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A Dependence Based Framework for Reforming Family Immigration Benefits

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Abstract

In this paper, I redefine the priority of family relationships as a basis for determining who should be allowed to enter and remain in their country of residence. I frame family relationships and other formative ties that bind a person to their country of residence as social membership claims to inclusion. First, I argue that citizens have a moral obligation to recognize all lifelong residents of their communities as compatriots. They also have a duty and interest in providing family immigration benefits for their compatriots who depend on non-citizens in relationships of guardianship and interdependence. A citizen or resident's claim to sponsor family members for immigration benefits should be proportionate to their degree of dependency on the non-citizen beneficiary. The claims of vulnerable citizens or lifelong residents who are completely dependent on a non-citizen caregiver should be prioritized, since they stand to lose the most if their parent, guardian or caregiver is deported. Adult citizens should only be allowed to sponsor non-citizen relatives for immigration benefits insofar as they intend to cohabitate and share responsibilities with them. Translating the social membership-based claims to inclusion that I defend here into policy would expand the rights of some citizens to sponsor their family members to come to the United States, and restrict the rights of others. It would redefine the foundations of family-based immigration claims to include considerations of dependency rather than privileging blood and marriage ties alone. In so doing, I argue that it would make family-based immigration more defensible from a moral standpoint.

Introduction

The principle of family-based immigration is ostensibly the cornerstone of U.S. immigration policy.¹ But its benefits do not reach to all citizens who depend on non-citizen family members. Adult citizens can petition for their non-citizen minor children and spouses to arrive at short notice. They can also petition to have their extended family members to come to the United States, although they will not receive permission to arrive lawfully for six to twenty years. Under the “Border Security, Economic Opportunity and Immigration Modernization Act of 2013” now being considered by the U.S. Senate, extended family preferences would be further curtailed.² This in itself is inconvenient for the families involved, and it incentivizes unauthorized migration by family members insofar they are unwilling to wait to reunite with their citizen or lawful permanent resident sponsor.³ But most adult citizens are capable of living without the care and support of their extended family members who have to wait to come to the United States. The same cannot be said of the minor citizen-children of unauthorized parents who have lived together in the U.S. for an extended period. If their parents are placed in removal proceedings, it is very likely that their children will have to leave their country of citizenship to remain under their care.⁴ They may unwillingly forgo the benefit of a free education in English and other social entitlements that will facilitate their return and reintegration into their country of birth and citizenship as adults.⁵ Or they may remain in the United States under the care of an alternate guardian, at the cost of the care and companionship of their parents.⁶ While resident and citizen children are not the direct targets of U.S. immigration enforcement, they stand to suffer collateral hardship if their parents are deported.

Outside the immediate context of U.S. immigration policy debates, family-based immigration preferences are also the subject of debates among political philosophers about how to design more just immigration policies. The primary normative defense of family-based immigration preferences is made on humanitarian grounds. For political theorist Iseult Honohan, family-based migration is best justified “not in terms of a partial preference towards fellow citizens (and residents), but as a universal obligation (to insiders and outsiders in different ways) to allow people to establish and maintain intimate relationships and practices of affection and support.”⁷ Honohan’s claim is supported by human rights instruments that affirm the value of family life as a means of providing care to its members.⁸ But if we frame family-based immigration as a humanitarian gesture towards non-citizen beneficiaries, we then have to consider why family members of citizens and residents should receive priority over other needy foreigners including refugees. In policy debates that pit family-based immigration against skills and education-based immigration preferences, we also have to justify to citizens why we should prioritize yet another category of humanitarian claimants over applicants whose admission is being justified on the basis of an economic national interest.⁹

A second political theorist, Matthew Lister, urges that we should instead justify family-based immigration “primarily through the perspective of the current citizen, rather than the would-be immigrant.”¹⁰ Family-based immigration would then be justifiable as a political obligation on the part of a political community towards its compatriots. One benefit of this justification, as part of a policy debate on how to distribute a limited number of immigration visas, is that it places family-based preferences on a more equal footing with skills-based preferences as a means of promoting citizen interests. The question that remains is how far family-based immigration preferences should be extended, given that they do not benefit all

citizens equally who will bear the costs of integrating new immigrants and sharing public benefits and political power with them once they naturalize. Lister argues that intimacy should be the primary criterion, and that a policy is justified in drawing the line at spouses and immediate family as particularly intimate relationships that are difficult to sustain at a distance.¹¹ This perspective privileges an Anglo-American conception of the family over different cultural models of the family valued by other citizens in a diverse society.¹² It would also require children to emigrate from their country of citizenship or permanent residence to benefit from the care of a non-citizen guardian who is not a parent or immediate family member.

Without departing from the partialist view that immigration benefits should ordinarily serve the interests of citizens and long-term residents, I contend that relational immigration preferences are best justified to the degree that a citizen is dependent on the care and companionship of a non-citizen. I will begin by considering the extent to which current U.S. immigration policy responds to the needs of citizens who are dependent on non-citizen family members. I will then develop my argument for dependency-based relational immigration preferences. First, I will contend that children who are citizens or nearly lifelong residents have a particularly strong claim on their fellow citizens to allow them to sponsor their non-citizen parents or guardians for immigration benefits. I will show how their claims to social membership are dependent on their ability to remain with their caregivers. They should not have to emigrate from their communities of birth and/or upbringing in order to receive the benefit of the care of their parents or guardians. Hence, non-citizen guardians should receive first priority for immigration benefits for the sake of their dependent children. Second, I will consider why other relational immigration preferences might be justified on the basis of relationships of interdependence between citizens and non-citizens to the extent that they share most of their lives together. This claim accounts for a citizen's interest in maintaining a relationship with a non-citizen spouse, other long-term partner, or adult family member with whom she shares a common life, without having to leave her country of residence and citizenship.

