



Separated Families: Barriers to Family Reunification After Deportation

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Executive Summary

This paper outlines the complexities — and unlikelihood — of keeping families together when facing, or in the aftermath of deportation. After discussing the context that limits or prevents reunification among immigrant families more generally, I outline several of the particular ways that families are divided when a member is deported. Drawing on case studies from longitudinal ethnographic research in Mexico and the United States, I describe: 1) the difficulties in successfully canceling deportation orders, 2) the particular limitations to family reunification for US citizen children when a parent is deported, and 3) the legal barriers to authorized return to the United States after deportation. I argue that without comprehensive immigration reform and concrete possibilities for relief, mixed-status and transnational families will continue to be divided. Existing laws do not adequately address family life and the diverse needs of individuals as members of families, creating a humanitarian crisis both within and beyond the borders of the United States. The paper concludes with recommendations for immigration policy reform and suggestions for restructuring administrative processes that directly impact those who have been deported and their family members.

Introduction

In recent years, the United States has deported an unprecedented number of noncitizens, with more than three million in the last decade alone, including a record high year in 2012 of 409,849 deportations (ICE 2016, 2). And, apprehensions, the detention of foreign nationals, and the increased threat of deportations have come to define the weeks and months following the inauguration of President Trump. Transnational and mixed-status families face new risks of deportation as executive orders are announced and implemented, even when family life is not explicitly addressed.¹ Over the past decade, deportations have resulted in families divided like never before, and based on the current chaos,

1 See Border Security and Immigration Enforcement Improvements, Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017), and Protecting the Nation from Foreign Terrorist Entry into the United States, Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017), as well as memos from Secretary John Kelly (2017a; 2017b) outlining their implementation.

unpredictability, and even “delirium” caused by state-enacted removals (Kanstroom and Lykes 2015), this trend is likely to intensify.

As I argue, high rates of deportations and increased “deportability” (De Genova 2002), or the threat of deportation, are causing a humanitarian crisis that is displacing individuals and separating families in unprecedented ways. Immigration and deportation have long impacted families, but an overall increase in deportations coupled with a growing number of mixed-status families — there were an estimated 3.3 million mixed-status households in the United States in 2014 (Warren and Kerwin 2017, 1) — mean that today families face divisions like never before. Millions of people have been and will continue to be impacted, including noncitizens who are deported and their undocumented migrant family members, but also a high number of US citizens with family ties to deportees.

In large part, the current crisis stems from decades without policies that adequately outline possibilities for maintaining or allowing for family reunification. Instead, US immigration policy has been made up of a patchwork of particular laws, de facto practices, administrative procedures, executive orders, and, significantly, decades without new legislation that considers family separation. Not since the Immigration Reform and Control Act of 1986 (IRCA) has the United States passed legislation that included a broad path to citizenship for undocumented immigrants. Thus, without immigration law reform, immigrant families will continue to suffer — through migration, but increasingly as a result of deportation. Indeed, it is those on the ground — immigrants and their loved ones, including children, parents, siblings, and partners — who are “paying the price” (Capps et al. 2007) for an absence of laws that consider the humanity of immigrants and those connected to them.

The haphazard and unpredictable character of immigration policy and its absence in recent decades — and in recent months — has resulted in a situation that imperils families throughout the United States. The current policy context makes deportation a legal and practical dead-end for most immigrants and their families: once families experience the deportation of a loved one, there are few, if any, options for family reunification in the United States through legal channels. Building on policy analysis and longitudinal ethnographic research in Mexico and the United States, I outline the complexities and unlikelihood of achieving “family reunification” in the current climate. After providing background about the policies that shape family reunification and perpetuate family separation, I discuss three case studies as a way to illustrate the specific challenges that families face when a loved one is deported. I conclude with recommendations for policy reform as well as suggestions for temporary actions that might address family ties and better support family unity.

