

# IMMIGRATION LAW LESSONS FROM *DEPORTED AMERICANS: LIFE AFTER DEPORTATION TO MEXICO*

---

Kevin R. Johnson\*

The last few years saw deeply troubling developments in U.S. immigration law and enforcement. The Obama administration annually removed hundreds of thousands of noncitizens from the United States,<sup>1</sup> which earned the President the unflattering nickname of “Deporter in Chief.”<sup>2</sup> After making immigration enforcement the cornerstone of his 2016 presidential campaign, Donald J. Trump, shortly after his inauguration, ushered in ever more aggressive and controversial immigration enforcement measures. He, for example, sought to separate parents from children at the border as part of a “zero tolerance” approach to undocumented immigration, cracked down on asylum seekers from Central America, and took steps—from restricting the admission of immigrants of modest means to a travel ban on the admission of noncitizens from several predominantly Muslim nations—in the name of dramatically reducing legal immigration to the United States.<sup>3</sup>

With the nation having recently experienced a whirlwind of immigration changes unprecedented in modern U.S. history, it is an especially fortuitous

---

\* Dean and Mabie-Apallas Professor of Public Interest Law and Chicana/o Studies, University of California at Davis, School of Law. I presented this paper at a webinar organized by the Southwestern Law Review in October 2020. Thanks to the law review editors and the participants for their comments and support.

1. See Eisha Jain, *The Interior Structure of Immigration Enforcement*, 167 U. PA. L. REV. 1463, 1464 (2019). “In recent years, federal immigration authorities have carried out three to four hundred thousand removals annually. The numbers are staggering on a historic scale . . .” *Id.* (footnote omitted).

2. *Obama Leaves Office as ‘Deporter-In-Chief’*, NPR (Jan. 20, 2017, 3:04 PM), <https://www.npr.org/2017/01/20/510799842/obama-leaves-office-as-deporter-in-chief>.

3. For analysis of the Trump administration’s early immigration enforcement measures, see Jennifer M. Chacón, *Immigration and the Bully Pulpit*, 130 HARV. L. REV. F. 243 (2017); Bill Ong Hing, *Entering the Trump ICE Age: Contextualizing the New Immigration Enforcement Regime*, 5 TEX. A&M L. REV. 253 (2018).

moment for publication of Beth Caldwell's book *Deported Americans: Life After Deportation to Mexico*.<sup>4</sup> Telling the stories of deported immigrants unknown to most Americans, this succinct volume looks at immigration law from a fresh and different perspective than the dry analysis of the law typical of legal scholarship. Caldwell critically analyzes how the application of the immigration laws has changed the lives of many long-term residents of the United States, who against their will and with great personal cost, have been involuntarily removed from their homes, families, and communities. Focusing on deportees to Mexico, most of whom were removed as a result of criminal convictions, the book demonstrates for all to see the racism baked into modern immigration law and enforcement. Given that a national public outcry is demanding the end to systemic racial injustice in law enforcement, *Deported Americans* comes at a particularly opportune historical moment to focus the nation's attention on systemic racism in the enforcement of the immigration laws.

With first-hand accounts from deported immigrants, *Deported Americans* provides a much-needed education about the human impact of immigration enforcement, mass detention, and deportation of immigrants. As Beth Caldwell acknowledges, “[a]lthough the troubling consequences of the U.S. deportation regime are visible virtually everywhere on the Mexican side of the border, they remain largely invisible to most people on the U.S. side.”<sup>5</sup> Hundreds of thousands of deportations threw equal numbers of loving families into turmoil, with many U.S. citizen spouses and children effectively removed from the country with the deportation of a parent/spouse.<sup>6</sup> Other families are torn apart when a parent/spouse is forcibly returned to his or her country of birth—involuntarily exiled from this country and from family, jobs, and community—while the rest of the family remains in the United States. Despite the devastating impacts on people once members of the national community, both Republican (the so-called “family values” party) and Democratic (the party frequently maligned by critics for

---

4. BETH C. CALDWELL, *DEPORTED AMERICANS: LIFE AFTER DEPORTATION TO MEXICO* (2019).

5. *Id.* at 1.

