

The American Dream

That American dream of a better, richer, and happier life for all our citizens of every rank . . . is the greatest contribution we have yet made to the thought and welfare of the world.

—James Truslow Adams, *The Epic of America*

On September 5, 2012, Benita Veliz, an undocumented youth advocate from San Antonio, Texas, took the podium during prime-time coverage of the Democratic National Convention. She made a plea for immigration reform and urged fellow Latinos to reelect President Barack Obama because, she said, “he fought for my community.” Benita was brought to the United States as a child “like so many Americans of all races and backgrounds.” Unlike most of her U.S. citizen peers, Benita graduated at sixteen as the valedictorian of her high school and finished college at twenty with a double major, a record that would have made her eligible for citizenship if the Dream Act had passed in the U.S. Senate in 2010. First proposed in 2001 by Illinois senator Dick Durbin with bipartisan support, it was designed to give legal status to young immigrants who had entered the country before the age of sixteen and completed college study or military service. Benita explained, “I feel just as American as any of my friends and neighbors. But I’ve had to live almost my entire life knowing that I could be deported.” She reminded her listeners, “When Congress failed to pass [the Dream Act], President Obama . . . took action so people like me can apply to stay in the country and contribute.” On June 15, 2012, late in the presidential campaign and under pressure from Latino groups, Obama issued an executive order that offered a temporary reprieve from deportation and short-term work authorization to young immigrants like her.

Benita vowed that Dreamers would continue to fight for permanent legal status, but “while we do we’re able to work steady, to pursue the American Dream.”

At a San Diego federal detention center for unaccompanied minors the same summer, Elizabeth Kennedy, a graduate student volunteer, asked the five kids in the English-language class she taught to write a story describing what the American Dream meant to them. The children had not been brought to the United States like Benita but came from their home countries in Central America and Mexico on their own or with smugglers, risking their lives to cross the treacherous border terrain. They were all apprehended within hours by U.S. immigration authorities, scheduled for deportation proceedings, and detained in a closed federal facility pending a hearing in the San Diego immigration court. After screening by staff and local attorneys under contract to the government, they would be released to approved U.S. sponsors, sent back, or, if no sponsors were available, held in custody until they turned eighteen or they requested voluntary departure. The new arrivals were young, between thirteen and seventeen. They had left home with idealized visions of life in the United States wrought from media images and migrants’ tales of the plentiful work and easy money to be made. In detention too the American Dream narrative was all around them in cheerful images, inspirational messages, and group activities.

The children wrote that they missed home, but few wanted to return because they were sure that life would be better on this side of the border. They would be loved and want for nothing. They dreamed of going to school, landing good jobs, and having a middle-class life. They were optimistic about the future in spite of the poverty, abuse, and neglect many had suffered. A number of the children made the journey to join a parent who had migrated in search of work and to be part of the families their parents had established in the United States. Others came in search of refuge and new attachments after violence back home tore their families apart. One thirteen-year old girl I will call Juanita wrote:

I have always dreamt of being in the United States with my dad. I came because I want to know my dad because he loves me and to see my brother and sister who are here. I will realize my dream of being a legal secretary, to study English and music, to have my legal papers, get a car, and to continue studying hard. I don’t want to suffer anymore in Guatemala. I haven’t seen my brother in eleven years and my little sister was born here.

Juanita's fourteen-year-old classmate named Pedro explained:

I would like a pretty house with a pool and a park. I would like to be a licensed linguist. I would like to have a dad. My family and my grandparents have all died, my dad left with another woman, and my mom looked for another man. I would like a family and to have peaches to eat every day.

A serious fifteen-year-old named Jesús said:

We come for different reasons, but we all have high hopes and ideas. My biggest dream is to go to school.

DREAMERS AND DETAINEES

Dreamers like Benita have been the poster children for immigration reform because their work ethic and sacrifices earned them scholastic achievements that appear to defy the odds. Sen. Dick Durbin, their long-time supporter, has taken the Senate floor every year to urge passage of the Dream Act. "These kids didn't make the decision to come to this country," he said on one such occasion. "It was a decision made by their parents and if they were breaking the law, I don't believe the children should be held responsible."¹ The Dreamers' stories tell the wrenching tale of children raised in the United States by parents of humble origins who arrived with little money but great faith in the opportunity for a better life. These young people embody American values and confirm the promise of the Dream yet live under the constant threat of deportation. The underlying message is that they should be awarded the political recognition of citizenship, unlike the willful "aliens" who continue to breach the border and threaten national security. Despite the color of their skin, Dreamers can be viewed as honorific Americans because of their command of English, cultural capital, and embrace of mainstream identity.

