

## CHAPTER 4

# The Punishment

## *Marco and Tanya*

As a 14 year old, Marco came to the United States with one goal in mind: to earn enough money to buy a motorcycle. In the fall of 1990, he left his home in Tlaxcala, Mexico, and traveled to the border city of Tijuana, just 25 miles south of San Diego, California. There, in a Tijuana bar, Marco struck up a conversation with a group of San Diegan teenagers who had come to Mexico to take advantage of the lower drinking age. The teenagers offered to take Marco across the U.S. border themselves. Marco, the son of a Polish farmer who had himself migrated to Mexico in the 1950s, “looks white,” he says laughingly, and he pretended to be sleeping in the backseat while the teens drove through the border checkpoint. They then took Marco to the airport, where he caught a plane to join his older brother in Chicago.

At first, Marco had trouble finding a job because of his age, but before long the owners of a Polish restaurant “adopted” him, and he worked in exchange for food for two months before they added him to the payroll as a cook. Eventually, Marco was able to purchase his first motorcycle: a used Honda Magna. The bike was so big, and Marco still so small, that he could hardly ride it, but he loved it just the same. When he was 17, a car struck him while he was riding the motorcycle, seriously injuring him. Although the other driver was at fault, Marco received a ticket for driving without a license, and when he recovered from his injuries, he took his Mexican birth certificate to the Illinois

Department of Motor Vehicles to get a driver license. Three years later, he got a commercial driver license and began working as a local truck driver. On the weekends, Marco moonlighted as a DJ and go-go dancer in some of Chicago’s most popular Latin-music clubs. With a steady income and plenty of friends, Marco partied away his twenties until he met Tanya in 2003.

Marco says that Tanya never asked him about his immigration status, but since he had a valid driver license, she assumed that he was lawfully resident. Six months into their relationship, Tanya became pregnant with their first child, and Marco worked up the courage to tell her about his status. Tanya was angry but agreed to try to make the relationship work. The following year, in 2005, Marco bought an engagement ring and proposed to Tanya at a family party. She accepted, and they got married in the summer of 2007.

In the years since Marco and Tanya first met, heightened immigration enforcement measures had eroded Marco’s tenuous financial stability. When his driver license expired in 2006, Marco was unable to renew it. He lost his job as a truck driver and took a lower-paying job in a restaurant. The threat of deportation loomed larger than it ever had before. So when Marco and Tanya returned from their honeymoon, they consulted with an immigration attorney about the possibility of changing Marco’s status. Marco had never been caught at the border, he had not left the United States since his first entry, and he had no criminal record. Their case was strong, the attorney said, “But you could be gone for one year or you could be gone for ten years. There is no guarantee,” he added. Marco and Tanya went home to think it over. Eventually, they decided to risk the separation and move forward with immigration processing.

It took them a year to gather the documents and save enough money for processing. They filed their family petition in late 2008, and it was approved within months. They began to prepare for the second step: Marco’s interview at the U.S. consulate in Ciudad Juárez, Mexico.

They decided that Marco would go to Mexico alone. This was a time of pervasive violence in Mexico, much of it concentrated near the U.S. border, and they did not want to take the baby there. Indeed, four months after Marco’s arrival, three U.S. consulate workers were gunned down in Juárez, and the consulate itself was temporarily closed. Also, Tanya needed to stay in Chicago so that she could continue working to keep on top of their bills. Immigration processing had drained their savings, and Tanya’s income would have to keep

them afloat while Marco was away. At the last minute, Marco sold his work truck so that Tanya would have some extra cash while he was gone. In December 2009, he left the United States for the first time in almost 20 years.

Marco flew from Chicago to El Paso, Texas, and then took a taxi across the border to Ciudad Juárez. The taxi driver took him to a hotel near the U.S. consulate, where he checked in, and the hotel staff warned him not to venture outside unless it was absolutely necessary.

Marco's interview was scheduled for a Monday, and Marco arrived in Juárez the Wednesday before to complete his medical exam and biometrics check. Marco went to his medical exam on Thursday. There, clinic doctors took urine and blood samples, and they questioned him about his tattoos, as well as his alcohol and drug use. On Friday, he went to his biometrics appointment, where his fingerprints were taken and his face was photographed. Then, after a long and lonely weekend at the hotel, he got ready to attend his consular interview on Monday.

Marco took his file with all of his documents to the U.S. consulate at 8:00 on Monday morning. A long line had already formed outside. He made his way to the entrance and showed his appointment letter to a security guard standing outside. The guard let Marco into the building, where he went through security. A second guard gave him a number. After a receptionist checked Marco's file to make sure it was complete, Marco sat down and waited for his number to be called. When his number flashed on a screen above one of the service windows along the wall, Marco approached.

He stood at a long countertop facing an agent who was seated behind the window. The interview began. "When did you first enter the United States?" "I entered in November of 1990." "Why did you come?" "I came to visit my brother and to get a motorcycle. But I didn't go back and now I'm married. I would like to see if I can fix my status." "Okay, let me look at your papers. . . . Did you cross on this date in 2006?" "No." "Okay," said the officer, "Well, let me review your papers. Sit over there and we will call you again."

Marco returned to his seat in the waiting area. After about 15 minutes, the agent called him back to the window. "Okay, I looked at your file, and I'm going to give you a bar because you entered the United States illegally." He handed Marco a sheet of paper with a numbered list; the ninth item was circled: a 10-year bar for unlawful presence.

Dejected, Marco left the consulate and called Tanya. They consoled each other as best they could over the phone. Then, Tanya called the attorney. This is what we expected to happen, the attorney explained. And, actually, it was good news: the 10-year bar for unlawful presence can be waived. Marco would be given the chance to return home.

Around the time that Marco was attending his consular interview in Ciudad Juárez, Mexico, I went to Chicago's USCIS offices with Gio and Rosie. Gio came to the United States with his parents on a tourist visa when he was nine years old, and he lived in the United States unlawfully for 12 years before marrying Rosie, his high school sweetheart. Four months into their marriage, Gio and Rosie filed the paperwork to adjust Gio's status. Six months later, we sat in USCIS's cavernous beige waiting room in downtown Chicago; Gio and Rosie held hands and spoke in whispers while Gio, dressed in his best jeans, tapped his foot nervously on the carpet. Less than 30 minutes later, we were headed to lunch; Gio had been approved. In all, the process cost Gio and Rosie about \$3,000 ("Worth every penny," Gio said) and took about six months to complete. Gio never left Chicago; he and Rosie were never separated.

