

# A Family Tradition: Giving Meaning to Family Unity and Decreasing Illegal Immigration Through Anthropology

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## INTRODUCTION: IVÁN'S FAMILY, AN ALLEGORY

Iván, a migrant from Rancho San Marcos, San Luis Potosí, Mexico, who now legally resides in the United States, attempted to reunite his family in the United States through legal channels after some time of being separated from them by the U.S.-Mexico border.<sup>1</sup> In so doing, Iván succeeded in bringing his wife and four of his five children, then ages seventeen, sixteen, thirteen, and three, to the United States.<sup>2</sup> His fifth child—an unmarried twenty-one-year-old daughter—however, did not qualify for a visa under U.S. immigration law.<sup>3</sup> Consequently, while the remainder of the family left Mexico and reunited in the United States, Iván's fifth child ("Bella") remained behind in Mexico with her grandmother, an event that caused considerable stress for the family.<sup>4</sup> Despite the hardship, because of the narrow construction of "family" in U.S. immigration law—a construct that deviates considerably from how a Mexican national would understand it<sup>5</sup>—Iván's family was forced to live with this arrangement if its members wished to comply with U.S. law.<sup>6</sup>

Iván's story, commonly replicated in transnational households,<sup>7</sup> exemplifies the unduly narrow definition of family in U.S. immigration law. As numerous scholars

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1. DEBORAH A. BOEHM, INTIMATE MIGRATIONS: GENDER, FAMILY, AND ILLEGALITY AMONG TRANSNATIONAL MEXICANS 17, 61 (2012) [hereinafter BOEHM, INTIMATE MIGRATIONS]. In another work, Boehm again offers Iván's story but refers to him, instead, by the pseudonym "Ernesto." Deborah A. Boehm, "For My Children:" *Constructing Family and Navigating the State in the U.S.-Mexico Transnation*, 81 ANTHROPOLOGICAL Q. 777, 794 (2008) [hereinafter Boehm, *For My Children*]. Boehm does not, in either work, tell whether Iván is a U.S. citizen or a lawful permanent resident. This, however, allows for manipulation of the allegory to better demonstrate certain aspects of immigration law that this Note analyzes. See *infra* text accompanying notes 104–32.

2. Boehm, *For My Children*, *supra* note 1, at 794.

3. *Id.*; BOEHM, INTIMATE MIGRATIONS, *supra* note 1, at 61; see also 8 U.S.C. § 1101(b)(1) (2012) (defining "child" as "an unmarried person under twenty-one years of age").

4. BOEHM, INTIMATE MIGRATIONS, *supra* note 1, at 35, 61.

5. *Id.*

6. See 9 U.S. BUREAU OF CONSULAR AFFAIRS, DEP'T OF STATE, VISA BULLETIN, NO. 60, at 2 (Sept. 2013) [hereinafter VISA BULLETIN, Sept. 2013], available at [http://www.travel.state.gov/pdf/visabulletin/visabulletin\\_september2013.pdf](http://www.travel.state.gov/pdf/visabulletin/visabulletin_september2013.pdf) (explaining the current wait times for approval of visa applications by preference category); see also *infra* notes 110–112 and accompanying text.

7. See, e.g., Rhacel Salazar Parreñas & Cerissa Salazar Parreñas, *Workers Without Families: The Unintended Consequences*, 10 ASIAN L.J. 143, 143–44 (2003). The article tells

have ably argued, the law is both static and outdated.<sup>8</sup> Its devotion to the ideal of the traditional nuclear conception of the household, where a family consists of “two married, opposite-sex parents and their children,”<sup>9</sup> makes American immigration law’s notion of family far too restrictive.<sup>10</sup> Indeed, as Bella’s exclusion portrays, it neglects even the closest relationships, which many people, irrespective of culture or national origin, ordinarily regard as incorporated into the fabric of the traditional nuclear family.<sup>11</sup> This unrealistic “one-size-fits-all”<sup>12</sup> construction of family fails to reflect accurately the composition of many Western households<sup>13</sup> and ignores other culturally relevant conceptions of family.<sup>14</sup> Because, as will be more fully developed in Part I, “family unity” embodies one of the core values underlying U.S. immigration law,<sup>15</sup> current constructions of family within the law are ineffective and make the underlying family unity policy disingenuous.<sup>16</sup>

This Note argues, as other scholars have, that the construction of family in immigration law must expand in order to give the family unity policy meaning and end the law’s contradictory division of families.<sup>17</sup> Building on these authors’ works, this Note suggests another solution to the problem: immigration law could look to the discipline of anthropology for its ethnographic methods and informed cultural expertise to obtain answers on how to make both the statutory and judicial analysis of family more flexible. This Note does not propose individualistic, anthropological analysis in every case but, instead, rejects this approach as too

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the story of Sharon, a legal migrant from the Philippines who managed to bring all of her family to the United States except her twenty-two-year-old daughter, Ellen. Of sixteen subjects with “U.S.-based parents” whom Professor Rhacel Parreñas interviewed as a part of her fieldwork, ten shared Ellen’s circumstances. *Id.* at 144–45.

8. *E.g.*, Jessica Feinberg, *The Plus One Policy: An Autonomous Model of Family Reunification*, 11 NEV. L.J. 629, 650 (2011).

9. *Id.* at 630.

10. Monique Lee Hawthorne, Comment, *Family Unity in Immigration Law: Broadening the Scope of “Family,”* 11 LEWIS & CLARK L. REV. 809, 819 (2007) (“Because the family based immigration system is highly restrictive, familial relationships that fall outside the traditional [Immigration and Nationality Act] definitions of parent or child are unable to attain family reunification.”).

11. *See* Feinberg, *supra* note 8, at 630.

12. *Id.* at 652.

13. *See* Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage?: Immigration Law’s Conflicted Answers*, 32 HOFSTRA L. REV. 273, 290 (2003).

14. *See* Feinberg, *supra* note 8, at 642.

15. STEPHEN H. LEGOMSKY, *IMMIGRATION AND REFUGEE LAW AND POLICY* 250 (4th ed. 2005). Other notable values underlying immigration law include “protect[ing] . . . the domestic labor force and . . . the immigration of persons with needed skills.” Fernando Colon-Navarro, *Familia E Inmigración: What Happened to Family Unity?*, 19 FLA. J. INT’L L. 491, 491–92 (2007). National security is also an underlying policy value of U.S. immigration law. *See* Demleitner, *supra* note 13, at 282 n.47 (“Since the terror attacks of September 11, 2001, immigration has become yet more cumbersome, especially for migrants from Muslim and Arab countries.”).

16. Feinberg, *supra* note 8, at 650.

17. *See, e.g., id.*; Hawthorne, *supra* note 10; Aubry Holland, Comment, *The Modern Family Unit: Toward a More Inclusive Vision of the Family in Immigration Law*, 96 CALIF. L. REV. 1049 (2008).

costly, contrary to legal processes, and unworkable.<sup>18</sup> However, as Professor Eddie Bruce-Jones explains, “[T]he richness of ethnographic inquiry can, when used to view law, illuminate new possibilities [of] understanding . . . .”<sup>19</sup> This Note posits that such an understanding, informed by the cultural expertise and methods of anthropologists, can provide immigration law with the flexibility necessary to give substance to family unity. This improved elasticity would offer otherwise illegal immigrants, who come to the United States by reason of family necessity, a more realistic opportunity to come legally. Because of the costs and dangers associated with illegal immigration, such a reformulation of immigration law would reduce illegal immigration.

In Part I, this Note explores the history of U.S. immigration law<sup>20</sup>—paying particular attention to family-related provisions—leading up to the Immigration and Nationality Act (INA) of 1952,<sup>21</sup> which “established the first comprehensive set of family-based preferences.”<sup>22</sup> Part II then transitions to a discussion of the relevant, as-amended INA provisions,<sup>23</sup> demonstrating American immigration law’s deleterious impact on the family,<sup>24</sup> its failure to account for cultural reality,<sup>25</sup> and its exacerbation of illegal immigration.<sup>26</sup> Finally, Part III discusses anthropology and explains how this discipline can improve family-centric immigration law, an underlying policy preference that this Note argues should continue to inform this area of law.<sup>27</sup>

For simplicity and efficiency, this Note focuses on immigration to the United States from Mexico, which is the largest sender country in terms of immigrant numbers.<sup>28</sup> Beyond this, anthropology tells that Mexican immigration is largely driven by familial considerations, a fact that lends itself to the argument herein.<sup>29</sup> Together, this high volume and familial focus explicates the problems in current immigration law’s family provisions, which this Note explores. However, this Note’s analysis is broadly applicable because immigration law’s family provisions affect families indiscriminately—many face the same plight as Mexican immigrants.<sup>30</sup>

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18. See Eddie Bruce-Jones, *Anthropology as Critical Legal Intervention? Instrumentalization, Co-Construction, and Critical Reformulation in the Relationship Between Anthropology and International Law*, 14 *UCLA J. INT’L L. & FOREIGN AFF.* 331, 336–37 (2009).

19. *Id.* at 335 (discussing the application of anthropology to international law).

20. See *infra* Part I.A.

21. Immigration and Nationality Act, Pub. L. No. 414, 66 Stat. 163 (codified as amended beginning at 8 U.S.C. § 1101(a) (2012)).

22. LEGOMSKY, *supra* note 15, at 250.

23. See *infra* Part I.B.

24. See *infra* Part II.A.

25. See *infra* Part II.B.

26. See *infra* Part II.C.

27. See *infra* Part III.

28. See YESENIA D. ACOSTA & G. PATRICIA DE LA CRUZ, U.S. CENSUS BUREAU, THE FOREIGN BORN FROM LATIN AMERICA AND THE CARIBBEAN: 2010, at 2 (2011) [hereinafter USCIB, FOREIGN BORN], available at <http://www.census.gov/prod/2011pubs/acsbr10-15.pdf>.

