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CHILDREN AND YOUTH

Disadvantaged and Disenfranchised by the Current US Immigration Regime

INTRODUCTION

The emphasis on securitization in the US's current immigration regime has led to a wide range of developments that have had detrimental consequences for undocumented immigrants, including the convergence of criminal and immigration law (Stumpf), the emphasis on detention, deterrence, and deportation, as well as the extension of the US's immigration control across national boundaries (Messmer). Taken together, these measures have substantially expanded the number of deportable offenses, have increased the "liminally legal" immigrant population (Menjívar, Cebulko), and have often led to so-called "legal forms of violence" (Menjívar and Abrego). While these developments have affected all undocumented immigrants, they are particularly harmful for children and adolescents living in irregular or mixed-status immigrant families, a segment of the US population whose special needs have not yet been acknowledged sufficiently by current immigration laws and policies. In 2016, approximately 18 million (26%) of 70 million US children under the age of 18 lived with at least one immigrant parent (Migration Policy Institute), and according to Thronson, these children constitute the fastest-growing segment of the US's child population (240). Moreover, two-thirds of all children living in mixed-status families are US citizens (241). In absolute numbers this means that "[m]ore than 5.9 million

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citizen children [...] live with at least one family member who is unauthorized” (Mathema).¹

To date, the complexity of the US’s under-age population living in irregular immigrant or mixed-status families is just beginning to be explored. For far too long, US immigration policies have tended to regard children as “appendages” to immigrant adults (Bhabha, *Child Migration 2*). Yet these children raise a lot of questions that differ from the issues raised by adult immigrants due to their heightened vulnerability and complex legal position, but there are also specific challenges that are created by them. Not acknowledging these differences will lead to confused, unsatisfactory, or even oppressive migration policies. In an attempt to create awareness of the specific needs as well as the complex situation of immigrant children, several recent studies have focused on the so-called 1.5 generation, a term that was developed by sociologist Rubén G. Rumbaut to refer to undocumented children/adolescents who were brought to the US by their undocumented parents at a young age (Gonzales, *Lives 6*). Most of these studies draw a clear distinction between these undocumented youth and US citizen children born to undocumented parents because the second group—in principle—enjoys full citizenship rights. In this essay I will demonstrate, however, that US citizen children living with one or more undocumented parent(s) have much more in common with the so-called 1.5 generation than with their US citizen peers because in pretty much all areas of life, the irregular immigration status of (one of) their parents seems to determine their *de-facto* life chances, irrespective of their *de-jure* legal status. My central argument is that the current US immigration regime is too strongly adult-centered and in this way not only systematically disenfranchises immigrant children; it also structurally

1. Mathema also notes that “California, Texas, and Nevada [...] have the highest percent of US-born population with at least one unauthorized family member living with them. But even states with smaller immigrant populations, such as Nebraska, Arkansas, and Kansas, [...] have high percentages of naturalized citizens who have unauthorized family members living in the same household. [...] These estimates are by their nature conservative since they do not include an accounting of the number of family members who do not live in the same household.”

disadvantages US citizen children living in irregular immigrant or mixed-status families as the parents' irregular status in effect overrules and frequently extinguishes their childrens' citizen status. In *Means without End*, Giorgio Agamben argues that the refugee "brings a radical crisis to the principles of the nation-state and clears the way for a renewal of categories that can no longer be delayed" (22-23). In analogy to this, I would argue that analyzing the US's current immigration regime through the lens of under-age youth can bring a radical crisis to this system by revealing fundamental inconsistencies, calling into question seemingly clear-cut binaries, and challenging us to rethink the socio-legal construction of "illegality" by problematizing overly facile assumptions and categorizations.

More specifically, I maintain that both immigrant children as well as US citizen children living in irregular immigrant or mixed-status families can function as an enabling prism to highlight the extent to which current US immigration laws and policies dominate, override, or collide with other national and international legal practices and produce inherently contradictory or paradoxical situations; they can throw into relief the extent to which children (even US citizen children) lack sufficient agency and voice in current US immigration law; and they can foreground the deleterial consequences of the current immigration regime's prioritization of deterrence and deportation for one of the most vulnerable segments of the US population. Drawing on sociological and ethnographic research that features migrant youth case studies, I will, in the following, first look at the situation of irregular immigrant children coming of age in the US. Building on studies of the 1.5 generation by Roberto Gonzales, Kara Cebulko, and Lisa Martinez, among others, who have identified the impossibility to attend college as one of the most crucial problems faced by this group, I will argue that not even DACA, which was introduced to eliminate this roadblock, can offer sufficient protection and alleviate this group's vulnerable status completely. In the second part I will then turn to US citizen children living in irregular immigrant or mixed-status families to highlight the extent to which US immigration law trumps other

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(national and international) legal principles and in the process leads to a systematic devaluation of US citizenship rights.

1. NARRATIVES OF WASTED TALENT: 1.5 GENERATION
IMMIGRANT YOUTH AND THE LIMITED PROTECTION PROVIDED BY DACA

On July 25, 2018, the Justice Department instructed US attorneys by email “not to use the term ‘undocumented’ immigrants and instead refer to someone illegally in the US as ‘an illegal alien.’” The reason given for this rhetorical reframing was that “[t]he word ‘undocumented’ is not based in US code and should not be used to describe someone’s illegal presence in the country” (Kopan). This change in terminology reverses the Associated Press’s Stylebook initiative of 2013 “to not describe a person as illegal, only actions” (Kopan) and constitutes a recent example of the extent to which the debate on irregular migration has grown harsher. Much of the public and media rhetoric is currently dominated by terms that evoke seemingly clear-cut distinctions between “good” and “bad”: legal vs. illegal; American vs. alien; deserving vs. undeserving immigrant. While such a reductionist form of classification fails to capture the reality of many immigrants’ lives, it becomes particularly questionable in the context of child migrants who were brought to the US by their parents at a young age (the so-called 1.5 generation). As pretty much all studies confirm, most of these children and youth culturally identify as “American” because they were socialized during their most important formative years by the US public school system. In its 1982 verdict *Plyler vs. Doe*, the Supreme Court had granted all undocumented children access to the US’s K-12 public school system by ruling that “unauthorized migrant children are people ‘in any ordinary sense of the term’” and are therefore “entitled to state-funded public education for primary and secondary schooling” (Bhabha, *Child Migration* 249, 274).²

