Childhood and Migration in Central and North America:

Causes, Policies, Practices and Challenges

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Chapter 11 Family Separation as a Result of Immigration Policies in the United States

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I. Introduction

This chapter broadly examines family separation in the context of the U.S. immigration system. Current U.S. immigration laws are built on enforcement principles rather than children's rights or family unity, an orientation that has had a devastating effect on the integrity of migrant families in the United States. The existing U.S. family-based immigration system also creates significant challenges for family unity, forcing individuals to wait years to reunite with family members. Throughout the enforcement process, federal laws, agency policies, and state and local practices that target immigrant parents harm hundreds of thousands of children each year by failing to appropriately consider their best interests. This is particularly true in the context of mixed-status families in which one or both parents are undocumented but the child is a U.S. citizen. Because parent and child have different legal statuses and therefore vastly different rights under U.S. law, the mixed-status family facing the deportation of a parent may be forced to make the difficult decision of whether it is better for the family to relocate together to the country of origin or to separate in hopes that the child will ultimately have a better life in the United States. In some cases, parents may not have a choice if they are deported without the ability to make decisions regarding their child's care.

This chapter first addresses the laws, enforcement policies, and related practices that are the root causes of family separation in the United States. It then examines the effect of these practices on the children of migrant parents, including psychological, economic, and educational outcomes as well as the potential for interaction with the child welfare system. The chapter also examines the challenges that deported parents face when they attempt to navigate the system from abroad in order to reunite with their children. Finally, this chapter examines the ways in which the enforcement policies described deprive impacted children of their internationally protected rights to family, education, and health.

II. Historic trends and post-1996 changes: limited family immigration and increased enforcement measures

A. An outdated family immigration system

As explained previously in chapter 10 on immigration remedies and procedures, the current family immigration system in the United States does not include adequate channels to encourage legal migration. In particular U.S. immigration status is often more focused on economic or other benefits to the United States over family unity. Few temporary visas are available to low skilled workers. Labor related visas are focused in large part in technical or high skill industries, often to the detriment of women and other laborers in non-traditional sectors such as domestic work. Lawful permanent resident status is only available to certain relatives after significant wait times for pending applications. Unmarried children (under the age of 18), and siblings, and parents of

adult legal residents can be eligible for legal migration. However, siblings and parents of U.S. citizen children under the age of 21 are not eligible for migration through the U.S. citizen child. This results in a situation where millions of citizen children or legal resident children have grown up in the United States but their parents are undocumented or living abroad.

In addition to the restrictions on the categories of relatives who may be sponsored for lawful permanent residence ("green card" holder), there are also statutory numerical limits on the numbers of green cards available. Each year, there are usually up to 226,000 green cards available to all of the family-based immigration categories. This limit results in long wait times or backlogs in family green card categories. As of September 2014, wait times for certain family visas are up to 23 years for Filipino brothers and sisters, seven years for adult unmarried children of U.S. citizens and residents, and up to 13 years for married adult children of U.S. citizens (see Table 1, below). These long wait times are not realistic for families needing help in caring for elderly parents or raising young children, or where family reunification is otherwise critical for the family. Because families cannot easily access these green cards in a reasonable amount of time some migrate irregularly rather than remain separated.

In addition to the limits on green cards available to certain categories of family members, there is also a statutory limit on the number of green cards available to nationals of each country. The ceiling on the number of people admitted each year is approximately 25,600 per country; this limit is shared between family and employment-based immigrants. For countries like Mexico, the Philippines, China and other nations that have high rates of immigration to the United States, these per-country limits can cause even longer wait times for family-based green card petitions. Below are the approximate wait times for the different family visa categories as of July 2014:[1]

Table 1. Family Visa Category Wait Times

Family visa category	Mexico	Philippines	All Other Countries (including Northern Triangle countries)
F1 – unmarried sons and daughters (children over 21) of U.S. citizens	20 Years	11 Years	7 Years
F2A – spouses and children (children under age 18) of LPRs	3 Years	2 Years	2 Years
F2B – Unmarried sons and daughters (children over 21) of LPRs	20 Years	10 Years	7 Years

[1] U.S. Department of State. (2014, July). Visa Bulletin for July 2014. Retrieved from http://travel.state.gov/content/visas/english/law-and-policy/bulletin/2014/visa-bulletin-for-july-2014.html. Although migration from the Philippines is outside the scope of this book, the wait times for family members from that country are included for sake of comparison. The wait times for all sending countries other than Mexico and the Philippines vary by visa category as described in the last column of Table 1, but do not vary by country; that column thus describes the wait times for the Northern Triangle countries of Honduras, El Salvador, and Guatemala.

F3 – Married sons and daughters (children over 21) of U.S. citizens	20 Years	21 Years	10 Years
F4 – Brothers and sisters of adult U.S. citizens	17 Years	23 Years	12 Years

Women in particular may face additional hurdles in obtaining visas, not because of direct discrimination but because of the United States prioritizes employment visas in male-dominated fields over family visas, and because the employment-based system is quicker than the family system. Seventy percent of immigrant women gain permanent residence in the United States through family-based visas as opposed to employment-based visas. That contrasts with 61 percent of men who gain status through family channels.[2]

While there have been numerous proposals to update the family immigration system, none have succeeded in being enacted into law. The system has not been updated in over 20 years. This has led to a situation where unauthorized migration is the norm and detention and deportation has increased dramatically.

B. A new approach to immigration enforcement

The number of immigrants detained and deported by U.S. immigration authorities has reached historic highs in recent years, even though overall migration to the United States decreased during this time. In the United States, the number of people being held in immigration detention centers awaiting removal hearings in immigration court grew by 54 percent between 2004 and 2010.[3] The number of individuals who are ultimately deported at the conclusion of immigration proceedings has also skyrocketed in the past decade. Since 2009, nearly 400,000 people have been deported from the United States each year, compared with just 189,000 in 2001.[4] In early 2014, the number of individuals removed from the United States under the Obama Administration reached 2 million.[5]

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[2] National Asian Pacific American Women's Forum. (2009, October). Family Immigration System and Asian & Pacific Islander Women. Retrieved from http://nciwr.files.wordpress.com/2011/01/napawf_familyimmigration_factsheet-3.pdf.

[3] Phillips, S. D. (2013, January) Introduction: Children in Harm's Way. In Phillips, S. D., Cervantes W., Lincroft, Y., Dettlaff, A. J., & Bruce, L. (Eds.), *Children in Harm's Way: Criminal Justice, Immigration Enforcement, and Child Welfare*, p. 5. Retrieved from http://firstfocus.org/resources/report/children-in-harms-way-criminal-justice-immigration-enforcement-and-child-welfare/.

[4] Caplan-Bricker, N. (2014, April 17). Who's the Real Deporter-in-Chief, Bush or Obama? *The New Republic*. Retrieved from http://www.newrepublic.com/article/117412/deportations-under-obama-vs-bush-who-deported-more-immigrants.

[5] Caplan-Bricker, N. (2014, April 17). Who's the Real Deporter-in-Chief, Bush or Obama? *The New Republic*. Retrieved from http://www.newrepublic.com/article/117412/deportations-under-obama-vs-bush-who-deported-more-immigrants. *See also* U.S. Immigration and Customs Enforcement. (2013, December 19). ICE announces FY 2013 removal numbers. Retrieved from https://www.ice.gov/news/releases/1312/131219washingtondc.htm. *See also* The great expulsion: Barack Obama has presided over one of the largest peacetime outflows of people in America's history. (2014, February 8). *The Economist*. Retrieved from http://www.economist.com/news/briefing/21595892-barack-obama-has-presided-over-one-largest-peacetime-outflows-people-americas.

While immigration enforcement in the context of the mixed-status family directly targets the undocumented parent for arrest, detention, and deportation, significant numbers of U.S. citizen children are impacted by these enforcement activities. Recent Department of Homeland Security (DHS) data reveals that 72,410 parents of U.S. citizen children were removed in 2013.[6] This data only reflects those parents who reported having U.S. citizen children and therefore fails to account for those individuals who did not voluntarily report parental status out of fear. Using deportation data, researchers estimate that 152,426 U.S. citizen children experience the deportation of a parent each year.[7] Furthermore, there are an estimated 4.5 million U.S. citizen children at risk of losing a parent because they live with at least one undocumented parent.[8] This number does not include the children of lawful permanent resident immigrants. Although permanent resident parents are at decreased risk of deportation due to regularized status, thousands are still deported each year.[9]

In light of staggering detention and removal numbers, advocates for immigration reform have begun to ask critical questions about how children are affected, such as where children go after the parent is arrested, how children respond socially and psychologically in a culture of increased enforcement, and how the child welfare system addresses the best interest of the child when immigration enforcement renders a parent absent. While the U.S. government does not collect data on the long-term outcomes of affected children, it is clear from anecdotal reporting that such children suffer immensely when separated from a parent. As lawmakers have largely ignored the best interest of children when it comes to immigration enforcement, the result is an immigration system that shows little regard for human collateral consequences in both its design and its enforcement.