29. See *infra* notes 144–53 and accompanying text.

30. See, e.g., Parreñas & Parreñas, *supra* note 7, at 143–44 (discussing challenges faced

## I: HISTORY

*A. A Brief History of Early Immigration Law with a Familial Focus*

The history of immigration to the United States is marked by an ebb and flow of nativistic sentiment, which shaped the respective laws of the time depending on popular opinion and the level of national xenophobia when passed. With a ready supply of empty territory, the first one hundred years of the United States' history reflected a general policy of open immigration, unencumbered by federal regulation.<sup>31</sup> In fact, official policy in the United States favored unrestricted immigration.<sup>32</sup> The preventative legislation that did exist met near universal disfavor and expired shortly after enactment.<sup>33</sup>

From the beginning of the republic, however, factions opposed to free-flowing immigration existed.<sup>34</sup> These groups increasingly gained favor as the republic neared its centennial, as immigration numbers increased and the immigrant demographic transformed.<sup>35</sup> Despite a growing anti-immigrant sentiment, the need for cheap labor to facilitate westward expansion largely drowned out the calls for a restrictive immigration regime until the late 1880s when this same labor-driven immigration depressed domestic markets.<sup>36</sup> As the surge of immigration continued, bringing immigrants regarded as ethnically and religiously “‘inferior’ and ‘less desirable,’” Congress gradually expanded exclusionary immigration controls, specifically targeting particular nationalities.<sup>37</sup>

This trend foreshadowed the solidification of restrictive immigration policy, which reached its apex in the years 1917 to 1924 and was reflected in the Immigration Act of 1924.<sup>38</sup> The 1924 law mandated, for the first time, a permanent quota. Using a national origins formula, it ultimately quantified admissible immigrants by “the number of persons of their national origin in the United States in 1920.”<sup>39</sup> Importantly, though, the law exempted from the quota “alien wives and children of American citizens and returning lawful residents”<sup>40</sup> provided that the children were unmarried and under the age of eighteen.<sup>41</sup> This exemption reflected one of the first instances of a family unity policy in a U.S. immigration law. Although this law largely remained unchanged between the years 1924 and 1952,

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by a family from the Philippines).

31. See CHARLES GORDON, STANLEY MAILMAN & STEPHEN YALE-LOEHR, IMMIGRATION LAW AND PROCEDURE §§ 2.02–2.04 (2004), reprinted in LEGOMSKY, *supra* note 15, at 14–15 [hereinafter, GORDON ET AL., in LEGOMSKY].

32. DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUT SHELL 3 (6th ed. 2011).

33. GORDON ET AL., in LEGOMSKY, *supra* note 31, at 15 (discussing the Alien Act of 1798, which was permitted to expire after its two-year term).

34. *Id.*

35. WEISSBRODT & DANIELSON, *supra* note 32, at 5–6.

36. See *id.* at 6–7 (discussing the rise of the Chinese Exclusion Act of 1882, “quality control[s],” and head taxes).

37. *Id.* at 7–10.

38. GORDON ET AL., in LEGOMSKY, *supra* note 31, at 16.

39. *Id.*

40. *Id.*

41. LEGOMSKY, *supra* note 15, at 250.

when Congress enacted the INA, two laws bolstered the presence of familial categories in immigration law.<sup>42</sup> The War Brides Act<sup>43</sup> and the Alien Fiancées or Fiancés Act,<sup>44</sup> passed in 1945 and 1946 respectively,<sup>45</sup> benefited American World War II servicemen by admitting their alien spouses, children, and fiancées.<sup>46</sup> Under the laws, 118,000 alien wives and 5000 alien fiancées gained legal admission to the United States.<sup>47</sup>

*B. The Immigration and Nationality Act and Its Family-Based Preference System*

In 1952, Congress enacted the Immigration and Nationality Act, a labyrinth of a law spanning hundreds of pages and containing twists and turns worthy of an M. Night Shyamalan film. The Act consolidated fragmented immigration laws, making one cohesive, although not entirely coherent, statute.<sup>48</sup> In addition, it “established the first comprehensive set of family-based preferences.”<sup>49</sup> While Congress has amended the INA a number of times, and in a variety of ways, its basic structure, including its system of family preferences, survives essentially intact.<sup>50</sup> Significantly, however, Congress amended the Act in 1965, abolishing the prejudice-driven national origins quotas. In their place, it enacted a tier preference system principally based on the family unity policy,<sup>51</sup> which is readily apparent in the text of the INA.<sup>52</sup> Indeed, in construing the law’s provisions, the Supreme Court has noted that the INA’s legislative history supports a reading of “congressional concern . . . directed at the problem of keeping families of United States citizens and immigrants united.”<sup>53</sup> In pursuit of this intent, Congress crafted a family tier

42. GORDON ET AL., in LEGOMSKY, *supra* note 31, at 17.

43. Pub. L. No. 271, 59 Stat. 659.

44. Pub. L. No. 471, 60 Stat. 339.

45. WEISSBRODT & DANIELSON, *supra* note 32, at 14.

46. GORDON ET AL., in LEGOMSKY, *supra* note 31, at 17.

47. *Id.*; see also WEISSBRODT & DANIELSON, *supra* note 32, at 14.

48. WEISSBRODT & DANIELSON, *supra* note 32, at 15.

49. LEGOMSKY, *supra* note 15, at 250.

50. *Id.* at 18–21. An updated version of the INA—current through March 4, 2010—can be found at the U.S. Citizenship and Immigration Services website, <http://www.uscis.gov/portal/site/uscis>.

51. GORDON ET AL., in LEGOMSKY, *supra* note 31, at 19–20. It would be a gross understatement to assert that these revisions are the only provisions that the 1965 amendments altered. However, for the purposes of this Note, this oversimplified characterization suffices. For a more complete discussion of the 1965 amendments to the INA, see generally *id.*; see also WEISSBRODT & DANIELSON, *supra* note 32, at 15–18.

52. Professor Carol Sanger noted three examples of family unity provisions in an influential article: “[n]umerically unrestricted admissions for immediate relatives of United States citizens, immigrant preference categories based on degrees of kinship, and suspensions of deportation based on hardship to immediate relatives who are citizens or permanent residents.” Carol Sanger, *Immigration Reform and Control of the Undocumented Family*, 2 GEO. IMMIGR. L.J. 295, 296 (1987) (footnotes omitted).

53. *Fiallo v. Bell*, 430 U.S. 787, 795 n.6 (1977) (internal quotation marks omitted) (quoting H.R. REP. NO. 85-119, at 7 (1957)); see also Hawthorne, *supra* note 10, at 814–15 (quoting *Fiallo*). As Hawthorne documents, several other courts have discussed the INA’s

system with six levels, ultimately divided into two groups: those relationships not subject to numerical limitations (one level) and those that are (five levels).<sup>54</sup>

#### 1. The First Group: Those Relationships Exempted from All Numerical Limitations

The first group—that is, those relationships exempted from numerical limitations of any kind—has only one tier and concerns “immediate relatives” of U.S. citizens.<sup>55</sup> These relationships include citizens’ “children, spouses, and parents”<sup>56</sup> provided that relatives in this category satisfy certain qualifications.<sup>57</sup> For example, despite including under its umbrella a mostly comprehensive list of parent-child relationships, the law strays from notions of inclusion and limits the scope of this category to embrace only those individuals who are both unmarried and under the age of twenty-one.<sup>58</sup> In other words, when the biological offspring of a U.S. citizen turns twenty-one, the INA ceases to define that person as a child, and instead, defines him or her as an “unmarried son[] or daughter[.]”<sup>59</sup> As the reader will see, this change in preference category has serious consequences for family reunification.

One cannot automatically sponsor a parent for immigration under this provision; in order to do so, the requesting citizen must be at least twenty-one-years-old.<sup>60</sup> This limitation results from congressional fear of “anchor babies,” an imagined phenomenon where immigrants come to the United States to have children, which serve as “anchors” for the undocumented parent based on birthright citizenship.<sup>61</sup>

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legislative concern with the family. *See id.* at 815 (discussing *Kaliski v. Dist. Dir. of INS*, 620 F.2d 214, 217 (9th Cir. 1980) (“[T]he INA has a ‘humane purpose . . . to reunite families.’”); *Degado v. INS*, 473 F. Supp. 1343, 1348 (S.D.N.Y. 1979) (“The rule adopted . . . ignores ‘the foremost policy underlying the granting of preference visas under our immigration laws, the reunification of families . . . .’”) (quoting *Lau v. Kiley*, 563 F.2d 543 (2d Cir. 1977)).

54. *See* Shani M. King, *U.S. Immigration Law and the Traditional Nuclear Conception of Family: Toward a Functional Definition of Family that Protects Children’s Fundamental Human Rights*, 41 COLUM. HUM. RTS. L. REV. 509, 525–26 & n.54 (2010).

55. 8 U.S.C. § 1151(b)(2)(A)(i) (2012).

56. *Id.*

57. Feinberg, *supra* note 8, at 631.

58. 8 U.S.C. § 1101(b)(1)(A)–(G) (2012).

59. 8 U.S.C. § 1153(a)(1) (2012). *See infra* notes 104–112 and accompanying text.

60. § 1151(b)(2)(A)(i). Courts have held that this provision does not violate the Equal Protection Clause even though it distinguishes between children over twenty-one-years-of-age and under twenty-one-years-of-age. *See, e.g.,* *Perdido v. INS*, 420 F.2d 1179, 1181 (5th Cir. 1969).

