Introduction

*Migration, Detention, and Deportation: Dilemmas and Responses*

**DANIEL KANSTROOM AND M. BINTON LYKES**

The structure of the present immigration system is predicated on the assumption that the physical removal of an alien from the United States is a transformative event that fundamentally alters the alien’s posture under the law . . . Removed aliens have, by virtue of their departure, literally passed beyond our aid.

—Board of Immigration Appeals
(Matter of Andres Armendarez-Mendez 2008)

This book explores the workings of an apparent deep contradiction. How can a massive, harsh deportation system operate within (and increasingly beyond) the borders of a nation-state that prides itself on being an open society, supportive of immigration as national policy, and generally protective of the rights of noncitizens? Obviously, this question raises many theoretical and applied issues. One might, for example, ask:

- Can the United States legitimately claim to be a “nation of immigrants” when its massive deportation machinery continues to negatively affect many millions of people? (Kanstroom 2007, 2012);
- What is the best understanding of the “rule of law” in the immigration context? Are those who enter without proper documents or who overstay visas outside of the rule of law? Are they criminals?
- Does physical deportation from U.S. national territory mark the end of legal rights to challenge deportation practices?
- Have globalization and transnational realities led to a decline in the legitimacy and power of the nation-state? If so, does this imply that greater attention must be paid to international human rights norms for migrants?
• What are the psychological and social consequences of policies and practices that force hundreds of thousands of migrants living within U.S. borders—many of whom are members of transnational families—“into the shadows”?

This book derives from and engages these questions and many similar ones. But it is not our primary purpose to answer them as problems of theory. Many other works have sought to do that, though, unsurprisingly, their conclusions vary widely. Our aim is to approach such questions inductively and empirically. We examine how deportation, detention, Immigration Courts, and social service agencies actually work and how they affect real people (though we concede that the verb, work, is sometimes descriptive and sometimes euphemistic). We consider legal norms and real-world effects. We explore how those who actually toil in these systems think they might be improved. We include important empirical research that examines the effects of deportation on individuals, children, families, and communities.

The authors come from a wide range of professional backgrounds and disciplines, including psychologists, sociologists, social workers, lawyers, judges, policy advocates, and government administrators. In previous work, Kanstroom unearthed the historical roots of the U.S. deportation system to suggest that it implicates powerful underlying normative debates, concerns about legal legitimacy, and deep, inherent tensions in the very self-definition of the “nation of immigrants” (Kanstroom 2007). But this was just the beginning of the theoretical and empirical issues that call for study. This edited volume therefore addresses important new questions, including:

• What are the effects of deportation on individuals, families, and communities, both in the United States and in the countries of origin of our deportees to which they are returned?
• What are the best practices for responding to the legal, psychological, health, educational, and survival challenges facing undocumented migrants living in Northern shadows?

Though such diversity of inquiry creates substantial challenges, our shared background assumptions start with the proposition that the
The nation of immigrants is clearly a current demographic reality. Many millions of visitors, students, and workers travel to the United States today. More than a million new immigrants arrive each year, in addition to the tens of thousands of refugees, asylum-seekers, trafficking victims, and others who receive legal status (US Department of Homeland Security 2013; Martin 2005). The benefits of such policies are well-known and largely respected across the political spectrum. Indeed, many polls confirm that most citizens, albeit in varying degrees, support a wide range of related ideals, including racial, ethnic, and religious diversity; demographic rejuvenation; and social dynamism. Most U.S. citizens still support Emma Lazarus’s evocative double-entendre of the “golden door” beside which the Statue of Liberty lifts her lamp to welcome:

Your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore. (Lazarus 1883; see also
Higham 1984; Neuman 1996; Gibney 1989)

The reality of U.S. immigration, however, has been much more complex and often more troubling than this. Recurrent waves of nativism and restrictionist sentiment have bedeviled the nation of immigrants from its founding to the present (Higham 1955, 1983; Kanstroom 2007). Today, a largely dysfunctional immigration system and the lack of comprehensive immigration reform, combined with harsh, wide-ranging deportation policies has, for many, turned the United States into a “deportation nation” in which many millions live in a tenuous state of fear (Kanstroom 2007; Rosenblum and Meissner 2014). The tension between the open immigration ideal and systems of exclusion and removal is
hardly new. Indeed, George Washington qualified the ideal as early as 1783, when he reminded a group of Irish immigrants that the “bosom of America is open to receive . . . the oppressed and persecuted of all Nations and Religions.” He cautioned, however, that such welcome was contingent: “[I]f, by decency and propriety of conduct, they appear to merit the enjoyment (Fitzpatrick 1938: vol. 27, 254) [emphasis added]).

The combination of an aspiration of humanitarian openness with certain restrictions is neither necessarily irrational nor even contradictory. Indeed, such combinations may be inevitable. Consider, for example, whether Nazi war criminals or terrorists should receive asylum if they face persecution in their countries of residence. But the combination demands careful balancing and is always a work in progress. Who decides what is decency, propriety of conduct, and merit? And what do we do with those who fail to meet such tests? What mechanisms are prohibited (or required) by adherence to a regime that also respects basic human and constitutional rights? At what point does exclusion or removal begin to dominate and call into question the viability of the open ideal itself? When is it fair to speak, as we do herein, of a “deportations delirium”?

