

All Under One Roof: Mixed-Status Families in an Era of Reform

(Research Report)

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Introduction

The casual observer—and policymaker—might readily believe that the country is neatly divided into two kinds of families: those composed of citizens who have strong claims to legal rights and social benefits, and those composed of noncitizens, whose claims to both are more contingent. American families, however, are far more complex: the number of families that contain a mix of both citizens and noncitizens is surprisingly large. Nearly 1 in 10 U.S. families with children is a mixed-status family, that is to say, a family in which one or more parents is a noncitizen and one or more children is a citizen. Further, mixed-status families are themselves complex: they may be made up of any combination of legal immigrants, undocumented immigrants, and naturalized citizens. Their composition also changes frequently, as undocumented family members legalize their status and legal immigrants naturalize. The number, complexity, and fluidity of these mixed immigration status families complicate the design and implementation of the already complicated arenas of immigration and immigrant policy.⁽¹⁾

In this paper, we document the prevalence of mixed immigration status families and discuss some of the immigration and citizenship policies that drive their formation. We identify a number of the challenges that mixed-status families pose for achieving the goals of recent welfare and illegal immigration reform laws. More specifically, we explore how recent curbs on *noncitizens'* use of public benefits may have the unintended effects of "chilling" *citizen* children's use of benefits. We note how efforts to single out immigrant children for the restoration of benefits such as food stamps may fall short of the intended objectives because most children of immigrants are already citizens who never lost their eligibility for benefits in the first place. These benefit restorations may also fall wide of the mark because the citizen children may still suffer the effects of their parents' reduced eligibility. Both of these results are, in a sense, the by-products of mixed-status families and social policies that treat citizens and noncitizens differently.

We also examine how recent laws limiting undocumented immigrants' ability to adjust from illegal to legal status could effectively perpetuate certain mixed-status families. They do so by freezing a growing number of parents and children into differing statuses: parents as undocumented immigrants or "outsiders" (to use Peter Schuck's phrase), children as citizens or "insiders."⁽²⁾ At the same time, policies that make it easier to remove or deport illegal and legal immigrants could have the impact of dividing more mixed-status families. While these policies might serve the goal of reducing illegal immigration, they do so at the expense of family unity. Finally, we note that a new policy denying legal immigrant status to aliens whose sponsors do not have incomes over 125 percent of poverty could have the unintended effects of either keeping families apart or transforming what might have been a legal immigration flow into an illegal one. The result, again, could be to increase the number of mixed-status families whose members could face divided fates as the parents are locked into illegal status while their children are born as citizens. The citizen children in these families may not receive the same opportunities as other citizen children due to their parents' legal status.

From the outset, we should make clear that we do not believe the "solution" to the challenges raised by mixed-status families is to transform the policies that give rise to them—most notably, the strong family reunification thrust of our immigration policies and the grant of birthright citizenship. Our aim, rather, is to call attention to the unintended effects of social policies—such as welfare reform—that do not appear to take into account the mixed legal statuses of immigrant families and the prevalence of citizen children within them when

public benefits and rights are partitioned.

The Importance of Mixed Immigration Status Families

Mixed Families' Demographic Importance. A review of the 1998 Current Population Survey (CPS) reveals that mixed-status families are surprisingly prevalent. As figure 1 indicates, 9 percent of U.S. families with children are mixed-status families.⁽³⁾ Not surprisingly, such families are more prominent in the places where immigrants are concentrated. Over a quarter of California families with children, and 14 percent of New York families with children, are mixed-status families (figure 1). At the same time, 85 percent of immigrant families (i.e., those with at least one noncitizen parent) are mixed-status families. The meaning of this is clear: *most policies that advantage or disadvantage noncitizens are likely to have broad spillover effects on the citizen children who live in the great majority of immigrant families.*

The demographic importance of mixed-status families is made even clearer by the number of children who live within them. One in ten children in the United States lives in a mixed immigration status family.⁽⁴⁾ One quarter of all children in New York City and nearly half of all children in Los Angeles live in mixed families (figure 2). That such a surprisingly large share of children lives in mixed families owes to the fact that noncitizens are more likely to live in families with children and noncitizens' families contain more children. According to the 1998 Current Population Survey (CPS), 54 percent of households headed by noncitizens have at least one child in them versus 36 percent for their citizen counterparts.⁽⁵⁾ Families with at least one noncitizen parent have an average of 2.04 children, while families with only citizen parents have an average of 1.86 children. Of course, high levels of immigration in recent years have also contributed to the growing numbers of mixed-status families and to the number of children who live within them.

The Significance of Mixed-Status Families for Social Welfare Policy. Beyond their straightforward demographic importance, mixed-status families are significant because they are more likely to be poor than other families and hence to be of concern to social welfare policy. While mixed-status families make up 9 percent of all families with children nationwide, they constitute 14 percent of all such families with incomes under 200 percent of poverty. Again, they are especially common in regions where immigrants are concentrated. Mixed-status families represent 40 percent of low-income families with children in California and 20 percent of such families in New York state (figure 3). Nearly three-fifths of low-income children in Los Angeles and one-third of low-income children in New York City live in mixed-status families.

Mixed-status families also account for a substantial share of children without health insurance: 21 percent of all uninsured children nationwide and over one-half of California's uninsured children live in mixed families.⁽⁶⁾

The Significance of Mixed-Status Families in Partitioning Citizen Versus Alien Rights. A third reason mixed-status families are important is because they redefine the legal and equity issues to which recent welfare and illegal immigration laws give rise. It could be argued, for example, that welfare reform has created two classes of citizen children. One class lives in households with noncitizens and suffers the disadvantage of losing benefits and the reduced overall household resources that may result; a second class of citizen children lives in households with only citizens and suffers no comparable disadvantage. The emergence of these two classes of citizen children begs the question whether their differing eligibility for benefits should be viewed as an example of constitutionally acceptable discrimination against aliens or as a more problematic instance of unacceptable discrimination between similarly situated citizens. In short, the presence of so many citizens in families with noncitizens suggests that recent reforms should be viewed through a lens of *alien rights* as well as one of *citizen rights*, which are substantially broader and more robust constitutionally.⁽⁷⁾

Limited Study of the Extent and Dynamics of Mixed-Status Families. A fourth reason for drawing increased attention to mixed-status families goes beyond demographic and constitutional considerations. It is simply that the composition of these households, and the ripple effects of policies that affect their members, have not been the subject of much scholarly attention. There has been some research on the role of extended family members in immigrant households.⁽⁸⁾ And there is a rapidly growing literature on the intergenerational mobility of children in immigrant families, driven in part by the introduction of new questions regarding parental nativity on the Current Population Survey. Mixed-status families, however, have rarely been used as a lens for studying immigrant integration or for understanding the impacts of welfare and immigration reforms.⁽⁹⁾

Fundamental Elements of Citizenship and Immigration Policy Drive the Creation of Mixed-Status Families

The number of mixed-status families can be ascribed in large measure to two structural elements of U.S. citizenship and immigration policy. One is birthright citizenship. The other is immigration policy's abiding commitment to the goal of family unification and, in particular, the principle that citizens should be able to unite with immediate family members more or less as of right. A third feature of recent policy should also be noted: the proliferation of permanent and temporary immigration statuses, which creates new and more complicated types of mixed-status families. The importance of each of these factors is reinforced by high, continuing levels of legal and illegal immigration.

