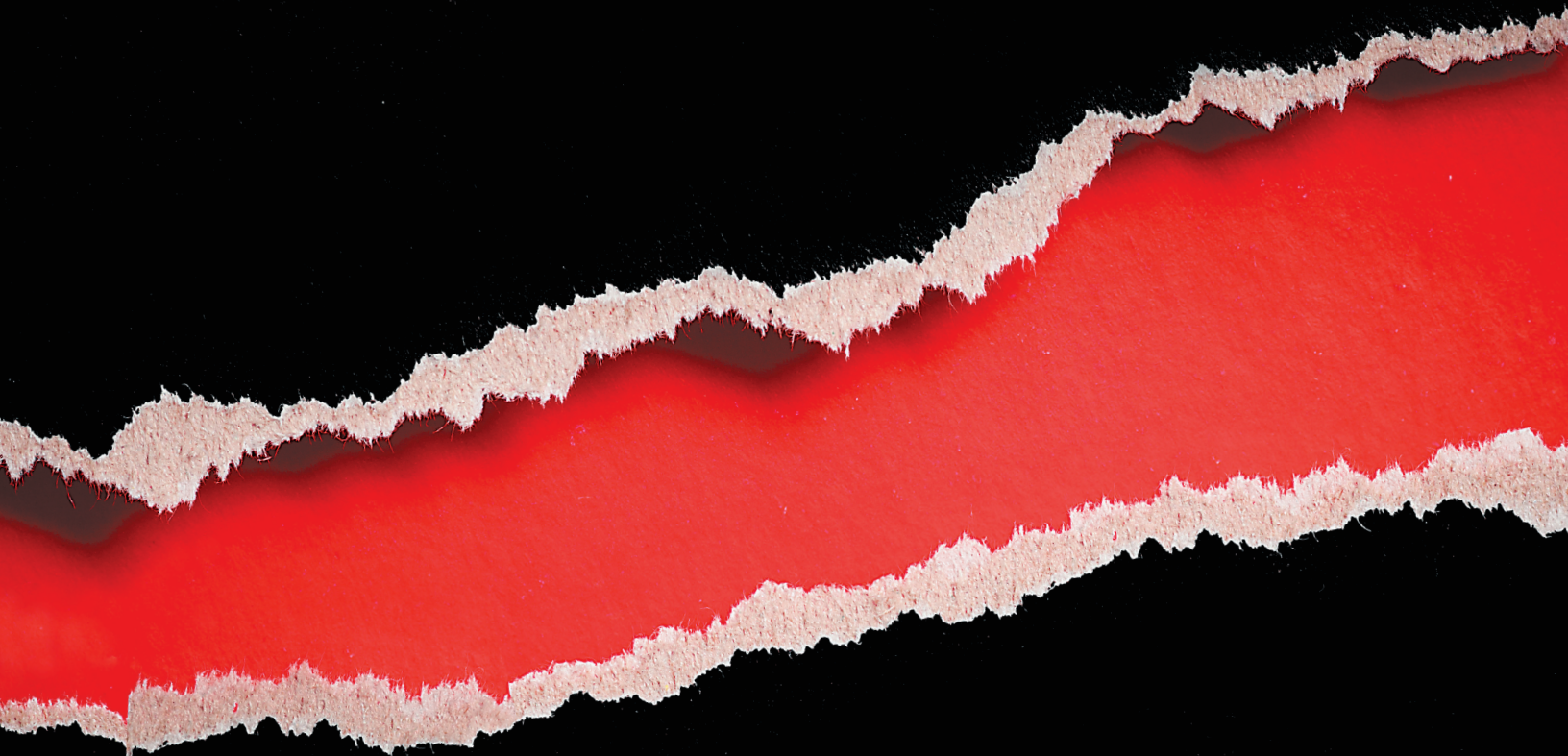


TORN APART

How U.S. Immigration Policy Fragments New Mexico Families



Acknowledgements



The ACLU of New Mexico expresses profound gratitude to the families who agreed to be interviewed for this briefing. They demonstrated unusual courage and commitment to their families and communities by coming forward to share their stories and put a human face on the tragedy of family separation caused by deeply flawed U.S. immigration and enforcement policies.

We would also like to thank the many coalition members, groups, and individuals in New Mexico who helped us identify these family members. We have omitted their names in order to protect the identity of the individuals who chose to participate. In addition, we offer thanks to Andrea Padilla for her photography work.

This report would not have been possible without generous support from the national ACLU Human Rights Program, Lannan Foundation and the William and Salome Scanlan Foundation.

ACLU of New Mexico
Regional Center for Border Rights
1300 El Paseo, Suite G, Box 148
Las Cruces, NM 88001
575-527-0664

ACLU of New Mexico
PO Box 556
Albuquerque, NM 87103
505-266-5915

www.aclu-nm.org



Introduction

In June of 2009, staff of the ACLU of New Mexico Regional Center for Border Rights arrived at a Catholic church in Roswell, New Mexico to hear community members voice concerns about a local police practice of inquiring about immigration status during routine traffic stops. Dorothy, a 24-year-old U.S. citizen, sat with her two boys, ages five and three, as she told the story of how a police officer had pulled her over for a “broken windshield” near Dexter, New Mexico. The officer had asked her husband, who was a passenger, for his license. When Dorothy replied that he did not have one, the officer demanded to know whether her husband was here “legally.” Her heart sank as she whispered, “No.”

Dorothy had met her husband in high school. He had come to the United States as a child and had lived in New Mexico for almost 20 years. After graduating from a local high school as valedictorian, he found work on a dairy farm. He was the major breadwinner of the family and had never been in trouble with the law. But that didn’t matter. The police officer who confronted Dorothy that day called Border Patrol and, in less than 48 hours, they deported him to Mexico. Dorothy is now receiving public benefits to care for her children and is considering moving to a country she knows nothing about to be closer to her husband. “You know,” she concluded, fighting back tears, “I never asked to see his papers before I fell in love with him.”



