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Author

Zavella, Pat, Professor

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Why Are Immigrant Families Different Now?

Patricia Zavella

University of California, Santa Cruz

Context and importance of the problem

The 1986 Immigration Reform and Control Act's (IRCA) enabled 2,703,984 people to become permanent residents by using the residency provision of the Special Agricultural Worker program (Kerwin 2010, 2).¹ Yet IRCA did not fulfill its primary intent of significantly reducing the influx of unauthorized workers since employer sanctions were rarely enforced (Bean, Edmonston, and Passel 1990; Donato et al. 1992).² It wasn't until the border closure after the 9/11 terrorists attacks that migration halted temporarily (Passel and Cohn 2009).

There were two unintended consequences of IRCA related to families: 1) those who qualified for permanent residence were usually men who were more likely to have formal employment and thus able to meet IRCA's stringent requirements related to documenting their employment or residence (Kanaiaupuni 2000, Cornelius 1992, Cerruti and Massey 2001, Massey, Durand and Malone 2002, 134). 2) The family reunification mechanisms of IRCA lead to increased births and a Latino "baby boom" where citizen children provided another avenue for legalization for their unauthorized parents (Johnson 2001). Births surpassed immigration as the main driver of the growth of the Latino population (Pew Hispanic Center 2011).

However, IRCA does not completely follow the family reunification practices that have been the cornerstone of US immigration policy (Hawthorne 2007) since it establishes culturally narrow views of family: "The family group shall include the spouse, unmarried minor children under 18 years of age who are not members of some other household, and parents who reside regularly in the household of the family group" (619). This provision codifies a heterosexual nuclear family and excludes other types of family structures that are prevalent in the United States and Latin America—such as single parents, the elderly, multigenerational, extended, those headed by minors, or same-sex families—as

well as children born "out of wedlock" or who have informal foster relationships with parents (in loco parentis) such as grandchildren cared by their grandmothers when the parents migrate. This narrow definition that excludes those culturally considered as members of the family then limits authorized migration, leading those who will never be admitted legally through family reunification provisions to consider unauthorized migration to the United States. These transformations had profound effects on migrant family life, seen in "migrant family formations," sociohistorical processes that originate in the law's provisions and the post-IRCA political and economic changes that pressure more people to migrate from Latin America to the United States (Zavella 2011).

Migrant Family Formations

Migrant family formations include suspended, reunited, separated and mixed-status families and occasionally these types overlap. Suspended families include those awaiting a change in their immigration status by securing a visa so they may reside in the United States with authorization. For those who have a family member eligible for permanent residence in the United States, the actual reunification of the family may be suspended for years because of delays in obtaining a visa. The US Department of State estimates the number of people with *approved* family-based visa petitions who have not yet received their visas range from 3.4 to 4.9 million. Some of these family members reside in the United States despite their unauthorized status and some reside outside the country.³

Under these circumstances, family life becomes problematic because the family is divided since some members are left behind and all must cope with significant tensions. Further, reunification often occurs in phases after long durations (Hondagneu-Sotelo and Avila 1997, Nicholson 2006) and may trigger disruptions when individuals decide to migrate without authorization and arrive

with little notification. Often reunification entails complex adjustments and negotiations, which may be quite challenging and may exacerbate other tensions in the family (Villalón 2010, Zavella 2011).

Mixed-status families are those with a mix of the unauthorized with birthright or naturalized U.S. citizens or permanent residents. Jeffrey Passel and D’Vera Cohn (2009, 8) estimate that in 2008 there were 8.8 million people living in mixed-status families and of these 3.8 million are unauthorized parents of children who are U.S. citizens. In these mixed-status families, the legal privileges afforded to citizens or permanent residents but not the unauthorized have significant material consequences in terms of access to health care or higher education as well as vulnerability to deportation. And even when the unauthorized do have rights, such as to prenatal care, often they are uninformed about them or they worry that presenting themselves in public may jeopardize their stay in the United States and subject them to removal (Zavella 2011).

Separated families originate in the post-IRCA detention and deportation campaigns and the administrative mechanisms that make detention and removal experiences where migrants have little due process. Deportations have increased because of subsequent legislation (notably the 1996 Illegal Immigration Reform and Immigrant Responsibility Act and the Secure Fence Act of 2006) that brought more funding and political will in the post-9/11 context (Hernández 2008). Deportations reached record levels during the Obama administration, rising to an annual average of nearly 400,000 since 2009, about double the annual average during George W. Bush’s first term (Lopez et al. 2011, 5). Significant numbers of children are being placed in foster care because their parents have been detained or deported and many of these children will be unable to reunify with their detained or deported mothers and fathers (Wessler 2011).

