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Forgetting Its Common Humanity: America's Immigration Story

ANITA MADDALI

IN 2014, 10-YEAR-OLD ANDRÉS JIMÉNEZ made a plea to President Obama to reunify his family and families like his that had been torn apart by deportation. His father had been stopped by police for an expired license plate, detained, and ultimately deported to Guatemala because he was in the United States without authorization. Andrés, a U.S. citizen, was seven, and his mother was pregnant with her fifth child. “President Obama, I want to have a family like yours,” Andrés said, as he broke down in tears.¹

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The current struggle to define U.S. values is perhaps most evident in laws and policies regarding immigrants and their families. Regardless of the political party in power, the reality for many immigrant families in the United States is that laws and policies have led to instability, separation, or both. The Jiménez family's story is not unique.

Immigration discussions historically featured rhetoric about the values of openness, compassion, and kinship—although these debates were subject to the racial prejudices of a given period. In fact, the United States' first president, George Washington, wrote, “The bosom of America is open to receive not only the opulent & respectable Stranger, but the oppressed & persecuted of all Nations and Religions.”² Today, however, debates about immigration largely focus on unlawful migration and enforcement, rarely exploring the immigration system's complexities, which have created incredible hardship for immigrants and their families.

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It has become increasingly difficult for immigrants to maintain family integrity under the current immigration system. The challenges they face include exceptionally long visa wait times; increasing penalties for violations (even minor ones); and limited discretion for leniency afforded to those who face deportation or who are barred from returning to the United States because of a prior immigration violation. Quiet changes in this system, which have been building for years under alternating political parties, reflect a lack of compassion and consideration for immigrants and their families. To move the debate beyond the black and white—rule breakers versus rule followers—and to appreciate how far immigration laws and policies have strayed from U.S. values of openness, compassion, and kinship, it is important to understand the complexities of the U.S. immigration system.

BACKGROUND OF FAMILY-BASED IMMIGRATION

134 Family-based immigration has been the defining feature of U.S. immigration law for decades, accounting for two-thirds of lawful immigrants admitted to the United States each year.³ Since the 1990s, however, this system has faced criticism, more pronounced under the current administration, which favors what it refers to as a merit-based system. There has been little outcry against the criticism, even from those favoring robust immigration.⁴ Senator Tom Cotton of Arkansas has led the charge to permanently slash most of the family-based system, except for spouses and non-adult children, the qualifying age for whom he proposes lowering from 21 to 18 years old. He recently delivered a speech proclaiming that family-based immigration is un-American: “We are a nation of immigrants. We’re a nation where blood ties are not supposed to dictate the path of your life, where you can fulfill your dreams.” The United States’ current immigration system, Cotton argued, does the opposite by favoring “ties of blood” and “the ties of tribe.”⁵

Senator Cotton’s words overlook the country’s history of family-based immigration. In 1965, Congress championed family reunification as a centerpiece of immigration reform, one which has since provided much of the foundation for the current system. The reform rejected immigration laws that had separated families, and these laws came to be viewed as unjust and un-American. Throughout the hearings debating the reform law before the Senate and the House, members of Congress consistently used the words “equality,” “humaneness,” and “family unity” to describe American values. As Congressman Seymour Halpern of New York stated, “In this country, we have always stressed the dis-

tinct importance of the family relationship. It is ingrained in our thought and outlook, a sanctuary of private concern. To society in general, the family is the starting point of allegiance and common value instrumental to the maintenance of coherence and stability.”⁶

In 1964, Senator Robert F. Kennedy also highlighted that “the primary purposes of civilization—and certainly its primary strength—is the guarantee that family life can flourish in unity, peace, and order. But the current national origins system separates families coldly and arbitrarily. It keeps parents from children and brothers from sisters for years—and even decades.”⁷ While the 1965 legislation specifically prioritized family-based immigration, family reunification had already been an important underpinning of U.S. immigration laws. Before the 1920s, there were no numerical restrictions on immigration, and immigrants had considerable flexibility in bringing family members to the United States, regardless of whether they were citizens. According to historian Mae Ngai, “families determined their migration strategies according to their needs, aspirations, and means.”⁸

Given the time period, however, not everyone experienced this lack of restriction. For example, in the late 1800s, Congress enacted the Chinese Exclusion Act in response to a perceived influx of Chinese railroad workers; the law prohibited the admission of all Chinese laborers to the United States.⁹ Yet, a Supreme Court decision in 1900 interpreted the 1880 Angell Treaty between the United States and China to infer that the wife and children of a Chinese merchant (not laborer) would be able to “accompany or follow to join” him (i.e., stay together as a family). This principle of family unity remains a part of U.S. immigration law.¹⁰

