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## Recognition of Former Editors

A special thank you to the former editors of the *Harvard Kennedy School Journal of Hispanic Policy*, previously known as the *Harvard Journal of Hispanic Policy*, whose legacy continues to be a source of inspiration for Latina/o students Harvard-wide.

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\* Harvard Kennedy School of Government degree program alumni

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# A Note on Terminology

In establishing the Harvard Journal of Hispanic Policy (HJHP) at the John F. Kennedy School of Government at Harvard University in 1985, our founding editors were cognizant of the importance of terminology and naming. They sought to form a credible publication that would bring the US Latina/o community to the forefront of policy debates and that would name new priorities, challenges, and opportunities for policy-makers to consider.

Naming the journal itself proved to be an important endeavor. For decades, the terms used to define US Latina/os fluctuated greatly, creating much dissonance within the policy discourse. Ethnic origin (e.g., Mexican) and regional labels (e.g., “Central American”) were not inclusive enough to capture HJHP’s mission as a publication. Similarly, emerging pan-ethnic constructs (e.g., “Latin American”) implied homogeneity where incredible diversity and fluidity exists. Even with these limitations, our founding editors knew that a common language was needed to bridge conversations across disciplines.

Our founding editors thus reached consensus around “Hispanic,” a term that reflected national trends at the time. The term’s adoption by the federal government reflected the growing prominence of US Latina/os in domestic policy. In 1968, President Johnson announced the observation of Hispanic Heritage Week, an important step in recognizing the population’s presence and history. In 1976, Congress passed legislation requiring the federal government to collect and analyze data on “Americans of Spanish origin or descent” in order to understand how this subgroup was impacted by federal policies and programs. The following year, the Office of Management and Budget developed standards for this data collection, hoping to create coherence across educational, health, and human service agencies. Finally, and perhaps most significantly, the US Census Bureau added a Hispanic question in 1980 in an effort to obtain more accurate population estimates with which to inform national policymaking.

Since the journal’s founding in 1985, the lexicon has only continued to evolve. In 2000, the US Census Bureau introduced survey language that used “Hispanic” and “Latino” interchangeably. Similarly, many national advocacy, leadership, research, and civic organizations continue to use “Hispanic” in their name while adapting their communications to be inclusive of the term “Latino.” Today, we too have adapted. Standing at the eve of our 30th published volume, we are proud to carry our name and legacy with us while remaining forward-looking. For this reason, we have begun to intentionally use “Latina/o” and the plural term “communities” within our publication, social media sites, and website.

Our Editorial Board remains committed to inclusivity and will continue to publish works from individuals and organizations who may use different terms. It is our firm belief that, in the difficult work of naming the policy needs of our community, no singular term may ever be comprehensive enough for the complexity at hand.

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## Editor's Note

Reflecting back on the events of the past year, it is hard not to recognize how challenging a year it was for the Latina/o community in the United States. The start of 2017 brought the beginning of a presidential administration that many consider to be fundamentally against many of the values and interests shared among our community, causing widespread concern about the state of US Latina/o policy over the next four years and beyond. This concern materialized in full force when the administration called for the repeal of the Deferred Action for Childhood Arrivals (DACA), leaving 800,000 young adults vulnerable to deportation and millions more fearful of being separated from their family members. In 2017, the Latina/o community also dealt with the horrific effects of some of the most destructive natural disasters in recent history. Hurricane Harvey ravaged communities in Texas, many of which were largely Hispanic, and Hurricane Maria caused such devastation on Puerto Rico's infrastructure that the island continues recovery efforts almost half a year later.

Despite the challenges brought on by these events, 2017 also gave us plenty of reason to remain optimistic about the future of US Latina/o policy. The events of the past year prompted our nation to engage in more critical policy discussions around long-standing issues that current policy frameworks have failed to address. They also inspired an unprecedented wave of political engagement among ethnic minorities and women seeking election as first-time candidates, a group that *TIME* magazine dubbed "The Avengers" in its January 2018 cover feature. In the aftermath of the DACA announcement, we saw an incredible outpour of support for DREAMers and calls for comprehensive immigration reform. Recovery efforts after the natural disasters were met with great support from policy makers, celebrities, and hundreds of thousands of fellow Americans eager to help people rebuild their lives and raised awareness about policies that had hurt minority communities in the affected regions. Finally, the end of 2017 brought the long-awaited release of Disney/Pixar's *Coco*, a significant milestone in the ongoing effort to increase representation of Latina/o culture in the mainstream media.

Like the events of 2017, the 30th volume of the *Harvard Kennedy School Journal of Hispanic Policy* (HJHP) reflects both the challenges and hopes of the current policy sphere. The pieces contained within this volume reflect both a critical view of current policy and methods for improvement. The selected content challenges the status quo and sheds light on important policy issues ranging from wage-theft policies and predatory lending to the rights of detained transgender Latinas in the age of prison privatization. The volume also briefly explores current and potential threats to Puerto Ricans' voting rights in the aftermath of Hurricane Maria, an issue that is extremely timely given recent trends in political engagement. We are also happy to feature a piece written by one of our own senior editors, Elizabeth Castro, after interviewing members of Disney/Pixar *Coco*'s Cultural Consultants Team. Together, the commentaries, research articles, and artwork contained within seek to educate, promote greater critical discussion of the current policy framework, and inspire policy makers to take action.

The 30th volume is a milestone in the long-standing legacy of the *Harvard Kennedy School Journal of Hispanic Policy*, and I am truly honored to be able to serve as the editor-in-chief during this momentous year. I would be remiss not to thank the founding editor-in-chief, Henry Ramos, and all subsequent journal staff that have contributed to HJHP's legacy through a history of excellence over the years. Being part of HJHP has been one of my greatest experiences during my time at Harvard, due in large part to the supportive community we have cultivated. I would like to acknowledge all of the individuals that contributed to this community during the production of the 30th volume.

I am deeply grateful to our executive advisory board members for their continued guidance and support of the journal staff, and I would like to give a special thank you to Genoveva Arrellano for all of her hard work as chair. I would also like to thank Martha Foley, the student journals coordinator at the John F. Kennedy School of Government at Harvard University (HKS), and Professor Richard Parker, our faculty advisor, for all of the time and effort that they devote to ensuring that our journal and all student-run journals at HKS have the resources and support necessary to continue our work. I would also like to thank the entire HJHP staff for your hard work, positivity, and commitment to the Latina/o community. Your incredible work made this volume possible and continues to carry forward the legacy of HJHP as the flagship policy journal at HKS. Finally, I would like to give a special thank you to Managing Editor of Print Leticia Rojas for being an instrumental aid to me throughout this journey.

Please find more information about the *Harvard Kennedy School Journal of Hispanic Policy* on our new website, [www.hjhp.hkspublications.org](http://www.hjhp.hkspublications.org).

To all of our committed readers, thank you for your continued support and for helping us achieve this milestone. I hope you enjoy Volume 30!

Sincerely,  
Kristell M. Millán  
Editor-in-Chief  
Cambridge, MA  
March 2018





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**Henry A. J. Ramos** is a California-based artist, writer, and progressive public advocate. A graduate of the University of California, Berkeley (where he earned bachelor's and law degrees) and the Harvard Kennedy School of Government (where he founded the *Harvard Kennedy School Journal of Hispanic Policy*), Ramos's original artworks have been featured and sold in galleries and showing venues in New York City; Paso Robles, California; Lausanne, Switzerland; and Berlin, Germany.

## Mauer Kunst Meets the U.S.-Mexico Border

In early 1990, my German wife, Claudia and I travelled to Berlin to experience the aftermath of the fall of communism all across Eastern Europe and the former Soviet Union. At the Berlin Wall, we saw seemingly endless depictions of artistic renderings celebrating democracy and freedom. Free Germans and other visitors along the western side of the wall had for years adorned the long corridor with messages and images calling for peace and unification among Europe's and the world's divided peoples.

As a Mexican American with close friendship ties to the descendants of the great Mexican muralist Diego Rivera, I naturally resonated with the political renderings and graffiti we found at the Wall. I later learned more about the important history of Mexican political art, and the Mexican Revolution that gave rise to it, through Rivera's daughter, Dr. Guadalupe Rivera Marín, a longtime friend to me and Claudia.

In 1996, when I started my own philanthropic advising and creative culture organization, I named it Mauer Kunst, which is German for graffiti. And I committed our firm's work to the task of breaking down the barriers of mind, matter, and ideology that political, business, and institutional leaders have too often erected to separate people and communities from one another and their best possibilities. I also began to produce in my own artistic creations increasingly political statements about the role artificial walls continue to play in American and global political economy.

The most significant focal point of these pieces was my concern about growing anti-immigrant sentiment in America targeted particularly at Mexican and other Latino workers and families, as well as Muslim Americans, beginning in the immediate aftermath of the 2001 terrorist attacks on America. By 2005, it had become evident to me that America was moving in a dangerous direction in these connections. A heavy-handed deportation policy and allied encroachments on people's civil liberties began to evolve and became even worse in subsequent years, under both Republican and Democratic administrations.

Most recently, American voters have elected a president who has called unapologetically for the building of a Great Wall along the U.S.-Mexico border, specifically to prevent immigrants and others fleeing political and economic hardship from gaining access



## Cover Artist

to America. While xenophobia is not entirely new to U.S. politics, it seems clear to all objective observers that our country has never faced such a serious challenge to the basic elements of our long-established standing as a nation of immigrants and of tolerance.

My recent paintings dating back to the early 2000s have thus focused on challenging the nativist impulse to erect new walls between people and nations. Rather, my works embody a reverence for nature, justice, and the free flow of people and ideas that have been the bedrock of America's best values and traditions throughout our nation's long history. Accordingly, the works offered here for the *Journal of Hispanic Policy's* 30th volume reflect a call to action in these directions.

The piece *Gardens at el Sueño* depicts the effortless beauty of the natural world and harkens to the dream (el sueño is the Spanish word for dream) that unites all immigrants and refugees to the U.S. This is the American Dream that lies at the heart of the contemporary Dreamer movement and that underscores the hopes and aspirations of all newcomers to our nation.

The piece entitled *Justice Has No Borders* serves as a reminder that while man-made laws may reflect man-held prejudices, in the higher scheme of things, there is no just way to separate people and families that have the most human impulses to seek safety, opportunity, and community in the face of unspeakable hardships.

Finally, the work entitled *House of the Unwelcome* reflects the recent turn of American culture from one of openness and invitation to one of unwelcoming hate where newcomers to our land are concerned.

Together, these pieces attempt to appeal to what remains of Americans' intellectual honesty and ethical foundations in a time of great danger for our nation and world. They seek to lift up the humanity, dreams, and inclinations that unite all of us; and they serve to remind and warn us that past efforts to walk the path of racial, ethnic, and religious exclusion in nations like Germany and the former Soviet Republics have resulted in outcomes that no American should want to associate with.



*Gardens at el Sueño*, 2013  
acrylics and collage on canvas  
(property of the author)

*House of the Unwelcome*, 2005  
acrylics and collage on canvas  
(property of Robert L. McKay, Jr.)



*Justice Has No Borders*, 2006  
acrylics and collage on canvas  
(property of Genoveva L. Arellano)



# El Pan de Cada Día: A Review of Wage Theft Policies

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Jesús Guzmán and Caleb Soto

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“He just disappeared.” In 2014, a couple of Latino immigrant workers came to Centro Laboral de Graton (Graton Day Labor Center) in Northern California, seeking help with recovering their wages. They had worked for a farm-labor contractor for weeks who owed them their wages but who suddenly refused to answer his phone and could not be found. The staff supported the workers filing a wage claim with the state’s Labor Commission—a process that lasted roughly more than six months. At the end of the process, a judgment was given by the Labor Commissioner, finding in favor of the workers and awarding of them roughly \$5,000 to be paid by the employer. However, the judgment, in effect, wasn’t much more than a piece of paper once it came time to collect. The employer had refused to participate in the state agency’s process and was now refusing to acknowledge, much less pay,

the monies owed to the aggrieved workers. Ultimately, the workers were unable to collect their awarded judgment and decided to drop their case by no longer pursuing further action. Through this process, we discovered that the contractor had over 30 wage claims against him with several that had been adjudicated but had been met with a similar fate as the aforementioned workers, in which none had been able to collect on their awarded judgment. The troubling truth about wage theft as a policy matter is that moderately well-designed policies exist, yet weak enforcement ultimately undermines their effectiveness. With insufficient resources, staffing, and regulatory teeth for enforcement, collecting on judgments can be a nightmare for workers.<sup>1</sup> In particular, wage theft is rampant in low-wage labor markets wherein Latino and Black workers are more likely to experience

minimum-wage violations, as compared to White workers.<sup>2</sup> For many Latino households, work is viewed as an opportunity to earn their daily bread. But all too often, the low-wage labor market can be a wicked place that might leave victimized workers without much of a prayer to recover their wages.

Wage theft is commonly defined as the underpayment or non-payment of wages or benefits. For example, workers can have their wages stolen when employers work them off the clock, misclassify them as contractors, fail to pay the minimum wage, or refuse to pay overtime.<sup>3</sup> Wage theft is not a common term in the English lexicon, so perhaps not surprisingly, wage theft's impacts are also little known to the general public. The Department of Labor estimates that 41,000 families in California and 26,000 in New York would be above the poverty line were it not for wage violations.<sup>4</sup> A recent survey estimates that Latino workers lose an average of \$3,100 per year from minimum-wage violations alone. Plus, roughly 5 percent of Black and Latino workers are paid less than the minimum wage, compared with 3.5 percent of White workers. In total, workers of color lose an annual average in wages well over \$4 billion.<sup>5</sup>

Wage violations go beyond simply random isolated incidents of rogue firms seeking an unfair advantage over the competition. Instead, the problem should be understood as systematic in which a policy failure rooted in weak

enforcement has permitted non-compliant firms to forego responsibility while workers shoulder the economic consequences. There is also a cultural lens that colors this conversation about the working poor in America. One of this country's enduring myths is the belief that the cure to poverty rests in instilling personal responsibility in the poor.<sup>6</sup> In essence, the poor have the power to lift themselves out of poverty if only they worked harder. For Guadalupe Salazar, a McDonald's cashier who says her paychecks were missing overtime wages, that belief feels contrived when working-class people like her play by the rules and work hard, yet when payday comes often times no paycheck arrives.<sup>7</sup> Tragically, it is those individuals who can least afford wage theft who are thrust even deeper into poverty. Immigration status adds a further layer to the discussion. A 2011 study of post-Katrina's rebuilding effort reported roughly half of the construction workforce was Latino and nearly all were undocumented. The key finding was that about 41 percent had experienced wage theft, with many citing the threat of deportation as a strong motivation to remain silent.<sup>8</sup> In summing the evidence, wage theft can be framed as a problem rooted in two key policy failures with respect to Latino workers: (1) ineffective enforcement mechanisms and (2) too few protections for undocumented Latino workers who are victims of wage theft.

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## National Policy Solutions

The Wage Theft Prevention and Wage Recovery Act of 2017 introduced by US Senators Patty Murray and Sherrod Brown, with Congresswoman Rosa DeLauro (D-CT), is an example of a moderately comprehensive policy solution.<sup>9</sup> The law would levy heavier penalties on dishonest employers, allow the Department of Labor to refer bad actors to the Department of Justice (DOJ) for prosecution, permit greater latitude for workers to engage in collective action similar to class action cases, and strengthen whistleblower protections.<sup>10</sup> This bill would be effective because of two features: greater possibility of criminal prosecution by the DOJ would strongly discourage employers from failing to abide by the rules, and increasing penalties to include treble damages (triple back-pay) has been shown by recent research to effectively decrease wage-theft rates in areas where such policies exist.<sup>11</sup>

The Wage Theft Prevention and Wage Recovery Act does have certain limitations as the bill does not offer certain legal protections to undocumented workers who come forward to report a wage claim to a government agency such as a state department of industrial relations or the US Department of Labor. The Protect Our Workers from Exploitations and Retaliation (POWER) Act, as last proposed by Congress-

woman Judy Chu (D-CA), would grant temporary legal protection for immigrant victims of labor retaliation.<sup>12</sup> The POWER Act would be an equitable solution that could empower workers to enforce their rights while protecting against retaliation. Moreover, the POWER Act would increase the percentage of workers coming forward to denounce wage violations and effectively complement the Wage Theft Prevention and Wage Recovery Act's tougher enforcement provisions.

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## State Policy Solutions

States like California and New Mexico have made meaningful changes to enforcement by providing additional tools to state agencies.<sup>13,14</sup> Two such examples are wage liens, an instrument shown to improve wage-theft outcomes, and the streamlining of an otherwise onerous collection process, which had contributed to the two aforementioned workers dropping their case. These mechanisms address the two weaknesses that most undermine the effectiveness of wage claims: the lack of immediacy in responding to wage violations and the delays in levying punishment against a scofflaw employer. Recent criminology literature suggests that the timing of punishment and its certain application are more effective deterrents compared with the severity of a punishment.<sup>15</sup> The swift and certain framework when applied to a wage lien, accompanied by quicker collec-

tions, connects the illegal behavior of violators with the punishment and diminishes the “discounting effect,” where a violator sees future harm as less costly than the immediate benefit.<sup>16,17</sup>

Equally important in the swift and certain framework, and as was noted in the two workers’ story, community-based organizations can be effective intermediaries and support vehicles that bolster the effectiveness of any policy. In the face of asymmetrical information, these are organizations that possess the experiential knowledge and pivotal trust that come by way of working with the victimized workers and their families. And because they are on the ground in the most at-risk communities, community-based organizations cut the average time it takes to report a wage violation significantly. County and state governments could make additional funding available to organizations supporting workers’ rights enforcement.

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## Conclusion

Policies that improve enforcement and extend protections to workers can fill much of the gap to hold exploitative employers accountable. Eventually, any effective and equitable policy must be predicated on the maxim that a day worked should be a day paid. Private firms, the large majority of whom play by the rules, should be concerned about the unfair advantage scofflaw employers

gain when they fail to pay workers and, in turn, save on labor costs. The private sector and high-road employers have a vested interest and pivotal role to play in ensuring their respective industries are on a fair and competitive playing field. Moreover, strong partnerships between the public and social sector can empower workers so that workers are leading the effort for a fair and just workplace while wielding policy as an anti-poverty tool against a pervasive culture of wage theft in low-wage labor markets.

