The Latina Paradox:

Cultural Barriers to the Equitable Receipt of Welfare Services Under Modern Welfare Reform

Elena Christine Acevedo†

La Llorona
Salías del templo un día, Llorona
Cuando al pasar, yo te ví
Hermoso huipil llevabas, Llorona,
Como La Virgen, te creí
Ay, de mi Llorona, Llorona, Llorona, de azul celeste
No dejaré de quererte aunque la vida me cueste
Todos me dicen el Negro, Llorona, Negro pero cariñoso
Yo soy como el chile verde Llorona, picante, pero sabroso
Tapame con tu rebozo, Llorona
Ya que me muero de frío

Leaving the temple one day, Llorona
In passing, I saw you
You wore a beautiful Mayan blouse, Llorona
Like the Virgin Mary, I thought you to be
Ay, my Llorona, Llorona, Llorona of the heavenly blue sky
I won’t quit loving you, even though it costs my life
They tell me you are the Black one, Black but affectionate

Copyright © 2005, The Regents of the University of California.
†. J.D. Candidate, Boalt Hall School of Law, University of California, Berkeley. The author would like to thank foremost Kacey Kamrin for her gracious guidance and patient collaboration; Shannon Riordan for her encouragement; members of BGLJ for their interest in the piece, support, and influence as admirable advocates and scholars; and her mother and father for their consejos in pursuit of this goal and in life.
1. LHASA DE SELA, La Llorona, on FRIDA (Music from the Motion Picture) (Deutsche Grammophon 2002).
La Llorona is a mythical woman said to haunt the river valleys of Mexico, weeping and moaning for her children whom she drowned in a fit of madness. Her story has been repeated for centuries in Mexican folklore. Like any myth, the details of the story change with the region or storyteller. However, the details of the story are less important than what the story represents—the traditional exaltation of mothers, akin in sacredness to the Virgin Mary. La Llorona did the unthinkable, but she is a romantic character who is exalted for her agony in forsaking her ultimate role: to be a good mother.

The folklore of La Llorona is a manifestation of the enduring cultural roles passed down by what researcher David Hayes-Bautista calls “the Latino civil society.”

Hayes-Bautista has explored the difficulty of describing ties that bind a group with several different countries of origin, differing degrees of linguistic and cultural assimilation, and identification with their mother countries. Hayes-Bautista has introduced a new conceptual model to describe Latinos that is sensitive to overgeneralizations, yet cognizant of cultural similarities running like a current through behavior. His model uses as its basis a “shared social experience communicated from parent to child” as an “initial introduction into the world of right and wrong... of duty and dereliction... and first hints of personal identity.” The Latino civil society, through the immediate and extended family, imparts daily dichos y hechos (sayings and doings), perpetuating messages that influence the choices and values of Latino children. Rather than focusing on tracing cultural heritage to the Spanish conquistadors or to Spanish law at the time of Spanish conquest of the Americas, Hayes-Bautista allows for the entire experience of the culture within countries of origin as well as in the United States to be counted as part of the Latino civil society.

---


4. See generally id. (recognizing that most California Latinos are of Mexican origin, but describing the Latino cultural experience and interaction with majority terms nationwide).

5. Id. at 4.

6. Id.

7. Id.

framework. The civil society is rooted in "the cultural dynamics of Mexico and elsewhere in Latin America, a true 'melting pot' where Indian, European, African and even Asian cultures have left their imprint and progeny."

It is within this framework that the experience of the Latina confronting the welfare system in the United States will be analyzed. Many studies analyzing race and the welfare system report disproportionate numbers of minorities in poverty and utilizing government benefits. Others reveal only logistical barriers stemming from limited language efficiency. This paper will attempt to dig beneath the surface figures on welfare participation to reveal the real push and pull factors working against Latina mothers in their struggle to create self-sufficient families. As the celebrated center—though not the head—of her family, the impoverished Latina must balance her culturally-engrained duty to care for her children and keep her family intact, while working to earn a wage that will allow her to receive state support until she can make ends meet. At the basis of her struggle is the necessity to obtain quality and culturally relevant childcare, so when she goes to work she will know her absence is not a detriment to her children.

The history of welfare reform has been centered on the individual and has been antithetical to the progress of Latino families. It has created a pronounced paradox for the poor Latina mother—she must work to be a good citizen and she must be home to fulfill her traditional and revered role as a good mother.

See HAYES-BAUTISTA, supra note 3, at 58-117. Hayes-Bautista traces identification of Latinos as a group first from "America's definition" from the outside, to "Latinos defining Latinos" more recently. In doing so, Hayes-Bautista accounts for inherited behavior brought from the mother countries as well as unique practices derived out of interaction with predominant American culture.

