1 • FROM REUNIFICATION TO SEPARATION

The preservation of family unity has become a common referent for immigrants and their descendants as well as for a broader community of support. Spearheaded by community, political, and religious leaders, this defense of family is mainly informed by the shared lived experiences of immigrants facing the prospect of deportation in a historical and legal context that had privileged family reunification and unity for almost four decades. As immigration policy changes seek a diminishment of the family reunification rationale to one that emphasizes "highly skilled" professionals, today's immigrants are experiencing an unprecedented reality: the contradiction between a history and official discourse that has prioritized family unity and reunification and a reality that threatens the survival of undocumented and mixed-status immigrant families already living in the United States. This chapter reviews the legal and political changes that have led to the current record rates of deportations and related family separations and the decline of family unity as a state goal. Additionally, I analyze the economic and social effects of immigration policy changes in the past fifty years, which have led to a dramatic increase in detention and deportations and increased the vulnerability of the undocumented and their family members.

Immigration policy analysis matters not only because the laws expand or curtail the possibilities of legalization but also because policy directly affects trends. Migration patterns and migration "crises" are caused both by demographic and economic trends and by immigration policy, which shapes who can or cannot migrate and how they can or cannot migrate. One clear example is Douglas Massey, Jorge Durand, and Nolan Malone's (2003) persuasive argument that intensification of border enforcement in the past two decades has impeded circulatory migration (a previously common pattern) and forced migrants to bring their families to settle without status rather than risk going back and forth to visit

them. In this way a policy designed to diminish undocumented migration actually increased it.

Even a policy that aims to be inclusive can be exclusionary if it is designed in a way that prevents millions from accessing the pursued good. As I review below, with one exception, the capacity of the family reunification visa system has remained the same for decades, creating a backlog that has led to more undocumented migration. Hence, U.S. policy (on both the admissions and enforcement ends) has facilitated the existence of eleven million migrants who are undocumented, made "illegal" and therefore deportable. As Mae Ngai, Cecilia Menjivar, Nicholas De Genova, and others have argued, illegality is created by a system that creates the boundaries of legality and illegality, and "illegals" are a production of the state.

IMMIGRATION LAW, FAMILY IN(EX)CLUSIONS, AND MIGRATION PATTERNS

Before the 1950s there was no consistent policy of family inclusion for migrants, and there were several instances of family exclusion targeting non-European migrants, such as the Chinese Exclusion Act, which would not allow the Chinese to bring spouses, or the bracero program, specifically targeted toward men who, in a time of labor shortages during World War II, were recruited to come alone and work and return to Mexico. The lack of concern for the family rights of Mexican immigrants was made even more evident in the massive repatriations in the 1930s, when citizen adults and children were sent back to Mexico along with their noncitizen relatives. In fact, according to Edward Telles and Vilma Ortiz (2007), 60 percent of the "repatriated" in this period were citizens. It was not until the 1950s that family reunification was explicitly included as a category that made someone eligible for admission. The McCarran-Walter Act of 1952 was the first to introduce a system of preferences for the selection of immigrants applying for admission that was based on both skill sets and family reunification. However, because it still continued the national origins quota system that gave preference to immigrants from those populations already here, this policy favored mainly Western European applicants.[1]

The 1965 Immigration and Naturalization Act (INA), by contrast, which was informed by the civil rights movement, did away with the national origin preference while maintaining the skills category and expanding the family emphasis (adding parents of U.S. citizens over age twenty-one to the list of immigrants not subject to numerical limitations, and altering the size of preference categories so that family reunification was emphasized). According to Charles Keely, this expansion was due to the negotiation of two philosophies of immigration, one that emphasized humanitarian values and one that was concerned with

maintaining American culture (1971, 8). Humanitarians favored repealing the national origins quota and expanding the family numbers, as there had been a backlog since the passage of the McCarran-Walter Act. Those concerned with the "preservation of American society" wanted to continue the national origins quota system and were open to family reunion with the condition that the American economy and labor were protected. The 1965 law reflected compromises by both factions (the death of the national origins preference and emphasis on family reunion were concessions to the humanitarians, while efforts to protect American jobs via labor certification and to curtail Western Hemisphere migration favored the preservationists). Eliminating the national origins preference allowed for the significant expansion of non-European migration. However, it was a controlled expansion, as there was a numerical restriction of 170,000 individuals for the Eastern Hemisphere, and a 120,000 ceiling on Western Hemisphere migration.

