

NOTES

(UN)FORGETTING LATINAS IN AMERICAN PRISONS:
ADDRESSING RISING NUMBERS AND REDUCTION
STRATEGIES

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INTRODUCTION

In late 2023, former President Donald Trump posted on his website, Truth Social, that “illegal immigration is poisoning the blood of our nation. They’re coming from prisons, from mental institutions—from all over the world.”¹ In fact, this bias against immigrants extends beyond the executive levels of government. Specifically, the American criminal justice system and law enforcement

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1. Ginger Gibson, *Trump Says Immigrants Are Poisoning the ‘Blood’ of the Country; Biden Campaign Likens it to ‘Racist Rhetoric,’* NBC NEWS (Dec. 17, 2023), <https://perma.cc/9S4S-TJ8M>.

agencies are plagued by similar biases. For example, Latine immigrants and communities are often unfairly and disproportionately targeted,² resulting in a self-perpetuating cycle of prejudice.

There is a significant data gap concerning Latino offenders, and it is even more pronounced for Latina offenders. Paradoxically, Latinas account for a substantial number, with “more than one million women behind bars or under the control of the criminal justice system, women are the fastest-growing segment of the incarcerated population in the United States, increasing at nearly double the rate of men since 1985.”³ Contextualizing limited data compiled by civil rights organizations on Latinas, studies concerning incarcerated women, and trends within Latino communities, this scholarship identifies the causes of Latina incarceration and the reasons for the rising numbers. Additionally, it will suggest strategies to prevent incarceration among Latinas and to reduce the existing numbers of those incarcerated.

Ultimately, this note posits that the phenomena of Latina incarceration may predominantly be attributed to a trinity of core, causative factors: the rigidity of traditional gender roles, the dearth of employment opportunities, and the prevalence of violent and traumatic experiences. This troubling combination is intensified by an acute insufficiency of related data, criminal law reforms that affect Latina women disproportionately over Latino men, substance abuse, and a correctional paradigm that persists in employing a monolithic approach. These factors are particularly detrimental to the subset of incarcerated Latina juveniles.

To address and curtail the burgeoning rates of Latina incarceration, this note advocates for the implementation of a four-pronged framework. The first prong demands that law enforcement and the criminal justice system collect accurate and up-to-date data on Latina women. Data collection must employ precise definitions while simulatenously engaging deeply with community networks to raise awareness of available community support and rehabilitation programs for Latinas suffering from, and survivors of, abuse perpetrated by spouses and romantic partners, also known as intimate partner violence (“IPV”). Second, specific efforts must be made to reduce the detention of Latina girls, which will also reduce the likelihood of future, and potentially more severe, run-ins with the law. Third, authorities should proactively reevaluate the sentences of all Latinas currently incarcerated, especially young offenders, in accordance with the 2023 Retroactive Guideline Amendments (“RGA”) approved by the U.S. Sentencing Commission which expanded the number of grounds for compassionate release.⁴ Fourth, it is essential

2. John Gramlich, *The gap between the number of blacks and whites in prison is shrinking*, PEW RSCH. CTR. (Apr. 30, 2019), <https://perma.cc/UTC7-DZCK>; José Luis Morín, *Latinas/os and US prisons: Trends and Challenges*, 6 LATINO STUDIES 11, 12-14 (2008), <https://perma.cc/WS8P-JPUN>.

3. *Facts about the Over-Incarceration of Women in the United States*, ACLU (Dec. 12, 2007), <https://perma.cc/98FT-3FHK>.

4. Sarah N. Lynch & Nate Raymond, *U.S. Panel Votes to Expand Compassionate Release for Prisoners*, REUTERS (Apr. 6, 2023), <https://perma.cc/48PB-EERP>.

to strengthen both prevention and rehabilitation programs for Latinas, with an emphasis on preventing recidivism. A holistic approach has the potential to reduce both the likelihood of incarceration and the current rates of incarceration among Latinas.

I. ROOT CAUSES OF LATINA INCARCERATION

The first part of this note explores the causes of Latina incarceration, focusing on three interrelated and complex factors. These include the rigidity of traditional gender roles, a scarcity of employment opportunities, and the prevalence of violent and traumatic experiences. Together, these elements contribute to a nuanced understanding of the issue.

A. MACHISMO, MARIANISMO, AND GENDER ROLES

Within numerous Latina/o communities, there exists a pervasive and deeply entrenched belief in machismo, an ideology asserting the inherent superiority of men over women for the purported betterment of the family, workplace, and society at large.⁵ This concept portrays the man as the unequivocal patriarch, occupying the head of the table both symbolically and literally.⁶ His key tasks are to safeguard the family and to display his dominance.⁷ This tradition of machismo has compelled countless generations of women to bear the brunt of toxic masculinity.⁸

Concurrently, Latinas are often expected to adhere to the principles of marianismo, which outline the quintessential ‘female role’ as caregivers and nurturers within the household.⁹ They are expected to dedicate themselves to, and sacrifice for, the welfare of their children and husband.¹⁰ Moreover, their value is judged based on their ability to fulfill these roles, embodying purity, piety, and selflessness—qualities deemed to primarily serve the interests of the family and spouse.¹¹ From an early age, many Latina women are indoctrinated into the marianismo ideology, learning the significance of domestic responsibilities and labor that are exclusively expected of them.¹² Such early indoctrination serves not only to define the role of girls within both familial and societal contexts but also to effectively silence them and force them to relinquish their personal dreams and ambitions.¹³

5. Hugo Quintana, *Machismo culture must go*, THE MICHIGAN DAILY (Mar. 17, 2021), <https://perma.cc/9XDP-6R9U>.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. Hugo Quintana, *Machismo culture must go*, The MICHIGAN DAILY (Mar. 17, 2021), <https://perma.cc/9XDP-6R9U>.

11. Carolyn A. Mendez-Luck & Katherine P. Anthony, *Marianismo and Caregiving Role Beliefs Among U.S.-Born and Immigrant Mexican Women*, 71 J. GERONTOLOGY SERIES B: PSYCH. SCI. & SOC. SCI. 926, 927 (2016).

