

HUMAN
RIGHTS
WATCH

TORN APART

FAMILIES AND US IMMIGRATION REFORM



Mike Wilson, a volunteer with Humane Borders in Tucson, Arizona, places containers of water in the desert in hopes of preventing more migrant deaths and leads search missions when families come looking for their loved ones.
© 2013 Platon for Human Rights Watch



LIVES AT STAKE IN IMMIGRATION REFORM

A recent surge in the number of child migrants trying to cross the US border from Mexico has rekindled public debate over US immigration policy. But the immigration issues that require Congress' urgent attention are not limited to the estimated 90,000 children who this year will journey into the United States alone and without authorization. Whether children who arrived yesterday or adults who came 20 years ago, 11 million unauthorized immigrants in the US are highly vulnerable to abuse of their basic rights—rights that US and international law guarantee.

Many are spouses, parents, and children of US citizens and of lawful permanent residents. This means that when their rights are violated—when they are exploited at work, detained for months or years in harsh conditions, or abruptly deported—American families and communities suffer too.

In June 2013, the US Senate passed a sweeping immigration bill that would create a path to citizenship for millions of unauthorized immigrants. The legislation is far from perfect, but it does contain important measures that would reduce some of the risks that many unauthorized immigrants face, allow many families to stay together, and minimize the number of people whose desperation leads them to try to enter the US illegally.

The full Congress should seize the opportunity to enact long-term comprehensive immigration reform that respects families, protects immigrants from workplace abuse and crime, safeguards due process rights, focuses enforcement on genuine threats to public safety, and includes a broad path to legal status.

Without meaningful immigration reform, millions of immigrants—like those whose stories follow below—will continue to live in fear and endure serious abuses. Their lives, and those of their families, are at stake.

1. LIFE AND DEATH ON THE BORDER

Despite a rise in the number of children seeking to enter the United States, the overall flow of unauthorized migration has decreased significantly—falling from its peak of 1.7 million people apprehended by US Border Patrol in 2000 to 421,000 in 2013.

However, the rising number of child migrants has intensified calls by some lawmakers to increase resources for Border Patrol and border enforcement. This would be a mistake. With 20,000 agents, the Border Patrol is already the largest federal law enforcement agency in the country, and has more than quintupled in size over the past 20 years. The amount the US government spends on immigration enforcement is already more than the budgets of all other major federal law enforcement agencies combined, even though the vast majority of unauthorized migrants caught on the southern border are not threats to public safety or national security. As a result, those who seek to enter the US illegally, and the communities in the region, now face a border that is very different to that of the past.

Unauthorized migrants now are increasingly detained, placed in expedited deportation procedures, and criminally prosecuted and imprisoned before deportation. Furthermore, as US immigration authorities have beefed up enforcement, they have driven border-crossing migrants away from urban areas to less populous, harsher terrain. As a result, a greater proportion of migrants, including children, are dying in the attempt. In 2012, an estimated 463 migrants died trying to enter the United States, the second highest number since these deaths began being recorded. Many migrants are motivated to risk detention, incarceration, and even death because they are fleeing violence and persecution, or are seeking to reunite with family in the United States. Provisions contained in the Senate bill would create, for some, legal ways of reuniting with family, but it would also call for an additional \$46 billion that would increase surveillance on the US-Mexico border, and double the size of Border Patrol.

Fermina Lopez Cash, a 47-year-old woman from Guatemala, sits in her home with a photo of her 13-year-old son, Omar, who died in July 2010 in the Arizona desert, trying to cross the US-Mexico border to join his mother and older siblings in Phoenix.

© 2013 Platon for Human Rights Watch





(left) Robin Reineke, director of the Colibrí Center for Human Rights, holds the personal effects of unidentified border crossers that are kept at the Pima County Office of the Medical Examiner in Tucson, Arizona, to match families with missing migrants. © 2013 Platon for Human Rights Watch

(next page) Last year, the Pima County Office of the Medical Examiner in Tucson, Arizona, investigated the deaths and examined the remains of 168 suspected migrants. They seek to identify the remains and bring closure to families looking for their loved ones. © 2013 Platon for Human Rights Watch

Fermina Lopez Cash

Fermina fled poverty and family tragedy in Guatemala in 2006. She said her grandparents and mother had been “disappeared” in the country’s deadly decades-long civil war, and she raised her three children as a single mother. Fermina left her children in Guatemala, but the two older ones, determined to help her, soon found their way north. Her youngest, Omar, who was only 9 years old when she left, begged to come to the US as well. She tearfully recalled his loneliness and his insistence that he was “training” for the arduous journey north. But she didn’t trust the men who work as smugglers, and she knew from personal experience how difficult the journey was. Only after Omar told her he had been threatened by a man who was occupying Fermina’s house did she finally agree. “It was that day that I decided to bring my baby,” she said. A middle-aged woman with whom Omar had become acquainted offered to come with him, and they hired a “coyote” (smuggler) to take them across the border.

