Racial Equity

Entangled Roots

This article examines the role racism plays in the publicly funded systems that separate families.

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Entangled Roots: The Role of Race in Policies that Separate Families

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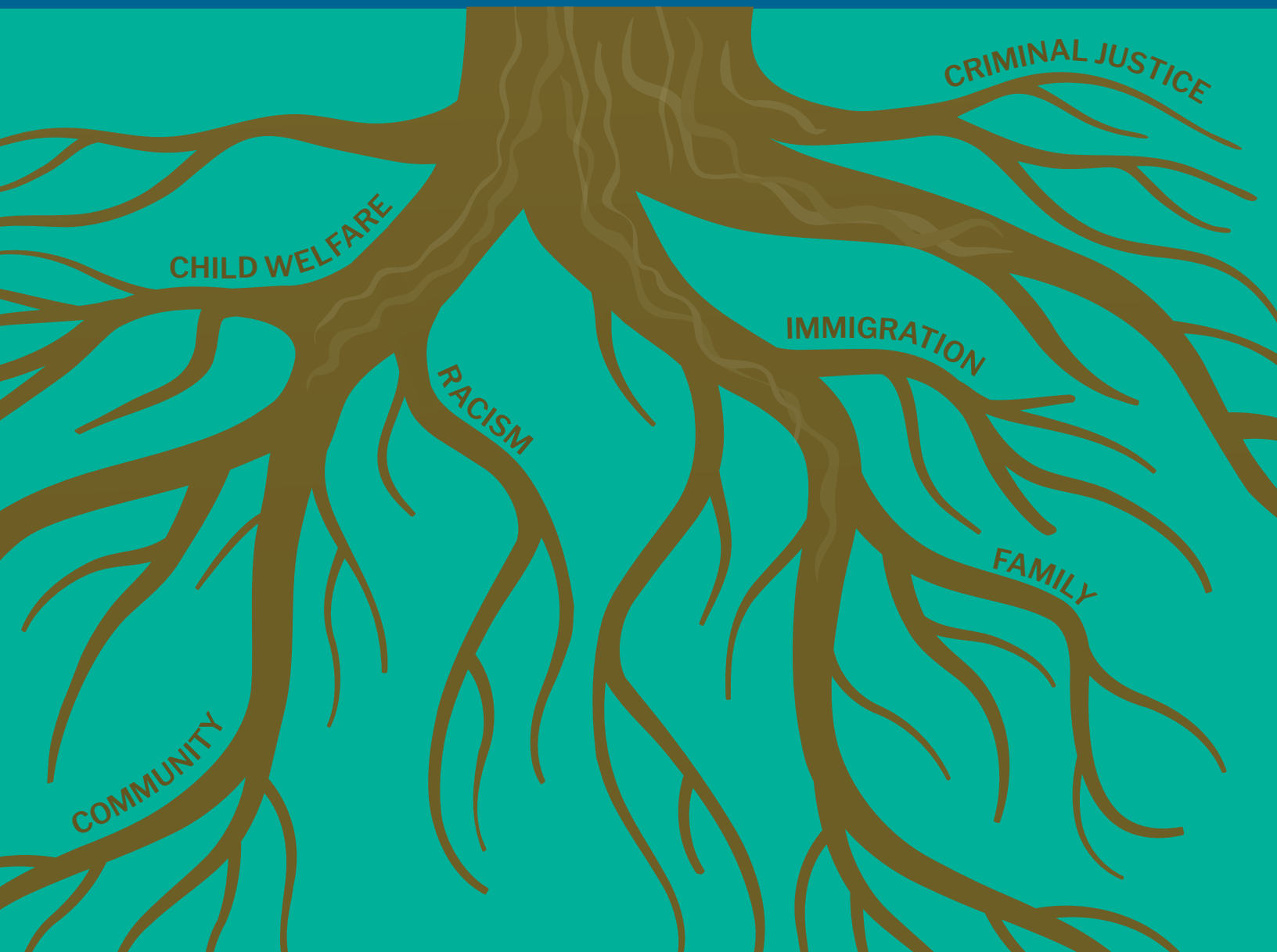

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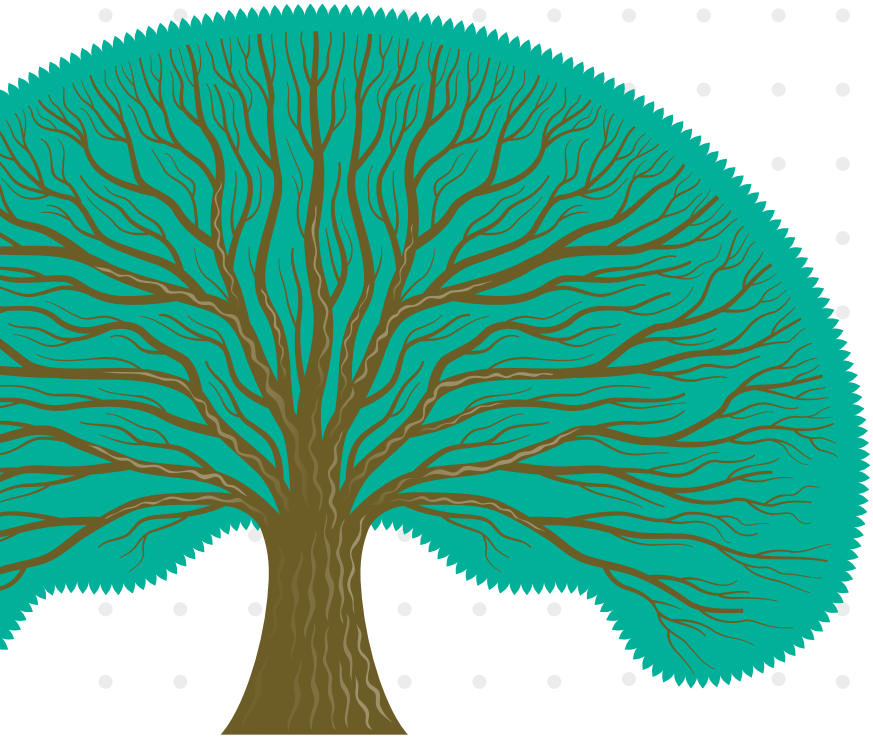

Introduction and Summary

Children need loving and supportive families to thrive. This point is at once self-evident and confirmed by decades of research into children's health and development.

As a nation, however, we separate children from their families on a routine basis. Sometimes, family separation is the deliberate result of government policy—as it is when child welfare agencies remove children from their parents' custody over concerns for their safety and well-being. At other times, family separation is an unconsidered, if not quite unintended, consequence of policy—as it is in the immigration and criminal justice systems, when parents are incarcerated and sometimes deported without their children. In all cases, however, children suffer the consequences. They long for their parents.[1] They worry that they are at fault.[2] They act out and have trouble in school.[3]

Children of color are significantly more likely to be put in these impossible situations. Across the child welfare, immigration, and criminal justice systems, families of color are more likely to be separated, and children of color are more likely to experience the short-term distress and long-term trauma stemming from separation.[4]

The role that race plays in policies that separate families has received more attention since the Trump administration's decision to separate families at the Southwest border to further its racist and xenophobic immigration agenda. As this report details, however, racism has always played a central role in the publicly funded systems that separate families. It is time for us to step back and question the underlying assumptions shaping these systems, and the policies they implement.

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Racism has both motivated policies that separate children from their parents and it has been institutionalized in the systems that carry on these policies. This is how racial injustice works. As the epidemiologist Camara Phyllis Jones has written, racial injustice is a result of "discrete historical events but persists because of contemporary structural factors that perpetuate these injustices."[5] In the immigration, criminal justice, and child welfare systems, racism has often compounded the disadvantage children and families of color experience because of poverty and economic inequality.

By examining the roots of policies that separate families and their entanglement with racial prejudice and discrimination, this report makes the case that we must embrace an alternative path. Policymakers' goal across public systems should be to end the routine separation of children from their parents. Family separations should be rare, and their harm to children should be mitigated in the extremely unusual circumstances when they are necessary. Realizing this vision will require fundamentally re-thinking each of the systems that separate families. The need for system transformation is clear when one considers policy from the perspective of children and families—and especially the children of color who are most likely to be harmed by these longstanding policies.

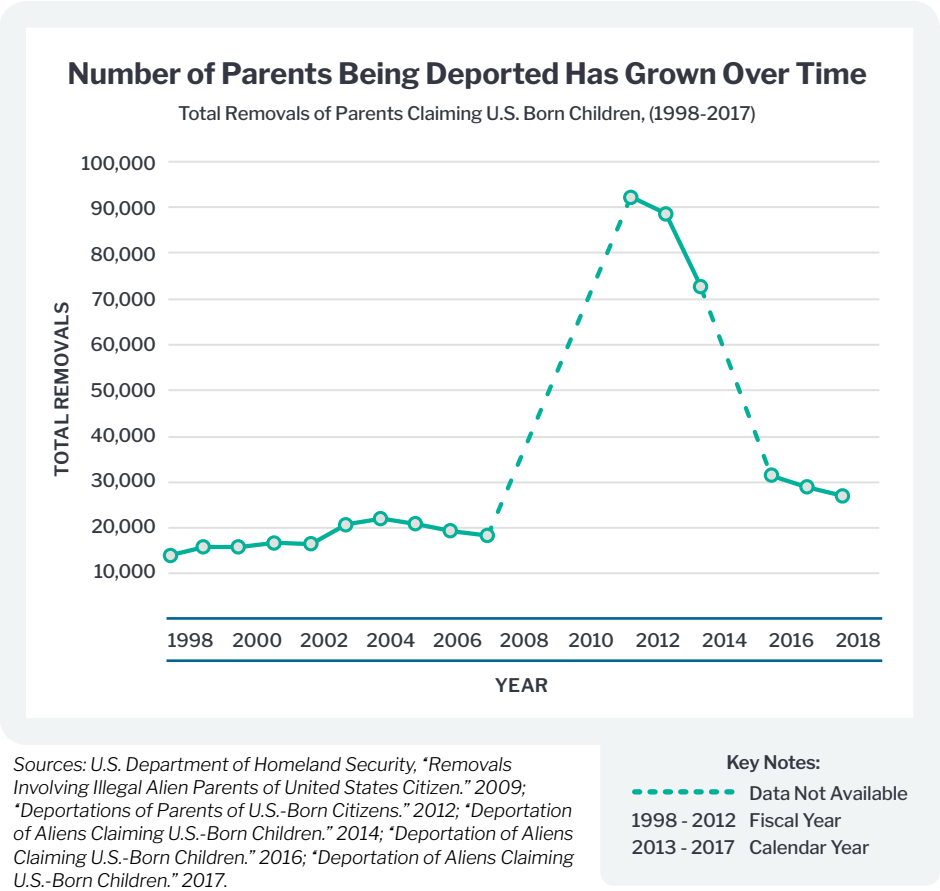
A NOTE ON TERMINOLOGY

Racial and ethnic groups are identified using different terms by different government agencies and researchers—and the terms used have changed over time. Though no single term is perfect, this report uses these contemporary, and commonly used, terms to refer to each group: African American, American Indian, Latino/Latina/Latinx, Asian American, and White. The exception is when we are citing data from a source that does not use these terms, in which case we use the term used by the source.

Immigration Policy and Family Separation

The Trump administration's decision in the summer of 2018 to systematically separate over 2,500 children from their parents at the Southwest border—including children and parents who were exercising their legal right to asylum—was the shocking culmination of a series of policy decisions, made by successive administrations, that have targeted Mexicans, Central Americans, and other Latinx immigrants for separation, detention, and deportation.[6] Prior to the Trump administration, immigrant children would sometimes be separated from their families at the border in the course of immigration enforcement, but such separations were not stated federal policy.[7] Instead, immigrant families were more often separated once already in the United States, as parents were detained or deported as a result of interior immigration enforcement.

Over the last two decades, interior enforcement has expanded in response to legislation significantly enhancing immigration enforcement powers in 1996 and increasing funding for enforcement following the September 11, 2001 terrorist attacks.[8] The number of annual arrests and deportations rose steadily during both the George W. Bush and Obama administrations, peaking between 2009 and 2011 with more than 300,000 arrests and 200,000 formal deportations annually from within the United States.[9] Though data on the number of parents in immigration detention are unavailable, in recent years well over 300,000 immigrants have passed through one of more than 200 immigration detention facilities annually—and most are incarcerated in facilities run by private prison companies where human rights abuses are more common.[10]



Sources: U.S. Department of Homeland Security, "Removals Involving Illegal Alien Parents of United States Citizen." 2009; "Deportations of Parents of U.S.-Born Citizens." 2012; "Deportation of Aliens Claiming U.S.-Born Children." 2014; "Deportation of Aliens Claiming U.S.-Born Children." 2016; "Deportation of Aliens Claiming U.S.-Born Children." 2017.