The undocumented population of the United States is diverse, differing in almost every way imaginable; this variation differentially shapes people's ability to legalize their status. For undocumented people with U.S.-citizen spouses, there is one distinction that is arguably more important than all of the rest. For them, the path to lawful status bifurcates around one central question: how did you get here?

There are two main ways in which a person can become undocumented in the United States. The first way is to enter the United States without permission, like Marco did. This is most often achieved by the unlawful crossing of a border, but it also results when people misrepresent themselves as U.S. visa holders or U.S. citizens to immigration officials. People who enter the United States unlawfully, either surreptitiously or through fraud, comprise about half of the U.S. undocumented population. The other way to become undocumented is to enter lawfully—either on a temporary visa, such as a tourist or student visa, or from one of the nations exempted from visas—and then to stay past its expiration or otherwise violate the terms of entry. This is what Gio's family did. I will refer to people who enter lawfully and later become undocumented as visa overstayers; they comprise the other half of the U.S. undocumented population.<sup>1</sup>

Undocumented people are not equally likely to be either unlawful entrants or visa overstayers. Instead, these categories are tied to broader ethn racial and class characteristics. In fact, many of the world's wealthiest nations—including most European countries, such as England, France, Germany, Sweden, Austria, the Netherlands, Finland, Greece, and Spain, as well as Australia and New Zealand and select Asian nations, including Japan, Taiwan, and South Korea—are part of the U.S. Visa Waiver Program (U.S. Department of State 2014). People from these countries do not need a visa to come to the United States. They can enter lawfully and stay up to 90 days without a visa; they are unlikely to ever be unlawful entrants.

For the rest of the world, whether a person can procure a temporary visa to visit the United States is often based on their “assets” in the home country. Ample assets are considered evidence that visitors will return home promptly after a visit, making middle-class and wealthy people more likely to be granted visas to visit the United States than poor and working-class people (Gerken 2013). For example, Anya explained the difficulty that Enrique's sister faced when she tried to get a tourist visa to visit her brother: “It is 2,500 pesos per person to get a passport, which is a lot for Mexico, and then \$150 [U.S. dollars] each to get an appointment to maybe see if you can get a visa, and then if you get a visa, you have to have 10,000 pesos in the bank to make sure that you're not going to stay [in the U.S.].” These requirements push the possibility of getting a temporary visa out of reach for most working-class and impoverished Mexicans. And because of the history of migration between Latin America and the United States, coupled with their proximity and the likelihood that prospective Latin American immigrants will be working class, undocumented Latin Americans are more likely to be unlawful entrants than undocumented people from elsewhere in the world (Coutin 2000a; Pew Hispanic Center 2006).

As policies that grant admission disadvantage working-class Latin Americans, so too does the coupling of criminal law and immigration enforcement on the U.S.–Mexico border. Currently, unlawful *presence* in the United States is not a crime but a civil violation, and deportation is not considered a punishment but an administrative solution (Golash-Boza 2012b). But since 2005, the U.S. Border Patrol has been aggressively charging unlawful *entry* as a federal crime: a misdemeanor for the first crossing attempt and a felony charge for any additional attempts. Between 1992 and 2012, the number of federal convictions for unlawful reentry into the United States increased 28-fold, from 690 cases to 19,462.

By 2012, people convicted of unlawful reentry made up 26 percent of all sentenced federal offenders, and they served an average of 23 months in prison prior to deportation (Light et al. 2014).

In all, Latin Americans are more likely both to be unlawful entrants and to have immigration-related criminal convictions than other undocumented people. These two factors amount to a one-two punch that makes undocumented Latinos far less likely to be able to legalize their status, regardless of their family relations or length of residence in the United States.

### The Legal Nonexistence of Unlawful Entrants

Gio and Marco's divergent paths to lawful status were forged by the 1996 IIRAIRA, which first established a legal distinction between undocumented people who enter unlawfully and those who enter the United States either with a temporary visa or from one of the nations exempted from visas and then overstay their departure date. IIRAIRA determined that visa overstayers had been lawfully “admitted” to the United States, whereas unlawful entrants had not. This distinction has important consequences for immigration processing.

First, to legalize their status, unlawful entrants must leave the country and apply to be admitted—as though they were never here (Immigrant Legal Resource Center 2012).<sup>2</sup> In contrast, because overstayers have been lawfully admitted, they do not have to leave and apply for admission; they can often adjust their status without separating from their U.S. families. Second, when unlawful entrants apply for admission, they must prove that they do not meet any “grounds of inadmissibility.” Yet one ground of inadmissibility is a history of unlawful presence in the United States. Anyone who has lived in the United States unlawfully between 180 days and 1 year is barred from reentry for 3 years. Anyone who has lived in the United States unlawfully for more than 1 year is barred from reentry for 10 years. In Chicago's Mexican communities, the 10-year bar is known colloquially as “el castigo,” or “the punishment.” The bars on reentry are automatic and nondiscretionary—applied without regard to a person's length of residence, family ties, work history, criminal record, need, or any other consideration. Since these bars are triggered when a person leaves and applies to come back, they almost exclusively apply to undocumented unlawful entrants and not to visa overstayers.

Because Marco is married to Tanya, he is eligible for an immigrant visa. Since he had never legally entered the United States, he had to leave the United States to get it. Because he left and applied to come back, he was barred from returning. Because he was barred, he and Tanya had to apply for a waiver of the bar, a step that I discuss more in the next chapter. Together, this process cost Marco and Tanya more than \$10,000 and left them separated for 18 months. Being an unlawful entrant pushes the cost and the risk of immigration processing to the ceiling, all but guaranteeing that many undocumented people will remain undocumented, even when they qualify for an immigrant visa.

Because unlawful presence following unlawful entry is a ground of inadmissibility, unlawful entrants can never meet the criteria for admission. When they go to their consular interviews, they already know that their applications for admission will be denied and their reentry prohibited for 3 or 10 years. Their task in Juárez is to avoid all other grounds of inadmissibility, so that they may be eligible to apply for a waiver of the bar and return home to their families.

