International Issues in Family Law: An Annotated Bibliography

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This bibliography addresses international legal issues that may be of special interest or significance for family law attorneys.

International Adoption 594
Benefits. 594
Concerns 594
Examination or Comparison of Particular Countries. . . 596
Proposed Reforms 598
Symposium. 599
International Child Abduction and Custody Disputes . . . 599
Advice for Attorneys 599
Applying the Hague Convention 600
Examination or Comparison of Particular Countries. . . 602
Jurisdiction and Conflict of Laws Issues. 603
Proposed Reforms 604
International Enforcement of Alimony and Child Support Orders. 605
International Perspectives on Families and Children . . . 607
International Surrogacy. 608
Advice for Attorneys 608
American Bar Association. 609
Citizenship Issues 609
Examination or Comparisons of Particular Countries. . . 610
Regulation 612
Reproductive Justice. 615
Issues for Attorneys Handling International Family Cases 615
Mediation of International Family Cases 617
Separation and Reunification of Immigrant Families . . . 619
Analysis of U.S. Policies 619
Child and Family Rights. 621
Empirical Studies 625

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Historical Perspectives 625
Proposed Reforms 626
Special Immigrant Juvenile Status 627

International Adoption

Benefits

Elizabeth Bartholet, *International Adoption: Propriety, Prospects and Pragmatics*, 13 J. Am. Acad. Matrim. Law. 181 (1996) (analyzing barriers to international adoption, arguing that the best interests of children should be the determinative issue shaping policies on international adoption, and challenging the view that international adoption should be opposed because it takes away children from their racial, cultural, or national group of origin).

Elizabeth Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, 13 Buff. Hum. Rts. L. Rev. 151 (2007) (discussing why human rights activists and organizations like UNICEF are critical of international adoption, arguing that this criticism is misguided, and asserting that international adoption is partial but good solution for the problems of homeless children of the world).

Elizabeth Bartholet, *Permanency Is Not Enough: Children Need the Nurturing Parents Found in International Adoption*, 55 N.Y. L. Sch. L. Rev. 781 (2010-2011) (arguing that international adoption should be a vital part of ensuring that all children receive early, permanent, and nurturing parenting).

Mary Landrieu & Whitney Reitz, *How Misconceptions About International Adoption Lead to a Violation of Human Rights Against Unparented Children*, 22 Tul. J. Int'l & Comp. L. 341 (2014) (discussing five major misconceptions about international adoption, arguing that international adoption is one of several powerful tools for protecting children living without family care or in danger of losing family care, and supporting the passage of proposed federal legislation that would require the government to prioritize the importance of permanent families for all children).

Concerns

Alexandra Doner, *International Adoptions and the Border Crisis: Do Sufficient Protections Exist for Children and Their*

Natural Parents?, 30 TRANSNAT'L L. & CONTEMP. PROBS. 89 (2021) (reviewing concerns expressed in news reports and social media that immigrant children separated from their families at the United States border might be permanently adopted by American families without their parents' knowledge or consent, finding that current laws provide adequate measures to prevent this from occurring, but noting that those protections may not be properly enforced in all circumstances).

Elizabeth Long, Note, *Where Are They Coming from, Where Are They Going Demanding Accountability in International Adoption*, 18 CARDOZO J.L. & GENDER 827 (2012) (discussing concerns about international adoption, including the risk of human trafficking and coercion, and arguing that the United States should permit international adoptions only from countries that have adopted the Hague convention on international adoption).

Ronald V. Ludlow, Note, *Walking the Mine Field: The Moral Issues of International Adoption*, 9 J. L. & FAM. STUD. 401 (2007) (examining the moral considerations that support international adoption, such as the interest in providing care for children, as well as the potential for conflicts between the moral values of adoptive parents and the values of the originating country, and arguing that adoptive parents should consider making financial contributions to support the host country's ability to provide care for children).

Johanna Oreskovic & Trish Maskew, *Red Thread or Slender Reed: Deconstructing Prof. Bartholet's Mythology of International Adoption*, 14 BUFF. HUM. RTS. L. REV. 71 (2008) (challenging Elizabeth Bartholet's arguments in favor of international adoption, questioning whether private adoption agencies and existing legal regulations provide sufficient protection against abuses, and discussing the human rights community's concerns about children's heritage, culture, and identity).

Katie Rasor et al., *Imperfect Remedies: The Arsenal of Criminal Statutes Available to Prosecute International Adoption Fraud in the United States*, 55 N.Y. L. SCH. L. REV. 801 (2010-2011) (explaining how the Intercountry Adoption Act is supposed to allow federal prosecutors to address international adoption fraud, such as when children are taken from their parents and put up for adoption as orphans, but arguing that the Act has flaws that reduce its effectiveness for prosecutors).

Jini L. Roby, *Understanding Sending Country's Traditions and Policies in International Adoptions: Avoiding Legal and Cultural Pitfalls*, 6 J. L. & Fam. Stud. 303 (2004) (discussing the importance of understanding and respecting the laws, policies, cultural traditions, religious beliefs, and histories of foreign countries that send children into the United States for adoption).

Lauren M. Rouhana, *The Adoption of Foreign National Children in the Post-Hague Convention Era*, Hous. Law., Nov./Dec. 2016, at 30 (discussing the legal difficulties and challenges for adopting parents trying to bring a foreign national child to the United States or to obtain permanent resident status for such a child already in the United States).

Ann Smith, Note, *We Have the Right Tools: An Examination and Defense of Spending in International Adoption*, 58 Harv. Int'l L.J. 485 (2017) (examining the benefits and potential disadvantages of money for orphan care or other humanitarian aid that flows overseas through the international adoption system, including the risk that this money creates incentives for taking advantage of women and children, and arguing that the benefits of the aid outweigh the risks but nuanced steps should be taken to protect child welfare).

Glenys P. Spence, *Singing Songs in a Strange Land: The Plight of Haitian Children in the Space of International Adoption*, 15 Scholar: St. Mary's L. Rev. Race & Soc. Just. 1 (2012) (discussing how the international adoption process favors the wealthy and how immigrants from the developing world face difficulties in trying to arrange to adopt children who are relatives of the immigrants and have lost their parents).

Barbara Stark, *When Genealogy Matters: Intercountry Adoption, International Human Rights, and Global Neoliberalism*, 51 Vand. J. Transnat'l L. 159 (2018) (tracing the history and development of thinking about adoption, including international adoption, and arguing that economic rights, children's rights, and other aspects of human rights should be crucial in shaping policy and practices for international adoption).

Examination or Comparison of Particular Countries

Joan Catherine Bohl, *Inter-Country Adoption: Is International Law Protecting the Best Interests of the Children?*, 19 Sw. J. Int'l

L. 323 (2013) (exploring the origins of international adoption and analyzing the effectiveness of legal regulation of it, with a focus on comparison of rules imposed by China and South Korea).

Andrew C. Brown, Comment, *International Adoption Law: A Comparative Analysis*, 43 Int'l Law. 1337 (2009) (comparing the adoption laws of China and Russia and analyzing weaknesses of the Hague Convention on international adoption).

David Poveda et al., *Professional Discourses on Single Parenthood in International Adoptions in Spain*, 36 PoLAR: Pol. & Legal Anthropology Rev. 35 (2013) (finding that psychologists and social workers involved in the international adoption process in Spain view a heterosexual couple as the standard for parental and family relations and portray single parenthood in negative terms).

Jennifer Ratcliff, *International Adoption: Improving on the 1993 Hague Convention*, 25 Md. J. Int'l L. 336 (2010) (discussing the practical problems that limit successful implementation of the Hague Convention on international adoption, particularly China's policies limiting parents to having one child and restricting who is allowed to adopt Chinese children).

Brian H. Stuy, *Open Secret: Cash and Coercion in China's International Adoption Program*, 44 Cumb. L. Rev. 355 (2013-2014) (questioning the effectiveness of the legal controls on international adoption and describing abusive practices in China's international adoption program, including baby-buying at Chinese orphanages, confiscation of children by population control officials, and falsification of information about teenagers in order to make them eligible for international adoption).