Hereinafter, the terms "Latina" and "Latino" will be used interchangeably with "Hispanic" in this discussion to refer to individuals tracing origins to Latin American countries within the Western Hemisphere. The term "Hispanic" did not come into the lexicon describing this population until 1973 when President Richard Nixon mandated that federal records should reflect data tracking persons of "Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race." Id. at 63.


See generally Christianne Lind, Addressing Linguistic and Cultural Barriers to Access for Welfare Services, 8 WELFARE INFO. NETWORK 1 (2004) (discussing language barriers to accessing welfare services). This report mentions cultural barriers but does not specify what kind of barriers or what the effects when facing the welfare system may be. The report makes reference to other reports with the same treatment of cultural barriers.

See generally, National Governors Ass'n Ctr. for Best Practices, TANF Reauthorization: Getting Over it Not Being Over (December 10, 2004) (posting comments of Mark Greenberg, Dir. of Policy, Ctr. For Law & Social Policy (CLASP)), available at www.nga.org/center/tanfwebcast (last visited Mar. 30, 2005) [hereinafter NGA Webcast]. Greenberg notes that integrated solutions for families would result in more sustainable success, measured by escape from poverty, not cessation of contact with the welfare system. It follows that the importance of family in the daily conduct of Latinos, or familismo discussed above, would compound this problem.

ROSA MARIA GIL & CARMEN INOA VAZQUEZ, THE MARIA PARADOX: HOW LATINAS CAN MERGE OLD WORLD TRADITIONS WITH NEW WORLD SELF-ESTEEM 27 (1996) [hereinafter
Welfare reform must implement culturally-sensitive solutions in order for the Latina madre to bring her family out of poverty. Unfortunately, the current direction of welfare reform does not embrace culturally-sensitive solutions to poverty.

This discussion is divided into four parts. The first section will outline aspects of the Latino civil society affecting Latinas' interaction with the welfare system. The second section will discuss the philosophy of the welfare system since the reforms of the Clinton administration in 1996 and its effects on Latinas as well as other minorities. The third section will provide insight into California's system of cash assistance—CalWORKS—paying particular attention to the difficulties facing Latinas in receiving subsidies for childcare. The last section will examine the landscape of upcoming welfare reform and the effects on Latinas should there be cuts to Temporary Aid to Needy Families (TANF) in the 109th Congress.

I. THE MARIA PARADOX—OLD COUNTRY TRADITIONS AND NEW RESPONSIBILITIES

In the 2000 Census, over 35 million people in the United States identified themselves as Hispanics. Increasing 142% since the 1980 Census, Latinos now comprise nearly 13% of the United States population overall. Half of the babies born today in California are being raised in a Latino family. Public attention focuses primarily on recent immigrants, but included in statistics are Latinos of all classes, from several countries and traditions, including children of recent immigrants and those whose families have been in the United States for centuries. As the fastest growing minority in the U.S. and the future majority of California, it is critical to gain an understanding of the social underpinnings of

---

16. It is by no means the intention of this article to essentialize the experience of an Hispanic woman with children. This article shall instead try to point out struggles a Latina may or may not face if she was raised in a household that is part of the Latino civil society. This paper does not intend to imply that being Latina wholly defines any Latina's identity; but rather its intention is to point to some recognized commonalities in the Latino culture that may be highly prevalent, embraced somewhat, or barely traceable in any given Latino family.


19. Note: At the time of the writing of this article, TANF was reauthorized until March 2005 when Congress was slated to review reauthorization and possibly make changes and/or budget cuts.

20. MARIA PARADOX, supra note 15, at 27.


22. Id.

23. HAYES-BAUTISTA, supra note 3, at 2.

24. SURVEY, supra note 21, at 35.
a group with such great influence on every portion of society.²⁵

Political theorist Richard Rodriguez, in describing the vast array of Americans considered to be, and who consider themselves to be, Hispanic observes: “In no sense can so many different lives be said to inhabit a singular culture. Save one sense: Hispanics in the United States are united in the belief (a Latin American belief) that culture is a more uniform source of identity than blood.”²⁶ The elements of Latino culture described below are in their pure form, and are by no means necessarily exhibited in each person identifying him or herself as Latino, or a clear predictor of behavior. Rather, the ideas may find their way into the daily activities, attitudes, and dichos (sayings, advice) of Latino families.

