

# THE PLUS ONE POLICY: AN AUTONOMOUS MODEL OF FAMILY REUNIFICATION

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## ABSTRACT

*Citizens who share close, important relationships with non-citizens often face significant obstacles if they wish to maintain these relationships permanently within the United States. In order to lawfully immigrate to the United States, non-citizen loved ones must fit within one of the narrowly-defined admission categories established by the Immigration and Nationality Act. The majority of individuals able to immigrate can do so because they share relationships with U.S. citizens that render them eligible under the “family reunification” admission category. Unfortunately, immigration law’s definition of family includes only relationships that could fit within the “traditional family unit.” Thus, many citizens find themselves unable to reunite with the people they value most. This Article proposes adding a new category to immigration law’s current family reunification scheme. The “Plus One Policy” would allow an adult U.S. citizen to sponsor one important individual in his or her life who does not fit within any of the pre-existing family reunification provisions. The Plus One Policy seeks to supplement the current purely “bounded model” of family reunification, in which the government decides categorically which relationships are most valuable to its citizens, with an “autonomous model,” whereby citizens decide for themselves which relationships they value most. Not only would such a model demonstrate that the United States recognizes and respects the wide variety of domestic and global conceptions of family, it would also further the humane and practical goals of family reunification law.*

## I. INTRODUCTION

Many people live near the individuals whom they love and value the most. In fact, most people take for granted the ability to receive love and support from the most important individuals in their lives on a daily basis. Unfortunately, not all U.S. citizens enjoy this luxury. Citizens who share close, impor-

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tant relationships with non-citizens<sup>1</sup> face harsh obstacles if they wish to maintain these relationships permanently within the United States. In order to lawfully immigrate to the United States, non-citizen loved ones must fit within one of the narrowly defined admission categories established by the Immigration and Nationality Act (INA).<sup>2</sup> The majority of individuals able to immigrate can do so because they share relationships with U.S. citizens or lawful permanent residents (LPRs)<sup>3</sup> that render them eligible under the “family reunification” admission category.<sup>4</sup>

Some citizens, however, have important relationships that current immigration law does not recognize as deserving of reunification.<sup>5</sup> These citizens might find themselves unable to reunite with the people they value most. Immigration law’s definition of *family* includes only relationships that could fit within the “traditional family unit” of two married, opposite-sex parents and their children,<sup>6</sup> and even then it includes only certain classes of these relationships. This narrow definition of family forces citizens and the non-citizens with whom they share important, yet unrecognized, relationships to choose from three undesirable options to continue the relationships on a permanent basis: (1) the citizen must leave the United States, (2) the non-citizen must reside in the United States illegally, or (3) the two individuals must separate.

This Article proposes adding a new category to immigration law’s current family reunification scheme, with the aim of providing U.S. citizens and those with whom they share important relationships significant relief from the harsh results that often arise under the current system. The “Plus One Policy” would allow an adult U.S. citizen<sup>7</sup> to sponsor, in his or her lifetime, one important

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<sup>1</sup> For purposes of this Article, the term “non-citizens” will refer to the class of individuals who are neither U.S. citizens nor Lawful Permanent Residents (individuals who have been lawfully admitted to the United States on a permanent basis but have not naturalized). See *infra* note 3.

<sup>2</sup> Immigration and Nationality Act (INA), Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. §§ 1101-1537 (2006 & Supp. 2010)). This Article will cite to the INA provisions and the respective provisions in the United States Code.

<sup>3</sup> I use the term “LPR” to denote an individual whom the United States has formally admitted, and who may reside permanently and work in the United States, but who has not yet been naturalized. See STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 2 (4th ed. 2005).

<sup>4</sup> See *infra* Part II; see also Ramah McKay, Migration Policy Inst., *US in Focus: Family Reunification*, MIGRATION INFO. SOURCE (May 2003), <http://www.migrationinformation.org/Feature/display.cfm?ID=122> (“[T]he family reunification program . . . accounts for approximately two-thirds of permanent immigration to the United States each year.”).

<sup>5</sup> For example, non-marital romantic partners, same-sex spouses, extended family members, and co-parents are not eligible for sponsorship. See *infra* notes 40-49 and accompanying text. In addition, citizens under age twenty-one cannot sponsor their non-citizen parents or siblings. INA §§ 201(b)(2)(A)(i), 203(a)(4), 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(a)(4).

<sup>6</sup> For the remainder of this Article, I will use the term “traditional family unit” to refer to two married, opposite-sex parents and their children.

<sup>7</sup> This Article uses the term “citizen” for ease of reference when referring to the eligible class of sponsors. The Plus One Policy is intended, however, to encompass LPR sponsors as well as citizen sponsors. Because LPRs currently have limited sponsorship rights as compared to citizens, see INA §§ 201(b)(2)(A)(i), 203(a), 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(a), additional requirements would likely be placed on LPR sponsors, such as a mandatory period of residency within the United States.

individual who does not fit within any of the pre-existing family reunification provisions. The Plus One Policy seeks to supplement the current purely “bounded model” of family reunification—wherein the government categorically decides which relationships are most valuable and therefore constitute family—with an “autonomous model,” wherein citizens decide for themselves which relationships they value most and consider familial.

Part II provides an overview of immigration law’s current family reunification provisions.<sup>8</sup> It identifies the categories of familial relationships that immigration law deems worthy of reunification.<sup>9</sup> Noticeably absent are the relationships shared between non-marital partners, same-sex spouses, extended family members, and co-parents.<sup>10</sup> In addition to its failure to recognize many categories of important relationships, the current system lacks any degree of flexibility.<sup>11</sup> Simply put, if a relationship fits within one of the narrow categories set forth under the current family reunification provisions, it is eligible for sponsorship benefits; if the relationship falls outside the categories, it is not eligible.<sup>12</sup> The actual value (or lack thereof) of the relationship to the individuals involved remains resoundingly irrelevant.<sup>13</sup>

Part III analyzes the significant problems inherent in the current bounded model of family reunification.<sup>14</sup> The traditional definition of family advanced by family reunification law accounts for only a discrete minority of U.S. family structures.<sup>15</sup> To demonstrate immigration law’s adherence to a definition of family that does not encompass the familial practices of most Americans, Part III.A first explores a number of the non-traditional familial structures common in today’s society and presents statistics regarding the increasing prevalence of such family structures.<sup>16</sup> It next identifies and analyzes domestic law’s growing recognition of non-traditional family structures.<sup>17</sup> This discussion underlies the argument that domestic law’s increasing recognition of non-traditional family structures indicates lawmakers are aware of the deficiencies of the traditional definition of family, yet continue to adhere to this outdated definition of family in the context of immigration law.<sup>18</sup>

Part III.B focuses on global conceptions of family.<sup>19</sup> It looks closely at family-related laws and practices in nations and cultures across the world.<sup>20</sup> It then explores how these conceptions of family differ greatly from the definition of family set forth by U.S. immigration law.<sup>21</sup> As this section highlights, not only does family reunification law fail to encompass the familial practices of

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<sup>8</sup> See *infra* Part II.

