Introduction

Encounters with Illegality

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Fleeing violence in their home nation of Honduras, young Diego and his mother, Wendy Osorio Martinez, came to the United States seeking asylum. They were apprehended by US Border Patrol agents and transferred to Berks County Residential Center in Pennsylvania, one of three US immigration detention centers that hold women and children. They were ordered released after being held for nearly two years—654 days—in the facility, during which time Diego, three years old when he left detention, had learned to walk and talk.

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In February 2017, twenty-one-year-old Juan Manuel Montes Bojorquez was deported from the United States, despite his status as a recipient of Deferred Action for Childhood Arrivals (DACA), and although he migrated with his family as a nine-year-old and had spent most of childhood in the country. A brief interaction with law enforcement—a US Border Patrol officer asked Juan for identification as he was walking in Calexico, California—resulted in his deportation later that night. Today he lives in Mexico, far from family and friends.

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When Guadalupe García de Rayos went for her annual check-in with US immigration officials, US Immigration and Customs Enforcement (ICE) agents took her into custody while her husband and two US citizen children waited outside. ICE later announced that Guadalupe would be deported. Although her children and a group of immigrant advocates tried to block the van transporting her, ICE deported Guadalupe
to Mexico, the country from which she had migrated more two decades earlier, as a child herself, at the age of fourteen.³

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In each of these cases, young people faced distinct circumstances, had diverse experiences, and held different immigration statuses, and yet collectively these encounters demonstrate similar patterns in the ways that children and youth interact with government agents and institutions. This book’s main intent is to track and understand how young people encounter, move through, and/or are outside of a range of legal processes, including border enforcement, immigration detention, federal custody, courts, and state processes of categorization. Even if young people do not directly enter state immigration systems—because they are US citizens or have avoided detention as undocumented immigrants—they are nonetheless deeply impacted by the invasive reach of government in its many forms.

Thus, this book’s title, Illegal Encounters, highlights our focus on young people’s interactions or encounters⁴ with the different legal systems that regulate immigration. Scholars from across disciplines have made “illegality” a focus of their work, considering the ways in which individuals are subject to laws that mark them as “illegal” in a range of contexts,⁵ especially through state actions that are tied to immigration status.⁶ Research about the “legal production of migrant ‘illegality’”⁷ problematizes “illegality” itself, showing how categories assumed to be natural are in fact created by laws, lawmakers, and government bodies and agencies that carry out immigration enforcement.

Throughout this volume, we consider children’s and young people’s many encounters with illegality, deportability,⁸ and deportation—those who migrate as well as those who are affected by the migration of others. We examine the impact of legal systems and discourses that construct legal categories on the everyday lived experiences of young people and their families, paying particular attention to the contradictions that occur when the state serves as both the body enforcing immigration law and the entity ostensibly tasked with providing a humanitarian response to crisis and suffering.⁹ To illuminate the circumstances that young people currently face when they move to and from the United States, the following chapters and reflections consider and prioritize on-the-ground
consequences. In what ways do political, legal, social, educational, and other systems shape children’s experiences of immigration, and how do young immigrants and immigrant families negotiate the increasingly restrictive state actions of immigration control and policing?

In the United States, millions of children and youth are undocumented migrants or have family members who came to this country without authorization. In this context, the unique challenges faced by young people—from new arrivals to long-term residents with a range of immigration statuses and citizenships—demand special attention. The media stories, reports by nongovernmental organizations (NGOs), and occasional documentary films on this subject provide only a partial view of this complicated set of circumstances. This volume takes a comprehensive and systemic approach by following children and youth as they cross the border, suffer apprehension and detention by immigration authorities, go through removal proceedings in immigration courts, lead lives in the shadows outside of legal systems, and witness the migration experiences of their loved ones. We turn our attention to how these processes unfold within specific local, national, and transnational contexts—in the United States and across the Americas, especially Mexico and Central American countries—as people migrate across the US-Mexico border and as the US government enacts policies and laws aimed at controlling and restricting such movement.

In the following pieces, then, contributors focus on the challenges that young migrants from the Americas face within and/or outside of the purview of overlapping criminal, immigration, and child welfare systems, whether in the United States or in their countries of origin. Children and youth who migrate to this country find themselves curiously situated both within and outside of different systems, and often betwixt and between different frameworks, institutional responses, and laws. For example, children may be treated as adults in immigration courts; criminalized and held in secure facilities even if very young; caught up in immigration enforcement aimed at their parents; granted temporary legal status (or not) as young people raised in the United States; and/or subject to government policies and practices but without the constitutional rights granted to citizens. The paradoxical and perplexing positionality of children vis-à-vis immigration and other state regimes is the result of a combination of factors and aspects of identity,
including age, citizenship, family relations, race, gender, and class position, among others. We maintain that children, youth, and young adults uniquely grapple with these contradictions, because of their categorization as “minors” or as members of the next generation, and because of the particular ways in which they are perceived socially, culturally, and within institutions. We therefore focus on precisely this positioning of young people in, between, and outside of legal systems and institutions.