Background: Existing Policy (and Its Absence)

The policies that direct family reunification are legally and logistically complicated. The principle of “family reunification” has been established through the passage of several laws over time, including the Emergency Quota Act of 1921, the McCarran-Walter Act of 1952, and the Immigration and Nationality Act (INA), or Hart-Celler Act of 1965 (Maddali 2016, 111).² Although immigrants with family members who are US citizens or lawful permanent

² See Maddali (2016) for discussion of the development of “family reunification” as a guiding principle over time.

residents may be able to change their status based on family relations, family reunification is, as Anita Ortiz Maddali (2016, 111) outlines, a principle that is “limited.” Many families do not include members with a status that makes them eligible for family reunification in the first place and certain family members are prioritized and/or excluded from the process, making “family reunification” a challenge — if not impossibility — for most immigrant and mixed-status families.

The laws that changed the nation’s immigration priorities to emphasize family reunification have brought (some) families together. Still, as I have argued elsewhere, such legislation has also divided families, especially through processes and procedures that engage specifically with individuals (Boehm 2012, 61-62; see also Thronson 2015). By singling “out the border and the individual as the sites for regulatory enforcement” (Sassen 1996, 10), the US government does not systematically identify migrants as members of families, even as its policies explicitly name family reunification as a priority. Thus, paradoxically, a focus on individuals creates mixed-status families and obstructs family reunification even as it continues to be ostensibly a guiding principle of US immigration policy.

Additionally, immigration laws influence families even when they do not explicitly focus on family life. As an example, consider the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. IIRIRA’s emphasis on enforcement and penalties rather than immigrant inclusion has had a devastating and lasting impact on families, separating relatives because of the law’s rigidity and the fact that it provides so few opportunities for relief (CLINIC 2005). The legal ramifications of IIRIRA, the “merger of criminal and immigration law” (Stumpf 2006, 369), and the increased criminalization of immigration more generally over time (e.g., Dowling and Inda 2013; Stumpf 2006) have translated into public discourse that crudely casts migrants as “criminals.” Depictions of migrants as members of families — mothers, fathers, children, partners, siblings, grandparents, aunts and uncles, cousins, and other kin relations — are largely absent from political and policy debates.

Families are also impacted by a variety of other barriers and challenges, including unpredictable and inconsistent yet virulent enforcement practices. Immigration enforcement, raids, and increased policing clearly have detrimental effects on communities, and especially on families and children (Capps et al. 2007; Dreby 2012; Thronson 2015). Under the Obama administration, the specifics of apprehension and deportation were, despite national priorities, often arbitrary depending on particular circumstances, place of residence, and the actions of individual law enforcement officers, immigration officials, and judges. Now, as a result of recent executive action, even ostensible national priorities have been suspended, such that under the Trump administration, randomness and chaos are ever more present.

And finally, administrative processes separate families and prevent family reunification. For example, not all familial relationships fit the preference categories outlined by immigration law (see Thronson 2015), significant backlogs in processing can result in wait periods that extend for a decade or more (CLINIC 2005, 3-9; Kerwin 2014, 336), and events that are commonplace — such as “entry without inspection” or the use of a borrowed social security number and other forms of “identity loan” (Horton 2016, 73) — can bar migrants from living in the United States for years or indefinitely (see Gomberg-Muñoz 2016). And,

the lengthy and extensive bureaucratic processes required for family reunification result in policies that are implemented in contradictory ways. These different factors mean that family reunification, even if codified through law, is never fully realized in practice and instead continues to be unattainable for millions of individuals and their loved ones.

So, while legislation has eliminated national origin quotas and established family unification as a guiding principle for US immigration law (DeSipio and de la Garza 1998, 42), US immigration policies repeatedly create circumstances that divide families (Abrams and Piacenti 2014; Thronson 2006; Thronson 2007). Existing laws provide an incomplete set of guidelines for considering family relations. And, because the principle of “family reunification” — already limited in the case of immigration — does not apply to families facing the deportation of an individual, the reunification of family members in the United States can be nearly impossible during deportation proceedings or after a family member has been deported. In most cases, families have little or no recourse or opportunities to come together after a deportation separates them across borders.

Thus, the nation’s contemporary immigration system is defined in large part by its gaps and a lack of sound legislation that might address the more than 11 million immigrants currently living in the United States without authorization and their families. This article’s proposals center on how to rethink immigration law and administrative procedures, and potential ways — through both legislation and the administration of policy — to ensure that families divided by immigration status and deportation can stay together. In the following discussion, I outline three cases that underscore some of the challenges or barriers to reunification that existing policies present. Family reunification — already complicated in the context of immigration — is that much more inaccessible when migrants are deported.