Between 2009 and 2013, an estimated half a million parents were deported, affecting a similar number of U.S. citizen children.[11] After declining significantly in the last years of the Obama administration, the number of arrests and deportations have begun to increase again under President Trump.[12] According to the latest administrative data, 27,080 immigrants who claimed to have at least one U.S. born child were deported in 2017.[13] Latinx immigrants are disproportionately affected. Though immigrants from Latin America make up an estimated 77 percent of the unauthorized population in the United States, they have constituted well over 90 percent of immigrants removed by U.S. Immigration and Customs Enforcement (ICE) in recent years.[14]

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The harm to children posed by the detention and deportation of their parents is well established. The Urban Institute has found that children whose parents were arrested in workplace immigration raids experienced significant economic hardship and emotional distress after their parents' arrest.[15] A review of the literature concluded that children who have been separated from their parents as a result of immigration enforcement often experience psychological trauma as a result of either witnessing an arrest, not knowing what happened to a detained parent, or dealing with unstable caregiving in the aftermath of an arrest. Economic hardship is also significant when a breadwinner is detained or deported.[16]

Children's living circumstances after a parent's detention or deportation are often uncertain. After a parents' deportation, children might return to their parents' country of origin, where they might not know the language and where social services might be unable to meet their needs. In other cases, children might stay in the United States with relatives or family friends, sometimes awaiting parents who plan to re-enter the United States illegally.[17] Sometimes children whose parents have been arrested or deported end up in state child welfare systems.[18] Once in the child welfare system, children may be thwarted from reunifying with parents because of the lack of coordination between the immigration and child welfare systems, because of a parents' inability to attend their child's court hearings, or because biases or misinterpretations of agency policy lead staff to resist returning children to undocumented parents, to parents who do not speak English, and to parents living outside the United States.[19]

Latinx children have been disproportionately affected by these policies because of a century of policy decisions that have made Latin American immigrants—particularly Mexicans and Central Americans who entered the United States by crossing the Southwest border—the iconic "illegal immigrants." Starting in the 1920s, immigration policy treated the U.S.-Mexico border differently than the U.S.-Canada border and other points of entry, as historian Mae Ngai has demonstrated. Though strict numerical limits on immigration from Latin America were not in place in those years, Mexican laborers were policed by an expanded Border Patrol made up of cowboys, ranchers, and Ku Klux Klan members (among others) and subjected to "a degrading procedure of bathing, delousing, medical line inspection, and interrogation" that was not fully instituted at other points of entry.[20] When undocumented immigration from Mexico increased in the mid-twentieth century as policy shifts made it increasingly difficult to cross the border seasonally for work and placed absolute numerical limits on immigration from the Western Hemisphere, Mexicans became increasingly associated with undocumented immigration.[21]

As detention and deportation became more commonly-used tools of immigration enforcement over the course of the twentieth century, Mexicans were often the target. During the Great Depression, local and state governments colluded with social welfare agencies to encourage and sometimes coerce Mexicans—and in many cases Mexican Americans—to "repatriate" to Mexico. European immigrants did not face the same degree of coercion.[22] Two decades later, concern about rising undocumented immigration in the Southwest led to "Operation Wetback," a federal deportation drive that was once again focused almost exclusively on Mexicans.[23]

Mexicans were not only more likely to be the target of deportation drives, but they were also less likely to benefit from discretionary relief from deportation. Starting in the early twentieth century, administrative discretion was used and encouraged to limit the deportation of immigrants with U.S. citizen spouses and children for whom their deportation might pose a "hardship."[24] For the very reason that deportations often resulted in family separation, there was a movement in the legal community at the time to further expand exemptions from deportation. Governors pardoned potential deportees, especially in "areas where European immigrants were numerous and had some political influence."[25] But Mexicans rarely received such pardons. When they applied for relief from deportation based on the federal hardship exemption, they were also routinely denied. Officials callously determined that deportation could not cause a hardship for non-Europeans, employing the faulty logic that because many non-European immigrants were low-paid laborers, they were unable to offer significant financial support to their families and thus their deportation could not cause hardship.[26]

At the end of the twentieth century, some Mexicans and Central Americans benefited from one-time dispensations creating a path to legal status—notably, with the Immigration Reform and

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Asian Immigrants: The Original Targets of Immigration Policies that Separate Families

Asians were the first ethnic group singled out for exclusion by federal immigration law because of their race, and families were frequently separated as a result. The first federal restrictions on immigration, passed in 1875, prohibited involuntary Chinese laborers and suspected prostitutes from entering the country. The effect of the law was to limit Chinese immigration and almost completely exclude Chinese women from entering the United States, including those who were planning on joining their husbands. This paved the way for the Chinese Exclusion Act of 1882, which prohibited Chinese laborers—"skilled and unskilled"—from entering the country and barred those already here from citizenship.[30] Later laws almost entirely barred immigration from across Asia, and Asian immigrants were explicitly denied relief from deportation. The 1917 law that granted relief from deportation for immigrants for whom it would constitute a "hardship" stated that this relief was only available for certain "white" "aliens" who were not "ineligible for citizenship"—a category explicitly invoked to exclude Asians, since Asians were barred from naturalizing at the time by the United States' racist naturalization law. Asians who did have a claim to enter the United States legally in these years often spent an extended period on Angel Island, the infamous immigration station in San Francisco Bay. Families at Angel Island were intentionally and routinely separated from each other for long periods of time so they would not be able to coordinate answers to the interrogations which they were subjected to while there. Historian Beth Lew-Williams recounts the experience of her grandfather, Lew Din Wang, who was detained on Angel Island in 1930 when he was just nine years old, having left China and crossed the Pacific to join his father living in San Francisco. Lew Din Wang was prohibited from talking to his family while detained, and told his granddaughter that his detention had lasted "9 to 12 months — I don't even know how long." When Beth Lew-Williams later examined Lew Din Wang's immigration file, she found that he had been detained for a total of 34 days, but as she trenchantly observed, "thirty-four days is a lifetime when you're 9 years old and imprisoned all alone."[31]

Control Act of 1986 and the Nicaraguan Adjustment and Central American Relief Act of 1997.[27] But these dispensations were accompanied by strengthened immigration enforcement provisions and increasingly broad detention practices that, over time, ensnared even more Latinx immigrants in their web.[28] Starting in the 1980s, the same federal statutes that contributed to the rise of mass incarceration in the criminal justice system, discussed in the next section, mandated the detention of noncitizens convicted of particular crimes. Detention rates rose steadily in the years that followed, and skyrocketed after the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandated detention for immigrants who had been convicted of additional crimes, including nonviolent misdemeanors.[29]

What we are seeing today is a continuation of a century of immigration policy decisions that targeted Mexican, Central American, and other Latinx families for deportation, struck fear in the Latinx community, and disproportionately separated Latinx families. According to a recent study by the Center for Law and Social Policy, service providers are reporting that they have never seen immigrant communities as fearful as they are today. Many children are witnessing their parents' arrest by ICE agents. A home visitor for one family in New Mexico reported that the father was arrested by ICE agents as he dropped his daughter off at preschool. The mother was dumbstruck, the home visitor explained: "It was just the lack of humanity around this person, this father, being taken away in front of his children and his wife."[32]

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Family Detention is Not the Answer

Detaining families together is not a solution to the separation of families by immigration enforcement. Family detention occurs more commonly as a result of immigration enforcement at the border, rather than interior enforcement. Over the last decade, expanding family detention has been proposed as a solution to the presence of undocumented families already in the United States, as well as a way to deter additional families—particularly families from Central America—from coming in the future. With this very goal, the Trump administration recently issued proposed regulations that would allow for the massive expansion of family detention.[33] But we know that family detention can inflict lasting harm on children. Studies of detained immigrant children have found high rates of posttraumatic stress disorder, depression, and anxiety, and psychologists agree that "even brief detention can cause psychological trauma and induce long-term mental health risks for children."[34] Dr. Luis Zayas, Dean of the School of Social Work at the University of Texas at Austin and an expert on child and adolescent mental health, interviewed families in immigration detention facilities and found "regressions in children's behavior; suicidal ideation in teenagers; nightmares and night terrors; and pathological levels of depression, anxiety, hopelessness, and despair."[35] The Department of Homeland Security's own Advisory Committee on Family Residential Centers concluded that "detention is generally neither appropriate nor necessary for families—and that detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children.[36]

The arrest and deportation of parents not only harms their children, but it also has a ripple effect, spreading fear and distrust throughout immigrant communities and threatening children's health and well-being.[37] Ethnographic research has found that both undocumented children and U.S. citizen children in mixed status families fear that immigration authorities will tear apart their families—even if they do not know anyone personally who has been detained or deported. Rumors and news media spread information about deportations, which young children absorb.[38] Research suggests that this pervasive fear and stress might be particularly common among Latinx children, because immigration enforcement activities disproportionately target their communities.[39]

But children of immigrants from all corners of the globe are affected by the current crackdown on immigration. Indra Sihotang, an undocumented immigrant from Indonesia and father of four boys, all U.S. citizens under the age of ten, was detained in September 2017 during a routine check-in with ICE. His wife Risma Fadersair explains the hardship her husband's detention has caused: "Only my husband works. The income [comes]

"Sometimes, when I see my dad in detention, to be honest, I want to sneak out with him so that he can be with us. But then, the Hudson County detention people would be all, like, searching for him. That's why I quit on that idea."

only from him. At home, my husband always takes care of them [the children]. Without him, right now, it's just my half missing. But the thing is, if I keep mourning this, how about my kids?" Their eight-year old son Ivor admitted that "sometimes, when I see my dad in detention, to be honest, I want to sneak out with him so that he can be with us. But then, the Hudson County detention people would be all, like, searching for him. That's why I quit on that idea." Ivor also expressed being "furious" over his father's detention—a common sentiment among children whose parents have been taken from them.[40]

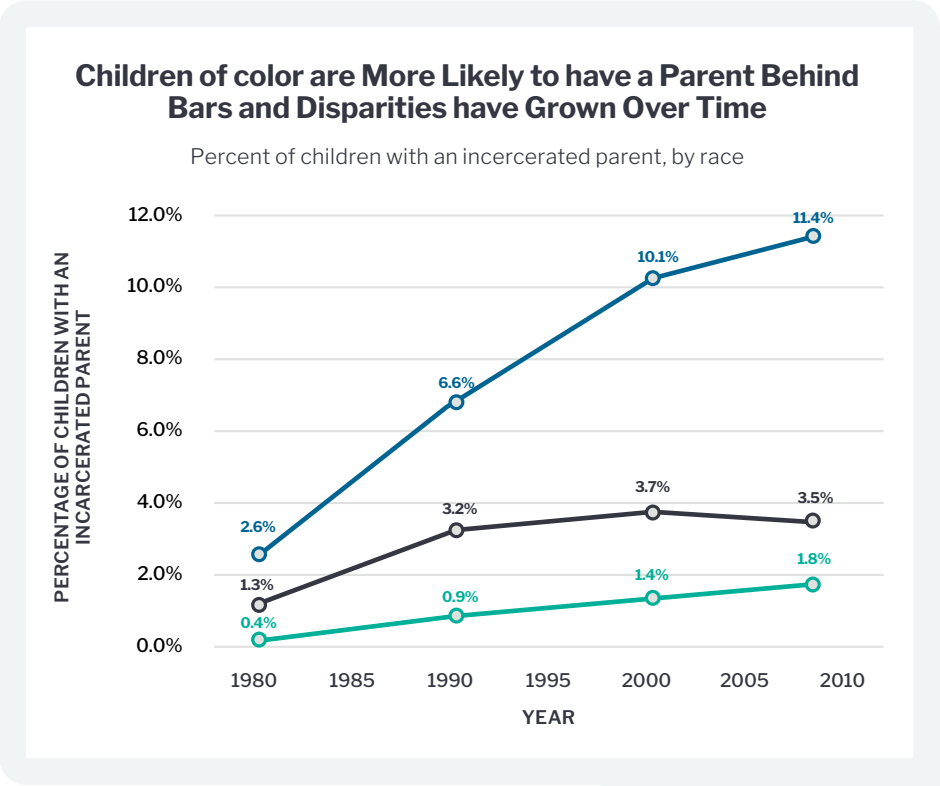
Some children and youth try to hide their pain. One high school senior—a U.S. citizen—described her father's deportation to Gambia in January 2018: "My friends don't really know. I don't want them to see me in a vulnerable way. What hurts most is to think about the future. He's never gonna see me walk down the aisle and finally meet the guy who was enough for me. He's never gonna see me in a hospital room giving birth to my kid. I know I can always visit him in Africa. It's not that he's dead, but it's not the same. Here with my dad, that's where I belong."[41]

As parents are detained and deported, many more children remain at risk of being separated from their parents as a result of immigration enforcement. According to the Migration Policy Institute, there are roughly 5 million children in the United States with at least one unauthorized parent. The vast majority of these children are U.S. citizens.[42] Advocacy groups are advising undocumented parents to fill out 22-page child care safety plans, which outline who should care for their children if they are detained and list some of their children's "favorite things" so that if they are picked up by ICE, their children's new caregivers will know how to comfort them.[43] The stress and fear many immigrant families are experiencing is heightened under the current administration, but it will continue indefinitely unless the policies that are themselves a product of a century of discriminatory and inhumane decisions are reversed.

Criminal Justice Policy and Family Separation

Like immigration enforcement, our system of mass incarceration routinely and mechanically—with no thought to the needs of children—separates families. The United States has the highest recorded adult incarceration rate in the world—more than four times that of any Western European country.[44] The growth in the U.S. incarceration rate and its divergence from that of other wealthy nations took off in the 1970s. After holding relatively steady for the first three quarters of the twentieth century, the incarceration rate rose fivefold between the mid-1970s and the early 2000s, growing from roughly 100 to more than 500 prisoners for every 100,000 people.[45] Over the last decade, the incarceration rate has declined slightly, but it remains high. According to the latest data from the Bureau of Justice Statistics, at the end of 2016, 2.2 million people were behind bars. One in 38 adults were under some form of correctional supervision—either incarcerated in prison or jails, or supervised on probation or parole.[46]

The United States' system of mass incarceration particularly affects communities of color.[47] From the very beginning, African Americans have been targeted by discriminatory criminal justice policies, and since data on incarceration rates have been collected they have been imprisoned at higher rates than whites. Mass incarceration has resulted in the disproportionate imprisonment not only of African Americans, but also of Indian Americans, Latinx, and Asian Americans. Between 1980 and 2000, African Americans were more than six times more likely to be incarcerated than whites.[48] The Hispanic incarceration rate during this period was between two and three times higher than that of non-Hispanic whites.[49] Meanwhile, American Indians and Alaska Natives are incarcerated in jails at



Source: Western, Bruce and Becky Pettit. "Collateral Costs: Incarceration's Effect on Economic Mobility." The Pew Charitable Trusts, 2009.

significantly higher rates than the general population—398 per 100,000 people, compared to 237 per 100,000 people in 2013—and the American Indian jail incarceration rate has continued to increase in recent years even as the overall jail incarceration rate has fallen.[50] Certain Asian American groups also are more likely to experience harsh treatment in criminal justice system. In the 1990s, the Asian American and Pacific Islander prisoner population increased 250 percent, and in California at this time, Asian juveniles were more than twice as likely to be tried as adults compared to white juveniles who had committed similar crimes.[51] Meanwhile, many immigrants of color are incarcerated in the immigration detention system and not captured in these statistics.