Dorothy's story and the others we heard that morning inspired us to document the experience of New Mexican families when harsh immigration policies separate parents, children and siblings across national borders. As we discuss below, family unity is a fundamental human right that is widely recognized in international human rights law.¹ Indeed, international human rights bodies have consistently held that nations must balance the legitimate state interest in maintaining their borders with respect for human rights, including the guarantee of family unity. For too long, elected officials in our nation's capital have ignored this balancing test, preferring to engage in political posturing on immigration while a broken and excessively punitive immigration system creates untold misery in the lives of hundreds of thousands of hard-working American families. Their narrative paints an incomplete portrait of immigration, stereotyping immigrants as individual, job-seeking border crossers and emphasizing enforcement-only solutions.

The reality, however, is that the motivations behind migration are complex, just as they have been throughout history. People often move not for themselves, but for those they love. Moving is hard and takes courage, but people move to put food on the table, to provide opportunities for their children, and to find communities where they can thrive, integrate, and contribute.

Typically migrant families include members of varying immigration statuses: U.S. citizens, lawful permanent residents, and individuals who have tried for years to obtain resident status in a convoluted immigration system that is rife with unnecessary, often insurmountable, barriers. (Note: We have chosen to call the latter group "aspiring citizens" to better capture their earnest in fulfilling American core values of responsibility, commitment to family and perseverance.)

According to the Pew Hispanic Center, 5.5 million children in the United States live with a parent who is aspiring to be an American citizen, and approximately 4.5 million of these children are U.S. citizens.² They live with the constant fear that their parents, siblings or guardians are going to be apprehended and forcibly removed to another country. In December 2012, Immigration and Customs Enforcement released data that showed that almost 205,000 mothers and fathers of U.S.-citizen children had been deported in a two-year period.³

In 2011 and 2012, the ACLU of New Mexico Regional Center for Border Rights conducted extensive outreach to local community groups, immigrant-serving agencies, and faith-based communities to identify families struggling with the loss of a loved one to deportation. In total, nine families came forward to tell their stories. Two staff members conducted initial and follow-up interviews in homes, community agencies, or churches to document the details of each family's experience.

This report draws a fuller picture of how increased enforcement without a common-sense immigration process tears apart New Mexican families who work hard, contribute to their local communities, and call this country home. These testimonies demonstrate not only serious concerns regarding the United States' indifference to family unity requirements in international law, but also far-reaching consequences that threaten fundamental human rights and necessities, such as access to health care, physical and emotional well-being, labor, education, and more.

Stories of family separation in New Mexico



Sandra and José

Sandra and José began exchanging love letters almost as soon as they learned to write. They lost touch for a while when Sandra's family moved from Mexico to the United States, but when Sandra was 19, the former childhood sweethearts reconnected while José was working in Colorado. In time, they got engaged, marrying in Mexico in January 2006.

But a police roadblock in southern New Mexico brought their dreams of starting a new family to an abrupt halt. The stop led to José's deportation. Sandra returned home, not just alone, but also pregnant. Sandra describes it as the most difficult point in her life. For three years she raised their son Ricardo by herself while working and attending New Mexico State University part-time. José agreed to raise Ricardo in Mexico so Sandra could focus on her schooling, but the escalating drug violence forced José to send him back after only a few months.

Sandra dedicated herself to making her family whole again. She found immigration legal support to help José obtain legal residency, but she soon began to worry that his case would be mishandled when she became aware of mismanaged cases by the same office. She didn't want José to lose his opportunity for legal residence, but she also didn't feel knowledgeable enough about immigration law to question the legal support she received.

In the meantime, Sandra earned her bachelor's degree and received a scholarship offer to pursue a master's degree in social work at the University of Michigan. She had a difficult choice: either leave Ricardo with her mother in New Mexico (she felt she couldn't care for Ricardo on her own) and enroll in the master's program, knowing that such a sacrifice would give her son better opportunities in the future, or forgo the scholarship and stay in New Mexico. Sandra decided to enroll at Michigan. The decision would prove fortuitous.

While she was completing her studies, a staff member put her in touch with an immigration attorney who told her about a "waiver of hardship"—a way to petition the government for José's admission to the United States based on evidence that their separation caused Sandra extraordinary difficulty. The legal office in New Mexico had never mentioned such an option. Taking matters into her own hands, Sandra researched the law and helped José file a petition. In March 2011, their request was accepted.

After five long years, Sandra and José are back together. Sandra completed her master's program and now works as a social worker in a local community health services center near Las Cruces, New Mexico. José began studying English and has enrolled in an engineering program at New Mexico State University. They are still getting reacquainted with each other. Ricardo constantly worries that his father could be taken away. As Sandra says, "The struggle [of family separation] doesn't magically end when someone gets their documents." But after all they've been through, Sandra and José are just grateful to be together again.

Alex and Louie

Family separation began for Alex, her husband Louie, and their three children in November 2007. State troopers pulled Louie over near Abilene, Texas for speeding while he was delivering cantaloupes for a trucking company. Louie had an entry visa to the United States, a pending petition for legal permanent residency successfully filed in 2001, and was not carrying anything illegal in his truck, but the troopers arrested and strip searched him, then transferred him to Border Patrol custody.

The Border Patrol finally let Louie call Alex immediately before his deportation. He couldn't tell her where he was or what was going to happen to him because the officers refused to give him any information. Border Patrol agents pressured Louie into signing forms written in English, which he could not read, that said he agreed to depart the country voluntarily. Alex never had the opportunity to find him an attorney before his deportation to Mexico.

Less than two years later, with Louie still in Mexico, local law enforcement stopped Alex in Las Cruces, New Mexico for a moving violation. She presented her valid New Mexico driver's license, proof of insurance and registration, but when she refused to tell the officer "where she was from," he arrested her and turned her over to Immigration and Customs Enforcement (ICE). While in custody, ICE agents threatened to arrest Alex's undocumented son, Michael, if she did not sign a voluntary return form. Alex refused—she also had a petition for permanent residency pending since 2001. ICE then transferred Alex to an immigrant detention facility to face deportation before an immigration judge.

With both parents taken away, 15-year-old Michael took care of his younger sisters, Angelica and Jessica, both of whom were born and raised in the United States. Their pastor paid the family's rent, delivered food to the children, and visited Alex in the detention center. Schoolteachers, who considered Alex one of their most active PTA members, drove the children home from school each day. Eventually Michael's grandmother completed arrangements to move in and help take care of the children.

Meanwhile, Alex pored over the detention center's meager library of legal reference books and learned that she was eligible for a bond. Although immigration officials misled Alex by saying her only option was to return to Mexico, she learned that a judge could allow her to stay if she presented a sufficiently compelling case. Alex found an attorney and paid a \$3,500 bond with a loan from her church. After three months apart from her children, immigration authorities finally released her.