“Exceptional and Extremely Unusual Hardship”

Case Study: Federico and Gaby

For Federico and Gaby, deportation meant packing up a home and making arrangements for a sudden departure, but it also required gathering up a life of 25 years and making choices about what would have to be left behind. Federico and his family parted with nearly everything: “We lost the house, we lost many things. We gave things away. We tried to make arrangements so that we could leave, but, well . . . we lost a lot.” Many of the family’s losses were material, but, as Federico described, the less tangible losses were far more profound.

Born in a small, rural community in Zacatecas, Mexico, Federico migrated as a young man, in the 1980s, to Los Angeles, California. Several months later, his wife, Gaby, followed, and they made the United States their home, living for more than two decades in Southern California. After spending all of his adult life in the United States as an undocumented migrant, Federico wanted desperately to “fix his papers,” to change his status so that he would be authorized to be in the country. Federico was not comfortable living “hidden,” and so he consulted with an attorney and was told that he was eligible to apply for permanent residency. He felt a deep connection — and had given much — to the nation. As he told

me: “I value the way of life in the United States. The United States is a good country.” He worked for the same company for 16 years, had five US citizen children (ages 10-24), volunteered at prisons through his local parish, and was part of a strong network of family, friends, neighbors, coworkers, and church members.

He began the paperwork to process a change in immigration status for Gaby and himself, but after the applications were submitted, the couple was contacted by US Citizenship and Immigration Services (USCIS) and told that they were not actually eligible to receive green cards. Instead, Federico and Gaby were placed in removal proceedings and told that they were likely going to be deported. The couple also learned that the “attorney” who had required advance payment and submitted the applications was not an attorney at all, but a notary public. The notary had, erroneously and intentionally, told Federico and Gaby that they were eligible for US lawful permanent residency. They had been the victims of fraud. Their effort to obey the law and to do the right thing started a process in motion that had the seemingly inevitable end of deportation.

Federico immediately hired an immigration attorney. However, despite efforts to cancel the removal order, Federico and Gaby were told that, five years after first filing for an adjustment of status, they had to leave the country or face imprisonment. “When the letter arrived informing us that we had to leave, it was very difficult. I thought, ‘How am I going to do this? What am I going to do back in Mexico?’ After so many years here, so many years that my family lived here . . .” Federico’s voice trailed off, his eyes teary. “I feel it was caused by the judge’s bad decisions. I’m not saying that we were without fault, but judges should consider the family.”

Each time I visited with Federico and his family in Mexico, he spoke of the hardships they faced: Federico’s successful career had been disrupted and he was forced to start anew financially, the family could not live together in the United States with government authorization, and, especially painful, Federico and Gaby were unable to be present for the birth of their first grandchild. Federico repeated how much he hoped that he and Gaby would be able to return to the United States. He told me that they would only do so, however, if they were able to find a way to go “home” within the boundaries of the law. For some time, I received emails from Federico inquiring about the possibility of a pardon or an appeal. “Perhaps there is another way to receive permission to enter the country?” He asked about potential ways to change his status: Could an attorney find a way for them to return? Would a pardon be possible? Was there any way to “fix” the situation and ultimately reverse the deportation?³

* * *

The case of Federico and Gaby points out some of the limitations that divide families as they face the possibility, or as the direct result, of the deportation of family members. Upon receiving the letter outlining their “removal,” Federico and Gaby immediately contracted with a highly recommended attorney and requested cancellation of removal. Yet, although their previous “attorney” was actually a notary public who had committed fraud by providing (incorrect) legal advice, Federico and Gaby were unable to successfully

3 For this and other vignettes about Federico and Gaby, see Boehm (2016). This excerpt is from pages 43-44 and 134.

stop the deportation.⁴ The many hardships the family would face because of deportation were not deemed sufficient to allow the couple to stay in the United States so that all family members could remain together in the country.