Lisa M. Yemm, Note, *International Adoption and the "Best Interests" of the Child: Reality and Reactionism in Romania and Guatemala*, 9 Wash. U. Global Stud. L. Rev. 555 (2010) (discussing how legislative changes effectively halted international adoptions of children from Romania and Guatemala, which were previously two of the largest providers of internationally adopted children, and questioning whether the elimination of international adoptions from these countries promotes the best interests of orphaned or abandoned children).

Proposed Reforms

Richard Carlson, *Seeking the Better Interests of Children with a New International Law of Adoption*, 55 N.Y. L. Sch. L. Rev. 733 (2010-2011) (evaluating the arguments against international adoption and proposing a restatement of international law concerning adoption).

Halley Cody, Note, *America's Hidden Citizens: The Untold Stories of the Unconscionable Deportations of Its International Adoptees*, 47 Seattle U. L. Rev. 227 (2023) (arguing that immigration laws should be amended to help people who came to the United States as children through international adoptions, but never became United States citizens through naturalization, and as adults now face the possibility of deportation if they have a criminal conviction).

Deleith Duke Gossett, *If Charity Begins at Home, Why Do We Go Searching Abroad? Why the Federal Adoption Tax Credit Should Not Subsidize International Adoptions*, 17 Lewis & Clark L. Rev. 839 (2013) (arguing that the federal tax credit for adoption was intended to encourage the adoption of children who are in foster care in the United States and should not apply to international adoptions).

Joseph M. Isanga, *Surging Intercountry Adoptions in Africa: Paltry Domestication of International Standards*, 27 BYU J. Pub. L. 229 (2012) (describing the increase in international adoptions of children from Africa and arguing that the regulatory framework governing such adoptions is both overly restrictive and ineffective).

Mario LoPiccolo, Note & Comment, *You Don't Have to Go Home, but You Can't Stay Here: Problems Arising when SIJS Meets International Adoption*, 33 Wis. Int'l L.J. 194 (2015) (analyzing flaws in federal immigration statutes concerning undocumented minors who are adopted by American families and are eligible for Special Immigrant Juvenile Status and arguing for expanded application of the best interests of the child principle in these situations).

Malinda L. Seymore, *Openness in International Adoption*, 46 Colum. Hum. Rts. L. Rev. 163 (2015) (considering the trend toward openness in domestic adoptions, with more adoptive families wanting

to know the identity of the birth mother and maintain contact with her, and arguing that increased openness in international adoptions is required by international human rights and beneficial for adopted children as they develop their sense of identity).

Lynn D. Wardle, *Adoption: Upside Down and Sideways? Some Causes of and Remedies for Declining Domestic and International Adoptions*, 26 Regent U. L. Rev. 209 (2013-2014) (suggesting that the number of domestic and international adoptions may decline if lesbian, gay, bisexual, and transgender people are allowed to adopt children and proposing a compromise to avoid this problem by allowing "sideways" adoptions in which the partner of the adopting parent has the status of an uncle or aunt rather than a parent).

Symposium

Elizabeth Bartholet, *International Adoption: A Way Forward*, 55 N.Y. L. Sch. Rev. 687 (2010-2011) (reviewing and discussing articles in a symposium growing out of a conference on international adoption and permanency for children).

International Child Abduction and Custody Disputes

Advice for Attorneys

Patricia E. Apy, *The Case for Reciprocity*, N.J. Law., Oct. 2015, at 46 (discussing the importance of the International Child Abduction Prevention and Recovery Act for attorneys practicing international family law).

Robert D. Arenstein, *How to Prosecute an International Child Abduction Case Under the Hague Convention*, 30 J. Am. Acad. Matrim. Law. 1 (2017) (providing advice about how attorneys bringing international child abduction claims under the Hague Convention on the Civil Aspects of International Child Abduction can effectively represent their client and educate the court about Hague Convention claims).

David Michael Breon, *International Child Abduction and the Hague Abduction Convention*, J. Mo. Bar, Mar./Apr. 2022,

at 66 (providing advice for lawyers about bringing or defending against a case under the Hague Convention on international child abduction).

Olivia Claire Dobard, Comment, *The Supreme Court Addresses International Child Abduction Under the Hague Convention*, 32 J. Am. Acad. Matrim. Law. 435 (2020) (reviewing the key standards that apply in Hague Convention cases about international child abduction and discussing resources for family law attorneys interested in handling such cases).

Melissa A. Kucinski, *The Future of Litigating an International Child Abduction Case in the United States*, 33 J. Am. Acad. Matrim. Law. 31 (2020) (reviewing trends in international child abduction cases and discussing the significance of the Uniform Child Custody Jurisdiction and Enforcement Act).

Kevin Wayne Puckett, Comment, *Hague Convention on International Child Abduction: Can Domestic Violence Establish the Grave Risk Defense Under Article 13?*, 30 J. Am. Acad. Matrim. Law. 259 (2017) (providing advice for attorneys arguing that a child faces a grave risk because of domestic violence if the child returns to the country of their habitual residence).

Robert E. Rains, *The Need for Speed in International Child Abduction Cases*, Fed. Law., Sept./Oct. 2020, at 48 (discussing how Hague Convention cases about international child abduction can take several years to move from filing to resolution and proposing ways to reduce these delays).

Applying the Hague Convention

Brenna Cass, Note, *Undocumented and Unsettled?: The Impact of Immigration Status on the Well-Settled Defense of the 1980 Hague Convention on the Civil Aspects of International Child Abduction*, 53 Suffolk U. L. Rev. 349 (2020) (discussing how courts should account for a child's immigration status in deciding whether a child is well-settled in a new country).

Stephen Cullen, *International Families and Litigation*, Fam. Advoc., Fall 2020, at 26 (analyzing an international child custody and divorce scenario and how the Hague Convention and the Uniform Child Custody Jurisdiction and Enforcement Act would apply to it).

Abigail Leann Heeter, Student Article, Monasky v. Taglieri*: The Supreme Court's Interpretation of Habitual Residency and Its Impact on International Child Abduction*, 18 Loy. U. Chi. Int'l L. Rev. 95 (2021) (discussing the Supreme Court's interpretation of what it means for a place to be a child's habitual residence and arguing that the Court has failed to adequately account for many challenges faced with international family relationships, including situations involving domestic abuse).

Elena J. Hildebrandt, Note, *Cultural Considerations and Capabilities of the Habitual State: American Jurisprudence Fails to Protect Victims in International Child Abduction Cases*, 109 Iowa L. Rev. 377 (2023) (explaining how courts assess whether a child faces a grave risk if returned to their country of habitual residence, arguing that the cultural considerations and the potential for ameliorative or protective measures should never outweigh the risk in situations where domestic violence or child abuse has already occurred, and proposing that the Department of State should provide specialized training for judges for international abduction cases).

Hannah Loo, Comment, *In the Child's Best Interests: Examining International Child Abduction, Adoption, and Asylum*, 17 Chi. J. Int'l L. 609 (2017) (discussing how the need to consider the best interests of a child can be reconciled with the requirements of the Hague Convention on the Civil Aspects of International Child Abduction, including lessons that can be drawn from how the child's best interests principle is applied in situations involving international adoption and asylum for refugees).

Lauren Mayell, Note, *Supreme Court Overreach Through Broad Discretionary Consideration of Ameliorative Measures in International Child Abduction*, 12 Global Bus. L. Rev. 1 (2023) (criticizing the Supreme Court for giving judges the discretion to consider protective measures that might ameliorate the risk of abuse if a child returns to their country of habitual residence, comparing the approach of European courts, and proposing a structure for analysis of grave risk and ameliorative measures).