<sup>9</sup> See *infra* notes 40-49 and accompanying text.

<sup>10</sup> See *infra* notes 40-49 and accompanying text.

<sup>11</sup> See *infra* Part II.

<sup>12</sup> See INA §§ 201(b)(2)(A)(i), 203(a), 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(a).

<sup>13</sup> See *id.*

<sup>14</sup> See *infra* Part III.

<sup>15</sup> See *infra* note 59 and accompanying text.

<sup>16</sup> See *infra* Part III.A.

<sup>17</sup> See *infra* Part III.A.

<sup>18</sup> See *infra* notes 192-94, and accompanying text.

<sup>19</sup> See *infra* Part III.B.

<sup>20</sup> See *infra* Part III.B.

<sup>21</sup> See *infra* Part III.B.

many Americans, it also disregards the familial practices of those who immigrate to the United States from cultures and countries where family is not defined in the traditional manner.<sup>22</sup> This section also considers the manner by which a number of other countries define family for immigration reunification purposes,<sup>23</sup> further demonstrating that the United States lags far behind other nations with regard to its willingness to recognize that people throughout the world form valuable relationships outside of the traditional family structure.<sup>24</sup>

Part IV first identifies the humane and practical goals of immigration law's family reunification admission category (family reunification law).<sup>25</sup> It then examines a number of the relationship categories excluded under current family reunification law, including relationships between non-marital significant others, same-sex spouses, non-marital co-parents, extended family members, and close friends.<sup>26</sup> Each of these relationship categories is examined in depth.<sup>27</sup> The discussion includes social science research regarding the value of the relationships to both the individuals involved and society as a whole.<sup>28</sup> After considering the benefits of many of the relationships excluded under current family reunification law, this section concludes that, by granting citizens the autonomy to choose which relationships are eligible for immigration sponsorship, the Plus One Policy will further both the humane and practical goals of family reunification law.<sup>29</sup>

Finally, Part V explores a number of likely concerns regarding the Plus One Policy's implementation and offers various potential options for addressing these concerns.<sup>30</sup> The first probable concern is that, because of a lack of standards for measuring the genuineness of relationships claimed under the Plus One Policy, considerable fraud will occur.<sup>31</sup> The second concern involves the fear that allowing every citizen to have a potential "plus one" will cause excessive immigration.<sup>32</sup> The final likely concern is that providing immigration benefits to a wider population necessarily means the government will have to spend more on public assistance in order to provide for immigrants who are unable to support themselves.<sup>33</sup> Although this section offers a number of possible solutions to these concerns, its goal is not to identify the exact manner through which implementation of the Plus One Policy should occur; rather, it is meant to serve as a springboard for future thought and discussion regarding the

<sup>22</sup> See *infra* notes 115-91 and accompanying text (describing familial practices within a number of countries).

<sup>23</sup> See *infra* notes 138-55, 165-66, 173-76, 187-91 and accompanying text.

<sup>24</sup> See *infra* notes 138-55, 165-66, 173-76, 187-91 and accompanying text.

<sup>25</sup> See *infra* Part IV.A.

<sup>26</sup> See *infra* Part IV.B.

<sup>27</sup> See *infra* Part IV.B.

<sup>28</sup> See, e.g., *infra* notes 221-22, 231-38, 243-51, 256-70 and accompanying text.

<sup>29</sup> See *infra* Part IV.

<sup>30</sup> See *infra* Part V.

<sup>31</sup> See *infra* Part V.A.

<sup>32</sup> See *infra* Part V.B.

<sup>33</sup> See *infra* Part V.C. While immigrants who have not yet naturalized remain ineligible for many public governmental assistance programs, most programs become available to immigrants after they have worked for forty social security quarters. 8 U.S.C. § 1612(a)(2)(B) (Supp. 2010). Other public governmental assistance programs have no restrictions as to immigrant eligibility. 8 U.S.C. § 1611(b).

implementation of an immigration policy that grants individuals greater autonomy in defining family.

## II. CURRENT CATEGORIES OF LEGAL IMMIGRANTS

Non-citizens can lawfully immigrate into the United States only if they fit within one of the admission categories established by Congress through the INA. The INA creates four main categories of admission. Three of them relate to employment,<sup>34</sup> regional and country diversity,<sup>35</sup> and humanitarian admissions.<sup>36</sup> The remaining category—of greatest relevance to this Article, and also the largest—is family reunification.<sup>37</sup> It applies to non-citizens who wish to join certain family members who are U.S. citizens or LPRs.<sup>38</sup> Family reunification law places an eligible individual into one of five subcategories based on the type of relationship shared with the U.S. citizen or LPR family member.<sup>39</sup>

The first subcategory, “immediate relatives,” includes a citizen’s opposite-sex spouse,<sup>40</sup> unmarried children<sup>41</sup> under age twenty-one, and parents (but only where the citizen is at least age twenty-one).<sup>42</sup> The INA does not subject the immediate relative subcategory to an annual cap, and thus immediate relatives may immigrate as soon as the relevant government agency processes their paperwork.<sup>43</sup> Each of the other four subcategories, termed “preference categories,” is subject to an annual cap.<sup>44</sup> The annual caps often result in substantial wait times for individuals who fall within one of the four preference categories.<sup>45</sup>

The first preference category consists of citizens’ unmarried children over age twenty-one.<sup>46</sup> The second preference category includes spouses and

<sup>34</sup> INA § 203(b), 8 U.S.C. § 1153(b).

<sup>35</sup> INA § 203(c), 8 U.S.C. § 1153(c). The INA places annual caps on the number of employment and diversity-based immigrants who may enter the United States each year. INA § 201(d)-(e), 8 U.S.C. § 1151(d)-(e).

<sup>36</sup> INA §§ 207, 208, 8 U.S.C. §§ 1157, 1158.

<sup>37</sup> See *infra* note 52 and accompanying text.

<sup>38</sup> INA §§ 201(b)(2)(A)(i), 203(a), (d), 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(a), (d).