### Going to Juárez

Of the three main steps of consular processing—the family petition, the consular interview, and the hardship waiver packet—filing a family petition is both the easiest and the least risky, since it involves no commitment to move forward. Once the family petition is approved, couples receive a notice in the mail with the date of a consular interview in Ciudad Juárez. Going to Juárez marks a point of no return: once the undocumented family member leaves, there is no guarantee that he or she will be able to come back. Some couples suspend the process at this juncture, unable to cope with the prospect of indefinite separation.

The reality that the undocumented family member must leave and may or may not be able to return can hit hard. Families do everything they can beforehand to increase their chances of a speedy approval and prompt reunion. One woman, Pamela, explains how she and her husband, Victor, prepared for his interview:

I was like, “You need to know my favorite drink. What’s my this, what’s my that? Where are my parents from?” He knew it, but he’s not good under pressure. And he’s not good with dates. He knows my birthday because it’s the day after his. I kept drilling him, “What day did we get married?” And thank god, it’s the same day we met,

so he knows that. The kids’ birthdays, he gets those confused with other days, so we kept going over and over and over this. I booked him the hotel. I set up the transportation. Got him a little phone book in case his cellphone doesn’t work. . . . We had heard all kinds of stories of certain people; they asked them for pictures, you know, that your marriage is legit. We were going through pictures. . . .

July 21st [the day Victor left], I got up, got lost going to the airport. I have been to the airport 100 million times. And he said to me the night before, he said, “Promise me you’re not going to cry.” And I said, “I can’t promise you that I won’t cry . . . but I will promise you that Security will not have to come and intervene. I will promise you that.” And he said, “Okay, I’ll take it.” And we get [to the airport] and I said, “Are you going to cry?” And he said, “No, I’m not going to cry.” He goes, “Why am I going to cry? I am coming home [back to you]. I am not going to cry. I am going to come home.”

Like many couples, Victor and Pamela made the decision to split up, rather than go to Juárez together. Not only is a family trip more expensive, but also travel to Juárez can be dangerous. During my fieldwork period, Juárez had the dubious distinction of being one of the most dangerous cities in the world (Valdez 2014). Enrique described the area around the U.S. consulate in Juárez as “a war zone,” replete with masked soldiers armed with machine guns. “You can feel the tension,” Enrique explained, “You see that and you think, ‘I want to go back to Chicago!’” Pamela remembers worrying, “All the shit is going down in Juárez, like all these murders every day. Now I am thinking, [Victor] is going to have papers, and he is going to die.” Attorneys counsel clients to take extreme precautions during their stay in Juárez, warning them to travel by hotel shuttle instead of taxi, to avoid carrying cash or other valuable items, and to stay within the consular zone and never venture outside after dark.

With thousands of people visiting the U.S. consulate in Juárez each day, the consulate building is at the center of a microeconomy oriented toward consulate visitors. There are numerous hotels, a shopping mall, a Starbucks, and several fast-food venues near the consular area that cater to consulate employees and clients. There are also many dubious establishments, including legal offices that guarantee “100% approval” for consular processing cases, exorbitantly priced copy services, and “medical offices” that promise applicants a quick, cheap, and successful

exam. The first test for people undertaking consular processing is simply to avoid all of the distraction and make it through their to-do list. In particular, USCIS sends them to Juárez to attend three appointments: a medical exam, a biometrics appointment, and a consular interview. At each appointment, applicants are screened for grounds of inadmissibility to the United States.

### The Medical Exam

The first appointment is the medical exam. The medical exam must be completed at least two days prior to the date of the consular interview, so that consular officials will have the results by the time of the interview. There are two U.S. Department of State–approved medical offices in Juárez, both within easy walking distance of the U.S. consulate and nearby hotels. The purpose of the medical exam is to test the applicant for health-related grounds of inadmissibility.

On any given day, there are hundreds of people waiting to have their medical exam completed at one of the approved clinics. Applicants are given a number on arrival, and when their number is called, they proceed through a conveyor belt of different tests, all done by different doctors. First, they are photographed, then weighed, then they give a urine sample, then a blood sample, then they disrobe and are physically inspected. Finally, they are vaccinated. At each juncture, the doctor asks them questions. Some are health related, such as, “Have you ever had surgery?” And others are not: “Do you have tattoos? Have you ever been arrested?”

Clinic doctors are testing applicants for signs of four main grounds of inadmissibility. The first consists of communicable diseases, such as tuberculosis or sexually transmitted infections like syphilis or gonorrhea, which potentially present a public health risk. If detected, some of these diseases can be treated, and then the applicant can try again later. The second health-related ground of inadmissibility is a failure to prove vaccinations. Unless the applicant has an updated vaccination record at the ready, doctors at the clinics make rough determinations of which vaccinations they are likely to need and then administer them—each at an additional cost, of course. Third, doctors inspect applicants for signs of a mental or physical disorder that could pose a danger to themselves or others. Alcoholism, past institutionalization, and suicide attempts are all potential indicators of a mental disorder, and arrests for driving under the influence can raise a red flag for alcoholism. Finally, applicants are tested for drug use and addiction, the fourth health-related ground of inadmissibility.

Before the medical exam, attorneys warn their clients that if they admit to regular alcohol consumption or any past drug use at all, clinic doctors may refer them to a psychologist for further evaluation. At best, a visit to the clinic psychologist incurs additional time and cost; at worst, it can jeopardize a case. One attorney recounted an instance in which her client was coerced into admitting drug use by medical clinic staff. “[The client] was reduced to a blubbering mass and admitted that he had smoked pot three times in his life or something, which shouldn’t be a bar. [He] was left crying and hysterical by this doctor and then psychologist. He admitted it after the doctor said, ‘You know, we are taking your urine sample and if you have ever used any kind of drug in your life, it will show up here.’ And he’s like, ‘Okay, I smoked pot three times.’” The client was hit with a bar for drug abuse, which is three years long and ineligible for a waiver.

Applicants may also be referred to the clinic psychologist if they have a criminal record to be evaluated for a “criminal” character. This is what happened to Alberto, who had lived in the United States since childhood and was arrested on assault charges following a street fight. Alberto went for consular processing after his marriage to Heather, and the clinic psychologist questioned Alberto about the fight and his subsequent arrest. When Alberto had a hard time remembering details of the event, the psychologist became angry, telling him, “Well, you don’t remember. You don’t remember. You don’t remember, so I put down on my sheet that you’re mentally retarded.” Of course, mental disability also constitutes a ground of inadmissibility. When Alberto attended his consular interview two days later, the agent barred him from the United States and determined that he was ineligible to apply for a waiver. “We don’t let criminals back into the United States,” she told him.