Molshree "Molly" A. Sharma, Golan v. SAADA*: Protecting Domestic Abuse Survivors in International Child Custody Disputes*, 56 Fam. L.Q. 251 (2022-2023) (reviewing the Supreme Court's decision about the extent to which courts should consider whether

ameliorative measures can reduce the risk of harm to a child in being returned to a parent who may be abusive).

Robert G. Spector & Melissa Kucinski, *The Effect of COVID-19 on International Child Abduction Cases*, 54 Fam. L.Q. 268 (2020) (discussing how the COVID-19 pandemic disrupted and delayed cases about international child abductions).

Robert G. Spector, *International Abduction of Children: Why the UCCJEA Is Usually a Better Remedy than the Abduction Convention*, 49 Fam. L.Q. 385 (2015) (discussing how the 1980 Hague Convention on international child abduction relates to the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children and the Uniform Child Custody Jurisdiction and Enforcement Act).

Tine Van Hof et al., *To Hear or Not to Hear: Reasoning of Judges Regarding the Hearing of the Child in International Child Abduction Proceedings*, 53 Fam. L.Q. 327 (2020) (discussing the child's right to be heard in international child abduction cases, empirical data about the extent to which judges in European courts hear from the child in such cases, and the reasons given by judges who decline to hear from the child).

Examination or Comparison of Particular Countries

Brenna Atwood, Student Work, *Addressing the Problem of Implementing the Hague Abduction Convention on the Civil Aspects of International Child Abduction Between the U.S. and Mexico*, 4 Penn. St. J. L. & Int'l Aff. 790 (2016) (examining the problem of countries failing to comply with the Hague Convention's requirements, with a focus on children abducted between the United States and Mexico).

Michelle Boykin, *A Comparison of Japanese and Moroccan Approaches in Adopting the Hague Convention on the Civil Aspects of International Child Abduction*, 46 Fam. L.Q. 451 (2012) (analyzing how Japan will need to revise its family code to meet the standards of the Hague Convention on the Civil Aspects of International Child Abduction, and comparing this to reforms made in Morocco's family law system).

Tarja Cajudo, Comment, *Japan's Failure to Protect Japanese-American Children from International Parental Kidnapping in Violation of the Hague Convention on Child Abduction*, 33 Am. U. Int'l L. Rev. 477 (2017) (recommending changes to Japanese law to ensure compliance with Japan's obligations under the Hague Convention in international child abduction cases).

Emily C. Dougherty, *International Child Abduction and the Hague Convention: Inconsistencies Between the United States and the United Kingdom – A Call for Amendments*, 24 Willamette J. Int'l L. & Dis. Resol. 297 (2017) (examining the challenges created by inconsistencies in the application of the Hague Convention, with a focus on the approaches of the United States and the United Kingdom, and proposing amendments to the Convention that would provide guidance in cases when a child is abducted to a country that has not adopted the Convention).

Alexandra Galdos, Note, *When a Stranger Isn't the Danger: International Child Abduction and the Necessity of Mandatory Preventative Measures in the European Union*, 49 Geo. Wash. Int'l L. Rev. 983 (2017) (examining measures that the United Kingdom has adopted to reduce the risk of international child abduction, including tipstaff orders and port alert systems, and explaining how the European Union could adopt similar measures).

Yoko Konno, Comment, *A Haven for International Child Abduction: Will the Hague Convention Shape Japanese Family Law?*, 46 Cal. W. Int'l L.J. 39 (2015) (discussing how Japan's ratification and implementation of the Hague Convention has affected international custody disputes involving Japan, from the perspective of a law student who immigrated from Japan, was a victim of domestic violence, and was falsely accused of attempting to abduct her child to Japan).

Jurisdiction and Conflict of Laws Issues

Nicole Clark, Note, *Putting the "Remedy" Back in the International Child Abduction Remedies Act – Enforcing Visitation Rights for the Left Behind Parent*, 89 St. John's L. Rev. 997 (arguing that federal courts have jurisdiction over claims for enforcement of parental visitation rights under the Hague Convention).

Sam F. Halabi, *The Hague Convention on the Civil Aspects of International Child Abduction and the Latent Domestic Relations Exception to Federal Question Jurisdiction*, 41 N.C. J. Int'l L. 691 (2016) (discussing whether federal courts should have jurisdiction over "domestic relations" issues in international abduction cases, such as claims seeking enforcement of access or visitation rights).

Zadora M. Hightower, Student Comment, *Caught in the Middle: The Need for Uniformity in International Child Custody Dispute Cases*, 22 Mich. St. Int'l L. Rev. 637 (2014) (examining whether the principle of comity should extend to foreign court orders and judgments in international child abduction cases, particularly if the foreign court is in a nation that has not adopted the Hague Convention).

Nicole Su, Comment, *The International Custody Battle: Conflict of Law Between the Hague Abduction Convention and U.S. Asylum Law*, 39 Hous. J. Int'l L. 433 (2017) (discussing the conflict of law that arises in situations where a parent seeks to have a child return to another country but the child wants to remain in the United States as a refugee seeking asylum).

George K. Walker, *The Hague Child Abduction Convention and the International Child Abduction Remedies Act: Comments for U.S. Practice*, 41 N.C. J. Int'l L. 741 (2016) (commenting on Sam Halabi's views about federal court jurisdiction in international child abduction cases).

Proposed Reforms

Megha Bhatt, *International Child Abduction: Modifying the 1980 Hague Convention on the Civil Aspects of Child Abduction and Proposals for a New United Nations Judicial Body*, 20 U.C. Davis J. Juv. L. & Pol'y 213 (2016) (discussing the importance of the "best interests of the child" standard and proposing that a neutral United Nations body with rotating members should convene to hear international child abduction cases).

Cassandra Erler, Comment, *Far from Now-Settled: The Supreme Court's Decision in* Lozano v. Montoya Alvarez *as a Violation of Substantive and Procedural Due Process Under the International Child Abduction Remedies Act*, 26 Am. U. J. Gender

Soc. Pol'y & L. 793 (2018) (arguing that a parent's due process rights are violated if the one-year filing period for a claim under the Hague Convention and the International Child Abduction Remedies Act cannot be extended through equitable tolling during time when the child's location is concealed from the parent seeking the child's return).

Katharine L. Tyler, Note, *International Custody Battles: The Not So Curious Case of David Goldman*, 12 J.L. & Fam. Stud. 533 (2010) (discussing weaknesses of the Hague Convention and potential improvements such as giving jurisdiction to international courts for international child custody disputes).

Andrew A. Zashin, *Domestic Violence by Proxy: A Framework for Considering a Child's Return Under the 1980 Hague Convention on the Civil Aspects of International Child Abduction's Article 13(B) Grave Risk of Harm Cases Post* Monasky, 33 J. Am. Acad. Matrim. Law. 571 (2021) (proposing a new approach, based on the concept of a zone of danger, for analyzing whether a child faces a grave risk of harm in returning to their country of habitual residence).

International Enforcement of Alimony and Child Support Orders

Mary Helen Carlson, *United States Perspective on the New Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, 43 Fam. L.Q. 21 (2009) (explaining the benefits of the new Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance, from the perspective of an Attorney-Adviser in the U.S. Department of States's Office of the Assistant Legal Adviser for Private International Law).

Gary Caswell, *Making Long-Distance Parents Pay Up*, Fam. Advoc., Fall 2000, at 52 (assessing problems with international enforcement of support orders and urging attorneys to support United States involvement in the development of a new Hague international support convention).

Michael S. Coffee, *International Child Support Issues with a U.S. Element*, Fam. Advoc. Fall 2020, at 30 (discussing international child support issues that a U.S. attorney may face, including how to

establish a child support order in the United States involving people outside the United States, how to establish a child support order in a foreign country involving people within the United States, how to enforce a U.S. order in a foreign country, how to enforce a foreign order in the United States, and how to obtain a modification of a foreign order in the United States or a modification of a United States order in a foreign country).

William Duncan, *The Development of the New Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, 38 Fam. L.Q. 663 (2004) (discussing the extensive process of negotiation and drafting that produced the Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance, by the professor and Hague Conference member who had primary responsibility for the project).