That said, individuals had to be white to naturalize. Even after the Civil Rights Act of 1866 allowed persons of “African nativity” and “African descent” to naturalize, this restriction excluded others who were considered nonwhite—Asians and Native Americans—from citizenship.¹¹ At that time, the “white” requirement remained.¹² Racial exclusions were not completely removed from the law until 1952.¹³

In 1924, the United States transitioned from a temporary to a permanent quota system that restricted the absolute number of immigrants from each country based on the proportion of each nationality identified in the 1890 census.¹⁴ It allowed for some family reunification, but allocated the greatest share of visas to Northern and Western Europeans in order to restrict the flow of undesirable immigrants—Southern and Eastern Europeans—who had reached American shores in large numbers at the turn of the twentieth century. These immigrants,

many of whom were from Italy, were low-wage workers who were viewed as distinct from and less desirable than the “old immigrants” from Northern and Western Europe. According to a Commission Report from 1907, these “new immigrants,” were “far less intelligent than the old [...] Racially they are for the most part essentially unlike the British, German, and other peoples who came during the period prior to 1880, and generally speaking they are actuated in coming by different ideals.”¹⁵ As a result of the quotas, very few people from outside of Northern Europe could immigrate, so immigrants from Southern and Eastern Europe already present in the United States had great difficulty reuniting with family members still living abroad. Consequently, discriminatory policies affected not only those outside of the United States, but also U.S. citizens of Southern and Eastern European descent.

In his 1925 State of the Union address, after the quota system had already gone into effect, President Calvin Coolidge emphasized the importance of regulating immigration to protect the economic welfare of the nation, but he noted that “if [the new immigration law] deprives [immigrants] of the comfort and society of those bound to them by close family ties, such modifications should be adopted as will afford relief [...] We should not [...] be forgetful of the obligations of a common humanity.”¹⁶ President Coolidge’s comments reflected an acknowledgement that while the purpose of the law was to protect and benefit the country, its success should also be measured by how it affected immigrants.

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Through its immigration policy, the U.S. Congress thus controlled the ethnic and racial makeup of the country. A committee report from 1924 stated that the justification for using the 1890 census to determine the numerical quotas was “to preserve, as nearly as possible, the racial status quo in the United States.”¹⁷ The descriptions of Southern and Eastern European immigrants in the 1907 Commission Report are eerily reminiscent of descriptions of non-European immigrants today—as criminals who do not assimilate, lack education, and take jobs from native workers.¹⁸ Much as with President Trump’s recent comments about “shithole” countries, opposition to family-based immigration cannot be separated from hostile attitudes toward immigrants’ racial and ethnic backgrounds.¹⁹

As was the case 100 years ago, the recognition of the importance of family bonds for immigrants has come into direct conflict with fears that new immigrants are changing cultural norms and the economic landscape for American workers. These fears frequently overshadow values and principles that the United States has embraced. In 1965, Congress recognized the damaging effects for some immigrants of an immigration law that promoted racial and ethnic exclu-

sion. Congress saw how these policies harshly separated immigrants from their loved ones. One senator noted, “There is urgency first of all in terms of simple humanity. Under present law, we are forcing families to be separated—indeed, in some cases, forcing mothers to choose between America and their children.”²⁰

With the passage of the Civil Rights Act just a year earlier, the national origins quota system seemed unjust, discriminatory, and un-American. Lawmakers and others who testified rejected the motivations behind the 1924 law: restrictionism, fear, and xenophobia. They rejected the idea that the United States could only flourish if im-

migration was confined to Northern Europeans.²¹ Much of the testimony reflected the view that immigration laws should mirror American

Opponents of chain migration today are promoting the same ideology espoused by the proponents of chain migration in the past.

values of equality, humaneness, and family unity. Judge Juvenal Marchisio, the then National Chairman for the American Committee on Italian Migration, provided extensive testimony, noting that “The conscience of a nation is also the reservoir of its ideals and the mirror of its aspirations. It is a force which needs constantly to be reminded of its existence and its purpose.”²²

The perceived unfairness of the law largely centered around its effect on families from Southern and Eastern Europe, who by that time had received greater acceptance into the fabric of American society. Additionally, the reforms were described as “not revolutionary.”²³ President Johnson downplayed their impact, suggesting that they would only result in minor changes to the system.²⁴ The changes, however, significantly altered the racial and ethnic makeup of the country.