6. Scholars long have recognized the effective deportation of U.S. citizen children with the removal of immigrant parents. See, e.g., Edith Z. Friedler, *From Extreme Hardship to Extreme Deference: United States Deportation of Its Own Children*, 22 HASTINGS CONST. L.Q. 491, 494, 529-30 (1995). During mass removals of Latinx immigrants in the Mexican repatriation of the Great Depression and the 1954 deportation campaign known as “Operation Wetback,” hundreds of thousands of U.S. citizens were subject to de facto removal in this manner. See Kevin R. Johnson, *Trump’s Latinx Repatriation*, 66 UCLA L. REV. 1444, 1453-64 (2019).

allegedly favoring “open borders”) political leaders have supported the large-scale removal of “criminal aliens” with impunity.<sup>7</sup>

*Deported Americans* is nothing less than a primer for Americans on the impact on Mexican lives of the U.S. government’s enforcement of the immigration laws. Through her incisive analysis, Beth Caldwell highlights several fundamental deficiencies in the U.S. immigration laws that warrant most serious attention. She does so in a sophisticated and even-handed fashion, without preaching or writing with the hyperbole all-too-common in the public discussion of immigration.

This essay highlights insights to be gleaned from *Deported Americans* about the realities of the contemporary immigration system in the United States. At a most fundamental level, Caldwell convincingly demonstrates the horrendous impacts of the criminal removal system on long-term Latinx members of the national community and the long overdue need for far-reaching reform.

## I. THE HUMAN IMPACTS OF U.S. IMMIGRATION POLICIES

*Deported Americans* offers much factual information about a topic that unfortunately is woefully missing from the public discussion of immigration in the United States: Immigrants are human beings deserving of dignity and respect, not faceless “illegal aliens,” “criminal aliens,” or simply “aliens” to be punished with impunity.<sup>8</sup>

Immigrant humanity came to the fore for many Americans through the short-lived Trump administration family separation policy.<sup>9</sup> A picture of a toddler sobbing as Immigration and Customs Enforcement officers took her mother away caught the national imagination and helped many Americans see, at a most basic level, the real-life consequences of President Trump’s no-holds-barred approach to immigration enforcement.<sup>10</sup> Who among us

---

7. CALDWELL, *supra* note 4, at 1, 2.

8. See Richard Delgado, *Rodrigo’s Homily: Storytelling, Elite Self-Interest, and Legal Change*, 87 OR. L. REV. 1259, 1278 (2008) (“We need stories that humanize the hard-working Mexicans, Guatemalans, and Caribbean immigrants who are desperate to come here—movies, novels, and simple word-of-mouth tales that show how they are very much like us, how by helping them we help someone who, at bottom, is our kith and kin.”). See generally Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 BYU L. REV. 1139 (contending that popular images of the immigrant must be changed in order to facilitate positive change in the immigration laws).

9. See Sarah McCammon, *After Family Separation Policy Reversal, Trump Says ‘Zero Tolerance’ Should Remain in Effect*, NPR (June 21, 2018, 4:34 PM), <https://www.npr.org/2018/06/21/622361876/after-family-separation-policy-reversal-trump-says-zero-tolerance-should-remain->.

10. See Jen Kirby, *Time’s Crying Girl Photo Controversy, Explained*, VOX (June 22, 2018, 6:30 PM), <https://www.vox.com/policy-and-politics/2018/6/22/17494688/time-magazine-cover->

cannot appreciate the agony of a parent being torn apart from a child or a young child's terror upon separation from a parent? When the emotionally-jolting picture went viral on the internet, nothing less than a popular revolt against family separation followed. A single picture of human misery, in my estimation, led to the quick abandonment of the policy by an administration that rarely retreated from the poorest of policy choices, admitted mistakes, or gave an inch on immigration enforcement.

Beth Caldwell acknowledges that her “book aims to humanize people who have been deported based on perceptions of criminality and dangerousness in an effort to push back against the totalizing narrative that frames the lives of ‘criminal aliens’ as less valuable.”<sup>11</sup> The popular drumbeat of an “invasion” of immigrants and “criminal aliens,” obfuscates the humanity of the people who suffered the wrath of the unforgiving immigration enforcement policies of the Trump administration.<sup>12</sup> Put simply, the inhumane treatment of faceless, predatory “aliens” is much easier to rationalize intellectually than similar treatment of flesh-and-blood people like us.<sup>13</sup> Caldwell’s interviews of deported Americans reveal human stories “of family separation, struggles with identity, stigmatization, and loss,” all ordinary human responses to the calamity of deportation and forced displacement to a foreign country.<sup>14</sup>