William Duncan, *The New Hague Child Support Convention: Goals and Outcomes of the Negotiations*, 43 Fam. L.Q. 1 (2009) (providing further discussion of the background, negotiation, and contents of the Hague Convention on family maintenance obligations).

Robert Keith, *Ten Things Practitioners Should Know About the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, 51 Fam. L.Q. 255 (2017) (providing advice for practitioners about new aspects of the Uniform Interstate Family Support Act and how they relate to the Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance).

Elisha D. Roy, *Enforcement of International Foreign Judgments, Is That Even a Thing?*, 33 J. Am. Acad. Matrim. Law. 459 (2021) (explaining that there is no uniform mechanism for enforcing a foreign judgment in the United States and reviewing the variety of different mechanisms for enforcing foreign judgments concerning child custody, child support, and alimony).

John J. Sampson & Barry J. Brooks, *Integrating UIFSA (2008) with the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, 49 Fam. L.Q. 179 (2015) (providing unofficial

annotations and footnotes for the Uniform Interstate Family Support Act and how it relates to the Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance).

Robert G. Spector, *The Hague Convention on Child Support and Other Forms of Family Maintenance: Divergent Private International Law Rules and the Limits of Harmonization*, 101 Am. Soc'y Int'l L. Proc. 353 (2007) (discussing how common-law countries and civil-law countries have substantially different private international rules concerning family maintenance obligations and explaining how this affected the negotiation of the Hague Convention on maintenance obligations).

Robert G. Spector, *Toward an Accommodation of Divergent Jurisdictional Standards for the Determination of Maintenance Obligations in Private International Law*, 36 Fam. L.Q. 273 (2002) (explaining the complexity that arises from legal systems having different jurisdictional rules for maintenance obligations and arguing for a new approach under which states would agree to recognize maintenance judgments made under circumstances that would meet their jurisdictional standards).

International Perspectives on Families and Children

Victor Hiller & Magali Recoules, *Changes in Divorce Patterns: Culture and the Law*, 33 Int'l Rev. L. & Econ. 1 (2013) (providing a theoretical model to explain the interaction of a nation's changes in its divorce laws, cultural acceptance of divorce, and shifts in divorce rates).

Barbara Stark, *Rhetoric, Divorce and International Human Rights: The Limits of Divorce Reform for the Protection of Children*, 65 La. L. Rev. 1433 (2005) (arguing that efforts to protect children in families where divorce occurs should be situated in the broader context of international human rights law, particularly the Convention on the Rights of the Child).

Nicola Taylor & Marilyn Freeman, *International Research Evidence on Relocation: Past, Present, and Future*, 44 Fam. L.Q. 317 (2010) (reviewing the international research evidence pertaining to

relocation of separated parents and how it affects children, finding that the results of the research are mixed with some studies finding detrimental effects and other research finding beneficial effects, and observing that the evidence from research has not yet been absorbed by judges and scholars examining relocation issues).

Richard A. Warshak, *Stemming the Tide of Misinformation: International Consensus on Shared Parenting and Overnighting*, 30 J. Am. Acad. Matrim. Law. 177 (2017) (describing the Warshak Consensus Report, which found that young children are not harmed by having their time evenly divided between both parents or by spending nights in each parent's home, and arguing that the Report's conclusions continue to be supported by scientific findings and an international consensus of experts).

International Surrogacy

Advice for Attorneys

Chelsea E. Caldwell, Note, *Baby Got Back? Enforcing Guardianship in International Surrogacy Agreements when Tragedy Strikes*, 49 U. Memphis L. Rev. 847 (2019) (discussing the need for estate planning in the event that intended parents die while their child is in utero with a surrogate in the United States).

Sara R. Cohen & Mathilde Foucault, *Who Goes on the Child's Birth Certificate for International Two-Dad Families When a Child Is Born Through Surrogacy in the United States?*, Fam. Advoc., Fall 2020, at 44 (discussing issues that can arise about who should be listed as parents on a birth certificate when a child is conceived through an international surrogacy arrangement and two men will be raising the child, with advice from lawyers in ten countries about which names to put on the birth certificate).

Stephen Page & Brian Esser, *Think Global, Act Local: 10 Must-Knows About International Surrogacy*, Fam. Advoc., Summer 2015, at ii (presenting ten rules that attorneys should share with their clients to help them understand the complexities and difficulties that can arise in international surrogacy journeys).

Richard F. Storrow, *"The Phantom Children of the Republic": International Surrogacy and the New Illegitimacy*, 20 Am. U. J. Gender Soc. Pol'y & L. 561 (2012) (discussing the widespread disapproval and legal obstacles faced by European parents who seek to have a child through international surrogacy arrangements, exploring how this represents a new form of hostility to "illegitimate" children, and reflecting on the implications of this bias for attorneys representing couples seeking to have a child through international surrogacy).

American Bar Association

Alex Sidwell, Comment, *Protect All Parties: Opposing the American Bar Association's Position Statement on Regulation of International Surrogacy Arrangements*, 49 Cumb. L. Rev. 125 (2018-2019) (describing how the American Bar Association adopted a resolution that opposes regulation of international commercial surrogacy and is favorable to the interests of businesses that profit from international surrogacy arrangements, exploring the motives behind the resolution, and arguing for regulation that protects the rights of all parties involved including the children).

Richard B. Vaughn, *Ending Border Battles: ABA Resolution on International Surrogacy*, ABA SciTech Law., Summer 2016, at 27 (explaining the American Bar Association's resolution on international surrogacy, which asserts that individual countries should be allowed to regulate surrogacy as they see fit, without being limited by international agreements concerning surrogacy).

Citizenship Issues

Rachael Curtin, Note, *Suspension of Citizenship: Ethical Concerns in International Commercial Surrogacy and the Legal Possibility of Stateless Children*, 55 Vand. J. Transnat'l L. 805 (2022) (describing how gaps in parentage laws create the possibility that a child born through international commercial surrogacy arrangements will not be a citizen of any state and proposing an ethics-based solution that protects the interests of children and ensures no child will be stateless).

Yasmine Ergas, *Babies Without Borders: Human Rights, Human Dignity, and the Regulation of International Commercial*

Surrogacy, 27 Emory Int'l L. Rev. 117 (2013) (discussing the legal and diplomatic struggles faced by a German couple who entered into a surrogacy agreement with a woman in India, using that example to illustrate the risk that a child could wind up stateless and parentless, and arguing that a comprehensive solution to the dilemmas created by international surrogacy will require new thinking about filiation, citizenship, and human rights).

Charles P. Kindregan & Danielle White, *International Fertility Tourism: The Potential for Stateless Children in Cross-Border Commercial Surrogacy Arrangements*, 36 Suffolk Transnat'l L. Rev.527 (2013) (discussing how international surrogacy can lead to children who are not citizens of any nation, expressing doubts about whether international agreements will solve the problem, and suggesting that countries need to do more to warn people abouto the potential dangers of cross-border surrogacy arrangements).

Tina Lin, *Born Lost: Stateless Children in International Surrogacy Arrangements*, 21 Cardozo J. Int'l & Comp. L. 545 (2013) (examining how the variation and lack of coordination in laws concerning international surrogacy has created the possibility of stateless children who are not citizens of any country, assessing proposed legislation in India that could serve as a model for other nations, and discussing whether an international convention or domestic adjudication can effectively address the problem).

Rutuja Pol, Note, *Proposing an International Instrument to Address Issues Arising out of International Surrogacy Arrangements*, 48 Geo. J. Int'l L. 1309 (2017) (examining issues arising from international surrogacy, including the problem of stateless children who have citizenship in no country, and comparing the laws of countries that take more restrictive or more permissive approaches to commercial surrogacy).