Once those who had supported maintaining the national origins quota system realized that they were in the minority, they adopted the position of prioritizing family-based immigration. They believed that it would perpetuate the European face of immigration through “chain migration,” since most immigrants at that time were from Europe.²⁵ European migration slowed, however, and since the 1965 reforms the face of immigrants has diversified, with the majority of immigrants coming from outside Europe.²⁶

Opponents of chain migration today are promoting the same ideology espoused by the proponents of chain migration in the past: the maintenance of the United States’ racial and ethnic makeup. Hostility toward immigrants is not just about curbing unlawful migration, but also about curtailing lawful family-

based migration to limit demographic changes that are viewed as undesirable. An undesirable population cannot grow if those already present cannot bring their family members to the United States, which is likely why opponents of immigration want to end chain migration.

Though it only considered a particular conception of family—namely the nuclear family with the male as the head of household—the 1965 immigration law did stress the importance of family unity. Congressman Halpern testified in 1965 that while Congress could restrict immigration as a nation, “[we should not] blind ourselves to humane considerations and other factors, which as our history so vividly bears testament, are in our national interest.”²⁷ Yet, now and for some time, these humane considerations have been dismissed. Today’s immigration laws have become an exercise in rigidity, where adherence to the rule of law and compassion for the individual and the family appear mutually exclusive. For most, there is no legal path to the United States. Restrictiveness in accepting refugees indicates that there is little compassion for hardship suffered outside of American borders. Moreover, U.S. immigration law has created heavy penalties for even minor infractions. For those facing deportation, there is little leeway for forgiveness that could allow an individual to remain in the United States with family.

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Family unity is a principle that is easy to dismiss when faced with appeals to seek immigrants with “more skills”; fears that family-based immigrants will be of “lower quality” or take jobs from low-wage workers; and protestations that a family-based immigrant is simply given a visa rather than having earned it through individual merit. In immigration debates, however, merit is frequently a euphemism for income, severely undervaluing or ignoring the significant economic contributions of immigrants coming through the family-based system—and also those of other low-wage immigrant workers, including unauthorized immigrants. Focusing the message on merit also deflects from underlying racial and ethnic discomfort toward certain immigrants.

It is true that the United States has a history of restricting immigration based on race, but it is also true that a lack of compassion for immigrant families is not in line with U.S. ideals, as Congress recognized in 1965. A system balanced with compassion toward immigrant families not only benefits immigrants, but is also a testament to the positive values that the United States once embraced. Family ties help make the difficulties around immigration more tolerable and reflect the reality that an immigrant provides more than just economic benefit. Former Florida Governor Jeb Bush and Senator John Kasich, both Republicans, urged the nation to act compassionately toward immigrant families in a *New*

York Times op-ed, quoting President Ronald Reagan: “The family has always been the cornerstone of American society. Our families nurture, preserve and pass on to each succeeding generation the values we share and cherish, values that are the foundation for our freedoms.”²⁸

DEVALUATION OF IMMIGRANT FAMILIES AND THE PUNITIVE REALITIES OF IMMIGRATION ENFORCEMENT

President Reagan’s sentiments are now in conflict with the modern Republican Party’s attacks on immigrants and their families. In 2017, Senators Cotton and Perdue introduced legislation, the RAISE Act, to change and drastically reduce the awarding of immigrant visas. Currently, there are family-based visas, employment-based visas, diversity immigrant visas, and refugee visas. All of these visas create a pathway to citizenship, and the RAISE Act seeks to reduce or eliminate many of these options. The majority of immigrants today are admitted through the family-based system, which the RAISE Act, if passed, would cut in half. The legislation proposes eliminating sponsorship for siblings, adult children, and parents under the family-based system so that only spouses and minor children—with the age cutoff lowered from 21 to 18—of U.S. citizens and lawful permanent residents (LPRs) can be admitted.²⁹ This is not the first time that efforts to cut family-based immigration have been proposed in Congress, but now there is an administration and a Congress committed to reducing overall levels of immigration.

The family-based system is complicated, but its opponents confidently suggest that it makes it too easy and fast to become a U.S. citizen. It does not. Even if an individual qualifies for a visa based on a particular family relationship, that alone does not guarantee admission into the United States. An individual may qualify based on the visa category but then be barred from entering based on criminal grounds, previous immigration violations, health grounds, or terrorism, among other reasons.³⁰ Moreover, a family member sponsor must also be able to show that their household income is 25 percent above the poverty line.³¹ Additionally, the sponsoring U.S. citizen or Green Card holder must guarantee their ability to financially provide for their immigrant family member, if needed. Finally, the visa wait times can be significant, and the current administration is slowing the process even further. This past year, the number of approved family-based visas declined significantly.³²

Because of annual caps, families coming from the Philippines, India, Mexico, and China face generations of waiting for their relatives. For families

already in the United States, the caps can create mixed status families in which, for example, a mother and child might not share the same immigration status.