61. *See* David B. Thronson, *You Can’t Get Here from Here: Toward a More Child-Centered Immigration Law*, 14 VA. J. SOC. POL’Y & L. 58, 83–84 (2006). For a comprehensive discussion of the term “anchor baby” and the legal implications of birthright citizenship, see generally Mariana E. Ormonde, Comment, *Debunking the Myth of the “Anchor Baby”: Why Proposed Legislation Limiting Birthright Citizenship Is Not a Means of Controlling Unauthorized Immigration*, 17 ROGER WILLIAMS U. L. REV. 861 (2012). In her anthropological research, Boehm also noted that the fear of anchor babies is unfounded. *See* BOEHM, INTIMATE MIGRATIONS, *supra* note 1, at 141 (“[T]he Mexican migrants I work with do not go to the United States to have children who will be U.S. citizens—in fact, over the course of my research no parent has expressed their motivations to migrate in these terms . . .”).

The first group also includes one other narrow group of relatives—“[a]liens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.”<sup>62</sup>

## 2. The Second Group: Those Relationships That Are Subject to Numerical Limitations

The second group contains those familial relationships that are subject to numerical limitations in terms of both overall restrictions and per-country ceilings on immigration.<sup>63</sup> In terms of family preference categories subject to numerical limitation, U.S. law caps total admissions at 480,000.<sup>64</sup> However, this 480,000 allotment is reduced by the amount of numerically exempt immediate-relative admissions (the first group described above), provided that the nonexempt “family-sponsored immigration quota must be at least 226,000.”<sup>65</sup> Because immediate-relative admissions from the first group almost always exceed 254,000,<sup>66</sup> the family-sponsored quota seldom exceeds the 226,000 statutory floor.<sup>67</sup> For example, in 2009 alone, 536,000 immediate relatives immigrated to the United States.<sup>68</sup> Stated differently, while the second group theoretically allows for a total admission of 480,000 immigrants, as a result of the reduction that occurs because of the numerically exempt admissions, the actual number of admissions under this tier is actually substantially lower.<sup>69</sup> Almost always, this number is no greater than the statutory floor: 226,000.<sup>70</sup> Furthermore, these family preference categories are also generally constrained by per-country quotas as well, which never exceed 26,260.<sup>71</sup> In essence, the law subjects these family preference categories to quotas because it deems these relationships, discussed immediately below, to be less persuasive for the purposes of family reunification.<sup>72</sup>

As indicated earlier, this second group of family relationships has four overarching levels, of which one level is further subdivided into two sublevels.<sup>73</sup> The State Department’s Visa Bulletin, the purpose of which is to indicate “how long ago the people who are now about to receive visas first applied,”<sup>74</sup> labels the

62. § 1151(b)(2)(B).

63. See WEISSBRODT & DANIELSON, *supra* note 32, at 150–54.

64. *Id.* at 152–53.

65. *Id.*

66. See *id.* at 153. The number of nonexempt preference visas consumed by exempt immediate-relative visas is 254,000, or the 480,000 immigrant cap reduced by the 226,000 statutory floor.

67. *Id.*

68. Evelyn H. Cruz, *Because You’re Mine, I Walk the Line: The Trials and Tribulations of the Family Visa Program*, 38 FORDHAM URB. L.J. 155, 156 (2010). There is one exception for the 2A preference category. See *infra* notes 78–80 and accompanying text.

69. See WEISSBRODT & DANIELSON, *supra* note 32, at 152–53.

70. *Id.*

71. Cruz, *supra* note 68, at 156–57.

72. See LEGOMSKY, *supra* note 15, at 250.

73. See 8 U.S.C. § 1153(a)(1)–(4) (2012); VISA BULLETIN, Sept. 2013, *supra* note 6, at 2.

74. LEGOMSKY, *supra* note 15, at 251.

four overarching levels in order of preference: F1, F2, F3, and F4.<sup>75</sup> It further divides the F2 level into two subparts, which it labels F2A and F2B respectively.<sup>76</sup> Hence, this second group has a total of five levels: F1, F2A, F2B, F3, and F4.

The first family-sponsored preference category (F1) applies to the “[u]nmarried sons and daughters [over twenty-one-years-of-age] of citizens.”<sup>77</sup> The second preference category is divided into two subcategories, to which the law allocates seventy-seven percent of the total number of visas for this preference category to the first subcategory (F2A) and twenty-three percent to the second subcategory (F2B).<sup>78</sup> Preference category F2A governs the immigration of “the spouses [and] children” of lawful permanent residents (LPRs);<sup>79</sup> seventy-five percent of the visas allocated to F2A do not count against the per-country quotas.<sup>80</sup> Meanwhile, preference category F2B regulates the admission of “the unmarried sons [and] unmarried daughters (but [who] are not the children)” of LPRs.<sup>81</sup> The third family-sponsored preference category (F3) applies to the “[m]arried sons and married daughters of citizens,”<sup>82</sup> and the fourth (F4) governs the “[b]rothers and sisters of citizens.”<sup>83</sup> As when sponsoring a parent, however, the citizen attempting to sponsor a sibling must have attained twenty-one-years-of-age.<sup>84</sup>

Finally, the INA attempts to avoid family separation by conferring upon the spouses and children of migrants, if not otherwise entitled to a visa, “derivative immigration status.”<sup>85</sup> This essentially means that, if the derivative beneficiary is “accompanying or following to join” her spouse or parent (the primary beneficiary), the INA regards her as having the same family preference status as the primary beneficiary.<sup>86</sup> Having derivative status entitles the beneficiary of that condition to the same waiting period as the primary beneficiary.<sup>87</sup> However, like the law’s other provisions, derivative status is also limited in that the INA only allows it to extend for one generation.<sup>88</sup>

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75. See, e.g., VISA BULLETIN, Sept. 2013, *supra* note 6, at 2.

76. *Id.*

77. § 1153(a)(1); see also VISA BULLETIN, Sept. 2013, *supra* note 6, at 2.

78. § 1153(a)(2); see also VISA BULLETIN, Sept. 2013, *supra* note 6, at 2.

79. § 1153(a)(2)(A); see also VISA BULLETIN, Sept. 2013, *supra* note 6, at 2.

80. 8 U.S.C. § 1152(a)(4)(A) (2012); see also VISA BULLETIN, Sept. 2013, *supra* note 6, at 2.

81. § 1153(a)(2)(B); see also VISA BULLETIN, Sept. 2013, *supra* note 6, at 2. “Children” here refers to the INA’s statutory definition of child, not the biological understanding of “children.” See 28 U.S.C. § 1101(b)(1) (2012) (containing the statutory definition of “child” used by the INS).

82. § 1153(a)(3).

83. § 1153(a)(4).

84. *Id.*

85. Colon-Navarro, *supra* note 15, at 498; see also § 1153(d).

86. § 1153(d); see also Hawthorne, *supra* note 10, at 817.

87. Hawthorne, *supra* note 10, at 817.

88. Thronson, *supra* note 61, at 71.

## II: IMMIGRATION LAW'S FAILED SUPPORT FOR FAMILY UNITY

A. *The INA's Limited Definition of Family*

The INA's failure to effectuate its own policy of family unity is well documented and is the subject of much scholarship.<sup>89</sup> This Part builds upon existing scholarship and further demonstrates this failure, paying particular attention to immigration law's petitioning provisions.<sup>90</sup> It does so to frame the need for a comprehensive solution to the problem. The INA's very first family-based preference category, immediate relatives, demonstrates the inherent problems with the way immigration law attempts to realize its policy of family unity. The law too narrowly defines family,<sup>91</sup> a problematic truth in light of the fact that family inherently drives immigration to the United States from Mexico,<sup>92</sup> the largest sender country in terms of immigrant numbers.<sup>93</sup>

Ignoring momentarily the INA's limited definition of "children," the law excludes a host of family relationships because it conceives of the family "as a nuclear family, consisting of mother, father and one or more (biological or adopted) minor children."<sup>94</sup> As one scholar has aptly observed, "Only . . . married couples, certain categories of parents and children, and siblings may reunite; no other relationships, however important or valuable, qualify."<sup>95</sup> In addition to some types of intimate partners, the law excludes a number of extended family relationships, including grandparents, aunts, uncles, cousins, nieces, and nephews.<sup>96</sup> This is the case even if one of the excluded persons acts in loco parentis over a child or if one is a part of what scholars have called "functional families."<sup>97</sup> Through this lens, immigration law appears completely intransigent,<sup>98</sup> and its policies seem "less

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89. See, e.g., Demleitner, *supra* note 13; Thronson, *supra* note 61.

90. By "petitioning provisions," this Note refers to those areas of the law governing requests by a U.S. citizen or LPR (the "petitioner") to bring his or her relative (the "beneficiary") to the United States. See Cruz, *supra* note 68, at 157.

91. See, e.g., Hawthorne, *supra* note 10, at 819.

92. See Boehm, *For My Children*, *supra* note 1, at 780 ("[I]n San Marcos the motivations to migrate almost always center on children. . . . An ethnographic view of negotiations within families reveals how intimate relations motivate and guide global migrations, directly linking kin relations to broader global processes.").

93. See USCB, FOREIGN BORN, *supra* note 28, at 2 ("The single largest country-of-birth group was from Mexico (29 percent of all foreign born).").

94. Demleitner, *supra* note 13, at 290.

95. Feinberg, *supra* note 8, at 635. Until recently, only those in opposite-sex marriages could petition for their spouses. *Id.* However, with the recent decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013), U.S. Citizenship and Immigration Services now considers petitions from same-sex married couples, even if the petitioner lives in a State that does not recognize that marriage. See *Same-Sex Marriages*, U.S. CITIZENSHIP & IMMIGR. SERVICES (July 1, 2013), <http://www.uscis.gov/family/same-sex-marriages>.

96. Demleitner, *supra* note 14, at 290–91.

97. Functional families are family "formations which may not satisfy [the INA's] narrow conception of family, but satisfy the care-taking needs of children." King, *supra* note 54, at 510–12 & n.5 (listing scholarship).

