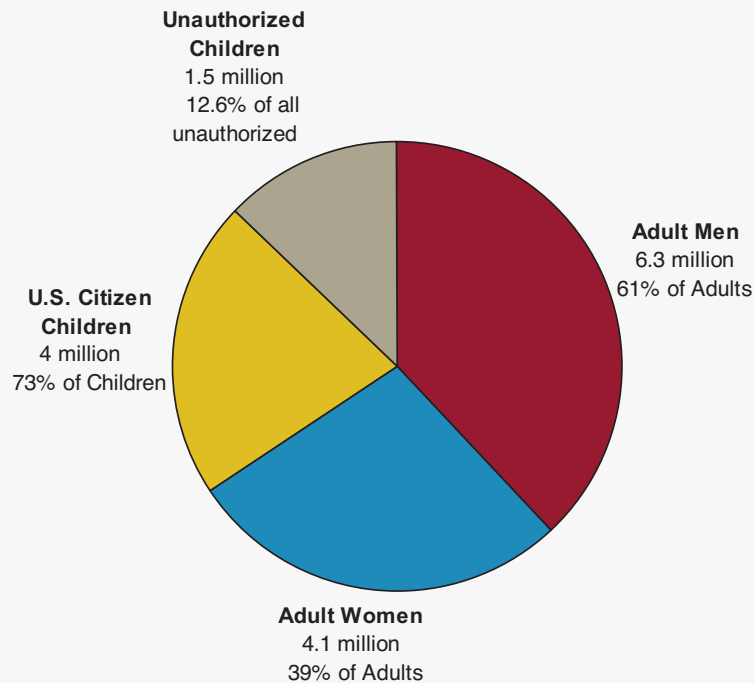




## The Undocumented Population of the United States - March 2008



### Undocumented Immigrant Family Composition: March 2008



Source: Passel, J., *A Portrait of Unauthorized Immigrants in the United States*, April 2009.

### Breaking Down the Numbers:

- Total Number of Undocumented Immigrants: **11.9 Million**
- "Mixed Status" Family Members: **8.8 Million**
- Children of Undocumented Parent(s): **6 Million**
- U.S.-Born / Citizen Children of Undocumented Parent(s): **4 Million**
- Undocumented Immigrant Parents of Citizen Children: **3.8 Million**
- Percentage of Households Consisting of Couple and Children:
  - Undocumented Immigrant Households: **47%**
  - U.S.-Born Resident Households: **21%**
- Percentage of Children Living in Two-Parent Families:
  - Undocumented Immigrant Parent(s): **80%**
  - U.S.-Born Parents: **71%**

Excerpt taken from *Severing a Lifeline: The Neglect of Citizen Children in America's Immigration Enforcement Policy*, a report by Dorsey & Whitney LLP available at [www.Dorsey.com](http://www.Dorsey.com)

## The Myth of the Line: Barriers to Lawful Entry



### Paths to Lawful Entry for the Majority of Undocumented Immigrants are Virtually Non-Existent

- **Employment-Based Immigration:** Arbitrary Caps on Visas Established Decades Ago are Out of Step with Demands of the Modern U.S. Economy
  - Undocumented Immigrants in U.S. Labor Force: **8.3 Million**
  - Vast Majority of Undocumented Immigrants Occupy Low-Skilled Jobs (>75%)
  - Estimated Growth in Demand for Low-Skilled Workers through 2014: **25 Million**
  - Annual *Worldwide* Allotment of Visas for Low-Skilled Workers: **5,000**
- **Family-Based Immigration:** Systemic Barriers and Bureaucratic Delays Impede the Goal of Family Unity
  - Family Preference Visa Numbers Have Gone Unused as a Result of Processing Delays (more than 200,000 in last 15 years)
  - Family Preference Visas Limited
  - Wait Times Often Exceed 15 Years
- **The Interest of the Citizen Child in Family Unity is Ignored**
  - Adult Citizen Children (age 21 or older) Can Petition for Admission of Non-Citizen Parent
  - Citizen Children (under age 21) Cannot Petition of Admission of Non-Citizen Parent
  - Our System Recognizes the Importance of Family Unity But Not in a Citizen Child's Formative Years

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## Barriers to Status and the “Catch-22” that Prevents Families from Lawfully Uniting



### Current Immigration Law Does Not Provide a Reasonable Pathway to Lawful Status for the Undocumented Immigrant

- Immigrants who maintain a valid immigration status in the U.S. can seek adjustment of their immigration status (*e.g.*, from a temporary work visa to lawful permanent residency) while remaining in the U.S.
- Immigrants who fall out of status or who initially entered the U.S. unlawfully cannot obtain lawful permanent residence while remaining united with their citizen children in the U.S.