Here is one way to answer the last question: We might compare admissions and expulsions to see how the balance has been struck in various historical periods. Clearly, this is an imprecise measure; but it provides a framework into which other facts may be added. Louis Post, who was once in charge of (what was then called) the Bureau of Immigration, wrote a book about harsh deportation actions led by Attorney General Mitchell Palmer and the young J. Edgar Hoover in 1919–20 against alleged anarchists such as Emma Goldman. Post (1923) evocatively called the episode (known as “the Palmer raids”) a “deportations delirium.” There were certainly severe violations of rights in that period and many civil libertarians rallied against government abuses of power (Kanstroom 2007; Kanstroom and Ozolins 2014). Comparisons between eras are difficult for many reasons. But, as a rough metric, consider this: According to government statistics, in 1920, the total number of U.S. deportations was 14,577. Immigrant admissions totaled 430,000. The ratio of deportees to immigrants was thus about 3:100. From 1997 (the year in which deportation laws changed dramatically) to 2012, however, the United States admitted about 15.5 million legal permanent residents, an achievement of which we should be proud. However, total removals and
returns exceeded 19.7 million, for a ratio of 127:100 (127 ordered to leave to 100 admitted as permanent residents), more than a 40-fold increase in the removal/return ratio since 1920 (U.S. Department of Homeland Security 2013, table 1, table 39). Even if we just calculate formal removals (over 4.2 million) we still achieve a ratio of about 27:100, a nine-fold increase from 1920. A recent report coauthored by a former U.S. Commission of Immigration notes that the pace of formal removals has increased from some 70,000 in 1996 to 420,000 in 2012. There can be no doubt that the Obama administration has “inherited—and further expanded upon—unprecedented capacity to identify, apprehend, and deport unauthorized immigrants” (Rosenblum and Meissner 2014, p. 1). If 1920 warranted the epithet of delirium, the years since 1997 have been at least that, if not an extended terrifying nightmare for many noncitizens and their families.

The lives of many millions of people have been affected by this huge expansion of deportation. Large-scale systems of arrest, removal, and detention have now run for a quarter century like a menacing underground river beneath the nation of immigrants ideal (Kanstroom 2007). Since 1996, when U.S. deportation laws were toughened, millions of migrants in the United States—including tens of thousands of long-term legal permanent residents (i.e., people with “green cards”)—have experienced summary arrest, incarceration without bail, transfer to remote detention facilities, family separation, deportation without counsel, and life-time banishment from what is, in many cases, the only country they have ever known as home (Rosenblum and McCabe 2014). Their families (often comprised of U.S. citizens) and communities must cope with the devastating loss of a spouse, parent, or child.

Further, in recent years, many have discovered that they were wrongly deported. This can arise in various ways. Perhaps the most common errors are forensic mistakes (e.g., a court may misread a criminal record or other documents). Indeed, even some U.S. citizens have found themselves wrongly deported in recent years (Kanstroom 2012).

Other cases involve late recognition by courts of legal errors. For example, in 2010 the Supreme Court considered whether the “ineffective assistance” of criminal defense counsel could be raised as a defense by a person facing deportation (Padilla v. Kentucky 2010). Mr. Padilla, a long-term lawful permanent resident of the United States, apparently had
been advised to plead guilty to a drug-related charge. Unbeknownst to him (and apparently also to his lawyer), this virtually guaranteed his deportation and lifetime banishment from the United States and his family (Kanstroom 2011). The Supreme Court, in a path-breaking doctrinal decision, upheld Mr. Padilla’s claim that his criminal defense counsel was “ineffective” due to this incorrect advice concerning deportation. He was thus allowed to withdraw his guilty plea and perhaps save himself from deportation. The Court recognized that deportation now often has a very close connection to the criminal process. The two systems have become inextricably linked. Further, the Court recognized that the deportation regime has limited the authority of Immigration Judges “to alleviate the harsh consequences of deportation” (Padilla v. Kentucky 2010: 357). As a result of these changes, noted the Court, the “draastic measure” of deportation or removal “. . . is now virtually inevitable for a vast number of noncitizens convicted of crimes.” Deportation has become “an integral part”—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes” (Padilla v. Kentucky 2010: 362; emphasis added). Although the Court’s Padilla decision was limited to certain process rights, its logic shows why substantial due process protections, and also some of the more specific protections normally tied to the criminal justice system, are warranted (Kanstroom 2011: 2000). However, the Court has not applied the Padilla case retroactively, thus insulating many similar past deportations from meaningful scrutiny.²

Those who do not regularly engage with the U.S. deportation system are often stunned not only by its harshness, but also by how complex it is, as the brief preceding discussion of retroactivity shows. Consider a rather typical scenario, a composite that is based on cases with which the authors have been involved:

Dith arrived in the United States at the age of 4 in 1980, with his aunt, Arunny, as a refugee from Cambodia. He lived with Arunny, and later, also with her second husband, as his parents were both killed in Cambodia by the Khmer Rouge. Dith had difficulty adjusting to life in the United States. He was depressed about the loss of his parents, had problems in school, lived in tough neighborhoods in Lowell, Massachusetts, and eventually joined a local gang of other Cambodian boys formed for
self-protection (Cahn and Stansell 2005). In 1998, Dith was convicted of possession of cocaine. He had become a lawful permanent resident in the United States, but was never naturalized as a citizen. He never understood the difference.

Dith left the gang after serving a prison sentence for the cocaine conviction. In the following year he married Melissa, a U.S. citizen. Dith and Melissa had a child, Chris, born in the United States in 2001. Dith was arrested by immigration authorities in 2004, and he learned that a “repatriation agreement” had been signed between the United States and Cambodia in 2002. The agreement removed obstacles to the deportation of Cambodians from the United States. Dith was soon transferred to immigration detention in South Texas and was deported in 2005. He knew no one in Cambodia, speaks only English, and had no idea how he would live there. In 2006, the U.S. Supreme Court ruled that a drug possession crime such as Dith’s should not have been considered drug trafficking and should not have been considered an “aggravated felony” under immigration law. Dith should have been able to ask an Immigration Judge for a “waiver” of deportation. But now, he was told, it was too late. Deportation cases such as his could not be re-opened after a deportee is taken from U.S. soil. He was barred from the United States for life.

