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Redefining American Families: The Disparate Effects of IIRIRA's Automatic Bars to Reentry and Sponsorship Requirements on Mixed-Citizenship Couples

Jane Lilly López[1]
University of California, San Diego

Executive Summary

With passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the goal of discouraging illegal immigration and the legal immigration of the poor triumphed over the longstanding goal of family unity in US immigration policy. This shift resulted in policy changes that prevent some mixed-citizenship families from accessing family reunification benefits for the immigrant relatives of US citizens. Two specific elements of IIRIRA — (1) the three- and 10-year bars to reentry, and (2) the minimum income thresholds for citizen sponsors of immigrants — have created a hierarchy of mixed-citizenship families, enabling some to access all the citizenship benefits of family preservation and reunification, while excluding other, similar families from those same benefits. This article details these two key policy changes imposed by IIRIRA and describes their impact on mixed-citizenship couples seeking family reunification benefits in the United States. Mixed-citizenship couples seeking family reunification benefits do not bear the negative impacts of these two policies evenly. Rather, these policies disproportionately limit specific subgroups of immigrants and citizens from accessing family reunification. Low-income, non-White (particularly Latino), and less-educated American families bear the overwhelming brunt of IIRIRA's narrowing of family reunification benefits. As a result, these policy changes have altered the composition of American society and modified broader notions of American national identity and who truly "belongs." Most of the disparate impact between mixed-citizenship couples created by the IIRIRA would be corrected by enacting minor policy changes to (1) allow the undocumented spouses of US citizens to adjust their legal status from within the United States, and (2) include the noncitizen spouse's income earning potential toward satisfying minimum income requirements.

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Introduction

Since the earliest laws regulating immigration into the United States were enacted in the late nineteenth century, preserving family unity and facilitating the reunification of families have been central tenets of immigration legislation (Colon-Navarro 2007; Lee 2013). Historically, this focus on maintaining and restoring family unity enabled American citizens' immigrant spouses (regardless of their legal status) to adjust their status while maintaining residence in the United States. The family reunification precedent also led to provisions facilitating the reunification of US citizens and permanent residents with their immediate family members, regardless of personal income. But in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the goals of discouraging illegal immigration and the legal immigration of the poor overpowered the longstanding prioritization of family unity. To achieve these goals, the IIRIRA created rules that (a) require citizen sponsors of immigrant relatives to meet a minimum income standard, and (b) mandate deportation and other severe penalties for any immigrants who entered the United States without inspection, regardless of their relationships with US citizens (Gimpel and Edwards 1999; Chacón 2007a; Hagan et al. 2008; Hwang and Parreñas 2010). Two specific elements of IIRIRA — the three- and 10-year bars to reentry and the minimum income thresholds for citizen sponsors of immigrants — have created a hierarchy of mixed-citizenship families, enabling some to access all the citizenship benefits of family preservation and reunification while preventing other families from enjoying those same benefits (Enchautegui & Menjívar 2015).

This article details these two key policy changes imposed by IIRIRA and describes their impact on mixed-citizenship couples seeking family reunification benefits in the US. These couples, living both within and outside the United States — some "winners" and others "losers" — exemplify the real and lasting effects of the law in practice (Abrego 2015). The position of these families along the spectrum of "legal statuses, as created through immigration laws, determine[s their] access to goods and services while also shaping their sense of belonging in US society" (Menjívar et al. 2016, 28). Family reunification benefits enabled some couples to ensure that all family members acquired legal status in the United States. These families have overwhelmingly thrived in the United States, integrating economically, politically, and socially into their communities and the broader national fabric. For many US citizens, as they have seen the promises of their citizenship play out in their families' lives, the experience of sharing US citizenship with their spouses has made them feel "more American" than ever before (López 2017). But other families have not fared so well. Some continue to live in the shadows in the United States, clinging to hope that relief will come before they are detected and deported (Fix and Zimmerman 2001; Chacón 2007b; Krikorian 2007). Others have either chosen or been forced to leave the United States for 10 or more years, with citizen spouses and children suffering exile alongside immigrant relatives deemed unwelcome (DHS 2009; López 2015). And still other families endure long-term separation or dissolve altogether as the stresses, suffering, and pain of deportation and prolonged separation overwhelm family bonds (Dreby 2012).