<sup>39</sup> INA §§ 201(b)(2)(A)(i), 203(a), 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(a).

<sup>40</sup> In the Defense of Marriage Act, Congress defined spouse for the purposes of all federal statutes as referring only “to a person of the opposite sex who is a husband or wife.” 1 U.S.C. § 7 (2006), *invalidated by* Massachusetts v. U.S. Dep’t of Health & Human Servs., 698 F. Supp. 2d 234 (D. Mass. 2010). Thus, the term spouse does not include members of a same-sex couple, even if the couple obtained a legal marriage in a jurisdiction that recognizes same-sex marriage.

<sup>41</sup> The INA defines “child” as, *inter alia*, an unmarried individual who is under the age of twenty-one and refers to children who are married or over the age of twenty-one as “sons and daughters.” INA § 101(b)(1); INA § 203(a)(1). For purposes of this Article, however, both the class of individuals the INA refers to as “children” and the class of individuals the INA refers to as “sons and daughters” will be referred to as children, and any age or marital specifications will be stated explicitly in the text.

<sup>42</sup> INA § 201(b)(2)(A)(i), 8 U.S.C. § 1151(b)(2)(A)(i).

<sup>43</sup> INA § 201(b), 8 U.S.C. § 1151(b).

<sup>44</sup> INA § 203(a), 8 U.S.C. § 1153(a). There are also per country annual caps on family- and employment-based visas. INA § 202(a)(2), 8 U.S.C. § 1152(a)(2).

<sup>45</sup> LEGOMSKY, *supra* note 3, at 251.

<sup>46</sup> INA § 203(a)(1), 8 U.S.C. § 1153(a)(1).

unmarried children of LPRs.<sup>47</sup> The third preference category encompasses the married children of citizens.<sup>48</sup> Finally, the fourth preference category consists of the brothers and sisters of citizens, provided the citizen sponsors are at least age twenty-one.<sup>49</sup> If non-citizens wish to immigrate under a family reunification provision, the citizens or LPRs with whom they share the recognized familial relationships, the “sponsors,” must file visa petitions with United States Citizenship and Immigration Services (USCIS).<sup>50</sup> The petition also may include the potential immigrant’s pre-existing spouse and unmarried children under age twenty-one.<sup>51</sup>

Because of the significantly lower annual caps on diversity- and employment-based immigration, as well as the exemption of immediate family members from any annual cap, immigration through the family reunification provisions accounts for approximately two-thirds of all U.S. immigrant admissions.<sup>52</sup> Individuals who do not qualify for admission under a family reunification provision thus have a much lower chance of legally immigrating to the United States.<sup>53</sup> As one immigration scholar notes, “[t]he numbers allotted to the three most direct means of acquiring residency . . . immediately reveal that family unity is the unchallenged priority.”<sup>54</sup> Thus, lawmakers and courts view family reunification as the cornerstone of immigration law.<sup>55</sup>

### III. CONCERNS REGARDING THE CURRENT BOUNDED MODEL

With no regard to individual circumstances, family reunification law unilaterally and categorically decides which relationships in a citizen’s life qualify as valuable enough to maintain within the United States. If a citizen’s most valuable relationship does not fit within one of the governmentally created fam-

<sup>47</sup> INA § 203(a)(2), 8 U.S.C. § 1153(a)(2).

<sup>48</sup> INA § 203(a)(3), 8 U.S.C. § 1153(a)(3).

<sup>49</sup> INA § 203(a)(4), 8 U.S.C. § 1153(a)(4).

<sup>50</sup> INA § 204(a)(1)(A)(i), 8 U.S.C. § 1154(a)(1)(A)(i). USCIS “manage[s] the process that allows current permanent residents and U.S. citizens to bring close relatives to live and work in the United States.” *What We Do*, U.S. CITIZENSHIP AND IMMIGR. SVCS., <http://www.uscis.gov/portal/site/uscis/> (follow “ABOUT US” hyperlink; then follow “What We Do” hyperlink) (last updated Sept. 2, 2009).

<sup>51</sup> INA § 203(d), 8 U.S.C. § 1153(d).

<sup>52</sup> McKay, *supra* note 4 (“Family reunification is the largest of [the immigration] channels and accounts for approximately two-thirds of total permanent immigration to the US every year.”).

<sup>53</sup> Emma O. Guzmán, *The Dynamics of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996: The Splitting-Up of American Families*, 2 SCHOLAR 95, 115 (2000) (“If a person does not fall within [the family reunification] preferences, the opportunity to legally migrate to the United States is very slim. Family-based migration has been and is currently the category that allows more people to migrate to the United States.”).

<sup>54</sup> Linda Kelly, *Family Planning, American Style*, 52 ALA. L. REV. 943, 953 (2001).

<sup>55</sup> *Lau v. Kiley*, 563 F.2d 543, 547 (2d Cir. 1977) (“[T]he foremost policy underlying the granting of preference visas under our immigration laws [is] that of the reunification of families. . . .”); H.R. REP. NO. 85-1199, at 6 (1957), *reprinted in* 1957 U.S.C.C.A.N. 2016, 2020 (“The legislative history of the Immigration and Nationality Act clearly indicates that the Congress . . . was concerned with the problem of keeping families of United States citizens and immigrants united.”); H.R. REP. NO. 82-1365, at 24 (1952), *reprinted in* 1952 U.S.C.C.A.N. 1653, 1680.

ily reunification admission subcategories, no reunification will occur. Thus, under the current model of family reunification, citizens are completely bound by the established categories as to with whom they can reunite.

The relationships deemed worthy of reunification under this purely bounded model are those between individuals who share certain relationships that could fit within the traditional family structure.<sup>56</sup> Only opposite-sex married couples, certain categories of parents and children, and siblings may reunite; no other relationships, however important or valuable, qualify.<sup>57</sup> This adherence to the traditional family structure forces citizens with non-citizen loved ones to conform to a narrow definition of family that fails to adequately represent current domestic and global familial conceptions and practices.<sup>58</sup>

#### A. *Domestic Conceptions of Family*

Most Americans do not exist in the traditional family structure provided for under the current family reunification provisions.<sup>59</sup> Domestic law increasingly recognizes and provides for Americans' varying, non-traditional conceptions of family.<sup>60</sup> The differing degrees to which domestic and immigration law recognize non-traditional relationships yields unfair consequences, resulting in differing treatment of the same classes of relationships depending upon whether they exist between two citizens or between a citizen and a non-citizen. In addition, immigration law's strict adherence to the traditional conception of family, even while domestic law continues to increasingly recognize non-traditional family forms, makes the United States' commitment to family reunification appear disingenuous both to its own citizens and to the rest of the world.<sup>61</sup>

<sup>56</sup> See also *supra* Part II (identifying the categories of relationships recognized by family reunification law).