Statement of the Problem – The Impact of Immigration Law on Mixed-Status Families

Immigration policy is somewhat responsive to the needs of adults with a political voice who can advocate for the right to live with non-citizen spouses, children, and other related dependents without leaving their country of residence. But the same is not true of minors and other U.S. citizens (USC's) and legal permanent residents (LPR's) who are dependent on non-citizen parents, spouses and other family members. In the first case, U.S. immigration law has provided avenues for the spouses and children of citizens to enter into the United States since broad-based immigration restrictions began to be enforced in the 1920s.¹³ Scholars of immigration law often remark that since 1965, the "principle of family unity has been the cornerstone of immigration policy in the United States."¹⁴ This assessment of U.S. immigration policy is accurate with respect to the allocation of visas that allow non-citizens outside the United States to enter and reside in this country. On average, 65.1 percent of all immigration visas to the United States have been allocated to the family members of USC's and LPR's every year between 2003 and 2012.¹⁵ And since workers often come with dependents,¹⁶ a significant proportion of employment based visas (54.2 percent in FY2012) are allocated to their spouses and minor children.¹⁷ Together, immigration admissions based directly on family ties and the family members of employment based immigrants constituted 73.5 percent of all new LPR's in

FY2012.¹⁸ The principle of family unity as a basis of allocating visas has survived numerous challenges in Congress by lawmakers who want to shift more visas to skills and employment-based applicants. In the second case, the principle of family unity is also taken into consideration as a basis for allowing unauthorized immigrants and other deportable non-citizens who are already in the United States to challenge a removal order. To qualify, they must have a USC or LPR dependent who will suffer “extraordinary and extremely unusual hardship” if they are forced to leave the country.¹⁹ But the number of applicants who can appeal a removal order through this provision is capped at 4,000 applicants a year.²⁰ This quota is far less than the potential need, since an estimated 4.5 million citizen-children in the United States are in a mixed-citizenship status family with a deportable parent.²¹ A further one million long-term resident children reside with at least one unauthorized immigrant parent.²² With the increase in mixed-status families coupled with the rise of interior immigration enforcement since the 1990s, a growing number of USC or long-term resident children are being separated from their non-citizen parents or forced to leave their country of residence or citizenship.²³ The children of deportable immigrants are in need of an immigration policy remedy that will honor their social membership in the United States as native-born citizens or long-term residents.

The principle of family unity in immigration policy also does not adequately extend to all citizens who are in relationships of dependence with non-citizen relatives. Even adult citizens who have the ability to sponsor extended family members cannot legally reunite with them in a timely manner.²⁴ Adult USC’s often have to wait years or even decades between when they sponsor a non-citizen relative to come to the U.S., and the time that relative is actually able to arrive lawfully.²⁵ Existing U.S. immigration policies only allow adult citizens to sponsor their opposite-sex spouses and minor children without having to wait for a visa preference number to become available. They also allow adult citizens to sponsor other family members to come to the United States. But other sponsored non-citizen family members cannot immigrate to the United States until their priority or processing date has become current, since there is a numerical quota on both the type of relationship that gives rise to a visa (i.e. adult children of a USC) and the number of non-citizens who can enter in any year from a particular country. The U.S. State Department’s Visa Bulletin (refer to Table 1 below) summarizes the U.S. Citizenship and Immigration Service’s (USCIS) priority date for processing family-based immigration visas in June 2013.²⁶ For example, U.S. citizens who applied for their siblings from the Philippines to immigrate to the United States on or before November 8th, 1989 are only now having their cases processed by the USCIS. U.S. citizen parents are now waiting nearly 20 years for permission for their adult children from Mexico to legally immigrate to the United States. The wait for a priority date has become progressively longer over time.²⁷ Decades-long waiting periods make it difficult for mixed-status families to legally reunite or stay together in the United States. The situation is even more problematic for young residents and citizens up to age 21. Minor citizens and residents who are not able to sponsor their parents, guardians, or any other family members to legally live with them in the United States as permanent residents receive no benefits from the “principle of family unity” as applied in current U.S. immigration and nationality law.

Table 1
U.S. State Department Visa Bulletin, Family Sponsored Preferences (June 2013)

Family-Sponsored Categories (i.e. F1)	Number of Visas Available Per Year for Each Category	Priority Date for All Areas Except Those Listed	Priority Date for Persons Born in Mainland CHINA	Priority Date for Nationals of INDIA	Priority Date for Nationals of MEXICO	Priority Date for Nationals of the PHILIPPINES
F1 (Unmarried adult children of adult US citizens)	23,400	22APR2006	22APR2006	22APR2006	15AUG1993	01JAN2000
F2A (Spouses and minor children of adult permanent residents)	87,934*	08JUN2011	08JUN2011	08JUN2011	08MAY2011	08JUN2011
F2B (Unmarried adult children of adult permanent residents)	26,266*	08JUL2005	08JUL2005	08JUL2005	15JUN1993	01NOV2002
F3 (Married sons and daughters of adult US citizens)	23,400*	01SEP2002	01SEP2002	01SEP2002	01APR1993	15NOV1992
F4 (Brothers and sisters of adult US citizens)	65,000*	01MAY2001	01MAY2001	01MAY2001	15SEP1996	08NOV1989

*Note: Numbers may be higher in the unlikely event that a preceding category's visas were unused that year. Data adapted from the U.S. State Department Visa Bulletin for June 2013.

The Principle of Family Unity in Immigration Law

Family unity is such an important consideration in the formation and application of immigration and nationality laws in all countries of immigration because it responds to three main concerns. First, the principle of family unity acts as a response to political pressure by citizens and interest groups. It allows citizens to form families and live together with spouses and children who do not share their legal nationality status. It allows transnational ethnic communities to maintain ties to their ancestral communities through the sponsorship of marriage partners and relatives who lack the necessary “skills in the national interest” to immigrate on a merit-based visa. Secondly, the principle of family unity responds to the needs of vulnerable citizens. It responds to the humanitarian tragedy that results when children that were raised in the United States are separated from their parents through the operation of laws that force minors and their guardians to choose whether to leave their country or their family behind. Finally, family-based immigration recognizes that there is more to individuals than their political ties to other citizens, or their legal ties to their country of nationality. It responds to the fact that families are essential to an individual’s development, livelihood, and dignity as a human being. It recognizes that strong and united families who are allowed to live together, regardless of the

citizenship status of their members, serve an important civic function in guiding the socialization of children and mediating their relationship with the broader community where they reside.