Mixed-citizenship couples seeking family reunification benefits do not bear the negative impacts of these two policies evenly. Rather, these policies only limit specific subgroups of mixed-citizenship couples from accessing family reunification: (1) those whose noncitizen

spouse crossed the border without inspection at a port of entry,[2] and (2) those whose citizen spouse has low economic capital.[3] This unequal distribution of family reunification benefits has disproportionately impacted non-White (especially Latino), low-income, and less-educated American mixed-citizenship families. These changes reach beyond the lives of mixed-citizenship couples to American society as a whole, reshaping the composition of society and altering broader notions of national identity and "belonging" in American society (Demleitner 2004; Ngai 2004; Hawthorne 2007; Lee 2013).

IIRIRA Bars to Reentry and Minimum Income Thresholds

Bars to Reentry. In the twenty years since the passage of IIRIRA, citizens and noncitizens alike have experienced the drastic and often devastating effects of the IIRIRA's three- and 10-year bars to reentry imposed upon undocumented immigrants who leave the United States (Lofgren 2005; Lundstrom 2013; Martínez de Castro 2013; Enchautegui and Menjívar 2015). Any individual who has lived without legal authorization in the United States for more than six months but less than one year faces a three-year ban from applying for legal permission to enter the United States; any individual who has lived without legal authorization in the United States for more than one year faces a 10-year ban from applying. The bar is automatically imposed when the individual leaves the physical territory of the United States (Cianciarulo 2015).

While this harsh penalty of IIRIRA seemingly punishes visa overstayers and those who entered the United States without inspection equally — subjecting all to the automatic bars — one subgroup of undocumented immigrants receives disparate treatment under the law: the undocumented spouses of US citizens (Cianciarulo 2015).[4] Immigration law enacted prior to IIRIRA allows visa-overstaying spouses of US citizens — undocumented immigrants who had previously been admitted to the United States through an official port of entry — to adjust to legal immigrant status from within the United States. The ability to adjust status from within the United States allows the undocumented (visa-overstaying) spouse in these marriages to obtain legal permanent residency without triggering the automatic bars to reentry. Undocumented spouses of US citizens never processed at a US port of entry must return to their countries of origin to complete their adjustment to legal status. Upon leaving the United States to attend the consular interview, the undocumented spouse triggers the automatic bars to reentry and thus becomes ineligible for a visa for the duration of the three- or 10-year period, whether or not she would otherwise qualify for legal entry.[5] Prior to IIRIRA, this distinction between families may have caused some

2 These undocumented immigrants tend to be lower income and less educated; also, they are almost exclusively immigrants from Mexico and Central America (Henderson 2014; Migration Policy Institute 2016).

3 Low-income workers are disproportionately less educated, female, and non-White (US Census Bureau 2016c).

4 A recent opinion of the Ninth Circuit Court of Appeals confirms that "nonimmigrants" with Temporary Protected Status (TPS) — including those who entered the US without inspection — should be considered legally admitted (not undocumented) for the purposes of adjustment to permanent legal immigration status and can adjust their status from within the United States (*Ramirez v. Brown* No. 14-35633 (9th Cir. 2017)).

5 IIRIRA does allow for couples facing the multiyear bars to reentry to apply for an "extreme hardship waiver," which waives the bars to reentry for waiver recipients. In order to qualify for a waiver, couples

temporary hardship for those couples required to return to the immigrants' home country to complete the adjustment process, but did not generally impact one group more than the other over the long term. But the automatic bars imposed through IIRIRA have significantly altered the trajectories of these different mixed-citizenship families (Mercer 2008; Kelly, and Dalmia 2011; Cianciarulo 2015). Some families continue to easily adjust to legal status, permanently establish their homes in the United States, and enjoy the rights and privileges of formal membership in society. Others must choose either to maintain their precarious position as undocumented families within the United States or leave the country and likely face a three- or 10-year (or, in some cases, permanent[6]) bar to legal re-entry to the United States.

