

If You
Knew My
Family

Contents

INTRODUCTION	
—CESAR SANCHEZ4
HOW DID YOU MANAGE TO END UP IN THE US?7
FEAR SHADOWS MANY CHILDREN IN IMMIGRANT FAMILIES—MIRIAM JORDAN10
WHAT WAS YOUR EXPERIENCE IN THE JUSTICE SYSTEM WHILE BEING DEPORTED?16
TORN APART BY ICE, A COLORADO FAMILY VOWS TO KEEP FIGHTING TO STAY TOGETHER—GABRIELA FLORA20
WHAT LIFE DID YOU LEAVE IN THE US WHEN YOU GOT DEPORTED?23
'ARE MOM AND DAD NOT COMING HOME?' AMERICAN KIDS LEFT STRANDED WHEN ICE TAKES THEIR PARENTS —BLAKE ELLIS.....	.26
EXPLAIN HOW YOU FELT BEING SEPARATED FROM YOUR FAMILY.....	.37
A U.S. CITIZEN DETAINED BY ICE FOR THREE DAYS TELLS HIS STORY—CONNER FREIDERSDORF42
WHEN YOU WERE CAPTURED, WHAT DID YOU EXPERIENCE?48
THE HUMAN RIGHTS OF NON-CITIZENS: MIGRANTS —DAVID WEISSBRODT52
WHAT WAS YOUR WORST EXPERIENCE WHILE BEING DETAINED?73

Introduction

Cesar Sanchez

If You Knew My Family is a book that pleads for empathy, compassion, and a willingness to see undocumented immigrants in America as more than numbers or headlines. It asks the reader to look beyond legal status and policy debates, to instead see human beings—people with parents, children, and loved ones, people with aspirations and fears, people who belong to communities even if those communities often refuse to claim them. The title itself is an invitation: if you knew my family, if you heard our stories, perhaps you would see us differently.

"The Human Rights of Non-Citizens" insists that dignity and respect must never be conditional. It argues that regardless of citizenship status, immigrants deserve to be treated as human beings whose rights are protections that affirm their existence, not privileges to be rationed. The essay challenges the misconception that undocumented immigrants live outside the realm of rights and shows that justice, to be meaningful, cannot stop at the border of legality.

This collection also incorporates contemporary articles that document the ongoing struggles of undocumented immigrants. Among them are *"Fear Shadows Many Children in Immigrant Families"* by Miriam Jordan (New York Times), *"Torn Apart by ICE, a Colorado Family Vows to Stay Together"* by Gloria Flora (American Friends Service Committee), *"Are Mom and Dad Not Coming Home?" American*

Kids Left Stranded When ICE Takes Their Parents" by Blake Ellis, Melanie Hicken, Anna Maja Rappard, and Kyung Lah (CNN), *"A U.S. Citizen Detained by ICE for Three Days Tells His Story"* by Connor Friederdorf (The Atlantic). Additionally, an interview with my brother, Giovanni, details his fight to remain in the U.S. with his son, his experience being deported, and his efforts to reunite with his family.

For me, these stories are not distant. As the child of undocumented immigrants, I have felt the weight of fear and sacrifice daily. Immigrants endure risks not as abstract numbers but as parents striving to secure a better future for their children, often at the cost of their own freedom. And yet, the challenge is not only legal—it is also deeply social.

There is another wound: the prejudice that extends to anyone who looks Hispanic or Latino, Undocumented or not, so many of us have faced suspicion, hostility, and hatred simply because of our appearance. Immigration status becomes an excuse, a justification for dehumanization that bleeds outward, touching everyone who resembles the "other." These experiences, both legal and social, humanize the people behind headlines, showing their courage, struggles, and hope. Undocumented immigrants are not boogymen or statistics—they are neighbors, workers, parents, and children, deserving of dignity, compassion, and

understanding. *If You Knew My Family* asks readers to hold these stories with care, to let them complicate easy judgments, and perhaps, to soften their hearts.

A Conversation With My Brother

How did you
manage to end
up in the US?



I was taken to the United States when I was about a year and a half old, so I don't remember it personally, but my family has told me the story many times. At first, my mom and uncle tried to cross the border with me through the desert. It was a very dangerous journey—they even told me my uncle had to fight off a large snake. We were caught by immigration and sent back to Mexico. Later, my parents decided on a different approach. They sent me with a

trusted friend who used another baby's U.S. documents to bring me across "legally." It was a huge risk for my parents, but it worked. Within a few days, I was reunited with my family in the United States. I have zero memories before being in the U.S. In addition to that, during my deportation process, an ICE agent asked me, "Do you recall crossing illegally into the United States in 1999?" I responded, "Yeah sure, I remember crawling across the border."

Fear Shadows Many Children in Immigrant Families

Miriam Jordan,
New York Times

Heightened immigration enforcement is stirring anxiety among children whose parents are vulnerable to deportation. “Every day I worry they could take my mom.”

Nine million children live in U.S. households with at least one noncitizen adult who could be affected by immigration enforcement.—**Jimena Peck** for The New York Times

During President Trump's first term in the White House, Nadene Casteel's students at an elementary school near Houston lamented that his border wall, as they understood it, would prevent them from seeing their grandmothers and other relatives in Mexico.

These days, she said, they are terrified that immigration agents will take away their parents.

“I have had kids coming to school saying, ‘Daddy’s gone—Daddy can’t come home,’” she said.

Mr. Trump focused his immigration crackdown on the southern border during his first term. His administration separated thousands of migrant children from their parents after they had crossed into the United States. The policy was intended to discourage family migration, and it set off public outrage as images surfaced of weeping toddlers pulled from their mothers’ arms.

This time, Mr. Trump has shifted his attention to the interior of the

country, as he seeks to fulfill his pledge to carry out mass deportations—a goal that has drawn relatively broad support. And teachers, parents and other caregivers say the very public detention and deportation effort is taking a particularly heavy toll on young people in immigrant families.

“Every day I worry they could take my mom,” Ximena, 11—who was born in California and whose Mexican mother has lived in the United States for decades—said before breaking into tears.

Nine million children, 17 percent of all 5–17-year-olds, live in a U.S. household with at least one noncitizen adult who could be affected by immigration enforcement, according to a report released this month by the Kaiser Family Foundation. The share is one in three children in California and about one in four in Nevada, New Jersey and Texas.

Within hours of his inauguration, Mr. Trump's administration rescinded a longstanding policy that had generally barred immigration agents from entering schools, houses of worship and other “sensitive” locations.

“Criminals will no longer be able to hide in America’s schools and churches to avoid arrest,” said a

statement issued by the Homeland Security Department that ricocheted across social media and news outlets.

There have been no reports of ICE actions inside schools. But rumors and, in some cases, sightings of agents around schools have stirred anxiety among parents and children.

"You say my child can be safe with you," read a text from a parent to Ms. Casteel that she shared with The Times, "but the problem will be for us to go drop him off and pick him up later."

As Times reporters have been interviewing people across the country about the impact of the crackdown, the effect on school-age children has emerged as a recurrent concern among psychologists, teachers and parents. They said many students were having trouble concentrating. Some were more fidgety. Others had become disruptive. And still others were notably subdued.

In interviews in Colorado, Ohio and Texas, young people talked about the impact on their lives.

Parents agreed to allow their children to speak to the Times on condition that only first names be published.

Manou, a Haitian girl in Columbus, Ohio, summed up her life in recent months like this: "We just go to school and back, school and home."

"We are scared here. We are scared to go back to our country."

—Manou, 17

Her family trekked to the southern border two years ago and found their way to Columbus, where they felt safe and settled.

They qualified for Temporary Protected Status, a U.S. program that shields people from deportation when they have come from countries in upheaval. Manou's mother and father got jobs at FedEx.

But their routine has been upended by Mr. Trump's return to the White House, she said.

Her parents kept Manou, who is a senior, and her two younger siblings home from school for a week after Mr. Trump was sworn in. Her 9-year-old sister still refuses to go to school many days, fearing ICE could separate her family.

Manou, who is 17, is not allowed to go to the gym or take her siblings to the public library.

Gone are outings with friends and trips to visit relatives in other states.

"We would go to the park, do barbecue with friends," Manou said. "Now we can't do anything."

The Trump administration recently announced that it was terminating Temporary Protected Status for Haitians. While that decision is facing court challenges, her family worries that they would be forced to leave the country if they were stripped of the status.

Returning to Haiti, where much of the capital and some other parts of the country are no longer under government control, and violence is

rampant, is an impossibility, she said.

"It's so hard for us," Manou said, fighting tears. "We are so tired. We are scared here. We are scared to go back to our country."

But she has not lost hope. She has been accepted into a U.S. college and continues to nurture her dream of working for the F.B.I. or C.I.A.

Until this year, Aianna, the daughter of undocumented Mexicans was a carefree 10-year-old girl whose biggest concern was making sure her pets—a bunny named Chopper, three cats and a dog—were happy and healthy.

Aianna's family lives comfortably in Denver. Her father has a house-painting business. Like Aianna, her two siblings are also U.S.-born, including a sister who is in the Navy.

Aianna's parents, who crossed the border three decades ago, tried to avoid discussing immigration issues in front of their fourth grader. But at school, children began talking about ICE.

One of her classmates, Jesus, shared that agents had come to his neighborhood.

She began fretting that they could take away her best friend, a Venezuelan girl in her class, with whom she spends lunch and recess. Aianna trusts her with secrets.

"I don't want" the friend "to have to go back to Venezuela just because of the new 'law,'" Aianna explained, saying that, as she understood it, "people can't live here if they aren't

U.S. citizens."

Amid intensified enforcement, Aianna's mother decided to sit her daughter down to explain that a relative would come forward to care for her should ICE detain them. She reassured her that they would not be separated forever.

Aianna said that she couldn't help but think about it. "Sometimes, at night, it's hard to fall asleep."

In class, she said, "I worry and just zoom out."

Anderson arrived in the United States two years ago from El Salvador, after his father, who had crossed the border a few years earlier, opened a car-repair shop in Columbus. Anderson quickly mastered English.

A history buff, he often texts his teacher to ask for extra material—about the Marshall Plan, the Constitution, she said—and Anderson aspires to be a social studies teacher.

But Anderson and his father are in the country unlawfully.

Whenever there are rumors of ICE operations, or unfamiliar vehicles in their neighborhood, Anderson's father urges him to stay home from school.

"We are not criminals. We are just trying to work hard."

—Anderson, 17

"I don't want to do that, because the reason I go to school every day

is because I want to be successful," said Anderson, who is in 11th grade. "And, also, in my school I have a lot of teachers who help me and who protect me."

So he goes to school every day but has scrapped soccer, bowling and baseball.

If he could, Anderson said, he would ask Mr. Trump to give him and other undocumented people the chance to stay and prove their worth.

"We are not criminals," he said. "We are just trying to work hard."

He added: "I'm scared, but I'm focused on my goals. That's the only thing I try to think about."

Melinda, 17, entered the country legally and has a pending application for a green card as a dependent of her mother, a refugee from Rwanda.

But each time that she and her mother leave their apartment in Columbus, they carry documents to prove that they are lawfully in the United States, just in case they are stopped by immigration agents or police officers.

Melinda is especially anxious for her friends who are undocumented, or who have undocumented parents.

"The president should deport criminals," she said. "He should forgive people who work hard for this country and pay taxes."

An honor roll student, she said that their plight had motivated her to become a lawyer.

Pabi, 17, will be the first in her family to attend college when she

enrolls at the University of Colorado Boulder next fall.

But these days, she can't help but wonder whether her parents and brother will still be in the United States when she graduates. They are undocumented.

"It's that constant fear, like any moment in time your family could be stripped away," she said, sitting on the steps of the State Capitol after participating in an immigration rally in Denver last month.