Hence, since the 1950s there has been an immigration norm that prioritizes family reunification in cases of family members abroad, and family unity in cases of families who reside in the United States. This includes not only prioritizing family members for visas (regardless of race) but also facilitating legalization for those who married in the United States. Citizenship was bestowed to partners and parents of minors (and siblings) of citizens and residents, although the latter have a longer wait for reunification. Very close relatives of citizens were not subjected to the numerical limitations of the quota system. In no legislation have children (under the age of twenty-one) ever been able to bestow citizenship upon their parents.

This creation of a family reunification system that prioritizes the nuclear family (in the immediate family relatives category) and locates siblings and adult children in a secondary category (in the family preference system, which has a limit) reinforced what Monique Hawthorne (2007) considers a very limited North American model of family that does not consider different cultural constructions of family, and does not even reflect the different models that exist in the United States. According to Pat Zavella, including only spouses and children under the age of twenty-one as part of the family unit is a provision that "codifies a heterosexual nuclear family and excludes other types of family structures that are prevalent in the United States and Latin America—such as single parents, the elderly, multigenerational, extended, those headed by minors, or same-sex families, as well as children born 'out of wedlock' or who have informal foster relationships with parents (in loco parentis) such as children cared [for] by their grandmothers when parents migrate" (2012, 1). This restricted model has not been altered since 1965, with the very recent and important exception of the recognition of same-sex marriages in visa petitions starting July 2013 and of same-sex partnerships in prosecutorial discretion (in cases of individuals facing deportation)

since October 2012.[2] While an analysis of how these very recent policies may affect immigrant family policy and politics is outside the scope of this chapter, the positing of a nonheteronormative model of immigrant families by youth activists, discussed in chapter 4, certainly indicates a better fit with the youth activists' model of family than with the traditional one.

However, while all these nuclear families were considered equal in theory by the 1965 INA, they were not equal in reality due to the differences in the volume of migration across the country. Mae Ngai (2013) discusses how Senator Phillip Hart's proposal prior to the 1965 act that would have allotted 48 percent of all visas to countries that were the largest senders in the previous fifteen years was not accepted by the Kennedy administration, which was pursuing a civil rights–era ethos of equality and insisting instead on the visa system that allotted an equal number of visas to all countries. This meant that citizens of the countries that send the largest number of immigrants, such as Mexico and the Philippines, have much longer waits for visas. Since all countries have an equal limit of visas, regardless of sending patterns, citizens' relatives and even very young children have had to wait years or decades before being able to enter the United States.

Despite these limitations, which led to different lived legal experiences among immigrants of different national origin, this policy not only shaped law but also immigrant communities' understanding of the law and their expectations that family was the primary rationale for migration and legalization. One cannot overestimate the discursive power of these family reunification policies. The prioritizing of admission based on family reunification has informed immigrant communities' notions of what is fair, just, and achievable, and these notions are shared by most immigrants, regardless of their legal status.

While one could argue that these reunification policies apply only to legal migration and do not include those immigrants who did not enter legally, these distinctions are problematic to make retroactive for at least a couple of reasons. It is not until the 1980s debate on the Immigration Reform and Control Act (IRCA) that the issue of "illegality" surfaced as a central concern, which remains prevalent through today, and that the distinction between "legal" and "illegal" became a central focus. Second, because of IRCA, many people who were undocumented were able to legalize—subsequent reunification of families has therefore included the reunification of family members of individuals who were once undocumented but gained legal status and were able to petition for family members. The fluidity between the undocumented and the legal migrant, between the citizen and the noncitizen, suggests that this norm of family unity is widespread and porous, predates the stark illegal/legal divide, and continues to be shared by most immigrants. As the visa backlogs became longer, many immigrants who were related to citizens opted to migrate without authorization and felt morally justified doing so. Insofar as the U.S. immigration system has

prioritized and recognized a need for family (the basis for this is discussed later in this chapter), the standards and norms have relevance for the undocumented immigrants' sense of what is fair.