The profile of undocumented immigrants who overstayed a visa differs significantly from that of undocumented immigrants who crossed the border without inspection. Immigrants seeking tourist, student, or other temporary visas are required to prove "sufficient funds to cover expenses in the United States . . . [permanent] residence [in the home country] . . . and other binding ties that will ensure their departure from the United States at the end of the visit" (Bureau of Consular Affairs 2015, 2; emphasis added). Thus, visa overstayers generally belong to their countries' middle and upper classes and "tend to be better educated and more fluent in English" than undocumented immigrants who entered the United States without inspection (Murray 2013, 1). Visa overstayers are also more likely to be nationals of European, Asian, African, and South American countries (Murray 2013). In contrast, due to geographic proximity and physical access to the US border, undocumented immigrants who entered the country without inspection almost exclusively hail from Mexico and Central America and, at the time of migration, generally did not have the financial and social "binding ties" necessary to qualify for a visa (Warren and Kerwin 2017; Menjívar et al. 2016). These undocumented migrants are also disproportionately male (Baker and Rytina 2013).

The incongruent profiles of these two types of undocumented immigrants, combined with their disparate treatment under the law, results in vastly different outcomes for mixed-citizenship families seeking family preservation and reunification benefits. US citizens who marry immigrants with legal immigrant status or those who overstayed a visa easily access family reunification benefits and the right to legally establish their family within US territory. Citizens who marry immigrants who crossed the border without documentation do not. This discrepancy in the law rewards some citizens for marrying the "right" kind of undocumented immigrant (higher-class, better-educated, non-Latino, female) and punishes others for loving the "wrong" kind of undocumented immigrant (lower-class, less-educated, Latino, male) (Golash-Boza and Hondagneu-Sotelo 2013).

must prove significant hardship for the US citizen spouse and children above and beyond the financial and emotional costs of deportation (Fix and Zimmerman 2001). The Obama Administration implemented a policy to allow couples to apply for the waiver *before* leaving the United States for the consular interview, which has eliminated some of the risk of applying for the waiver (Skrentny and López 2013). But for families whose waiver application is denied, they must either remain undocumented and at risk of deportation within in the United States or leave the United States and wait out the multiyear bar to reentry.

6 Undocumented spouses of US citizens who have been convicted of an "aggravated felony," as defined in the IIRIRA, are often subject to additional penalties to legal reentry and, in some cases, are permanently disqualified from obtaining any legal authorization to enter the United States (Coonan 1998).

Minimum income thresholds. IIRIRA also introduced new minimum income requirements for US citizens seeking to sponsor a spouse for legal permanent residency. These thresholds have placed new limitations on mixed-citizenship families, disproportionately affecting lower educated, female, and disabled citizens — as well as citizens with children — seeking to sponsor a noncitizen spouse for legal immigrant status (Hwang and Parreñas 2010). Before the IIRIRA, citizen spouses were not required to prove a certain level of income in order to successfully sponsor a noncitizen spouse for permanent residency in the United States. The minimum income threshold imposed by IIRIRA — proven income of at least 125 percent of the poverty level[7] — prevents otherwise qualified citizens with insufficient income from sponsoring a spouse for permanent residency in the United States (Hayes 2001).[8]

This inequity stems primarily from the fact that only the US citizen spouse's income may be considered in meeting the minimum income threshold. Despite the fact that the noncitizen spouse would have permission to work once granted lawful permanent residency, a sponsor must satisfy the minimum income requirement without considering the ability of her spouse, once inside the United States, to contribute to the family's income. A single minimum-wage earner working full time could not meet the minimum income requirement, but a family income composed of two minimum-wage salaries could (ASPE 2016; Center for Poverty Research 2016). This means many citizen sponsors earning minimum wage (who tend to have lower levels of education) could not qualify for family reunification benefits. Furthermore, women are more likely to fall below the required income threshold, given that they only earn 80 cents for every dollar a man earns (US Census Bureau 2016b). Blacks and Latinos are also at a disadvantage, as their median household income falls $20,000 and $11,000, respectively, below the national median income ($56,516), decreasing their odds of satisfying the minimum income threshold (US Census Bureau 2016a). The minimum income requirement also penalizes citizens with disabilities or other health issues that prevent them from working full time. Finally, the minimum income threshold is determined based on family size; citizen sponsors with children from their current or previous marriage must meet a higher income threshold than those without children. US citizens with one or more of these traits who seek to sponsor a spouse for lawful permanent residency face additional barriers to accessing family reunification benefits. Preventing consideration of the noncitizen spouse's earning potential in satisfying the minimum income threshold further exaggerates these inequalities.