Consider this vivid description of the violation experienced through immigration enforcement: “*When ICE [Immigration & Customs Enforcement] detained my husband, it felt violating. Like a rape. Like something had been snatched out of my body. That’s the best way I can describe it,*” says Stephanie with tears in her eyes.<sup>15</sup> After Stephanie’s husband was deported, she moved with him to Mexico.<sup>16</sup> The entire family lost their home, jobs, and community in the United States.<sup>17</sup> Lives were

---

crying-girl-photo-controversy-family-separation; see also Carrie F. Cordero et al., *The Law Against Family Separation*, 51 COLUM. HUM. RTS. L. REV. 432 (2020) (marshalling arguments why President Trump’s family separation policy was unlawful); Mariela Olivares, *The Rise of Zero Tolerance and the Demise of Family*, 36 GA. ST. U.L. REV. 287, 290 (2020) (footnote omitted) (noting that the zero-tolerance policy is “built . . . on a historical and contemporary foundation that targets immigrant families”).

11. CALDWELL, *supra* note 4, at 6.

12. *Id.* at 24-26.

13. See Kevin R. Johnson, *From ‘Aliens’ to ‘Noncitizens’ The Biden Administration is Proposing to Change a Legal Term to Recognize the Humanity of Non-Americans*, THE CONVERSATION, Feb. 23, 2021, <https://theconversation.com/from-aliens-to-noncitizens-the-biden-administration-is-proposing-to-change-a-legal-term-to-recognize-the-humanity-of-non-americans-155693>.

14. CALDWELL, *supra* note 4, at 10.

15. *Id.* at 101 (emphasis added).

16. *Id.* at 101-02.

17. *Id.*

forever changed, with Stephanie left feeling violated in the most personal, violent, and humiliating of ways.

To humanize immigrants, the book is rich with personal stories, like Stephanie's, and details the transformation of the lives of deported Americans. Such richness comes from Caldwell's interviews with more than one hundred immigrants who "migrated to the United States as children and were primarily socialized there," only later to be forcibly removed from the only real country that they truly know.<sup>18</sup> The interviews, many of which Caldwell conducted in Mexico, offer a touch of humanity and much-needed context to cold, opaque, and antiseptic terms and phrases, such as "aliens," "removals," and "immigration enforcement," which obscure the blunt-force trauma done to the lives of real human beings—people once part of our communities, who attended our schools and sat with us in our churches. Besides the interviews, Caldwell "followed a core group of fifteen deportees over the course of five to seven years checking in with them over time to see how their lives were unfolding."<sup>19</sup> The fruits of her fieldwork provide the reader with a window into the lives of Gina, Edgar, Jose, Frank, Mike, and Luis, ordinary people caught up in a deportation whirlwind.<sup>20</sup>

The persons involuntarily returned to their countries of birth understandably identify as, and feel, American. That should be no real surprise in light of the fact that their lives before deportation, including their formative years, were lived in the United States. They have deep attachments to people, places, and experiences in this country, established lives here in reliance on the U.S. government's decision to admit them as immigrants and, before their removal from the United States, lived lives remarkably similar to those of ordinary U.S. citizens.<sup>21</sup> Although ultimately deported, they were true Americans in virtually every sense of the word. They once were nothing less than members of our community.

The deported Americans struggle to survive in a land foreign to them and resent the dehumanizing rhetoric that helps to rationalize their inhumane treatment, from family separation to detention in cages to forced removal. "I hate when they call us aliens," Joe says. "We're people just like you."<sup>22</sup> Part of the dehumanization is accomplished through the use of racial epithets not heard in polite company but part and parcel of a history of racism directed

---

18. *Id.* at 5, 11.

19. *Id.* at 11.

20. *Id.*

21. *Id.* at 154.

22. *Id.* at 50.

at Latinx persons in the United States.<sup>23</sup> “Deportees regularly report being insulted with racial slurs by U.S. immigration officials. They report being called a ‘fucking wetback,’ ‘a dirty little Mexican woman,’ and ‘Mexican pieces of shit.’”<sup>24</sup> Still, the debate over immigration goes on in the United States, without full public acknowledgment and appreciation of the human costs of immigration enforcement, including the pure and simple destruction of peoples’ lives.