<sup>57</sup> See INA §§ 201(b)(2)(A)(i), 203(a), 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(a) (2006 & Supp. 2010).

<sup>58</sup> Monique Lee Hawthorne, *Family Unity in Immigration Law: Broadening the Scope of "Family,"* 11 LEWIS & CLARK L. REV. 809, 809 (2007) ("U.S. immigration policy incorrectly focuses on a static concept of family that excludes family models presently existing in the United States, thereby failing to achieve family reunification."); Kelly, *supra* note 54, at 945 ("Yet against the reality of changing family shapes and sizes, immigration law continues to adhere to the nuclear family ideal.").

<sup>59</sup> See TAVIA SIMMONS & MARTIN O'CONNELL, U.S. DEP'T OF COMMERCE, MARRIED-COUPLE AND UNMARRIED-PARTNER HOUSEHOLDS: 2000, at 1, 10 (2003), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf> (noting that of the 52 percent of households currently maintained by married couples, only 46 percent contain children); Martha Albertson Fineman, *Why Marriage?*, 9 VA. J. SOC. POL'Y & L. 239, 246 (2001) ("[T]he traditional marital family has become a statistical minority of family units in our society."); Michael C. Gottlieb, Troxel v. Granville and Its Implications for Families and Practice: A Multidisciplinary Symposium, 41 FAM. CT. REV. 8, 9 (2003) ("As a result of the women's movement, economic downturn, immigration, and assisted reproductive technologies, the traditional family structure of the past is now the minority."); Annie Y. Wang, *Unmarried Cohabitation: What Can We Learn From a Comparison Between the United States and China?*, 41 FAM. L.Q. 197, 197 (2007) ("In the United States, the number of unmarried couples living together has increased dramatically due to the growing social recognition of unmarried cohabitation.").

<sup>60</sup> See *infra* Part III.A.1-4.

<sup>61</sup> For some legislators, the definition of family advanced in immigration law may not, in fact, be disingenuous. They may feel that a true definition of family encompasses only

### 1. Recognition of Non-Marital Relationships

One reason the traditional family unit no longer represents the reality for most Americans is that adults increasingly choose to enter into and maintain relationships that do not involve marriage.<sup>62</sup> Today, a higher proportion of adult Americans remain unmarried than ever before.<sup>63</sup> Since 1950, the percentage of married households has dropped by 30 percent, while households consisting of unmarried partners have increased from 523,000 in 1970 to nearly 5.5 million in 2000.<sup>64</sup> The move away from marriage is not expected to change course anytime soon.<sup>65</sup>

Recognizing this change in marital practices, states, cities, counties, municipalities, and employers increasingly recognize and support various forms of non-marital relationships. For example, more than 100 states, cities, and counties now offer domestic-partner benefits for same-sex unmarried couples, opposite-sex unmarried couples, or both.<sup>66</sup> In addition, a number of state laws also grant civil unions to unmarried same- and/or opposite-sex couples, thereby providing the couples with varying arrays of rights and benefits.<sup>67</sup> Moreover, “10 states and 161 local governments now offer some sort of employee protections and benefits—from basic bereavement rights to full health insurance coverage—to unmarried domestic partners. . . .”<sup>68</sup> Similarly, more than 9,000 employers, including more than half of all Fortune 500 companies,<sup>69</sup> offer benefits to the partners of their unmarried employees.<sup>70</sup> Even the

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members of the traditional family unit. However, even if legislators feel that the INA’s current definition is a correct conception of family, they nonetheless know, as evidenced by the laws discussed in this Part, that most people do not define family in this manner. Thus, to claim to the rest of the world that a major goal of immigration law is to provide family reunification, with the knowledge that most people will not be able to reunite with those individuals whom they consider family, appears disingenuous. *See supra* note 59 and accompanying text (discussing the decline of the traditional family unit).

<sup>62</sup> Wang, *supra* note 59.

<sup>63</sup> David L. Chambers, *For the Best of Friends and for Lovers of All Sorts, A Status Other than Marriage*, 76 NOTRE DAME L. REV. 1347, 1364 (2001) (“A higher proportion of adult Americans are unmarried today than at any point in our history.”).

<sup>64</sup> Kelley Beaucar Vlahos, *Singles Seek Financial, Legal Perks Offered Marrieds*, FOXNEWS.COM (Nov. 20, 2003), <http://www.foxnews.com/story/0,2933,103590,00.html>; *see also* ARLENE F. SALUTER, U.S. DEP’T OF COMMERCE, MARITAL STATUS AND LIVING ARRANGEMENTS: MARCH 1994, at xiii (1996), *available at* <http://www.census.gov/prod/1/pop/p20-484.pdf>; SIMMONS & O’CONNELL, *supra* note 59, at 2.

<sup>65</sup> Sharon Jayson, *Divorce Declining, but So Is Marriage*, USA TODAY, July 18, 2005, at 3A, *available at* [http://www.usatoday.com/news/nation/2005-07-18-cohabit-divorce\\_x.htm](http://www.usatoday.com/news/nation/2005-07-18-cohabit-divorce_x.htm) (describing the shift in U.S. society from marriage to cohabitation).

<sup>66</sup> Rebecca Anderson, *A Description of Domestic Partner Benefit Policies of State, County, and City Governments* 39 (Feb. 1, 2003) (unpublished research project, Texas State University), *available at* <http://ecommons.txstate.edu/cgi/viewcontent.cgi?article=1043&context=arp>.

<sup>67</sup> Christine Nelson, *Civil Unions & Domestic Partnership Statutes*, NAT’L CONF. OF ST. LEGISLATURES (Jan. 2010), <http://www.ncsl.org/Default.aspx?TabId=4244> (identifying states with civil union and/or domestic partnership laws and describing the content of such laws).

<sup>68</sup> Vlahos, *supra* note 64.

<sup>69</sup> HUMAN RIGHTS CAMPAIGN FOUND., CORPORATE EQUALITY INDEX 2006, at 7 (2006), *available at* <http://www.hrc.org/documents/HRCCorporateEqualityIndex2006.pdf>.

