

Exposing the American History of Applying Racial Anxieties to Regulate and Devalue Latinx Immigrant Reproductive Rights

By CRISTINA A. QUIÑÓNEZ*

I. Introduction

A. What is “Racial Anxiety” and How Has It Affected Current Immigration Policies and the Regulation of Latinx Immigrants?

NATIONALISTS ACT ON RACIAL ANXIETIES to oppress the reproductive rights of Latinx immigrants. The term “racial anxieties” refers to increased stress levels and emotions that occur when individuals interact with people of other races.¹ Racial anxieties can affect the daily lives of individuals of all races—while some people may be subjected to discrimination and hostility caused by racial anxieties, others can be accused of spreading racial anxieties themselves.²

* Cristina A. Quiñónez, J.D. Candidate, University of San Francisco School of Law; Criminal Justice and Latino/a Studies, B.A., San Francisco State University (2016). The author would like to thank the College of Ethnic Studies at San Francisco State University for keeping the history of minority groups alive and encouraging students to learn, remember, and advocate for minority communities. Thank you Professors Renee Stephens, Felix Kury, Teresa Carrillo, and Dr. Wei Ming Dariotis. Thank you Professors Bill Ong Hing and Jacqueline Brown Scott, as well as the Immigration and Deportation Defense Clinic at the University of San Francisco for their pioneering work, compassion, and dedication to the immigrant community. The author would also like to thank Professor Yvette Lindgren for her help in developing the Comment topic in the Spring of 2019. Lastly, thank you to the editors of *U.S.F. Law Review* for their patience, hard work, and assistance in publication. This Comment is dedicated to the thousands of Latinx immigrant families who have been forcibly separated and abused by the Trump Administration and yet, remain resilient in their hearts to fight for their families and future.

1. *Racial Anxiety*, PERCEPTION INST., <https://perception.org/research/racial-anxiety/> [<https://perma.cc/7ETR-2JNM>].

2. *Id.*

The fears and emotions that stem from racial anxieties can be small and subtle or overbearing and pervasive.³

Recently, President Donald J. Trump has ignited racial anxieties in the American public and created immigration policies and procedures that target Latinx immigrants who make the reproductive choices to give birth and come to the United States with their children.⁴ The President implemented the “Zero Tolerance Policy” that criminally prosecutes and detains all individuals, including pregnant immigrant women, who illegally enter the United States along the Canadian and Mexican borders.⁵ Under the Obama administration, United States Immigration and Customs Enforcement (“ICE”) officers generally avoided detaining pregnant women unless they had a serious criminal history or extraordinary circumstances.⁶ Now, under President Trump’s Zero Tolerance Policy, pregnant women can be detained up to their third trimester,⁷ and reports indicate they may even be shackled while transported to and from detention centers.⁸ Detention centers are not equipped to handle the medical care pregnant women need and therefore put pregnant immigrant women and their unborn children in grave danger.⁹ Detaining pregnant women is

3. *Id.*

4. See Susan Ferriss, *What’s Behind the Policy Separating Kids from Their Parents at the Border?*, CTR. FOR PUB. INTEGRITY (June 19, 2018), <https://publicintegrity.org/inequality-poverty-opportunity/immigration/whats-behind-the-policy-separating-kids-from-their-parents-at-the-border/> [https://perma.cc/9PQH-US8L].

5. Victoria López, *Working to Uncover How ICE Treats Pregnant Women in Detention*, ACLU (May 3, 2018, 5:45 PM), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/working-uncover-how-ice-treats-pregnant-women> [https://perma.cc/P42X-PZDE]; *Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration*, U.S. DEP’T JUST. (May 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions> [https://perma.cc/C547-2NKK].

6. Liz Jones, *Pregnant and Detained*, NPR (Apr. 6, 2018, 9:29 AM), <https://www.npr.org/2018/04/05/599802820/pregnant-and-detained> [https://perma.cc/2Q63-4R7J].

7. See *id.*; Tina Vasquez, *Meet the Federal Agency Helping to Criminalize Pregnant Migrants*, REWIRE.NEWS (May 14, 2019, 12:11 PM), <https://rewire.news/article/2019/05/14/meet-the-federal-agency-helping-to-criminalize-pregnant-migrants/> [https://perma.cc/P8KP-JCHR].

8. Press Release, Veronica Escobar, U.S. Congresswoman Representing 16th Dist. of Tex., Reps. Escobar and Maloney Seek Answers on Mistreatment of Pregnant Migrants (June 7, 2019), <https://escobar.house.gov/media/press-releases/rep-escobar-and-maloney-look-for-answers-on-mistreatment-of-pregnant-migrants> [https://perma.cc/XM8U-HT9B].

9. BILL ONG HING, *AMERICAN PRESIDENTS, DEPORTATIONS, AND HUMAN RIGHTS VIOLATIONS: FROM CARTER TO TRUMP* 114 (2018).

a form of reproductive oppression of Latinx immigrant women designed to deter them from entering the United States to give birth.¹⁰

The Trump administration's immigration policies and procedures devalue Latinx immigrants' fundamental rights to keep their families together in order to deter them from entering the United States. President Trump used nationalist fears to forcibly separate Latinx immigrant families along the United States-Mexico border, thereby denying their fundamental right to have custody of their children and keep their families together. The federal government has reported that nearly 3000 immigrant children were forcibly separated from their parents and placed into foster care or detention centers in 2018 under President Trump's Zero Tolerance Policy.¹¹ However, before a federal court ordered the government to account for all migrants entering the United States, reports show that thousands more children had been separated from their parents since 2017.¹² Due to the lack of a formal government tracking system, the total number of immigrant children separated from their parents by immigration authorities is unknown.¹³ As of April 2019, the Trump administration asked for a two-year deadline to identify immigrant children and reunify them with their parents.¹⁴

On January 22, 2020, nine parents who were deported and separated from their children in the United States as a result of the Trump administration's separation policy were allowed to return to reunite with their children—they had not seen them since 2018.¹⁵ Unfortunately, these nine parents are only a small percentage of the potentially thousands of other parents and children who are still separated

10. Tina Vasquez, *OB-GYN Says U.S. Marshals Service Is Shackling Detained Pregnant Migrants*, REWIRE.NEWS (May 14, 2019, 12:11 PM), <https://rewire.news/article/2019/05/14/ob-gyn-says-u-s-marshals-service-is-shackling-detained-pregnant-migrants/> [https://perma.cc/SY5J-RJKQ].

11. Miriam Jordan, *Family Separation May Have Hit Thousands More Migrant Children Than Reported*, N.Y. TIMES (Jan. 17, 2019), <https://www.nytimes.com/2019/01/17/us/family-separation-trump-administration-migrants.html> [https://perma.cc/R528-H6XU].

12. *Id.*

13. *Id.*

14. Elliot Spagat, *U.S. Wants 2 Years to ID Migrant Kids Separated From Families*, PBS (Apr. 6, 2019, 4:16 PM), <https://www.pbs.org/newshour/politics/us-wants-2-years-to-id-migrant-kids-separated-from-families?fbclid=IWAR2iz7PYn6XVTOCbDEizAzL4cXUzBRjM3ovqfaSGQJWPv7o7svjk8L2cXQ> [https://perma.cc/9TS5-79Y7].

15. The Associated Press, *Migrant Parents Separated from Kids Since 2018 Return to US*, KRON 4 NEWS (Jan. 23, 2020, 9:52 AM), <https://www.kron4.com/news/migrant-parents-separated-from-kids-since-2018-return-to-us/?fbclid=IWAR3CJqm3V1AetzB2y1jpSvfp0joO66t0st-uzm7AClajAeZBdcyAtEeNVnI> [https://perma.cc/M8ME-23LL].

after the implementation of the Zero Tolerance Policy along the southern border.¹⁶

The current immigration policies and procedures of policing, denying, and oppressing Latinx women in the United States are not new and follow a long history of pathologizing and regulating their reproductive capabilities.

B. American History of Applying Racial Anxieties to Regulate Latinx Immigrant Reproduction

The migration waves of the late nineteenth century and early twentieth century ignited nationalist fears and spread racial anxieties directed toward certain minority groups in the United States.¹⁷ Throughout United States history, American-born children and grandchildren of immigrants feared that new incoming immigrants, particularly those from Mexico and the Northern Triangle—comprised of Guatemala, El Salvador, and Honduras—would deface and ruin the American culture by creating a melting pot. New incoming immigrants were automatically seen as an imminent threat to society because immigrants were more likely to keep their culture's traditions rather than assimilate to American traditions and lifestyles.¹⁸ The rapidly growing rate of the Latinx population in the United States in the twentieth and twenty-first centuries furthered nationalist fears that Latinx immigrants would soon take control of American society and eliminate the moral and economic identity of United States culture.¹⁹ Nationalists argue that Latinx immigrants blatantly refuse to fully assimilate to the American lifestyle because they take pride in their culture and chose to preserve their native languages and customs.²⁰ In response to the refusal to assimilate to American culture, nationalists spread racial anxieties by targeting the Latinx immigrant population and openly demeaning their existence in society by creating and implementing Americanization programs along the southern border.

Americanization programs were created to ease the transition for recently arrived, primarily Latinx immigrants in towns along the southern border.²¹ These programs offered English learning and

16. *Id.*

17. LEO R. CHAVEZ, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENS AND THE NATION* 2–4 (2008).

18. *Id.* at 3.

19. *Id.* at 2.