In the mid-2000's, several highly publicized workplace raids raised the awareness of the American public regarding critical oversights in the immigration enforcement system with respect to the well-being of children.[10] These raids, conducted in the years just after the creation of ICE and DHS, demonstrated disturbing neglect for the care and safety of children.

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[6] Foley, E. (2014, June 25). "Deportation Separated Thousands of U.S.-Born Children from Parents In 2013." *Huffington Post*. Retrieved from http://www.huffingtonpost.com/2014/06/25/parents-deportation_n_5531552.html?utm_hp_ref=tw.

[7] Human Impact Partners. (2013, June). Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families, p. 2. Retrieved from http://www.familyunityfamilyhealth.org/uploads/images/FamilyUnityFamilyHealth.pdf.

[8] Passel, J. S., & Cohn, D. (2011, February 1). Unauthorized Immigrant Population: National and State trends, 2010, p. 13. Retrieved from http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-brnational-and-state-trends-2010/.

[9] See Baum, J., Jones, R., & Barry, C. University of California, Berkeley, School of Law & University of California, Davis, School of Law. (2010, March). In the Child's Best Interest? The Lawful Consequences of Losing a Lawful Immigrant Parent to Deportation, p. 1, 4. Retrieved from https://www.law.berkeley.edu/files/Human_Rights_report.pdf. (The report estimates that between April 1997 and August 2007, the lawful permanent resident parents of at least 88,000 U.S. citizen children were deported. Half of these children were under the age of 5 when their parent was deported.).

[10] ICE was created in 2003 to replace the Immigration and Naturalization Service (INS) and is tasked with the enforcement of federal immigration law. Philips, S. D. Introduction: Children in Harm's Way, pp. 4-5.

New Bedford factory raids

> *In 2007, ICE raided a leather goods factory in New Bedford, Massachusetts. Although federal officials suspected that the owners of the factory had mistreated the workers and were complicit in helping them obtain fraudulent employment documents, the owners were released soon afterwards to await court proceedings. In contrast, the 361 workers apprehended in the raid were immediately taken into ICE custody and out of the area for processing, and most ultimately ended up in a detention facility on the U.S.-Mexico border where they awaited removal. The majority of the 361 workers apprehended in the New Bedford raid were women, and 110 were sole caregivers of minor children. Despite knowing that many of the workers were parents, ICE planned the raid without coordinating with local officials to ensure that appropriate childcare arrangements would be made for the children. The decision resulted in nearly 200 children being left without a caretaker and without a means to contact their parents. Many of these children were simply left to wait at schools or daycare centers that day for parents who would never arrive.*[11]

The agency responded by issuing new guidance that required its enforcement officers to coordinate with local child welfare agencies prior to conducting workplace raids.[12] Despite these added protections for the families of undocumented workers apprehended in larger-scale operations, the vast majority of apprehensions now occur in the context of smaller-scale home raids or fugitive operations—during which officers are not required to plan ahead to ensure appropriate placements for children.[13] In 2007, ICE issued time-of-apprehension guidance for officers who encounter children in the course of small-scale enforcement operations. However, the guidance was generally viewed by immigrants' rights advocates as deficient for prioritizing placement of a child with a local child welfare or law enforcement agency, rather than permitting the parent to determine appropriate placement. The guidelines were also not implemented consistently in the field. Moreover, while DHS has given more attention to humane policies in this area, it is still not clear whether this policy has been retracted or replaced with clear guidance.[14]

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[11] Butera, E. & Cervantes, W. (2013). Family Unity in the Face of Immigration Enforcement: Past, Present, and Future, pp. 11-21. In Phillips, S.D., Cervantes, W., Lincroft, D., Dettlaff, A.J., & Bruce, L. (Eds.). *Children in Harm's Way: Criminal Justice, Immigration Enforcement, and Child Welfare*. Retrieved from http://firstfocus.org/resources/report/children-in-harms-way-criminal-justice-immigration-enforcement-and-child-welfare/.

[12] U.S. Immigration and Customs Enforcement. (2007). Guidelines for Identifying Humanitarian Concerns Among Administrative Arrestees When Conducting Worksite Enforcement Operations. Retrieved from http://www.nilc.org/document.html?id=364.

[13] Butera, E. (2010, December 7). Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention, p. 7. Retrieved from http://womensrefugeecommission.org/component/docman/doc_download/667-torn-apart-by-immigration-enforcement-parental-rights-and-immigration-detention.

[14] U.S. Immigration and Customs Enforcement. (2007, August 24). Juveniles Encountered During Fugitive Operations. Retrieved from http://www.ice.gov/doclib/foia/dro_policy_memos/juvenilesencounteredduringfugitiveoperations.pdf. *See also* Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention. (The Women's Refugee Commission met with the ICE Office of Policy in 2010, during which time the Director informed participants that the agency was reviewing the policy, but did not clarify whether the 2007 policy remained in effect during the review period.).

Albuquerque home raid

> *In February 2010, during a fugitive operations team home raid in Albuquerque, New Mexico, ICE detained two undocumented Guatemalan parents of a three-year-old U.S. citizen child. ICE turned the child over to CPS, and immediately transferred his parents to a detention center in El Paso, Texas to await their deportation. Prior to taking custody of the child, the CPS caseworker inquired with ICE whether the child could be placed with a relative instead and was told that a new national protocol required ICE to hand over U.S. citizen children to CPS when detaining their parents. CPS agencies in New Mexico had never been informed of this policy, leaving caseworkers scurrying to learn how to navigate the immigration system to find a way for the child to be reunited with his parents. The child spent several days in foster care with a family he did not know and that did not speak his language, despite the fact that his parents had requested that he be placed with an aunt who lived in the area. Only when the Guatemalan Consulate began advocating for the family's reunification did ICE officers arrange for the child to be reunited with his parents at the airport when they were being deported.*[15]

C. The enhanced role of local law enforcement in immigration enforcement

U.S. immigration law is federal law, enforced at the federal level. However, in recent years, state and local law enforcement have become increasingly involved in federal immigration law enforcement. On the one hand, some states such as Arizona and Georgia, among others, have instituted state laws that discriminate based on immigration status. At the same time, federal legislation has come to increasingly rely on state and local law enforcement to support the implementation of immigration law. State and local agencies now play a key role in identifying immigration violators and routing them into the federal system for deportation. Since 2007, two federal-state partnership programs that are classified as ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ICE ACCESS) have chiefly been responsible for authorizing local involvement in immigration enforcement. The 287(g) jail program gives local law enforcement officials more authority than ever before to check the immigration records of individuals apprehended for violations of state law.[16]

Likewise, state law jurisdictions that participated in the Secure Communities Program gave the Federal Bureau of Investigation (FBI) permission to send all fingerprints ordinarily checked against federal criminal databases to ICE for checks against its immigration database.[17] Under both programs, ICE can request that the person be held in local custody until ICE can take the individual into custody to initiate removal proceedings. The REAL ID Act of 2005 made it nearly impossible

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[15] Santa Fe, New Mexico CPS, Interview, February 2010.

[16] Philips, S. D., Introduction: Children in Harm's Way, p. 5. *See also* Dettlaff, A. J. & Lincroft, Y. (2013). Unanswered Questions about Immigration Enforcement and Children's Well-being. In Phillips, S. D., Cervantes, W., Lincroft, D., Dettlaff, A. J., & Bruce, L. (Eds.). *Children in Harm's Way: Criminal Justice, Immigration Enforcement, and Child Welfare*, pp. 66-70. Retrieved from http://firstfocus.org/resources/report/children-in-harms-way-criminal-justice-immigration-enforcement-and-child-welfare/.

[17] Dettlaff, A. J., & Lincroft, Y., Unanswered Questions about Immigration Enforcement and Children's Well-Being, p. 66.

for any immigrant without a green card to obtain a state-issued driver's license or "valid government ID" absent a state law authorizing such identification. Without the possibility of acquiring a valid ID and driver's license, undocumented individuals are at increased risk of being arrested by local law enforcement officials for driving without a license, then channeled into immigration custody.[18] The new Priority Enforcement Program (PEP) announced by the Administration as part of its executive action in November 2014 intends to eliminate Secure Communities. PEP instructs ICE to prioritize enforcement of immigrants in local law enforcement custody only when there is already a conviction in certain categories of crimes, or when ICE deems an individual to pose a threat to national security.[19] Many questions remain, however, on the new PEP and how it will be implemented and monitored.

The rationale for increasing the scope of immigration enforcement to include local agencies was to apprehend and deport fugitives, recent entrants, and individuals who have committed serious criminal offenses. However, the data shows that disproportionate numbers of undocumented individuals who have only minor criminal convictions and are neither a threat to national security nor to public safety fall into this net. ICE removal data shows that only about 39 percent of the individuals removed from the United States in 2011 had been convicted of a non-immigration criminal offense, whereas 10 percent had been convicted of a criminalized immigration offense such unauthorized re-entry. The remaining majority of 52 percent had no criminal conviction whatsoever, but were removed for violation of civil immigration rules, such as visa overstays or unauthorized entry.[20]

Further examination of those removed for non-immigration criminal convictions, the category of individuals that the new policies were intended to target, reveals that only about 20 percent of removed individuals had actually committed what most would consider a serious criminal offense representing a danger to society. In fact, the largest category, representing the number convicted of a dangerous drug offense, was virtually equal to the number convicted of a traffic offense.[21] This shift in immigration enforcement strategy to include working with enhanced cooperation with local enforcement agencies in the interior of the country has resulted in the detention and removal of more immigrants who have lived in the United States for many years, many of whom have established ties to the community and are raising U.S. citizen children. According to a 2011 study conducted by the University of California, Berkeley School of Law, 37 percent of individuals arrested through Secure Communities reported having a U.S. citizen child, and 83 percent of arrested individuals were ultimately placed in immigration detention.[22]

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[18] National Immigration Law Center. (2008, February). Questions and Answers about Driver's Licenses Now That Final REAL ID Regulations Have Been Issued. Retrieved from http://www.nilc.org/document.html?id-882.