The book provides new perspectives on immigration debates and discussions taking place in the academy, among policy makers, and in the public sphere. It is unique in that the contributors privilege the voices and everyday experiences of immigrant children and youth themselves. Some of the following chapters and essays provide firsthand accounts of the experience of immigrating as children or as teenagers to the United States, including those whom the US government categorizes as “unaccompanied alien children” and those who migrated at a young age with family members. Many of the pieces are written by advocates and service providers who have years of experience working directly with young people and who draw on these interactions to provide specific policy recommendations. Still other contributors are researchers whose work focuses on the everyday lives and experiences of young people as understood from their own viewpoints. By combining these different perspectives, the book presents ethnographically rich accounts that also have policy implications, are of theoretical importance to academics, and convey the outlooks of young people themselves—views of immigration that are generally missing from the public arena but that can contribute to informed debates and policy reform.

This book, then, is innovative in the way that it combines writings by academics, practitioners, and migrant youth. We bring together work by scholars, including ethnographers from anthropology, education, sociology, and legal studies; practitioners such as social workers, attorneys, and judges; authors at different stages of their careers, including senior and junior scholars, graduate students, college students, and recent graduates; and most important, those who immigrated to this country as children themselves. Our primary aim is to bridge disciplinary and professional divides in order to bring different perspectives into productive dialogue and to highlight the connections and/or gaps between theory and practice.
The volume also highlights the range of experiences that young people have in the context of immigration—whether they themselves or their loved ones are immigrants (or both). Some children migrate with undocumented parents or other family members while others make the journey alone or with hired smugglers to reunite with parents who previously migrated to the United States. After growing up in the country, some undocumented and US citizen children may follow deported family members to countries they left as children or remain in the United States on their own, with relatives, or in foster care or state institutions. Among children living in the United States, many have such strong ties to the nation that they may not even be aware of their unauthorized status until they apply for a driver's license or a job. Still others migrate alone, often fleeing violence in their home country, and are apprehended by immigration authorities. Some are immediately deported, while others may be detained, placed in deportation proceedings, and released to sponsors. Countless young people live in the shadows for years.

By underscoring the ways in which young people encounter or avoid legal systems, this book problematizes the very policies, laws, and legal categories that shape so much of daily life for immigrants in the United States. By following children and youth as they navigate US immigration policies, we complicate the supposed binary of “legal” and “illegal” in their lives—that is, the notion that such categorizations of migration can be neatly defined and separated. The volume highlights the ways that young people (1) enter in government systems, (2) move through legal processes, and/or (3) are forced out of the nation or resist unjust institutions that attempt to define immigrants as outside of the national body. Certainly, these stages—in, through, and out—are not easily delineated, and a primary aim of this book is to show the overlapping and blurry character of young migrants’ encounters with, and challenges to, the very illegality that is thrust upon them by state action, policy, law, and practice.

Mapping Illegality in the Lives of Young People

From the nation’s founding until today, US immigration laws and policies have emphasized restriction, exclusion, and control. Contemporary immigration and deportation policies are a legacy of long-standing
ideas about race, imperialism, and state power. Late nineteenth-century legal doctrine, for example, established the government’s right to expel foreigners and held that deportation is not punishment, a finding that still applies today. During the same period the Supreme Court distinguished civil detention from criminal incarceration, holding that jailing pursuant to a civil proceeding against a potential deportee was permissible. The view that immigration detention differs fundamentally from penal imprisonment has persisted even as the number of adults, youth, and families in detention has skyrocketed.

During the late twentieth and early twenty-first centuries until the contemporary moment, the US government has expanded the category of “illegality,” ushering in further restrictions on immigration and criminalizing immigrants, including migrant youth and even very young children. Immigration and antiterrorism laws, such as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and legislation passed after September 11, 2001, placed a heightened emphasis on security and containment. These statutes curtailed existing personal freedoms, gutted due process protections, gave unparalleled enforcement powers to immigration authorities, blurred the already tenuous boundary between immigration and criminal law, and limited judicial review of detention and deportation decisions. This legislation also expanded the categories of deportable offenses to include nonviolent misdemeanors, applied them retroactively to include acts committed “at any time” in a person’s life, and eliminated the exercise of discretion by immigration judges in most deportation cases.