Tattoos can also be a source of complication at medical exams, not because they present a health risk, but because they make a person suspect for gang affiliation. Savvy attorneys ask their clients about tattoos during intake meetings, and they advise them to cover or remove any tattoos that might invite suspicion. And because popular tattoos are often common among both gang members and non-gang members, all but the most innocuous tattoos can cause problems. For instance, people have been barred from the United States for tattoos depicting grim reapers, happy/sad theater masks, hands praying the rosary, and certain sayings, such as “my crazy life” (see also Jordan 2012).

Enrique has what he describes as a “tribal” tattoo, consisting of intertwining black lines, on his left bicep, which the doctor at his medical exam quizzed him about. Enrique recounted, “[The doctor] asked me, ‘What does it mean?’ I told him, ‘Nothing. It’s tribal.’ ‘Well, why did you get it?’ [I told him] ‘I liked it, and I wanted a tattoo, and I didn’t know what to get, and I liked this and that’s why I got it.’” Enrique laughed when he recounted this exchange, but the stakes of having a “suspicious” tattoo are high and can include a permanent bar for affiliation with organized crime (Jordan 2012). Pamela said that she thought Victor’s grim reaper tattoo—the result of a lost bet with his brother—was “the bomb” when she was in her early twenties, but it turned out to be “not so nice” for their consular processing case. Victor had to cover the tattoo before he went for processing, at an additional cost of \$500 for them. Now, because so many applicants have had their tattoos removed or covered, signs of a removed tattoo are also deemed suspicious and those applicants are subjected to additional questioning.

Finally, the expense of the medical exam can be a burden for families. The exact cost of the exam cannot be predicted beforehand, since the doctor determines which vaccinations are needed and charges accordingly; vaccines range in price from \$30 to \$95 each. Enrique and Anya tried to head off some of the cost by updating Enrique’s vaccinations before he left, but to no avail: the doctor told him that he needed them again in Juárez. Also, many people have to do the exam more than once because their first exam expires before their cases are resolved. For example, when Nico went for processing, he and his wife Natalie already knew that he was going to be barred from returning to the United States for five years for failing to attend removal proceedings. Nico needed to have an exam done before his initial interview, and since the exam expires after six months, he would have to repeat the exam at the end of his five-year bar. Natalie, who was working two jobs to support their four children while Nico was away, complained about the \$250 cost to her attorney. The attorney remarked that “[\$250] is not a lot of money in the grand scheme of things.” “I don’t know about you,” Natalie replied, “But I had to work a day and a half to make that money.” For couples struggling to pay for processing, repeated and variable costs for the medical exam can be a significant burden.

After the exam, applicants return to the clinic on the following day to pick up the exam results. These are enclosed in a black plastic envelope,

which must remain sealed and be handed unopened to a U.S. immigration official during the consular interview.

### Biometrics

On their second day in Juárez, applicants attend their biometrics appointment, which must be completed at least one day prior to the consular interview. During the biometrics appointment, applicants’ fingerprints and pictures are taken and then run through U.S. federal criminal and immigration databases. The purpose of the biometrics appointment is to check for grounds of inadmissibility related to criminal or immigration violations. The fingerprinting and photographing procedures are fairly straightforward, but the implications of these checks can be complex and life-changing.

There are several grounds of inadmissibility related to criminal violations. Some are fairly obvious; for example, a conviction for terrorist activity, murder, or sexual assault will definitely make a person inadmissible to the United States. Yet even petty offenses—such as being under the influence of drugs or minor drug possession—can also make a person inadmissible. Some convictions that involve intentional violence, fraud, theft, or prostitution are likely to be considered crimes involving moral turpitude, or CIMTs, which have especially serious immigration consequences (Immigrant Legal Resource Center 2012). (Interestingly, working as a prostitute is a long-standing CIMT, whereas soliciting a prostitute is not.) For example, one young man, Beto, was convicted of two felony counts, grand theft and larceny, after he stole a purse from a car. Several years later, when he and his wife Christine attempted consular processing, those convictions were considered CIMTs and Beto was permanently barred from returning to the United States.

Other “criminal” grounds of inadmissibility are especially related to immigration violations and likely to cause problems for undocumented applicants. By itself, unlawful presence following unlawful entry is a ground of inadmissibility that applies to almost all unlawful entrants and is the reason why the bar on their admission must be waived before they can return. Other grounds of inadmissibility that can especially affect undocumented people include “alien smuggling,” which covers everything from helping someone cross the border to sending money for a family member’s passage, and “document fraud,” or using false documents to enter or work in the United States.

One particularly punitive ground of inadmissibility is the “false claim” to U.S. citizenship. Any noncitizen who has ever claimed to be a U.S. citizen, even by checking a “U.S. citizen” box on a job application, can be penalized with a permanent bar on their reentry to the United States. This can even occur without an applicant’s knowledge: one attorney explained that a few years ago Illinois Secretary of State employees were obligated to ask people applying for a driver license if they wanted to be registered to vote. If noncitizens answered “yes,” they had made a false claim to U.S. citizenship that would get them permanently barred if they later tried to undertake immigration processing (or, if they were lawful residents, that would get them deported if they later applied to naturalize as U.S. citizens).

Some of these bars, such as the bar for unlawful presence and Beto’s lifetime bar for criminal convictions, can be waived. Others, such as the bar for false claim to U.S. citizenship, cannot. One unwaivable bar that applies to many applicants from Central and South America is the 5-year bar for failing to attend removal proceedings. Until recently, Mexicans who were caught unlawfully entering the United States were typically taken back to Mexico immediately, whereas people from elsewhere in the world, but predominantly from Central and South America, were given a court date for removal hearings and released on bond. (Since 2004, the practice of releasing non-Mexicans on bond has been partially replaced by putting them in detention centers to await their deportation hearings.) Not surprisingly, many of those released on bond subsequently proceeded to their U.S. destinations and declined to appear in court. When they attempt to legalize their status, they often receive a 10-year bar for unlawful presence, which is waivable, and a 5-year bar for failing to attend court, which is not.