While this policy may seem a logical safeguard to ensure that visa recipients will not become "public charges," it ultimately punishes citizens for having limited financial resources and potentially prevents those citizens from rising out of poverty through the financial support

7 This is a sliding scale based on family size. A sponsor who is single or married with no children would have to meet the income thresholds for a household of two (the citizen sponsor plus the immigrant spouse/fiancé); sponsors with children and/or other dependents must prove sufficient income for a household that includes themselves, all of their dependents, and the immigrant spouse being sponsored.

8 While a third party could step in as financial sponsor of the noncitizen spouse in the case that the citizen's income is insufficient, the third party must be willing to accept legally enforceable financial responsibility for the visa applicant for the duration of her stay within the United States (even if the marriage dissolves). Financial responsibility remains in force until the immigrant (a) becomes a citizen, (b) accrues forty quarters (ten years) of employment history in the United States, or (c) returns to her country of citizenship (USCIS 2013). Securing an outside sponsor under these conditions can be very difficult.

of their noncitizen spouses (LeMay 2007; Hayes 2001). This policy may *not* only not keep out potential "public charges," but it could actually cause US citizens to become "public charges" themselves (through the use of social welfare benefits) by preventing them from increasing their combined family income through family reunification.

The Effects of IIRIRA on Mixed-Citizenship Couples

Many immigrants in the United States form part of a mixed-citizenship family. The 2011 American Communities Survey data suggest that 7.8 percent of all married couple households in the United States — approximately 4.1 million households — are "mixed-nativity" couple households (one US-born spouse, one foreign-born spouse) (Larsen and Walters 2013). This includes couples with different immigration statuses — foreign-born spouses could have legal permanent residency, temporary legal immigration status, undocumented status, or US citizenship through naturalization.[9] Millions of mixed-status couples composed of a US citizen spouse and an immigrant with legal status (legal permanent residency, student/work visa, etc.) are living throughout the United States, with their ranks growing by more than 250,000 each year (Monger and Yankay 2012). An additional nine million people — roughly three percent of the US population — form part of an "unauthorized" mixed-citizenship family, with both undocumented immigrant and US citizen family members (Taylor et al. 2011). Many other mixed-citizenship families live outside of the United States, often as a result of harsh immigration laws that prevent these families from living together within the United States. Recent data from the Migrant Border Crossing Study show that about one-half of Mexican deportees have a US citizen family member, such as a spouse, child, and/or sibling (Slack et al. 2015).

Between 2012 and 2016, I conducted in-depth, semi-structured interviews with 40 mixed-citizenship couples living within and outside the United States. The interviews focused on these couples' day-to-day experiences, with a particular interest in how their mixed-citizenship status and the laws governing mixed-citizenship families created opportunities for and/or placed limitations on their success as individuals and as a family. In order to capture some of the similarities and differences in mixed-citizenship families' experience that could be affected by the immigrant spouse's home country while minimizing the influence of cultural and linguistic differences, I limited my participant pool to mixed-citizenship couples with one US-citizen spouse and one non-US citizen spouse[10] from any (Spanish-speaking) Latin American country. Any such couple was eligible to participate, regardless of both spouses' age, race, ethnicity, gender, or current place of residence. Twenty-eight of the mixed-citizenship couples were living in various regions of the United States, including the Midwest, South, West, and Southwest, at the time the interviews were conducted; 12 of the couples were living outside the United States (in Mexico and Guatemala) when they were interviewed for the study. To recruit participants, I directly

9 Larsen and Walters (2013) report that 61.3 percent of foreign-born spouses have naturalized, while 38.6 percent remain noncitizens (due to choice or legal impediments to their ability to naturalize). Female foreign-born spouses of male US-born citizens naturalize at higher rates than male foreign-born spouses of female* US-born citizens (63% vs. 59%). *At the time the data were collected, same-sex foreign-born spouses could not be legally sponsored by their citizen spouses for permanent residency or citizenship.