These racial disparities in the criminal justice system have given rise to what legal scholar Michelle Alexander has called the "New Jim Crow." People with felony convictions—disproportionately people of color—are relegated, by law, to second-class status: denied the right to vote, denied access to public benefits and social services, and denied, in many cases, the ability to make a living.[52] For immigrants caught up in our system of mass incarceration, the result can be deportation and removal to a country they have not seen in decades, or, in some cases, never seen at all.[53]

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Children are directly affected by the system of mass incarceration—and the burden falls especially heavily on children of color. In 2009, 11.4 percent of African American children had a parent in prison, compared to 3.5 percent of Hispanic children and 1.8 percent of white children.[54] Sociologist Christopher Wildeman has found that racial disparities in lifetime parental incarceration are even greater: one in four black children born in 1990 had a parent in prison by the age of 14, compared to roughly one in twenty-five white children—that is, black children were almost 7 times more likely to have a parent in prison than white children.[55] Shockingly, half of black children with parents who have lower educational achievement experienced parental imprisonment by the age of fourteen.[56]

Mass incarceration threatens to tear the social fabric of communities of color. Incarceration is concentrated in poor neighborhoods with high proportions of African American and Hispanic residents.[57] As the National Research Council observes in a landmark report on mass incarceration published by the National Academies of Sciences, "the intense concentration of incarceration added to existing social inequalities constitutes a severe hardship faced by a small subset of neighborhoods."[58] The result may destabilize already disadvantaged communities, decreasing social cohesion and respect for the law and increasing crime.[59] Children and families of color who do not directly experience mass incarceration, therefore, may nonetheless be affected.

The system of mass incarceration—and its disproportionate impact on communities of color—is not an historical accident. Rather, it is the logical product of a set of laws and policy decisions that grew out of the turbulent events surrounding the civil rights movement of the mid-twentieth century. After World War II, African Americans demanding political, social, and economic rights faced violent repression by law enforcement in both the North and the South. In the North, where growing numbers of African Americans lived in impoverished urban neighborhoods where crime was rising, politicians increasingly "conflated riots, street crime, and political activism."[60] The conservative standard-bearer Barry Goldwater made law and order a central issue of his 1964 presidential campaign, and both Democrats and Republicans embraced policies to expand the capacity of law enforcement as unrest shook the nation's cities.[61] The turn to law and order in the wake of the civil rights movement paralleled the response to the end of slavery a century earlier: just as African Americans claimed greater freedoms, the nation turned to the criminal justice system to limit those freedoms.

The punitive shift in criminal justice policy in the mid-twentieth century not only increased the likelihood that someone who was arrested would be convicted of a crime but also increased the length of time they spent in prison as a result. Harsher sentencing policies—including mandatory minimums, three strikes, truth-

"Slavery by another name": The post-emancipation turn to law and order to limit African Americans' freedoms

After the end of slavery, Southern states attempted to subordinate newly freed people and force them to work for white landholders by criminalizing everyday activities—such as walking down a street without proof of employment—through vagrancy laws. Many states exploited people who were incarcerated as a result of these laws, establishing lucrative convict leasing systems, whereby incarcerated people could be rented out to private companies, where they would be forced to work in often brutal conditions. As historian Donna Murch notes, "At its worst, more than one in four leased convicts died in under two years from a mix of overwork, malnutrition, and unsafe working conditions." If African Americans were not caught up in the convict leasing system, they were likely to be trapped in debt peonage: working as sharecroppers for exploitative employers who would over-charge them for the cost of feed and land use and force them to work to pay off their debts, sometimes selling the debt and the person to other employers who would then force them to work. This post-emancipation system of forced labor, overseen by the state, has been aptly called by historian Douglas Blackmon "slavery by another name."[62]

in-sentencing, and life without the possibility of parole laws—were accompanied by the war on drugs, which was formally declared by President Ronald Reagan in 1982 and continued under both Democrats and Republicans.[63] Some African American community leaders supported the crackdown on drugs and crime, recognizing the toll both took on their neighborhoods.[64] But African Americans have been prosecuted for drug crimes at disproportionately high rates, despite the fact that research has found no significant difference in the rates of either drug use or the selling of drugs between African American and white people—if anything, whites are more likely to do both.[65] During the crack epidemic of the 1980s, harsher sentences for the possession crack cocaine compared to powder cocaine—even though they are pharmacologically similar drugs—contributed to racial disparities in incarceration, because African Americans were more likely to use crack cocaine, while white people were more likely to use powder cocaine.[66] During these years, African Americans were six times as likely as whites to be arrested for a drug-related offense. More recently African Americans have been three to four times more likely to be arrested for a drug-related offense.[67] Today almost three-quarters of drug offenders in federal prisons are either non-Hispanic Black or African American (39 percent) or Hispanic or Latino (37 percent).[68] The treatment of the current opioid epidemic as a public health problem—which has disproportionately affected white people—stands in stark contrast to the penal response to the crack epidemic of the 1980s.[69]

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Similar racial disparities are evident in the juvenile justice system, which like the adult criminal justice system separates families.[70] In 2013, African American youth were more than four times as likely to be committed to a juvenile facility as white youth. American Indian youth were more than three times as likely to committed, and Hispanic youth were 61 percent more likely to be committed. Between 2003 and 2013 these disparities remained constant for Hispanic youth, but they increased for African American and American Indian youth.[71] Juvenile detention not only tears youth away from their parents, but for youth who are parents

themselves, it threatens their ability to bond with their own young children. Many of these youth have been touched by multiple intervening state systems. Studies have found that the child welfare system contributes to the overrepresentation of youth of color in the juvenile justice system.[72]

Mass incarceration causes significant economic hardship for children and families. Maternal incarceration is increasing, but because fathers are still much more likely to be incarcerated, much of the research has focused on the effects of paternal incarceration.[73] Studies show that incarceration reduces family financial resources in the short and long term, because men with incarceration histories are less likely to contribute financially to their families with small children than men who have never been incarcerated, and when they do contribute they contribute less, even when controlling for demographic characteristics such as race, family history, and education. These lower financial contributions stem from two primary factors: men who have been incarcerated have significantly lower earnings, and they are more likely to live apart from their children (and men who live apart from their children contribute less, even when taking into account formal and informal child support).[74] The result is material hardship for many children with incarcerated parents—meaning their families are less likely to be able to pay rent or utilities or afford a visit to the doctor.[75]

Research has associated parental incarceration with childhood health problems, acting out behavior, challenges in school, and poorer mental and physical health in adulthood.[76] A ChildTrends study found small but statistically significant negative associations between parental incarceration and a child's school success, and associations with school-reported problems for children of all ages.[77] One rigorous study found that paternal incarceration is associated with statistically significant increases in child homelessness.[78] Another study found that changes in female incarceration were the largest single contributor to the dramatic increase in foster care caseloads

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between 1985 and 2000, accounting for about 30 percent of the increase from 276,000 children to 568,000 children during those years.[79] According to the latest data from the Adoption and Foster Care Analysis Reporting System (AFCARS), parental incarceration was a factor in the removal of over 20,000 children from their homes in 2016—a likely undercount of all child welfare cases in which a parent is incarcerated.[80]

Incarcerated parents—whether in the criminal justice or immigration systems—are at risk of permanently losing their parental rights if their children are in the child welfare system because of the strict timelines imposed by the Adoption and Safe Families Act, a federal law passed in 1997. According to the law, states must file a petition to terminate parental rights on behalf of any child who has been in foster care for 15 of the most recent 22 months, with few exceptions. Since parents are often incarcerated for significantly longer than 15 months, their imprisonment means they risk losing their children forever.[81] Even if parents are released in under 15 months, they may have difficulty reunifying with their children if they have not been able to attend hearings for their children while in prison or if they struggle to get back on their feet once released—common occurrences for incarcerated and formerly incarcerated parents.

Researchers have estimated that because of racial disparities in the likelihood of experiencing paternal incarceration, the growth in incarceration has significantly increased disparities between black and white children across a wide variety of indicators of child well-being—from infant mortality to homelessness to externalizing and internalizing problems.[82] One study found that the growth in the prison population has increased the black-white gap in child homelessness by about 65 percent.[83]

The emotional toll on children is heavy. Children sometimes feel guilt or shame when a parent is incarcerated. As one mentor of a child with an incarcerated parent explains, "The stigma and shame associated with parental incarceration is different from what other disadvantaged kids experience."[84] The journalist Nell Bernstein has found, through dozens of interviews with children of incarcerated parents, that they often believe they have done something wrong. As Bernstein recounts, Jennifer was twelve years old when she returned home from camp to find police arresting her mother. She was subsequently taken to a shelter, and she explained later, "I thought I had done something wrong, because I had to go away, too."[85] Anthony, who also was sent to a shelter after his mother was arrested, described it as a "kiddie jail." "A jail for kids. Actually, it's not punishment. Actually, they punished me, though. Someone stole my watch. And they gave me clothes too small for me. They keep you in cells—little rooms that you sleep in, and you have nothing except for a bed, blankets, and sheets. You couldn't even go to the bathroom in the middle of the night. They wouldn't let you out." Ricky at age nine, was not sent to a shelter, but his experience was no better than Jennifer and Anthony's. Home with his mother and his infant brother when she was arrested, he remembered years later that "the police came and took my mom, and I guess they thought someone else was in the house…They just rushed in the house and got her and left." Ricky took care of his infant brother for two weeks after his mother's arrest, preparing him food and taking him on a walk in the stroller every day because he remembered that was something his mother would do. A neighbor finally noticed him on one of his walks and called Child Protective Services.[86]

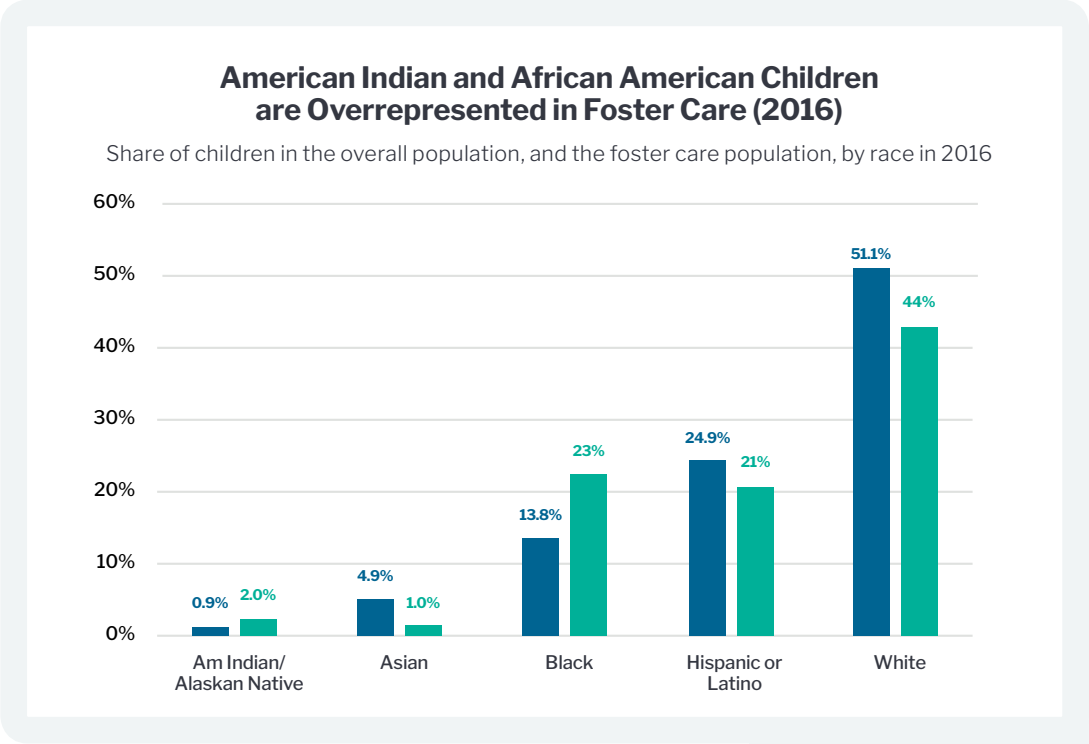
Once parents are incarcerated, it can be difficult for them to maintain relationships with their children. Visits are difficult, and phone calls can be prohibitively expensive. Recently, the Federal Communication Commission, pressured by prisoner advocacy groups, placed a cap on the exorbitant fees that telephone companies charge prisoners making interstate phone calls—lowering rates from $17 to $3.75 for a 15-minute call. But the vast majority of calls from detention centers are made within states and are not subject to the new regulations.[87] A multistate survey of families with incarcerated relatives found that one in three survey participants went into debt to cover visitation and phone costs.[88] Once a parent is released from prison, family reunification can be difficult—causing disruptions and disappointment for children who have high expectations for what their life will look like after their parent's return.[89]

Anthony, who also was sent to a shelter after his mother was arrested, described it as a "kiddie jail." "A jail for kids. Actually, it's not punishment. Actually, they punished me, though. Someone stole my watch. And they gave me clothes too small for me. They keep you in cells—little rooms that you sleep in, and you have nothing except for a bed, blankets, and sheets. You couldn't even go to the bathroom in the middle of the night. They wouldn't let you out."

These emotional, social, and economic hardships are disproportionately felt by African American children and other children of color because of decades of discriminatory policy decisions that have stacked, one on top of the other, to create our system of mass incarceration.