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## Author Bios:



Jesús Guzmán is a second-year MPP candidate at the University of California, Berkeley Goldman School of Public Policy. While at GSPP, Jesús has served on the leadership teams for both the Labor Policy Group and the Berkeley Energy & Resources Collaborative. Jesús has also served as the program analyst for the National Day Laborer Organizing Network. Jesús is currently completing his advanced policy analysis with the Marin Economic Forum with a focus on the housing shortage and income inequality. Jesús's policy interests include labor economics, equity in energy policy, and economic development. Prior to attending graduate school, Jesús was the program director for the Graton Day Labor Center in Northern California, where he developed innovative workforce training programs and advocated for inclusive immigrant and labor policies. Jesús was born in Jalisco, México, and grew up in Sonoma County where he now resides with his wife, Stephanie, and daughter, Victoria.



Cal Soto has been the worker's rights coordinator and staff attorney for the National Day Laborer Organizing Network since 2015. He helps low-wage workers win their money back from scofflaw employers while organizing labor rights campaigns for worker centers across the country. Before joining NDLO, he was a Ford Legal fellow at LatinoJustice's Rights Restoration Project in Orlando, working to end felon disenfranchisement practices in Florida. Cal graduated with his bachelor of arts from Harvard University and received his juris doctorate from Yale Law School. Cal is originally from Miami, Florida, and now resides in Los Angeles.

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## End Notes

<sup>1</sup> Shannon Gleeson, Ruth Silver Taube, and Charlotte Noss, *Santa Clara County Wage Theft Report* (California: Santa Clara County Wage Theft Coalition, 2014).

<sup>2</sup> David Cooper and Teresa Kroeger, “Employers steal billions from workers’ paychecks each year,” *Economic Policy Institute*, 10 May 2017, <http://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>.

<sup>3</sup> Brady Meixell and Ross Eisenbrey, “Wage Theft is a Much Bigger Problem than Other Forms of Theft—But Workers Remain Mostly Unprotected,” *Economic Policy Institute*, 18 September 2014, <http://www.epi.org/publication/wage-theft-bigger-problem-forms-theft-workers/>.

<sup>4</sup> US Department of Labor, *The Social and Economic Effects of Wage Violations: Estimates for California and New York* (Lexington, MA: Eastern Research Group, Inc., 2014).

<sup>5</sup> David Cooper et al., “Employers steal billions.”

<sup>6</sup> Brook Gladstone and Bob Garfield, “Who Deserves To Be Poor?” 6 October 2016 in *On the Media*, produced by WNYC Studios, podcast, <https://www.wnyc.org/story/who-deserves-to-be-poor/>.

<sup>7</sup> Steven Greenhouse, “More Workers Are Claiming ‘Wage Theft,’” *The New York Times*, 31

August 2014, <https://www.nytimes.com/2014/09/01/business/more-workers-are-claiming-wage-theft.html>.

<sup>8</sup> Elizabeth Fussell, “The Deportation Threat Dynamic and Victimization of Latino Migrants: Wage Theft and Robbery,” *The Sociological Quarterly* 52, no. 4 (2011): 593–613.

<sup>9</sup> Wage Theft Prevention and Wage Recovery Act: H.R. 3467, 115th Cong. (2017).

<sup>10</sup> Ross Eisenbrey, “New legislation could help end wage theft epidemic,” *Economic Policy Institute*, 16 March 2016, <https://www.epi.org/blog/new-legislation-could-help-end-wage-theft-epidemic/>.

<sup>11</sup> Daniel J. Galvin, “Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance,” *Perspectives on Politics* 14, no. 2 (2016).

<sup>12</sup> “The POWER Act: Protect Our Workers from Exploitation and Retaliation Act,” The National Immigration Law Center, last modified October 26, 2015, <https://www.nilc.org/issues/workersrights/poweract/>.

<sup>13</sup> Employment: nonpayment of wages: Labor Commissioner: judgment enforcement: California S.B. 588, (2015).

<sup>14</sup> Morgan Lee, “New Mexico Agrees to Strengthen Wage-Theft Enforcement,” U.S. News & World Report, 20 December 2017, <https://www.usnews.com/news/best-states/new-mexico/articles/2017-12-20/new-mexico-agrees-to-strengthen-wage-theft-enforcement>.

<sup>15</sup> Daniel S. Nagin, “Deterrence in the Twenty-First Century,” *Crime and Justice* 42, no. 1 (2013): 199–263.

<sup>16</sup> Gleeson et al., “Santa Clara County Wage Theft Report.”

<sup>17</sup> Daniel S. Nagin and Greg Pogarsky, “Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence,” *Criminology* 39, no. 4 (2001): 865–892.



# Fresno, California's New Downtown: Visualizing Policy through Anthropology

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Doris Pérez

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Several thousand people gathered on downtown Fresno, California's newly revamped Fulton Street for its grand opening, crowding the sidewalk to watch the first official parade drive down an area that hadn't been open to traffic for over 50 years. Fulton Mall, the pedestrian haven for shoppers in the 1960s, was no more. Fulton Street, the same three-block length, has been reborn as what many hope will be the city's newest, hippest Main Street, opening up the pavement to refresh the local urban environment and tempt investors. This event, in warm October 2017, marked the true culmination of Fresno's downtown facelift and left many Fresnans questioning the efficacy of such reinvestment in their city's "rediscovered"<sup>1</sup> downtown. Carefully avoiding the word "gentrification"<sup>2</sup> by most involved in the project, the Fulton project is exactly that—an arguably much-needed facelift on old

infrastructure that was once repurposed from its Modernist provenance to an open-market-style Latino hub that has been deemed empty and underutilized by the City.

The population arguably most affected by these changes to the politics of urban space in Fresno is the small mom-and-pop stores on Fulton Street being pushed out of business by disrupted foot traffic due to the project's construction, as well as the prospect of higher rents, which include the new condo developments springing up in what is now known as the Cultural Arts District near Downtown that run above market rates. Erasure happens at multiple levels: the Latino daytime shoppers that have shopped for quinceañera dresses on the mall for decades as White flight abandoned the space have little to no place in the vision of Fulton Street's bourgeois craft brewery future. Yet the Latino population in Fresno, now the

fifth-largest urban center in California, has grown 17 percent from 1990 to 2010.<sup>3</sup>

With the State of California's high-speed rail project situated near Fulton Street, the dense urban area has developed a sheen of promise via media attention and real-estate speculation. It is hard not to get excited at the brilliant imagined futures city leaders talk about. Two sides argued past each other in the galleries of Fresno's City Hall, one a push for more investment into urban infrastructure and the other a cry to remember the value of green public space in the age of rapid urbanization. Boosterism, or local cheerleading done to great effect, becomes the means through which a form of citizenship activism develops.

My dissertation project on Fresno's changing urban renaissance is being completed through anthropology's qualitative scholarship. Slow methodological data collection can feel like a bad match for those in need of good data to write impactful legislation. Public policy, defined as the written legislation and systems of practices of governing bodies, is a relatively new unit of analysis for anthropological investigation and the subfield of the Anthropology of Policy only a few years old. Seen as an outgrowth of political institutions, legal systems, and the interpretation of those exerting power and those being governed, "a policy finds expression through a sequence of various events; it creates new social and semantic social spaces,

new sets of relations, new political subjects and new webs of meaning."<sup>4</sup> In short, policy happens within cultural milieus, and it is these unspoken norms and ideas that add value to legislative endeavors. Anthropology's ethnographic methodology of "deep hanging out" to discover the invisible patterns of human behavior and systems of value pick up the slack where big data abstracts.

Still, it is policy, specifically the federal grant won to fund the construction and the City of Fresno's building code adjustments of 2016, that shapes the outlines and outcomes of my analysis. Taller buildings and new zoning for residential housing means increased activity and human capital downtown. Policy draws the outlines of what can be, physically manifesting financial support and code enforcement in contrast to what I measure—memory and placemaking—through ethnographic interviews and on-the-ground participant observation.

My research on memory and the methodology I use, ethnography, is a qualitative additive to the more readily accepted quantitative data analyses that most analysts, be they financial and/or legislative, use to make policy recommendations. Via nuance, ethnographic data drills down to core themes—public local memory, social connection to space, placemaking strategies in use, like that of a marginalized Latino presence on Fulton less welcome in North Fresno—that are correlated to the development of

interest-group resistance and community-empowerment practices.

Ethnographic research that supports the policies of local government expands the information being received for greater localization through the metrics of in-depth local public opinion, important as many domestic quantitative data sets happen at the national or state-wide level (i.e., the general social survey) or are produced every decade (e.g., the US Census, etc.). Finally, power systems analysis that anthropology affords is more holistic than other disciplinary conventions, making ethnographic data an underused source of valuable local data, "ground truth" through embodiment and participant observation rather than inferred through theoretical means. As one person on a walking tour of the new street said: "If nothing ever changes, why bother coming downtown?" Such qualitative data highlights the very import that placemaking strategies like the Fulton Street project instill.

In the last decade, the positivism forwarded by practitioners eager to follow linear legislative processes is being eroded, inviting true methodological cross-pollination. Policy is being analyzed as processual and interpretive, as a manifestation of particularized power that is culturally constructed. Methodologies long held dear to the anthropological canon, like reflexive analysis and situated knowledge, are being utilized to better understand the unintended consequences and

meaning-making that occurs after a policy is implemented. But the analysis of power is not limited to a policy's legislative genesis—it is often in places where power is authorless that more in-depth inquiry is needed. In fact, the "authorless" nature of policy as a layered patchwork of rules produced by different actors over time helps demystify the reach of authoritarian power regimes as cultural processes in a world of many. Fulton's redesign may be a diffusion of responsibility by stakeholders making decisions, but the gaps in representation—here the urban poor, the homeless, and Fulton's former primacy as a site for Latino consumers—have been baked into the project from the very beginning of its problematization as an "underused" site. Thus, the future of policy analysis and development is interdisciplinary, and the value that anthropology's cultural brokerage can add to policy scholarship can be seen in case studies that, like the reopening of Fulton Street, speak to the complex human fortunes of a city bent on change.

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### **Author Bio:**

Doris Pérez is in her fifth year as an interdisciplinary humanities doctoral student at the University of California, Merced. Her research focuses on the cultural meaning-making of urban space and the political anthropology of public policy as a tool for cultural change. She was the 2015–2016 Graduate Fellow for the Center

for Humanities at the UC Merced. An exhibit of her research about water and the history of the Central Valley opened on the UC Merced campus in March of 2017.

Her dissertation project centers on the revitalization of the Fresno, California, Fulton Mall, which serves as an anthropological case study around changing urban forms. The creation and maintenance of community as it pertains to open urban space is central to her argument that context and placemaking matter when confronting change at the street level, querying the role public space plays in 21st-century urban areas. Her research asks what preservation efforts really seek to save in a rapidly changing region like California's greater Central Valley. What do such preservation efforts say about the role of citizens in their community at the local level and how their participation in the urban revitalization process include cultural meaning that reinforces and counters the discourse of a dominant local planning regime? Through ethnographic research and an intimate and empirically grounded understanding of place, she showcases the different negotiations of space and self that community groups and local government entities develop.

In her previous career as a political aide, she worked for the California State Legislature and the Oakland City Council in Oakland, California. She currently teaches at UC Merced



and recently worked on the Google X Self-Driving Car project. More information about her research can be found at [www.dorieperez.org](http://www.dorieperez.org).

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## End Notes

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# We Must Protect Puerto Rican Voting Rights in 2018

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Katherine Culliton-González

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On 20 September 2017, Hurricane Maria devastated Puerto Rico, and with recovery sorely lacking, many residents are fleeing for the mainland. By November 17, over 168,000<sup>1</sup> had arrived in Florida, and 100,000 more<sup>2</sup> are expected by the end of 2017. One prediction estimates 750,000<sup>3</sup> Puerto Ricans arriving in the Sunshine State in the next four years.

Mainstream media has been covering how Puerto Ricans can change Florida and national politics,<sup>4</sup> but there is little discussion<sup>5</sup> of the many challenges to Puerto Ricans' voting rights. Puerto Ricans' potential to influence the 2018 elections may be massive, but the community's actual political power and ability to influence policy is stunted not only by Hurricane Maria but also by many layers of disenfranchisement. Participation in elections in Puerto Rico is over 80 percent, yet once Puerto Ricans move to the mainland, participation plummets.

On the mainland, although the solution to the problem of low Latino turnout is complex,<sup>6</sup> several components are obvious as they flow from already-developed but under-enforced legal and policy solutions. Puerto Rican community leaders won protections for Spanish speakers<sup>7</sup> under the 1965 Voting Rights Act, and precedent-setting cases<sup>8</sup> were brought during the next decade in Chicago, Philadelphia, New Jersey, and New York. These cases were mainly brought by the Puerto Rican Legal Defense and Education Fund (now LatinoJustice PRLDEF) and the US Department of Justice (DOJ). In recent years, LatinoJustice PRLDEF led successful cases<sup>9</sup> in Florida, New York, and New England; I worked on Puerto Rican voting rights cases<sup>10</sup> in Florida, Massachusetts, New Jersey, New York, Ohio, and Pennsylvania while serving at the DOJ. Yet experience is already showing that under Trump<sup>11</sup> and Attorney General Jeff

Sessions<sup>12</sup>, we cannot rely on the DOJ<sup>13</sup> to protect the new American demos. Non-profit voting rights and community groups must step in to protect voting rights, including the specific rights of Puerto Ricans.

English-only elections are a major barrier to the ballot for many Puerto Ricans. Over 78.5 percent<sup>14</sup> of Puerto Rico's 2.78 million adults are limited-English proficient. Because persons educated in Puerto Rico received public schooling in Spanish, Section 4(e) of the Voting Rights Act<sup>15</sup> requires that they be provided with Spanish voting materials and assistance. In Central Florida, after legal intervention, Orange, Osceola, Seminole, and Volusia counties began providing bilingual access to voting for their significant Puerto Rican communities, and South Florida counties have long had bilingual elections. However, other counties with significant Puerto Rican populations still have English-only elections, making it very difficult for Spanish speakers to vote. According to 2016 Census data,<sup>16</sup> Pasco, Duval, and Brevard counties each had over 20,000 Puerto Rican residents; Marion, Lake, St. Lucie, and Hernando had over 10,000; and a dozen other Florida counties had over 2,000 each. With thousands fleeing from the Island, these numbers are skyrocketing, but nearly 80 percent of the newcomers face a *de facto* literacy test.

This has to change: Like all US citizens, Puerto Ricans have the right to register, vote for candidates, and un-

derstand ballot measures. Therefore, the law requires that most Florida counties and any county in the United States with a significant Puerto Rican population must provide bilingual ballots and poll workers.

Puerto Rican birth certificates issued prior to 2010 are not accepted as proof of citizenship<sup>17</sup> in states with strict voter ID or documentary proof of citizenship laws (these are Alabama, Arizona, Georgia, Indiana, Kansas, Mississippi, Missouri, North Dakota, South Carolina, Tennessee, Texas, Virginia, and Wisconsin).<sup>18</sup> In these states, exceptions must be made for Puerto Ricans in 2018; in the long run, discriminatory voter ID and documentary proof of citizenship laws must be overturned. The complications of proving residency after climate displacement are another obstacle, so proof of residency rules must also be made more reasonable. Additionally, the tendency of poll workers to disproportionately ask voters of color for ID,<sup>19</sup> even in non-voter ID states,<sup>20</sup> is a discriminatory practice that must end immediately.

Puerto Ricans may also be subject to voter purges, as Black and Latino surnames are more likely to be mistakenly identified<sup>21</sup> in the Interstate Voter Registration Crosscheck Program that Kansas Secretary of State Kris Kobach has urged states to adopt.<sup>22</sup> Crosscheck allegedly identifies persons who may have voted in more than one state, but it has a high misidentification rate of up to 99.5 percent.<sup>23</sup> Since Crosscheck

compares addresses,<sup>24</sup> being displaced and living in temporary housing may also exacerbate Crosscheck's misidentifying voters<sup>25</sup> as being illegally registered in two jurisdictions. Demos, a public policy organization fighting for inclusive democracy, urges election officials to refrain from purging voters based on Crosscheck or inappropriate and inaccurate federal immigration data<sup>26</sup> that has also disparately targeted voters of color,<sup>27</sup> including Puerto Ricans. Instead, states should undertake proactive measures, such as automatic voter registration, to enable every citizen to vote.

In 2018, Puerto Rican evacuees will want to vote in their first federal election, as the racist, colonialist system codified in the 1917 Jones Act,<sup>28</sup> which made Puerto Rico a US territory subject to numerous inequities, prohibits people on the Island from doing so. To truly change the system that has created the post-Maria humanitarian crisis, the Jones Act must be repealed so that everyone has an equal say in American democracy. The modern American crisis of voter suppression requires visionary opposition. Failure to remove barriers to the ballot for Puerto Ricans in 2018 would be just one more way that communities of color are counted on during elections but not respected in policy decisions. On the positive side, high turnout in Puerto Rico shows that there is no essentialist cause for Latino voting rates to continue to stay low. For all these reasons, now is the

time to protect Puerto Rican voting rights, along with the rights of millions of other voters who would also benefit from these measures.

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### **Author Bio:**

Katherine Culliton-González is senior counsel and bilingual civil rights lawyer at Demos. She focuses on overcoming racial discrimination in access to political power and justice and promoting inclusive democracy. She brings over 20 years of experience in movement lawyering, and her work focuses on lifting up the voices and visions of communities of color to bring about empowering change. Prior to joining Demos, she served as director of the Voter Protection Program at Advancement Project, as a senior attorney in the Voting Section of the Civil Rights Division of the US Department of Justice, and as a staff attorney at the Mexican American Legal Defense and Educational Fund. During the last decade, working with community groups, she developed successful litigation against discriminatory voting practices in various states, authored influential reports on Latino voting rights, and provided expert advice regarding the legislation needed to restore the full protections of the Voting Rights Act.

A former Fulbright Scholar, Culliton-González taught human rights law in Chile (1993–1994), and among other awards, she graduated as valedictorian of the Washington College of Law of American University in

1993. She is the author of a series of law review articles and other publications, written in English and Spanish, which have been used to protect civil and human rights in the Americas. Ms. Culliton-González's scholarship includes the 2008 *Berkeley La Raza Law Journal* article "Time to Revive Puerto Rican Voting Rights," which she authored in English and Spanish, and "La Gente Unida Jamás Será Vencida: The Power of 'Changing Demographics' in the 2012 Elections and Beyond," published in this journal.

Ms. Culliton-González has been interviewed and has published opinion pieces in major news outlets and has frequently appeared in Spanish-language media as a nationally recognized civil rights expert. For visionary opposition to voter suppression, follow her on Twitter @KathyCullitonGZ.