10 At the time of marriage.

contacted individuals in my social networks who met study criteria or who I believed could help me identify potential participants.[11] Additionally, many of the interviewees identified through this process recommended other interview candidates. The US citizens in the couples interviewed included 17 males and 23 females married to immigrants from various Latin American countries including Mexico, Colombia, Guatemala, Argentina, El Salvador, and Chile.[12] Two-thirds of the citizen participants' spouses were undocumented at the time they married, having either entered the United States without inspection or overstayed a visa.

Documentable Families

Documented, Formerly Documented, and Documentable. For many mixed-citizenship couples, the two statutory changes enacted through IIRIRA detailed above had no measurable effect on their families. Because the noncitizen spouses (a) had not yet immigrated to the United States, (b) already had legal immigrant status in the United States (even if temporary), or (c) had overstayed a visa, the three- and 10-year bars did not apply to them. Furthermore, because the US citizen spouses earned sufficient income to meet the minimum income threshold, these families were able to acquire lawful permanent residency status relatively easily. This was the case for 16 couples I interviewed. These couples agreed that acquiring permanent residency for the noncitizen spouse was an involved and often expensive process, but they generally lauded the fact that "the system works." All of these couples had established strong relationships in their communities, secured regular employment, and confidently declared that they were living exactly where they wanted to be (whether inside or outside the United States). For these families, immigration law accomplished its goal of preserving family unity. These immigrant families also integrated well into their new local and national communities. This was especially the case for Lola, whose husband died unexpectedly a few years after their marriage. Despite the tragic loss of her husband — her only family member with US citizenship — Lola continued to feel at home in the United States and was in the process of acquiring citizenship for herself when we met. She expressed a strong sense of belonging to her new country and a commitment to continue to build her life there as an active member of the community. The other couples conveyed similar satisfaction with their communities and felt strongly that they each belonged as an American family.

Undocumentable Families

Never Documented. Other families currently residing within the United States faced a less certain future. With an undocumented spouse subject to the bars to reentry (should she leave the country), most of these couples chose inaction with regard to seeking legal immigration status (combined with hope that their inaction would be reciprocated by immigration authorities). Eight of the families I interviewed were living within the United

11 I was acquainted with approximately one-third of the interviewees prior to their involvement in the study.
12 All couples participating in this study were married, heterosexual couples. Because unmarried couples cannot access any family reunification benefits, it was necessary to limit study participants to married couples. While same-sex couples were eligible to participate, I was unable to identify any same-sex couples meeting the other study criteria.

States with one undocumented spouse subject to the bars to reentry. Of these couples, only two had even attempted to apply for family reunification (and an extreme hardship waiver); the others cited the low probability of a successful application and the costly nonrefundable application fee as primary drivers behind their decision not to apply. In many ways, these families mirrored those who had received family reunification benefits. They also worked hard, though many of the noncitizen spouses struggled to secure jobs with steady hours and income. They also planted roots in their communities, but the ever-present threat of deportation (and lower "official" income) kept them from creating more permanent ties to their neighborhoods, such as buying a home. Most of these families had a "deportation plan" and knew more-or-less where they would go and what they would do if US law enforcement deported the noncitizen spouse. But, at the time they were interviewed, most couples considered deportation a highly unlikely outcome.[13] Rather than dwelling on the looming possibility of deportation, they lived their lives as other "normal" families: raising children, working, and actively participating in their communities. They pushed forward in good faith and hoped for a legal solution that would allow them to acquire legal permanent residency without being forced to live apart or leave the United States for a decade. While they acknowledged certain limits to their ability to progress without a family-level legal status, most of these families preferred undocumented life in the United States to establishing a new life outside of the United States. And, as long as no one prevented them from pursuing their life as a family in the United States, they would do their best to make it work. These families generally feel like they belong in their communities and that they are "American" families, but the lack of official legal status looms large as they build a life in the United States together as a family.