The principle that citizens should be allowed to sponsor their close family members to live with them in the United States unites policymakers and interest groups across the political spectrum. It brings together socially conservative groups such as the United States Conference of Catholic Bishops with progressive legislators who are sponsoring more inclusive immigration reforms including Sen. Richard Durbin (D-IL) and Rep. Luis Gutierrez (D-IL).²⁸ Both groups are using a family values narrative to argue for inclusive immigration reforms.²⁹ However, the scope of family-based immigration is now a subject of controversy in the debate over the U.S. Senate's 2013 comprehensive reform bill. If enacted, this bill would eliminate the current immigration visa preference category for siblings and married children of U.S. citizens over the age of 31.³⁰ This provision builds upon earlier recommendations by lawmakers that it is in the national economic interest to redistribute immigration visas from family-based applicants to immigrants selected for skills and education.³¹ Supporters of restrictions on family-based immigration draw on the normative ideal of "the traditional nuclear family" that sociologist Dorothy Smith describes as the "Standard North American Family."³² In an influential recent proposal for immigration reform, former Florida Governor Jeb Bush unapologetically defends "defining family" for the purposes of immigration law "as a nuclear family" on the basis of the fact that "we are a Western nation, and our immigration policies should reflect our values."³³ These proposals do not sufficiently account for the supportive roles that the extended families of immigrants play in the lives of affected U.S. citizens from a variety of cultural backgrounds including Hispanic and Asian-Americans. For Hispanics, extended family unity was a rallying cry in the immigration rights movement of the 2000s starting with the May Day 2006 protests.³⁴ The Congressional Asian Pacific American Caucus is voicing similar concerns based on the economic interdependence of siblings in many mixed-status Asian American extended families.³⁵ For many citizens, ties of economic and emotional interdependence between family members are not limited to the "nuclear family." As such, family-based immigration policy should reflect the diversity of family forms that link U.S. citizens to non-citizen family members.

The autonomous migratory and reproductive decisions of mixed-status families undermine attempts by political communities to limit immigrant admissions to persons that will serve a broader national interest. Citizens in mixed-status families want to be able to sponsor their non-citizen relatives to live with them in the United States. Some of their compatriots would prefer to lower admissions or to admit more employment-based immigrants in their place. This tension is expressed in political discourse about the unforeseen long-term consequences of past immigration policy choices involving families.³⁶ This situation is also problematic if we believe that a self-determining people should collectively decide who it wants to admit to share in the burdens of residence on the basis of shared benefits.³⁷ It is harder to limit the number and characteristics of new residents if citizens can sponsor non-citizens based on kinship rather than other qualities desired by the community or if unauthorized immigrants can give birth to citizens.³⁸ The legal doctrines that have supported immigration restriction and enforcement regimes in the U.S. and other nations since the late nineteenth century claim an expansive prerogative for citizens and their representatives to determine who is allowed to enter and reside in a nation.³⁹ But family connections and birthplace citizenship both complicate the state's ability to control immigration. Extended transnational family networks serve as powerful natural

incentives for migration, regardless of whether it is sanctioned by the receiving or sending states.⁴⁰ As a *jus soli* country, the United States' immigration policy preferences do not directly extend to children born to immigrant families while they reside on U.S. soil.⁴¹ For over a century, the U.S. Constitution has been interpreted to guarantee the rights of native-born children to citizenship at birth, even as they are prevented as a matter of immigration policy from sponsoring their parents to become residents. This conflict of law and policy results in the formation of mixed-citizenship status families.⁴² In *jus sanguinis* countries that confer citizenship by descent, the law of citizenship attribution at birth more closely matches immigration policy choices. But this leaves the children of immigrants unable to claim the citizenship of the country where they reside.⁴³

Social Membership Arguments for Family Based Immigration Preferences

Family reunification policies and citizenship attribution laws should work to strengthen relationships that reflect a person's claim to social membership within a state. But in reality, family immigration policies and citizenship laws operate in tension with one another. While citizenship attribution laws can serve to link a child to her country of birth and upbringing, these ties can be undermined by her inability to sponsor her parents to remain in that country.⁴⁴ And citizenship attribution laws are not always the best proxy of a person's social membership in a community. The practice of *jus soli* or birthplace citizenship only reflects a child's social membership in that country if she continues to reside there.⁴⁵ The practice of *jus sanguinis* that assumes priority in many European countries can be defended as a social membership claim to the extent that birth to citizen parents will indicate a child's later connection to that community through her upbringing. But neither of these justifications of longstanding practice is entirely satisfactory as the basis for a normative social membership argument.

Here, I propose and defend the use of three types of relational social membership claims linking non-citizens to citizens as a basis for allowing the former to obtain immigration benefits and eventual citizenship. First, young children who are brought to a country where they continue to reside throughout their early lives are *de facto* members of their communities based on their upbringing, education, and other formative influences. Their right to remain in their country of residence should be no different than that of their younger siblings who happened to be born there. Second, the social membership claims of adults should be contingent upon the benefit that they provide to a citizen that is linked to them in a relationship of interdependence. The most pressing claim of this type involves a dependent citizen's interest in receiving the care of a non-citizen parent without having to leave her country of long-term residence and citizenship. Third, a less pressing but still significant claim of this type involves the interest of an adult citizen in a relationship of interdependence with a non-citizen where they share most of their lives together. This claim accounts for a citizen's interest in maintaining a relationship with a non-citizen spouse, other long-term partner, or adult family member with whom she shares a common life, without having to leave her country of residence and citizenship.

Safeguarding the Right to an Effective Nationality: The Social Membership of Children

Like most countries in the Western Hemisphere, the United States grants *jus soli* citizenship to nearly every child who is born within its territorial boundaries. As a matter of

political morality, this practice can be defended as a means of preventing the creation of a perpetual caste of non-citizen permanent residents. This justification assumes that children who are born in a country will remain there throughout their lives. It is important to ensure that children do not just obtain any nationality status, but that they also obtain an effective nationality status. While children are dependent upon their parents, an effective nationality ensures that they will not be removed from their country of upbringing without their parents' consent. It also ensures that they will have access to the same rights and social services (i.e. education) as their peers as they mature to adulthood. The *jus soli* only confers a child with an effective nationality insofar as she is able to remain in her country of birth and citizenship to adulthood. The simple fact of birth within a jurisdiction does not assure that a child will remain there or develop a lifelong attachment to their country of accidental citizenship. For instance, non-citizen parents may be forced to move their family abroad if their immigration status expires or they are deported. Immigration and nationality laws interact to deprive children of the right to remain in their country of citizenship, birth, and residence. Under current family-based immigration laws in the United States, children cannot sponsor their parents to become legal permanent residents of their country of citizenship. The principal alternative legal framework for conferring citizenship on children at birth, *jus sanguinis* or citizenship by descent, does not ensure that a child has an effective nationality either. If a child is born and remains in a country that does not grant citizenship to children at birth, she may obtain the citizenship of her parents by descent, but this will not help her to obtain rights and services reserved to citizens in her country of residence. Both legal practices can be defended as a means of ensuring that the majority of children with same-citizenship parents obtain a nationality that is effective at birth through adulthood. But some changes to both citizenship and family-based immigration laws may be necessary to ensure that children in mixed-status families can benefit from an effective nationality.