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# Latinos and Unions: The Survival of Organized Labor Depends on Increasing Latino Membership

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Victor Baten

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### Introduction

For the American labor movement, declining union membership rates is a serious problem for the survival of organized labor. Union membership has plummeted from one-third of workers in the 1960s to one in every ten workers today. It is in this environment that the American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) met in St. Louis, Missouri, for their 2017 Convention, where they discussed the future of the US labor movement and passed numerous resolutions aimed at addressing the decline in membership. Although the resolutions mostly focused on organizing more workers, none of the resolutions paid attention to Latino workers, the fastest-growing sector of workers.

It is surprising that the AFL-CIO ignored Latino workers since the labor movement should be focusing on organizing more Latinos into

their ranks. Latino workers should be important to American labor unions because of their organizing potential. Latinos represent an increasing share of the US population and workforce.<sup>1</sup> This makes Latinos a growing segment of workers for unions to organize.

While more Latinos are joining the workforce, they are also confronting tremendous challenges at their worksites and are America's most vulnerable workers. The United States's growing low-wage service sector and broken immigration system are forcing Latinos into underpaid, unsafe, and abusive working environments that place their lives and livelihoods at risk. Because of this combination of factors, Latinos are perfectly positioned to join unions in large numbers. Unionization will provide this widely exploited population with a voice at the worksite and protections to improve their working conditions and economic standing.

For unions to continue to be a source of power and protection for all workers,<sup>2</sup> they must face the reality that an aging workforce and lack of sustainable new membership are causing their numbers to diminish.<sup>3</sup> If unions are to survive and rebuild in the near future, there is no doubt that Latinos and historically underserved communities will have to join the labor movement. Latino engagement will be critical to organizing more Latino workers. There must be targeted bilingual organizing campaigns to ensure Latinos understand their rights to organize. More importantly, the labor movement will need to embrace this new workforce by creating pathways to leadership in the worksite and in the union.

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### **The Union Difference for Latino Workers**

While Latinos are naturally positioned to join unions, the monetary incentive for Latinos to unionize is what makes organizing Latinos an easier lift and sell for labor unions. The moment a Latino worker wins a union contract, they start making better wages and work in safer and healthier environments. Latino workers benefit the most of any other ethnic group with respect to median weekly earnings.

According to a 2017 Bureau of Labor Statistics report, Latino workers who belong to a union typically earn higher pay than non-union workers doing the same kind of job.

Although wages vary by sector and occupation, the overall union averages are striking for Latinos.

- On average, Latinos represented by a union earn approximately \$45,552 a year. Non-union Latino workers earned approximately \$32,448 a year. That means Latinos represented by a union earned \$13,104 more a year.<sup>4</sup>
- On average, Latino men represented by a union earn approximately \$46,852 a year. Non-union Latino men earned approximately \$34,476 a year. That means Latino men represented by a union earned \$12,376 more a year.<sup>5</sup>
- On average, Latina women represented by a union earn approximately \$43,108 a year. Non-union Latina women earned approximately \$30,472 a year. That means Latina women represented by a union earned \$12,636 more a year.<sup>6</sup>

It is clear the union difference in earning is significant for Latino workers. These earning-potential figures could be the central incentive for union organizers to attract Latinos to a union and drive up Latino membership nationwide.

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### **Latinos Have the Highest Risk of Dying on the Job**

According to the US Bureau of Labor Statistics and the AFL-CIO's *Death on the Job: The Toll of Neglect*, Latino

and immigrant workers continue to be at higher risk than other workers.<sup>7</sup>

- The Latino fatality rate was 4.0 per 100,000 workers, 18% higher than the national average.<sup>8</sup>
- Deaths among Latino workers increased significantly in 2015—903 deaths, compared with 804 in 2014.<sup>9</sup>
- Almost the entire increase in Latino deaths was among immigrant workers—605 (67 percent) of Latino workers killed were immigrant workers.<sup>10</sup>
- 943 immigrant workers were killed on the job—the highest since 2007.<sup>11</sup>

While the number of Latino fatalities is troublesome, these numbers do not describe the many more Latinos who suffer debilitating workplace injuries but remain silent because their legal status leaves them voiceless in the workplace. Undocumented workers are in constant fear of being reported to immigration enforcement officials, so in cases of injury, many undocumented workers do not report injuries because their undocumented status could be used against them. For many employers, exploiting Latino workers and cutting corners on safety has become a common but deadly business practice. This an important reason why Latino advocacy groups have supported unionization. Third parties such as unions can ensure workplace safeguards are in place and can report safety infractions, lessening the number of deaths and injuries on the job.<sup>12</sup>

The leading industries with the most Latino deaths include construction, administration and support, waste management and remediation services, and transportation and warehousing.<sup>13</sup> These industries are primed for union organizing. Latino workers will undoubtedly benefit from a union contract, especially since the Federal Occupational Safety and Health Administration's (OSHA) can currently inspect a workplace on average only once every 145 years.<sup>14</sup> Even worse, the average OSHA penalty to employers for a serious safety/health violation was only \$2,148, while the median penalty for worker deaths was only \$7,000.<sup>15</sup>

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## The Organizing Potential for Latino Workers

While organized labor should be aggressively attempting to organize more workers, their dwindling resources should be directed in a strategic way. There is no question that the American labor movement is old and aging. According to the Bureau of Labor Statistics, union membership rates are highest among individuals aged 45–64.<sup>16</sup> When considering race and ethnicity, Black workers continued to have a higher union membership rate in 2016 (13.0 percent) than workers who were White (10.5 percent), Asian (9.0 percent), or Latino (8.8 percent).<sup>17</sup>

Considering these trends, it is clear that the labor movement must target workers who are young and growing

in population. Latino workers perfectly fit a growth strategy for unions. According to the Pew Research Center, about half of Latino workers are employed in just four industries: construction; eating, drinking, and lodging services; wholesale and retail trade; and professional and other business services.<sup>18</sup> These industries have a strong labor union presence.

More importantly, Latinos are joining the workforce at a disproportional pace. According to a new report by the Latino Donor Collaborative, 70 percent of the increase in the US workforce from 2010 to 2015 was due to Latinos workers. Even more impressive, from 2010 to 2015, the number of young Latinos who were in the workforce and were between 16 and 24 years old grew by 359,633, while the number of non-Latinos in the workforce grew by only 155,160. In other words, for every two young Latinos entering the civilian work workforce, roughly one young non-Latino entered. This is a clear opportunity for organized labor to target a young, growing workforce that will help union membership numbers.<sup>19</sup>

Finally, Latinos are proving to be a real force in the US economy. It is estimated that the gross domestic product (GDP) produced by Latinos in the United States in 2015 was \$2.13 trillion. That ranks Latinos as the seventh highest GDP in the world, compared to the world's ten largest economies. Of the top ten economies, it would rank the third-fastest grow-

ing. As young Latinos enter the workforce, Latino GDP will account for an increasing portion of total US GDP growth—projected to be 24.4 percent by 2020.<sup>20</sup> Although Latinos are underpaid compared to other workers, their numbers in the workforce make them an economic giant. If unions could successfully organize a sizable portion of this workforce, it would not only benefit Latinos and labor unions, but the US economy at large.

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## Conclusion

Despite the vital role unions play in protecting workers, the share of workers represented by a union is in decline. It is clear that organized labor must make strategic investments in their outreach to Latinos. The potential for growth in organizing Latinos is a critical lifeline that labor unions must use in order to stay relevant. More importantly, labor unions can use this new membership to leverage a more pro-worker agenda and reverse the laws that have weakened collective bargaining for working people.

Although the current outlook for Latinos is uncertain, their growth in the US workforce and population is impressive. Wielding over \$2.3 trillion dollars in GDP and making huge gains in the workforce, it is no surprise that this community will be important to the future of the US economy. In order to realize their potential, Latinos must harness their strengths and exert their voice in the workplace.

Gaining access to a union will be

an essential step for Latino workers and their families. Through union representation, Latinos can achieve higher wages that will help them fight poverty and gain access to health and retirement benefits. All of these factors truly highlight why unions and Latinos need each other now more than ever.

However, this partnership can only come to fruition if unions make strategic investments in organizing Latinos. This starts by hiring culturally competent organizers to make inroads into Latino-heavy worksites. More importantly, unions must make thoughtful decisions about creating leadership pipelines for Latinos already in the labor movement. As of now, there are only a handful of Latinos holding the highest leadership positions in American unions. If organized labor wants to survive, it must embrace the changing face of the workforce and let underrepresented workers take the helms of unions by creating leadership pipelines within unions. Without these strategic investments and decisions, the future of organized labor is in real jeopardy.

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### **Author Bio:**

Victor Baten is a policy strategist with over six years of experience working with national Latino advocacy organizations and political campaigns and on Capitol Hill. Prior to starting a master's of public policy at the University of California, Berkeley's Goldman School of Public Policy



(GSPP), Victor worked for the Latino constituency group of the American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) on issues affecting US workers and Latinos within the halls of Congress and with the Obama administration. Before joining the AFL-CIO in 2013, Victor worked on the 2012 election of Representative Lois Frankel (FL-22) and served at the offices of Representative Judy Chu (CA-32) and Speaker Nancy Pelosi's Green the Capitol Initiative. At GSPP, Victor has focused his studies on creating public-private partnerships to address the policy issues affecting underserved communities. He currently serves as a graduate student researcher at the Berkeley-Haas School of Business on a project with the MasterCard Center for Inclusive Growth & Financial Inclusion. The project is evaluating the effectiveness of a government program focused on micro-entrepreneurs in Mexico. He is also involved with the American Institute for Contemporary German Studies (AICGS) New Transatlantic Exchange Program, which focuses on the issues affecting

German and US immigrants. Victor was raised in Boynton Beach, Florida, and has a BS in political science from the Florida State University. He is proud alumnus of the Congressional Hispanic Caucus Institute (CHCI) and was a Public Policy and International Affairs (PPIA) fellow at Princeton University's Woodrow Wilson School of Public Policy and International Affairs.

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# When *Coco* Feels like Home: Film as Homenaje

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Elizabeth Castro

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### Film Synopsis

Released in November 2017, Disney/Pixar's *Coco*<sup>1</sup> centers around the traditional celebration of Day of the Dead set in Mexico. The story follows Miguel Rivera, a 12-year-old boy with a talent for the guitar despite his family's generational ban on music. Young Miguel reveres Ernesto de la Cruz, a former film star and musician who is the point of pride in Miguel's hometown. After a dispute with his family, Miguel breaks into Ernesto's mausoleum only to be swept into the Land of the Dead. There, he must find his way home with the help of savvy navigator, Hector. Amid the discoveries he makes about his family's past, Miguel comes to understand the love that is shared amongst family.

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### Aiming to "Get It Right"

Marked with subtle commentary on Mexico's society, the film *Coco* is uniquely situated in a line of Disney

ventures in Latin America combining policy and storytelling. Contributing their insight, Marcela Davison Avilés and Lalo Alcaraz, two of the cultural consultants from the film, were interviewed by senior editors Elizabeth Castro and Bryan Cortes of the John F. Kennedy School of Government *Journal of Hispanic Policy*.

Disney met swift backlash from the Latinx community in their early attempt to trademark the phrase Day of the Dead or "Día de los Muertos."<sup>2</sup> The studio blunder was a prompt toward forming collaborations with cultural consultants who provided feedback for the film. Marcela Davison Avilés is a producer and strategist with long-standing consultancy work for Latino-related projects at the Walt Disney Company. A graduate of Harvard College, Marcela has produced Latino arts and culture festivals. Lalo Alcaraz is a political cartoonist, satirist, and creator of the nationally syndicated comic strip "La

Cucaracha,” as well as early critic of Disney’s doomed trademark effort. When invited to join the film, he was upfront by fielding questions such as “If there was going to be brown-facing.” Audiences today are quick to call out studios for casting decisions that favor white or prominent actors while diminishing opportunities for underrepresented artists. In *Coco*’s case, the film is imbued with a long list of Latin voices.

Critiques of the film range from assertions of appropriation to skepticism of Disney’s corporate backing of the venture. As someone who grew up crossing the border between San Diego and Tijuana, Lalo’s worldview is informed by tuning in to Mexican perspectives. For *Coco*, he has “rarely heard criticism from the Mexican side of the border.” Marcela adds that communities have strong feelings about how identity is depicted as part of their critiques. “My own view is that here is the States, the context also has to do with feelings of identity that don’t necessarily exist in Mexico, or if they do, they exist in a different way. The political situation is different,” she adds.

Sharing about her production of mariachi events, Marcela recalls instances “where folks who have attended were very conservative, not necessarily supportive of our [Latino] community, but they attended because friends invited them. They left with that proverbial ‘aha.’ The lightbulb going off over their head because

the music spoke to them. Seeing kids perform this music the way Miguel does spoke to them.” With *Coco*, “I think, for the most part, we were able to create something that people feel very deeply.”

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### The Role of Indigeneity

Marcela and Lalo underline that “indigeneity is at the core” of the film. “From the beginning, we brought in elders who have spent their lives creating magic through Día de Muertos through their creation of ofrendas,” Marcela shares. Elders include Ofelia Esparza, a master artist engaged in altar-making who is known across the Los Angeles Chicano art scene and brought to the film via Lalo. In respect to a traditional altar, *Coco* is replete with cempasúchil, the orange marigold meant to attract spirits through its color and scent.<sup>3</sup> Miguel’s dog is a xoloitzcuintli, sacred to Mayans, Aztecs, and multiple communities who regard it as a spiritual guide. The film has “actual dark-skinned characters, indigenous-featured characters on film,” Lalo says.

In Mexico, *Coco*’s success exists in a context where colorism and anti-indigenous sentiment permeate across Mexican media. There, *Coco* became one of the highest-performing films of all time. Mexican national newspaper *Milenio* positions *Coco* as a jab to Mexico’s entertainment executives who render Brown and indigenous characters as inferior to their blonde counterparts in national television.<sup>4</sup>

Marcela emphasizes *Coco*'s music for highlighting musical fusion, or syncretismo. The film scores are a result of "musicians from all over Mexico coming to Mexico City to record for the movie." Beyond the nod to mariachi music, source music includes son jarocho from the Gulf state of Veracruz, a style riddled with indigenous, African, and European influence. "I don't recall that type of homenaje [tribute] in any other movie coming out of Hollywood."



### Interpreting Scenes in the Film: The Serenade, Frida, and Shoeshiners

\*spoilers ahead\* Strengthening the themes of female empowerment in

the film is a scene featuring Mamá Imelda, the proud head of the family, singing a serenade. Marcela details:

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*"Seeing kids perform this music the way Miguel does spoke to them"*

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"First of all, you don't get more Mexican than the song La Llorona. In the Siglo de Oro, you see Pedro

Infante, Jorge Negrete, Javier Solís, a singer who is typically down in the street singing up to their novia [girlfriend] who is on a balcony. And she is receiving the song and he is ... doing his macho thing. In this instance, who sings the song? It's Imelda. Imelda the entrepreneur. Imelda who had to create a business to provide for her family. She has to go back and recall a very painful memory, and out of that memory comes a serenade. But then what happens? She is literally on a pedestal that is raised as she is singing. And don't we all put our mothers on pedestals? There is this whole thing on *marianismo* and veneration of women, except that here, this woman is claiming her agency. She is singing to her family, and through that she is re-uniting them. If you look at women like María Félix or María Grever, or now like Natalia Lafourcade. That's my favorite scene and I think that it was so marvelously done. And that came out of the brain of Lee, Adrian, and the team."

An unconventional narrative is *Coco*'s depiction of Frida Kahlo, one the most recognized women from Mexico. Famed for her self-portraits, Frida's real-life art addresses trauma, love, and

disability. Lalo adds, “A part that could have been done wrong but was not was all the Frida stuff. There was a moment when we were talking [around a] screening. Lee [Unkrich] is immersed in this and, I think, said ‘What do you think of this Frida sequence and gag? And the papaya?’ They were thinking about cutting it, and they ran it by us. I was like, ‘No way!’ It is so unexpected, kind of a modern gag, really an adult gag. It is so great that it is in a Pixar or even just a mainstream Hollywood movie.” In effect, the light-heartedness in portraying Frida became a comical way of incorporating her into the film.

La chancla scene, as it is known, is also a nod to Mexico’s shoeshiner industry. After Miguel’s grandmother finds him talking to a mariachi, she reacts in a scolding tone, taking off and shaking her chancla, the infamous leather sandal. Simultaneously, this scene shows Miguel, a 12-year-old boy working as a shoeshiner, mirroring real-life shoeshiners in Mexico, or as they are locally known, *lustradores* or *boleros de zapatos*. Across Latin America, *boleros* are recognized for carrying a shoeshiner box, or *cajón de bolero*, to hold their brushes and supplies, all details that are present in the film. Mexican news sources, particularly in southern states, continually report on the stories of shoeshiners, including youth, who carry out this work every day.<sup>5</sup> Among discussions of inclusivity, one finds a less-addressed image of youth working during their school-age years in *Coco*.

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## From Donald Duck to Abuela Coco: Disney’s History in Latin America

Historically, *Coco* joins a line of Disney films on Latin America, the first dating to the 1940s during the Roosevelt administration’s promotion of the Good Neighbor Policy.<sup>6</sup> Using film as a policy vehicle, Roosevelt was keen on combatting “Nazi influence” and the threat of this infiltration in Latin America.<sup>7</sup> Marcela writes, “President Roosevelt and his team also knew... they needed to reach the hearts and minds of ordinary Americans and invite them to re-imagine negative stereotypes of Latin Americans which painted Latinos as lazy, suspicious, and uncivilized.”<sup>8</sup> In the US State Department, the Office of Coordinator of Inter-American Affairs (CIAA) had a division seeking to “present Latin Americans in more favorable images,”<sup>9</sup> and the government enlisted Walt Disney himself to support their work.

Before *Coco*’s Rivera family, Disney featured Mexican rooster Panchito Pistoles belting “¡Ay, Jalisco, no te rajes!” in the 1944 Disney release, *Los Tres Caballeros*. True to his last name, Pistoles is a pistol-wielding character replete with boot spurs and a sombrero. *The Three Caballeros* follows the lively rooster travelling and teaching his buddies about Mexican culture and traditions, from *posadas* to *piñatas*. A distracting part of the film centers around Donald Duck

chasing after Latinas as love interests, including Carmen Miranda's younger sister, Aurora.