This is what happened to Paolo, a Brazilian man in his forties who was caught entering the United States unlawfully in 2005. When he was caught on the border, U.S. immigration officials first offered Paolo a deal: if he joined the U.S. military, he could get on a “fast track” to U.S. citizenship. But Paolo was nervous that the military did not pay well enough to allow him to cover his \$10,000 debt to a coyote, and he declined. Then, he was given a court date in Arizona 12 months in the future and released. Paolo traveled to Chicago, where he joined his brother and found a job doing asbestos removal. He did not attend his court hearing. Five years later, in May 2010, he married Wendy. When they consulted with a lawyer about the possibility of changing Paolo’s

status, Paolo and Wendy were stunned to learn that his failure to appear in court would result in a 5-year unwaivable bar. Unable to face the prospect of a 5-year separation, Wendy and Paolo declined to pursue consular processing. In October of that year, ICE agents came to their apartment looking for Paolo’s former roommate. The roommate was not there, but Paolo was. He was arrested and, a month later, deported to Brazil. Wendy then moved to Brazil to be with him, and they began looking into their legal options from there.

Finally, there is what is known as the “permanent bar.” The permanent bar is applied to people who live in the United States for a year or more without authorization, leave, and then reenter the United States unlawfully. The permanent bar is waivable, but only after a 10-year wait period. This is the bar that would apply to René if he and Molly were to pursue consular processing. Not everyone is aware that they may be hit with a permanent bar, and the sudden and unexpected banishment can devastate a family.

For example, Ramón attained lawful permanent residency through IRCA in 1986 and married his wife Lupita in the 1990s; they later had three U.S.-citizen children together. Lupita was undocumented, but Ramón never filed a petition on her behalf because spouses of lawful permanent residents are subject to annual caps and can wait for many years for a visa to become available. In 2002, Lupita’s mom became ill, and Lupita decided to visit her in Mexico. When her mom recovered, Lupita attempted to go back to her family in Chicago. She was caught by the U.S. Border Patrol and returned to Tijuana, Mexico, by bus. As she was unloaded from the bus, a U.S. agent whispered in Lupita’s ear, “They are not checking trunks today.” Lupita called Ramón, and Ramón drove to Tijuana to pick up his wife. She climbed into the trunk of their car, and Ramón drove through the border checkpoint and back into the United States. They picked up their children and went home to Chicago.

Several years later, after Ramón naturalized as a U.S. citizen, he and Lupita decided to pursue consular processing. Lupita attended her consular interview in June 2011. There, the U.S. immigration agent saw Lupita’s record of unlawful entry and reentry, and he barred her from returning to the United States for 99 years.

When I visited Ramón in Chicago two months later, he was still in shock. “The boys cry for their mom every night,” he told me, “especially the littlest one.” The oldest boy had been literally sick with grief and had to be hospitalized for three days. To make matters worse, when

Ramón visited Lupita in Mexico, he was robbed and beaten. His shoulder was injured in the attack, and he had been unable to work since. "What am I supposed to do?" Ramón asked me as we sat in his kitchen, his three boys standing protectively around him. In 10 years, Ramón can apply to have the remainder of Lupita's bar waived, but they cannot wait 10 years for her to come home. The family could all move to Mexico, he suggested, but the situation in Mexico is bad. "*Está feo*," he said as he rubbed his sore shoulder. Anyway, "it's better for the children to be [in the United States] . . . they don't know anything about Mexico." Maybe Lupita could get a visa to visit Canada, Ramón proposed, and then try to enter the United States from there, where crossing is easier. But if she is caught, she could spend time in detention or prison and then be deported anyway. If all else fails, Ramón said, Lupita will have to cross the desert again. "The law makes people break it," he said. "We need her here. My children need her here." Soon after, Ramón's phone was disconnected and his house empty; I never did learn what he and Lupita decided to do.

### The Consular Interview

The applicants' three-day trek in Juárez culminates in their interview with an immigration official at the U.S. consulate. There, all of the evidence will be put together and weighed by a U.S. immigration agent who will assess whether the applicant is admissible to the United States and, if not, will determine which bars to apply. It is a big day.

The U.S. consulate in Ciudad Juárez is not a single building, but a secured compound. As applicants approach, they join hundreds of other visitors standing in line, all clutching their files. The tension is palpable, Enrique explained, "Everyone is scared. . . . The people ahead of you and behind you are all asking, 'What happens next? What's going to happen?' Or, 'I heard this, I heard that. This guy was denied.'" He said, "All your fears start to rush forth and boil over. You don't know what's going to happen inside." The applicants must enter the consulate alone, since only people with appointments are allowed inside. The entrance to the consulate is kept clear by masked and armed security guards; family members wait on the other side of a covered fence and peer through gaps, hoping to get a glimpse of their loved ones as they come out with a decision.

Applicants first pass through a security building, where they are screened—no pens, cellphones, or other electronic devices are permitted.

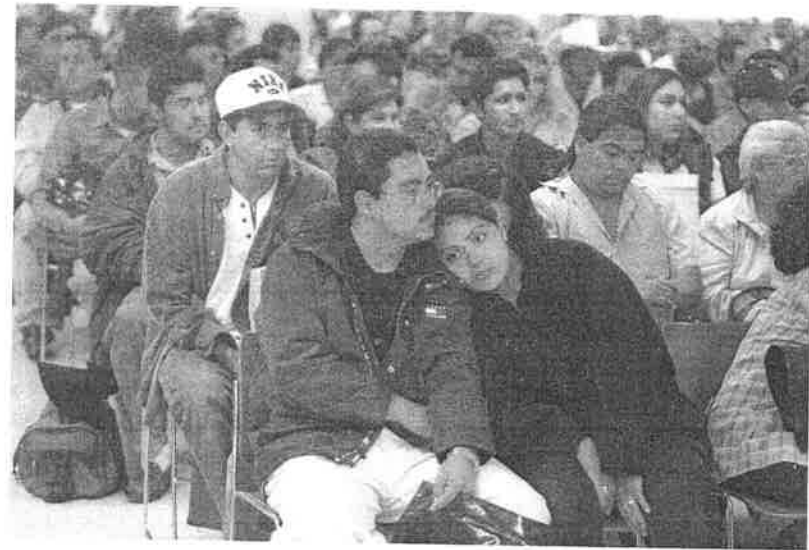


FIGURE 4.1 Visa applicants wait to speak with an official at the U.S. consulate in Juárez. Photo by Joe Raedle/Newsmakers.

