

DEPORTATION OF A PARENT: HOW CURRENT IMMIGRATION LAW IGNORES THE BEST INTERESTS OF THE CHILD

INTRODUCTION

On the morning of February 28, 2007, U.S. Immigration and Customs Enforcement¹ (“ICE”) officers arrested Pedro Ramirez and his wife, Isabel Aguirre, as the couple walked to their car in Palo Alto, California.² Forced to return to Mexico leaving his four young children behind, Pedro was deported an hour after the arrest.³ In the United States since 1985, Pedro had worked continuously at a supermarket until his deportation.⁴ The children, American citizens by virtue of their birth in the U.S.,⁵ attend school and had received health insurance through their father’s employment.⁶ Pedro and Isabel, unable to remain in the U.S., allowed the four young children to make a decision that would impact their future and the future of the family unit.⁷ The children faced an excruciating choice: stay in the only country they had ever known or return to Mexico with their parents. Eventually, the four children decided to return to Mexico, wanting to “stay like a family and not be separated.”⁸

The Ramirez’s classmates, many of them Latino, live in constant fear that their own families may be torn apart.⁹ The fear is not unfounded. The Ramirez children are just four of

¹ U.S. Immigration and Customs Enforcement, a division of the Department of Homeland Security, was established in 2003 as part of the government’s response to the September 11th attacks. See U.S. Immigration & Customs Enforcement, About ICE, <http://www.ice.gov/about/index.htm> (last visited Nov. 21, 2009).

² Julie Johnson, *Reluctant Ex-Pats: U.S. Born Kids Face Deportation as Well*, NEW AM. MEDIA, Apr. 4, 2007.

³ *Id.*

⁴ *Id.*

⁵ Children born in the United States acquire citizenship by virtue of being born within the country. See U.S. CONST. amend XIV, § 1.

⁶ Johnson, *supra* note 2.

⁷ See *id.*

⁸ *Id.*

⁹ See *id.*

thousands of children facing possible separation from their parents because of deportation. Between 1998 and 2007 the U.S. conducted 2,199,138 undocumented immigrant¹⁰ removals,¹¹ 108,434 of them have U.S. citizen children.¹² The Urban Institute has found that for every two adults arrested by ICE, one citizen child is affected.¹³ Currently, about four million U.S. citizen children live in families with one or two undocumented immigrant parents.¹⁴ Like any other American child, these children grew up, socialized, and attended school in this country. Unlike other American children, however, their best interests are not always considered. Rarely do immigration judges presiding over a removal hearing consider the undocumented immigrant's family circumstances and the potential detrimental impact deportation could have on children.¹⁵

This Note posits that the current U.S. immigration system seriously jeopardizes the best interests of the child by allowing for nondiscretionary deportation of the child's parents. Current immigration policy sits within an assortment of imperative national immigration goals: securing our borders, protecting the safety and well-being of all within the border, limiting the nation's population, and promoting family unification. Missing among the assortment of goals is the vital objective prevalent in other aspects of law: protecting the

¹⁰ Throughout this Note, "undocumented immigrant" refers to a noncitizen who came to the U.S. without requisite documentation, stayed past his visa, or violated terms of a valid admission.

¹¹ DEP'T OF HOMELAND SEC., OFFICE OF INSPECTOR GEN., REMOVALS INVOLVING ILLEGAL ALIEN PARENTS OF UNITED STATES CITIZEN CHILDREN 1 (2009), *available at* http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_09-15_Jan09.pdf.

¹²The government report states that data limitations decreased the reliability of these statistics, "including the absence of a requirement for staff to collect data that establish which aliens are parents of U.S. citizen children." *Id.* Further, ICE does not collect information on undocumented immigrants who depart without an order of removal. *See id.*

¹³ *See* RANDY CAPPS ET. AL., NAT'L COUNCIL OF LA RAZA, PAYING THE PRICE: THE IMPACT OF IMMIGRATION RAIDS ON AMERICA'S CHILDREN 15 (Urban Inst. 2007), *available at* http://www.urban.org/UploadedPDF/411566_immigration_raids.pdf.

¹⁴ JEFFREY S. PASSEL & D'VERA COHN, A PORTRAIT OF UNAUTHORIZED IMMIGRANTS IN THE UNITED STATES, at ii (Pew Hispanic Ctr. 2009) *available at* <http://pewhispanic.org/files/reports/107.pdf>.

best interests of the minor citizens of this country. This Note urges that protecting the best interests of the child must be a priority of the immigration system. Attainment of this goal can be met without detracting from attaining the other aims of immigration policy.

This Note focuses exclusively on undocumented immigrant parents of U.S. citizen children and proposes integrating the best interests of these children into our immigration system.¹⁶ Part I begins with a brief history on immigration law and the recent increases in enforcement by ICE, followed by a background of deportation law and procedure. Part II exposes the impact immigration law has on the child. Part II then explores the “best interests of the child,” its prevalence and importance in other parts of the American legal system, and its absence in the immigration system. This section advocates for family unity as a vital part of “the best interests of the child.” Finally, Part III argues that current immigration policy prohibits immigration judges presiding over removal hearings from considering the best interest of the children. It proposes a reform that would place discretion in the hands of a judge ruling over a deportation hearing when minor citizen children are involved. Further, the proposal incorporates a path towards citizenship for the parent whose children’s best interests are served by not removal but the family’s complete integration into society. This reform would create a system that rectifies the conflicting concerns between immigration law and the protection of the welfare and best interests of U.S. citizen children.

I. OVERVIEW OF IMMIGRATION LAW

¹⁵ See Maria Pabon Lopez, *A Tale of Two Systems: Analyzing the Treatment of Noncitizen Families in State Family Law Systems under the Immigration Law System*, 11 HARV. LATINO L. REV. 229, 243 (2008) (citation omitted).

¹⁶ As American citizens, the children have the option to stay in the U.S..

In 1798, the first immigration law granted the President authority to deport any foreign national found “dangerous to the peace and safety of the United States.”¹⁷ Since then, the law has been aimed at controlling those who enter and remain unlawfully within U.S. borders. Among Congress’ plenary powers is its power to deport.¹⁸ It has been said, “Congress clearly has the ‘ . . . power to prescribe conditions under which aliens may enter and remain. . . even though their enforcement may impose hardship upon the aliens’ children ’ ”¹⁹

Over the past several years, ICE has increased raids on workplaces and homes in the U.S..²⁰ Often, ICE raids occur in the middle of the night, with officials entering homes and intimidating occupants.²¹ An encounter with ICE officials can be a terrifying, life-altering experience. Fearful of what may happen to their children, parents may hide their young ones and deny to ICE the existence of children in the home.²² Later, children emerge from hiding to find their parents have disappeared. Confused, vulnerable, and scared, children are left to fend for themselves.²³ ICE’s aggressive stance on illegal immigration has led to an increase in arrests, detentions, and deportation.²⁴ An indicator of ICE’s growing force can be gleaned by looking at its ballooning budget; between 2006 and 2009 ICE’s budget increased from 3.6 billion to 5.4

¹⁷ Alien Act, ch.58, 1 Stat. 570 (1798).