[19] Department of Homeland Security Memorandum: "Secure Communities." November 20 2014. http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf

[20] Family Unity in the Face of Immigration Enforcement: Past, Present, and Future, p. 14; Phillips, S. D., Introduction: Children in Harm's Way, p. 7.

[21] Philips, S. D., Introduction: Children in Harm's Way, pp. 7-8. (For FY 2011, Removals of Non-immigration Criminal Offenders: Dangerous drug offenses, 11%; Criminal traffic offenses, 11%, Other criminal convictions – believed to represent primarily misdemeanor offenses, 7%; Assault, 3%; Larceny, 2%; Fraudulent Activities, 1%; Burglary, 1%, Family Offenses, 1%; Sexual Assault, 1%.).

[22] Kohli, A., Markowitz, P., & Chavez, L. (2011, October). Secure Communities by the Numbers: An analysis of Demographics and Due Process, pp. 5, 7. Retrieved from https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

The interactions of local law enforcement officers with immigrants suspected of having committed an immigration violation are problematic for several reasons. Such partnerships increase the risk for racial profiling and undermine the trust between immigrant communities and local law enforcement agencies to preserve community safety. Furthermore, local law enforcement agencies are not subject to the guidelines that govern how federal enforcement agents must handle cases in which the well-being of children is implicated. Neither do there appear to be any Memoranda of Understanding between ICE and local law enforcement requiring the identification of humanitarian concerns at the time of apprehension. For example, the workplace raid humanitarian guidelines referenced earlier do not apply to local law enforcement actions even when the targeted immigrant is a primary caregiver. Also, when local or state police apprehend an undocumented individual for a suspected immigration violation, local policies often do not mandate a phone call like they do for individuals facing criminal charges, making it extremely difficult for detainees to make childcare arrangements for children. It is only until she is booked into a local jail that an immigration detainee is given a phone call, which may be hours later and may result in children being stranded at school or left in precarious situations. Also, if an individual is transferred to federal immigration custody, she may be relocated hundreds of miles away without the right to a phone call to make child care arrangements beforehand.[23]

Children left stranded in Georgia

> *A public school educator was on her way home and passed eight students who had been dropped off from school. The children were standing in front of their home crying. Their parents were missing and they had no idea where they were. The educator called the principal who said that there was nothing they could do and that the school's responsibility was over once school was over. The teacher remained with the children for another thirty minutes until the children's uncle arrived. He told them that their parents had been taken away and brought the children to stay with relatives.*[24]

In a policy memorandum issued in March 2011, ICE Director John Morton identified federal immigration enforcement priorities as national security, border security, public safety, and the integrity of the immigration system. Director Morton clarified that because ICE has limited resources with which to initiate proceedings, and could not possibly remove all of the millions of undocumented individuals living in the United States, federal enforcement officers must ensure that the individuals who are removed fall into one of these four priority categories.[25] In a follow-up memo issued in June 2011, ICE employees were instructed to use discretion in deciding whether and to what extent to enforce the law against individuals who could be removed from the country, and were encouraged to make key decisions about apprehension, detention, bond, prosecution, and removal as early as possible in the process. The memo outlined a variety of factors to consider in

[23] Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention, pp. 7-8.
[24] Shore, E. S. (2010, June 22). Sapelo Foundation White Paper: Immigration Enforcement and Its Impact on Latino Children in the State of Georgia, pp. 17-18. Retrieved from http://sapelofoundation.org/downloads/whitepapers/immigration2.pdf.
[25] Morton, J. (2011, March 2). Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens. Retrieved from http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf.

exercising discretion, including the length of time the individual had been in the United States, and ties and contributions to the community. ICE officers were also explicitly instructed to take into consideration whether the individual is a spouse, parent, or child of a U.S. citizen or permanent resident; whether she is a primary caretaker of a minor child; whether the individual or spouse is pregnant or nursing; and any other compelling family relationship factors.[26]

A new November 2014 DHS memorandum on enforcement priorities clarified enforcement priorities agency-wide, and included that "absent extraordinary circumstances" ICE should not detain immigrants who are pregnant, nursing, or primary caretakers of children or an ill person. However, it is unclear how an individual who exhibits one or more of these vulnerabilities will be treated if he also falls into a priority enforcement category.[27] ICE has also developed a Risk Classification Assessment that is conducted on all individuals placed into detention. The assessment examines the need to detain based on a balanced consideration of flight risk, public safety, community ties, and vulnerabilities—including whether an individual is a primary caretaker of dependent children. It important to note however, that ICE officials implementing these directives and this assessment are not trained in child welfare, or in addressing best interest of the child factors. Therefore, providing them with discretion in this regard presents a structural problem in the proper exercise of discretionary authority, as seen through the continuing deportation of parents in high numbers.

Since the issuance of the Morton memos, the number of parents deported has remained consistently high. Approximately 24,000 of those removed in FY 2013 were individuals removed from the interior of the United States who had no criminal convictions whatsoever, and another approximately 37,000 had been convicted on a misdemeanor offense only.[28] It is this demographic, individuals who pose no risk to public safety but are still being removed in large numbers, that is most troubling to those who advocate for reforms addressing family separation concerns. While the Administration has publicly emphasized individuals with criminal convictions as priorities for removal, stated official priorities also include recent entrants and those with prior orders of removal. Because of these broad priorities and the failure to adequately consider children's best interest and family unity, primary caregivers or parents and guardians of U.S. citizen children who pose no risk to national security continue to make up a large percentage of removals. Families and children suffer the consequences.

[26] Morton, J. (2011, June 17). Exercising Prosecutorial Discretion Consistent with the Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens. Retrieved from http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf.

[27] Department of Homeland Security. Memorandum by Secretary Jeh Johnson. "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants." November 20, 2014. http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf

[28] U.S. Immigration and Customs Enforcement. FY 2013 ICE Immigration Removals. Retrieved from https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf.

D. New immigration consequences for non-immigration-related criminal offenses

Another factor increasing the number of deportations by the U.S. government is the growing number of non-immigration related crimes that now carry immigration consequences.[29] In 1996, with the passage of the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the U.S. Congress dramatically expanded the kinds of criminal convictions designated as "aggravated felonies" to include many non-violent and minor offenses, including non-violent theft offenses.

When an individual in removal proceedings has been convicted of an "aggravated felony," "crime involving moral turpitude," or a "drug crime," she faces a variety of immigration consequences such as deportability, mandatory detention during the pendency of proceedings, and ineligibility for humanitarian relief based on the impact of deportation on U.S. citizen children.[30] Since AEDPA and IIRIRA, increasing numbers of parents convicted of minor offenses under state law that do not subject offenders to serious criminal penalties have been removed from the United States. These changes affect not only the undocumented population, but also temporary immigrants who are lawfully in the United States on a non-immigrant visa, and even lawful permanent residents.[31]

Mandatory detention and a removal order for Sann, a refugee father of five

> *Sann Chey was granted refugee status (lawful permanent resident) in the United States in 1981 as a teenager after fleeing the genocide in Cambodia. Twenty years later, after graduating from high school, serving in the U.S. military, developing a career as an auto mechanic, and providing for a family that included five U.S. citizen children, Chey pleaded guilty to misdemeanor domestic battery following a fight with his wife about her gambling addiction. The State of California handed down a 365-day sentence, which triggered classification of his misdemeanor conviction as an "aggravated felony" under federal immigration law. After his release, a California family court awarded Chey full custody of his five children because his wife was ultimately deemed an unfit parent. Four years later, Chey lost his green card, and he filed for a replacement card. In 2009, ICE officers came to Chey's house and arrested him. Because of his "aggravated felony" conviction, he was subject to mandatory detention and was ordered removed after spending six months in immigration detention. He was able to return home temporarily only because the U.S. government has been unable to obtain the necessary travel documents from Cambodia. Chey could be deported at any moment, and he and his five children live in a constant state of uncertainty.*[32]

[29]Phillips, S.D. Introduction: Children in Harm's Way, pp. 3-11.
[30] Phillips, S.D. Introduction: Children in Harm's Way, pp. 3-11.
[31] In the Child's Best Interest?, p. 3.
[32] In the Child's Best Interest?, p. 2.