Chapter 2 describes the experiences of deported Americans upon resettling in Mexico and explores four common human responses—culture shock, lack of family ties, barriers to social integration, and stigma.<sup>25</sup> Chapter 3 focuses on the life trajectories of deportees, with many suffering from substance abuse, depression, and other mental health problems brought on by deportation and the arduous efforts to rebuild broken lives.<sup>26</sup> Caldwell reports that more than half the people whom she interviewed attempted to return home to rejoin family and community in the United States outside legal avenues.<sup>27</sup> Some were apprehended by the Border Patrol and imprisoned for illegal reentry into the country.<sup>28</sup> Many other migrants are far less fortunate and die when attempting the dangerous journey through deserts and mountains in the heavily fortified and militarized U.S./Mexico border region.<sup>29</sup>

The cost of deportations is not simply an American’s loss of family, community, and entire life, as if that were not enough. Economically dislocated and placed in a strange and different land far from family, friends, and community, some deportees suffered severe economic hardship and even homelessness.<sup>30</sup>

At the same time, some of the deported Americans beat all odds to rebuild lives torn apart by the U.S. government’s actions. They found jobs teaching English, at call centers, and in the tourist and private security industries; others started their own businesses.<sup>31</sup> A number navigated a thick

---

23. See generally LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* (2d ed. 2018) (tracing the historical racialization of Mexican Americans in the United States); KELLY LYTLE HERNÁNDEZ, *MIGRA!: A HISTORY OF THE U.S. BORDER PATROL* (2010) (documenting the history of discrimination by the U.S. Border Patrol against persons of Mexican ancestry, U.S. citizens as well as immigrants).

24. CALDWELL, *supra* note 4, at 50.

25. *Id.* at 49-66.

26. *Id.* at 67-100.

27. *Id.* at 91-92.

28. See Immigration and Nationality Act § 276, 8 U.S.C. § 1326 (2018).

29. CALDWELL, *supra* note 4, at 90-95.

30. *Id.* at 72.

31. *Id.* at 80-86.

and foreboding Mexican bureaucracy, the workings that they must labor to learn to understand as literal and figurative outsiders, to pursue an education in Mexico.<sup>32</sup>

Chapter 4 discusses the human devastation resulting from the deportation of a spouse/parent on the entire family.<sup>33</sup> Those separated from deported spouses fared little better. “Women who remained in the U.S. after their husband was deported experienced symptoms of depression: loss of appetite, disrupted sleep patterns, and frequent episodes of crying.”<sup>34</sup>

Caldwell draws parallels between the experiences of the deported Americans and the U.S. laws’ historical stripping of U.S. citizenship from women who married immigrants.<sup>35</sup> She challenges the legal fiction that removal of a married noncitizen does not interfere with the fundamental right to marry.<sup>36</sup> In her view, marriage to a U.S. citizen should weigh heavily against removal of an immigrant from the United States.<sup>37</sup>

Chapter 5 considers the impacts of removal of noncitizen parents on their U.S. citizen children born in the United States.<sup>38</sup> Children who leave the country—Americans under the law—with a deported parent often experience diminished educational opportunities and a lower standard of living in Mexico than they would have enjoyed in the United States.<sup>39</sup> Because of limited educational opportunities in Mexico, U.S. citizen children who later in life return to their country of birth have relatively few employment opportunities.<sup>40</sup> In that and many other ways, the deportation of a parent effectively diminishes the value of U.S. citizenship. Moreover, “[w]hen children remain in the U.S. after a parent’s deportation – as most do – the parent-child relationship often deteriorates over time.”<sup>41</sup>

The stories from the deported Americans were often heart-wrenching. One deportee talked of losing contact with his three sons and characterized his deportation from the United States as “a lifetime sentence.”<sup>42</sup> *Deported Americans* demonstrates that banishment from the United States in fact may

---

32. *Id.* at 86-87.

33. *Id.* at 101-26.

34. *Id.* at 110.

35. *Id.* at 113-17; *see, e.g.*, *Mackenzie v. Hare*, 239 U.S. 299 (1915) (holding that, under the law then in place, a woman lost her U.S. citizenship upon marriage to a noncitizen and was assigned the nationality of her spouse).

36. CALDWELL, *supra* note 4, at 103-04.

37. *Id.* at 125.

38. *Id.* at 127-52.

39. *Id.* at 139-42, 152.

40. *Id.* at 142.

41. *Id.* at 132.