¹⁸ See *Kleindienst v. Mandel*, 408 U.S. 753, 769–70 (1972) (“[P]lenary congressional power to make policies and rules for exclusion of aliens has long been firmly established.”).

¹⁹ *Cervantes v. INS*, 510 F.2d 89, 92 (10th Cir. 1975).

²⁰ David B. Thronson, *Creating Crisis: Immigration Raids and the Destabilization of Immigrant Families*, 43 WAKE FOREST L. REV. 391, 396 (2008).

²¹ *Id.* at 399.

²² See Randy Capps & Rosa Maria Castañeda, *The Impact of Immigration Raids*, CMTYS. & BANKING 10, 11 (2008), (discussing the impact on families when hundreds of immigration agents raided a New Bedford, Massachusetts workplace).

²³ See *id.*

²⁴ See DORSEY & WHITNEY LLP, SEVERING A LIFELINE: THE NEGLECT OF CITIZEN CHILDREN IN AMERICA’S IMMIGRATION ENFORCEMENT POLICY 1 (2009), available at http://www.dorsey.com/probono_severing_lifeline/.

billion dollars.²⁵ In 2008, the government removed an astounding 359,000 immigrants, while allowing another 811,000 opportunity to leave before the issuance of a formal removal order.²⁶

The dire consequences of deportation loom over those caught by ICE. The deportation of an individual has “historically been viewed as having harsh consequences.”²⁷ Recognizing the possible permanent loss of family, friends, and livelihood that deportation poses, Supreme Court Justice Murphy stated, “[T]he impact of deportation upon the life of an alien is often as great if not greater than the imposition of a criminal sentence.”²⁸

Congress has enumerated a multitude of grounds for deportation in the Immigration and Nationality Act (“INA”). Among the various grounds, an individual can be deported on the basis of various status violations. Violations of status include overstaying a visa²⁹ and failing to maintain non-immigration status.³⁰ The government regards other undocumented immigrants as inadmissible at the time of their entry into the U.S.; thus, upon being found in the U.S. these undocumented immigrants can be deported.³¹ Included in this group of potential deportees are those present within the U.S. without having been formally admitted.³²

Before deportation, undocumented immigrants are entitled to a hearing before an immigration judge, an employee of the Department of Justice’s Executive Office for

²⁵ See Aaron R. Marcu, *Workplace Raids and Investigations*, in 1698 CORPORATE LAW AND PRACTICE COURSE HANDBOOK SERIES 389, 395 (Practising Law Inst. ed., 2008).

²⁶ DEP’T OF HOMELAND SEC., OFFICE OF IMMIGRATION STATISTICS, ANNUAL REPORT: IMMIGRATION ENFORCEMENT ACTIONS: 2008 1 (2009) [hereinafter DOH 2008 REPORT], available at http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_08.pdf.

²⁷ See IRA J. KURZBAN, IMMIGRATION LAW SOURCEBOOK 268 (10th ed. 2006) (citing *Fong Haw Tan v. Phelan*, 333 U.S. 6 (1948) (describing deportation as equivalent to banishment) (additional citations omitted)).

²⁸ *Id.* at 268 (citing *Bridges v. Wixon*, 326 U.S. 135, 164 (1945) (Murphy, J. concurring)).

²⁹ See *id.* at 158 (citing INA § 237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B), 8 C.F.R. § 103.12).

³⁰ See *id.* (citing INA §237(a)(1)(C)(i)).

³¹ See 8 U.S.C. § 1227(a)(1)(A) (2006).

³² See *id.* § 1182(6).

Immigration Review.³³ At a removal hearing, the burden of proof first rests with the government to establish by “clear, unequivocal, and convincing evidence” that the undocumented immigrant is not a citizen.³⁴ Once met, the burden shifts to the undocumented immigrant to prove by clear and convincing evidence that he is lawfully present in the U.S.³⁵ Finally, if met, the burden shifts back to the government to prove that the individual is deportable by clear and convincing evidence.³⁶ The consequences of a removal hearing can go beyond removal to include imprisonment for up to ten years or a permanent bar to future entries into the U.S..³⁷

After the immigration judge renders a decision, an appeal of the decision can be made to the Board of Immigration Appeals (“BIA”),³⁸ a division of the Executive Office for Immigration Review.³⁹ Regrettably, the BIA has come under extensive criticism for “the [poor] quality of transcripts, the delay in rendering decisions, and the [poor] legal quality of BIA decisions....”⁴⁰ One circuit court chastised the BIA as “fall[ing] below the minimum standards of legal justice.”⁴¹ Another court said of the BIA, “[t]he elementary principles of administrative law, the rules of logic, and common sense seem to have eluded the Board in this as in other cases.”⁴²

Still, the potentially faulty system is more than some parents will be afforded. Some parents will be subject to an expedited removal without a hearing. Beginning in 1997, Congress

³³ See U.S. Immigration & Customs Enforcement, Detention and Removal, <http://www.ice.gov/pi/dro/index.htm> (last visited Nov. 21, 2009).

³⁴ See *Woodby v. INS*, 385 U.S. 276, 286 (1966).

³⁵ INA § 240(c)(2)(B).

³⁶ INA § 240(c)(3)(A).

³⁷ See DOH 2008 REPORT, *supra* note 26, at 2.

³⁸ See 8 C.F.R. §§ 1003.38(b), 1240.15 (2009).

³⁹ KURZBAN, *supra* note 27, at 1019.

⁴⁰ *Id.* at 1029.

⁴¹ *Id.*; see also *id.* (citing *Ahmed v. Ashcroft*, 388 F.3d 247, 248 (7th Cir. 2004) (stating that “BIA’s explanation for denying a petition for reconsideration ‘appears to be a piece of boilerplate mindlessly affixed to a case to which it’s irrelevant.’ ”)).