2. Cf. also “[T]he Supreme Court held that states cannot constitutionally deny students a free public education on account of their immigration status” (Golash-Boza, *Forced Out* 85). “Citing the ‘pivotal role of education,’ in the life of a child and the nation, Justice William Brennan noted in his verdict that, while education is not a fundamental right, denying K-12 education to undocumented children amounted to inflicting a ‘lifetime of hardships on a dis-

Thus, for many undocumented immigrant children who complete their K-12 education in the US, their country of birth is frequently nothing but a distant memory. As former President Obama confirmed in his DACA speech in June 2012: “These are young people who study in our schools, they play in our neighborhoods, they’re friends with our kids, they pledge allegiance to our flag. They are Americans in their heart, in their minds, in every single way but one: on paper” (White House). For many of these 1.5 generation youth, the dichotomy American vs. alien thus does not make much sense. School, moreover, is seen by this generation of immigrant kids as a pathway to upward social mobility: these children were “raised with the expectation that as adults they would find better opportunities than those afforded to their parents” (Gonzales, *Lives* 7). They speak English fluently, they identify with American values such as meritocracy and hard work, and they have high expectations for their future, in many ways assuming they will have career trajectories similar to those of their US citizen peers.

Nothing could be further from the truth, however, for the majority of this group of young people, as has been documented in detail by Roberto Gonzales, Kara Cebulko, and Lisa Martinez, among others. Gonzales, who has devoted several studies to analyzing the life paths of members of the 1.5 generation, has observed that when these young people turn into adults, their coming of age leads to radical disillusionment. As children, not least because of their integration into the public school system, their undocumented status did not impede them in any significant way (Gonzales, “Learning” 605). When they get older, however, they realize that they cannot participate in many adult activities such as getting a driver’s licence, taking part-time jobs, or applying for college (605; cf. also Gonzales, *Lives* xix-xx). In other words, when the children of unauthorized immigrants grow up, they experience a radical

crete class of children not accountable for their disabling status” (Gonzales, *Lives* 11). Brennan continued: “It is difficult to understand precisely what the State hopes to achieve by promoting the creation or a perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime. It is thus clear that whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the state, and the Nation” (qtd. in Bhabha, *Child Migration* 274).

shift in status from quasi-legal and socially integrated to illegal (Gonzales, "Learning" 602). This means that "undocumented children move from protected to unprotected status, from inclusion to exclusion" (602); from being just like other American kids to being a deportable alien; from being citizens-in-the-making (Lind 298) to being "a new, disenfranchised underclass" (Gonzales, "Learning" 603); or, as Gonzales phrases it, when they come of age, "they must learn to be illegal" (602). They thus acquire a paradoxical and contradictory status according to which they are "culturally integrated but legally excluded": there exists a gap "between individual feelings of belonging and the exclusion enforced by the society in which they live" (Gonzales, *Lives* 7).

The number of young people who experience this dramatic shift towards illegality and exclusion is quite substantial as "[a]n estimated 65,000 undocumented or legally uncertain students graduate from high schools throughout the United States every year" (Menjívar and Abrego 1411). One central problem faced by these young people is the fact that, due to their undocumented status, they are often unable to attend university or apply for jobs that are commensurate with their level of education. As one of Cebulko's interviewees formulated this dilemma: "[after graduating from high school] I felt like my life had come to a stop and I wasn't allowed to move forward, to reach my dreams, 'cause there was this huge wall in front of me. And my future didn't depend on me, but on the government, and whether or not they allowed me to go to school" (qtd. in "Double Jeopardy" 77). Another example is Rafael, whose parents migrated from Zacatecas, Mexico, to the US when he was six years old.³ Even though he was lucky to be able to attend college on a full-tuition scholarship from a private fund in Colorado, he was only able to get a job in retail afterwards, unlike his friends with the same degree: "I can't really work in my field because everything that is in my field requires a background check and requires some type of traveling or something I am not able to do" (Martinez 61).

Gonzales observes that none of his interviewees "had been able to legally pursue an occupation that made use of his or her

3. This case has been documented by Martinez 57ff.

educational credentials or professional preparation" (*Lives* 191), and at some point, these young people realize that the only jobs they can get are similar to those of their undocumented parents.⁴ In other words, no intergenerational progress, no social mobility is possible for 1.5 generation immigrant children (Gonzales, "Learning" 616). Gonzales thus concludes that at the turn to adulthood, illegality becomes "the most salient feature of their lives" (*Lives* 7), a kind of "master status" (15) that "trump[s] their achievements and overwhelm[s] almost all of their roles," irrespective of their educational background (178); it becomes a "stranglehold" that determines these young people's lives more than any other variable (179).⁵ Gonzales also notes that frequently, such an "experience of shattered dreams and expulsion" (202) can lead to "anxieties, chronic sadness, depression, over- or undereating, difficulty sleeping, and [a] desire to 'not start the day'" (200). In one dramatic case, it even led to suicide. Gonzales reports that on November 25, 2011,

eighteen-year-old Joaquin Luna Jr. of Mission, Texas, a teen who had come to the United States as a six-month-old infant, took his own life. Despairing that his undocumented status would block his ability to achieve his dreams to go to college, he drafted goodbye letters to relatives, friends, and teachers. In a letter addressed to Jesus Christ, he wrote: "I've realized that I have no chance in becoming a civil engi-

4. Janet, working for a maid service, said: "I cried every day after work for the first two months [...] I can't believe this is my life. When I was in school I never thought I'd be doing this" (qtd. in Gonzales, "Learning" 612). Cf. also Marita, who works the same job as her mum and wonders: "Why did I even go to school?" (qtd. in Gonzales, "Learning" 614).

