Beyond status: Seeing the whole child

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Competing values underlie U.S. immigration law and child welfare law. Immigration law often operates in ways that intentionally hinder family unity, which in the child welfare context enjoys tremendous constitutional protection. First, the operation of immigration law undermines family unity by failing to recognize the variety of family structures that exist, which has profound implications for millions of mixed status families, that is, families in which all family members do not hold the same immigration status. Second, immigration law hinders family unity because it does not recognize children’s interests as a valid factor in immigration decisions, thereby failing to take into account the best interests of the child, a concept that otherwise is universally recognized in child welfare law.

Despite the U.S. immigration system’s exceptional disregard for family unity and the best interests of the child, immigration status can become an issue in many contexts outside of immigration proceedings, from state intervention through child protection agencies to state court decisions in parent custody disputes. Therefore, systems and policies that affect immigrant children and their families must recognize the competing values underlying immigration law and child welfare law or risk importing improperly the immigration systems’ values into other contexts in ways that discourage family unity and negatively impact children.

1. Mendoza v. Miranda

Eleven-year-old Brianna is at the center of a transboundary custody dispute between her unmarried parents. In many ways, the factual allegations at the center of the custody dispute are typical of the kinds of factual allegations that parties regularly raise in custody disputes. However, Brianna’s family is of mixed status, i.e., all family members do not share the same immigration status or citizenship. As such, Brianna’s situation is illustrative of many issues that arise for transborder families. Brianna, her mother, and
her father are all Mexican citizens and do not have legal immigration status in the United States. Brianna’s extended family includes U.S. citizen relatives, including her younger half-brother, her maternal grandmother, and her paternal grandmother.3

Although Brianna’s father lived in the United States for eight years, he was deported to Mexico before Brianna was born. After she was born, Brianna lived with her mother, father, and paternal grandmother in Mexico. When Brianna was four, her mother moved back to the United States. Brianna went with her mother while her father remained in Mexico. Because she could not afford to support Brianna and could not enroll her in a pre-kindergarten program in the United States, Brianna’s mother sent her to Mexico to live with Brianna’s father and her paternal grandmother again.4

Less than a year later, Brianna returned to the United States and has remained in the United States since her return. As a result, Brianna has lived in the United States over half of her life. At times she has lived with her mother, and, at other times, she has lived with her mother and her maternal grandmother. She also visits with other relatives in the United States and interacts with them at family gatherings. Besides her family ties to the United States, Brianna has other ties. Brianna attended first through fourth grades at the same elementary school in the United States and did well academically.5 She also has made a number of friends, and is “very active in extra-curricular activities.”6

Brianna’s father has been unable to visit her in the United States because he does not have a visa or other authorization to enter the United States.7 Brianna’s mother and father dispute which parent should have custody of Brianna and in which country a determination of custody should take place.8 As a result, Brianna’s father filed a petition in the United States District Court for the Central District of California pursuant to the Hague Convention on the Civil Aspects of International Child Abduction.9 Such a petition is not to determine the merits of a custody dispute, but rather “merely seeks to establish in which country that custody proceeding may take place.”10

Her father’s petition requested Brianna’s return to Mexico for disposition of the child custody case and alleged Brianna’s mother had wrongfully retained Brianna in the United States.11 Her mother opposed Brianna’s return to Mexico for disposition of the child custody case, in part, because “Brianna had since become settled in her new environment.”12 Whether a child is settled in a particular location is a parental defense to a wrongful retention under the Hague Convention and allows the child custody case to proceed in the child’s new environment, in this case the California state court.

Despite Brianna’s ties to the United States, the district court found that “Brianna’s unlawful immigration status precluded her from being settled in the United States.”13 How the district court reached this decision in which Brianna’s immigration status absolutely precluded consideration of any of Brianna’s other ties or interests in family unity may be explained by the importation of immigration’s values into a different context. Accordingly, an understanding of the competing values underlying U.S. constitutional law and child welfare law on one side, and U.S. immigration laws on the other will aid in understanding the district court’s assumptions and misapprehensions in Mendoza.14

2. Valuing the child in family law

The right to family unity is not enumerated specifically in the U.S. Constitution. Nonetheless, the Supreme Court consistently has recognized that “the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.”14 The primary vehicle to ensure family integrity has been to emphasize parents’ role in raising children.15 “[T]he interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme Court].”16