Child Welfare Policy and Family Separation

While family separation is often the unconsidered consequence of immigration and criminal justice policy, it is the deliberate result of decisions in the child welfare system. In Fiscal Year 2016, the most recent year for which data are available, 437,465 children were removed from their families and placed in foster care—either in family foster homes, group homes, or institutions—according to the Adoption and Foster Care Analysis and Reporting System. African American and American Indian/Alaskan Native children are both overrepresented among children in foster care. American Indian/Alaskan Native children are less than 1 percent of the child population, but they make up 2 percent of children in foster care. African American children are 14 percent of the child population, but they make up 23 percent of children in foster care.[90] The racial disparities in the cumulative lifetime risk of being placed in foster care are even greater. One study found that 4.9 percent of white children will experience foster care placement before their eighteenth birthday, compared to 15.4 percent of Native American children and 11 percent of black children.[91]



Source: U.S. Children's Bureau. "The AFCARS Report." 2017; KidsCount, "Child Population by Race." 2017.

At times, intervention in families is necessary for children's safety, but as research has shown, removing children from their families causes significant short-term distress and can have long-lasting negative

consequences.[92] Children often experience the physical separation from their caregivers as rejection or loss and do not understand why it has occurred. Removal and placement in foster care and subsequent placement changes may affect a child's ability to form healthy attachments.[93] Because of discretion built into the system, some case managers remove children more frequently than others, regardless of families' circumstances. One study looking at children who were assigned case managers who had higher rates of removing children from their homes found that those children "have higher delinquency rates, along with some evidence of higher teen birth rates and lower earnings."[94] Surveys have found that nearly one-third of homeless youth and well over half of victims of child trafficking had experience in foster care.[95] The Midwest Study, the largest longitudinal survey of youth ageing out of the foster care system, found that former foster youth were significantly less likely to be employed, have health insurance, and have a college degree than their peers who had not been in foster care, and they were significantly more likely to experience economic hardship.[96] Over half of youth surveyed had been arrested, and one-fifth reported being convicted of a crime.[97]

The extent to which children of color are overrepresented in the child welfare system—what is referred to in the field as "disproportionality," or the difference in the share of children of a particular race or ethnicity in the overall population compared to their share in the child welfare system—varies across states and localities. Nationally, Black or African Americans and American Indians/Alaskan Natives are significantly more likely to be removed from their families than white, Asian, and Hispanic children,[98] but Hispanic children are over-represented in the foster care system in some states—and the number of states in which Hispanic/Latino children are overrepresented has grown over the last decade and a half.[99]

Because families involved in the child welfare system are also likely to be living in poverty and face other barriers, it has been hard for researchers to disentangle the causes of these racial disparities.[100] For many years, national studies found little-to-no difference in the incidence of maltreatment between children of different racial groups, but the most recent federally-funded National Incidence Studies of Child Abuse and Neglect indicated that Black children experience maltreatment at higher rates than white children across several categories of maltreatment.[101] One reason may be that African American children are more likely to experience the most significant risk factor for maltreatment: poverty. The majority of poor families never come to the attention of the child welfare system, but poverty is still the best

predictor of abuse and neglect.[102] High poverty rates mean these families are less likely to have access to necessary resources such as stable housing, counseling, and childcare services, without which they may be determined to be neglectful by the child welfare system.[103]

The child welfare system also is designed in a way that invites bias and discrimination. Not only are the definitions of maltreatment written primarily by white people, applying their own ideas of what constitutes maltreatment, but as legal scholar and child welfare expert Dorothy Roberts has observed, "Vague definitions of neglect, unbridled discretion, and lack of training form a dangerous combination in the hands of caseworkers charged with deciding the fate of families."[104] Studies have found systemic bias among people who report children to the child welfare system. One study of toddlers who were hospitalized in Philadelphia for bone fractures found that children of color were more likely to be reported for suspected physical abuse than white children, even after controlling for the likelihood of the child's particular injury stemming from abuse.[105] Other studies have found that race may influence a child welfare caseworkers' "threshold" for removing a child from their family. When African American children are removed

from their homes, they on average are assessed by caseworkers to have lower risk at the time of removal than white children removed from their homes.[106] In-depth studies of state and local child welfare systems have found that African American families do not receive supports that could "prevent or divert their involvement with the child protective system" and that they suffer the consequences of widespread beliefs that "African American children are better off away from their families and communities."[107]

Once they are removed from their families, children of color also experience worse outcomes within the foster care system. There are shortages of people of color as well as speakers of Spanish and other languages who are licensed to be foster parents.[108] In particular, the over-incarceration of people of color has led to a smaller pool of available people who can serve as kinship caregivers for children of color who become involved in the child welfare system, because of child welfare policies that prohibit people with criminal histories from being foster parents.[109] In part as a result, children of color spend more time in out-of-home care, they change placements more frequently, they are less likely to receive necessary services, they are less likely to reunify with their families, and they are more likely to age out of foster care.[110] More than 30 percent of Hispanic and Native American youth who have experienced foster care are parents at age 21. More than 60 percent of African American and Latino youth in foster care "have crossed paths with the criminal justice system."[111]

As William Pryor Letchworth, the most famous advocate of children's causes at the time, declared in 1874, "If you want to break up pauperism, you must transplant [the child].... When parents cannot protect their child, cannot feed, cannot clothe it, cannot keep it from evil influence, and are perhaps degrading it by their own example, it is the duty of every true man to step forward to save it."

The problem of disproportionality in the child welfare system has proven so intransigent in part because the roots of these disparities are deep. The child welfare system, from the very beginning, saw its role as removing poor children from their families. Orphanages were among the first institutions developed to serve children, and by the late nineteenth century many children living in them were not, in fact, orphans, but rather had parents who were poor.[112] Charities in New York, Boston, and other East Coast cities sent thousands of poor children on "orphan trains" to towns in the Midwest, where they were assigned foster families—some of whom loved them as their own and others of whom used them as "slave farm labor."[113] Reformers in this period explicitly called for breaking up families in order to fight "pauperism." As William Pryor Letchworth, the most famous advocate of children's causes at the time, declared in 1874, "If you want to break up pauperism, you must transplant [the child].... When parents cannot protect their child, cannot feed, cannot clothe it, cannot keep it from evil influence, and are perhaps degrading it by their own example, it is the duty of every true man to step forward to save it."[114] The first institutions devoted to child protection, the Societies for the Prevention of Cruelty to Children, were established during these years and focused on "rescuing" children "from their abusive parents or employers and removing them to another family or to institutions."[115] By the early twentieth century, reformers were beginning to doubt the efficacy of breaking up families in order to help children, but child welfare practice continued to see its primary function as separating families.[116]

Children of color were, for the most part, excluded from the developing public child welfare system, but other public institutions with which they came into contact separated them from their families at high rates.[117] A Children's Bureau report observed that from 1750 to 1960, "the black child's chance of 'receiving care' from a correctional facility was still much greater than that of receiving any other type of care."[118] For American Indians, the United States undertook a concerted campaign to remove children from their families in order to facilitate their "assimilation." Since the colonial era, settlers had advocated for the separation of American Indian children from their parents and communities so they could be "civilized" and "Christianized."[119] Starting in 1879 and continuing well through the twentieth century,

children as young as five years old were packed off to boarding schools so they could learn how to act like people of European descent.[120] Assimilation-focused education policy complemented policies that stripped American Indian communities of their land: both shared the goal of eliminating Native cultures. Boarding school administrators discouraged visits home, prohibited children from speaking their native languages, and they "intercepted letters from children documenting homesickness and health problems to prevent parental requests for visits."[121] As a result, children were often separated from their families for years at a time.[122]

After World War II, as the civil rights movement demanded the integration of public institutions, the formal child welfare system increasingly served children of color alongside white children. The result was continued family break up. For American Indians, policymakers focused increasingly on placing children in white families, through adoption and foster care. Starting in 1959, the Indian Adoption Project, part of the Bureau of Indian Affairs' (BIA) larger effort to undermine tribal sovereignty and erase American Indian cultures, purposefully placed American Indians in white homes. As part of the project, BIA and state social workers cajoled and coerced unmarried American Indian mothers to give their infants up for adoption. As Cheryl DeCoteau, a member of the Sisseton-Wahpeton tribe in South Dakota, reported, when she was pregnant a social worker "kept coming over to the house…every week… and they kept talking to me and asking if I would give him up for adoption and said that it would be best. They kept coming and coming and finally when I did have him, [the social worker] came to the hospital. After I came home with the baby, [the social worker] come over to the house. He asked me if I would give him up for adoption and I said no."[123] Independent of the Indian Adoption Project, state child welfare systems placed hundreds of American Indian children in foster or adoptive homes annually.[124] Though extended families played a crucial role in raising children in many American Indian cultures, social workers viewed leaving a child with people outside the nuclear family as neglect and grounds for terminating parental rights.[125] Surveys in 1969 and 1974 documented that between 25 and 35 percent of all American Indian children were placed in foster or adoptive homes or institutions.[126]

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Surveys in 1969 and 1974 documented that between 25 and 35 percent of all American Indian children were placed in foster or adoptive homes or institutions.

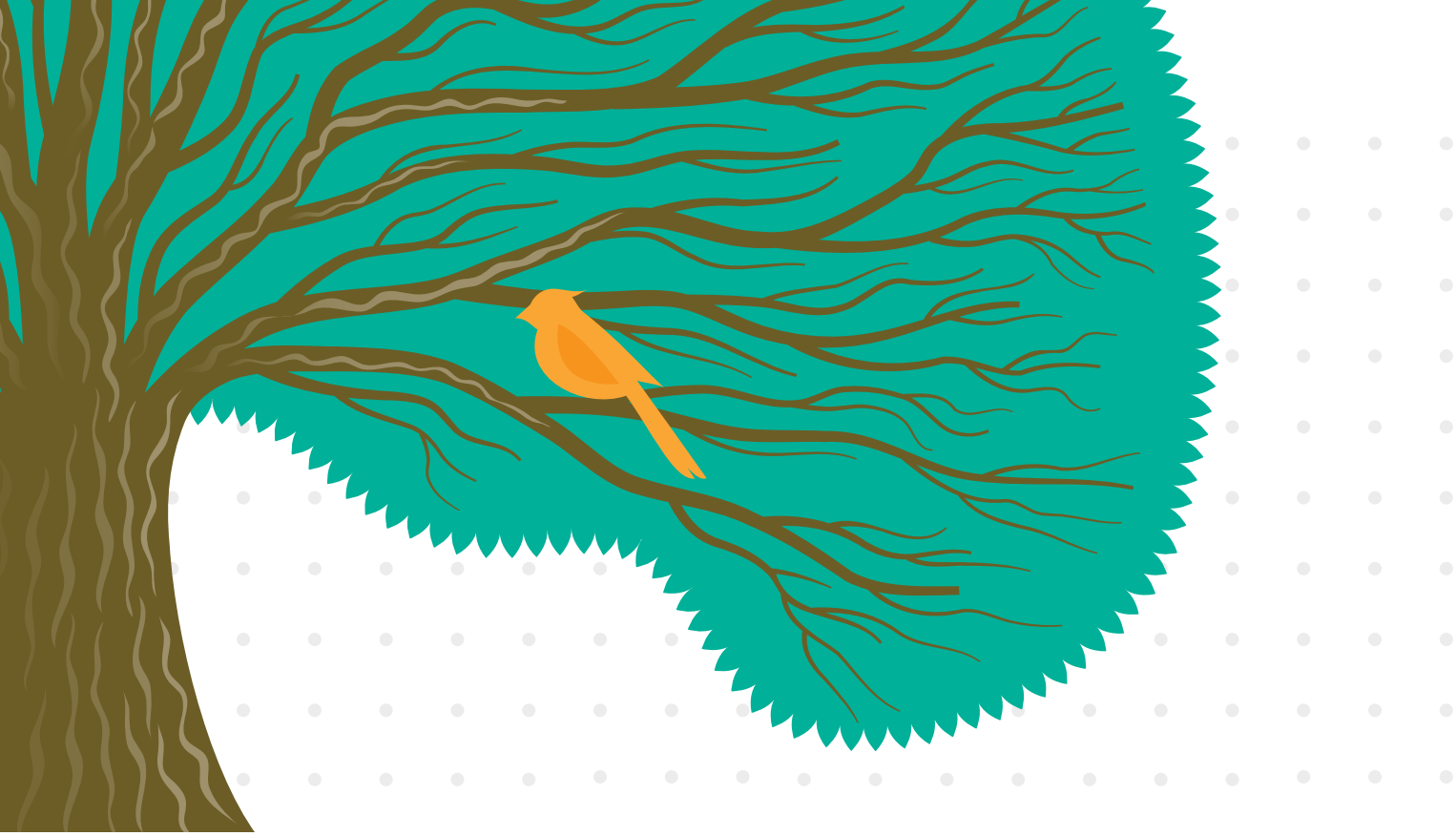
African American children were also increasingly removed from their families by the child welfare system in the mid-twentieth century. Precise data on disproportionality in these years is scarce, but the problems were so clear by 1972 that child welfare scholars Andrew Billinglsey and Jeanne Giovannoni declared that "the system of child welfare services in this country is failing Black children" because it was ripping families apart.[127] That year, the National Association of Black Social Workers condemned the rapid growth of "transracial adoptions" and called the placement of black children in white families a form of cultural "genocide." Black children should be placed with black families, they argued, so that the children can develop a healthy racial identity and learn how to survive in a racist society.[128] Over the next several decades, however, transracial adoptions declined but did not disappear, and more and more children receiving child welfare services were placed in out-of-home care.[129] The Child Abuse Prevention and Treatment Act, passed in 1974, signaled a Congressional commitment to the child protection approach and required states to have a procedure in place to respond to allegations of abuse and neglect and ensure children's safety in order to receive federal funds.[130] The result, as child welfare expert Dorothy Roberts has written, was to transform the child welfare system "from a social service system that tried to

help needy families to a child protection system that investigates allegations of abuse and neglect."[131] In the years that followed, the total number of children served by the system fell as fewer received services while living at home. The number of children in foster care and the share of Black in foster care, however, "exploded."[132]