⁴² *Id.* at 1030 (quoting *Galina v. INS*, 992 F.2d 94, 98 (7th Cir. 2000)).

mandated a procedure to instantly remove those individuals attempting to enter the country without possessing proper documentation or those committing material misrepresentations.⁴³ Yet, expedited removal is not limited to the border, the Attorney General has authority to order removal of any individual who has not been “admitted or paroled into the United States” and who cannot “affirmatively show, to the satisfaction of an immigration officer,” that he has been physically present within the U.S. continuously for the prior two years.⁴⁴ These individuals will be removed without further review, save for those eligible to apply for asylum or who under oath attest that they have been lawfully admitted for permanent residence.⁴⁵ In 2008, 113,500 individuals removed expediently, accounting for thirty-two percent of all removals.⁴⁶

One possible avenue of relief for an undocumented immigrant facing deportation is cancellation of removal.⁴⁷ To qualify for cancellation, a nonpermanent resident undocumented immigrant must be physically present in the U.S. for at least ten continuous years, be of good moral character during that time, have no convictions of certain offenses, and establish that removal “would result in exceptional and extremely unusual hardship” to a spouse, parent, or child who is a citizen or lawful permanent resident of the U.S.⁴⁸ Even after meeting all of the statutory requirements, relief is purely discretionary.⁴⁹ Part III discusses the difficulties and dismal success rate undocumented immigrants face when they pursue cancellation of removal.

II. THE IMPACT OF IMMIGRATION LAW ON THE CITIZEN CHILD

⁴³ See 8 U.S.C. § 1225(b)(1)(A)(i) (2006).

⁴⁴ See *id.* § 1225(b)(1)(A)(iii).

⁴⁵ See *id.* § 1225(b)(1)(C).

⁴⁶ DOH 2008 REPORT, *supra* note 26, at 1.

⁴⁷ See 8 U.S.C. § 1229b.

⁴⁸ 8 U.S.C. § 1229b(b)(1)(A)-(D) (2006).

⁴⁹ See *id.* § 1229b(a); § 1229b(b) (stating that “[t]he Attorney General *may* cancel removal...”) (emphasis added). The immigration court and/or the BIA acts for the Attorney General in making these decisions. See *Romero-Torres v. Ashcroft*, 327 F.3d 887, 891 (9th Cir. 2003).

Any child born on American soil is a U.S. citizen.⁵⁰ The Fourteenth Amendment declares that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”⁵¹ A parent, however, does not earn citizenship upon the birth of his or her child.⁵² Facing deportation, a parent has an agonizing choice between either leaving her children behind with family or as wards of the state or taking the children with her. Often, the child has no say in the decision, despite possessing a right as a U.S. citizen to remain in the U.S.⁵³

Children who remain with their families must leave their homes and the only country they have ever known for the home country of their parents. Settling in a country that likely feels foreign to them; the newly arrived children can face a multitude of hardships.⁵⁴ Frequently, children find themselves living in a country of great poverty where their parents receive wages so low that they cannot support a decent standard of living the family.⁵⁵ As a result poor economic conditions, “child labor is a persistent problem in many countries.”⁵⁶ Further, the parent’s home country often lacks adequate educational opportunities.⁵⁷ For example, in Mexico the average years of education among those fifteen years of age is 7.9, while in Guatemala the average among nonindigenous children is 4.2 years.⁵⁸ Forty-percent of children in Haiti do not

⁵⁰ See 8 U.S.C. § 1401(a) (2006).

⁵¹ U.S. CONST. amend XIV, § 1. This concept of jus soli or birthright citizenship was upheld by the Supreme Court in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

⁵² See *In re Anaya*, 14 I. & N. Dec. 488, 489 (B.I.A. 1973) (holding that the Constitutional rights afforded to a citizen child do not extend to the child’s undocumented immigrant parent).

⁵³ See David B. Thronson, *Choiceless Choices: Deportation and the Parent-Child Relationship*, 6 NEV. L. J. 1165, 1189-90 (2006).

⁵⁴ See, e.g., DORSEY & WHITNEY LLP, *supra* note 24, at 88–98.

⁵⁵ *Id.* at 85.

⁵⁶ *Id.* at 86.

⁵⁷ *Id.*

⁵⁸ *Id.*

receive any education because there are too few public schools.⁵⁹ Alarming, some children will even be subjected to extremely harsh practices unheard of in this country, such as female genital mutilation.⁶⁰ Due to gangs and drug cartels that are all too common in these countries, violence runs rampant and often children become the innocent bystanders of terrifying acts of violence either witnessing atrocious acts, or losing their lives to them.⁶¹

For children who separate from their family and stay in the U.S., many end up in foster care.⁶² Further, an additional threat to family unity lurks—the frightening possibility that parental rights will be terminated as a result of the deportation process. For example, a mother detained by ICE for a year and a half had the rights to her child terminated on grounds of abandonment.⁶³ Without her consent, a judge allowed a couple to adopt the woman’s two year old son without the mother being informed in her native Spanish of the proceeding until it was too late.⁶⁴ Unfortunately, maintaining the stability that is so desired for a child can often be thwarted by the efforts of immigration.⁶⁵ For example, a state family court judge may find that the child’s best interests are served by having the mother reunited with her child, but such an outcome becomes impossible when the mother is being detained by immigration.

⁵⁹ *Id.*

⁶⁰ See Miriam R. Cahan, Note, *An Impossible Choice: Denial of Parent's Derivative Asylum Claims Based on Their Citizen Daughter's Risk of Female Genital Mutilation*, 8 WASH. U. GLOBAL STUD. L. REV. 545, 546 (2009).

⁶¹ See DORSEY & WHITNEY LLP, *supra* note 24, at 87–90 (citations omitted). Guatemala presents a frightening example of this violence; there, 812 children suffered violent deaths between 2006 and 2007. See *id.* at 89.

⁶² See Alison M. Osterberg, *Removing the Dead Hand on the Future: Recognizing Citizen Children's Rights Against Parental Deportation*, 13 LEWIS & CLARK L. REV. 751, 754.

⁶³ Ginger Thompson, *After Losing Freedom, Some Immigrants Face Loss of Custody of Their Children*, N.Y. TIMES, Apr. 23, 2009, at A15.

⁶⁴ *Id.*

⁶⁵ See *id.* (explaining the judge’s emphasis on the stability needed for the child).