In contrast to the public attention lavished on Dreamers like Benita, until recently little has been reported in the mainstream media about the thousands of undocumented children like Juanita or Jesús who came alone in pursuit of the American Dream and landed in federal detention. When journalists wrote about undocumented families, they focused on the U.S. citizen children who were caught up in immigration sweeps and mistakenly deported or chronicled the ordeal of living in families where some members have citizenship and others do not. Before 2014 reports on immigration detention exposed the appalling conditions of unauthorized adults but largely ignored the treatment of unaccompanied children in federal custody.

A vulnerable population that has been hidden from public scrutiny and absent from immigration debates for years suddenly became breaking news in 2014, when shocking pictures of kids in detention centers began circulating in the media. The number of children detained at the Southwest border since October 2013 had surpassed 57,000 by July 2014 and was climbing rapidly.² News reports since then have galvanized the public, creating both sympathy and alarm. We have heard stories of Central American migrants as young as four or five packed into overcrowded holding cells and witnessed anti-immigrant protesters banning these children from entering their communities by blocking buses³ or even passing resolutions.⁴ Facing what President Obama called an “urgent humanitarian crisis,” his administration has been scrambling to set up additional shelters, and the president has promised to “stem the tide” of further migration, asking Congress for emergency funding to aid the effort. Critics of the administration blamed the crisis on lax border security, while advocates described the children forced to flee gang and cartel violence in Mexico and Central America⁵ as refugees.⁶

Children who migrate alone have compelling reasons to leave home. They see the journey north as necessary—as a chance to reunite with undocumented parents “on the other side” or as a hedge against domestic abuse, predatory police, forced gang conscription, and drug traffickers. The murder of younger and younger victims by gangs is a major factor fueling the exodus of children from Central America.⁷ After a treacherous journey they risk their lives crossing the border through barren desert wastelands or the swift currents of the Rio Grande, endure abuse by smugglers or gangs en route, experience coercive arrests by the Border Patrol, and wage a prolonged and uphill battle to stay in the United States legally.

In addition to these new arrivals, increasing numbers of teenagers have been identified and referred to immigration authorities by police, probation officers, juvenile judges, or child protective services because of their unlawful status.⁸ Like the Dreamers, they were brought to the United States as young children and grew up here. Unlike the Dreamers, many were designated as unaccompanied because they were too afraid to identify their undocumented family members after they were apprehended. As a result, they were removed from their families, held in federal custody, and put into removal proceedings. Many of these youths face removal from the United States because they are ineligible for legal status. Although like the Dreamers they are culturally American, they are not “good” victims. Both groups—the recent arrivals and the long-

term residents—are questionable symbols of vulnerability. Even those who ultimately win legal status and settle permanently in the United States say that the stigma of confinement continues long after their release. They suffer for years from the ill effects of separation from family and the trauma of a dangerous journey.

I became interested in this population after researching youth crime in France in 2000–5 and discovering that almost half of the Paris juvenile court cases involved unaccompanied and separated child migrants from Eastern Europe or Africa. They were forced to steal or to prostitute themselves when their attempts to find legal work or to enroll in school failed.⁹ How, I wondered, did we deal with the same vulnerable population? This book answers that question. Based on site visits to twenty-six government-contracted detention facilities and foster care and postrelease programs, 140 interviews with federal staff and immigration authorities, observation of 120 hours of immigration court proceedings, and in-depth interviews of forty formerly detained youth, I tell the story of how the U.S. government got into the business of detaining unaccompanied children. Using data gathered between 2009 and 2012, the period immediately preceding the current surge, I track the evolution of the custodial system. I focus primarily on six youths—Ángel, Carlos, Corina, Ernesto, Maribel, and Modesto—who describe in their own words the lives they left behind in Guatemala, El Salvador, Honduras, and Mexico, their reasons for migrating, the journey north, and what they experienced in government custody. This is their story, a firsthand account of what became of their American Dream.