U.S. Federal Government offers a number of benefits to certain classes of domestic partners of its unmarried employees.<sup>71</sup>

In addition, state laws throughout the country allow unmarried adults to enter into joint-tenancy contracts, health care proxies, and power-of-attorney agreements with the adults of their choice.<sup>72</sup> Under these laws, individuals, regardless of marital status, may choose to share essential benefits and responsibilities with the people they value most.<sup>73</sup> Thus, while governments and employers throughout the country recognize a wide variety of adult relationships, family reunification law continues to deny recognition to many non-marital adult relationships, no matter the importance of the relationships to the individuals involved.<sup>74</sup>

## 2. Recognition of Same-Sex Marital Relationships

In addition to the myriad laws recognizing various forms of non-marital same-sex relationships, legal recognition of same-sex marriage has increased significantly in recent years. Same-sex marriage is currently legal in Massachusetts, Connecticut, Iowa, New Hampshire, Vermont, and the District of Columbia.<sup>75</sup> Additionally, New York, Rhode Island, and Maryland recognize same-sex marriages performed in other states.<sup>76</sup> In the coming years, a number

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<sup>70</sup> ALENE RUSSELL, AM. ASS'N OF STATE COLLS. AND UNIVS., DOMESTIC PARTNERSHIP BENEFITS: EQUITY, FAIRNESS, AND COMPETITIVE ADVANTAGE 1 (2007), available at [http://www.aascu.org/policy\\_matters/pdf/domestic\\_partners07.pdf](http://www.aascu.org/policy_matters/pdf/domestic_partners07.pdf).

<sup>71</sup> See, e.g., Stephen Losey, *Long-term care open season starts today*, FED. TIMES, April 4, 2011, available at <http://www.federaltimes.com/article/20110404/BENEFITS06/104040303/>; Sarah Wildman, *Domestic-Partner Benefits for Federal Workers Trickle In: Progress or Procrastination?*, POLITICS DAILY, June 4, 2010, available at <http://www.politicsdaily.com/2010/06/03/domestic-partner-benefits-for-federal-workers-trickle-in-progre/>.

<sup>72</sup> BEYOND SAME-SEX MARRIAGE: A NEW STRATEGIC VISION FOR ALL FAMILIES AND RELATIONSHIPS 2, BEYONDMARRIAGE.ORG (July 26, 2006), <http://www.beyondmarriage.org/BeyondMarriage.pdf>.

<sup>73</sup> See, e.g., CAL. PROB. CODE § 4701 (West 2009) (“You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things.”); MONT. CODE ANN. § 70-20-105 (2009) (“A joint tenancy as to any interest in real property may be established by the owner of the interest by designating in the instrument of conveyance or transfer the names of the joint tenants, including the person’s own, without the necessity of any transfer or conveyance to or through a third person.”); OHIO REV. CODE ANN. § 1337.17 (West 2004) (“Generally, you may designate any competent adult as the attorney in fact under this document.”).

<sup>74</sup> INA §§ 201(b)(2)(A)(i), 203(a)(2), 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(a)(2) (2006 & Supp. 2010).

<sup>75</sup> Katherine Jarvis, *They’re Married—in Connecticut at Least: Senate Bill Would Grant Rights to Same-Sex Couples Who Marry Outside California*, OAKLAND TRIB., Aug. 15, 2009, at 1, available at 2009 WLNR 15947421 (cataloguing the states in which same-sex marriage is currently legal); Ian Urbina, *Nation’s Capital Joins 5 States in Legalizing Same-Sex Marriage*, N.Y. TIMES, Mar. 4, 2010, at A20, available at [http://www.nytimes.com/2010/03/04/us/04marriage.html?\\_r=1](http://www.nytimes.com/2010/03/04/us/04marriage.html?_r=1).

<sup>76</sup> *Same-Sex Marriage, Civil Unions and Domestic Partnerships*, NAT’L CONF. OF ST. LEGISLATURES, <http://www.ncsl.org/?TabID=16430> (last updated Sept. 2010). Under the Defense of Marriage Act, states are not required to recognize same-sex marriages entered into legally in other jurisdictions. 28 U.S.C. § 1738C (2006) (“No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act,

of state legislatures and courts are expected to consider the legalization of same-sex marriage.<sup>77</sup> While the U.S. moves toward a more inclusive definition of civil marriage domestically, immigration law continues to deny recognition to the important relationships shared between members of same-sex couples who have entered into civil marriages.<sup>78</sup>

### 3. *Recognition of Parent-Child and Co-Parent Relationships*

Like adults, a great number of U.S. children currently live outside of the traditional family unit. Today, unmarried cohabitating couples are almost as likely to be raising children as are their married counterparts.<sup>79</sup> The unmarried biological or adoptive parents of a child generally have the same legal parental rights and responsibilities as married parents,<sup>80</sup> and “United States law has eliminated most legal impediments faced by children in non-marital families.”<sup>81</sup> Moreover, with high divorce rates and presumptions of joint custody in most states, children often split time between their parents’ separate households.<sup>82</sup>

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record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.”).

<sup>77</sup> See, e.g., Bob Egelko, *Judge Sets January Trial in Prop. 8 Suit*, S.F. CHRON., Aug. 20, 2009, at D3, available at 2009 WLNR 16176979 (discussing upcoming lawsuit challenging the law banning same-sex marriage in California); Cheryl Hanna, *The Loving Lesson*, SEVEN DAYS (Vt.), Apr. 22, 2009, available at <http://www.7dvt.com/2009loving-lesson> (“The District of Columbia recently passed a preliminary bill recognizing same-sex marriage and, currently, many state legislatures—including those in New York, New Jersey, New Hampshire, Maine, Illinois and Maryland—are considering same-sex-marriage bills.”); John Marelius, *Advisers Urge Foes of Prop. 8 Not to Rush: Odds for Repeal May Be Better in 2012*, SAN DIEGO UNION-TRIB., Aug. 3, 2009, at A1, available at 2009 WLNR 15109473 (identifying various states with pending same-sex marriage legalization legislation and discussing efforts in California to overturn its law banning same-sex marriage); Christine Vestal, *Gay Marriage Legal in Six States*, STATELINE.ORG, (June 4, 2009, 4:40 PM), <http://www.stateline.org/live/details/story?contentId=347390> (“Further change is possible in 2009. In April 2009, New York Gov. David Paterson (D) proposed a bill to legalize gay marriage, following his 2008 decision that the state would recognize same-sex marriages performed out-of-state. In New Jersey and the District of Columbia, prominent lawmakers support moving from marriage alternatives to full marriage rights.”).