The conflation of immigration and criminal laws and the increased reliance on enforcement have had an adverse impact on young people, ranging from infants to young adults, specifically as members of families. Because of the militarization of national borders, there are growing numbers of families that extend transnationally and have members with mixed legal statuses. Illegality and deportability disrupt and reconfigure immigrant families in profound ways. Divided families result when, for example, family members are forcibly separated while in federal custody at the US border, undocumented parents of immigrant or US citizen children are detained or deported, or unaccompanied child migrants are removed at the border or held in federal custody after apprehension by immigration authorities. Indeed, it is precisely in the sphere
of family life that children often encounter legal systems and the state actions that limit or define their status as children, as immigrants—or as those who are related to immigrants—and as members of families, communities, and social networks.

And, as several of the pieces in this volume underscore, migrant children themselves are at constant risk of confronting the coercive power of government systems of apprehension, detention, and deportation. Unaccompanied child migrants from Central America and Mexico who seek refuge, family, work, and education in the United States may be caught in federal detention systems or deportation proceedings. If they are apprehended by immigration authorities, child migrants enter a labyrinthine system (see Guevara Martínez, this volume) that may include Border Patrol stations, ICE detention centers, subcontracted facilities and jails, and proceedings in state and federal courts. And, as several contributors to this volume show, US citizen children are also affected by the immigration status of loved ones as parents and other family members move in and out of legal systems.

Undocumented children and youth who grow up in the United States have the same aspirations and abilities as their US citizen peers but are often socially and economically marginalized. Many are permanently stymied by the cumulative disadvantages of lacking citizenship, and, despite educational and other opportunities in the United States, they may end up in the same structural position as their undocumented parents and significantly disadvantaged compared with their peers. The persistent effects of illegality limit social mobility and constrain social networks. By adulthood, illegality can become a “master status” that pushes them to the margins. Exploitative jobs, missed opportunities, and accumulated frustrations exact a significant toll on the physical and psychological well-being of young people. And all children with ties to immigrants—regardless of immigration status or citizenship—can be deeply impacted by “illegal” statuses and restrictive immigration laws.

This volume examines the impact of evolving immigration policies, especially those that regulate entry, produce unauthorized migrants and illegality, and redefine potential citizens. On the one hand, the authors explore how children and youth are marginalized within and across borders, and how legal frameworks and state power disadvantage them. On the other hand, the pieces also examine youth empowerment move-
ments and civil disobedience initiatives through which youth challenge public policies on enforcement and deportation and shape legislation on citizenship, family security, and immigration. In this sense, young people interact with, are coerced by, and/or challenge systems of “illegality” and “legality,” as well as the spaces in between. Although we outline agency on the part of individual children and youth, above all, the pieces in the volume demonstrate the structural power of state-based and supranational forces that constrain and limit young people and their family members as they move across borders.

Law and Policy as Everyday Experience

Multiple factors have coalesced to produce this complicated legal backdrop to the immigration of young people and their family members, including a patchwork of existing laws as well as the absence of laws that could address certain aspects of immigration. Restrictive immigration laws, intensified enforcement at international borders and in the country’s interior, as well as executive actions and federal programs such as those overseen by the US Department of Homeland Security (DHS) clearly influence the everyday lives of young immigrants and young people in immigrant families. In addition, government agencies and laws that do not specifically address immigration—for example, in the spheres of education, child welfare, and social services—also play out in the lives of children and youth. Finally, the absence of laws, especially decades without comprehensive immigration reform, shapes daily experience for millions of infants, children, and teenagers in the United States.

There are currently more than 11 million unauthorized migrants living in the country, more than 2.5 million of whom are young people.24 Among the most vulnerable of migrants are unaccompanied minors who flee violence in their home countries and are apprehended after dangerous crossings at the US-Mexico border (see De León, this volume). Since 2012, a total of 231,416 children and youth have migrated alone to the United States,25 and, after apprehension by immigration authorities for unauthorized entry, have entered a complex system of detention and immigration courts. Federal regulations in place since 1997 mandate the humane treatment and prompt release of detained children and youth to
approved sponsors. Nonetheless, numerous problems have persisted: long periods of detention with no set end point; the overuse of secure facilities; rigid behavioral management programs; the use of a detention model organized by security level; the intensive scrutiny of sponsors, including parents and close relatives; a shortage of therapeutic facilities; and the long-standing trend of locating facilities in remote areas to reduce costs and access to voluntary attorneys, as well as to keep children close to the border and ready for deportation if ordered.26