The impact of a parent’s deportation on a child is pervasive. “Psychologists, teachers, and family members have reported significant increases in anxiety, depression, feelings of abandonment, eating and sleeping disorders, post traumatic stress disorder, and behavioral changes among children who have experienced the loss of a loved one or who have witnessed ICE in action.”⁶⁶ A once well adjusted and flourishing child becomes depressed and unruly.⁶⁷ A psychologist assigned to work with families affected by immigration raids in Willmar, Minneapolis reported “the level of post-traumatic stress disorder and anxiety rivaled that seen in war-torn countries like Bosnia.”⁶⁸ A traumatic experience such as the deportation of a loved one can be detrimental to the child’s “thought process, learning, memory, self perception, and individual feeling about self and others.”⁶⁹

The “best interests of the child” has become an essential factor in multiple facets of our legal system. The Supreme Court has consistently recognized that the best interests of the child should not be curtailed due to the status of his parents. For example, in *Weber v. Aetna Cas. & Sur. Co.*,⁷⁰ the Court stated, “Obviously, no child is responsible for his birth and penalizing the ... child is an ineffectual—as well as unjust—way of deterring the parent.”⁷¹ Further, as a signatory to the Convention on the Rights of the Child, the U.S. should recognize that “.... a child shall not be separated from his or her parents against their will, except when ... such

⁶⁶ DORSEY & WHITNEY LLP, *supra* note 24, at 5.

⁶⁷ *See, e.g.*, *McNeil v. Att’y Gen.*, No. 08-2084, 2009 U.S. App. LEXIS 20177 (3d Cir. Sept. 2, 2009).

⁶⁸ Rubén Rosario, *Immigration Raids Leave Traumatized Children in Their Wake* (Kids at Risk Action, St. Paul, Minn.), Mar. 28, 2009, <http://www.invisiblechildren.org/2009/03/30/ruben-rosario-immigration-raids-traumatize-children/>.

⁶⁹ Bryan Lonagan, *American Diaspora: The Deportation of Lawful Residents from the United States and the Destruction of their Families*, 32 *New York University Review of Law and Social Change* 55, 66 (2007) (citing Comm’n on Immigration, ABA American Justice Through Immigrant’s Eyes 68 (2004)).

⁷⁰ 406 U.S. 164 (1972)

separation is necessary for the *best interests of the child*.⁷² Therefore, the best interests of the child standard should be utilized in immigration law.

The best interests of a child should include family unification. In trials where a child's interests are at stake, trial judges determine what would best serve the child's best interests.⁷³ A judge may look to his or her own experience and commonsense to determine what route would lead to the best future development for the individual child.⁷⁴ Furthermore, judges rely not only on their own experiences, but on social science research to support their position.⁷⁵ For example, judges rely on the Attachment Theory which advocates for a consistent and close relationship between mother and child during infancy and early childhood to assure the formation of sustainable healthy and intimate relationships throughout life.⁷⁶ While the judge determines what constitutes the best interests of a child, the parent, more often than not, their child's best interest in mind. The presumption that parents act in the best interests of their children has been woven into the threads of our judicial system.⁷⁷ The innate bond of affection between parent and child leads a parent to act in the child's best interests.⁷⁸

⁷¹ *Id.* at 175.

⁷² Convention on the Rights of the Child, art. 9, Nov. 20, 1989, 1577 U.N.T.S. 3 (emphasis added).

⁷³ See, e.g., *Calhoun v. Calhoun*, 138 S.W.3d 689, 691 (Ark. Ct.App. 2003) (stating that the best interests and welfare of the child should be considered over anything else in child custody cases) (citation omitted); *Gubernat v. Deremer*, 657 A.2d 856, 866 (N.J. 1995) (using a best interests standard to determine that surname of a child).

⁷⁴ See Satya Grace Kaskade, Note, *Mothers Without Borders: Undocumented Immigrant Mothers Facing Deportation and the Best Interests of Their U.S. Citizen Children*, 15 WM. & MARY J. WOMEN & L. 447, 456 (2009).

⁷⁵ See Rachel M. Colancecco, Note, *A Flexible Solution to a Knotty Problem: The Best Interests of the Child Standard in Relocation Disputes*, 1 DREXEL L. REV. 573, 582 (2009).

⁷⁶ See *id.*

⁷⁷ See *Troxel v. Granville*, 530 U.S. 57, 68 (2000) (stating that a presumption exists that "fit parents act in the best interests of their children.").

⁷⁸ See *Parham v. J.R.*, 442 U.S. 584, 602 (1979) ("[T]he natural bonds of affection lead parents to act in the best interests of their children.").

Additionally, family unification is well recognized as essential in assuring that the next generation can be strong contributors to society.⁷⁹ For one, extended periods of separation have detrimental effects on children.⁸⁰ Moreover, children are a vulnerable class, often unable to provide for themselves and dependant on adults for survival.⁸¹ The U.S. places great emphasis on the importance of family unification in many aspects of its jurisprudence. In *Moore v. East Cleveland*,⁸² the Supreme Court stated that “the institution of the family is deeply rooted in this Nation’s history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.”⁸³

Yet, deportation of parents leads to the disintegration of the family unit. If children do not go with their parents and instead remain in the U.S., often they are placed in the foster care system. Siblings can be separated from each other within the system,⁸⁴ further destroying family unity. Families feel the loss of a parent not only emotionally, but financially as well. Often the deported parent is the breadwinner of the family, leaving the rest of the family in the U.S.

⁷⁹ See Clare Huntington, *Happy Families? Translating Positive Psychology into Family Law*, 16 Va. J. of Soc. Pol’y & L. 385, 396–97 (2009) (citing SARA McLANAHAN & GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* 1–2, 89–91 (1994) (“ ‘Compared with teenagers of similar background who grow up with both parents at home, adolescents who have lived apart from one of their parents during some period of childhood are twice as likely to drop out of high school, twice as likely to have a child before age twenty, and one and a half times as likely to be ‘idle’—out of school and out of work—in their late teens and early twenties’; further noting that only about half of this effect can be attributed to the effects of lower income.”) (additional citations omitted).

⁸⁰ See Lopez, *supra* note 15, at 238.

⁸¹ See generally, Gregory A. Loken, *Gratitude and the Map of Moral Duties Toward Children*, 31 ARIZ. ST. L.J. 1121 (1999).

⁸² *Moore v. East Cleveland*, 431 U.S. 494 (1977).

⁸³ *Id.* at 503–04.

⁸⁴ Cahan, at 563 (discussing the emotional harm foster care can impose on a child and the frequent sibling separation due to the inability of foster families to take more than one child).

without the means to survive on their own.⁸⁵ Savings quickly run out and privately funded assistance generally lasts only two or three months.⁸⁶

It is important to note that assumptions should not be made that the United States is the only country that is capable of fulfilling the best interests of the child. Instead, a judge should assess many factors when determining what country would serve those interests. Important factors could include access to education and health services, quality of such services, possible language barriers, the presence of family members already in the country, the parent's potential to financially support the child within the country, and the cultural fit.