By the mid-1980s, the United States had already experienced a family reunification system that was limited in its breadth and would become more so in subsequent decades. The economic crisis of the late 1970s and early 1980s, conjoined with the migration influx of Central Americans (in addition to the substantial migration of Cubans coming from the Port of Mariel), led to the intensification of public concern about immigration and to the development of a national agenda and legislative process that concluded with the passing of IRCA in 1986. IRCA is the federal government's first attempt to manage and control "illegality" by combining an amnesty program that legalized about two million people who could prove they had arrived in the United States before 1982, but also created employer sanctions to punish those who hired undocumented immigrants. Like the 1965 act, it was a trade-off between immigrant rights supporters, who sought a human solution for the undocumented, and restrictionists, who conditioned the amnesty on establishing measures that would impede and/or disincentivize more undocumented migration. No significant changes to the numbers of the visa quota system were made in this or any subsequent bill, nor was there any provision that would expand the restricted family model created by the INA.

In fact, newly legalizing family members was quite restricted, as IRCA did not allow for the legalization of spouses and minors of applicants who had arrived after 1982 to legalize as derivatives as long as the newly legalized had temporary status. (It took four years from the granting of temporary status to becoming a legal permanent resident [LPR], which then qualified an immigrant to petition for family.) Hence, IRCA is the first policy to create split families among those living in the United States, consisting of those who qualified and those who did not, leading to deportations of many of those who did not qualify. This development led to pressure from immigrant rights supporters for the 1994 modification of section 245 I of the 1990 act, in which an adjustment of status provision allowed for undocumented family members of residents and citizens who had been residing in the United States to petition to legalize without having to leave the country and wait.

Because these new family legalizations were added to the caps in the visa list (and the quota was not formally expanded to accommodate the post-IRCA demand), amnesty made backlog longer, significantly slowing the process for future applicants and further lengthening already lengthy waits. The Immigration Act of 1990 made a one-time adjustment in order to accommodate IRCA beneficiaries' petitions, raising the maximum number of visas per year from 500,000 to 700,000. This was the first and last time the cap was adjusted. However, given the number of years it takes for an immigrant to become a resident

and then a citizen and petition for family, the greatest number of IRCA-related petitions have come after 1990, with no subsequent updates to the caps.[3] While neither perfect nor permanent solutions, both the creation of 245 I and the expansion of the caps did reinforce the family reunification norm and signaled that family unity of mixed-status families already residing in the country was also a priority.

While IRCA led to the temporary expansion of visas to accommodate the relatives of those who qualified, it also created a backlog that extended even further the wait of future applicants. This backlog problem pushed family migrants residing in the United States to opt to migrate illegally. Policy makers of different stripes made this connection explicit in the Independent Task Force on Immigration and America's Future, which reported in 2006: "The system's multiple shortcomings have led to a loss of integrity in legal immigration processes. These shortcomings contribute to unauthorized migration when families choose illegal immigration rather than waiting unreasonable periods for legal entry."[4] Statistics support this task force observation, since the problem has only become exacerbated after 245 I was eliminated in 2001. A significant percentage of the estimated eleven million unauthorized immigrants in the United States are spouses and minor children of LPRs who have been approved for family-based visas but are caught in the years-long preference category logjam. But if they come and then try to legalize, they are barred for ten years and then "become part of a growing underground of undocumented people who are subject to exploitation and abuse."[5]

The bar referred to in this passage is the one in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which stipulated that a person who was unlawfully present in the United States for one year, upon leaving the country, would be barred from returning for ten years. While this was passed in 1996, it was only felt to its full extension when section 245 I's second extension expired. This meant that an undocumented family member of a citizen who wanted to apply for legalization could no longer do so from the United States and would have to leave the country and apply at a consulate. However, leaving the United States to do this immediately triggered the bar. The ability of citizens to petition their family members living in the United States and legalize their status was thwarted.

If the situation of undocumented family members already living here was impossible, the prospects of family members living abroad and seeking to reunite here was not exactly easy or quick. Because the quota has never been based on realistic matching with demands of the economy, or been adjusted to expand for the largest sending countries, the problem just perpetuates itself and becomes more severe. The 2007 bill as well as the 2013 Senate legislation did nothing to expand the number of visas; instead, both sought to reduce family-based migration and increase skill-based visas. Specifically, the 2013 bill would

have eliminated the sibling family preference category, making it impossible to sponsor siblings. To address the demands of agriculture and service industries, both bills proposed a form of temporary guest worker program that would not grant visas to the families of workers.