Over the last several decades, there have been attempts to reform the system to limit family separation and mitigate the harm for families of color. The Indian Child Welfare Act, passed by Congress at the urging of social workers and community activists in 1978, has given tribes jurisdiction over many child welfare matters and sought to limit the involuntary removal of Indian children from Indian homes and the involuntary termination of parental rights.[133] More recently, the U.S. Congress embraced this approach for all families when it passed the Family First Prevention Services Act in February 2018, which funds services to prevent or limit the use of foster care. Jerry Milner, Acting Commissioner of the Administration for Children Youth and Families, has promoted this approach within his agency, stating last year that the child welfare system should change its focus to "primary prevention of maltreatment and unnecessary removal of children from their families."[134]

But significant work remains to be done to overcome this history and realize this vision. Five year old Deja was living with her mother in an apartment in Brooklyn when she wandered off one night after being put to bed. Deja's mother, Maisha Joefield, was in the bathtub with earphones on at the time, and when Deja could not find her she set out to find her grandmother, who lived in the neighborhood. When a passerby encountered Deja on the sidewalk at midnight, he called Child Protective Services. Maisha was arrested for endangering the welfare of her daughter, and Deja was sent to foster care. The case record revealed the incident for what it was: a horrifying accident. Deja's pediatrician noted that her mother was "very attentive" and had significant family support. But the agency still pushed for her longer-term removal. This is how Maisha understood the situation: "they factored in my age [she was 25 at the time], where I lived, and they put me in a box." They may also have factored in the fact that she was African American. In Deja's case, the judge decided that "the risk of emotional harm in removal" outweighed her risk at home, and Deja was returned to her mother's care after four days. But the effects of the brief removal were lasting. Maisha, a former day care provider, could not work with children because her name was placed on a state registry of child abusers. According to Maisha, the experience also "changed" her daughter. After she came home, "she was always second-guessing if she did something wrong, if I was mad at her." Several months later, when caseworkers checked in with teachers at Deja's school, they said that they had no concerns about her mother's care, but Deja was "not doing as well as she used to before she was removed from her home."[135]

As a lawyer at Brooklyn Defender Services observed, reflecting on Maisha and Deja's case, "There's this judgment that these mothers don't have the ability to make decisions about their kids, and in that, society both infantilizes them and holds them to superhuman standards. In another community, your kid's found outside looking for you because you're in the bathtub, it's 'Oh, my God'" — a story to tell later, he said. "In a poor community, it's called endangering the welfare of your child."[136] This is particularly true in poor communities of color, like Maisha and Deja's. As the New York Times reported in the article recounting Maisha and Deja's experience "In interviews, dozens of lawyers working on these cases say the removals punish parents who have few resources. Their clients are predominantly poor black and Hispanic women, they say, and the criminalization of their parenting choices has led some to nickname the practice: Jane Crow."[137]



Where do we go from here?

The history of these publicly funded systems that separate families reveals that they have disregarded the real needs of children and actively discriminated against children and families of color since their founding. These systems have harmed generations of children and made it especially difficult for the children of color impacted by them to lead happy, healthy, and productive lives. In order to rectify these past injustices and ensure that they do not continue, we need to re-envision policy from the perspective of families.

Re-envisioning policy from the perspective of families requires that we value the role of parents and caregivers in children's lives, and that we keep children with their families whenever safe and possible. This is important not only for the individual families involved, but for the larger communities that are systematically weakened by family separation. As policymakers, we should embrace the alternative American tradition that has long recognized the deep value of keeping families together. Some of the first federal attempts to restrict immigration in the late nineteenth and early twentieth centuries exempted family members from the new limits, recognizing that families belong together.[138] When African American children were excluded from public child protection services in the

"I think they shouldn't have took my mama to jail. Just made her go to court, and give her some community service, or some type of alternative, where she can go to the program down the street. Give her the opportunity to make up for what she did. Using drugs, she's hurting herself. You take her away from me, now you're hurting me."

early twentieth century, African American communities stepped in to support families and keep them together. Communities established kindergartens and nurseries to support families, and grandparents, aunts, uncles, and other extended or fictive kin took responsibility for children until parents were able.[139]

In the child welfare system, centering policy on the needs of families requires re-conceptualizing child maltreatment and how we, as a society, address it. In particular, it requires raising the threshold that must be met before children are removed from their parents' care. Agencies must actively work to keep families together—as some are beginning to do today in their attempts to address the overrepresentation of children and families of color in the child welfare system.[140] In some cases this may require changing policies on the books, while in other cases it may require changing how those policies are interpreted and implemented. Centering policy on the needs of families also requires that state child welfare agencies be transparent about their policies and practices, and that they be held accountable to the communities that are most impacted by their actions—whether through citizen review boards, the direct-hiring of community members, or some other means. In the end, both policy and practice must recognize the crucial role that parents and caregivers play in children's lives.

In the criminal justice and immigration systems, centering policy on the needs of families requires limiting the detention and deportation of parents. We should, as the National Resource Council concluded in their landmark report, significantly reduce the rate of incarceration in the United States.[141] Bruce Western and Becky Pettit, two of the leading scholars of the collateral consequences of incarceration, recommend that policy "sort people convicted of crimes by the risk they pose to society" and divert "lower-risk offenders into high-quality, community-based mandatory supervision programs."[142] Communities should have a say in how they are policed, and police departments should work closely with the communities they serve.[143] In immigration enforcement, family detention is not the solution. Instead, detention and deportation should be viewed as measures of last resort, and parents should be exempted from both whenever possible.

When the separation of families is unavoidable—either in the criminal justice, immigration systems or child welfare systems— policy should ensure that

parents are able to maintain frequent contact with their children and strengthen their relationships. There are many promising interventions in this area. For example, the "Baby Elmo" program seeks to help young fathers detained in juvenile facilities develop positive relationships with their children.[144]

Above all, we need to heed the voices of the children themselves. Terrence, who was fifteen when his mother was arrested for drug use, fended for himself for five months before finally receiving help. He explained how policy should have responded to his family's situation: "I think they shouldn't have took my mama to jail. Just made her go to court, and give her some community service, or some type of alternative, where she can go to the program down the street. Give her the opportunity to make up for what she did. Using drugs, she's hurting herself. You take her away from me, now you're hurting me."[145]

Endnotes

[1] "City of Fear: 20,000 of New York's immigrants have been identified for deportation since Trump took office. The rest worry they'll be next." *New York Magazine and the Marshall Project*, July 23, 2018. Available at: http://nymag.com/daily/intelligencer/2018/07/undocumented-new-yorkers-living-in-fear-ice-deportation.html.

[2] See, for example, Davies, Elizabeth et al. "Understanding the Experiences and Needs of Children of Incarcerated Parents: Views from Mentors." Urban Institute, February 2008. Available at: https://www.urban.org/sites/default/files/publication/31481/411615-Understanding-the-Needs-and-Experiences-of-Children-of-Incarcerated-Parents.PDF.

[3] See, for example, Murphey, David and P. Mae Cooper. "Parents Behind Bars: What Happens to Their Children?" Child Trends, October 2015. Available at: https://www.childtrends.org/publications/parents-behind-bars-what-happens-to-their-children.

[4] See discussion below in sections "Immigration Policy and Family Separation," "Criminal Justice Policy and Family Separation," and "Child Welfare Policy and Family Separation."

[5] Jones, Camara Phyllis. "Levels of Racism: A Theoretic Framework and a Gardener's Tale." *American Journal of Public Health*, 90, no. 8, August 2000, pp. 1212-1215. Available at: https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.90.8.1212. On the role of structural racism in determining socio-economic outcomes in particular, see Flynn, Andrea et al. "Rewrite the Racial Rules: Building an Inclusive American Economy." The Roosevelt Institute, June 2016. Available at: http://rooseveltinstitute.org/rewrite-racial-rules-building-inclusive-american-economy/. Dorothy Roberts, a legal scholar who has written at length about family separation in the child welfare system, has made a similar point, observing that racism, "often involves but does not require prejudice against Blacks. Racism is 'a structural relationship based on the subordination of one racial group by another." Roberts, Dorothy. *Shattered Bonds: The Color of Child Welfare*. New York: Basic Books, 2002, p. 95. Here she quotes David Wellman's *Portraits of White Racism*.

[6] On the Trump administration's "zero-tolerance policy" resulting in family separations, see Sessions, Jeff. "Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration." *U.S. Department of Justice*, May 7, 2018. Available at: https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions. On family separations, see Lind, Dara. "The Trump administration's separation of families at the border, explained." Vox, Updated June 15, 2018. Available at: https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents. For the total number of children separated by this policy see Shapiro, Leslie and Manas Sharma. "How many migrant children are still separated from their families?" *Washington Post*, August 30, 2018. Available at: https://www.washingtonpost.com/graphics/2018/local/tracking-migrant-family-separation/?utm_term=.97c86ac3fb7e.

[7] On previous policy see Women's Refugee Commission, Lutheran Immigration and Refugee Service, and Kids in Need of Defense. "Betraying Family Values: How Immigration Policy at the United States is Betraying Family Values." January 2017. Available at: https://supportkind.org/wp-content/uploads/2017/03/BetrayingFamilyValues_Feb2017.pdf. Chishti, Muzaffar and Jessica Bolter. "Family Separation and 'Zero-Tolerance' Rolled Out to Stem Unwanted Migrants, but May Face Challenges." Migration Policy Institute, May 2018. Available at: https://www.migrationpolicy.org/article/family-separation-and-zero-tolerance-policies-rolled-out-stem-unwanted-migrants-may-face. On how the Trump administration's actions differed from the Obama administration, see Lind, Dara. "What Obama did with migrant families vs. what Trump is doing." Vox, June 21, 2018. Available at: https://www.vox.com/2018/6/21/17488458/obama-immigration-policy-family-separation-border. See also Ordoñez, Franco and Anita Kumar. "Yes, Obama separated families at the border, too." McClatchy, June 21, 2018. Available at: https://www.mcclatchydc.com/news/politics-government/white-house/article213525764.html.

[8] On the growth in enforcement as the United States' "singular response to illegal immigration" in the wake of the Immigration Reform and Control Act of 1986, and especially after the creation of the Department of Homeland Security and its absorption of the Immigration and Naturalization Service in 2003, see Meissner, Doris et al. "Immigration Enforcement in the United States: The Rise of a Formidable Machinery." Migration Policy Institute, January 2013. Available at: https://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery. Douglas Massey and Karen Pren emphasize the significance of both anti-terrorism and immigration legislation in changing the nature of immigration enforcement from the 1990s onward. See Massey, Douglas and Karen Pren. "Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America." *Population and Development Review* 38, no. 1, March 2012, pp. 1-29. "Between July 1, 2010, and Sept. 31, 2012, nearly 23 percent of all deportations–or, 204,810 deportations–were issued for parents with citizen children." Wessler, Seth Freed. "Nearly 205k Deportations of Parents of US Citizens in Just Over Two Years." *Colorlines*, December 17, 2012. Available at: https://www.colorlines.com/articles/nearly-205k-deportations-parents-us-citizens-just-over-two-years. On how border enforcement policies themselves have hurt parents of U.S. citizen children see Human Rights Watch. "Border Enforcement Policies Ensnare Parents of US Citizen Children." January 8, 2015. Available at: https://www.hrw.org/news/2015/01/08/border-enforcement-policies-ensnare-parents-us-citizen-children. On immigration prosecutions impinging on family unity see also Human Rights Watch. "Turning Migrants into Criminals: The Harmful Impact of US Border Prosecutions." May 22, 2013. Available at: https://www.hrw.org/report/2013/05/22/turning-migrants-criminals/harmful-impact-us-border-prosecutions.

[9] Capps, Randy et al. "Revving up the Deportation Machinery: Enforcement Under Trump and Push back." Migration Policy Institute, May 2018, p. 7. Available at: https://www.migrationpolicy.org/research/revving-deportation-machinery-under-trump-and-pushback.

[10] Luan, Livia. "Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention." Migration Policy Institute, May 2018. Available at: https://www.migrationpolicy.org/article/profiting-enforcement-role-private-prisons-us-immigration-detention.

[11] Capps, Randy et al. "The Implications of Immigration Enforcement Activities for the Well-being of Children in Immigrant Families." Urban Institute and Migration Policy Institute, September 2015. Available at https://www.migrationpolicy.org/research/implications-immigration-enforcement-activities-well-being-children-immigrant-families. For other estimates of the number of U.S.-citizen children affected by the deportation of a parent see Satinsky, Sara et al. "Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families." Human Impact Partners, June 2013. Available at: https://www.familyunityfamilyhealth.org/uploads/images/FamilyUnityFamilyHealth.pdf. A study of New York City between October 2005 and December 2010 found that 87 percent of the "resolved cases" of individuals with U.S. citizen children resulted in deportation. New York University School of Law Immigrant Rights Clinic. "Insecure Communities, Devastated Families: New Data on Immigrant Detention and Deportation Practices in New York City." July 2012. Available at: http://www.immigrantdefenseproject.org/wp-content/uploads/2012/07/NYC-FOIA-Report-2012-FINAL.pdf.