12. *Id.*

13. *Id.*

In recent years, beyond the traditional expectations of being caregivers, Latina women have increasingly faced pressure to join the workforce due to a confluence of factors such as economic insecurity, shifting expectations on how best to support the family, and increased educational attainment for Latina women.¹⁴ Cultural norms have historically discouraged women from seeking employment, yet changing familial needs have necessitated their entry into the workforce.¹⁵ The cultural shift of mothers joining the workforce places additional burdens on their daughters who, in the absence of their mothers, also must act as nurturers.¹⁶ While sons are usually expected to be the main financial contributors, in times of dire need, daughters are tasked with both providing additional financial support and fulfilling the role of caregiver within the home.¹⁷ Despite these changes, the concept of machismo remains firmly in place, and women's increased financial input to the family does not necessarily bring about a change in perceived gender roles.¹⁸ Rather than altering traditional gender roles, the responsibility of generating income is simply added to the list of tasks women are presumed to manage.¹⁹ This expectation is in line with the principle of marianismo, which dictates that women should be devoted to, and self-sacrificing for, the well-being of their children and spouse. For daughters, this dual responsibility demands significant time and energy, compelling them to offset the reduced earnings of their fathers, brothers, and potentially mothers, while also managing a second shift as caregivers. All of which further limits their opportunities in life, and reinforces gender roles and gender inequality for future generations.

B. LACK OF EMPLOYMENT OPPORTUNITIES FOR LATINA WOMEN

There is a critical shortage of job opportunities for Latina women. Even when jobs are available, they are predominantly in-person and low-wage. Latinas with families are further hindered because of their need to care for their children and husbands. Furthermore, the cultural norm that Latina women belong at

14. Gretchen Livingston, *Among Hispanics, immigrants more likely to be stay-at-home moms and to believe that's best for kids*, PEW RSCH. CTR. (Apr. 24, 2014), <https://perma.cc/EA7M-6UZ8>; Mohamad Moslimani & Sahana Mukherjee, *How Latinas' educational and economic situation has changed in the last two decades*, PEW RSCH. CTR. (May 15, 2024), <https://perma.cc/5GN6-9LVZ>; Luis Noe-Bustamante, Sahana Mukherjee & Jens Manuel Krogstad, *A Majority of Latinas Feel Pressure To Support Their Families or To Succeed at Work*, PEW RSCH. CTR. (May 14, 2024), <https://perma.cc/JHX8-CM56>.

15. See Noe-Bustamante, Sahana Mukherjee, & Jens Manuel Krogstad, *supra* note 14; see also Kassandra Hernández, Diana Garcia, Paula Nazario, Michael Rios & Rodrigo Domínguez-Villegas, *Latinas Exiting the Workforce: How the Pandemic Revealed Historic Disadvantages and Heightened Economic Hardship*, UCLA LATINO POL'Y & POL. INITIATIVE 12 (June 14, 2021), <https://perma.cc/J59X-QJL7>.

16. Karen Garcia, *These young Latino creatives are breaking gender role norms*, LA TIMES (Aug. 15, 2023), <https://perma.cc/UY9X-G6XJ>.

17. *Id.*

18. *Id.*; see also Luis A. Valdez, Emily C. Jaeger, David O. Garcia, & Derek M. Griffith, *Breaking Down Machismo: Shifting Definitions and Embodiments of Latino Manhood in Middle-Aged Latino Men*, 17 AM. J. MEN'S HEALTH 1, 6 (2023).

19. Noe-Bustamante, Sahana Mukherjee & Jens Manuel Krogstad, *supra* note 14.

home leads to the neglect of girls' education, which contributes to limited job prospects.

The COVID-19 pandemic highlighted this issue of occupational segregation, with Hispanic women over the age of 20 experiencing the highest unemployment rate among all groups at 20.1% in April 2020.²⁰ Regarding youth employment, the Women's Media Center reported in 2020 that research indicates the U.S. has largely excluded young people from the job market.²¹ For 16, 17, and 18-year-olds, employment rates have halved compared to a decade ago.²² Since jobs are already scarce for Latina women, it makes it even more difficult for Latina girls to find employment, and fulfill familial expectations of earning money and caregiving.

Unsurprisingly, Latina women in the criminal justice system are often incarcerated for property offenses.²³ Often, these women face immense economic pressure and feel obligated to support their male partners, who may be involved in illegal activities such as the drug trade.²⁴ This sense of loyalty can lead them to commit minor offenses as a means of assistance.²⁵ Cultural shifts and financial needs have significantly altered the traditional roles of Latina women. Yet, the types of jobs typically available to them—which are usually in-person and low-paying—do not allow them to adequately fulfill their roles as caregivers nor to earn enough money. Thereby, preventing them from proving their 'worth.' In essence, the pressing need to secure income and the commitment to support their families are major factors that frequently lead to the incarceration of Latina women.²⁶

C. PREVALENCE OF VIOLENT AND TRAUMATIC EXPERIENCES

Multiple studies concerning female inmates suggest a significant correlation between prior physical and sexual abuse and subsequent incarceration. Research indicates that up to 94 percent of women in prison facilities have histories of such abuse.²⁷ This highlights a potential causal relationship.

Women's prisons are not only filled with survivors of abuse and assault but also people who are incarcerated for their acts of self-defense.²⁸ A 2020 survey of

20. Ryan Zamarripa & Lorena Roque, *Latinos Face Disproportionate Health and Economic Impacts From COVID-19*, CTR. FOR AM. PROGRESS (Mar. 5, 2021), <https://perma.cc/T63D-23AJ>.

21. Gisele Castro, *Young Latinas Behind Bars: An Alarming Trend We Must Reverse*, WOMEN'S MEDIA CTR. (Oct. 22, 2020), <https://perma.cc/YTM5-K9BV>.

22. *Id.*

23. Kristen M. Budd, *Incarcerated Women and Girls*, THE SENT'G PROJECT (July 24, 2024), <https://perma.cc/KM76-SXVT>.

24. Lauren Borders, *Villain Or Victim? Understanding The Role of Women In The Latin American Drug Trade*, WASHINGTON OFF. ON LATIN AM. (Aug. 16, 2022), <https://perma.cc/X6CT-TZW8>.