The historian James Truslow Adams popularized the phrase “American Dream” in his 1931 book, *Epic of America*: It is “[the] dream of a land in which life should be better and richer and fuller for every man, with opportunity for each according to his ability or achievement.”¹⁰ Adams observed that the dream appealed not only to the native born but to the millions of immigrants who were lured to American shores in a quest for both material plenty and the opportunity to “attain the fullest stature of which they are innately capable,”¹¹ regardless of birth or position. Since the earliest days of the nation, the American Dream has figured prominently in literature, politics, and popular discourse. It is at the core of our national mythology and is intricately bound up with basic American values such as individualism, meritocracy, achievement, optimism, and faith in progress. It translates deeply held beliefs about the openness of social class, the possibility of upward social mobility through hard work, and, more important, the ability of individuals to

achieve success by their own efforts. It glorifies economic success and individual initiative. The American Dream remains powerful because it works to unify present and would-be Americans around the promise of a better future and the mythic past of an immigrant nation forged from many origins. As a national narrative it is, and must be, silent on the categories of differences that threaten the arc of progress. It consistently downplays the stubborn persistence of poverty and the entrenched inequalities based on class, race, ethnicity, and gender. It ignores the overwhelming evidence that in the twenty-first century the United States has less equality of opportunity than almost any other advanced industrial country, a particularly salient reality for poor immigrant families and children.

Both the enduring power of the dream and its current fragility were on full display in the rhetoric of the 2012 presidential campaign. In the political theater of the party conventions, both nominees, Mitt Romney and Barack Obama, crafted speeches that drew heavily on the American Dream. In his August 30 speech to GOP delegates, Romney repeated Adams almost verbatim by describing Americans as “optimistic, positive, and confident in the future.” “That optimism is uniquely American,” he continued. “It is what brought us to America. We’re a nation of immigrants, the children, grandchildren, and great-grandchildren of the ones who wanted a better life, the driven ones. . . . They came not just in pursuit of riches in the world, but for the richness of this life.” Romney highlighted the immigrant beginnings of his family, who fled to the United States from Mexico during the revolution and were treated as war refugees by the U.S. government. He depicted the founding of his equity firm, Bain Capital, as a risky endeavor that became “a great American success story” thanks to his family’s ingenuity and hard work. Downplaying his class privilege, family connections, and private school education, he insisted, “I am an American and I make my own destiny.”¹²

Obama’s September 6 convention speech repeated the same themes. He evoked the “the basic bargain at the heart of America’s story” that enabled his grandparents to go to college and opened the doors of Harvard to him and his wife. The bargain is “that hard work will pay off, that responsibility will be rewarded, and that everyone has a fair shot.” This narrative put his white mother and her parents on a level playing field with his wife’s working-class African American family. Obama spoke of an inclusive social contract that would strengthen the middle class and lift up the neediest, but he added, “As Americans . . . we insist on personal responsibility, we celebrate individual initiative. We’re not

entitled to success. We have to earn it. We honor the strivers, the risk takers, the entrepreneurs who have always been the engine behind our free enterprise system.”¹³

Despite agreement on resonant American values like freedom and work, both candidates’ positions revealed deep ideological divides on the role of government in regulating the market, in addressing economic disparities, and in setting national immigration policy. The promise of a postracial society heralded by the 2008 election of the first African American president was a chimera by 2012. Race shaped political narratives and played a prominent role in voting patterns. The GOP won a majority of white votes, whereas Hispanics, Asians, and African Americans voted overwhelmingly for Democrats. The campaign unfolded in the context of demographic anxiety about the shrinking proportion of whites to minorities—Latinos and Asians—and nativist fears about what the loss of a white America would mean for the national culture. The economic crisis of 2008 continued a long-term trend of downward mobility among the middle class as millions lost jobs, homes, and health care. The downturn had a disproportionately negative impact on underemployed and jobless minorities and on young people, particularly those ages eighteen to twenty-four who are the new face of homelessness.¹⁴ Neither nominee explicitly mentioned race, and both avoided a meaningful discussion of class, ignoring the poor and concentrating exclusively on the middle class. Romney contrasted the dream “of every new wave of immigrants” to build a better future with a new reality: “For the first time a majority of Americans now doubt that their children will be better off than they are.”¹⁵ Although the median net worth of whites is roughly twenty times higher than that of African Americans and Hispanics, whites expressed much more pessimism about the direction of the country and their own future prospects.¹⁶ When whites are no longer the majority, will the United States still be the same country? If the institutions of social mobility and national security that whites have always counted on—the schools, the labor market, and the economy—are broken, is the American Dream itself in jeopardy?