Then, they are given a number and told to proceed to a second building with a large waiting area and screens showing which numbers are currently being serviced. When their number appears on the screen, applicants approach a reception window, where an administrator checks that the file is complete. The file, now quite thick, should include the visa application, results from the medical exam, certified court dispositions, proof of income such as tax returns and pay stubs, birth and marriage certificates, passports, passport photos, and any other documents that USCIS or the Department of State has deemed relevant.

If the file is complete, applicants are given another number and sent to a second area. This is where they wait to speak with an immigration agent. When they are called, applicants walk to a long countertop, where consular officials who work for the U.S. Department of State sit behind glass on the other side. There, the interview begins.

According to my study participants, consular officials begin the interview by reviewing the file and asking selected questions from it. The questions start out easy: "What is your name? Where were you born? What is your spouse's name?" And then they move into more precarious territory: "When did you come to the United States? How many

times? Have you ever been arrested? When and what for?" Officials compare verbal answers to written records, looking for hints of dishonesty; any deviation or uncertainty could invite suspicion. According to attorneys, officials may even try to trick applicants into admitting to additional violations by pretending to have evidence of border crossings or criminal convictions. Careful attorneys prepare their clients for this barrage in advance, so that applicants are not caught off guard. Of my participants, Enrique alone had a panic-inducing interview moment when the consular official asked him whether he had ever been arrested. In Spanish, Enrique replied, "Sí, por tráfico." "Tráfico?" the official asked. "Yes, just for driving without a license." "You mean 'tránsito,'" the official corrected him. "'Tránsito' is traffic, 'tráfico' means drug trafficking." Enrique was horrified by his error at the time, but laughs about it now that he is safely home in Chicago with his green card in hand.

Additional screens for inadmissibility not completed by the medical exam or biometrics check occur during the interview. One of the most important of these is the requirement that the applicant will not become a "public charge" or receive cash welfare or long-term care at government expense. You may remember from Chapter 2 that being likely to become a public charge is one of the longest standing grounds of inadmissibility in U.S. immigration statutes. Today, consular officials continue to pay special attention to applicants' ability to prove that they will not become a public charge (Immigrant Legal Resource Center 2012). The key piece of evidence for this is the "Affidavit of Support," a legally binding document in which the U.S.-citizen or legally resident petitioner promises to assume financial responsibility for the applicant for at least five years. The petitioner must demonstrate that his or her household income is at least 125 percent of the federal poverty level or secure a cosponsor. This form is supplemented by copies of tax returns and other proof of the petitioner's income. Consular officials may also look at characteristics such as the age, health, skill level, and education of the immigrant applicant to assess his or her likelihood of becoming a public charge (Immigrant Legal Resource Center 2012). Meeting the financial requirements to avoid this ground of inadmissibility can be a major burden on working-poor families seeking to lawfully reunite. This requirement also firmly ties a potential immigrant's admissibility to their capacity for work and their family's socioeconomic status in the United States.

In addition to the hard evidence contained in the file, consular officials will make subjective observations of the immigrant applicant. According to members of the Juárez Wives Club, an applicant's English proficiency, "clean-cut" appearance, and observance of middle-class norms during the interview may all help to persuade officials to approve a petition. In the end, all of this evidence, objective and subjective, is brought together in the final decision. Most of my participants' interviews were short and straightforward—between 5 and 15 minutes long. And at the end of their interviews, the official handed them a piece of paper with their decision.

### "Criminal" Complications

Most people who make it to this step have clean criminal records or have only been arrested for minor offenses, such as driving without a license. There is good reason for this: undocumented people with serious criminal records are unlikely to pursue immigration processing because it will almost certainly result in a deportation and/or unwaivable bar. Some people, however, find themselves caught up in immigration and criminal proceedings at the same time. This is what happened to Alberto and Heather.

Alberto came to the United States when he was 12 years old, brought by his parents across the U.S.–Mexico border on foot. He met Heather through his sister, and they began dating when they were only 15 years old. At the age of 19, Alberto tried to stop a street fight that his brother was involved in; another young man was hurt in the incident, and both Alberto and his brother were arrested. While Alberto was being held in the local jail on probable cause, ICE agents came to pick him up. The criminal charges against Alberto were dropped, but he was compelled to sign a "voluntary departure" to avoid deportation. Heather posted his bail, and he was released into her custody. He had two months until the date of his mandatory departure, October 1, 2009, to prepare to leave the United States. Six days after his release, Heather discovered that she was pregnant.

They got married two weeks later and immediately filed a family petition. Soon after, the criminal charges against Alberto were reinstated, and a warrant was issued for his arrest. Heather and Alberto hired a criminal attorney, in addition to their immigration attorney, and he advised Alberto to turn himself in to police. But their immigration attorney

told Alberto not to turn himself in, because if he missed his October 1 departure because he was in jail, his voluntary departure would turn into a deportation order. The immigration attorney filed a motion to extend the departure date to give Alberto some time to take care of the criminal matter. The motion was approved on October 1, but by the time they found out, Alberto had already boarded his plane to Mexico.

This is when their case “became so much more complicated,” Heather explained. With Alberto in Mexico, Heather was reaching the late stages of her pregnancy alone when she found that USCIS refused to process their family petition because Alberto had an outstanding warrant for his arrest. They were in an impossible situation: Alberto could not come back to the United States until he resolved the criminal case, and he could not resolve the criminal case until he came back to the United States. Heather got in touch with her congressperson’s office and persuaded them to intervene on her behalf; another year passed with no word, and then their family petition was finally approved. Alberto remained in Mexico, and Heather began raising their infant daughter by herself.

Alberto’s consular interview was finally scheduled for May 2011. But when Alberto attended his interview, as I mention above, the consular official told Alberto that he was barred from the United States and could not submit a waiver petition because “We do not allow criminals back in the United States.” The consular official then told Alberto that the only way to move forward with immigration processing was to purposefully get himself arrested in the United States. That way, he could be paroled into the United States to go through criminal proceedings for the assault charge; once that was over, he might be able to adjust his status. The next morning, Alberto walked across the Zaragoza Bridge, where he was arrested and taken into custody by Customs and Border Patrol agents. A week later, Cook County Sheriffs showed up to take Alberto back to Chicago in handcuffs and shackles.