### A. Marianismo and Machismo

A much studied aspect of Latino civil society is the concept of “machismo,” or ideal male qualities often including physical power, social domination and repudiation of traditionally feminine traits.²⁷ Less studied is the female counterpart, “marianismo,” encompassing ideal female characteristics like self-sacrifice, chastity, and loyalty, characteristics rooted in the revered Virgin Mary.²⁸ Both are understood to have roots in Spanish patriarchy coupled with the influence of Catholicism.²⁹ Both evolved in the colonial environment.³⁰ Negative aspects are emphasized in discussions of both, as the interplay of the two traditional roles can result in a picture of a woman never ceasing to answer to a man—first her father, then her husband. Many in the Latino civil society, however, point to positives—machismo aspects are often hand-in-hand with cabellerismo (gentlemanliness, chivalry), and marianismo manifests itself often as compassion which affords mothers sacred respect.³¹ The two are not taken in a vacuum, but rather interplay in everyday interactions of Latino families. For instance, a Latina may feel forced to accommodate her husband’s family as a part of her marianismo, and her husband may enforce his authority by persuading her to do what he wants with machismo.³² Both concepts define gender roles, but they have also been defined so as to encompass a broader sense of a Latina’s core personal identity.³³

---

²⁷. Hardin, supra note 8, at 3.
²⁸. MARIA PARADOX, supra note 15, at 7.
²⁹. Hardin, supra note 8, at 5. A culture of sexual oppression was said to have developed in the Spanish colonies as the conquistadors did not marry Indio woman but rather took them as their concubines and kept Spanish wives. Id.
³⁰. See generally id.
³¹. MARIA PARADOX, supra note 15, at 5-6.
³². Id. at 77-78.
³³. Id. at 47 (referring to negative experiences surrounding confrontation with North American
The pertinent conflict for purposes of this discussion is not only the interaction of *machismo* and *marianismo*, but also the interaction of both with the "new world" American values.\(^3\) This conflict is most pronounced in recent immigrants and foreign-born Latinos, but can still manifest itself powerfully in the values passed down through generations in the Latino civil society.\(^4\) In their book, *The Maria Paradox*, two psychotherapists describe a strong internal paradox in their Latina patients. The patients tied themselves to old world values when they were confronted by dominant American values that were at odds with tradition.\(^5\) The authors describe a conflict often present when Latinas confront the American values of ambition and aggressiveness. While these values are required of individuals in the American working world, the authors characterize these values as traditionally masculine in the old world structure.\(^6\) Working to help their clients achieve a harmony in acculturation rather than forced assimilation, the authors recognize that the lower a Latina's self-esteem, the more chance she has of "falling prey" to strict adherence to *marianismo* and *machismo* roles, and the more difficulty she will have confronting adverse New World values.\(^7\) It would likely follow that the more unstable her life is, due to poverty and the stress of looking for work to qualify for welfare, the more chance a Latina has of "falling prey" to strict old world values.

**B. Familismo**

Inextricable from *marianismo* is the concept of *familismo*, or the importance of family. The "old country" values in their pure form dictate that the culmination of a Latina's life is the birth of her children.\(^8\) Motherhood is romanticized in Hispanic cultures, and the association between mothers and the Virgin Mary is so strong that "even the word *mother* tends to evoke an almost religious response."\(^9\) Self-sacrifice is a strong aspect of *marianismo* manifesting itself in *familismo*. Hispanic mothers often feel validated when they put their children above everything else.\(^10\)

The daily life of a Latina caught in the middle of old country values and new country responsibilities may be fraught with stress. While mothers of any background will feel pangs of guilt for not spending enough time with their children, a Latina may feel extra pressure coming from her extended family, as a part of the Latino civil society retention of *marianismo* roles and *familismo*

---

34. *Id.* at 26.
37. *Id.* at 106-07.
38. *Id.* at 5.
40. *Id.* (emphasis added).
41. *Id.*
values.\textsuperscript{42}

Without the opportunities that money and education bring, the Latina in poverty will likely try to fulfill her traditional role and feel tension when, out of necessity, she must leave her children in order to work.\textsuperscript{43} The importance of appropriate childcare becomes tantamount and, in the absence of close family, the childcare must be culturally relevant.\textsuperscript{44}

II. THE PHILOSOPHY OF WELFARE—ANTITHETICAL TO THE PROGRESS OF LATINO FAMILIES

The philosophy of the welfare system in the United States has always been rooted in American individualism. It grudgingly supports those perceived to lack the “pull yourself up by your bootstraps” ingenuity and work ethic, and perceives them as lazy and delinquent.\textsuperscript{45} The welfare system’s emphasis on “personal responsibility” has done “little to address the ways in which historical patterns of race and gender-based discrimination, whether outright or structural, reinforce and contribute to poverty.”\textsuperscript{46} Recent welfare reform has shifted the focus of the system to work, rather than education and training. This focus has perpetuated poverty even for those leaving welfare rolls.\textsuperscript{47} For Latinas, the focus on work has lead to cultural conflict and tangible barriers to assistance. It has also perpetuated poverty and low education levels for Latinas.