"See, this country is where we belong."—Pabi, 17

Her parents sneaked across the border 25 years ago from Mexico. Since then, she said, they have consistently filed their tax returns, hoping that Congress would eventually pass immigration reform to adjust their status and that of others. However, the chance that that will happen has only grown slimmer, while the threat of deportation looms larger.

Her brother, 26, is a recipient of Deferred Action for Childhood Arrivals, an Obama-era program that has protected from deportation hundreds of thousands of unauthorized immigrants brought to the country as children. But DACA has been entangled in legal battles since Mr. Trump tried to end it during his first term, and its survival remains at risk.

On a recent evening, Pabi's mother arrived home from her construction

job in paint-splattered and dusty work clothes, washed up and helped her daughter slip into a gold, shiny gown for senior prom.

She marveled at her daughter—all grown up, she said, ready to take part in a quintessential American ritual.

“See, this country is where we belong,” said Pabi, “where we celebrate special moments together and make happy memories.”

Then, on further reflection, she said, “It could start out as a good day, but we can’t be sure anymore that it will end that way.”

Miriam Jordan reports from a grass roots perspective on immigrants and their impact on the demographics, society and economy of the United States.

A Conversation With My Brother

What was your
experience in the
justice system
while being
deported?

My experience in the justice system—that is something I will never forget. In 2019 I had a warrant for my arrest, and on a Saturday night I went out with my son. We were driving to his mom's job at that time when I got pulled over as soon as I drove out of my apartment. I remember thinking to myself, "Keep driving so that you leave Aiden with his mom." So that's what I did. Once the car came to a stop, I don't know what went through my head, but I tried to run. To keep it short, I got booked at Waller County on my violation of probation warrant and a couple of other misdemeanors. The very next day I got a call from Homeland Security, and they told me that once I finished my state time, I was going to a federal detention center to fight for my immigration status. I did about 10 months in county, got time served, then spent about 9 months fighting for my immigration status. It took two court hearings before the judge gave me time served for being in the U.S. illegally and a 10-year ban. My lawyer tried to appeal, which only resulted in more time, so I was actually released after the third court hearing.

Later, I spent another 9 months in federal prison for illegally re-entering the U.S. about a year after my first deportation. My ban went from 10 years to 20 years, with a 5-year pardon penalty—meaning after 5 years I can apply for a pardon. I remember the very first judge at my first deportation saying, "Beautiful story, but I'm still sending you to Mexico," in response to my lawyer's argument that I had basically grown up in the States and had a son and wife there. I could honestly go on forever about the treatment. On the way in and out of the detention center, they put you in insanely crowded rooms we would call "hieleras," or freezers, because of how cold they were. We slept on the ground next to random people, our blankets were thermal sheets, and the food was half-frozen burritos with cold fruit and either juice or water. Honestly, I ate a lot better in county jail or in federal prison compared to the detention center "hieleras." I really could write a book on these topics—the whole jail experience, the culture shock, the scenarios I went through. To this day, I still can't believe everything I saw and lived through.





Torn apart by ICE, a Colorado family vows to keep fighting to stay together

Gabriela Flora,
American Friends
Service Committee

Jorge and Christina Zaldivar have been married for 15 years and have five children, whom they raised in Colorado. But for over a decade, Jorge has faced potential deportation and separation from his family because of a mistake by U.S. consular officials years ago.

On Nov. 13, 2019, the family's fear became a reality when Jorge went to his monthly check-in with Immigration and Customs Enforcement (ICE) and was detained, despite a pending petition to review his case. He was imprisoned in the for-profit GEO detention center in Aurora for two months, where he had to fight to receive basic diabetes medication and was denied dental care and adequate nutrition. He lost more than 10 pounds in that time.

On Jan. 15, 2020 Jorge was deported to Mexico. Prior to his deportation Christina flew to Mexico City to be there with him when he arrived. She returned to Denver on Jan. 25 to parent their five children on her own while they continue to fight his case to return Jorge to Denver with his family where he belongs.

In a Jan. 24 phone interview from Mexico City, Christina shared her thoughts on their experience and what comes next for their family.

The unbearable stress of detention and deportation

The abuse Jorge suffered in detention reminded Christina of atrocities she had seen in movies, Christina says.

"He was basically starved and given uncooked food," she says. "How can anyone have such a cold heart? But GEO makes money by denying care, food, and decent treatment. What is even worse is having your dignity stripped away from you as if you were nothing."

The effects of detention and deportation have been devastating on Jorge and his family. "He hasn't

been able to hold and hug his children since Nov. 13," Christina says. Their youngest child, Francysco, age 9, smells Jorge's shirts because it gives him a sense that his dad is still around. Their two eldest daughters, Josefyna and Yolanda, declined to attend college because the family can't afford tuition on top of legal fees to fight Jorge's immigration case.

"I wish you could put yourself in my place as a mom and put yourself in my husband's place as a dad—to watch your kids and to listen to the things other people say," Christina

says. "A little boy at school told my son, 'Your dad left because he doesn't love you anymore.' That's bullying no one should have to deal with, especially when they do not understand the reality of this unjust, unwarranted separation of a child from his parent by force."

Christina is unsure what the future

might hold for her family. "I don't want to bring our children to live in Mexico, but what do I tell my husband after 20 years and five kids? 'I am sorry, Jorge, but you don't have anything or anybody after all we have suffered through?' No, that is not an option or even a thought in my head," says Christina.

Working in the courts and in Congress

Jorge's case is in the Tenth Circuit Court for the third time, and his lawyer is waiting to hear on a similar case, according to AFSC staff Gabriela Flora, who has worked closely with the Zaldivars for many years. If that ruling is favorable, Jorge's lawyers could use it to reopen his case.

Christina has started a GoFundMe page to help her family pay for a portion of their legal bills, and people from her church have given grocery gift cards.

While she's very grateful for this help, she's now facing another \$20,000 in legal fees on top of her family's monthly living expenses and daily necessities.

Christina and Gabriela have worked together to garner support

from Colorado's congressional delegation. Four members sent letters asking ICE for a stay of Jorge's deportation. Christina and Jorge have also built a long-term relationship with Rep. Diana DeGette office, with one of her staffers accompanying Jorge to his last ICE check-in when he was detain by ICE. Gabriela, along with other members of the Not1More Deportation table AFSC coordinates, met recently with Rep. Joe Neguse relaying Jorge's description of the inhumane treatment he and others received at GEO detention center. Jorge has urged elected officials who visit detention centers to speak directly with people detained to learn what's really going on inside.

A Conversation With My Brother

What life did
you leave in the
US when you
got deported?



I left behind my son, his mom, my family, my friends—everything. My mom, dad, brother, sister (who I only remember being 2 years old), and my son, also 2 at the time, were all part of the life I had to leave behind. My son is a sensitive topic for me because, yes, I miss all my family—but with him, I feel like I robbed him of so many beautiful memories. That only motivates me to grind harder in Mexico so that one day soon I can go back and be a part of his life. Time is irreplaceable, but one thing is for sure—new memories can always be made.

'Are Mom and Dad not coming home?' American kids left stranded when ICE takes their parents

Blake Ellis,
Melanie Hicken,
Anna-Maja Rappard,
Kyung Lah

CNN identified more than 100 US citizen children, from newborns to teenagers, who have been left stranded without parents because of immigration actions this year, according to a review of verified crowdfunding campaigns, public records and interviews with families, friends, immigration attorneys and other advocates.

These cases have unfolded as the Trump administration has abandoned the “humane enforcement” of immigration laws when deporting mothers and fathers who entered the country illegally, according to policy documents.

Since President Donald Trump took office in January, American children across the country have ended up in the care of relatives, neighbors, friends, co-workers and even strangers. Their parents were picked up during raids on workplaces ranging from farms to meatpacking plants, coming out of check-ins with Immigration and Customs Enforcement or dropping their kids off at school.

Feebe and Angelo, ages 6 and 9, miss their mother and don't understand why she was taken away by ICE.

In some cases, ICE appears to have violated protections that still remain in official policies by failing to allow undocumented parents time to find an appropriate caregiver or to make travel plans for their children as they are taken into custody and deported, CNN found. Unlike

immigrant children, American children of immigrants do not fall within ICE's jurisdiction and are not tracked by the agency.

An ICE spokesperson did not provide any data on how many cases the agency is aware of where US citizen children have been separated from their parents and would not comment on the removal of “humane” from official ICE policies. The spokesperson claimed that ICE “goes out of its way” to give parents the opportunity to designate a guardian or have their children accompany them upon removal.

“CNN is trying to obscure the fact that each of the illegal alien parents they are defending willingly chose to break our nation's criminal and administrative laws and as a result of those choices, are responsible for what happens to their children—just as any U.S. citizen parent who breaks the law is when they are taken to jail,” the spokesperson said.

Accounts gathered by CNN included an autistic 11-year-old who was placed in foster care in Nebraska when her father was picked up by ICE in June, and a 10-month-old left with family friends when her single mother was arrested during a workplace raid at a cannabis farm in Southern California in July. In Michigan, the oldest daughter of four reportedly scrapped plans to attend college in the fall so she could raise her three younger siblings after their widowed father was detained.

"It's literally a kid's worst nightmare having someone come take your parents in the middle of the night," said Wendy Cervantes, a longtime immigration policy expert who has worked with Democratic

and Republican lawmakers to help craft federal policies that protect the children of immigrants. "No matter the outcome, you are turning a kid's life upside down."

'Children at risk'

Federal agents donned riot gear and lobbed flash bang grenades and smoke bombs at protesters as they raided a pair of cannabis farms near the California coast this summer. When the smoke cleared, multiple employees were left injured and a worker fleeing one of the facilities plummeted 30 feet from the roof of a greenhouse to his death.

The raids made headlines for the chaotic and deadly scene that unfolded, as well as reports that a protestor fired at ICE agents.

What went largely unnoticed was just how many US citizen children—more than a dozen, according to CNN's analysis—were left without parents to care for them.

A sister and brother play outside a family member's apartment complex. Their parents have been deported, leaving them in uncertainty. (Zaydee Sanchez for CNN)

One 15-year-old ended up on his own with his two younger brothers, 8 and 9, when his mother was arrested, her immigration attorney told CNN. From detention, the mother had told the attorney she wanted to see her

children as soon as possible. But she was deported to Mexico only three days after the raid.

Martita Martinez-Bravo and her small nonprofit organization, Friends of Fieldworkers, have been attempting to fill in some of the gaps—gathering donations and delivering diapers, formula, clothes and toys to those in need. Since the raids, which swept up more than 300 undocumented workers Martinez-Bravo's phone constantly rings. Many families contacting her have had their primary or sole income-earner ripped away, leaving the remaining parent without a way to pay rent and other bills.

She said some of the most alarming calls have come from people who are now unexpectedly caring for children. She recalled one call about a babysitter who showed up to one of the farms with two babies in her arms the morning after the raid. Their parents had never come home, Martinez Bravo said she was told.

"There is no government support, so all the support that is happening is from nonprofit groups and

families," said Martinez-Bravo. "It's leaving children at risk."

Siblings join hands while playing outside the apartment they've been staying at since their parents were deported. (Zaydee Sanchez for CNN)

Martita Martinez-Bravo, executive director of Friends of Fieldworker helps provide resources to families. (Zaydee Sanchez for CNN)

Martinez-Bravo wore a cheerful, embroidered red blouse on a Friday afternoon last month when she dropped off a large Target bag full of supplies—including toothbrushes, toothpaste and Lysol wipes—at a one bedroom apartment where seven people had been living for more than a month.

The apartment had been tight when it was just a family of four living there—two farmworkers and their two children. But then the couple took in three more children—their niece and two nephews—when those kids' parents were detained and quickly deported.