According to the INA,⁵ cancellation of removal for non-lawful permanent residents is possible only if the individual “has been physically present in the United States for a continuous period of not less than 10 years,” “has been a person of good moral character during such period,” “has not been convicted of an [specified] offense,” and, “establishes that removal would result in exceptional and extremely unusual hardship to the alien’s spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.” In Federico and Gaby’s case, the couple’s new attorney informed them that — despite the many reasons that a cancellation would seem logical and although the deportation did indeed create hardship for their children — their particular case was not likely to be approved. In order to do so, they would need to prove that their US citizen children faced “exceptional and extremely unusual hardship,” an option that is rarely attainable (Thronson 2015, 37).

And indeed, the rates of successful cancellations of removal corroborate what Federico’s attorney confirmed. The statutory cap is 4,000 per year, and from 2011 through 2015, the number of cancellations was on average about one percent of the number of removals (EOIR 2016, N1; ICE 2016).⁶ Federico and Gaby undeniably faced hardship due to the pending deportation, but in their case — like the cases of so many and therefore not understood to be “extremely unusual” — the narrow definition of “hardship” did not account for the multiple struggles that deportation in fact creates. As outlined in the American Bar Association’s report, *American Justice Through Immigrants’ Eyes*, after the passage of IIRIRA, possibilities for relief through a cancellation of removal became even more unlikely (ABA 2004, 41), again underscoring how the period post-IRCA, from the 1990s to today, has made family unity that much more difficult to achieve.

Once deported, the couple explored the possibility of requesting what Federico called a “pardon.” He contacted several immigration attorneys to ask about the likelihood of successfully being granted permission to return, but little came of it. All the lawyers had the same read of Federico and Gaby’s situation: authorized return after deportation would be nearly impossible. They explained that he could apply for such permission — this would require completing and submitting an I-212, “Application for Permission to Reapply for Admission into the United States After Deportation or Removal” — but that such requests are not often approved. As the attorneys outlined, the statutory bar would run for 10 years, and documented return before that time was very unlikely.

And finally, as I discuss in the following section, Federico and Gaby’s case underscores the challenges to — and often impossibility of — family reunification for US citizens whose parents are deported. All five of Federico and Gaby’s children are US citizens, and yet, they did not have recourse once they received the removal order unless the children faced what the court would deem “exceptional and extremely unusual hardship.” In other words,

4 Federico did not mention the possibility of a U Visa or recount that his attorney considered this.

5 INA § 240A(b)(1), 8 U.S.C. § 1229(b)(1).

6 For example, in 2012 when the US government carried out 409,849 removals, 3,787 cancellations of removal were granted (EOIR 2016, N1; ICE 2016).

the fact that five of the seven family members were US citizens was not enough to ensure family reunification. Indeed, theirs was yet another family sentenced to separation if the five US citizens continued to live in their home nation.

Penalizing US Citizens

Case Study: Cora, Joaquín, Dina, and Leo

When Emy and Manuel made arrangements for their four children, ranging in age from three to 14, to cross the US-Mexico border, the children's safety was their priority. They found a respectable *coyote*, someone they could trust, and they made a substantial payment to ensure that the children made it safely to their destination. But this crossing was not a typical one: while most border crossings facilitated by guides involve movement of unauthorized migrants from Mexico to the United States, these children were US citizens who migrated in the other direction, from north to south.

After Emy had been deported, she and Manuel decided that it would be best for the children to join her in Mexico, but because both Emy and Manuel are undocumented migrants they were unable to easily travel with their children. If Manuel accompanied the children to Mexico, he risked apprehension should he try to cross the border back into the United States. Similarly, Emy was unable to easily enter the United States to meet the children there; the stakes of an attempted border crossing were even higher for Emy because of her recent deportation. So instead the couple hired a *coyote*, a US citizen, to travel with the children, accompany them across the border, and bring them to Emy. Within a day of departing from a border town in Texas, the children and Emy were reunited, but in Mexico and without Manuel. Because the family depended on Manuel's income, he stayed in the United States to continue working and the family was now divided transnationally.