Examination or Comparisons of Particular Countries

Jessica M. Caamano, *International, Commercial, Gestational Surrogacy Through the Eyes of Children Born to Surrogates in Thailand: A Cry for Legal Attention*, 96 B.U. L. Rev. 571 (2016) (describing how restrictive regulation in India led to Thailand

becoming the most important location for international surrogacy, until scandals and abusive practices resulted in a ban on international surrogacy in Thailand, and arguing for regulation that would improve international surrogacy rather than banning it).

Ashley Hope Elder, Comment, *Wombs to Rent: Examining the Jurisdiction of International Surrogacy*, 16 Or. Rev. Int'l L. 347 (2014) (emphasizing the importance of understanding the laws of every jurisdiction connected to an international surrogacy arrangement and analyzing the laws on surrogacy of the United States, the United Kingdom, India, and Ukraine).

Shana Noy Kirshner, Note, *Selling a Miracle? Surrogacy Through International Borders: Exploration of Ukrainian Surrogacy*, 14 J. Int'l Bus. & L. 77 (2015) (examining American and Ukrainian laws concerning surrogacy and proposing the development of a detailed international agreement to protect all parties involved in surrogacy arrangements).

Seema Mohapatra, *Stateless Babies & Adoption Scams: A Bioethical Analysis of International Commercial Surrogacy*, 30 Berkeley J. Int'l L. 412 (2012) (analyzing bioethical issues raised by international commercial surrogacy, using examples of cases involving India, Ukraine, and the United States).

Erin Nelson, *Global Trade and Assisted Reproductive Technologies: Regulatory Challenges in International Surrogacy*, 41 J.L., Med. & Ethics 240 (2013) (comparing Canada's approach to international surrogacy to that of the United Kingdom, Australia, and the United States and suggesting that domestic regulation may be more effective than international measures).

Margaret Ryznar, *International Commercial Surrogacy and Its Parties*, 43 J. Marshall L. Rev. 1009 (2010) (evaluating the law and policy issues surrounding international commercial surrogacy, with a particular focus on surrogacy in India, and proposing frameworks for thinking about surrogacy that are focused on the interests of women and children).

Usha Rengachary Smerdon, *Crossing Bodies, Crossing Borders: International Surrogacy Between the United States and India*, 39 Cumb. L. Rev. 15 (2008-2009) (arguing that international

surrogacy arrangements involving intended parents in the United States and surrogate mothers in India should be prohibited because they raise too many ethical concerns and legal uncertainties about parentage and citizenship).

Richard F. Storrow, *International Surrogacy in the European Court of Human Rights*, 43 N.C. J. Int'l L. 38 (2018) (discussing how commercial surrogacy arrangements are prohibited in many European countries, which forces couples seeking to become parents to seek surrogates abroad, and which then leads to difficult legal issues when the parents bring the child back to their home country).

George S. Yacoubian, Jr. & Lucy Clements, *An Examination of Compliance with the Inter-Country Adoption Convention: Exploring Surrogacy in Armenia as a Form of Human Trafficking*, 31 Ariz. J. Int'l & Comp. L. 811 (2014) (examining concerns about human trafficking related to international adoptions and international surrogacy in Armenia, including the need for investigation of how surrogate mothers in Armenia are recruited and compensated).

Regulation

Kristiana Brugger, *International Law in the Gestational Surrogacy Debate*, 35 Fordham Int'l L.J. 665 (2012) (examining whether international surrogacy should be regulated under measures developed through the World Trade Organization or the International Labour Organization).

Jamie Cooperman, Comment, *International Mother of Mystery: Protecting Surrogate Mothers' Participation in International Commercial Surrogacy Contracts*, 48 Golden Gate U. L. Rev. 161 (2018) (analyzing the problems that can arise from the lack of uniform international laws regarding commercial surrogacy, including questions about the citizenship of the child, the rights of the intended parents, and the interests of the women who serve as surrogates).

Erica Davis, Note, *The Rise of Gestational Surrogacy and the Pressing Need for International Regulation*, 21 Minn. J. Int'l L. 120 (2012) (explaining the urgent need for international regulation

of the reproductive tourism industry, including international surrogacy agreements).

Laura Rose Golden, Note, *Regulating International Surrogacy Arrangements Within the United States: Is There a Conceivable Solution?*, 47 Ga. J. Int'l & Comp. L. 169 (2018) (proposing better communication standards and other regulatory changes the United States can implement to overcome the problems created by the lack of international agreements on commercial surrogacy arrangements).

Daniel Gruenbaum, *Foreign Surrogate Motherhood: Mater Semper Certa Erat*, 60 Am. J. Comp. L. 475 (2012) (discussing legal definitions of motherhood, considering how nations that prohibit surrogacy should treat children born through surrogacy that occurs abroad, and arguing that it is sensible to allow the intended parents to adopt the child born through a surrogacy arrangement).

Bruce Hale, *Regulation of International Surrogacy Arrangements: Do We Regulate the Market, or Fix the Real Problems?*, 36 Suffolk Transnat'l L. Rev. 501 (2013) (examining how issues about international surrogacy, such as stateless children and exploitation of women, expose underlying flaws in the international private law rules concerning the acceptance of parentage documents from other countries and suggesting that these flaws can be addressed under international agreements that are not specifically about surrogacy).

Lily Johnson, Comment, *Commercial Surrogacy Is the Sale of Children?: An Argument that Commercial Surrogacy Does Not Violate International Treaties*, 28 Wash. Int'l L.J. 700 (2019) (arguing that international commercial surrogacy does not violate the international protocol that bans the sale of children).

Yehezkel Margalit, *From Baby M to Baby M(anji): Regulating International Surrogacy Agreements*, 24 J.L. & Pol'y 41 (2015) (discussing the controversy and debate created by famous situations involving surrogacy in Britain and America, examining the issues that surround international surrogacy, and proposing a robust system of regulation through a Hague international convention).

Seema Mohapatra, *Adopting an International Convention on Surrogacy – A Lesson from Intercountry Adoption*, 13 Loy. U.

Chi. Int'l L. Rev. 25 (2015) (comparing the attempts to develop an international convention on surrogacy to previous efforts to generate an international convention on adoptions).

Sarah Mortazavi, Note, *It Takes a Village to Make a Child: Creating Guidelines for International Surrogacy*, 100 Geo. L.J. 2249 (2012) (explaining the core principles that should apply to regulation of international surrogacy, including that commercial surrogacy contracts should be tolerated, the parental rights of the intended parents should be guaranteed, citizenship issues for the child should be resolved before insemination occurs, and a central agency should be established in each nation to implement regulations of surrogacy).

Sophia Shepherd, *Regulating International Commercial Surrogacy: A Balance of Harms and Benefits*, 32 U. Fla. J.L. & Pub. Pol'y 293 (2022) (arguing in favor of moderate regulation of international commercial surrogacy, to address concerns like exploitation of surrogate mothers or abandonment of surrogate-born children, but also to avoid excessive regulation that might discourage the practice and eliminate the benefits that can come from it).

Barbara Stark, *Transnational Surrogacy and International Human Rights Law*, 18 ILSA J. Int'l & Comp. L. 369 (2012) (considering how international human rights laws provide useful guidelines for international surrogacy, particularly the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child).

Emily Stehr, Note, *International Surrogacy Contract Regulation: National Governments' and International Bodies' Misguided Quests to Prevent Exploitation*, 35 Hastings Int'l & Comp. L. Rev. 253 (2012) (arguing that international regulation of surrogacy should be based on systematic studies of the health, economic, and social justice impacts of surrogacy markets and practices).

Xinran "Cara" Tang, Note, *Setting Norms: Protections for Surrogates in International Commercial Surrogacy*, 25 Minn. J. Int'l L. 193 (2016) (assessing the potential harms of international

surrogacy and suggesting that a non-governmental organization should be established to create norms for surrogacy and certify clinics that follow appropriate standards).

Reproductive Justice

Seema Mohapatra, *Achieving Reproductive Justice in the International Surrogacy Market*, 21 Annals Health L. 191 (2012) (exploring concerns about international surrogacy from a reproductive justice perspective, suggesting that regulation may be a slow and ineffective way to address these concerns, and arguing for an international analysis of race, gender, and class to determine how best to achieve reproductive justice in international surrogacy arrangements).