Alberto remained in Cook County Jail while he awaited trial. There, he was found guilty of riot in the second degree, which is a felony but not a CIMT. Alberto was sentenced to 364 days in jail, but his sentence was stayed in favor of probation. Still, Alberto remained in jail for 14 more months, ineligible for release because of his immigration status.

With Alberto in jail and the criminal case resolved, Heather and their immigration attorney moved forward with the immigration case.

Because Alberto had been paroled into the United States and was thus lawfully admitted, he was eligible to adjust his status without leaving. However, immigration officials had lost the paperwork documenting Alberto’s parole, and they charged him with illegal reentry—which would have triggered a permanent bar. When the attorney produced evidence of Alberto’s parole, USCIS allowed them to continue with immigration processing from within the United States.

Heather and Alberto filed the adjustment of status application. But, in the end, their application was denied because the immigration adjudicator found that Alberto had committed a CIMT, “which is false,” Heather says. A deportation order against Alberto was issued.

Out of money and unable to afford an appeal, Heather and Alberto made the decision to let Alberto be deported. With Alberto in Mexico, he and Heather initiated consular processing all over again, beginning with the family petition. As I write this, Alberto and Heather’s daughter has just graduated from preschool, and Alberto has just attended his second consular interview in Juárez. There, immigration officials questioned Heather’s ability to sponsor Alberto financially, but ultimately they decided to allow him to submit a waiver petition. It has been four years since his arrest; he has never lived with his wife and daughter.

For all undocumented people, the increasing criminalization of unauthorized migration has profound but uneven consequences. These consequences are most obvious in prolonged prison sentences, indefinite detention, and record-breaking deportation rates. But criminalization seeps into civil immigration processing as well, disproportionately burdening undocumented Latinos not only with criminal records, but also with indefinite and prolonged bars on reentry. It is ironic, in fact, that the bar for unlawful presence is called the punishment in Spanish, since U.S. law classifies the bar as civil, not criminal, and thus does not consider it punitive or “punishing” at all.

Heather and Alberto beg to differ. “[Alberto] is my *media naranja* [my other half],” Heather wrote me after our first interview. “I need him in a way I’ve never needed anyone else, and he understands me in a way no one else does.” Years later, she is “stubbornly pushing to move forward . . . defiantly insisting that I be allowed to pursue happiness with my family.” But whether Heather and Alberto will ever live together in the United States remains to be seen.

## Outcomes

For some couples, like Lupita and Ramón, the consular processing journey ends at this juncture, truncated by an unwaivable bar on reentry. For many others, like Heather and Alberto, processing is postponed or dragged out indefinitely; their financial and emotional costs will continue to accrue. Other couples, such as Marco and Tanya, Cynthia and Hector, and Enrique and Anya, received the best possible outcome: a 10-year bar for unlawful presence. This bar can be waived, and it allows applicants to move on to the third and most difficult step of the process: the hardship waiver packet. Even for these “lucky” applicants, there are many months to go before they can return home.

## CHAPTER 5

# Extreme Hardship

### *Pamela and Victor*

Pamela and Victor prepared for the consular interview as best they could. Pamela quizzed Victor about important dates and events in their lives; they prepped for questions about his entry to the United States as a teenager, his work history, and his family relations. They budgeted for months and built up their savings account. They explained to their oldest daughter that her daddy would be taking a trip to visit his mom in Mexico, and they assured her that he would be back soon. Pamela even joined an online forum for people doing consular processing with a hardship waiver so that they could keep track of how long the process was taking. Based on their attorney’s information and the timeline posted on the forum, Pamela anticipated that Victor would be gone for a little more than a month.

The night before he left, Victor presented Pamela with a pendant of la Virgen de Guadalupe, an icon of Mexican Catholicism; he put the pendant on a chain and placed it around her neck. “Don’t ever take it off because la Virgen will take care of you,” he said. “I know she will,” Pamela replied, and she gave Victor her childhood rosary to take with him on his trip. The next day, Victor left for Juárez. It was July 2011.

Victor’s medical exam was on a Friday, and his biometrics appointment was on Monday. He and Pamela spoke on the phone every day, and everything was going as planned; so far, so good. They expected the consular interview to

Indeed, much like racial categories, the distinction between legal and illegal migration is a cultural invention that has been (as racial categories were) codified in law. And legal codification alone does not make a practice morally legitimate, much less socially just; only consider that *racial exclusion was explicitly legal* until the 1960s. (Moreover, U.S. foreign and economic policies violate national borders and state sovereignty via military invasion and trade policies all the time, so why are migrants punished for doing it?) Reducing undocumented migration to the behaviors of migrants and ignoring how law structures migration patterns is not merely overly simplistic; it also distorts the relations of power that shape a person's status in society, renders law invisible and unassailable, and legitimizes inequality by dismissing claims to resources and rights made by disempowered people.

In contrast, an attention to processes that legalize migration, as Nicholas De Genova (2002, 2005) has argued, illuminates the role of law in creating both legality and illegality. This is apparent not only in policies that are explicitly exclusionary or restrictionist, but also in programs that govern inclusion, such as the family-based processing that I have described here. Attention to how immigration policies are created, enacted, and experienced "on the ground" allows us to read policy making as a dynamic cultural process that is deeply embedded in broader sociopolitical and economic contexts.

When we do, it becomes apparent that the process I describe in this book is not a broken part of a broken system, much less a faulty part in an otherwise functioning one. Rather, like most structures of exclusion, the U.S. immigration system works for some and not for others; indeed, it benefits some at the expense of others. As Lourdes put it, "I guess what I'm trying to say is that it just really sucks how all this stuff works. . . . I was basically part of sending three black youth to a juvenile detention because they were the people that beat up my brother [making her family eligible for a U visa]. It's one of those things where, if I connect the dots and I really see how things happen, I realize that we're all just pawns in this game."

