



# US Immigration Policy and the Case for Family Unity

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## Executive Summary

As the Trump administration contemplates immigration reform, it is important to better understand what works and what does not in the current system. This paper reviews and critically evaluates the principle of family unity, a hallmark of US immigration policy over the past 50 years and the most important mechanism for immigration to the United States. Since 1965, the United States has been admitting a relatively high proportion of family-based migrants and allowing for the immigration of a broader range of family members. However, restrictive annual quotas have resulted in a long line of prospective immigrants waiting outside of the United States or within the United States, but without status. Further policy changes have led to an increasing number of undocumented migrants and mixed-status families in the United States. Several policies and practices contribute to prolonged periods of family separation by restricting travel and effectively locking in a large number of people either inside or outside of the United States. On top of that, increasingly aggressive enforcement practices undermine family unity of a large number of undocumented and mixed-status families. Deportations — and even a fear of deportation — cause severe psychological distress and often leave US-born children of undocumented parents without economic and social support.

A recent comprehensive report concluded that immigration has overall positive impact on the US economy, suggesting that a predominantly family-based migration system carries net economic benefits. Immigrants rely on family networks for employment, housing, transportation, informal financial services, schooling, childcare, and old age care. In the US context where there is nearly no federal support for immigrants' integration and limited welfare policies, family unity is critical for promoting immigrant integration, social and economic well-being, and intergenerational mobility.

Given the benefits of family unity in the US immigrant context and the significant negative consequences of family separation, the United States would do well to make a number of changes to current policy and practice that reaffirm its commitment to family unity. Reducing wait times for family reunification with spouses and children of lawful permanent residents,

allowing prospective family-based migrants to visit their relatives in the United States while their applications are being processed, and providing relief from deportation and a path to legalization to parents and spouses of US citizens should be prioritized. The cost to implement these measures would likely be minor compared to current and projected spending on immigration enforcement and it would be more than offset by the improved health and well-being of American families.

## **US Immigration Policy and the Case for Family Unity**

Over the span of a few months, the new administration has announced sweeping changes to immigration policy. In his speech to the US Congress on February 28, 2017, President Trump stated that increasing immigration enforcement and adopting a merit-based immigration system will benefit the country, citing improving jobs and wages and strengthening security as top priorities. At the same time, Trump's administration also revealed plans to restrict the number of employment-based visas, including H1-B visas that are currently the main pathway to the United States for highly skilled foreign-born. At this point, it is not clear what the new immigration policy will look like and whether it will prioritize family, employment or skilled-based immigration. But the consequences of the increased focus on immigration enforcement have been clearly visible across the country. Under the new guidelines imposed by the administration, all unauthorized immigrants, and those with legal status who have criminal convictions, are eligible for deportation regardless of familial ties in the United States. While it is not feasible to deport all 11.1 million unauthorized individuals, such measures amplify the fears of family separation among unauthorized immigrants, legal migrants, and US citizens alike. Such policies also reverse the US commitment to family unity, a hallmark of US immigration policy over the past 50 years and the most important mechanism for immigration to the United States. In what follows, we review the principle of family unity in US immigration policy and some of the current challenges to family unity: prolonged family separations, the increase of unauthorized and mixed-status families, and the devastating consequences of current enforcement practices. We argue that in the US context with virtually no federal support for immigrant integration and limited welfare policies, family unity is critical for promoting immigrant integration, social and economic well-being and intergenerational mobility, and thus should remain the guiding principle of immigration policy.