Eight days after the group had left, Fermina received a phone call. A voice said, “I am only informing you that your son and the woman stayed....They said they could no longer walk.” Almost three years later, the remains of a teenage boy that had been found in the Arizona desert along with those of an older woman, were confirmed as those of Fermina’s son.

Robin Reineke

Robin Reineke, director of the Colibrí Center for Human Rights based in Tucson, Arizona, helped to identify Omar’s remains. “There’s been this discourse that security is the automatic obvious need on the border ... more walls, more border patrol, more surveillance, more unmanned aerial drones,” she said. “That’s the type of strategy that we saw change our landscape into one of death, and it’s heartbreaking to see the same type of conversation happening now.”

Border Patrol’s rapid and unprecedented growth has been accompanied by hundreds of complaints of rights violations in recent years, including beatings at the border and racial profiling, along the United States’ borders with Mexico and Canada. The Senate bill addresses some of these concerns by calling for use-of-force trainings, as well as imposing a prohibition on racial profiling by Customs and Border Protection agents. But the bill’s requirement to quickly double the size of Border Patrol, and recent calls by some Congress members for ramped-up border enforcement, raise serious concerns





that rights violations at the border will persist and even intensify.

[Anastasio Hernandez Rojas](#)

On May 28, 2010, Anastasio Hernandez Rojas, 42, tried to re-enter the United States to return to his family after having been deported a few months earlier. He died three days later, leaving behind his wife, Maria Puga, and their five US-born children, now aged 7 to 23. Customs and Border Protection agents claim that he was combative and force was necessary to subdue him. An autopsy report ruled his death a homicide, with hypertension and methamphetamines as contributing factors. An investigation is pending into whether Customs and Border Protection used excessive force.

“No one from the government ever contacted us ... to apologize to me, or to give us an explanation of what happened,” Puga said. “Never.” Puga has since become active in efforts to investigate her husband’s death and to seek greater transparency from CBP regarding its training and policies. “I want my kids to grow up peacefully, not to grow up with rancor,” she said. “That is why I continue to search for justice.”

Maria Puga, 42, and her twin 7-year-old children, Daniela and Daniel, photographed by the wall at the San Ysidro port of entry near San Diego, California. Border guards beat and shocked her husband, Anastasio Hernandez Rojas, with a stun gun some 100 yards away from the site of this photo on May 28, 2010, near Puerto Mexico, where Customs and Border Protection agents process migrants before they are deported to Mexico. He died three days later.

© 2013 Platon for Human Rights Watch

2. FAMILIES TORN APART

Current US immigration law threatens the right of many American families to live together. An estimated 17 million people in the US have at least one family member who is in the country illegally. Yet most unauthorized immigrants with strong family ties to the United States do not have a realistic way to gain legal status.

Immigration judges in most cases are powerless to take family relationships into account when weighing whether to deport an unauthorized immigrant. And immigrants, once deported, have almost no way to return legally, whatever their family ties to the US. Under the Senate immigration bill, some would be able to apply to return legally.

Marta Garcia

More than 20 years after leaving Mexico for California, Marta Garcia said she considers the United States her true home. It is where she met her husband, Crescencio Alguirre Duenas, and raised her three children, Gisella, Jasmine, and Roy. But while her husband and children are all US citizens, Marta was in the United States illegally. She said that because her husband had applied for her to become a legal resident, she mistakenly thought she could return to the US legally after leaving to take care of her dying mother in Mexico. But when she tried to reenter the country in the summer of 2013, she was arrested by border officials and immediately deported. Marta has little hope, under the current law, of legally rejoining her family in the US. She was interviewed in Tijuana, while her family remained in California, trying to pick up the pieces of their lives without her. Tearfully describing her kids—her studious daughters and athletic son—she said, “I want to be with my children and watch them succeed.”

Tying the Hands of Judges

The US immigration system is especially harsh on non-citizens with criminal convictions, even minor or very old ones. The US government is empowered to regulate migration, including by deporting people who have broken the law. But the current system applies a mandatory “one-size-fits-all” policy to a wide range of offenses, from the very serious to the relatively minor. Since 1996, immigration law has severely limited judges’ discretion to consider cases on an individual basis. Anyone convicted of an “aggravated felony”—a legal term so broad



Marta Garcia, wife of a US citizen and mother to three children who are US citizens, weeps at a women’s shelter in Tijuana, Mexico, soon after being deported.