E. Limited opportunities for immigration judges to consider the best interest of children in deportation proceedings

Under current immigration law, the best interest of the child is often disregarded and children have few individual rights or benefits. Prior to the 1996 IIRIRA law, immigration judges were able to weigh harm to minor children in the same way as adult relatives, without needing to meet different guidelines for hardship. IIRIRA made hardship to children irrelevant in critical decisions in response to concerns that parents would seek relief through their U.S. born children. As a result, since 1996, immigration judges have lacked discretion to consider the potential harm to minor children when making decisions about a parent's admissibility or removal. For example, even in cases when an immigrant visa is available, a previous period of unlawful presence in the United States may prevent an individual from being able to immigrate to join a family member. A waiver can overcome these restrictions when an individual can prove "extreme hardship" to a U.S. citizen or legal permanent resident spouse or parent; however, hardship to children is not considered. Likewise, when an individual is facing removal, he or she may seek relief based on "exceptional and extremely unusual hardship" to his or her legal permanent resident or U.S. citizen spouse or parent. For the impact to a minor child to be considered, a parent must prove that the hardship suffered by the child is "substantially different or beyond" what is typical from family separation. Courts currently consider the hardship suffered by children as a "common" and "expected" result of parent-child separation, and therefore the ability to meet the "exceptional and extremely unusual" standard in such cases becomes incredibly difficult.[33] For example, the effects on the child of being left behind in the United States without a parent and potentially without appropriate care, or of being forced to leave the United States in order to be with the deported parent, are not considered. Thus, the hardship suffered by children due to separation from a parent carries little weight in immigration court, resulting in negative outcomes for child well-being. Fundamentally, the best interest of the child is not considered.

Under international law, a child's best interest is of paramount importance in legal determinations affecting the child. Article 3, paragraph 1 of the Convention on the Rights of the Child gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public or private sphere. The Committee on the Rights of the Child found that a child's best interest should be treated as a substantive right, a fundamental interpretive legal principle, and a rule of procedure.[34] Under the Committee's recommended analysis, the child should have his or her best interest assessed and taken as a primary consideration when different interests are considered in order to reach a decision on the issue at stake. Decision-making processes must include an evaluation of the possible impact, positive or negative, of the decision on children. The process should include procedural guarantees to ensure that the decision included a consideration of the child's interest.

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[33] Thronson, D. B. (2013). Immigration Enforcement and Family Courts. In Phillips, S. D., Cervantes, W., Lincroft, D., Dettlaff, A.J., & Bruce, L. (Eds.). *Children in Harm's Way: Criminal Justice, Immigration Enforcement, and Child Welfare*, p. 55. Retrieved from http://firstfocus.org/resources/report/children-in-harms-way-criminal-justice-immigration-enforcement-and-child-welfare/.

[34] U.N. Committee on the Rights of the Child (CRC), *CRC General Comment No. 14 (2013): on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1.)*, CRC/C/GC/14 (2013, May 29). Retrieved from http://www.refworld.org/docid/51a84b5e4.html.

III. Tearing families apart: the interaction between the immigration enforcement and child welfare systems

A. Lack of collaboration and communication across systems impacting children

The state-based child welfare system and the federal immigration system are guided by distinct missions and principles. Historically, the two systems have not communicated or collaborated. Therefore, when the two systems collide, conflicting interests and policies may result in adverse outcomes for children and families. When a parent is detained by immigration authorities, it can be very difficult for the parent to reunite with a child who is involved in the child welfare system. In some cases, an individual's parental rights may be inappropriately terminated and the child placed in state custody. A 2011 report by Race Forward (formerly the Applied Research Center) estimates that 5,100 children with a detained or deported parent are currently living in foster care, and projects that if deportation rates continue at current levels, 3,000 more children will enter the system every year.[35]

Letter from ten-year-old Jadon to President Obama

> *Jadon Shaikh, age 10, wrote this letter to President Obama explaining how his family was separated after his father was apprehended at home, "After my dad was taken away for a while, I thought we weren't a family anymore. I was so sad and mad I couldn't think clearly. The exact reason I was put in foster care is because my mom couldn't take care of me and my aunt, uncle, grandpa, grandma, and my Dad couldn't either. So I will always miss them. My family is very important to me and I will do anything for them because I love them and I will protect them will all my heart."*[36]

Historically, the lack of communication and coordination across both systems has had negative consequences for families. Until recently, ICE lacked a consistent policy to ensure a parent's ability to make decisions regarding his child's care and to prevent transfer outside of the home community. As a result, some children unnecessarily entered foster care or remained in care longer due to the inability to reunite with a parent in detention. The breakdown in communication across systems also often left child welfare case workers and courts unable to locate detained parents, particularly those transferred to a detention center in another state. To date, many child welfare personnel remain unaware of the tools available by ICE to help locate individuals in immigration detention.[37]

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[35] Wessler, S. F. (2011, November). Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System, p. 6. Retrieved from http://www.atlanticphilanthropies.org/sites/default/files/uploads/ARC_Report_Shattered_Families_FULL_REPORT_Nov2011Release.pdf.

[36] Letter from Jakir Shaikh to President Obama, December 2011, as part of "Wish for the Holidays" Campaign. On file with Women's Refugee Commission.

[37] Cervantes, W. (2012, December). Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught Up in the Child Welfare System, p. 6. Retrieved from http://firstfocus.org/resources/fact-sheet/falling-through-the-cracks-the-impact-of-immigration-enforcement-on-children-cau/.

Women also encounter specific issues in relation to the immigration enforcement system. Studies have found that only 13 percent of immigrant women work as professionals in the United States either because they cannot find employment or they are caretakers of children or dependents.[38] Because migrant women are often the sole caretaker of children, their detention frequently results in children being left in situations without any care of an adult, in the care of relatives, or placed in foster care with the eventual possibility of termination of parental rights. The detention of a parent can also result in extreme financial hardship for children. Children of women who are stay-at-home mothers may suffer financially when the father or male companion is detained. As mentioned above, ICE often does not take these factors into account when detaining caretaker parents or heads of households.

ICE also previously lacked policies with regards to a parents' ability to meet child welfare case plan requirements or participate in family court proceedings. When a child welfare case is opened, a plan is created that often includes requirements that a parent must meet to reunify with a child. These requirements may include parenting classes, regular visitation with the child, or substance abuse treatment, all of which are difficult requirements to meet when an individual is in detention. Detained parents have also historically been unable to participate in dependency or family court proceedings which can lead to a court making critical decisions, such as terminating parental rights, without a parent having the opportunity to provide input. Detained parents also previously lacked the opportunity or assistance necessary to make arrangements for their children at the time of removal, whether it was their decision was to take their children with them or leave them behind in the care of designated guardian.[39]

Marta loses her parental rights after detention and deportation by ICE

> *When Marta (not her real name) was apprehended in her home in front of her four children, ICE did not give her an opportunity to arrange for child care arrangements for her children. Instead, they were placed in the custody of the state, and Marta was taken in an immigration detention center, where she was held for two years while her case was being adjudicated. During that time, Marta desperately struggled to participate in the child welfare proceedings that were simultaneously happening in state court and would determine her ability to reunite with her children at the conclusion of her immigration proceedings. However, Marta was not able to arrange for her children to visit her in detention, and could not meet in person with her own attorney or the child welfare worker assigned to her children's case, and was never able to attend a single custody hearing. The most she could do was arrange for a handful of phone calls. While the custody case was still pending, Marta was deported to Mexico without her children. From Mexico, she tried to participate meaningfully in the case but was unable to*

[38] New American Media. (2009, February). Women Immigrants: Stewards of the 21st Century Family, p. 17. Retrieved from http://media.namx.org/images/communications/immwomenexecsummary.pdf.
[39] Falling Through the Cracks, p. 7.

> *communicate effectively with the court from abroad. Ultimately, the family court terminated her parental rights for all four of her children.*[40]

In addition to problematic ICE policies, there also exist barriers within the child welfare system that put families impacted by immigration enforcement at risk of long-term or permanent separation. For example, the Adoption and Safe Families Act (ASFA) of 1997 creates strict timelines that require courts to file for termination of parental rights in cases when a child has been in care for 15 of the previous 22 months. These timelines may not provide sufficient time for parents who are undergoing lengthy, uncertain immigration proceedings. They also limit the ability of child welfare agencies to conduct diligent searches for detained or deported parents or other potential relative caregivers living abroad.[41] While current law allows for state agencies to delay filing for termination of parental rights in cases where there is a "compelling reason" to do so, the detention or deportation of a parent is not necessarily considered a compelling reason in all states and localities.

Research also shows that systemic bias exists among child welfare staff and family and dependency court judges against undocumented parents or caregivers, compromising the ability of a child to reunify with a parent or be placed with a relative.[42] For example, front line staff or judges may conclude that it is not in a child's best interest to be reunited with a parent or relative who is undocumented because of assumptions regarding the individual's moral character or the assumption of imminent deportation.