42. *Id.* at 134.

mean, as the Supreme Court put it, the loss of “all that makes life worth living.”<sup>43</sup>

## II. THE RACIAL IMPACTS OF THE U.S. IMMIGRATION ENFORCEMENT

From the days of the exclusion of Chinese immigrants to the present, public debates about immigration to the United States historically have been founded in disputes about race and racial hegemony. In turn, the racist foundations of U.S. immigration law have influenced the evolution of the laws and profoundly shaped the modern removal system, which through color-blind means have racially-skewed impacts. As a result, the immigration laws are stark and nagging reminders of how public opinion all-too-often has strongly endorsed discrimination against immigrants of color—and unpopular minorities generally.<sup>44</sup> The infamous laws prohibiting immigration from China, which the Supreme Court upheld in a series of decisions that remain good law,<sup>45</sup> are a testament to the corrosive embodiment of racism in the U.S. immigration laws. Asians, southern and eastern Europeans, and Latinx persons, as well as women, the poor, persons with disabilities and the infirm, LGBTQ persons, political minorities, and others, historically have suffered the wrath of the immigration laws, just as they have been disfavored generally in U.S. social life.<sup>46</sup> Consistent with that history, the Trump administration’s immigration measures targeted people of color.<sup>47</sup>

*Deported Americans* focuses on the experiences of Americans deported to Mexico. This is appropriate in light of the fact that, in recent years, *more than ninety percent of those annually removed from the United States have been from Mexico and Central America.*<sup>48</sup> The overwhelming racially

---

43. *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922).

44. For a critical analysis of the history of discrimination against various disfavored groups by the U.S. immigration laws, see KEVIN R. JOHNSON, *THE “HUDDLED MASSES” MYTH: IMMIGRATION AND CIVIL RIGHTS* (2004).

45. See, e.g., *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 606-07 (1889) (refusing to disturb the Chinese Exclusion Act of 1882, which discriminated against Chinese immigrants, and proclaiming that Congress’s immigration decisions were “necessarily conclusive”); see also Gabriel J. Chin, *Segregation’s Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1 (1998) (analyzing the modern vitality of *The Chinese Exclusion Case*).

46. See generally ERIKA LEE, *AMERICA FOR AMERICANS: A HISTORY OF XENOPHOBIA IN THE UNITED STATES* (2019) (compiling the history of xenophobia reflected in U.S. law).

47. See generally Rose Cuison Villazor & Kevin R. Johnson, *The Trump Administration and the War on Immigration Diversity*, 54 WAKE FOREST L. REV. 575 (2019) (analyzing the adverse impacts of the Trump administration’s immigration policies on people of color).

48. See JOHN F. SIMANSKI, U.S. DEP’T OF HOMELAND SEC., *IMMIGRATION ENFORCEMENT ACTIONS: 2013*, at 6 (2014), [https://www.dhs.gov/sites/default/files/publications/Enforcement\\_](https://www.dhs.gov/sites/default/files/publications/Enforcement_)



disparate impacts of the U.S. immigration removal system is no real surprise, especially to Latinx and Asian persons who have suffered through generations of discriminatory immigration policies. Today, in Caldwell's words, "[t]he United States is systematically and forcibly removing millions of Latino men from the boundaries of the country despite strong evidence of their attachments and claims to membership in American society."<sup>49</sup> In important respects, the modern immigration enforcement machinery allows for nothing less than an ethnic cleansing of Latinx immigrants from the United States.<sup>50</sup>

Chapter 1 traces the racist origins of the framework that serve as the foundations of modern immigration law, namely the Chinese exclusion laws as well as the extraordinary Supreme Court decisions immunizing the immigration laws from constitutional review.<sup>51</sup> Although a noncitizen facing removal generally has due process rights to a hearing before removal from the United States,<sup>52</sup> the substantive legal rights of noncitizens are much more limited than those of U.S. citizens. For example, although a lawful permanent resident can be deported from the United States for a relatively minor crime, a U.S. citizen cannot be deported for even the most heinous crimes, such as murder and mayhem.

*Deported Americans* forces the reader to confront a modern immigration system that, in a race-neutral, color-blind, and wholly legal fashion, overwhelmingly impacts the Latinx community. Besides the adverse impacts on the deported Americans, U.S. citizens in families in which an immigrant parent or spouse is removed from the country, are injured.<sup>53</sup> Although much immigration scholarship beats around the bush about the racially disparate impacts of immigration, Beth Caldwell requires the reader to stare into the face of the racialized impacts of the U.S. immigration policies, which do grievous violence to Latinx families and literally destroy the lives of people who are Americans in virtually every sense of the word.