Rejected. For thousands of mixed-citizenship families, though, deportation is their reality. Eight of the couples I interviewed were living outside the United States as a result of deportation, "voluntary removal," or the denial of the extreme hardship waiver during the consular interview. All of these couples wanted to live as a family in the United States; many of them had already lived in the United States as a family for a significant amount of time before the deportation.[14] All of these couples also faced the 10-year bar before becoming eligible to apply for legal immigrant status within the United States. These families expressed frustration, bitterness, and anger at a system that purports "preserving family unity" as its primary goal but forced their family to move outside the United States if they wanted to remain together. Some of these families were able to establish a cross-border life along the US-Mexico border, maintaining ties to the United States even while living outside it. Others felt completely disconnected from the United States and their extended family members left behind. Camille, Sandra, and Angelica spoke of the fear and sadness they experienced while giving birth to children in the United States alone, as their husbands could not cross the border to support them during labor. Deportees, like Edgar and Joaquin, cited the pain of being a part of only half their children's memories — the half that doesn't take place in the United States. Even when these families found a way to stay together outside the United States by moving abroad as a family unit, they continued to experience the pain of separation from, for example, extended family living in the United States with whom they now have only limited contact. Despite relocating together outside the United States and trying their best to survive as a family, the strain of deportation

13 The interviews for this study were conducted before Donald Trump was elected president.

14 One couple met in Mexico after the noncitizen spouse had been deported.

resulted in divorce for at least two of these eight families. In both cases, the couples cited their forced removal from the United States and inability to return as a family to the United States as the primary reason their marriages dissolved.

Table 1. Types of (and Access to) Legal Status Among Mixed-Citizenship Couples

Status (No. in Sample)		Description	Legal Outcome
DOCUMENTABLE	Documented (6)	Noncitizen spouse had legal immigrant status or nonimmigrant status (such as tourist or student visa or TPS) when couple married; citizen spouse had sufficient income or support from others to sponsor spouse for visa	Noncitizen spouse granted lawful permanent residency by US government
	Formerly Documented (6)	Noncitizen spouse entered the United States with a valid visa, but visa expired (rendering spouse undocumented) before the couple married; citizen spouse had sufficient income or support from others to sponsor spouse for visa	Noncitizen spouse granted lawful permanent residency by US government
	Docu-mentable (4)	Noncitizen spouse was living outside the United States with no immigration experience to the United States when couple married; citizen spouse had sufficient income or support from others to sponsor spouse for visa	Noncitizen spouse granted lawful permanent residency by US government
UNDOCUMENTABLE	Never Documented (8)	Noncitizen spouse entered the United States without crossing through a port of entry ("entered without inspection," or EWI); even a citizen spouse with sufficient income could not successfully sponsor spouse for visa without receiving emergency hardship waiver (EHW) or waiting out 10-year ban	Noncitizen spouse living in United States remains in limbo with no official legal status and no access to official legal status without leaving the United States for 10+ years
	Rejected (8)	Noncitizen spouse entered the United States without crossing through a port of entry (EWI); spouse was later deported or "voluntarily removed" herself from the United States and became subject to 10+ year bar to reentry	Noncitizen spouse is not allowed to legally enter the United States for at least 10 years; citizen must either acquire an EHW, be separated from her spouse or live outside the United States with spouse for the duration of the bar (or dissolve the marriage)
	Too Poor to Document (6)	Noncitizen spouse has no immigration history in United States and qualifies for spousal visa; citizen spouse does not have sufficient income or support from others to sponsor spouse for visa	Noncitizen spouse is not allowed to legally enter the United States