Jakir faces termination of parental rights

> *Jakir's four children were placed in four different foster homes after he was detained and his wife found herself unable to support or care for them. Social Services initiated the termination of his parental rights and he was not included in any of the initial hearings, despite his desperate attempts to communicate with them and maintain custody. When he was released and when to social services to inquire about his children, he was told, "Oh, we thought that you were never getting out but getting deported so that's why we didn't include you in the process."*[43]

There may also be concerns regarding an undocumented parent's limited access to public benefits or services, sufficient employment, or the ability to obtain a drivers license. Similarly, case workers and judges are sometimes reluctant to relocate a U.S. citizen child to another country to be placed with a parent or relative based on assumptions that it is in the child's best interest to remain in the United States.[44]

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[40] Butera, E. (2013, August 26). ICE's Parental Interests Directive: Helping Families Caught Between the Immigration and Child Welfare Systems. Retrieved from http://womensrefugeecommission.org/blog/1713-new-ice-directive-helps-families-caught-between-the-immigration-and-child-welfare-systems.
[41] ICE's Parental Interests Directive: Helping Families Caught Between the Immigration and Child Welfare Systems.
[42] Shattered Families, p. 17.
[43] Jakir, Interview with Kathryn Finley for Women's Refugee Commission, Slinger, Wisconsin, March 20, 2014.
[44] Falling Through the Cracks, p. 7.

B. Interim measures to reduce family separation and proposed legislation

As a result of ongoing efforts by immigrant and children's advocacy organizations, the Department of Homeland Security has introduced some important policies to address family unity concerns. In addition to the prosecutorial discretion memos mentioned above, the following are important advances in recent years:

- In 2010, ICE developed an Online Detainee Locator System, which allows family members, child welfare providers and other interested parties to locate immigrants in detention using either a name and birthplace, or immigration identification number. This seemingly insignificant service is critical in cases where a parent has been taken into custody and communication with children or relatives has been lost, allowing social workers to locate parents and work on case management plans.

- In 2010, in response to a Congressional directive, ICE began keeping records of whether immigrants being deported claimed to have U.S. citizen children being left behind in the United States. While not necessarily an accurate number due to reporting inconsistencies, this has been a useful statistic for policy and planning purposes.

- The 2011 Performance Based Detention Standards include provisions allowing for contact visitation with minor children, and the possibility of attending family court hearings in person if practicable.

- In 2012, ICE initiated a Risk Classification Assessment that includes primary caretakers as a vulnerable population to be considered for release or alternatives to detention.

- In August 2013, ICE released a directive entitled "Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities," which is designed to uphold the rights and responsibilities of detained parents by establishing protocols to address the placement, monitoring, accommodation, and removal of certain parents who are placed in immigration detention and removal proceedings.[45] The directive applies specifically to individuals who are: (1) primary caretakers of minor children without regard to the dependent's citizenship; (2) parents and legal guardians who have a direct interest in family court proceedings involving a child or child welfare proceedings in the United States; and (3) parents or legal guardians whose minor children are physically present in the United States and are U.S. citizens or Lawful Permanent Residents (LPRs). The directive reminds ICE employees to determine whether an individual is eligible for prosecutorial discretion under existing policy. It also creates guidelines to help prevent a parent from being transferred out of the area of family court or child welfare proceedings; facilitate a parent's ability to abide by child welfare requirements and court-ordered parent-child visitation; enable participation in family court proceedings; and make arrangements for children at the time of removal. In cases of removed parents, the directive allows ICE to consider allowing a parent back into the United States on a temporary basis for the limited purpose

[45] U.S. Immigration and Customs Enforcement. (2013, August 23).ICE Memoranda: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities. Retrieved from http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf.

> of participating in a termination of parental rights hearing.[46] The directive also designates a point of contact in each ICE field office to deal with parental interests issues, and states that ICE will collaborate with the U.S. Department of Health and Human Services' Administration for Children and Families to develop methods for improving cooperation and communication between the two systems.

While immigrants' rights advocates consider these actions to be important steps toward maintaining family integrity when immigration enforcement impacts the child welfare process, these steps do not create any new rights for immigrant parents and caregivers. Moreover, their effectiveness in preventing family separation remains to be seen. The policies and standards outlined above are self-determined by ICE and are not binding or enforceable as law. This means that they can be changed without need for Congressional action, and no legal consequences flow from ICE's failure to follow the procedures.

In March 2014, President Obama announced in meeting with Hispanic legislators that he ordered a review of deportation policy with the intention of crafting enforcement practices that are more humane and minimize family separation.[47] On June 30, 2014, when it was clear that the House of Representatives was not going to advance an immigration reform bill, the President announced his plans to consider broad administrative reforms to the immigration system by the end of the summer.[48] In November 2014, as described in greater detail in the Preface to this chapter, President Obama announced several components of an executive action that will provide temporary relief to undocumented immigrants who arrived in the United States before the age of 16, as well as to immigrants who are parents of a U.S. citizen or legal permanent resident child. However, the precise contours of this program and the course of its implementation remain unknown as of time of this writing.

In addition to policy changes related to immigration enforcement at the federal level, both state and federal legislation have been introduced that would address systemic challenges facing detained and deported parents with children in foster care. The first bill to be implemented into law is the California Reuniting Immigrant Families Act (SB1064). The bill, signed into law in September 2012, authorizes California child welfare courts to provide an extension in the family reunification period in cases of detained or deported parents. The bill also ensures that immigration status alone does not disqualify parents or relatives from being a potential placement, and allows foreign documents, such as passports, to be used for background checks. SB1064 also requires the California Department of Social Services to provide guidance to agencies on how to screen children and parents for immigration relief options and how to establish memoranda of

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[46] ICE Memoranda: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities.
[47] Shear, M. D. (2014, March 13). Obama, Citing a Concern for Families, Orders a Review of Deportations. *New York Times*. Retrieved from http://www.nytimes.com/2014/03/14/us/obama-orders-review-of-deportations.html?_r=1.
[48] Hirshfield Davis, J., & Preston, J. (2014, June 30). Obama Says He'll Order Action to Aid Immigrants. *New York Times*. Retrieved from http://www.nytimes.com/2014/07/01/us/obama-to-use-executive-action-to-bolster-border-enforcement.html.

understanding (MOUs) with foreign consulates to facilitate parent-child reunification in cases where parents are detained, deported, or living abroad.[49]

IV. Institutional challenges to transnational family reunification

Traditionally, one of the biggest obstacles to family reunification after the deportation of a parent was that it was virtually impossible for a parent to re-enter the United States, even on a temporary basis,[50] to participate in ongoing child welfare proceedings.[51] In addition, reunification plans regularly include requirements that are impossible to satisfy from abroad. With no parent present at custody proceedings and no way for a parent to satisfy reunification plans or demonstrate their willingness to provide for their children abroad, family courts routinely terminate parental rights.

Irma loses her infant son in a closed adoption after being deported

> *Irma was separated from her two month old baby when she was arrested in the US and deported to Mexico in 2011. Because she was unable to participate in family court proceedings from Mexico, her parental rights were terminated and her son was given up for adoption. During the closed adoption, her son's name was changed. Irma has placed her name on the state adoption registry, but her only chance of ever contacting her son again is if he independently chooses to inquire with the state about the identity of his biological parents at age 18.*[52]

Parents face a variety of challenges when trying to communicate with the U.S. child welfare system from abroad, such as: difficulty contacting the social worker assigned the case; inability to establish living arrangements and employment in the country of origin within a short period of time and to the satisfaction of the family court judge; lack of legal representation; and the family court's lack of understanding of the reasonableness of the reunification plan in the context of a given country of origin. One of the most prohibitive factors is the difficulty many deported parents face in complying with the reunification plan established by the family courts from abroad. This is a major barrier even in the case of fit parents who are willing and able to adequately provide for

[49] Lincroft, Y. (2013, May). 'The Reuniting Immigrant Families Act': A Case Study on California's Senate Bill 1064, p. 2. Retrieved from http://childwelfaresparc.files.wordpress.com/2013/05/reuniting-immigrant-families-act-brief.pdf.

[50] Individuals could and still can apply for humanitarian parole to enter the United States for a specific reason even if otherwise barred, but very few deported parents qualify or are even aware that this is the case, are often unable to access the consulate to submit an application, and we most often denied this benefit when requesting to attend custody hearings.

[51] Kline, V., & Instituto para las Mujeres en la Migración, AC. (2013, October). Where Do We Go From Here? Challenges facing transnational migrant families between the US and Mexico, pp. 17, 33. Retrieved from http://uf.imumi.org/recursos/where_challenges.pdf (hereinafter "Where Do We Go From Here?"). (Under current U.S. immigration law, an undocumented parent of a US citizen child is ineligible to gain legal status from that child until he or she is 21 years old. A parent might also be eligible to gain legal status through marriage to a U.S. citizen, but is likely barred from re-entry to the country for a period of 3 or 10 years depending on how long the undocumented individual had been living illegally in the United Status. In this case, a "Stateside Waiver" may sometimes be available that allows an eligible individual to be paroled back into the country for humanitarian reasons. While hardship to a U.S. citizen parent or spouse is a weighted factor in the waiver process, the law prohibits hardship to a U.S. citizen child from being considered.).