The aunt and uncle struggled to pay for food and rent, and their landlord told them too many people were living in the small apartment. The stress had become so great that the aunt—who is also undocumented—kept getting headaches. Just the week prior, she ended up in the hospital,

she said.

When she could no longer afford a babysitter for the youngest of the children, she said, a family friend drove the 2-year-old boy—a US citizen—across the border to live with his father in Tijuana, Mexico. The father said he had come to the United States days after he found his own father shot dead in his house in Mexico. He said he and his son are now sharing a room with a roommate while his wife stays with her family thousands of miles away. He found a job on a farm and works six days a week, but nets less than

\$20 a day. After paying for child care, it's a struggle to afford food and diapers, he said.

A young boy is among the children left behind after the immigration raid at Glass House Farms.

(Zaydee Sanchez for CNN)

Back in California, the aunt says she worries about being separated from her own children, a teenager and 4-year-old, who were both born in the US and are citizens. She wants a better future for them, one where they don't come home from long days picking produce, caked in mud like her and their father.

"Now I feel sad for everything happening," she said in Spanish. "What happens if ICE takes me?"

A new kind of family separation

Previous immigration crackdowns

had primarily focused on immigrants

who had violent criminal records or were recent arrivals.

But now, as immigration agents scramble to meet the Trump administration's aggressive quotas of 3,000 arrests a day, many immigrants who have lived in the country a decade or longer with no criminal records are being arrested, detained and deported—often within a matter of weeks or even days.

Many parents in the cases CNN identified had dutifully attended immigration appointments, paid taxes and received work permits and other authorization to remain in the country, according to interviews and records from parents, families and attorneys.

In prior policy documents, ICE noted that there were “limited circumstances in which detention is appropriate” for parents. While it was not unheard of under past administrations for immigrant parents to end up deported, ICE has historically given agents “discretion” to prevent children from being separated from their sole caregivers.

ICE has taken a different approach under Trump’s second term. The administration’s “border czar,” Tom Homan, has repeatedly said parents are to blame for entering the country illegally and having children here without being documented. “If (you’re) in the country illegally and you choose to have a US citizen child, that’s on you,” Homan told Politico in July. “If we want to send a message to

the whole world ... go have a US citizen child and you’re immune ... we’re never going to solve this problem.”

ICE echoed this in its statement to CNN, saying that even if an undocumented immigrant attends immigration appointments, pays taxes or receives authorization to work in the US, they “are not absolved of their original offense of illegally entering the country.”

The agency’s “Detained Parents Directive,” meanwhile, has been changed to weaken protections for undocumented parents, most notably removing a written commitment to pursue “humane enforcement” of deportation laws. Instead, the guidance states that agents should “remain cognizant of the impact enforcement actions may have on a minor child.”

The administration’s updated policy still provides that undocumented parents should be given time to find an appropriate caregiver or to make travel plans for their children. Yet, some detained parents have alleged they were not given such accommodations, according to immigration attorneys and accounts detailed in interviews and online fundraisers.

In one case, a young girl was placed in foster care despite having family members who were willing to care for her, according to a nonprofit. In others, parents were deported so quickly that there wasn’t enough time for them to secure passports for their

children to be able to join them.

"This ICE is not using their discretion," said Heidi Altman, vice president of policy at the National Immigration Law Center. "The checks and balances that used to exist are gone."

In Honduras and Guatemala—two countries many undocumented immigrants are being deported to—parents are arriving without their US citizen children and saying they weren't given the option to bring them, researchers from the nonprofit advocacy group Women's Refugee Commission said after visiting both places.

"Some parents were showing up inconsolable because they did not know where their children were or who was caring for them," said Zain Lakhani, the group's director of migrant rights and justice. "This is the new family separation crisis."

In its statement, ICE said parents are given the opportunity to designate a guardian to care for their children or to have their children accompany them when they are deported. "That decision is entirely up to the illegal alien parents, and

they are given a reasonable amount of time to make that decision," the spokesperson said.

Citing the increasing likelihood that undocumented parents could end up in ICE custody, nonprofits have been holding community workshops to help parents consider their options, such as designating guardians for their children in the event they are separated. Lawmakers in several states have also recently introduced legislation to make it easier for parents to designate appropriate caregivers if they are taken.

"We are witnessing families being torn apart in real time—parents detained, unable to pick up their children from school and childcare," Democratic California Assemblywoman Celeste Rodriguez said in a statement about legislation that is currently awaiting the governor's signature. "This bill is not just about planning; it's about creating a safety net."

Mimi Lettunich consults with the family's attorney while David Merlos talks to his detained mother on the phone. (Zaydee Sanchez for CNN)

Lasting trauma

Mimi Lettunich was in the middle of work when she received a call from an immigration agent asking her whether she could pick up her friend Jackie Merlos' four children. Merlos

was being detained, and if she didn't immediately find a US citizen to take her kids, they would end up in foster care

Within hours, Lettunich found

herself driving along the highway with 9-year-old triplets and their 7-year-old brother to care for indefinitely.

The children sat stunned in the back seat. Lettunich herself was trying to wrap her mind around what was happening, she told CNN. She couldn't understand why immigration authorities would take away Merlos and her husband, well-regarded local business owners who had come to Portland, Oregon, from Honduras decades ago.

Lettunich hadn't cared for young children in years—her own kids were now grown up. And she had a full-time job. As they drove to her Portland home, she realized she and her husband hadn't even started to think about what they needed or how this was all going to work: Did they have toothbrushes? Where were they going to sleep? What were they going to have for dinner? How do we make sure they feel comfortable but also give them their space?

That first night at Lettunich's, the children slept in their clothes because they didn't have pajamas. She comforted them before bed, telling them they were safe and reading them stories. She told them they could think of this as "summer camp," and the kids now call it "Camp Reindeer" because of how many deer they see in the backyard. In the days and then weeks that have followed, she and her husband have taken the kids swimming, to the zoo and out

to dinner—anything to try to cheer them up. Because they have had to keep working too, they enrolled the children in day camps, and they often visit their parents in detention on the weekends.

David writes in Spanish to his mother, "I love you, Mom. I want you to come back." The children made paper bracelets to send to their parents. (Zaydee Sanchez for CNN)

The Merlos children have been trying to find a sense of normalcy through activities like swimming and having playdates. (Zaydee Sanc for CNN)

But Lettunich said she worries every day about the impacts that they will be coping with for the rest of their lives because of the ordeal. "They fear for their parents," she said. "They ask, 'are Mom and Dad not coming home?'"

One of the kids has been keeping everything bottled up, she said. He doesn't want to hear anything about what happened or talk about it, only wanting to "think of happy things." And all of the children have started talking with a psychiatrist to try to begin processing the trauma, she said.

Less than three hours away in her cell at an ICE detention center in Tacoma, Washington, their mother, Jackie Merlos, is grappling with her own emotions, writing regular journal entries about her experience and her worries. US Customs and Border Protection, which initially

detained Merlos and her husband, told CNN she was arrested “as she attempted to smuggle illegal aliens into the United States” and that formal removal proceedings were underway. Neither Merlos nor her husband has been charged with a crime related to this allegation, however, and Merlos has said she and her family were simply meeting her sister—a Canadian resident—at a park along the US-Canada border. ICE did not comment.

It has been more than 70 days since Merlos was separated from her kids, and her next court date isn’t until the middle of October.

“I feel powerless not being able to see or hug my children, play with them, and watch them grow,” she wrote a week after her children were

separated from her. “I’m suffering, and my children are suffering psychologically. It’s not fair to separate children from their mom and dad.”

Sometimes Merlos convinces herself that what is happening is just a nightmare that she will wake up from. “My life feels meaningless without them,” she wrote.

But until the whole family is reunited, she urged her children to keep praying and to continue living their lives without her.

“Please don’t stop practicing your piano (David), guitar (Carlitos), violin (Abigail), and piano (Caleb),” Merlos wrote.

Carlos practices guitar while his siblings play on their tablets. (Zaydee Sanchez for CNN)

An untracked issue

Pleas for donations to help stranded children have been popping up online since immigration efforts ramped up earlier this year.

In some cases, the children themselves are asking for financial support to help pay for food, rent and utility bills. Teenagers describe being left on their own with younger siblings, and recent high school graduates say they have dropped out of college and returned home in the hopes of keeping their siblings housed, fed and out of the care of strangers.

“My mother is the most hard

working woman I know, she is a single mother of 3 and has worked for us

to always have everything we need and everything she’s had worked for her whole life was just taken away from her,” a daughter wrote in a July fundraiser. “Truly anything helps.”

Because the number of kids left behind by the ongoing ICE raids and deportation efforts is not being publicly tracked, CNN used the crowdfunding platform GoFundMe as a way to provide a snapshot of the issue, as well as interviews with

families and attorneys, who confirmed additional cases to reporters. CNN's count of more than 100 US citizen children does not include dozens of children whose citizenship status or age was unclear, or where fundraisers couldn't be verified.

The fundraising accounts, which GoFundMe confirmed to CNN had been verified by the company's trust and safety team, also served as a window into where separated children have ended up. Some were taken into foster care. Most were being cared for by family friends, community members or relatives.

An 11-year-old girl and her younger brother are living with a family member after their parents were deported in Oxnard, California.

(Zaydee Sanchez for CNN)

An eagle with American flags is displayed inside a family home that is sheltering children whose parents were deported. (Zaydee Sanchez for CNN)

ICE said it couldn't comment on CNN's analysis because it included anonymous families and some of the information had come from what it called "notoriously biased and unreliable" crowdfunding websites. The spokesperson did not respond to questions about how often children

were ending up in this situation or whether this was something being internally tracked by the agency.

Immigration experts said it is difficult to fully assess how widespread the issue is until the federal government comprehensively tracks and releases that data. There are millions of US citizen children living in households where their only parent or both parents are undocumented, Brookings Institution research shows.

Attorneys told CNN about cases ranging from an 8-year-old who allegedly watched her single mother get handcuffed and taken away by ICE to a one year-old who is currently living with a foster family as the toddler's mom fights for custody from detention.

"It's stunning that we're putting so much emphasis on hitting deportation numbers, and not thinking about all the collateral damage we're doing," said Leecia Welch, deputy litigation director at nonprofit Children's Rights, who has been visiting families in immigrant detention centers to monitor conditions. "We're traumatizing everybody involved in these situations and completely destabilizing their lives and causing long-term trauma."

'It terrifies me'

It was around 6:30 in the morning when Kenia Perez arrived home from

her overnight shift at the hospital. She had stopped at the store to

get milk for her daughter's cereal and was planning to go inside and wake her kids up and get them ready for school, when she saw two large, unfamiliar cars parked outside her apartment.

ICE agents were waiting for her.

"Run away as far as you can," she texted her 14-year-old son, Isaac, who jumped out the window. Since Isaac was also undocumented, she worried ICE would take him too—leaving Febe and Angelo without any family in the country.

Agents in tactical vests and local police officers surrounded her in the parking lot.

Desperate to keep her children out of foster care, her next call was to Jeff Chaney, a family friend and coworker who had agreed just a day earlier to take guardianship of the children if ICE came for her—something she had become increasingly nervous about under the Trump administration.

Perez had been in the US for roughly a decade, fleeing cartel violence in her native Honduras. She described to CNN how she was assaulted, raped and left in a dumpster on her journey. She was pregnant when she was apprehended at the border and records show she was released under an order requiring regular check-ins with ICE. She met and married her husband in the years that followed and created a family in Galveston, Texas. Only months after she gave birth to her third child, her

husband passed away from Covid in 2020, and she suddenly became the sole caregiver for her three children—two of whom, Febe and Angelo, are US citizens.

Perez said she paid taxes and documents show that she never missed a check-in with ICE. Her work permit is not set to expire until the spring of 2026. But ICE came for her anyway.