A. Focus on the Individual

Since its beginning, the welfare system has been colored by conventional theories on the origins of poverty, which either locate responsibility within the individual or view poverty as a necessary evil of a capitalist society.\textsuperscript{48} The reforms of 1996, which replaced the Aid to Families with Dependent Children Act (AFDC) with the Personal Responsibility and Work Opportunity

\begin{itemize}
  \item \textsuperscript{42}Maria Paradox, \textit{supra} note 15, at 61-63.
  \item \textsuperscript{43}Preto, \textit{supra} note 39, at 16.
  \item \textsuperscript{44}Lynet Uttal, \textit{Racial Safety & Cultural Maintainance: The Childcare Concerns of Employed Mothers of Color}, 19 \textit{ETHNIC STUD. REV.} 43, 43 (Feb. 1996). “Culturally relevant” is a common term used in discourse on childcare in minority communities. In culturally relevant childcare, providers are cognizant of cultural differences pertaining to food, medicine and values. \textit{Id.} at 44.
  \item \textsuperscript{48}Lindhorst & Mancoske, \textit{supra} note 46, at 29.
\end{itemize}
Reconciliation Act (PRWORA), "institutionalized policies devoted to changing the behavior of individuals," such as promoting marriage and, as the name suggests, emphasizing "personal responsibility." The philosophy behind these reforms was focused on single mothers and was aimed at promoting a family ethic, as well as a work ethic.\(^5\)

The philosophy of personal responsibility is antithetical to bringing Latino families out of poverty because it fails to see the reality of their poverty. According to Hayes-Bautista's research, Latinos as a group sociologically look much more like what the American middle class should look like, but with very low incomes and low levels of education.\(^5\) They have a very strong work ethic resulting in disproportionately higher labor participation numbers.\(^5\) They are much more likely than other minority groups to live in households composed of couples with children.\(^5\) The reality is that Latinos do not behave like an "urban underclass" as they have been portrayed in the media, nor do they behave in conformance with racial minority stereotypes.\(^5\) They are much more likely to be a part of the working poor—working full time—than to be eligible for or to utilize welfare.\(^5\)

For those Latinos that do apply for cash assistance under TANF, they find a system set up to force them quickly into the first jobs available, or risk being sanctioned.\(^5\) The focus on individual responsibility emphasizes getting welfare applicants into work, rather than assessing the needs of families as a whole. The latter focus is much more congruent with Latino civil society values of *familismo* and familiar modes of operation. Paradoxically, though state cash assistance programs do not take a family-focused approach to moving recipients off the rolls, entire families can be sanctioned for non-compliance.\(^5\)

For a Latina, an individualistic system might personify the new world, American values of personal ambition and ingenuity. The government's expectation of immigrant populations with regard to welfare may be based on the historically successful assimilation of other immigrant groups. But the "personal

49. Id.
51. HAYES-BAUTISTA, supra note 3, at 8.
52. Id. Labor participation numbers cited are for California, but represent manifestations of a larger ethic of the Latino civil society. Id. at 58.
53. Id. at 76.
54. Id. at 74.
55. ROSINA M. BECERRA, MEXICAN AM. LEGAL DEF. & EDUC. FUND, CALIFORNIA'S LATINO CHILDREN AGES 0-5 16 (not dated), available at http://www.maldef.org/publications/pdf/58784%20Prop10%20Report.pdf (last visited Mar. 30, 2005) [hereinafter MALDEF]. In California and several other states, those who work more than 40 hours per week are not eligible for cash assistance. Id.
57. Id.
responsibility” element pervading PRWORA is not likely to comport with a Latina’s own personal marianismo responsibilities to her familia. The requirements of PRWORA may exert a pressure on the Latina to assimilate to American values and relinquish her cultural values. Latinas who have recently immigrated or live among family members who have recently immigrated are the most likely to feel the continuing pressures of marianismo and familismo. The competing pressure resulting from PRWORA requirements may create unnatural expectations that will make it more difficult for her to access the welfare system.

The discussion surrounding the possible upcoming TANF reauthorization has not included changing the emphasis on the individual toward integrated solutions for families, although welfare reform advocates recognize the dire need to do so. Nor have discussions addressed the efficacy of the work-first emphasis of TANF. Changes and potential cuts are almost certain to be within the current philosophical framework concerning reforms. As a result, concerns about Latinas’ access to the welfare system and the effects of competing cultural pressures are unlikely to abate upon reauthorization of TANF.