At her first immigration court hearing, Alex presented dozens of letters of support from her community. Some came from workers in the local Gospel Rescue Mission, describing Alex's years of volunteer service there helping the homeless. Others came from her children's counselors, who described the toll that family separation had taken on Angelica and Jessica's emotional well-being.

Thanks to the overwhelming community support for her, the immigration judge allowed Alex to return to her community until her next immigration hearing in 2014.

Alex is taking English classes and studying for her GED. She says she wants to "show America that [she] loves [this] country." But the experiences of the last few years have left their mark. "My children fear the police," Alex says, "even though police are supposed to be there for their protection. How can they trust the police when the police took away their parents?"



Ana

When ICE agents detained Julia in 2008, her 57-year-old mother, Ana, became the sole guardian of Julia's children, Alexa and Antonio. Ana, Alexa and Antonio are all U.S. citizens. Ana naturalized in May of 2012. She expresses mixed emotions about her naturalization, given the fact that she attended the ceremony alone—in addition to Julia, Ana's two other children have also been deported from the United States.



Ana deeply misses her children and describes her family as “very united” when they were together. She struggles with depression, but she never shares her sadness with her grandchildren, and refuses to let them see her cry. She stays strong for Alexa and Antonio, saying, “If I don’t live for them, who will care for them?” She finds comfort in talking to her next-door neighbor, whose son was killed several years ago. The two often attend classes together on managing depression.

Ana grows sad when she thinks of the opportunities Julia had and lost. Now 31 years old, Julia arrived in New Mexico at the age of eight. She graduated from high school as a member of ROTC and with a scholarship to pursue higher education in nursing. Due to her immigration status, however, the family decided she couldn’t continue school or enlist in the U.S. Army.

Ana and her grandchildren currently live in a modest trailer home in rural, southern New Mexico. Ana receives dialysis for her diabetes three times per week. Julia once drove Ana to all of her appointments. Ana now uses a free van service provided for appointments, but she feels the struggle of separation every time she makes the 20-minute walk to school to pick up her grandchildren.

Alexa, 12, reminds Ana of Julia. “She is bright like her mother and receives straight A’s in school.” Alexa also plays guitar, and she recently competed in the school spelling bee and science fair. Her mother’s deportation has taken an emotional toll on

her, which manifests itself in a fear of losing her grandmother. Alexa monitors Ana's health closely. "She always watches me, looking at my body language for clues," explains Ana. "She never forgets to ask me how I feel after every dialysis." Alexa also fears that she will lose her grandmother to deportation. On one occasion, Ana realized that she had forgotten her passport as they arrived at the U.S.-Mexico border, and Alexa said to her, "Please, please don't let them deport you!"

Ana describes Antonio, 11, as a sensitive boy—he once gave his hand to a pregnant teacher to "make sure she didn't fall." Ana says he seems to be the most affected by his mother's deportation. He is often distracted and has become rebellious. He once told a neighbor, "My heart hurts, because no one loves me." He even feels responsible for his mother's deportation. Alexa once blamed Antonio, saying Julia's deportation was his fault for not wearing a seat belt. Ana explains that the two confused a prior incident with that of their mother's actual detention.

When asked if she would choose to come to the United States again if she could do it all over, Ana responds that she would, because she came here to give her children a better life, "and for the time that they were with me," she says, "they had that."

Marisol

High school sweethearts Marisol and Alfredo spent 17 years building a family and raising their three children together in rural southern New Mexico until Alfredo's deportation in 2006. Arriving in the United States at the age of five, Marisol is now 36 years old and a legal permanent resident (LPR), eligible for U.S. citizenship in two years. She and Alfredo never legally married in order to avoid canceling their pending LPR petitions, but their three children are U.S. citizens.

Marisol found the sudden transition into sole provider an emotionally and financially overwhelming experience. Without Alfredo's income, Marisol began working seasonally harvesting onions. Marisol explains that even routine tasks added to her feelings of insecurity. "I didn't even know where to go or how to pay the water bill," she explains. For five years, Marisol and her children lived with her mother because dealing with these responsibilities alone proved too difficult for Marisol.

Marisol now lives in her own apartment with her two sons: Christian, 13, and Juan, 10. Her 15-year-old daughter, Mercedes, became withdrawn and performed poorly in school after her dad's deportation. She started sleeping a lot and often locked herself in her room. The emotional toll led Marisol and Alfredo to decide it was necessary for Mercedes to move to Ciudad Juarez to be with her dad. Although they both wished she could continue her education in the United States (she cannot afford school in Mexico), they saw she needed time with her father to mend. Her presence also helps Alfredo feel less isolated.

Christian and Juan also miss their father greatly. They both quit playing sports because the weekend games interfered with visits with their father. Christian is intelligent and always excelled in school. However, after Alfredo's deportation, Christian's grades fell, and he began acting out in class. Juan often struggled in school, and his grades dropped further after the separation.

Marisol constantly worries about her family. Soon after Alfredo was deported, he suffered a stroke. Marisol knows his poor health directly relates to the stress and grief of their separation. For now, she's left to wonder when they will be able to live together once again.

Blanca

Although now in their sixties, Blanca and her husband, Guadalupe, have become parents of young children all over again. They took custody of their five grandchildren after their daughter Sofia was deported to Mexico and their other daughter Carmen moved back to Mexico because she could no longer afford medical care in the United States. Both Blanca and Guadalupe are legal permanent residents, and their five grandchildren are U.S. citizens.

The family lives in a newly expanded, three-bedroom house to accommodate their grandchildren. The grandchildren share the bedrooms while Blanca and her husband take turns sleeping on the floor or recliner. Blanca is a licensed child care provider who cares for children in her home 16 hours a day, six days a week. For two years, she has been the sole breadwinner in the household. She used to work eight hours a day, but says she had to start working more once Sofia and Carmen were no longer around. Guadalupe is now working custodial jobs two days a week; a recent eye surgery previously prevented him from working.



Blanca speaks lovingly of her grandchildren. Rocio, 16, is an avid reader who participates in Science Olympics and dreams of becoming an astronaut. Sometimes she becomes so engrossed in her books that Blanca has to remind her to eat. Blanca suspects that Rocio uses reading to escape the reality of living apart from her mother.