RACE, IMMIGRATION, AND THE LAW

Adams’s *Epic of America* appeared less than a decade after the passage of landmark legislation in 1924, the Reed-Johnson Act, which ended the era of open immigration from Europe and signaled the beginnings of stringent restrictions.¹⁷ It established for the first time numerical

limits based on national origins and aligned quotas with the racial hierarchies of the time. The law inaugurated a new emphasis on both territorial integrity and muscular control over the nation's contiguous land borders. It reaffirmed all the restrictions on the admittance of undesirables codified in the Immigration Act of 1907, namely, idiots, imbeciles, the insane, criminals, polygamists, anarchists, and persons likely to become a public charge. It took legal practices that had justified racial discrimination against African Americans through separate but equal policies and extended them to other ethnoracial groups in immigration law: Asians, southern Europeans, and those of "the Semitic race."¹⁸ Most important, the law created a new category of illegal alien¹⁹ that stood in sharp contrast to the citizen as the only formal bearer of inalienable rights.²⁰ Its sponsor, a junior senator, David Reed, shared his congressional committee's concern with "racial purity" and their fear that the rising immigrant tide would bring "races that would mongrelize and weaken hardy American stock."²¹ Writing in the *New York Times*, Reed warned that the new immigrants could not be expected to assimilate as their predecessors had: "America can no longer tolerate the irritation of her 'foreign colonies'—those groups of aliens who speak a foreign language and live a foreign life and who want neither to learn our common speech nor to share our common life."²²

Forty years later, in 1965, President Lyndon B. Johnson signed the Hart-Cellas Act into law in a dramatic overhaul of immigration policy that abolished national origin quotas and made family reunification the basis for legal status. Although widely viewed as a major reform, because it corrected what Johnson called "a cruel and enduring wrong in the conduct of the American nation," Hart-Cellas imposed other restrictions that are still with us today.²³ It extended the principle of formal equality in admission to all countries and imposed national quotas of 20,000 entrants for each country in the western hemisphere. The unintended result was that the law created greater opportunities for migration from Asia and Africa while severely restricting it from Mexico, the Caribbean, and Latin America. It ended the annual legal Mexican migration of 200,000 *bracero* workers and 35,000 permanent residents. After 1965, the majority of Mexican migrants became illegal aliens, and the number of apprehensions and deportations skyrocketed from 151,000 in 1968 to 781,000 in 1976. These immigration enforcement policies and the statistical evidence used to support them have created the mistaken but enduring perception that "Mexican" is a synonym for migrant illegality.²⁴

Contemporary warnings about America's "Mexifornias" that are overrun with Spanish-speaking "illegals" who commit crimes, undercut wages, spread disease, refuse to learn English, and produce anchor babies at government expense recall early-twentieth-century anti-immigrant views. Then, eugenicists, politicians, novelists, and even Progressive-era sociologists and reformers decried the dangers of immigrant crime and poverty in crowded tenements and issued dire predictions of race suicide as a result of hereditary defects in the blood of unwanted immigrants. Now, virulent resistance to undocumented immigration is expressed by a combination of unemployed workers, nationalists, nativists, demagogic political opportunists, and conservatives, as well as liberals who fear that these immigrants will swamp the welfare system and swell the ranks of the unemployed. The Southern Poverty Law Center, which tracks hate groups, documented the role of the eugenicist John Tanton in founding the Federation for American Immigration Reform (FAIR), Numbers USA, and the Center for Immigration Studies, all important groups in the anti-immigrant movement.²⁵ The Latino threat is embodied in the images of the drug runner, the human smuggler, and the gang banger.²⁶ The stereotypes that underlie these images have been reinforced by grassroots rallies, citizen militias, talk radio, movies, and television shows such as Arizona sheriff Joe Arpaio's three-episode pilot on the Fox Reality Channel. The cable shows *Border Wars*, *Law on the Border*, and *Border Battles* glorify the enforcement efforts of beleaguered agents struggling to hold back the flood of illegal aliens who wreck havoc on communities.