20. *Id.*

21. ELENA R. GUTIÉRREZ, *FERTILE MATTERS: THE POLITICS OF MEXICAN-ORIGIN WOMEN'S REPRODUCTION* 9–12 (2008).

American cooking classes so immigrants could part ways from their native customs and embrace the American culture.²² The American public wanted to eliminate any obvious differences between Americans and immigrants.²³ More importantly, the Americanization programs sought to deter immigrant women from having larger families.²⁴ These efforts to transform the reproductive ideas and behavior of Latinx immigrants were clearly motivated by nationalist fears of American race suicide.²⁵ American race suicide is the theory that the large number immigrants with different cultures and traditions who come to the United States and reproduce will overpower the cultures and traditions of the American race.²⁶ Though white Anglo-Saxon Protestant immigrants have been strongly preferred as the “ideal immigrants” because they physically blended into American society easily, were more willing to part from their native traditions, generally had smaller families, and contributed more economically to society compared to Latinx immigrants.²⁷

Americans with racial anxieties have defined white families as superior to reproduce the American race and defined minorities, including Latinx immigrants, as socially undesirable to reproduce in part because of their assumed dependency on state benefits.²⁸ Social institutions and the American public devalued the reproductive capabilities of Mexican and Latinx immigrant women.²⁹ Mexican women were not seen as loving mothers with large families. Rather, they were depicted as breeders and a threat to society.³⁰ Therefore, proponents of this view have felt entitled to control the Latinx immigrant population for the safety of the American public by regulating and oppressing their reproductive rights.³¹

Historically, private actors, specifically doctors and judges, acted on their own racial anxieties and denied Mexican American women

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Adam Hochman, *Race Suicide*, EUGENICS ARCHIVE (Apr. 29, 2014), <http://eugenicsarchive.ca/discover/connections/535eedb87095aa0000000250> [<https://perma.cc/B5LX-CWRZ>] (“The concept of ‘race suicide’ is now rejected by sociologists and other scholars because of its racism, its anti-feminism, its connection to the eugenic movement, and its use of the controversial category of ‘race.’”).

27. GUTIÉRREZ, *supra* note 21, at 9–12.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

their fundamental right to procreate by forcibly sterilizing them without their informed consent.³² They abused their professional roles in society by giving into their fears of hyper-fertile Latinx immigrant women and the rapidly growing Latinx population.³³

Public officials have used racial anxieties toward the Latinx immigrant population to address and combat immigration policies and procedures along the southern border. California Proposition 187, the “Save Our State Initiative,” was designed to deny undocumented immigrants access to public education and health care services on the notion that Latinx immigrants were opportunists who depleted public services from the American public.³⁴ Proposition 187 provided the opportunity for citizens to act as police officers of the state and target Latinx individuals who appeared undocumented.³⁵ Proponents of this proposition constantly referred to the hyper-sexuality and hyper-fertility of Latinx immigrant women as a primary issue with immigration from Mexico.³⁶ The Save Our State Initiative strongly referred to the “allure of social benefits” as the driving factor for Latinx immigrant women who migrated to the United States so their children can have access to such benefits as United States citizens.³⁷

Section II of this Comment further defines racial anxiety and exemplifies how it has been historically used to pathologize and control Latinx reproduction in the United States. Section III discusses the current administration’s immigration policies and procedures motivated by racial anxieties and designed to target the Latinx immigrant population and their reproductive rights. This Comment concludes by calling for solutions to end the use of racial anxieties in immigration policies and procedures—racial anxieties that have worked to regulate Latinx reproduction thereby denying them their fundamental rights to procreate and to keep their families together.

32. *Id.* at 45–47.

33. *Id.*

34. CHAVEZ, *supra* note 17, at 72.

35. Gustavo Arrellano, *Prop. 187 Forced a Generation to Put Fear Aside and Fight. It Transformed California, and Me*, L.A. TIMES (Oct. 29, 2019, 3:00 AM), <https://www.latimes.com/california/story/2019-10-29/proposition-187-california-pete-wilson-essay> [<https://perma.cc/35DK-NK9J>].

36. GUTIÉRREZ, *supra* note 21, at 74–75.

37. *Id.* at 4.

II. Background

A. Right to Procreate

The United States has previously used involuntary sterilization to control the reproductive futures of minority populations.³⁸ In *Buck v. Bell*,³⁹ a Virginia statute allowed the state of Virginia to sterilize institutionalized individuals deemed to be “feeble-minded” to prevent them from reproducing children and to protect the well-being of the public from feeble-minded individuals. In 1927, the United States Supreme Court believed it was better to forcibly prevent these individuals from “continuing their kind” than to risk the chance that their offspring could become a burden to society.⁴⁰ The Court believed that “three generations of imbeciles are enough,” and it legalized eugenic sterilization in the United States.⁴¹

However, in *Skinner v. Oklahoma*,⁴² the plaintiffs challenged eugenic sterilization in the United States and brought suit against an Oklahoma legislation that allowed the courts to order the sterilization of individuals convicted of two or more crimes of moral turpitude. The Court found that (1) any attempt by the government to impose involuntary sterilization has to meet strict scrutiny, and (2) the right to procreate is deemed a fundamental right.⁴³ The Court emphasized that the right to procreate is a “basic civil right[] of man.”⁴⁴ Although the Court did not expressly overrule *Buck v. Bell*, the forceful language of the majority opinion made it difficult for the legalization of eugenic sterilizations to survive.⁴⁵

1. Controlling the Reproduction of the Latinx Immigrant Population

Latinx women have been the targets of various public debates in an effort to control their reproduction and disempower their right to bear children.⁴⁶ Latinx reproduction and fertility were the center of anti-immigrant sentiment in the last decades of the twentieth century

38. Tom Head, *Forced Sterilization in the United States*, THOUGHTCO. (Nov. 23, 2018), <https://www.thoughtco.com/forced-sterilization-in-united-states-721308> [https://perma.cc/4RFG-RDDL].

39. *Buck v. Bell*, 274 U.S. 200, 205–08 (1927).

40. *Id.*

41. *Id.*

42. *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

43. *Id.* at 541.

44. *Id.*

45. *Id.* at 542.

46. GUTIÉRREZ, *supra* note 21, at 18.

and the first decades of the twenty-first century.⁴⁷ After the 1965 immigration wave, the percentage of white women giving birth significantly declined, which contributed to a demographic shift in the United States.⁴⁸ As the white population decreased, the Latinx population increased across the nation.⁴⁹ Social scientists linked the hypersexual Latinx fertility to the dangerous decline of white women giving birth and the threat that Latinx would soon take over the population.⁵⁰ White individuals in power encouraged white women to have more children during their childbearing years and not to work outside of their homes.⁵¹ Meanwhile, Latinx women were strongly discouraged from reproducing because of the assumption that their children would burden the economy.⁵²

With the decline of white women giving birth in the United States, fears of the American race suicide spread across the nation.⁵³ American public figures sought legitimate ways to improve the birth rate of white families while oppressing the reproduction of minority groups and individuals of color.⁵⁴ Eugenics is a social movement surrounding the belief that the human race and society could be improved by encouraging the reproduction of populations with desirable traits (positive eugenics) and discouraging the reproduction of people with undesirable traits (negative eugenics).⁵⁵ The eugenics movement began at the start of the twentieth century and was used to justify sterilizing individuals deemed undesirable for society.⁵⁶ The main goal of eugenics was to reduce the societal burdens brought by members of the undesired social group.⁵⁷ The eugenics movement targeted people of color, immigrants, “feeble-minded” individuals, and the poor.⁵⁸

47. CHAVEZ, *supra* note 17, at 71–73.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. GUTIÉRREZ, *supra* note 21, at 12–14.

54. Kathryn Krase, *History of Forced Sterilization and Current U.S. Abuses*, OUR BODIES OURSELVES (Oct. 1, 2014), <https://www.ourbodiesourselves.org/book-excerpts/health-article/forced-sterilization/> [https://perma.cc/K26M-92LE].

55. *What Is Eugenics?*, PERSONAL GENETICS EDUC. PROJECT, <https://pged.org/history-eugenics-and-genetics/> [https://perma.cc/82J8-YLUQ].

56. *Id.*

57. *Id.*

58. *Id.*

Eugenics encourages reproductive oppression against marginalized communities.⁵⁹ Margaret Sanger, an advocate for birth control and a pioneer for the pro-choice movement, relied on the eugenics movement to support the legalization of contraceptives.⁶⁰ Sanger argued that birth control use would help control the reproduction of “unfit” people, including individuals with disabilities, women of color, and the poor.⁶¹ This argument identified the fertility of certain classes of people, including Latinx immigrant women, as a problem that required state intervention.⁶² The Eugenics movement disempowered the reproductive right of Latinx immigrant women because society and eugenics followers deemed them unfit to be good mothers.

Shellee Colen’s concept of “stratified reproduction” describes how women’s reproduction in some groups are characterized positively, while women of other less socially desired groups, such as Latinx immigrant women and other marginalized groups, are despised by the public.⁶³ The concept of stratified reproduction rests on the idea that an individual’s position within social hierarchies, such as race or class, results in the appraisal of some people’s reproductive choices and procreation and the devaluation of others.⁶⁴ Historically, the reproductive futures of white women are highly valued and encouraged, whereas Latinx immigrant women are seen as “hypersexual opportunists.”⁶⁵ Latinx women are depicted in society as exotic, sexually aggressive women who have more sexual partners and more babies at a younger age compared to white women.⁶⁶ These stereotypical assumptions only advanced the fear of Latinx hyper fertility and the link to demographic changes, specifically in states where the Latinx population was substantially greater than their white counterparts.⁶⁷ Private actors and public officials worked in unison to oppress the reproductive capabilities of Latinx immigrant women, control their pop-

59. Robin Levi et al., Human Rights Program at Justice Now, *Prisons as a Tool of Reproductive Oppression*, 5 STAN. J. C.R. & C.L. 309, 314 (2009).