Birthright Citizenship. The framers of the Fourteenth Amendment to the Constitution, seeking to vest the recently emancipated slaves with citizenship, granted citizenship to "all persons born or naturalized in the United States."⁽¹⁰⁾ The amendment confers citizenship status on all persons born on U.S. soil, whether their parents are legally present or not. While some scholars have claimed that the framers did not intend to confer membership on the children of undocumented aliens,⁽¹¹⁾ their view remains a minority one.⁽¹²⁾ Moreover, the constitutional, as opposed to legislative, basis of the doctrine makes it unlikely to be disturbed, despite repeated legislative efforts to

overturn it.

The grant of birthright citizenship is a defining feature of U.S. immigration, civil rights, and family law, aligning the United States with other nations that confer citizenship on the basis of place of birth (*jus soli*) and distinguishing it from countries where citizenship derives solely from family heritage (*jus sanguinis*). Because most children of U.S. immigrants are born in the United States, birthright citizenship largely explains the fact that three-quarters of children in immigrant families (i.e., families with a noncitizen parent) are citizens.⁽¹³⁾ Eighty-nine percent of the children in mixed-status families (i.e., families with a noncitizen parent and a citizen child) are citizens.

The birthright citizenship provision gives rise to two distinct and predominant types of mixed-status families: those with an illegal immigrant adult and a citizen child, and those containing a legal immigrant parent and a citizen child. A 1998 study of the immigrant population in New York that imputes legal status to the foreign born finds that 22 percent of all mixed-status family households are headed by an undocumented immigrant and that one-third of all undocumented-headed households in New York contain citizen children. Of those undocumented-headed households with children, 70 percent contain a native-born child.⁽¹⁴⁾ Citizen children, then, predominate even in families headed by an undocumented immigrant (figure 4).

Mixed families containing undocumented adults and citizen children and those containing legal immigrant adults with citizen children raise distinct and common issues.⁽¹⁵⁾ Both types of families may be reluctant to apply for public benefits for citizen children. Illegal immigrants are likely to fear detection and deportation, or worry that use of services by their citizen children will prevent them from eventually adjusting to legal immigration status. Legal immigrant parents may also be "chilled" from applying for public benefits for their children, but their reasons may differ. They may be concerned that benefit use will trigger a claim for repayment on the part of government or keep them from successfully sponsoring a relative for admission to the United States.⁽¹⁶⁾ Or they may erroneously believe that benefit use on the part of their citizen children can bar them from naturalizing.

Family Unification. A second structural element of U.S. immigration policy that gives rise to mixed-status families—but in a quite different way—is the goal of family unification that has dominated immigration policy at least since 1965. Of particular consequence is the hitherto unrestricted right of citizens to unite with their immediate family members (i.e., spouses, minor children, parents), which, in practice, has meant that most immigrants entering the United States as legal permanent residents join citizen family members.

As one scholar has written:

"The United States is committed to the principle that its citizens may both marry anyone they wish (excepting, of course, minors and persons of certain very close degrees of consanguinity) and live with that person in the United States if they so wish."⁽¹⁷⁾

In fact, over half of the approximately 800,000 immigrants admitted in FY 1997 came to join a U.S. citizen family member, with the remainder entering to unite with a legal permanent resident, for employment purposes, or as a diversity immigrant.⁽¹⁸⁾ The largest single category of family or any other type of immigrant admitted is spouses of U.S. citizens. Immigrants entering under the Immigration and Naturalization Act's family unification provisions are by and large young and most often have U.S.-born citizen children after arriving in the United States, creating mixed-status families. Of course, the continuing high levels of immigration to the United States ensure the ongoing creation of large numbers of mixed families.

The admission of a large number of spouses as immigrants, in turn, points to another feature of mixed families: the mixed-status of parents. A slightly larger share of mixed families are made up of a citizen parent and a noncitizen parent than of two noncitizen parents (41 percent versus 39 percent) (figure 5). But even when both parents are noncitizens, a large majority of their children (83 percent) are citizens (figure 6).

Proliferation of Immigration Statuses. A third feature of recent U.S. immigration policy that has led to the creation of additional types of mixed-status families is a proliferation in immigration statuses assigned to entrants. These statuses, which generally fall in between the classification of legal permanent resident (or green card alien) and undocumented alien, frequently allow noncitizens to work and live in the United States but not to naturalize. In some instances, the status is premised upon an assumption that the migrant's tenure is temporary. An example is entrants granted temporary protected status who cannot return to their home country because of political turmoil or natural disasters. (In other cases, no assumption that the stay will only be temporary is made; an example is aliens who have been paroled into the country for humanitarian reasons.) These statuses have often been the by-product of immigration emergencies that have forced ad hoc accommodations in order to admit or to avert the deportation of those with strong equities in the country. Of course, children born in the United States to immigrants in these in-between categories are citizens and, thus, generate yet a different type of mixed-status family.⁽¹⁹⁾

It goes without saying that not all citizenship and immigration policies promote the creation of mixed families. One set of policies that moves in the opposite direction is those that make naturalization comparatively easy—at least by international standards. Several aspects of naturalization policy should be noted. One is the comparatively short period of residence that is required: three years for the spouses of citizens, five years for others.⁽²⁰⁾ Another is the automatic conferral of citizenship status on minor children when both parents have naturalized. A third is the comparatively modest level of language and civics knowledge that is demanded of naturalization applicants.⁽²¹⁾ At the same time, while the goal of policy can be seen as making naturalization accessible, administrative inefficiencies in adjudicating naturalization benefits have led to lengthy waiting periods and delayed legal immigrants' ability to convert their status.

Mixed Families and the Transformation of Immigration Law

As we have seen, several foundational elements of immigration and citizenship policy drive the creation of mixed-status families. Beyond these structural features, the number and fates of mixed-status families have been affected by other, largely liberalizing, trends in immigration law and policy that emerged in the 1970s and 1980s. These trends extended the due process norms that had been well established in other domains of U.S. public law to immigration. In practice, they set the noncitizen and citizen members of mixed-status families on a more even footing when it comes to the claims they can make on society. But immigration law and policy evolve in an epiphenomenal manner. And just as the liberalizing expansions of rights of the 1970s and 1980s represented something of a reversal of the comparatively harsh immigration policies that preceded them, they, in turn, appear to have been reversed by the largely exclusionary legislation enacted by Congress in 1996. Rather than aligning the differing fates of members of mixed-status households, the new law's deeper divisions within them.

Liberalizing Trends of the 1970s and 1980s. In part as a result of Supreme Court doctrine that emerged in the 1970s, it became clear that the states did not have the authority to discriminate on the basis of alienage in their public benefit programs.⁽²²⁾ While the federal government might retain this power to discriminate, there was little political impetus to do so, and until the mid-1990s few distinctions were drawn.⁽²³⁾ It could be argued that, by treating legal immigrants on a par with citizens, federal policy effectively discounted the importance of citizenship. As a result, citizenship distinctions were largely restricted to voting, holding political office, serving on juries, sponsorship of immediate family members, holding some public-sector jobs, and exposure to deportation. All important, to be sure, but not critical aspects of daily membership in the society. The net effect had been only modest incentives to naturalize and, by extension, a proliferation of mixed-status families. Notwithstanding this proliferation, naturalization rates in the United States are quite high by international standards. According to the INS, almost half of immigrants admitted in 1977 had been naturalized by 1995.⁽²⁴⁾

Other policies—also in large part the product of judicial doctrine—muted distinctions based on immigration status. Perhaps the most striking and inclusionary was the grant of the substantive right to elementary and secondary education extended to undocumented children by the landmark 1982 Supreme Court decision *Plyler v. Doe*.⁽²⁵⁾ When viewed through the lens of mixed-status families, this ruling eliminated critical differences in the rights and treatment of legally present and undocumented children who happen to be members of the same family. Again, legally distinct members enjoyed comparable substantive rights.