Whether they migrate alone or with family members, undocumented immigrant children and youth have no right to government-appointed counsel or child advocates in family, district, or immigration court proceedings, and they face extremely limited avenues of legal relief under US immigration law.27 If they are in immigration court proceedings, they must find volunteer or pro bono representation on their own, a daunting challenge given the high demand for and critical shortage of free legal services for immigrants (see Young and McKenna, this volume). Even with competent legal representation, young immigrants must defend against removal by proving eligibility for forms of relief designed almost exclusively for adults (see Marks, this volume), and their cases are often heard in accelerated immigration court hearings or “rocket dockets” (see Terrio, this volume). Many of those who enter the United States without authorization or have no qualifying relative may never be able to regularize their legal status.28 Others may wait for years to have their asylum cases adjudicated in backlogged immigration courts, hit statutory limits on available humanitarian visas such as Special Immigrant Juvenile Status (SIJS),29 or apply for other temporary statuses such as Deferred Action for Childhood Arrivals, an executive order issued under the Obama administration.

On September 5, 2017, the Trump administration announced that DACA would be terminated. As of that date, nearly 800,000 young people had qualified for this status.30 Because of DACA, immigrant youth were able to come out of the shadows to pursue higher education, employment, home ownership, and more. DACA provided temporary work authorization, the possibility to obtain a driver’s license or to travel internationally through Advance Parole (see Boehm, this volume), and, most significantly, a deferral or suspension of deportation.31 But, from the beginning, those with DACA were in a tenuous position in that a
deferral of removal is temporary and can be revoked at any time. The Trump administration’s termination of DACA made the future legal status, and future trajectories, of DACA recipients that much more uncertain. As many as 1.8 million young people who have grown up in the United States would qualify for legal status and a path to citizenship if Congress were to pass a form of the Dream Act, underscoring the ways that the absence of sound policy impacts young people currently living in the United States.

Children and youth also face US immigration enforcement when they cross the border with family members. For example, in 2014, the Obama administration responded to the arrival of 61,000 undocumented families—largely mothers and young children—with aggressive enforcement policies designed to deter potential asylum seekers by building new detention facilities specifically intended to hold women and children. These “family reception centers” have been the subject of repeated allegations of due process violations, unsafe conditions, mistreatment of children and parents, woefully inadequate medical care, and deliberate misinformation about the possibility of release. Despite a Ninth Circuit Court ruling ordering the government to release all children in family detention in 2016, the US government continues to detain them in inhumane conditions for prolonged periods.

Finally, an estimated 5.1 million children and youth—both US citizens and undocumented immigrants—are living in mixed-status families within the United States. Many undocumented children in mixed-status families cross the border undetected, live in stable households and safe communities, and build lives in this country. Indeed, many undocumented immigrants brought as children to the United States grow up knowing no other home. They enroll in public schools, form strong social networks, interact with different systems and government agencies (see Ortiz-Rosales and Jackson, this volume), connect with community organizations (see Núñez and Gittinger, this volume), engage in advocacy efforts (see Valdivia, this volume), and become members of the United States even if not legally recognized as citizens (see Salas-Crespo, this volume). In some cases, living in the shadows also means living outside of the most coercive of government systems—such as detention centers and immigration court systems—and out of the reach of certain US immigration laws and policies.
Still, young people with diverse legal positions, citizenships, national memberships, and immigration statuses are subject to the effects of US immigration laws every day. For example, the vast majority of those in mixed-status families—79 percent, or 4.1 million—are US citizens, demonstrating the profound impact of US immigration policy on children and youth regardless of their citizenship or immigration status. These figures underscore the limitations of US immigration law and the few possibilities for reuniting families across borders or allowing family members to change their immigration status through loved ones—even as US immigration law is ostensibly based on family reunification. And when families extend transnationally, financial and emotional strains take a toll on caregivers and children (see Dreby, this volume), both in the United States and in countries of origin.

Thus, young people with a range of statuses experience US immigration enforcement and laws in diverse ways. Youth and young adults may be deported as “unaccompanied minors” (see Heidbrink, this volume), after coming to the United States with family members (see Coutin, this volume), or after encounters with the criminal justice system (see Hansen, this volume), even in cases when they have lived most of their childhood in the country. Immigration laws pose serious structural obstacles for all children affected by immigration, including those who live on their own (see Rabin and Menjívar, this volume), those who reunify with parents after long periods of separation, and those in blended or mixed-status families. And, both US citizen and immigrant children often live with a constant fear of being found and/or having family members apprehended, experience detention firsthand or through others when loved ones are detained, and find their lives altered after deportation, whether their own deportation or that of their parents, siblings, or other family members. In sum, the reach of US immigration laws extends to children and youth of all ages and impacts those in a wide range of circumstances and with diverse immigration histories and trajectories.