*Saludos Amigos* (Greetings Friends), released in 1942, features Goofy in Argentina and introduces José Carioca, a Brazilian parrot. To draw inspiration for the films, Walt Disney and studio artists gathered research during their "Goodwill Tour" in Latin America, a trip captured in *South of the Border with Disney*.<sup>10</sup> At times almost a head-on educational tool, the films are inescapably centered in their political moment and consciousness.

*Coco* met audiences during a time marked by a record-breaking earthquake in Mexico City, the aftermath of Hurricane Maria in Puerto Rico and Hurricane Harvey in Texas, and decisions on programs including Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS). Countless viewers experience *Coco* within the context of Mexican and Latinx experience, and their positionality at large today. For Marcela, the power of narrative lies in "the notion that storytelling really can make a difference in terms of policy."

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### The Spotlight and the Future

Looking toward the future of Latino-oriented animation, "I am hoping that they are done right, with care, and that they actually are using Latino creators in these instances...I'm hopeful," Lalo shares. Marcela is opti-

mistic about seeing more pilots being green-lit for TV and life-action work. "I am from Nogales. You got two border babies on this team here. We know the sweet/bittersweet elements of the stories of la Frontera. And I am hoping that we will see more of that in terms of what comes from our filmmakers," she says.

Powerhouses such as Mexican film directors Alfonso Cuarón, Alejandro González Iñárritu, and Guillermo del Toro are already taking Hollywood by storm. In a span of five years, they each won coveted awards for Best Director: two Academy Awards and one Golden Globe. González Iñárritu won praise after the dedication of his win to the immigrant community and those in Mexico.<sup>11</sup> Given its reception, it is not surprising that *Coco* cinched a Golden Globe and an Academy Award for Best Animated Feature film in 2018.

Yet the most heart-warming reception to the film is seen in the faces of elders in Oaxaca, Mexico, some of them reportedly visiting the cinema for the first time.<sup>12</sup> Disney and Pixar's *Coco* demonstrates that generations of Latinx will continue to vocally praise and thoughtfully examine the intentional portrayals of our cultura that are yet to come.

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### Author Bio:

The daughter of migrant farmworkers, Elizabeth Castro grew up surrounded by apple orchards in Mesa, Washington and sugarcane fields in Veracruz,

Mexico. She is driven to serve rural students as they transition to higher education. Her research has addressed higher education for Canadian Inuit and Mexican rural teacher colleges, centered on the Ayotzinapa college. Most recently, she engaged university students in Iztapalapa, Mexico City as a teaching assistant. Elizabeth is an Ed.M. candidate in Education Policy and Management at Harvard Graduate School of Education, and she participates in the Women and Public Policy Program at Harvard Kennedy School. She is a Fulbright and CHCI alumnus and a McNair and Gates Millennium scholar. She graduated from Columbia Basin Community College and the University of Washington, majoring in International Studies.



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# Effects of Privatization of Immigration Detention in the Lives of Detained Transgender Latina Immigrants

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Chantiri Duran Resendiz

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## Abstract

Over the past three decades, the privatization of prisons has accelerated and expanded to include undocumented immigrants. This paper builds upon the assertions that immigrant detention has become increasingly privatized and disproportionately affects low-income Latino communities. I examine how the social marginalization of transgender undocumented Latina immigrants has created conditions that facilitate their subjugation within the government and private immigrant detention infrastructure. Understanding how racism, xenophobia, transphobia, and sexism operate within society is imperative to dismantle the human rights violations of the immigrant detention infrastructure. I conclude by reviewing current policy efforts to strengthen the rights of detained transgender Latina immigrants.

**Keywords:** *Latinas; undocumented immigrants; transgender; detention centers*

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## Introduction: Criminalization of Undocumented Immigration

The prison industrial complex describes both the rapid expansion of the US inmate population as well as the political influence of private prison companies and for-profit suppliers of government prison agencies. Over the past decades, the prison industrial complex has expanded to include undocumented immigrants and other noncitizen residents living in the United States.<sup>1</sup> This reshaping of the processing of undocumented immigrants in the American criminal justice system has been possible because of the increasing policies that criminalize daily activities of immigrants, as well as the expanding privatization of prisons that began developing since the 1980s with the creation of Miami's Krome Detention Center.<sup>2</sup> This detention center was used to detain and process Cuban refugees in the early 1980s. The phenomenon of detaining and deporting undocumented

immigrants has significantly accelerated since September 11, as collective sentiment and policies toward undocumented immigrants have largely been shaped by anti-terrorist propaganda.<sup>3</sup>

The anti-terrorist and anti-immigrant discourse that has developed since September 11, has convoluted acts of improper immigration entry, criminal activity, and terrorism, all under similar laws. Under federal law, Title 8 US Code § 1325 - *Improper Entry by Alien*, the act of being present in the United States without proper documentation is not a criminal violation but instead an administrative violation or a civil offense.<sup>4</sup> Yet, over the course of the past two decades several federal and state legislative bills have attempted to criminalize undocumented immigration by criminalizing the everyday activities of living life in the United States without proper documentation. A federal example of this type of proposed legislation is the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, a bill that passed the House of Representatives but died at the Senate. H.R. 4437 attempted to make unauthorized lawful presence or aiding an undocumented immigrant stay in the US an aggravated felony. H.R. 4437 exemplifies the most drastic legislation push to criminalize the daily activities of undocumented immigrants at the federal level. Had this bill become a law, it would have criminalized those who have close connections to undocumented immigrants such as family members in mixed-status fami-

lies, educators, or health care providers.

Even though the proposed H.R. 4437 died at the Senate, there are more intensive examples of state and local legislation that have passed and criminalized undocumented immigrants, particularly in southern states of the country. Since 2007, states like Alabama, Indiana, Georgia, South Carolina, Utah, and Arizona have passed state legislation that has criminalized nearly every aspect of the daily lives of undocumented immigrants. For instance, Alabama's H.B. 56, *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, was signed into law June 2011. H.B. 56 made it illegal for undocumented immigrants to work or to seek work, required police to arrest anyone suspected of being in the country illegally, forced schools to check the immigration status of their students, and made it illegal to rent an apartment to an undocumented immigrant. This type of legislation increases the possibilities for undocumented and noncitizen immigrants to be arrested and detained for acts that have not been traditionally viewed as "illegal."<sup>5</sup> The increasing criminalization of undocumented immigrants has generated an escalating need for administrating the physical detainment of undocumented immigrants once they enter into police and immigration custody.

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### **Privatization of Immigration Detention Centers**

Immigration detention has been used in the United States in various ways



throughout history. The detention of immigrants pending the resolution of their legal status and potential deportation was not always the norm. Immigrants were not detained at all until the 1890s, when the United States opened its first federal immigration detention center in Ellis Island, New York. A shift in immigration policy occurred in 1952, when Congress passed the Immigration and Nationality Act, which eliminated immigrant detention except in cases in which an individual was a flight risk or posed a serious risk to society. Ellis Island subsequently closed.

It wasn't until the early 1980s that the United States government began to seek private companies to contract into operating correctional facilities.<sup>6</sup> Private detention illustrates an interesting shift to market-based solutions, promoted as more cost efficient and effective than solutions from the government, to solve socio-political issues. According to Doty and Wheatley, "the fiscal conservatism that began in the 1970s, as well as the crisis that resulted from Reagan's monetarism in the early 1980s, played a significant role in the rise of private prisons."<sup>7</sup> During this time period, increasing budget deficits and revenue constraints made private prisons an attractive alternative to using tax revenue for constructing prisons.

The oldest and most influential private company contracting the operation of correctional facilities is the Corrections Corporation of America (CCA). Funded in 1983, CCA became the first corporation to provide privat-

ized prison, jail, and detention services. CCA has advertised itself as a corporation "striv[ing] to aid governments by reducing costs, alleviating overcrowding, and providing quality correctional care for inmates and detainees."<sup>8</sup> CCA has built a strong influence based off its extensive lobbying and participation in the American Legislative Exchange Council, a conservative group founded in 1973 where private corporations and conservative state legislators draft and mobilize pro-business legislation. In the 1980s, CCA along with the GEO Group, currently the second largest private-prison contractor with the Department of Homeland Security, won their first contracts to operate immigrant detention centers.<sup>9</sup>

For more than three decades, CCA has been an active participant in the privatization of detention centers and has benefited from the social construction of undocumented immigrant criminality by turning their administrative processing in the immigration system into a powerful potential source of revenue. According to Ackerman and Furman, "To date CCA houses over 75,000 inmates in over sixty facilities... the company has entered into contracts with the Federal Bureau of Prisons, the US Marshals Service, Immigration, Customs and Enforcement, half of the US states and several local municipalities."<sup>10</sup> Companies like CCA and the GEO Group not only benefit from the ownership and operation of correctional facilities but also benefit from the subsidiary industries of immigra-

tion detention such as transportation, health care services, residential treatment services, design, construction, and expansion of facilities.

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### **Detention Bed Mandate in the Appropriations Act of 2014**

The detention bed mandate represents the number of detention beds that must be occupied by immigrants at any time as an aggregate in the 250 US immigration detention facilities, as mandated by Congress and interpreted by the Department of Homeland Security's office of US Immigration and Customs Enforcement (ICE). Congressional appropriations language covering ICE's detention budget—most recently referenced in the Continuing Appropriations Act of 2014—states, “[t]hat funding made available under this heading shall maintain a level of not less than 34,000 detention beds.”<sup>11</sup> Given that ICE and some members of Congress interpret the language to require ICE to maintain and fill 34,000 beds daily, it has become known as the detention bed “mandate.” This quota has steadily increased since its enactment in 2007. No other law enforcement agency is subject to a statutory quota on the number of individuals to hold in detention.

The detention bed mandate prevents ICE from exercising discretion and expanding more efficient alternatives to detention (ATD) that would allow individuals who pose no risk to public safety to be released back to their families while awaiting immigration court

hearings. According to the National Immigrant Justice Center, “ADTs cost as little as seventy cents to seventeen dollars a day—a fraction of the \$159 ICE spends to detain one person per day. Over the course of a year, immigration detention costs over two billion dollars, approximately 5.5 million dollars each day. Taxpayers could save 1.44 billion dollars each year—a nearly 80 percent decrease in detention spending—if ATDs were more widely used.”<sup>12</sup>

The detention bed mandate fuels detention by forcing ICE to continually keep the private and federal immigration detention facilities and county jails at the rate of 34,000 detained immigrants a day. Expedited removals and deportations of immigrants create empty beds that ICE needs to fill to keep in compliance with the mandate. In February 2014, Congressmen Theodore E. Deutch (D-FL) and Bill Foster (D-IL) urged the Office of Management and Budget to end the detention bed mandate for the president's fiscal year 2015 budget and proposed to consider alternatives to detention such as, “ankle bracelets, curfews, telephonic and in person reporting.”<sup>13</sup> Their proposal to eliminate the detention bed mandate did not pass, although then-President Barack Obama decreased the proposed 2015 DHS budget from 34,000 to 30,500 beds.<sup>14</sup> However, in October 2016, the National Immigrant Justice Center and the *Wall Street Journal* reported that ICE was detaining a historic high of more

than 40,000 people.<sup>15</sup>

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### **Perpetual Foreigners: Racial Policing and Citizenship Inspection of Latinos**

Part of the argument of this paper is to unravel the ways in which the criminalization of undocumented immigration and the privation of immigration enforcement are issues that affect Latinos at large, not only US noncitizens. Political theorist Ray Rocco states, “Although the United States was built upon ethnic and cultural diversity, ethnic diversity has constantly presented a challenge to the normative political imagery of white supremacy grounded on the political, cultural, and justice system.”<sup>16</sup> The normative political imagery of White supremacy has defined the *de facto* parameters of inclusion of the nation and often complicated the inclusion of people of color. Latino studies scholars have explored the images and depictions of immigrants that racialize and refer to all Latinos as foreign and “others,” regardless of their immigration status.<sup>17</sup> This is a very important theoretical framework to help us understand why Latinos are disproportionately targeted by police, why undocumented immigrants’ everyday actions have become increasingly criminalized, and eventually, how they enter the immigrant detention infrastructure.

A growing body of critical race theory literature has shown that racism in the United States can be fully comprehended by studying the ways

in which immigration laws have detrimental consequences for all racial minorities.<sup>18</sup> Critical race theory reveals how racialized immigration laws and citizenship distinctions allow physical appearance to serve as a way of controlling certain racial and ethnic groups. The practice of racial profiling assumes that citizenship status is inscribed on the body and that a person’s physical appearance can serve as a reasonable suspicion for inspection. Critical race theorists Tara Yosso and Daniel Solorzano argue that the method of counterstory-telling may be a useful mechanism to challenge and change racial dominance.<sup>19</sup> Counterstories of racialized immigrants challenge narratives of meritocracy and immigrant assimilation. Counterstories to the myth of immigrant incorporation also demonstrate the ways in which White privilege is embedded into our understanding of immigrant incorporation—the myth of immigrant success that has not applied to the lives of transgender immigrant Latinas.

Through the theoretical framework of critical race theory, we can examine how the criminalization of undocumented immigrants, and in this case, transgender Latinas, is centered within the racial and gendered exclusionary character of US citizenship.<sup>20</sup> I view how undocumented transgender Latinas have systematically become vulnerable to an intersection of legal vulnerabilities because of their citizenship status, gender, and race. For the purpose of this paper, I define “Lati-

nas” as women born in Latin America, “transgender” as women whose gender’s identity or gender’s expression does not match their assigned sex at birth, and “undocumented immigrants” as those women who entered the United States without immigration inspection or who overstayed their visa.

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### **Transgender Latina Immigrants in Detention Centers**

#### *Transgender Undocumented Latinas Immigrants in the United States*

According to the Williams Institute at UCLA, there are approximately 267,000 lesbian, gay, bisexual, and transgender (LGBT) adult undocumented immigrants living in the United States.<sup>21</sup> The National Center for Transgender Equality estimates that between 15,000 and 50,000 of these undocumented adults are transgender “based on the existing data on the trans population as a fraction of the US population and LGBT population.”<sup>22</sup> Current immigration laws and the continuous discrimination against transgender people make transgender immigrants among the most vulnerable to discrimination and violence.

Transgender undocumented immigrants of Latino descent are more likely to be racialized and criminalized than White undocumented immigrants. Although in ideological sense, modern deportation campaigns have aimed to protect US citizens from the risk of potential terrorist attacks—“just like in the deportation campaigns of the 1930s, when 458,000 Mexicans

were forcibly removed from the US over a 9-year period—the most adversely affected in recent deportations have been Mexicans.”<sup>23</sup> According to the Department of Homeland Security, in 2012 ICE detained an all-time high of 477,523 unauthorized migrants: Mexicans accounted for 64 percent, Guatemalans accounted for 11 percent, Hondurans for 8.5 percent, and El Salvadorians for 6.6 percent of total detainees. These four countries accounted for 90 percent of all detainees in 2012. In terms of deportations, the number of immigrant removals increased to 419,384, with Mexican nationals accounting for 73 percent, Guatemalans for 9.2 percent, Hondurans for 7.5 percent, and El Salvadorians for 4.5 percent. These four countries accounted for 94 percent of all removals in 2012.<sup>24</sup>

ICE detention and deportation fiscal year statistics for 2016 show a decrease in ICE removals, from record-high 409,849 in 2012 to 240,255 in 2016. These statistics also show an increase in removals from the Central American Triangle (Guatemala, Honduras, and El Salvador), with Mexican nationals accounting for 62.4 percent, Guatemalans for 14.1 percent, Hondurans for 9.3 percent, and El Salvadorians for 8.5 percent. These four countries accounted for 94.2 percent of all removals by ICE. These statistics demonstrate that among all ethnic groups, Latinas are more likely to be targeted by immigration authorities and enter the immigrant detention infrastructure.

The deportation of immigrants has been utilized throughout the 20th century at the nexus of national crises, xenophobia, and racism; thus, Latino detention is a process of historical continuity and links to the detention of other racialized immigrants. Given the different legal vulnerabilities in relation to the intersections of race, gender, and citizenship status, low-income transgender Latina undocumented immigrants are at the highest risk of being racialized and targeted for detention, and because of the inefficiencies of how detention centers handle transgender individuals, they are at higher risks of suffering institutional violence—particularly being sexually abused.

#### *Transgender Immigrants in Detention Facilities*

According to a 2013 report by the Center for American Progress, “While the Department of Homeland Security... does not keep data on gender orientation or gender identity of people in its custody, reports of treatment of LGBT detainees obtained through Freedom of Information Act... requests and through complaints filed by immigrant rights groups reveal that much like in the general prison population ... LGBT immigrants in immigration detention facilities face an increased risk of abuse in detention.”<sup>25</sup> Additionally, in their 2013 report on immigration detention, the United States Government Accountability Office found that “[t]he Department of Homeland Security’s (DHS) U.S. Immigration and Customs Enforcement (ICE) sexual abuse and

assault allegations data [was] not complete, a fact that could limit their usefulness for detention management.”<sup>26</sup>

Several reports by nongovernmental organizations, such as the Heartland Alliance’s National Immigrant Justice Center, Center for American Progress, and Americans for Immigrant Justice, have uncovered incidents of sexual assault, denial of medical care, prolonged use of solitary confinement, verbal and physical abuse, and even death among immigrants in detention facilities. The situation is particularly dangerous for LGBT immigrants. According to the organization Just Detention International, LGBT immigrants are “fifteen times more likely than other detainees to be sexually assaulted in confinement.”<sup>27</sup> Community Initiatives for Visiting Immigrants in Confinement (CIVIC) estimates that between January 2010 and July 2016 there were 33,126 complaints of sexual or physical abuse in immigration detention facilities, with just 570 of those complaints leading to investigation by the federal government.<sup>28</sup> Modifications to the Prison Rape Elimination Act is one the current legal efforts to address and protect transgender immigrants from rape in detention.

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#### **Policy Efforts to Protect Transgender Immigrants in Detention Facilities: Prison Rape Elimination Act Adjustments to Department of Homeland Security**

Congress unanimously passed the Prison Rape Elimination Act (PREA)

in 2003. After more than a decade of study and review, the US Department of Justice issued final regulations to implement it in 2012. PREA's purpose is to provide for the analysis of the incidence and effects of prison rape in federal, state, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape. With more than 200,000 youth and adults in prisons, jails, and juvenile detention facilities being raped each year,<sup>29</sup> these rules represent an important step toward ending the crisis of sexual abuse in confinement facilities. Yet, PREA as implemented in 2012 excluded immigration confinement facilities.