[12] The Obama administration changed course in 2014, instructing the U.S. Customs and Immigration Enforcement (ICE) to exercise "prosecutorial discretion" to limit the number of unauthorized immigrants who were apprehended and deported—particularly those caring for children. On these changes see Chisthi, Muzaffar, et al. "The Obama Record on Deportations: Deporter in Chief or Not?" Migration Policy Institute, January 2017. Available at: https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not. For the details of Obama's narrowed enforcement priorities from 2014 on, see Rosenblum, Marc. "Understanding the Potential Impact of Executive Action on Immigration Enforcement." Migration Policy Institute, July 2015. Available at: https://www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement. The Obama administrations new DHS policy guidance in 2014 declared that, "pregnant, or nursing, [or] who demonstrate that they are primary caretakers of children or an infirm person," should not be detained unless absolutely necessary. See Johnson, Jeh to Thomas Winkowski et al. "Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants." U.S. Department of Homeland Security, November 20, 2014. Available at: https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf. On the changes under Trump see Capps et al. "Revving up the Deportation Machinery." On ICE arrests over the last ten years see "ICE Apprehensions Half Levels of Five Years Ago." TRAC. Available at: http://trac.syr.edu/immigration/reports/517/. On family separation resulting from recent workplace raids under President Trump, see Saslow, Eli. "Are you alone now? After raid, immigrant families are separated in America's Heartland." *Washington Post*, June 30, 2018. Available at: https://www.washingtonpost.com/news/national/wp/2018/06/30/feature/are-you-alone-now-after-raid-immigrant-families-are-separated-in-the-american-heartland/?utm_term=.e8e05f76cfa6.

[13] Author's calculations based on U.S. Immigration and Customs Enforcement, Department of Homeland Security. "Deportation of Aliens Claiming U.S.-Born Children, First Half, Calendar Year 2017. Fiscal Year 2017 Report to Congress." October 12, 2017. Available at: https://www.dhs.gov/sites/default/files/publications/ICE%20-%20Deportation%20of%20Aliens%20Claiming%20U.S.%20-Born%20Children%20-%20First%20Half%2C%20CY%202017.pdf and U.S. Immigration and Customs Enforcement, Department of Homeland Security. "Deportation of Aliens Claiming U.S.-Born Children, Second Half, Calendar Year 2017. Fiscal Year 2017 Report to Congress." June 26, 2018. Available at: https://www.dhs.gov/sites/default/files/publications/ICE%20-%20Deportation%20of%20Aliens%20Claiming%20U.S.%20-Born%20Children%20-%20Second%20Half%2C%20CY%202017.pdf.

[14] Here Latin America is defined as Mexico, Central America, and South America (Cuba and the Dominican Republic, often included in a definition of Latin America, are left off because of the way the data on the unauthorized population is presented). Data on the unauthorized population are from "Profile of the Unauthorized Immigrant Population in the United States." Migration Policy Institute. Available at: https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US. According to the author's calculations based on ICE data, immigrants from these countries constituted roughly 96 percent of removals in FY 2016 and 93 percent of removals in FY 2017. See "Fiscal Year 2017 ICE Enforcement and Removals Report." U.S. Immigration and Customs Enforcement, December 2017. Available at: https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf.

[15] These studies found that fathers are typically arrested in workplace raids, leaving children behind with their mothers, who often have limited attachment to the labor force. Chaudry, Ajay et al. "Facing Our Future: Children in the Aftermath of Immigration Enforcement." The Urban Institute, February 2010. Available at: https://www.urban.org/sites/default/files/publication/28331/412020-Facing-Our-Future.PDF. Capps, Randy et al. "Paying the Price: The Impact of Immigration Raids on America's Children." Urban Institute, October 2007. Available at: https://www.urban.org/sites/default/files/publication/46811/411566-Paying-the-Price-The-Impact-of-Immigration-Raids-on-America-s-Children.PDF. For a summary of the research and analysis on the impact of immigration enforcement on children see American Immigration Council and First Focus. "Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught Up in the Child Welfare System." December 2012. Available at: https://www.americanimmigrationcouncil.org/sites/default/files/research/falling_through_the_cracks_3.pdf.

[16] Capps et al. "Implications of Immigration Enforcement."

[17] Ibid.

[18] Wessler, Seth Freed. "Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System." Applied Research Center, November 2011. Available at: https://www.raceforward.org/research/reports/shattered-families.

[19] Ibid. and Wessler, Seth Freed. "How the 'Best Interest' Bias of Family Court Threatens Immigrant Parents." *Colorlines*, August 8, 2012. Available at: https://www.colorlines.com/articles/how-best-interest-bias-family-court-threatens-immigrant-parents. On the role of bias in immigrant family separation in the child welfare system see Yablong-Zug, Marcia. "Separation, Deportation, Termination." *Boston College Journal of Law and Social Justice*, 31, no. 1, February 2012, pp. 63-117. Available at: https://lawdigitalcommons.bc.edu/jlsj/vol32/iss1/4/.

[19] Ngai, Mae. "The Strange Career of the Illegal Alien: Immigration Restriction and Deportation Policy in the United States. 1921-1965." *Law and History Review*, 21, no. 1, Spring 2003, pp. 69-107. Available at: http://www.jstor.org/stable/3595069.

[20] Ibid.

[21] Ibid, p.72. As undocumented immigration from Mexico rose and then stabilized at a relatively high level, politicians and journalists increasingly referred to migrants as "criminals" or "illegals" who were part of an "alien invasion"—what anthropologist Leo Chavez has documented as the rise of the "Latino threat narrative." Chavez, Leo R. *The Latino Threat: Constructing Immigrants, Citizens, and the Nation*. Stanford University Press, 2008. The demographer Douglas Massey and others have shown that the peaks in the use of threatening language about Latino immigrants in newspapers like the New York Times and the Los Angeles Times coincided with "the passage of new piece of anti-immigrant legislation or the implementation of a new restrictive border policy." See Massey, Douglas. "Chain Reaction: The Causes and Consequences of America's War on Immigrants." Julian Simon Lecture Series, 2011. Available at: http://conference.iza.org/conference_files/amm2011/massey_d1244.pdf#page=29%C2%A0.

[22] See especially Fox, Cybelle. *Three Worlds of Relief: Immigration and the American Welfare State from the Progressive Era to the New Deal*. Princeton University Press, 2012. Balderrama, Francisco and Raymond Rodríguez. Decade of Betrayal: Mexican Repatriation in the 1930s. University of New Mexico Press, revised edition 2006.

[23] Hyman, Louis and Natasha Iskander. "What the Mass Deportation of Immigrants Would Look Like: Operation Wetback didn't merely enforce immigration law—it enforced the idea that American citizens are white." Slate, November 16, 2016. Available at: http://www.slate.com/articles/news_and_politics/history/2016/11/donald_trump_mass_deportation_and_the_tragic_history_of_operation_wetback.html.

[24] Ngai, "The Strange Career of the Illegal Alien," pp. 99-101. Kanstroom, Daniel. *Deportation Nation: Outsiders in American History*. Harvard University Press, 2007, p. 234.

[25] Ngai, "the Strange Career of the Illegal Alien," p. 96.

[26] Ngai, "the Strange Career of the Illegal Alien," p. 103.

[27] Tichenor, Daniel. *Dividing Lines: The Politics of Immigration Control in America*. Princeton University Press, 2002, chapter 9. "The Nicaraguan Adjustment and Central American Relief Act: Hardship Relief and Long-Term Alien Status." Congressional Research Service, Updated July 15, 1998. Available at: https://www.everycrsreport.com/files/19980715_98-3_08ea932ffbb5b70b21888bb84863bfba90bfba25.pdf.

[28] Massey and Pren. "Unintended Consequences of US Immigration Policy."

[29] Luan, "Profiting from Enforcement."

[30] "Chinese Exclusion Act (1882)" in "Teaching With Documents: Using Primary Sources From the National Archives." National Archives and Records Administration, 1989. Excerpted at: https://www.ourdocuments.gov/doc.php?flash=false&doc=47.

[31] Kanstroom, *Deportation Nation*, p. 234. Abrams, Kerry. "Polygamy, Prostitution, and the Federalization of Immigration Law." *Columbia Law Review*, 105, no. 3, April 2005, pp. 641-716. See also Lee, Erika and Judy Yung. *Angel Island: Immigrant Gateway to America*. Oxford University Press, 2012, p. 75. Lew-Williams, Beth. "For a child migrant, days feel like a lifetime when you're imprisoned and alone." *PRI's The World*, June 20, 2018. Available at: https://www.pri.org/stories/2018-06-20/child-migrant-days-feel-lifetime-when-you-re-imprisoned-and-alone.

[32] Cervantes, Wendy et al. "Our Children's Fear: Immigration Policy's Effect on Young Children." CLASP, March 2018, p. 13. Available at: https://www.clasp.org/publications/report/brief/our-childrens-fear-immigration-policys-effects-young-children.

[33] "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children." 83 Fed. Reg. 45486. September 7, 2018. Available at: https://www.federalregister.gov/documents/2018/09/07/2018-19052/apprehension-processing-care-and-custody-of-alien-minors-and-unaccompanied-alien-children.

[34] Linton, Julie M. et al. "Detention of Immigrant Children." *Pediatrics*, March 2017. Available at: http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483#xref-ref-51-1.

[35] Seda, Claire Hutkins. "Dr. Luis Zayas Provides Testimony on Family Detention." *Migrant Clinicians Network*, July 29, 2015. Available at: https://www.migrantclinician.org/blog/2015/jul/dr.-luis-zayas-provides-testimony-family-detention.html.

[36] "Report of the ICE Advisory Committee on Family Residential Centers." October 2016. Available at: https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf. On family detention see also Lutheran Immigration & Refugee Service and the Women's Refugee Commission. "Locking up Family Values, Again: A Report on the Renewed Practice of Family Immigration Detention." October 2014. Available at: https://innovationlawlab.org/wp-content/uploads/2015/01/Fam-Detention-Again-Full-Report.pdf.

[37] See generally Satinsky, Sara et al. "Family Unity, Family Health." Cervantes et al. "Our Children's Fear."

[38] Dreby, Joanna. "How Today's Immigration Enforcement Policies Impact Children, Families, and Communities." Center for American Progress, August 2012. Available at: https://www.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamiliesFINAL.pdf.

[39] Capps et al. "Implications of Immigration Enforcement Activities," p. 6.

[40] "City of Fear: 20,000 of New York's immigrants have been identified for deportation since Trump took office. The rest worry they'll be next." *New York Magazine and the Marshall Project*, July 22, 2018. Available at: http://nymag.com/daily/intelligencer/2018/07/undocumented-new-yorkers-living-in-fear-ice-deportation.html.

[41] Ibid.

[42] Capps, Randy et al. "A Profile of U.S. Children with Unauthorized Immigrant Parents." Migration Policy Institute, January 2016. Available at: https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents. The Center for the Study of Immigrant Integration at USC estimates that there are over seven million children living in households with at least one unauthorized member—almost six million of whom are U.S. citizens. See Mathema, Silva. "Keeping Families Together: Why All Americans Should Care About What Happens to Unauthorized Immigrants." Center for American Progress and USC Dornsife Center for the Study of Immigrant Integration, March 2017. Available at: https://dornsife.usc.edu/assets/sites/731/docs/KeepFamiliesTogether-brief.pdf.

[43] "City of Fear," *New York Magazine and the Marshall Project*.

[44] Gramlich, John. "America's incarceration rate is at a two-decade low." Pew Research Center, May 2, 2018. Available at: http://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/. See also World Prison Brief Database, Institute of Criminal Policy Research and Birkbeck, University of London. "Highest to Lowest - Prison Population Rate." Available at: http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All.

[45] For an overview see Wildeman, Christopher and Bruce Western. "Incarceration in Fragile Families." *The Future of Children*, 20, no. 2, Fall 2010, pp. 157-177. Available at: https://www.jstor.org/stable/20773699. On the data from the 1970s to 2000s see Bonczar, Thomas P. "Prevalence of Imprisonment in the U.S. Population, 1974-2001." U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Special Report, August 2003. Available at https://www.bjs.gov/content/pub/pdf/piusp01.pdf. Here the incarceration rate does not include those incarcerated in U.S. jails. In recent years, the government has been able to count the number of people in jails and has included them in data on the incarcerated population. For an overview of the historical statistics see Lind, Dara. "One chart that puts mass incarceration in historical context." *Vox*, June 7, 2016. Available at: https://www.vox.com/2015/10/11/9497161/incarceration-history. For historical statistics through the 1980s see Cahalan, Margaret Werner. "Historical Corrections Statistics in the United States, 1850-1984." U.S. Department of Justice, Bureau of Justice Statistics. December 1986. Available at: https://www.bjs.gov/content/pub/pdf/hcsus5084.pdf.

[46] Kaebele, Danielle and Mary Cowhig. "Correctional Population in the United States." U.S. Department of Justice, Bureau of Justice Statistics, April 2018. Available at: https://www.bjs.gov/content/pub/pdf/cpus16.pdf.

[47] Alexander, Michelle. "The New Jim Crow: How the war on drugs gave birth to a permanent American undercaste." *The Nation*, March 9, 2010. Available at: https://www.thenation.com/article/new-jim-crow/.

[48] National Research Council. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. National Academies Press, 2014, p. 58. Available at: https://doi.org/10.17226/18613. In the 2000s disparities fell slightly, so that by 2010 African Americans were 4.6 times more likely to be imprisoned than whites.

[49] Ibid, p. 62.

[50] Minton, Todd and Susan Brumbaugh. "American Indian and Alaska Natives in Local Jails, 1999-2014." U.S. Department of Justice, Bureau of Justice Statistics, September 2017. Available at: https://www.bjs.gov/content/pub/pdf/aianlj9914.pdf.

[51] "Asian Americans & Pacific Islanders Behind Bars: Exposing the School to Prison to Deportation Pipeline." Asian Americans Advancing Justice et al, December 2015. Available at: http://www.asianprisonersupport.com/wp-content/uploads/2014/01/AAPIs-Behind-Bars-Report.pdf.

[52] Alexander, "The New Jim Crow." Western, Bruce and Becky Pettit. "Collateral Costs: Incarceration's Effect on Economic Mobility." Pew Charitable Trusts, 2010. Available at: http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf.

[53] "Asian Americans & Pacific Islanders Behind Bars." Asian Americans Advancing Justice et al.