### **A Brief Overview of Family Unity**

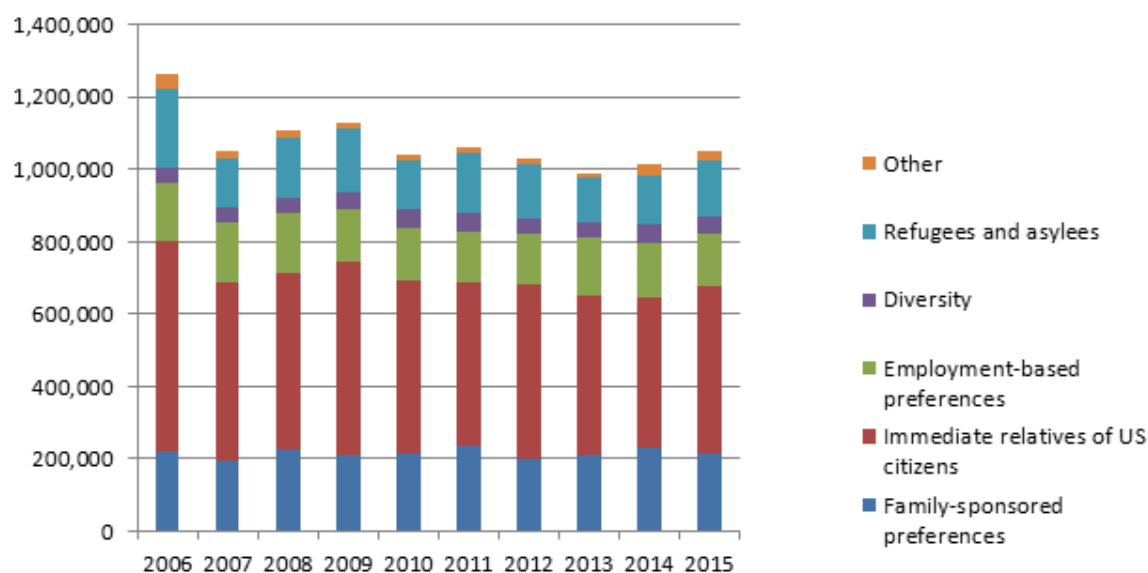
Since 1965, family-based immigration has been a cornerstone of US immigration policy. While immigration policies of other countries favor skilled-based migrants, the United States admits more immigrants who have family connections to Americans than any other category of migrant. The numerical limits set by the Immigration and Nationality Act (INA) of 1965<sup>1</sup> and expanded by the Immigration Act of 1990<sup>2</sup> allow for admission of 480,000 family migrants annually, compared to just 140,000 employment-based and

1 Immigration and Nationality Act, Pub. L. No. 89-236, 79 Stat. 911.

2 Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978.

55,000 diversity visa lottery immigrants. The law also allows admission of much broader categories of relatives compared to other countries' immigration systems. Besides spouses and minor children of US citizens, there are special categories for parents, adult children, and siblings of US citizens, and for spouses and minor children of lawful permanent residents (LPRs), regardless of their levels of education, occupation, or other skills. As a result, family-based migrants constitute roughly 65 percent of the total annual number of immigrants to the United States in any given year. In contrast, family-based migrants constitute only 30.2 percent of all immigrants to Australia, and the vast majority of those (83.3%) are spouses of Australian citizens (DIBP n.d.). In Canada, family immigrants are less than a quarter of all permanent immigrants (24.4%) with the vast majority (71%) also being spouses or partners of Canadian citizens (IRCC 2015).

**Figure 1. Immigrant Admissions to the United States by Major Class**



Source: DHS (2016, Table 6).

As Figure 1 shows, about 68 percent of family migrants (or 45% of total) are immediate relatives of US citizens, defined as spouses, minor children, and parents, and are admitted without numerical limitations under the total 480,000 cap. The rest are unmarried adult sons and daughters of US citizens (1st preference); spouses, children, and unmarried adult sons and daughters of LPRs (2nd preference); married sons and daughters of US citizens (3rd preference); and siblings of US citizens (4th preference). Immigrant admission under the family-preference categories is restricted by the total numerical limit of 226,000 per year and by category-specific ceilings as well as country-specific caps. Recognizing that the adult relatives of US citizens and LPRs may have families of their own, the policy allows for their immigration. The idea of family unity also exists in the policies governing temporary admission, refugee resettlement, and diversity immigration. For example, family members can apply for tourist visas together, and dependent's visas are issued to spouses and minor children of the foreign-born who come to the United States for relatively long periods of time on student or work visas.

## Prolonged Family Separation

Despite explicit emphasis on promoting family unity and a number of family-friendly provisions, the current immigration system is based on certain assumptions about families and immigration that may not reflect families' lived experiences. For example, the laws assume that there is a clear distinction between temporary and permanent migrants; that most families are nuclear consisting of a married couple and children; and that there are few immigrants in the process of adjustment of status, in a temporary protected status (TPS) or completely outside of the legal immigration system (unauthorized). As the result, instead of promoting family unity, the current immigration system often contributes to prolonged periods of family separation (Bergeron 2013; Enchautegui 2013; Enchautegui and Menjivar 2015; Kandel 2016).