“My oldest grandkid, David, has a heart so big that it doesn’t fit in his chest,” says Blanca. “When his mother Carmen left, he became very responsible—taking out the garbage, sweeping the kitchen floor and washing all the dishes after dinner without being asked.” David’s good grades, participation in sports and perfect attendance earned him a home computer in a competition at his high school. He dreams of becoming an engineer one day. Recently, David promised his grandmother that if anything ever happens to her, he would care for his siblings and cousins, just as a parent would.

Alma, 12, has had a difficult time adjusting to her mother’s absence. She sees a school psychologist on a regular basis. More recently, Alma has begun to fear that immigration officials could come and deport her, even though she’s a U.S. citizen. Her anxieties were exacerbated by a cruel, anonymous text image she received on her phone that depicted a bruised caricature of her handcuffed by Border Patrol agents.

Rocio once asked her grandmother if she expects compensation for her efforts, and her grandmother responded that her only wish is that her grandchildren study hard so that they never have to work in the fields cutting onions all day like their mothers and grandmother did. Blanca often gets tired, but with children to feed, clothe and shelter, retirement and rest is only a dream.

Adrián and Rafael

Teen brothers Rafael, 17, and Adrián, 14, are aspiring citizens who vividly remember the day their mother, Mariela, and 15-year-old sister, Dulce, were deported. In September of 2011, Mariela left Adrián for what was supposed to be a short errand to pick up Dulce from a cooking class. On her way back, a sheriff’s deputy pulled Mariela over, saying she had failed to use her turn signal.

Mariela showed her driver’s license and proof of insurance, but the officer seemed only interested in questioning Mariela and Dulce about their immigration status. When they refused to respond, he threatened to go find the rest of their family members and arrest them, but instead called Border Patrol and demanded the agent “do his job” by taking both women into custody.

Border Patrol agents pressured Mariela to sign voluntary return forms. They said she would not be able to make any phone calls, and Dulce would be sent to Philadelphia while Mariela would be detained elsewhere for several months as she waited to see a judge. Under the threat of separation, Mariela signed the forms.

Adrián and Rafael now live with their aunt Carolina in her two-bedroom home along with Carolina’s husband and three children. Carolina’s husband supports the family of seven with the money he earns working at a local dairy farm. It’s cramped and uncomfortable with so many in one home, and Adrián sleeps on the floor since they can’t afford another bed.

Adrián, Rafael and Carolina describe how much they miss Mariela and Dulce. Adrián cries when he thinks about his sister, explaining, “All she does is sit around all day. She can’t even go to school.” Before separation, Dulce taught Sunday school and ballet folklórico, a Mexican folk dance, at their local church while also earning straight A’s in school. Carolina recounts that her sister, Mariela, always offered what little she had and explains that they once opened their trailer home to provide shelter for a homeless woman.

The community’s response to the separation demonstrates the profoundly positive impact Mariela’s family made locally. The Sunday after their deportation, their church raised \$800 during an impromptu collection taken after the regular offering. Dulce’s former high school teacher began to raise funds for her to enroll in school in Mexico. And another church member pays for Mariela to have a cell phone in order to speak with her sons. The outpouring of support, however, fails to outweigh the reality that, due to their immigration statuses, Adrián and Rafael are uncertain when they’ll see their mom and sister again.

Esperanza

Tears begin to stream down Esperanza’s face when she describes the day that her 16-year-old son, Sergio, was deported to Mexico. It was June 2011 when Sergio left the house to help harvest lettuce in southern New Mexico. Esperanza received a call later that day from the man who drove Sergio to work. Border Patrol (“la migra”) had pulled them over and taken Sergio into custody. The next time Esperanza spoke with her son, he was more than a thousand miles away, living with his grandfather and uncle in Central Mexico.

“Sergio is a good kid,” says Esperanza. “His father passed away when he was young, so by age 12 he started working to support the family. When he wasn’t at school, he worked in the fields harvesting onions, peppers or lettuce. He used to take his brothers to the store to buy them candies or toys with the money he earned.”

Education is impossible for Sergio now, as he has to work full time to survive far from his home. Esperanza tries to send him money but he insists that she keep it for his brothers and sisters. “I’m okay, I have what I need here,” he says. Esperanza is pained that Sergio cannot pursue his studies. “With an education,” she explains, “he could get any job, and would no longer have to work in the fields.”

After he was deported, Sergio wanted to cross back into the United States, but Esperanza cautioned against it, reminding him of the relatives who died during the dangerous crossing. Sergio, stranded half a continent away from his loved ones, struggles with depression and loneliness. Any time too many days pass without speaking to his family, Sergio uses his meager earnings to call long distance because he wants to hear their voices and know how they are doing.

Sergio’s deportation has hit his two younger brothers hard. Ten-year-old Diego often sits alone quietly, worrying about his distant brother. But 6-year-old Israel is perhaps the most affected. He used to share a bed with Sergio, and when he sees one of Sergio’s belongings around the house, he picks it up to play with and asks his mom when she will bring him back.

More than anything, Esperanza yearns to make her family complete again. But she knows that moving back to Mexico would deprive her other four children of the opportunities she has sacrificed so much to give them. Her own immigration status prevents her from seeing her oldest son for the foreseeable future.

Soon after Sergio was deported, Esperanza sought the help of a New York immigration attorney whom a friend had recommended. He initially responded to her needs but eventually stopped returning her calls and emails. Sergio's case is complicated by the fact that he signed a voluntary return. Esperanza doesn't know when she'll see her son again. "His portrait on the wall and the empty chair at the dinner table," she explains, "constantly remind us of what's missing."

Silvia

Silvia beams with pride when she describes her 15-year-old nephew, Beto. She says he is a top student and a mature, responsible teenager who worries too much for a boy his age. Beto earns straight A's in school and is a member of the Science Mensa Club. On weekends and during the summer, he works in the fields with Silvia picking chile and onions, earning about \$50 a day. Beto never asks Silvia for anything, and sometimes Silvia has to insist that he take a couple of dollars so that he can at least buy himself a soda.