Terms such as *racial purity* have largely disappeared from public usage, but racial thinking is expressed in coded language about work, education, immigration, and entitlements. During the primaries, GOP candidates advocated a return to the opportunity society and lamented Obama's entitlement society. Newt Gingrich mocked Obama as the "food stamp" president, and Romney's campaign warned that under Obama, "you wouldn't have to work or train. They would just send you a welfare check." "Entitlement society" is racial code for disadvantaged minorities and illegal aliens who get undeserved handouts funded by taxpayers; "opportunity society" refers to the white mainstream population who have to work hard for what they earn.²⁷ The shrill taunt, "What is it about illegal that you don't understand?," usually targets Latinos—not only the undocumented but also legal residents and U.S. citizens. The Harvard political scientist Samuel Huntington best expressed the racialized anxiety about the loss of national identity in the wake of fears linked

to a burgeoning Latino population. In a widely cited 2004 article, he warned against the lump of unassimilated Spanish-speaking immigrants and the threat they pose to the Anglo-Protestant culture that has been central to American identity for three centuries. “There is no Americano Dream,” he insisted. “There is only the American Dream created by an Anglo-Protestant society.”²⁸ As comprehensive immigration reform efforts gathered steam in Congress in 2013, racist diatribes specifically targeted undocumented Latino youth. Rep. Steve King of Iowa likened them to livestock, insisting that for every Dreamer valedictorian there were one hundred drug mules who had “calves the size of cantaloupes” from hauling huge bales of marijuana across the desert.²⁹ When the number of unaccompanied children crossing the U.S.-Mexico border from October 2013 to June 2014 surged to 57,525,³⁰ moral panic centered on the threat of criminality and disease they posed.

THE STATE OF EXCEPTION FOR UNACCOMPANIED ALIEN CHILDREN

The state of exception legislated for “Unaccompanied Alien Children” (UAC) has an unsettling history.³¹ In 1984, during the Salvadoran civil war, there was another large-scale migration of children to the United States as thousands of youth fled violence at home and headed north. Until that time U.S. immigration authorities had routinely released detained children to parents or family members already living in the United States pending immigration court hearings. But citing the need to protect vulnerable children caught up in a humanitarian emergency and using their broad powers to detain noncitizens, in 1984 authorities in the western division of the Immigration and Naturalization Service (the precursor to Immigration and Customs Enforcement [ICE] and Customs and Border Protection [CBP], the immigration enforcement agencies within the Department of Homeland Security [DHS]) made automatic detention the new norm and release the exception.³² Once the state of exception was firmly established, the rationale for detaining a vulnerable population became both a self-authorizing status and a moral imperative. Federal authorities continued to defend detention even when legal aid organizations in California sued them for confining children under the punitive conditions usually reserved for violent offenders.³³ Children as young as fourteen, who posed no security threat or flight risk, were incarcerated with adult criminals and adjudicated youths, subjected to handcuffing and shackling, and deprived of legal and social services.

A 1985 class action lawsuit challenged the government's indefinite detention of undocumented minors and the harsh treatment they received. After years of litigation, in 1993 the Supreme Court affirmed the government's right to detain undocumented children in secure facilities for unspecified, and sometimes prolonged, periods pending release to approved sponsors and an appearance in immigration court.³⁴ Faced with continuing legal challenges, the federal government agreed in 1997 to establish minimum standards for their humane treatment, to hold them in the least restrictive setting, and to ensure their prompt release.³⁵

Federal authorities have continued to justify detention as a humanitarian response to exceptional conditions of instability and displacement. Intake teams are on standby 24/7 to admit undocumented children who are determined to be unaccompanied because they are under eighteen and without parents or guardians in the United States who are able and willing to provide care. Paradoxically, a permanent state of emergency now exists. Detention is not a temporary suspension of law and policy in crisis situations. Rather, when coupled with selective deportations, it serves as the dominant paradigm for managing the increasing numbers of undocumented Central American and Mexican children who are apprehended annually by immigration authorities.

The federal custodial system is a constantly expanding leviathan that now costs taxpayers close to a billion dollars a year and affects thousands of families.³⁶ Between 2004 and 2010 the budget for the custodial system soared from \$53 million to \$225 million and included thirty-seven full-time administrative staff members working with thirteen contracting agencies to oversee thirty-nine facilities with 1,561 beds.³⁷ Beginning in 2011 the number of arrivals spiked. A new record was set in 2012 when the total admissions reached 14,721, requiring the rapid recruitment and training of additional staff. By 2012 sixty-four federal and contract staff members managed sixty-nine facilities with 2,927 beds.³⁸ In 2013 there were 25,041 children in eighty-three government facilities and programs with roughly 5,000 beds.³⁹ Federal authorities projected that in 2014 new admissions of unaccompanied children could balloon to 74,000; a 2015 estimate of 130,000 represents a cost of \$2 billion.⁴⁰ The estimate for 2014 was subsequently lowered by USCCB, an ORR subcontractor that reported there were 61,340 admissions to 114 federal facilities.⁴¹