These migrant family formations illustrate the quotidian struggles of forming and maintaining places of intimacy, love and commitment by migrants in the United States. Reunited families, where one would expect joy and celebration,

negotiate how to accommodate the material disparities in family life as well as the hurt feelings and dashed expectations of family members who were left behind. Those who live in suspended families struggle to work out where, with whom and, most importantly, when their families will consolidate and their lives are no longer on hold. Those in mixed-status families are attuned to quotidian privileges where health problems or possibilities for higher education become indicators of possible life outcomes. And those who live in separated families must negotiate long-distance communication, the overwhelming fears and anxiety, and the complicated plans to try and reunite with family members.

Yet despite the many barriers to full integration that IRCA established, it is important to highlight the opportunities provided by becoming permanent residents. In a survey with Mexicans, Wampler (et al. 2009, 101) finds: “collective memory among migrants, documented and undocumented alike, likely recalls the positive effect of IRCA for many Mexicans who gained legal permanent residency. The hope that another type of amnesty will be provided for undocumented residents helps to explain why so many Mexicans are willing to stay in a political context in which they are subject to increasingly hostile attacks.”

Policy recommendations:

- Place more emphasis on family reunification. Given the long history in the United States in which family reunification has served as a rationale for authorizing immigration, “family reunification should be recognized as part of the fundamental human right of family unity” (Hawthorne 2007, 823).
- Expand the definition of “family.” Policy should take into consideration the multiple forms of families and their fluid formation processes where other relatives such as grandmother caretakers, same-sex partners, informally parented children, minor parents, or common law partners should be considered immediate family members.⁴

- Expand the “extreme hardship” basis for removal to help keep families together. A strong rationale for changing policies related to defining families was formulated by The United Nations’ Committee on the Rights of the Child in 1959 in “The Declaration of the Rights of the Child,” which introduced the concept of children's rights, the "best interests of the child" standard, and an enhanced role for parents and extended family members in promoting children’s financial and emotional well-being (King 2010).
- Provide a process for mixed-status families whereby unauthorized members are not

removed and sent back to their home countries but instead are given a pathway toward legalization based on the best interests of U.S.-born children.

If family reunification were the basis of increased numbers of authorized migrants, there would likely be fewer remittances sent out of the country (a significant economic benefit to the United States) and some of the budget allocated for border security could be redirected toward processing new applications for legalization (Hawthorne 2007). Without national immigration reform, remedies for families will remain with the states, which is equivalent to a roll of the dice.⁵

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Notes

¹ IRCA allowed those who could demonstrate they had lived in the United States since January 1, 1982 and met other conditions, such as speaking English and demonstrating their knowledge of US civics, to apply for permanent residence. In addition, those who had worked at least 90 days as farmworkers in 12-month periods prior to May 1, 1986 on certain perishable crops qualified for the Special Agricultural Workers program.

² A system of labor contracting developed as employers who hired the unauthorized sought to evade sanctions by using contractors to certify the legal status of workers and avoid knowingly recruiting or hiring unauthorized immigrant workers. This labor contracting system in turn led to widespread document fraud, a black market for documents such as social security cards, greater discrimination against unauthorized migrants, and a steady deterioration of wages paid to the unauthorized (Lowell, Teachman and Jing 1995, Philips and Massey 1999; Massey, Durand and Malone 2002, López 2007).

³ If unauthorized migrants leave the United States to obtain their visas, they trigger 3- and 10-year bans on readmission based on their unlawful presence in the United States. These bans could be addressed through the Waiver of Grounds of Inadmissibility yet these applications must be submitted abroad and meet the strict "extreme hardship" standard (Kerwin, Meissner and McHugh 2011, 9-10). It wasn't until January of 2012 that the Obama Administration allowed immigrants with U.S. citizen family members who are eligible for waivers of the 3- and 10-year "unlawful presence" bars to file their applications in the United States rather than having to return to their country of birth and stay there for many months while their applications for waivers are processed. This change could benefit as many as 100,000 low-income immigrant families (Nicholas 2012).

⁴ Canada's immigration law allows for these categories to be considered immediate family members if the person is "known and important," which allows utilizing factors such as actual kinship relationship, length of acquaintance, length of shared residence, geographical distance between residences, knowledge of each other's personal histories, number of shared experiences, and strength of bond that would aid in a flexible application of derivative beneficiary status (Hawthorne 2007, 828-9).

⁵ E.g. AB 2015 introduced in California in June 2012 would ensure that the right of an arrested custodial parent to make telephone calls or otherwise arrange for the care of a minor child or children during his or her absence is applied without regard to immigration status or language of the person arrested. While clearly necessary this bill would not address the issues discussed here.

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Mailing Address: 2420 Bowditch Street #5670, Berkeley, CA 94720-5670

www.clpr.berkeley.edu