5. Gonzales cites the example of Esperanza, who had changed "from an outwardly confident, wide-eyed university student with 'big plans for the future' to a socially withdrawn, inwardly focused adult who seemed to have the weight of the world on her shoulders" (*Lives* 197). She tells him: "I have grown up, but I feel like I'm moving backwards. And I can't do anything about it. I had much more freedom in school. Like, I had rights, you know. Now I can't do anything by myself and it makes me feel so helpless" (197). She continues: "I can't choose where I live. I can't choose where I work. And the worst thing is that I can't choose my friends"; "I can't do anything that is eighteen and over [...] I can only hang out where little kids hang out. I can't hang out with them [former high school friends]. I can't travel with them. I can't go out to dinner with them. I can't go to Vegas with them. If I want to go to a bar, I don't even have a drink" (197).

neer the ways I've always dreamed of here [...] so I'm planning on going to you." (qtd. in *Lives* 199)

In many ways, DACA, the Deferred Action for Childhood Arrivals program, an executive order signed into law by former President Barack Obama in August 2012, was an attempt to alleviate this problem by providing not only legal access to higher education but also a work permit for eligible young undocumented people. DACA "grants temporary reprieve from deportation as well as a work permit to youth who arrived in the United States prior to the age of fifteen and have completed high school" (Golash-Boza, *Forced Out* 52). DACA recipients can also get Advance Parole that allows them "to travel outside the United States for humanitarian, educational, or employment purposes" (Martinez 63). In this way, DACA seems to remove most of the roadblocks that many young undocumented immigrants experienced upon coming of age. Zaíra, a Guatemalan immigrant aged 21, expresses her excitement about DACA thus: "It just feels like all of my dreams are finally opening up to me" (qtd. in Cebulko and Silver 1563). And Cebulko and Silver conclude that students eligible for DACA can now finally reap the benefits of their education and feel they are "legit" (1564).

The number of youth profiting from DACA is significant. To date, 800,000 so-called DREAMers have received DACA protections between 2012 and 2017, and 690,000 DREAMers are currently enrolled in DACA (Gomez).⁶ Gonzales, however, notes that DACA has come too late for many of those 1.5 generation immigrants that he interviewed, and he also observes that by 2015, "of those potentially eligible for the program, more than half had not applied" (*Lives* 226). Some of the reasons included difficulties providing evidence of continuous residence or financial barriers (since DACA does not offer access to federal financial aid, college access without financial support remained illusory for many) (226). But Gonzales's main point of criticism is that DACA focuses so centrally on college access, in this way privileging educational high achievers and thus at least indirectly creating and maintaining a distinction between "deserving" and "undeserving" immigrant youth (26-27).

6. 97% of all DACA recipients are working or enrolled in school while 900 recipients serve in the military (Gomez).

Apart from Gonzales's important point of critique, I would argue that DACA also has several other serious limitations. In theory, as mentioned above, DACA enables recipients to travel abroad and return legally to the US, but in practice, many DACA recipients avoid foreign travel because they are afraid that they might not be allowed to re-enter. Roberta d'Antona, for example, a Brazilian immigrant, is covered by DACA but fears not being able to re-enter if she travels to Brazil to visit her relatives because in her view, much depends on the goodwill of the person conducting the re-entry interview (Cebulko, "Double Jeopardy" 81).

Yet apart from such potential risks, one of DACA's most problematic limitations consists in its temporary nature: DACA does not provide any path to citizenship, nor does it offer the possibility to extend protection to immediate family members. In this way, DACA cannot offer any security or stability in the face of the US's current emphasis on managing immigration flows through deterrence, detention and deportation. In his DACA announcement, former President Obama confirmed that this emphasis on temporariness was indeed a quite deliberate strategy to increase DACA's political acceptance: "Now, let's be clear—this is not amnesty, this is not immunity. This is not a path to citizenship. It's not a permanent fix. This is a temporary stopgap measure that lets us focus our resources wisely while giving a degree of relief and hope to talented, driven, patriotic young people" (White House). Given the current insecure future of DACA under President Trump,⁷ the temporariness of this measure produces an even higher sense of vulnerability, threat, and anxiety among its recipients.

By legalizing the status of its beneficiaries, but only temporarily, DACA can be said to place eligible young people in a state of "liminal legality." This term was first introduced by Cecilia Menjivar in reference to Salvadoran and Guatemalan immigrants with Temporary Protected Status⁸ ("a permanently temporary

7. Trump had announced to end the program on March 5, 2018, but the deadline has expired and still no permanent solution is in sight; renewals of protection are still accepted at this point, but no one can say for how long.

8. TPS beneficiaries have the right to work, but don't have access to social services; TPS also restricts international travel (Advance Parole is necessary) (Menjivar 1008, 1018).

status” [1001]).⁹ Menjivar builds on Victor Turner’s concept of liminality and defines it as “the gray areas between documented and undocumented” (1004). She argues that “[t]he immigrants’ uncertain legality transforms them into ‘transitional beings,’” a temporary condition “which for many Central Americans has extended indefinitely” (1007, 1008). In this way, “immigration law has effectively produced a population of longtime residents with suspended lives” (1015). She continues to argue that this form of liminal legality is currently on the increase and coexists with a “reduced access to permanent legality”; it is a result of “the tightening of immigration laws when national security is paramount” (1005) because “stiffer immigration laws seek not only to reduce the number of immigrants entering the country, but also to keep more of them in undetermined legal statuses” (1009). In many ways, one could argue that DACA has precisely this effect of keeping a specific group of undocumented immigrants in a liminally legal and hence indefinitely vulnerable position while reducing (or *de facto* negating) their chances to acquire permanent legality. As one DACA recipient termed it: “they are putting the rug under my feet but they can pull it out at any time” (qtd. in Cebulko, “Documented” 160).