Determinations regarding the custody of children and the law governing those determinations, “ha[ve] dramatically changed over the course of our history.”17 Until the early twentieth century, family law in the United States viewed children as a paternally controlled asset and treated them as property, always bound to their parents and under parental control. Within the family unit, wives were subjected to the control of husbands, and children, which included servants and other household dependents, to the control of their parents.18 Under this view, fathers virtually “had an absolute right to their children, ‘owning’ them as if they had ‘title’ to them.”19

Beginning in the late nineteenth century, “reformist discourses viewed children not so much as individual property . . . but as a form of social investment in which custody produced concomitant social duties on the part of each parent, the performance of which the state could supervise.”20 During this period, the state imposed limits on the absolute rights of the parent by legislating compulsory education, regulating child labor, and establishing standards for parental competence.21 This resulted in changes in the law governing child custody determinations: “[f]irst, through the best interests of the child standard, the law focused on the children of divorce, usually middle class children[and,] . . . [second], the law recognized the rights of poor children whose parents could not support them.”22 But the new shift towards the best interests of the child often presumed that mothers would better serve children’s best interests.23 A final shift in the law occurred in the latter half of the twentieth century when “[t]he best interests of the children were reinterpreted to include either or both parents, not always the mother.”24

When circumstances require that the state becomes involved in custody determinations, parental choice becomes just one factor in making such decisions. Universally, child custody law “in every state in the United States . . . embraces the ‘best interests”

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3 Id. at 1184-85; Mendoza, No. 08-55067, - - - F.3d - - - -, slip op. at 3459, 3.
4 Mendoza, 525 F. Supp. 2d at 1184-86.
5 Id. at 1186-87, 1194-95.
6 Id. at 1195.
7 Id. at 1185.
8 Id. at 1186.
9 Mendoza, No. 08-55607, - - - - F.3d - - - -, slip op. at 3461.
10 Id. at 3462.
11 Id. at 3474.
12 Mendoza, 525 F. Supp. 2d at 1184.
13 Mendoza, No. 08-55607, - - - F.3d - - - -, slip op. at 3462.
14 Id. at 3462.
22 Id.
23 Mason, supra note 17, at xiii-xiv.
24 Id. at 188.
25 Id.
26 Id. at 189; for a fuller discussion regarding changes in the conception of children’s rights throughout United States’ history and how those changes relate to immigration law see David B. Thronson, Kids Will Be Kids? Reconsidering Conceptions of Children’s Rights Underlying Immigration Law, 83 Ohio St. L.J. 979 (2002).
framework of family-sponsored immigration, the largest source of legal immigration.\textsuperscript{30}

On the surface, the Immigration and Nationality Act has recognized the general principles of family unity.\textsuperscript{31} It supports family relationships through its system of family-sponsored immigration, derivative immigration for the family members of certain immigrants, and waivers of bars of admissibility and cancellation of removal based on hardship to certain family members.\textsuperscript{32} But, “to the extent the statutory scheme of immigration law promotes the goal of family integrity, it does so only by providing parents with opportunities to align their children’s status with their own.”\textsuperscript{13}

The INA’s family-sponsored immigration framework allows legal permanent residents and citizens to petition for immigrant visas for certain family members.\textsuperscript{34} The person having legal immigration status is the “petitioner,” and the person wishing to immigrate and who the law presumes is waiting outside the country is the principal “beneficiary.” If the principal beneficiary has a spouse or children, in some instances the spouse or children may acquire immigration status as derivatives.\textsuperscript{35}

The law assigns various levels of priority to the petitions, depending on both the immigration status of the sponsoring petitioner, and the familial relationship between the beneficiary and the petitioner.\textsuperscript{36} Nontextual family relationships are recognized. U.S. citizens only can petition for their spouses, children, siblings, and parents.\textsuperscript{37} The ability of legal permanent residents is restricted further. They may petition only for their spouses and unmarried children.\textsuperscript{38}

The petitions of U.S. citizens receive priority over those of legal permanent residents and petitions based on the parent–child and spousal relationships of traditional nuclear families are privileged over other family relationships.\textsuperscript{39} Petitions filed by U.S. citizens for

30 In 2008, 64.7% of all legal permanent resident flow was due to family-sponsored immigration, as compared to only 15% for employment-based, 3.8% for the diversity program, and 15% for refugee and asylee adjustment. R. Monger & N. Rytina, U.S. Dep’t of Homeland Sec., Annual Flow Report, U.S. Legal Permanent Residents: 2008 3 (2009).