Along similar lines, courts extended new procedural rights to aliens in the process of being deported.⁽²⁶⁾ They also mandated the extension of some public benefits to immigrants falling in the "in-between" immigration statuses mentioned in the preceding section.⁽²⁷⁾ These and other rulings that extended new procedural and substantive rights to noncitizens effectively softened the distinctions in the treatment of immigrants in differing legal statuses. Viewed as a whole, these rulings on benefits eligibility, relief from deportation, and illegal immigrants' rights to education turned in part on the duration and depth of immigrants' ties to their communities and families. They were also driven to some degree by a new willingness to apply communitarian or universalistic principles to the cases presented by aliens.⁽²⁸⁾ In the process, they blurred the formal legal distinctions between citizens and legal noncitizens—and, to a more limited extent, between legal and illegal noncitizens.

Against this backdrop of a largely court-formulated expansion of noncitizens' rights and benefits, Congress in 1986 sought to reduce the size of the illegal immigrant population in the United States by enacting a legalization program that eventually granted legal status to 2.8 million formerly illegal immigrants. The majority of those legalized under the law (the 1986 Immigration Reform and Control Act, or IRCA⁽²⁹⁾) had been in the United States for at least five years, and a large share had native-born U.S. children.⁽³⁰⁾ Soon thereafter, Congress enacted the 1990 Immigration Act, expanding legal immigration by 40 percent and retaining family unification as a central goal of immigration policy.⁽³¹⁾ At the same time, in what can be considered one of the few de facto acknowledgments of mixed-status families under immigration law, Congress granted work authorization to, and barred the deportation of, certain undocumented family members of immigrants who had legalized under IRCA.

The Exclusionary Policies of 1996. A harsh California recession, unabated levels of illegal immigration, and the emergence of immigration and welfare use among immigrants as wedge issues led Congress in 1996 to enact an unprecedentedly tough legislative agenda that substantially restricted the legal and social rights of immigrants. As enacted, welfare reform or the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) transformed immigrant policy by:

- Barring most immigrants from food stamps and Supplemental Security Income (SSI)—cash assistance for the poor, elderly, and disabled. Immigrants barred from these programs included "current" immigrants who were already in the United States at the time the law was enacted and new "future" immigrants who had yet to enter.
- Barring new immigrants for five years from "federal means-tested benefits," defined so far to include Temporary Assistance for Needy Families (TANF), Medicaid, and the Child Health Insurance Program (CHIP).
- Giving states the option of barring current immigrants (i.e., those in the United States on or before August 22, 1996) from TANF, Medicaid, and the Social Services Block Grant. The law also gave states the option of barring new immigrants (arriving after August 22, 1996) from TANF and Medicaid following a mandatory five-year bar. In so doing, the Congress overrode settled Supreme Court doctrine by permitting states to discriminate against legal immigrants in determining eligibility for certain federal, state, and locally funded benefit programs.

- Exempting some legal immigrants with strong equities from the benefit restrictions. These include refugees during their first several years in the United States, legal immigrants who have worked for 10 years or whose spouse or parents have done so, and noncitizens who have served in the U.S. military.
- Barring "unqualified immigrants" from all "federal public benefits" and requiring that public agencies that dispense them verify the legal status of applicants.⁽³²⁾ Unqualified immigrants include not only undocumented aliens but also other groups with authority to remain in the United States without permanent residence, some of whom had been determined to be eligible for selected federal benefits by the courts.⁽³³⁾

The Antiterrorism and Effective Death Penalty Act⁽³⁴⁾ and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,⁽³⁵⁾ both passed in the same year as welfare reform, scaled back the rights of legal and illegal immigrants in far-reaching ways. They:

- Mandate the deportation of legal permanent residents and illegal immigrants for relatively minor crimes, withdrawing discretion from immigration judges to consider the resulting hardship on family members.⁽³⁶⁾
- Limit judicial review available to immigrants facing deportation or removal or seeking waivers to the new barriers of admissibility.⁽³⁷⁾
- Raise the "hardship" standards noncitizens have to meet to avoid deportation (referred to as cancellation of deportation) by extending from 7 to 10 years the required length of U.S. residence and by introducing a new annual cap of 4,000 where no previous limit existed.⁽³⁸⁾
- Introduce new expedited removal and summary exclusion measures that apply to migrants arriving without papers or with false papers and to illegal immigrants residing in the United States for less than two years.⁽³⁹⁾ Migrants who are summarily excluded have no rights of appeal and are barred from entering for five years.
- Make it harder for persons who had resided in unauthorized status to reenter the country, barring for 3 years those in the United States for more than six months and for 10 years those in the country more than a year.⁽⁴⁰⁾ These barriers to entry, in conjunction with the "sunset" of the provision that made it possible for illegal immigrants to adjust their status without returning to their home country, effectively foreclose the ability of the undocumented to gain legal status.⁽⁴¹⁾

Some of the reforms noted above—in particular those that make it easier to deport, remove, or bar immigrants from the United States—may have the effect of dividing mixed-status families. Other provisions, which complicate or foreclose adjustment from illegal to legal to citizenship status, may have the effect of freezing mixed-status families into differing statuses: dividing the fates of family members, if not the families themselves, with potentially negative effects on citizen children.

A third major policy shift in 1996 introduces a powerful back-door reform to legal immigration policy. The illegal immigration reform law imposed for the first time a minimum income requirement on legal immigrants' sponsors that exceeds the poverty line, making it more difficult for individuals and families to bring a relative—including a spouse—to live in the United States.⁽⁴²⁾ In addition to this higher income level required of sponsors, the new law requires stronger documentation of income (i.e., the three most recent years of federal tax returns) and forecloses taking into account the income of a spouse unless he or she has been living in the household for at least six months. The law also imposes a new binding requirement on immigrants' sponsors that they support the immigrants until they have worked for 10 years or become citizens, making sponsors liable for repayment of certain benefits that may have been used during that time.

Mixed Families and the Implications of Welfare and Immigration Reforms

Viewed through the lens of the mixed family, the 1996 welfare and illegal immigration reforms have far-reaching and, in some instances, unexpected implications for immigrants and their families, for the number of mixed families, and for public policy. Some effects can already be documented, but the full impact of these laws remains somewhat speculative.

Divided Fates. As mentioned, the prevalence of mixed-status families means that when the law draws sharp distinctions between citizens and noncitizens it ends up treating members of the same family quite differently. Under welfare reform, for example, legal immigrants entering the United States after August 22, 1996, are barred from Medicaid for their first five years in the United States. As a result, a legal immigrant child who entered the United States two years ago would not be eligible for Medicaid but her U.S.-born citizen brother would be, even though both live in the same household and have the same resources available to them. The older child's lack of health insurance will mean that she has less access to preventive and other forms of health care than her sibling.