For instance, if an adult U.S. citizen wishes to sponsor his sister from the Philippines, she would have to wait 23 years to come because of the visa backlog. This assumes that the U.S. citizen meets the financial criteria to sponsor his sister and that she does not fall within one of the other categories mentioned above that would result in her being barred from entering. Although the sister would be able to bring her spouse and minor children once admitted to the United States, the children would no longer qualify to come to the United States because they would be over the age of 21 after the 23-year wait and thus no longer qualify as children.³³ Should the RAISE Act be passed, the cutoff age for child status for immigration purposes would become age 18.³⁴

Slashing family-based immigration has not only been proposed in the Senate, but is also being used as a negotiating tool for Deferred Action for Childhood Arrivals (DACA). If DACA recipients are provided a pathway to citizenship, the current debate centers on whether their parents should be given any benefit, with some arguing that doing so would reward bad behavior. Others want to condition DACA relief not only on denying any kind of immigration benefit for DACA recipients' parents, but also on slashing most of the family-based immigration system. In this way, there is an attack on immigrant families from all angles.³⁵

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ENFORCEMENT ABOVE FAMILY UNITY

Over the years, immigration laws and policies have focused on increased enforcement and penalties for immigration violations without much consideration for family unity. These laws and policies have resulted in lengthy and often permanent family separation while fostering a harmful and inaccurate characterization of immigrants as criminals. The immigrants impacted most are not drug and human traffickers, but rather family members seeking safety, opportunity, and reunification with one another in the United States.

Efforts to cut family-based immigration will affect authorized immigration and impact families. Likewise, a system where enforcement and penalties are prioritized in dealing with unauthorized immigration also devalues families. Advocacy for those who are unauthorized is frequently dismissed, and any immigration-related penalties to which they are subject are seen as justified because they are present without authorization. Such dismissals, however, ignore how the system itself has become overly rigid at the expense of human dignity. Moreover, as Tom Cotton's comments demonstrate, the quick dismissal has also

become a slippery slope where valuing family ties—even for those who are here lawfully—is seen as un-American.

Family separation due to the U.S immigration system affects more than just unauthorized immigrants. As of 2016, an estimated 5.1 million children under the age of 18 resided in the United States with at least one parent with unauthorized status, and nearly 80 percent of those children were U.S. citizens.³⁶ Thus, immigration laws and policies not only impact those without authorization, but also U.S. citizens.

Since 1996, Congress has steadily expanded the reasons for which an individual—even a permanent resident (Green Card holder)—can be deported. Long-term residents have been forced to leave their families behind, including U.S.-citizen children, in many cases without the possibility of return to the United States. Those who do make the unauthorized return face significant penalties. While there is some discretion for judges to cancel deportation, the criteria are incredibly stringent and often impossible to meet. As a result, few can come out of the shadows. Certainly, rule of law is an important priority for any nation, but in many circumstances the severity of the penalty outweighs the infraction. For example, because of an immigration violation, a person may not only face deportation, but may also be barred from returning to the United States legally for 10 to 20 years—or sometimes permanently. Some of these time restrictions are strictly based on being in the United States without authorization.

Many parents and children are attempting to seek refuge in the United States after escaping violence and turmoil. Rather than showing compassion for these families and their struggles, the current administration is separating parents from their children at the border. The purpose of this policy is to disincentivize

Rather than showing compassion for these families and their struggles, the current administration is separating parents from their children at the border.

parents from unlawfully migrating to the United States with their children.³⁷ Recently, a father fled from El Salvador with his one-year-old son to seek asylum in the United States. When he reached the border, he turned himself and his son in to border patrol, explaining that they were seeking asylum. He was immediately separated from his son and placed in a separate detention facility.³⁸ If the purpose of such actions is compassion for children, it is difficult to imagine how it would involve separating a one-year-old from his father.

As another affront to the historic values embodied by the United States,

the Trump administration announced the termination of Temporary Protected Status for Salvadorans and nationals of other countries that had TPS protection, granted in 2001 following two earthquakes. The termination is expected to impact over 200,000 Salvadorans who now face deportation. All of them have been in the United States for the past 17 years, if not longer, and many have U.S. citizen children. One Salvadoran woman, a 41-year-old janitor at Walter Reed National Military Medical Center, has three children, two grandchildren, and owns a house. In response to the termination, she noted, “It doesn’t affect just one person. It affects the whole family.”³⁹ Many Salvadorans will likely not leave the United States, and others may attempt to return unlawfully if they are sent back to a country devastated by violence. In either situation, they will be among the growing group of immigrants who violate immigration laws to keep their families together.