Beto has lived with Silvia since his mother, Maria, was deported to Mexico in October of 2010. Maria was a passenger in a vehicle that police pulled over for speeding in rural southern New Mexico. Even though Maria wasn't driving, the officer demanded to see identification and arrested her for "unpaid traffic tickets"—tickets that Maria showed proof of paying along with her driver license at the scene. By the time Silvia gathered the fine to release Maria from custody later that day, the police had already turned Maria over to immigration authorities.

After she was deported, Maria settled in a border city to allow her four daughters, who are all U.S. citizens, to continue attending school in the United States. Her 12-year-old daughter, Luz, has never missed a day of classes and recently competed in the New Mexico state spelling bee. Silvia brings her across the border for appointments with her orthodontist, but the logistical nightmare has interrupted her care, causing Luz to develop infections.

The deportation has also forced Maria to cancel speech therapy sessions for her 9-year-old daughter Ariana, who is partially deaf. Ariana's performance in school is suffering accordingly.

Ariana and her twin, Adriana, still too young to fully understand the rights of their own citizenship, constantly fear that they may be deported on their way to school. Because of the similarity of their names, U.S. immigration agents regularly detain and question Adriana and Ariana about the validity of their documents as they cross at the U.S. Port of Entry to go to school.

According to Silvia, Maria worries daily about sending her daughters to school on their own. She struggles with depression, at times fearing that she will be unable to clothe and feed the girls. Silvia can see the girls are hungry, which she says is confirmed "every time [she] opens her sister's fridge to find it nearly empty." Maria tells her sister she feels at times that she would rather be dead than watch her girls suffer.

Beto must stay in the United States to finish his education. He has not seen his mother in almost two years and doesn't know when they will be together again. Silvia says that Beto is often distracted by worry for his distant family. "He gets lost in thought," she says. Beto saves most of his money to send shampoo, hair clips, and other small gifts to his sisters.

Silvia wants a better future for her big-hearted nephew. She is looking into adopting him to give him better opportunities, but the costs of adoption are prohibitive. Despite everything, she's confident she'll find a way to provide, especially with the support of neighbors and friends who "know what we're going through." A legal permanent resident who has lived for 20 years in New Mexico with her U.S. citizen husband, Silvia is proud to say that she has never asked for help from the government.

Estela

To see how harsh border enforcement policies tear apart families, you need look no farther than Estela's family. In June 2010, the Border Patrol picked up Estela's 20-year-old son Cesar while he was on his way to work. For three months, immigration officials pressured him to sign a voluntary departure agreement, even locking him and six others in solitary confinement for resisting their efforts at coercion.

Eventually, with Estela's help, Cesar posted bond and returned to his community near Las Cruces, New Mexico, until his next immigration hearing. Because some paroled immigrants cannot acquire work permits, Cesar spends his days at home while his friends and family go to work. He feels useless because he isn't able to help his mother with the bills.

Exactly one week after the Border Patrol detained Cesar, local police stopped Estela's younger son, Javier (18 years old at the time), for an alleged traffic violation and demanded his immigration "papers" even though he presented a valid driver's license, vehicle registration and proof of insurance. The police called Border Patrol, who took Javier into custody and later deported him.

Javier settled into Zacatecas, Mexico, near his extended family, but without a job or a place to stay. Estela and her husband, Oscar, quickly realized that loneliness and depression were overwhelming Javier. They soon decided that Oscar needed to move back to Mexico to help Javier, while Estela would stay in New Mexico to provide for Cesar.

Estela says she often worries about Oscar and Javier as she cooks, because she knows they don't always have enough to eat. Although Estela struggles financially she says, "Unlike Oscar and Javier in Mexico, we never go hungry in the United States."

Estela also has an older daughter who is an aspiring citizen living in Texas. She has not seen her in 14 years, because interior immigration checkpoints prevent Estela and her daughter from traveling to see each other.

Estela has consulted with several immigration attorneys to find a way to reunite her family. One attorney, who she contacted after seeing his TV commercial, required a \$300 consultation fee, only to tell her that he couldn't take her case. "I don't mind that they charge us a lot of money," she says. "We always find a way to pay them, but it's only after we pay them that they tell us that they can't do anything for us."



Findings and Recommendations

The foregoing narratives illustrate the complex dynamics that break apart New Mexican families and how those families deal with the consequences. By drawing out the common threads from these experiences, we can begin to identify specific recommendations for building a new immigration policy that treats family unity with the same deference that it enjoys in international human rights law and agreements.

Makeup of Border Families

- Like many families living in the U.S.-Mexico border region, the majority of the families identified in this study are made up of members who have different immigration statuses. Only 20 percent of the nuclear families interviewed consisted entirely of members who were unauthorized to work in the United States. These fathers and mothers came to the United States at a great cost to themselves and have worked hard to provide their U.S. citizen children with an education, health care, and better opportunities than they had in their country of origin. This means that outdated immigration policies not only affect people who are not authorized to live in this country, but also harm many U.S. citizens and lawful permanent residents.
- Despite the popular portrayal of immigrants as individual job-seekers or public entitlement stealers, immigration is rarely just an individual pursuit. Individuals typically migrate within family networks, to serve family interests, most often “to offer my children a better life.” Often they rely upon their community networks to survive the harsh consequences of a family member who has been deported. In over half of the testimonies we reported, extended family members, from grandparents to aunts and uncles, stepped in to take an active role in supporting families that had been rocked by a deportation. Churches, local non-profits, schools, counselors and neighbors also helped weather these crises.

RECOMMENDATION: The U.S. government should create a common-sense immigration process that includes a roadmap to citizenship, puts our core American values of fairness and justice first, and protects the unity of our families.

Local Police and Family Separation

- We found that local police, not immigration authorities, were often responsible for apprehending aspiring citizens and setting in motion the processes that fragment New Mexican families. The same local law enforcement officers who swore an oath to serve and protect our New Mexico communities are sometimes the very agents of family separation.

In more than half of the testimonies in this report, families were separated as the result of a person being asked about immigration status by local police during a routine traffic stop. In most instances, what began as routine stops ended with local police collaborating directly with Border Patrol. In two cases, officers targeted vehicle passengers even though they were not the reason for the initial stop. And in the cases of Estela, Silvia, Adrián and Rafael, and Alex, they or their loved ones showed a valid New Mexico driver's license to local police when stopped as part of a routine traffic encounter, only to be referred to federal authorities for immigration status investigation.