Kimberly M. Mutcherson, *Things That Money Can Buy: Reproductive Justice and the International Market for Gestational Surrogacy*, 43 N.C. J. Int'l L. 150 (2018) (using the paradigm of reproductive justice to analyze the legal and policy implications of international commercial surrogacy and how it commodifies and exploits the women who act as surrogates).

Issues for Attorneys Handling International Family Cases

Michael A. Benedetto, *International Foreign Judgments in Divorce and Custody Cases: A Clash of Legal Cultures*, DCBA Brief, Oct. 2012, at 22 (considering how courts interpret foreign marriage contracts in international custody cases).

Ann Laquer Estin, *International Divorce: Litigating Marital Property and Support Rights*, 45 Fam. L.Q. 293 (2011) (introducing the complex issues that arise in international divorce cases, including jurisdictional and procedural issues, questions about what law covers marital property and support rights, and problems with cross-border enforcement of marital property and support orders).

Ann Laquer Estin, *Marriage and Divorce Conflicts in International Perspective*, 27 Duke J. Comp. & Int'l L. 485 (2017) (reviewing the provisions concerning marriage and divorce in the Restatement (Second) of Conflict of Laws, examining subsequent social and legal changes such as the widespread availability of

no-fault divorce and the increasing number of international marriages and divorces, and suggesting how these changes should influence the preparation of the Third Restatement of Conflict of Laws).

Alena Geffner-Mihlsten, Note, *Lost in Translation: The Failure of the Interstate Divorce System to Adequately Address the Needs of International Divorcing Couples*, 21 S. Cal. Interdisc. L.J. 403 (2012) (examining how laws treat interstate divorces within the United States, assessing how the interstate system handles international divorce cases, and arguing that the interstate system produces inconsistent and unfair results for the characterization of marital property and for dealing with concurrent international divorce proceedings).

Susan Myres, *Increasing Your Knowledge of Jurisdictional Issues in International Divorce Cases*, Aspatore, Oct. 2012 (providing advice for attorneys about the most difficult challenges in handling international divorce cases, such as complex jurisdictional and procedural problems, difficulties in obtaining enforcement of agreements or court orders, misguided advice that may be given to parents by staff of foreign embassies, and different cultural norms about matters like honesty, finances, or the role of extended family members).

Bryce D. Neier, *International Military Divorce*, Fam. Advoc., Fall 2020, at 42 (discussing important considerations for attorneys handling military divorce cases, including benefits issues, international child custody and child abduction issues, and problems with international service of process).

John Sill, Comment, *The Enforcement of Premarital Agreements at the International Level*, 27 J. Am. Acad. Matrim. Law. 245 (2014-2015) (looking at international views of marriage and pre-marital agreements and analyzing how U.S. courts handle the enforcement of foreign pre-marital agreements and foreign judgments relating to family law).

Peter M. Walzer, *International Prenups*, Fam. Advoc., Fall 2020, at 6 (providing advice for attorneys drafting prenuptial agreements with international aspects).

Rhonda Wasserman, *Family Law Disputes Between International Couples in U.S. Courts*, Fam. Advoc., Fall 2020, at 22 (discussing important issues for family attorneys handling international cases in American courts, including jurisdiction of the courts, choice of law rules, enforcement of choice of law agreements, and recognition of foreign divorces).

Mediation of International Family Cases

Julia Alanen, *When Human Rights Conflict: Mediating International Parental Kidnapping Disputes Involving the Domestic Violence Defense*, 40 U. Miami Inter-Am. L. Rev. 49 (2008) (arguing that mediation should not be banned in situations involving international child abduction and allegations about domestic violence, but discussing how mediators and attorneys must carefully handle the mediation to ensure that it provides a fair and non-coercive mechanism that protects victims of domestic violence and victims of parental kidnapping).

Colby Berman, Note, *Crossing the Border or Crossing the Line? Why Alternative Dispute Resolution Is the Best Route to Reunite Families of Immigrant Children Separated at the U.S.-Mexico Border*, 21 Cardozo J. Conflict Resol. 465 (2020) (proposing the use of mediation, rather than long and costly litigation, to resolve immigration issues and reunite families separated when attempting to cross the border between the United States and Mexico).

Eric M. Bernal, *A Dual-Role Bilingual Mediator Is Inefficient and Unethical*, 13 Scholar 529 (2011) (discussing ethical problems that can arise when a lawyer serves as both the interpreter and the mediator for a matter involving non-English speaking parties).

Elizabeth Cunha, Note & Comment, *The Potential Importance of Incorporating Online Dispute Resolution into a Universal Mediation Model for International Child Abduction Cases*, 24 Conn. J. Int'l L. 155 (2008) (examining efforts to create a universal alternative dispute resolution model for international child abduction cases and exploring the value of online dispute resolution mechanisms for such cases).

Nuria González Martin, *International Parental Child Abduction and Mediation: An Overview*, 38 Fam. L.Q. 319 (2014) (arguing that mediation and other alternative dispute resolution methods are valuable tools for resolving international child abduction disputes, discussing efforts to ensure that parents can choose voluntary mediation with a skilled international family mediator, and assessing how best to use technology in these mediations).

Melissa A. Kucinski, *The Delicate Art of Mediating International Parental Child Abduction Cases*, Disp. Resol. Mag., Winter 2014, at 18 (examining complications that can arise in using mediation in international child abduction cases and discussing important skills and tactics for mediators in these cases).

Melissa Kucinski, *Mediating International Child Abductions*, Fam. Advoc., Fall 2020, at 33 (discussing how mediation can yield creative solutions and help to find middle ground in international child abduction cases).

Melissa A. Kucinski, *The Pitfalls and Possibilities of Using Technology in Mediating Cross-Border Child Custody Cases*, 2010 J. Disp. Resol. 297 (2010) (providing advice for lawyers and mediators involved in mediation of international disputes about child custody, with a particular focus on the use of technology, such as videoconferencing and online automatic translations).

Paul Shulman, Note, *Brazil's Legacy of International Parental Child Abduction: Mediation Under the Hague Abduction Convention as a Solution*, 16 Cardozo J. Conflict Resol. 237 (2014) (proposing the use of a new mediation system, similar to those of Germany and the United Kingdom, to address Brazil's failure to comply with the Hague Convention's requirements about expeditious return of children taken from their habitual residence).

Anne K. Subourne, Comment, *Motivations for Mediation: An Examination of the Philosophies Governing Divorce Mediation in the International Context*, 38 Tex. Int'l L.J. 381 (2003) (analyzing the rationales that different countries have for encouraging the use of mediation in divorce cases, including a long tradition of using mediation for dispute resolution, encouraging reconciliation

in order to reduce divorce rates, providing a means to ensure protection of children's interests, empowering women, and making the legal process more efficient).

Jennifer Zawid, *Practical and Ethical Implications of Mediating International Child Abduction Cases: A New Frontier for Mediators*, 40 U. Miami Inter-Am. L. Rev. 1 (2008) (examining the risks and benefits of mediation in international child abduction cases and discussing the ethical issues that can arise for mediators when there are conflicting rules governing the mediator's conduct).

Chandra Zdenek, Comment, *The United States Versus Japan as a Lesson Commending International Mediation to Secure Hague Abduction Convention Compliance*, 16 San Diego Int'l L.J. 209 (2014) (recommending that a system of international mediation would help to ensure neutrality and fairness in international child abduction cases involving the United States and Japan).

Separation and Reunification of Immigrant Families

Analysis of U.S. Policies

Jamie R. Abrams, *Why the Legal Strategy of Exploiting Immigrant Families Should Worry Us All*, 14 Harv. L. & Pol'y Rev. 77 (2019) (using a family law lens to examine the traumatic effects of immigration laws and policies, particularly those that intentionally sever parent-child relationships, and urging the family law bar to engage in immigration advocacy and reform efforts).