[52] Where Do We Go From Here?, p. 9.

their children in the country of origin. Generally speaking, reunification plans are created under the assumption that a child is in state custody due to abandonment, abuse, or neglect; however, in separation resulting from immigration enforcement there often is no history of mistreatment of the child. Standards policies and procedures for reunification do not generally consider unintentional separation not involving abuse or neglect. Because of this, a standard reunification plan requires a home study, psychological evaluation and/or therapy, parenting classes, drug and/or alcohol testing, and evidence of an established living environment and stable employment before the child is allowed to reunite with the parent. The courts also require that the level of service utilized by the parent abroad—psychological counseling, for example—be similar in quality and scope to services available in the United States, even when similar services simply do not exist in the country.[53] If the court finds that the parent has failed to satisfactorily complete the reunification plan within the given time frame, the judge will deem the parent unfit and terminate parental rights.

According to IMUMI, an NGO that advocates for migrant rights in Mexico, the availability of psychological counseling, parenting classes, anger management classes, and drug and alcohol testing in Mexico varies widely depending on the municipality, and may require the parent to travel 8-10 hours by bus to reach the nearest service center. If the municipality does not provide the required service, the parent may hire a private therapist but usually at great cost. Similarly, the scope of the home study required by CPS offices often exceeds that of the home study that the Agency for Integral Development of the Family (*Sistema de Desarrollo Integral de la Familia* or DIF), Mexico's child welfare and family services agency, is able to provide. For example, a CPS home study generally requires an evaluation of the parenting style, social environment, and the prior family history of involvement in the child's life; whereas a DIF home study often focuses on the parent's financial status and the family's overall economic situation. In rural areas such as Oaxaca, Guerrero, and Chiapas, an on-site home study can prove difficult logistically because DIF workers must travel several hours by bus or foot to reach these remote regions.[54] Finally, some home studies simply fail to meet U.S. standards due to basic cultural differences such as the number of extended family members living in the same home or the age at which a family deems it appropriate to leave children unsupervised in the home.[55]

As previously mentioned, some caseworkers and judges have been reluctant to relocate a U.S. citizen child to another country, even to reunify with a parent or relative.[56] In such cases, courts often find that it is in the best interest of the child to remain in the United States because of a higher standard of living, and fail to properly consider the effect of living without parents.[57]

[53] Where Do We Go From Here?, pp. 43-45. For a discussion of challenges that families may face as a result of poverty, violence, or instability in their home country—the same factors that in many cases drive migration in the first place—see chapters 2-7 on Honduras, El Salvador, Guatemala, and Mexico. Family reunification decisions must, of course, be made case-by-case, based on the best interests of the child.

[54] Where Do We Go From Here?, pp. 43-45. In these same regions, families may face widespread poverty, violence, or instability—the same factors that in many cases drive migration in the first place; however, decisions regarding family reunification must be made case-by-case. For more detail on causes of migration, see chapter 6 on Southern Mexico.

[55] Where Do We Go From Here?, p. 44.

[56] Falling Through the Cracks, p. 7.

[57] Where Do We Go From Here?, p. 32.

As noted above and emphasized throughout this book, international legal standards suggest that the best interest of the child should be considered in judicial proceedings regarding care and custody of the child. The Convention on the Rights of the Child also recognizes the family as the "natural environment for the growth and well-being of a child" and states the importance of keeping children with their parents and reunifying children with family when it is in the child's best interest."[58] The U.S. child welfare system is also guided by similar principles that promote family integrity, including reunification of children with parents and/or placing children in kinship care whenever possible.[59] Yet, as was mentioned previously, limited knowledge among child welfare personnel regarding the immigration enforcement system and assumptions about what it means to undocumented often impede family reunification, preventing placement with parents or caregivers who are undocumented or in removal proceedings, or who are located abroad.

With so few legal avenues for reunification, many deported parents attempt to return to the United States without authorization in order to see their children. According to a study conducted by the Kino Border Initiative, 27 percent of the women interviewed after attempting to cross the border reported reunification with their minor children as the main factor motivating return to the United States.[60] A similar study conducted by No More Deaths revealed 46.6 percent of individuals interviewed in CBP custody reported that all of their children in the United States were U.S. citizens. The detainees who named family reunification as their primary reason for crossing the border were also more likely to report that they were trying to reach children under the age of 5 and that their family was dependent on their income.[61] The majority of these parents admitted that they saw illegal entry as the only way to see their family again and no amount of personal risk or inhumane treatment effectively deter them. [62]

Following the release of the Parental Interest Directive, ICE now seeks to improve reunification outcomes by allowing parents to petition for temporary lawful entry into the country for the limited circumstance of participating in a termination of parental rights hearing. While this is certainly a move in the right direction, the Parental Interest Directive does not permit parents to re-enter the United States for the purpose of participating in any other sort of custody hearing, or in order to

[58] Convention on the Rights of the Child (CRC) Preamble, art. 9, art 10, 1989, November 20, 1577 U.N.T.S. 3. Retrieved from http://www.refworld.org/docid/3ae6b38f0.html.

[59] Child Welfare Information Gateway, U.S. Department of Health & Human Services. (2013, July). Placement of Children with Relatives, p.70. Retrieved from https://www.childwelfare.gov/systemwide/laws_policies/statutes/placement.cfm; Child Welfare Information Gateway, U.S. Department of Health & Human Services. (2011, June). Family Reunification: What the Research Shows, pp. 1-2. Retrieved from https://www.childwelfare.gov/pubs/issue_briefs/family_reunification/family_reunification.pdf.

[60] Where Do We Go From Here?, pp. 17, 57.

[61] No More Deaths / No Mas Múertes. (2011). A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody, p. 6. Retrieved from http://forms.nomoredeaths.org/abuse-documentation/a-culture-of-cruelty/.

[62] Declaration on the Right to Development, A/RES/41/128 (1986, December 4). Retrieved from http://www.refworld.org/docid/3b00f22544.html. Under the Declaration on the Right to Development (1986), the right to pursue development suggests that the well-being of migrants should be taken into account under U.S. law. The Declaration on the Right to Development, Article 1, ¶ 1 proclaims that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The rights of migrants to pursue family unity or to contribute to their family's economic well-being is not recognized in U.S. immigration law outside of the limited family immigration system as described above.

meet the conditions of an existing reunification plan that might involve contact visits. Humanitarian parole is also unavailable to certain parents with criminal history, even if they are at risk of losing parental rights. As of the writing of this chapter, several months after the issuance of the Directive, ICE has received only ten requests for temporary humanitarian parole for the purpose of attending a child welfare proceeding, raising concerns that parents are not being adequately informed about the opportunity.[63]

Even in the absence of the risk of legal separation due to the involvement of a family court, many deported parents find it difficult to arrange for their U.S. citizen children to join them in the country of origin due to a lack of travel documents or due to restrictive regulations in the home country regarding non-citizen children's access to school, health care, and other services. In many cases U.S. citizen children may be entitled to the citizenship of their parents, but may have difficulty in obtaining the proper paperwork due to obstacles in accessing birth records or other documentation bearing proper seals or "apostilles." The de-centralized U.S. child welfare, birth records, and school documentation systems make it very difficult to obtain the "standard" forms acceptable to foreign governments. The process is further complicated because foreign consulates in the Unites States representing the deported parent are often unable to gain access to a U.S. citizen child in state custody or foster care, because they do not have jurisdiction unless the child is a citizen of their country.[64]

It is important to note that several state and local child welfare agencies already have policies in place that help in the reunification of children with parents who have been deported or who otherwise live abroad. For example, local child welfare agencies such as those in California, Washington, New Mexico, and others, already have established MOUs with their Mexican consulates. These MOUs typically specify the roles and responsibilities of the county or state child welfare agency and the consulate when foreign children are placed in out-of-home care, and the ways in which the respective entities agree to collaborate to ensure the best interests of children. MOUs may also specify the role of the foreign child welfare agency (e.g., DIF in Mexico) in collaborating with the consulate and child welfare agency. MOUs often address consular notification required by the Vienna Convention on Consular Relations, and other procedures for communicating and collaborating with the consulate. Additional family reunification provisions that may be addressed in MOUs include attendance at court hearings, appointment of counsel, exchange of information, and location of and placement with relatives in the foreign country.[65]

[63] WRC Correspondence with ICE Office of Enforcement and Removal Operations, March 27, 2014.
[64] The Vienna Convention notification requirements apply only to nationals of the requesting country and do not extend to their children. *See* Vienna Convention on Consular Relations art. 5(h), 1963, April 24, 596 U.N.T.S. 261.
[65] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Office of Human Services Policy. (2013, December). U.S. Department of Health and Human Services Issue Brief: Emerging Child Welfare Practice Regarding Immigrant Children in Foster Care: Collaborations with Foreign Consulates, p. 1-2. Retrieved from http://aspe.hhs.gov/hsp/14/MOUsWithConsulates/ib_MOUsWithConsulates.pdf.

V. The consequences of family separation: the impact on the left-behind child

Research has consistently documented the negative effect of a parent's detention or deportation on the well-being of children.[66] Separation leads to the disruption of bonds between children and parents, the separation of other family members and siblings, alienation of the child from peers, and economic instability within the home. Most troubling are the reports of the emotional toll that separation takes on children, which reveal how some children become fearful, anxious, withdrawn, socially isolated, and disruptive as a direct result of separation. All of these factors can have a significant impact on a child's overall health and ability to do well in school. In cases when a parent is deported, very difficult decisions must be made regarding whether to take children out of the United States or leave them behind in the care of family members or friends. In both cases, a child must face significant challenges of either adjusting to a new country or adjusting to life without a parent.