60. *Id.* at 315.

61. *Id.*

62. *Id.* at 339.

63. CHAVEZ, *supra* note 17, at 73.

64. Emma S. Ketteringham, Sarah Cremer & Caitlin Becker, *Healthy Mothers, Healthy Babies: A Reproductive Justice Response to the “Womb-To-Foster-Care Pipeline”*, 20 CUNY L. REV. 77, 84 (2016) (“The concept of stratified reproduction posits that certain categories of people in a society are encouraged to reproduce and parent, but others are not. In other words, an individual’s position within our social hierarchies such as race or class results in the valuation of some people’s reproduction and the devaluation of others.”).

65. CHAVEZ, *supra* note 17, at 71–73.

66. *Id.*

67. See GUTIÉRREZ, *supra* note 21, at 56–70.

ulation, and deny their fundamental right to bear children in order to maintain the balance of their ideal American society.⁶⁸

2. Coercive Sterilization of Mexican American Women

Racial anxieties based on the hyper-fertile Latinx woman and the growing Latinx population led medical professionals of the Los Angeles County Medical Center (“LACMC”) to perform involuntary sterilization procedures on women of Mexican origin in the 1970s.⁶⁹ Mexican and African American populations reflected the hospital’s patient majority demographic.⁷⁰ Dr. Edward James Quilligan, leader of the Obstetrics-Gynecology department, tenaciously promoted birth control to female patients in an effort to control the growing minority population.⁷¹ The doctors of LACMC followed Dr. Quilligan’s orders and implemented the strongest form of birth control by forcibly sterilizing women of Mexican origin during delivery.⁷²

In order to control their reproductive futures, physicians and nurses abused the trust of their Mexican American patients and forcibly sterilized them when they were at their most vulnerable.⁷³ Physicians and nurses approached Mexican American patients to sign sterilization consent forms immediately before birth, during the last and most painful stages of labor, while they were unable to understand or notice that they were signing consent forms for their own sterilization.⁷⁴ Since there were no Spanish translators available to read the form to them, non-English speaking mothers were more likely to be targeted for the procedure.⁷⁵ Doctors and nurses were unable and unwilling to fully explain the irreversibility of tubal ligation.⁷⁶

The doctor would hold a syringe in front of the mother who was in labor pain and ask her if she wanted a pain killer; while the woman was in the throes of a contraction the doctor would say, “Do you want the pain killer? Then sign the papers. Do you want the pain to stop? Do you want to have go through this again? Sign the papers.”⁷⁷

68. *Id.* at 9–12.

69. *Id.* at 35–54.

70. *Id.* at 40.

71. *Id.*

72. *Id.* at 40–41.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 40–43.

77. *Id.* at 43.

Immediately after the patient gave birth, some doctors asked a basic question before discretely depriving a woman of her reproductive rights: “¿mas niños?” which translates to “more children?” in English.⁷⁸ The doctors intentionally acted with deception by posing a question without explaining the consequences of the patient’s response.⁷⁹ The doctors acted with intent to deceive their Mexican American patients in order to maintain control of their birthing experiences and their racially charged agenda to strip them of their right to bear children.

The doctors of LACMC demonstrated their superiority and entitlement as white medical professionals by violating women’s bodies and denying them their fundamental right to procreate. The doctors justified their actions by claiming that women of Mexican origin had placed a “strain on society” because they were using public services to care for their large families.⁸⁰ The doctors of LACMC clearly violated their medical oath to do no harm and abused their discretion in order to advance their racially motivated objective to control Mexican reproduction. In June 1975, several Mexican American victims came forward and brought a class-action civil rights suit against the state of California, the LACMC, the United States Department of Health, Education, and Welfare (“HEW”), and twelve doctors, including Dr. Quilligan.⁸¹

In *Madrigal v. Quilligan*, the plaintiffs argued that the defendant-doctors did not obtain the plaintiffs’ informed consent to sterilize them, which violated the plaintiffs’ right to bear children.⁸² The plaintiffs further argued that the doctors “acted in accordance with an attitude widespread within the hospital that overpopulation of [Latinx] immigrants must be remedied through sterilization procedures because they tend to have larger families.”⁸³ Witness testimony revealed that Dr. Quilligan informed his medical students that LACMC received substantial federal funds to rebuild and improve the Women’s Hospital facility in an effort “to show how low we can cut the birth rate

78. *Id.* at 41; NO MAS BEBÉS (Moon Canyon Films 2015).

79. GUTIÉRREZ, *supra* note 21, at 41–42; NO MAS BEBÉS, *supra* note 78.

80. GUTIÉRREZ, *supra* note 21, at 45–46.

81. *Id.*

82. Marcela Valdes, *When Doctors Took ‘Family Planning’ Into Their Own Hands*, N.Y. TIMES (Feb. 1, 2016), <https://www.nytimes.com/2016/02/01/magazine/when-doctors-took-family-planning-into-their-own-hands.html> [<https://perma.cc/4LWH-4YS6>]. *Madrigal v. Quilligan*, No. 75-2057 (C.D. Cal. 1978), is an unpublished opinion that is currently unavailable in legal databases or hard copy in most legal libraries.

83. GUTIÉRREZ, *supra* note 21, at 45.

of the Negro and Mexican populations in Los Angeles County.”⁸⁴ The defendants argued that the plaintiffs’ sterilization procedures were “medically necessary,” although they provided no evidence to support their argument.⁸⁵ The reproductive choice to have children was snatched away from all twelve Mexican-origin patients for greedy and racially motivated purposes: to control the Latinx immigrant population and show the white doctors’ dominance as the superior race.⁸⁶ The doctors and nurses of LACMC devalued the reproductive choices for these Latinx immigrant women solely because they felt they were entitled to protect the American public from further economic burdens.⁸⁷ However, not one of the twelve plaintiffs used public services for their delivery.⁸⁸ Dr. Quilligan and his staff demonized Latinx immigrant women because they were threatened by their ability to reproduce Latinx children.

Unfortunately, the judge in *Madrigal v. Quilligan* ruled in favor of the defendants.⁸⁹ The judge did not apply the necessary strict scrutiny standard the Supreme Court of the United States found in *Skinner v. Oklahoma*.⁹⁰ Instead, the judge viewed this case as a matter of cultural difference rather than the defendants significantly infringing the plaintiffs’ fundamental right to procreate.⁹¹ The *Madrigal* court felt that the state of California, LACMC, HEW, Dr. Quilligan, and his medical staff were simply part of a culture concerned about overpopulation.⁹² However, the twelve women of Mexican origin were members of a culture that highly valued a woman’s ability to procreate a family.⁹³ The judge further stated that the doctors “were entitled to invoke social motivations for actively encouraging sterilization as long as they had some medical rationale.”⁹⁴ Here, the doctors did not have a legitimate medical rationale, but only racial anxieties that the Latinx

84. *Id.*

85. *Id.*

86. *Id.* at 51–54.

87. *Id.*

88. *Id.* at 43–44.

89. THOMAS M. SHAPIRO, POPULATION CONTROL POLITICS: WOMEN, STERILIZATION AND REPRODUCTIVE CHOICE 90–91 (1985).

90. *Skinner v. Oklahoma*, 316 U.S. 535 (1942) (“We advert to them merely in emphasis of our view that strict scrutiny of the classification which a State makes in a sterilization law is essential, lest unwittingly or otherwise invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws.”).

91. GUTIÉRREZ, *supra* note 21, at 47.

92. *Id.*

93. *Id.* at 46.

94. *Id.*

population would burden the economy because “Mexican people were very poor and that [they] should not have any more children because [they] could not support them.”⁹⁵ The judge further noted:

Suppose he [a doctor] does favor sterilization in every chance he can get. So long as he does not override the will of one of his patients, I do not see that there is anything objectionable. He may believe that in theory of the big problems is that some families are too big. He is entitled to that belief. He is just not entitled to overpower the will of his patients.⁹⁶

The doctors abused their power by sterilizing their patients without informed consent and allowed their patients to believe the procedure’s effects were temporary.⁹⁷ The doctors clearly overpowered their patients’ will. It is also clear that the doctors at LACMC did not obtain informed consent from the women they coercively sterilized and acted to cure their anxieties towards the Latinx immigrant population.⁹⁸ The judge in *Madrigal v. Quilligan* failed to apply the strict scrutiny standard, thereby absolving the white medical professionals of all responsibility for their coercive actions and letting doctors believe they can abuse their legal limit to devalue the reproductive rights of Latinx immigrant women.⁹⁹

B. The Right to Custody and to Keep Families Together

In *Stanley v. Illinois*,¹⁰⁰ the Supreme Court determined that parents have a fundamental right to have custody of their children, thereby overruling an Illinois state law that declared unwed fathers unfit to parent. Peter Stanley was an unwed father who lost custody of and was separated from his children when his children’s mother and significant other passed away.¹⁰¹ The Supreme Court ruled: “[W]hen an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his children, his interest in personal contact with his children acquires substantial protection under the Due Process Clause.”¹⁰² Here, the Court protected the relationship between parents and their children where the parent is actively involved in his children’s lives.

95. MELISSA MURRAY & KRISTIN LUKER, *CASES ON REPRODUCTIVE RIGHTS AND JUSTICE* 886–87 (2015).

96. GUTIÉRREZ, *supra* note 21, at 47.

97. *Id.* at 41–42.