© 2013 Platon for Human Rights Watch



Roland Sylvain, 35, and his wife, Joeddy, 30, who is a US citizen, pictured with their older son, also a US citizen. Born in Haiti, Roland has been a lawful permanent resident of the United States since the age of 7, but he faces permanent exile from the US for a single conviction arising from a traffic offense.
© 2013 Platon for Human Rights Watch

that it encompasses both shoplifting and murder—must be ordered deported and permanently barred from entering the United States, even if that person has strong ties to a US family or can show that they have since lived law-abiding lives. Even lawful permanent residents (that is, “green card” holders) can be deported and barred from returning to the US if convicted of an aggravated felony, without even an opportunity to present a judge with evidence of family ties. The immigration bill that the Senate passed in July offers no remedy for this problem. House legislative proposals offered in 2013 would actually expand the definition of “aggravated felony” to encompass an even broader range of offenses.

Roland Sylvain

Roland Sylvain first came to the US at 7 years old, as a legal immigrant from Haiti. His wife, Joeddy, is a US citizen, and so are their two children, as well as his two children from a previous relationship. Roland has been for many years a lawful permanent resident of the US, but everybody else in his immediate family is a US citizen, including his parents, his siblings, and his 94-year-old grandfather.

In 2001, Roland was pulled over for speeding and issued three tickets while driving through Virginia with his cousin and uncles. “I panicked, because my license was revoked at the time,” Roland said, explaining why he signed his cousin’s name instead of his own to the first two tickets. When he got to the third, Roland said, he told the officer, “I’m sorry. I lied. My name is Roland Sylvain.” The officer turned and said, “Too bad, you just got yourself three felony charges.” Roland hired a lawyer, who told him, “Just plead guilty, there are going to be fines. It’s no big deal.” He followed the attorney’s advice and served a year of probation for the “aggravated felony” of “forging public records.”

In 2011, returning from a family vacation, Roland was stopped by immigration officials, who took his green card and put him into deportation proceedings, citing his 10-year-old “aggravated felony” conviction. Roland and his family are struggling to understand this legal term: “‘Aggravated felony’ makes it sound like I killed someone or I was some type of major drug dealer. And here it is, I’m facing deportation for three traffic tickets.” His next hearing is in September 2014. Under the current law, the judge is required to order him deported and permanently bar him from living with his family in the US.

Living in fear

Undocumented immigrants in the United States live in a state of anxiety and insecurity, and an ever-present threat of arrest, detention, and deportation. Deportations have increased dramatically in the past two decades, from 30,000 in 1990 to almost 370,000 in 2013—a total of 4.4 million over the same period. When an unauthorized immigrant is removed from the US, family members who are US citizens and legal residents suffer the emotional and financial consequences. The Senate bill includes a path to citizenship, but that path is arduous and requires that immigrants pay steep fines. Moreover, it excludes anyone with a felony conviction without any opportunity for individualized consideration.

Angie and Peter Kim

Angie and Peter Kim came to the United States from South Korea with their parents when they were 9 and 7 years old respectively. Their grandmother, a US citizen, had petitioned for their family, they said, but after years of waiting due to a backlog of visas, she died just before they could complete the process. When their father married a US citizen, he and Peter became legal permanent residents, but not Angie, who, at 21, was too old to qualify. Angie has become an activist in the movement of so-called “DREAMers,” undocumented immigrants who were brought to the United States as children. Their activism prompted the Obama administration in 2012 to introduce a new policy called Deferred Action for Childhood Arrivals (DACA), under which some immigrants brought to the US as children can apply for a two-year reprieve from deportation and obtain temporary work papers. Angie has since been granted deferred action for two years under this program. However, without congressional action on immigration, she could soon be back where she started—unauthorized and living in fear of deportation. Angie knows that in some ways she is lucky. “I’m able to sit next to my brother right now but I know ... children, or parents who are literally separated from each other.” The stories of those whose families have been torn apart, she said, “gives you a lot of courage to step up.”

Kathleen Velazquez

Kathleen Velazquez, a US citizen, was building a life with her partner Antonio Herrera, an undocumented immigrant who had grown up in the US. According to Kathleen, Antonio was the main support for her and their children, mother, sister, and disabled older brother until he was arrested in 2012 for working with false documents. She said those charges were ultimately dropped, but he was placed in immigration detention and missed the birth of his son, Aaron, in February 2013.