B. Race and Racism in Welfare Philosophy

The origins of the current welfare system can be found in early Workmen’s Compensation and Mother’s Aid implementation in the 1930s. Nancy Rose has examined the origins of modern welfare. She notes that Workmen’s Compensation began as assistance primarily aimed at “white, industrial working-class men,” and Mother’s Aid provided financial assistance for “impoverished, white, working class widows with children.” The earliest welfare programs systematically excluded African Americans from participation in order to preserve a labor supply for the least desirable positions, mostly arduous manual labor tied to the land. In the modern era however, instead of viewing welfare as a support system for white Americans, the public largely views welfare as a system for African-American single mothers who are promiscuous and lazy, perhaps resulting from mass media attention to marginal recipient abuse of the system rather than institutional inadequacies.

Since the 1996 reforms, research on welfare recipients has followed the

58. NGA Webcast, supra note 14.
59. Id.
60. Id.
61. Rose, supra note 45, at 2.
62. See id. (examining the history of racism and gender discrimination, as well as the modern welfare state and its origins).
63. Id.
64. Id. at 3.
focus of PRWORA thereby focusing on the individual. Few studies have shown the effects of reform on race.66 However, studies looking at race have found racial disparities in the application of welfare laws. For example, "states with larger minority populations [receiving benefits] tend to have harsher sanctions, time-limits, and family cap policies."67 Since welfare reform began, studies show white families have been leaving welfare at a faster rate than minority families.68

Almost all discussions of race and the welfare system are drawn along black and white lines, but there is also evidence of discrimination against Latinos as a group. This is due in part to varying degrees of English language proficiency, especially after PRWORA limited the eligibility of certain categories of legal immigrants for assistance.69 The cuts heightened caseworker discrimination against Hispanics still legally eligible for benefits, especially if they were limited in English language proficiency.70 Caseworkers tended to assume that non-English proficient Hispanic applicants were among the ineligible immigrants.71 This is in addition to discrimination based on perceived undeservedness of immigrants to receive advantages of American citizenship, evidenced by widespread support for establishing English as the official language of the United States.72 Investigations revealed sparse numbers of bilingual staff at state welfare departments, applicants being sent away because they did not bring an interpreter, and applicants waiting four times longer than English-speakers for applications in their language.73 The experience of Hispanic families in attempting to receive TANF assistance is not well documented.74 Few researchers have studied the ways in which Hispanic families are denied or discouraged from receiving TANF assistance, but any such discrimination will have serious effects on familial well-being.75

67. Id. at 33.
68. Id. at 32.
69. NCLR Brief, supra note 17, at 8.
70. Id.
71. Id.
73. Id. Another problem noted anecdotally by the Child Care Law Center was that interpreters were often untrained in policies and might make misrepresentations. Often older children served as interpreters, greatly heightening the chance for misrepresentations and inaccuracies. Telephone Interview with Eve Hershcopf, Senior Staff Attorney, Child Care Law Center (Dec. 28, 2004).
74. NCLR Brief, supra note 17, at 8.
75. Id.
C. Work-First and Devolution

The 1996 welfare reforms were particularly remarkable for imposing strict requirements that recipients work or seek work in order to receive assistance. This signified a philosophical focus on "work-first," which effectively de-emphasized education as a means to move people out of poverty. In fact, the goal of work-first welfare reform was to move people off welfare rolls, not necessarily out of poverty. The reforms also gave broad flexibility to states to administer TANF programs as they saw fit, so long as the states met federal work participation rate requirements. Both of these changes have adversely affected Latinas.

Though the Latino civil society has always handed down a strong work ethic, it has not meant that they are able to work themselves out of being poor. Latinos constitute the largest population of working poor—those living at, below, or just above the federal poverty line. It might be said that Latinos find the American philosophy of work incongruent with theirs. My own father, an immigrant from Mexico, has always said that Latinos "work to live, not live to work." The Pew Hispanic Center in collaboration with the Kaiser Family Foundation, found in a 2002 study that Hispanics do not think sacrificing personal life in favor of long hours at work will lead to more success.