Dith’s aunt was terrified and confused by his removal. She could not understand why the country that had granted them refuge after they had survived the atrocities of the Khmer Rouge would send Dith back to Cambodia. She was also uncertain about what would happen to Dith when he returned, as most of their family had either been killed in the 1970s or had left Cambodia many years earlier. Melissa and Chris were also distraught over Dith’s removal. Beyond the emotional toll of losing a beloved spouse and father, Melissa had relied upon Dith’s full-time income to help support the family and to allow her to stay at home part-time with Chris. Since Dith’s deportation, Melissa has had to return to full-time work and to rely on government assistance to keep herself and Chris fed and housed (Wessler 2009).

In early 2009, Melissa was killed when the car she was driving home from an evening work shift was struck by a drunk driver. Dith was unable to return for her funeral. After Melissa’s death, Chris went to live with Arunny and her husband, both of whom are now of advanced age. Since Melissa’s death, Chris has exhibited increasingly severe socio-emotional
problems. He is afraid to fall asleep at night, is defiant and depressed, and recently has begun saying that he would rather die than live without his parents. Dith’s aunt and uncle are having difficulty caring for Chris due to the severity of his symptoms. The cumulative effects of the losses Arunny experienced in Cambodia, her advanced age, the loss of Dith to deportation, and Melissa’s death are also taking a toll on her. A social worker is working with the family to try to help Chris and to maintain stability in the home. She thinks that it is in Chris’s best interest to be with his father, but neither Melissa’s parents nor Dith’s aunt and uncle want Chris to be sent to Cambodia.

This case obviously raises deep questions about the nature and limits of deportation law. But its implications extend far beyond technical legal analysis. The family’s situation compels inquiry into the multiple legal and policy decisions that affect access to health, educational, and human services necessary to live a life of dignity, or to obtain the most basic rights guaranteed by such instruments as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (Capps et al. 2004; Ku and Matani 2001; Simich, Wu, and Nerad 2007). As a practical matter, the professionals involved with the family bring differing expertise, which may lead to conflicting and sometimes contradictory recommendations. For example, the deep-seated psychological effects of multiple losses for Arunny as well as the generational and cultural gaps between her and Chris suggest the need for psychosocial services from culturally and linguistically competent counselors. Arunny’s sadness may yield to depression, making it more difficult for her to care for Chris, while the recommendation that Chris be with his father has apparently been made with minimum family engagement and has exacerbated rather than relieved Arunny’s situation. Thus, those who respond to this family’s needs must consider a complex array of legal, psychological, educational, social, health, and human services issues. This demands an integrated approach by an interdisciplinary professional team with legal, cultural, and linguistic expertise and resources. Of course, this would be difficult enough to secure in the United States for intact, functional families. But it is nearly impossible for Arunny to access such services in the country to which Dith has been deported (Yoshikawa 2011).
Consider, too, the legal problem of the border. Reasonable minds may well differ about how this case and others like it ought to be resolved. But a more basic question arises: can Dith’s case be considered at all? May judges even hear it? At present, for those who are still within U.S. borders, adequate judicial consideration is possible, though the systems are difficult to navigate and options are limited. For those beyond U.S. borders (i.e., the deported), however, the answer in many situations has been a simple and emphatic “no.” Much of the rule of law, in particular the possibility of re-opening or re-considering a wrongly decided deportation case, ends at the border for deportees. This has begun to change, due to extensive federal litigation efforts in which the editors of this volume have been participants. Still, after deportation from the United States, there often is no law; there is only—at most—executive discretion; and even that is severely limited.

Given the scope of current detention and deportation systems, we must also consider the significant challenges facing the approximately 11 million immigrants living out of status in the United States today, the so-called illegal aliens. For some members of this group, recent administration initiatives such as DACA (Deferred Action for Childhood Arrivals) have provided at least temporary relief (Menjívar and Kanstroom 2013). But the millions who have been deported over the past two decades, many of whom had legal status of one form or another (U.S. Department of Homeland Security 2013; Rosenblum and McCabe 2014), have suffered a harsh and in many cases irremediable fate. And as of this writing, the future prospects for the undocumented remain poignantly unclear.

Still, migrants and their families surely have powerful rights claims, including rights to human dignity, proportionality, fair processes, and family unity. The question is how such rights can be instantiated in U.S. practice. What this book seeks to support and develop is thus both a systemic critique and a holistic professional model. Our work draws on international human rights discourse and practice to press for and exemplify fairer policies and practices that will allow migrants to move out of the shadows and to participate more fully in life within the United States. In this way, we may better comprehend and respond to the current rather grim multifaceted realities of U.S. migration and deportation.

The authors in this volume, as noted, are lawyers, judges, social workers, academic researchers, clinical and community psychologists, educators,
community activists, and a filmmaker. Drawing on decades of experience working within and across our respective areas of expertise and engagement with immigrant communities within the United States and in immigrants’ countries of origin, our major goal has been to reflect critically upon the multiple challenges facing migrants, their advocates, and their advisors today. We are particularly concerned about how U.S. policies and practices of the Immigration and Customs Enforcement (ICE) and Customs and Border Enforcement (CBP) agencies affect children (many of whom are U.S. citizens) whose parents may lack proper documents or who face deportation for other reasons. We suggest that an interdisciplinary perspective that brings together scholars from diverse fields, practitioners, community activists, and migrants in collaborations that embrace a participatory and action research paradigm responds best to the realities facing migrants and the wider society of which they are an integral part.