98. MURRAY & LUKER, *supra* note 95, at 882–89.

99. *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

100. *Stanley v. Illinois*, 405 U.S. 645, 658 (1971).

101. *Id.* at 646.

102. MURRAY & LUKER, *supra* note 95, at 268–72.

In *City of East Cleveland v. Moore*,¹⁰³ the Court found that families have a fundamental right to keep their family together. A Cleveland zoning ordinance limited the number of “unrelated” people who could live together in one household and defined unrelated people as anyone outside the nuclear family.¹⁰⁴ A grandmother was accused of violating the ordinance because she lived with her son and two grandsons.¹⁰⁵ One grandson was the first cousin of the other grandson.¹⁰⁶ The Court held that the “Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.”¹⁰⁷ The Court found that the ordinance significantly infringed on the grandmother’s rights to keep her family together.¹⁰⁸

The lack of a best interest standard for children in immigration laws allows border patrol agents and Immigration Customs Enforcement to ignore the safety and well-being of immigrant children.¹⁰⁹ The “best interests of the child” standard is mostly used for divorce proceedings to determine which parent will be awarded custody of the child.¹¹⁰ However, it is not the sole criterion or test, let alone a constitutional criteria to be met.¹¹¹ The “best interests of the child” is not a legal standard that governs the parents’ or guardians’ custody rights: “[S]o long as certain minimum requirements of child care are met, the interests of the child may be subordinated to the interests of other children, or indeed even to the interests of the parents or guardians themselves.”¹¹²

When parents or legal guardians demonstrate their full commitment to bear parental responsibilities and participate in their children’s daily lives, they also demonstrate their commitment to serve their children’s and the communities’ best interest.¹¹³ When children are in a safe environment with parents who are committed to their

103. *City of East Cleveland v. Moore*, 431 U.S. 494, 505–06 (1977).

104. *Id.* at 495–96.

105. *Id.* at 496–97.

106. *Id.* at 496.

107. *Id.* at 503.

108. *Id.* at 505–06.

109. Jennifer Nagda & Maria Woltjen, *Best Interests of a Child Standard: Bringing Common Sense to Immigration Decisions*, BIG IDEAS, Apr. 2015, at 105, <https://firstfocus.org/wp-content/uploads/2015/04/Best-Interests-of-the-Child-Standard.pdf> [<https://perma.cc/ZSA4-ULPE>].

110. *Reno v. Flores*, 507 U.S. 292, 303–04 (1993).

111. *Id.* at 304.

112. *Id.*; *R.C.N. v. State*, 233 S.E.2d 866, 867 (Ga. 1977).

113. *Stanley v. Illinois*, 405 U.S. 645, 652–55 (1971).

responsibilities as parents, the best interest of a child standard is met without state intervention.¹¹⁴

1. International Law: Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (“Convention”) is a human rights treaty that contains the civil, political, economic, social, health, and cultural rights of children.¹¹⁵ The Convention recognizes “the needs of children and sets minimum standards for their protection, survival, and development.”¹¹⁶ It requires various governments to uphold children’s basic human rights, non-discrimination practices, and the best interests of the child.¹¹⁷ The Convention demands children be recognized as human beings with legal rights and not as objects controlled by the state.¹¹⁸ It protects family integrity and supports family unity in order to serve the best interests of the child.¹¹⁹ Most developed countries and nations, like those of the European Union, have signed and ratified the Convention and therefore are bound by international law to comply.¹²⁰ The United Nations Committee on the Rights of the Child monitors compliance of all nations bound to the Convention.¹²¹ However, the United States has not ratified the Convention.¹²²

While the United States government was actively involved in drafting the Convention and signed it in February 1995, it failed to ratify the Convention after receiving push back from religious congregations and familial-like institutions.¹²³ The Convention on the Rights of the Child is believed to “threaten parental rights,” and if the United States were to ratify the Convention, parents across the nation would

fear that ratifying the treaty would mean children could choose their own religion, that children would have a legally enforceable right to leisure, that nations would have to spend more on children’s welfare than national defense, and that a child’s ‘right to be

114. *Reno*, 507 U.S. at 303.

115. G.A. Res 44/25, Preamble (Nov. 20, 1989).

116. *Id.*; *Children’s Rights in the U.S.*, AM. SOC’Y FOR POSITIVE CARE CHILD., <https://americanspcc.org/the-convention-on-the-rights-of-the-child/> [<https://perma.cc/5GGU-BK2H>].

117. *Children’s Rights in the U.S.*, *supra* note 116.

118. *Id.*

119. *Id.*

120. G.A. Res 44/25, *supra* note 115.

121. *Id.* at art. 43.

122. *Children’s Rights in the U.S.*, *supra* note 116.

123. *Id.*

heard' could trigger governmental review of any decision a parent made that a child didn't like.¹²⁴

Article 9 section 1 and section 3 of the Convention states:

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

...

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal [relationships] and direct contact with both parents on a regular basis, except if it is contrary to the child's best interest.¹²⁵

Without the ratification, the United States is allowed to separate children from their parents against their will because they are not bound by international law to uphold the Convention.¹²⁶ If the United States were to ratify the Convention, federal and state laws and policies regarding children would be evaluated periodically.¹²⁷ This would protect the safety, development, welfare, and protection of all children in the United States, particularly immigrant children in detention who are among the most vulnerable and marginalized.¹²⁸

2. "Best Interest of a Child" Standard as Applied to Immigrant Children

The Immigration and Naturalization Service ("INS") was the main body overseeing immigration in the United States from 1993 until it dissolved in 2003.¹²⁹ In *Reno v. Flores*,¹³⁰ the respondents were a class of unaccompanied minors who were arrested and detained in INS custody pending their deportation hearing. The respondents ar-

124. Karen Attiah, *Why Won't the U.S. Ratify the U.N.'s Child Rights Treaty?*, WASH. POST (Nov. 21, 2014), <https://www.washingtonpost.com/blogs/post-partisan/wp/2014/11/21/why-wont-the-u-s-ratify-the-u-n-s-child-rights-treaty/> [https://perma.cc/C67W-VX22].

125. G.A. Res 44/25, *supra* note 115, at art. 9 §§ 1, 3.

126. *See generally Children's Rights in the U.S.*, *supra* note 116.

127. *Id.*

128. *Id.*

129. After the attacks of 9/11, the government made changes to improve immigration security, including dissolving the INS. Now, USCIS and Department of Homeland Security do many of the tasks the Immigration and Naturalization Service once did. *Our History*, U.S. CITIZENSHIP & IMMIGR. SERVS. (last updated Jan. 8, 2020), <https://www.uscis.gov/about-us/our-history> [https://perma.cc/AVY5-WMBZ].

130. *Reno v. Flores*, 507 U.S. 292, 303 (1993).

gued that the Constitution and immigration laws required they be released to the custody of responsible adults under the “best interest of a child” standard.¹³¹ The Court found that the best interest of a child standard is not the legal standard for unaccompanied minors so long as the minimum standards of child care are met.¹³² The Court concluded that unaccompanied minors should not be released to responsible adults because 8 U.S.C.S. §1252 was in accord with both the Constitution and immigration laws.¹³³ However, the Court noted in its decision:

Where a juvenile has no available parent, close relative, or legal guardian, *where the government does not intend to punish the child*, and *where the conditions of the governmental custody are decent and humane*, such custody surely does not violate the Constitution. It is rationally connected to a governmental interest in preserving and promoting the welfare of the child and is not punitive since it is not excessive in relation to that valid purpose.¹³⁴

Therefore, when the immigrant juvenile is in the government’s custody, the government must not intend to punish the child, and government detention centers must be decent and humane in order to not violate the Constitution and meet the “best interest of the child” standard.¹³⁵

III. Current Issues

Racial anxiety is the largest contributor of support for President Trump and his campaign against Latinx migration from the southern border.¹³⁶ Racial anxieties have encouraged a significant portion of the American public to maintain their superiority and control over Latinx immigrants and their families.¹³⁷

A. Right to Procreate

President Trump is targeting Latinx immigrant women by igniting racial anxieties among the public in order to devalue their repro-

131. *Id.* at 303–05.

132. *Id.* at 305.

133. *Id.* at 314–15.

134. *Id.* at 303.

135. *Id.*

136. Christopher Ingraham, *Two New Studies Find Racial Anxiety is the Biggest Driver of Support for Trump*, WASH. POST (June 6, 2016), <http://cc.bingj.com/cache.aspx?q=two+new+studies+find+racial+anxiety+is+the+biggest+driver+of+support&d=4824676091823673&mkt=en-US&setlang=en-US&w=PfoPB1YszOOSAjW8BaVFz6SbAASyzLeB> [https://perma.cc/2KW2-WM7X]; HING, *supra* note 9, at 296.