Prior to detention and deportation, Emy had lived primarily in the United States for a period of more than 15 years. When a car accident killed her parents and her brother, Emy traveled to Mexico for the funeral and to support her family. After several months in Mexico, she decided it was time to "go back" or "return" to the United States, so she went to the border, intending to cross by land, wading through the Rio Grande/Rio Bravo and walking through the desert. But when she arrived, the *coyotes* told her that there had been a change in the plans: because of increasing apprehensions along the border in recent days, Emy would cross with documents supplied by the *coyotes*, a passport that was valid but belonged to someone else. Emy told me she was very hesitant to cross that way, but because Emy had already paid for her passage and was at the border without family or resources, she went ahead with the crossing. When attempting to enter the United States, however, her fears were actualized: she was stopped and questioned by immigration officials. They found her to be "inadmissible" and transferred her to a federal detention center.

Emy's deportation prompted the departure to Mexico of her four US citizen children. The eldest siblings, teenagers Cora and Joaquín, had been to Mexico as young children, but had few memories of their parents' home community. The two younger children, Dina and Leo, had never visited Mexico, so their transnational border crossing was a first. When I

spoke with Cora several months after her departure from the United States, she still seemed stunned by the sudden move. As she described it, one day she was at the mall with friends, and by the end of the week, she was in a dusty, rural community in Mexico's countryside. These children now faced undeniable hardship, though it was not legally defined as such: their mother's deportation meant that the children would have to live far from their nation and from their home.

For more than a year, Emy and the children lived in Mexico while Manuel lived in the United States. The children, all US citizens, found themselves living in a country that was not their own, probably until they were old enough to return to the United States without their parents. Because of their US citizenship, the children could, in principle at least, return to their country, but in all practical senses, they were confined to Mexico until they were older or until their parents could make alternative arrangements, presenting a form of hardship not addressed by US immigration law.⁷

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As was the case for Federico and Gaby's five children, Cora, Joaquín, Dina, and Leo found their family separated by the deportation of a parent, despite their US citizenship and despite the fact that they themselves had not been deported — not formally at least. For these children, their status as minors meant that they were not yet eligible to petition for an immigrant visa for their parents. Indeed, except for the possibility of cancellation of removal — as discussed, a process that is unlikely and unattainable in most cases of deportation — US citizen children have few legal options for relief that might keep their families together after deportation. Until they are 21 years old, children are not able to petition to be reunited with their parents. And, if parents are deported, even this possibility at some point in the future becomes extremely unlikely.

Here, again, family reunification is characterized by barriers and limited options for immigrant families. For this family, hardship took different forms. They were unable to structure family life so that all members lived together in the United States, and family reunification in Mexico would mean no income to support the family. All family members faced risks if Emy, now deported, and the children tried to return to the United States, and they faced certain economic hardship if Manuel were to leave his fulltime employment in the United States to join the family in Mexico. Paradoxically, the chain of events that resulted in Emy's deportation was caused by another unconsidered hardship: the death of three family members in a tragic car accident. As this case shows, such family separation does not only impact noncitizens: deportation has enduring effects on US citizens, especially children, even as US citizens would seem to be outside the reach of deportation regimes.

For some US citizen children, they are separated from primary caregivers as their parents "disappear" into detention or are deported (Rabin 2011). For other children, such as Cora, Joaquín, Dina, and Leo, the deportation of a parent results in their own "de facto deportation" (Kanstroom 2012, 135). Such informal expulsions of US citizens are, for the most part, unrecorded and undocumented, as young US citizens find themselves compelled to migrate to reunite with family in other countries if they are to continue living with their parents (see Boehm 2016). Some of the challenges US citizen children face stem from

⁷ This excerpt is from Boehm 2016, pages 45-46, 80.

the “tremendous potential for deep conflict as immigration law and family law intersect” (Thronson 2015, 35). Other obstacles come from the lack of laws that explicitly outline or grant US citizen children the right to maintain family unity after deportation. Although “the best interest of the child” is a standard used in family law context, the same standard does not guide deportation proceedings, a point that underscores the multiple barriers to family unification after deportation.

For US citizen children—indeed for children regardless of citizenship or immigration status—the path to family reunification is a difficult or impossible one when a parent is deported. The fact that in 2012 there were 4.5 million US-born children whose parents were unauthorized (Passel and Cohn 2015) shows how widespread family separation after deportation is or is likely to become. Emy’s children expressed frustration that their options were to live in Mexico, far from their country of origin and their home, or live in the United States without their mother there to care for them. The bind these children face underscores what Jacqueline Bhabha (2014, 19) aptly calls “the elusive right to family life.” As parents and other family members are deported from the United States, US citizen children and youth increasingly find themselves unable to maintain “family” in any meaningful way.