A second aspect that seriously limits the benefits of DACA is the fact that it has been implemented differently in different states, which means that DACA recipients can experience radically diverse scenarios depending on where they live. On the one hand, this can be attributed to the fact that each state had to translate this federal policy measure into appropriate state-level applications. But in addition, many individual states have recently also started to take immigration matters into their own hands and have implemented state-level laws that openly and deliberately collide with federal-level regulations. Cebulko and Silver in this context talk about a “mounting anti-immigrant legislation at the state and local levels” (1554). As Gonzales has noted: “Between 2005 and 2011, state legislative activity focused on immigration increased more than fivefold” from 39 enacted bills in 2005 to 306 in 2011 (*Lives* 22–23). As a result, in many states “local restrictive

9. It has subsequently also been used by Karen Cebulko in reference to 1.5 generation Brazilian immigrants (“Documented”).

laws can curtail access to employment, housing, higher education, driver's licences and identification, and social services and can facilitate local police cooperation in immigration law enforcement" (Golash-Boza, *Forced Out* 87).

Kara Cebulko and Alexis Silver have compared the implementation of DACA in two states: Massachusetts (an immigrant-friendly state) and North Carolina (a hostile one), and they note that in North Carolina, "state policies continued to impede mobility pathways and differentiate previously undocumented youth as outsiders even after the passage of DACA" (1553). This was accomplished by introducing special driver's licences, for example, that contain the added, stigmatizing phrase: "Legal presence no lawful status" (1559). In this way, "immigrants can simultaneously experience movements toward inclusion at the federal level while they face exclusionary policies at the state level, or vice versa" (1557).

In addition to Massachusetts, one could add California here as an interesting example of an immigrant-friendly state. During the 1990s, California was known for its harsh anti-immigrant policy measures (e.g. Propositions 187 and 209), but in the meantime, the situation has changed quite substantially. California currently allows undocumented youth to pay in-state tuition at public colleges and universities (Golash-Boza, *Forced Out* 87). Moreover, "[t]he California DREAM Act (2011) provided access to state financial aid at California state institutions of higher education; California AB-60 (2015) provided access to driver's licences for all undocumented migrants" (87); AB-263 and SB-66 "target employers who retaliate against workers by threatening to report their immigration status" (Gonzales, *Lives* 24); and AB-1025 even allows those undocumented immigrants who pass the state bar exam to become attorneys (24). Given this immigrant-friendly climate, it is perhaps not surprising that California currently has by far the largest number of DACA recipients: 424,995 ("DACA Recipients by State").¹⁰

While California has taken the lead in creating a more hospitable climate for irregular immigrants in general, several other states have followed suit in matters that are of special importance

10. In Arizona, the state with the second-highest DACA population, the number is 51,503 ("DACA Recipients by State").

to immigrant youth: 18 states have currently adopted in-state tuition policies, and as of mid-2018, 12 states (plus the District of Columbia and the Commonwealth of Puerto Rico) allow undocumented immigrants to obtain a driver's licence (Bray). State laws can thus be said to provide "pockets of inclusion or exclusion" (Gonzales, *Lives* 22) at one and the same time, and the diversity of regulations has a strong impact on how DACA is being experienced locally: "[R]espondents in North Carolina [for example] interpreted DACA as a more inclusive policy against the backdrop of a more hostile state climate, while respondents in Massachusetts found state-level policies to be more inclusive in the face of an insufficient federal-level action" (Cebulko and Silver 1561). Caught between state and federal policies, young people thus "simultaneously felt included and excluded in a complex and layered political environment" (1569).

What this diversity of state-level regulations, combined with a lack of effective and stable protection at the federal level, can lead to in a worst-case scenario is illustrated by young immigrants who fall prey to the US's current detention and deportation regime. According to Peutz and de Genova, deportation "has come to stand in as the apparently singular and presumably natural or proper retribution on the part of the state powers" against irregular migrants; it has become the primary way of enacting state sovereignty (1). In this sense, deportation is "a complex sociopolitical *regime* that manifests and engenders dominant notions of sovereignty, citizenship, public health, national identity, cultural homogeneity, racial purity, and class privilege" (2; emphasis in the original). Maira links the US's current deportation regime to neoliberal capitalism and imperial domination, arguing that it has become "part of the normative regime of controlling and disciplining bodies [...] to ensure a docile workforce and target politically threatening dissent" (297–298, 299, 300).

Increasingly, under-age immigrants become the targets of deportation too once they leave the protected space of the public school system in their transition to adulthood. Jennifer Chacon in this context talks about a "school-to-deportation pipeline" (qtd. in Gonzales, *Lives* 27). And what is most problematic here is fact that not even DACA recipients with an active DACA status are

immune to the threat of deportation, as is illustrated by the case of Daniel Ramirez Medina. When his undocumented father was arrested in February 2017, Ramirez was arrested as well because US Immigration and Customs Enforcement falsely claimed that he was “gang-affiliated” (Bolt): “The agents argued Ramirez’s tattoo, which reads ‘La Paz BCS,’ looked similar to a gang tattoo. Yet according to the *Splinter* report, the tattoo is a reference to his birthplace of Baja California Sur and does not share any similarities with gang tattoos” (Bolt). When Ramirez explained to the officers that he was legally in the country because of his DACA status, “the agent responded, ‘It doesn’t matter because you weren’t born in this country’” (Bolt). In May 2017, however, federal judge Ricardo S. Martinez, who openly condemned ICE’s racial profiling in this case, “ruled against ICE and accused the agency of lying to a federal court of law” (Bolt). “Martinez’s final ruling bars ICE from detaining, deporting or terminating Ramirez’s DACA benefits” (Bolt), but it cannot hide the fact that not even an active DACA status can provide a sufficient level of protection against the threat of deportation. On February 17, 2017, Juan Manuel Montes, 23, who had lived in the US since he was nine and also has an active DACA status, was actually deported to Mexico within three hours after being questioned by a US Customs and Border Protection Officer because he had left his wallet in a friend’s car and couldn’t produce his ID or proof of his DACA status (Gomez and Agren). According to *United We Dream*, an advocacy group working on behalf of young immigrants, at least 10 DACA beneficiaries are currently in federal custody and face threats of deportation (Gomez and Agren). And US Human Rights Network recently reported that Eroid, another DACA recipient, has been detained at Stewart Detention Center in Georgia since August 4, 2018.