A Latina's marianista tendencies might naturally cause her to think about the effects of work on her children and family before she thinks of herself. A Latina receiving welfare benefits may spend too much time looking for childcare she deems culturally relevant and racially safe, so as to shield her children from racism and allow them to feel comfortable in a familiar environment. This attention to the needs of her family may lead her to spend more time looking for childcare and less time looking for a job. As a result of this family-oriented delay, she may be sanctioned or denied assistance for non-compliance. Additionally, under certain state implementations of TANF, such as CalWORKS, a family can only receive benefits if the head of the household is unemployed or working less than a designated number of hours per month. This means that in Latino families, the male head of the household must be out of work or working less than full time. In such a situation, a Latino male may feel emasculated due to his inability to adequately provide for his family and

---

76. Id. at 2.
77. Id.
78. HAYES-BAUTISTA, supra note 3, at 76-78.
79. MALDEF, supra note 55, at 16.
80. SURVEY, supra note 21, at 42.
82. CHILD CARE LAW CTR., MANUAL FOR CHILD CARE SUBSIDIES IN CALIFORNIA 16 (2003) [hereinafter CCLC Manual] (on file with author). While state policies may vary, states must have policies in place to allow participants to meet federal work participation requirements. NGA Webcast, supra note 14.
remorseful that he cannot allow his *mujer*\textsuperscript{83} to stay home with his children. A Latina on welfare may encounter *machismo* from her husband if he is out of work or working less than full time, and she is required by law to supplement the income.\textsuperscript{84} She may then experience dissonance between the pressure to find work to receive assistance and the pressure to maintain peaceful relationships within her family.

In addition to their cultural incongruence with American “rat race” work attitudes, the fact remains that Latinos also constitute some of the poorest-educated people in the country.\textsuperscript{85} The work-first philosophy of the current welfare system measures success by how many TANF recipients move into jobs and off welfare rolls. This approach de-emphasizes education and training.\textsuperscript{86} Devolution of power to the states has meant a perpetuation of the work-first philosophy. States must keep up with federally mandated work-participation rates to sustain federal block grant funding, and states receive bonuses for reducing caseloads.\textsuperscript{87} Reducing Latina caseloads has meant moving Latinas to the status of working poor, because Latinas typically lack skills to qualify for more than menial work.\textsuperscript{88} While both Hispanic men and women are undereducated, Latinas have even less education than men because of their traditional place in the home.\textsuperscript{89} Moving Latinas off welfare rolls and into working poor status does nothing to further any sustainable progress for them; rather, it perpetuates poverty.

### III. Barriers to the Necessary First Step of Obtaining Childcare in California

While every mother leaving small children in childcare to go to work may experience guilt, the necessity of leaving children in childcare creates a particularly pronounced paradox for Latinas. The necessity for childcare greatly interferes with the progress of Latinas working to obtain welfare, as their *marianismo* and *familismo* influence their encounters with the requirements of the system. Obtaining childcare is a most crucial first step toward a Latina’s advancement into the working world and toward creating a self-sufficient family. Due to the devolution of authority to states to implement childcare subsidy grants, each of the states has a different program, and each county within the

---

\textsuperscript{83} Latino men often refer to their wives or girlfriends as *mi mujer*, translating to “my woman.” In the author’s opinion, this language choice, though subconscious, reflects the machismero view of women as property.

\textsuperscript{84} MALDEF, *supra* note 55, at 16.


\textsuperscript{87} NCLR Brief, *supra* note 17, at 1.

\textsuperscript{88} *Id.* at 8.

\textsuperscript{89} *Id.*
state may have its own way of implementing state policies. Nevertheless it is useful to look at the Latina experience within California, a state where Latinos will soon cease to be a numerical minority, to examine the barriers they face in obtaining childcare subsidies.90

A. License-Exempt Care

The perception, and indeed the current reality, is that Latinas statistically prefer "license-exempt"91 childcare arrangements as opposed to licensed care, though there is some disparity between native- and foreign-born Latinas.92 Foreign-born Latinas are less likely to have close relatives living nearby and may have no choice but to choose a licensed provider if a neighbor or acquaintance is not available.93 Though requirements vary, in general, family members inside the recipient’s Assistance Unit (roughly, the household) may not receive subsidies for childcare.94 Thus, out of preference for care a Latina knows will be culturally appropriate, and perhaps lessening her marianista guilt, she may leave children with a family member in the household and decline subsidies.95 This may prevent the family member from obtaining other employment, keeping Latino families poorer. If the caregiver is an older sibling (usually female in keeping with marianista roles) this may hinder her educational development, further perpetuating the trend of Latinas being poorly educated.96

Arrangements for license-exempt care may either be in the home or outside of the home. If the arrangement is made outside of the home, the maximum payment rate may be lower than minimum wage.97 This may work to keep Latino families, who prefer family members like aunts or grandmothers to care for children, in poverty. If a family chooses license-exempt care inside their home, the family is paid with subsidies directly instead of receiving vouchers,