The challenge is greatest for children who are raised in a country where their parents do not have the right to remain. The child of unauthorized immigrant parents who is born in the United States technically has legal advantages over her foreign-born older sibling, but practically speaking both stand to be removed from their country of upbringing if their parents are deported. If they remain in their community of upbringing and education through adulthood, their connection to their country and moral claim to an effective nationality is very similar. Immigrant children and their native-born younger brothers and sisters attend school alongside citizen-peers and are shaped by other formative experiences that bind them to the communities in which they were raised. Through their formative experiences, they become attached to their communities of upbringing even though they may be also shaped by their parents' heritage. A child who was brought to the United States from Mexico with her immigrant parents before she started school would be expected to learn English and adapt to the customs of her adopted community in school just like her native-born citizen siblings and peers. Based on her formative experiences, she develops as strong of a social membership claim to remain in her community of upbringing as her citizen-peers. But unlike her native-born brothers and sisters in a *jus soli* country that accords citizenship based on birthplace, a child of unauthorized immigrant parents who is born abroad has no legal claim to citizenship or right to remain in her country of habitual residence. There is no morally relevant distinction between the two sibling's connections to their communities that can be used to justify allowing the native-born child of unauthorized immigrants to stay, while requiring the child born abroad to leave without the right to return as an adult.

Unlike their parents who entered and who continued to reside without authorization, young children who were either born in, or who were brought to a country with their parents where they continued to reside through their formative years have a powerful social membership claim to inclusion. Political theorist Joseph Carens offers a starting point for considering why both non-citizens who come to a country at a young age and their native-born siblings have a similar moral claim to remain as their citizen-peers. Suppose both siblings “grow up speaking the local language, using their parents’ native tongue only at home if at all. Their schooling, their friendships, their cultural experiences, and their formal and informal socialization are similar to those of the children of the citizens in the land where they live and very different from those of the children in the land where their parents came from.”⁴⁶ Carens argues that “the society where they have been raised is their home. They are clearly members of that society . . . and it would be wrong to expel them.”⁴⁷ Formative ties can be used to begin to establish a moral claim to an effective nationality and the same rights and services as other citizens that it provides. This is important as a way of addressing the shortcomings of legal claims to *jus soli* citizenship from the social membership perspective. A person can be born in the country, leave with her parents and spend her formative years abroad, only to return as an adult to claim her citizenship status and the rights that follow from it. By contrast, a moral claim to social membership can only be made by a person who spent their formative years in that country.

But how should other citizens respond to this moral claim to social membership? In the case of unauthorized immigrant youth who do not have a pre-existing legal claim to citizenship, we are asking citizens to confer new immigration and nationality benefits that carry with them the costs of providing rights and entitlements throughout their lives. Do they not have the right to ask for something in return from these beneficiaries? Carens seems to disagree by arguing that “long-term residents ought to be entitled to remain regardless of their conduct.”⁴⁸ This proposition is contested in recent legislative proposals in the United States for conferring immigration benefits on the foreign-born children of unauthorized immigrants that ask for more than just formative ties to their country of residence. The proposed DREAM Act that is part of the 2013 comprehensive immigration reform bill requires young immigrants to complete two years of college or join the military and stay out of trouble with the law to obtain a pathway to citizenship.⁴⁹ From this perspective, the fact of being raised in a country is not enough to show that someone deserves citizenship there. To obtain the rights of citizenship as an adult, adolescents are being asked to assume obligations of either present (military service) or future service (education to employment) towards their country of residence. On the one hand, given that other citizens are being expected to confer the rights of membership on persons who were not entitled to this benefit before, they may have a legitimate expectation that the beneficiaries will give back to the community in turn. And the narratives of unauthorized immigrant youth with great academic potential, or who are volunteering extensively in the community or serving in the military are well received by the American people as evidence that they are particularly worthy of citizenship. At the same time, if we believe that children should be entitled to citizenship simply because they were born in the country, it stands to reason that no more or less should be expected of their older siblings simply because they happened to be born abroad after being brought to the country at a young age. All members of society should bear the obligation of contributing the resources that are necessary to provide young future citizens with the educational opportunities to assume these roles in preparation for citizenship. Unlike Carens, I

accept that conduct can be taken into account in evaluating a young person's claims to the benefits of citizenship, but only if the same standard is applied to all similarly situated persons.

Native-born and foreign-born children of unauthorized immigrants should be treated as having equal moral claims to social membership insofar as they remained in their country of residence for most of their childhood and adolescence. But whereas Carens extends the logic of this argument to unauthorized immigrants who arrived later in life, I argue that their claims are dissimilar for at least three reasons.⁵⁰ First, children who entered a country without authorization with their parents cannot be held fully responsible for an action that they did not undertake willfully or independently. Citizens can hold adult immigrants including the parents of the same children to account for acting against their public policy objectives in enforcing generally applicable immigration laws. Second, older immigrants can more readily reintegrate into their countries of origin based on their early socialization, education, connections and linguistic knowledge than their children who left at a young age or who were born abroad. Finally, in emphasizing time of residence as a basis for developing "social membership" ties to an adopted country, Carens does not give adequate consideration to his counterpoint that "individuals form attachments and become members of a community at different rates."⁵¹ For instance, what if a migrant lives and works in a country for years or decades as a migrant farm worker who travels from community to community, interacting only with other workers on a day-to-day basis and with citizens as employers?⁵² How do we respond to instances where migrants never learn the language of their adopted community, or venture outside their ethnic community?⁵³ These situations are more common among adult immigrants than their children, insofar as they attend school and have the opportunity to interact with peers of different national origins.⁵⁴

Instead of the time that a person spends in a country, I contend that relationships ought to be regarded as the crux of a social membership claim. In the case of children, the relationships that give rise to a social membership claim will ordinarily be made in school and other civic institutions that bring them together with citizen-children and authority figures. The relationships that the children of immigrant parents forge at school with their teachers *can* be particularly valuable as the basis for a social membership claim. These relationships with teachers and other authority figures can be conduits through which a child develops the linguistic, social, and civic skills that will facilitate his integration into society throughout life.⁵⁵ But what if a child who is born and/or raised in the United States does not have the benefit of these formative relationships? Families led by unauthorized immigrants face socioeconomic difficulties that impede access to educational opportunities even in the public schools.⁵⁶ The resources available to teachers vary widely between school districts given the high degree of stratification in American public school systems.⁵⁷ Even where opportunities exist, their parents often lack the institutional knowledge to take advantage of them.