Navigating Legal Systems: In, Through, and Out

Against this backdrop of laws, policies, and government actions, children and their family members must navigate systems that are both opaque and increasingly coercive. We have structured the book around
three guiding themes—in, through, and out—while recognizing that there is considerable overlap among them. Part I, “In: Confronting Enforcement, Detention, and Deportation,” traces young people’s path as they enter, often through force, into multiple legal systems associated with migration. In part II, “Through: Navigating Laws and Legal Systems,” we see firsthand the encounters between young people and multiple government agencies. Finally, part III, “Out: Responding to ‘Illegality,’” follows children and youth who are outside of legal systems, whether they are formally expelled through deportation, out in the sense of claiming their immigration status as a tool for organizing, and/or on the margins due to unjust laws that limit opportunities for a change in status. Each part includes three chapters and two shorter essays. The book concludes with a commentary by Jacqueline Bhabha about children’s international legal and human rights in the current moment. Together, the pieces underscore the complexities of diverse encounters with the state, and the circumstances of being within, moving through, and living outside of immigration categories and processes.

This movement is not linear, and young people can be in, between, and/or outside of different systems simultaneously. For example, migrants and their loved ones may at times be closely controlled by legal institutions, such as when detained at a federal facility, and yet at other times—including when crossing borders clandestinely or building lives in new destinations despite unauthorized status—migrants may not formally interact with government or judicial agents. Some who go into immigration systems may come out with a changed immigration status, and even those who would not seem to be the likely targets of immigration policy, such as US citizens, can be caught within systems. Being in legal systems can result in youth being deported and formally expelled outside of the nation. After being in detention, for example, youth may choose to leave or “self-deport,” despite eligibility for legal status, because they can no longer endure separation from their families. Being out can mean living in the nation without legal status. Finally, those entangled with government bureaucracies may also overtly challenge them from the outside, as “Dreamers” and DACA recipients have done. In this case, youth have come out of the shadows, even as they continue to be confined by immigration laws with limited possibilities for a path to citizenship.
The legal immigration regime under President Obama was focused on enhanced enforcement and deterrence. Nonetheless, current federal immigration policies are that much more restrictive, and few could have predicted that the hyperbolic statements on “illegal immigration” made by candidate Trump would become federal public policy just weeks after his inauguration. For example, the DHS memos of February 17, 2017, vastly expand the definition of “criminal aliens” and the priority categories for deportation, propose new detention facilities, call for thousands of additional immigration enforcement agents, discourage asylum seekers (in violation of US and international law), enlist local police as federal enforcers, redefine who counts as an “unaccompanied alien minor,” propose the prosecution of parents who pay smugglers to bring their children to the United States, and, ultimately, aim to speed up deportations. The immediate and future effects of these actions on young people cannot be overstated, and will, without question, shape their lives in the months and years to come.

We end this introduction as we began—by highlighting specific cases and narratives of young people as they contemplate their future, but this time from our individual and collaborative research. Referencing the limited period of eligibility for deferred action, one DACA recipient told us, “I live my life in two-year increments.” Now that DACA has been rescinded, young people with approved applications face an even more uncertain future. Although she is a US citizen, another young woman similarly described the uncertainty that defines her everyday life; as she completes her undergraduate studies and prepares for medical school, her otherwise very bright future is shaped by fears that her undocumented immigrant parents might be deported to Mexico. And, when we interviewed a fifteen-year-old from Colombia who came to the United States as an unaccompanied minor, he was perplexed by the anti-immigrant sentiment expressed during the 2016 presidential election:

I don't understand why Americans feel this way about immigrants. This is a country made by immigrants. They came from another country as we did. They are the same as us. This country is full of different cultures and people. If we expel them all, then they will not see how big and beautiful this country is. Donald Trump says he wants to make America great
again, but I would tell him that if America was not great, no one would want to come here. And I wouldn’t be here.

Despite different circumstances, migration trajectories, and nations of origin and citizenship, these young people—and the many others described throughout the volume—share the experience of living in the United States during a period when encounters with illegality are commonplace for millions of children, youth, and their loved ones.

This volume is intended to make visible the burdens, hopes, and potential of a population of young people and their families who have been largely hidden from public view and are currently under siege. We write at a time when the issue of the nation and its newcomers is sure to guide federal, state, and local politics moving forward. The United States and its residents collectively face an uncertain future, and this new reality makes it all the more urgent to follow young people as they move into, through, and out of the complicated and often bewildering systems and institutions that characterize the United States—laws, policies, and state actions that influence the lives of so many within the country but also impact countless people in countries throughout the world.