In May 2012, then-President Barack Obama released a memorandum clarifying that, in addition to the Department of Justice, all confinement facilities must work with the attorney general to implement the goals of PREA. As a result of this memorandum, the Department of Homeland Security was required to publish a final rule that adopted national standards for the detection, prevention, reduction, and punishment of sexual abuse in immigration detention facilities.

On March 2014, the Department of Homeland Security published its final standards. These standards include many important protections for LGBT immigrants in detention facilities that apply to immigrants in DHS-owned facilities. However, it is unclear when, if ever, they will apply to contract facilities run by private companies—such as the

CCA and the GEO Group—as well as to the bed space rented from local or county facilities, which house the majority of immigrants in DHS custody. The standards require that any “new contracts, contract renewals or substantive contract modifications” comply with these standards, but unfortunately, most of Department of Homeland Security's contracts have auto-renewals or will not be up for renewal for decades. This means that many immigrants in DHS custody are housed in facilities that will never be required to comply with the PREA standards.

The final rule requires that housing decisions for transgender detainees never be made solely on the basis of identity documents or physical anatomy and instead be made on a case-by-case basis that considers a detainee's self-identification and self-assessment of safety. This provision applies to all housing decisions, including the decision of whether a detainee should be placed in female or male housing. Under this provision transgender women must be housed with other women in appropriate cases, genital anatomy notwithstanding. Although this requirement already exists in the PREA standards, the Department of Homeland Security has continued to house all transgender women with men based on their anatomy.

Among the many shortcomings of the final rule is neglecting that the mass incarceration of nearly 400,000 people per year in immigration detention is a failed and dangerous policy and that immigration detention continues to

be unacceptably hazardous and unnecessary for transgender individuals. Many of the 400,000 individuals held in these facilities include permanent legal residents with long-standing relationships to the United States, asylum seekers, and victims of human trafficking. Transgender immigrants who are asylum seekers face unusually long periods of detention. This is detrimental to their psychological well-being and exposes them to further danger. Instead of finding safety in the United States, LGBTQ asylum seekers who fled persecution and imprisonment in their home countries, often due to their LGBT status, are subjected to further trauma when they are placed in immigration detention facilities.

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### **Policy Recommendations**

Based on a review of recommendations from the National Immigrant Justice Center, the Community Initiatives for Visiting Immigrants in Confinement, the Detention Watch Network, the Government Accountability Office, the Transgender Law Center, and the National Center for Transgender Equality, some recommendations for improving the lives of transgender Latina immigrants in detention centers include the following:

1. Mandate the application of 2013 PREA regulations to all forms of custody, including all DHS contract facilities and short-term holding facilities. Until all detention centers and county jails adhere to PREA, individuals in DHS custody

will continue to be at risk of sexual assault.

2. Require annual audits of all facilities, including holding facilities. Under the Department of Homeland Security's current implementation and auditing timelines, many facilities will not be held accountable to implement PREA's protections for nearly a decade, and those immigration facilities that have audits are only every three years.
  3. Eliminate the use of solitary confinement as a form of "protective custody" for transgender individuals who cannot be safely detained with the general prison population.
  4. Allow individuals to continue their hormonal treatment when in detention facilities.
  5. Require officers to identify other housing options, such as ATD, which are far more cost effective and safe to transgender individuals.
  6. Require facilities to house transgender individuals according to their gender identity.
  7. Allow individuals who are victims of abuse while in DHS custody to apply for U visa protection and refrain from deporting U visa-eligible individuals while their applications and case investigations are pending.
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### **Conclusion**

The expansion of the immigration detention system has created a profitable market for those involved in operating county and state jails as well as for the

private-prison industry. The current Congress detention bed mandate requires ICE to have 34,000 immigrants held in detention facilities at any time while they wait for their cases to be heard in immigration court. Many reports confirm that a vast number of human rights violations occur in detention centers and that transgender immigrants are at even higher risks of violence.

According to the Department of Homeland Security, most of the immigrants detained and deported in the last year were of Mexican or Central American descent. For Latina transgender undocumented and noncitizen immigrants, the fear of deportation is a serious reality facing their communities. Once transgender Latina immigrants enter the detention center, they are often subject to incorrect housing arrangements in male facilities, which makes them vulnerable to being sexually harassed by inmates and guards. Jennicet Gutiérrez, a transgender immigrant community organizer with Familia: Trans Queer Liberation Movement, a grassroots group based in Los Angeles, has testified that despite the mandatory training of guards in Santa Ana detention facilities, transgender women are told “to act male and are often addressed with male pronouns.”<sup>30</sup> With guards who lack real sensitivity training to the issues facing transgender Latina immigrants in detention, it is imperative that legislation and proper government oversight assures the well-being of this vulnerable population.

The PREA Adjustments to the De-

partment of Homeland Security offers a few new legal protections against sexual assault to transgender individuals in immigrant detention facilities. These adjustments were only implemented to DHS-owned facilities and do not include any protections for individuals in private detention centers. With 60 percent of people held in privately run immigration detention facilities, there is no doubt that policymakers working for the rights of all immigrants in all detention facilities still have work to do to guarantee that the financial interests of private corporations do not get in the way of prioritizing human rights. On 5 October, 2017, California’s Governor Jerry Brown’s signing of S.B. 29, Dignity Not Detention Act, into law will freeze the growth of private, for-profit immigration detention facilities in the state of California. This legislation will prohibit cities or counties from entering into new, or modify existing, contracts with private-prison companies for the purposes of expanding immigration detention.<sup>31</sup> If replicated in other states, similar legislation that stops the construction of further private detentions could contribute to the decrease of human rights violations that are rampant in privately run detention facilities.

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### Author Bio

Chantiri Duran Resendiz is a Eugene Cota Robles fellow and doctoral student at the University of California, Los Angeles in the Department of Chicana and Chicano Studies. She received a graduate certificate in urban humanities



from UCLA and a bachelor's degree in development studies with disciplinary concentration in economics and geographical concentration in Latin America from the University of California, Berkeley. As an interdisciplinary scholar, Chantiri has engaged in a variety of methodologies and approaches in her work with Latino immigrant communities. She collaborated in community participatory research through the Luskin School of Public Affairs Community Scholars Program where she had the opportunity to engage with students and community members to create and disseminate a resource guide for recently arrived Central America unaccompanied minors and their families in the Westlake/Pico Union neighborhoods. As a Dream Summer fellow at the UCLA Labor Center, Chantiri has been commissioned by the American Federation of Teachers to develop immigration curriculum for high school and community college students. Her training in urban humanities has provided her the opportunity to build and collaborate with community organizations in Boyle Heights neighborhood, Multicultural Communities for Mobility and Self-Help Graphics, and to develop public humanities projects engaging issues of mobility equity and public art. Her dissertation, "The Development of a Politicized Voice in Undocumented Immigrant Student Organizing," examines the ways in which politicized immigrant youth disclosed their personal testimonies in public spaces and in the process created collective identities. Her

project examines the impact of narrative and performance of personal testimony in the development of the undocumented immigrant youth movement and immigrant student movement across the country. Her research looks at how these intertwined movements developed by highlighting the humanity of undocumented young immigrants and their right to access educational resources, a path to citizenship, and economic opportunities.



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# Child Nutrition Reauthorization and Latino Childhood Obesity

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Lanette García

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## Abstract

Former First Lady Michelle Obama's *Let's Move* campaign focused around health initiatives that will help create healthier future generations of children. This public health campaign brought attention to childhood obesity and, as a result, helped to set higher standards for the Healthy, Hunger-Free Kids Act (2010). The Act authorized funding and set nutritional standards for the US Department of Agriculture (USDA)'s core child nutrition programs, which include the National School Lunch Program and the School Breakfast Program. Together, these programs serve millions of Latino children nationwide. While nutritional standards have improved, childhood obesity remains a pressing issue, especially in the Latino community, where nearly 40 percent of children are overweight or obese. This paper will assess provisions of the Healthy, Hunger-Free

Kids Act, which expired in 2015, that can be improved and, in doing so, help decrease childhood obesity among Latinos.

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## Background

Obesity, having too much body fat or weight that is higher than what is considered a healthy weight for a given height, is a much more complex issue than a calculated body mass index (BMI) number.<sup>1</sup> Obesity stems from an individual's behaviors, race, genetics, socioeconomic status, the environment, and other social determinants of health. While the root cause of obesity can be disputed, obesity rates in our country are undeniably high. More than one-third of US adults (36.5 percent) were considered obese during 2011–2014.<sup>2</sup> These numbers are even more alarming within certain ethnic groups, as obesity affects some groups more than others. For instance, the prevalence

of obesity among Hispanics is 42.5 percent and only second to non-Hispanic Blacks.<sup>3</sup>

The long-term effects of obesity have been found to include diabetes, heart disease, stroke, certain types of cancers, and negative mental and emotional health outcomes.<sup>4</sup> It is important to note that obesity-related diseases not only affect the individual but also pose major public health concerns and cause an economic burden for our country. For an overweight or obese individual, direct costs often relate to outpatient and emergency visits and medication. Obesity and its comorbid conditions result in higher insurance premiums and Medicare and Medicaid spending. In 2013, obesity-related illnesses resulted in a \$69 billion cost to our country, including \$8 billion to Medicaid.<sup>5</sup> Obesity indirectly affects absenteeism and productivity in our workforce, which totaled \$988.8 billion in 2014.<sup>6</sup>

Considering the detrimental long-term public health and economic effects of obesity, many obesity prevention programs and interventions focus on a much younger population: school-aged children. Overweight and obese children are more likely to perform poorly in school, as well as become overweight or obese adults. This reality, together with obesity affecting cognitive development, impacts their future outcomes as adults, which makes addressing obesity during childhood a key imper-

ative in the future health of the US population.<sup>7</sup>

While childhood obesity continues to rise, Latinos face unique challenges and issues that increase the likelihood of obesity. Latinos are less likely to have access to healthy food and have higher exposure to marketing of less nutritious foods.<sup>8</sup> Hispanic neighborhoods have almost one-third fewer chain supermarkets than non-Hispanic neighborhoods.<sup>9</sup> Nearly 40 percent of Latino children are overweight or obese, compared to 28.5 percent of non-Hispanic White children.<sup>10</sup> As adults, Latinos are disproportionately affected by obesity-related chronic diseases. Latinos are also 1.7 times more likely than non-Hispanic White adults to be diagnosed with diabetes by a physician.<sup>11</sup> Reducing health disparities among Latinos proves not only important to this community but essential to the future health of our country, as Latinos are expected to grow to more than a quarter of the US population by 2060.<sup>12</sup> Addressing obesity among Latino children is critical considering that one out of every four children in the United States is Latino, while in certain school districts this number may be even higher.<sup>13</sup> By 2030, Latino children are projected to make up one out of every three children, and 44 percent of all poor children if these trends continue—the same population who will most likely be able to benefit from programs such as Women, Infants, and Children

(WIC), Supplemental Nutrition Assistance Program (SNAP), and free school meal programs.<sup>14</sup>

Considering children spend a large portion of their time in school, most children consume a majority of their daily calories at school; for some, school meals are their only source of food.<sup>15</sup> This situation is especially true for Latino children, who are more than twice as likely as non-Hispanic White children to be living in households with low food security.<sup>16</sup> As major recipients of the USDA's school-based core child nutrition programs, which include the National School Lunch Program (NSLP) and the School Breakfast Program (SBP), Latino children can benefit from improvements made to the policies that fund these programs and, in doing so, reduce their chances of becoming overweight or obese.

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### Existing Policies and Programs

Among the objectives of the former *Let's Move* campaign was the Healthy, Hunger-Free Kids Act (HHFKA) of 2010 as a means of achieving improved school nutritional standards.<sup>17</sup> This legislation authorized funding and set nutritional standards for USDA's core child nutrition programs, mandating that recommendations from the National Academy of Medicine, formerly the Institute of Medicine (IOM), be used, changing nutritional standards significantly and reforming this vital safety net program for the first time

in over 30 years.<sup>18</sup> While the HHFKA expired in 2015, the child nutrition programs continue to operate, as re-authorization is not required for them to continue. However, Child Nutrition Reauthorization is necessary, as it offers the opportunity to re-examine and potentially improve nutrition standards. As of December 2016, Congress was unable to reach agreement and reauthorize these child nutrition programs.<sup>19</sup>

USDA's Food and Nutrition Services consist of 13 programs that are designed to combat food insecurity while promoting healthy and high nutritional standards. NSLP and SBP are two programs specifically targeting childhood nutrition at school that are appropriate and effective points of intervention as they directly impact millions of Latino children they serve every day.<sup>20</sup> While Latino children make up about one-quarter of all children participating in the NSLP, they also make up more than one-third of income-eligible nonparticipants, suggesting that there is ample room for improvement in program enrollment.<sup>21</sup> Limited English proficiency and apprehension or confusion about application requirements were cited in one study as barriers that prevented eligible children and families from accessing programs such as the NSLP.<sup>22</sup>

In some school districts, coordinated efforts between Medicaid, SNAP, and the NSLP have allowed for direct certification, which auto-enrolls Medicaid and SNAP-eligible

ble students into the NSLP without further paperwork from parents.<sup>23</sup> Not all states have successfully done so, however, despite efforts through the HHFKA to institute reforms to strengthen and expand direct certification. Some states have identified data collection and communication issues with their local Medicaid and SNAP agencies that have prevented them from directly certifying children into the NSLP.<sup>24</sup> A 2016 USDA report notes that only 24 states have successfully implemented direct certification at a rate at or above HHFKA's 95 percent performance target.<sup>25</sup> California and Texas, the two top Latino-populated states, were not among these 24 states.

Another recently implemented provision of the HHFKA was the Community Eligibility Provision (CEP), which allows the nation's highest poverty schools and districts to eliminate household paperwork and offer all students breakfast and lunch at no additional cost, eliminating the stigma of free or reduced-priced lunch.<sup>26</sup> School districts with more than 40 percent of their students identified as eligible for free school meals, based off of previous eligibility for other programs such as SNAP, can participate. Similar to direct certification, CEP is still in its early stages; the 2016–2017 school year was its third year since being implemented nationwide, with slightly over half of all eligible schools nationwide participating (55 percent).<sup>27</sup>

The School Breakfast Program, another critical school-based nutrition program, had just over half of low-income children participate in the 2015–2016 school year, which highlights the need for increased enrollment in this underutilized program.<sup>28</sup> According to a report from the US Congressional Budget Office (CBO), Latino children make up the majority (38 percent) of all the SBP participants in the 2010–2011 school year.<sup>29</sup> A 2008 study showed that the SBP enables children to eat more nutritious foods, lead more emotionally and physically healthy lives, and improve their cognitive and mental abilities.<sup>30</sup> School districts in Los Angeles and Chicago that have increased participation in the SBP have been shown to reduce absenteeism while increasing test performance, reducing food insecurity, and improving dietary intake.<sup>31</sup> In an effort to increase participation in the SBP, several school districts have introduced Universal School Breakfast, which provides breakfast to all students regardless of income.<sup>32</sup> In Newark, New Jersey, the public school district saw an increase of more than 150 percent in SBP participation after implementing Universal School Breakfast during the 2004–2005 school year.<sup>33</sup>

Reducing obesity rates among Latino children in the United States is not only a matter of increasing enrollment in programs such as the NSLP and SBP but ensuring that

these programs adhere to high nutritional standards, another important component of the HHFKA. In 2012, the USDA released its new nutritional standards, making significant changes for the first time in 30 years. Using science-based recommendations set forth by the National Academy of Medicine, the new standards included reducing the sodium content of meals gradually over a ten-year period; sizing portions based on grade level (i.e., fewer calories for younger children); and introducing more whole grains, fruits, and vegetables, among other recommendations.<sup>34</sup> After receiving backlash from food-industry lobbyists, certain regulations have been relaxed. As an example, the USDA is actively working to rollback nutrition standards with respect to sodium, whole grains, and flavored milk.<sup>35</sup> Another important component of the HHFKA provides an additional six cents per lunch reimbursement to school districts that are in compliance with USDA's nutritional guidelines, the first meal reimbursement increase in over 30 years.<sup>36</sup> As of July 2014, 92 percent of school districts across the country indicated that they are receiving the reimbursement; only 12 states reported 100 percent of their school districts in compliance with the new nutritional standards.<sup>37</sup>

Major concerns around implementing these child nutrition programs relate to funding. USDA reports, however, have shown that

school lunch revenue is up approximately \$200 million since implementing new nutritional standards. This increase accounts for the incentivized additional six cents per meal for school districts meeting the new standards and the annual reimbursement-rate adjustments.<sup>38</sup> Some school districts have also expressed concerns around food waste—children throwing away unappetizing healthy food options. Food waste continues to be a prevalent problem in schools; however, the new standards have in fact resulted in a decrease of vegetables being discarded (60 percent compared to 75 percent before the implementation of USDA's new standards).<sup>39</sup> The new standards did not result in an increase of food waste per person; overall food waste remains the same.<sup>40</sup> Lastly, the issue of “double dipping,” children who may already be consuming meals at home in addition to the ones offered at school, has been raised. Double dipping, especially in school districts where Universal School Breakfast is in place, is considered problematic as it is thought to increase the likelihood of obesity and contradict some of the main intentions of HHFKA. Similar to the concerns around funding and food waste, concerns around double dipping have been found to be false in that there is no correlation to excessive weight gain.<sup>41</sup>

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## Recommendations

Currently, these programs are set in

place to reduce food insecurity and combat childhood obesity, but nationwide participation rates are not yet where they should be. Below are recommendations that should be taken into consideration with the next Child Nutrition Reauthorization.

- *Increase enrollment in the NSLP and SBP through mandated direct certification, CEP, and Universal School Breakfast.* The burden of elaborate paperwork should not fall on parents, particularly for families who are already eligible for free or reduced-priced meals, who have often already completed paperwork for other programs such as Medicaid and SNAP. This initiative can be facilitated through auto-enrollment (direct certification and CEP) and can include an opt-out option for parents. This process should be streamlined by improving data-exchange systems between local Medicaid and SNAP agencies and local school districts. Since being executed eight years ago, nearly half of all states have successfully implemented direct certification at a rate at or above HHFKA's 95-percent performance target—mandating that all school districts nationwide directly certify eligible children within the next eight years is attainable. If school districts choose to mandate some form of paperwork, alternative language applications should be federally

mandated and readily available for families as set forth by the National Standards for Culturally and Linguistically Appropriate Services.<sup>42</sup> The expansion of the SBP should be done so with the implementation of the Universal School Breakfast across all school districts.