Another legacy of IRCA was the criminalization of deportation by equating a deportation order with a felony conviction, and barring those with felony convictions from ever legalizing. Thus IRCA barred the previously deported from being able to apply for legalization, eliminating the possible use of waiver (212 I) that had allowed the possibility of pardoning any felony with the exception of drug-related ones.[6] This permanently prevented families that had a member deported previously from being reunited.

The decade between IRCA and IIRIRA was characterized by the rise of strong anti-immigrant sentiment expressed in an intense restrictionism that sought increased external and internal enforcement and exclusion of immigrants (documented and not) from state services and resources. The immigrant family came to renewed attention in the debate and mobilization over Proposition 187 in California, which aimed to deny education, social services, and most health services to undocumented immigrants and required local police, health, and social service officials to report undocumented immigrants to the federal government. Mexican women, in particular, were represented as hyperfertile, their reproductive expenses costing taxpayers highly.

The view of immigrant and specifically Mexican immigrant women as a reproductive threat is not necessarily new. In a study of mainstream journalism's perceptions of Mexican and Mexican American women's fertility between 1965 and 1999, Leo Chavez (2004) found that journalists associated these women with high fertility and population growth, and therefore more likely to use medical and other services for their children. He claims that anti-immigrant sentiment during the 1980s and 1990s focused on the reproductive aspects of Mexican immigrant and Mexican-origin women. Both Chavez and Jennifer Hirsch (2003) show a more complicated story of fertility than the alarmist stereotypes of mainstream media. Relying on California-based data, Chavez (2004) showed that Mexican-origin women have had a drop in fertility, but that the steep decline in the fertility of white women and the fact that the fertility of immigrants remains higher than that of native white women have led to alarmist but unfounded claims of hyperfertility. Hirsch (2003) argues that while fertility rates of Mexican women did increase in the 1980s and 1990s, fertility in Mexico has declined significantly in the past three decades, and that fertility tends to decline with migration. Some of these statistics may point to the life-cycle and relative youth of migrants more than to hyperfertility.

Irrespective of its accuracy, the claim of hyperfertility has had a deep impact on health and immigration policies. Elena Gutierrez (2008) has aptly argued that

in the 1970s, the forced sterilization of Mexican and Mexican American women (of different legal statuses) was a form of eugenics in response to the perceived threat of Mexican women's reproduction. In the 1990s, this attack on Mexican women's fertility assumed a different path, focusing not on eugenics but on a discourse of "economic costs" (which erased or minimized economic contributions of immigrants). Hence, in the 1990s the reproductive threat left the realm of hospital and street and became part of the public discourse on immigration policy—becoming a central rationale or basis for excluding immigrants from rights and public services.

While Proposition 187's victory did not lead to its implementation due to immediate challenges in the court system, it did inform national politicians and debates, as anti-immigrant organizers moved from the state to the national scene, seeking legislative support for a bill that would advance the restrictionist agenda. IIRIRA, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), and the Anti-Terrorism and Effective Death Penalty Act (AEDPA) all passed in 1996, and all contained provisions that restricted the rights of immigrants. IIRIRA limited legalization options and expanded enforcement; PRWORA excluded immigrants from state resources and services; and AEDPA expanded the powers of local police to arrest immigrants. The strict and punitive implementation of these enforcement measures especially became far more widespread after the post–September 11, 2001, creation of the Department of Homeland Security (DHS) in 2002, which took over immigration affairs from the Department of Justice and added a security rationale to its immigration external enforcement through the U.S. Customs and Border Enforcement Protection and internal enforcement through U.S. Immigration and Customs Enforcement (ICE). Enforcement intensification continued and became exacerbated after 9/11, when national security became a new framework of justification for further immigration enforcement and border control. This was due in great part to the substantial increase in the budget for arresting, detaining, and deporting noncitizens once immigration came under DHS (Golash-Boza 2012, 40).

IIRIRA and AEDPA led to important changes, including restricting of family petitions and a bureaucratic path to legalization; facilitating the increase in enforcement; and restricting or minimizing legal recourses for those facing deportation.[7] Each of these three measures bears relevance for immigrant family unity and requires further examination.