Another common example occurs when citizen-children and their unauthorized immigrant older siblings are in households led by parents who are seasonal migrant workers that have to travel frequently. The children rarely attend the same school for more than a few weeks at a time, and many of their social interactions take place in their parent's primary language.⁵⁸ They may travel back and forth to their ancestral country of origin with some frequency. These considerations are relevant since I base the strength of a social membership claim on the characteristics of relationships rather than residence alone. But we also need to consider whether

the child in question has a “home” to return to in another country or an alternative site of social membership where she has deep ties.⁵⁹ Here, I provide theoretical guidance that could be used to develop a bright-line legal or policy test that could be developed by relevant agencies like the USCIS to guide the exercise of discretion by adjudicators. A future test used by adjudicators based on my theoretical framework might consider where the child’s relationships of interdependence (through extended family, school, and other social affiliations) are more rooted. Does she believe she has a future in her parents’ country of nationality, where she may hold legal citizenship status,⁶⁰ or is her view of the challenges and opportunities available to her in life more structured by her U.S.-based experiences? If she had to return to her parents’ country of nationality, would she have anything to return to (a network of relationships to plug into to facilitate finding housing, education, employment, legal protection) upon arrival beyond her *jus sanguinis* claim to legal citizenship status there?⁶¹

The main difference between my formulation of a social membership argument and Carens’ can be illustrated in the distinction that I draw between the claims of the children in the above example and their parents. If the state must take into account the harm that is done to non-citizens in enforcing immigration laws, then citizens should be able to make counter-claims regarding the harm that arises from unauthorized entry, residence, and incidental offenses. Carens contends that in most states, violations of immigration law are treated as an administrative matter, and not a criminal offense.⁶² While this view continues to inform federal immigration law, it exists in tension with newer state and local enforcement policies that treat unauthorized residence as individual offenses against community standards, or focus on illegal actions incidental to unauthorized status such as identity theft. These approaches require a finding of culpable action and intent that leads to punishment.⁶³ When we consider whether a non-citizen has a social membership claim to inclusion in the first case, we must also consider whether the state has a sufficiently strong countervailing reason to deny this claim. Whatever the legal strategy that state actors are using now, the culpability of persons who are not authorized to reside in a country is an important moral consideration that citizens and state actors alike can employ to oppose social membership claims. This leads to at least two distinctions between the state’s counter-claims against an adult and a child. We need to consider the degree to which the migrant acted independently, and willfully entered and continued to reside without authorization.

The implications of my argument for the social membership claims of dependent unauthorized immigrant children are as follows. Like their native-born slightly younger siblings, children who were brought by their parents to a country without authorization have a strong moral claim to inclusion. Children might assert this claim by referring to where they consider home, where they believe their future lies, or the society and system they have the best prospect of integrating into as adults. They might base this claim on the location and duration of formative relationships and skills that they acquire while participating in bridging social institutions like schools and other civic organizations. Shared socialization, education, and other formative experiences, rather than birthplace alone, is what binds the social membership claims of immigrant children and their peers with U.S. parents together and why they should have the same right to reside in their community together as adults. They should not be required to earn a right to permanent residence and eventual citizenship. Nor should they be subject to removal by the state if they have few direct ties to their nationality of origin other than legal citizenship

status. The community cannot hold them accountable for unauthorized entry and residence if they were brought there as very young children by their parents.

By contrast, older children and adults who arrive independently to seek employment have a much weaker claim to social membership. They will have gone to school in their country of origin where they will have been instructed in its civic and social commonplaces. Their formative relationships will have developed there, and they will be more likely to have direct ties in their country of origin than a child migrant unless they have been absent for a very long time. While some older children migrate to join their parents at their urging and with their support, many leave at their own volition and ought to have some awareness that what they are doing is illegal based on the obstacles they confront at the border. These factors raise the counter-claims by which citizens and state actors can object to non-citizen claims to inclusion. Both older children and adults as independent migrants who entered and remained in a country without authorization can make social membership claims to inclusion on the basis of the bridging relationships that they develop as they settle into their adopted communities. But they must also address and respond to the counter-claims of citizens who demand accountability for violations of their immigration laws and who also want to deter future unauthorized immigration. These counter-claims may be addressed by requiring older unauthorized immigrants to perform a community service to earn legalization as restitution.

Relationships of Dependence between Citizen Dependents and Non-Citizen Guardians

The main practical problem that arises from the moral distinction that I draw between the claims of children and the unauthorized immigrant parents who gave birth to them or brought them to the U.S. as young children is that the children are usually dependent on their parents. Mixed-citizenship status families already face this problem under current immigration and nationality laws in the United States. Citizen-children benefit from inclusive citizenship attribution policies that have been interpreted for more than a century to give them a constitutional right to citizenship status at birth unless their parents are senior diplomats.⁶⁴ As minors, they are ineligible to sponsor their unauthorized immigrant parents, who fall under the exclusionary rules of U.S. immigration policy. As a result, the parents of citizen-children are frequently detained and removed from the United States by immigration authorities.⁶⁵ In some cases, the parents can make a quick and forced choice whether they will take their children with them, or allow them to stay in their country of citizenship under the care of another guardian or as wards of the state.⁶⁶ In other cases, family courts are making this decision for the parents and suspending their parental rights subsequent to deportation.⁶⁷

Even if they are citizens, children are limited in their ability to stay with their families without having to leave their country subsequent to their parents' deportation. To remedy this situation, children ought to be able to sponsor their parents to remain in the country (through an intermediary). Their parents would be allowed to remain in the country based on the benefit that they confer upon citizen-children as caregivers. Parents in mixed-status families are fully engaged in a relationship of guardianship that carries its own obligations to dependent children who either have a legal or a moral social membership claim to remain in the country. This speaks to the need to assign more normative significance to the civic contributions entailed in parenting future citizens in line with other modes of civic service. The challenge for these parents is to

show that their contribution that is far-reaching enough to benefit a wide range of citizens and to offset any potential counter-claims or losses that may result from including her as a potential citizen and allowing her to legally compete for work and claim public goods. To this end, we might justify extending family immigration benefits for the guardians of citizen or long-term resident dependents on two public-interest based grounds. First, a non-citizen would be given an immigration benefit to ensure that a child citizen or long-term resident will be cared for privately without having to be removed from her community ties and country of citizenship. In cases where the child has no other U.S.-based relatives to assume custody in the event of parental deportation, granting the parents the right to remain would mean foregoing the costs of having to raise the child as a ward of the state at the public's expense.⁶⁸ If a citizen-child returns with her parents to her country of origin, the societal costs of the family's removal may be deferred but not avoided entirely. A citizen (but not a mere resident) child who returned to her parents' country of origin following deportation can return as an adult, but she may require training and education to reintegrate into American society that she may be able to obtain at the public's expense. It is in the interests of all citizens to avoid the economic and social costs associated with these outcomes by providing a non-citizen parent with an immigration benefit to remain to care for her U.S. resident or citizen children.