98. See Feinberg, *supra* note 8, at 631.

aimed at the overall goal of family unification and more at judging which households constitute true families and which do not.”<sup>99</sup> Because of this fundamental disconnect between stated policy and apparent reality,<sup>100</sup> the family unity policy is disingenuous.<sup>101</sup> This is especially true when one considers that the Supreme Court has recognized the importance of the extended family in other contexts.<sup>102</sup>

The INA’s implausibly narrow definition of “children,” a definition that the Supreme Court has held to be exclusive,<sup>103</sup> contributes to immigration law’s current inadequacy. Consider again Iván’s allegory at the beginning of this Note and a few hypothetical situations related to his family’s circumstances.

Assuming first that Iván naturalized as a U.S. citizen,<sup>104</sup> four of his children—those that were unmarried and under twenty-one-years-of-age—fell into the immediate-relative preference category, meaning that the INA exempted their visas from all numerical limitations.<sup>105</sup> This being the case, the law allowed these four children to immigrate immediately upon approval of their visas.<sup>106</sup> Bella, however, turned twenty-one-years-old prior to Iván’s petitioning for his family.<sup>107</sup> Accordingly, despite the fact that Bella is Iván’s biological offspring, the INA no longer considers Bella to be his child.<sup>108</sup> On her twenty-first birthday, Bella ceased to be Iván’s “child” and became an “unmarried daughter” under the law.<sup>109</sup> In September 2013, Bella’s change in preference status—from immediate relative to F1 (unmarried daughter)—came laden with enormous consequences. Instead of

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99. Holland, *supra* note 17, at 1059.

100. Despite its family unity policy, immigration law takes no account of “individual circumstances . . . [and] unilaterally and categorically” determines the value of familial relationships. Feinberg, *supra* note 8, at 634.

101. *Id.* at 650.

102. *See, e.g.*, Moore v. City of E. Cleveland, 431 U.S. 494 (1977) (plurality opinion). In this case, Justice Powell, writing for a plurality of the Court, noted that the United States’ family fabric “is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family[.] The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.” *Id.* at 504.

103. *See* INS v. Hector, 479 U.S. 85, 90–91 (1986).

104. Remember that Boehm does not tell whether Iván obtained citizenship or maintained LPR status. *See* BOEHM, INTIMATE MIGRATIONS, *supra* note 1, at 61.

105. 8 U.S.C. § 1151(b)(2)(A)(i) (2012).

106. Cruz, *supra* note 68, at 158 n.15.

107. *See* BOEHM, INTIMATE MIGRATIONS, *supra* note 1, at 61. “Aging out” (where the beneficiary turns twenty-one after a petition is filed but before a visa is granted) is not a problem for immediate relatives. The Child Status Protection Act of 2002 (CSPA), Pub. L. No. 107-208, 116 Stat. 927 (codified in scattered sections of 8 U.S.C.), freezes the age of the immediate-relative beneficiary at the age of the beneficiary on the date of the petition’s filing. *See* § 1151(f)(1); LEGOMSKY, *supra* note 15, at 251–52. Aging out, however, remains a problem for the children of LPRs. *See* 8 U.S.C. § 1153(h)(1) (2012); LEGOMSKY, *supra* note 15, at 251–53.

108. BOEHM, INTIMATE MIGRATIONS, *supra* note 1, at 61.

109. § 1153(a)(1).

waiting only a matter of months, or even a few years, to immigrate,<sup>110</sup> as her four younger siblings did, Bella would have to wait two decades. In fact, in order for a visa to become available for her priority date<sup>111</sup> in September 2013, Iván must have petitioned for her no later than September 8, 1993.<sup>112</sup> Thus, today, a person in Bella's situation faces separation from her family for a duration of approximately twenty years.

Regardless of age, the situation becomes more problematic when the consequences of marriage are thrown into the mix. Continuing to assume that Iván has naturalized, further suppose that he petitioned for his family before Bella's twenty-first birthday. In this situation, if Bella wished to maintain her immediate-relative preference status, she must "put her life on hold"; she cannot marry.<sup>113</sup> If Bella married, she would forfeit her immediate-relative preference and her ability to immigrate upon the completed processing of her visa.<sup>114</sup> Instead, the INA would move her into the F3 preference category, "[m]arried sons and married daughters of citizens."<sup>115</sup> As a result, for Bella to immigrate in September 2013, Iván must have filed her petition no later than May 15, 1993.<sup>116</sup> Even if Bella married after turning twenty-one years old—meaning that she moved from the F1 preference category (unmarried daughter of a U.S. citizen) to the F3 preference category (married daughter of a U.S. citizen)—despite the relatively slight discrepancy in *current* waiting times between the two categories,<sup>117</sup> this could still pose a problem for Bella and her family because waiting times cannot be predicted

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110. Cf. Demleitner, *supra* note 13, at 282 ("[A]dministrative delays separate married couples at least for a number of months, and sometimes even years, even if one of the partners is a citizen . . ."). This Note does not intend to demean the hardship inflicted upon a family by a several month or several year separation caused by administrative delays in the immigration process; in fact, its thesis recognizes all familial separation as difficult. Instead, this "short" waiting time is simply offered as a contrast to the significantly longer waiting times that follow other preference categories.

111. A priority date is the date on which the petitioner files the first relevant immigration document. On the Visa Bulletin, it indicates the person(s) next in line for a visa. LEGOMSKY, *supra* note 15, at 251; see also VISA BULLETIN, Sept. 2013, *supra* note 6, at 2.

112. See VISA BULLETIN, Sept. 2013, *supra* note 6, at 2. Additionally, because Bella is not a "child" under the INA, her mother cannot bestow derivative status on her. 8 U.S.C. § 1153(d) (2012). Bella's wait was substantially the same in December 2012. In order for her priority date to receive a visa at that time, Iván would have had to petition for Bella no later than July 1, 1993. See 9 U.S. BUREAU OF CONSULAR AFFAIRS, DEP'T OF STATE, VISA BULLETIN, NO. 51, at 2 (Dec. 2012) [hereinafter VISA BULLETIN, Dec. 2012], available at [http://www.travel.state.gov/pdf/visabulletin/visabulletin\\_december2012.pdf](http://www.travel.state.gov/pdf/visabulletin/visabulletin_december2012.pdf).

113. Parreñas & Parreñas, *supra* note 7, at 144; see also 8 U.S.C. § 1101(b)(1) (2012) (defining a child as "unmarried").

114. See Cruz, *supra* note 68, at 158 n.15.

115. 8 U.S.C. § 1153(a)(3) (2012).

116. See VISA BULLETIN, Sept. 2013, *supra* note 6, at 2. For Bella to have immigrated in December 2012, Iván must have filed her petition no later than March 1, 1993. See VISA BULLETIN, Dec. 2012, *supra* note 112, at 2.

117. See VISA BULLETIN, Dec. 2012, *supra* note 112, at 2. The priority date for the F1 category is July 1, 1993, while the priority date for the F3 category is March 1, 1993, a difference of four months.

with any degree of certainty.<sup>118</sup> For instance, in September 2013, the F2A category, which covers the spouses and children of LPRs, was current, meaning that visas were granted when processed.<sup>119</sup> Indeed, August 2013 marked the first time that this category had been current in a number of years.<sup>120</sup> To contrast, in December 2012, the waiting time for the Mexican spouse or child of a LPR (F2A) was two years, four months.<sup>121</sup> In August 2009, this period was considerably longer: nearly seven years.<sup>122</sup>

In general, the issue of family separation becomes further exacerbated if the petitioner does not have citizenship but is, instead, an LPR. Assuming now, therefore, that Iván is an LPR and not a citizen, his entire family would then likely face prolonged separation from their father, not just Bella (however, the length of Bella's separation from Iván would still be far longer than any of her other family members).<sup>123</sup> If Iván is an LPR, the INA then places his wife and four unmarried children under twenty-one-years-of-age into the F2A preference category.<sup>124</sup> Bella, meanwhile, who would find herself in the F2B category (unmarried daughter of at least twenty-one-years-of-age of a LPR) would, in September 2013, face a waiting time of just under twenty years.<sup>125</sup> Assuming, for whatever reason, Iván's inability to travel to Mexico to visit his daughter and further assuming that his family does not act outside of the law, if Iván petitioned for Bella on her twenty-first birthday, he would not see her until she was forty-one-years-old.<sup>126</sup>

While twenty years of separation seems both appalling and paradoxical in light of a law that claims family unity as an underlying policy, Bella's situation can get worse. If she marries, irrespective of age, the provisions of the INA permanently separate her from her family. The text of 8 U.S.C. § 1153(a)(3) only speaks of the "[m]arried sons and married daughters of *citizens*"; the Act conspicuously omits the

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118. Cruz, *supra* note 68, at 158; *see also* LEGOMSKY, *supra* note 15, at 251 ("The Visa Office Bulletin tells us only how long those who are *now* receiving visas had to wait. . . . That doesn't necessarily tell us how long those who are initiating the process today will have to wait. On the demand side, perhaps an unusually high (or low) number of applications for a particular country/preference combination have been filed since the priority date displayed in the chart. And on the supply side, the various statutory formulas . . . cause the numerical ceilings to change from year to year.") (emphasis in original).

119. *See* VISA BULLETIN, Sept. 2013, *supra* note 6, at 2.

120. *See* 9 U.S. BUREAU OF CONSULAR AFFAIRS, DEP'T OF STATE, VISA BULLETIN, No. 59, at 2 (Aug. 2013), *available at* [http://www.travel.state.gov/pdf/visabulletin/visabulletin\\_august2013.pdf](http://www.travel.state.gov/pdf/visabulletin/visabulletin_august2013.pdf).

121. *See* VISA BULLETIN, Dec. 2012, *supra* note 112, at 2.