32 Thronson, supra note 15, at 1180 (2006); see also INA § 203(a), 8 U.S.C.A. § 1153(a) (West 2008) (setting forth preference allocation for family-sponsored immigrants); INA § 201(b)(2)(A)(i), 8 U.S.C.A. § 1153(b)(2)(A)(i) (excluding “immediate relatives” of U.S. citizens from direct numerical limitations on immigrant visas); INA § 201(c), 8 U.S.C.A. § 1151(c) (setting worldwide levels of family-sponsored immigrants); INA § 203(d), 8 U.S.C.A. § 1153(d) (defining who may receive accompanying or following to join immigration visas based on a family member’s immigrant visa); INA § 240A, 8 U.S.C.A. § 1229b(d) (allowing cancellation of removal for lawful permanent residents or nonpermanent residents based on, among other things, a qualifying familial relationship with a U.S citizen or lawful permanent resident).

33 Thronson, supra note 15, at 1181.


35 See INA § 203(d), 8 U.S.C.A. § 1153(d).

36 See INA § 203(a), 8 U.S.C.A. § 1153(a).


38 INA § 203(a), 8 U.S.C.A. § 1153(a).

their spouses and unmarried minor children are not subject to numerical limits and are immediately available. They face barriers in other major immigration law programs that are not directly related to family. For example, children generally are ineligible under a program known as the diversity visa lottery because applicants must be high school graduates or have equivalent education or work experience. And, while children are not directly prohibited from applying for employment-based immigrant visas, it is highly unlikely that they would have the requisite education or job experience to qualify.

Similarly, U.S. immigration laws fail to recognize the best interests of the children in the context of waivers of grounds of inadmissibility and in cancellations of removal. Even if an immigration visa is available, certain grounds of inadmissibility may preclude a beneficiary from being able to immigrate to the United States. In some instances, grounds of inadmissibility may be overcome by showing hardship to adult family members, i.e., spouses and parents. But the immigration statutes make hardship to children irrelevant. Not only are the best interests of the child ignored, the child’s interests are consciously excluded from the equation.

The failure to provide real consideration of children’s best interests extends to immigration removal proceedings. In this context, an individual facing removal may seek cancellation of the removal based, in part, on “exceptional and extremely unusual hardship” to his or her legal permanent resident or U.S. citizen spouse, parent, or child. Although children may be considered in determining cancellation of removal, the standard for relief is high and looks not to children’s best interests but rather whether they would be subjected to exceptional and extremely unusual hardship. To qualify for relief, parents must demonstrate hardship to children “substantially different from, or beyond that which normally would be expected from the deportation of an alien with close family members here.”

In theory, parents facing removal can argue hardship to their children in two basic ways. First, they can assert that if children are left behind, separation will cause hardship. But courts are unlikely to find “exceptional and extremely unusual hardship” because harm is a typical result of removal as “[d]eportation rarely occurs without personal distress and emotional hurt.” Moreover, separation from family members is “simply one of the ‘common results of deportation or exclusion [that] are insufficient to prove extreme hardship.’” Second, parents can argue that if children leave with the parent, the children will face hardship in the destination country. Such hardship, however, generally is insufficient for relief simply on grounds that children will not have the same levels of education, health care and economic opportunities that they would have in the United States.

Whether children stay behind or accompany parents out of the country, the interests of the children involved are not relevant to the immigration law determination unless they rise to exceptional and difficult to prove circumstances of hardship. Family separation and “common” harm to children are an anticipated and accepted荒.
part of the process. This stands in stark contrast to the principles of family unity and the best interest of the child at the center of domestic child welfare law.

Children and their interests are routinely and appropriately at the center of determinations in the child welfare context, but under immigration law children’s interests are brushed aside. The parent-centered nature of family and the diminished consideration of children’s interests in immigration law has profound implications for millions of children who find themselves in mixed status families. In such circumstances, immigration law hinders family unity by failing to recognize the variety of family structures in which children live and discounting children’s interests.