May only seek a visa through U.S. consulates in their country of origin – A process that can take years to complete

- Those who leave to obtain a visa are often barred from returning to if they were “unlawfully present” in the U.S.
  - 180 days “unlawfully present” – 3 year re-entry bar
  - 1 year “unlawfully present” – 10 year re-entry bar
  - Entered U.S. after prior order of removal – *Permanent* re-entry bar

Attorney General has discretion to waive re-entry bars for immigrant who is the spouse or child of a U.S. citizen, but only if the bar would result in “extreme hardship” to the immigrant’s citizen spouse or parent

- Hardship to the *citizen child is not* grounds for waiver
- Immigrant subject to permanent bar cannot seek waiver for 10 years

### The “Catch 22” Facing the Undocumented Parent of the Citizen Child:

- Your citizen child cannot sponsor you for a visa
- You cannot seek to legalize your status while remaining in the U.S. no matter how long you have been here, how you have comported yourself while here, your ties to your community, or the extent of integration of your citizen children into U.S. life
- If you leave to obtain a visa, you are barred from re-entering the U.S. for 3 or 10 years, and perhaps permanently
- The hardship to your citizen child is not grounds for relief from the re-entry bars
- Even if you obtain a waiver of the re-entry bars, you may have to wait a decade or more to receive a visa
- In short, there is no way for you to legalize your status while maintaining family unity in the U.S.

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## Removal Proceedings and the Neglected Child: The Disregard of the “Best Interests” of the Citizen Child



### Current Immigration Law Gives Little or No Consideration to the Interests of the citizen child in Removal Proceedings of the Parent

- Prior to 1996, the law afforded immigration judges the ability to “suspend” the deportation of the parent if (1) she had been living in the U.S. continually for at least 7 years; (2) she had good moral character (i.e., had not been convicted of certain crimes, or spent greater than 6 months in jail); (3) she had not committed crimes that would make her ineligible for admission; and (4) removal would result in “extreme hardship” to the immigrant or her U.S. citizen or lawful permanent resident spouse, parent or child
- 1996 amendments made it much more difficult for families to remain united by changing the “hardship” standard to “exceptional and extremely unusual hardship,” extended the continuous residency requirement to 10 years, and significantly expanded the scope of disqualifying criminal convictions
- “Exceptional and extremely unusual hardship” is virtually impossible to establish
  - Economic hardship does not suffice
  - Lack of meaningful and quality educational opportunity does not suffice
  - Inability of the child to communicate in language of foreign country does not suffice
  - Disruption of the citizen child’s life, social bonds, family relations, etc. in the U.S., and the emotional trauma this necessarily entails, does not suffice
  - Depriving the citizen child of the economic, social and educational opportunities of life in the U.S. that is his or her birthright does not suffice
  - The only viable ground for meeting this heightened standard is a serious health condition of the citizen child that may be exacerbated or go untreated in the event of effective deportation
- Immigration Judges have decried the harshness of the current law

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## The Effective Deportation of Citizen Children



“By denying undocumented parents cancellation of removal, our government effectively deports their United States Citizen children and denies those children their birthrights. ... The government’s conduct violates due process by forcing the children to accept de facto expulsion from their native land or give up their constitutionally protected right to remain with their parents.”

Dissenting Opinion of Judge Harry Pregerson, *Cornelio Arcos Memije and Maria Del Rosario Rendon Velez v. Gonzales*, 481 F.3d 1163 (9th Cir. 2007).