25. *Id.*

26. *Id.*

27. Justine Van der Leun, "No Choice but to Do It": Why Women Go to Prison, THE NEW REPUBLIC, (Dec. 17, 2020), <https://perma.cc/GKN9-7ZW9>.

28. *Id.*

women incarcerated on murder and manslaughter charges revealed that 43 percent of the respondents disclosed that they were survivors of IPV, a rate nearly twice that of the general population.²⁹ Among the 43 percent who experienced IPV, 41 percent, or nearly 18 percent of all participants, were incarcerated for the homicide of a romantic partner.³⁰ The intimate partners they killed had subjected the respondents to extreme violence, inflicting injuries such as fractured ribs, vertebrae, knees, and skulls.³¹ The respondents also recounted being awoken with threats of violence and derogatory insults.³²

Violent offenses have been one of the primary factors contributing to the expansion of state prison populations over the last forty years. Specifically for women, arrest rates for violent crimes were 63 percent higher in 2019 in comparison to arrest rates in 1980, while rates for men decreased by 35 percent over the same time period.³³

Statistics from The Centers for Disease Control and Prevention (“CDC”) further illustrate the prevalence of this issue within specific demographics, reporting that approximately 1 in 3 Latinas (34.4%) will encounter IPV in their lifetimes, including “physical, sexual, and/or stalking victimization.”³⁴ Notably, in the fiscal period between 2020 and 2021, 1 in 12 Latinas (8.6%) reported experiencing IPV.³⁵

However, instances of IPV are grossly underreported, particularly among Latina women. The inclination for many members of this demographic, akin to that of many IPV survivors, is to rely on informal support networks.³⁶ For instance, they prefer to share their experiences with members of their family, female friends, or even neighbors.³⁷ This tendency is especially true among undocumented Latinas who have a predisposition to rely on informal resources, in comparison to Latinas who are documented residents or citizens.³⁸

Additional factors contributing to underreporting by Latina women are manifold. They include, but are not limited to, a pervasive fear and mistrust of law enforcement institutions, feelings of shame and guilt, emotional bonds, a fear of reprisal from their partners, the psychological residue of childhood abuse, and for some, a trepidation regarding potential impacts on immigration status.³⁹ Notably, religion can also be a factor that prevents Latinas from seeking help or using

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Women's Justice: By the Numbers*, COUNCIL ON CRIMINAL JUSTICE, (July 2024), <https://perma.cc/7N9L-5MJR>.

34. *Latinas and Intimate Partner Violence Evidence-Based Facts*, ESPERANZA UNITED (2021), at 2, <https://perma.cc/NY34-EQ8E>.

35. *Id.*

36. *Id.* at 4.

37. *Id.*

38. *Id.*

39. *Latinas and Intimate Partner Violence Evidence-Based Facts*, ESPERANZA UNITED (2021), at 2, <https://perma.cc/NY34-EQ8E>.

institutional services due to their adherence to the notion that marriage is sacred.⁴⁰ This belief may deter them from taking any action that could lead to divorce or separation, thereby undermining their religious beliefs.⁴¹ Collectively, legal, political, socio-religious, and psychological factors hinder the reporting of IPV, thereby obscuring its true prevalence.

Incarcerated women have emphasized that they faced significant challenges in proving their experiences of abuse, as domestic violence and rape often occur behind closed doors and without witnesses to corroborate the violations.⁴² Furthermore, even when evidence of abuse was present, many of them faced another formidable challenge: the death of the perpetrator, which, in turn, reframed the perpetrator as the victim.⁴³ As a result, they were unable to claim self-defense because, after a woman kills her abuser, her situation no longer fits within the traditional definition of self-defense, which usually requires an immediate threat.⁴⁴ Although many incarcerated women report extensive histories of abuse that influence their commission of crimes, these narratives go unrecognized by courts in their decision-making.⁴⁵ Judicial neglect of these histories of abuse can lead to disproportionately severe sentencing for women. For instance, in relation to homicide, statistics gathered by the American Civil Liberties Union (“ACLU”) indicate that women convicted of killing their partners typically receive sentences averaging 15 years, whereas men convicted of killing female partners tend to face significantly shorter incarcerations, with average sentences ranging between 2 to 6 years.⁴⁶ Therefore, studies concerning incarcerated women and data on IPV against Latinas suggest that many currently incarcerated Latina women may be serving unfair sentences. More importantly, in order to achieve substantial reductions in the number of Latina women, and women in general, who are serving disproportionately long sentences, targeted policy reforms addressing violent crimes will be necessary.

II. REASONS FOR RISING NUMBERS

A. AN ACUTE INSUFFICIENCY OF DATA RELATED TO INCARCERATED LATINAS

One of the major factors contributing to the data gap on incarcerated Latinas is definitional: various state criminal justice agencies fail to collect information based on ethnicity and instead force Latine individuals into categories of either “Black” or “White[.]”⁴⁷ This arbitrary, binary classification causes mislabeling;

40. *Id.* at 7.

41. *Id.*

42. Van der Leun, *supra* note 27.

43. *Id.*

44. *Id.*

45. *Id.*

46. Amanda Kippert, *Women Serve Longer Prison Sentences After Killing Abusers*, DOMESTICSHELTERS.ORG, (Jun. 22, 2020), <https://perma.cc/Y853-D7HV>.