122. 11 U.S. BUREAU OF CONSULAR AFFAIRS, DEP'T OF STATE, VISA BULLETIN, No. 11 (Aug. 2009) [hereinafter VISA BULLETIN, Aug. 2009], *available at* [http://www.travel.state.gov/visa/bulletin/bulletin\\_4539.html](http://www.travel.state.gov/visa/bulletin/bulletin_4539.html); Cruz, *supra* note 68, at 158.

123. *See* VISA BULLETIN, Sept. 2013, *supra* note 6, at 2 (giving the priority dates for the different family-based preference categories).

124. *See* 8 U.S.C. § 1153(a)(2)(A) (2012); VISA BULLETIN, Dec. 2012, *supra* note 112, at 2; *see also supra* notes 78–80 and accompanying text.

125. *See* VISA BULLETIN, Sept. 2013, *supra* note 6, at 2. In December 2012, Bella would have waited just over twenty years. *See* VISA BULLETIN, Dec. 2012, *supra* note 112, at 2.

126. *See* Cruz, *supra* note 68, at 160–62 (discussing restrictions on short-term travel); *see also infra* notes 164–70 and accompanying text.

married sons and daughters of lawful permanent residents.<sup>127</sup> As a married woman, the law would permanently sever Bella from her mother, father, and siblings, no longer considering her to be a member of that family.

Finally, the INA makes one more subtle, though meaningful, distinction in LPR families. The law exempts the children born to LPRs “during a temporary visit abroad” from all numerical limitations, but as noted, does not exempt any other children of LPRs from these limitations.<sup>128</sup> Straying from the Iván/Bella allegory, assume that the waiting times for the F2A preference category match those of Mexico for August 2009, meaning that the spouses and children of LPRs would have to wait approximately seven years for a visa.<sup>129</sup> If a Mexican LPR gave birth to a child while temporarily visiting her other children abroad, assuming that she could overcome the restrictions on short-term travel,<sup>130</sup> this child would be immediately admissible upon approval of its visa petition while her other children would have to continue their wait for a visa. This is because the newborn child would be covered by the “Aliens not subject to direct numerical limitations” preference category,<sup>131</sup> whereas the LPR’s other children would be subject to the F2A preference limitations.<sup>132</sup>

#### *B. The INA Fails to Embrace Culture and Reality*

As can easily be seen from the preceding sections, one of the primary problems with the INA’s family construct is that it “views adult, married children as no longer part of the family but instead as having their own, separate family.”<sup>133</sup> LPR families find this especially problematic given that no reunification right with their married children exists at all.<sup>134</sup> This view emphatically defies many family structures, both in terms of other cultural conceptions of family<sup>135</sup> and conceptions of the “traditional” U.S. family.<sup>136</sup> Its exclusion of relationships that many regard as “immediate” simply cannot peacefully coexist against a policy of family unity. As one scholar has skillfully argued, “When a government chooses to adopt a strong family reunification policy, it must follow through by recognizing that ‘family’ cannot be limited to a statute’s narrow view of who is and who is not ‘family,’ when society itself reflects different models than those embodied in the statute.”<sup>137</sup>

Anthropology teaches that many cultures that extensively immigrate to the United States—including Latin American and, more specifically, Mexican, culture—adhere to significantly different views of family from those promulgated

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127. 8 U.S.C. § 1153(a)(3) (2012) (emphasis added).

128. 8 U.S.C. § 1151(b)(2)(B) (2012).

129. See VISA BULLETIN, Aug. 2009, *supra* note 122.

130. See Cruz, *supra* note 68, at 160–62 (discussing restrictions on short-term travel); see also *infra* notes 164–70 and accompanying text.

131. § 1151(b).

132. § 1153(a)(2)(A).

133. Demleitner, *supra* note 13, at 290.

134. See § 1153(a)(3); see also *infra* note 127 and accompanying text.

135. See Hawthorne, *supra* note 10, at 818.

136. See *id.* at 815.

137. *Id.* at 824.

into American immigration law.<sup>138</sup> This means that, as a result of the INA's narrow, unrealistic definition of family, many immigrants lack the ability to petition for relatives with whom they have close familial relations.<sup>139</sup> Much of this problem stems from the fact that U.S. law evaluates an immigrant as an individual instead of as a member of a family unit.<sup>140</sup> However, an immigrant often principally bases her identity on the relationships that she cultivates with other family members.<sup>141</sup> Indeed, extended family members, whom the INA excludes entirely from its family-based preference categories, play active roles in family life in cultures all over the world.<sup>142</sup>

For instance, the Mexican family is the primary component of that culture,<sup>143</sup> which places a high emphasis on maintaining close relationships with members of the extended family.<sup>144</sup> Mexicans, who make up the bulk of foreign-born immigrants in America,<sup>145</sup> "generally consider extended family members to be as important to their daily lives as immediate family members,"<sup>146</sup> and sizeable extended families are the norm in Latin America.<sup>147</sup> Their notion of family embraces relationships as removed as aunts, uncles, cousins, and even godparents, making what that culture regards as the family unit considerably different from INA expectations.<sup>148</sup> Furthermore, in rural Mexico, where patrilocal living arrangements predominate, extended families frequently live in close proximity, if not together, in multigenerational households.<sup>149</sup> Families continue to act on this preference today in Mexico and, as members relocate, in the United States.<sup>150</sup>

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138. This Note does not seek to stereotype the Mexican family or any other cultural construct of family; instead, it offers generalizations. As Dr. Geri-Ann Galanti has written, the difference between the two is that "[a] stereotype is an ending point; a generalization is a beginning point." Geri-Ann Galanti, *The Hispanic Family and Male-Female Relationships: An Overview*, 14 J. TRANSCULTURAL NURSING 180, 180 (2003) (citation omitted). The difference, she explains, lies in the intended use of the information. Stereotypes are not associated with positive treatment, whereas a generalization can serve a beneficial purpose "[b]ecause it can help us understand and anticipate behavior." *Id.* at 181. In this light, this Note employs the use of generalizations in order to further demonstrate the shortcomings in domestic immigration law and to frame the issue for an anthropological solution. In short, anthropology, through its cultural expertise, can help Congress understand and anticipate migrant motivations and behaviors. In turn, this will lead to a better-informed immigration law with a more inclusive definition of family that will ultimately decrease illegal immigration. *See infra* Part III.

139. *See* Feinberg, *supra* note 8, at 642. Feinberg explores a number of these relationships in depth. *See generally id.* at 641–50.

140. Hawthorne, *supra* note 10, at 821.

141. *Id.*

142. Feinberg, *supra* note 8, at 648.

143. Galanti, *supra* note 138, at 181.

144. *The Mexican Transnational Experience in South Bend*, 3 INST. FOR LATINO STUDIES, UNIV. NOTRE DAME 1, 2 (2009).

145. *See* USCB, FOREIGN BORN, *supra* note 28, at 2.

146. Feinberg, *supra* note 8, at 649.

147. Galanti, *supra* note 138, at 181.

148. *Id.*

149. *See* BOEHM, INTIMATE MIGRATIONS, *supra* note 1, at 42 ("Today, for example,

Bella's situation demonstrates these conclusions. Instead of beginning her own household upon separation from her family, she went to live with her grandmother.<sup>151</sup> Anthropologist Dr. Deborah A. Boehm described the separation of Bella from her family:

Iván said that this [separation] was a cause of serious stress for his family, particularly because it is common for children in rural Mexico to live with their parents until they marry. The construct of a twenty-one-year-old as an adult who should live independent of her parents is problematic within Mexican families and does not accurately reflect how Mexican (im)migrants [sic] think about family.<sup>152</sup>

Moreover, as this evidently close relationship with a grandparent reveals, many immigrants find frustrating the complete exclusion of grandparents from the INA's family preference categories, making it altogether impossible for a grandchild to legally bring her grandparent to the United States.<sup>153</sup> This is especially true if they, like Bella, come from a culture that defines the traditional family as multigenerational.<sup>154</sup>

A failure to give meaning to other cultural conceptions of family is one problem; however, the U.S. conception of family in immigration law does not even reflect modern notions of the "traditional" American family.<sup>155</sup> Indeed, notions of the traditional family are entirely inapposite for a generation.<sup>156</sup> In recent years, U.S. households have come to include family members that themselves fall outside the INA family preference categories.<sup>157</sup> In fact, most Americans reside in non-nuclear households that fail to reflect the "nuclear family model of a wage-earner husband, homemaker wife, and their biological children, all sharing one domicile."<sup>158</sup>

### *C. Legal/Illegal Implications of the Failed Family Unity Policy*

American immigration policy prompts prolonged family separation, an experience with considerable deleterious consequences for those families who must

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[because of immigration] mothers-in-law and daughters-in-law often live under one roof without their husbands . . ."). "Patrilocal" refers to the living arrangement where "sons and daughters-in-law buil[d] homes on or adjacent to the [son's] extended family compound, and daughters move[] to the homes of their husbands." *Id.* With patrilocality, kinship is "traced from fathers to sons," and the arrangement reflects "meaningful family relations." *Id.*

150. *Id.* ("This desire or ideal to maintain close geographic proximity of kin—albeit in new gendered forms—continues to define family structures in the U.S.-Mexico transnation.").

151. *Id.* at 61.

152. *Id.*

153. Hawthorne, *supra* note 10, at 827.

154. *Id.*

155. *Id.* at 815.

156. See Demleitner, *supra* note 13, at 290.

157. *Id.*

158. King, *supra* note 54, at 522 (quoting Barbara Bennett Woodhouse, "It All Depends on What You Mean by Home": Toward a Communitarian Theory of the "Nontraditional" Family, 1996 UTAH L. REV. 569, 570 (1996)).

navigate this hardship.<sup>159</sup> Moreover, the division of families significantly increases the incidence of illegal immigration.