- More than 108,000 Undocumented Parents of Citizen Children Have Been Deported in the Last 10 Years
- Current Immigration Law Compels Two Equally Untenable Choices Upon Deportation of the Undocumented Immigrant Parent:
  - (1) Break Up the Family so the Citizen Child Can Continue Her Life in the United States and Retain the Educational, Social and Economic Opportunity that is Her Birthright

-OR-

- (2) Effectively Deport the Citizen Child to a Foreign Land and a Life of Educational and Economic Deprivation

## The Effective Deportation of Citizen Children



### HARDSHIPS FACING THE EFFECTIVELY DEPORTED CHILD

	<b>Economic</b>	<b>Educational</b>	<b>Safety</b>
<b>Mexico</b>	"The minimum wage (slightly over \$4 a day) did not provide a decent standard of living for a worker and family, and only a small fraction of the workers in the formal workforce received the minimum wage."	While 91 percent of children between the ages of six and 14 attend school, only 68% of all children entering the first grade complete all nine years of compulsory education. The average educational attainment among the population 15 years of age and older is just 7.9 years.	Escalating drug violence has resulted in the deaths of scores of innocent children, and traumatized school children across the country.
<b>Guatemala</b>	"The daily minimum wage was \$5.94 . . . per day for agricultural work and \$6.10 . . . for nonagricultural work. . . . Labor representatives noted that even when both parents worked, the minimum wage did not allow the family to meet its basic needs. The minimum wage did not provide a decent standard of living for a worker and family."	Although the constitution and law provide for free compulsory education for all children up to the sixth grade, less than half the population had completed primary education. The average nonindigenous child received 4.2 years of schooling, while the average indigenous child received just 1.3 years.	Highest rate of violent death among young people in Central America; 395 children suffered violent deaths in 2006, 417 in 2007.
<b>El Salvador</b>	"The minimum monthly wage was \$182.05 for service employees, \$178.79 for industrial laborers, and \$161.97 for maquila workers. The agricultural minimum wage was \$85.59, except for seasonal coffee harvesters (\$93.56), sugarcane workers (\$79.35), and cotton pickers (\$71.38). The minimum wage did not provide a sufficient standard of living for a worker and family."	"Education is free, universal, and compulsory through ninth grade and nominally free through high school. In reality, children on average attended school for approximately 5.5 years."	Many children are physically and psychologically abused, forced into labor at a young age, and suffer from malnutrition.
<b>Haiti</b>	"The legal minimum daily wage, which was approximately \$2.00, . . . did not provide a decent standard of living for a worker and family . . . The majority of citizens worked in the informal sector and subsistence agriculture, where minimum wage legislation does not apply and daily wages of \$0.42 . . . were common."	Although public primary education is free and compulsory, 40% of children never attend school due to an insufficient number of public schools. Of those children attending school, fewer than 15% graduated from secondary school. More than 500,000 children ages six to 11 were not in school, and nearly 75% of adolescents were not in school.	Child trafficking, forced labor, abuse identified as problems.
<b>Honduras</b>	"[T]he minimum wage with the increases covered only 64 percent of the cost of feeding a family of five. . . . The scale ranged between \$2.88 . . . for unskilled labor and \$7.13 . . . for workers in financial and insurance companies."	"The education system . . . faced fundamental problems, including high dropout rates, low enrollment at the secondary level, unbalanced distribution of government spending, teacher absenteeism and low quality classroom education. . . . [A]s many as 368,000 of the 1.7 million children ages five to 12 did not receive schooling during the year. In rural areas there were very few schools, some without books or other teaching materials for students. Most children in rural areas attended school only until the third grade and then began work in agricultural activities."	"Large numbers of Honduran children are victims of violence and other human rights violations . . . Children are sick and dying due to a lack of medicines, oxygen, vehicles and timely care."
<b>Dominican Republic</b>	The minimum monthly salary ranged from approximately \$139 to \$200 in the private sector, and \$81/month in the public sector. For hourly workers, the daily minimum wage was \$4.70 based on a 10-hour day, with cane workers receiving only \$2.50/day. "The national minimum wage did not provide a decent standard of living for a worker and family."	"Education is free, universal, and compulsory for all minors through the eighth grade, but legal mechanisms provide only for primary schooling, which was interpreted as extending through the fourth grade . . . [A] government study estimated that the average grade level achieved by children in public schools was the fifth grade in rural areas and the sixth grade in urban areas."	Child labor, sexual exploitation of children, and physical <u>and</u> sexual abuse are "serious problems."