137. HING, *supra* note 9, at 296.

duction, reduce their access to medical care, and deny their right to procreate.¹³⁸ President Trump and his administration created and enforced immigration policies and procedures in order to combat birth-right citizenship and so-called chain migration.¹³⁹

1. **Demonizing Latinx Immigrant Women as Hyper-fertile Opportunists**

The Welfare Reform Act prohibits undocumented immigrants from accessing benefits on the federal, state, and local levels.¹⁴⁰ In response to this, the United States Department of Health and Human Services adopted a regulation that gave states the option to provide prenatal care to undocumented immigrant women by allowing the Children Health Insurance Program (“CHIP”) to cover fetuses.¹⁴¹ This policy is referred to as the “Unborn Child Option,” and it is funded either through the CHIP Unborn Child Option or through “state only” funds.¹⁴² Only eighteen out of the fifty states in the United States currently offer the Unborn Child Option to undocumented immigrant women to cover the costs of their prenatal care through the individual state’s funding.¹⁴³ By placing a burden on access to prenatal care, the government hoped to deter undocumented immigrant women from giving birth and using public funds for their citizen children.¹⁴⁴ However, what the remaining thirty-two states fail to realize is that without access to prenatal care, pregnant women are more likely to face complications during labor and have high-risk deliveries, leaving the state to cover a costly bill.¹⁴⁵ To minimize medical complica-

138. See generally Joe Neel, *Poll: 1 in 3 Latinos Report Discrimination Based on Ethnicity*, NPR: Two Way (Nov. 1, 2017, 5:25 AM) <https://www.npr.org/sections/thetwo-way/2017/11/01/561185815/poll-1-in-3-latinos-report-discrimination-based-on-ethnicity> [https://perma.cc/J5FZ-2A8P].

139. Jorge Cancino, *Timeline of Trump Administration’s Zero Tolerance Immigration Policy*, UNIVISION NEWS (Sept. 26, 2018), <https://www.univision.com/univision-news/immigration/timeline-of-trump-administrations-zero-tolerance-immigration-policy> [https://perma.cc/2UJG-EGNU].

140. Casey Colleen Lee, Note, *Unjust Barriers: Prenatal Care and Undocumented Immigrants*, 31 J. CONTEMP. HEALTH L. & POL’Y 96, 97–101 (2015).

141. CASEY LEE, CATH. LEGAL IMMIGR. NETWORK, STATE & LOCAL IMMIGRATION UPDATE: EIGHTEEN STATES OFFER PRENATAL CARE TO UNDOCUMENTED IMMIGRANT WOMEN (2013), https://web.archive.org/web/20150908032703/https://cliniclegal.org/sites/default/files/state_policies_for_prenatal_care_11-22-13.pdf [https://perma.cc/ZLY3-2XR3].

142. *Id.*

143. *Id.*

144. Lee, *supra* note 140, at 106–08.

145. *Id.* at 117–19.

tions and future medical expenses, it would be more beneficial for the state to invest in the CHIP insurance.

2. Combating Birthright Citizenship and Chain Migration

According to the Constitution, children born in the United States with immigrant parents are considered United States citizens and are entitled to the same rights and benefits as children born with United States citizen parents.¹⁴⁶ This is called birthright citizenship.¹⁴⁷ However, this constitutional law has been challenged throughout history because of the waves of immigrants who come to give birth in the United States.¹⁴⁸ Under birthright citizenship, children born in the United States with immigrant parents gain the rights to food assistance and welfare benefits, benefits which a family of undocumented immigrants would not otherwise have access.¹⁴⁹ United States citizens can also petition for and sponsor foreign family members for lawful permanent residency and potentially citizenship.¹⁵⁰ Those who assume petitioning for and sponsoring relatives creates a never-ending immigrant population expansion call this process chain migration.¹⁵¹

The benefits of birthright citizenship have been the center of immigration debates and challenges for many years because immigrants and their families are seen as a threat to the American economy.¹⁵² President Trump and his administration have used this as ammunition against Latinx immigrant mothers by depicting them as opportunists in an effort to combat birthright citizenship and chain migration. President Trump believes that the construction of a secure, militarized wall along the southern border will deter Latinx immigrant women and families from entering and giving birth in the United States.¹⁵³ As such, President Trump has attempted to repeal

146. Robert Longley, *What Is Birthright Citizenship in the United States?*, THOUGHTCO. (July 31, 2019), <https://www.thoughtco.com/birthright-citizenship-4707747> [https://perma.cc/YX49-GDFR].

147. *Id.*

148. Jon Feere, *Birthright Citizenship in the United States: A Global Comparison*, CTR. FOR IMMIGR. STUD. (Aug. 31, 2010) <https://cis.org/Report/Birthright-Citizenship-United-States> [https://perma.cc/J89U-UQTH].

149. *Id.*

150. *Id.*

151. *Id.*

152. See Longley, *supra* note 146.

153. Meghan Keneally, *8 Times Trump Slammed 'Chain Migration' Before It Apparently Helped Wife's Parents Become Citizens*, ABC NEWS (Aug. 10, 2018), <https://abcnews.go.com/US/times-trump-slammed-chain-migration-apparently-helped-wives/story?id=57132429> [https://perma.cc/5VYV-5BBA].

birthright citizenship, through an executive order, as applied to children born to Latinx immigrants under the belief that these children are undeserving of the benefits offered to United States citizens.¹⁵⁴

3. Birth Tourism vs. Anchor Babies

Birth tourism occurs when mothers-to-be come to the United States with tourist visas, give birth, and then return to their home countries to raise their child.¹⁵⁵ This gives their children birthright citizenship and a lifelong right to live, work, and collect benefits in the United States.¹⁵⁶ When the United States citizen turns twenty-one, they can sponsor and petition their parents to enter the United States as legal residents and potentially become citizens.¹⁵⁷ Although President Trump has expressed his strong opposition to chain migration on multiple occasions,¹⁵⁸ he has not verbally attacked this particular form of obtaining birthright citizenship compared to women who cross the southern border. Birth tourism has become a business where women from wealthier countries pay agencies or “maternity hotels” anywhere between fifty thousand to one hundred thousand dollars to give birth in the United States.¹⁵⁹ Given the exorbitant prices, only wealthier immigrant women are likely to afford such accommodations.

Poor pregnant immigrant women, such as the thousands of Latina immigrants who cross the southern border, are depicted as giving birth to “anchor babies” who abuse birthright citizenship for the economic benefits and to secure their chances of obtaining permanent legal residence.¹⁶⁰ The child is seen as the family’s anchor who can provide pathways to citizenship for the family in the future. The negative meaning the term “anchor babies” holds further condones Latinx women as “hyper-reproductive” who bear the blame for overpopula-

154. *Id.*

155. Cynthia McFadden et al., *Birth Tourism Brings Russian Baby Boom to Miami*, NBC NEWS (updated Jan. 10, 2019, 7:38 AM), <https://www.nbcnews.com/news/us-news/birth-tourism-brings-russian-baby-boom-miami-n836121> [<https://perma.cc/G7UJ-S9JU>].

156. Feere, *supra* note 148.

157. *Id.*

158. Alan Gomez, *What Is ‘Chain Migration’ and Why Does President Trump Want to End It?*, USA TODAY (Jan. 11, 2018), <https://www.usatoday.com/story/news/world/2018/01/11/what-chain-migration-and-why-does-trump-want-end/1022479001/> [<https://perma.cc/847D-B2RL>].

159. McFadden et al., *supra* note 155.

160. Reena Flores, *Donald Trump: “Anchor Babies” Aren’t American Citizens*, CBS NEWS (Aug. 19, 2015, 10:44 AM), <https://www.cbsnews.com/news/donald-trump-anchor-babies-arent-american-citizens/> [<https://perma.cc/5LJJ-AW8P>].

tion.¹⁶¹ President Trump has even questioned the citizenship status of anchor babies whose parents are from Mexico, stating that “they don’t have full citizens’ rights” because they were born to Latinx immigrant parents.¹⁶² President Trump and his immigration policies and procedures do not viciously verbally attack or devalue the reproductive choices of wealthy women who pay thousands of dollars to give birth in the United States on tourist visas. President Trump’s comments and ideas to change immigration policies mirror the main goal of eugenics: reducing the burden of society placed by members of an undesired social group.¹⁶³ Here, President Trump wants to build a wall and create tougher policies that target Latinx immigrant women and their families because he believes Latinx women who cross the southern border are putting a strain on the American economy.¹⁶⁴ Yet, President Trump only depicts Latinx immigrant women as opportunists and only attacks Latinx immigrant women for their reproductive decisions to give birth in the United States—he does not attack the thousands of other wealthier women using birth tourism for the exact same reasons.

On January 24, 2020, the Trump administration implemented a new rule to deter birthright citizenship abuse stemming from the tourist visa holders.¹⁶⁵ Under this rule, consular officials have the authority to deny visitor visas to applicants when the officers believe the applicant has the primary purpose of giving birth in the United States.¹⁶⁶

4. Immigration Policies and Procedures that Affect Reproductive Health of Latinx Reproductive Health

Under the Obama administration, ICE was generally required to release pregnant immigrant women on bond or under supervision

161. Nicole Guidotti-Hernandez, *For Latinas, a Fine Line Between Reproductive Justice and Eugenics*, Ms. MAG. (Aug. 3, 2010), <https://msmagazine.com/2010/08/13/for-latinas-a-fine-line-between-reproductive-justice-and-eugenics/> [https://perma.cc/J2AJ-B5QA].

162. Flores, *supra* note 160.

163. *What Is Eugenics?*, PERS. GENETICS EDUC. PROJECT, <https://pged.org/history-eugenics-and-genetics/> [https://perma.cc/82J8-YLUQ].

164. *Full Transcripts: Trump’s Speech on Immigration and the Democratic Response*, N.Y. TIMES (Jan. 8, 2019), <https://www.nytimes.com/2019/01/08/us/politics/trump-speech-transcript.html> [https://perma.cc/X5DX-3BTJ].

165. Bill Chappell, *Trump Administration Targets ‘Birth Tourism’ With New Visa Rule*, NPR (Jan. 23, 2020), <https://www.npr.org/2020/01/23/798874112/trump-administration-targets-birth-tourism-with-new-visa-rule> [https://perma.cc/VHC9-8QNC].