Collaboration between local law enforcement officials and Border Patrol often incentivizes local police and sheriff's authorities to find pre-textual and unconstitutional reasons to stop someone who "looks" foreign to ask about their immigration status and invite Border Patrol to verify a person's status. In addition to troubling instances of racial profiling, such policing threatens the safety and integrity of all New Mexico families by creating fear and mistrust of police. When people do not trust the police, they often choose not to report crimes or cooperate in police investigations, resulting in a less safe environment for all New Mexicans.

RECOMMENDATION: State and local police or sheriff's deputies should not enforce federal immigration laws during routine encounters or routine traffic stops.

Children Experience Severe Consequences

- The impact of harsh immigration enforcement policies falls principally on children. It disrupts their ability to go to school and complete an education that would ultimately let them prosper. It interferes with families' ability to address children's medical and health-related needs, lowering their quality of life. Children often exhibit symptoms that reflect emotional trauma from family separation and the fear, despite having U.S. citizenship or lawful permanent residency, of being deported. The testimonies of Sandra and José, Alex and Louie, Silvia, Esperanza, Blanca, Adrián and Rafael, Ana, and Marisol each illustrate these significant, adverse impacts upon children.
- Typically, the affected children are U.S. citizens whose immigration status provides no insulation from the deportation of their parents. Some politicians have cynically suggested that immigrant women come to the United States in order to bear U.S. citizen children who can provide them with legal residence and means to improve their own lot in life. Within this report, however, the testimonies of Alex and Louie, Silvia, Blanca, Ana, and Marisol show that deportation of a parent often occurs regardless of the fact that children are U.S. citizens. Immigration law requires that children reach 21 years of age before petitioning for legal permanent resident status for their parents, at which time they begin a process that still involves significant backlogs and hurdles. Acquiring citizenship is even more complex.

In fact, men and women typically migrate to the United States to give their *children* better opportunities in life, without concern for themselves. Moving to provide a better life for one's children is a motive most Americans would applaud.

- Border enforcement policies trap individuals without authorization in the United States and make it difficult for them to return to Mexico to see family members. This fact strongly contributes to the separation of immigrant families, as parents with no authorization to work in the United States are unwilling to return to Mexico once a spouse or children have been deported. In addition, parents do not want to sacrifice the opportunities their U.S.-citizen children have studying or working in the United States by risking apprehension and the legal consequences while trying to return to Mexico. This fact also belies the argument of "self-deportation," when people are unwilling to return home because of separation from their family members or loved ones.

RECOMMENDATIONS: Immigration courts and border enforcement should recognize family separation as a legal defense against deportation, at least in some cases. The courts should also consider the potential harsh effects on children left behind and the contributions to the culture and local economies that have been made by aspiring citizens.

Need for a Clear Immigration Process and Adequate Legal Assistance

- Aspiring citizens often make significant efforts to secure legal status, but they struggle in a complex, confusing, and unforgiving immigration system with significant backlogs that impede family unity. Americans often assume that most immigrants could become legal residents if they just tried hard enough to get proper documentation. In fact, many of the above narratives show that many do try to become citizens or lawful permanent residents. Some are even deported with residency petitions pending.

Sandra and José, Alex and Louie, and Marisol all sought to utilize the immigration system to keep their families together. In these cases, three separate individuals faced deportation despite having petitions pending for at least five years, if not significantly longer. Immigration laws are complicated and difficult to navigate alone, especially for individuals who do not speak English as their first language. Unfortunately, for those individuals who cannot afford to hire a private attorney, there is no real way to fight their deportation, even though they may have a valid defense against deportation.

- Aspiring citizens face challenges to finding competent, reliable legal assistance. Most families understand that an attorney is necessary to protect against the deportation of a family member. Even though many families struggle financially, many make sacrifices in order to hire an attorney. Unfortunately, there are a large number of so-called “notarios” who claim that they can help process immigration cases and often take advantage of the vulnerability of these families.

Sandra and José, Alex and Louie, Esperanza, and Estela all state how difficult it was for them to find competent legal assistance or accurate information. Estela, in particular, felt misled by an immigration attorney who charged exorbitant fees only to inform her that they could not help with her case.

RECOMMENDATIONS: Because the consequences of deportation are so dire, detained immigrants should have the right to a government-appointed attorney. Upon detention, the government must allow detainees to notify their families so they can secure legal representation to defend against deportation. Federal and state consumer protections should be implemented to provide safeguards against fraud by so-called “notarios” and some private attorneys.

Coercion to Sign Documents

- One of the greatest threats to family unity results from federal immigration authorities pressuring individuals to sign away their legal rights and agree to deportation. A number of instances in this report illustrate alarming practices of coercion by immigration authorities. ICE authorities punished Cesar with time in solitary confinement when he refused to agree to a voluntary return. Border Patrol agents gave Louie forms in English that he did not understand and, threatening him with more time in detention, pressured him to sign the forms agreeing to a voluntary return. CBP officials pressured Mariela into signing voluntary return forms with threats of separating her from her daughter, Dulce. And Esperanza’s 16-year-old son, Sergio, signed a form while in Border Patrol custody which she now understands has further jeopardized his opportunity to return legally to the United States.

When individuals agree to a voluntary return or expedited removal, they forgo their right to fight their deportation, thus ensuring family separation. With an expedited removal, there are more immigration consequences, such as 5 and 10-year bars for returning. Individuals must knowingly agree to give up this important right to fight their deportation and clearly understand the consequences of signing the form; otherwise, their right to family unity or reunification is threatened.

RECOMMENDATIONS: Immigration authorities must clearly explain all the repercussions of agreeing to voluntary returns or expedited removals⁴ *in a language that the individual understands*. The practice of coercing individuals into signing a form should be banned. Family members should be kept together in detention and there should be no threats made about separating family members if they do not sign a form. Furthermore, it is imperative that immigration authorities provide individuals with copies of any forms they sign.

Family Unity and International Human Rights Law

As we noted above, the United States distinguishes itself in the international community by its refusal to recognize a fundamental human right to family unity, even though the principle is enshrined in laws and agreements that the United States has endorsed. According to Article 16 of the Universal Declaration of Human Rights (UDHR) and Article 23 of the International Covenant on Civil and Political Rights (ICCPR), which the United States has ratified, “The family⁵ is the natural and fundamental group of society and is entitled to protection by society and the State.”⁶ A number of human rights treaties further elucidate the types of protections afforded to family units.⁷ Moreover, the jurisprudence of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights (IACHR), to which the United States is a party, considers the Declaration a source of international obligations for Organization of American States (OAS) member states.