While thus not even an active DACA status can protect individuals against immigration-related detention and deportation, this risk is infinitely higher for those 1.5 generation youth who did not or could not apply for DACA. Once they turn 18, a minor traffick incident such as speeding or driving without licence can lead to deportation. This increase in the number of deportable offences can be traced back to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which recoded

“civil violations into criminal acts” while at the same time “expanding the categories of noncitizens eligible for deportation and [...] restricting the ability of migrants to appeal deportation” (Hagan et al 1375–1376). According to IIRIRA, using a borrowed social security number, for example, was now classified as an aggravated felony (Menjívar and Abrego 1390). Peutz and de Genova in this context talk about “the sociolegal production of deportable populations” (2).

For young people who have spent most of their formative years in the US, getting deported to their country of birth often means returning to a country that they barely know and whose language they often do not speak. Due to their cultural identification as “American,” many subsequently suffer from socio-cultural exclusion (Golash-Boza, *Forced Out* 184) when they find out that they “lack the linguistic, cultural, and social capital to successfully adapt to their countries of origin” (Silver 194). In the end, they often find they “lack social membership [...] in spite of their citizenship status” (194). Moreover, their deportation records can also have a negative impact on their job or educational opportunities in their country of birth (194). A case in point is the story of Katy, who came to the US from Guatemala together with her parents and her sister when she was two years old.¹¹ While waiting for his asylum decision, Katy’s father managed to start several successful businesses (which is permitted under US law): “He was able to buy a spacious home, purchase five cars, and pay his oldest daughter’s college tuition” (Golash-Boza, “American Dreams” 134). Katy was 14 when her father’s asylum application was finally rejected and her entire family was deported back to Guatemala. For Katy, returning to Guatemala meant a radical break with her previous life in the US: “Katy went from living in a spacious, luxurious home in Louisiana to a one-bedroom shack with an outdoor toilet in Guatemala City.” As a result, “[s]he fell into a deep depression” (136). And what is more, “with no record of ever having studied in Guatemala, the public schools refused to enroll her [...] . Unable to read or write Spanish, she never went back to school” (136). Today, Katy works in a call center in Guatemala City.

11. My summary of this case follows Golash-Boza’s documentation in “American Dreams” 131ff.

Katy's experience mirrors that of many young deportees who find out that the only work available to them is in call centers, due to their English language skills. Anderson has noted that "[t]ransnational call centers throughout Mexico actively recruit English-speaking deportees and facilitate their employment in ways that other industries and institutions do not" (206). As a result, "the call center sector has more than doubled in Mexico during the same period that millions of deportees have arrived in Mexico" (Golash-Boza, *Forced Out* 184). Anderson, who cites the example of a deportee working at TeleTech, a call center in Mexico City, also notes that "about 95 percent of his fellow workers had returned or been deported from the United States" (203). This development can also be observed in other Central American countries, including El Salvador, Guatemala, and Honduras, but what is most worrying, according to Anderson, is the fact that in most cases deportees cannot depend on their own national or local governments to help with the reintegration process. In Mexico, for example, the government completely evades its responsibilities (207). Some countries such as El Salvador originally did introduce reception programs. El Salvador's *Bienvenido a Casa* (BAC) was launched in 1998, but the fact that it was co-designed by the US State Department meant that by 2008, its function had shifted from reintegrating deportees to monitoring the deportee population (Hagan et al 1379).

In other words, the US's current immigration regime that is dominated by national security concerns and an overemphasis on deterrence, detention and deportation, can be said to have vastly detrimental effects for a generation of culturally and socially "Americanized" young people who had been brought up to aspire towards successful futures in the US, thus producing what Gonzales has termed "narratives of wasted talent" (*Lives* 211). But this effect is not limited to undocumented or liminally legal immigrant youth but increasingly also affects US citizen children.

2. THE VULNERABILITY OF US CITIZEN CHILDREN IN IRREGULAR OR MIXED-STATUS FAMILIES: LACKING AGENCY AND VOICE IN US IMMIGRATION LAW

Several scholars have observed that the citizen children of irregular immigrants face several disadvantages vis-à-vis peers who

live in families with a legal immigration status. Often their parents' undocumented status limits their range of activities due to what Talavera has termed "solidarity in the face of unequal deportability" (186), which means that mixed-status families frequently only participate in activities that are considered "safe" for *all* family members. This can include sparetime activities, but frequently it also refers to a more limited access to social services. As Jacqueline Bhabha has noted: "children living with parents frightened of being arrested and deported [...] risk being kept away from necessary medical services and other public situations to avoid potentially devastating encounters with law enforcement and immigration agents" (*Child Migration* 7). In this sense one can argue that US citizen children growing up in irregular or mixed-status families are denied the full benefits of their citizenship status, despite their fully legal presence in the US, or more poignantly, that their parents' irregular status in effect eclipses at least some of their rights as US citizens. As will be demonstrated in this section, this heightened vulnerability of US citizen children becomes particularly visible in the context of securing or preserving family unity.