Unlike other cases examined by CNN, Perez said she was allowed to go into her apartment, wake her children, and tell them goodbye.

"I need you to be strong," she remembers telling Febe and Angelo. "You see those men. They're going to take Mom."

Perez prayed she would be able to take her children with her to Honduras. Even though she knew it would be dangerous, she couldn't imagine being separated.

But she was deported 11 days after her arrest, leaving her friend, Chaney, trying to lighten the kids' moods. He took them to IHOP on the weekends and held movie nights at his house.

Kenia Perez was deported to her native Honduras and now lives in a neighborhood known for gang violence. (David von Blohn/CNN)

Chaney couldn't keep the kids at his house given the long hours he worked at his two jobs, so the children spent several days bouncing around among a network of Perez's coworkers' homes until one of her undocumented friends gave them a place to stay, at least temporarily.

Because the kids didn't have access to any of the funds Perez had saved from her job, community members began supporting the family through a GoFundMe campaign.

In an interview with CNN, Chaney said that when he voted for Trump last year, he understood that immigration enforcement was a top priority for his administration. He supported the Republican Party's promise to secure the border and to go after criminals and gang members.

But he never imagined that someone like Perez, his close friend and coworker, would end up caught in the crackdown.

"This is not what I voted for," he said, adding that he never supported the targeting of working-class people who had been doing everything right. "You don't do this. This is inhumane what they're doing."

An ICE spokesperson told CNN Perez asked to be reunited with her children before she was deported, but that she refused to provide agents with their specific location. Perez told CNN she did not want to endanger any of her undocumented friends who were helping to care for her kids when she was first arrested, but that she had hoped that while she was in detention, she would have an opportunity to secure their passports so that they could be reunited when she was deported. "After

exhausting all efforts, ICE proceeded with her removal in accordance with federal law," the spokesperson said in a statement

The spokesperson described Perez as an "irresponsible parent," who "chose to use her children as a bargaining chip in an attempt to prevent her own removal from the country."

"Any claims by her now that ICE improperly separated her from her kids are patently false and just another attempt to manipulate the system for her own benefit," the spokesperson said.

From a small home on a dirt road in a neighborhood of San Pedro Sula, Honduras, known for gang violence, Perez called her kids every night, telling them everything was going to be OK. Her daughter's dolls and her son's toys sat waiting for them, along with two spots next to her in her bed.

More than two months after she was deported, Perez was finally able to secure the paperwork and passports needed for Febe and Angelo to reunite with her in Honduras, where her oldest son had also joined her. But she told CNN she worries about her children and the life they will have in one of the most violent countries in the world.

"It terrifies me," she said. "I don't like the decisions I'm making, but I'm tied hand and foot."

A Conversation With My Brother

Explain how
you felt being
separated from
your family.

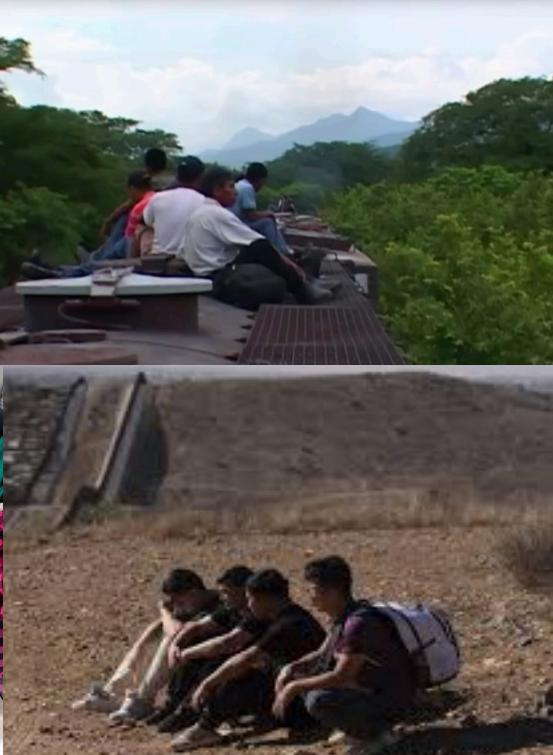
Knowing that my court hearing ended with deportation was the most intense mix of sadness, anger, and disappointment. That day was full of mixed feelings. I felt relieved I would no longer be locked up, but I feared crossing into a country I didn't know. I felt sad leaving everything behind, and I was disappointed in the justice system. I got deported for misdemeanors and later became a felon just for trying to get back the life I left behind.

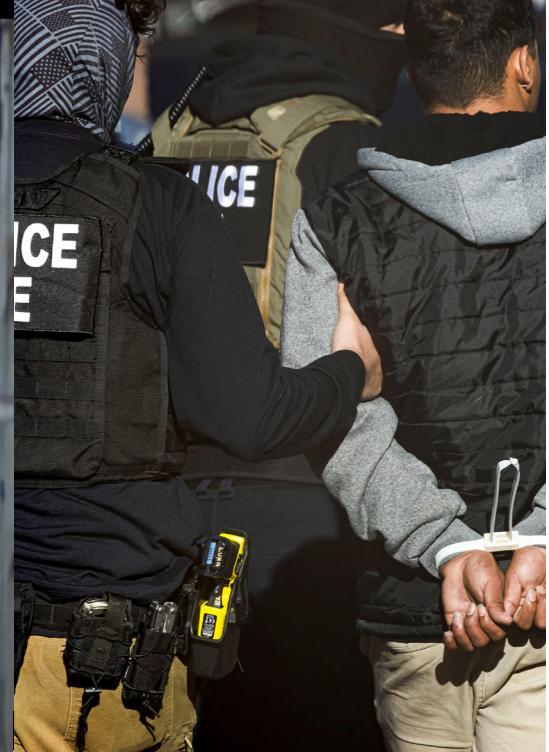
What was your experience trying to cross back over to the US?

Man, my experience trying to cross back to the U.S.—where do I even begin. I met a good friend in CDMX (also deported) and right from the start we were on the same page. I would always say, “Mexico isn’t for me, I’m going back,” and he would always agree. Originally Mexico was so tough on us (story for another time) that we found a coyote to cross us into the U.S. He was charging \$15,000 at the time, so we decided to go with him. We hopped on a plane, went from CDMX to Hermosillo, Sonora, then drove to the coyote’s house in Culiacán, Sinaloa. From there we took a bus to Nogales, Sonora. We were excited, nervous, scared. The plan seemed so simple—“oh, you just walk a few hours and get picked up on the other side.” Yeah right. We got picked up from the motel we were staying at and driven about 5–8 minutes to a house in the desert. Three of their guys were

dropped off in different locations (higher ground with binoculars) so they could guide us by phone, telling us which way to go and when to duck or run. When the truck dropped us off, we walked into the desert for about 2 hours until we reached the wall. There was an open gap due to construction. The guys guiding us told us when the coast was clear, so we went through the gap, crossed the street, and jumped a barbed-wire fence. After all that, we got caught. But that first attempt was a great learning experience.

For the second attempt, we did everything all over again, but this time with a better sense of direction. It took us 2 hours to make it from the border wall to the pick-up spot, which was really just a 30-minute walk. It took longer because we had to maneuver around ICE agents. We finally made it to the pick-up spot, but now we had another problem—we ran out of water. The pick-up driver was a no-show, and it was 9 PM, which meant we had to stay the night in the desert again. The next morning, after my friend was almost passed out, he decided to turn himself in. I was going to join him, but he insisted I go to Texas to reunite with my son. I insisted on staying back, but he wandered off into the tall grass and bushes. He came back 30 minutes later with 2 gallons of water that a lady who lived near the border gave him. A few hours later an ICE official drove near our location. I





heard a drone, and just like that we were caught. There was nowhere to run, just open land and bushes that the officials already had eyes on, so we gave in and got taken to the detention center. We were released a second time due to the pandemic. Before they released me, one ICE official stopped me and said, "You're becoming a frequent, next time we won't let you go."

After that, devastated, my friend moved to Guadalajara. I went back to Mexico City and stayed about a week before trying another border. I went to Reynosa alone. I had a really traumatic experience there—I was locked in a house for a week before getting to cross. I tried twice before getting caught. The first attempt I got stopped halfway across the river, fled back to Mexican territory, taunted the officers, and left. The second

attempt was a day later, through another area of the river. I made it across around 2 AM and stayed put, because they said they would call me and guide me from a rooftop. That phone call took forever, so I told another immigrant with me that I had maps open on my phone and knew where to go. She followed me, and we made it to a street named Zaragoza Avenue, if I'm not mistaken, right by the border river line in Roma, Texas. I got caught shortly after. I evaded officials by hiding in an abandoned house for a couple of hours. I was moving through the neighborhood and stayed put there until they surrounded me. I tried to flee, climbed the house, and it came crashing down with me. They arrested me, and that's when I did the 9 months for re-entry.

A U.S. Citizen Detained by ICE for Three Days Tells His Story

Connor
Friedersdorf

A conversation with George Retes, an Army veteran swept up in a California raid

George Retes is a 25-year-old U.S. Army veteran who served a tour in Iraq. On July 10, while on his way to work as a security guard at a Southern California cannabis farm, he was detained by federal immigration agents, despite telling them that he is an American citizen and that his wallet and identification were in his nearby car, Retes told me. While arresting him, the agents knelt on his back and his neck, he said, making it difficult for him to breathe. Held in a jail cell for three days and nights, he was not allowed to make a phone call, see an attorney, appear before a judge, or take a shower to wash off pepper spray and tear gas that the agents had used, according to the Institute for Justice, a public-interest law firm that is representing Retes. He worried about his two young children and missed his daughter's birthday.

Mistreatment of American citizens by immigration authorities is not new. According to a 2021 Government Accountability Office report, the best available data indicate that Immigration and Customs Enforcement arrested 674 “potential” U.S. citizens, detained 121, and removed 70 during a five year, six-month period that ended in 2020. We don’t yet know if detentions of U.S. citizens are becoming more common in President Donald Trump’s second

term, but news outlets have documented more than a dozen such cases. And the Trump administration has ramped up immigration raids, rolled back due-process protections, and secured funding to quickly hire 10,000 additional ICE officers, all of which creates the conditions for more erroneous detentions—and raises the question of whether ICE can violate the rights of citizens with impunity.

“There must be *some* avenue to hold the federal government or its officers liable for violating George’s constitutional rights,” Marie Miller, one of Retes’s attorneys, told me.

Her strategy is to seek relief for Retes under the Federal Tort Claims Act, a law that allows private parties to sue for negligent or wrongful acts committed by federal employees acting within their job. The government has six months to resolve a claim, after which the claimant can sue. The hope is that the case “will chart a path to holding federal officers or their employer accountable,” Miller explained, “and that blazing the path to accountability will discourage this kind of treatment.” She said that ICE has acknowledged receiving Retes’s claim but has not yet responded.

ICE did not respond to my request for comment about the claim. But a spokesperson for the Department of Homeland Security put out a statement after the raid in which Retes was swept up, saying that the

"US Attorney's Office is reviewing his case, along with dozens of others, for potential federal charges related to the execution of the federal search warrant in Camarillo." Retes was one of more than 360 people who were detained in the operation

—“a mix of workers, family members of workers, protesters and passersby,” according to the Los Angeles Times

Late last month, I spoke with Retes, who detailed his story, starting with the day that his employer, Glass House Farms, one of California’s largest legal cannabis companies, was raided. What follows has been edited for length and clarity.

You were driving to your job as a security guard when you encountered a bunch of men, some with ICE vests on, blocking the road. You’ve described the scene as chaotic. Can you tell me what you saw?

Cars bumper to bumper, people getting out walking down the street to try to see what’s happening, really a logjam. Making my way through was a task, and eventually I drove up to where a line of agents was just in the middle of the street keeping everyone away and blocking the road.