90. HAYES-BAUTISTA, supra note 3, at 180.
91. The term “License-exempt” refers to childcare providers not legally required to have a license to care for children. Another common term is “informal” care. In California, types of childcare providers exempt from state licensing include providers who care for the children of only one family in addition to the provider’s own children, providers who only care for relatives, before and after school programs operated by schools and public recreational programs. Cal. Health & Safety Code § 1596.792 (West 2004); Cal. Code Regs. tit. 22, § 101158 (2004).
93. Id.
95. Buriel & Hurtado-Ortiz, supra note 92, at 329.
96. Id.
97. License-exempt providers may be paid a maximum of 90 percent of the maximum rate for family childcare providers, determined by the Regional Market Rate survey. Cal. Code Regs. § 18074.2(b) (2004). This rate can be lower than minimum wage when few children are cared for, or in less-populated counties where the standard of living is relatively low and payment rates for childcare providers are low. CCLC Manual, supra note 82, at 62.
and becomes a legal "employer" of the in-home childcare. There are difficulties associated with assuming the responsibilities of an employer. As an employer, the family may be obligated to pay the difference between a subsidy amount and minimum wage, an obvious hurdle for low-income parents who may only earn minimum wage themselves. The Child Care Law Center reports that these policies may have the effect of restricting parental choice among childcare providers. While this affects families of any culture, the effects of these barriers to license-exempt care may be monumental for Latinas. One study comparing uses of types of care found that Euro-American mothers use licensed childcare centers at a rate of about 6 to 1 compared to Latina mothers overall.

B. Licensed Care

As stated above, while it is true Latinas tend to prefer license-exempt care, particularly provided by family members in congruence with familismo, evidence suggests they might utilize licensed care more often if culturally relevant and quality licensed care were available near them. The Mexican American Legal Defense and Educational Fund (MALDEF) reports that low-income areas, particularly Latino communities, have the most severe shortages of affordable childcare. For example, areas with 50% or more Latino families have 46% fewer childcare spaces than areas with lower concentrations of Latino families. By definition, licensed childcare providers must meet certain licensing requirements including demonstration that the environment enriches children's learning. Thus Latino children may be missing out on educational opportunities available in quality licensed care centers. Balancing the cultural relevance of care with a stimulating environment would be ideal for Latino families. The first step in addressing this problem would be to increase the existence of such care. Next, Resource and Referral Networks in charge of referring CalWORKs recipients to providers should be trained not to assume a Latina may want and/or have license-exempt care.

98. CAL. EDUC. CODE § 8357(e) (West 2004) (stating that if care is provided in the home of the recipient, payment may be made to the parent as the employer, and the parent shall be informed of his or her concomitant legal and financial reporting requirements).
99. CCLC Manual, supra note 82, at 63.
100. Id.
101. Buriel & Hurtado-Ortiz, supra note 92, at 327.
102. HISPANICS & CHILD CARE, supra note 25, at 4.
103. MALDEF, supra note 55, at 33.
104. Id. (quoting Children Now, CAL. COUNTY DATE BOOK (1999)).
105. Id. (quoting Stephanie Stassel, Study Finds Acute Shortage of Child Care, L.A. TIMES, Aug. 5, 2000, at B7).
C. Childcare and Work Requirements

The Child Care Law Center reports that families and advocates in California must be “extremely persistent going up the chain of command at the county welfare department or Alternative Payment Program in order to have their child care subsidy application approved quickly.”\textsuperscript{106} This is often due to the fact that recipients are expected to begin welfare-to-work activity with very short notice.\textsuperscript{107} The need for persistence may create marked strain on a Latina, already facing the paradox between complying with welfare requirements and maintaining her cultural duty to care for her children. She will have to quickly find arrangements for childcare in order to apply, and then be persistent in getting her application approved. This may be especially difficult for foreign-born Latinas with less of a resource network in place in this country.\textsuperscript{108} If she does not comply with the work-first policies of CalWORKs, she risks sanctions on herself and her family.

As discussed earlier, many Latinas are from working poor families and are not eligible for CalWORKs cash assistance. Childcare expenses are often an extremely high proportion of their income.\textsuperscript{109} In California, childcare subsidies are available outside of the CalWORKS system, but the waiting lists are extremely long.\textsuperscript{110} Due to the problems facing states in sustaining TANF, especially in the face of possible future cuts, new policies to help Latinas with this expensive necessity do not look promising.