[54] Western and Pettit, *Collateral Costs*. For similar data, see Glaze, Laruen and Lara Maruschak. "Parents in Prison and Their Minor Children." Bureau of Justice Statistics Special Report, August 2008, Revised March 2010. Available at: https://www.bjs.gov/content/pub/pdf/pptmc.pdf.

[55] Wildeman, Christopher. "Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage." *Demography*, 46, no. 2, May 2009, pp. 265-280.

[56] Ibid. Another study using data from the 2011-2012 National Survey of Children's Health found that more than five million children—seven percent of all U.S. children—have ever had a residential parent (i.e a parent who lived with them) incarcerated. Black children are about twice as likely to have had a parent who lives with them in prison compared to white children—11.5 percent compared to 6 percent. Murphey and Cooper, "Parents Behind Bars."

[57] Wildeman and Western, "Incarceration in Fragile Families."

[58] National Research Council, *The Growth of Incarceration*, p. 282.

[59] For a summary of these theories and the methodological hurdles to substantiating them, see ibid, pp. 288-289.

[60] Ibid, p. 114.

[61] President Lyndon Johnson initiated the War on Crime and backed the Law Enforcement Assistance Act, which "established the Office of Law Enforcement Assistance to award grants and administer other programs aimed at improving and expanding law enforcement, court administration, and prison operations at the state and local levels." Richard Nixon, meanwhile, embraced the "southern strategy" to create a new conservative majority that "politicized and further racialized the law and order issue." In the words of H.R. Haldeman, President Richard Nixon's White House chief of staff: "[T]he whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to." Quoted in Alexander, "The New Jim Crow." See generally, National Research Council, *The Growth of Incarceration*. See also Thompson, Heather Ann. "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History." *Journal of American History*, 97, no. 3, December 2010. Available at: https://doi.org/10.1093/jahist/97.3.703. Hinton, Elizabeth. *From the War on Poverty to the War on Crime*. Harvard University Press, 2017.

[62] For a good summary of these events see Murch, Donna. "Paying for Punishment: The New Debtor's Prison." Boston Review, August 1, 2016. Available at: http://bostonreview.net/editors-picks-us/donna-murch-paying-punishment. For more detail see Blackmon, Douglas. *Slavery by Another Name: The Re-Enslavement of Black America from the Civil War to World War II*. Doubleday, 2008. Nelson, Scott Reynolds. Steel Drivin' Man: John Henry, the Untold Story of an American Legend." Oxford University Press, 2008. Goluboff, Risa. *The Lost Promise of Civil Rights*. Harvard University Press, 2007.

[63] For a summary see Wildeman and Western, "Incarceration in Fragile Families" and Wakefield, Sara and Christopher Wildeman. "How Parental Incarceration Harms Children and What to do About It." National Council on Family Relations, January 2018. Available at: https://www.ncfr.org/sites/default/files/2018-01/How%20Parental%20Incarceration%20Harms%20Children%20NCFR%20Policy_Full%20Brief_Jan.%202018_0.pdf.

[64] See especially Forman, James, Jr. *Locking up Our Own: Crime and Punishment in Black America*. Farrar, Straus and Giroux, 2017. On this literature generally, see Weaver, Vesla. "The Untold Story of Mass Incarceration." *Boston Review*, October 24, 2017. Available at: http://bostonreview.net/race-law-justice/vesla-m-weaver-untold-story-mass-incarceration.

[65] Weiman, David F. and Christopher Weiss. "The Origins of Mass Incarceration in New York State: The Rockefeller Drug Laws and the Local War on Drugs." In Raphael, Steven and Michael A. Stoll, eds. *Do Prisons Make us Safer?* Russell Sage, February 2009, p. 81.

[66] Vagins, Deborah J. et al. "Cracks in the System: Twenty Years of Unjust Federal Crack Cocaine Law." The American Civil Liberties Union, October 2006. Available at: https://www.aclu.org/sites/default/files/field_document/cracksinsystem_20061025.pdf. Ghandnoosh, Nazgol. "Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System." The Sentencing Project, 2015. Available at: https://sentencingproject.org/wp-content/uploads/2015/11/Black-Lives-Matter.pdf.

[67] National Research Council, *The Growth of Incarceration*.

[68] Data is from the federal Bureau of Prisons population at the end of fiscal year 2012. Taxy, Sam et al. "Drug Offenders in Federal Prison: Estimates of Characteristics Based on Linked Data." Bureau of Justice Statistics, October 2015. Available at: https://www.bjs.gov/content/pub/pdf/dofp12.pdf. All told, today black men are about six times as likely to be incarcerated as white men, and Hispanic men are about 2.7 times as likely to be incarcerated. See "Fact Sheet: Trends in U.S. Corrections." The Sentencing Project, January 2016. Available at: https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf.

[69] Cohen, Andrew. "How White Users Made Heroin Use a Public Health Problem." The Atlantic, August 12, 2015. Available at: https://www.theatlantic.com/politics/archive/2015/08/crack-heroin-and-race/401015/.

[70] Hill, Robert B. "Synthesis of Research on Disproportionality: An Update." Center for the Study of Social Policy, October 2006, p. 33. Available at: https://www.cssp.org/reform/child-welfare/other-resources/synthesis-of-research-on-disproportionality-robert-hill.pdf. National Council on Crime and Delinquency. "And Justice for Some: Differential Treatment of Youth of Color in the Justice System." January 2007. Available at: http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf

[71] Rovner, Johsua. "Racial Disparities in Youth Commitments and Arrests." *The Sentencing Project*, April 1, 2016. Available at: https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/.

[72] Fluke, John et al. "A Research Synthesis on Child Welfare Disparities and Disproportionality." In "Disparities and Disproportionality in Child Welfare: Analysis of the Research." Center for the Study of Social Policy and the Annie E. Casey Foundation, December 2011, p. 49. Available at: https://www.cssp.org/publications/child-welfare/alliance/Disparities-and-Disproportionality-in-Child-Welfare_An-Analysis-of-the-Research-December-2011.pdf.

[73] There is more reliable research on paternal incarceration, because it is more common and better represented in data sets. This research clearly demonstrates paternal incarceration harms most children. The research on maternal incarceration is conflicting, with some research suggesting massive harms, and others attributing those harms to risk factors such as high levels of economic hardship that precede maternal incarceration. Wakefield and Wildeman, "How Parental Incarceration Harms Children." Forty-two percent of mothers in state prison and 52 percent of mothers in federal prison reported living in single parent households before arrest. Men in prison most commonly identified the children's mother as their current caregiver, while mothers most commonly identified the children's grandmother as their current caregiver. Glaze and Maruschak, "Parents in Prison and Their minor Children." Evidence from focus groups suggest that a mother's incarceration is a greater disruption in a child's life than a father's incarceration. See Davies et al. "Understanding the Experiences and Needs of Children."

[74] Geller, Amanda, Irwin Garfinkel and Bruce Western. "Paternal Incarceration and Support for Children in Fragile Families." *Demography*, 48, no. 1, February 2011, pp. 25-47.

[75] In this study, material hardship was defined as a mother self-reporting one or more of the following events in the previous 12 months: could not pay their full rent or mortgage, could not pay the full amount of their utility bills, needed to go to a doctor or a hospital but could not afford it, had telephone service disconnected due to nonpayment, had electricity or gas service turned off or could not afford to have heating oil delivered, or received free food or meals. Schwartz-Soicher, Ofira, Amanda Geller, and Irwin Garfinkel. "The Effect of Paternal Incarceration on Material Hardship." *Social Service Review*, 75, no. 3, September 2011, pp. 447-473.

[76] Literature summarized in Murphey and Cooper, "Parents Behind Bars." They note that in some cases there can be positive effects of incarceration, for example when a parent is abusive, but most research finds negative outcomes associated with incarceration.

[77] Murphey and Cooper, "Parents Behind Bars." The best point-in-time data we have, from 2007, estimates that over 800,000 parents of over 1.7 million minor children are in prison. Glaze and Maruschak, "Parents in Prison and Their minor Children."

[78] Wildeman, Christopher. "Parental Incarceration, Child Homelessness, and the Invisible Consequence of Mass Imprisonment." *Annals of the American Academy of Political and Social Science*, January 2014, p. 651.

[79] Swann, Christopher and Michelle Sheran Sylvester. "The Foster Care Crisis: What Caused Caseloads to Grow?" *Demography*, 43, no. 2, May 2006, pp. 309-335. For similar results using data on paternal incarceration from Denmark, see Andersen, Signe Hald and Christopher Wildeman. "The Effect of Paternal Incarceration on Children's Risk of Foster Care Placement." *Social Forces*, 93, no. 1, September 2014, pp. 269-298. Available at: http://www.jstor.org/stable/43287825.

[80] This accounted for eight percent of all children who were removed from their homes that year. Children's Bureau. "The AFCARS Report: Preliminary FY 2016 Estimates." October 2017. Available at https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport24.pdf. For more on the relationship between parental incarceration and child welfare, see U.S. Children's Bureau. "Child Welfare Practice with Families Affected by Parental Incarceration." October 2015. Available at: https://www.childwelfare.gov/pubs/parental-incarceration/.

[81] See Raimon, Martha et al. "Sometimes Good Intentions Yield Bad Results: ASFA's Effect on Incarcerated Parents and Their Children." In "Intentions and Results: A Look Back at the Adoption and Safe Families Act." Center for the Study of Social Policy and Urban Institute. Available at: https://www.cssp.org/publications/child-welfare/top-five/intentions-and-results-a-look-back-at-the-adoptions-and-safe-families-act.pdf.

[82] Wakefield and Wildeman. "How Parental Incarceration Harms Children."

[83] Wildeman, "Parental Incarceration, Child Homelessness."

[84] Davies et al. "Understanding the Experiences and Needs of Children."

[85] Quoted in Bernstein, Nell. "Arrest." *Children of Incarcerated Parents*, Spring 2010. Available at: http://sfonline.barnard.edu/children/print_bernstein.htm.

[86] Ibid.

[87] deVuono-Powell, Saneta et al. "Who Pays? The True Cost of Incarceration on Families." Ella Baker Center, Forward Together, Research Action Design, September 2015, p. 29. Available at: http://whopaysreport.org/who-pays-full-report/.

[88] Ibid. Incarceration places particularly high costs on women of color and their families. See generally Delaney, Ruth. "Who pays in an offender-funded justice system?" *Vera Institute of Justice*, October 13, 2015. Available at: https://www.vera.org/blog/gender-and-justice-in-america/who-pays-in-an-offender-funded-justice-system.

[89] Davies et al. "Understanding the Experiences and Needs of Children."

[90] Children's Bureau. "The AFCARS Report." For data on race of child population in 2016, see KidsCount. "Child Population by Race." Available at: https://datacenter.kidscount.org/data/tables/103-child-population-by-race#detailed/1/any/false/870,573,869,36,868,867,133,38,35,18/68,69,67,12,70,66,71,72/423,424. For an analysis of the overrepresentation of African American children specifically, see U.S. Government Accounting Office. "African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care." July 2007. Available at: https://www.gao.gov/new.items/d07816.pdf.

[91] Wildeman, Christopher and Natalia Emanuel. "Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children, 2000-2011. PLoS One, 9, no. 3, 2013. Available at: http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0092785.

[92] See generally U.S. Children's Bureau. "In-Home Services in Child Welfare." March 2014. Available at: https://www.childwelfare.gov/pubPDFs/inhome_services.pdf.

[93] For a summary of this research see Sankaran, Vivek and Christopher Church. "Easy Come, Easy Go: The Plight of Children Who Spend Less than Thirty Days in Foster Care." Penn Law, 2017. Available at: https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1197&context=jlasc.

[94] Doyle, Joseph. "Child Protection and Child Outcomes: Measuring the Effects of Foster Care." *American Economic Review*, 97 no. 5, December 2007, pp. 1583-1610. Available at: http://www.jstor.org/stable/30034577. Studies on the effect of removal face a significant challenge in controlling for underlying factors that distinguish children who experience out of home placement from their peers who remain at home. Other studies have found little-to-no effect of removal on cognitive skills or behavioral problems. See Berger, Lawrence et al. "Estimating the 'Impact' of Out-of-Home Placement on Child Well-Being: Approaching the Problem of Selection Bias." *Child Development*, 80, no. 6, November-December 2009. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2836492/.

[95] "Missed Opportunities: Youth Homelessness in America." Chapin Hall and Voices of Youth Count, November 2017. Available at: http://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf. Nasr, Firas et al. "Foster Care and Human Trafficking: A State-by-State Evaluation." Human Trafficking Search, 2017. Available at: http://humantraffickingsearch.org/wp-content/uploads/2017/09/Foster-Care-Report.pdf.

[96] Courtney, Mark E. et al. "Midwest Evaluation of the Adult Function of Former Foster Youth: Outcomes at Age 26." Chapin Hall, 2011. Available at: https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-26.pdf

[97] Courtney, Mark et al. "Midwest Evaluation of the Adult Functioning of Former Foster Youth: Conditions of Your Prepare to Leave State Care. Executive Summary." Chapin Hall, 2004. Available at: https://www.chapinhall.org/wp-content/uploads/Midwest-Study-Youth-Preparing-to-Leave-Care-Brief.pdf.

[98] Center for the Study of Social Policy, "Disparities and Disproportionality in Child Welfare: Analysis of the Research." U.S. Children's Bureau. "Racial Disproportionality and Disparity in Child Welfare." November 2016. Available at: https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf.

[99] Somers, Alicia. "Disproportionality rates for Children of Color in Foster Care (FY 2014)." The National Council of Juvenile and Family Court Judges, August 2016. Available at: http://www.ncjfcj.org/sites/default/files/NCJFCJ%202014%20Disproportionality%20TAB%20Final.pdf. See also Detlaff, Alan. "Responses to a Research Synthesis on Child Welfare Disproportionality and Disparities." In Center for the Study of Social Policy, "Disparities and Disproportionality in Child Welfare: Analysis of the Research."