WHAT IS LOST WHEN IMMIGRANT FAMILIES ARE DEVALUED?

The focus on family unity in the 1960s did not create a perfect system. It prioritized the traditional nuclear family and heterosexual parent relationships. Further, it was based on the assumption that women would be dependents on a male relative’s visa, complicating migration for women today, particularly those who are classified as unskilled workers.⁴⁰ Additionally, it placed a cap on migration from the Western Hemisphere for the first time, severely restricting migration for those closest to the U.S. border.⁴¹ It did, however, refocus the nation’s priorities. The emphasis on the family unit recognized not only the benefits that immigrants would derive from a system that valued their family ties, but also how values of humanitarianism and compassion benefitted U.S. national interests. Moreover, family-based immigration has benefitted the United States economically.

For various reasons, the majority of women immigrating to the United States come through the family-based system. Most women who come through the employment-based system—a system that this administration does not want to alter significantly—come as dependents on a spouse’s employment-based visa.⁴² Cutting family-based migration would thus have disproportionate gendered consequences. Proposals for immigration reform have rarely addressed the gendered impact of the system, especially given the limited opportunities for women to become “skilled” in other countries, along with other biases that impact women’s migration.

Moreover, caregiving labor in the United States is often filled by im-

migrants—especially immigrant women—whether they came through the family-based system, are unauthorized, or have a different immigration status. It is estimated that one in four care workers in nursing homes, assisted living facilities, and home care agencies is foreign-born.⁴³ As a result of immigrants either becoming unable to work or fearful of doing so, some nursing homes in the United States have shut down or stopped admissions because they have not been able to hire enough workers.⁴⁴ As the population of the United States ages, it seems counterintuitive to reduce the overall admission of immigrants, particularly the very immigrants who are filling this labor need.⁴⁵

Family-based immigrants are in a better position to respond flexibly to labor needs than employment-based immigrants.⁴⁶ For example, if an astrophysicist is admitted under our employment-based system, that individual meets a very specific need that may or may not continue. In contrast, many immigrants admitted under the family-based system are not necessarily tied to a particular profession, so they can respond with greater flexibility to changing labor needs.⁴⁷


The value of family immigration, though, is more than economic. Immigrants with strong family ties have networks that provide caregiving within their families. Families help new members with integration and provide each other with social and financial support. For many immigrants, extended families provide emotional and practical ties.⁴⁸ Finally, prioritizing family ties creates permanence—immigrants who stay—which has been shown to result in intergenerational educational progress.⁴⁹

Whether immigrants come through the family-based system or cross the border unlawfully, decisions to migrate are often influenced, if not made exclusively, by family needs.⁵⁰ Frequently, people break immigration laws out of desperation to live with their children. When immigrants are viewed solely through the lens of what they can offer the United States, the nation loses sight of important connections that bind people and provide meaning; it also ignores that immigrants have the same wants and needs that bind humans irrespective of citizenship.

A society that overlooks the value of family ties and loses sight of compassion makes itself weaker and more vulnerable. In 1965, policymaking emphasized common desires of Americans and immigrants, including the importance of family desires. The sentiment was as much about being fair and humane to immigrants as it was about ensuring that the United States stayed true to its values. The law professor, author, and activist Bryan Stevenson wrote in his book *Just Mercy*:

I've come to believe that the true measure of our commitment to the

rule of law, fairness, and equality cannot be measured by how we treat the rich, the powerful, the privileged, and the respected among us. The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned. We are all implicated when we allow other people to be mistreated. An absence of compassion can corrupt the decency of a community, a state, a nation. Fear and anger can make us vindictive and abusive, unjust and unfair, until we all suffer from the absence of mercy we condemn ourselves as much as we victimize others.⁵¹

The rhetoric around immigration today ignores the complexities of a system that is not only difficult, but also punitive to immigrants and their families. Family-based immigration and the focus on kinship have been important components of the American immigration system, reflecting American values of compassion, openness, and kinship. However, immigration debates no longer highlight these values, which at one time framed how Americans approached immigration. The narrative that now dominates public discourse is that of the law-breaking immigrant. Yet, there is much to be lost—economically, socially, and in the United States’ expression of its values—if the United States continues to abandon immigrants and their families. 

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