- *Incentivize school districts to meet high nutritional standards by providing higher reimbursement rates.* Childhood obesity rates will not decrease solely based on program enrollment and participation rates without nutritional standards being considered. With Child Nutrition Reauthorization well overdue, it is imperative that nutritional standards currently set in place be protected and improved upon. Nutritional standards should be reflective of the original recommendations set forth by the National Academy of Medicine that have been weakened and made less restrictive since 2010. School districts should be incentivized to meet these standards by increasing current reimbursement rates by an additional ten cents. Although increasing current reimbursement rates by ten cents would increase federal spending by \$10.2 billion (or 4 percent) between 2016–2025, increasing reimbursement rates not only incentivizes schools to comply with improved nutritional standards but also helps school



districts with their increased costs of providing healthier meals.<sup>43</sup>

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## Conclusion

With the Child Nutrition Reauthorization overdue, protecting nutrition programs, funding, and standards set forth by HHFKA and the Let's Move campaign proves important. These programs are crucial to our most vulnerable populations, low-income children, many of whom are Latino children. Increased enrollment in the National School Lunch Program and the School Breakfast Program is imperative and can be achieved through direct certification and the Community Eligibility Program and through Universal School Breakfast. Concurrent with program enrollment rates, nutritional standards set in place should be reflective of the original recommendations set forth by the National Academy of Medicine that have been weakened and made less restrictive since 2010. While school districts already have incentives to comply with the current nutritional standards, the reimbursement rate should increase by an additional ten cents to ensure that all schools districts across the country adhere to these standards. Although an increased reimbursement rate will result in an immediate increase in federal spending, it is important to note that investing in the health of our children will help decrease future obesity-related expenses in our country. Through increasing enrollment and participation rates

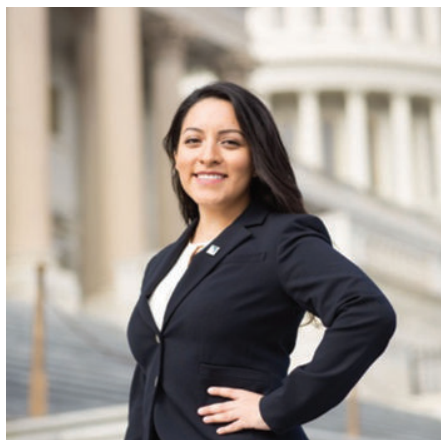
in USDA's school-based core child nutrition programs, while improving nutritional standards, we can help decrease childhood obesity among Latino children in the United States.

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## Author Bio:

Lanette García is a policy analyst for the Health Policy Project at UnidosUS, formerly the National Council of La Raza, the largest national Hispanic civil rights and advocacy organization in the United States. Lanette works across various issue areas including child nutrition policy, health care reform, and an emerging state-level policy and advocacy portfolio. She conducts policy analysis that examines the impact of various health and nutrition policy proposals and advocates for policy options that will benefit the Latino community. Lanette is a recent Congressional Hispanic Caucus Institute (CHCI) Health Graduate fellow, gaining experience with the National Hispanic Medical Association and having the privilege to work for Congresswoman Jan Schakowsky (D-IL). Before arriving in Washington, DC, Lanette was a caseworker at the Illinois Department of Human Services, helping underserved families and individuals enroll in Medicaid and SNAP. Lanette is a first-generation American, born and raised in Chicago's Little Village and Pilsen neighborhoods. She earned a master's degree in public health and a bachelor's degree in anthropology from the University of

Michigan. As a graduate student, she interned at Healthy Schools Campaign, where she researched developing health and wellness policies in Chicago Public Schools and helped educate parents from predominantly Latino communities in Chicago on food justice issues.



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### Steve Alfaro

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**Artist Bio:**

Steve Alfaro is the son of immigrant parents from Guatemala. He is a graphic artist, designer, and a senior advisor for creative and digital at Voto Latino. His social media designs have gone viral multiple of times, and his work has garnered awards and recognitions including a Webby Honoree Award and a MySpace Impact Award for Online Organizing. Steve is currently an Art for Social Impact fellow at the Sanctuaries DC. He continues to do his graphic art, which has allowed him to display his work at multiple art exhibits across the country including Manifest Hope in Washington, DC, Re: form School in New York, Manifest Equality & Manifest Justice in Los Angeles, and the Cross-Lines exhibit at the Smithsonian Arts and Industries Building in Washington, DC.





## DREAM ACT® GOOD FOR AMERICA

“Dream Act - Good for America” is part of a series of posters showing Capitol Hill with an open dome. In this art piece, the actions of activist and lawmakers pushing the DREAM Act forward from within in a fun and aesthetically pleasing way.



“Tierra” is part of a series of posters showing Capitol Hill with an open dome. The idea behind this piece is a bit more abstract, envisioning nature getting involved in the fight for Earth justice. The hybrid between the protest signs and the tree shows two worlds uniting for the fight against climate change.



“The vote” is an art piece inspired and dedicated to our living legend, activist, and fighter, Dolores Huerta. Her work, contributions to our country about people power, comes down to getting our community involved, to participate, and to vote in all elections. The flames and symbols around her represent her love, fire, and fight for social justice.

# The Importance of College-Going Culture for Latinos prior to High School

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Griselda Guevara-Cruz

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### Abstract:

The earlier students are exposed to the idea of college and nurtured to believe in their ability to achieve success, the more likely it is that they will live up to those expectations and feel prepared to achieve their goals. A big component of students' success is access to resources and support systems in school. To be college and career ready means leaving a K–12 system with adequate academic preparation (including academic planning), social awareness, financial literacy, and a clear understanding of career pathways. Investments in middle school college and career coaches, early commitment scholarships, and improved family engagement can ameliorate secondary and postsecondary opportunities for Latino students.

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### Introduction

Narrowing the opportunity gap and fostering an environment for college

and career readiness are critical necessities in the 21st century. Creating an inclusive college-going culture for all students in every elementary, middle, and high school can better prepare Latinos for college and career success. It is important to focus on Latino initiatives because they are a growing representation in the education pipeline and are also one of the most underperforming groups. Latino college preparedness has increased but remains lower than other groups. Latino students face challenges early on in the education pipeline because they have the least access in comparison to all racial and ethnic groups, particularly to high-quality pre-schools, which have a direct correlation with positive education benefits.<sup>1</sup> Other barriers commonly experienced by Latino students are being English learners, coming from low-income families, and attending high-poverty schools with less experienced educators.<sup>2</sup>

According to the National Cen-

ter for Education Statistics, Latino students comprise 26.8 percent of all pre-K through 12th grade public school population.<sup>3</sup> The earlier these students are exposed to the idea of college and nurtured to believe they are capable in achieving success, the more likely it is that they will live up to those expectations and feel prepared to achieve their goals. Currently, the college participation rate, including enrollment in two- or four-year colleges, for Latinos is at a high 35 percent.<sup>4</sup> However, as per *The Condition of Education 2016*, Latinos ages 25–29 still trail behind other groups in obtaining a four-year degree, with only 16 percent earning a bachelor’s degree or higher in comparison to 43 percent of Whites, 63 percent of Asians/Pacific Islanders, and 21 percent of Blacks.<sup>5</sup> In Latino communities, early conversations regarding postsecondary opportunities and access to information and resources can help Latino students navigate the educational system and move up the economic ladder. As per UnidosUS, formerly known as the National Council of La Raza, “poverty and other barriers to economic mobility will never be eradicated unless children from communities of color are thriving” in schools.<sup>6</sup> A big component of students’ success is access to resources and support systems in school, which help students become college and career ready—leaving the K–12 system with an adequate academic preparation (including academic planning), social awareness, financial

literacy, and a clear understanding of postsecondary opportunities. These opportunities should encompass technical, vocational, two-year, and four-year institutions.

This paper presents regional and federal initiatives that have helped Latino students and other underserved young people navigate the K–12 educational pipeline and pursue postsecondary opportunities—academic and career tracks. Furthermore, this paper seeks to add to conversations regarding college and career readiness for Latino youth by offering policy recommendations for investments in middle school college and career coaches. This will ameliorate secondary and postsecondary opportunities for Latino students, a community that is rising in numbers and should have opportunities to positively contribute in all sectors of society.

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## Background and Importance

### *Importance of College and Career Awareness and Preparedness*

Creating a college-going culture in K–8 grades is important because these are fundamental years to engage young people and encourage academic success. More importantly, today, college readiness simultaneously means career readiness. The majority of jobs in the country now require some postsecondary education. There is a demand for a well-educated workforce, specifically to fill jobs that require a degree in a science, technology, engineering, or mathematics (STEM) field or other technical disci-



plines<sup>7</sup> because these fields drive the economy. For the United States to maintain its competency in the global economy, it requires a workforce that is skilled.<sup>8</sup> Additionally, jobs in these sectors often pay a salary above the poverty line and provide opportunities for career advancement.<sup>9</sup> In STEM careers, Latinos are still not well represented: roughly 5 percent Latino in comparison to 70 percent White.<sup>10</sup> For the Latino community to achieve success in postsecondary opportunities, whether in higher education or the workforce (especially in STEM fields), they need to be fully equipped with college readiness early in their education.

Environments that cultivate a college-going atmosphere make students feel safe, welcomed, and included in the learning community. In the Latino community, dropout rates continue to be higher than their non-Hispanic counterparts. Although the overall Hispanic dropout rate has dropped in recent years to 10.6 percent, it remains higher than White (5.2 percent) and Black (7.4 percent) dropout rates.<sup>11</sup> As such, it is imperative to prepare young Latinos to matriculate through primary and secondary school and eventually pursue a postsecondary education. According to Excelencia in Education, 65 percent of Latinos graduate from high school, with 70 percent of this group enrolling in higher education institutions.<sup>12</sup> Nevertheless, just 22 percent of those enrolled go on to complete an associate degree or

higher.<sup>13</sup> While US Latino students enroll in two-year institutions up to one and a half times more than their non-Hispanic White counterparts,<sup>14</sup> they often require additional support in their academic tracts, including course remediation. There is a need to better prepare Latinos to become college ready in order for them to succeed in higher-education institutions. Moreover, as they continue to be the fastest-growing majority in the United States, they need to be well equipped political actors of this country.

#### *At a Glance: US Latinos and Their Educational Attainment*

Currently, there are nearly 58 million Latinos in the United States,<sup>15</sup> only 15 percent of whom have earned a bachelor's degree.<sup>16</sup> Twenty-one percent of all Latinos currently live in poverty in comparison to 13.5 percent of the general US population.<sup>17</sup> Access to equitable educational opportunities is critical in order to address poverty and ensure generational and economic sustainability. Latinos now make up 26.8 percent of all public-school students according to the National Center for Education Statistics' Fall 2017 Back to School Statistics.<sup>18</sup> The latter population percentage can be attributed to the high school dropout rate. It is important for Latinos to be exposed to college and career readiness topics by the time they reach eighth grade to maximize the opportunities available to them after high school. For Latino youth, interventions prior to high school are crucial and show a positive

correlation with success in high school and postsecondary institutions.

Students who come from a low-income family, high-poverty schools, and are first generation (first in family to attend college) have a lower likelihood of being academically and socially prepared for college or being considered college and career ready by the time they graduate from high school. Complete College America research shows that in four-year colleges, 20.6 percent of Hispanic students needed remediation in comparison to the average 19.9 percent of the overall student demographic.<sup>19</sup> In two-year colleges, 58.3 percent of Hispanic students needed remediation in comparison to 51.7 percent of the overall student population.<sup>20</sup> Another indicator, income, showed that 64.7 percent of students of low income in two-year colleges needed remediation. In four-year colleges, 31.9 percent of low-income students needed remediation.<sup>21</sup> As research conducted by ACT suggests, “if we want not merely to improve but to maximize the college and career readiness of U.S. students, we need to intervene not only in high school but also before high school, in the upper elementary grades and in middle school.”<sup>22</sup> Students’ success in becoming college and career ready is the result of a process extending throughout K–12 grades, not just in a single stage in the educational journey.

*Why Is Exposure to College and Career Readiness at an Earlier Age Fundamental?*

In the United States, the 2008 ACT research<sup>23</sup> demonstrated that the earlier students are equipped with information on how to navigate K–12 and learn about postsecondary opportunities, the more likely they are to graduate on time from high school and pursue opportunities. An increased focus on college and career readiness in settings prior to high school provides students with an increased likelihood of being successful in high school and beyond.<sup>24</sup> According to a report from ACT in 2016 that measured college readiness of high school students seeking enrollment in college, 64 percent of all 2016 US high school graduates took the ACT, an 8.6 percent increase from 2015.<sup>25</sup> The number of underserved students taking the ACT test also increased: 44 percent among Hispanic/Latino students and 23 percent among African American students.<sup>26</sup> Overall, 84 percent of 2016 ACT-tested graduates aspired to obtain a postsecondary education.<sup>27</sup> This report breaks down some data that support the claims made around the importance of college awareness and preparedness, particularly in settings prior to high school (emphasis on eighth-grade academic achievement).

Twenty-eight states are now participating in statewide partnerships with ACT on college awareness and preparedness—as such, the number of students tested has increased.<sup>28</sup> The ACT report provides a much deeper and more representative sample of students in comparison to the purely

self-selected college-going population. A prominent detail woven throughout the report is that an 8th-grade student's grade is the most important predictor of 12th grade GPA, followed by academic achievement and psychosocial and behavioral factors. Earlier access to testing (prior to 12th grade) for students from low-income backgrounds would be beneficial because they would have more opportunities to improve their test scores and because they would be exposed to various postsecondary opportunities with ample time to plan. There was also a clear discrepancy in an increased number of students interested in vocational or technical and two-year degrees versus going straight into a four-year college. This suggests that students now better understand that they do not have to go to a four-year university to be successful and that broad opportunities are available from other postsecondary opportunities.

Although this report shows important information, it is not indicative of all 50 states. These numbers do not take into consideration students who did not have access to information or resources to sign up for the ACT. There is still a lot of work to be done in preparing young people for college, particularly those that come from a low-income background. ACT research has consistently shown that when students take rigorous academic courses in middle school, particularly in eighth grade, they are more likely to succeed—do well in high school,

graduate on time, and go on to postsecondary institutions of learning. Students who come from low-income and underrepresented backgrounds, such as English-language learners, farm workers, special education students, should be encouraged to take rigorous academic courses and participate in extracurricular activities. Through these, students learn new skills that they otherwise would not in the classroom setting, such as social and decision-making skills, and they develop an increased interest in pursuing postsecondary education.

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### **Programs that Promote College and Career Awareness and Readiness prior to High School**

#### *Gaining Early Awareness and*

#### *Readiness for Undergraduate Programs*

Currently, Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), a federal grant whose goal is to increase the number of underrepresented students who are prepared to enter and succeed in postsecondary education, serves as an example of a program geared toward promoting and preparing underrepresented students to complete secondary education and enter higher-education institutions. GEAR UP, signed into law in September 1998 by then-President Bill Clinton as part of the 1998 Amendments to the Higher Education Act of 1965 (HEA), provides early intervention services at middle and high schools with high-poverty, first-generation students. Through initiatives

such as the Career and College Clubs (CCC) and Youth Leadership Summit, students gain access to knowledge that fosters, creates, and promotes college awareness and preparedness. This includes information on the importance of school attendance, matriculation, and professionalization and the impact the students can have as positive contributing members of society. More importantly, students who go through GEAR UP have a clear understanding of what college success entails (awareness, persistence, and graduation). A study conducted by CCC in 2015 found that students who engaged in CCC were 85 percent more likely to enroll in college than peers who did not participate in the program.<sup>29</sup>

One limitation of GEAR UP is that it is a competitive grant, so not everyone who would benefit from it has access to the resources or information. As such, it is imperative to look for other ways to provide support in alleviating the barriers that many Latino students may have in their navigation of the K–12 pipeline and eventual pathway to higher education or other opportunities. The services GEAR UP provides can be easily emulated if resources, in the form of staff to serve as college and career coaches, materials, and funding to carry out the programs, are provided to the schools.

#### *College Advising through AmeriCorps State and National Service*

Some existing AmeriCorps state and national programs (through varied partnerships with either states or local

non-profits) place recent college graduates in underserved middle and high schools across the United States to contribute to educational support systems as tutors or college and career coaches. Some examples include the College Advising Corps and the College Success Foundation. Both programs work to increase the number of underserved, low-income students graduating from high school and pursuing postsecondary opportunities—college or career tracks. While College Advising Corps partners up with 15 higher-education institutions across the country, the College Success Foundation has a presence in Washington State and Washington, DC. Both programs create or expand on a college-going culture—awareness, preparedness, and financial literacy—at the schools served. This is achieved through the implementation of school-wide college awareness/readiness curricula, providing students with academic and social enrichment activities such as mentorship, opportunities to visit college campuses, and in Washington State’s case, signing up eligible students for the Washington State College Bound Scholarship. Furthermore, school districts have the capacity to implement college awareness and preparedness curricula by providing the right training for educators to send consistent messages to all students that they are capable of pursuing postsecondary opportunities. More resources and access to information for students prior to high school around the topic of college and career pathways will increase

the likelihood of their success in high school and beyond.

Although these programs have a tremendous impact on the students served, their shortcomings are the inconsistencies in program longevity or renewability and continuous turnover of coaches. The inconsistency in service can be disruptive to the mission of creating a college-going culture and preparing students to thrive academically. The nature of AmeriCorps's programs is for individuals to serve one or two terms as volunteers—limited monetary compensation plays an important factor in whether AmeriCorps members will serve a second term. In order for programs like these to have greater impact, these positions (of college and career coaches) need to be written in as part of the school budget. Research conducted by the College Board revealed the positive impact of having college advising coaches in schools, particularly on Latino students and students receiving free and/or reduced-price lunch.<sup>30</sup>

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## Recommendations

Investments in middle school college and career coaches can ameliorate secondary and postsecondary opportunities for Latino students. At the local level, districts can include these important roles in their school-year budget—prioritizing schools with the highest needs. Subsequently, the Department of Education should expand on how it defines the roles of paraprofessionals in schools “labeled” as Title 1 and mobilizes access for all students.

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## Investments in Middle School College-Going Culture via College and Career Coaches

Middle schools will benefit tremendously from the creation of a college-going culture and establishment of an onsite college and career coach to work with students and emphasize the importance of planning ahead. College and career coaches can increase students' awareness and preparedness in academics, social capital, and financial literacy. In this capacity, these coaches can collaborate with school administrators on the implementation of school-wide college awareness/readiness curricula, providing students with academic and social enrichment activities such as mentorship, opportunities to visit college campuses, and signing up eligible students for early commitment scholarships. Indiana and Washington State have championed early commitment scholarship initiatives through their state legislature for the 21st Century Scholars Program and College Bound Scholarship, respectively. These initiatives alleviate the economic hurdles of college for low-income students and encourage students to have high school plans, persist in high school, and pursue postsecondary opportunities—college or career.