Spillover Effects. While benefit restrictions may explicitly target noncitizens, they inevitably affect citizen family members as well. Take, for example, current law governing noncitizens' access to food stamps. When Congress barred noncitizens from food stamps, citizen children remained eligible but their noncitizen parents did not. Food stamps, though, are provided on a household, not an individual, basis. That is, the amount of food stamps received is based on the number of eligible people in the household. Thus, mixed-family households, along with the citizen children in them, receive fewer food stamps than they did before the cuts and presumably have less to eat.

Spillover effects can also be seen in mixed families' declining use of public assistance—despite their continued eligibility. We believe that falling benefit use in these households occurs in large measure due to the chilling effects of shifting eligibility requirements, uncertain

and sometimes overbroad application of the public charge provisions,⁽⁴³⁾ and the unfathomable complexity of the new rules regarding immigrant eligibility for benefits. The steep decline that we see in program participation within these households is not confined to their noncitizen members, but spills over to citizen children.

Data from Los Angeles County show that approved applications by noncitizen-headed families for welfare and Medi-Cal dropped by 52 percent between January 1996 and January 1998; there was no change for citizen families.⁽⁴⁴⁾ Most of the children in these immigrant families are citizens. This decline occurred despite the fact that California had not changed its eligibility rules for noncitizens.⁽⁴⁵⁾ National data on benefit participation rates tell a similar story. Even though eligibility had changed for only a very few,⁽⁴⁶⁾ use of welfare (TANF, SSI, or General Assistance) by noncitizen-headed households fell by 35 percent between 1994 and 1997, but the drop was only 14 percent among citizen-headed households.⁽⁴⁷⁾ This same trend can be observed in Medicaid and food stamp use.

Since 85 percent of noncitizen households with children contain citizen children, these declines in noncitizen household participation in benefit programs are clearly affecting large numbers of citizen children. Further, the presence of citizen children does not seem to diminish these chilling effects. The decline in benefit participation from 1994 to 1997 for U.S. households in which all children are noncitizens is not statistically different from the drop for families where there is at least one citizen child.⁽⁴⁸⁾ These findings are supported by an analysis of changes in the food stamp program that compares the decline in participation of children living in native-born families with the decline among citizen children living in families containing legal immigrants. Use of food stamps by the latter group fell by 37 percent from FY 1996 to September 1997, while use by the former group fell by only 15 percent.⁽⁴⁹⁾

Recent federal guidance defining the public charge provisions in immigration law should eliminate some of the confusion that has led to these declines.⁽⁵⁰⁾ The new rules define a public charge as a noncitizen who has become or is likely to become primarily dependent on the government for subsistence. The guidance clarifies public charge's reach by drawing several important distinctions:

- For the most part, only immigrants applying for a green card and some noncitizens re-entering the United States after six months abroad must demonstrate they will not become a public charge. Public charge will not be taken into account when noncitizens apply to naturalize and will only rarely be grounds for deportation.
- A public charge determination will only arise from the use of cash welfare benefits like TANF and SSI; use of noncash benefits such as Medicaid or food stamps will not trigger a public charge determination.⁽⁵¹⁾
- Use of welfare benefits by the family members of green card applicants will not be considered when making a public charge determination, except in the rare circumstance where those benefits are the family's only source of support.
- Public charge will not be applied to refugees and other immigrants admitted for humanitarian reasons.

New barriers to illegal immigrants' ability to adjust status create another kind of possible spillover effect.⁽⁵²⁾ Under the new rules, undocumented immigrants are likely to remain longer in an illegal status. As a result, citizen children in these mixed families could exhibit less intergenerational mobility than they would have if their parents had been able to legalize easier or faster. While some may argue this is an acceptable trade-off to help control illegal immigration, it is a trade-off that is thrown in sharper relief by acknowledging the prevalence of citizen children in these mixed-status families. It is also a trade-off that was not publicly debated in connection with the passage of illegal immigration reform in 1996.

Public Benefit Restorations to Immigrant Children: Falling Short. Since 1996, the federal government has restored selected public benefits to legal immigrants.⁽⁵³⁾ The restorations go some distance toward putting citizens and noncitizens who arrived before August 22, 1996, on more equal footing.⁽⁵⁴⁾ However, efforts such as the food stamp restorations that targeted noncitizen children already in the United States may be, in the end, more symbolic than real because of the prevalence of mixed-status families. Three-quarters of the children in immigrant families are citizens whose eligibility for benefits did not change. Since the food stamp restorations did not cover noncitizen parents, they remain ineligible, and their households continue to receive reduced benefits. The limited reach of the restored benefits is suggested by the fact that only 29 percent of families with a noncitizen parent have a noncitizen child, compared with the 85 percent that have at least one citizen child.⁽⁵⁵⁾ Further, the impact of the restorations targeting noncitizen children will become increasingly limited over time as those children turn 18 and "age out" of their eligibility.

Dividing Families. The new reforms depart from the historically central goal of family unification embedded in U.S. immigration policy. Under the new illegal immigration law, all family-based immigrants must have sponsors with incomes equal to 125 percent of the poverty level.⁽⁵⁶⁾ A high proportion of mixed families is not likely to meet the new income threshold: one-third of all mixed families have incomes under 125 percent of the federal poverty level (figure 7). An even larger share (45 percent) of mixed families where there are no citizen parents will be unable to meet the threshold. By keeping legally present, low-income immigrants and citizens from bringing their spouses to the United States, the law may be transforming what might have been a legal immigration flow into an illegal one. The law can also be seen as further diminishing the right of low-income legal permanent residents and citizens to marry and live in the United States with whomever they choose. Thus, policies intended to increase noncitizens' self-sufficiency could have the unintended effect of abridging citizens' rights.

In similar fashion, reforms that make it easier to deport or remove aliens in unauthorized status and aliens who have committed crimes—possibly many years earlier—are likely to divide immigrant families. Mixed families with an undocumented parent are faced with

a tough choice: (1) leave the United States with the whole family, including U.S.-born citizen children; (2) have only the unauthorized parent leave, creating a single-parent family in the United States; or (3) remain in the United States as an intact family, at the risk of getting caught and deported and then not being able to reenter for 3 or 10 years. The difficult choices faced by these families point to the inherent tension between the goals of controlling illegal immigration and the effects of birthright citizenship.

Another recent reform acknowledges that many immigrants subject to deportation have citizen family members but emphasizes enforcement goals over family unity. Prior to the 1996 law, an immigrant could avoid deportation if he could prove that deportation would cause him or his family members "extreme hardship." One factor considered was whether he had a U.S.-born citizen child. The new law toughens the standard for what is now called cancellation of removal by requiring that the immigrant prove his removal would cause "exceptional or extremely unusual hardship" to a citizen or permanent resident spouse, parent, or child. The framers of this new law spelled out that

". . . the alien must provide evidence of harm to his spouse, parent, or child substantially beyond that which ordinarily would be expected to result from the alien's deportation. . . . Similarly, showing that an alien's United States citizen child would fare less well in the alien's country of nationality than in the United States does not establish "exceptional" or "extremely unusual" hardship and thus would not support a grant of relief under this provision."⁽⁵⁷⁾

The legislation's goal is to make it easier to deport criminal and illegal aliens and to ensure that an alien parent not "derive immigration benefits through his or her child who is a United States citizen." Again, while these may be legitimate enforcement goals, to the extent that they lead to more divided families and to citizen children being forced to leave the country they were born in, they raise questions about family policy and citizen, as well as alien, rights.