A Brief Overview of Deportation

What is deportation? How large a system is it? What are its goals and its effects? Deportation (also known under U.S. law as “removal”) may be most simply defined as the physical expulsion of a noncitizen or “alien.” More generally, though, it can be better understood as a major, complex law enforcement system that governs the lives of the many millions of migrants who live, study, travel, and work in a country that is not their birthplace (Kanstroom 2007). In the United States, deportation has two basic forms which reflect two somewhat different, if inter-related, functions: extended border control, which seeks to remove those noncitizens who have evaded the myriad of rules that govern legal entry into the United States; and post-entry social control, which regulates the conduct of those who have legally entered but who then engage in a wide variety of prohibited behaviors, some quite serious, others surprisingly minor (Kanstroom 2007). These forms implicate related but different theories of nation-state control over the entry and lives of noncitizens. Most simply put, extended border control seeks to buttress failed border control with interior enforcement. The goals of post-entry social control are much more complex, overlapping with such other enforcement systems as criminal law (Kanstroom 2012). Within the Obama administration, as noted above, there has been some movement to ameliorate
the harshness of extended border control deportations of certain young people. There has been little, if any Obama administration impetus, however, to reform post-entry social control deportations. Indeed, so-called smart enforcement has focused on “criminal aliens,” including many long-term legal residents convicted of very minor offenses (Kanstroom 2012; Rosenblum and McCabe 2014) Courts have played a more important role regarding protection of rights in this realm.

In some of its guises, deportation is a relatively formal legal process, in which certain basic procedural rights are well accepted. In many settings, however, it can be a very informal administrative mechanism with little in common with trials. For example, a process known as expedited removal has been designed as a fast-track mechanism for illegal entrants who have not been in the United States for long periods of time. Similarly, those who reenter illegally after removal face a very informal, fast-track regime known as reinstatement of removal in which most rights claims are unavailing (Kanstroom 2012). Indeed, much of the late twentieth and early twenty-first century story of deportation is a story of de-formalization in which even certain very basic procedural rights recognized by courts—such as the right to be heard by a judge—have been severely restricted.

In all of its forms, however, deportation has long been an anomalous legal system, largely exempt from many of the most important protections of the U.S. rule of law. Specifically, people facing deportation do not have:

- the right to jury trial (cases are decided by Immigration Judges who are employed by the U.S. Department of Justice; see chapter by Judges Slavin and Marks in this volume);
- the right to counsel (if a deportee cannot afford a lawyer she generally has no right to one);⁶
- the right to bail (many thousands face mandatory detention every day) (Demore v. Kim 2003);
- the right to have illegally seized evidence suppressed (unless the police conduct was “widespread” or “egregious”) (INS v. Lopez-Mendoza 1984);
- the right against ex post facto laws (a person can be deported for conduct that was not a deportable offense when it was done) (Kanstroom 2007); or
- the right against selective prosecution (one may be selected for deportation due to nationality, political opinion, etc.) (Reno v. AADC 1999).
Much of the system is highly discretionary. For example, decisions about whom to arrest and place in removal proceedings are virtually immune from review. Discretion of the ameliorative type has long been a major part of deportation law. However, another aspect of the 1996 changes to the law was the limitation of the powers of Immigration Judges to grant such relief. This was one of the reasons why the Supreme Court in the Padilla case highlighted the importance of proper legal representation in criminal court. Once a noncitizen pleads guilty to or is convicted of a crime, the possibilities for discretionary relief are highly constrained. Moreover, judicial review of the exercise of discretion is limited and varies widely in practice (Kanstroom 2012). Finally, as noted above, for many deportees, physical removal has essentially ended their ability to access the U.S. legal system. This has undoubtedly shielded from judicial scrutiny innumerable government errors (especially cases based upon legal theories later found to be incorrect) and many disproportionately harsh actions.

What are the goals of the deportation system? It is surprisingly hard to answer this basic question. Clearly, much of it was designed to help with border control, national security (broadly defined), and to some degree with crime control within the United States. Put simply, though, deportation has no independent goals, nor should it. It is typically described as “an instrument of immigration policy, not a policy in itself.” Although this book does not explore in detail whether the deportation system has achieved its own goals, there is considerable doubt about this among scholars and policy analysts (Kanstroom 2012). The border has obviously not been controlled, notwithstanding massive walls, fences, billions of dollars spent, and the extended border control deportations of millions of migrant workers (Rosenblum and Meissner 2014). The widespread, harsh use of deportation as part of a post–9/11 security frenzy yielded little, if any, positive results (Kanstroom 2007). And much recent research has shown that deportation is remarkably inefficient as a crime control strategy. Indeed, the vast majority of criminal deportees have long been relatively minor offenders. A 2009 report by Human Rights Watch, for example, found that more than 70 percent of those deported for criminal conduct were deported for a nonviolent offense (Human Rights Watch 2009). Moreover, programs such as Secure Communities, an element of post-entry social control, have generated enhanced fear of
authorities among migrants, weakening rather than strengthening local law enforcement.

Many deportees are not newcomers to the United States. A 2006 study found that some 70 percent of those charged had lived in the United States for more than a decade. The median length of residence was fourteen years (TRAC 2006; Rosenblum and McCabe 2014). Such data prompt hard questions: If the system is not removing serious or violent criminals in large numbers, what justifies it? Should a long-term lawful permanent resident with U.S. family ties be deported for possession of a marijuana cigarette (Bernstein 2010)? Or for drunk driving? Is the post-entry social control system working in a fair and just way?

Social science researchers have highlighted a paradox that warrants serious thought (Rumbaut and Ewing 2007). Assimilation, as traditionally understood, involves the acquisition by immigrants and their descendants of language proficiency, higher levels of education, job skills, and other attributes that improve their chances of success. However, in contrast to what this theory would predict, the life situations of immigrants—and that of their children—often worsen the longer they live in the United States, as they become more acculturated (Garcia Coll and Marks 2012). The children and grandchildren of many immigrants—as well as some immigrants themselves—become subject to economic and social forces, such as higher rates of family disintegration and drug and alcohol addiction. This exposure has been found to increase the likelihood of criminal behavior. The conclusion is disturbing for the proponents of deportation: “If there was an ‘immigrant crime problem’ it was not found among the immigrants, but among their US-born [US citizen] sons” (Rumbaut and Ewing 2007). It is difficult to see how the best solution to such a problem could be deportation of noncitizens for minor offenses.