Bhabha has emphasized that almost all contemporary legal frameworks consider the notion of family unity as crucially important: "domestic, regional, and international laws consider the family the bedrock of society, and a key aspect of childhood" (*Child Migration* 22). Bhabha refers to the Universal Declaration of Human Rights, which states that: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." She also cites the 1989 Convention on the Rights of the Child as saying: "The family [is] [...] the natural environment for the growth and well-being of all its members and particularly children" (22). In general, according to Bhabha, US law is committed to translating the principle of family unity into national legal practice. The US Supreme Court, for example, has established that "the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this nation's history and tradition" (22). Moreover, US immigration law has, since the 1960s, specifically privileged family reunification, which is proven by the fact that "[a]bout two-thirds of all immigrant visas issued each year are allotted

to the family members of US citizens or lawful permanent residents” (Golash-Boza, *Forced Out* 69).

There are, however, situations in which the US’s current immigration regime seems to produce the opposite effect: instead of facilitating family unity, it enforces family separation. And this inherently contradictory nature of family-related US immigration policies specifically manifests itself when US citizen children growing up in irregular or mixed-status families are faced with the deportation of (one of) their parents. In this situation, the children frequently have to choose between leaving the US together with their non-citizen parent(s), or living permanently separated from them: “At its extreme, immigration law [thus] functions to deny the possibility of children living with parents or forces the de facto exile of children from their country of citizenship” (Thronson 237). In such cases, as Thronson has argued, the state not only fails to protect citizen children from such harm, but it actually actively causes it (237). In this way, one can argue, citizen children are unable to exercise their full citizenship rights but are instead assimilated to the immigration status of their parents.

A major piece of legislation that has produced such inherently problematic effects is the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which also tore apart the family of Ramón, a US citizen; his wife Lupita, a Mexican national and irregular immigrant; and their three US citizen children at the very moment when Ramón filed a family petition in order to legalize his wife’s status.¹² Prior to 1996, irregular immigrants were able to adjust their status without leaving the US, but this 245 (i) provision expired with IIRIRA in 1996. For this reason, Lupita’s immigration hearing was scheduled to take place at the US consulate in Ciudad Juárez, Mexico. However, when Lupita left the US to attend her hearing, this automatically triggered a ten-year bar on re-entry (this regulation was also established by IIRIRA and applies to anyone who has lived in the US without authorization for a year or more). In other words, the process of legalizing Lupita’s status enforced a ten-year separation of the wife and mother from her husband and children.

12. This paragraph and the next summarize the story of this family as it has been documented by Gomberg-Muñoz (67–74).

But things got even worse: Lupita's application for naturalization was eventually denied on the grounds that she had returned to Mexico to take care of her sick mother while living in the US. The fact that she had left the US and re-entered illegally afterwards made her permanently ineligible for naturalization because this automatically triggered a permanent bar on re-entry (likewise established by IIRIRA). As Gomberg-Muñoz notes: "Between 1996 and 2001, the US Congress would periodically suspend the requirement that undocumented applicants must leave the United States to apply for a green card, thus allowing them to change their status without triggering the bar" (71). But since 9/11, this is no longer possible. Lupita now lives in Mexico, trying to find work while the couple is struggling financially as Ramón has to take care of their three children on his own (72).

Lupita's case is far from being a particularly drastic exception, though.¹³ Thronson has observed that between 1998–2007, at least 108,434 parents of US citizen children got deported, which has had a devastating effect on a vast number of families, but particularly so on their children, leading to trauma, insecure care, and very often also to the loss of a substantial part of the family income (246). Gomberg-Muñoz confirms that under current immigration law, bars on re-entry and/or removal procedures can be triggered very easily: "People can be barred from the United States for past drug and alcohol use, helping someone cross the border unlawfully, criminal and immigration violations, making a 'false claim' to US citizenship, and even having a 'suspicious' tattoo" (71). One can thus say that current immigration policy measures are designed in such a way that they can separate families—sometimes forever—at the very moment when these families try to stay together lawfully (73). In this way, US immigration law can potentially prevent many irregular immigrants from legalizing their status. On a more general level, one can thus note an inherent contradiction in current US immigration law "between a universal consensus on the critical importance of family unity for children and the reality of policy-in-

13. As Gomberg-Muñoz notes: "In 2011, Lupita was one of more than 20,000 undocumented people who left their US homes and families in an attempt to legalize their status; she was one of thousands who were then barred from returning" (68).

duced family separation” (Bhabha, *Child Migration* 24). On the one hand, such a contradiction can be attributed to the state’s dual responsibility “to defend family unity and national self-interest” (25). But the main reason for this inherent contradiction, I would argue, is the fact that children, in spite of their citizenship status, lack agency and voice in current US immigration law.

This becomes particularly clear in the ways in which people’s *fear* of deportation is currently being exploited. Golash-Boza notes that “less than 2 percent of undocumented migrants are [actually] apprehended every year” (*Forced Out* 85), but nonetheless the anxiety induced by the threat of deportation forces many mixed-status families to “structure[] their lives around the fear of deportation” (87). As mentioned above, this process had started with IIRIRA in 1996, which increased the number of offenses for which an immigrant could be deported, but the situation has worsened since then. While the number of deportations had already dramatically increased under President Obama, the latter still focused on the deportation of individuals who had been *convicted* of crimes. President Trump’s January 25, 2017 executive order “Enhancing Public Safety in the Interior of the United States,” on the other hand, now also includes immigrants who have only been *charged* with a criminal offense (“Executive Order”). As Gonzales cynically observes: “[I]n addition to terrorists, convicted felons, and gang members, parents and their children who do not qualify for asylum or other forms of relief remain a top priority for deportation” (*Lives* 228). The aim of these measures is, according to García, to spread fear, and to “advance attrition through enforcement” (90) by making it “as difficult and unpleasant as possible to live here illegally” (Thronson 245). Frequent traffic controls and workplace raids also play a major role in this context as they “produce precisely the sense of unease and fear that attrition advocates seek” (Thronson 245).