Too Poor to Document. Other couples whose spouses did not face the bars to reentry still struggled to access family reunification benefits due to the minimum income thresholds and the costs of applying for a visa. Six of the couples I interviewed had experienced significant struggles in their efforts to acquire lawful permanent residency. Some endured prolonged separation before and during the visa application process (which usually takes at least one year). The need to earn sufficient income forced Carlos to miss the birth of his daughter and the first 10 months of her life while he worked to meet the income threshold necessary to sponsor his wife. Other couples had to rely on the generosity of family members or friends, who legally assume financial responsibility for them, in order to qualify for the visa. Nicole, a doctoral student, could not sponsor her fiancé for the visa because her income as a teaching assistant was insufficient to meet the income threshold. Luckily, her mother accepted legal responsibility for the couple so their application could move forward. Oscar does not have family in the United States who can act as financial sponsor for his wife, and they cannot qualify on his income. So he continues to commute weekly from a Mexican border town to southern California, a world completely unknown to his wife and daughter who wait for him just a few miles away in Mexico. Otherwise eligible mixed-citizenship families unable to meet the IIRIRA-imposed income thresholds find themselves excluded from family reunification benefits or, at best, forced to experience extended family separation before they can qualify. In these cases, the US citizens' low-income status yields their families unworthy of the benefits of US citizenship.

As Table 1 summarizes, the law differentiates mixed-citizenship couples into five different groups, based on (a) the citizen spouses' financial status, and (b) the noncitizen spouses' original mode of entry into the United States (if any). Based on those statuses, the law then declares families either "documentable" or "undocumentable."[15] All citizen spouses must demonstrate sufficient income (or find a friend or family member with sufficient income and willing to accept legal financial responsibility for the noncitizen spouse) in order to qualify for family reunification benefits. Any couples unable to meet minimum income requirements will remain "undocumentable" until their financial circumstances change. Furthermore, even families with sufficient income — but with a history of "never documented" status in the United States — are also labeled by the law as "undocumentable." This includes "never documented" families living within the United States and "rejected" families forced to live outside the US. The law prevents these families from becoming an "official" American family and enjoying the benefits and freedoms associated with that status. As described above, the hardships "undocumentable" families experience as a result of their status have significant and long-term negative impacts on the affected families and their relationship to the US.

But these extreme hardships are not necessary. Two couples I interviewed who had married before the implementation of IIRIRA did not experience such drastic outcomes from the family reunification process, despite the fact that both of the noncitizen spouses had lived "never documented" in the United States before marriage. Rather than having to choose between a life in the shadows or a 10-year exile, both of these couples applied for a visa, traveled to the US consulate in Ciudad Juárez, Mexico, for their interview and, within a few

15 Although "undocumentable" status is not permanent, transitioning out of this status requires (1) acquiring an exception to decade-long bars to reentry, (2) waiting out the 10-year bar outside the United States, and/or (3) demonstrating an increase in income sufficient to meet minimum income standards. Thus, families deemed "undocumentable" by the law generally experience this status as long-term.

weeks, received the visa for permanent residency in the United States. These couples have thrived in their communities, raised children who played in marching band and took ballet lessons, coached soccer teams, and served in parent-teacher organizations. They are proud American families who have worked hard to establish a good life for themselves and their children in the United States. Their experiences align with those of the "documentable" mixed-citizenship couples who have benefitted from family reunification post-IIRIRA. And their success as families suggests that the policies imposed by IIRIRA punishing some mixed-citizenship families are neither necessary nor productive.

Redefining the American Family

In addition to directly impacting the lives of tens of thousands of mixed-citizenship families, IIRIRA also altered the definition of which kinds of couples and families qualify for official membership in American society. Through the bars to reentry, IIRIRA has redefined the American family by effectively excluding mixed-citizenship families in which one partner entered the United States without inspection from realizing the benefits of a married family life in the United States. Given the economic and social thresholds required to qualify for a tourist or other visa to the United States, this new definition of the "un-American" family is generally limited to mixed-citizenship families in which the immigrant spouse came to the United States with fewer economic resources and less formal education. Furthermore, due to the physical and geographic realities of crossing the border without passing through an official port of entry, the new "un-American" family is almost exclusively limited to mixed-citizenship couples with immigrant spouses born in Mexico or Central America. The disproportionate burden placed upon mixed-citizenship families by the bars to reentry has marked families with less-educated, lower-income Mexican and Central American spouses as unworthy of membership in an official American family. Furthermore, the IIRIRA-imposed minimum income thresholds marked some US citizens as unworthy of forming an official American family with a foreigner. The IIRIRA effectively declared poor Americans undeserving of family reunification benefits in that it declared female, non-white, and less-educated Americans — those most likely to earn below 125 percent of poverty level — unworthy of forming an official American family with a noncitizen.