Samantha R. Bentley, Comment, *Give Me Your Tired, Your Poor (Unless They Are from "One of Three Mexican Countries"): Unaccompanied Children and the Humanitarian Crisis at the U.S. Southern Border*, 54 U. Rich. L. Rev. 569 (2020) (arguing that the focus of the United States approach to border issues should be on protecting children rather than deterring immigrants).

Carrie F. Cordero et al., *The Law Against Family Separation*, 51 Colum. Hum. Rts. L. Rev. 430 (arguing that the Trump Administration's policy of separating foreign children from the adults accompanying them on arrival at the U.S. border is not

authorized by domestic or international law and discussing how litigation and legislation should be used to stop the policy).

Morgan Doiron, Note, *Living the American Nightmare: The Adverse Psychological Effects of Separating Immigrant Children from Their Primary Caregivers at the Border*, 16 J. Health & Biomedical L. 52 (2019) (examining the psychological harm to children separated from their families at the border, through comparisons to the psychological effects of being in foster care, being separated from family members due to their incarceration, and suffering ambiguous loss).

Stephen Lee, *Family Separation as Slow Death*, 119 Colum. L. Rev. 2319 (2019) (contending that family separation is a pervasive part of the entire American immigration system and that this is a form of slow death or slow violence that happens slowly and gradually over time).

Stephen H. Legomsky, *Rationing Family Values in Europe and America: An Immigration Tug of War Between States and Their Supra-National Associations*, 25 Geo. Immigr. L.J. 807 (2011) (examining the tension created by the fact that the United States and European nations have been trending away from family reunification and toward restricting family immigration, while supra-national associations such as the European Union and United Nations have moved in the opposite direction and sought to limit national restrictions on family immigration).

Anita Ortiz Maddali, *Left Behind: The Dying Principle of Family Reunification Under Immigration Law*, 50 U. Mich. J.L. Reform 107 (2016) (exploring the principle of family reunification within immigration law and contending that immigration law privileges families fitting the dominant nuclear family model and disadvantages other families, particularly those in which a woman is classified as unskilled or a child is the head of a migrating family unit).

Leanna Marie Sac, Note, *The Real Anchor Babies: How Our Family Reunification Process Fails Refugee Women and Children & How We Can Do Better*, 16 Hastings Race & Poverty L.J. 313 (2019) (describing flaws in the U.S. system for seeking asylum and family reunification, providing case studies from the Mam Maya

people of Guatemala, and proposing statutory changes that would address the problems).

Juliet P. Stumpf, *Justifying Family Separation: Constructing the Criminal Alien and the Alien Mother*, 55 Wake Forest L. Rev. 1037 (2020) (exploring the symbiotic relationship between official discourse and legal change, describing how the discourse during the Trump Administration justified family separation as a natural consequence of the need to protect children while prosecuting parents for criminal behavior, and emphasizing the importance of recognizing how official discourse moves areas of law into or out of public view).

Kylee Verrill, Note, *"Collateral" Damage: Implications of the Zero-Tolerance Policy on Immigration*, 25 Quinnipiac Health L.J. 333 (2022) (examining the adverse psychological and public health effects that family separation has for immigrant children and families).

Child and Family Rights

Kerry Abrams, *Family Reunification and the Security State*, 32 Const. Comment. 247 (2017) (analyzing how the Trump Administration's ban on immigration from several predominantly-Muslim countries had the effect of separating families, tracing the relationship between family rights and federal immigration power in past eras, and predicting that courts will recognize family reunification as a constitutional interest that must be balanced against national security interests).

Kerry Abrams & R. Kent Placenti, *Immigration's Family Values*, 100 Va. L. Rev. 629 (2014) (examining the inconsistencies that can arise in how state family law and federal immigration law define parentage, arguing that immigration law has failed to properly incorporate family law principles, and proposing that immigration law should be reformed to adequately integrate interests in family reunification).

Jeffrey R. Baker & Allyson McKinney Timm, *Zero-Tolerance: The Trump Administration's Human Rights Violations Against Migrants on the Southern Border*, 13 Drexel L. Rev. 581 (2021) (using international human rights law to analyze and critique the

Trump Administration's family separation policies, arguing that the enforcement mechanisms for international law may be too weak to be effective in addressing those policies, and urging that legislators and voters need to act in opposition to human rights violations).

Beth Caldwell, *Deported by Marriage: Americans Forced to Choose Between Love and Country*, 82 Brooklyn L. Rev. 1 (2016) (considering the increasing number of Americans who face a choice between leaving the country or remaining here alone after deportation of a spouse, examining why courts have concluded that a spouse's deportation does not infringe upon a citizen's right to marriage, and arguing that courts should protect the rights of couples to remain together in the United States).

Jenny-Brooke Condon, *When Cruelty Is the Point: Family Separation as Unconstitutional Torture*, 56 Harv. C.R.-C.L. L. Rev. 37 (2021) (arguing that separation of immigrant families is a form of torture that violates Eighth Amendment and Due Process rights).

Jenny-Brooke Condon & Lori A. Nessel, *Border Enforcement as State-Created Danger*, 96 St. John's L. Rev. 829 (2022) (arguing that the government has a constitutional obligation to refrain from acting in ways that create such a risk of danger that they shock the conscience, applying this doctrine to family separation and other policies affecting immigrant families, and asserting that there is a strong basis for holding the government accountable for harm perpetrated in the name of border enforcement).

Keila E. Molina & Lynne Marie Kohm, *"Are We There Yet?" Immigration Reform for Children Left Behind*, 23 Berkeley La Raza L.J. 77 (2013) (examining the tension between family law and immigration law and arguing that the best interests of the child standard should apply in decisions about immigration and deportation that may result in separation of immigrant families).

Mariela Olivares, *The Rise of Zero Tolerance and the Demise of Family*, 36 Ga. St. U. L. Rev. 287 (2020) (contending that family unity was traditionally a core element of immigration law, separation of immigrant families directly contradicts that principle, and the litigation and advocacy efforts in opposition to

family separation could lead to establishment of due process rights to maintain the integrity of immigrant families).

Claudio J. Perez, *How U.S. Policy Has Failed Immigrant Children: Family Separation in the Obama and Trump Eras*, 54 Fam. L.Q. 37 (2020) (explaining how the Trump Administration built on the family separation policies of the Obama Administration and arguing that these policies violate the Fifth Amendment right to family integrity).

Sarah Rogerson, *Cruelty Was the Point: Theories of Recovery for Family Separation and Detention Abuses*, 21 Nev. L.J. 583 (2021) (discussing litigation concerning separation of immigrant families and the extent to which liability can be imposed for harm suffered by detained immigrants, particularly children).

Ediberto Román & Ernesto Sagás, *A Domestic Reign of Terror: Donald Trump's Family Separation Policy*, 24 Harv. Latinx L. Rev. 65 (2021) (arguing that separation of immigrant families violates human rights, child welfare interests, and basic moral norms).

Felicity Sackville Northcott & Wendy Jeffries, *Forgotten Families: International Family Connections for Children in the American Public Child-Welfare System*, 47 Fam. L.Q. 273 (2013) (examining what happens to children who remain in the United States when their parents are deported or detained and arguing that steps must be taken to ensure that parental rights are not terminated without justification and all safe and legitimate options are considered in permanency planning for the child).

Olivia Saldaña Schulman, *"Now They've Robbed Me:" The Use of Termination of Parental Rights in Government-Fractured Immigrant Families*, 43 N.Y.U. Rev. L. & Soc. Change 361 (2019) (explaining how states can terminate the parental rights of immigrant parents in civil detention, unfairly forcing these parents to choose whether to contest their immigration cases and risk losing their children or accept deportation and preserve their family's unity).

Erica Stief, Comment, *Impractical Relief and the Innocent Victims: How United States Immigration Law Ignores the Rights of Citizen Children*, 79 UMKC L. Rev. 477 (2010) (arguing that

U.S. immigration law violates the right to family preservation by failing to account for the best interests of children in decisions about deportation of a parent).