They were raiding your workplace. Were there signs or instructions on what to do?

Nothing. So I pull up a good distance away. I put my car in park. I get out. I say, I’m a U.S. citizen. I’m

just trying to get to work. I have a job just like you guys. I have a family to feed. I got bills to pay. I’m not here to fight you guys. I’m not part of the protest. I’m literally just trying to get to work. Sey didn’t care and immediately got hostile. No one seemed to be in charge. Just all of them yelling at once.

Yelling what?

They were all yelling different things: Work is closed. You’re not going to work today. Get the fuck out of here. Leave, get back in your car. Pull over to the side. And then they started walking toward me in a line. I didn’t want to escalate. I wasn’t there to argue or to fight them. So I decided to get back in my car. I didn’t want any conflict. Sey surrounded my car. I’m telling them, “I’m leaving.” I’m trying to leave. And agents are banging on my driver’s and passenger’s-side windows. Agents in front are telling me to reverse, pull over to the side, while other agents are trying to open my door and telling me to do something completely different, contradicting each other. I reversed out of the lane I was in to get out of the way. Then they let a bunch of their vehicles pass by.

How did the arrest happen?

Sey re-approached my car. I don’t know why they decided to re-approach, but they end up throwing tear gas behind my car. Now I’m kinda just trapped there, with tear gas filling up my car, choking. They’re banging on my window, telling me

to reverse again, and I'm trying to tell them, How do you expect me to reverse when I can't see? You hear me coughing. They just weren't listening; they were still telling me to reverse, still trying to pull my car door open, still contradicting each other. Then one of the agents shatters my driver's-side window, and another agent sticks his arm through it and immediately pepper-sprays me in the face. They dragged me out of the car.

They threw me on the ground. An agent kneels on my back; another kneels on my neck. Others stand around and watch, as if I'm resisting or whatnot, but I wasn't. I was trying to comply.

What were you thinking and feeling as this happened?

I knew the situation I was in. People in uniform abuse their power sometimes. It happens. I've seen it on the news. I always know: hands on the steering wheel; don't fight. It's just what I've been taught. Because I don't want exactly what happened to me to happen. And so it was just crazy. I didn't know what to do. They were just all so contradictory, and none of them was in charge.

What to do was confusing. Then I didn't know what was going to happen. When you have agents on your neck and back, and you're telling them you can't breathe and they don't care, it's scary.

You presumably faced chaotic situations while in the military. Do you think that helped you?

Yeah, I think it helped a lot. Just going through basic training, going through the bullshit together, being in the Army—you gotta keep your military bearing. So I'm pretty good in tense situations.

How long were you on the ground with a knee on your back and your neck?

It felt like forever, if I'm being honest with you. But I couldn't give you a time. I remember them lifting me up and feeling like it was finally over. They walked me down to the Glass House, where I work, and the whole time they're questioning each other, like, why was I arrested? Who arrested me?

What were they going to do with me? Who would take me? They were unsure themselves. I'm just sitting in the dirt for maybe four hours.

After that, they put us [detainees] in an unmarked SUV and take us to a Navy base with this big open field. Every agency you could think of is there: FBI, people from the Navy, National Guard, Homeland Security, ICE. They take our fingerprints, they take our picture, they put real handcuffs on me, they handcuff my wrists and my ankles, and they put us back into the SUVs. Then they take us to downtown Los Angeles to the detention center.

Once you're in the cell, what were you thinking?

It was just me and one other person in a cell, a professor who also got arrested that day. I was in

disbelief. Why was I treated this way? Why am I even here to begin with? What did I do wrong?

And the entire time, my hands and body were burning from the tear gas. It felt like my hands were on fire. And they never let me wash it off. It was bad, and I thought it was never gonna end. They gave us these sandwiches when we first got in there. I took the sandwich out, and I filled up the sandwich bag with water. All night, I was alternating my hands trying to relieve the heat.

That next morning, they finished doing our intake. They do, like, a medical screening and ask how we're doing. Then they sent me to see the psychiatric lady, and based off the answers I gave her, she said it was best that I get put on suicide watch. So until the point I was released, I was alone in a cell with a concrete block and a thin mattress on top. They never turn off the lights there. So it's bright 24 hours a day. And there's always a guard outside the room. It was terrible, feeling so confined, not being able to do anything, and not knowing what was going to happen.

Was there something in particular you were worried about, or just the overall uncertainty?

All I knew is that I was fucking taken. No one told me what I was there for. I thought no one knew—that I was literally gonna just disappear in there and never see my fucking kids again. You hear stories

like that, when they take someone, and they just get lost in the system. It happens. It happens a lot. I didn't want that to happen to me. I mean, I never did anything wrong.

Did anyone ever offer any explanation of why you were being arrested or how long you would be held?

No.

Were you worried about anyone in particular on the outside wondering what happened to you?

My kids. I told them that I'd be back later that day. I never showed up. That thought was in back of my head. My son is 8, and my daughter just turned 3—I missed her birthday while I was there. And not knowing if I was going to see them again and just—that's so scary to think about.

Eventually, they released you without any charges. How did your kids react when you got home?

They're super happy. The biggest smiles, calling for Dad, just a hug. It was the best feeling ever. Literally the best feeling.

And at some point, you decided to pursue legal action against the government. Talk me through that decision.

Because I know what they did wasn't warranted. I know for an absolute fact I did nothing wrong. They were the aggressors the entire time. They were looking for a reason to do something. And I missed my daughter's birthday.

Then you just release me and say,

No charges have been filed. I ask, So I was locked in here, and missed my daughter's birthday for no reason, and you guys just stay silent? It's so shitty and disrespectful. No "sorry," not acknowledging that anything went wrong.

I want change. No one deserves to be treated like this. To have no rights. It's just crazy to think about--that they can just mask up and take someone off the street, no questions asked, and you're just gone. If they feel like it, they can just take you. No. Someone has to be held accountable. I hope

change happens in the way that ICE goes about their business. I hope they get proper training. I hope that they're just not able to racially profile people and just take people off the streets. I hope the government acknowledges that they could do wrong. I hope they take accountability. My case is a perfect chance for the government to say, Okay, we fucked up. You're right. This isn't right. And we're not gonna try to hide it. We acknowledge what we did was wrong.

A Conversation With My Brother

When you were
captured, what
did you
experience?

My experience with all my captures was always anger, sadness, disappointment, and the feeling of, “Am I safer here caught, or out on the other side with strangers in a border city trying to make it back home?” It was always a huge risk. Not to mention, right before my second attempt one

of the guys that crossed me over the river pulled a gun on me after an argument we had, so when I got caught, a part of me felt like maybe it was for the best. So much went through my mind—will I ever be with my family again, will I ever see my hometown again?





The Human Rights Of Non-Citizens: Migrants

David
Weissbrodt

Introduction

Approximately 191 million individuals—or 3% of the world's population—currently reside in a country other than where they were born.¹ The International Labour Organization (ILO) estimates that about 40 million of these persons are migrant workers, and that an additional 50 million are members of a migrant worker's family.² This means that one in every thirty-four persons is a migrant. In industrial countries, one in every ten persons is a migrant.³

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention)⁴ defines a migrant worker as 'a person who is to be engaged or has been engaged in a remunerated activity in a State of which he or she is not a national'.⁵ This definition of a migrant worker, however, should not be interpreted to exclude migrants who may not be properly remunerated for their work in the country where they are living, that is, the host country. Such persons include undocumented migrants and victims of trafficking who are often exploited by unscrupulous recruiters and employers and compelled to work in conditions that

resemble slavery.

Economic globalization has created rapid structural changes and has led to a growing demand for low-wage and low-skilled labor in industrialized countries, encouraging international migration from the lower end of the work force. At the same time there is an increasing demand for workers particularly in developed countries where low birthrates and longer life expectancies are resulting in an aging population. The informal sector (or underground economy) is expanding, even in industrialized countries. The pressure to be competitive encourages many enterprises to employ cheap and often irregular migrant workers in sectors such as agriculture, garment manufacturing, domestic service, and the sex industry. Many employers in the informal economy avoid payroll taxes, thus remaining outside the purview of labor standards and labor statistics. Migrant workers in these situations are extremely vulnerable to human rights abuses.⁶ Many of these jobs are subject to irregular hours and seasonal layoffs—jobs usually shunned by national laborers.

The human rights of migrants

From its origins as part of the

League of Nations, the ILO—the UN

specialized agency that formulates international labor standards—has developed standards relating to the protection of migrants and their families. The Preamble to the ILO Constitution, drafted in¹⁹¹⁹, emphasizes the ‘protection of the interests of workers when employed in countries other than their own’.⁷ The ILO has adopted a number of instruments relevant to the rights of migrant workers and their families. All eight of the fundamental ILO conventions, which provide for freedom of association and the right of collective bargaining,⁸ elimination of all forms of forced labor,⁹ abolition of child labor,¹⁰ and the elimination of discrimination,¹¹ apply to migrant workers regardless of their legal status. These conventions offer an important source of protection for migrant workers because they are widely ratified by both receiving and sending States. Moreover, according to the¹⁹⁹⁸ ILO Declaration on Fundamental Principles and Rights, all ILO Member States have an obligation to promote and realize these core labor standards even if they have not ratified the conventions.¹² Following this logic, the ILO Committee on Freedom of Association has ruled that the right of freedom of association is part of the fundamental aims and purposes of the ILO Constitution, and that governments do not have to ratify specific conventions in order to have their laws subject to scrutiny

by the ILO.¹³

Two ILO conventions address migrant workers rights directly. ILO Convention 97¹⁴ focuses on the standards applicable to the recruitment of migrants for employment and their conditions of work in the host country. Convention 143,¹⁵ for its part, focuses on clandestine migration and is the first multilateral treaty to address the rights of irregular migrants directly.

Both conventions make headway with regard to promoting the principle of equality of treatment between migrants and national workers. Convention 97 provides migrant workers legally within a State’s territory with equality of opportunity and treatment with national workers in respect of employment rights, trade union rights, accommodation rights, and social security programs.¹⁶ This principle is narrowly defined, however, in that equality of treatment is only prescribed when it is ‘regulated by law or regulations, or is subject to the control of the administrative authorities’.¹⁷ Convention 143 expands on this principle by requiring States to ‘promote and guarantee.... equality of opportunity and treatment in respect of equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully

within its territory.¹⁸

ILO Conventions 97 and 143 provide migrant workers and their families lawfully in the host State with important protections. Undocumented migrants, however, receive substantially less protection under these conventions. Convention 97 protects only migrants lawfully present in the host State.¹⁹ Convention 143 guarantees equal treatment for undocumented migrants, but only with respect to rights arising out of past employment ‘as regards remuneration, social security, and other benefits’.²⁰ It also requires States to respect the basic human rights of all migrant workers,²¹ but these do not include the right to equal opportunity and treatment provided to migrants legally present in the host State.

Migrants are confronted with particular difficulties with regard to social security programs, as enjoyment of these rights are usually tied to periods of employment, contributions, and residency. ILO Convention 118²² provides migrants with the right of equality of treatment with regard to all nine types of social security.²³ The Convention, however, operates on the principle of reciprocity: a State must only provide equality of treatment for each type of social security that it accepts, and only to the nationals of States that have also ratified the Convention.

Despite the protections they provide, the effectiveness of the ILO

Conventions is restricted by low ratification rates.²⁴ This situation is unlikely to improve in the near future as there has been little active promotion of ILO Conventions 97 and 143 in the last two decades.

In addition to the ILO Conventions, the UN has developed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention).²⁵ The Convention entered into force in July 2003 and protects *all* migrant workers and their families regardless of their legal status. Nonetheless, the rights granted to documented and undocumented migrant workers are not identical.