Given the failure to recognize the variety of family structures that exists and the inability to assert children’s interests, the reality in many U.S. families is that one or more family members do not share the same immigration or citizenship status. Children in immigrant families form “the fastest growing segment of the [United States] child population”64 and if current demographic trends persist, “children of immigrants will represent at least a quarter of all U.S. children by 2010.”65 At least one child in ten in the United States lives in a mixed status family.66

Mixed status families often include parents who lack authorization to remain in the United States. In the United States, there are currently “over 5 million children living with unauthorized parents.”67 In fact, in the 6.6 million families with a parent who is not authorized to remain in the United States, two-thirds of all children are U.S. citizens.68 Of these “unauthorized” parents, 1.5 million have exclusively U.S. born children.69 Added to these children of immigrants are nearly two million children in the United States who themselves lack authorization to remain in the country.70 In comparison with younger children, adolescent children in families with unauthorized parents are more likely to be unauthorized themselves.71 Because more “younger children were born here, there are many mixed-status families in which the younger children are citizens but the older children—like their parents—are noncitizens.”72 In sum, millions of children are directly affected by decisions regarding immigration law and policy that control the immigration fate of close family members. Children often pay a steep price for the happenstance of being born into a mixed status family.

The circumstances of Brianna and her family illustrate the price which many children in mixed status families pay because of U.S. immigration policy’s failure to value family unity by not recognizing the variety of family structures in which children live and not considering the best interests of the child. Ideally, a system that valued family unity through the recognition of the variety of family structures that exist would allow both Brianna and her mother to obtain immigration status through Brianna’s extended family members who are U.S. citizens.

As described above, however, the reality is quite different. Instead, this family that does not meet the U.S. immigration system’s ideal of a traditional, parent-centered family73 is forced to straddle international boundaries in ways that mean a forced separation at the least. For example, even though Brianna’s half-brother is a U.S. citizen, because he is a child, he is unable to petition for his mother or his sister, Brianna.74 Further, even if Brianna’s half-brother were an adult and was able to petition for her, the wait for a visa could be as long as nineteen years, due to the priority level assigned sibling petitions for Mexican beneficiaries.75 Brianna’s grandmothers cannot petition for her because U.S. immigration law does not view the grandparent–grandchild relationship as valid for immigration purposes, even though in 2007, it is reported that 2,607,152 children lived with grandparents who were responsible as caregivers for them, and 4,752,751 children lived in the same household as a grandparent.76

In this way, U.S. immigration law utterly fails to recognize real family relationships in ways that take into account the family structures in which children actually live.

Likewise, a system that recognized Brianna’s interests might permit her to petition for her father or mother should she gain legal status. At the least, with legal immigration status Brianna could visit family freely on both sides of the border. Such a system would facilitate parental rights to make basic choices, such as where Brianna should live and visitations with Brianna, while taking into account Brianna’s best interests.

Instead, other provisions of the INA create a situation in which members of mixed status families are forced to remain without authorization in the United States or face lengthy separations from their families. A provision of the INA generally makes inadmissible for a period of ten years individuals who have resided in the United States without authorization longer than one year.77 Another provision in the INA also makes inadmissible immigrants who entered the United States without inspection.78 And, as discussed above, although there are waivers of inadmissibility based on hardship to a spouse or parent, individuals may not seek a waiver based on hardship to a child.79 Unlike domestic child welfare law, U.S. immigration law fails to recognize children’s best interests by discounting “the interaction and relationship of the child with the child’s parents, siblings, and other important people in the child’s life,” “the wishes of the child’s parent[,]” “the ability of one parent to allow frequent and meaningful contact with the other[,]” and “potential disruption of the child’s life.”80 Families routinely are forced to either live apart or risk violating U.S. immigration laws, especially when one family member has been deported. The result is a system which presents untenable choices on immigrant

74 See pp. 7–8 supra. Brianna’s brother most likely attained citizenship through jus soli, that is, being born on United States soil. “Jus Soli is embodied in the first sentence of the fourteenth amendment to the U.S. Constitution: ‘All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.’” Hiroshi Motomura, We Asked for Workers but Families Came: Time, Law, and the Family in Immigration and Citizenship, 14 Va. J. Soc. Pol’y & L. 103, 108 (2006).
79 Supra pp. 9–10.
80 See discussion supra pp. 4–5 which sets forth the factors that domestic courts use to determine the best interest of the child.
families solely due to their immigration status. Any consideration of Brianna and her family's immigration status, then, must start with the acknowledgement that their status is predicated on an immigration system that does not recognize their right to live in the family structure of their choice and does not even consider the best interests of children.

4. Looking beyond status

If a child's status is the result of the application of a legal framework that ignores the real family context in which the child lives and disregards the child's best interests, then any view of that child that fails to look beyond immigration status implicitly adopts the values of the current immigration system. Viewing children and their families only through the prism of their immigration status creates the risk of distorting the viability of immigrant families. In Brianna's case, the district court, in determining that Brianna was not well settled in the United States because her status invalidated her visa, made assumptions about Brianna and her family that fail to look beyond issues of immigration status alone. The district court's assumptions and misapprehensions illustrate the risk of importing the values underlying immigration law into decisions affecting domestic child welfare in other contexts.