All students should have access to college preparation curriculum to better equip them for postsecondary opportunities. Students' grades, at-

tendance rates, and levels of school engagement prior to high school are correlated with their ability to complete high school and position them to be college and career ready. Therefore, increased investment in college and career counselors and coaches in middle school will benefit students tremendously. At the local level, districts can include these important roles in their school-year budget, prioritizing schools with the highest needs. Along with it, school districts should have family engagement as part of their priorities. Part of family engagement can be to familiarize Latino parents with the US education system—including post-secondary opportunities—and the college and career readiness preparation that takes place prior to high school. School districts need to see Latino parents as partners in raising student academic achievement, promoting persistence, and cultivating aspirations for opportunities beyond high school.

Creating pathways for paraprofessionals to serve in the capacity of college and career coaches can provide an opportunity for schools to better serve Latino students while providing paraprofessionals with an opportunity to expand their impact in the classroom. Through amendments to Title I of the Every Student Succeeds Act (ESSA), paraprofessionals could serve as college and career coaches onsite, with them and the school receiving incentives for their work. Subsequently, the Depart-

ment of Education should expand on how it defines the roles of paraprofessionals in schools “labeled” as Title I and mobilizes access for all students.

As part of the new provisions of ESSA, schools can implement college and career awareness and college-going culture as part of their strategic plan to improve the academic achievement of the disadvantaged. Particularly after Sec. 1002(d) (Prevention and Intervention Programs for Youth Who Are Neglected, Delinquent, or at Risk), (h) (School Dropout Prevention), and (i) (School Improvement),<sup>31</sup> a provision that schools can use in their accountability plans to the Department of Education can be to have paraprofessionals serve as college and career coaches as part of schools’ goals to ensure students meet the proficiency test, English language proficiency, and graduation rate expectations. Paraprofessionals already have a lot of access to students. As such, they can be leveraged to teach students about college and career readiness through different points of contact—reading, writing, and mathematics. Paraprofessionals are key instructors in schools and should be provided with opportunities to have a participatory role in an important component of student learning and development.

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## Conclusion

It is imperative to ensure that the education system paves clear pathways, ones that include college-readiness

opportunities for Latino students, in order for students to fulfill their potential and become positive contributing members of society. By having intentional efforts investing in middle school college and career coaches, improved family engagement, and early commitment scholarships, we can ameliorate secondary and postsecondary opportunities for Latino students. There is a need for federal, state, and local policymakers to affect change by supporting initiatives and legislation that grant students access to readiness for college and career readiness pathways. Federal and state grants aimed at providing access to information and resources to underserved and underrepresented young people create a lifelong impact, especially among Latino student populations, changing the trajectory of their lives and that of their families and future generations.

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### Author Bio

Griselda Guevara-Cruz is an educator based in Washington State. She was born in Portland, Oregon, to parents from La Mixteca region in Oaxaca, México. The daughter of two monolingual indigenous immigrant parents, Griselda is a first-generation US citizen and a first-generation formal education attendee. Griselda received her BA in Spanish with honors, with double minors in education and sociology from Whitman College. She earned her MA in Mexican American studies at The University of Texas at Austin.

She is the recipient of the 2012



National Association for Chicana and Chicano Studies Undergraduate Frederick A. Cervantes Student Premio for her paper, “El hombre mexicano inmigrante a través de las canciones de Los Tigres del Norte.” Most recently, Griselda served as the Congressional Hispanic Caucus Institute’s 2016–2017 Secondary Education Graduate Fellow. She is deeply committed to narrowing the opportunity gap and fostering comprehensive work for college and career readiness for Latino youth.

Griselda is an experienced educator and an actively involved community member. She has served on various boards ranging from community accountability in the juvenile justice centers to her local school board’s research and evaluation committee. These experiences continue to shape her passion and commitment to equity in educational services for underrepresented and underserved youth while continuously mentoring young adults with college navigation.

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## End Notes

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# Impacts of Payday Lending in California among Communities of Color

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### Abstract: Overview

While many US states have worked to confront the rise of the payday lending industry with bans or regulatory action, the State of California has failed to pursue an adequate policy response of its own. This policy failure has left consumers across the state vulnerable to predatory lending. Californians consistently account for the highest rates in the nation of payday loan borrowing in terms of dollar amount and number of loans disbursed. Typical payday loan consumers are from lower socioeconomic and underserved backgrounds who use the services as an alternative form of credit. Studies demonstrate that a disproportionate amount of payday loan storefronts conduct business in predominantly Latino and Black communities. Additionally, the State of California does not regulate payday loan providers to the same extent as other traditional consumer

financial services, which allows the industry to offer high-risk loans to financially vulnerable populations. Consumers often fall into a “debt trap” of repeated borrowing due to the high interest rates and inability to meet repayment terms. The high prevalence of payday lending in poor communities of color hurts their ability to build intergenerational wealth and stagnates local economic development.

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### Objectives

This analysis evaluates different policy options to address the repeated borrowing of payday loans among California consumers. This was done using the following objectives:

- Increase consumer financial literacy
- Strengthen payday-loan protections for consumers
- Improve government oversight of payday lending
- Implementation feasibility

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## Policy Options

Status Quo: Regulation will continue to limit loans at \$300 per loan with a 15 percent initiation fee. No consumer resources.

- Market Regulation of Payday-Loan Industry: Regulation will alter the supply and demand of the payday lending industry to benefit consumers.
- Financial Literacy Program: Option will increase consumer knowledge of payday lending as well as other financial options available.
- Deferred Presentment Transaction System Database: A real-time database system will track payday loans
- Industry Regulation with Deferred Transaction System Database: A combination of new regulation and a real-time database will monitor payday-lending practices.

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## Recommendation

We recommend that the California Department of Business Oversight implement regulation of the payday-loan industry and the integration of a statewide deferred transaction digital database.

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## Main Text:

Payday Loan Industry Background For the past 25 years, the payday loan industry has steadily grown, constituting a \$50 billion industry.<sup>1</sup> A typical payday loan averages \$350 for repay-

ment within one to two weeks.<sup>2</sup> The average borrower in the United States utilizes a payday loan about eight times a year to cover recurring expenses.<sup>3</sup>

Payday lending institutions charge a borrowing fee for a loan amount limited to \$300.<sup>4</sup> Consumers who are not able to repay their original loan have access to rollovers or the ability to renew the original loan for an additional fee. The rollover continues to accumulate interest, leading the average payday loan consumer to be indebted for approximately five months out of the year.<sup>5</sup> Borrowers who face difficulty accessing financial capital often pay a high price to utilize credit. Consequently, the payday loan industry serves as an attractive option for high-need borrowers who are locked out of the traditional credit market.

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## National Payday Lending by the Numbers

Adults ages 25–49, workers with annual incomes below \$40,000, and people of color tend to use payday loans at higher-than-average rates nationwide.<sup>6</sup> The average credit score of a payday loan borrower, below 520, is more than 100 points below that of the general population at 680.<sup>7</sup> These borrowers utilize payday loans when they are not able to qualify for or have exhausted more affordable forms of credit, such as credit cards and bank loans with lower interest rates.<sup>8</sup> The increased popularity of payday lending across the nation, along with decries

of predatory lending, has drawn the attention of the Consumer Financial Protection Bureau (CFPB).<sup>9</sup>

Advocates who favor regulation of the payday loan industry are primarily concerned with the “debt trap,” or the inability of payday loan borrowers to pay off their loan, primarily due to the high annual percentage rate (APR). The CFPB conducted a study that explains the profile of the repeated borrower. Most repeat consumers take out between \$3,000 and \$6,000 in payday loans annually. Their loans accounted for over 42 percent of the total annual dollar disbursement of payday lenders across the country. These same consumers averaged 14 loans per year with approximately two weeks between each loan disbursement.<sup>10</sup>

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### **California Payday Loan Industry in 2015**

California accounts for 40 percent of all payday loan disbursements nationwide.<sup>11</sup> Over the past decade, the California State Legislature has considered various bills aimed at regulating the payday lending industry the way banks and credit cards are regulated. Such legislative proposals have repeatedly failed passage. A 2012 Pew study categorizes states by level of regulation, listing California as among one of the least-regulated states. This lack of regulation has allowed the payday loan industry to increase the amount of dollars loaned out to consumers by 23.5 percent despite a 1.17 percent drop in the total number of loans disbursed.<sup>12</sup>

In addition, the average APR for payday loans increased from 361 percent in 2014 to 366 percent in 2015.<sup>13</sup> The California Department of Business Oversight (CDBO) indicates that in 2015 over 12.3 billion payday loans were given to 1.9 million individual customers. The average number of payday loans obtained by each individual customer in 2015 was 6.5 while the average payday loan in California had an APR of 366 percent.<sup>14</sup>

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### **Who Borrows Payday Loans in California?**

#### *Repeat Consumers*

Repeat payday loan consumers represented 76.2 percent of all transactions in California and totaled 83.1 percent of the total dollar amount disbursement for 129 licensed payday lenders.<sup>15</sup> Repeat consumers represented 63.75 percent of all fees collected by payday lenders and 47.2 percent took out two payday loans in the same day.<sup>16</sup> California consumers in long-term debt are defined as those who have taken out 10 or more loans or borrow an average of 13 loans annually.<sup>17</sup>

#### *Impacted Populations*

Low credit scores severely hinder a consumer’s ability to borrow traditional loans or access a line of credit from banks at affordable rates, driving them toward riskier alternatives like payday loans. The APR of a payday loan is 390 percent, while the average APR of a credit card is 14.7 percent.<sup>18</sup>

The CDBO used 2015 data submitted by payday lenders to identify

the industry's consumers. The report shows that most Californian consumers are 22–31 years old with an annual income of \$20,000–30,000.<sup>19</sup> In addition, a 2007 study done by the California Department of Corporations, now known as the CDBO, found that most borrowers were Latino (36.4 percent), female (59.8 percent), and had either a high school education (33.5 percent) or some college (29.3 percent).

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### **Payday Lending Locations in California**

Studies have found that payday loan storefronts are concentrated in specific areas of California, including poor and minority neighborhoods and near military bases.<sup>20</sup> The City of Los Angeles and the City of Sacramento had the highest concentrations of payday lending storefronts.<sup>21</sup> Sacramento County was ranked as having the highest urban rate of payday lenders with about ten lenders per 100,000 residents.<sup>22</sup> Rural areas also experienced a high rate of payday-lender-to-population ratio, with Madera County having a rate around 11 lenders per 100,000 residents.<sup>23</sup> A 2011 comparative analysis of two Southern California State Senate districts demonstrated targeted concentrations of payday loan storefronts. The analysis found that Senate District 20, which was predominantly working class and Latino, had 96 payday lenders and 76 banks.<sup>24</sup> In the 23rd Senate District, which was pre-

dominantly middle class and White, there were 31 payday lenders and 270 banks.<sup>25</sup>

The majority of storefronts across the state were located in areas where Latino and Black families were living in poverty. Nearly 49 percent of all payday loan storefronts were located in communities where the Latino family poverty rate was higher than the statewide Latino poverty rate.<sup>26</sup> These storefronts were in areas that had about 29.2 percent of Latino families living in poverty on average.<sup>27</sup> For Black families living in poverty, 48.8 percent of all payday loan storefronts were located in communities where the average rate of poverty was 36.7 percent.<sup>28</sup> A spatial analysis by the CDBO found that a higher-than-average number of storefronts are located in zip codes that have family poverty rates above the state average of 12.3 percent.<sup>29</sup> In addition, more storefronts were found to be located in communities where the average Latino family poverty rate was 19.4 percent and the average Black family poverty rate was 20 percent.<sup>30</sup>

The number of payday lending storefronts is disproportionately higher in Latino and Black communities. When examining individual zip codes with six or more storefronts, there was a high correlation between race and number of storefronts. The average poverty rate for families living in communities with six or more storefronts was 22.6 percent for Latino families and 24.4 percent for Black families.<sup>31</sup>

The average population rate of White individuals in these areas was 38.5 percent lower than the average number of White people living within the state.<sup>32</sup> On average, payday lending locations are less likely to be in communities that are predominately white.

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### **Latinos and Payday Lending**

Payday lending has had an immense impact on the Latino community in California and across the nation. A 2009 study found that Californians alone paid approximately \$247 million toward servicing payday lenders, with a majority of those dollars coming from Latino and Black communities.<sup>33</sup> According to a 2012 national study by the Pew Charitable Trusts, the payday loan debt trap most significantly impacts communities of color, with Black individuals ranking first in usage and Latinos following behind, representing 14 percent of all payday loan borrowers nationally. Payday lenders are filling a gap left by the neglect of traditional financial services in communities of color. This gap, coupled with the absence of clear regulation in some states such as California, continues to trap many Latino families in a cycle of debt. This hinders social mobility and ultimately drains communities of color of income that could be used to stimulate local economies.

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### **Problem Definition**

The payday loan industry provides consumers with immediate access

to high-cost financing. Consumers access payday lending services because they have exhausted traditional forms of lower-interest credit such as bank loans and credit cards. The State of California does not regulate payday loan providers to the same extent as other traditional consumer financial services, which allows the industry to offer high-risk loans to financially vulnerable populations. Consumers with the fewest financial resources and access to capital pay the most to use payday lending services, which puts them at risk for revolving debt.

#### *Objectives and Criteria Increase Consumer Financial Literacy*

Data gathered by agencies outside of the payday industry show that individuals who lack access to traditional forms of credit and financial information are often exploited by the payday loan industry.<sup>34</sup> Increased financial literacy among payday loan consumers will increase their knowledge of financial services and improve their access to other competitive products. A better informed and more empowered consumer base will be determined by the following:

- **Credit Scores:** Consumers with low credit may be ineligible to borrow at low interest rates from banks and credit card companies. An improved credit score would change a consumer's eligibility prospects. Measured by the average credit scores of payday loan

consumers who have participated in financial literacy training compared to the general population of payday loan consumers.

- **Understanding of APRs:** Some consumers may not initially understand what the 15 percent origination fee for a payday loan constitutes. Consumers are likely to realize the advantages of low-interest borrowing after learning about the risks of payday loans in conjunction with improving one's credit score. Measured by the average number of loans per borrower in long-term debt (with ten or more loans).

#### *Strengthen Payday Loan Protections for Consumers*

Greater protection and security for consumers decreases the rate of repeat borrowing and the use of a new loan to pay an existing loan. The following criteria will be used to evaluate this project.

- **Charged Fees:** Creation of bill similar to the Talent Amendment to the Service-members Civil Relief Act for the civilian population.<sup>35</sup> Measured by the average dollar amount of fees charged in California.
- **Number of Loans:** Limit number of loans consumers can take out from a single agency and multiple agencies. Measured by the average number of payday loans initiated and disbursed in California.
- **Repayment periods:** Extension

of repayment periods while controlling for fees. Measured by the median length of repayment periods in California.

#### *Improve Oversight of Government Lending*

California state law indicates that payday lenders can only give one payday loan per customer and cannot make a new loan while an existing loan is outstanding.<sup>36</sup> This regulation is not consistently enforced due to a lack of shared information on behalf of governmental agencies.<sup>37</sup> Limiting consumer access to one payday loan at a time and increasing communication between lenders and the CDBO about a borrower's loan history would reduce the number of repeat borrowers. The following criteria will be used to evaluate.

- **Consumer Borrowing from Multiple Lenders:** Decreased consumer borrowing from multiple lenders.<sup>38</sup> Measured by the number of times a client took out a loan from more than one lending agency.
- **Time Period between Payday Loans:** Increased time between consumer payday loans. Measured by the number of days between the customer's first and second payday loans.

#### *Implementation Feasibility*

To evaluate the cost of the alternatives and the likelihood of gaining support from stakeholders, the cost and political feasibility of the alternative will be considered. The following criteria

will be used to evaluate:

- **Minimizing Cost:** Minimized cost of implementation and enforcement of the alternative. Measured by amount of dollars needed to fully implement and sustain alternative. Dollars will be measured in the worth of dollars in 2015.
- **Political Feasibility:** Probability of gaining approval and support for implementing the alternative. Measured by the likelihood of stakeholder approval.

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## Policy Options

### *Status Quo*

California limits payday loan amounts to \$300 and its APR to 460 percent for a two-week loan.<sup>39</sup> A customer with no outstanding payday loans can receive only one loan disbursement at a time, which cannot be used to pay off an existing payday loan.<sup>40</sup> Due to a lack of government oversight of the one loan limit, borrowers may obtain multiple loans at different payday lenders.<sup>41</sup>

### **Alternative 1: Market Regulation of Payday Loan Industry**

#### *Supply-Side Regulation*

Supply-side regulation directly limits the activities of the payday lending industry to protect consumer safety. Although payday loan consumers borrow small, short-term loans at a maximum fee of 15 percent, the fee over a two-week repayment period translates to an APR of 460 percent.<sup>42</sup> Imposing the following regulations on lenders would facilitate repayment for borrowers,

reducing the likelihood for revolving debt, limiting the APR and fees charged to customers, and extending the length of repayment for low-interest loans.

Between 2006 and 2012, 11 US states and the District of Columbia indirectly banned payday lending by regulating APRs at levels between 24 and 36 percent.<sup>43</sup> Requiring low APRs may render the payday loan industry unprofitable, ultimately pushing out payday lending services and effectively banning payday lending in the state.

#### *Demand-Side Regulation*

Demand-side regulation restricts payday loan consumption, thereby limiting the customer's ability to borrow. Although payday loans are marketed as one-time loans for emergency situations, the average California consumer takes out seven payday loans annually.<sup>44</sup> Consumers are less likely to find themselves entrapped in a cycle of payday loan debt if they are not allowed to borrow excessively. Regulations to curb borrowing include limiting the number of loans per consumer and limiting the maximum dollar amount per loans.

#### *Summary*

Despite the regulations already outlined under the status quo, California continues to leave financially vulnerable populations at risk for revolving debt. Therefore, new regulations to consider include extending the repayment period and limiting the total amount of payday loans that a customer may borrow annually.

- Extend repayment period to four

weeks (supply-side).

- Limit the amount of payday loans per consumer to seven annually (demand-side).