The Migrant Workers Convention provides for the following list of rights and liberties for all migrant workers and their families, regardless of immigration status: non-discrimination;²⁶ freedom to leave any country and to enter their country of origin;²⁷ the right to life;²⁸ freedom from torture and ill-treatment;²⁹ freedom from slavery or forced labor;³⁰ freedom of thought, conscience, and religion;³¹ freedom of opinion and expression;³² freedom from arbitrary or unlawful interference with privacy, family, home, correspondence, or other communications;³³ property rights;³⁴ liberty and security of person;³⁵ the right of migrants deprived of their liberty to be treated with humanity;³⁶ a fair and public

hearing by a competent, independent, and impartial tribunal;⁵⁷ prohibition of retroactive application of criminal laws;⁵⁸ no imprisonment for failure to fulfill a contract;⁵⁹ no destruction of travel or identity documents;⁴⁰ no expulsion on a collective basis or without fair procedures;⁴¹ the right to consular or diplomatic assistance;⁴² the right to recognition as a person before the law;⁴³ equality of treatment between nationals and migrant workers as to work conditions and pay;⁴⁴ the right to participate in trade unions;⁴⁵ equal access to social security;⁴⁶ the right to emergency medical care;⁴⁷ the right of a child to a name, birth registration, and nationality;⁴⁸ and equality of access to public education.⁴⁹ In addition, States parties must ensure respect for migrants' cultural identity;⁵⁰ the right to repatriate earnings, savings, and belongings;⁵¹ and information about rights under the Convention.⁵²

In an attempt to discourage illegal migration,⁵³ the Convention provides additional rights to migrant workers who are documented or in a regular situation. Indeed, for migrant workers and their families in a documented or regular situation, the Convention provides for: the right to liberty of movement in the territory of the State of employment;⁵⁴ equal access to education, vocational guidance, housing, social and health services, and cultural rights;⁵⁵ equality of treatment with nationals in respect of protection against dismissal and

access to unemployment benefits;⁵⁶ right to vote, be elected, and participate in the public affairs of the State of origin;⁵⁷ and the right to have a family.⁵⁸

In general, the Migrant Workers Convention does not create new rights for migrants, but instead reaffirms basic human rights norms found in existing treaties and embodies them in an instrument applicable to migrant workers and their families. The Convention takes into account relevant international labor standards such as ILO Conventions 97⁵⁹ and 143,⁶⁰ as well as the Slavery Conventions.⁶¹ The Convention also refers to other instruments, such as the International Covenant on Economic, Social and Cultural Rights,⁶² the International Covenant on Civil and Political Rights,⁶³ UNESCO's Convention Against Discrimination in Education,⁶⁴ and the Convention on the Rights of the Child.⁶⁵

The Migrant Workers Convention innovates by defining the rights that apply to specific categories of migrant workers and their families, and presents a division of migrant workers into sub-categories—‘frontier workers’, seasonal workers, seafarers employed on vessels registered in a State other than their own, workers on offshore installations which are under the jurisdiction of a State other than their own, itinerant workers, migrants employed for a specific project, and

self-employed workers.

The Convention also imposes a series of obligations on States parties in the interest of promoting ‘sound, equitable, humane, and lawful conditions’ for the international migration of workers and their families.⁶⁶ These requirements include the establishment of rules for the recruitment of migrant workers;⁶⁷ exchange of migration information with other States parties;⁶⁸ establishment of rules regarding repatriation;⁶⁹ and measures to be taken to combat clandestine migration.⁷⁰

Compliance with the Migrant Workers Convention is monitored by a panel of experts serving as members of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Committee).⁷¹ The Committee is charged with reviewing the reports submitted by States parties and offering comments to each State regarding its compliance with the Convention.⁷² Under the treaty, a State party may recognize the competence of the Committee to receive and consider complaints from individuals subject to its jurisdiction who claim that their rights under the Convention have been violated by the State party.⁷³ It should be noted, however, that no State party to the Convention has yet issued a declaration authorizing the Committee to receive complaints from individuals.⁷⁴

The practical impact of conventions which protect migrants has

been limited by low ratification numbers⁷⁵ and a striking disparity in ratifications between ‘sending States’ (States that primarily send migrants) and ‘receiving States’ (States that primarily receive migrants).⁷⁶ As of November 2007, for example, the Migrant Workers Convention has been ratified by only thirty-seven nations, most of which are primarily States of migrant origin, such as Mexico, Morocco, and the Philippines. None of the major migrant-receiving countries have ratified the Convention, however, leaving the vast majority of the world’s migrants without the Convention’s protection. It should be noted that there was a surge in ratifications of the Migrant Workers Convention—in 2005 alone, seven nations became party to the Convention, but no nations ratified in 2006 and only two have ratified so far in 2007.

The Migrant Workers Convention’s low rate of ratification is sometimes attributed to the breadth and complexity of the Convention’s protection. Many of the Convention’s provisions, for example, apply equally to both legal and illegal migrant workers, a fact that may discourage ratification by States that are eager to combat unlawful immigration. The breadth and complexity of the Migrant Workers Convention, however, suggest that the most significant problem with regard to the rights of migrants is not one of

conceptualizing or codifying those rights. Indeed, since the rights of migrants have already been comprehensively enunciated, the biggest challenge is one of persuading States to adopt and implement international standards regarding migrants—particularly the Migrant Workers Convention. To be sure, the entering into force of the Migrant Workers Convention is cause for optimism, but it remains to be seen if its effective implementation will follow.

Before the Migrant Workers Convention entered into force, migrant workers did, of course, enjoy protections under several international human rights treaties. For instance, the Preamble to the Migrant Workers Convention acknowledges that the treaty takes into account ‘the principles embodied in the basic instruments of the United Nations concerning human rights’.⁷⁷ The principal UN human rights treaties generally do not make distinctions between nationals and non-nationals with respect to the rights they provide. This position is illustrated by the expansive language of the Universal Declaration of Human Rights (Universal Declaration),⁷⁸ which guarantees civil, political, economic, social, and cultural rights to ‘everyone.... without distinction of any kind’.⁷⁹

The International Covenant on Civil and Political Rights (Civil and Political Covenant)⁸⁰ guarantees *everyone* freedom from human rights

abuses such as arbitrary killing,⁸¹ torture and inhuman treatment,⁸² slavery and forced labor,⁸³ and arbitrary arrest and detention.⁸⁴ In addition, it provides all persons with the right to freedom of thought and religion,⁸⁵ freedom of association,⁸⁶ and the right to marry.⁸⁷ While the Civil and Political Covenant’s non-discrimination clause (Article 2(i)) does not explicitly prohibit discrimination based on citizenship or nationality, the Human Rights Committee—the body of experts that issues authoritative interpretations of the Civil and Political Covenant—has found that ‘aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant’⁸⁸ and that ‘the guaranteee (of non-discrimination) applies to aliens and citizens alike’.⁸⁹ The Civil and Political Covenant, however, does limit certain rights—such as freedom of movement and political participation rights—to citizens and other such persons lawfully present in a State.⁹⁰

The International Covenant on Economic, Social and Cultural Rights (Economic Covenant)⁹¹ also has wide application, guaranteeing everyone the right to work;⁹² the right to just and favorable conditions of work;⁹³ the right to establish trade unions;⁹⁴ and to an adequate standard of living including adequate food, clothing, housing, and the continuous improvement of living conditions.⁹⁵ The Economic

Covenant, however, may provide less protection for migrants than the Universal Declaration or the Civil and Political Covenant for a number of reasons. First, the rights contained in the Economic Covenant are to be realized progressively, to the maximum extent allowed by a given State party's available resources.⁹⁶ Secondly, the Economic Covenant's non-discrimination clause,⁹⁷ as with the Civil and Political Covenant provision, does not explicitly prohibit discrimination based on citizenship or nationality. Unlike the Civil and Political Covenant, the Economic Covenant's monitoring body has not yet issued a comment clearly stating that the non-discrimination provision protects migrants.

Migrants who are victims of human trafficking received new protections under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)⁹⁸ and the United Nations Convention against Transnational Organized Crime.⁹⁹ In contrast to traditional law enforcement approaches, these instruments have sought to view trafficked migrants as victims rather than as criminals.¹⁰⁰ Article 2 of the Trafficking Protocol, for example, obligates States parties to protect the physical safety, privacy, and identity of victims; assist victims with legal procedures; and consider implementing measures for physical and social rehabilitation of the victim. The

Protocol also requires States parties to facilitate and accept the return of trafficking victims who had a right of permanent residence in the State at the time of the victims' entry into the receiving State.¹⁰¹

Other core international human rights treaties provide additional protections to migrants and their families. The Convention Against Torture¹⁰² prohibits *refoulement* (forcible return to a home State) of any person, regardless of citizenship or legality of presence in the host State, to a country where they are at risk of torture.¹⁰³ States that ratify the Vienna Convention on Consular Access¹⁰⁴ undertake to respect the right of all migrants to consular access and protection. Additional protections can be found in the Convention on the Rights of the Child¹⁰⁵ and the Convention on the Elimination of All Forms of Discrimination against Women.¹⁰⁶

In addition to the global human rights instruments, a 2003 decision of the Inter-American Court of Human Rights supported the rights of migrant workers regardless of their legal status in a host State. In September 2003 the Inter-American Court of Human Rights held that non-discrimination and the right to equality are *jus cogens* that are applicable to all residents regardless of immigration status, and hence that governments cannot use immigration status as a justification for restricting the employment or labor rights

of unauthorized workers, such as rights to social security.¹⁰⁷ The Court found that governments do have the right to deport individuals and refuse to offer jobs to people who do not possess employment documents, but held that once an employment relationship has been initiated, even unauthorized workers become entitled to all the employment and labor rights that are available to authorized workers.¹⁰⁸ Also in 2003, the International Labour Organization's Committee on Freedom of Association ruled that freedom of association is part of the fundamental aims and purposes of the ILO Constitution, and that governments do not have to ratify specific conventions guaranteeing these rights in order to have their laws subject to scrutiny by the ILO.¹⁰⁹ In addition, the Committee found that remedies available to migrant workers in the United States were 'inadequate to ensure effective protection against acts of anti-union discrimination'.¹¹⁰ This Committee held that protection must be provided whether or not the workers are documented.

In nearly every country, migrant workers have been captured and confined in deportation jails. The Civil and Political Covenant provides limitations on immigration detention. In Australia,¹¹¹ the Human Rights Committee found that Australia's practice of detaining Southeast Asian 'boat people' violated the Covenant. In 1989 a Cambodian national arrived

in Australia by boat, applied for refugee status, and was kept in detention for four years. The Human Rights Committee found that his detention violated the Covenant's Article 9, paragraph 1 (arbitrary detention), because there were no specific grounds justifying detention for four years. The Committee further noted that immigration detention must be open to periodic review. In addition, the Human Rights Committee found that Australia had violated the Covenant's Article 9, para 4 (access to a court), because Australian law did not allow courts to order the release of 'boat people'.¹¹²

Under the European Convention on Human Rights, immigration detainees cannot be indefinitely detained if they cannot be deported.¹¹³ In *Chahal v United Kingdom*, the British Government wanted to deport Mr Chahal to India for 'national security' reasons. The European Court of Human Rights held that there was a real risk that Chahal would be subject to torture or similar violations of Article 3 of the European Convention and consequently could not be deported. Therefore, Chahal could no longer be detained 'with a view to deportation' and was subsequently released. Following 11 September 2001, the United Kingdom passed the Anti-Terrorism, Crime and Security Act 2001 providing that non-UK nationals suspected of terrorism could be indefinitely detained if they could

not be deported. In *A (FC) and Others v Secretary of State for the Home Department*,¹¹⁴ nine terrorism suspects successfully challenged their detention under the Act and the UK's derogation from Article 5 of the European Convention on Human Rights.