A. Economic security

In families for which immigration enforcement results in job loss because a working parent was detained, deported, or released on the condition that they would not work illegally, economic hardship is an inevitable result. In a study of the consequences of immigration enforcement on family stability and child well-being conducted by the Urban Institute, researchers found that across their entire sample of immigrant parents who had experienced temporary to long-term family separation, average household incomes after apprehension fell by at least half.[67] A recent study by Human Impact Partners (HIP) reveals that the average annual income for a mixed-status household in the United States is approximately $36,000, which means that the loss of a parental income due to detention or deportation likely results in a drop in household income to an estimated $15,400, putting the family below the poverty line.[68] Another study by the Center for American Progress also reveals that the high number of fathers being deported has resulted in an increase in single-mother households, many of which may not have access to secure jobs, child care assistance, or public benefits due to the mother's immigration status.[69]

"No child or family should suffer like we did"

> *Charlie, age 11, wrote this letter to Congress as part of We Belong Together's Wish for the Holidays campaign: "I'm writing to tell you my worst nightmare became real. Last year our dad was taken away from us to and was sent to Mexico. We fought really hard to get him out of jail. I went to church and prayed. We did protests, vigils, wrote letters, petitions, and I behaved well in school. But*

[66] Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families, p. ii.
[67] Chaudry, A., Capps, R., Pedroza, J. M., Castañeda, R. M., Santos, R., & Scott, M. M. (2010, February) Facing Our Future: Children in the Aftermath of Immigration Enforcement, pp. 27-36. Retrieved from http://www.urban.org/publications/412020.html.
[68] Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families, p. 31.
[69] Dreby, J. (2012, August). How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground, pp. 12-15. Retrieved from http://cdn.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamiliesFINAL.pdf.

> *immigration did not listen. They don't care about us. I even thought about harming myself because it is sad when bad things happen to good people, and because I love my dad very much... It's been really hard on me and my brother and my mom. I love my mom too, and she keeps us safe, but it's really hard for her, too. Every time I hear her crying, I feel sad. She cries because she misses him.... It is a horrible feeling. It is like when someone you care about dies. It is sad because you will never see them again. I don't know how long I'm going to have to wait to see my dad back. No [child] or family should suffer like we did."*[70]

Beyond the loss of income, many families find themselves in even more precarious situations due to the legal expenses required to fight deportation in immigration court or the Courts of Appeals. Declines in income also lead to housing instability, with many families in the Urban Institute study reporting that crowded housing conditions worsened because they were forced to move in with relatives to save money. Many children ended up moving frequently and suddenly during the course of the immigration proceedings, which can have a debilitating effect on a wide variety of development metrics. Half of the respondents who had previously owned homes lost the property as a result of income loss. Declines in income also lead to drastic levels of food hardship, reported at levels significantly higher than the national average. The majority of parents reported difficulty in paying for food following interaction with the immigration enforcement system and admitted resorting to offering their children smaller meals with less variety due to financial strain.[71]

B. Psychological well-being and physical health

In both the short- and long-term period following an immigration enforcement action, children suffer significant psychological trauma. In the short-term (six months or less following initial apprehension), two-thirds of children studied by the Urban Institute experienced behavioral changes, such as frequent crying, increased anxiety, and changes in eating and sleeping habits. Adverse behavioral effects were most pronounced for children who had actually witnessed a parent being taken away and children who experienced long-term separation as a result of immigration enforcement. Although some children began to recover emotionally in the longer-term, the overall incidence of behavioral changes remained at 40 percent even six months after initial apprehension and beyond.[72]

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[70] We Belong Together. December 9 Wish for the Holidays Letter Delivery, Retrieved from http://www.webelongtogether.org/events/december-9-wish-holidays-letter-delivery. To see a video of Charlie reading his letter, *see* National Domestic Workers Alliance [domesticworkers]. (2013, December 11). Charlie H., Homestead, FL – no family should have to suffer like this! [Video file]. Retrieved from https://www.youtube.com/watch?v=9qtRePD57Ws&feature=youtu.be.

[71] Facing Our Future, Children in the Aftermath of Immigration Enforcement, pp. 27-36.

[72] Facing Our Future, Children in the Aftermath of Immigration Enforcement, pp. 41-53.

Eleven-year-old Jamie suffers from depression as his mother's apprehension

> *Even though Jamie's mother was allowed to stay at home during the pendency of her removal proceeding, the 11-year-old U.S. citizen says, "I got depressed." Every time her mother left the apartment, even for a short time, Jamie "felt cold, nervous, and would start crying" because she could not help but imagine what life would be like if her mother never came back.*[73]

Even if children living in mixed status families have not yet experienced the trauma of separation, they are often acutely aware of the reality that their parents might be taken away at any moment. In a focus group of undocumented parents, the HIP study documents that nearly 30 percent of parents reported that their children were afraid either all or most of the time, and nearly 75 percent of parents reported that a child had demonstrated symptoms of post-traumatic stress disorder.[74] In another study, one 12-year old daughter of an undocumented Mexican immigrant responded that she was afraid that "maybe one day, they take her [Mom] . . . .Just leave us all by [ourselves]." Another could not even conceive of a scenario in which his family would remain together if the undocumented members of his family were deported. When asked about the probable fate of his 8-year-old brother, the only U.S. citizen in his family, the boy replied, "He'll just have to take care of himself. Maybe they'll adopt him."[75]

C. Educational outcomes

In the short run, many children studied by the Urban Institute suffered an initial disruption in schooling immediately after apprehension or even considered dropping out.[76] Following the arrest of a parent, one out of five children reported that their grades dropped.

Daniel, a former honor student, suffers lower grades at school

> *When Daniel had to change schools after his LPR mother was arrested and held in long term detention, his grades dropped. He had previously been an honor student in the Gifted and Talented Program (GATE) in a school in California, but at his new school he says "I didn't concentrate as much because I was in a place I didn't recognize." Usually an outgoing student, Daniel also became withdrawn at his new school and rarely socialized with his peers.*[77]

The decline in school performance is not only psychological in nature or exacerbated in some cases by the need to change schools unexpectedly, but also can be the direct result of the sudden absence of the parent or caregiver, i.e., the person who helped a child with homework, read to the child at

[73] In the Child's Best Interest?, p.8.
[74] Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families, pp. 6-8.
[75] How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground, pp. 10, 12.
[76] Facing Our Future, Children in the Aftermath of Immigration Enforcement, pp. 49-52; In the Child's Best Interest?, p. 9.
[77] In the Child's Best Interest?, p. 9.

night, took the child to school, and was generally invested in her academic success.[78] The HIP study also documents that other factors related to a parent's detention or deportation, such as housing instability, food insecurity, and psychological stress, are all closely tied to a student's overall academic performance and can lead to a child ultimately completing fewer years of school. However, the Urban Institute did find that when the school was able to provide traumatized children a measure of stability and normalcy, overall psychological and academic outcomes markedly improved.[79]

VI. Family separation due to immigration enforcement can amount to a violation of the rights of a child under international law

While a basis for legally challenging family separation due to the implementation of immigration law has yet to be identified under domestic law, enforcement practices that result in family separation may amount to a violation of family and/or children's rights under international law.[80] Unlike U.S. law, international human rights law recognizes due process rights of all children and parents in order to protect family unity and prohibits arbitrary family separation regardless of immigration status. Particularly in recent decades, these protections have been explicitly articulated in a variety of international human rights treaties, declarations, and jurisprudence.[81] Many of the human rights treaties to which the United States is a signatory explicitly recognize the obligation of States to afford special protection to the most vulnerable populations, including children.[82] Even in cases where the United States has not ratified the instrument, it has an obligation to refrain from taking actions that defeat the object and purpose of the treaty.[83] These rights, and the necessity of a comprehensive regional framework on migration to address them, are also discussed in detail in Chapter 13.