47. Sonja Diaz, Adriana Bernal, Julie Aguilar, Maria Morales, Michael Applegarth, Rene Casas, Patricia Foxen, Marcia Ricon-Gallardo, Franscio A. Villarreal, *The Latinx Data Gap in the Youth*

Many Latinas involved in the criminal justice system are likely to be incorrectly labeled as White.⁴⁸ Differences in how state agencies collect ethnic data lead to a lack of consistent demographic information, exacerbating the data gap.⁴⁹ This mislabeling artificially distorts the perceived racial composition of the system and understates the true disparities that exist.⁵⁰

Another contributing factor is that Latinas in general, and even more so undocumented Latinas, tend to rely on informal networks of support, making it difficult to collect uniform data. Because Latinas experiencing IPV are particularly vulnerable and likely to enter the criminal justice system, accurate information about this demographic is imperative. They often endure immigration fears, language barriers, lower socioeconomic conditions, and distrust of police, in addition to abuse. Formal help-seeking options may not provide adequate resources to address these situations and can inadvertently present barriers to safety. Thus, in response to their victimization, Latinas often use informal resource networks, such as family, friends, and neighbors, to connect to formal aid or as resources for assistance.⁵¹

Discriminatory policing and a constellation of socio-economic challenges such as distrust of courts, poverty, language barriers, fears of deportation, and social isolation significantly compromise the agency of Latina women in abusive relationships.⁵² These difficulties exacerbate their vulnerability and amplify the control and power their abusers have over them. These risks are even greater for immigrant Latina survivors than for nonimmigrant women.⁵³ This is because they are intensified by entrenched institutional and structural inequalities, making it exceedingly hard for them to seek help.⁵⁴ Abusers strategically exploit these vulnerabilities as mechanisms of control to ensure that the subject of their abuse remains in isolation.⁵⁵ Latinas who legally reside in the United States, whether naturalized or born here, also encounter numerous systemic barriers to accessing resources due to the “ripple effects” of anti-immigrant legislation.”⁵⁶

In the face of these daunting barriers, the “everyday resistance strategies” employed by Latina women emerge as critical, yet underrecognized, tools of

Justice System, UCLA LATINO POLICY & POLITICS INSTITUTE, (Aug. 25, 2020), <https://perma.cc/V26B-BRRM>.

48. Colin Hernandez, *We Need More Data to Understand the Impact of Mass Incarceration on Latinx Communities*, VERA INST., (Oct. 14, 2019), <https://perma.cc/JH32-CA5N>.

49. *Id.*

50. *Id.*

51. Sujei Vega, Alesha Durfee, & Jill Messing, *Entre Mujeres Platicamos: The Role of Informal Social Networks among Latina Survivors of Intimate Partner Violence*, in *LATINAS IN THE CRIMINAL JUSTICE SYSTEM: VICTIMS, TARGETS, AND OFFENDERS*, 19–41, 21 (Vera Lopez & Lisa Pasko eds., 2021).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. Sujei Vega, Alesha Durfee, & Jill Messing, *Entre Mujeres Platicamos: The Role of Informal Social Networks among Latina Survivors of Intimate Partner Violence*, in *LATINAS IN THE CRIMINAL JUSTICE SYSTEM: VICTIMS, TARGETS, AND OFFENDERS*, 19–41, 21 (Vera Lopez & Lisa Pasko eds., 2021).

survival.⁵⁷ Characterized by their “less visible, less organized, and less recognizable” nature, these strategies are essential for creating opportunities for endurance and resilience amidst IPV.⁵⁸ Latina women often rely on informal networks as powerful coping mechanisms to combat loneliness, depression, anxiety, and violence.⁵⁹ Therefore, acknowledging and understanding these networks and strategies is crucial to mending the current data gap regarding incarcerated Latinas. It can also bolster efforts to reduce the number of incarcerated Latinas and inform criminal justice institutions’ efforts to prevent the imprisonment of Latinas through more effective interventions and assistance.

B. THE WAR ON DRUGS AND RELATED POLICIES

In the 1980s and 1990s, during the apex of the ‘tough on crime’ era, the number of women incarcerated for drug offenses increased significantly, accounting for 40 percent of the female state prison population increase in the 1980s alone.⁶⁰ The 1986 mandatory drug sentencing laws, rooted in a ‘get tough on crime’ approach that mandated automatic sentences for anyone caught in possession of drugs, were aimed at eliminating drug dealers and leaders of the illegal drug trade from society.⁶¹ However, these laws had unintended, detrimental consequences for women, undermining the assumption that such legislation would exclusively incarcerate dangerous male offenders of the drug trade.⁶² Specifically, during this period, women’s incarceration rates for drug crimes rose over 400%, a trend that greatly surpassed the growth in men’s incarceration for the same offenses.⁶³ Furthermore, while violent crimes remained the leading cause of imprisonment among men, drug convictions became the predominant factor behind the spike in women’s incarceration rates.⁶⁴

This escalation was largely attributed to the policies instigated under the ‘War on Drugs’ rather than to changes in offending.⁶⁵ The shift in law enforcement practices disproportionately affected women, many of whom were considered low-level threats to public safety.⁶⁶ The dramatic increase in female incarceration rates could be directly attributed to changes made to drug enforcement policies and practices, which reallocated resources towards more stringent drug law

57. *Id.* (citing Dolores Delgado Bernal, *Learning and Living Pedagogies of the Home: The Mestiza Consciousness of Chicana Students*, 14 INT’L J. QUAL. STUD. EDUC. 14(5), 623, 626 (2001)).

58. Vega, Durfee, & Messing, *supra* note 51.

59. *Id.*

60. Wendy Sawyer, *The Gender Divide: Tracking Women’s State Prison Growth*, PRISON POLICY INITIATIVE (Jan. 9, 2018), <https://perma.cc/M3AW-JHFC>.

61. Stephanie S. Covington, *Women in Prison: Approaches in the Treatment of Our Most Invisible Population*, 21(1) WOMEN & THERAPY 141, 143 (1998), <https://perma.cc/98QE-B7BT>.

62. *Id.*

63. *Id.*

64. Sawyer, *supra* note 60.

65. *Id.*

66. *Id.*

enforcement.⁶⁷ Furthermore, the adoption of ‘proactive’ policing strategies prompted law enforcement to target low-level rather than serious offenses.⁶⁸ Given that women are more likely to commit minor rather than serious crimes, these policing methods, alongside the ‘War on Drugs’ initiatives, effectively broadened the scope of criminal justice to encompass a greater number of these low-level offenders.⁶⁹ This expansion played a significant role in the increase of incarceration rates among women, particularly affecting Latina populations.⁷⁰ Often, male partners served as gateways to criminal activity, and many women, driven by a sense of *marianismo* loyalty, became complicit in supporting their partners’ actions.⁷¹