The US Supreme Court has similarly interpreted immigration statutes to prohibit indefinite detention of non-citizens who cannot be removed from the US. In *Zadvydas v INS*,¹¹⁵ a permanent resident was ordered to be removed from the US after being convicted of a number of crimes. Under the 'post-removal period detention' statute, 8 USC § 1231(a) (6) (2005), Zadvydas was kept in detention until he could be deported. No country, however, agreed to accept Zadvydas. The Court held

that after six months, the 'post-removal period detention' requires a detainee to be released if there is no significant likelihood of removal in the reasonably foreseeable future. In *Clark v Martinez*,¹¹⁶ the Supreme Court extended *Zadvydas* to cover inadmissible non-citizens paroled into the United States. The defendants in *Clark*, however, were convicted of crimes in the US and were thus ineligible to adjust to permanent resident status. As a result of those convictions, the defendants were ordered removed but could not be repatriated because the Cuban Government refused to accept them. The Court held that the 'postremoval period detention' statute, 8 USC § 1231, also limited the length that an unadmitted non-citizen could be detained.

Mechanisms for the protection of migrants

Migrants sometimes gain diplomatic protection from their home State when their human rights are compromised or when migrants are otherwise in trouble. Indeed, when a State arrests a migrant worker, the Vienna Convention on Consular Relations requires the arresting State to contact the consular officials of the detainee's home State, who may then act to safeguard the interests of its nationals. The importance of this practice has grown as the

number of undocumented migrants has increased. In an important case demonstrating the essential role of consular officers in the protection of migrants, the International Court of Justice ruled in *Avena & Other Mexican Nationals* that the US was in breach of the Vienna Convention by holding Mexicans in custody without ensuring consular access.¹¹⁷ The Mexican detainees were irregular migrants who had been charged and convicted of capital offences. In addition to

assisting with the defense of Mexican nationals, the activities of Mexican consular officers provide an example of how States can protect their citizens abroad by issuing identity cards to documented and undocumented migrants so that the migrants can open bank accounts and obtain driving licenses. The embassies of several South Asian countries provide services to their nationals who are migrant workers, such as shelter, medical services, documentation replacement, and legal action to obtain wages and compensation.¹¹⁸

While migrants are sometimes provided diplomatic protection on an individual basis, treaty-monitoring bodies may also oversee the protection of migrants. The Committee on Migrant Workers held its first session in March 2004, and is beginning to review reports from States parties on the steps taken to implement the Migrants Convention. Other treaty-monitoring bodies have also been known to advocate for the rights of migrants. For example, the Human Rights Committee—which monitors the International Covenant on Civil and Political Rights—expressed concern over the failure of the Dominican Government to protect Haitians living or working in the Dominican Republic from serious human rights abuses such as forced labor and cruel, inhuman, and degrading treatment.¹¹⁹ In addition, the Committee has requested that Switzerland ensure that forcible

deportations of migrants should not violate the life and dignity of the person.¹²⁰ The Committee expressed concern that excessive force had been used during several deportations, in at least one case resulting in the death of the deportee.¹²¹

In addition to treaty-monitoring bodies, a number of other entities exist which monitor the treatment of, and advocate for, migrants. In 1997 the Commission on Human Rights established the Working Group of Intergovernmental Experts on the Human Rights of Migrants. The Working Group consisted of five intergovernmental experts with the mandate to gather all relevant information from governments, NGOs, and any other relevant sources on the obstacles existing to the protection of the human rights of migrants. In addition, the Working Group submitted reports to the Commission recommending strategies to strengthen the promotion and protection of the human rights of migrants. In 1999 the Working Group was replaced by the Special Rapporteur on the Human Rights of Migrants, who could undertake country visits and otherwise be more responsive to the problems of migrants.

Since 1999 the UN Special Rapporteur on the Human Rights of Migrants has examined ways to improve the protection of migrants, particularly migrants in undocumented or irregular situations. The Special Rapporteur gathers

information on violations of the human rights of migrants and their families; formulates recommendations to prevent and remedy violations of the human rights of migrants; promotes the implementation of the Migrant Workers Convention; gives special attention to occurrences of discrimination and violence against migrant women; and reports annually to the UN Human Rights Council. Between 2000 and 2005 the Special Rapporteur conducted country visits to Burkina Faso, Canada, Ecuador, Iran, Italy, Morocco, Peru, the Philippines, Spain, and the US/Mexico border.

In 2003 the UN Secretary-General and a number of governments initiated the Global Commission on International Migration (GCIM), which is composed of nineteen independent experts. The GCIM has held several regional hearings with intergovernmental bodies and NGOs to analyze gaps in current policy with regard to migration and to present recommendations to the UN Secretary General, governments, and other interested groups.

The Inter-American Commission on Human Rights (IACHR) also created a Special Rapporteur on the Human Rights of Migrant Workers. The IACHR Special Rapporteur generates awareness of States' duty to respect the human rights of migrant workers and their families; makes recommendations to OAS member States on areas related to protecting

and promoting the rights of migrant workers and families; prepares specialized reports and studies; and responds to complaints concerning the violation of migrants' human rights.

The Berne Initiative was initiated by the Swiss Federal Office for Refugees in 2001 to establish a dialogue between governments on migration issues and is managed by the International Organization for Migration (IOM). The goal of the Berne Initiative is to establish a consultative process for obtaining better management of migration at regional and global levels through enhanced cooperation between States. The Berne Initiative enables governments from all regions of the world to identify their different policy priorities and offers the opportunity to develop a common orientation to migration management. International symposia on migration were held in 2001 ('Berne I') and 2004 ('Berne II'). At the symposia, nearly 100 government officials as well as experts from intergovernmental organizations, NGOs, and academia reviewed current migration dynamics and trends, including demographic developments, the impact of globalization on migration, foreign labor demand, irregular migration, trafficking in human beings, the gender dimension of migration, and other aspects of international migration. The views expressed at the symposiums were adopted into an International

Agenda for Migration Management (IAMM).¹²²

In most regions of the world, there are intergovernmental consultative processes on migration, including: the Commonwealth of Independent States (CIS) Process;¹²³ the Puebla Regional Consultations on Migration and Asylum;¹²⁴ the Dakar Process; the Migration Dialogue for Southern Africa (MDSA);¹²⁵ the Conference on Migration Policy in Central Asia;¹²⁶ and the South American Conference on Migration. While these fora are important opportunities for regional intergovernmental dialogue on migration, these processes have nonetheless been criticized for treating migration as a serious threat to national security and focusing on border control and intelligence cooperation instead of human rights and social services.

National trade unions—including the AFL-CIO in the US and the TUC in the UK—are beginning to welcome and organize migrant workers, rather than to exclude them. The AFL-CIO has in recent years played a leading role in asserting migrants' rights in the US. For example, in 2003 the AFL-CIO sponsored the Immigrant Workers Freedom Ride. Modeled after the Freedom Rides of the 1960s, which challenged racial segregation in the Deep South of the US, the Immigrant Workers Freedom Ride mobilized nearly 1,000 migrant workers representing dozens of nationalities who traveled more than 20,000

miles and stopped in more than 100 cities across the country as part of a national coalition of unions and community groups. The AFL-CIO supports the right of migrant workers in the US to be 'legalized' and to live and work in the US, as well as the right of migrant workers to be united with their families in the US.

By upholding standards enunciated in human rights instruments, international and regional courts may also have a role in protecting migrants. As explained in Chapter 3, Section L, the Inter-American Court of Human Rights has confirmed the applicability of international labor standards to migrants. Also, discussed earlier in this chapter, the Court held that non-discrimination and the right to equality are *jus cogens* that are applicable to all residents regardless of immigration status.¹²⁷ Additionally, and as set forth in the introduction to this book, the Inter-American Court of Human Rights in *Bosico v Dominican Republic*¹²⁸ has forbidden racial discrimination in the granting of citizenship.¹²⁹ In the *Bosico* decision, the Inter-American Court found that the Dominican Republic's discriminatory application of birth registration and nationality laws rendered children of Haitian descent stateless and effectively deprived them of a number of essential human rights such as the right to a name, the right to equal protection before the law, and the right to education.¹³⁰ The Court determined that the Dominican

Government should: create an effective procedure to ensure that birth certificates are granted to all children born on Dominican territory regardless of parental citizenship or migratory status; allow all children born on Dominican territory equal access to State education; and compensate the parties and their families for the injuries they had suffered.¹⁵¹

In addition to international and regional courts, national courts should also uphold protections for migrants that are enunciated in national and international laws. As discussed earlier in this chapter, the US Supreme Court, in 2005, upheld such protections in *Clark v Martinez*.¹⁵² In 1980 over 100,000 Cubans left the port of Mariel and traveled in small boats to the US. Those 'Mariel' Cubans were paroled into the US and given the opportunity to become permanent residents after one year. The defendants in *Clark*, however, were convicted of crimes in the US and were thus ineligible to adjust to permanent resident status. As a result of those convictions, the defendants

were ordered removed but could not be repatriated because the Cuban Government refused to accept them. The Court held that the 'post-removal period detention' statute, 8 USC § 1231, limited the length of time during which an unadmitted non-citizen could be detained. Because the 'Mariel' Cubans in *Clark* had been detained for six months and there was no significant likelihood of removal to Cuba, the defendants were released. The limitations on indefinite detention in *Clark*—such as the six-month detention period—are similar to those found in the Fourth Geneva Convention for administrative detainees in occupied territories.¹⁵³ As noted earlier in the book, however, the US Supreme Court has not always upheld the rights of migrants and non-citizens. For example, in 1993 the US Supreme Court ruled in *Sale v Haitian Centers Council*¹⁵⁴ that Article 33 of the Convention relating to the Status of Refugees,¹⁵⁵ which prohibits *refoulement*,¹⁵⁶ does not apply on the high seas.¹⁵⁷

The plight of migrant workers

Migrant workers are often treated as criminals or at least characterized as 'illegal'. Migrants make convenient scapegoats for crime, unemployment, disease, and other social ills that usually result from domestic causes, including a lack of adequate

government services. As a result, migrants are often subject to situations that force them to endure—among other things—(1) housing and employment discrimination; (2) abuse; (3) arbitrary expulsion; and (4) high-risk travel.

Housing and employment discrimination

Migrant workers often live in conditions that are unsatisfactory and face serious accommodation problems. Although they contribute to social security programs, migrant workers and their families often do not enjoy the same benefits and access to social services that are enjoyed by citizens of the host country. Migrants and their families are often excluded from education and denied access to health care, including emergency care. They are also subject to discrimination in areas such as housing and employment. For example, in Norway a migrant went to a housing service in order to find an apartment.

He noted that about half of the housing advertisements clearly indicated that persons from certain groups were not desired as tenants. Statements like ‘no foreigners desired’, ‘whites only’, and ‘only Norwegians with permanent jobs’ punctuated the housing lists.¹⁵⁸

Discrimination in employment against migrant workers includes exclusions or preferences with regard to types of jobs that are open to migrants, difficulty in gaining access to vocational training, and different standards that are often applied to citizens and migrant workers with regard to job tenure.