Deportation looms over the heads of some 40 million foreign-born people who live in the United States along with their families (Pew Research Center: Hispanic Trends 2013). Many still think that only the so-called illegal aliens need be concerned with deportation; but, as noted above, this is clearly not correct. There are some 20 million lawful permanent residents within the foreign-born population. About a million new legal immigrants arrive each year as permanent residents. Millions more live in a variety of complex tenuous, quasi-legal statuses with ar-
cane names like “VAWA applicants”; “U and T visa holders”; “Temporary Protected Status,” etc. Also, some 170 million “non-immigrants” enter the United States legally each year as tourists, students, workers, etc. (U.S. Department of Homeland Security 2012, table 25).

Moreover, nearly 9 million immigrants are part of “mixed-status” families (Passel and Cohn 2009), a number that has increased significantly over the last several decades, and includes some 4.5 million children (Passel and Cohn 2011). Best estimates suggest that children born to undocumented migrants have made up 6.8 percent of youth in U.S. schools (Passel and Cohn 2009). Of these children, approximately 82 percent are U.S. citizens (Passel and Cohn 2009). In addition to these children of migrant parents, there are over 2 million migrant youth in the United States who traveled with parents during childhood or by themselves (Gonzalez 2009; Chavez and Menjívar 2010). Large numbers of migrants who are deported are separated from their U.S.-born citizen children. Estimates are that between July 2010 and September 2012, 205,000 deportees reported having at least one U.S.-citizen child, resulting in an estimated annual average of approximately 90,000 parental deportations (Wessler 2012). The Immigrant Rights Clinic at the New York University School of Law found that between 2005 and 2010, 87 percent of processed immigration cases of noncitizens with citizen children resulted in deportation (NYU School of Law Immigrant Rights Clinic 2012).

The most basic fact is that for all of these millions of people and for their families, many of whom are U.S. citizens, deportation law is the primary part of the “rule of law” with which they must be concerned. If they run afoul of its often highly complicated, technical, and obscure commandments, they may well be subject to arrest, detention, and lifetime banishment from this country and separation of family members, including young children from their parents.

Some may suggest that this fear is overstated. However, the numbers are daunting: In the past quarter century, the number of times an individual noncitizen has been caught somewhere on U.S. soil, and determined to be subject to deportation (i.e., removal or return), has exceeded 25 million. Actual removals and returns have regularly exceeded one million per year (U.S. Department of Homeland Security 2013, table 39), though the numbers were down a bit in 2013–14. Still, DHS has, for
many years, annually detained over 280,000 people for at least 24 hours, in over 400 facilities, at an annual cost exceeding $1.2 billion. The current number of “funded beds” for immigration detainees exceeds 30,000 (Rosenblum and Meissner 2014; Siskin 2012; Gavett 2011; Special Rapporteur on the Human Rights of Migrants 2008; Dougherty, Wilson, and Wu 2005). The deportation system has grown steadily since the late 1990s (Kanstroom 2007, 2012). Indeed, the number of deportations during the Obama administration increased substantially from that of the George W. Bush administration (Slevin 2010).

Contemporary deportation law changed dramatically during the Clinton administration, when new laws amplified the authority of the federal government to arrest, detain, and deport noncitizens. These laws included the Illegal Immigrant Reform and Responsibility Act (1996) and the Anti-terrorism Effective Death Penalty Act (1996). The 1996 laws expanded the offenses for which a noncitizen could be deported, allowed for retroactive deportation, increased the categories of persons subject to removal, and eliminated the range of judicial review and due process rights formerly available to immigrants. In 2001, following the attacks on the World Trade Center, the Bush administration signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act. By expanding the ability of the government to deport persons deemed “threats to national security” and allowing for use of secret evidence in such cases, the Act further marginalized migrants, increasingly labeling them as dangerous threats to the newly denominated “homeland” (Kanstroom 2007). As significantly, for many mixed-status families, the federal welfare reform legislation of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), sharply restricted eligibility for federal means-tested programs for legal immigrants arriving that year or thereafter. Federally funded benefits for migrants were restricted to Medicaid emergency funds, although citizen children were eligible for all federal benefits as well as those supplemented by the states (Yoshikawa 2011). Despite this, as research has demonstrated, many legal immigrants as well as migrant parents hesitate to avail themselves of the resources to which their children are entitled (Xu and Brabeck 2012; Yoshikawa 2011). They fear contact with the legal system, and rightly so.
Put simply, since major, harsh changes were implemented to the deportation system and in welfare policies, tens of millions of people—most undocumented migrants, but also many hundreds of thousands with legal immigration statuses, asylum claims, and the like—have suffered repeated indignities. These include hunger, lack of adequate housing, healthcare, higher education, and a livable wage, or being ordered to leave the United States. Many of those ordered out are barred by law from ever returning. Indeed, the last two decades have witnessed the creation of what amounts to a large, new American diaspora peopled by deportees, many of whom have been here since early childhood (Kanstroom 2012). As significantly, a growing number of U.S. citizen children have become “de facto deportees” (Argueta 2011), having been returned to their parents’ country of origin and consigned to rural poverty. And yet, many of those who are not citizens are surely “Americans” by virtually any measure beyond the formalistic legal one (Motomura 2007).

The challenges these migrants and deportees face require inter- and cross-disciplinary dialogue, research, and practice as well as university-community partnerships. For example, the Migration and Human Rights Project (MHRP) at Boston College has been engaged collaboratively with immigrant organizations in New England—Centro Presente, Organización Maya K’iche’, English for Action, Casa El Salvador, and Women Encouraging Empowerment. These collaborations have been facilitated by participatory and action research initiatives, legal representation of individual clients, participatory educational activities (e.g., Know Your Rights workshops, Domestic Violence Training workshops, and an English for Speakers of Other Languages Tool Kit), community organizing, and media outreach, including press conferences, newsletter publications, and professional journal articles.