The overwhelming majority of those in federal detention come from Guatemala, El Salvador, and Honduras, a pattern that has remained constant since the 1980s. Children in custody are younger than ever

before, with 24 percent under the age of fourteen in 2013, up from 17 percent in 2012. New data analyzed by the Pew Research Center show a 117 percent increase in the number of unaccompanied children ages twelve and younger apprehended at the U.S.-Mexico border to date this year (May 31, 2014), compared to the last fiscal year.⁴² The number of unaccompanied teenagers ages thirteen through seventeen increased by 12 percent, and nongovernmental organizations (NGOs) report a dramatic increase in the number of young girls, who now make up 40 percent of the total. Among all countries, Mexico had the highest number of unaccompanied minors apprehended at the border (17,219) in 2013, but in July 2014 far fewer Mexicans (11,550) than Hondurans (13,244) were in CBP custody.⁴³ Undocumented Mexican children are underrepresented in federal custody⁴⁴ because the vast majority are quickly deported after apprehension.

The apprehension of undocumented, unaccompanied children ensnares them in two parallel but separate federal systems: mandatory detention and removal proceedings in immigration court. The children enter a labyrinthine system that encompasses Border Patrol stations, ICE centers, subcontracted facilities and programs for minors in thirteen states,⁴⁵ and immigration courts. Federal policy manuals describe custody as necessary to protect a vulnerable population from “smugglers, traffickers and others who would victimize or exploit them” and to neutralize “the danger they may pose to themselves or others.”⁴⁶ Detaining child migrants is also a guarantee that they will appear at all removal hearings or legal proceedings initiated against them.⁴⁷ Huge resources go to electronic detection, risk assessments, psychosocial evaluations, preliminary legal screenings, detention bed space, staff recruitment, immigration adjudications, and deportations, whereas legal representation for all children in immigration court, comprehensive postrelease tracking, and long-term social services are not funded. While the Department of Health and Human Services through the Office of Refugee Resettlement (ORR) assigns itself as the legal guardian for unaccompanied children and operates facilities to hold them, the enforcement branches of the Department of Homeland Security—Customs and Border Protection and Immigration and Customs Enforcement—and the Department of Justice sweep up and prosecute the very same children.

Detention centers are spaces of exception where the competing agendas of humanitarianism and security collide.⁴⁸ One agenda, informed by Western child welfare standards, centers on the individual child as a dependent victim and emphasizes compassion and protection. It relies on

a conception of children as developing beings who are vulnerable to coercion and in need of protection from the obligations and violent disruptions of adult society. This agenda is centered on trauma, pathology, exploitation, and victimhood. It prioritizes attending to the immediate needs of new arrivals who are hungry, exhausted, disoriented, and, sometimes, ill or hurt. It likewise recognizes the basic rights of confined children to education, visitation, health care, recreation, social services, cultural identity, legal assistance, and safe release. It is designed to facilitate rapid release and reunification with family or approved sponsors. Nonetheless, this agenda does not treat children as autonomous and important participants in the decision to leave home, to cross borders, and to work.⁴⁹

The humanitarian agenda conflicts with a second, more political, and better-funded approach that favors security and punitive enforcement. It is dominated by discussions of accountability and choice and views immigrant children as alternately threatening and burdensome. The priority is to reduce risk, limit mobility, discipline families, and engineer the social body through decisions related to sponsors and residence.⁵⁰ These control mechanisms are intended to reinforce security by holding greater numbers of children in highly regulated facilities, isolating suspected offenders and flight risks in secure detention, and removing large numbers of unaccompanied youth, particularly Mexicans, through deportation or voluntary departure.

The regimented custodial care of children stands in stark contrast to the lack of legal protection afforded them in federal immigration courts. Current U.S. immigration law prohibits funding for direct legal representation and competent advocacy for children in removal proceedings. It excludes best interest considerations for minors in court hearings. The U.S. government took a series of “historic steps” in 2014 to fund legal representation for 2,700 undocumented children after their release from custody. This funding will affect only a fraction of those expected to appear in removal proceedings.⁵¹ Most of these children will continue to face immigration judges and government prosecutors without the benefit of legal counsel or a child advocate in backlogged immigration courtrooms.