---

Actions\_2013.pdf (noting that citizens of Mexico, Guatemala, Honduras, and El Salvador "accounted for ninety-six percent of all removals").

49. CALDWELL, *supra* note 4, at 189.

50. See generally Johnson, *supra* note 6 (contending that the Trump administration's immigration enforcement measures target Latinx immigrants in ways reminiscent of earlier Latinx repatriations in U.S. history).

51. CALDWELL, *supra* note 4, at 17-47.

52. See *Yamataya v. Fisher (The Japanese Immigrant Case)*, 189 U.S. 86, 100-01 (1903).

53. CALDWELL, *supra* note 4, at 101-25, 131-37.

### III. THE CRIMINAL EXCESSES OF THE MODERN CRIMINAL REMOVAL SYSTEM

Many of the long-time immigrant residents of the United States interviewed by Beth Caldwell for *Deported Americans* had been convicted of crimes—many small-time drug as well as other offenses.<sup>54</sup> As discussed in Part I, she brings much-needed humanity to the faceless and patently evil “criminal aliens,” who are frequently vilified and denigrated by political leaders, including President Trump.

The increased modern reliance on the criminal justice system to feed the immigration removal system is well-known. A sub-specialty of immigration law scholarship known as “crimmigration law” critically analyzes how the criminal justice system places noncitizens into the removal machinery.<sup>55</sup> The criminal justice system in the United States has glaring disparate impacts on Latinx persons, including immigrants.<sup>56</sup> Once again, unlike scholars who evade the cold hard truth—and avoid calling out a patently discriminatory system, Caldwell bluntly acknowledges that “given that racial bias pervades the criminal justice system, the fact that one has been convicted of a crime often has more to do with race than criminality.”<sup>57</sup> More generally, she harshly indicts the discrimination embedded in the modern immigration system: “The history of racial exclusion within the United States shaped a legal framework that has allowed discrimination under immigration law that would be prohibited in virtually all other contexts.”<sup>58</sup>

As a political matter, efforts to reform the criminal removal system in any meaningful way will be easier said than done. All but the harshest treatment of “criminal aliens” will no doubt encounter fierce resistance. The venom expressed at Donald Trump’s campaign rallies in 2016 about extension of the U.S./Mexico border wall and “criminals” from Mexico, offers a glimpse of the passion of the resistance.<sup>59</sup> As Caldwell aptly puts it,

---

54. *Id.* at 53, 55, 60.

55. The foundational crimmigration article is Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 396-418 (2006).

56. See Kevin R. Johnson, *Doubling Down on Racial Discrimination: The Racially Disparate Impacts of Crime-Based Removals*, 66 CASE W. RES. L. REV. 993, 1016-17 (2016); Yolanda Vazquez, *Constructing Crimmigration: Latino Subordination in a “Post-Racial” World*, 76 OHIO ST. L.J. 599, 602-04 (2015).

57. CALDWELL, *supra* note 4, at 28.

58. *Id.* at 46 (footnote omitted).

59. See, e.g., Michelle Mark, *Trump Just Referred to One of His Most Infamous Campaign Comments: Calling Mexicans ‘Rapists’*, BUS. INSIDER, (Apr. 5, 2018, 12:50 PM), <https://www.businessinsider.com/trump-mexicans-rapists-remark-reference-2018-4> (observing that, as a presidential candidate, Donald Trump said, “When Mexico sends its people, they’re not sending their best . . . They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume,

“‘[c]riminal aliens’ are perhaps the most demonized socially undesirable group in the United States today. This perception has driven the massive increase in deportation efforts in the past decade . . . .”<sup>60</sup> To facilitate immigration enforcement, Congress in 1996 passed tough-as-nails immigration reforms that, among other things, greatly expanded the crimes for which an immigrant can be removed from the country, required many noncitizens convicted of crimes to be placed in mandatory, at times indefinite, detention, and strictly limited—and, in many cases, eliminated—judicial review of orders removing immigrants from the United States.<sup>61</sup> The reforms resulted in skyrocketing numbers of immigrants placed in detention and removed from the country on criminal grounds.<sup>62</sup>