First, the new law restricted family petitions by creating a requirement that an individual petitioning a relative had to be 125 percent above the poverty line. Because this made it very hard to sponsor relatives, some families who would have petitioned formally had no option but to bring their relatives through alternative means. Additionally, the bureaucratic relief to facilitate legalization mentioned above, 245 I, was cut—prior to October 1994, most undocumented residents were

required to leave the United States and acquire a visa abroad from the Department of State, as they are again now. As I stated earlier, when Congress created the adjustment of status part to Section 245 I, this allowed undocumented residents to adjust their status without leaving the country. IIRAIRA stipulated that this part of Section 245 I could only be extended until 1997. However, President George W. Bush approved a temporary extension in January 2000 to include anyone who was present in the United States before December 2000.

A second set of measures combined new laws and new enforcement programs that expanded "illegality," and the number of deportations skyrocketed. First, the new laws grandfathered no one, and thus targeted all noncitizens with a previous infraction (felony, misdemeanor), which could be applied retroactively, even after time was served. When the criminal act was implemented, there was no grandfathering that would exclude people who had committed previous infractions. This is why one of the first ways in which IIRIRA was felt was the unprecedented deportations of people, including many LPRs who were deported, sometimes upon applying for citizenship, for having a criminal record or immigration infractions that were now considered felonies. In other words, IIRIRA criminalized immigration. Reentry, or returning after a deportation, was a felony, as were a number of other immigration-related acts, which made it possible for people who committed these acts to be called "criminal offenders," likened to violent criminals or serious offenders, and made, by definition, ineligible for any form of relief and most likely ineligible for any form of legalization in the future. The very creation of a criminal alien category and the targeting of those with a record who were not fleeing the state initiated the deportation increase even before other forms of enforcement were intensified. Moreover, the further criminalization of immigration violations made it increasingly easy to place many of the undocumented on the list of "criminals" who had committed a misdemeanor or a felony, and should therefore be deported.

IIRIRA also created three-year bars from returning for people who have been deported once and ten-year bars from returning for people who have been deported twice. Additionally, as mentioned earlier, the law also prohibited anyone who has left the country after having been here a minimum of six months without permission from reentering the country for three years—regardless of whether they have qualified for an immigrant visa through family or employer sponsorship. Those here for twelve months or more were prohibited from reentering the country for ten years. This places immigrants in a Catch-22: many immigrants who are in the United States without permission, but who have qualified and are on the verge of gaining immigration status, are required to leave the country to pick up their immigrant visas in their home countries. After the elimination of the section of 245 I, discussed earlier, they were not able to leave to adjust their papers without triggering the bars. This is perhaps the system's most

pernicious contradiction or trap since the bars make legalization of most people who are undocumented here impossible. These immigrants face the choice of a very long separation from their family or remaining in the United States with no status and forgoing the immigrant visa for which they have qualified.

Currently a waiver for the bar to reentry is available only to an individual who can show that a U.S. citizen or LPR spouse, child, or parent would suffer "extreme hardship" if the individual were to be forced to remain outside of the United States for a long period of time. Even if an individual qualifies for the waiver, the application process itself may result in a long period of separation. Currently, this waiver is obtained at a consular post abroad, and it may take up to a year for a decision to be made. In April 2012, the Obama administration proposed a new waiver process that would allow applicants for these waivers to remain in the United States while their application is adjudicated. This would cut down on the amount of time families are separated while waiting for the waiver to be processed. However, the onerous "extreme hardship" standard must still be met to qualify for the waiver. Because the implementation did not start until March 2012, it will be some time before we know how easy or difficult it is to get such a waiver and what percentage of applicants are accepted. Despite the obvious problems that these bars present for people who are members of mixed-status families in the United States, neither version of a comprehensive reform bill, either in 2007 or 2013, has proposed the elimination of these bars. Together, the elimination of 245 I and the continuation of the bars since 1990 reveal the lack of a political will to resolve the legal status of mixed-status families outside of a massive legalization bill, which remains elusive.[8]