No Path to Authorized Return

Case Study: Jaime

Just before he was deported, while still at a federal detention center, Immigration and Customs Enforcement agents brought Jaime the clothes he had been wearing the night he was arrested several months earlier. After a childhood and life of more than 15 years in the United States, Jaime had only this small ziplock bag with a few possessions. Three months in a county jail in rural Colorado, followed by several weeks at a federal detention center, had been demoralizing. Arrested just after his 18th birthday, Jaime admitted that jail was quite frightening at first, but he soon learned the ropes and kept his head down: “You let people do their thing, and you just do yours.”

Jaime — whom his aunt described as “a good kid who made a mistake” — was deported to Mexico. He had migrated as a toddler, and although he was an unauthorized migrant in the United States, his day-to-day life as a teenager was much like that of his US citizen peers: he worked part-time, socialized with friends on the weekends, and had a steady girlfriend. But that abruptly changed when he was detained. After Jaime and some friends were stopped by police officers and cited for having open containers of alcohol in their vehicle, their paths went in notably different directions. Jaime’s friends, US citizens, were arrested, quickly released, and ordered by the court to complete community service. In contrast, Jaime’s life took a jarring turn.

Jaime chose to go before an immigration judge without legal representation. He had met with an attorney prior to the hearing, but the attorney said that there were no legal options available — that deportation was likely — and so he advised Jaime and his family to save the money they would spend on legal services. During the immigration hearing, the judge asked if he had any family members who were from the United States. Feeling

hopeful, Jaime mentioned his two siblings who are US citizens. “No,” the judge clarified, “Do you have any *immediate* family members who are US citizens?” The judge explained that by “immediate family members,” he meant parents, children, or a spouse. “The judge just reads you your rights and then he asks, ‘Are you married to a citizen?’ No. ‘Do you have any citizen kids?’ No. ‘Are your parents citizens?’ I said, ‘no.’ ‘Well, then,’ said the judge. ‘I can’t do anything for you. You have to leave.’ And that’s it.” Jaime recounted how people who did have US citizen family members — what he described as the “right” family members, that is, parents, a spouse, or children — were assigned another court date, and the people who did not, “Well, that’s it.”

So, after months in prison and federal immigration detention, Jaime found himself in rural Mexico, a place he could not remember and did not identify as home. Upon “repatriation” to his “hometown,” Jaime had no memories of Mexico to draw upon. For Jaime, life and life’s recollections began in *el norte*. Although he was reunited with his grandmothers and extended family members in Mexico, he was very far from the family members he was close to, including his parents, siblings, girlfriend, and peers — the family and friends who had provided support in his day-to-day life. Within a matter of months after being caught up in deportation proceedings, Jaime’s kin and social networks were upended, presenting a kind of hardship that was unimaginable prior to his return.

Shortly after he arrived in Mexico, Jaime started to consider the possibility of returning to the United States. The long-distance relationship with his girlfriend was challenging, he wasn’t able to have much contact with his friends, and he missed his family tremendously. After just a few months in Mexico, and in consultation with his parents and siblings, Jaime decided to again migrate north. Jaime told me that he was unhappy: he missed his family, could not “get used” to being in Mexico, and did not, he felt, fit in. And so, he went “home,” back to the United States and back to the only life he had ever really known.⁸

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Jaime’s experience as he moved through various legal systems and after his deportation to Mexico show some of the ways that family ties are typically not enough to reverse a deportation or to bolster a request for return after removal. As his conversation with the judge during his hearing demonstrates, for Jaime, his “immediate” family members who were US citizens — namely two of his siblings — were not relatives who could have strengthened his claim for cancellation of removal. When Jaime explained that his parents were not US citizens, and that he did not have a spouse or children, the judge issued a deportation order and Jaime was “removed.”