The sentencing landscape for women, particularly in drug-related offenses, often results in plea bargains.⁷² To avoid prolonged imprisonment, women may plead guilty to expedite their release, only to find themselves later arrested for breaching one of their probation conditions, which traps them in a punitive loop of arrest and re-arrest.⁷³ This iterative cycle can escalate even minor offenses into substantial penal system entanglements, which may later exacerbate the severity of sentencing for subsequent offenses.⁷⁴ Moreover, the expansion of drug conspiracy laws means that even women who are marginally involved in drug-related crimes face the same severe sentences as the leaders of such operations.⁷⁵ Thus, the surge in female federal drug cases can be largely attributed to these conspiracy statutes, which have also been adopted at the state level.⁷⁶ More generally, the sentences for drug offenses have significantly increased in duration.⁷⁷ Between 1975 and 1995, legislative bodies across all 50 states and the federal government curtailed traditional judicial discretion by mandating incarceration for a plethora of offenses, introducing stringent policies such as “mandatory minimums, ‘truth in sentencing,’ and ‘three strikes’ laws.”⁷⁸

In recent years, there has been a noticeable stabilization in the incarceration rates for drug offenses among both men and women, reflecting a societal shift in perceptions of the impact of the ‘War on Drugs.’⁷⁹ As the detrimental effects of stringent drug policies have come to light, attitudes toward drug offenses have

67. *Id.*

68. *Id.*

69. Sawyer, *supra* note 60.

70. Gladys E. Ibañez, Michelle Agudo, Steve S. Martin, Daniel J. O’Connell, Rehab Auf & Diana M. Sheehan, *Offending Behavior, Drug Use, and Mental Health Among Foreign-Born versus U.S. Born Latino Criminal Justice Clients*, 19 J. OF IMMIGRANT AND MINORITY HEALTH 674, 675 (2017), <https://perma.cc/M2S6-FMLD>.

71. See Kathryn Duque Lenhart, *Multiculturalism and Feminism for Hispanic Immigrant Women Accused of Drug Crimes*, 2013 BYU L. REV. 1613, 1636 (2013).

72. Sawyer, *supra* note 60.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. Sawyer, *supra* note 60.

78. *Id.*

79. *Id.*

started to change.⁸⁰ This shift in perspective has helped to arrest the previously alarming upward trend in drug-related crime imprisonments, a trend that was especially pronounced among women.

C. A CONTINUED WAR ON DRUGS: SUBSTANCE ABUSE

While shifts in the outlook on the harsh policies of the ‘War on Drugs’ have occurred, many women still turn to drugs as a means of self-medicating to cope with victimization, trauma, and IPV, which often leads to recurrent involvement with the criminal legal system.⁸¹ Research indicates that substance use by women entangled in the legal system is often a method of managing the psychological pain from past traumas and related mental health issues.⁸² Additionally, a significant number of these women have histories of substance abuse, or have committed offenses while under the influence or to support their drug addictions.⁸³ Notably, over two-thirds of women in state prisons are diagnosed with drug dependency or abuse, with approximately half having used drugs at the time of their offenses.⁸⁴ Moreover, many women, especially those from Latin backgrounds who often exist on the social and economic fringes of society, participate in illicit activities as a means of survival, inevitably leading to more frequent encounters with the criminal legal system.⁸⁵ These encounters are manifestations of their struggles with abuse, economic desperation, and addiction. Without addressing the underlying causes such as gender roles, IPV, and poverty, harsh criminal laws will merely perpetuate high incarceration rates for Latina women.

D. THE MONOLITHIC CORRECTIONAL PARADIGM ROOTED IN STEREOTYPES OF LATINA GIRLS

Prior to the mid-1970s, discussions about juvenile offenders and juvenile courts seldom included specific data on girls, particularly girls of color.⁸⁶ However, female juvenile offenders have gained significant attention in recent decades and now constitute one of the fastest-growing demographics within the juvenile justice system.⁸⁷ Presently, girls account for 30% of juvenile arrests and one-fourth of all referred delinquency cases in the United States.⁸⁸ Their adjudications have increased threefold over the past 20 years, and girls also make up a

80. Jamila Hodge & Nazish Dholakia, *Fifty Years Ago Today, President Nixon Declared the War on Drugs*, VERA INST. (June 17, 2021), <https://perma.cc/HPP9-RLEY>.

81. Sawyer, *supra* note 60.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*; see Marisa D. Salina, *Latinas as carceral collateral: Violence in the lives of Latinas across the carceral community*, 21 LATINO STUDIES 477, 481, 488 (2023).

86. Lisa Pasko & Vera Lopez, *The Latina Penalty: Juvenile Correctional Attitudes toward the Latina Juvenile Offender*, 16(4) J. ETHNICITY CRIM. JUST. 272, 272 (2018).

87. *Id.*

88. *Id.*

growing percent of the population of juveniles in custody.⁸⁹ By the turn of the century, girls' detentions and commitments to secure facilities saw a nearly 100% increase.⁹⁰ Yet, there is virtually no literature about the experiences, assumptions made about, and treatment of young Latina offenders in the juvenile justice system.⁹¹ This has contributed to a severe lack of understanding about this demographic and, consequently, to unconstructive policies. According to the Office of Juvenile Justice and Delinquency Prevention, in the United States, 1 out of every 6 girls committed, and 1 out of every 5 girl detainees, is Latina.⁹² Additionally, the majority of these Latina girls are committed for nonviolent offenses; in 2010, only 2% were committed for homicide, and 5% for robbery, whereas 23% were committed for technical violations, such as not adhering to probation terms.⁹³

On the whole, Latina/o youth are disproportionately represented at every stage of the juvenile justice system and often receive harsher treatment and sentences than their White counterparts, even for committing identical offenses.⁹⁴ Research shows that Latina teens are more likely than other girls to have multiple court referrals, to be referred to juvenile court by age 14 or younger, and to be charged with a status offense as their first referral, often for running away, and violating curfews.⁹⁵

Studies have revealed that the delinquent issues of Latina girls are seldom contextualized within their individual histories of victimization, which often entail core issues of rigid gender roles, as well as physical and sexual abuse.⁹⁶ Instead, juvenile justice workers make negative assumptions about Latina girls, which impact the care they receive.⁹⁷ A national study in 2008 underscored the unique challenges faced by Latina juveniles in detention, noting crucially that many of these girls are bilingual and transcultural.⁹⁸ As such, they utilize language both as a method of bonding with fellow detainees and as a form of resistance.⁹⁹ However, juvenile justice workers often punish girls who speak in Spanish or a mix of Spanish and English because they interpret it as a potential security threat, suspecting them of scheming to assault staff.¹⁰⁰ As a result, workers insist on enforcing English-only policies in detention centers.¹⁰¹

Unlike Latino youth who are typically detained due to public safety concerns, girls are often arrested for going against societal gender norms imposed on them,

89. *Id.*

90. *Id.*

91. Vera Lopez & Lisa Pasko, *Bringing Latinas to the Forefront: Latina Girls, Women, and the Justice System*, 12 FEMINIST CRIMINOLOGY 195, 195 (2017).