A De Facto Reduction in Mixed Families. Viewed collectively, the welfare and illegal reform bills may have the de facto effect of reducing the number of mixed families. By limiting benefits to legal immigrants and by exposing them to a greater threat of deportation, they create an incentive to naturalize, presumably increasing the number of families composed only of naturalized citizens.

Naturalizations have increased in recent years, climbing from 434,000 in 1994 to over 1 million in 1996.⁽⁵⁸⁾ The number of immigrants naturalizing exceeded the number admitted for the first time in 1996. While naturalizations are on the rise, there is still a substantial backlog of people who are waiting to become citizens. In some places, the waiting period can last up to two years, extending the time that families are in a mixed status. In addition, naturalization denials have increased in recent years. According to INS data, the share of citizenship applications denied increased from 7 percent in FY 1994 to 18 percent in FY 1996.⁽⁵⁹⁾ These denial rates suggest that despite the country's comparatively easy naturalization process, many families may be left involuntarily in mixed status.

In addition to naturalization backlogs, the Immigration and Naturalization Service is experiencing less well-publicized backlogs in applications for green cards. Between FY 1994 and FY 1997, the number of pending applications for adjustment of status increased more than fivefold (from 121,000 to 699,000).⁽⁶⁰⁾ As a result, there are more illegal immigrants in mixed families waiting longer to become legal immigrants and remaining that much further from becoming citizens.

Conclusion

As we have seen, it is extremely difficult to achieve the sometimes conflicting objectives of the nation's immigration and immigrant integration policies: to control illegal immigration while promoting family unification, immigrant self-sufficiency, and economic and social integration. Further, the mixed immigration status of immigrant families and the complex interdependencies of citizen, legal immigrant, and undocumented family members make it difficult to set policy for noncitizens without having unintended effects on citizens, particularly citizen children.

One effect, then, of welfare reform and, to a lesser extent, illegal immigration reform is to treat citizen children in mixed-status families as second-class citizens. Of course, one ready solution to this problem would be to eliminate birthright citizenship. But this solution would represent a radical departure from the long-settled determination of U.S. immigration policy that the second generation will be treated as citizens and not as the children of foreigners. Its adoption would signal a shift toward the approach taken by many European nations, which treat not just newcomers but also their children as outsiders, thereby perpetuating a type of hereditary disadvantage that departs from U.S. historical tradition.

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Notes

1. *Immigration policy* determines who enters the United States and in what numbers. *Immigrant policy* can be viewed as the cluster of policies that govern how immigrants are integrated into the U.S. economy and society, including those that determine participation in the social welfare state. See Michael Fix and Wendy Zimmermann, "After Arrival: An Overview of Federal Immigrant Policy in the United States," in B. Edmonston and J. Passel, eds., *Immigration and Ethnicity, The Integration of America's Newest Arrivals*, The Urban Institute Press, 1994.
2. Peter H. Schuck, *Citizens, Strangers and In-Betweens: Essays on Immigration and Citizenship*, Westview Press, 1998.
3. The data used for the analysis reported here have been corrected for overreporting of naturalized citizen status in the Current Population Survey. See Passel and Clark 1998 for an explanation of the problem and correction.
4. While 10 percent of U.S. children live in a mixed-status family, only 3.6 percent of U.S. children under 18 are foreign born, according to the Current Population Survey.
5. Michael Fix and Jeffrey S. Passel, ["Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-97,"](#) The Urban Institute, March 1999.
6. Urban Institute tabulations of March 1998 Current Population Survey (CPS).
7. See generally, Hiroshi Motomura, 1997, "Review Essay: Whose Immigration Law? Citizens, Aliens and the Constitution," *Columbia Law Review* 97:1567.
8. See, for example, Jennifer Glick, Frank Bean, and Jennifer Van Hook, 1997, "Immigration and Changing Patterns of Extended Family Household Structure in the United States: 1970-1990," *Journal of Marriage and the Family* 59 (February): 177-191.

9. We should somewhat self-interestedly call attention to a federally funded three-year project at the Urban Institute that is seeking to examine the health and economic adjustment of immigrants in the wake of federal welfare reform. The project focuses on New York and Los Angeles and involves a household-level survey and analyses of immigrant households' adaptations to federal benefit curbs enacted as part of welfare reform. See "Welfare Reform, The Economic and Health Status of Immigrants and the Organizations That Serve Them," Urban Institute WEB page: www.urban.org/centers/ps_welfare.html.
10. The full text of the relevant clause reads: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Constitution, 14th Amendment.
11. See Peter Schuck and Rogers Smith, *Citizenship without Consent*, Yale University Press, 1985.
12. A forceful counterargument has recently been made by law professor Gerald Neuman in *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law*, Princeton University Press, 1996. Neuman claims that because there were "illegal immigrants" before 1875, the drafters of the Fourteenth Amendment knowingly conferred birthright citizenship on children born in the United States to undocumented parents.
13. Not all citizen children of immigrants are born in the United States, of course. Of the 2,570,000 foreign-born children under 18 included in the Current Population Survey, 344,000 or 13 percent were naturalized citizens.
14. Background data from Jeffrey S. Passel and Rebecca Clark, "Immigrants in New York: Their Legal Status, Incomes, and Taxes," The Urban Institute, April 1998.
15. It is entirely possible for some mixed-status families to include one undocumented parent, one legal immigrant parent, and citizen children. In fact, such households may be rather common, given the large number of pending applications for admission.
16. State claims for repayment may not be justified in some instances. The state of California agreed to repay funds received from hundreds of immigrants who had been ordered to pay back the value of Medi-Cal benefits they had received. See Louis Freedberg and Sabin Russell, "Immigrants' Fears Leave Children without Insurance: Thousands Have No Health Care in California," *The San Francisco Chronicle*, January 15, 1999, p. A4.
17. Guillermina Jasso, "Migration and the Dynamics of Family Phenomena," in A. Booth, A. Crouter, and N. Landale, eds., *Immigration and the Family: Research and Policy on U.S. Immigrants*, Lawrence Erlbaum Associates, 1996. As we note later, this largely unrestricted right of entry for the spouses and children of U.S. citizens has been conditioned by a recent reform that requires for the first time that citizens who sponsor immediate family members have incomes exceeding 125 percent of poverty.
18. The 1990 Immigration Act created a new "diversity" category of permanent admissions to bring in immigrants from countries that had sent comparatively few immigrants to the United States in recent years. Refugees who adjust to legal permanent resident status are also included in the 800,000 admissions.
19. Nonimmigrants, including students, temporary workers, and tourists, are another group whose U.S.-born children are citizens, creating yet another type of mixed family.
20. This period is considerably shorter than the 8 to 15 years a noncitizen must wait to become a citizen in Germany, for example.
21. While these can present formidable barriers for many applicants, again, they are comparatively low by the standards of most other industrialized countries. See, generally, Joseph H. Carens, "Why Naturalization Should Be Easy: A Response to Noah Pickus," in *Immigration and Citizenship in the 21st Century*, Noah Pickus, ed., New York, 1998.
22. See generally, *Graham v. Richardson*, 403 US 67 (1971).
23. See, however, *Mathews v. Diaz*, 426 US 67 (1976), upholding the Congress's authority to deny certain Medicare benefits to legal permanent residents who had lived in the United States for less than five years.
24. U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service*, 1996, Washington, D.C., 1997, p. 142.
25. 457 US 202 (1982).
26. See, for example, Peter Schuck, *Citizens, Strangers and In-Betweens: Essays on Immigration and Citizenship*, Westview Press, 1998, p. 83.
27. *Berger v. Heckler*, 771 F. 2d 1556 2d Cir. 1985.
28. On this point and on the epiphenomenal character of immigration law generally, see Peter Schuck's classic article "The Transformation of Immigration Law," *Columbia Law Review* 84(1), January 1984.
29. P.L. 99-603, 100 Stat. 3359.
30. A survey of the legalized population showed that 69 percent of those who legalized after having been in the United States for at least five years had children. Although the survey did not report on the share of those children born in the United States, at least 40