Notwithstanding legal grounds for admission, the actual number of visas available for family preference immigrants is limited, especially for applicants from certain countries. Setting restrictive numerical quotas and prioritizing certain groups of relatives over others, coupled with per country limits, eventually results in backlogs and long waits before families are united (Bergeron 2013; Kandel 2016). The increased demand for immigrant visas was partly spurred by the provision of the INA that restricted immigration from the Western hemisphere. Before 1965, anyone born in a North or South American country could apply for an immigrant visa without numerical restrictions (and many did); now they are subject to numerical caps and have to compete with the foreign-born from all other countries for a limited number of visas. Given the large flows of migrants since 1965 and especially during the 1980s and 1990s, it is not surprising that the wait time for obtaining family-sponsored visas has increased dramatically over the years, disproportionately affecting immigrants from countries with large applicant pools, such as Mexico, Philippines, China, and India. Currently, the wait time for family-sponsored immigrants from most countries varies from about two years for the spouses and minor children of LPRs to 13 years for siblings and adult children of US citizens (DOS 2017). But adult children and siblings of US citizens born in Mexico have to wait more than 20 years to reunite legally with their relatives in the United States (*ibid.*).

Although shorter as compared to other types of family-based immigrants, prolonged wait times for LPRs to reunite with spouses and minor children (currently approximately two years) is of greatest concern. Research consistently documents negative and persistent effects of separation from immediate family members on the health and well-being of immigrant adults and their children, as we discuss further below (Abrego 2014; Dreby 2010; Suarez-Orozco et al. 2002). Ironically, long-term temporary residents can bring their spouses and dependent children to the United States relatively quickly by applying for dependent visas. But despite the laws supporting family reunification, in practice LPRs will be separated from their new spouses for the next two to three years.

What makes things worse for families are the restrictions on travel for prospective LPRs while their petitions are in process. A sharp distinction between temporary visitors and permanent migrants built into the current immigration system means that once a petition on behalf of a family-sponsored immigrant has been filed, the family-sponsored immigrant is no longer eligible for a visitor visa because it would be impossible to prove the absence of the intent to immigrate permanently, which is one of the conditions for receiving a

temporary visitor visa. Thus, prospective immigrants who are currently abroad are barred from visiting family members in the United States for many years. Partly in response to this, eligible prospective immigrants, family- and employment-based alike, prefer to apply for adjustment of their immigration status while in the United States. In fact, more than one-half of all new LPRs adjust status in the United States (DHS 2016). The adjustment time varies depending on the visa availability in specific immigration preference categories. Despite possible restrictions on travel during the adjustment process, those family-based migrants who hold valid temporary visas are usually able to become LPRs without leaving the United States. For unauthorized family-based migrants, this process involves much greater risk of permanent separation as most must return to the country of origin and seek approval of a waiver of inadmissibility, which, if denied, can lead to either three-year, 10-year, or permanent bars to readmission (Kerwin, Meissner, and McHugh 2011). By severely limiting in-person contact between family members and attendance at important family events like weddings, funerals, religious holidays, graduations, and anniversaries, these policies undermine family unity and ultimately weaken family support systems.

Although the current US immigration policy includes a relatively large list of relatives, it emphasizes legal definitions of family and assumes that formal, close kinship ties are the most instrumental. As a result, US immigrants are unable to reunite with certain relatives who may be extremely important for their family but fall outside of the defined set of eligible relatives. Two of the most common situations in which this may occur are familial relationships that are not officially documented (e.g., the absence of a formal marriage or adoption) and a relationship category that is considered too distant by the law (e.g., cousin, grandparent, godmother). For example, cohabitation without official marriage is widespread in many countries of Latin America and Caribbean, as are informal (de facto) adoptions and multigenerational families. Cohabiters and adoptive parents who did not formalize their relationship are unable to prove that relationship through official documentation to US immigration authorities. Also, godparents, aunts, uncles, and grandparents often play instrumental roles in children's upbringing, especially for families involved in international migration, but because these familial relationships do not qualify a migrant for a family-based visa, there is no mechanism for reuniting with them in the current immigration system.