Yet while seemingly targeting adults, these fear-inducing measures in practice affect entire families and have seriously detrimental effects on children. Hagan et al. note that public school enrollment has declined as a result of parents being afraid of deportation, for example (1378), which is confirmed by Bhabha, who observes that when George W. Bush increased workplace

raids, this led to declining school attendance in North Carolina and Ohio (*Child Migration* 275). But children also learn to live in constant fear: Talavera mentions the case of a 15-year-old teenager who is afraid of going out at all and stays home with her mum as much as possible (172). And Marta, a Salvadoran college student, admits: “Now, every day, I leave the house and don’t know if me or my parents will be back. It could be any of us, any of these days, and it’s so scary [...] . We started to talk about what will happen with my little sister because she’s a US citizen, but who is she going to stay with here if we get deported?” (qtd. in Menjivar and Abrego 1400). In many ways, (citizen) children have thus become pawns in the hands of immigration policy makers, and they are being instrumentalized to regulate and control their (undocumented) parents’ lives and behavior. This is worrisome in any case, but particularly so when it curtails the rights and life chances of US citizen children.

Such rights violations regularly occur at the moment when deportation has become a reality: especially young citizen children often have no choice but to leave the US together with their parent(s). Prior to 1996, such an infringement upon the rights of US citizens could potentially have been averted by invoking the so-called “extreme hardship clause”: “[A]n undocumented alien without any criminal convictions and seven years continuous presence in the US could receive a *suspension of deportation* if he or she could establish the deportation would result in *extreme hardship* to the deportee or a US citizen or permanent resident spouse, parent, or child” (Bhabha, *Child Migration* 87; emphasis in original). Bhabha confirms that the standards for such a claim had always been very high: “Economic loss, inadequate medical care in the country to which deportation was to occur, and lower standards of education have all been considered insufficient to establish extreme hardship” (88). But after 9/11, a suspension of deportation due to extreme hardship has become pretty much unattainable, and according to Thronson, hardship to US citizen children no longer counts as an argument at all (240). Bhabha cites the example of a Mexican father who described “the untenable situation his three citizen children would face [in case he got deported]: poverty, educational exclusion, and threats of violence

in Mexico, or economic hardship if forced to rely on the single income of their mother in the United States” (*Child Migration* 63), yet to no avail. Frequently such hardship claims are rejected with reference to the fact that “Mexico is not Auschwitz’ but a middle-income country with infrastructure and employment opportunities, suggesting that deportation should occasion little real hardship” (63). However, as Bhabha notes, “[a]ccounts provided by deportees contradict this glib argument. American children ripped out of the only home they have known endure traumatic experiences that can create lifelong scars” (63).

The US’s current emphasis on deterrence and deportation thus highlights the extent to which US citizen children lack enforceable rights in the context of US immigration law in order to preserve their family’s unity. When citizen children have to leave the country together with their undocumented parent(s), one can argue that the deportee’s irregular status has in fact overruled and eclipsed the child’s citizenship status. While parents are routinely allowed to align their children’s immigration status with their own, “children, on the other hand, are denied agency and opportunity to extend immigration status to their parents” (Thronson 238).¹⁴ They cannot do so even in the context of preserving family unity, which is otherwise respected by both US national law as well as US immigration law, because “[t]he child’s interest in family unity is assumed to be value free as regards location” (Bhabha, *Child Migration* 37).¹⁵ According to Bhabha, this inherently contradictory legal situation can be attributed to the fact that “children only

14. Cf. also Bhabha: “A citizen child cannot generally use the fact of citizenship to block the removal of parents facing deportation or to secure entry for a parent abroad” (*Child Migration* 70). This was the initial goal of DAPA (Deferred Action for Parents of Americans and Lawful Permanent Residents), which was announced in 2014, but blocked by a federal district court in Texas. The injunction has been upheld by the Supreme Court, so DAPA never took effect (Golash-Boza, *Forced Out* 52).

15. Thronson notes that “US citizens may petition for their parents only when they are no longer children and have reached age twenty-one” (239). Cf. also Bhabha: “It is a strange paradox of modern public policy, that children are considered to have a fundamental right to family life and yet no legally enforceable right [...] to initiate family reunion or resist family separation” (*Child Migration* 79).

exist as parental possessions or rewards, not as active holders of the right to family life themselves” (58). But “[r]educing the citizen child to a ‘mere bystander’ in his or her parent’s deportation-suspension proceedings denies the child constitutional due process rights” (89–90). In this way, the current US immigration regime structurally and systematically violates the rights of US citizens as “immigration law is designed not just to ignore the interests of children but rather to marginalize the role of children and thus the value placed on their interests” (Thronson 238).

Bhabha argues that this situation can be attributed to “a deep-seated modern ambivalence about what it means for a child to be a citizen” (*Child Migration* 64). She distinguishes between a “liberal conception of citizenship as a bundle of rights and obligations that is universal and inclusive—and that sets no age limit, no mental or physical competency requirement,” and a republican one which “entails the ability to participate in public deliberation” (64). According to the latter—republican—view, “young children, are not able to contribute to the *res publica* and are therefore not citizens” (64). The liberal view, as Bhabha notes, is implicit in international law whereas the republican one dominates “much [of] domestic family and social-welfare practice. It subordinates citizen children’s independent interests and agency to those of their adult mentors, reflecting the view that children belong to their families and depend on their protection, mentorship, and judgment” (65). For Bhabha, this constitutes a clear form of age-based discrimination. She compares this to earlier gender-based exclusionary practices¹⁶: “Obliteration of the woman’s perspective [in US law] was justified by assumptions about her dependence—social, political, economic, and personal—on male relatives”; “she was considered an appendage of male agency and dependent on male protection,” and therefore, “her legal status, and with it her citizenship and immigration rights, flowed from those of her male relative” (78). An analogous line of argumentation is implicitly applied when denying children important citizenship rights. However, as the Fourteenth Amendment to the US Constitution states: “All persons born or naturalized in the United States,

16. Cf. also: there was also a time when women only had “legally sanctioned partial access to the benefits of membership” (Bhabha, *Child Migration* 65).

and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States” (“Amendment XIV”). And one of the citizen-specific entitlements, as Bhabha emphasizes, is “the guarantee of nondeportability, irrespective of criminal offending. Even treason cannot lead to deportation of a citizen” (*Child Migration* 67). Yet currently, citizen children become deportable by proxy because “[t]he one-way descending flow of familial transmission of citizenship, from parent to child rather than from child to parent, is accepted as a natural rather than a constructed asymmetry, just as its gendered antecedent was” (79).