In addition to these changes, there was an increased focus on enforcement, some measures stemming from IIRIRA and AEDPA and others stemming from subsequent piecemeal enforcement bills. In terms of external enforcement, there was the creation of expedited removal, which allowed border agents to deport people they caught crossing or on the U.S. side, a power they did not have prior to IIRIRA. Expedited removal meant an immigrant could be deported without having her or his case considered by a judge. Additionally, there was a significant expansion of border security via patrol reinforcement, new equipment, and wall construction (Hold the Line, 1993; Operation Gatekeeper, 1994; and Operation Desert Safeguard, 2004). Two consequences of this external enforcement intensification have been the rising expense of crossing (leading drug cartels to become involved in the industry) and the rising number of deaths of migrants in the desert as enforcement in California and Texas led migrants to opt for Arizona. In terms of internal enforcement, work-site raids increased dramatically between 2004 and 2007, and the proliferation of agreements between DHS and local police departments (thanks to the 287 G provision in IIRIRA) allowed local enforcement officers to detain people for immigration-related purposes, leading

to more arrests and deportations. With these new arrangements, even routine traffic violations could lead to detention and deportation. More recently, DHS's Secure Communities program has relied on integrated databases and partnerships with local and state jailers to identify, detain, and deport more immigrants, many of whom do not have any criminal record.

Given these new conditions that eliminated most options for legalization and dramatically increased deportations, what recourse did families facing deportation and separation have? Very few, given IIRIRA's specific criteria about who is deportable under what conditions, which meant the minimization of judicial discretion. The new rules, which criminalized many immigration offenses, did not easily allow judges to balance a person's contributions and ties when considering a deportation case. In fact, in some cases, such as reentry (when a person had a previous deportation), a person was deprived of the right to go before an immigration judge. While "suspension of deportation," the last recourse available to immigrants pre-IIRIRA, allowed a judge to consider how deportation would cause extreme and unusual hardship to the individual migrant making the appeal, IIRIRA canceled suspension of deportation and replaced it with cancellation of removal, which was more stringent. Now, the potential deportee no longer had to prove that deportation would lead to extreme and unusual hardship for herself or himself, but for others.

There is a maximum of 4,000 approvals for cancellation of removal for non-LPRs per year, and the standard for granting approval is quite rigorous. Immigrants first must apply to the attorney general's office, which frequently reviews them without a full judicial hearing. After a cancellation of removal is denied at the level of the attorney general, it can move on to very busy circuit courts with very limited prospects. IIRIRA policy severely restricts the ability of immigrants to seek a remedy through the judicial courts when they receive an order of removal. Sometimes referred to as the "jurisdiction stripping rule" by the circuit courts (see *Morales-Morales v. Ashcroft*), 8 USCS 1252 (a)(2)(B) states that no court should have jurisdiction to review previous judgments on granting relief, or any other decisions of the attorney general or the secretary of DHS. In other words, the courts cannot "reverse" or alter the outcome of the attorney general's decision. Law 8 USCS 1252 (a) (2) (D) still allows the courts to review "constitutional claims or questions of law." This latter point constitutes the basis for most of the suits heard in the circuit courts.[9]

DEPORTATION, DEPORTABILITY, DETENTION, AND THEIR EFFECT ON FAMILIES

While there are an estimated 11 million undocumented immigrants, adding their family members means there are approximately 16.6 million people who are directly affected by deportation or the possibility of deportation. The number

of children of undocumented immigrants increased by 1.2 million from 2003 to 2008, totaling 5.5 million children (DHS 2009).[10] Most of the growth is due to more births in the United States; 4 million of the 5.5 million children (or 73 percent of the children of the undocumented) are U.S. citizens. The number of undocumented children, by contrast, has remained level at approximately 1.5 million in that five-year period (DHS 2009, 7). Eighty-two percent of children of undocumented immigrants are in mixed-status families, while 18 percent, or 792,000, are not (DHS 2009, 8).[11]

According to ICE's own figures (released after a Freedom of Information Act [FOIA] request by the online news outlet Colorlines and published on December 17, 2012), between July 1, 2010, and September 30, 2012, nearly 23 percent of all deportations—or 204,810 deportations—were issued for parents with citizen children, averaging about 90,000 deportations of parents per year (Wessler 2012). According to Colorlines journalist Seth F. Wessler, "the new figures show that rates of parental deportation have remained largely level since Congress ordered ICE to begin collecting the data, quashing hopes from some advocates that the agency's 2011 prosecutorial discretion guidelines would lead to a decline in these removals" (Wessler 2012). Because there is no data prior to 2010 about the percentage of people deported who were parents, it is impossible to know what the average was for the last decade and if levels have gone up or down. However, this two-year snapshot gives a sense of the severity of the issue; with 90,000 parents deported a year, we can assume that significantly more than 90,000 citizen children are affected. However, despite this data limitation, one Human Rights Watch report estimates that since 1997, at least 1.56 million family members—including husbands, wives, sons, and daughters—have been separated from loved ones by deportation, and that many of those affected are citizens and lawful residents.[12]