Of course, the importance of extended family connections in particular cultures and family contexts present factual issues that are more difficult to prove when there is no formal marriage or birth certificate. In addition, concerns about possible fraud and even longer waits for visas if a wider range of relatives is allowed to immigrate are not unreasonable. However, other countries are taking steps in this direction. For example, Australia allocates "remaining relative," "aged dependent relative," and "orphan relative" visas. This system prioritizes relatives' contribution to or dependence on their family members in Australia over the formality of the ties (DIBP n.d.).

### **Unauthorized and Mixed-status Families**

Although family-based petitions are the primary mechanism by which people immigrate to the United States, a growing number of people have been completely barred from admission

and are ineligible to regularize their status. This has led to a significant rise in the number of mixed-status families. Recent estimates suggest that 16.7 million people in the United States have at least one unauthorized member of their household (Mathema 2017). Among those most impacted are immediate relatives, both parents and spouses, of US citizens. In the past, most immigrants who lived and worked in the United States for lengthy periods of time became eligible for legalization through US citizen immediate family members; now many do not. Today the average length of time an unauthorized person has lived in the United States is 13.7 years, and two-thirds of all unauthorized have been here for more than a decade, up from 35 percent in 1995 (Krogstad, Passel, and Cohn 2016). Of course, the longer someone lives in this country, the more likely that person is to form familial ties. One in three unauthorized persons — or 3.35 million people — are estimated to live with at least one US citizen child (Migration Policy Institute 2017), while 5.1 million children in the United States live with at least one unauthorized parent (Capps, Fix, and Zong 2016). Most unauthorized immigrants today are long-term residents with significant family and community ties.

The lack of legal conformity within families has significant consequences often overlooked by US policymakers. US citizens married to unauthorized migrants are not able to enjoy many of the benefits of their citizenship, such as the freedom to travel. They endure lengthy separations from their spouses and, in some cases, may become immigrants themselves (Lopez 2015). And US citizen children living in mixed-status families face a number of developmental challenges (Suarez-Orozco et al. 2011). Unauthorized parents typically have lower incomes, poor working conditions, and higher levels of poverty (Capps et al. 2013). This can make it difficult for parents to provide financial stability for their US citizen children. Other research shows that unauthorized parents have lower levels of social support and less access to public and community resources to help with child care than parents with legal status (Yoshikawa 2011). Moreover, simultaneous with increases in the number of mixed-status families, the past decade has seen a significant increase in deportations and bars on reentry (Lopez 2017). Thus not only are unauthorized family members at risk of family separation through enforcement, but so too are their US citizen children and spouses.

## **The Detrimental Effects of Enforcement on Families**

The social costs of immigration enforcement is significant and should not be overlooked by policymakers. The deportation of a family member leads to significant family trauma for unauthorized and US citizens alike. Families experience significant short-term and long-term economic and emotional hardship following a parents' detention or deportation (Dreby 2012; Warren and Kerwin 2017). They also experience strains in family relationships, especially between fathers and children as men are much more likely to be deported than are mothers (Dreby 2015; Golash-Boza and Hondageu-Sotelo 2013). Recent scholarship also shows significant short- and long-term mental health impacts on children when parents are detained or deported. Children have been shown exhibit significant behavioral effects, including changes in diet and sleep, frequent crying, anxiety, and fear during a deportation event. While some of these symptoms may decrease over time, studies show that withdrawal and angry or aggressive behavior persists (Brabeck, Lykes, and Hunter

2014). US citizen children also have been shown to experience higher levels of distress after a parent's deportation regardless of whether they remain in the United States or return to Mexico with their parents (Zayas et al. 2015).

It is not only a deportation or detention that negatively impacts families: the threat of what De Genova (2002) calls the fear of “deportability” alone has significant repercussions. Young children in Latino families in the United States have reported fears of separation even when their parents have never had any trouble with the law, fears that were even repeated by children whose parents were legal migrants to the United States (Dreby 2012). One study shows heightened levels of distress among children with unauthorized parents even among those who have not had a parent deported (Gulbas et al. 2015). Another shows a decreased use of social programs such as Medicaid and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) due to the risk of deportation (Vargas 2015). Policies that focus on enforcement and the criminalization of unauthorized migration have undermined the well-being of US citizens, legal immigrants, and unauthorized migrants alike.