166. *Id.*

with the use of an ankle monitor.¹⁶⁷ The Trump administration has now taken into effect the “Zero Tolerance Policy,” which extends ICE’s power to detain pregnant immigrant women.¹⁶⁸ There are no exemptions under President Trump’s Zero Tolerance Policy.¹⁶⁹ The Zero Tolerance Policy’s purported purpose is to protect the American public from border-crossing Latinx immigrants, particularly pregnant women—immigrants the administration poses as criminals and opportunists.¹⁷⁰

The new policy only prohibits detaining pregnant women in their third trimester, and it provides that ICE is responsible for “ensuring pregnant detainees receive appropriate medical care including effectuating transfers to facilities that are able to provide appropriate medical treatment.”¹⁷¹ However, reports have indicated that ICE has failed to provide adequate medical care to pregnant women, mothers, and children held in detention facilities.¹⁷² Pregnant women in detention have reported severe pain, bleeding, vomiting, headaches, being shackled in transport to and from the detention centers, and miscarriages.¹⁷³ ICE detention centers are not equipped with adequate medical care or trained staff to provide care for pregnant women.¹⁷⁴ The needs of pregnant Latinx immigrant women in detention are neglected because, according to the general public, pregnant Latinx immigrant women are “unauthorized” to be in the United States and therefore should not be given access to prenatal care paid by Ameri-

167. Maria Sacchetti, *Trump Administration Ends Automatic Release from Immigration Detention for Pregnant Women*, WASH. POST (Mar. 29, 2018), https://www.washingtonpost.com/local/immigration/trump-administration-ends-automatic-release-from-detention-for-pregnant-women/2018/03/29/8b6b1bc0-3365-11e8-8abc-22a366b72f2d_story.html?utm_term=.ffb0a467a459 [https://perma.cc/T73S-U8Y5].

168. *Id.*

169. *Id.*

170. WILLIAM A. KANDEL, CONG. RES. SERV., *THE TRUMP ADMINISTRATION’S ‘ZERO TOLERANCE’ IMMIGRATION ENFORCEMENT POLICY* (2019), <https://fas.org/sgp/crs/homesecc/R45266.pdf> [https://perma.cc/S4HH-RPUB]; *see also*, Press Release, U.S. Congresswoman Representing 16th Dist. of Tex., Reps. Escobar and Maloney Seek Answers on Mistreatment of Pregnant Migrants (June 7, 2019), <https://escobar.house.gov/media/press-releases/rep-escobar-and-maloney-seek-answers-mistreatment-pregnant-migrants> [https://perma.cc/3LJX-DXLQ].

171. Ema O’Connor & Nidhi Prakash, *Pregnant Women Say They Miscarried in Immigration Detention and Didn’t Get the Care They Needed*, BUZZFEED NEWS (July 9, 2018, 2:44 PM), <https://www.buzzfeednews.com/article/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump> [https://perma.cc/N8S6-93VE].

172. HING, *supra* note 9, at 114.

173. López, *supra* note 5.

174. HING, *supra* note 9, at 113.

can tax dollars.¹⁷⁵ The Trump administration acts negligently by not providing necessary medical care to detained pregnant immigrant women, thereby putting the mothers-to-be and their unborn children at a high risk for complications.

The Zero Tolerance Policy allows ICE to ignore the reporting procedures required for detention system oversight, making it more difficult to monitor pregnant women's treatment.¹⁷⁶ The Trump administration and its government agencies are acting in unison to deny these pregnant immigrant women their liberty and deprive them of access to medical care for their unborn children.¹⁷⁷

B. The Parental Right to Custody and Keeping Families Together

Latinx immigrants and their families are not afforded the same reproductive rights as their white counterparts. President Trump is using racial anxieties to fuel tension against Latinx immigrant families and deter them from entering the United States. For example, President Trump separates parents from their children at the border and detains immigrants in inhumane conditions.¹⁷⁸

1. Militarization of the Southern Border: Protecting the American Public from Latinx Opportunists and Their Economically Threatening Children

President Trump has militarized the southern border to “protect” the American public from Latinx “opportunists” and their “economically threatening” children who will strain the health care system and steal jobs and welfare from American citizens.¹⁷⁹ President Trump's campaign to “build a border wall” is an attack against Latinx immigrants to deter them from entering the United States, whether legally or illegally.¹⁸⁰ Thousands of Central American migrants who present themselves at ports of entry along the southern border to request asylum are denied entry, most of whom are women and children.¹⁸¹ La-

175. See HUMAN RIGHTS WATCH, *DETAINED AND DISMISSED: WOMEN'S STRUGGLES TO OBTAIN HEALTH CARE IN UNITED STATES IMMIGRATION DETENTION* (2009), http://www.hrw.org/sites/default/files/reports/wrd0309web_1.pdf [<https://perma.cc/4ZSN-BP3Y>].

176. See Emily Singer, *Trump Team Decided to Detain Pregnant Women, and Miscarriages Doubled*, AM. INDEP. (Mar. 1, 2019), <https://americanindependent.com/trump-team-zero-tolerance-pregnant-women-ice-detention-miscarriages/> [<https://perma.cc/WH4S-CL99>].

177. Vasquez, *supra* note 10.

178. HING, *supra* note 9, at 299–302.

179. CHAVEZ, *supra* note 17, at 72.

180. HING, *supra* note 9, at 225.

181. See Fernanda Echavarti, *Tijuana Is Overwhelmed By a Rush of Asylum-Seekers—Many of Them Women with Children*, MOTHER JONES (Mar. 8, 2019), <https://www.motherjones.com/>

tinx immigrant asylum seekers are forced to remain in Mexico pending their immigration court hearings under the new Migrant Protection Program, also known as the “Remain in Mexico” policy.¹⁸² The Department of Homeland Security issued the “Remain in Mexico” policy via memorandum on January 25, 2019.¹⁸³ This policy allows the United States government to return asylum seekers who appear at ports of entry along the southern border to Mexico, where the asylum seekers will wait through the duration of their asylum claim proceedings.¹⁸⁴

Prior to the Remain in Mexico policy, asylum seekers were allowed to stay in the United States pending their immigration court appearances. However, President Trump has fueled fears by depicting asylum seekers from Mexico and the Northern Triangle as “some of the roughest people you have ever seen. People that look like they should be fighting for the UFC.”¹⁸⁵ Women and children are the majority of people seeking asylum from the Northern Triangle and Mexico,¹⁸⁶ and they are framed as the greatest threat to the American economy by the President of the United States. Forcing vulnerable people to wait to access asylum protection is extremely dangerous because immigrants, particularly women and children, are at a high risk of being targeted by traffickers or criminal groups due to the lack of familial, legal, or social support in Mexico.¹⁸⁷

Unaccompanied minors are being physically turned away at ports of entry along the southern border and denied access to seek asylum and family reunification.¹⁸⁸ They are forced to either return to their

politics/2019/03/tijuana-asylum-seekers-women-children-trump/ [https://perma.cc/XXP4-AMP2].

182. See *Innovation Law Lab v. Nielsen*, 366 F. Supp. 3d 1110, 1114 (N.D. Cal. 2019).

183. Memorandum from Kirstjen M. Nielson, Sec’y, U.S. Dep’t of Homeland Sec., on Policy Guidance for Implementation of the Migrant Protection Protocols (Jan. 25, 2019), https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf [https://perma.cc/T44Y-578X].

184. *Id.*

185. Michelle Mark, *Trump Mocks Asylum-Seekers at the Border, Says They ‘Look Like They Should be Fighting for the UFC’*, BUS. INSIDER (Apr. 6, 2019, 10:48 PM), <https://www.stamfordadvocate.com/technology/businessinsider/article/Trump-mocks-asylum-seekers-at-the-border-says-13747723.php> [https://perma.cc/FQ5L-3STY].

186. HING, *supra* note 9, at 143.

187. See generally, Jason Kao & Denise Lu, *How Trump’s Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico*, N.Y. TIMES (Aug. 18, 2019), <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html> [https://perma.cc/7DP3-K4D3].

188. *US: Unaccompanied Children Turned Back at Border: Face Risk of Return to Harm*, HUM. RTS. WATCH (Dec. 24, 2018, 12:01 AM), <https://www.hrw.org/news/2018/12/24/us-unaccompanied-children-turned-back-border#> [https://perma.cc/ZN4L-XGRN].

home countries or remain in limbo in Mexico until the government decides when to start processing their asylum applications.¹⁸⁹ The Remain in Mexico policy does not apply to unaccompanied minors because they are not currently being offered the opportunity to pursue asylum claims in the United States.¹⁹⁰ Some unaccompanied minors are trying to reunite with their parents in the United States, but being precluded from claiming asylum denies them of this right and leaves them stranded on the border in Mexico.¹⁹¹ By denying asylum applications and thereby family reunification, the United States devalues the family integrity of unaccompanied minors who attempt to enter the United States to plea for asylum through the southern border.

The Zero Tolerance Policy allows the separation of children from their parents upon entry into the United States.¹⁹² Separating migrant families was a key part of the Trump administration's plan to deter immigrants from Mexico and the Northern Triangle from entering the United States.¹⁹³ Parents are sent to separate detention centers to await their immigration court proceedings, and children are placed in the custody of a qualified sponsor, such as a relative.¹⁹⁴ In the event that children do not have a qualified sponsor, they are placed in the foster care system or detained until a parent is released from detention and able to afford bond to get their children released from detention.¹⁹⁵

189. *Id.*

190. Molly Hennessy-Fiske, *The New Family Separation: Migrant Parents Stranded on Border Send Kids Across Alone*, L.A. TIMES (Nov. 27, 2019, 2:58 PM), <https://www.latimes.com/world-nation/story/2019-11-27/the-new-family-separation-migrant-parents-stranded-on-border-send-kids-across-alone> [https://perma.cc/G6A8-9P3Y].