The district court determined that Brianna's lack of immigration status “is a constant danger to Brianna's well-being, threatening to undermine each and every connection to her community that she has developed in the past five years.”81 Perhaps tacitly understanding that immigration law works in ways that undermine family stability, the district court assumed that Brianna's lack of lawful status provided grounds to ignore her connections to her family and community, even though “Brianna has developed significant connections to the United States.”82

The district court further assumed that, because of their lack of immigration status, Brianna “and her mother are subject to deportation at any time[,]” while at the same time the district court presumed that, upon her return to Mexico, Brianna “will have a full opportunity to apply to return to this country legally, should she so choose.”83 While Brianna and her mother lack lawful immigration status in the United States, they have developed substantial ties and equities in this country. One irony of immigration law is that it may indicate that a person should leave the United States while simultaneously creating incentives to remain through provisions that upon exit trigger additional grounds of inadmissibility and obliterate consideration of equities here.84

Indeed, the district court's assumption that Brianna will be unable to obtain lawful status in the United States at some point in the future is unfounded. “Between individualized grants of discretionary relief and broad-scale legalization, the history of U.S. immigration law includes occasional episodes during which large groups of previously unlawful migrants were brought into the lawful fold.”85 And, many of those legalization programs have historically required a showing of continuous presence and ties in the United States for a period of years.86

Moreover, that undocumented immigrants are here without authorization does not necessarily mean that their deportation is imminent. As the Appeals court wrote: “the reality is that millions of undocumented immigrants are presently living in the United States, many of whom will remain here permanently without ever having contact with immigration authorities. . . . and '[e]ven with occasional spikes in the enforcement of immigration laws, most unauthorized immigrants are unlikely to face removal.”87 The district court's failure to see Brianna and her mother as anything other than people without status, resulted in a decision that ignored Brianna's ties to her family in the United States and imported immigration law's disregard of the real family contexts in which children live.

The district court's linking Brianna's status to that of her mother's also imports the values of parent-child centered immigration law in which benefits flow only from parent to child, and not the other way around. Moreover, the district court's insertion of the status of Brianna's mother does not take into account Brianna's interests. Just as immigration law fails to take into account Brianna's best interests, the district court's approach failed to take into account her best interests, or in the terms of the Hague Convention, “the well-settled defense [which] is intended to prevent harm to the child[,]”88 by equating Brianna to her immigration status.

The district court also devalued the parental rights of Brianna's parents which exist independently of immigration status and, as discussed above, serve as a vehicle to promote a child's best interests. The district court assumed that Brianna's father was “unable to . . . assert his right to shared custody of Brianna” because he “lack[ed] a visa or other authorization to enter the United States.”89 The implication is that noncitizens may not assert their parental rights in the United States, an implication which contradicts the constitutional protections given parental rights in the United States and which serves to undermine family unity.90

By failing to move beyond status, the district court also assumed that Brianna's lack of immigration status would mean diminished future prospects for her, because she would be unable to obtain a driver's license, be limited "to low-wage work[,]" lack access to affordable health care, and unable to receive financial aid if she chose to attend college.91 The Appeals court rejected this assertion as a basis for finding that Brianna was not settled in the United States because “to the extent that Brianna's unlawful status poses real risks, such risks are most likely to be suffered (if at all) in the indefinite future.”92 Further, many U.S. citizen children face the prospect of being unable to obtain a driver's license for a variety of reasons, being forced to work in low-wage jobs, and difficulties in attaining financing for college in the indefinite future, but that would not necessarily serve as a basis for determining that child is not well-settled in his or her community. However, by viewing Brianna and her parents solely as people without status, the district court made a decision that did not serve to promote the best interests of Brianna or her family.