After being deported to Mexico, Jaime was living far from those he identified as close or “immediate” family, even though the US government did not define them as such for the purposes of canceling a removal order. Jaime lamented that he did not have the “right” family member to cancel the deportation, and indeed, as David B. Thronson (2007, 66) writes, “[A] close family member with legal immigration or citizenship status does not guarantee that immigrants in mixed status families will achieve legal immigration status themselves.” For Jaime, hardship came directly out of his separation from immediate

⁸ Jaime’s deportation is described throughout Boehm (2016). The vignette here is a compilation of his experiences from pages 38-39, 89, 97-98, 139-40.

family, as he faced isolation, disorientation, and a future life in Mexico that was difficult to imagine or take steps toward fulfilling. Here, legal definitions of “hardship” and “family” did not overlap with Jaime’s own understandings of family members and the challenges he experienced.

For Jaime, future options for family reunification through formal channels seemed extremely unlikely. After moving through both the criminal and immigration justice systems, Jaime was not hopeful that legal possibilities for return would come to fruition. And, his intuition was probably correct. The unlikelihood of Jaime being given a second chance — whether through a petition for admission after deportation, such as the relief that Federico and Gaby hoped for, or by way of a successful tourist visa application after living a decade in Mexico — meant that Jaime’s options were very limited. In this context, his decision to return to the United States without authorization was likely the only way he would be able to return at all. And, yet, in doing so he triggered a permanent bar,⁹ thereby eliminating legal options for return in the future.

Jaime’s case — and indeed all the cases I have described here — demonstrates the many barriers to family reunification after deportation and the multiple forms of individual and family hardship that come in deportation’s wake. Regardless of the impetus for or conditions of the deportation, or the ties that individuals have to US citizens and the nation, the opportunities for family reunification in the United States and future return through legal channels are very limited. Even when trying to follow the law, as was the case for Federico and Gaby, there are few or no options. And, for those who have come into contact with law enforcement, regardless of the conditions or specifics of the case — such as the open container violation that resulted in Jaime’s deportation but did not result in prison time for the US citizens involved — authorized return can be an impossibility in every practical way.

During Jaime’s immigration hearing, the judge reminded him of his 10-year bar from the United States as the result of his deportation and encouraged him to wait out the time in Mexico. But Jaime was doubtful that any visa would be approved for him even after a decade had passed. And so, faced with few possibilities for returning with state authorization, Jaime decided to migrate without documents despite the high stakes in doing so. It was the only way he could ensure that he would be with his family once more.

Policy Recommendations

Faced with the challenges of keeping or bringing families together, families affected by deportation find themselves divided, living across borders, with mixed statuses within families, living together but with the fear of imminent separation, and/or with few or no possibilities for a change in immigration status. A primary recommendation, therefore, is to create policies with enough flexibility to facilitate family unity in the United States. Strong policies should acknowledge — and support — the wide variety of family experiences and the diverse ways that families are structured and made meaningful. If such options are not possible for immigrants and their families, the rigidity of the current system is

⁹ INA § 212 (a)(9)(A), 8 U.S.C. 1182(a)(9)(A).

likely to result in ongoing if not increased unauthorized migration, as families strive to come together across borders after deportation, even if they must do so through informal channels.

Thus, future comprehensive immigration policy reform should be attentive to family ties and the profound hardship that comes from family separation. First, a focus on maintaining family ties — rather than severing them — is policy that will strengthen both human and national security (Kerwin 2016). Second, a justice system that does not consider family or does not have the flexibility to acknowledge different family relations and their importance only perpetuates injustice, presenting “rule of law concerns” (Kanstroom 2012, 89) and threatening US compliance with human rights law (Thronson 2016). And, finally, from a humanitarian perspective, the nation should consider its role in contributing to this large-scale crisis. When families are separated by US immigration law, the result is a humanitarian crisis that is, in large part, of our own making. Indeed, humanitarian crises and efforts to address them are always embedded within political motivations and debates (e.g., Fassin 2007; Fassin 2013; Ticktin 2014). While policymakers and members of the public often frame unauthorized immigration as the product of individual choice and action, such logic is not tenable in the current climate. Today, millions of families — whose members have a variety of immigration statuses, including US citizenship — are impacted by US immigration laws and an absence of sound policies.