### **The Benefits of Family Unity**

Debate over preferred US immigration policy — whether it should focus primarily on skill-based or family-based immigration — is at least as old as the INA itself. Will US society be better off if we admit immigrants based on their skills and education rather than on their family ties? Arguments are usually made based on the cost-benefit analysis with respect to the potential impact of each type of migration on the economy and society. Some policymakers also consider the breadth of services that exist for immigrants and the kind of new services they are willing to create (if any) for newcomers. Often missing from the discussion is a large body of research that points to multiple benefits of family unity for the economic, social and psychological well-being of US citizens, like the children and spouses of the unauthorized discussed in the previous sections, as well as the immigrants to the United States (Berkman et al. 2000; Cohen and Syme 1985). Helping immigrants preserve and rebuild their families may indirectly improve the health and well-being of the entire US population.

A recent comprehensive report concluded that immigration has an overall positive impact on the US economy, suggesting that a predominantly family-based migration system carries net economic benefits (National Academies of Sciences, Engineering, and Medicine 2016). This and other research emphasize that both high- and low- skilled immigrants are crucial for sustained economic growth (Bean et al. 2012). Even though family-based immigrants have lower human capital upon arrival compared to skill- or employment-based immigrants, over time these differences narrow because family migrants are more likely to experience upward socioeconomic mobility as compared to employment-based migrants (Duleep and Regets 1996; Jasso and Rosenzweig 1995). Highly skilled migrants often experience downward mobility post-migration because their foreign degrees, credentials, and work experience are not directly transferable to the US job market (Aydemir 2011; Akresh 2006). A possible mismatch between specific classifications of new immigrants and job availability prompted countries that initially favored skill-based immigration

(e.g., Canada, Australia) to settle on a system split between skill-based and employment-based admission. Unlike the United States, these countries also provide a pathway to permanent residency for temporary employment-based immigrants who spend some time in the country and have valid job offers. Although guaranteed to have jobs after arrival, employment-based immigrants in the United States (e.g., H-1B visa holders) may be reluctant to change jobs or ask for raises or promotions for fear of losing their legal status, which is tied to their current employment. Additionally, a pathway to permanent residency for most employment-based immigrants in the United States depends on their employers' willingness and ability to sponsor their immigration, which may force them to trade higher wages for a green card.

One the other hand, while it may take longer for family migrants initially to find jobs, their legal status in the United States does not depend on their employers. This gives them more freedom to make the best use of their skills and experiences and also motivates them to invest in education, which improves their employment opportunities and income levels in the long term (Akresh 2006; Vallejo 2012). Partly due to initial difficulties of finding employment in the mainstream economy, family-based immigrants are more likely to be self-employed and/or work in ethnic economies (Light, Bernard, and Kim 1999; Razin and Light 1998). Immigrant entrepreneurship plays an important role in their integration into US society, revitalizing ethnic communities and improving chances of upward mobility of second-generation immigrants (National Academies of Sciences, Engineering, and Medicine 2015; Sanders and Nee 1996; Vallejo 2012). Immigrants have higher business ownership and formation rates than nonimmigrants as roughly one out of 10 immigrant workers owns a business and 620 of 100,000 immigrants start a business each month (Fairlie 2012). Immigrant-owned businesses start with higher levels of startup capital than nonimmigrant-owned businesses with about two-thirds reporting personal and family savings as the main source of startup capital (Fairlie 2012). Data limitations often preclude comparison of entrepreneurship between employment- and family-based immigrants, but the fact that immigrants coming to the United States as children are more likely to start larger firms than immigrants arriving as adults (Kerr and Kerr 2016) suggests that the age at migration may play a more important role than the immigration pathway.