percent had children under 5 who were likely to be U.S. born. "A Survey of Newly Legalized Persons in California," Comprehensive Adult Student Assessment System (CASAS), 1989.

31. P.L. 101-649, 104 Stat. 4978.

32. "Federal public benefits" includes any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any similar benefits to which payment or assistance is provided to an individual, household, or family eligibility unit by an agency of the United States by appropriated funds of the United States. The Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193, Section 401(c).

33. The Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193 (1996). One objective of welfare reform was to generate budget savings. As enacted in 1996, the welfare reform law's immigrant restrictions were expected to generate 44 percent of the law's \$54 billion in expected savings, despite the fact that immigrants represented about 7 percent of all welfare recipients. See Congressional Budget Office, "Federal Budgetary Implications of H.R. 37334, The Personal Responsibility and Work Opportunity Act of 1996," August 9, 1996.

34. P.L. 104-132 (1996).

35. P.L. 104-208.

36. P.L. 104-208, Section 321.

37. See, for example, P.L. 104-208, Section 301, barring federal court review of the Attorney General's decision to waive newly imposed bars on admission for hardship.

38. Immigration and Naturalization Act, Section 240A(b)(1).

39. See, generally, P.L. 104-208, Sections 301 - 309.

40. P.L. 104-208, Section 301(b).

41. Immigration and Naturalization Act Section 245(l) permitted illegal immigrants who qualify for a permanent resident visa through family or employer sponsorship to adjust their status without leaving the country for a \$1000 processing fee. In November 1997, President Clinton signed H.R. 2267, effectively sunseting Section 245(l), while grandfathering in beneficiaries of immigrant visa petitions filed with the Attorney General before January 14, 1998.

42. P.L. 104-108, Section 551. Prior to enactment of the new law, the federal poverty level was used as a guideline, but there was no firm income requirement for sponsors.

43. "Public charge" is a term used in immigration law to describe someone who is, or is likely to become, dependent on public benefits. In practice, public charge considerations have historically been a factor in the admissibility of aliens (i.e., grant of a green card) but only rarely in the deportation of aliens in the United States.

In the past several years, public charge has been inappropriately invoked in some instances where noncitizens have attempted to reenter the United States and where immigrants have sought to naturalize. In some cases, noncitizens seeking to reenter the country have been asked to repay public benefits. The legality of compelling repayment in these contexts is suspect.

44. This trend holds true for both legal and undocumented immigrant-headed families. The latter group would receive benefits only for their citizen children.

45. Wendy Zimmermann and Michael Fix, "[Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County](#)," The Urban Institute, July 1998.

46. Many immigrants had their eligibility for SSI restored, and virtually all states kept immigrants admitted to the United States before August 22, 1996, eligible for TANF. As a result, by 1997, few immigrants had lost eligibility for these benefits.

47. Michael Fix and Jeffrey S. Passel, "[Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-1997](#)," The Urban Institute, March 1999.

48. Fix and Passel 1999.

49. Jenny Genser, "Who Is Leaving the Food Stamp Program? An Analysis of Caseload Changes from 1994 to 1997," Office of Analysis, Nutrition, and Evaluation, The Food and Nutrition Service, U.S. Department of Agriculture, 1998.

50. See 8 CFR Parts 212, 237, "Inadmissibility and Deportability on Public Charge Grounds; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds; Proposed Rule and Notice," page 28676.

51. Persons in long-term institutionalized care that is paid for by Medicaid or other public funds may be considered a public charge.

52. These new limits on adjustment arise from the combined effects of the new barriers to reentry and the sunset of INA Section 245(l) discussed above.

53. SSI and derivative Medicaid have been restored to noncitizens in the United States before the welfare law passed who were already receiving benefits or who subsequently become disabled, including some noncitizens without legal permanent resident status. Federal food stamps have also been restored to noncitizen children under 18 in the United States prior to August 22, 1996, and some elderly and disabled immigrants.

54. However, immigrants arriving *after* August 22, 1996, remain effectively barred from most federal means-tested benefit programs until they naturalize.

55. Some state efforts to replace benefits for immigrants have employed the same targeting strategy. See, generally, Wendy Zimmermann and Karen Tumlin, "Patchwork Policies: State Assistance for Immigrants under Welfare Reform", The Urban Institute, May 1999.

56. This new income requirement applies to most legal immigrants who enter the United States after August 22, 1996. In practice, the standard is actually even higher because the family size includes the incoming immigrant or immigrants.

57. Conference Report to accompany H.R. 2202, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, September 24, 1996, 104th Congress, 2d session, Report 104-828, p. 213.

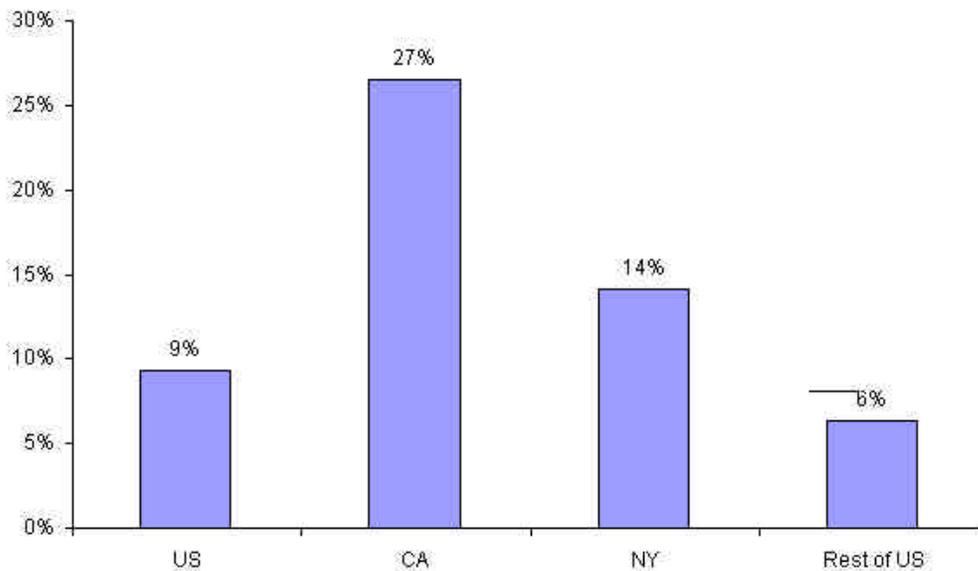
58. U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1996*, Washington, D.C., 1997.