In one way or another, immigration is almost always inextricably tied to and impelled by family. As one anthropologist explains, “[P]eople migrate to support family, to reunite with family, and/or with financial and social resources from family members.”<sup>160</sup> Moreover, family networks of migration make subsequent migrations by other family members more commonplace and more successful.<sup>161</sup> Put together, prolonged family separation, in combination with the lack of any real opportunity to come to the United States through legal channels, increases illegal immigration to the United States.

Many families that experience the prolonged separation resulting from the severely truncated definition of family in U.S. immigration law are overcome by their need to be with loved ones, motivating new illegal immigration and sustained illegal residence.<sup>162</sup> In effect, these immigrants believe that their family ties leave them with no option *but* to come to or remain in the United States illegally.<sup>163</sup> Sometimes this decision relates to the family’s finances, if, for example, the immigrant is the family’s breadwinner,<sup>164</sup> which at times has become espoused with idealistic notions of masculinity.<sup>165</sup> Other times, immigrants regard living in the United States without legal status as a lesser moral harm than abandoning one’s family.<sup>166</sup> Consequently, deportation, even when combined with substantial prison sentences, has had little deterrent effect on family-related immigration,<sup>167</sup> which is

159. See Colon-Navarro, *supra* note 15, at 495–96.

160. BOEHM, *INTIMATE MIGRATIONS*, *supra* note 1, at 33.

161. See Paul Winters, Alain de Janvry & Elisabeth Sadoulet, *Family and Community Networks in Mexico-U.S. Migration*, 36 J. HUM. RESOURCES 159, 160 (2001).

162. See Cruz, *supra* note 68, at 157.

163. See *id.* at 166.

164. *Id.* at 167. Evidence suggests that this is often the case. In documenting the gendered nature of migrations, Professor Boehm, for instance, tells that, for Mexicans:

(Im)migration [sic] and transnational movement [to the United States] impact what it means to be a man, what is appropriate masculine behavior, and how men are judged in both sending and receiving communities. . . . No longer able to support their families as they have in the past, men go to the United States to fulfill their role as providers, or stay in Mexico and are reminded of how their work in the *milpas* cannot financially maintain a household. Masculinized migration is driven by economic necessity. . . . Increasingly, to be a man, one must migrate.

BOEHM, *INTIMATE MIGRATIONS*, *supra* note 1, at 73 (emphasis in original). Moreover, according to a recent report by the Pew Hispanic Center, net migration from Mexico recently flatlined and may have even reversed. The group attributes this, at least in part, to the weakened U.S. economy, especially in terms of the housing construction markets. Jeffrey S. Passel, D’Vera Cohn & Ana Gonzalez-Barrera, *Net Migration from Mexico Falls to Zero—and Perhaps Less*, PEW HISP. CENTER (May 3, 2012), <http://www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/>.

165. See BOEHM, *INTIMATE MIGRATIONS*, *supra* note 1, at 73.

166. Cruz, *supra* note 68, at 167.

167. See Demleitner, *supra* note 13, at 295.

illustrated by the ever-growing number of petitions to change the legal status of undocumented migrants already residing illegally in the United States.<sup>168</sup>

The lack of any real opportunity for short-term travel in order to visit relatives abroad or to obtain temporary visas in the interim exacerbates this trend. Although a petitioning LPR can travel to visit a relative living abroad—ignoring expense altogether—immigration law only allows for short furloughs from the United States. Prolonged absences affect one’s admissibility to the United States and one’s ability to naturalize as a citizen.<sup>169</sup> If an immigrant travels to visit her family abroad and sojourns outside of the United States for a period longer than 180 days, upon returning, the law regards that person as attempting to make a new admission to the country and, therefore, subjects her to inadmissibility.<sup>170</sup> Moreover, a LPR wishing to naturalize must spend half of the required five year residence-eligibility period physically present in the United States, and LPRs who leave the country from anywhere between six to twelve months jeopardize their compliance with the continuous presence requirement.<sup>171</sup>

Nor are separated beneficiary relatives generally eligible for temporary visas to assuage the hardship caused by the often-prolonged division.<sup>172</sup> As Professor Evelyn H. Cruz explains, in order to legally travel to the United States on a temporary basis, one must qualify for a nonimmigrant visa.<sup>173</sup> This requires one to establish a lack of “immigrant intent.”<sup>174</sup> Dispelling the presumption of immigrant intent—a presumption that applies equally to applications for tourist visas—requires the immigrant to prove that he or she does not plan on coming to the United States with the purpose of remaining here.<sup>175</sup> Obviously, when one has an application pending for a permanent visa, this showing is difficult, if not impossible. As a result, family members waiting to secure a family-preference immigrant visa have substantial difficulty obtaining temporary visas because consulates regularly use the “nonimmigrant intent” requirement to deny the nonimmigrant visa requests.<sup>176</sup> If a family member fails to disclose the pending family-preference visa request, however, that individual “risk[s] being denied admission at the port of entry, subjected to expedited removal, or accused of misrepresentation when they apply for immigrant status.”<sup>177</sup> These requirements, then, translate to a policy that basically *requires* the disruption of family;<sup>178</sup> an LPR must remain separated from her family until her qualified family members’ priority

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168. Cruz, *supra* note 68, at 163.

169. *Id.* at 161.

170. See 8 U.S.C. § 1101(a)(13)(C)(ii) (2012); Cruz, *supra* note 68, at 161.

171. See 8 U.S.C. § 1427(a) (2012); 8 C.F.R. § 316.5(c) (2011); Cruz, *supra* note 68, at 161–62.

172. Cruz, *supra* note 68, at 160–61.

173. *Id.* at 160.

174. *Id.*

175. *Id.* at 160 n.34 (citing 8 U.S.C. § 1184(b) (2012)).

176. *Id.* at 160.

177. *Id.* at 160–61.

178. See *id.* at 162.

dates are eligible for visas, a daunting prospect for these kin.<sup>179</sup> As discussed, this could be several decades.<sup>180</sup>

As a result of this de facto family separation policy, immigrants feel compelled to circumvent the law.<sup>181</sup> However, the decision to come to the United States illegally “complicates or even eliminates their opportunity to regularize their immigration status”<sup>182</sup> because of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),<sup>183</sup> a law passed by Congress in 1996 that amended the INA by adding to it a number of immigration penalties in an effort to deter illegal residence in the United States.<sup>184</sup> Scholars have accused Congress of deliberately undermining the family unity policy with the IIRIRA,<sup>185</sup> and the law’s several provisions substantiate these arguments. Essentially, the law creates a series of “bars” to admission into the United States for those immigrants who enter and remain in the United States illegally. The first applies to immigrants who remain unlawfully in the United States for more than 180 days but less than one year. If an immigrant leaves the United States—voluntarily or forcibly—within this window, the law provides that she is inadmissible for three years following the departure.<sup>186</sup> If, however, an immigrant remains illegally present for longer than one year and subsequently departs—again, voluntarily or forcibly—she is then inadmissible for ten years.<sup>187</sup> If either immigrant subsequently reenters the United States illegally during the period of her respective bar, she is then permanently inadmissible.<sup>188</sup>

These immigration penalties arise out of what Professor David Thronson calls “the myth of ‘the line.’”<sup>189</sup> Popular estimation reasons that a legal “line” into the country exists, and while the line may be longer today than in the past, resulting in longer waiting times, prospective immigrants who wait patiently will eventually obtain legal admission to the United States.<sup>190</sup> While theoretically true, Thronson explains that the fallacy inherent in this argument is easily exposed when one considers the sizeable barriers erected in the paths of families seeking legal immigration, “which make it difficult or even impossible to get here (legally), especially when the family already is here (physically).”<sup>191</sup>

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179. *See id.* at 160.

180. *See, e.g., supra* notes 110–12 and accompanying text.

181. *Cf. Hawthorne, supra* note 10, at 819 (“This hopelessness for a complete legal family reunification . . . drives some families toward finding avenues for illegal immigration and, as a result, creates mixed-status families.”).

182. Cruz, *supra* note 68, at 166.

183. Pub. L. No. 104-208, 110 Stat. 3009-546 (codified at scattered provisions of 8 U.S.C.).

184. *See Cruz, supra* note 68, at 166.

185. *See generally, e.g., Colon-Navarro, supra* note 15 (arguing that provisions of the IIRIRA undermine family unity and proposing an amendment that would exempt immediate relatives from the same).

186. 8 U.S.C. § 1182(a)(9)(B)(i)(I) (2012); Cruz, *supra* note 68, at 166.

187. 8 U.S.C. § 1182(a)(9)(B)(i)(II); Cruz, *supra* note 68, at 166.

188. 8 U.S.C. § 1182(a)(9)(C); Cruz, *supra* note 68, at 166.

189. Thronson, *supra* note 61, at 67.

190. *Id.*

191. *Id.*; *see also supra* Part II.A.