Assistance from family members in the United States is not limited to employment. Family-sponsored immigrants are also likely to receive help from their US-based relatives with housing, healthcare access, transportation, school enrollment, and enrichment activities for children. The informal exchange of goods and services goes both ways as recent immigrants, especially older parents, often assume caregiver responsibilities and contribute to unpaid household labor (Treas and Gubernskaya 2015; Treas and Mazumdar 2004). Many employment-based immigrants lack this kind of support, which is crucial for alleviating initial stress related to immigration. Moreover, there are virtually no federal or state assistance programs for newly arrived immigrants (except for refugees), and there is no indication that the current administration will institute such a program. In fact, all LPRs with less than five years of residence in the United States are explicitly prohibited from receiving federal means-tested public benefits. While other countries that prioritize skill-based immigration have a more comprehensive welfare state system of benefits and more robust immigrant integration policies (Bloemraad 2006), family support is the only kind of support the foreign-born in the United States can access and is vital to the health



and well-being of families. Policymakers promoting a skill-based immigration system and using other countries as examples need to take into account other programs, benefits, and services that are available to immigrants in those countries but not in the United States. For example, Canada has a publicly funded healthcare system that provides health insurance not only to citizens but also to permanent residents. Canada also allocates federal funds for immigrant integration services, such as free language classes and community and labor market integration services (Bloemraad 2006). These programs are likely to be as important for immigrant integration as their human capital.

### Policy Recommendations

Given the benefits of family unity in the US immigrant context and the significant negative consequences that family separation — both during family sponsored immigration and due to immigration enforcement events — the United States would do well to make a number of changes to current policy and practice so as to reaffirm the commitment to family unity. First, prolonged separation of LPRs from their immediate family members should end. Even a year in the life of a child spent forcefully separated from her parents can have long-term negative implications for her health and well-being, which may persist despite eventual family reunification.

Second, family members who are stuck in the long process of obtaining or adjusting to LPR status should be able to travel. Either establishing a temporary visa for this category of prospective immigrants or allowing prospective migrants to apply for visitors' visas will facilitate family unity and speed up subsequent immigrant integration. Risks that prospective immigrants will overstay their visas may be minimized by making it clear that violating temporary visa status requirements will preclude them from obtaining permanent status in the future.

Third, given the expanding evidence on the mental health and economic impacts of enforcement on families, the definition of hardship in granting waivers to deportation needs to be revised. Fathers and mothers of US citizen children should be afforded a path to legal status because deportation not only threatens children's well-being, but also potentially increases the burden on state-run welfare and foster care systems. Members of mixed-status families should be provided a pathway to legalization. A step in this direction would be to expand eligibility for in-country adjustment of status.<sup>3</sup>

Finally, it is important to note that preserving family unity does not necessarily mean increasing the number of permanent immigrants, and it would be a mistake to assume that all families want to be reunited in the United States. Temporary family separation is almost inevitable, especially in the beginning of highly uncertain immigration process. Additionally, many families today choose global arrangements in which members reside, at least periodically if not more permanently, in different countries (Coe 2014; Stephens 2007). Such transnational families take advantage of new technologies and the availability of temporary visas to maintain family unity despite the distance (Parreñas 2001; Wilding 2006). Making travelling to the United States difficult through expensive and uncertain visitor visa application processes, excessive vetting, and unwarranted scrutiny at the border

3 INA § 245(i), 8 U.S.C. 1255(i).

may prompt some family members to apply for permanent residency or to stay without proper documentation even if they had no previous plans to do so. Allowing for greater flexibility for migrant families may paradoxically decrease permanent settlement in the United States.

## Conclusion

Positive socioeconomic outcomes of family immigrants and their children and evidence of economic, social, and psychological benefits of family support suggest that family unity should remain a priority in US immigration policy. Families are a buffer that aids immigrant integration, provides a social and economic safety net for new Americans, helps to incorporate, and builds new businesses in the United States. And yet despite these benefits, the principle of family unity has faced significant hurdles over the past decade, including many unintended consequences for families such as lengthy visa backlogs and processing delays, visa restrictions, biased assumptions about family structure, bans on reentry, and separations due to enforcement practices. Such policies increase the likelihood of lengthy family separations and ultimately undermine families.

Going forward, the new administration should seek out ways to enhance family unity, rather than undermine it. Enforcement policies should deprioritize deportation of those with significant family ties to US citizens. The definition of family members eligible for immigration should match family members' lived experiences. And wait times in immigration applications must be reduced. After all, strong immigrant families create strong American communities.

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