In addition to family unification, integration into society of the entire family will positively impact the child. Many new citizens in this country express gratitude towards becoming citizens because it “gives them a sense of belonging and of being included in mainstream American society.”⁸⁷ This sense of belonging benefits a child who will no longer have hurdles preventing his own full integration into society. The alternative, a mixed status family in which children are citizens and parents are not, leaves many doors closed to a citizen child. Moreover, the steady fear of deportation can impact a parent's desire and ability to fully immerse within the community.

III. THE IMMIGRATION SYSTEM CANNOT CONTINUE TO IGNORE THE BEST INTERESTS OF CHILDREN

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) expanded the challenges of undocumented immigrants facing deportation, changing the immigration laws to become more draconian and offering fewer opportunities to remain in the

⁸⁵ See Capps et al., *Paying the Price: The Impact of Immigration Raids on America's Children* (Nat'l Council of La Raza 2007).

⁸⁶ *Id.*

⁸⁷ Judith Bernstein-Baker, *Citizenship in a Restrictionist Era: The Mixed Messages of Federal Policies*, 16 TEMP. POL. & CIV. RTS. L. REV. 367, 368 (2007).

United States.⁸⁸ Congress passed the IIRIRA “in an effort to make ‘sweeping revisions of immigration policy’ in the United States[,]”⁸⁹ to expedite removals, and to curtail the opportunities available to obtain discretionary relief from deportation.⁹⁰ Among the increased restrictions, the IIRIRA constructed a large obstacle before those facing deportation by abolishing suspension of deportation which had been available under the former INA §§ 244(a), replacing it with cancellation of removal.⁹¹ Under suspension of deportation, only the most serious violators of immigration policy had to meet the “exceptional and extremely unusual hardship” standard while everyone else had to establish “extreme hardship.”⁹² After the IIRIRA, everyone applying must now meet the harder standard.⁹³ Further, suspension had allowed hardship to be established by showing hardship to the applicant himself, while cancellation ignores such hardships, taking into account only hardship to qualifying family members.⁹⁴

As a result, the existence of cancellation of removal in no way remedies the dire situation faced by families confronting potential deportation. First, to qualify for cancellation the parent must satisfy all the objective requirements set out in the INA.⁹⁵ These requirements are not easily met. Parents may encounter difficulty in proving the requisite continual presence in the country

⁸⁸ See STEPHEN H. LEGOMSKY & CHRISTINA M. RODRIGUEZ, IMMIGRATION AND REFUGEE LAW AND POLICY 22 (5th ed. 2009).

⁸⁹ Brent Asseff, *Reinstatement of Removal and IIRIRA Retroactivity after Fernandez-Vargas V. Gonzales: Restoring Section 212(C) Discretion and Fairness to Immigration Law*, 46 U. OF LOUISVILLE L. REV. 157, 160 (2007).

⁹⁰ See Lee J. Teran, *Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act*, 17 B.U. INT'L L.J. 1, 20 (1999).

⁹¹ KURZBAN, *supra* note 27, at 992.

⁹² Elwin Griffith, *The Transition Between Suspension of Deportation and Cancellation of Removal for Nonpermanent Residents Under the Immigration and Nationality Act: The Impact of the 1996 Reform Legislation*, 48 DRAKE L. REV. 79, 84, 95 (1999).

⁹³ *Id.*

⁹⁴ KURZBAN, *supra* note 27, at 992.

⁹⁵ See 8 U.S.C. §1229b (2006). For a discussion of requirements see Part II.

for ten years.⁹⁶ In 2005, forty percent of the total undocumented population had been in the U.S. for five years or less; hence, forty percent of the immigration population cannot apply for cancellation of removal.⁹⁷ Second, a number of those removed do not have the option to apply for cancellation of removal; this group includes those removed pursuant to the expedited removal process.⁹⁸ Overall, the issuance of a cancellation of removal proves to be a rare event. While a 4,000 cap is placed upon the number of cancellations issued per year, the Attorney General has not been apt to come close to reaching this cap.⁹⁹

The “exceptional and extremely unusual hardship” standard presents a formidable hurdle for a parent. In order for the hardship to qualify, the parent must demonstrate that the child would suffer a hardship substantially beyond that which would ordinarily be expected to result from the parent’s departure.¹⁰⁰ With the IIRIRA, Congress intended for cancellation to be granted in only “truly exceptional cases.”¹⁰¹ Immigration judges have recognized that factors that would have been viewed as presenting an extreme hardship to a child in the pre-IIRIRA era, today, would fail to prompt a judge to order a cancellation.¹⁰²

⁹⁶ *See id.* § 1229b(b) (requiring ten year continual presence for nonpermanent undocumented immigrants).

⁹⁷ JEFFREY S. PASSEL, THE SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S.: ESTIMATES BASED ON THE MARCH 2005 CURRENT POPULATION SURVEY (Pew Hispanic Ctr. 2006), *available at* <http://pewhispanic.org/files/reports/61.pdf>.

⁹⁸ KURZBAN, *supra* note 27, at 133 (citing *Ramos v. Gonzales*, 485 F.3d 509 (9th Cir. 2007)).

⁹⁹ *See* 8 U.S.C. §1229b(e)(1) (2006). In 2006 only 3,144 nonpermanent residents were granted cancellation. *See* U.S. DEP’T OF JUSTICE, EXECUTIVE OFFICE OF IMMIGRATION REVIEW, FY 2006 STATISTICAL YEAR BOOK, at R3, tbl. 15 (2007).

¹⁰⁰ *See, e.g., In re Monreal*, 23 I. & N. Dec. 56, 59 (BIA 2001) (citation omitted).

¹⁰¹ *See In re Andazola*, 23 I. & N. Dec. 319, 322 (BIA 2002) (stating that “Congress...imposed a standard of hardship that is significantly more burdensome than the former ‘extreme hardship’ standard.”); *see also* H.R. Conf. Rep. No. 104-828 (1996)..

¹⁰² *See In re Andazola*, 23 I. & N. Dec. at 322 (recognizing that had a showing of extreme hardship been sufficient, relief to a mother of small children facing deportation might well have been granted).