These parent deportees would include not only undocumented immigrants but legal residents as well, even though we do not know the exact breakdown (DHS data does not distinguish between LPRs and the undocumented when reporting removals, nor does it distinguish among nonviolent felonies such as drug convictions and illegal entry or other immigration-related felonies). This happens because, as stated earlier, IIRIRA made permanent residents subject to deportation after having served criminal sentences, even in the case of nonviolent offenses with a short sentence.[13] In terms of criminal offenses, it is important to note that the 1996 law added seventeen offenses to the category of aggravated felony. Before IIRIRA, offenses were only aggravated if the term of imprisonment was five years or more, but with IIRIRA, offenses became aggravated if the term of the offense was one year. Additionally, the federal law respected state sentences, so an LPR might be deported for an offense that had a one-year sentence in one state, while another one with the same offense in a state with

different laws might not. According to Human Rights Watch (2007, 42), in fiscal year 2005 only 20 percent of deportations for criminal offenses were charged with violent offenses, whereas 64.6 percent were for nonviolent cases, including theft offenses, and 14.7 percent were "other."

In sum, the effects of the policies of 1996 and subsequent policies have led to unprecedented rates of deportation. In the ten-year period between 1998 and 2007, for example, the number of deportations more than doubled, from 179,000 to 359,000 (see figure 1.1).[14]

While there was a dramatic increase in deportations in this ten-year period, the high numbers maintained in recent years have remained stable. Between 2008 and 2012, deportation rates maintained the high rate obtained in 2008, fluctuating between 350,000 and 400,000 individuals,[15] despite the steep decline in actual rates of migration in recent years (Passell and Cohn 2010). This has meant that in order to maintain its 400,000 annual deportation quota, DHS has relied on increased internal enforcement by ICE, which is more likely to target immigrants who have been here for many years and have formed families (rather than recent border crossers).

Together, this intensification of border enforcement, the minimization of judicial discretion, the limit of administrative limits to relief from deportation, and the lack of any legislative action that creates a path to legalization (the only exception being the deferred action for youth discussed in chapter 4) mean that the mass deportation and family separation issue, and its detrimental economic, social, and psychological effects, has not only continued in the past decade but has become more severe in the last five years.[16]

What exactly have been the effects of deportation on families? In addition to the child and adult trauma, insecurity, and anxiety that stems from the

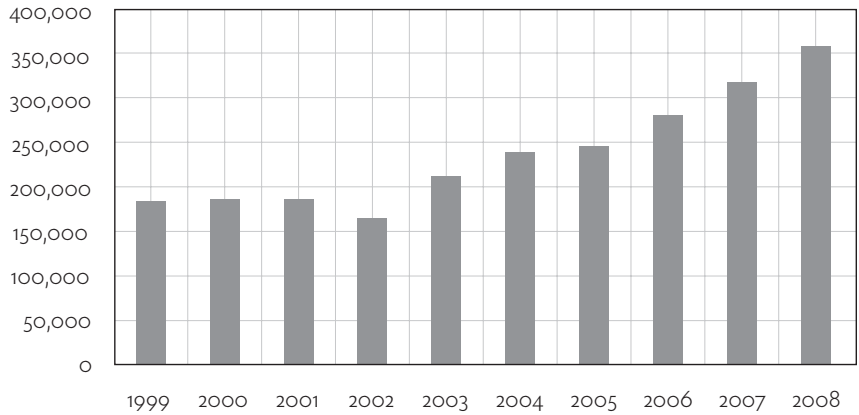

FIGURE 1. Total Number of Deportations by Year
Created by Roberto Rincon.