The IIRIRA penalty provisions demonstrate Thronson's argument. While the problems with this law are multifaceted, they arise primarily in the second stage of the immigration process, which determines the jurisdiction where the immigrant applies for an immigrant visa after his or her priority date reaches the top of the list.<sup>192</sup> As shown, long waiting times for visas often separate families for years, provoking evasion of the legal process.<sup>193</sup> Therefore, instead of petitioning for a visa outside the United States, family members petition for a change in legal status within the United States.<sup>194</sup> Like other family visa petitions, this requires a determination of jurisdiction—there are two: (1) United States Citizenship and Immigration Services (USCIS) offices, located in the United States; or (2) the U.S. consulate located abroad in the beneficiary's country of origin—at which the beneficiary will apply for the visa.<sup>195</sup> Effectively, however, undocumented family members are consigned to the latter jurisdiction.<sup>196</sup> Consequently, family beneficiaries must depart the United States to apply for a permanent visa in their country of origin; their departures frequently trigger the bars under the IIRIRA.<sup>197</sup> Although one can, in theory, obtain a waiver of the inadmissibility bars, the request for the waiver must also be submitted and adjudicated at the consulate in the immigrant's country of origin, meaning that this process also elicits the IIRIRA bars.<sup>198</sup> The decision process takes several months and waivers are not easily obtained.<sup>199</sup>

In light of the effective non-navigability of this process, many immigrants forgo it all together, believing that departing the United States for a visa is not worth the risk.<sup>200</sup> In fact, these provisions do not even successfully encourage undocumented family members to leave the United States.<sup>201</sup> The IIRIRA, in combination with a

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192. Cruz, *supra* note 68, at 158. Professor Cruz explains that the family visa petition process contains three steps: (1) the petitioner submits a visa application for a relative beneficiary; (2) when the beneficiary's priority date reaches the top of the list, a determination is made about where, geographically, that person applies for the visa; and (3) the beneficiary must establish that he or she is not inadmissible to the United States. *Id.* at 157–59. A beneficiary can be ineligible for a number of reasons, one of which is a prior immigration violation under the IIRIRA. *Id.* at 159.

193. See, e.g., *supra* notes 110–12 and accompanying text.

194. See Colon-Navarro, *supra* note 15, at 493.

195. Cruz, *supra* note 68, at 158–59.

196. See *id.* at 159. In order to submit the application to the local USCIS office, the immigrant must either be in the United States legally or be “the beneficiary of a family petition filed before January 14, 1998 or April 30, 2001 . . . [and] have been present in the United States on December 21, 2000.” *Id.* Both categories are extremely limited. Any person who does not fall into either category does not qualify for USCIS jurisdiction and must submit her application abroad, irrespective of that person's physical, though albeit illegal, residence in the United States. *Id.*

197. See *id.* at 167.

198. See *id.* at 167 n.79.

199. *Id.*

200. *Id.*

201. See *id.* at 167.

Perversely, the statutory provisions meant to encourage compliance with the law may have encouraged the opposite: People wait in the United States hoping

failed family unity policy and increased border control, has made illegal immigration to the United States, ironically, both more probable and more dangerous.<sup>202</sup> However, rather than stemming the flow of illegal immigrants into the country,<sup>203</sup> these policies have *exacerbated* the problems of illegal immigration.

Professor Bernard Trujillo has labeled this phenomenon “northern capture.”<sup>204</sup> Northern capture relates to a bent of migration called “return migration” where a migrant enters the host country, often to work, and then returns to her country of origin after a period.<sup>205</sup> Because of the difficulties of navigating the legal immigration system, enhanced border control in the United States has interrupted return migration, which would otherwise occur in the natural immigration cycle.<sup>206</sup> Accordingly, immigrants come to the United States and stay for longer durations to avoid the increasing dangers inherent in immigration.<sup>207</sup> Professor Boehm’s anthropological research corroborates this hypothesis. She found that Mexican immigrants would prefer to “go and come” from the United States, establishing lives that transcend the border,<sup>208</sup> and discovered that illegal immigrants stay in the United States for longer durations, especially in the post-9/11 political climate.<sup>209</sup> Perhaps more significantly, Professor Boehm observed that despite the increasingly difficult task it has become to reunite families, this does not stop immigrants from nevertheless trying, even if that means flouting immigration law altogether and facing the dangers that come packaged with that choice.<sup>210</sup>

### III. KEEPING FAMILY BUT CHANGING “FAMILY”

This Note has demonstrated that the family unity policy in U.S. immigration law relies on a severely circumscribed and unrealistic definition of “family” that subverts the goals it purports to value.<sup>211</sup> American immigration law separates immigrants from loved ones for months, years, and, sometimes, even

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for a method of legalizing or adjusting status rather than leaving the United States and triggering the bar. Rather than returning to their country and filing for a waiver, they choose to forego the process and remain in the United States with their families, even if it means remaining in illegal status. The effects of this provision are to separate U.S. citizens and LPRs from their immediate relatives in contradiction to the long-standing purpose of family reunification, and to encourage illegal immigration.

Colon-Navarro, *supra* note 15, at 495–96 (footnotes omitted) (internal quotation marks omitted).

202. See BOEHM, *INTIMATE MIGRATIONS*, *supra* note 1, at 10; Cruz, *supra* note 68 at 163.

203. See Cruz, *supra* note 68, at 163 (“The number of applications for [change in status of] undocumented family members is growing . . .”).

204. Bernard Trujillo, *Mexican Families & United States Immigration Reform*, 38 *FORDHAM URB. L.J.* 415, 423 (2010) (internal quotation marks omitted).

205. *Id.*

206. See *id.*

207. *Id.*

208. BOEHM, *INTIMATE MIGRATIONS*, *supra* note 1, at 3.

209. *Id.* at 35.

210. *Id.* at 35, 74.

211. See *supra* Part II.A.

permanently.<sup>212</sup> Consequently, immigrants thwart immigration law and reunite their families illegally.<sup>213</sup> In the words of one scholar, “A long wait without a clear end results in families reunifying by other means, and the desire of . . . families to remain together eclipses the consequences of living in the shadows of U.S. society.”<sup>214</sup> Clearly then, if family serves as the primary stimulant of immigration and if the definition of family in U.S. immigration law essentially ensures the inefficacy of its family-related provisions, resulting in immigration through illegal channels, family unity must be maintained as an underlying policy, but the law’s construct of family informing that policy must expand. Doing so would more truly adhere to the family unity policy and further the politically prudent ideal of decreasing illegal immigration. Because anthropologists extensively study immigration and cultures—often the latter in context of the former, which allows these scholars to assess the corresponding effects—anthropology provides the proper way to inform a new, meaningful definition of family that finally endows family unity with substance.

Currently, immigration law views the individual migrant as a prime number, an “elementally alone” entity removed from the environmental context in which she both exists and maneuvers.<sup>215</sup> Anthropologists disagree with this view, reporting that the immigrant acts within an environment comprised of one’s family and one’s culture.<sup>216</sup> Anthropologists no longer regard the immigrant, in mathematical terms, “as an isolated iota, but rather as an iota raised to the power of a set of family members.”<sup>217</sup> The discipline recognizes that immigrants do not act in isolation but both in the macro context of the push and pull of a global economy and the micro context of social processes, such as the family, that transcend geographic, political, and cultural borders.<sup>218</sup> Ahead of the law, anthropology no longer evaluates immigrants as individuals; the immigrant household now represents the analytic unit.<sup>219</sup> This signifies a structural shift demonstrating the discipline’s superior cultural expertise and knowledge of the contextual migrant.<sup>220</sup>

The stage is again set for the United States to consider comprehensive immigration reform. For any reform to ultimately succeed, Congress must create a law that reflects an understanding that, like the migrant, the United States does not exist in isolation. As Professor Trujillo argues:

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212. *See supra* Part II.A.

213. *See supra* Part II.C.

214. Cruz, *supra* note 68, at 180.

215. Trujillo, *supra* note 204, at 421.

216. *See* BOEHM, *INTIMATE MIGRATIONS*, *supra* note 1, at 33 (“[M]igrations are never entirely autonomous or disconnected from family.”).

217. Trujillo, *supra* note 204, at 421.

218. *See* Caroline B. Brettell, *Theorizing Migration in Anthropology: The Social Construction of Networks, Identities, Communities, and Globalscapes*, in *MIGRATION THEORY: TALKING ACROSS DISCIPLINES* 97, 103–04 (Caroline B. Brettell & James F. Hollifield eds., 2000).

219. *Id.* at 107.

220. *See* Trujillo, *supra* note 204, at 421.

United States immigration law is typically seen as an expression with two terms: a single receiver-country (the United States) interfacing simultaneously with applicants from a vector of 194 sender-countries. It might be more useful, however, to re-imagine U.S. immigration as an expression containing 194 terms, each representing a bi-state relationship: United States and Slovenia, United States and Togo, etc.<sup>221</sup>

The shortcomings of current immigration law, however, reveal Congress's virtual ineptitude at crafting such a solution, at least when it acts alone and uninformed. Although the primacy of family-driven immigration has been well known for some time,<sup>222</sup> Congress has effectively failed to furnish the family unity policy with any actual substance.<sup>223</sup> Congressional efforts have been, like the current law, entirely too limited,<sup>224</sup> and worse yet, Congress has, in recent years, actually retreated from the family unity policy.<sup>225</sup>

Current legislation before Congress is no better. Indeed, beyond failing to address the problems created by the severely circumscribed family-sponsor provisions of the INA, proposed legislation exacerbates the issue. For example, using the dubious name "Nuclear Family Priority Act," House Bill 477 ruthlessly cuts the overall yearly cap on immigration, taking it from 480,000 to 88,000.<sup>226</sup> Moreover, the bill further limits the family members that may benefit from a petition, allowing only for the petitioning for children and spouses.<sup>227</sup> In light of what scholarship tells us, it is difficult to fathom how this bill would help even those families the bill's title claims to prioritize. It would do little more than further undercut the family unity policy and drive illegal immigration by separated families wishing to reunite.

Professor Trujillo correctly argues for an immigration law that envisages "U.S. immigration policy as a series of bi-state analyses."<sup>228</sup> Anthropologists have recognized this migratory duet for some time, and therefore, this discipline provides the proper means for realizing such a policy. For example, Caroline Brettell describes that anthropologists often do not follow a "bipolar model" of migration where a *single* sending society links to a *single* receptive locale.<sup>229</sup> Such a model is too limiting, too static; anthropologists recognize that functional analytical frameworks must account for migration networks that are "facilitating rather than encapsulating, as permeable, expanding, and fluid rather than as correlating with a metaphor of a rigid and bounded structure."<sup>230</sup> However, one

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221. *Id.* at 417 (emphasis omitted) (footnote omitted).