In determining whether or not to grant cancellation under the heightened standard, a judge assesses various factors including the age of the applicant, family ties in the U.S., length of U.S. residence, level of health of any qualifying members of applicant's family, political and economic conditions in the home country, availability of any other status adjustment means, community involvement, and immigration history.¹⁰³ Additionally, the age, health, and circumstances of qualifying U.S. citizen relatives will be considered.¹⁰⁴ Missing among these factors is the potential separation that a child may face if the parent is deported and chooses to leave the child in the U.S.. Potential separation from a parent does not often qualify as the necessary "exceptional and extremely unusual hardship" that a U.S. citizen or permanent legal resident spouse, parent, or child may face.¹⁰⁵ In a proceeding, the judge looks first at the hardship a child would face if taken to the parent's country of return, not what would happen to a child left behind.¹⁰⁶ Without a showing of hardship to the child in the country of return, it is presumed that the parents decide whether or not to leave the child behind and a judge will not intervene.¹⁰⁷ This ignores the fact that the optimal choice is missing: staying in the U.S. together, as a family.

Many things that would seem to be a hardship to a child in the country of return do not pass muster under the heightened level of hardship. While a cancellation of removal may be granted for an applicant who has a child with very serious health issues, or "compelling special

¹⁰³ *In re Monreal*, 23 I. & N. Dec. at 63 (citing *In re Anderson*, 16 I. & N. Dec. 596 (BIA 1996) (describing how pre-IIRIRA factors should be considered but assessed at the higher post-IIRIRA level)).

¹⁰⁴ *In re Monreal*, 23 I. & N. Dec. at 63.

¹⁰⁵ See MiaLisa McFarland & Evon M. Spangler, *A Parent's Undocumented Immigration Status Should Not Be Considered Under the Best Interest of the Child Standard*, 35 WM. MITCHELL L. REV. 247, 260–64 (2008).

¹⁰⁶ KURZBAN, *supra* note 27, at 994 (citing *In re Ige*, 20 I. & N. Dec. 880 (BIA 1994)).

¹⁰⁷ *Id.*

needs in school[,]” a lower standard of living or adverse country conditions in the country of return...generally will be insufficient...”¹⁰⁸ The lack of education or language barriers that relocation to the parent’s home country could present to a child also fail to meet the necessary level of hardship.¹⁰⁹ For example, in *In re Andazola*,¹¹⁰ the BIA denied a single mother’s application for cancellation despite the fact that her citizen children would have to return to Mexico where they would be placed in lower grades in school and be forced to work with the limited Spanish language ability.¹¹¹ The judges in the case even conceded that the children would not receive an education in Mexico equal to the educational opportunities in the U.S..¹¹²

Some immigration judges do defer more to the importance of family unity; however, often the BIA reverses these decisions on appeal. For example, in *Kane v. Holder*,¹¹³ the immigration judge had granted a father’s application for cancellation based upon the real fear that his two minor daughters would be subject to female genital mutilation if the family returned to Senegal.¹¹⁴ Yet, later, the BIA reversed the decision and ordered that the father be removed¹¹⁵ despite the separation such a deportation would cause since the father refused to bring his girls to a country that would subject them to dangerous practices. This case exemplifies the difficulty

¹⁰⁸ *In re Monreal*, 23 I. & N. Dec. at 63–64.

¹⁰⁹ *See, e.g., In re Andazola*, 23 I. & N. Dec. 319, 322 (BIA 2002).

¹¹⁰ *Id.*

¹¹¹ *See id.*

¹¹² *See id.* at 323 (stating “[W]e recognize that Mexico likely will not provide the respondent’s children with an education equal to that which they might obtain in the United States.”).

¹¹³ 2009 U.S. App. Lexis 19361 (5th Cir. Aug. 26, 2009).

¹¹⁴ *Id.* at *4–5 (5th Cir. Aug. 26, 2009) (explaining that “it is, quite frankly, difficult for this Court to expose two young U.S. citizens to this practice, simply because their parents were not of status in this country.”).

¹¹⁵ *See id.* at *6 (citing *In re A--- K---*, 24 I. & N. Dec. 275 (BIA 2007)).

inherent in gaining cancellation of removal as a parent with a minor child as courts do not allow for claims based on the “feared future harm to...[a] United States citizen child.”¹¹⁶

Limiting relief to only parents whose children will suffer an “exceptional and extremely unusual hardship” inadequately takes into account the best interests of the child. Frighteningly, the current immigration system encourages judges to be satisfied with children suffering an extreme hardship, as long as it does not rise to “exceptional and extremely unusual.” Again, the case of *In re Andazola* illustrates the stark reality of the current system. In *In re Andazola*, the court denied a single mother of two young children cancellation of removal.¹¹⁷ In the U.S. the mother had steady employment at the same company for four years which provided health insurance and a 401k savings plan for the benefit of her and her children.¹¹⁸ The mother owned a house, two vehicles, and had savings of about \$7,000.¹¹⁹ The children’s grandmother cared for them while the mother worked.¹²⁰ In contrast, in Mexico, the mother had no family to care for her children¹²¹ and feared it would be difficult to find a job because her asthma condition made it hard for her to work outside in Mexico, and her lack of education would probably preclude her from an office job.¹²² Despite the better situation for her children in the U.S., she was ordered to voluntarily depart from the U.S. within thirty days of the court’s decision.¹²³ Surprisingly, the mother’s possession of money and assets she had accumulated during her time in the U.S. persuaded the court to reason that her savings could assist her in relocating.¹²⁴ Returning to

¹¹⁶ *In re A--- K---*, 24 I. & N. Dec. at 276.

¹¹⁷ *See id.* at 325 (ordering voluntary departure from the U.S. within 30 days of decision).

¹¹⁸ *See id.* at 320.

¹¹⁹ *Id.* at 324.

¹²⁰ *Id.* at 320.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 325.

¹²⁴ *Id.* at 324.

Mexico was certainly not in the best interests of the children, when the children had many more resources in the U.S.. The court even recognized, “We have no doubt that she [the mother] and her children will suffer some hardship upon moving to Mexico.”¹²⁵

There must be a mechanism in place to allow for undocumented immigrant parents to remain in the U.S., if it serves the child’s best interests. Judges presiding over deportation hearings must be given full discretion to determine a child’s best interests. Under this proposal, judges would take into account an undocumented immigrant’s family ties in the U.S., allowing the U.S. to catch up with the rest of the world in terms of weighing family ties in all of its deportation proceedings.¹²⁶ To assure that the immigration system operates with a focus on the best interests of the child, each child whose parents are in deportation proceedings should be given a representative in the proceeding, to assure that the child’s interests remain at the forefront of concern.