Removal procedures can be incredibly fast-moving and ruthlessly efficient. Immigration courts may enter removal orders even if the noncitizen for whatever reason—including, for example, a notice of the hearing sent to the wrong address—fails to appear at a hearing.<sup>63</sup> In many instances, the immigration courts lack any discretion to avoid ordering the removal of an immigrant from the country.<sup>64</sup> As the Supreme Court has soberly acknowledged:

While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation . . . . [D]eportation or removal . . . is now virtually inevitable for a vast number of noncitizens convicted of crimes.<sup>65</sup>

---

are good people.”); see also Jordan Fabian, *Trump on MS-13: ‘These Are Not People, These Are Animals’*, THE HILL, (May 23, 2018, 2:32 PM), <https://thehill.com/homenews/administration/389037-trump-on-ms-13-these-are-not-people-these-are-animals> (discussing President Trump’s reference to members of MS-13, a Salvadoran gang, as “animals”); Eli Watkins & Abby Phillip, *Trump Decries Immigrants from ‘Shithole Countries’ Coming to US*, CNN (Jan. 12, 2018, 9:53 AM), <https://www.cnn.com/2018/01/11/politics/immigrants-shithole-countries-trump/index.html> (reporting that President Trump stated that the United States should not provide relief from removal to citizens from “shithole countries,” such as Haiti and El Salvador).

60. CALDWELL, *supra* note 4, at 30.

61. *Id.* at 31-32; see *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. 104-208, div. C, 110 Stat. 3009-546; see, e.g., Jennifer M. Chacón, *The 1996 Immigration Laws Come of Age*, 9 DREXEL L. REV. 297 (2017); see also PETER H. SCHUCK, *CITIZENS, STRANGERS, AND IN-BETWEENS* 143 (Routledge 2018) (1998) (characterizing the 1996 immigration reforms as “the most radical reform of immigration law in decades – or perhaps ever”).

62. See Jorge A. Solis, *Detained Without Relief*, 10 ALA. C.R. & C.L. L. REV. 357, 374-75 (2019).

63. Jennifer Lee Koh, *Removal in the Shadows of Immigration Court*, 90 S. CAL. L. REV. 181, 217-19 (2017).

64. CALDWELL, *supra* note 4, at 36-42.

65. *Padilla v. Kentucky*, 559 U.S. 356, 360 (2010) (citation omitted) (emphasis added).

Moreover, due process is little more than a mirage in an immigration court system housed in the U.S. Department of Justice, the primary arm of the federal government dedicated to law enforcement.<sup>66</sup> Further decreasing the odds of prevailing in the courts, unlike criminal defendants, immigrants, who face the possible loss of their entire lives in the United States, are not even guaranteed counsel; they go unrepresented before the immigration court if they cannot afford an attorney or find an attorney willing to handle their case for free.<sup>67</sup> In legal parlance, representation by an attorney is a mere “privilege,” not a guaranteed right.<sup>68</sup> That is just the beginning of the restrictions on the rights of immigrants. Unfortunately, the law further limits the rights of immigrants convicted of crimes, for example, barring them from many forms of relief from removal and denying judicial review of their removal orders.

After the removal from the country for criminal activity, some of the deported Americans successfully integrated in Mexico and established upstanding and successful lives. Nonetheless, under the immigration laws, many of them are permanently barred from ever returning to their lives, families, and communities in the United States.<sup>69</sup> Caldwell poses a patently reasonable and thought-provoking question: “Why should people who are contributing members of society be permanently barred from returning?”<sup>70</sup>

#### IV. THE NEED FOR REFORM

The concluding chapter of *Deported Americans* explores ideas for reforms of the immigration laws and their enforcement that would improve matters for long term immigrants facing removal from the United States.<sup>71</sup> Caldwell, for example, calls for the treatment of removal cases of noncitizens married to U.S. citizens and with other family ties in the United States to be

---

66. See Mary Holper, *The Fourth Amendment Implications of “U.S. Imitation Judges”*, 104 MINN. L. REV. 1275, 1275 (2020); Amit Jain, *Bureaucrats in Robes: Immigration “Judges” and the Trappings of “Courts”*, 33 GEO. IMMIGR. L.J. 261 (2019); see also Jill E. Family, *Immigration Adjudication Bankruptcy*, 21 U. PA. J. CONST. L. 1025 (2019) (criticizing actions by the Trump administration undermining the independence of immigration courts).