Source: U.S. State Department, Country Reports on Human Rights Practices.

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## The Disconnect Between U.S. Immigration Law and State/International Laws Regarding Children



### State Laws Consistently Require Consideration of the “Best Interests” of the Child in Addressing Custody and Other Issues Concerning the Place and Environment in which the Child Lives

- In contrast, U.S. Immigration Law largely *ignores* the “Best Interests” of the child in deportation proceedings against one or both parents
- U.S. Immigration Law compels either the separation of parent(s) from child, or separation of the child from her country – the United States – through effective deportation with the parent(s)
- Neither alternative serves the “Best Interests” of the child

### U.S. Immigration Law Fails to Comply with International Human Rights Laws

- International Law declares that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State,” and that principles of family unity limit the State’s power to deport non-citizens (International Covenant on Civil and Political Rights)
- The Convention on the Rights of the Child (CRC) recognizes that “the family, as the fundamental group of society and the natural environment for the growth and well-being of all of its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community” and that “*the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding*”
  - CRC requires that in all actions concerning children, “the best interests of the child shall be a primary consideration”
  - CRC precludes the separation of child from parents against their will unless necessary for the best interests of the child and only through a process that includes judicial review
  - United States is just one of two countries in the world that has not ratified the CRC – the other is Somalia

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## IMMIGRATION REFORM: RECOMMENDATIONS TO CONGRESS



### **Address Systemic Barriers to Obtaining Lawful Status:**

- Recapture unused visa numbers
- Address outdated visa limitations in a manner that is responsive to labor market needs and promotes the goal of family unity
- Allow a citizen child (or the child's legal guardian) to petition for the lawful admission and residency of a parent
- Promote family unity in the U.S. by:
  - (1) permitting the temporary admission of the parent of a citizen child pending immigration processing
  - (2) providing an opportunity for the parent to seek lawful status without first leaving the U.S. (which may subject the parent to re-entry bars)
  - (3) eliminating the unfettered discretion afforded the government in relation to waivers of the re-entry bar rules, including (a) requiring the exercise of such authority reasonably, in good faith, and with due regard for the "best interests" of citizen children; (b) providing for judicial review of waiver determinations; and (c) granting the citizen child (or her legal guardian) standing in any waiver proceedings and permitting the child to petition for a waiver on behalf of her parent
  - (4) eliminating mandatory detention of arrestees in circumstances involving child care issues, thereby affording ICE discretion to release undocumented immigrant parents of minor children with appropriate monitoring and/or reporting

## IMMIGRATION REFORM: RECOMMENDATIONS TO CONGRESS



### **Meaningfully Address the “Best Interests” of Citizen Children in Removal Proceedings of their Parents:**

- Allow for the appointment of a guardian ad litem to advocate the interests of affected children
- Grant immigration judges discretion to consider the “best interests” of the child (i.e., restore the discretion that existed under the law prior to the 1996 amendments)
- Change the standard for relief from removal to permit the meaningful consideration of the “best interests” of the child (i.e., amend the heightened standard of hardship enacted in 1996)
- Redefine the scope of disqualifying criminal convictions to exclude petty offenses and to otherwise afford immigration judges discretion to make removal determinations based on the relevant facts and circumstances of each case (including the severity of the offense in question, present danger to the community, and the “best interests” of the citizen child)
- Provide for meaningful judicial review of removal determinations
- Allow parents to derive asylum through their citizen children (i.e., the threat of persecution of the citizen child in the undocumented parent's country of origin should be recognized as a basis for granting asylum to the parent)

### **Oversight of Immigration Enforcement:**

- ICE should be required to gather and report demographic data regarding citizen children affected by enforcement actions
- ICE should be required to document and report specific actions taken to minimize the harm to children in connection with enforcement actions and detention practices