Canada’s policy on deportation hearings involving parents of minor citizens should serve as a guide for the U.S.. Canada acknowledges that the best interests of the child must be protected during a parent’s deportation hearing.¹²⁷ Under Canadian law, the best interests of a child can be taken into account when a parent faces deportation from Canada and the child has the right to remain.¹²⁸ Parents have the opportunity to apply for permanent Canadian residency through a humanitarian and compassionate relief application.¹²⁹ When considering these

¹²⁵ *Id.* at 322.

¹²⁶ See HUMAN RIGHTS WATCH, FORCED APART: FAMILIES SEPARATED AND IMMIGRANTS HARMED BY UNITED STATES DEPORTATION POLICY 61 (2007), available at <http://hrw.org/reports/2007/us0707/us0707webwcover.pdf>.

¹²⁷ See Amanda Colvin, Comment, *Birthright Citizenship in the United States: Realities of De Facto Deportation and International Comparisons Toward Proposing a Solution*, 53 ST. LOUIS U. L.J. 219, 233–34 (2008).

¹²⁸ See Bridgette A. Carr, *Incorporating a “Best Interests of the Child” Approach into Immigration Law and Procedure*, 12 YALE HUM. RTS. & DEC. L.J. 120, 147.

¹²⁹ See *id.* (citation omitted).

applications, decision makers must consider the child’s best interests. A judge must be guided by the words of the Federal Court of Appeal:

The “best interests of the child” are determined by considering the benefit to the child of the parent’s non-removal from Canada as well as the hardship the child would suffer from either her parent’s removal from Canada or her own voluntary departure should she wish to accompany her parent abroad. Such benefits and hardship are two sides of the same coin, the coin being the best interest of the child.¹³⁰

The proposal here is similar to the legislation proposed in the Child Citizen Protection Act.¹³¹ If passed, the Bill, proposed by Representative Jose E. Serrano of New York, would grant discretionary authority to an immigration judge presiding over a removal proceeding of a parent with a citizen child to order that the parent not be removed if the judge determines that removal would clearly run counter to the child’s best interests.¹³² This discretion would not extend to any undocumented immigrants described in sections 212(a)(3) or 237(a)(4) of the INA or to those immigrants who have committed certain human trafficking violations.¹³³ This same discretion coupled with some additional restrictions should be adopted here. The proposal presented here requires that in addition to assessing the best interests of the child, an immigration judge must evaluate some of the factors already required to be addressed by a judge presiding over a cancellation of removal proceeding. These factors include the good moral character of the undocumented immigrant and whether or not the person applying for cancellation has been convicted of specified criminal offenses.¹³⁴

¹³⁰ *Id.* at 147–48 (citing *Hawthorne v. Canada*, [2002] F.C.A. 475, P 4 (Can.)).

¹³¹ H.R. 182, 111th Cong. (2009). This Note adds requirements to Senator Serrano's proposal.

¹³² *See id.*

¹³³ *See id.* (citing INA § 212(a)(3); 237(a)(4); 22 U.S.C. § 7102). Sections 212(a)(3) and 237(a)(4) refer to certain undocumented immigrants who pose security threats to the U.S., such as those engaged in terrorist activities. *See* INA §§ 212(a)(3), 237(a)(4).

¹³⁴ *See* 8 U.S.C. §1229b (2006).

Under the proposal, additional obligations would be placed on the parent, in the interest of both the child and the U.S.. These obligations can be garnered from the obligations imposed on someone seeking naturalization. For example, naturalization requires an applicant to possess knowledge of the English language, U.S. government, and U.S. history.¹³⁵ A parent permitted to stay in the U.S. should be required to acquire English skills and knowledge of U.S. history. Because the judge's decision would be grounded primarily on the best interests of the child, such a requirement would be in line with the goals of the proposed system. Currently, more than half of undocumented immigrant parents have difficulty speaking English, which can negatively impact their children's progress in school.¹³⁶ The best interests of the child standard should incorporate having a child be included in society and fully integrated which requires full family effort. Therefore, requiring parents to learn English and U.S. history will foster integration, promoting the best interests of the child.

Judges presiding over deportation hearings recognize the need for discretion. For example, in *In re Monreal*,¹³⁷ the immigration judge faced with deciding whether to grant cancellation of removal for a father whose children would have to return to Mexico with him, stated that "if the respondent were eligible for cancellation of removal, we would grant such relief in the exercise of discretion."¹³⁸ The respondent, a father whose oldest son was a twelve year old boy who had lived in the U.S. his entire life, was ineligible for cancellation because he

¹³⁵ *See id.* §1423.

¹³⁶ URBAN INST., CHILDREN OF IMMIGRANTS: FACTS AND FIGURES 3 (2006), *available at* http://www.urban.org/uploadedpdf/900955_children_of_immigrants.pdf. According to The Urban Institute, "[l]ack of English proficiency is strongly associated with poverty, food insecurity, and other forms of economic hardship in immigrant families. Limited English skills may lead to difficulty navigating schools, health providers, and other public and private institutions." *Id.* at 3.

¹³⁷ 23 I. & N. Dec. 56 (BIA 2001).

¹³⁸ *Id.* at 65.

was unable to show the requisite “exceptional and extremely unusual hardship.”¹³⁹ Congress took away the judge’s discretion when they created the IIRIRA. This discretion should be placed back in the hands of the immigration judges, without the caps enforced under the INA.¹⁴⁰

Once a judge determines that the best interests of the child are met by the parent remaining in the U.S. and the aforementioned proposed factors are met, the parent should be set on a path towards earned legalization, eventually leading to citizenship. This concept is derived from the Comprehensive Immigration Reform Act (“Act”) proposed in 2007 which established legalization, which could then set an individual on the path towards citizenship.¹⁴¹ The Act stood as a compromise between legalizing the undocumented immigrants already residing in the country and an increase in border enforcement.¹⁴² In order to earn legalization under the Act, undocumented immigrants had to be “physically present in the U.S. on or before the date that is five years before April 5, 2006,” be employed for at least three of those five years, pay any outstanding tax liabilities, be free of any criminal records, pass a security screening, and prove they are learning English.¹⁴³

Incorporating an earned citizenship concept into this proposal will ease the tension between the best interests of the child and the immigration policy. Legalizing a parent allows the parent to become fully integrated into society and emerge from the shadows casted by a fear of

¹³⁹ *Id.*

¹⁴⁰ *See* 8 U.S.C. §1229b(e) (2006).