191. *Id.*; See also Steven Berkowitz & Alisa R. Guzman, *Trump's 'Remain in Mexico' Policy Is Traumatizing Kids. Bring Asylum-Seekers Here to Heal*, USA TODAY (Jan. 6, 2020, 5:00 AM) <https://www.usatoday.com/story/opinion/2020/01/06/trump-remain-in-mexico-policy-causing-child-trauma-psychiatrists/2784393001/> [https://perma.cc/2YR8-4TBE].

192. Miriam Valverde, *What You Need to Know About the Trump Administration's Zero-Tolerance Immigration Policy*, POLITIFACT (June 6, 2018, 10:38 AM), <https://www.politifact.com/truth-o-meter/article/2018/jun/06/what-you-need-know-about-trump-administrations-zer/> [https://perma.cc/X7MX-PQ92].

193. *Id.*

194. *Id.*

195. *Id.*

2. “Best Interest of a Child” Debunked: Devaluing Latinx Immigrant Families Through Detention, Separation, and Traumatization

In *Reno v. Flores*,¹⁹⁶ the Court held that the best interest of a child standard did not apply unless:

Where a juvenile has no available parent, close relative, or legal guardian, *where the government does not intend to punish the child*, and *where the conditions of the governmental custody are decent and humane*, such custody surely does not violate the Constitution. It is rationally connected to a governmental interest in preserving and promoting the welfare of the child and is not punitive since it is not excessive in relation to that valid purpose.

Despite this standard, incarcerating and detaining immigrant children cannot meet the best interest of the child standard.¹⁹⁷ The next portion of this Comment will provide examples of how the current administration implemented procedures that target and devalue Latinx immigrants families in violation of the best interest of a child standard by intentionally placing them in inhumane conditions and involuntarily separating and traumatizing them.

a. Torture in Detention: The “Hieleras”

Upon entry into the United States and inspection by Border Patrol officers, infants, children, and adults are detained in Border Patrol holding cells under notoriously deplorable conditions.¹⁹⁸ Detainees refer to these holding cells as *hieleras*, or “iceboxes” in English, because of the extremely cold temperatures.¹⁹⁹ The *hieleras*’ temperatures are consistently cold because Border Patrol officers keep the air conditioning on to encourage immigrants to self-deport themselves.²⁰⁰ Once the immigrants are in the *hieleras*, they are stripped of their belongings, including all outer layers of clothing, and are left with only one layer of clothing on their chest, legs, and feet.²⁰¹ Customs and Border Patrol’s combination of cold temperatures, lack of clothing, and lack of medical care serves as an intentional, strategic

196. *Reno v. Flores*, 507 U.S. 292, 303 (1993).

197. *US: Halt Expansion of Immigrant Family Detention*, HUM. RS. WATCH (July 29, 2014, 6:47 PM), <https://www.hrw.org/news/2014/07/29/us-halt-expansion-immigrant-family-detention#> [<https://perma.cc/TDB3-CCS7>].

198. HING, *supra* note 9, at 71–75.

199. *Id.*

200. Samuel David Garcia & Joseph Gallardo, *End ‘La Hielera’ in Immigrant Detention*, ASSOCIATED PRESS (Feb. 10, 2019), <https://apnews.com/a5a8ab5576384f4face4c73de4332056> [<https://perma.cc/RM3D-NHPZ>].

201. HING, *supra* note 9, at 71.

method to encourage the detainees to self-deport.²⁰² These are not humane or decent conditions for anyone, particularly immigrants who are pregnant women, infants, elderly, or individuals with respiratory issues.²⁰³ Immigrants who left the unofficial icebox detention centers have reported pneumonia and other serious illnesses.²⁰⁴

The *hieleras* were initially created for immigrants to be held in while they waited to be processed and had a maximum capacity of forty people in each cell.²⁰⁵ Detainees in the *hieleras* should be “promptly” processed within twelve hours if possible and then transferred to ICE.²⁰⁶ However, people have been in the *hieleras* for two to three weeks waiting for their credible fear interviews.²⁰⁷ The *hielera* holding cells are also reported to be overcrowded—more than one hundred people can be imprisoned in one cell at a given time.²⁰⁸

As a border rights project volunteer for Al Otro Lado,²⁰⁹ I was instructed to prepare the asylum seekers waiting in Mexico for the *hielera* and its conditions at the Chaparral port of entry. I prepared parents for the worst—the risk of being separated from their children in the *hieleras*. In most cases, the *hielera* is the first “shelter” immigrants have in the United States, and the first point at which parents are

202. See generally, Garcia & Gallardo, *supra* note 200.

203. See generally, Rafael Bernal, *Infant Migrant Develops Pneumonia in Border Control Custody: Report*, HILL (Dec. 19, 2018, 5:28 PM), <https://thehill.com/latino/422159-infant-migrant-develops-pneumonia-in-border-control-custody-report> [<https://perma.cc/HDB6-DUQ8>].

204. *Id.*

205. HING, *supra* note 9, at 71–75.

206. *The ‘Hieleras’: A Report on Human & Civil Rights Abuses Committed by U.S. Customs & Border Protection*, AM. FOR IMMIGRANT JUST. (Aug. 7, 2013), <http://www.ajjustice.org/the-hieleras-a-report-on-human-civil-rights-abuses-committed-by-u-s-customs-border-protection-2/> [<https://perma.cc/9BX5-V99E>] [hereinafter “*The ‘Hieleras’*”].

207. The author observed this while volunteering with Al Otro Lado. The proper procedure for the credible fear interview is as follows:

Under the [Immigration and Nationality Act] § 235(b), if the ‘alien indicates either an intention to apply for asylum . . . or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer.’ Then, if the asylum ‘officer determines at the time of the interview that an alien has a credible fear of persecution . . . the alien shall be detained for further consideration of the application for asylum.’

HING, *supra* note 9, at 45; See 8 U.S.C. § 1225(b) (2012).

208. HING, *supra* note 9, at 71–75.

209. Al Otro Lado is a non-profit organization based in San Diego, California. Al Otro Lado’s Border Rights Project hosts a know-your-rights training and workshop in Tijuana, Mexico and provides direct legal representation to detained asylum seekers in Southern California. The Border Rights Project documents human rights violations committed against asylum seekers at ports of entry along the southern border and inside immigration detention centers.

separated from their children. To fight against the forced separation of Latinx immigrant families, I filled out non-legally binding waivers for immigrant parents indicating that they did not provide their consent to be separated from their children. Although it was not legally binding, it had the effect of demonstrating to the Customs and Border Patrol Officers that the immigrant understood their rights as a parent. However, Border Patrol Officers often stripped immigrants of their personal belongings, including their signed waiver forms.

The best interest of the child standard is ignored as children are forcibly separated from their parents in the *hieleras* and then placed in ice cold, overcrowded holding cells not intended for stays longer than twelve hours.²¹⁰ It is clear that the Trump administration, Department of Homeland Security, and Customs and Border Patrol intend to punish Latinx immigrants for crossing the southern border by placing them in unbearable conditions and separating families—and that these inhumane conditions are designed to force immigrants to self-deport to deter others from crossing the border.²¹¹

b. The Strategic Planning of Family Separation

Oregon Senator Jeff Merkley leaked a federal memorandum to the press that indicated the government's plan to deter immigrants from entering the United States by separating immigrant children from their parents and traumatizing them.²¹² This memorandum was shared among high ranking members of the Department of Homeland Security, Department of Justice, and Trump administration.²¹³ The memorandum indicates the administration's plans to speed up deportation proceedings by forcibly separating immigrant children from their parents, denying them their legal right to asylum hearings before an immigration judge, and deporting the entire family without reunification.²¹⁴ The memorandum also specifically targets immigrant parents and reveals plans to criminally prosecute and punish them in response to the belief that an "increase in prosecutions would be re-

210. *The 'Hieleras'*, *supra* note 206.

211. See Ed Kilgore, *Trump's Immigration Blitz: A 'Self-Deportation' Strategy Taken to Extremes*, N.Y. MAG.: INTELLIGENCER (Jan. 26, 2017), <https://nymag.com/intelligencer/2017/01/trump-goes-to-extremes-to-encourage-self-deportation.html> [https://perma.cc/Y8WP-W47L].

212. Julia Ainsley, *Trump Admin Weighed Targeting Migrant Families, Speeding up Deportation of Children*, NBC NEWS (Jan. 17, 2019, 8:37 PM), https://www.nbcnews.com/news/amp/ncna958811?__twitter_impression=true [https://perma.cc/99PC-SJET].

213. *Id.*

214. *Id.*

ported by the media and it would have a substantial deterrent effect.”²¹⁵

This further indicates the Trump administration’s intent and drive to criminally punish Latinx immigrants by separating them from their children and traumatizing them. This also violates the best interest of the child standard because the government is acting with malicious intent to deprive Latinx immigrants of their fundamental right to keep their families together. These Latinx immigrants followed immigration laws and lawfully appeared at ports of entry to seek asylum in the United States, yet they are still punished by the Trump administration and Department of Homeland Security.