In immigration law legal status is achieved and held by individuals, not by families. In the absence of parents U.S. immigration law treats children as functional adults in terms of substantive rules, evidentiary requirements, and burden of proof criteria without giving them the necessary safeguards for their developmental immaturity, cultural incapacity, and special vulnerability.⁵² They are held accountable in the same way as adults when they are enjoined to find competent pro bono legal

representation on their own and to make high stakes decisions with regard to release from custody, family reunification, and return to the home country. Since most child migrants are ineligible for the limited forms of legal relief available under U.S. law, their choices after release involve living in the shadows and risking deportation or agreeing to return to their home countries.

Like the refugee camp,⁵³ the closed federal facility responds to problems of public order and border security by creating spaces of exception.⁵⁴ Confinement is not a final solution to the dilemmas posed by the lack of legal status but the temporary defense of minimal existence. It is a bare life that is highly controlled and bereft of full social and political rights.⁵⁵ The suspension of national and international norms premised on the detention of children is accepted only because it applies to undesirable subjects. A situation that would be considered intolerable if it were applied to white middle-class U.S. citizen children is accepted because of the perceived threat they pose as “illegal aliens.”

For years the rights deficits of young migrants without legal status have been blamed on their invisibility. The implication is that public advocacy would generate change if their unique challenges were made known. Jacqueline Bhabha argues that visibility is not the issue. It is rather “an unresolved ambivalence” about the legitimacy of protecting “alien” children that explains persistent policy failures.⁵⁶

DEPORTATION NATION

Over the past twenty-five years, unauthorized immigration has been conflated with crime and terrorism and portrayed as a new and dangerous threat to national security. Fear of “illegals” has produced a public consensus on tighter enforcement as part of any comprehensive immigration reform proposal. Distrust of the undocumented congeals all the familiar racial anxieties, undermining “democratic norms and fostering a punitive state long before the current ‘war on terror.’”⁵⁷ The immigration and terrorism laws passed in 1996 and again after September 11, 2001, represented a significant shift in the assessment of risk and in the methods needed to contain it. These statutes have curtailed existing personal freedoms, gutted due process protections, given unparalleled enforcement powers to immigration authorities, blurred the boundary between criminal and immigration law, and limited judicial review of detention and deportation decisions.⁵⁸ Deportability—the ever-present possibility of being deported—is the condition of both the

undocumented and legal residents who, despite some protections, remain removable.⁵⁹

By expanding the categories of deportable offenses to include nonviolent misdemeanors, applying them retroactively to include acts committed “at any time” in a person’s life, and eliminating the exercise of discretion by immigration judges in most deportation cases, these laws have allowed the state to wield arbitrary power against groups who are being targeted on the basis of racialized national identities and held to harsh standards of unauthorized conduct.⁶⁰ In immigration enforcement, race may be used as a factor in determining whether a person is undocumented. Border Patrol agents typically record the skin color of the people they arrest.⁶¹ “Driving while brown,” as one California immigration attorney put it, puts one at risk for traffic stops by police in states on the Southwest border that have large Latino populations. Supreme Court doctrine gives local police wide discretion to follow, stop, frisk, and deploy excessive force against suspects. As a result, a higher body of law “continues to expose African Americans and Latinos to surveillance, harassment, violence—and death.”⁶² More than border security or social control, current deportation policies are “a living legacy of the ideas about race, imperialism, and harsh government power” that we have grappled with since the founding of the nation.⁶³

By the time Benita took center stage at the 2012 Democratic National Convention, a renewed emphasis on enforcement and security had resulted in a militarized southern border and the criminalization of migration through increased apprehensions and prosecutions, robust collaboration between local police and federal authorities to identify undocumented persons, the failure of even modest comprehensive immigration reforms, and the shattering of families after the apprehension and separation of undocumented parents from their U.S. citizen children. The frantic crackdown on the undocumented has channeled huge resources to contain exaggerated sources of harm. In 2010, John Morton, head of ICE, pledged to focus enforcement efforts on criminal aliens. Instead, in the twenty-six-month period from July 2010 to September 2012, ICE deported more than two hundred thousand immigrant parents who have U.S. citizen children, most of whom were charged with minor offenses.⁶⁴