experience, research has shown that it damages family structure and personal relationships and leads to a substantial decline in the household economy. Joanna Dreby (2012) found that there were three main directions that families could take after deportation, each with detrimental outcomes. One is the case of a spouse remaining in the United States with children (mostly women since the majority of deportees are men); another would be the moving of most or the entire nuclear family to Mexico or another country of origin; and a third would be the placement of children in foster care. The first option most often leads to the creation of single-mother households, whose income goes from low to poverty level after a spouse's deportation, and who do not qualify for unemployment or welfare relief. Additionally, their spouses are usually returning to countries where it is hard to find a job that allows them to support themselves, much less their families. In many cases, women end up sending money to the deported spouse. This arrangement also tends to restructure the family, as older children are forced to assume child-care responsibilities when the mother works, and deported spouses sometimes become estranged from their spouse and/or children. In fact, David Brotherton and Luis Barrios (2011) have found that while male migrants who leave voluntarily tend to maintain their relationship with their children, deportation tends to sever bonds with children, as deportees experience high levels of rejection and demoralization in their country of origin. The long-term outcomes of this option vary. In some cases the deported spouse returns illegally. In other cases, and if viable and affordable, the children and spouse regularly visit the deportee in order to maintain family ties. In other cases, all or most of the family travel to Mexico. However, such arrangements may take a long time, since paying for passports and tickets is a large financial burden (Dreby 2012). Less research has been done in the case of deported mothers, although most cases I have encountered have led to women taking small children with them and leaving teenage or older children with a spouse or relatives to avoid disrupting their lives and schooling. For women who leave children behind, their child's legal status determines their ability to receive visits from their children.

In the case of the family's departure to Mexico, in addition to the economic difficulties entailed in finding work, it can have disruptive effects on children born and educated in the United States. For example, research on the children who have returned to Mexico (a number that the Pew Hispanic Center calculated at 300,000) has found that the children feel like exiles, have difficulties with the language and a very different education system in school, and are deprived of certain health benefits they had in the United States, something especially important in the case of children with learning disabilities. Additionally, their educational achievements and aspirations often suffer (Boehm 2011; Chaury et al. 2010; Dreby 2012; Yoshikawa 2011; Zuniga and Hammond 2006).

Finally, the foster care option has been recently noted in the Colorlines report "Shattered Families," as research has uncovered the tragic ways in which the detention and deportation of parents have led to charges and findings of parental neglect and the subsequent entering of children into the foster system. Once deported, parents have very little recourse to argue their case and regain custody of their children. In many cases where parents have expressed their desire to have their children cared for by relatives, the state has denied this request, finding undocumented relatives poor prospects for foster parenthood on the basis of their status. The report estimates that there were at least 5,100 children living in foster care whose parents had been detained and/or deported. All three of these possible directions mentioned by Dreby—leaving children in the United States, moving them to the country of origin, or placing them in foster care—lead to severe distress, dramatic family changes, a decline in family income, and a loss of opportunities for children.

As explained in the first section of this chapter, the policy of family reunification and family unity, despite its limitations, was sustained for thirty-six years, between 1965 and 2001 (when section 245 I ended). It remains the main logic for the admission of people who are not in the United States, but has been severely curtailed for those families seeking to remain united here. In 2003, family reunification was the largest category of entry (categories include family, work, refugee and asylum, and diversity-based migration) and accounted for two-thirds of permanent migration to the United States every year.[17] However, despite this persistent rationale, because of the changes explained above, families of mixed status in the United States have found their ability to regularize their status impeded, and families that are entirely undocumented have waited for years for a legalization bill that would regularize their status and allow them to come out of the shadows in an age of intensified deportation. Moreover, prior to IIRIRA, judicial discretion allowed judges far more flexibility in balancing an immigrant's infractions and the individual's standing as a family member with responsibilities and rights. While the right to family has been recognized in several international human rights treaties, including the Universal Declaration of Human Rights and the Convention of the Rights of the Child,[18] this recognition has not permeated the legislative process or significantly mitigated enforcement. These contradictions, made painfully evident in the enforcement policies that have truncated over 90,000 families per year, have become the basis for the politicization of family for undocumented immigrants and their families, legal immigrants, and the wider Latino communities in which they reside. For them, seeking justice and recognition of their personhood has become deeply intertwined with the defense of family unity. This process, its meaning and its effects, is the topic of the remainder of this book.