CONCLUSION: SECURING THE RIGHTS OF UNDER-AGE CHILDREN
AND YOUTH IN THE CURRENT US IMMIGRATION REGIME

As the examples discussed above have shown, the US’s current immigration regime shapes the everyday lives and modes of integration of both irregular migrant children as well as US citizen children living in mixed-status families. The first group includes young people who both socially and culturally identify as “American,” but when they turn 18, they begin to face multiple forms of legal exclusion. They thus encounter the paradoxical situation of being “simultaneously accountable to [US] law” but also excluded “from legal protections or rights” (Menjívar and Abrego 1385). Upon coming of age, many of these young people also find their hopes of upward social mobility thwarted—with the possible exception of DACA beneficiaries, but even an active DACA status cannot provide any long-term stability or protection. For this reason, Jacqueline Bhabha refers to this generation of immigrant minors as “children without a state” because “despite having a nationality, they cannot turn to the state in which they live for protection or assistance” (*Children without a State* Preface xiii). Even though these 1.5 generation youth are of course not literally stateless, they can be termed as such because “their lack of a legally recognized status denies them practical access to the critical life opportunities that only a state can supply” (Legomsky 217). As Gonzales has summarized their predicament: “These narratives of wasted talent are a heart-breaking illustration of a dysfunctional immigration

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system that persistently denies the futures of aspiring teachers, doctors, engineers, and architects” (*Lives* 211). On a very basic level, the precarious condition of these minors highlights “the need for policies that provide access to citizenship” (Cebulko, “Double Jeopardy” 82) and hence access to more stability, protection, and long-term perspectives for the kinds of immigrants who have managed to radically deconstruct the seemingly clear-cut binaries between “American” and “alien,” between “legal” and “illegal.” Otherwise, as Gonzales warns, “a sizeable population of US-raised adults will continue to be cut off from the futures they have been raised to expect” (“Learning” 616). What is more, they will be cut off from utilizing to the fullest their education, socialization, and enculturation to make the most valuable contributions to the society they live in and identify with.

Laws are socially constructed, hence illegality is also a category that is historically and culturally produced (Menjívar and Kanstroom 5). 1.5 generation youth constitute a good example of a demographic group whose lived experience radically challenges the existing legal construction of “illegality.” Despite Obama’s assertion that young children brought to the US by their parents should not be held responsible for their parents’ actions, child migrants are often seen as both, victims and perpetrators at once, and lawmakers are often “mired between the pressure to protect rights and the obligation to punish juvenile offending” (Bhabha, *Child Migration* 13). But these young people who are, in Obama’s words, American in every respect but on paper (White House) defy the label of “offender” and deserve the opportunity to leave their state of liminal legality behind. Current developments show that access to college and a temporary work permit (as provided by DACA) are not enough; they have to be combined with long-term legal residency. While immigration critics often counter such proposals with warnings about “opening the floodgates,” the number of eligible youth in this case is of manageable size. And while the benefits for the young people concerned are obvious, Legomsky also emphasizes the potential advantages for US society at large as “an underground shadow population is not healthy” in any case (231).

But although US immigration laws are in principle meant to only target irregular migrants, the second part of this essay

has illustrated that in effect they also target entire families, including US-born family members. In this way, US citizen children growing up in mixed-status families, for example, who would in theory have the right to enjoy the full benefits of citizenship, are in practice reduced to the irregular immigration status of their parents. If a young child's parent gets deported, the child often has no choice but to leave the US together with him/her. This vividly illustrates how citizen children's rights and protections are currently being curtailed and eclipsed in the interest of the US's national security priority and its emphasis on deterrence and deportation. A possible argument in favor of granting US citizen children more agency in removal proceedings, offering more protection for their familial needs and rights, and integrating their perspective more explicitly in the institutional decision making process could be based on the so-called "best interests" principle as articulated in the United Nations Convention on the Rights of the Child. Article 3 (1) stipulates that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" (United Nations).¹⁷ Even though this Convention has not yet been ratified by the US, its basic principles are consistent with a range of US laws and policies, including US child welfare policy, the standards by the American Bar Association, and not least US immigration law with its emphasis on family reunification. This shows that the US legal system is in principle not averse to protecting family unity and family reunification under specific conditions. Hence an adjustment of current deportation practices by reactivating the "extreme hardship" clause on the basis of the "best interests" principle could be seen in accordance with existing US legal practice, especially when the best interests concerned are those of US citizens.

Ultimately, the examples discussed in this essay emphasize the extent to which current US immigration laws and policies neglect or openly disregard the perspectives of one of the most

17. Cf. also UNHCR's *Guidelines on Determining the Best Interests of the Child*, which offers concrete and detailed advice on how to apply this principle in practice.

vulnerable population groups: children—both immigrant children as well as US citizen children. Securing the rights of under-age youth and granting them a more audible voice in the US's immigration system by developing more age-sensitive policy measures is thus of paramount importance. And in the end, such a more child-inclusive migration regime will not only benefit the children concerned, but also the nation as a whole.

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