¹⁴¹ S. 1348, 110th Cong. (2007). Also known as the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007, the bill was proposed by Senator Harry Reid on May 9, 2007, but never reached a vote. *Id.*

¹⁴² Lorie Love, *Legislatures Continue to Wrestle with Issue*, RICHMOND REGISTER, Sept. 24, 2008.

¹⁴³ S. 1348 Sec. 245B Access to Earned Adjustment.

deportation. Once the parent achieves citizenship doors will open.¹⁴⁴ Becoming a citizen allows parents to have full access to public benefits for their children and to have increased bargaining power with employers, leading to increased compensation.¹⁴⁵ Immediate documentation allows a parent to become fully immersed in all aspects of a citizen child's life, helping the child psychologically and educationally. While, immediate documentation benefits the government because once documented, the individual will pay taxes.

This idea of earned citizenship for parents is not as far removed from the desires of the American people as one may initially believe. American citizens increasingly recognize the positive aspects of immigration and the positive contributions immigrants can make to our nation.¹⁴⁶ A recent Gallup poll found that seventy-eight percent of Americans favor opening a path for citizenship for undocumented immigrants.¹⁴⁷ Even the immigration system purports to adopt a goal of family unification.¹⁴⁸

¹⁴⁴ In addition to freedom from fear of deportation, citizenship presents a multitude of benefits for the individual. A U.S. citizen has the right to vote, giving him a voice to express political opinions and influence policy. *See* Bernstein-Baker, *supra* note 100, at 368 (citations omitted). Those who naturalize can apply for certain government jobs as well as gain access to public benefits denied to non-citizens under the Welfare Reform and Responsibility Act. *See id.*

¹⁴⁵ Currently, many undocumented immigrants are “forced to accept submarket wages and working conditions because their status makes them vulnerable and unable to protect themselves against unscrupulous employers.” AM. IMMIGRATION LAWYERS ASS’N, MAKING THE CASE FOR COMPREHENSIVE IMMIGRATION REFORM: RESOURCE GUIDE 13, *available at* <http://www.aila.org/content/fileviewer.aspx?docid=21713&linkid=157219>.

¹⁴⁶ *See* James A.R. Nafziger, *Immigration and Immigration Law After 9/11: Getting it Straight*, 37 DENV. J. INT’L L. & POL’Y 555, 560 (2009).

¹⁴⁷ *Id.* at 561 (citing Kathy Kiely, *Public Favors Giving Illegal Immigrants in USA a Break*, USA TODAY, Apr. 19, 2007, at 7A).

¹⁴⁸ *See* *Fiallo v. Bell*, 430 U.S. 787, 811 (1977).

Some argue that the difficult situation a citizen child of non-citizen parents is placed in is a natural and acceptable consequence of the parent's unlawful entry into the country.¹⁴⁹ What many fail to see, however, is that these parents lack many viable opportunities to come to the U.S. legally.¹⁵⁰ In fact, the presence of immigrants benefits our society. Between one-half and three-quarters of undocumented immigrants pay taxes at both the federal and state level.¹⁵¹ A CATO institute study in 1997 concluded that immigrant households, both documented and undocumented, paid an estimated \$133 billion in taxes.¹⁵² Over 500 economists and social scientists confirmed this number in 2006.¹⁵³ Further, the Social Security Administration reports that undocumented immigrants "account for a major portion" of the money paid into the Social Security system.¹⁵⁴ Immigrants' presence in the workforce actually complements natives, increasing productivity because immigrants do not usually possess the same skill set as American citizens; therefore, they do not often take jobs away from the American citizen.¹⁵⁵ Rather, about ninety percent of native-born workers with at least a high-school diploma

¹⁴⁹ See, e.g., *Salameda v. INS*, 70 F.3d 447, 449 (7th Cir. 1995) (stating that "[o]f course, as the INS's counsel reminded us at argument, it is the Salamedas' 'fault' that their children face the prospect of deportation to an alien land.").

¹⁵⁰ The government limits the number of permanent visas available for lawful entry of individuals who possess lower skills and lower education to 5,000 per year. See DORSEY & WHITNEY LLP, *supra* note 24, at 3.

¹⁵¹ See IMMIGRATION POLICY CTR., *THE ECONOMICS OF IMMIGRATION REFORM: WHAT LEGALIZING UNDOCUMENTED IMMIGRANTS WOULD MEAN FOR THE U.S. ECONOMY* 3 (2009), available at

<http://www.immigrationpolicy.org/images/File/factcheck/EconomicsofCIRFullDoc.pdf>.

¹⁵² AM. IMMIGRATION LAWYERS ASS'N, *supra* note 145, at 15.

¹⁵³ *Id.*

¹⁵⁴ See AMY M. TRAUB, *PRINCIPLES FOR AN IMMIGRATION POLICY TO STRENGTHEN & EXPAND THE AMERICAN MIDDLE CLASS* 1 (2009), available at http://www.drummyinstitute.org/pdfs/DMI_immigration_paper_09_FINAL.pdf.

Undocumented immigrants have been found to contribute \$7 billion a year to federal Social Security taxes. See *id.*

¹⁵⁵ See Giovanni Peri, *Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004*, at 15, http://sproul4121a.ucr.edu/AllUcLabor/2009_Workshop_files/Peri.pdf.

experienced wage increases as a result of immigration ranging from 0.7 percent to 3.4 percent depending on the citizen's education.¹⁵⁶

CONCLUSION

Many parents facing deportation came to the U.S. seeking a life that would be better for their children than the life offered by their home country. With the best interests of their children in mind, these parents made lives for themselves in the U.S.. A parent's ability to protect the best interests of their child cannot continue to be hampered by the current immigration system and the U.S. should not ignore the best interests of a group of citizens.

The proposal presented here will allow the best interests of a child to remain a touchstone of our judicial system for all children, not just children whose parents are American citizens. This can be accomplished by granting discretion to immigration judges and presenting an option of earned citizenship to those parents who a judge determines would serve the best interests of their child by remaining in the U.S.. We cannot continue to sacrifice the best interests of children; children in dire need of defense against policies that could prove detrimental to their wellbeing. By sacrificing the best interests of this discrete group of children we are jeopardizing the future of our country. As Koffi Annan once said, "No one is born a good citizen; no nation is born a democracy. Rather, both are processes that continue to evolve over a lifetime. Young people must be included from birth. A society that cuts off from its youth severs its lifeline."¹⁵⁷

¹⁵⁶ *See id.*

¹⁵⁷ DORSEY & WHITNEY LLP *supra* note 24 at iii.