59. U.S. Immigration and Naturalization Service, 1997. Another report analyzing more INS data indicates that the denial rate has continued to grow and that the share of applicants denied U.S. citizenship grew from 16 percent in the first quarter of FY 1998 to 37 percent in the first quarter of FY 1999. National Association of Latino Elected Officials, "INS Makes Progress on Naturalization Backlog, but Denial Rate Increases Dramatically," Press Release, March 1, 1999.

60. U.S. Immigration and Naturalization Service, Office of Policy and Planning, *Annual Report: Legal Immigration, Fiscal Year 1997*, No. 1, January 1999.

Figures & Charts

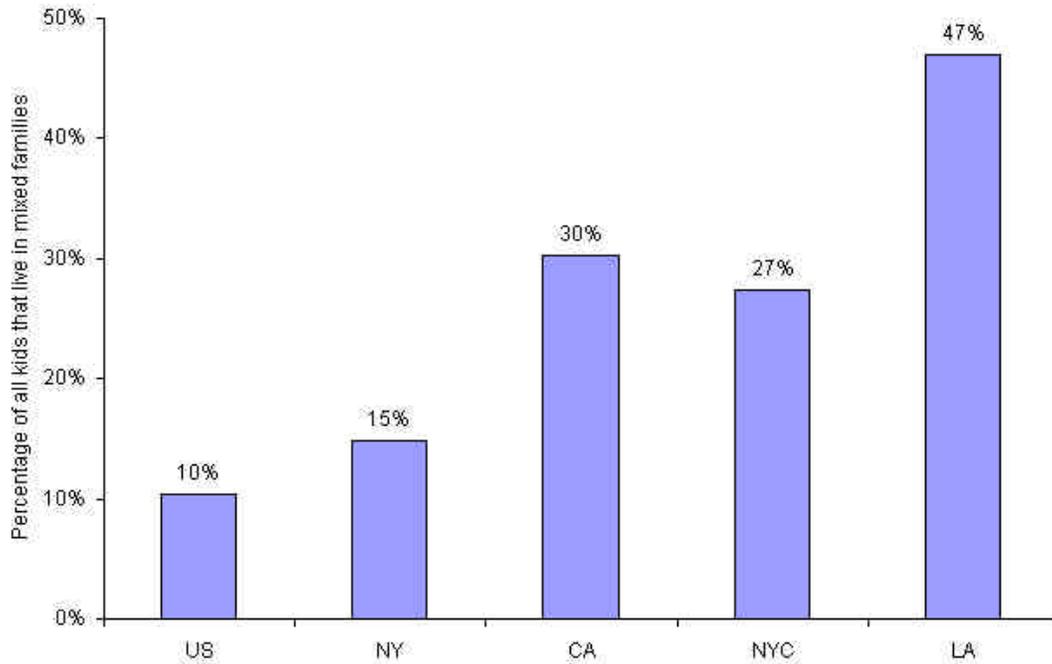
Figure 1: Mixed Families* as a Share of All Families with Children, for the U.S. and Selected States: 1998



* A mixed family has at least one noncitizen parent and at least one citizen child.

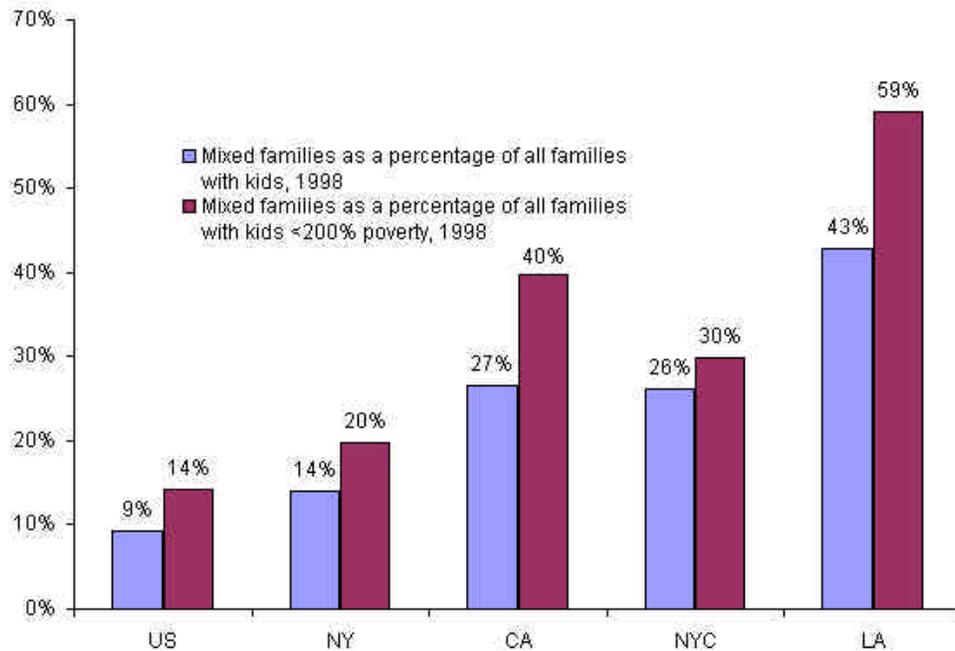
Source: Urban Institute tabulations from March 1998 Current Population Survey (with modified citizenship status, Passel and Clark, 1998)

Figure 2: Share of All Children Who Live in Mixed Families, 1998



Source: Urban Institute tabulations from March 1998 Current Population Survey (with modified citizenship status, Passel and Clark, 1998)

Figure 3: Mixed Families As a Share Of All Low Income Families with Children, 1998



Source: Urban Institute tabulations from March 1998 Current Population Survey (with modified citizenship status, Passel and Clark, 1998)

Figure 4: Immigrant-Headed Households Containing U.S.-Born Children (As a Percentage of All Immigrant Households with Children) by Legal Status of Household Head: New York, 1995