<sup>78</sup> The Defense of Marriage Act defines the term “spouse” for purposes of all federal statutes as “a person of the opposite sex who is a husband or wife.” 1 U.S.C. § 7 (2006), *invalidated by Massachusetts v. U.S. Dep’t of Health & Human Servs.*, 698 F. Supp. 2d 234, 236 (D. Mass. 2010). Meanwhile, a vast number of foreign countries recognize the validity of same-sex marriages. See *infra* Part III.B.2.

<sup>79</sup> Vivian Hamilton, *Mistaking Marriage for Social Policy*, 11 VA. J. SOC. POL’Y & L. 307, 359 (2004) (“Across the United States, unmarried men and women who live together are almost as likely to be raising children as are married couples.”).

<sup>80</sup> Vivian E. Hamilton, *Family Structure, Children, and Law*, 24 WASH. U. J.L. & POL’Y 9, 10 (2007) (“As the Supreme Court stated in 1972, ‘[B]urdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent.’”) (quoting *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972)).

<sup>81</sup> *Id.*

<sup>82</sup> *Johnson v. Calvert*, 851 P.2d 776, 781 n.8 (Cal. 1993) (en banc) (“[R]ising divorce rates have made multiple parent arrangements common in our society . . .”).

Additionally, many states now recognize the relationship between a child and an individual who is neither the child's biological parent nor the biological parent's spouse, but who wishes to, or already does, act as the child's parent. For example, more than twenty jurisdictions recognize second-parent adoption procedures through which the non-marital partner of a child's parent can legally adopt the child.<sup>83</sup> In addition, a significant number of laws protect the relationship between a child and an individual who functions as the child's parent or stands in *loco parentis*,<sup>84</sup> regardless of the individual's relationship to the child's biological or adoptive parent(s).<sup>85</sup> The widespread recognition of diverse parent-child relationships demonstrates the strong domestic policy goals of supporting parents and enabling children to have as much contact as possible with their parents, regardless of the parents' marital status.

Immigration law, however, stands in direct tension with these goals. If a non-citizen and a citizen co-parent a child, but are not married to each other, current family reunification law does not recognize their relationship.<sup>86</sup> Not only does family reunification law devalue relationships between co-parents, but by refusing to recognize co-parent relationships it also devalues the relationships between non-citizen co-parents and their citizen children. Children under age twenty-one remain unable to sponsor their non-citizen biological, adoptive, or functioning parents.<sup>87</sup> Thus, an unmarried non-citizen co-parent will not receive admission to the United States by virtue of his or her relationship to either his or her citizen co-parent or his or her citizen child.

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<sup>83</sup> Sharon S. v. Superior Court, 73 P.3d 554, 575 (Cal. 2003) (Baxter, J., concurring in part and dissenting in part) ("The majority's principal holding—which recognizes second parent adoptions as valid in California—is unremarkable. At least 20 other jurisdictions have already done so, including the highest courts of three sister states." (internal citations omitted)).

<sup>84</sup> An individual "[S]tands in loco parentis when he puts himself in the situation of a lawful parent by assuming the obligations incident to the parental relation without . . . [legal] formalities . . . ." 59 AM. JUR. 2D *Parent and Child* § 9 (2002).

<sup>85</sup> See, e.g., Elementary and Secondary Education Act of 1965, 20 U.S.C. § 7801(31) (2006) ("The term 'parent' includes a legal guardian or other person standing in loco parentis . . . ."); Family and Medical Leave Act of 1993, 29 U.S.C. § 2611(12) (2006) ("The term 'son or daughter' means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis . . . ."); LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, 33 U.S.C. § 902(14) (Supp. 2010) ("'Child' shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a stepchild . . . ."); see also Sara R. David, Note, *Turning Parental Rights into Parental Obligations—Holding Same-Sex, Non-Biological Parents Responsible for Child Support*, 39 NEW ENG. L. REV. 921, 936 (2005) ("Of late, there has been a greater willingness by courts to recognize child support claims, using . . . in loco parentis . . . .").

<sup>86</sup> See *supra* notes 40-49 and accompanying text (discussing the relationships that qualify for immigration sponsorship benefits).

<sup>87</sup> See *supra* note 42 and accompanying text. Lawmakers have stated that this restriction is based on the fear that because individuals born in the United States automatically gain citizen status, U.S. CONST. amend. XIV, § 1, without the restriction women present unlawfully would give birth within the United States so as to instantly become eligible to immigrate as the parents of U.S. citizens. *To Amend the Immigration and Nationality Act, and for Other Purposes: Hearings on S. 500 Before the S. Subcomm. on Immigration & Naturalization of the S. Comm. on the Judiciary*, 89th Cong. 230-31, 270-71 (1965).

#### 4. Recognition of Extended Family Relationships

Extended family households continue to maintain a significant role in U.S. society.<sup>88</sup> In fact, with the decreasing prevalence of the traditional nuclear family structure,<sup>89</sup> extended family households have experienced a recent resurgence in the United States.<sup>90</sup> Although immigration, housing, and the economy have all contributed to the increasing prevalence of extended family households, social change in Americans' conceptions of family is also an important factor.<sup>91</sup> It is estimated that 14 percent of all households in the United States are now extended family households,<sup>92</sup> and that number is expected to continue to increase in the coming years.<sup>93</sup> In addition, about one in seven children live in a household that includes an extended family member,<sup>94</sup> and more than 5 percent of all households contain three or more generations of family members.<sup>95</sup>

United States law recognizes that many Americans' definition of family includes extended family members such as grandparents, aunts, uncles, nieces, nephews, and cousins. For example, all fifty states allow grandparents to seek visitation rights,<sup>96</sup> and federal adoption law requires that state agencies attempt to place children with extended family members before exploring alternative options.<sup>97</sup> In addition, the Supreme Court explicitly discussed the significant

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<sup>88</sup> See *infra* notes 92, 94-95 and accompanying text (providing statistics regarding extended family households within the United States).

<sup>89</sup> See *supra* note 59 and accompanying text.

<sup>90</sup> Mike Swift, *With More Generations Under One Roof, U.S. Families No Longer Shrinking, Census Data Shows*, MERCURY NEWS (San Jose), Jan. 10, 2009, available at <http://www.commercialappeal.com/news/2009/jan/25/immigration-housing> ("After nearly half a century, the chronic shrinking of the American family has stalled. [With] more extended families living under the same roof, the nation's families may be growing for the first time since the early 1960s.").