Under international law, human rights apply to all persons regardless of immigration or citizenship status. Although the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the United States ratified in 1994, states that the treaty’s prohibition on discrimination does not apply to “distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens,”⁸ the Committee on the Elimination of Racial Discrimination clarified and emphasized that, “[h]uman rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law.”⁹ Accordingly, by failing to protect the human right to family unity, the United States stands in violation of its international obligations under ICERD.

Governments must apply an individualized balancing test when considering deportation

International human rights law recognizes the legitimate state interest in maintaining its borders. However, international and regional bodies, including the Human Rights Committee, International Court of Justice, Inter-American Commission on Human Rights, European Court of Justice and European Court of Human Rights, have consistently held that this interest must be *balanced* with respect for fundamental human rights, such as the right to family unity.¹⁰

For example, the Human Rights Committee, the body authorized to interpret the ICCPR, has held that although the ICCPR does not recognize the right of aliens to enter or reside in the territory of a state party, and it is in principle a country's prerogative to decide who it will admit into its territory, "in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and *respect for family life* arise."¹¹ In reference to the prohibition against arbitrary interference with family rights, the Human Rights Committee explained, "Even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances."¹² Regarding cases where deportation would split up members of a family, the Human Rights Committee instituted a balancing test, stating, "The relevant criteria for assessing whether or not the specific interference with family life can be objectively justified must be considered, on the one hand, in light of the significance of the State Party's reasons for the removal of the person concerned and, on the other, the degree of hardship the family and its members would encounter as a consequence of such removal."¹³

The U.S. government's failure to apply a balancing test further violates the right to non-discrimination under CERD. The CERD Committee has held that differential treatment based on citizenship or immigration status constitutes discrimination if "the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied to a legitimate aim, and are not *proportional* to the achievement of this aim."¹⁴ The CERD Committee further recommended that governments "avoid expulsions of non-citizens, especially long-term residents that would result in *disproportionate interference with the right to family life*."¹⁵

The IACHR has rebuked the United States for its failure to institute such a balancing test in deportation proceedings for non-citizens with criminal convictions. In *Wayne Smith and Hugo Armendariz v. United States of America* (2010), the IACHR ruled that the United States violated Smith and Armendariz's rights to private and family life (Article V), family (Article VI), protection for mothers and children (Article VII), fair trial (Article XVIII) and due process (Article XXVI). Rejecting the U.S. government's argument that the government had broad authority to regulate immigration, the Commission concluded that an individualized balancing test must be employed to weigh the State interest in preserving the general welfare against the fundamental rights of non-citizens.¹⁶ Specifically, the Commission concluded, "It is well recognized under international law that a Member State must provide non-citizen residents an opportunity to present a defense against deportation based on humanitarian and other considerations...Each member state's administrative or judicial bodies, charged with reviewing deportation orders, must be permitted to give meaningful consideration to a non-citizen resident's defense, balance it against the State's sovereign right to enforce reasonable, objective immigration policy, and provide effective relief from deportation if merited."¹⁷ The IACHR's decision served as a reminder to the U.S. government that human rights law still applies at the borders.

The right to present a defense must be preserved

In addition to applying a balancing test, governments must afford those subject to deportation the right to present a defense, such as family ties in the country. According to Article 13 of the ICCPR, “An Alien lawfully in the territory¹⁸ of a State Party to the present covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, *be allowed to submit the reasons against his expulsion.*”¹⁹ Further, according to the American Convention on Human Rights, “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law...for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”²⁰ Such a hearing must take place *prior* to deportation.²¹

Conclusion

The United States has always been dually defined as a nation of immigrants and a nation of values. Americans come from a variety of backgrounds and places, but we are united by shared beliefs. We believe that strong, supportive families form the backbone of a nation strengthened by those who work hard and contribute to our communities. How we decide to treat new immigrants is ultimately a testament to the values that define us.

Our nation has lost sight of its values with the political posturing that occurs around immigration policy. Incomplete and inaccurate portrayals of immigrant communities have allowed enforcement practices to become increasingly harsh and even cruel. Layer this trend upon an immigration system that confronts aspiring citizens with insurmountable barriers to legalizing their status, and the conditions are ideal for husbands to be torn from wives, children from their parents.

The families who bravely shared their personal experiences within this report help to create a more complete portrait of immigration. Like many families, these new American families are composed of loving parents who showed the courage to take risks so that they might provide a better future for their children. Their children work hard, both in school and by seeking employment beginning in their high school years, to help contribute to their families. These aspiring citizens try to understand a confusing immigration system that often defrauds them of money when they hire incompetent legal help or robs them of a fair process when they are pressured to relinquish the right to their day in court. New Americans develop significant roots in their communities, and the value of their contributions is evident in the outpouring of generosity from community members seeking to help families weather separations.

Now is the time to put an end to the suffering caused by painful separations that deny access to fundamental human rights. Elected officials can begin alleviating the harm by implementing the administrative recommendations provided within this report at local, state and federal levels. In the end, to protect these mothers, fathers, sons, and daughters, we must create a common-sense immigration process that recognizes the hardships and contributions of people moving here, keeps families in this country, and creates a process for New Americans who aspire to be citizens of the country they already call home.