This new, narrower definition of the American family — wealthier, whiter, better educated, non-Latino, and headed by a US citizen male — has not only precipitated the othering of some immigrants, but also their citizen family members. The IIRIRA has marked all of them as less-than and unqualified to enjoy the benefits of American citizenship as a family. This new definition of the "American" family also shapes broader notions of who "belongs" in the United States (Lee 2013; Bunting 2015; Darian-Smith 2015). Preventing some families from accessing family reunification benefits has ripple effects. Initially, it redefines which families are "American enough" to qualify for family reunification. Then, by extension, it also prevents the immigrant spouses who were denied family reunification benefits from sharing those same benefits with their noncitizen parents, siblings, and children (Hawthorne 2007). This burden is not spread proportionally across nations of origin, socio-economic classes, and racial and ethnic backgrounds, altering the composition of American citizenry toward a richer, whiter, better-educated membership and further narrowing the definition of both who "deserves" to be American and which Americans "deserve" to enjoy the full benefits of their citizenship.

Policy Solutions

Numerous policy solutions could easily resolve this devastating disparity in the treatment of mixed-citizenship American families.

Bars to Reentry. One option — though its effects would reach far beyond mixed-citizenship couples — is to repeal the multiyear bars to legal reentry currently applied to almost all undocumented immigrants upon leaving the United States. Though the bars to reentry were designed to discourage undocumented immigrants from attempting to settle in the United States, they have had little effect as a deterrent (Lofgren 2005; Lundstrom 2013). Repealing the bars to reentry would help many mixed-citizenship families adjust to legal immigration status without facing the severe penalties currently imposed. A more limited approach would involve changing current law to allow all undocumented spouses of US citizens to adjust to legal status from within the United States. If readmission through a port of entry remains a necessary bureaucratic or symbolic step, arrangements could be made to allow such processing at international airports based within the United States once applicants receive final visa approval, satisfying the letter of the law without invoking the bars to reentry. Either of these policy solutions would also provide a quick and easy way of reducing the size of the undocumented immigrant population residing in the United States by allowing the undocumented spouses of US citizens to adjust to legal status. Including the spouses of US citizens in any future DAPA-esque executive action would provide at least temporary relief for most mixed-citizenship couples in the United States, should political opposition render other, permanent policy changes impossible to enact.[16]

Minimum Income Thresholds. The minimum income thresholds should be repealed. Failing that, the potential earnings of the noncitizen spouse being sponsored should be included toward meeting the minimum income thresholds. Disqualifying American citizens from family reunification because they earn low wages perpetuates income inequality and punishes US citizens for circumstances that are often beyond their control. It also prevents them from increasing their family income and economic opportunities by prohibiting their reunification with an additional wage earner.

The effects of IIRIRA have proven similar to many other US immigration laws that, intentionally or not, marked specific kinds of immigrants — based on their race, national origin, and/or class — as unwelcome (Luibhéid 2002; Ngai 2004; Kanstroom 2007; Lee 2013). The discriminatory effects of these policies reach far beyond individual immigrants to their families and communities. As policymakers consider every policy option — including the continuation of IIRIRA and associated laws in their current form — they must remember that laws targeting immigrants affect citizens, too (Menjívar et al. 2016). As the undocumented population in the United States continues to drop, policymakers should shift their attention away from punishing undocumented immigrants and toward supporting and preserving American families, including those with an undocumented spouse and/or low incomes (Warren 2016). Developing policies that provide opportunities for mixed-citizenship American families to succeed will reduce the undocumented immigrant population while generating significant benefits for these families and the communities in which they live (de Graauw and Bloemraad 2017).

16 Under Obama's proposed executive action, Deferred Action for Parents of Americans (DAPA), only the parents of citizens and permanent residents qualified for relief.

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