67. 8 U.S.C. § 1229(b)(4)(A); see Keren Zwick, *The Fiction of Legal Counsel in Immigration Proceedings Right to a Lawyer?*, 27 CBA REC. 32 (2013).

68. See 8 U.S.C. § 1362 (“In any removal proceedings before an immigration judge . . . , the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel . . . as he shall choose.”); see also Kevin R. Johnson, *An Immigration Gideon for Lawful Permanent Residents*, 122 YALE L. J. 2394 (2013) (arguing that Due Process requires that the right to counsel should be afforded to lawful permanent residents); CALDWELL, *supra* note 4, at 42-43.

69. See 8 U.S.C. § 1182(a)(9)(A).

70. CALDWELL, *supra* note 4, at 99.

71. *Id.* at 153-88.

similar to the stricter requirements for the denaturalization of citizens, with the law placing a heavy burden of proof on the U.S. government to strip a person of U.S. citizenship.<sup>72</sup> She specifically advocates that greater weight be given in removal decisions to immigrant marriages and family in the United States.<sup>73</sup> Caldwell sees glimmers of hope for giving greater weight to family ties in removal decisions in Supreme Court decisions like *Kerry v. Din* (2015),<sup>74</sup> in which a majority of the justices recognized the legal rights at stake of a U.S. citizen seeking an immigrant visa for a noncitizen spouse.<sup>75</sup>

Caldwell also calls for Congress to provide greater flexibility to immigration judges in deciding whether to remove a noncitizen for criminal activity.<sup>76</sup> To ensure the fairness of removals, the immigration laws once authorized precisely such a balancing approach. Caldwell reasonably calls for the return of a balancing test, allowing immigration courts to weigh the factors for and against removal, with a heavy presumption against the removal from the United States of an immigrant married to a U.S. citizen.<sup>77</sup>

Again, it is difficult to imagine Caldwell's reasonable and moderate reform proposals prevailing in the contemporary political process. The antipathy for immigrants remains extremely strong, a fact shown by the enthusiastic support among President Trump's base for ever stricter, if not punitive, immigration measures. However, resistance to the perceived excesses of contemporary immigration enforcement has grown. Some states and localities, for example, have declared themselves to be sanctuaries for immigrants.<sup>78</sup> Only time, of course, will tell how immigration law will evolve and whether Congress will meaningfully reform the law.

*Deported Americans* highlights the human misery caused by a system invisible to many Americans that cry out for significant and immediate comprehensive reform of the immigration laws. To transform the status quo, such reform would need to be comprehensive in every sense of the word. Although Congress has debated comprehensive immigration reform for

---

72. *Id.* at 169-74; see Amanda Frost, *Alienating Citizens*, 114 NW. U. L. REV. 241, 246-49 (2019) (outlining the requirements for denaturalization of U.S. citizens); see, e.g., *Maslenjak v. United States*, 137 S. Ct. 1918 (2017).

73. CALDWELL, *supra* note 4, at 174-81.

74. 576 U.S. 86 (2015).

75. CALDWELL, *supra* note 4, at 179.

76. *Id.* at 181-88.

77. *Id.* at 184-85; cf. Jason A. Cade, *Judging Immigration Equity: Deportation and Proportionality in the Supreme Court*, 50 U.C. DAVIS L. REV. 1029, 1033, 1041 (2017) (understanding contemporary Supreme Court immigration decisions as attempting to ensure proportionality in removals).

78. See Rose Cuison Villazor & Alma Godinez-Navarro, "Sanctuary States", 48 SW. L. REV. 503 (2019).

decades, the efforts have not yet born fruit. Reform appears far from imminent.

#### CONCLUSION

In *Deported Americans*, Beth Caldwell's interviews and incisive analysis offer much insight into the impacts of U.S. immigration laws on the lives of long-term U.S. residents, Americans under any ordinary definition. Her analysis makes it clear that campaign slogans for increased immigration enforcement are not simply words but battle cries for violence against people of color. Real human lives are torn apart. Real people are affected. Real—and enduring—human damage is done. The law currently not only allows but itself imposes such injuries. Needless to say, reform of the immigration laws that recognize the impacts of removal on human lives does not appear to be on the immediate horizon. One can hope that *Deported Americans* will open minds, help to redirect the national debate over immigration, and lead to reform of the immigration laws in ways that better account for the basic humanity of immigrants.