92. Pasko & Lopez, *supra* note 86 at 273.

93. *Id.*

94. *Id.* at 274.

95. *Id.*

96. *Id.*

97. Pasko & Lopez, *supra* note 86 at 273.

98. *Id.*

99. *Id.*

100. *Id.* at 275.

101. *Id.*

such as resolving conflicts through physical violence.¹⁰² Inside the juvenile justice system, Latina offenders often report negative experiences, severe punishments for even minor offenses, and unfair treatment from all levels of law enforcement, ranging from police to facility staff to probation officers.¹⁰³ In fact, most girls felt the services provided during detention were unconstructive and even worsened their behavior over time, further pushing them to the margins of society and increasing their likelihood of future run-ins with the law.¹⁰⁴

Studies investigating these negative experiences suggest that juvenile probation officers often rely on a stereotypical ‘one-size-fits-all’ representation of Latinas, characterizing them as hypersexual and destined for pregnancy and domesticity.¹⁰⁵ A 2014 study found that staff in clinical residential treatment centers believe the problems of Latina girls are rooted in dysfunctional family dynamics and a broader Latino culture purported to support teen pregnancy and gang involvement.¹⁰⁶ Therefore, the understandings relied upon by juvenile justice system staff appear to be deeply entrenched biases rather than a genuine understanding of the experiences of Latina females and their individual histories of abuse and victimization.

Notably, the COVID-19 pandemic has only intensified these problems. It triggered a multilayered crisis—including the suspension of schools, community centers, and other places of engagement and safety, as well as the collapse of the economy.¹⁰⁷ These effects have deeply impacted Latina girls from underemployed or unemployed homes.¹⁰⁸ Numerous Latina girls have had to cope with minimal or no support, struggling to survive in neighborhoods so heavily patrolled by police officers that they resemble prison facilities.¹⁰⁹ More generally, the pandemic has significantly exacerbated the expectations that Latina girls face in their communities alongside existing issues and gender roles that predate the pandemic.

III. PREVENTING AND REDUCING LATINA INCARCERATION

This section posits a four-pronged framework to address current and to prevent future incarceration of Latina women. The first prong requires law enforcement and all levels of the criminal justice system to gather precise and updated data on Latina women, using clear definitions and increasing engagement with community networks to increase cultural understanding. Second, the criminal justice system must take targeted actions to decrease the detention of Latina girls to reduce their likelihood of future, and potentially more serious, encounters with the law.

102. Pasko & Lopez, *supra* note 86 at 273.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Castro, *supra* note 21.

108. *Id.*

109. *Id.*

Third, officials should proactively review the sentences of incarcerated Latinas, particularly those of young offenders, according to RGA, which have broadened the criteria for compassionate release. Finally, it is crucial to enhance and promote awareness of existing community support and rehabilitation programs for Latinas who have experienced or are currently experiencing IPV and for Latinas after incarceration to prevent recidivism. Adopting a comprehensive approach can lower both the probability and the existing rates of incarceration among Latinas.

A. PRONG ONE – DATA ACCURACY AND ENGAGING INFORMAL SUPPORT NETWORKS

Abolishing the ‘Black’ or ‘White’ binary is only the beginning of ensuring that data about Latine communities is accurate. Different criminal justice systems around the United States have various ways of collecting and storing data on Latine groups involved in the justice system, which inhibits a system-wide understanding of racial and ethnic disparities.¹¹⁰ It is imperative that agencies adopt standardized collection methods for race and ethnicity data across all states to enable better data sharing and translation between systems.¹¹¹ In turn, these broader efforts will improve the quality of statistics concerning incarcerated Latina women and girls.

The connection between prior abuse and the increased likelihood of incarceration for Latinas underscores the urgent need for more data collection—and policy developments informed by this data—to support IPV survivors. Research suggests that the expression *entre mujeres platicamos* (“between women we talk”) may be crucial towards accurate understandings of Latina survival strategies.¹¹² Some Latina IPV survivors have expressed a strong interest in sharing their experiences and providing advice to those seeking to escape abusive situations, inspired by their own previous experiences within their social networks that helped them obtain help.¹¹³ Hence, survivors should be mobilized to act as potential mentors for others navigating similar challenges.¹¹⁴

The influence and potential of informal support networks can be utilized by establishing community-centered programs designed to train friends and neighbors to serve as lay advocates, people who Latinas enduring IPV may be more likely to trust and approach for help.¹¹⁵ Such initiatives could be modeled on *promotora* programs that leverage informal social networks to connect community members with trained individuals who can refer them to formal services.¹¹⁶ Training Latina survivors of IPV to become *promotoras*—individuals who possess unparalleled insight into the experiences of women currently facing IPV and knowledge about ending abusive relationships—can establish a powerful network

110. MACARTHUR FOUND., Data on Latino Population is Critical to Addressing Disparities (Mar. 9, 2023), <https://perma.cc/NR9B-TQQA>.

111. *Id.*

112. Vega, Durfee, & Messing, *supra* note 51.

113. *Id.*

114. *Id.*

115. *Id.* at 37.