Relationships of Interdependence between Adult Citizens and Non-Citizens

Family-based immigration benefits are best justified on the basis of the benefit that they confer on a citizen or a life-long resident with a strong social membership claim to remain. First, the political community has a moral obligation to one of its citizens who is completely dependent on a non-citizen caregiver to allow her to remain for her sake. A dependent citizen should not be required to leave her country of residence and citizenship to benefit from the care of her parent or guardian. Most adult citizens will have a greater ability than a child to subsist independently if a close non-citizen family member is deported, and so a dependent's claim to sponsor a non-citizen guardian should take precedence. But this does not negate the hardship that an adult non-citizen experiences following the deportation of a spouse or close family member or their interest in remaining together in the same country. We also need to account for the interests of adult citizens to sponsor non-citizen family members with whom they are in relationships of interdependence for immigration benefits in recognition of the supporting role that they play in a member's life. This claim accounts for a citizen's interest in maintaining relationships with a non-citizen spouse, other long-term partner, or adult family member with whom she shares a common life without having to emigrate. The interdependence criterion would limit family immigration benefits to non-citizens who intend to live with and share in caregiving and financial responsibilities with the citizen sponsor, leaving out some adult siblings and children who intend to live independently from their citizen sponsors. But this framework would also be more inclusive than current policy by providing non-citizen same-sex spouses, long-term partners, and extended family members with immigration benefits insofar as they can show that they live in a relationship of interdependence with their sponsor.

Few normative theorists have addressed the policy realities of U.S. family-based immigration preferences in any detail. The most extensive recent normative treatment of the U.S. system is in Matthew Lister's article on "Immigration, Association and the Family" (2010).⁶⁹ Lister contends that spousal preferences are more morally justified than extended family-based

visas on the basis of the intimacy and need for proximity that is entailed in the spousal relationship.⁷⁰ He extends this claim without further explanation, to immediate but not extended family members as a moral claim that trumps the state's right to exclude.⁷¹ This argument, in turn, resembles policy proposals for curtailing the extended family preference program either to reallocate more visas to skills and employment-based immigrants or to limit the total number of legal immigrants to the United States.⁷² I contest this argument on two grounds. First, I define what is important about family relationships more expansively than Lister does. Lister's emphasis on close physical proximity and intimacy only begins to characterize what is morally significant about the relationship between spouses that sets them apart from friends who are able to pursue their relationship at a distance.⁷³ I argue further that a more satisfactory definition of what sets the family relationship apart from friendship as a limitation on the state's right to exclude starts with the degree of interdependence that exists between spouses, and some adult family members. The duties of a parent to care for her child in a relationship of care and dependency are even more morally significant than ties of interdependence between adult spouses and other family members. This is reflected, to a limited extent, in the ongoing obligations that parents have for their children in family law.⁷⁴ Second, I question Lister's view in support of a nuclear family preference that the "common conception of the family" in the United States is a family with two spouses and their minor children.⁷⁵ He differentiates this conception of the family from "more traditional societies where the extended family is both more common and important."⁷⁶ Lister suggests that the same is not true of the United States. This ignores the growing diversity of family forms among the native-born and immigrants alike. In first and second generation Latino and Asian American communities, extended families are often characterized by relationships of interdependence that provide emotional, economic and social benefits to their members.⁷⁷ Same-sex and long-term committed unmarried partners also share in the benefits and burdens of a common life without the ability to sponsor their non-citizen partners to continue to live with them in the United States. Citizens do not necessarily need to approve of their compatriots' relationships to bear a responsibility to them to ensure that they can continue to live with persons whom they are bound to in ties of interdependence. Under my framework, all interdependence-based visa applicants would be asking for the same thing: the ability to continue to share in the benefits and burdens of a common life with a non-citizen.

In sum, citizens devising family-based immigration policies should not overlook the interests of their compatriots in communities "where the extended family is both more common and important" to sponsor non-citizen family members so they can live together in relationships of interdependence.⁷⁸ It is more equitable to base eligibility for family-based immigration benefits on the function of the relationship between the citizen sponsor and non-citizen beneficiary, rather than privileging one cultural conception of familial interdependence in the nuclear family. Insofar as members of a family unit are in a relationship of interdependence whose mutual benefits cannot be pursued at a distance their claims to family reunification should be treated equally. Not all extended family relationships will meet this test. Adult relatives who are financially independent and who intend to live on the other side of the country from one another would not be able to argue that they are linked in relationships of interdependence that cannot be maintained at a distance. The characteristics of an extended family relationship can be tested in the same way that immigration adjudicators already scrutinize spousal immigration claims to ensure that they are sharing a common life together.⁷⁹ But if a USC depends on her adult children, siblings, parents or a partner of any gender in a relationship of dependency or for

mutual social and economic support, their claims should not be treated any less favorably than immediate family members.

Conclusion

Family immigration benefits and citizenship attribution laws should work together to reflect and reinforce a person's claims to social membership in their country of residence. Social membership captures an understanding of a person's ties to their country and communities that is broader than juridical citizenship and the formal rights and responsibilities that follow from this status. In general, I define social membership-based claims to inclusion in terms of the quantity and characteristics of the ties that bind persons to other members and institutions in their community of residence. For citizenship attribution laws, this means that birth within the territorial jurisdiction of a state is only a starting point for establishing the kinds of relationships that will link children to their communities during their formative years. It also means that children born abroad to nonimmigrant parents who are brought to a country at a young age should be recognized as having a social membership claim to citizenship insofar as they have developed the same kinds of relationships to their communities as their U.S.-born peers and siblings. Family immigration benefits should support the social membership claims of children and other citizens to profit from the care of their families without having to leave their country. Instead of prioritizing eligibility for family immigration benefits based on the degree of consanguinity and kinship between a citizen and a non-citizen, we should look to the degree to which a citizen or lifelong resident is dependent on a non-citizen for care and support. At present, family-based immigration policies in the United States do not allow minor children to sponsor their non-citizen parents and guardians as immigrants. I have argued that the political community has both a moral obligation and a policy interest in ensuring that its most vulnerable members are cared for by their parents and guardians regardless of their citizenship rather than public agencies. This requires that we not only allow, but prioritize the claims of minors and other dependents to sponsor their non-citizen family members in relationships of guardianship and interdependency for immigration benefits. We should continue to allow adult citizens to sponsor their non-citizen family members for immigration benefits, but their claims should take secondary priority behind minors and dependents since most adults are more capable of subsisting independently of their non-citizen family members than children. The current system for allocating family immigration benefits for adult sponsors assigns preferences based on their kinship relationships with non-citizen family members. With the exception of spouses, sponsors are not asked whether they will cohabitate or otherwise share a common life with their non-citizen family members if they gain the right to live together in the same country. I urge that we reform the family-based immigration system for adults to prioritize claims for immigration benefits for non-citizens to the extent that they are in relationships of interdependence with citizens in which they share the benefits and burdens of living together and supporting one another. In sum, both citizenship and family immigration laws should be designed to function together to prevent the separation of mixed-status family members insofar as that they depend on each other in all areas of life.