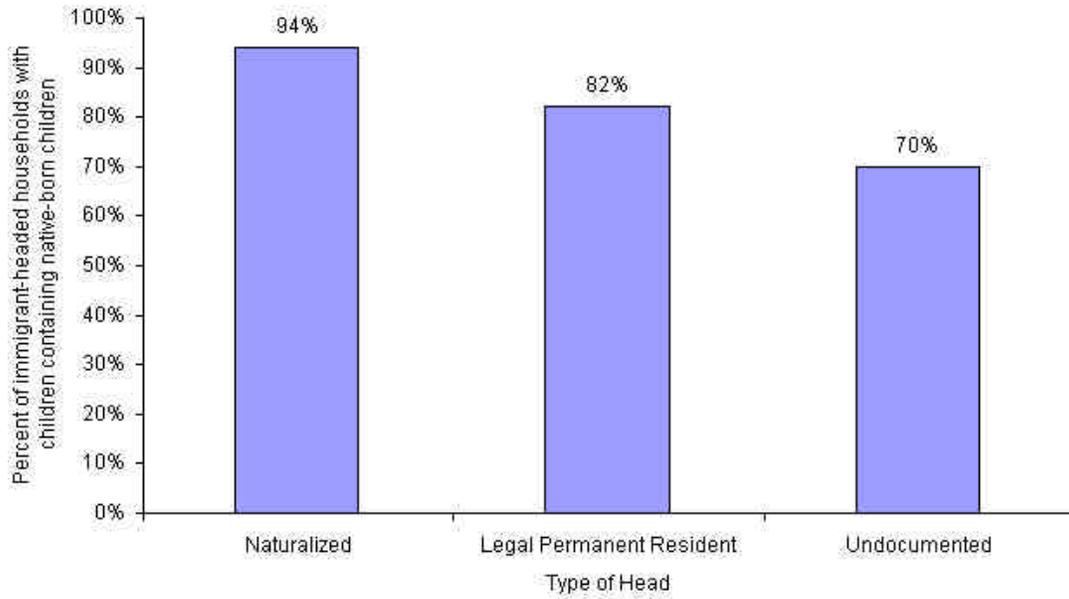
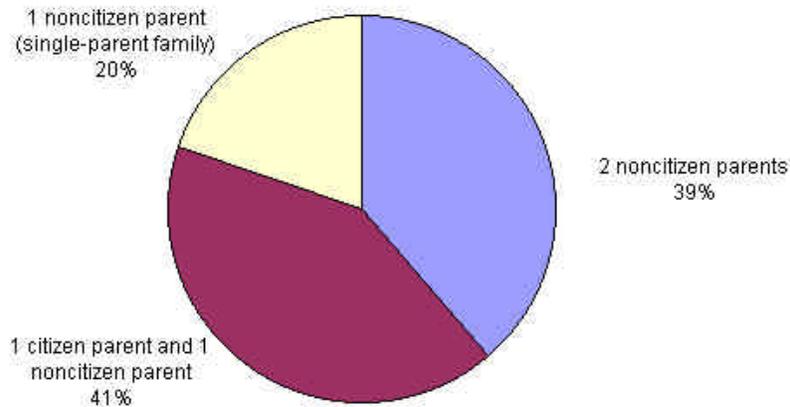


Table reads: Seventy percent of New York's undocumented immigrant-headed households with children contain native-born citizen children.

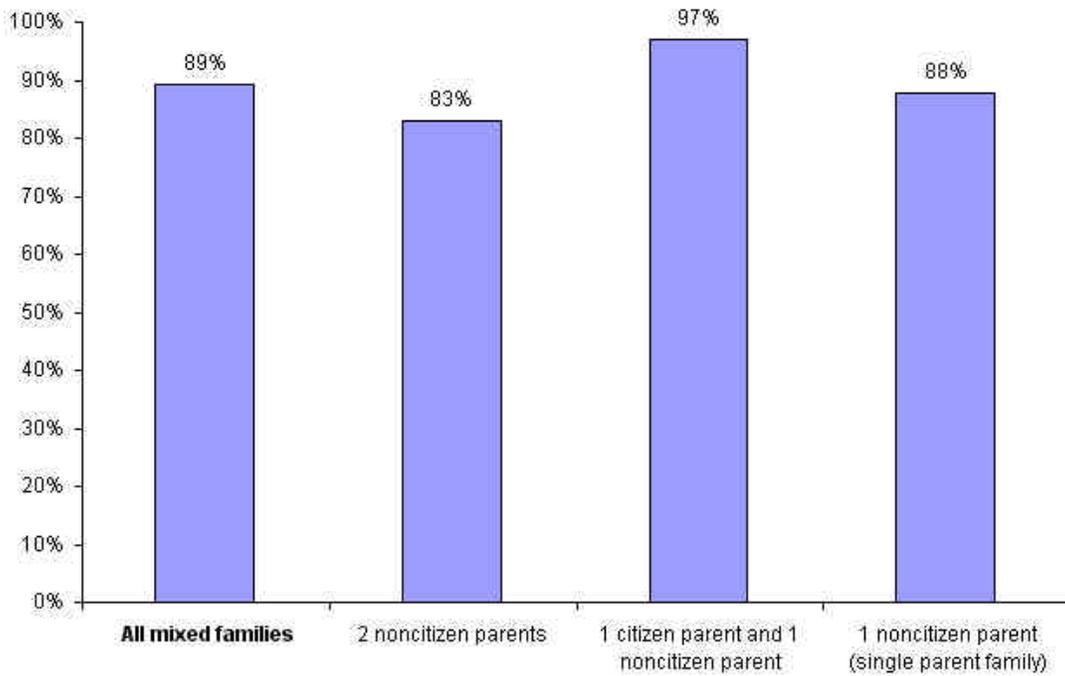
Source: Urban Institute tabulations from March 1998 Current Population Survey (with modified citizenship status, Passel and Clark, 1998)

Figure 5: Citizenship of Parents in Mixed Status Families, 1998



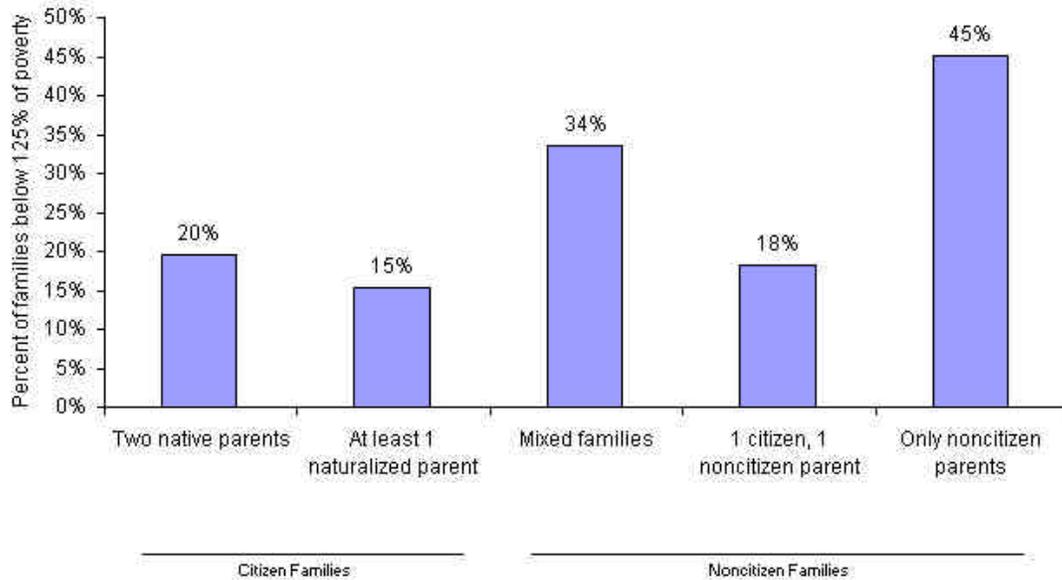
Source: Urban Institute tabulations from March 1998 Current Population Survey (with modified citizenship status, Passel and Clark, 1998)

Figure 6: Share of Children in Mixed Families Who Are Citizens, by Type of Family, 1998



Source: Urban Institute tabulations from March 1998 Current Population Survey (with modified citizenship status, Passel and Clark, 1998)

Figure 7: Share of Families with Children Having Incomes under 125 Percent of the Poverty Level, by Type of Family, 1998



Source: Urban Institute tabulations from March 1998 Current Population Survey (with modified citizenship status, Passel and Clark, 1998)

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