116. *Id.*

that provides comfort and advice and acts as a bridge to essential resources.¹¹⁷ To maximize the reach of *promotora* programs, it is crucial to educate the broader community, including friends and neighbors, about survivors' rights, safety strategies, and available formal resources.¹¹⁸ This approach mobilizes the influence of existing relationships and networks to disseminate critical information and to raise awareness about resources for those enduring IPV.¹¹⁹

Women experiencing IPV are often ashamed of disclosing their abuse, which complicates outreach efforts.¹²⁰ As such, *promotora* training with an aim of fostering networks of "friends helping friends" or *comadre promotoras* may be more effective to foster wider participation by reducing stigma.¹²¹ This model is centered around trust-building and forging "sisters-of-the-heart" bonds that counter the culture of silence and guide survivors toward safety.¹²² Moreover, engaging IPV survivors to lead these training sessions through *platicas* ("talks") can help them regain confidence in themselves, amplify their voices, and harness their resilience for the greater good of the community.¹²³

Promotoras would be more culturally familiar with their respective local communities than any third party, particularly institutional representatives.¹²⁴ Thus, they are best equipped to establish spaces of confidentiality and provide aid.¹²⁵ While churches and other religious institutions may encourage women to remain in abusive relationships in order to maintain obedience to the sanctity of marriage, *promotora* programs can offer alternative support narratives.¹²⁶ These programs can establish trusted communication channels in important community spaces like churches, reaching large swathes of the Latina population.¹²⁷

The *promotora* approach not only provides critical support but also enhances the validity of statistics on incarcerated Latinas by capturing qualitative data that reveals underlying patterns not captured by quantitative methods alone.¹²⁸ This nuanced qualitative data can enrich the understanding of statistical analyses by highlighting underlying patterns and connections that may otherwise remain obscured.¹²⁹ Consequently, this approach not only adds depth to the data, but also significantly improves the accuracy of statistics concerning incarcerated Latinas

117. Vega, Durfee, & Messing, *supra* note 51.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. Vega, Durfee, & Messing, *supra* note 51.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. Vega, Durfee, & Messing, *supra* note 51.

128. *Id.*

129. *Id.*

by corroborating or suggesting alternative interpretations of findings.¹³⁰ Thus, the current data gap regarding incarcerated Latinas cannot truly be mended without more holistic and informed perspectives on their experiences.

B. PRONG TWO – INITIATIVES FOCUSED ON LATINA GIRLS

Various probation officers, judges, case managers, and other decision-makers in juvenile courts and correctional facilities have admitted that misconceptions about Latina girls contribute to their disproportionate representation in the juvenile justice system.¹³¹ These decision-makers often perceive Latina girls as “hoochie mamas” who are sexually promiscuous, gang-involved, resistant to programming, manipulative, and apprehensive.¹³² Such stereotypes can lead to harsher penalties; instead of being placed in treatment group homes, many Latina girls are sent to correctional facilities, even when their offenses or criminal records do not justify such extreme measures.¹³³

Since the 1990s, there has been a national focus on developing more effective interventions for delinquent girls.¹³⁴ Studies have shown that cognitive-behavioral therapies and life-skills programs are particularly highly effective methods to reduce aggression and delinquent actions.¹³⁵ When combined with talk therapy, these methods support healthy emotional development for girls.¹³⁶ Behavioral training for parents and improvements in caregiving environments have also proven beneficial.¹³⁷

Despite these advancements, many challenges persist in delinquency policy and programming for girls, especially regarding the development and implementation of culturally sensitive approaches.¹³⁸ A 2006 study by the Pew Research Center revealed that over 20% of Latino youth have difficulty understanding and communicating in English, with even higher rates among their parents.¹³⁹ This underscores a critical need for bilingual services.¹⁴⁰ Furthermore, the Vera Institute of Justice revealed in a 2012 study that most juvenile justice settings lack the capacity to properly address the linguistic needs of Latine populations.¹⁴¹ This negatively affects placement decisions and access to mental health services.¹⁴² The study also found that community-based programs often overlook

130. *Id.*

131. Pasko & Lopez, *supra* note 86, at 278–279.

132. *Id.*

133. *Id.* at 280–281.

134. *Id.* at 287.

135. *Id.*

136. Pasko & Lopez, *supra* note 86, at 278–279.

137. *Id.* at 288.

138. *Id.*

139. *Id.*

140. *Id.*

141. Pasko & Lopez, *supra* note 86, at 278–279.

142. *Id.*

barriers such as transportation, safety, and cost, which can hinder completion of probation requirements.¹⁴³

To achieve meaningful progress in cultural sensitivity, juvenile justice systems must go beyond superficial initiatives, like hosting a “taco night,” to truly meet the cultural needs of Latina girls.¹⁴⁴ Culturally sensitive programming must account for the foundational values, norms, and beliefs that shape Latine perceptions and experiences within specific spatial-temporal contexts.¹⁴⁵ At the institutional level, all juvenile justice professionals must receive proper training to become aware of their biases, critically challenge them, and learn how factors like race, ethnicity, gender, age, class, and country of origin influence the experiences of Latina girls.¹⁴⁶ Thus, comprehensive and effective programming will require not only Spanish-speaking staff but also professionals who are formally educated in Latine culture, encompassing its many elements and diverse histories.¹⁴⁷

C. PRONG THREE – REEVALUATING THE SENTENCES OF PRESENTLY INCARCERATED LATINAS

The RGAs took effect on November 1, 2023, and amended how criminal history points are calculated, altering when a decrease of two offense levels for “zero-point offenders” is applicable.¹⁴⁸ These amendments constituted significant changes and warrant a sweeping, institutional reevaluation of the sentences of presently incarcerated Latinas, which could lead to a reduction in this demographic. Moreover, incarcerated Latinas should be informed about and educated on these developments, and provided with legal support to make such applications, should they wish to do so.

The revised criminal history points calculation procedure reduces “status points” by one point for individuals with seven or more criminal history points and eliminates them for individuals with six or fewer points.¹⁴⁹ This retroactive reduction applies to anyone who received Status Points during their initial criminal history calculation.¹⁵⁰ The amendment imposes no restrictions on eligibility based on the type of crime, presence of violence, or use of weapons, although courts may consider these factors when deciding on sentence reductions.¹⁵¹ Consequently, many currently incarcerated Latinas may qualify for a reduction. However, they may encounter obstacles in accessing the legal services they need to understand the new criteria and navigate this process. Therefore, criminal

143. *Id.*

144. *Id.*

145. *Id.*

146. Pasko & Lopez, *supra* note 86, at 278–279.

147. *Id.*

148. UNITED STATES SENT’G COMM’N, *Materials Relating to the 2023 Criminal History Amendment* (2023), <https://perma.cc/265P-ZP9D>.