222. The scholarship on which this Note relies demonstrates this point.

223. *See supra* Part III.

224. To be sure, Congress has made, albeit limited, efforts to cure some of the defects in the law. However, as Professor Cruz recounts, these legislative interventions have been primarily both narrow in scope and short-lived. *See generally* Cruz, *supra* note 68, at 167–75.

225. *See* Demleitner, *supra* note 13, at 293.

226. Nuclear Family Priority Act, H.R. 477, 113th Cong. (2013).

227. *Id.*

228. Trujillo, *supra* note 204, at 417.

229. Brettell, *supra* note 218.

230. *Id.* at 107.

cannot describe domestic immigration law as a metaphor of any kind, even a rigid one, because metaphors, by definition, make comparisons of two parts. Immigration law is, therefore, unlike even the most intransigent metaphor because of its tremendous egocentrism; it accounts only for itself in ignorance of the other half of the equation—the sending country.<sup>231</sup>

Conversely, anthropology avoids this mistake. It evaluates “immigration policy from the perspective of the immigrant who acts, adapts, and often circumvents.”<sup>232</sup> The immigrant does not act in isolation; nor can she adapt to nothing. Most obviously, she must have something to circumvent. For a productive study, then, anthropologists evaluate all of these variables, which afford them with their cultural expertise. If the above were framed as a question—“What compels an immigrant to act, adapt, and circumvent?”—anthropology has answered it. The immigrant acts in response to the familial context and its needs,<sup>233</sup> adapts to the changing face of immigration policy,<sup>234</sup> and circumvents the law when its impact on the family has become too onerous.<sup>235</sup>

Anthropology has reached these conclusions through the in-depth fieldwork which its social scientists conduct. For instance, in an article Professor Boehm authored on the transnational family, she described her research methods:

I have interviewed approximately 200 transmigrants, lived with several Mexican families, and attended events, including weddings, *quinceañeras*, baptisms, first communions, and holiday celebrations in both [Mexico and the United States]. Finally, I have spent time with transnational Mexicans as they experience their daily lives—in their homes, at their workplaces, in social settings, and traveling between the United States and Mexico.<sup>236</sup>

Additionally, her research demonstrates the ongoing nature of anthropological inquiry. She expanded upon this same research, which she conducted and continually supplemented for more than a decade, in writing a book that took a more expansive, nuanced look at the same topic.<sup>237</sup>

The exhaustive research methods of anthropology allow the discipline to distinguish between “the ideal and the actual as a fundamental characteristic of human experience.”<sup>238</sup> Consequently, the discipline can both “[with]stand critical scrutiny as a mode of producing knowledge . . . [and] yield[] truths of enormous insight and value, often to the discomfort of conventional Western wisdom.”<sup>239</sup> It

231. See Trujillo, *supra* note 204, at 417.

232. Brettell, *supra* note 218, at 100.

233. See generally BOEHM, *INTIMATE MIGRATIONS*, *supra* note 1.

234. See *id.* at 35 (explaining how stays in the United States have lengthened).

235. See *id.* at 117 (recounting an illegal immigration of children).

236. Boehm, *For My Children*, *supra* note 1, at 779.

237. See BOEHM, *INTIMATE MIGRATIONS*, *supra* note 1, at 22–26 (describing her research methods).

238. Brettell, *supra* note 218, at 100.

239. John Comaroff, Notes on Anthropological Method, Mainly in the Key of E 4 (unpublished manuscript), available at <http://www.wjh.harvard.edu/nsfqual/Comaroff%20Paper.pdf>.

does just this in the context of immigration law, debunking the ideal, static concept of the traditional family<sup>240</sup> in support of a fluid vision of the household that changes over time and in context.<sup>241</sup> Anthropology understands the various forces at work, cultural and otherwise, in the immigration process and how those forces affect one another. Therefore, it “offers the best understanding of the process of migration and of migrant culture,” an understanding from which the law can and should learn.<sup>242</sup>

If nothing else, immigration law would benefit from direct, but albeit limited, use of anthropological methods. Although procedural differences and practical concerns preclude case-by-case application of anthropological methods, “anthropological and legal work can overlap, harmonize, and mutually constitute each other.”<sup>243</sup> While courts could not, in the interest of legal administration, “consider the types of factual ambiguities or changes in culture (or indeed the perspective that culture is fluid, hybrid, and contingent) that anthropologists consider in their writing,”<sup>244</sup> Congress could engage in this sort of analysis during periods of legislative fact finding, which would, in turn, create a more informed, inclusive law that would finally provide the family unity policy with real substance. True, culture is an imperfect concept, but a law informed by anthropology can account for this imperfection.<sup>245</sup> Indeed, anthropology’s emphasis on awareness of self and one’s own subjectivities would benefit the legislature, and thereby the resultant law, by keeping it honest through awareness of ethnocentrism,<sup>246</sup> thus allowing it to keep out such biases.<sup>247</sup> Ultimately, any law that attempts to place an amorphous concept, such as family, into a box will also be imperfect.<sup>248</sup> However, a more flexible definition of family will still account for more familial relationships that fuel immigration than the current, static definition, which will ultimately decrease illegal immigration.<sup>249</sup>

This Note acknowledges, as it must, that a more flexible definition of family will increase legal immigration in lieu of illegal immigration.<sup>250</sup> Although family-based quotas will need to increase in number to give true meaning to family reunification, a compromise in numbers could be found.<sup>251</sup> For instance, Congress could increase quotas by a number less than the statistical number of immigrants illegally entering and remaining in the country but more than the current INA provisions allow.<sup>252</sup>

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240. See BOEHM, *INTIMATE MIGRATIONS*, *supra* note 1, at 31–67 (exploring how the family is changing as a result of migration).

241. Brettell, *supra* note 218, at 101–02.

242. *Id.* at 118.

243. Bruce-Jones, *supra* note 18, at 336.

244. *Id.* at 336–37.

245. See *id.* at 338.

246. Ethnocentrism is “[t]he attitude or belief that one’s own culture is the best or only one, and that one can understand or judge another culture in terms of one’s own.” JACK DAVID ELLER, *CULTURAL ANTHROPOLOGY: GLOBAL FORCES, LOCAL LIVES* 15 (2009). By evaluating immigrant families in terms of the “traditional” American family, the United States immigration system fails to account for reality. See *supra* Part II.B.

247. Bruce-Jones, *supra* note 18, at 338.

248. See Hawthorne, *supra* note 10, at 810–11.

249. See *supra* Part III.

250. See King, *supra* note 54, at 561–62.

251. See Cruz, *supra* note 68, at 179.

252. See *supra* Part II.B. In 2010, an estimated 11.2 million unauthorized illegal immigrants

Considering that a “long wait without a clear end results in families reunifying by other means,”<sup>253</sup> the United States would benefit from such a compromise. In fact, if Congress could simply provide a clear, realistic, and meaningful end, which entails that the concept of the line would no longer be only a myth,<sup>254</sup> families would likely wait to reunify given the harsh consequences of the IIRIRA and the dangers of immigrating through illegal means.<sup>255</sup> Furthermore, in light of the fact that much of the money earned by immigrants goes to their countries of origin, where their families are located, the United States could benefit economically; allowing more legal immigration would keep at least some of the money otherwise sent as remittances in the domestic economy.<sup>256</sup> The money kept in the domestic economy could offset the administrative costs from increased legal immigration. Additionally, because legal immigration would likely translate to money saved in terms of border enforcement, resources “could then be diverted to deal with a heavier volume of family applications.”<sup>257</sup>

#### CONCLUSION

A more flexible definition of family in U.S. immigration law is not only needed, but the creation of such a workable definition is feasible through an anthropological lens. As a result of the current law’s family reunification policy, the INA stands as a living contradiction; it often divides families instead of uniting them—sometimes permanently. Consequently, families work around the law to be with their loved ones, exacerbating the problems of illegal immigration. Therefore, to give the definition of family more flexibility from an informed, anthropological perspective would decrease illegal immigration, thereby benefiting both families and the United States.

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lived in the United States, 58% of whom came from Mexico. JEFFREY S. PASSEL & D’VERA COHN, PEW HISPANIC CTR., UNAUTHORIZED IMMIGRANT POPULATION: NATIONAL AND STATE TRENDS, 2010, at 1–2 (2011), *available at* <http://www.pewhispanic.org/files/reports/133.pdf>. In 2011, the Department of Homeland Security reported 641,633 border apprehensions, 489,547 of which were from Mexico. U.S. DEP’T OF HOMELAND SEC., OFFICE OF IMMIGRATION STATISTICS, 2011 YEARBOOK OF IMMIGRATION STATISTICS, 91, 93 (2012), *available at* [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois\\_yb\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf).

Additionally, in this same year, there were 715,495 combined removals and returns of “inadmissible or deportable aliens,” *id.* at 102, of which 205,811 were returns to Mexico and 149,221 were non-criminal removals to Mexico, *id.* at 104, 113.

253. Cruz, *supra* note 68, at 180.

254. See Thronson, *supra* note 61, at 67.

255. See *supra* notes 181–210 and accompanying text.

256. See BOEHM, INTIMATE MIGRATIONS, *supra* note 1, at 21 (“Today, the primary source of income for most of the families in San Marcos comes from remittances that migrants send.”); Brettell, *supra* note 218, at 103 (“[M]igrant savings are often spent on conspicuous consumer items, rather than for economic investment . . . .”); Trujillo, *supra* note 204, at 424 (“[T]he migrant does not act in isolation, but rather as a representative or agent of his or her family. The household, in effect, sends the migrant as a sort of financial intermediary both to earn income that helps the household to achieve specific goals, and to overcome certain limitations in the home economic environment.”) (footnote omitted).

257. Hawthorne, *supra* note 10, at 829.