Abuse

Migrant workers frequently face outright abuse. Migrant workers employed as domestic servants, for example, have been subjected to debt bondage, illegal employment practices, passport deprivation, illegal confinement, rape, and physical assault. In some cases, the treatment of migrant workers constitutes forced labor. The ILO has identified a number of abuses associated with forced labor, including threats of physical abuse; physical abuse; confinement or restriction of movement; debt bondage; withholding payment or excessive wage

reductions; retention of identity documents; or threats of denunciation to authorities.¹⁵⁹

Troubling reports have emerged concerning the ill-treatment of migrant workers in Saudi Arabia, many of whom have suffered human rights abuses inflicted by oppressive employers, police, and judges. In particular, Saudi Arabia's criminal justice system has proven to be unfair in its treatment of migrant workers who have been accused of crimes, many of whom were not informed of their rights under the law, and others who have been tortured until a confession

was forcibly obtained. An undetermined number of migrants have been sentenced to death in Saudi Arabia and are awaiting execution. Saudi authorities often refuse to disclose the details of trials involving migrant workers or the evidence used to support convictions. In some cases, the condemned persons do not know that they have been sentenced to death and their embassies are informed only after the execution. The bodies are often not returned to the families.¹⁴⁰

Since most countries do not provide legislative protection against labor discrimination of migrants, it is often difficult for migrant workers to

obtain legal protection from abuse. Kuwait and Saudi Arabia—two countries with many migrants—exclude all migrant workers from national social and labor laws. It is usually the case that migrant workers cannot assert their rights for fear of retribution and, as non-citizens, have no way of participating in the political process so as to assure legal protection. Further, migrants may be unfamiliar with the national language, laws, and practices, and thus have little knowledge regarding their rights. As a result, they are often left without the effective means to challenge—or seek remedies for—violations of their human rights.

Arbitrary detention and expulsion

In virtually every country, migrant workers have been captured and confined in deportation jails. Many migrants detained in deportation jails describe severe overcrowding, inadequate sanitation facilities, and corporal punishment. In the United States, the Department of Homeland Security has handed over more than 60% of migrant detainees to local sheriffs and other jail officials. These migrant detainees are held in jails inappropriate to their non-criminal status where they may be mixed with accused and convicted criminal inmates—and where they are sometimes subjected to physical ill-treatment and inadequate conditions of

confinement. Local jails profit from Homeland Security detainees. For example, jails charge the federal government between \$35 and \$100 per day, per detainee. Migrant detainees are often unable to contact their families or obtain legal representation. In some cases, migrant detainees cannot be deported because they are stateless, or because neither their own country nor any third country will accept them. In these cases, detainees are sometimes held indefinitely and do not know when, if ever, they will be released.¹⁴¹ Debate about the legality of immigrant detention and deportation practices has initiated the development of national and

international standards that to some extent address the arrest, detention, and deportation of immigrants.¹⁴²

In addition to indefinite detention and deportation, migrant workers may also be subjected to arbitrary expulsion. Where migrant workers face expulsion orders, they are frequently denied the right to challenge those orders in court. Some Burmese migrant workers flee their homeland for political as well as economic reasons, and face serious reprisals if they are expelled from host countries such as Thailand. In 2003, Thai authorities expelled as many as 10,000 Burmese migrants each month on the grounds that they were illegal workers. While some of these deportees are able

to bribe their way back to Thailand, others have faced persecution or ill-treatment by Burmese government soldiers, or by other ethnic-based armed groups along the border. Some deportees are transported directly to holding centers in Burma that are operated by the Burmese military. The Burmese authorities do not allow NGOs or other monitors to ensure that the deportees are not being ill-treated, and there is concern that returned Burmese migrants of particular ethnic groups may be targets for ill-treatment.¹⁴³ In such cases, the Thai Government violates the principle of *non-refoulement* by deporting Burmese migrants to persecutory situations.

Irregular movement and high-risk travel

Hundreds of thousands of men and women leave their homes each year in search of opportunities to earn wages and to improve the economic status of their families. As migration flows have increased, many governments have responded by tightening legal controls and fortifying geographical borders. Studies and experience demonstrate, however, that efforts to obstruct or deter migration have had negative consequences. Tighter border controls have only partially curbed the flow of migrants, and these controls have frequently made migrants more vulnerable to

irregular and life-threatening forms of transport.

Undocumented migrant women are particularly at risk of being exploited by traffickers. Indeed, traffickers often demand sexual favors or rape the trafficked women. When authorities intercept trafficked persons, they are vulnerable to excessive use of force and cruel or degrading treatment, and are at times accused of being smugglers and traffickers themselves. Unfortunately, when trafficked persons attempt to return to their homes, countries of origin are often unwilling to acknowledge

the nationality of their citizens who have been deprived of passports and identification documents.

Undocumented migrant workers and ‘irregular migrants’—persons who have been victims of human smuggling or trafficking—are particularly vulnerable to deaths that result from border control practices and policies. Migrants are ‘irregular’ if they have entered illegally by avoiding border controls or by using false documents; by posing as a student or tourist while intending to work; or by continuing to work after the termination of an employment contract. Undocumented migrants may live under substandard conditions, face raids on their homes and workplaces, and interrogations in which they may be subjected to abuse, inhuman, or degrading treatment, and violations of the right to privacy. Their encounters with the police may go unnoticed because they have no relatives to raise questions about their detention or even death. Even when they suffer violations of their human rights, they may not seek judicial remedies because of fear of deportation. Undocumented migrants’ lack of legal status in the host State may compel them to accept terrible working and living conditions. Hence, if undocumented workers can find work, they are often employed in the informal economy, in which employers can exploit their fear of being reported to the authorities and may subject them to conditions that

resemble slavery. Without documentation, they also cannot obtain access to basic government services like health care and education.¹⁴⁴

States’ responses to irregular migration have ranged from mass amnesties to mass deportations or criminal prosecution. In 2002 Malaysia conducted mass deportations of undocumented migrants from Bangladesh, India, Indonesia, and the Philippines. During those deportations, dozens of migrant workers died of dehydration and disease while stranded in transit areas for months.¹⁴⁵ In 2004 Malaysian authorities announced that it would begin arresting migrants, perform a 14-day investigation, and press charges against undocumented migrants in federal courts. Those migrants found guilty of working illegally could be subsequently caned, fined, and/or imprisoned indefinitely until deportation. In contrast, the European Union granted citizenship to thousands of irregular migrants from East and Central Europe in 2004—citizens of the new accession States who were illegally working in EU member States.¹⁴⁶ Similarly, Spain announced in February of 2005 that amnesty would be granted to nearly 800,000 undocumented migrants.¹⁴⁷

According to the IACHR Special Rapporteur on Migrants, States have not addressed the underlying reasons which motivate high-risk travel. Tighter border controls have resulted in an increased loss of life among

migrants. For example, the stricter border controls near urban areas in California and Texas have resulted in increased attempts by migrants to cross in less-patrolled and less-accessible areas in New Mexico and Texas, including deserts, canyons, streams, and mountains. From 1993 to 1997, the number of migrant deaths tripled, resulting from asphyxia, hypothermia, dehydration, and drowning.¹⁴⁸ Additionally, from 1999 to 2003, more than 4,000 migrants drowned in

the Strait of Gibraltar attempting to cross from Morocco to Spain.¹⁴⁹ In many other instances migrants have died while attempting to cross a border unnoticed, sometimes running out of food and water while at sea, or suffocating while hiding in refrigerated trucks or in the baggage carriers of aircraft. In Greece, undocumented Albanian migrants have died as a result of excessive force used by border guards.¹⁵⁰

The plight of women migrants

Over the last four decades, women have accounted for nearly half of all international migrants.¹⁵¹ As of 2000, women's share of total international migration was 49%, up from 46% in 1960.¹⁵² While many women migrate to accompany or join family members, increasing numbers of female migrants migrate on their own and are the principal breadwinners for themselves and their families.¹⁵³ Most move voluntarily for economic reasons, but a significant number are forced migrants who have been trafficked or are fleeing conflict, natural disasters, or persecution.¹⁵⁴

While migration can empower women with new economic opportunities and increased independence, many migrant women face serious discrimination and abuse in their host countries. Migrant women face discrimination and abuse due to their

status as both women and migrants. Employment opportunities are often limited to occupations that are stereotypically female-dominated, and women migrants frequently have no option but to take work as domestic workers, cleaners, sweatshop laborers, sales girls, or entertainment or sex workers.¹⁵⁵ Many of these jobs are in the informal economy and are either not covered—or only partially covered—by the host country's labor code and social security provisions.¹⁵⁶ In addition, many migrant women lack the legal status or information necessary to challenge abusive practices by employers, supervisors, spouses, or co-workers.¹⁵⁷

The experience of migrant women as domestic workers illustrates the challenges that many migrant women face. Domestic work is the single largest employment category for women

migrants.¹⁵⁸ Working conditions for domestic workers can vary widely: some women are treated as members of their employer's family, while others are exploited and subjected to conditions that may amount to virtual slavery and forced labor.¹⁵⁹ Domestic work is often specifically excluded from part or all of the host country's labor code, resulting in excessive hours with no rest days or holidays. Some immigration and labor laws foster dependence by not allowing women to change employers or requiring their visas to be sponsored by a national.¹⁶⁰ Domestic workers are frequently exposed to sexual harassment, violence, and other forms of abuse and are in some cases physically or legally restrained from leaving the

employer's home by means of threats, actual violence, or the withholding of pay or identity documents.¹⁶¹ For example, more than 500,000 female domestic workers in Thailand have been recruited or have migrated from villages in nearby countries such as China, Cambodia, Laos, and Myanmar (Burma). These migrant women confront numerous obstacles that limit their ability to leave abusive situations or to seek redress. They often suffer severe restrictions on their freedom of movement; psychological and physical abuse, including sexual abuse; and prohibitions on practicing their religion. These women typically work 16 to 18-hour days, without holidays or overtime pay, and sometimes have their wages withheld completely.¹⁶²

Conclusion

Despite the legal protections offered by the Migrant Workers Convention and other relevant human rights treaties, migrant workers remain vulnerable to discrimination and other human rights abuses. Unfortunately, the racism and xenophobia that fuel anti-migrant discrimination not only affect migrants themselves, but also generations of their descendants. In many countries, for example, minimal levels of migrant education, income, and political representation persist for generations and serve to perpetuate the socio-economic

isolation of migrant communities. As highlighted by the Paris riots of October and November 2005, migrant communities are forced by economic conditions to 'live in areas with poor housing where they congregate because of the need for mutual support'.¹⁶³ In the ghettoized French communities that sparked the 2005 Paris riots, high levels of unemployment were combined with lack of social services, poor housing, and systematic exclusion from mainstream French society. In these communities, unemployment

among migrants and descendants of migrants was in some instances four times greater than France's per capita unemployment level of about 10%.¹⁶⁴

As migrant 'ghettos' in both developed and underdeveloped countries grow in size and number, and as levels of education, income, and political representation remain low in migrant communities,¹⁶⁵ the migrant-outsider/citizen-in-sider¹⁶⁶ dichotomy is perpetuated. Governments 'deal' with migrants through geographic and socio-economic isolation, arbitrary detention, and indiscriminant deportation, rather than embracing a human rights approach that generally requires the equal treatment of citizens and migrants.

A Conversation With My Brother

What was
your worst
experience while
being detained?

That's a tough one, I had a couple of crazy experiences. I remember one specific storm that wiped out all power in Texas and froze the water pipes. Being in a cell with 60 angry prisoners was not easy. We had no drinking water, no hot food, had to take cold bird baths by collecting water drops from the showers. We lit a fire for warmth, which we almost got caught for and could have gotten another charge. Fights broke out in the dark. We had to wait for guards to take us out to use portable restrooms. It was chaotic, and it went on like that for a couple of days. Another experience was during intake, when we were supposed to be in 2-man cells but they stuffed 4-5 people inside. Covid was at its peak. I remember an older guy in the

cell next to us passed away. I would hear him coughing and asking for help. I even came up with a plan to get away from his cell—I threw water into the hallway and on the officers until they sent me to a segregation cell, “the shoe,” a single-man cell with just a window and a toilet. Not much, but I felt better being away from that covid-infested area. Then they moved me back after 3 days. It didn’t last forever, and I still heard the same guy coughing and asking for help. No one listened until he actually passed. His cellmates started banging on the door yelling. The guards finally listened, but it was too late. I remember seeing them roll him out on a stretcher, limp, and everyone was just left speechless.



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