In overturning the district court's decision, the Ninth Circuit Court of Appeals demonstrates how an awareness of the competing values underlying family law and immigration law can serve to better promote the well-being of immigrant children and their

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81 Mendoza, 525 F. Supp. 2d at 1195.
82 Id.
83 Id.
84 See discussion at supra page 14; also because inadmissibility generally only becomes an issue once an individual leaves the country and then seeks to reenter it, U.S. immigration law provides a perverse incentive for unauthorized immigrants to remain in the United States without status rather than leave the country and risk being denied admission and thereby be unable to reunite with family members in the United States. Kremer, et al., supra note 19, at 72–5.
86 See, e.g., INA § 245A, 8 U.S.C.A. § 1255a (allowing the adjustment of status of certain individuals who entered the United States prior to January 1, 1982).
88 Mendoza, 525 F. Supp. 2d at 1195.
89 Id. at 1185.
91 Mendoza, 525 F. Supp. 2d at 1195.
families. First, the Ninth Circuit rejected the district court’s view that Brianna’s immigration status alone determined the outcome of the case. The Court of Appeals wrote that “there is no justification in the [Hague] Convention’s text or its subsequent interpretation for holding that a child is not ‘settled’...simply because he is not lawfully present in the country.”93 Second, the Ninth Circuit explicitly rejected the district court’s reasoning that Brianna and her mother’s lack of immigration status defeated Brianna’s other interests and ties in the United States.94 Finally, the Ninth Circuit recognized that the district court misapprehended the tenuousness of Brianna’s residency in the United States and repudiated the district court’s finding that Brianna was not settled due to the threat of imminent removal. The Ninth Circuit noted “[i]n the ordinary case, then, a child such as Brianna is at minimal risk of removal, as is her mother.”95

5. Conclusion

Because the U.S. immigration system overrides the principle of family unity by ignoring the real family structures in which children live and systemically devaluing the well-being of children, viewing immigrant children and their families through the lens of their immigration status creates misapprehensions which import immigration or citizenship status.98 Such assumptions run the risk of harming children rather than helping them. Across the spectrum of ways in which courts or policy makers take action in children’s lives, an exploration of those assumptions provides fresh insights regarding the appropriate parameters for the consideration of immigration issues in other contexts.

Children’s interests change, as does the world in which they live. When immigration issues are involved in or impacted by courts, states, or policy makers, however, consequences can be profound and lasting. Understanding the ways in which immigration and nationality law devalue children’s best interests and fail to recognize all family structures, gives further reason to exhibit caution in mixing immigration and child welfare policy. As demonstrated, immigration law has real impact on families, yet it does so in a manner that does not take existing family contexts and children’s interests into account. When creating policy or making decisions that impact immigrant children and their families, it is vitally important that decisionmakers divorce themselves from their own assumptions and misapprehensions about immigration and look beyond status, if they wish to serve the interests of immigrant children and their families.

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93 Mendoza, No. 08-55067, - - - F.3d - - - , slip op. at 3469.
94 Id. at 3471 (“a child such as Brianna who has five years of stable residence in the United States coupled with academic and interpersonal success here, may be ‘settled’ within the meaning of [the Hague Convention], despite her unlawful status.”); see also id. at 3473–74 (discussing Brianna’s significant ties to the United States).
95 Id. at 3472.
96 See, e.g., Rodriguez v. Rico, No. D-303041 at 2 (Nev. Eighth Jud. Dist. Ct. Fam div. filed November 6, 2003) (copy on file with authors). In Rodriguez, despite the father having had no contact with the children for seven years, the court determined that the best interests of the children were served by transferring custody to the out-of-state father because the father had legal permanent residence and “can lawfully immigrate [sic] both minor children and obtain the status of a United States citizen on their behalf.” Id.
97 See Ginger Thompson, After Losing Freedom, Some Immigrants Face Loss of Custody of Their Children, N.Y. Times, April 23, 2009, at A15 (discussing one case in which the court terminated parental rights because the parent’s “lifestyle, that of smuggling herself into the country illegally and committing crimes in this country, is not a lifestyle that can provide stability for a child. A child cannot be educated in this way, always in hiding or on the run.”); see also In re Margarita T., No. A-95-53, 1995 Neb. App. LEXIS 397, at *15 (Neb. Ct. App. Dec. Dec. 19, 1995) (while denying that the father’s immigration status was a “fault” leading to termination of the father’s parental rights, the court stated that the father’s “status an illegal immigrant [means that] his future presence to provide any supervision of the care of Margarita can be measured only one day at a time, as he is here only so long as he can avoid deportation.”)
98 See, e.g., Uniform Child Abduction Prevention Act § 7(a)(9)–(10) (2006); (a) in determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent: (9) is undergoing a change in immigration or citizenship status that would adversely affect the respondent’s ability to remain in the United States legally; (10) has had an application for United States citizenship denied[.]