Kathleen Velazquez’s partner, Antonio Herrera, was arrested in 2012 for working with false documents. She said those charges were ultimately dropped, but he was placed in immigration detention and missed the birth of his son, Aaron, in February 2013.
© 2013 Platon for Human Rights Watch



3. EXPLOITED AT WORK

Immigrant workers, both authorized and unauthorized, are a mainstay of the US economy, and certain industries, like agriculture, depend on them heavily. But 8 million workers in the United States, including at least half the nation's 1.4 million farmworkers, are unauthorized.

Workers without legal papers are highly vulnerable to exploitation. Immigrant workers injured on the job or subject to sexual abuse are often afraid to report the harm they have suffered, for fear that their employers will report them to immigration authorities and have them deported. Conscious of the power they hold over unauthorized workers, employers who fail to pay wages often tell them, "I don't have to pay you, you're illegal."

All workers, regardless of immigration status, should have the right to safe and healthy working conditions and to equal treatment under the law. If the Senate immigration bill, or similar legislation, becomes law, some unauthorized workers will be able to work in the United States legally. The Senate bill also increases legal protections for workers who suffer serious workplace abuses, which would empower them to seek remedies and stand up for their rights.

Evie Liu

When Evie was 18, "snakeheads," the Chinese term for smugglers, approached her family in China and said they could get her into the US

quickly and easily. Once there, they assured her parents she would make enough money to help them with their heavy debt. Instead, Evie said her roundabout journey through four countries took several months, during which time she was often denied food and water and sometimes held under armed guard. When she was caught by immigration authorities entering the United States, the traffickers bonded her out of detention but told her she now owed even more, a total of \$98,000. She began working seven days a week, paid only in tips, to work off the debt. There is no right to appointed counsel for immigrants who cannot afford a lawyer, and so she had no idea she was eligible for help as a trafficking victim. Through luck and chance, Evie met Lauren Burke, a Mandarin-speaking nonprofit immigration attorney, who helped her apply for and receive a "T" visa as a trafficking victim. "Human trafficking exists because so many people are forced to live in the shadows," said Burke. "The more humane we can make our [immigration] laws, the harder it will be for traffickers to continue with their illicit work."

Alina Diaz

Alina Diaz, a farmworker advocate, works with many women who report having been victims of workplace abuse, including sexual violence and harassment by supervisors. Often such women are reluctant to report these abuses for fear of being deported. "You don't call the police unless you want a free ticket back to your country," Diaz said.

Once an undocumented immigrant herself, Diaz is now a US citizen. For her, the farmworkers in her community are "already great citizens" in all but name: they work hard, pay taxes, and contribute labor that helps to feed the people of the United States. She dreams that one day they will go to Washington, not to "demand and scream and march," but to commemorate victory— to say, "Thank you, because you are giving me dignity, because you are treating me as a human being."

(right) Evie Liu, 23, was trafficked into the United States when she was 18 years old.

© 2013 Platon for Human Rights Watch

(next page)

Alina Diaz, a farmworker advocate, with Lidia Franco, Gisela Castillo and Marilu Nava-Cervantes, members of the Alianza Nacional de Campesinas. Alianza is a national organization that works to mobilize farmworker women around the country to engage with national policymakers about workplace abuses, including unpaid wages, pesticide exposure, and sexual harassment.

© 2013 Platon for Human Rights Watch



GO
HAVE ALL
THE FUN

4. LOCKED UP

The US immigration detention system has grown enormously in the past 20 years. The US government currently spends about \$5 million a day to detain immigrants. Congress has even decreed that at least 34,000 people be detained on any given day. Immigration detention is not supposed to be punitive in nature; its purpose is to ensure that non-citizens appear at their hearings. In fact, about half of all immigration detainees have never been convicted of a crime, and even those with criminal records have already served any sentences that the criminal justice system meted out. Numerous detainees, including children and victims of torture abroad, have endured punitive conditions, including prolonged solitary confinement, grossly inadequate medical care, and sexual abuse, which often goes unreported or unaddressed. Detainees are regularly transferred across the country, far from family members and legal assistance, simply due to limited space.

Even nonviolent offenses, such as simple possession of a controlled substance, trigger “mandatory detention” of a non-citizen, meaning that even lawful permanent residents who might have a good defense to deportation have no opportunity to post bond. Prolonged detention severely impacts non-citizens’ ability to fight deportation, as continued detention separates them from their support networks, limits their access to legal counsel, and typically leads to financial hardship.