<sup>91</sup> *Id.* ("[S]ome demographers and sociologists say other social changes are pulling generations closer, and broadening the template for the American family. . . . 'There is a rediscovery of intergenerational ties,' said Stephanie Coontz, director of research for the Council on Contemporary Families. 'I think it's a very significant shift in family life.'").

<sup>92</sup> Claude S. Fischer & Michael Hout, *How Americans Lived: Families and Life Courses in Flux, 1900-2000* in CENTURY OF DIFFERENCE 2-3 (July 2005) (unpublished article), available at [http://ucdata.berkeley.edu/rsfcensus/papers/Fischer-Hout\\_Ch2\\_July05.pdf](http://ucdata.berkeley.edu/rsfcensus/papers/Fischer-Hout_Ch2_July05.pdf).

<sup>93</sup> Yoshinori Kamo, *Racial and Ethnic Differences in Extended Family Households*, 43 SOC. PERSP. 211, 211 (2000).

<sup>94</sup> ROSE M. KREIDER & JASON FIELDS, U.S. DEP'T OF COMMERCE, LIVING ARRANGEMENTS OF CHILDREN: 2001, at 1, 11 (2005), available at <http://www.census.gov/sipp/p70s/p70-104.pdf>.

<sup>95</sup> Robyn Tomlin, *Editor's Note—Extended-Family Living Suits Us Just Fine*, STAR NEWS (N.C.) (July 31, 2009, 11:24 AM), <http://www.starnewsonline.com/article/20090731/COLUMNIST/907319981?Title=Editor-s-Note-Extended-family-living-suits-us-just-fine> ("In 2008, 5.3 percent of U.S. households were multigenerational, according the U.S. Census Bureau data. That number was up about 11 percent from 2000.").

<sup>96</sup> Lauren F. Cowan, Note, *There's No Place Like Home: Why the Harm Standard in Grandparent Visitation Disputes Is in the Child's Best Interests*, 75 FORDHAM L. REV. 3137, 3139 (2007) ("Today, however, grandparents have standing to sue for visitation time with grandchildren in all fifty states.").

<sup>97</sup> 42 U.S.C. § 671(a)(19) (Supp. 2010) ("[T]he State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards . . .").

value of extended family relationships in *Moore v. City of East Cleveland*.<sup>98</sup> The Court upheld the relational rights of extended family members under the Constitution by striking down a zoning statute that prohibited a grandmother from living with her two young grandsons.<sup>99</sup> The Court noted that Americans have considered extended family members as within their core definition of family for centuries, and stated that “[o]urs is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family.”<sup>100</sup> Today, however, immigration law’s narrow definition of family, which excludes extended family members, stands in stark contrast to the Court’s statement.

### B. Global Conceptions of Family

Each year, individuals from all over the world immigrate legally to the United States.<sup>101</sup> In 2008, more than 700,000 individuals were granted LPR status through the family reunification admission category.<sup>102</sup> An additional 160,000 individuals immigrated to the United States through the employment admission category,<sup>103</sup> which provides immigration benefits to individuals who have specific skills or are engaged in certain occupations.<sup>104</sup> More than 40,000 individuals immigrated to the United States pursuant to the diversity admission category,<sup>105</sup> which uses a lottery system to provide immigration benefits to individuals from various countries with low immigration rates to the United States.<sup>106</sup> Finally, more than 76,000 individuals initially admitted under the humanitarian admission category, which provides immigration benefits to refugees,<sup>107</sup> became LPRs in 2008.<sup>108</sup>

Thus, in one year alone, a significant number of non-citizens—more than 1.1 million—were granted LPR status.<sup>109</sup> Although LPRs have more-limited

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State agencies that fail to adhere to this requirement do not receive federal assistance. *Id.* § 671(a).

<sup>98</sup> *Moore v. City of E. Cleveland*, 431 U.S. 494, 503 (1977).

<sup>99</sup> *Id.* at 495-96, 506.

<sup>100</sup> *Id.* at 504.

<sup>101</sup> See STEVEN A. CAMAROTA, CTR. FOR IMMIGRATION STUDIES, IMMIGRANTS IN THE UNITED STATES, 2007: A PROFILE OF AMERICA’S FOREIGN BORN POPULATION 7 (2007), available at <http://www.cis.org/articles/2007/back1007.pdf>.

<sup>102</sup> See Jeanne Batalova, Migration Pol’y Inst., *US in Focus: Spotlight on Legal Immigration to the United States*, MIGRATION INFO. SOURCE (June 2009), <http://www.migration-information.org/USFocus/display.cfm?id=730> (“Immigrants who obtained green cards as spouses, children under 21, and parents of US citizens (488,483), or as immediate family of lawful permanent residents and certain family members of US citizens (227,761), accounted for 64.7 percent of all lawful permanent immigrants.”).

<sup>103</sup> See *id.* (“The 166,511 immigrants who received green cards through sponsorship from their US employers accounted for 15.0 percent of all LPRs.”).

<sup>104</sup> INA § 203(b), 8 U.S.C. § 1153(b) (2006).

<sup>105</sup> See Batalova, *supra* note 102 (“Seventy-two percent of the ‘other immigrants’ in 2008 (41,761) were people who received their immigrant visas through the Diversity Immigrant Visa Program, also known as the Green Card Lottery, run by the US State Department.”).

<sup>106</sup> INA § 203(c), 8 U.S.C. § 1153(c).

<sup>107</sup> INA § 207, 8 U.S.C. § 1157. Individuals admitted under the humanitarian provisions, unlike most individuals admitted through the other categories, are not eligible to become LPRs for one year. INA § 209(a)(1)(B), 8 U.S.C. § 1159(a)(1)(B).

<sup>108</sup> See Batalova, *supra* note 102.

<sup>109</sup> *Id.* (“There were 1,107,126 immigrants who were granted legal residence in 2008.”).

sponsorship rights initially (LPRs can only sponsor spouses and unmarried children),<sup>110</sup> when they become U.S. citizens,<sup>111</sup> they, like all other citizens, will have the opportunity to sponsor eligible family members through the family reunification provisions of the INA providing for sponsorship by U.S. citizens.<sup>112</sup> Many immigrants, however, come from countries and cultures that define family in a manner that differs greatly from the definition set forth in the family reunification provisions of the INA.<sup>113</sup> The lack of flexibility in the current bounded model of family reunification means that many immigrants will be unable to sponsor important individuals in their lives who do not fit within the INA's definition of family.<sup>114</sup> As will be discussed below, due to the differing global definitions of family, the significant limitations of the current bounded model of family reunification will likely affect a great number of U.S. immigrants.