Jonathan Todres & Daniela Villamizar Fink, *The Trauma of Trump's Family Separation and Child Detention Actions: A Children's Rights Perspective*, 95 Wash. L. Rev. 377 (2020) (contending that the Trump administration's family separation policies violate children's rights and calling for action by lawyers and law professors to oppose these policies).

Jesus Torres-Rojas, *No Parent Left Behind: Seeking Equality for Parents of U.S. Citizens*, 36 Geo. Immigr. L.J. 823 (2022) (discussing how people who were unlawfully in the United States at some point may later be barred from seeking immigration benefits through a family member, explaining that this bar can be waived for spouses and offspring of U.S. citizens but not their parents, and arguing that the inability for parents to obtain a waiver violates equal protection rights).

Alysa Williams, Note, *The Forgotten Relatives in the Fight Against Family Separation: A Constitutional Analysis of the Statutory Definition of Unaccompanied Minors in Immigration Detention*, 26 Wm. & Mary J. Race, Gender & Soc. Just. 191 (2019) (asserting that children who arrive at the U.S. border with nonparental adult family members have a constitutional right to family unity and should not be classified as unaccompanied minors).

Marcia Yablon-Zug, *Separation, Deportation, Termination*, 32 B.C. J.L. & Soc. Just. 63 (2012) (arguing that the Children's Rights Movement and its focus on the bests interests of children has had the perverse effect of providing justification for separation of immigrant families and termination of immigrants' parental rights).

Marcia Zug, *Deporting Grandma: Why Grandparent Deportation May Be the Next Big Immigration Crisis and How to Solve It*, 43 U.C. Davis L. Rev. 193 (2009) (contending that the hardship exception, which allows a deportation to be cancelled where it would cause hardship to a family member who is a U.S. citizen or permanent resident, should be expanded to cover situations where a grandparent who cares for children is facing deportation).

Empirical Studies

Nina Rabin, *Disappearing Parents: Immigration Enforcement and the Child Welfare System*, 44 Conn. L. Rev. 99 (2011) (describing the systematic failures of the immigration enforcement and child welfare systems in situations involving children in state custody while their parents are in detention or deportation proceedings, based on a detailed case study of one such situation and empirical results from surveys and interviews with attorneys, caseworkers, and judges in one Arizona county).

Emily Ryo & Reed Humphrey, *Children in Custody: A Study of Detained Migrant Children in the United States*, 68 UCLA L. Rev. 136 (2021) (presenting results of the first systematic empirical investigation of children in the custody of the Office of Refugee Resettlement, finding that an increasing number of the children are extremely vulnerable, and questioning the system's capacity to provide adequate care and protection for them).

Historical Perspectives

Sara Gray, *The Effect of Rhetoric: The Narrow Nexus Between Great Britain's 1938 Kindertransport Rescue Operation and the United States 2018 Zero Tolerance Immigration Policy*, 20 Rutgers J.L. & Religion 203 (2019) (comparing the Trump Administration's zero tolerance and family separation policies to the British government's Kindertransport operation in 1938, which brought thousands of Jewish children out of Germany, Poland, and Austria, and finding that the rhetoric used to justify the actions is strikingly similar even though the motivations underlying the practices is different).

Anita Ortiz Maddali, *The Immigrant "Other": Racialized Identity and the Devaluation of Immigrant Family Relations*, 89 Ind. L.J. 643 (2014) (comparing the contemporary policy of separating immigrant families to historical child welfare practices such as when children were removed from poor immigrant families by "child-saving" agencies in the 1880s and when Native American children were removed from their families and sent to boarding schools).

Christina A. Quiñónez, Comment, *Exposing the American History of Applying Racial Anxieties to Regulate and Devalue*

Latinx Immigrant Reproductive Rights, 54 U. S.F. L. Rev. 557 (2020) (contending that policies requiring separation of immigrant families at the border are a continuation of racial anxieties used to disempower Latinx women and violate their right to bear children).

Anita Sinha, *A Lineage of Family Separation*, 87 Brooklyn L. Rev. 445 (2022) (tracing the history of family separation policies in America, including the separation of enslaved families and indigenous families and the "orphan train" movement aimed at immigrant families, and comparing the narratives justifying those practices to the ones used to justify separation of families at the U.S. border with Mexico).

Proposed Reforms

Jessica Feinberg, *The Plus One Policy: An Autonomous Model of Family Reunification*, 11 Nev. L.J. 629 (2011) (describing how some American citizens have important relationships with non-citizens that do not qualify under the family reunification provisions for admission to the United States, arguing that the definition of family relationships should be expanded beyond the traditional family relationships, and suggesting a "plus one policy" that would allow each adult citizen to sponsor the admission of one important person despite the absence of a family relationship recognized by the immigration laws).

Renee Ambrosek Graves, Note, *"Deleting" Family Units: The Need to Codify the* Flores *Settlement Agreement*, 51 U. Memphis L. Rev. 507 (2021) (discussing the settlement of the *Reno v. Flores* litigation, providing standards for treatment of unaccompanied children arriving at the border, and why regulations should be enacted to replace the settlement agreement).

Medha D. Makhlouf, *Theorizing the Immigrant Child: The Case of Married Minors*, 82 Brooklyn L. Rev. 1603 (2017) (analyzing how the immigration laws do not adequately account for individuals in the immigration system who are married but also minors, examining how this reflects outdated assumptions about marriage and family, and proposing reforms to address the disadvantages that married minors face in the immigration system).

Marie Weisenberger, *Broken Families: A Call for Consideration of the Family of Illegal Immigrants in U.S. Immigration Enforcement Efforts*, 39 Cap. U. L. Rev. 495 (2011) (discussing arguments under constitutional law and international law for immigration reform that would protect families comprised of a mixture of U.S. citizens and undocumented immigrants).

Special Immigrant Juvenile Status

Javeria Ahmed, Note, *No Parents Allowed: The Problem with Special Immigrant Juvenile Status*, 24 Cardozo J. Equal Rts. & Soc. Just. 131 (2017) (proposing that the law on special immigrant juvenile status should be interpreted to deny any immigration benefits to parents who have been abusive, neglectful, or abandoning, but should not bar other parents from obtaining immigration relief).

Michelle Anne Paznokas, Note, *More Than One Achilles' Heel: Exploring the Weaknesses of SIJS's Protection of Abused, Neglected, and Abandoned Immigrant Youth*, 9 Drexel L. Rev. 421 (2017) (arguing that state judges frequently misunderstand their role in cases involving special immigrant juvenile status cases, the judges' decisions in such cases should be based on a best interests of the child standard derived from family law, and a standard order should be created for state judges to use in special immigrant juvenile cases).

Bernard P. Perlmutter, *Judges Behaving Badly… Clinics Fighting Back: The Struggle for Special Immigrant Juveniles in State Dependency Courts in the Age of Trump*, 82 Alb. L. Rev. 1553 (2018-2019) (providing a first-hand account of shifting judicial attitudes toward immigrant children in Florida, by a lawyer with three decades of experience representing clients seeking to qualify for immigration relief under special immigrant juvenile status).

Irene Scharf, *Robbing Special Immigrant Juveniles of Their Rights as US Citizens: The Legislative Error in the 2008 TVPRA Amendments*, 30 Berkeley La Raza L.J. 40 (2020) (criticizing how immigration law does not give special immigrant juveniles who obtain American citizenship through naturalization the same rights as other citizens to petition for their parents to be able to immigrate to the United States).

Richard F. Storrow, *Unaccompanied Minors at the U.S.-Mexico Border: The Shifting Sands of Special Immigrant Juvenile Status*, 33 Geo. Immigr. L.J. 1 (2018) (discussing how special immigrant juvenile status is supposed to permit undocumented minors abandoned or neglected by their parents to obtain lawful resident status, but resistance from state courts and federal agencies is undermining its effectiveness).