The Universal Declaration of Human Rights (UDHR) recognizes a right to family as a fundamental human right. Article 16 of the UDHR states that "[t]he family is the natural and fundamental group

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[78] In the Child's Best Interest?, p. 9.
[79] Facing Our Future, Children in the Aftermath of Immigration Enforcement, pp.49-53.
[80] In the Child's Best Interest?, p.6.
[81] Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention, pp. 24-26.
[82] In the Child's Best Interest?, p. 6 (Referencing the International Covenant on Civil and Political Rights art. 24, 1966, December 16, 999 U.N.T.S. 171. Retrieved from https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf. (Every child has "the right to such measures of protection as are required by his status as a minor."); UN Human Rights Committee, CCPR General Comment No. 17: Article 21, ¶ 1 (Rights of the Child), 1989, April 7. Retrieved from http://www.refworld.org/docid/45139b464.html. (States must adopt "special measures to protect children" to ensure that they enjoy all of the rights provided in the Covenant.); Convention on the Rights of the Child (CRC), 1989, November 20, 1577 U.N.T.S. 3. Retrieved from http://www.refworld.org/docid/3ae6b38f0.html.); *See also* Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention, Appendix C, p. 24 (also referencing the Riyadh Guidelines, Principle 12, A/Res/45/112 of 14 December 1990. Retrieved from http://www.un.org/documents/ga/res/45/a45r112.htm; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 44, U.N. Doc A/45/158. 1990, December 18. Retrieved from http://www.un.org/documents/ga/res/45/a45r158.htm; American Convention on Human Rights art. 17, "Pact of Jan Jose, Costa Rica," November 22, 1969. Retrieved from http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm; and the American Declaration of the Rights and Duties of Man arts. V, VII, VII. Retrieved from https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm.).
[83] Vienna Convention on the Law of Treaties Part II, § 1, art. 18, 1969, May 23, 1155 U.N.T.S. 331. Retrieved from http://www.refworld.org/docid/3ae6b3a10.html.

unit of society and is entitled to protection by society and the State."[84] The Convention of the Rights of the Child (CRC), the principal international human rights treaty that outlines the protections to which children are entitled, demands that States "respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community."[85] The International Covenant on Civil and Political Rights (ICCPR) states that the family is "entitled to protection by society and the State." The U.N. Human Rights Committee has commented that this protection includes the obligation of States to take appropriate measure "to ensure the unity or reunification of families" and more specifically, requires that States refrain from deportation of a parent if such a separation would "arbitrarily interfere" with the right to family.[86] While the Committee has held that the presence of a citizen child does not per se classify the deportation as an "arbitrary interference," in cases where substantial factors exist that increase the potential that removal will result in hardship, the State must present additional factors to justify deportation and avoid a classification as arbitrary.[87] Experts predict that the prohibition against arbitrary family separation will soon become a fundamental norm (*jus cogens*) in international law from which the United States will not be permitted to derogate under any circumstance.[88]

As emphasized and articulated throughout this book, the Convention of the Rights of the Child clearly articulates that with respect to all court proceedings, "the best interest of the child shall be a primary consideration" and that "[a] child shall not be separated from his or her parents against their will, expect when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child."[89] The best interest of the child doctrine includes a presumption of family unity and the right of children to know and preserve their familial identity absent compelling evidence to the contrary.[90] In some cases, the United States courts recognize and apply this principle, notably in the context of child custody determinations where the immigration status of the parents is not a factor. Although unification of mixed-status families was originally identified as a priority when the INA was originally enacted in 1952, and the 1981 Select Commission on Immigration and Immigration Refugee Policy has described a humane reunification policy as having the potential to serve the national interest through the promotion of public order and the health and welfare of the United States, the current immigration and child welfare systems do not appropriately consider the best interest of the child.[91] In a recent case before the Inter-American Court of Human Rights,

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[84] United Nations General Assembly, *Universal Declaration of Human Rights*, Art. 16, 10 December 1948, 217 A (III), Retrieved from http://www.refworld.org/docid/3ae6b3712c.html.
[85] Convention on the Rights of the Child (CRC) art. 5, 1989, November 20, 1577 U.N.T.S. 3. Retrieved from http://www.refworld.org/docid/3ae6b38f0.html.
[86] In the Child's Best Interest?, p. 6.
[87] *Winata v. Australia* (Communication No. 930/2000), 2001, August 16, U.N. Doc. No. CCPR/C/72/D/930/2000 (2001).
[88] Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention, p. 24. (Citing Starr, S. & Brilmayer, L. (2003) Family Separation as a Violation of International Law. *Berkeley Journal of International Law*, 21 (2), 213, 230. ("[S]uch a norm is beginning to evolve in fragmentary ways. Sufficient consensus exists against particular types of family separation...to constitute customary international law.").).
[89] Convention on the Rights of the Child (CRC) art. 3, art. 9, 1989, November 20, 1577 U.N.T.S. 3. Retrieved from http://www.refworld.org/docid/3ae6b38f0.html.
[90] Family Separation as a Violation of International Law, pp. 213, 222.
[91] *In the Child's Best Interest?* (referencing US Dept. of Health and Human Services, Administration for Children and Families. (2008, April). Determining the Best Interests of the Child: Summary of State Laws, p.6, 11-12.).

the failure of the United States to even consider the best interest of the child at all in some removal proceedings was determined to violate fundamental principles of international law.[92]

In addition to the international protections designed to minimize the occurrence of family separation, children who have been separated from their families by the State are also entitled to certain procedural rights. Article 9(4) of the CRC requires that information on the whereabouts of missing family members be provided to all affected parties unless such information would not be in the best interest of the child. Article 9(2) of the CRC requires that all parties have the opportunity to meaningfully participate in child welfare proceedings. Article 10 of the CRC requires that parents and children be allowed entrance into the territory of the State for the purpose of reunification and that reunification be effectuated in a humane and expeditious manner.

When the detention or removal of a parent has a negative impact on the physical and mental health of a child, such a State action also implicates a child's internationally recognized right to health. Likewise, when the detention or removal of a parent has a negative impact on the educational outcome a child, such a policy implicates a child's right to education. Beyond a 1982 Supreme Court ruling (*Plyler v. Doe)* that determined that all children in the United States have the right to a public K-12 education regardless of immigration status, the United States has taken very limited steps to promote health and education in immigrant children.[93] In fact, research shows that confusion regarding immigrant eligibility for federal- and state-funded health insurance and fear of immigration authorities often deter parents from applying for important health and nutrition programs to which their children are entitled.[94] Recent efforts by state legislators to require schools to document the immigration status of students and their parents have even threatened to deter parents from sending their children to school, as was seen following implementation of the controversial Alabama state law HB56.[95] Thus, both federal and state policymakers should

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[92] *Wayne Smith, Hugo Armendariz et al v. United States*, Report No 81/10 - Case 12.562, Inter-American Commission on Human Rights (IACHR), July 12, 2010. Retrieved from http://www.refworld.org/docid/502ccca62.html; *See also* Inter-American Commission on Human Rights (IACHR). (2000). Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, ¶¶ 159-160, 163. Retrieved from http://www.refworld.org/type,COUNTRYREP,IACHR,CAN,50ceedc72,0.html. ("[T]he absence of any procedural opportunity for the best interest of the child to be considered in proceedings involving the removal of a parent or parents raises serious concerns."); Inter-American Court of Human Rights. (2014, August 19). IACHR Advisory Opinion OC-21/14, ¶¶ 263- 282, Opinion 13. Retrieved from http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf. ("Any administrative or judicial body that is to make a decision on the separation of family members, due to expulsion based on the immigration status of one or both parents, must employ a weighting analysis that considers the particular circumstances of the case and guarantees an individualized decision, prioritizing in each case the best interest of the child. In situations in which the child has a right to the nationality of the country from which one or both of her or his parents may be expelled, or the child complies with the legal conditions to reside there on a permanent basis, States may not expel one or both parents for administrative immigration offenses, as the child's right to family life is sacrificed in an unreasonable or excessive manner, in the terms of paragraphs 263 to 282.").

[93] *Plyler v. Doe*, 457 U.S. 202 (1982); In the Child's Best Interest?, pp. 7-9. (The No Child Left Behind Act mandates that public schools track the academic performance of limited-English speaking children and other immigrant groups.).

[94] Yoshikawa, H. & Kholoptseva, J. (2013, March). Unauthorized Immigrant Parents and Their Children's Development: A Summary of the Evidence, pp. 6-7. Retrieved from http://www.migrationpolicy.org/research/unauthorized-immigrant-parents-and-their-childrens-development.

[95] How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground, p. 22.

implement a more holistic approach to ensure that all children in immigrant families have the maximum opportunity to thrive.

VII. Conclusion

Although the principle of the best interest of the child is an internationally recognized and fundamental principle of child protection, the best interest standard does not underlie U.S. immigration laws that directly impact families. Families are forced to remain separated even when seeking to migrate through lawful family-based immigration channels, which drastically fail to meet demand. Furthermore, the well-being and safety of children are not adequately reflected in the enforcement policies that govern apprehension, detention, and deportation of immigrant parents. Likewise, although the best interest of the child is recognized as central to all domestic juvenile court determinations, when the parent in question detained or deported, systemic barriers and institutional biases threaten family unity and needlessly tear apart loving families. In recent years, deportation numbers have soared to historic highs in the name of national security and public safety, with little regard for the hundreds of thousands of children left to suffer the consequences.

The United States must find a better way to balance valid public safety concerns with the best interest of children and the importance of family unity. Federal law, administrative policy, and judicial process must all aim to address the wide range of challenges U.S. children in mixed-status face in the wake of enforcement action. If steps are not taken to protect the children impacted by immigration enforcement, this significant and growing segment of the population will only continue to suffer. Comprehensive legislative and administrative reforms that completely overhaul the currently dysfunctional immigration system is necessary; these must include consideration of children's best interest and a pathway to citizenship for undocumented individuals whose deportation is not necessary to protect the public interest. At the same time, child protection and family services across the country must become more culturally aware, developing systems that take into account the reality of transnational families. Several key recommendations at the end of this book address the changes necessary at these levels to truly protect the best interest of all children.

Recommendations are included in full at the end of this book. For the full set of recommendations, please visit http://cgrs.uchastings.edu/Childhood-Migration-HumanRights.