This approach draws on earlier models of interdisciplinary work among service providers and academic researchers. Klein’s (1996, 2005) “knowledge integration model,” for example, emphasizes an iterative triangulation of knowledge depth (disciplinary and professional practice approaches), breadth (multiple theoretical perspectives), and synthesis (achieving interdisciplinary outcomes through collaborative actions). Similarly, Amey and Brown (2000) focus on the development of discipline orientation, knowledge engagement, and working relationships
within each stage of collaboration and partnership development, culminating in “energetic teamwork.” Both models assume that interdisciplinary collaboration can yield important new ideas that rely simultaneously or iteratively on theories from multiple disciplines and reflections on applied work (see Chicco and Congress, this volume).

Participatory Action Research with Migrants and Deportees

Some of the contributors to this volume apply interdisciplinary theories and participatory action research (PAR) to the problems migrants and deportees face. PAR offers a set of strategies and reflexive practices to build partnerships across university-community borders and for all involved to think critically and reflexively about themselves and those with whom they work. Such reflection is especially important as university-based scholars seek to connect with local communities. PAR is a resource through which individuals—migrants or deportees and their families—self-consciously empower themselves to take effective, collective action toward improving conditions in their own lives and to bring about a more just and equitable society (Reason and Bradbury 2001; Park 1993). Thus, PAR facilitates alliances among researchers and immigrant rights advocates and migrants themselves who are all too often afraid to advocate for their rights. It facilitates processes through which some of these migrants have emerged from the shadows, affirming their stories and struggles, as well as their rights to a better future.

Although PAR is often described as a qualitative research method or approach, it is also conceptualized as a worldview, a “philosophy of life” (Rahman and Fals Borda 1991:29) or a “life project” (Fals Borda 2001). PAR posits a distinctive conception of knowledge co-constructed through collaborative actions and reflection on those actions. Hence, knowledge is neither universal nor objective, but is situated, local, and socially constructed, a perspective deeply resonant with many of the challenges facing migrant communities. Further, PAR assumes that knowledge is inextricably linked with power; knowledge mechanisms including socialization, education, and the media have defined and legitimized both what counts as useful knowledge and whose interest (the educated, white middle class) this knowledge serves (Gaventa and Cornwall 2001; Rahman 1991). Thus, the goals of collaborations and the
PAR methodology situate researchers alongside migrants as knowledge co-producers and advocates, affirming their dignity and human rights.

Participatory and action research is, thus, a means of recognizing the research capabilities of marginalized and disenfranchised people and facilitating processes through which they acquire tools with which they can create knowledge “from the bottom up” and transform their lives and their communities (Park 1993). The outsider—often a university-based researcher or human service professional—plays a catalytic and supportive role, seeking to generate opportunities for co-research. She joins migrants in pragmatic solidarity, coming together within local communities to (1) challenge oppressive structural features that silence them or force them “into the shadows”; and (2) affirm their rights to a more just and humane immigration policy. PAR thus contributes to real and material changes in what people do, what they value, how they interact with others, and how they interpret their world (Park 1993; Kemmis and McTaggart 2005). These are the overall goals—and challenges—that inform the participatory and action research model that animates this work. (See, e.g., Brabeck, Lykes, and Hershberg 2011; Brabeck and Xu 2010; Lykes, Brabeck, and Hunter 2013.)

It is especially important to listen to the voices of “deportable” migrants. These people—whose voices are too often unheard—speak about workers headed north in search of a better future for their children, seeking to escape structural poverty resulting from decades of war and state-sponsored violence. They have been met by what they call a “second war”: the U.S. Immigration and Customs Enforcement (ICE) response to what one mother whom the editors of this volume interviewed described as a “heart divided.” This Mayan woman was referring to the painful decision to separate from her children in order to be a “responsible parent” (Brabeck, Lykes, and Hershberg 2011). Such heart-wrenching decisions are made by more and more parents from the Southern Hemisphere in order to ensure that their children will escape the systemic marginalization, poverty, and violence that have deeply constrained their lives.

This book thus reflects knowledge generated through action-reflection processes in ever-widening circles of participants. We began with a preface from migrants themselves, as reflected in the recent films of Guatemalan filmmaker, Luis Argueta. We then engage with these re-
alities from the perspective of lawyers, judges, and activists seeking to manage the legal conundrums generated by contemporary laws and administrative practices. We present several suggested interdisciplinary approaches that animate our collaborative work, followed by ethnographic and participatory action research projects through which activist scholars and migrants engage material and socio-emotional complexities of sustaining family and/or community transnationally.

The chapter by law professor David Thronson examines the profound tensions between the aspirations and real practices of immigration and family law, noting in particular how the best interests of the child fare remarkably poorly in the immigration system. As summarized above, deportation laws have devastated families in the United States as they separate U.S. citizen children from their parents, spouses from each other, and disrupt the fabric of American communities. Some 33 million native-born citizens have at least one foreign-born parent (U.S. Census Bureau 2010). Further, among the estimated 11 million undocumented people in the United States, more than 1.5 million are children (ibid.). The family may lose a breadwinner; those left behind may face eviction; and the family suffers emotionally from having a loved one in detention, often thousands of miles away (Morawetz 2000). In many cases, deported parents are separated from their U.S.-born children. Baum, Jones, and Barry (2010), for example, found that between 1997 and 2007, 88,000 U.S. citizen children (44,000 of whom were under the age of 5) lost a legal permanent resident parent to deportation. Furthermore, recent research by Wessler (2012) from the Applied Research Center (ARC) reported that at least 5,100 children whose parents were detained or deported currently live in U.S. foster care and face significant barriers to reunification with parents. Exemplifying the challenges “within disciplines,” Thronson highlights the stark contradictions between the best practices of family law and children’s rights versus deportation law. There is mounting evidence about the negative effects of deportation on U.S. families and communities, especially the children of the undocumented, millions of whom are U.S. citizens. Tens of thousands of such children have seen their families split; some have experienced the effective deportation of the entire family to what, for them, are foreign countries (Kremer, Moccio, and Hammell et al. 2009). As Thronson explains, we need a better, more holistic theory of interpretation to account for human rights to dignity and family and
a better trained group of attorneys who can counsel and represent their clients on the basis of both family and immigration law.