Endnotes

- 1 See, for example, Universal Declaration of Human Rights (UDHR), G.A. Res 217A(III), U.N. Doc A/810 at 78 (1948) adopted December 10, 1948, art. 16; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, ratified by the United States on June 8, 1992, Article 23.1; International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res 2200A(XXI), *entered into force* January 3, 1976, signed by the United States on Oct 5, 1977, Article 10.1; The International Covenant on the Protection of the Rights of the Migrant Workers and Members of their Families (ICRMW), New York, Dec. 18, 1990, *entered into force* July 1, 2003, 2220 U.N.T.S. 93, 30 I.L.M. 1517 (1991), Article 44.1; Convention on the Rights of Persons with Disabilities (CPRD), G.A. Res 61/106 at 25(d), UN doc A/RES/61/106, *entered into force* May 3, 2008, Paragraph X, preamble; American Convention on Human Rights “Pact of San Jose, Costa Rica” Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99 (1969) *entered into force* July 18, 1978, Article 17.1. The principle is also recognized by the UN General Assembly in, *inter alia*, resolutions No. 49/182, UN Doc. A/RES/49/182, 2 March 1995, Article 2; No. 50/175, UN Doc. A/RES/50/175, 27 February 1996, Article 2; No. 51/89, UN Doc. A/RES/51/89, 7 February 1997, Article 2; No. 52/121, UN Doc. A/RES/52/121, 23 February 1998, Article 2; No. 53/143, UN Doc. A/RES/53/143, 8 March 1999, Article 2; No. 57/227, UN Doc. A/RES/57/227, 26 February 2003; No. 59/203, UN Doc. A/RES/59/203, 23 March 2005, Article 2; No. 61/162, UN Doc. A/RES/61/162, 21 February 2007, Article 2.
- 2 Passel, Jeffrey S. and Cohn, D’Vera. “A Portrait of Unauthorized Immigrants in the United States,” Pew Hispanic Center, April 14, 2009. Available at: <http://www.pewhispanic.org/files/reports/107.pdf> (accessed July 3, 2012).
- 3 Freed Wessler, Seth. “Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years,” Dec. 17, 2012. Available at: http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html (Accessed 1/8/2013).
- 4 Note: It was unclear whether the individuals who were deported received the choice of a voluntary return or expedited removal from ICE or CBP. Family members described these as “salidas voluntarias” (voluntary exits), but did not see the legal forms signed by their loved ones.
- 5 Note: “The term ‘family,’ for the purposes of the Covenant, must be understood broadly to include all those comprising a family as understood in the society concerned.” (*Ngambi and Nebol v. France*, CCPR, op. cit., fn187, para 6.4).
- 6 Universal Declaration of Human Rights (UDHR), G.A. Res 217A(III), U.N. Doc A/810 at 78 (1948) adopted December 10, 1948, art. 16 (3); International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, ratified by the United States on June 8, 1992, Article 23 (1).
- 7 These treaties include the International Covenant on Civil and Political Rights (G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, ratified by the United States on June 8, 1992, Article 17 (1)), which mandates that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence; the American Convention on Human Rights “Pact of San Jose, Costa Rica,” Pact of San Jose, Costa Rica” (Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99(1969) *entered into force* July 18, 1978, Articles 11, 17, 19), to which the United States is a signatory, ensures the family is protected from “arbitrary or abusive interference;” the American Declaration of the Rights and Duties of Man (OAS Res. XXX, adopted by the Ninth International Conference of American States (1948), art. V, VI) provides all persons with “protection of the law against abusive attacks upon... his private and family life;” and finally, although nonbinding, the United States considers the Declaration “a noble statement of the human rights aspirations of the American states.”
- 8 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No.14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969. Ratified by the U.S. on October 21, 1994.

- 9 UN CERD Committee General Comment 30, Discrimination Against Non-Citizens, 23 February-12 March 2004. Note: this does not include the right of non-citizens to vote.
- 10 See, for example, Council of the EU – Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Article 12, holding that before deporting a long-term resident alien, states must consider factors such as duration of residence, age, consequences for the deportee and his or her family, and links with the expelling and receiving country; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004) ICJ Gen. List No. 131, decided July 9, 2004, at para. 136, holding that where limitations on freedom of movement are concerned, they must be limited by proportionality to the least intrusive means possible for achieving a legitimate state purpose. Furthermore, the use of proportionality is also widespread in the European Court of Justice, where the doctrine was invoked either by litigants or the court in over 500 cases between 1955 and 1994. (Vicki C. Jackson, “Ambivalent Resistance and Comparative Constitutionalism: Opening up the Conversation on ‘Proportionality,’ Rights and Federalism,” University of Pennsylvania Journal of Constitutional Law, vol. 1 (1999), p. 604 n.81.) Additionally, the European Court of Human Rights has “consistently held that the principle of proportionality is inherent in evaluating the right of an individual person and the general public interests of society.” (Yutaka Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR* (Belgium: Intersentia, 2002), p. 14; Ian Brownlie, *Principles of Public International Law* (Oxford, UK: Oxford University Press 2003), p. 551.)
- 11 UN Human Rights Committee, General Comment No. 15: The Position of aliens under the Covenant, November 4, 1986.
- 12 UN Human Rights Committee, General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation, August 4, 1988.
- 13 *Rubin Byahuranga v. Denmark*, CCPR, op. cit., fn 331, para 11.7; *Madafferri and Madafferri v. Australia*, CCPR, Communication No. 1011/2011, Views of the 26 August 2004, para. 9.8, *Omojudi v. United Kingdom*, ECtHR, Application No.1820/08, Judgment of 24 November 2009.
- 14 UN CERD Committee General Comment 30, Discrimination Against Non-Citizens, 23 February-12 March 2004.
- 15 UN CERD Committee General Comment 30, Discrimination Against Non-Citizens, 23 February-12 March 2004.
- 16 *Wayne Smith and Hugo Armendariz v. United States of America*, Case No. 12.561, Inter-American Commission on Human Rights Report No. 81/10, July 12, 2010, para 48.
- 17 *Wayne Smith and Hugo Armendariz v. United States of America*, Case No. 12.561, Inter-American Commission on Human Rights Report No. 81/10, July 12, 2010, para 5.
- 18 Note: The Human Rights Committee has interpreted the phrase “lawfully in the territory” to include non-citizens who wish to challenge the validity of their deportation (UN Human Rights Committee, General Comment No. 15, paras 9 and 10.)
- 19 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, ratified by the United States on June 8, 1992, Article 13.
- 20 American Convention on Human Rights “Pact of San Jose, Costa Rica,” Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99(1969) entered into force July 18, 1978, Art 8 (1).
- 21 See, for example, *Stewart v. Canada*, Communication No. 538/1993, U.N. Doc. CCPR/C/58/D/538/1993 (1996); *Canepa v. Canada*, Communication No. 558/1993, U.N. Doc CCPR/C/59/D/558/1993 (1997). This is also the practice of 61 governments around the world, and has been consistently applied in the European Union.



ACLU of New Mexico

Regional Center for Border Rights

1300 El Paseo, Suite G, Box 148

Las Cruces, NM 88001

575-527-0664

www.aclu-nm.org