[100] For a discussion of the literature on racial disproportionality in the child welfare system, see Dettlaff, Alan J. "The Evolving Understanding of Disproportionality and Disparities in Child Welfare." In Korbin, J.E. and R.D. Krugman, eds. *Handbook of Child Maltreatment*, November 2013. Available at: https://link.springer.com/chapter/10.1007/978-94-007-7208-3_8.

[101] For a summary of the research see The Children's Bureau, "Racial Disproportionality." For the findings from NIS-4 see Sedlak, Andrea et al. "Supplementary Analyses of Race Differences in Child Maltreatment Rates in the NIS–4." Westat, March 2010. Available at: https://www.acf.hhs.gov/sites/default/files/opre/nis4_supp_analysis_race_diff_mar2010.pdf. The study authors suggest that the findings from the latest NIS could be a result of more precise estimates made possible by the larger sample size in NIS-4, or growing racial income inequality. Lower-income children have a higher risk of maltreatment, and while the incomes of both black and white children increased between NIS 3 and NIS 4, the incomes of white children increased more rapidly, leading to a larger gap. See also Sedlak, A.J et al. "Fourth National Incidence Study of Child Abuse and Neglect (NIS–4): Report to Congress." Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, 2010. Available at: https://www.acf.hhs.gov/sites/default/files/opre/nis4_report_congress_full_pdf_jan2010.pdf. For an analysis of limitations of the latest NIS methodology, see Fluke et al. "A Research Synthesis on Child Welfare Disproportionality."

[102] Martin, Megan and Alex Citrin. "Prevent, Protect, and Provide: How child welfare can better support low-income families." Center for the Study of Social Policy, August 2014. Available at: https://www.cssp.org/policy/2014/Prevent-Protect-Provide.pdf. Because of their high poverty rates, children of color are also more likely to come into contact with people who report suspected cases of maltreatment to the child welfare system—particularly mandated reporters such as social services staff. Children's Bureau. "Racial Disproportionality."

[103] Fluke, et al. "A Research Synthesis on Child Welfare Disproportionality," pp. 18-21.

[104] Roberts, *Shattered Bonds*, p. 55. On balance, Robert Hill concludes that the evidence suggests that race "is an important factor that affects the decision to place children in foster care." Hill, "Synthesis of Research on Disproportionality in Child Welfare," p. 24. See also Fluke, et al. "A Research Synthesis on Child Welfare Disproportionality and Disparities."

[105] For a summary of the literature, see Hill, Robert B. "Synthesis of Research on Disproportionality in Child Welfare," p. 18. For the Philadelphia study see Lane, Wendy G. et al. "Racial Differences in Pediatric Fractures for Physical Abuse." *Journal of the American Medical Association*, 2002. Available at: https://jamanetwork.com/journals/jama/fullarticle/195342.

[106] Rivaux, Stephanie et al. "The Intersection of Race, Poverty, and Risk: Understanding the Decision to Provide Services to Client and to Remove Children." *Child Welfare*, February 2008, pp. 151-168. See also Dettlaff, Alan et al. "Disentangling: The influence of race, income, and risk on the substantiation decision in child welfare." *Child and Youth Services Review*, April 2011, pp. 1630-1637.

[107] "Race Equity Review: Findings from a Qualitative Analysis of Racial Disproportionality and Disparity for African American Children and Families in Michigan's Child Welfare System." Center for the Study of Social Policy, January 2009. Available at: https://www.cssp.org/publications/child-welfare/institutional-analysis/race-equity-review-findings-from-a-qualitative-analysis-of-racial-disproportionality-and-disparity-for-african-american-children-and-families-in-michigans-child-welfare-system.pdf. See also "Positive Outcomes for All: Using an Institutional Analysis to Identify and Address African American Children's Low-Reunification Rates and Long-Term Stays in Fresno County's Foster Care System." Center for the Study of Social Policy, October 2010. Available at: https://www.cssp.org/publications/child-welfare/institutional-analysis/positive-outcomes-for-all-fresno-county-institutional-analysis-executive-summary.pdf. "Child Welfare Practice: Creating a Successful Climate for Change: Findings and considerations from an Institutional Analysis." Center for the Study of Social Policy, September 2012. Available at: https://www.cssp.org/publications/child-welfare/institutional-analysis/Child-Welfare-Practice-Creating-a-Successful-Climate-for-Change.pdf.

[108] See, for example, Capello, Doris Correa. "Recruiting Hispanic Foster Parents: Issues of Culture, Language, and Social Policy." *Families in Society: The Journal of Contemporary Social Services*, 2006, pp. 529-535. Available at: http://cssr.berkeley.edu/cwscmsreports/LatinoPracticeAdvisory/RecruitingHispanicFosterParents.pdf.

[109] Thanks to Alan Dettlaff for this point.

[110] See generally "African American Children in Foster Care," U.S. Government Accounting Office. Hill, "Synthesis of Research on Disproportionality in Child Welfare." "Disparities and Disproportionality in Child Welfare," Center for the Study of Social Policy.

[111] "Improving Foster Care for Young People of Color." Annie E. Casey Foundation, January 19, 2018. Available at: http://www.aecf.org/blog/improving-foster-care-for-young-people-of-color.

[112] By the early twentieth century, the majority of children in orphanages had living mothers who could not afford "to support and care for their children simultaneously." Many poor women placed out their children temporarily either in orphanages or private homes (what we would call foster care today). It was common for employed women of all classes to solve "child care problems with temporary placements in institutions, with foster parents, or with relatives." Gordon, Linda. *Dorothea Lange: A Life Beyond Limits*. W.W. Norton, 2009, p. 109.

[113] Scheuerman, Dan. "Lost Children: Riders on the Orphan Train." *Humanities*, November/December 2017. Available at https://danscheuerman.files.wordpress.com/2013/09/humanities_orphan_train.pdf. For an excellent summary of this history see Pokempner, Jenny and Jennifer Rodriguez. "Foster Care in the United States: A Timeline." *Teen Vogue*, May 31, 2018. Available at: https://www.teenvogue.com/story/foster-care-in-the-united-states-a-timeline.

[114] Quoted in Katz, Michael B. *In the Shadow of the Poorhouse: A Social History of Welfare in America*. Basic Books, 1986, pp. 107-108.

[115] Billingsley, Andrew and Jeanne Giovannoni. *Children of the Storm: Black Children and American Child Welfare*. Harcourt, 1972, p. 38.

[116] A 1909 White House Conference on Children declared that "children of worthy parents or deserving mothers should, as a rule, be kept with their parents at home." Quoted in Katz, *In the Shadow of the Poor House*, p. 124.

[117] The tendency of child-focused agencies to ignore the needs of children of color was recognized as early as 1930, when a White House Conference on Child Health and Protection of Dependent and Neglected Children: "the dependent and neglected children of Negro, Puerto Rican, Mexican, and Indian families present special problems needing consideration, and while there is theoretical agreement among leaders in health and social welfare that the children of these groups should receive the… same standards of care as those given other children, their needs are in reality little understood by the general public, and in many communities are almost wholly ignored." Billingsley and Giovannoni, *Children of the Storm*, p. 80.

[118] Quoted in Ibid, p. 92.

[119] Graham, Lorie, "The Past Never Vanishes: A Contextual Critique of the Existing Indian Family Doctrine." *American Indian Law Review*, 23, no. 1, 1998, pp. 1-54. Available at: https://www.jstor.org/stable/20068871?seq=1#page_scan_tab_contents.

[120] Hogan, Patricia Turner and Sau-Fong Siu. "Minority Children and the Child Welfare System: An Historical Perspective." *Social Work*, 33, no. 6, November-December 1988, pp. 493-498.

[121] For a review of the historiography on Indian boarding schools see Davis, Julie. "American Indian Boarding School Experiences: Recent Studies from Native Perspectives." *OAH Magazine of History*, 15, no. 2, 2001, pp. 20-22.

[122] Ibid.

[123] Quoted in Jacobs, Margaret D. "Remembering the 'Forgotten Child': The American Indian Child Welfare Crisis of the 1960s and 1970s." *The American Indian Quarterly*, 37, nos. 1-2, Winter/Spring 2013, p. 146.

[124] Ibid.

[125] Graham, "The Past Never Vanishes," pp. 25-26.

[126] Hogan and Siu, "Minority Children and the Child Welfare System," p.495.

[127] Billingsley and Giovannoni, *Children of the Storm*, p. 221.

[128] Roberts, *Shattered Bonds*, pp. 246-248.

[129] The Multi-ethnic Placement Act of 1994 barred agencies from delaying or denying a placement "solely on the basis of the race, color, or national origin of the adoptive or foster parent or the child. See "The Multiethnic Placement Act." Administration for Children, Youth, and Families, 1995. Available at: https://www.acf.hhs.gov/sites/default/files/cb/pi9523.pdf.

[130] On CAPTA see "The Child Abuse Prevention and Treatment Act (CAPTA): Background, Programs, and Funding." Congressional Research Service, November 2009. Available at: https://www.everycrsreport.com/files/20091104_R40899_52b107ff31f0e25899fbe35212a7435e09a9a385.pdf.

[131] Roberts, *Shattered Bonds*, p. 15.

[132] Roberts, *Shattered Bonds*, p. 8.

[133] Jacobs, "Remembering the 'Forgotten Child'" p. 154. On ICWA see "The Indian Child Welfare Act: A Legal Overview." Congressional Research Service, September 2013.

[134] Quoted in Heimpel, Daniel. "Trump's Top Child Welfare Official Speaks." *The Chronicle of Social Change*, November 6, 2017. Available at: https://chronicleofsocialchange.org/featured/trumps-top-child-welfare-official-speaks. For more recent comments along the same lines see Milner, Jerry. "Reshaping Child Welfare in the United States. Lawyers as Partners in Prevention." American Bar Association, July 5, 2018. Available at: https://www.americanbar.org/groups/child_law/resources/child_law_practiceonline/child_law_practice/clp-today-2018/january---december-2018/reshaping-child-welfare-in-the-united-states--lawyers-as-partner.html?ct=t(EMAIL_CAMPAIGN_2_7_2018_COPY_01)&mc_cid=e8e55f1829&mc_eid=83eceb5310.

[135] Clifford, Stephanie and Jessica Silver-Greenberg. "Foster Care as Punishment: The New Reality of 'Jane Crow.'" *New York Times*, July 21, 2017. Available at: https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html.

[136] Ibid.

[137] Ibid.

[138] See generally Wolgin, Philip E. "Family Reunification is the Bedrock of American Immigration Policy." Center for American Progress, February 12, 2018. Available at: https://www.americanprogress.org/issues/immigration/news/2018/02/12/446402/family-reunification-bedrock-u-s-immigration-policy/.

[139] Testa, Mark F. "The Changing Significance of Race and Kinship for Achieving Permanence for Foster Children." In Derezotes, Dennette M. et al. *Race Matters in Child Welfare*. Child Welfare League of America, 2005, p. 232. Billingsley and Giovannoni, *Children of the Storm*, p. 53 and p. 80.

[140] Fluke et al. "Research Synthesis on Child Welfare Disproportionality and Disparities." Kirk, Raymond. "BUILDING EVIDENCE AND INFORMING POLICY: THEN AND NOW Re-examining the efficacy of IFPS using secondary data and advanced evaluation methods." August 2011. Available at: https://www.acf.hhs.gov/sites/default/files/cb/es2011_session_301.pdf.

[141] National Academies. "U.S. Should Significantly Reduce Rate of Incarceration; Unprecedented Rise in Prison Population 'Not Serving the Country Well,' Says New Report." 2014. Available at: http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=18613.

[142] Recommendation in Western and Pettit, Collateral Costs. Any risk assessment process needs to include checks against racial bias to ensure that people of color are not systematically assessed as higher risk. This may include data collection, the use of external assessors, and other measures. Another proposal has been to keep parents under house arrest. See Cowen, Tyler. "American Families Shouldn't Be Separated, Either." *Bloomberg News*, June 18, 2018. Available at: https://www.bloomberg.com/view/articles/2018-06-18/family-separation-goes-beyond-trump-s-immigration-plan.

[143] President's Task Force on 21st Century Policing. "Final Report of the President's Task Force on 21st Century Policing." Office of Community Oriented Policing Services, May 2015. Available at: http://elearning-courses.net/iacp/html/webinarResources/170926/FinalReport21stCenturyPolicing.pdf.

[144] Richeda, Benjamin, et al. "Baby Elmo Leads Dads Back to the Nursery: How a Relationship-Based Intervention for Fathers Enhances Fathers and Child Outcomes." Zero to Three, May 2015. Available at: http://elp.georgetown.edu/wp-content/uploads/2016/12/Richeda0515-3-Baby-Elmo-ZTT.pdf. Some prisons are allowing mothers with infants to raise them behind bars, though it is unclear why many of these mothers cannot simply be released into the community to raise their children at home. See discussion in Jouvenal, Justin. "Raising babies behind bars: A bold experiment in parenting and punishment is allowing children in prison. But is this a good thing?" *Washington Post*, May 11, 2018. Available at: https://www.washingtonpost.com/news/local/wp/2018/05/11/feature/prisons-are-allowing-mothers-to-raise-their-babies-behind-bars-but-is-the-radical-experiment-in-parenting-and-punishment-a-good-idea/?noredirect=on&utm_term=.6d53f429251c. The Bureau of Prisons has a program called Mothers and Infants Nurturing Together that allows mothers to be sentenced to alternative community-based placements. For analysis of these programs see "Mothers Behind Bars: A state-by-state report card and analysis of federal policies on conditions of confinement for pregnant and parenting women and the effect on their children." The Rebecca Project for Human Rights and the National Women's Law Center, 2010. Available at: https://www.nwlc.org/sites/default/files/pdfs/mothersbehindbars2010.pdf.

[145] Bernstein, Nell. "Arrest."