Relief, Flexibility, and the Possibility for Exceptions

A first step — and one that could be implemented through both administrative and legislative channels — is to make the possibility for relief more robust. Such options could take different forms, and might include an expansion of the opportunities for exceptions, appeals, or pardons, and a mechanism for a meaningful review of the particular circumstances of a deportation. For example, relief through a U Visa might have been a possibility for Federico and Gaby as victims of a crime. Or, for young people, such as Jaime, who have lived the majority of their lives in the United States, there should be some option outside of deportation. In the three cases discussed above, migrants faced penalties that would not likely match the “crime” in any other aspect of the US justice system.¹⁰

Indeed, the “[e]limination of discretionary relief means factors that weigh against an individual’s deportation are now ignored” (ABA 2004, 4). Jason Cade (2015, 37-38) suggests that revisiting Judicial Recommendation Against Deportation (JRAD) might provide one such possibility for relief and could point “the way to an important administrative reform that would decrease the likelihood of unjustified removals.” The reality is that the experiences of individuals, the circumstances of their removal orders, and their family relations are particular, nuanced, and complicated. Reasonable immigration legislation needs to include flexibility, some possibility for alternative outcomes, and a way to account for the many different circumstances that shape unauthorized presence in the United States. Shouldn’t Federico and Gaby, upstanding members of the community who lived in the United States for decades, have five US citizen children, and were victims of a crime themselves, be given some possibility for relief?

¹⁰ See discussion in Cade (2015, 36-37).

The Rights of US Citizens

In addition, future immigration policy reform should expand options for family reunification when US citizens are affected. Current legislation does not consider — or at least does not adequately recognize — the millions of US citizens with parents who are deported or at risk of being so. For US citizen children, the deportation of a parent can essentially “[destroy] their right to live in an intact family” (Thronson 2007, 80). Here, US citizenship is compromised through relations with others, resulting in a form of “contingent citizenship” for those whose parents, partners, siblings, or other relatives are unauthorized migrants (Boehm 2011). For example, future legislation could expand definitions of “hardship,” remove limiting adjectives like “exceptional” to consider factors such as US citizen children’s right to live with their parents, and utilize the “best interest of the child” standard in immigration and deportation proceedings. Such steps could have potentially provided relief to Federico and Gaby and their children, as well as Emy and Manuel’s family. Don’t Manuel and Emy’s children — all US citizens — have the right to live with their parents in their country of origin?

A Path to Authorized Return

And, just as immigrant advocates have argued that a path to citizenship should be part of immigration reform, so, too, should there be a path to authorized return after deportation. Although possible in theory — after living outside the United States for the full duration of time barred from the country or through the possibility of a petition for reentry — the reality is that authorized migration post-removal is unlikely. The full effect of a record number of deportations in recent decades is still unfolding. The range of consequences of policies that shut people out of the United States indefinitely, even when they are in every meaningful way members of the nation, is difficult to predict. One point is certain: current statutes — and the absence of immigration reform — create hardship for families that cannot be overstated. Families are, more often than not, altered indefinitely after the deportation of a loved one. Shouldn’t it be possible for Jaime, raised in the United States after arriving as a toddler, to return to his de facto home nation at some point in the future?

* * *

To address this humanitarian crisis — a crisis that separates families and keeps them apart for years, decades, or indefinitely — an alternative approach is needed. Given the many barriers, struggles, and difficulties families face because of deportation, comprehensive immigration reform that acknowledges individuals as embedded in families is crucial. As Thronson (2015, 33) argues, despite the “ubiquitous yet inaccurate impression that the promotion of family unity is a key value underlying immigration law . . . distain for family unity . . . is evident in the failure of immigration law.” Indeed, we must find ways “to keep mixed-status US families intact” (Warren and Kerwin 2017, 7), and to provide opportunities for families to reunite when removal results in separation and division across borders.

Deportation can be a kind of life sentence for individuals who have been deported, but also for their family members. Given that “[f]amily life that spans international borders still abuts against the state’s exclusionary prerogative” (Bhabha 2014, 25), the expulsion of

immigrants divides them from loved ones in ways that may never be remedied. Currently, deportation is more often than not a dead end for families—a place from which there is no out, no hope, and no possibilities for return to the United States. Finding rational and just options that can in fact keep families together has never been more urgent.

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