## APPENDIX A

## Group One

### Seeking Status Change, Ineligible for Family-Based Processing

Name (U.S.-citizen spouse)	Year of first entry to United States	Mode of entry	Country of birth	Process	Status as of June 2014	Chapter(s)
Felipe	1997	EWI	Mexico	Removal	Deported, living in Mexico (family in United States)	
Isabel	1988	EWI	Mexico	NA	Undocumented	
Juan	1995	EWI	Mexico	NA	Undocumented	1, 3
Lily (Carl)*	1995	EWI	Mexico	Removal/ DACA	DACA recipient	3
Lourdes	2001	EWI	Mexico	U visa	Conditional residency	3, 6, 7
Luis	1995	EWI	Mexico	DACA	DACA recipient	3, 6
María	1999	EWI	Mexico	U visa	Conditional residency	6
Noe (Kaitlin)	1996	EWI	Mexico	NA	Undocumented	3, 5
Pancho	1980	EWI	Mexico	NA	Undocumented	
Raymundo	1957	Bracero visa	Mexico	NA	Undocumented	
René (Molly)	1995	EWI	Mexico	NA	Undocumented	1, 3, 6, 7
Roberto	1995	EWI	Mexico	NA	Undocumented	
Rosa	1999	EWI	Mexico	NA	Undocumented	
Sam	1994	EWI	Mexico	DACA	DACA recipient	6

continued

Name (U.S.-citizen spouse)	Year of first entry to United States	Mode of entry	Country of birth	Process	Status as of June 2014	Chapter(s)
Sara	1999	Tourist visa	Ecuador	NA	Undocumented	
Sofia	1997	EWI	Mexico	Removal; suspension of deportation	Undocumented	
Yari	1994	Tourist visa	Mexico	DACA	DACA recipient	

DACA, Deferred Action for Childhood Arrivals; EWI, entry without inspection; NA, not applicable.  
\*Lily is eligible to seek residency through her U.S. citizen husband under the law, but she is unable to do so because of the uncertainty of the outcome.

## Group Two

### Undertook Family-Based Immigration Processing

Name (U.S.- citizen petitioner)	Year of first entry to United States	Mode of entry	Country of birth	Process	Status as of June 2014	Time in processing	Chapter(s)
Abril (stepfather)	1989	EWI	Mexico	Adjustment of status	U.S. citizen	10 years	3, 6
Alberto (Heather)	1998	EWI	Mexico	Removal/ consular processing	Living apart	7 years, still in processing	4, 5
Beto (Christine)	1996	Tourist visa	Bolivia	Removal/ consular processing	Living together in Bolivia	4 years	4
Carlos (Grace)	1996	EWI	Mexico	Consular processing	LPR	18 months	5, 6
Cuautemoc (Nayeli)	1999	EWI	Mexico	Consular processing with provisional waiver	Un- documented	1 year, still in processing	
Enrique (Anya)	1998	EWI	Mexico	Consular processing	LPR	18 months	1, 2, 3, 4, 5, 6
Leticia (spouse)	1997	EWI	Mexico	Consular processing	U.S. citizen	1 year	6
Gio (Rosie)	2002	Tourist visa	Mexico	Adjustment of status	LPR	6 months	4
Guillermo (Marie)	1994	EWI	Mexico	Consular processing	U.S. citizen	1 year	5, 6
Gume (husband)	1989	EWI	Mexico	Adjustment of status	LPR	6 months	6
Hector (Cynthia)	1992	EWI	Mexico	Consular processing	LPR	2 years	3, 5, 6

*continued*

Name (U.S.-citizen petitioner)	Year of first entry to United States	Mode of entry	Country of birth	Process	Status as of June 2014	Time in processing	Chapter(s)
Isaiah (Jane)	2005	EWI	Mexico	Consular processing	Waiver denied, living together in Mexico	2 years	5, 6
Javier (Stephanie)	2007	EWI	Mexico	Consular processing with provisional waiver	LPR	1 year	5, 6
Jorge (Beth)	2000	EWI	Mexico	Removal/consular processing	LPR	6 years	3, 5, 6
Lorelei (parents)	1980	Tourist visa	Mexico	Adjustment of status	LPR	1 year	
Lucy (sibling)	1996	Tourist visa	Colombia	Adjustment of status	LPR	10 years	6
Lupita (Ramón)	1992	EWI	Mexico	Consular processing	Permanent bar, living in Mexico	1 year	4
Manuel (Danielle)	2003	EWI	El Salvador	Removal/consular processing	LPR	3 years	5
Marco (Tanya)	1990	EWI	Mexico	Consular processing	Conditional visa	2 years	3, 4, 5, 6
Nico (Natalie)	2005	EWI	Honduras	Removal/consular processing	5-year unwaivable bar, living apart	5 years, still in processing	4, 5
Paolo (Wendy)	2004 or 2005	EWI	Brazil	Removal/consular processing	5-year unwaivable bar, living apart	4 years	4, 5, 6
Pepe (Rachel)	2009	Fiancé visa	Nicaragua	Adjustment of status	LPR	1 year	
Rosita (husband)	1996	EWI	Mexico	Adjustment of status	U.S. citizen	6 months	6
Veronica (Francisco)	2008	Tourist visa	Mexico	Adjustment of status	Conditional visa	3 years	3, 6
Victor (Pamela)	1994	EWI	Mexico	Consular processing	LPR	18 months	4, 5, 6

EWI, entry without inspection; LPR, lawful permanent resident.

## TERMINOLOGY

I use terminology in this book that warrants some discussion. Consistent with popular and academic usage, I use “undocumented” to refer to people who do not have a temporary visa, legal permanent residency, or citizenship in the nation-state where they live. The term undocumented is something of a misnomer, since undocumented people can and do possess both valid and invalid identity documents. Still, undocumented avoids the pejorative connotation of “illegal” (itself a legal misnomer), is more widely understood than “unauthorized,” and is the term that my study participants prefer.

I also describe my foreign-born study participants as “immigrants” rather than “migrants” or “transmigrants.” As Nicholas De Genova (2005) has pointed out, “immigrant” and “immigration” always reflect the perspective of the receiving nation-state and, thus, are inherently nationalist. Moreover, “immigrant” presupposes legal admission to the nation-state and, thus, “undocumented immigrant” and “illegal immigrant” are technically contradictions in terms (Plascencia 2009). Even so, “migrant” and “transmigrant” imply transience and mobility, and my study participants are settled in the United States for the long term and, indeed, are striving to become lawful U.S. immigrants.

I use the term “mixed-status family” to describe any self-identified family that consists of any combination of undocumented people with lawful residents and/or U.S. citizens. The term family has the advantage of being widely understood to describe relationships of ancestry and marriage, but it is also criticized as a concept that validates only