The Senate bill for immigration reform includes provisions that would enable more immigrants in detention to get a bond hearing, expand alternatives to detention (such as electronic monitoring), and call for more oversight of detention facilities. In contrast, one of the House proposals for reform would expand detention, including mandatory detention of those convicted of even minor offenses.

Melida Ruiz

Melida Ruiz, a lawful permanent resident, has lived in the United States since 1981. Her entire family—children and grandchildren, mother, brothers, and sisters—is in the United States, and all are US citizens or permanent residents. Until she was injured in a car accident, she worked as a roofer in New York and New Jersey. In 2011, Melida was arrested and ultimately held in immigration detention for seven months while she fought her deportation based on a 2002 misdemeanor drug conviction, her sole conviction in more than 30 years in the United States. In granting her application



Melida Ruiz, a 52-year-old grandmother, photographed with her 19-year-old daughter, Mercedez Ruiz, and her one-year-old grandson, Christopher Gonzalez.

© 2013 Platon for Human Rights Watch



(left) Hilarion Warren Joseph, 46, a decorated veteran of the 1990-91 Persian Gulf War and a lawful permanent resident, with his son, Japeri, 13, who wears the jacket from Joseph's US Army uniform. The government sought to deport Joseph for an "aggravated felony," which he fought for three years while in immigration detention. He now lives with Japeri in Brooklyn, New York. © 2013 Platon for Human Rights Watch

(next page) The grassroots organization Puente's "Undocubus" took dozens of undocumented immigrants, who adopted the slogan, "No Papers, No Fear," from Phoenix, Arizona, to the Democratic National Convention in Charlotte, North Carolina, in the summer of 2012. © 2013 Platon for Human Rights Watch

for cancellation of removal and allowing her to remain in the United States, an immigration judge found that her one conviction was "out of character," and that Ruiz was "a law abiding resident of the United States and a stalwart positive force for her family and friends." Her detention, mandatory under current immigration law, cost US taxpayers over \$34,000.

Although Melida knew she had a good chance of winning her case, months of detention away from her family were difficult. When her daughter Mercedes, who was then 17, gave birth to Christopher, Melida could not be there. She considered giving up and agreeing to be deported voluntarily, she said. But "the only thing keeping me strong was my kids."

[Hilarion Warren Joseph](#)

Hilarion Warren Joseph first came to the United States from Trinidad in 1987, as a lawful permanent resident, to join his mother and his sister. Three months after he arrived, he joined the US Army, in part because a recruiter told him he could become a US citizen more quickly. Joseph's unit was activated on August 1990 and sent to the Middle East during the Persian Gulf War. As part of the "spearhead unit," Joseph said, he was trained to be on the front lines, moving ahead of other divisions, "the first to go in and the last to get out." "The training requires us to be mentally 'do or die,'" he said. He received numerous commendations and awards over eight years of service in the Army and the Army Reserves, and was honorably discharged in 1996.

When he returned from the war, Joseph said, he suffered from post-traumatic stress disorder. "I did a lot of stuff in order to crutch my pain and suffering.... Between 1997 and 2001, I attempted suicide three times." In 2001, Joseph was convicted of transporting guns without a license. The judge sentenced him to a term of probation, rather than incarceration, but when he violated his probation by failing to report that he had moved to his mother's house, he received a six-month prison sentence, at the end of which he was placed in immigration detention, where he remained for three years.

After years of litigation, the Third Circuit Court of Appeals ruled that Joseph had not been convicted of an "aggravated felony." He was thus eligible to apply for cancellation of removal and present evidence of his service to the United States and his strong family ties in requesting permission to remain in the country. But many other veterans are not so fortunate and end up exiled from the country they served.

ACKNOWLEDGMENTS

Platon and Human Rights Watch thank the many immigrants and their families who generously and courageously shared their experiences with us for this project. We also thank Alina Diaz, David Maung, Samuel Murillo, the ACLU Immigrant Rights Project, American Friends Service Committee – US/Mexico Border Program, Alianza Nacional de Campesinas, Atlas: DIY, the Arizona DREAM Act Coalition, Casa del Migrante, Coalicion Pro-Defensa del Migrante, the Colibrí Center for Human Rights, Instituto Madre Assunta, Farmworker Justice, the Kino Border Initiative, the Immigrant Defense Project, Immigration Equality, the Law Offices of Claudia Slovinsky, the Pima County Office of the Medical Examiner, and Puente Arizona.