Latinx immigrants and their right to keep their families together are devalued because their families are not socially acceptable to American nationalist standards. After separating immigrant families, immigrant parents are not told where their children are being held and are not allowed to communicate with them.²¹⁶ It is extremely difficult for immigrant parents to look for their children, as parents can be in detention centers in a different state and do not have access to the internet or legal counsel.²¹⁷

The Trump administration is expanding immigration policies to further criminalize Latinx immigrant families and their constitutional right to keep their families together. The Trump administration officials planned in advance to deport immigrant children swiftly and quietly, all while fully understanding the traumatic effects of being caged in an unknown country without their parents and without knowing the language.²¹⁸ This was a well-thought out plan to devalue and torture Latinx immigrant families because they are “undeserving” of what the United States has to offer. According to a 2018 New York Times article, while discussing immigration traffic on the southern border, President Trump said, “We have to break up families You wouldn’t believe how bad these people are. These aren’t people, these are animals, and we’re taking them out of the country at a level and at

215. *Id.*

216. See generally, Camila Domonoske & Richard Gonzales, *What We Know: Family Separation And ‘Zero Tolerance’ at the Border*, NPR (June 19, 2018, 2:17 PM), <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border> [<https://perma.cc/D5EF-3QQN>].

217. Jordan, *supra* note 11.

218. *Id.*

a rate that's never happened before."²¹⁹ Latinx immigrant children and parents coming from countries overwhelmed with poverty and violence are intentionally treated as criminals, stripped of their parental rights, and imprisoned solely because they escaped violence in their home countries and seek asylum in the United States.

c. Economic Incentives to Detain Women and Children

Current United States immigration policies and procedures treat Latinx immigrant families as dollar signs rather than families fleeing violence. Private prison corporations have entered into contracts with the United States government to build and operate detention centers throughout the United States in response to the influx of immigrants.²²⁰ These contracts include a "bed mandate" providing economic incentive to the United States government to imprison women and children in order to meet their quotas.²²¹ In 2012, immigrants detained by federal officials held in private prisons had an average cost of \$166 per night for each detained immigrant.²²² Federal agencies paid private companies \$5.1 billion to hold more than 23,000 immigrants in 2012.²²³ By depicting these immigrants as criminals generating dollar signs rather than human beings seeking asylum, the United States government has failed both the United Nation standards for refugees and the immigration system.²²⁴

President Trump has devalued Latinx immigrant families and depicted them to the American public as "animals."²²⁵ The President of the United States, one of the most powerful people in the world, is dehumanizing an entire population of individuals and giving other

219. Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants 'Animals' in Rant*, N.Y. TIMES (May 16, 2018), <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html> [https://perma.cc/A457-RCLE].

220. AMBER D. MOULTON, UNITARIAN UNIVERSALIST SERV. COMM., NO SAFE HAVEN HERE: CHILDREN AND FAMILIES FACE TRAUMA IN THE HANDS OF U.S. IMMIGRATION 2-4 (2015), http://www.uusc.org/sites/default/files/no_safe_haven_here_-_children_and_families_face_trauma_in_the_hands_of_u.s._immigration.pdf [https://perma.cc/47L6-QDM9].

221. *Id.*

222. Aviva Shen, *Private Prisons Spend \$45 Million on Lobbying, Rake In \$5.1 Billion for Immigrant Detention Alone*, THINK PROGRESS (Aug. 3, 2012, 4:00 PM), <https://thinkprogress.org/private-prisons-spend-45-million-on-lobbying-rake-in-5-1-billion-for-immigrant-detention-alone-b9ef073758be/> [https://perma.cc/XJ5H-7KJK].

223. *Id.*

224. Madeline Buiano & Susan Ferriss, *Family Separation, U.S. Treaties and Asylum Obligations: What's Legal?*, CTR. FOR PUB. INTEGRITY (July 26, 2018), <https://publicintegrity.org/inequality-poverty-opportunity/immigration/family-separation-u-s-treaties-and-asylum-obligations-whats-legal/> [https://perma.cc/263A-NZ68].

225. Davis, *supra* note 219.

citizens the power and ability to do so as well. Customs and Border Patrol Agents are acting as instruments of the President's administration and denying Latinx immigrant parents their rights to have custody of their children and keep their families together. The Customs and Border Patrol, Trump administration, and its supporters are devaluing the rights of the Latinx immigrant parents because they are posed as socially undesirable and undeserving of the opportunities in the United States.

IV. Solutions

Although nationalist fears have been prevalent throughout American history, there are ways to prevent this prejudice from plaguing immigration laws and procedures.

A. The Right to Procreate

To protect the reproductive rights of Latinx immigrant women in the United States and ensure a healthy delivery for their unborn children, access to medical care is crucial. The United States should mandate that the CHIP Unborn Child option is available in all fifty states, whether funded by the state or the CHIP Unborn Child Option itself.²²⁶ This will lift the burden of using public funds to pay for the high-risk, expensive deliveries that result from the lack of prenatal care access.

"Anchor babies" are frequently linked to hyper-fertile Latinx immigrant mothers and their United States citizen children.²²⁷ This notion that only Latinx immigrant mothers are opportunists, whereas wealthy immigrant mothers who engage in birth tourism are not, must be eliminated. Birth tourism has skyrocketed as a legitimate business in the twenty-first century in the United States,²²⁸ meanwhile only Latinx immigrant mothers are demonized for their reproductive choices to cross the southern border and give birth to a United States citizen. If the government truly wants to end the birthright citizenship abuses, it should turn its attention to tourist visa applications and conduct

226. MARCH OF DIMES, CHIP COVERAGE FOR PREGNANT WOMEN (2014), <https://www.marchofdimes.org/materials/chip-coverage-for-pregnant-women-may-2014.pdf> [https://perma.cc/RSL9-WJ7C].

227. See Flores, *supra* note 160.

228. Aimee Picchi, *The Booming Business of U.S. Birth Tourism*, CBS NEWS (Feb. 9, 2015), <https://www.cbsnews.com/news/the-booming-business-of-u-s-birth-tourism/> [https://perma.cc/37HC-V3RS].

more thorough background checks of the applicants and sponsors to stop citizens from creating businesses to profit from this abuse.

B. The Right to Keep Family Together

To protect Latinx immigrant parents' fundamental rights to have custody of their children and keep their family together, the forced separation of families must be eliminated from immigration policies and procedures in the United States. Forced family separation is a means of torture, especially for immigrant families who are fleeing violence in their home countries, do not speak or understand English, are unfamiliar with United States, and do not have access to legal counsel. Families are seen as the first social environment children are exposed to and the place where they learn their roles in society.²²⁹ By attacking immigrant families and separating them upon entry into the United States, the government is threatening the family's integrity and devaluing their roles in society. In this way, involuntary family separation is a direct attack on the social and cultural structure of immigrant families, particularly immigrants from Latinx countries.

If the United States ratified the Convention on the Rights of the Child, the United Nations could hold the United States government accountable for violating the abuses of children, particularly Latinx immigrant children, and denying children their fundamental right to be with their families. The United States government has lost the children of Latinx immigrants due to the lack of a formal government issued tracking system,²³⁰ when this could have been avoided if the children remained with their parents.

The United States government is not protecting Latinx family integrity, and instead Latinx immigrant family reunification is a low priority in current immigration reform because the government's priority is to prosecute immigrant parents for entering the United States illegally.²³¹ The public should pressure legislatures to push for ratification of the Convention of the Rights of the Child so the United Nations can force the United States to comply with international law and provide children with basic human and legal rights. The "best

229. *What Is the Role of Family in Society?*, REFERENCE, <https://www.reference.com/world-view/role-family-society-7b47ba83132ab800> [https://perma.cc/9DWW-448V].

230. Amy B. Wang, *The U.S. Lost Track of 1,475 Immigrant Children Last Year. Here's Why People Are Outraged Now*, WASH. POST (Mar. 29, 2018), <https://www.washingtonpost.com/news/post-nation/wp/2018/05/27/the-u-s-lost-track-of-1500-immigrant-children-last-year-heres-why-people-are-outraged-now/> [https://perma.cc/TE8J-S8YZ].

231. Ainsley, *supra* note 212.

interest of the child” standard must be applied to all children who enter through ports of entry in the United States. This includes permanently eliminating all indecent and inhumane detention centers, especially the *hoteles* along the southern border.

The purpose of detention centers is to protect the American public from immigrants who enter the United States illegally, which automatically depicts immigrants as criminals. Another purpose of having detention centers is to ensure that the immigrants will appear for their immigration court proceedings.²³² However, there are other ways of ensuring people attend court. The United States government and the Department of Homeland Security can create job opportunities for case workers that would check in with immigrants to ensure they are attending their court hearings and removal proceedings. The government can also create jobs for social workers who could maintain accurate records of the progress immigrants and their families have in attending their court appearances, communities, work force, and education.

President Trump and his administration’s Zero Tolerance and Remain in Mexico policies are clear attacks against Latinx immigrant families fleeing violence and poverty in their native countries. These policies are driven by hate and racial anxieties that create animosity within American society toward Latinx immigrants. Instead of requiring asylum seekers to remain in dangerous parts of Mexico and putting them at risk of further harm, the United States government and Department of Homeland Security should open more jobs for asylum officers to process immigrants at the border, thereby eliminating the credible fear interviews and long visa processing times. For individuals who do not pass their initial asylum interviews, they can be processed into formal immigration court proceedings where they will have their right to be heard by an immigration judge.

Latinx immigrants are human beings. They are not “animals,” and they deserve to be treated as fairly as their white counterparts.

232. Dan MacGuill, *Are Migrants Free to Leave Detention Centers Any Time?*, SNOPE (July 11, 2019), <https://www.snopes.com/fact-check/immigrants-free-leave-detention/> [https://perma.cc/6CPR-EHDY].