Here, I have provided a moral justification for allowing citizens to sponsor non-citizen family members to the degree that they are dependent on them for care and support. I have begun to consider how this principle would reshape current family immigration and citizenship laws if

it were to be implemented as part of broader immigration reform legislation. Future policy oriented research should further consider ways to contain the costs of this policy for all citizens. We might start by asking how existing financial support requirements for sponsors of non-citizen family members might be reallocated to non-citizen guardians who are being allowed to remain for the sake of their citizen-dependents.⁸⁰ Future conceptual research on this topic would also profit from examining and comparing the family immigration practices of other jurisdictions. We could use this information to test the extent to which interdependence provides a reliable cross-societal definition of the family and the values that family reunification in immigration law are intended to secure. Future research would also benefit from considering how other jurisdictions have balanced family unity with competing public interests in immigration regulation.⁸¹ In short, family-based immigration can and should be justified not just as a humanitarian concession to non-citizens, but also as a policy preference that serves the interests of citizens.

Notes

¹ Abrams 2013, 15; Aleinikoff, Martin and Motomura 2003, 302; Rumbaut 1997, 3.

² Border Security, Economic Opportunity and Immigration Modernization Act of 2013, §2307; Nakamura 2013.

³ Huang 2008, 6. Fuchs 1996, 18. In his role as Vice Chair of the 1990-1997 United States Commission on Immigration Reform, Lawrence Fuchs urged members of Congress that were considering new restrictions on legal immigration to consider the impact of these changes would have on future unauthorized immigration levels. He noted that while “many of the opponents of legal immigration reform in both the House and Senate argued that most of these spouses and minor children are already in the United States. That is true. Some are here illegally. They could have remained separated from husbands, wives, and small children outside the U.S. That would have complied with the law, but it also would have defied human realities. They chose to disobey the law to keep their immediate families together.”

⁴ *Oforji v. Ashcroft* 2003; *Niang v. Gonzales* 2007; *Gumaneh v. Mukasey* 2008; Collopy 2007, 489-495; Conroy 2009, 123. The doctrine espoused in these cases allows for constructive deportation of citizen children (accompanying parents subsequent to deportation in the absence of another guardian) to countries where they may face female genital mutilation. If these children were not citizens, they would be eligible for asylum in the U.S. under similar circumstances.

⁵ Morales 2009, 80-87.

⁶ *Perdido v. Immigration and Naturalization Service* 1969; *Acosta v. Gaffney* 1977; *Polovchak v. Meese* 1985.

⁷ Honohan 2009, 787.

⁸ *United Nations Convention on the Rights of the Child* (1989), Articles 3, 9, 10, 21, 22. For other human rights-based defenses of family unity in the face of immigration enforcement, see: *Beharry v. Reno* 2002; Cole 2006 (U.S. practice); *Baker v. Canada* 1999 (in which the Supreme Court of Canada ruled that a parent’s case to remain in the U.S. must take the UN Convention on the Rights of the Child into account); Lambert 2013 (discussing how the European Convention on Human Rights may limit the prerogative of member states to deport non-citizen parents or spouses of citizen-dependents based on their dependence in family life or interdependence in private life).

⁹ Bush and Bolick 2013, 20-23.

¹⁰ Lister 2010, 720.

¹¹ Lister 2010, 736, 743.

¹² On the prevalence of extended family interdependence among non-white U.S. citizens and immigrants, see, for instance, Schwede 2003; Fomby, Mollborn, and Sennott 2010, 236-237.

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- ¹³ Hing 2006, 118.
- ¹⁴ See note 1.
- ¹⁵ “Table 6: Persons Obtaining Legal Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 2003 to 2012,” (Washington, DC: Office of Immigration Statistics, 2013). Available Online: <http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2012/LPR/table6.xls>
- ¹⁶ Motomura 2006, 242.
- ¹⁷ Table 7: Persons Obtaining Legal Permanent Resident Status by Type and Major Class of Admission: Fiscal Year 2012,” (Washington, DC: Office of Immigration Statistics, 2013). <http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2012/LPR/table7d.xls>. This number was obtained by dividing the total number of spouses and children of employment-based immigrants (78,080) by the number of employment-based immigrants (principals and family derivatives combined) admitted in FY2012 (143,998).
- ¹⁸ Ibid. This number was obtained by adding the total number of spouses and children of employment based immigrants in all 5 categories (78,080) to family preference immigrants (202,019) and the immediate relatives of US citizens (478,080) and dividing the total (758,179) by the number of immigrants admitted in FY2012 (1,031,631).
- ¹⁹ 8 USC 1229b(b)(1) or Immigration and Nationality Act Section 240A(b)(1).
- ²⁰ Ibid.
- ²¹ Yoshikawa and Kholoptseva 2013, 3.
- ²² Ibid.
- ²³ Fix and Zimmermann 2001; Hawthorne 2008, 819-823; Thronson 2008.
- ²⁴ One might respond that the USC could just leave the country to continue to pursue a relationship in the same community with the non-citizen relative. But the USC would then be subject to the immigration laws of the country of his relative, which might be just as restrictive as what the non-U.S. citizen is facing in attempting to come to the United States.
- ²⁵ U.S. State Department 2013.
- ²⁶ Ibid.
- ²⁷ Honda 2013.
- ²⁸ Pallares and Flores-Gonzalez 2011, 166.
- ²⁹ Ibid., 164, 168.
- ³⁰ See note 1.
- ³¹ Lowell 1996; Employment Based Permanent Immigration 2006.
- ³² Smith 1993, 57-62.
- ³³ Bush and Bolick 2013, 22.
- ³⁴ Pallares and Flores-Gonzalez 2011, 161, 166. Pallares and Flores-Gonzales contend that “the common referent of the family has become a source of political identification and mobilization among mixed-status families and youth. Ideas about the sanctity of family preservation and the injustice of family separation are being used by movement activists to produce a new collective action frame . . . [where] civic responsibility entails a personal morality that privileges loyalty to family above all other principles, laws and concerns. [This] run[s] counter to the notion of a distinct public/private divide between state and family that is more prevalent in Anglo liberal (and Protestant) political theory, this divide is not so clear in Catholic views of state/family relation or in Latino political thought and activism.”
- ³⁵ Chu 2013; Pimentel 2013.
- ³⁶ Zolberg 2006, 330-336; Martin 2011, 190-200.
- ³⁷ Walzer 1983, 31-35, 60-62.
- ³⁸ Mancini and Finlay 2008, 581.
- ³⁹ *Chae Chan Ping v. United States* 1889; *Nishimura Ekiu v. United States* 1892; *Fong Yue Ting v. United States* 1893.
- ⁴⁰ Boehm 2008, 789-795.
- ⁴¹ *Wong Kim Ark v. United States* 1898; Meyler 2001; Jacobson 2006.