Many of the most specific and difficult immigration policy challenges in the last few years have involved the immigration detention system. The 1996 changes to U.S. deportation law have led to a massive and unprecedented increase in the detention of noncitizens for deportation. Detention, which had been largely abolished by INS in 1954, except for those who were likely to abscond or who were deemed dangerous to national security or public safety, has gradually come to be a defining characteristic of the immigration enforcement system (Kanstroom 2007, 2012). As Mark Dow noted in his 2004 book, *American Gulag*, enforcement procedures that had long “tended to be casual,” became increasingly “brutal.” The majority of detainees are held in facilities near where they were arrested. However, large numbers of people have been summarily transferred to remote locations, causing innumerable hardships.

To examine this phenomenon, the book’s second chapter is written by Dora Schriro. Dr. Schriro was the former director of the Office of Detention Policy and Planning for the Department of Homeland Security, where she led an overhaul of the nation’s immigration detention system. She describes the size and scope of the system, the resources dedicated to detention, and the challenges of developing “best practices” at the intersection of increasing need and limited resources. Most importantly, she offers a sensible and humane reform agenda for detention systems.

Immigration Judges Denise Noonan Slavin and Dana Leigh Marks next focus on the multiple roles, responsibilities, and challenges facing judges in the current regime. The judges examine the deeply dysfunctional nature of our immigration adjudication system, which must process hundreds of thousands of deportation cases annually. The judges’ candor and incisive perspectives offer a unique window into some of the most difficult systemic legal and policy contradictions facing those who adjudicate removal cases. As significantly, they engage the delicate balance in their roles as defenders of the administration’s policies while seeking to respond humanely to the concrete dilemmas facing migrants who have risked all to secure access to life within U.S. borders and are now being “sentenced home.”

This section of the book concludes with a chapter co-authored by Ali Noorani, executive director of the National Immigration Forum and
long-time activist and community organizer, and Brittney Nystrom and Maurice Belanger, organizers, immigration experts, and former Forum colleagues. They address the state of immigration law and policy in the United States today and describe a national community organizer’s agenda for building responses. These four chapters highlight the challenges of comprehensive immigration reform in a context of ongoing detentions and deportations despite a change in executive and legislative leadership in Washington. The descriptions of experiences “inside the beltway” and in courtrooms throughout the nation frame more detailed discussion about specific approaches to the problems faced by those affected by current policies and practices.

Part II of this book examines the lives of migrants and how those working directly with migrants assist them as they respond to severe challenges. It includes chapters that consider deep tensions within and across multiple disciplines, all of which contribute importantly to work with migrants. Building on the integration of theory and practice through direct work with migrants and deportees, the first chapter in Part II is a multidisciplinary discussion from the perspectives of law and social work, that is, legal and community-based work with migrants in New England and beyond. Attorneys and social workers act as advocates for their clients. They also have common goals, albeit from different professional perspectives and with different codes of professional ethics and responsibility. The authors discuss interdisciplinary and multidisciplinary scholarship and practice, exploring their respective approaches to advocacy and practice. Jessica Chicco, an immigration attorney who has worked extensively with deportees, and Professor Elaine Congress, an academic researcher and advocate for immigrants, co-authored a discussion of such complexities of advocacy. Situating migrants within an ecological framework, social workers emphasize the forces affecting the migrant and her or his family at various levels. As importantly, they see the migrants’ journey in terms of its multiple stages, that is, beginning in their countries of origin wherein the focus is on the push and pull factors that contributed to decisions to “leave home.” This more personal decision is situated within the political, economic, social, and personal factors that constrain and facilitate the migrant’s choice. Stage 2 examines the journey or transition experiences, while the third and final stage involves assessing migrants in their current environments,
including socioeconomic issues, migration status, and their physical and socio-emotional well-being. Chicco demonstrates how this framework can usefully serve the immigration attorney who must situate the immediate demand for relief within the wider migration story, seeking to locate a wider range of needs which can contribute to an attorney’s ability to determine whether or not the client has personal equities that may be taken into consideration in the increasingly narrow circumstances available for a legal case seeking relief. Thus the attorney brings knowledge of the law into dialog with the client and draws not only on the framework offered by a social worker but on the listening skills typically engaged by the psychologist. This chapter uses vignettes developed from individual cases on which the editors have worked to show how professionals can collaborate in defending undocumented migrants while also exploring tensions that arise due to differing professional ethics and standards of practice. The authors conclude with several suggestions of how to build bridges across these potential contradictions in search of stronger and more effective advocacy for migrants.

In the second chapter of this section, psychologists Kalina Brabeck, Katherine Porterfield, and Maryanne Loughry offer a set of highly textured analyses of psychosocial interventions and clinical assessments of migrants and their families. They draw on the same cases referenced by Chicco and Congress, vignettes built from composite stories of migrants from a variety of countries that exemplify the challenges facing clinicians who are often asked to render judgments about the psychological effects of forced migration, detention, and deportation and/or about the lives to which migrants would be forced to return should they be deported. They must also weigh the stories of violence and extreme poverty that those with whom they work faced prior to risking all to head north. Thus, they bridge the broad policy concerns raised by Professor Thronson and the practical adjudication issues raised by the judges with real-world insights into the needs of undocumented migrants and their families on both sides of the border who are caught up in these systems. These authors write from within the subfields of counseling, clinical and social psychology in dialogue with the lived experiences of immigrants, detainees, and deportees and their families.