#### *Analysis*

- Increase Consumer Financial Literacy: Payday loans do not impact a consumer's credit score and neither does their regulation. The criteria for measuring the understanding of APRs suggests that limiting the number of payday loans per consumer increases financial literacy. However, regulating the number of payday loans a consumer can borrow necessarily decreases consumption of payday loans, even without increased financial literacy.
- Strengthen Payday Loan Protections for Consumers: Extending the repayment period to a maximum of four weeks gives a customer two additional weeks to pay off interest. With the current cap of a 15 percent fee, allowing four weeks for repayment instead of two effectively lowers the APR, thereby reducing the amount of fees charged. The current national average for repayment is 13 days because most payday loans have repayment periods of two weeks. Extending the repayment to four weeks lengthens the average amount of time for repayment to a new average. Additionally, the customer can still repay their loan within two weeks without prepayment penalties. For the purposes

of this analysis, we assume an eventual normal distribution with an average of four loans.

- Improve Government Oversight of Payday Lending: No data exists to determine how many consumers borrow more than one payday loan at a time. Because regulation without enforcement has little to no impact, consumers can still borrow from multiple lenders. By extending the repayment period through regulation, the median time between loans will likely increase because an individual cannot have more than one loan at a time. We predict that it will increase to 21 days since not all consumers will use the full four weeks (28 days) to repay their loan. Using the median time period between payday loans as criteria suggests that this increase leads to improved oversight, when that is not necessarily the case.
- Implementation Feasibility: The cost of regulation will fall on payday lenders because, in conjunction with existing laws, the cost of new regulations cannot be passed onto the consumer. New regulations that are enforced will increase the liability of payday lenders; the industry is likely to oppose any type of regulation. The CDBO will assume additional costs to enforce the new regulations. The method of enforcement contributes to the overall cost. The supply- and de-



mand-side regulations outlined above will require legislative action; given the Democratic supermajority in the legislature, regulation is possible. Otherwise, an advocacy campaign could be implemented to secure legislative support for regulatory reform. If the legislature is unwilling, the governor or advocacy groups could utilize the ballot initiative process to regulate payday lending. Lastly, the governor also can issue an executive order; however Governor Jerry Brown has historically been opposed to increased regulatory action.

#### *Trade Offs*

The regulations discussed above assume enforceability. Limiting the number of loans and extending repayment periods without serious enforcement will not solve the problem faced by millions of consumers. However, the law cannot be meaningfully enforced without the existence of a database. Likewise, the collection of information through a database is pointless unless it is used to enforce the law. If the regulations are enforceable, they mostly strengthen payday loan protections for consumers and do not increase consumer financial literacy or improve government oversight of payday lenders.

#### **Alternative 2: Financial Literacy Program for Repeat Consumers**

Studies have shown that consumers who borrow payday loans often lack financial literacy.<sup>45</sup> Some consumers

utilize payday loans because they are locked out of the credit market due to low credit scores.<sup>46</sup> Others with relatively good credit may lack an awareness of the various market options and in turn rely on payday loans.<sup>47</sup> This shows that payday borrowers are not fully informed of all their financial options or that they do not know how to access alternatives.<sup>48</sup>

#### *Analysis*

- **Increase Consumer Financial Literacy:** By offering classes or workshops that emphasize money management, consumers can learn about the various ways to obtain cash and credit. In addition, repeat borrowers can obtain the necessary tools to manage their current payday lending debt, allowing them to stop the borrowing cycle. To promote attendance, trusted community organizations must conduct outreach and implement workshops in various languages and using cultural sensitivity.
- **Strengthen Payday Loan Protections for Consumers:** A financial literacy program would give customers the necessary information to identify and report fraud or suspicious activity from a payday lender. Workshops must empower borrowers to report abuses without fear of repercussions.
- **Improve Government Oversight of Payday Lending:** An additional benefit of financial literacy workshops is the creation and strength-

ening of social networks that can serve as support groups for repeat borrowers. In addition, many of the workshops can be provided by community or non-profit organizations that already advocate to improve oversight of the payday lending industry. Borrowers can potentially participate in actions to pressure local governments to regulate the industry through zoning and community economic development initiatives.

- **Implementation Feasibility:** Financial literacy in California is currently conducted through the public K–14 education system, which includes community colleges and adult education.<sup>49</sup> The state also has several campaigns aimed at addressing financial literacy.<sup>50</sup> Implementation of a financial literacy program targeting payday borrowers can be achieved by expanding the current plan, which includes adult education, and working with non-profit organizations such as the National Endowment for Financial Education. Implementation costs would increase compared to current funding due to a greater number of individuals served. The State of California has already established efforts to provide certain populations in the state, such as high school and community college students, with the tools needed to make informed financial decisions. Ex-

panding a financial literacy program for payday borrowers builds upon the current infrastructure. It will likely be well received within the legislature because programs would directly benefit consumers. Additionally, lenders would lose credibility if they were to oppose this reasonable measure, leading to high probability of support and passage.

#### *Trade Offs*

Due to the lack of a database that identifies individuals who have borrowed repeatedly, outreach and attendance to the workshops would be based on self-identification. This would mean that many borrowers can potentially decide not to participate. Also, increased protection for consumers assumes an agency is already in place for consumers to report abuses in variety of languages.

#### **Alternative 3: Adopt a Deferred Presentment Transaction System Database**

Nine states across the country limit the number of loans a borrower can take annually by using a real-time, point-of-sale verification database system to track disbursed payday loans called Veritec Solutions, LLC.<sup>51</sup> Florida, Michigan, Illinois, Indiana, North Dakota, New Mexico, Oklahoma, South Carolina, and Virginia all contract with the private deferred presentment database.<sup>52</sup> This corporation provides the nine states with regulatory support to protect consumers using data-driven examination report-

ing. Florida, the largest of these states, enacted 2001 legislation that paved the way for establishment of the Deferred Presentment Transaction System database.<sup>53</sup> This legislation requires payday lenders to check the statewide database prior to initiating the loan process to ensure borrowers are eligible under state law.<sup>54</sup> Consumers who do not meet state guidelines cannot legally borrow a payday loan and are flagged in the system.<sup>55</sup>

#### *Analysis*

- **Increase Consumer Financial Literacy:** Establishment of a statewide database to track payday loans would not increase financial literacy on its own. The database would be able to provide regulatory agents data to target geographic areas throughout the state where there is a large pool of borrowers maxing out their annual borrowing cap, thus justifying need for financial literacy workshops.
- **Strengthen Payday Loan Protections for Consumers:** This policy option indirectly protects borrowers by helping enforce statewide borrowing caps. Consumers who reach their max borrowing would not be able to further deepen their payday loan debt, pulling them out of the revolving debt trap.
- **Improve Government Oversight of Payday Lending:** Contracting with Veritec Solutions, LLC would strengthen the ability of

the CDBO to enforce borrowing limits while at the same time relieving the department of collecting borrower information and maintaining the database.

- **Implementation Feasibility:** The Florida Veritec database is funded annually in the state budget in compliance with H.B. 217, with the 2015–2016 fiscal year allocation standing at \$320,020.<sup>56</sup> New Mexico uses a transaction fee option available through Veritec to fund the statewide database. Approved loans are subject to a 50-cent transaction fee that funds the database; payday lenders pass on this fee to the borrower.<sup>57</sup> California can adopt either funding source to contract with Veritec, considering the cost of implementation in Florida as a baseline. Adopting Veritec technology database, and budget allocation, would need to come before the state legislature. The database would be the responsibility of the CDBO in cooperation with the private corporation Veritec. California has a strong track record of consumer financial protection, and this database will serve as a tool to continue those protections; establishment of the database is likely but not guaranteed. The payday lending industry, and their strong lobby, may be opposed to an additional level of oversight because it has the possibility of lowering

the number of payday loans disbursed by enforcing the legal limits. Consumer financial protection advocacy groups may take issue with an information-gathering non-state entity taking part in state regulations.

### *Trade Offs*

The Veritec database alone cannot regulate the payday loan industry or eliminate the debt trap for borrowers. This policy option is a technological tool that monitors borrowing statewide and provides critical, real-time information. California law enforcing payday lending regulation must follow suit for the database to work. The database is not effective without impactful regulation on the industry. In addition, the caveat with a transaction fee to fund the database is that current California law prohibits additional fees on consumers; this funding source would have to be absorbed by payday lenders.

### **Alternative 4: Industry Regulation with Deferred Transaction System Database**

New regulatory additions to California's payday law would be enforced by a deferred presentment transaction system database. California does not have a method to oversee whether payday lenders adhere to the payday loan laws. A combination of additional payday loan regulations with a deferred presentment transaction system database entails the following:

#### *Supply-Side Regulation*

Supply-side regulation limits the payday lending industry to protect con-

sumer safety. Imposing the following regulations on lenders would facilitate repayment for borrowers, reducing the likelihood for revolving debt. The following recommendations for regulation are to extend the length of repayment for low-interest loans to four weeks.

#### *Demand-Side Regulation*

Demand-side regulation restricts payday loan consumption by limiting the customer's ability to borrow. Regulation to curb borrowing is limiting the number of loans per consumer to seven annually.

#### *Deferred Presentment Transaction System Database*

Consumers who do not meet state guidelines cannot legally borrow a payday loan and are flagged in the database.<sup>58</sup> The database has two funding methods: (1) the database is funded annually in the state budget depending on legislative approval, or (2) the database is funded by the payday loan provider through a 50-cent transaction fee on every approved loan.<sup>59</sup> The database provider is Veritec Solutions, a Florida-based business.

#### *Analysis*

- **Increase Consumer Financial Literacy:** New regulations on payday lending would increase consumer financial literacy by decreasing the average number of loans per borrower in long-term debt. However, it is unclear whether the decrease would also be linked with borrowers' increased under-

standing of how APR affects loan repayment. The database would not address consumer financial literacy on its own and does not affect regulation change. The CDBO would use the database to regulate the new payday law.

- **Strengthen Payday Loan Protections for Consumers:** Extending the repayment period will increase the length of time borrowers must pay back loans. For example, a four-week repayment period, instead of the current two-week repayment period, effectively lowers APR. Under the new regulation of repayment period, customers still have the option of paying a loan within two weeks. New regulation also aims to prevent repeat borrowers' long-term payday loan debt by limiting the total amount of payday loans a consumer can obtain. Currently, repeat borrowers in long-term debt are classified as borrowing ten or more loans. Limiting the number of loans a consumer can obtain will decrease the average number of loans per borrower. For the purposes of this analysis, we assume that capping the number of payday loans at seven will result in an eventual normal distribution with an average of four loans. The deferred presentment transaction enforces the borrowing caps, preventing borrowers from obtaining more than seven loans. The system will flag the

borrower as a max borrower; the customer will not be able to take out any other loans for the remainder of the year.

- **Improve Government Oversight of Payday Lending:** Presently, California does not have a mechanism to ensure borrowers obtain one loan at a time. Consumers can borrow more than one loan from multiple payday lenders. Payday lenders do not have knowledge of customer loan status and do not know whether a borrower is eligible for another loan. By extending the repayment period through regulation, the median time between loans will likely increase because an individual cannot have more than one loan at a time. We predict that it will increase to 21 days since not all consumers will use the full four weeks (28 days) to repay their loan. Using the median time period between payday loans as criteria suggests that this increase leads to improved oversight when that is not necessarily the case. The Veritec database will track borrowing in the state and strengthen the ability of the CDBO to enforce borrowing limits. This in turn will relieve the department of collecting borrower information and maintaining the database.
- **Implementation Feasibility:** Establishing a real-time enforcement database will enable the CDBO

and the payday lending industry to meet current and future payday lending guidelines. Veritec Solutions can create database options that track borrowers and enforce borrowing caps statewide.<sup>60</sup> Administration and oversight of the database would be the responsibility of the CBDO in cooperation with Veritec. The baseline budget allocation for this system is \$320,020.<sup>61</sup> New payday loan regulations will require legislative action and approval by the governor, or they will require a ballot initiative and approval by the voters. There are several possible avenues that could be used to introduce new regulations. The Democratic supermajority in the legislature could work with the governor's office to introduce reasonable legislation with a guarantee that the governor will sign the bill. The governor can act independently of the legislature with statewide advocacy groups to secure public support for payday lending regulations and push for legislative action on the issue. If the legislature does not pursue action, the governor and advocacy groups could utilize the ballot initiative process to take payday lending regulatory action directly to the voters. Lastly, the governor could issue an executive order if appropriate. The State Legislature would be wise to pursue action focused on securing a budget allocation for the database

and pursuing regulatory legislation after the implementation of the database. Establishing the database will allow for effective and efficient enforcement of current and future regulations.

### *Trade Offs*

The ability to pass regulatory legislation is probable, but it is uncertain how California's legislative body will perceive the new regulations, particularly the cap on the amount of a customer can borrow. Passing regulation and purchasing the database consume financial and human resources that the state legislature may be unwilling to use.

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### **Recommendation**

Repeat consumers of payday loans who borrow more than ten loans are at high risk of falling into long-term debt. Under current payday laws, borrowers cannot obtain more than one loan at a time; however, the CDBO has no infrastructure in place enforcing the one-loan limit. To this end, California payday regulation does not address repeat borrowing specifically. Considering these factors and their impact on both the payday lending industry and consumers, California would benefit from both new regulation of the payday loan industry and a deferred transaction database system. The new regulation that caps the amount of loans a consumer can take out annually and extends the repayment period aligns with the mission of the CFPB.

Enforcing current and future payday loan regulation will curb repeat borrowing and reliance on the payday loan industry. Consumers will follow the one-loan mandate and cannot get multiple loans from multiple lenders simultaneously. The deferred transaction database will track repeat borrowers and flags the borrower if they are ineligible to take out another loan from any payday lender. The cost of implementing the database and passing new regulations may become barriers to implementation even if stakeholder support is present. Given the importance of upholding payday loan laws and creating a sustainable payday loan market, a database is recommended in conjunction with new regulation.

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### **Author Bios:**

Andrea C. Ávila is a graduate student at the University of Southern California pursuing a master's degree in public policy. She transferred from Santa Monica College to the University of California, Los Angeles, where she received her bachelor's and master's degrees in Latin American studies. Upon graduation, she served as a fiscal coordinator for Los Angeles Mayor Eric Garcetti's Summer Night Lights Program. Her immigrant background and academic and professional experiences have led her to work on Latino issues in the United States and Latin American policy. Her research has focused on domestic household workers in Los

Angeles and on the use of big data to navigate emergency response in the City of Rio de Janeiro. She is interested in exploring how public, private, and non-profit partnerships can create innovative approaches to address prevalent issues within social policy. Andrea currently works for the USC Price Office of Global Engagement: Latin American task force initiative.

Briana M. Calleros is a master of public policy student at the University of Southern California and is expected to graduate in May 2018. Her previous experiences include working as a Capital fellow in the California State Senate and a summer associate at the White House Office of Presidential Correspondence. She is the primary author of *Rebuilding the California Dream*, a Right Start Commission Report on early childhood. Most recently, Briana managed a summer internship program at mitú, created to help address the media and tech industry's leaky pipeline. Briana graduated magna cum laude from Wellesley College in 2012.

Gilbert Felix has a passion for economic and social justice that drives his work in progressive politics, community organizing, and legislative advocacy. Gilbert's professional background includes political consulting, campaign management, and serving as staff for elected officials in local governments and the California State Legislature. He is a Maddy Institute Wonderful Company Public Service fellow pursuing a master's degree in

public policy degree at the University of Southern California. A native of California's Central Valley, Gilbert is dedicated to helping build the political leadership and power of women, youth, people of color, immigrants, and LGBTQ people in rural communities.

Danielle Guillen is passionate about creating communities that are the best version of themselves. As a master's of public policy candidate at the University of Southern California, Danielle aspires to understand the holistic needs of a community and how policy affects families. Danielle specializes in education policy with experience teaching and working within the education sector. She currently serves on the MacArthur Park Neighborhood Council in Los Angeles.

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*This paper was originally written in the fall of 2016. In the fall of 2017, the Consumer Financial Protection Bureau released tougher regulations on payday lending. As of January 2018, the fate of the regulations are up for debate in Congress and by the new director of the CFPB. Payday lending regulations could be rolled back by either The Financial Choice Act currently under consideration or the revision of CFPB rules.<sup>62,63</sup> The state of affairs in California prior to the 2017 CFPB actions should serve as a cautionary tale of the impact that deregulation can have on Latino communities.*

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## End Notes

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# In Memoriam

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## Jeanette Marie Acosta

September 25, 1985–December 18, 2017

Jeanette Marie Acosta's memory will live on as someone who dedicated her life to the service of others and who constantly sought to champion for the rights of those most in need. Her contributions to the cause of social justice, especially among Latino communities, started at a young age and continued until she passed away on 18 December 2017, after a long battle with cervical cancer. She was 32.



Jeanette began her work in public service interning for mayor of Los Angeles Antonio Villaraigosa as a freshman at the University of Southern California. After completing a Congressional Hispanic Caucus Institute Fellowship in the office of Congressman Xavier Becerra, Jeanette graduated cum laude in 2008 as a presidential scholar with a BA in political science and psychology.

Following her work establishing a learning center for Mexican immigrant children in California as an AmeriCorps VISTA fellow and doing research on education policy in Mexico as a Fulbright Scholar, Jeanette decided to advance her own education by enrolling in the Master in Public Policy Program at the John F. Kennedy School of Government at Harvard University. While there, she made valuable contributions to the work of the *Harvard Kennedy School Journal of Hispanic Policy* as the director of board relations and, later, as managing editor. During this time, Jeanette also led many advocacy initiatives in support of civil rights, especially among immigrants and DREAMers, co-founding the Ivy League Immigrant Rights Coalition and interning with the White House Domestic Policy Council's Immigration Policy team and the US Department of Education's Office of Migrant Education. Jeanette later went on to earn a law degree from the University of California, Hastings College of Law in 2016. She continued her work in the field of social justice as a judicial law clerk for Hon. Anna Blackburne-Rigsby, District of Columbia Court of Appeals.

Even after her cancer diagnosis, Jeanette remained the positive, determined, and uplifting person her family and friends always knew her to be. Apart from fighting fiercely for her life in her personal battle, Jeanette sought to inform and empower other women by authoring numerous articles on her treatment for different online platforms and building communities that she hoped would help other women going through her same struggles.

We will miss Jeanette dearly, but the memory of all that she did for others and all that she was to so many will live on in our hearts.

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Correction for page 2: Juana Hernandez Sanchez was erroneously omitted from the "Recognition of Former Editors" section. She served as editor of the HJHP from 2014-2015.

Correction made on 03/27/2024