The large-scale deportation regime in the United States created a “formidable machinery” of enforcement that imposes harsh penalties for immigration law violations and relies on a massive and well-funded detention system.⁶⁵ The annual total number of detainees increased

from 88,730 to 429,247 between fiscal years 1995 and 2011. That dramatic increase mirrors the mass incarceration that grew out of a domestic war on crime. Despite a drop in violent crime that began in the 1990s, the U.S. prison population has risen to a high of 1.6 million, a figure that represents 22.4 percent of the world's inmates.⁶⁶ To detect, apprehend, and detain unauthorized immigrants,⁶⁷ the government spent a gargantuan sum—\$18 billion—on enforcement, more than the total expenditures for all its criminal enforcement agencies combined.⁶⁸ Despite a massive investment in sophisticated surveillance technology, fencing, military aircraft, and additional Border Patrol agents to secure the border and wage a global war on terror, the threat from international terrorists has been negligible. Instead, the vast majority of the adults who were apprehended and detained were labor migrants, people crossing the border in the hope of finding work. They found primarily low-wage work as nannies, maids, or day laborers.

During the 2008 campaign, Obama pledged a balanced approach to immigration policy. Instead his administration has focused almost exclusively on enforcement, deporting a record two million undocumented immigrants during his first six years in office. That number was nearly as many as the total deported during the two terms of the George W. Bush presidency.⁶⁹ In the 2012 election campaign, Obama promised less enforcement by increasing the use of “prosecutorial discretion” to close the deportation proceedings of immigrants who had U.S. citizen children, strong ties to the community, and no criminal records. This initiative generated great hopes but produced few results. After reviewing 298,173 cases for potential relief, Immigration and Customs Enforcement closed only 5,684, or 1.9 percent, of the total proceedings as of June 28, 2012.⁷⁰

Obama has once again used his executive authority to announce a new deferred action program, this time for the parents of U.S. citizens or Legal Permanent Residents, who will get temporary relief from deportation and work authorization for three years. This November 19, 2014, order also expands the 2012 executive order for child arrivals to include those who were brought to the United States before January 1, 2010. However, the White House insisted that the administration’s “aggressive and coordinated Federal response” to the 2014 influx of unaccompanied children to the U.S. border would continue with a focus on “heightened deterrence, enhanced enforcement, stronger foreign cooperation, and greater capacity to secure our borders.”⁷¹ The new executive order directed immigration courts to prioritize the removal

cases of “recent border crossers,” a reference to unaccompanied children and single mothers with young children.

A NEW AMERICAN STORY

This is the story of what happens to child migrants like Ángel, Carlos, Corina, Ernesto, Mirabel, and Modesto who are apprehended and detained every year. To put their stories in the appropriate context, I examine the litigation and legal debates surrounding a federal system that insiders and outsiders alike describe as disjointed and labyrinthine. I explore the contrasting perspectives of staff, attorneys, and youths on “child-centered custody,” protection, and risk and follow children into removal proceedings in federal court. They discuss the limited avenues for legal relief available to the “unaccompanied alien child” under U.S. immigration law, as well as the difficult choices these proceedings demand. I provide the differing perspectives of immigration attorneys and judges on the challenges that children face in court and the reforms needed to repair a broken system. Throughout the book, I include extended narratives of youths who attempt to make sense of American notions of justice, law, rights, and accountability as they struggle to realize a version of the American Dream while remaining part of families that stretch across national borders.

In early February 2013 three undergraduate Dreamers from Georgetown University, Francisco, Kim, and Citlalli, told “a new American story” at a public event I helped them organize as a resident fellow in 2012–13 at the Woodrow Wilson International Center in Washington.⁷² Their story places Dreamers and detainees within the same narrative of possibility and uncertainty, of hope and loss. Francisco, a senior business major at Georgetown, reminded listeners, “The story of undocumented youth is . . . about the families and homes we’ve established, about the daily interactions in our immigrant communities, and the interconnected stories between all of us.” All three grew up in the United States with parents who encouraged them to believe “that the American Dream belongs to everyone, no matter where they come from.” Finding out that they were “illegal” exploded that myth. Kim, a sophomore in the School of Foreign Service, evoked the constant, suffocating ordeal of “a life filled with uncertainty every minute, every hour.” Choking on sobs, she added, “It is a story of closed doors, of broken dreams, broken families, split up because of deportation. . . . [I]t is a story of

depression, stress, and fear, and the psychological toll of being in this country and not having any of the freedoms that so many people enjoy. . . . [A] pathway to citizenship is just about being human in this country. We have lost the freedom to be mobile, the freedom to provide for our families, our freedom to just feel like we exist.”