biometric data is used and stored.⁶⁴

Use and User Limitations and Other Safeguards

A final category of actions Congress can take is to enact use or user limitations over border security technologies subject to certain safeguards. For example, Congress can limit the use of drones to border security operations; restrict their use within a certain geographic range from the border below the expansive 100-mile jurisdiction CBP claims; limit the technologies CBP drones can be equipped with, such as facial recognition technology; and limit CBP's ability to share drones with other agencies or subject such transfers to additional safeguards.⁶⁵ Another example of use and user limitations is restricting CBP's use of facial recognition, as well as increased limitations on both the sharing of data with other agencies and the conditions and amount of time data can be stored.⁶⁶ Use and user limita-

<https://news.bloomberglaw.com/daily-labor-report/border-agency-eye-scan-flaws-expose-government-ai-risks-report>.

64 Tanvi Misra, "The Problem with a 'Smart' Border Wall," *Bloomberg*, Feb. 12, 2019, <https://www.bloomberg.com/news/articles/2019-02-12/the-problem-with-a-smart-border-wall>.

65 Bier and Feeney, "Drones on the Border: Efficacy and Privacy Implications," at 4-5.

66 Giuliani and Fialing, "Congress, Don't Give DHS Unrestricted Authority to Build a 'Smart Wall.'"

tions would mitigate these technologies' impact on human rights, but concerns would remain about these technologies' continued application on migrants and border communities.

Bio

Charles Orta is a Legislative and Policy Analyst at the Senate Foreign Relations Committee (SFRC), where he works on issues related to the Western Hemisphere and global counternarcotics and law enforcement. He previously served on SFRC as the Congressional Hispanic Caucus Institute's Facebook Graduate Fellow, where he worked on Spanish-language dis/misinformation and tech cooperation in the Western Hemisphere, among other issues, and sought to increase the representation of Latinos within the national security and foreign policy fields.

Charles graduated with a Juris Doctor and Master in Public Policy from Harvard Law School and Harvard Kennedy School in May 2021, respectively, completing a joint curriculum focused on international law and policy. Prior to that he earned a Bachelor of Arts in Government with magna cum laude honors and a Certificate in Latin American Studies from Harvard College in 2016.

Charles has over two years of professional experience across the NGO, journalism, government, and public interest law sectors, where he has predominantly worked on issues related

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Cover Illustration: Silvia López Chávez

Silvia López Chavez is a Dominican-American painter, designer, and muralist. Informed by her experience as an Afro-Caribbean woman living in the diaspora, her vibrant color palette, emphasis on place-based art, and value of connection, she continues to redefine streets, art museums and products across the U.S. & worldwide.

In 2020, Silvia painted a mural at the Harvard Kennedy School of Government (HKS) as part of a program to bring art to campus spaces. HJHP selected her mural for this year's cover art. Her mural reflects the celebration of connection and encouragement of dialogue. As stated on Silvia López Chavez's website, the concept of the mural conveys energy, movement, a journey, and the idea of convening.

*Sources: <https://www.silviaopezchavez.com/#/harvard-kennedy-school-mural/>
<https://www.silviaopezchavez.com/about>*