149. *Id.*

150. *Id.*

151. *Id.*

justice officers should actively promote this amendment and facilitate discussions by inviting legal professionals to inform incarcerated Latinas about it. Additionally, they should help connect these women to legal aid services or NGO support upon their request after learning about the amendments.

Subpart 1 of Part B of the 2023 amendments introduces a new § 4C1.1 guideline that allows a decrease of two offense levels for “Zero-Point Offenders”—offenders with no criminal history points and no involvement in specific aggravating factors.¹⁵² To qualify, offenders must meet ten specified criteria.¹⁵³ The specificity of these requirements emphasizes the critical need for legal services to assist incarcerated Latinas navigating the RGA. Notably, the fourth criterion stipulates that “the offense did not result in death or serious bodily injury,” a requirement that may pose challenges for Latinas who have defended themselves against an abuser that resulted in serious injury or death.¹⁵⁴

In 2018, the First Step Act extended the right to seek release for the elderly, those with severe or terminal illness, or upon the death of the caregiver for a minor child.¹⁵⁵ Prior to this Act, only the Bureau of Prisons could apply to a court for the release of a prisoner under extraordinary or compelling circumstances.¹⁵⁶ Eligibility for compassionate release has been further broadened to include: individuals who were victims of sexual assault by a corrections officer while in custody, those who received “unusually long sentences” and have served at least a decade, especially if an intervening change in the law would likely have resulted in a shorter sentence if it had been in place at the time of sentencing, and those affected by the death or incapacitation of caregivers for any loved one or family member, not just minor children.¹⁵⁷

Notably, the sexual abuse ground requires the physical or sexual abuse to have been perpetrated by Bureau of Prisons personnel.¹⁵⁸ To qualify, an applicant must substantiate the abuse with evidence from a criminal conviction, a civil finding of admission or liability, or a finding from an administrative proceeding. However, if these proceedings are unduly delayed or there is risk of imminent danger to the defendant, this requirement may be waived. Additionally, a general provision allows for compassionate release for “other reasons” if a court find that a defendant’s circumstances are of comparable severity and justify such consideration.¹⁵⁹

Given the high burden of proof and difficulties with evidence gathering, it is unlikely that many incarcerated Latinas will qualify for compassionate release.

152. *Id.*

153. UNITED STATES SENT’G COMM’N, Materials Relating to the 2023 Criminal History Amendment (2023), <https://perma.cc/265P-ZP9D>.

154. *Id.*

155. James Fieweger, *US Sentencing Commission Expands Compassionate Release Criteria*, MICHAEL BEST (Apr. 7, 2023), <https://perma.cc/HU6L-T9PV>.

156. *Id.*

157. *Id.*

158. UNITED STATES SENT’G COMM’N, *supra* note 148.

159. *Id.*

Admittedly, this development permits an unprecedented degree of judicial discretion to determine appropriate relief for extraordinary cases that do not fit neatly within the previously limited criteria. Due to the nature of these obstacles, even with strengthened legal aid, applicants will still face significant challenges in building a strong enough case for compassionate release. Nonetheless, they should be provided with sufficient knowledge and assistance to pursue this option, as they are entitled to access justice.

Ultimately, because the RGA is a complex regime that is difficult to navigate, state agencies should first conduct a complete reevaluation to determine whether the sentences of currently incarcerated Latinas may be reduced. The Justice Department and dissenting commissioners have posited that because the RGA only makes ““minor”” modifications to sentencing guidelines, reducing sentences by only a few months, there is no need to reassess prior cases.¹⁶⁰ Conversely, proponents of retroactive application maintain that inmates value any reduction in their sentences, even if it is only by a few days.¹⁶¹ Inmates should be properly informed of their new options and given support if they make independent applications for sentence reduction or release.

D. PRONG FOUR – BOLSTERING PREVENTION AND REHABILITATIVE PROGRAMS

Programs must be designed to prevent the incarceration of Latinas and ensure their successful rehabilitation. Prevention efforts should adopt a community-based approach that includes education about teen dating violence, focused prevention programming, and the empowerment of vulnerable populations. Additionally, building cross-sector advocacy relationships and strengthening funding streams, along with a commitment to anti-oppressive services, will be beneficial. Rehabilitative programs should teach Latina women and girls technical skills to increase their chances of securing employment, assist with job searches, and address barriers such as transportation fees to secure higher participation rates.

Furthermore, Latinas dealing with substance abuse issues should have access to gender-responsive substance abuse and mental health services post-incarceration, which are not adequately provided in prisons. Currently, less than half of the women in state prisons with a history of substance abuse receive treatment, and fewer than 1 in 4 women with psychiatric disorders are able to access mental health services.¹⁶² These gaps must be addressed with targeted efforts made post-incarceration to prevent recidivism, even if the status quo within the prisons does not change.

160. Nate Raymond, *Thousands of federal inmates become eligible for sentence reductions*, REUTERS, (Feb. 1, 2024), <https://www.reuters.com/legal/government/thousands-federal-inmates-become-eligible-sentence-reductions-2024-02-01/>.

161. *Id.*

162. Sawyer, *supra* note 60.

CONCLUSION

Ultimately, this scholarship identifies and emphasizes the multifaceted challenges and systemic issues that disproportionately affect Latina women and girls within the criminal justice system. Through an exploration of the root causes of Latina incarceration, including the persistence of rigid gender roles, scarce employment opportunities, and the prevalence of violence and trauma, it becomes evident that these factors are intricately linked and contribute to the high incarceration rates of Latina women. As such, there is an urgent need for targeted policy reforms and a shift in societal attitudes to address these deep-rooted issues. By adopting a more holistic four-prong framework that includes improving data collection, addressing cultural stereotypes about Latine populations, reviewing previous sentences, and enhancing community support and rehabilitation programs, barriers that contribute to the over incarceration of Latina women can be dismantled piece by piece. Such initiatives not only promise to reduce incarceration rates, but also aim to restore justice and dignity to countless Latina women adversely affected by a punitive system that often overlooks their unique circumstances and challenges.