The next two chapters in Part II address the transnational dimensions of this work. The first chapter, co-authored by the volume’s co-
editor, community and cultural psychologist M. Brinton Lykes and her colleagues, examines transnational and mixed-status families within the context of interdisciplinary community-university partnerships. They document interdisciplinary participatory and action research processes through which lawyers, social workers, psychologists, educators, community organizers, and activist scholars have collaborated with local migrants and their families within New England and in the southern Quiché region of Guatemala. The chapter describes the findings from interviews with parents and children in mixed-status and transnational families in New England and transnational families in New England and Guatemala. This chapter focuses on Central American families’ experiences and the meanings they make of migration, detention, and deportation from within and beyond the U.S. border. Such experiences and meanings are situated within their histories and current realities, including state-sponsored violence and armed conflict in their countries of origin; ongoing extreme violence in migrants’ countries of origin (e.g., femicide, drug and human trafficking, gang violence) (Internal Displacement 2011; Stone 2011); recent iterations and intensification of U.S. immigration policies and practices; and other global social structural factors (e.g., extreme poverty in countries of origin as well as NAFTA, CAFTA, and other IMF and World Bank policies) (Cohen 2006; Washington Office on Latin America 2003). The chapter then examines the psychosocial effects of migration, detention, and deportation on children of migrants living in the United States and in the country of origin. Stories of children “left behind,” of young fathers and mothers “deported home,” and of grandparents and school teachers seeking to sustain and support families represent the complexities of life for those living in the shadows of the policies and practices described in the earlier chapters of this volume. As importantly, it explores migrants’ experiences of discrimination, racism, and poverty on both sides of the border—despite the widely reported importance of remittances to countries of origin—and analyzes how migrants’ children incorporate and resist the criminalization of their parents by law enforcement within the United States and how activist scholars collaborate in teaching-learning processes through which these migrants Know Your Rights. The activist scholarship described herein suggests how partnerships across disciplines can generate audiences to hear the voices of migrants out of the shadows.
and into actions that can influence policies within and across borders. In the final chapter of Part II, sociologists Katie Dingeman-Cerda and Rubén G. Rumbaut examine the grim realities of deportation in El Salvador and the poignant contradictions and unintended consequences of U.S. policy there. The U.S. government’s long-term support of the Salvadoran civil war (1980–1992) and subsequent natural disasters as well as the repatriation of Salvadoran youth who had established gangs in the United States frame the challenges facing thousands of Salvadorans who have been “sentenced home.” Drawing on the lived experiences of many of these youth, Dingeman-Cerda and Rumbaut document how those within this “new American diaspora” negotiate their identities and the multiple material challenges they face when forcibly returned to their parents’ country of origin, a country that is often tepid to hostile to their return. These two chapters demonstrate the transnational nature of detention and deportation, as well as the deeply entwined political, economic, and social histories of the United States and Central America.

In sum, this book examines a range of theoretical and practical problems that often elude analysis within single disciplines. As importantly, this work has been developed at the interface of theory and practice. It presses for theory based on lived experiences and applications that engage theory. Its basic goals are to marshal the experiences and critical reflections of those working alongside migrants to develop better frameworks for policy recommendations for the U.S. Congress and the president and to provide guidance for ourselves and others who collaborate with migrants, detainees, deportees, and their families, during what the authors anticipate will continue to be heated debates about immigration reform in years to come.

NOTES
1 According to DHS, “[r]emovals are the compulsory and confirmed movement of an inadmissible or deportable alien out of the United States. . . . Returns are the confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal.” Returns, however, also invariably involve coercive government action.
2 See Chaidez v. United States, 568 U.S. __ , 133 S. Ct. 1103 (2013) (Padilla does not apply retroactively to cases already final on direct review). Some state courts, however, have held that Padilla should be retroactively applied. The Supreme Judicial Court of Massachusetts (SJC), for example, has held that Padilla is retroactive, at
least as to state convictions that became final after April 1, 1997 (the effective date of relevant changes to deportation law). Commonwealth v. Sylvain, 466 Mass. 422 (2013). The effects are profound for many deportees with state (as opposed to federal) convictions, though the practical difficulties involved in bringing such claims on behalf of deportees are significant.

3 Melissa’s parents are alive, but she had been out of contact with them in recent years and was in foster care for much of her childhood. Melissa and Chris maintained a relationship with Dith’s aunt and uncle after his deportation, however.

4 The Post-Deportation Human Rights Project at Boston College was founded by the editors in order to conceptualize this emerging body of law, to study the effects of deportation, and to aid deportees, their families, and attorneys who wish to take on such cases. See http://www.bc.edu/centers/humanrights/projects/deportation.html.

5 The word, “alien,” though pejorative in common discourse (especially if preceded by the adjective “illegal”), is a legal term of art, defined as “any person not a citizen or national of the United States”; 8 USC § 1101(a)(3).

6 But see the previous discussion of Padilla v. Kentucky. Also, there have been important recent inroads made to provide counsel in New York City, a model that may soon be followed elsewhere.

7 In other words, it is “a means of implementing a policy of selecting those allowed to become and remain residents of the United States” (Hutchinson 1981:443).

8 70.5 percent were deported for a nonviolent offense and 29.5 percent were deported for a violent or potentially violent offense.

9 A project supported by the Center for Human Rights and International Justice at Boston College.

REFERENCES


CASE CITATIONS
Fong Yue Ting v. United States, 149 US at 759 (Field, J. dissenting) (1893).