IV. PENDING TANF REAUTHORIZATION AND LIKELY EFFECTS ON LATINAS

The discussion around pending welfare reforms of 1996 focused on the broad controversy surrounding devolution and the efficacy of block grants, work requirements, and time limits. With the details we now have on the effects of TANF, experts on macro and micro implementation of welfare reform argue that we are better equipped to focus on the more acute details of implementation.\textsuperscript{111} Given all of the shortcomings of the rigid work-first approach, the best hope for keeping families from falling back into the welfare system is an approach cognizant of the full-picture of poverty. A welfare system with a view toward substantive outcomes for families will help to keep families out of the class of working poor and thus reduce the chances of the family returning to welfare.\textsuperscript{112} More attention must be focused on mixed strategies of education and training. Policymakers might look at ties to the business community to find better jobs

\textsuperscript{106} CCLC Manual, \textit{supra} note 82, at 50.
\textsuperscript{107} Id.
\textsuperscript{108} Buriel & Hurtado-Ortiz, \textit{supra} note 92, at 316.
\textsuperscript{109} Rockeymoore, \textit{supra} note 86, at 6.
\textsuperscript{110} CCLC Manual, \textit{supra} note 82, at 31.
\textsuperscript{111} NGA Webcast, \textit{supra} note 14 (posting comments of Mark Greenberg, Dir. of Policy, Ctr. for Law & Social Policy (CLASP)).
\textsuperscript{112} Id.
than just the first available job and create more partnerships with community-based organizations to integrate culturally and linguistically-efficient modes of operation.\textsuperscript{113}

None of the above mentioned shifts in focus are easily financially or structurally obtainable. Given the current state of the federal budget, those in the field of welfare advocacy deem it very unlikely that reauthorization of TANF will create a welcoming environment for the above-suggested reforms.\textsuperscript{114} Funding for TANF has remained at 1996 levels in most states without adjustment for inflation. In the first years of TANF, caseloads were decreasing, and therefore states had enough money to operate.\textsuperscript{115} But caseloads in most states have been flat and with no increase in funding, states will likely be forced to make cuts even if TANF is reauthorized in 2005.\textsuperscript{116} States are already spending more than their annual TANF block grant to operate.\textsuperscript{117}

Greater budget restraints have led states to lower the rates paid to childcare providers, forcing low-income families to pay the difference in costs.\textsuperscript{118} As it is, many states report that they spend more from their TANF block grants on childcare than they do on cash assistance.\textsuperscript{119} As TANF funding decreases, so do available funds for subsidized childcare. The Center for Law and Social Policy (CLASP) reports that the President’s recent budget proposal estimates 300,000 fewer low income children will receive child care assistance by 2010.\textsuperscript{120} CLASP argues that this figure is underestimated, especially given the fact that states cannot afford to continue to provide for childcare at current levels.\textsuperscript{121} All of these changes on the horizon mean further difficulty for Latinas, who rely on TANF childcare to comply with work requirements. As discussed above, these policies have serious detrimental effects on the Latina navigating through the welfare system.

\textbf{CONCLUSION}

In surveys, Latinos identify themselves as American.\textsuperscript{122} They also identify themselves as Hispanic or Latino, as well as with their country of origin.\textsuperscript{123} However, this does not indicate a lack of solidified identity. As Hayes-Bautista

\begin{itemize}
  \item \textsuperscript{113} \textit{Id.}
  \item \textsuperscript{114} \textit{See generally id.} (discussing the landscape of upcoming TANF reforms).
  \item \textsuperscript{115} \textit{Id.}
  \item \textsuperscript{116} \textit{Id.}
  \item \textsuperscript{117} \textit{Id.}
  \item \textsuperscript{118} \textit{Id.} (posting comments of Elaine Ryan, Deputy Executive Dir., Policy & Gov’t Affairs, American Public Human Serv. Ass’n (APHSA)).
  \item \textsuperscript{119} \textit{Id.}
  \item \textsuperscript{120} Hannah Matthews & Danielle Ewen, \textit{President’s Budget Projects 300,000 Low-Income Children to Lose Child Care by 2010}, RECENT PUBLICATION (CLASP), February 7, 2005, at 1.
  \item \textsuperscript{121} \textit{Id.}
  \item \textsuperscript{122} \textit{HAYES-BAUTISTA, supra note 3, at 174; SURVEY, supra note 21, at 23.}
  \item \textsuperscript{123} \textit{SURVEY, supra note 21, at 23.}
\end{itemize}
concludes, being Latino is a distinctive way of being American.124 Unfortunately, government welfare programs do not recognize the unique cultural experience of Latinos confronting the system. Ideally, these government programs would create specific, targeted services to help Latina mothers—the shepherds of Latino families—to create self-sufficient families on their way to moving out of poverty. At the very least, welfare reform must look beyond welfare to include services aimed at helping the working poor. Welfare advocates and policy lobbyists are in a unique position to formulate and stress the importance of integrated and culturally-sensitive solutions aimed at pulling the country’s fastest growing minority out of poverty.

124. HAYES-BAUTISTA, supra note 3, at 178.