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- ⁴² Fix and Zimmermann 2001.
- ⁴³ Surak 2008, 550-555; Mullaly 2005; Colvin 2008, 232-246.
- ⁴⁴ Thronson 2006.
- ⁴⁵ Shachar 2009, 152-159; Carens 2010, 9-11.
- ⁴⁶ Carens 2002, 103.
- ⁴⁷ Carens 2002, 103-104, Carens 2010, 11.
- ⁴⁸ Carens 2002, 103.
- ⁴⁹ Border Security, Economic Opportunity and Immigration Modernization Act of 2013, §2103.
- ⁵⁰ Carens 2010, 11, 20-21.
- ⁵¹ *Ibid.*, 24
- ⁵² Balderamma and Molina 2009, 197.
- ⁵³ Treas and Mazumdar 2002. Treas and Mazumdar note that older immigrants who come to the United States to join their working-age children often experience isolation in ethnic enclaves and family social networks. They have social ties to the broader community and the economic support of their family to support potential claims to legal permanent residence (to benefit from the care of their children, provided this does not occur at taxpayer expense). The issue here is whether they contribute to the community sufficiently to merit the benefits of citizenship.
- ⁵⁴ *Plyler v. Doe* 1982; Gouwens 2001; Smokowski and Bacallao 2011, 130-163.
- ⁵⁵ Perez 2009, 148. All of the children interviewed in Perez’s book mention an influential teacher that helped them to overcome socioeconomic and linguistic challenges, and in some cases, the biases of other teachers who told them they would not amount to anything because of their social background and legal status.
- ⁵⁶ Olivos and Mendoza 2010, 343.
- ⁵⁷ Ryan 2010, 173-174.
- ⁵⁸ Kozoll, Osborne and Garcia 2003.
- ⁵⁹ *Ibid.*, 580-581.
- ⁶⁰ Spiro 2008, 70-76. Spiro notes that countries that send large numbers of emigrants to the United States (i.e. Mexico and the Dominican Republic), with or without authorization, are increasingly allowing their nationals to retain their legal nationality of origin after they naturalize as U.S. citizens, or to claim their parents’ legal nationality status if they are born abroad. There are legal benefits for the child-beneficiaries of dual citizenship: if their parents are deported and they are forced by circumstances to return to Mexico, for instance, they have a claim to the rights and services accorded to nationals. But we should not overstate the adequacy of this safety net. Young U.S. born and/or socialized persons may have few remaining connections in Mexico, and their ability to integrate into what amounts to a foreign society and state from their perspective may have deep and lasting repercussions for them as adults.
- ⁶¹ Hamman and Zuniga 2011, 155-160. The author’s study documented cases of serious educational disadvantages in U.S. born children who followed deported parents back to their ancestral communities in Mexico and a lack of social acceptance by teachers and students alike.
- ⁶² Carens 2010, 42.
- ⁶³ Garcia, Eig and Kim 2010; *Flores-Figueroa v. United States* 2009; Kephart, Janice. 2010. “Fixing Flores: Assuring Adequate Penalties for Identity Theft and Fraud,” *Center for Immigration Studies Backgrounder* (January, 2010). But considerations of culpability and innocence are being raised on both sides of the immigration debate. In President Barack Obama’s speech on immigration in El Paso, TX in May, 2011, he argued on the one hand regarding unauthorized adults that “we have to acknowledge they’ve broken the rules.” But in the same speech, Obama argued for legalizing unauthorized children through the DREAM Act because “we should stop punishing innocent young people for the actions of their parents.”
- ⁶⁴ U.S. State Department 2013b. The U.S.-born children of senior diplomats on the U.S. State Department’s “Blue List” with diplomatic immunities are not currently regarded by the U.S. State Department or the United States Citizenship and Immigration Service as “subject to the jurisdiction of

U.S. law.” Even so, they are statutorily eligible to adjust to LPR status with eligibility for naturalization five years later through a simple registry process.

⁶⁵ Morton 2012; Wessler 2012. Between January, 2011 and June, 2011, the U.S. Immigration and Customs Enforcement reports that it deported 46,486 parents with at least 1 USC child. Wessler’s Freedom of Information Act request reveals that ICE deported 204,180 parents of citizen-children between July 1, 2010 and September 30, 2012.

⁶⁶ *Acosta v. Gaffney* 1977; *Oforji v. Ashcroft* 2003.

⁶⁷ Hall 2011.

⁶⁸ Wessler 2011, 6. Wessler’s report notes that as of November, 2011, over 5,000 citizen-children lived in foster care subsequent to their parents’ deportation.

⁶⁹ Lister 2010.

⁷⁰ *Ibid.*, 722, 728, 732-733 (intimacy), 735-736 (proximity).

⁷¹ *Ibid.*, 737, 742 (nuclear family as common core presented as an *a priori* argument).

⁷² Orrenius and Zavodny 2010.

⁷³ Lister 2010, 735-736.

⁷⁴ Parkinson, Patrick. 2011, 16-44.

⁷⁵ Lister 2010, 742

⁷⁶ *Ibid.*, 743.

⁷⁷ Gerstel 2011; Treas and Marcum 2011, 133-135.

⁷⁸ Lister 2010, 743.

⁷⁹ For a US example, see: Immigration Marriage Fraud Amendments of 1986; In Canada, see: “Regulations Amending the Immigration and Refugee Protection Regulations, 2012.

⁸⁰ United States Citizenship and Immigration Service 2013.

⁸¹ See note 8 for some starting points for this line of research.

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