### 1. *Non-Marital Relationships*

Laws in a significant number of countries recognize non-marital same-and/or opposite-sex relationships between adults. Some of these countries are Andorra,<sup>115</sup> Australia,<sup>116</sup> Croatia,<sup>117</sup> the Czech Republic,<sup>118</sup> Denmark,<sup>119</sup> Fin-

<sup>110</sup> Before they become citizens, LPRs may sponsor only their spouses or unmarried sons and daughters. INA § 203(a)(2), 8 U.S.C. § 1153(a)(2).

<sup>111</sup> See, e.g., INA § 316(a), 8 U.S.C. § 1427(a) ("No person, except as otherwise provided in this title, shall be naturalized, unless such applicant . . . immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application . . ."); INA § 319(a), 8 U.S.C. § 1430(a) ("Any person whose spouse is a citizen of the United States . . . may be naturalized upon compliance with all the requirements of this title except the provisions of paragraph (1) of section 316(a) if such person immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years . . .").

<sup>112</sup> See *supra* notes 40-42, 46, 48-49 and accompanying text (discussing the provisions through which citizens may sponsor family members).

<sup>113</sup> See *infra* notes 115-91 and accompanying text (describing familial practices within a number of countries).

<sup>114</sup> See *supra* Part III.

<sup>115</sup> *Marriage and Partnership Rights for Same-Sex Partners: Country-by-Country*, IGLA EUR., [http://www.ilga-europe.org/home/issues/families/recognition\\_of\\_relationships/legislation\\_and\\_case\\_law/marriage\\_and\\_partnership\\_rights\\_for\\_same\\_sex\\_partners\\_country\\_by\\_country](http://www.ilga-europe.org/home/issues/families/recognition_of_relationships/legislation_and_case_law/marriage_and_partnership_rights_for_same_sex_partners_country_by_country) (last visited Feb. 8, 2011) [hereinafter IGLA EUR.] (explaining that Andorra "provides for the registration of 'unions estables de parella' (stable unions of couples) irrespective of whether they are of the same-sex or different-sex. The partners wishing to register their union must prove that they have lived together for a minimum of six months; have right of residency in Andorra; and also have a private pact regulating their property and personal relations.").

<sup>116</sup> Rosalind Dixon, *A Democratic Theory of Constitutional Comparison*, 56 AM. J. COMP. L. 947, 972 (2008) ("[I]n Australia, legislation had been passed in almost every state and territory recognizing same-sex relationships as part of the regime governing de facto relationships.").

<sup>117</sup> Roger Severino, *Or for Poorer? How Same-Sex Marriage Threatens Religious Liberty*, 30 HARV. J.L. & PUB. POL'Y 939, 952 n.63 (2007) ("Croatia . . . provide[s] the functional equivalent of marriage to same-sex couples.").

<sup>118</sup> Aaron Xavier Fellmeth, *State Regulation of Sexuality in International Human Rights Law and Theory*, 50 WM. & MARY L. REV. 797, 857 n.267 (2008) ("The parliament of the

land,<sup>120</sup> France,<sup>121</sup> Germany,<sup>122</sup> Hungary,<sup>123</sup> Iceland,<sup>124</sup> Israel,<sup>125</sup> Luxembourg,<sup>126</sup> New Zealand,<sup>127</sup> Portugal,<sup>128</sup> Slovenia,<sup>129</sup> Switzerland,<sup>130</sup> the United Kingdom,<sup>131</sup> and Uruguay.<sup>132</sup> Depending on the country, the relationships are legally identified in various manners, such as civil unions,<sup>133</sup> civil solidarity pacts,<sup>134</sup> registered cohabitations,<sup>135</sup> registered domestic partnerships,<sup>136</sup> and

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Czech Republic approved a registered partnership law for same-sex couples over the President's veto in March 2006 . . .").

<sup>119</sup> Kathleen A. Doty, *From Fretté to E.B.: The European Court of Human Rights on Gay and Lesbian Adoption*, 18 *LAW & SEXUALITY* 121, 138 n.153 (2009) (describing Denmark as a country with registered domestic partnership laws).

<sup>120</sup> *Id.* (describing Finland as a country with registered domestic partnership laws).

<sup>121</sup> Katharina Boele-Woelki, *The Legal Recognition of Same-Sex Relationships Within the European Union*, 82 *TUL. L. REV.* 1949, 1957 (2008) ("In 1999, France introduced the civil solidarity pact, *pacte civil de solidarité (Pacs)*, which was revised in 2007.").

<sup>122</sup> Doty, *supra* note 119, at 138 n.153 (describing Germany as a country with registered domestic partnership laws).

<sup>123</sup> *Id.* (describing Hungary as a country with registered domestic partnership laws).

<sup>124</sup> *Id.* (describing Iceland as a country with registered domestic partnership laws).

<sup>125</sup> See Dixon, *supra* note 116, at 972 ("In Israel, same-sex couples enjoyed equal recognition under *de facto* relationship legislation and equal access to a range of benefits, including survivor benefits for the spouses of civil service employees and for insurance purposes, pension rights, and benefits relating to recognition of guardianship.").

<sup>126</sup> Doty, *supra* note 119, at 138 n.153 (describing Luxembourg as a country with registered domestic partnership laws).

<sup>127</sup> Reg Graycar & Jenni Millbank, *From Functional Family to Spinster Sisters: Australia's Distinctive Path to Relationship Recognition*, 24 *WASH. U. J.L. & POL'Y* 121, 123 (2007) ("New Zealand is a fascinating comparator, as it introduced presumptive recognition for same-sex couples (to a limited extent) in 2001 and followed this a few years later with extensive presumptive recognition in conjunction with opt-in civil unions, both of which are available to same-sex and heterosexual couples.").

<sup>128</sup> Elizabeth Kukura, *Finding Family: Considering the Recognition of Same-Sex Families in International Human Rights Law and the European Court of Human Rights*, *HUM. RTS. BRIEF*, Winter 2006, at 17, 18 ("Portugal's 2001 *de facto* union law granted same-sex couples property rights and other benefits . . .").

<sup>129</sup> Doty, *supra* note 119, at 138 n.153 (describing Slovenia as a country with registered domestic partnership laws).

<sup>130</sup> *Id.* (describing Switzerland as a country with registered domestic partnership laws).

<sup>131</sup> *Id.* (describing the United Kingdom as a country with registered domestic partnership laws).

<sup>132</sup> Anthony R. Reeves, *Sexual Identity as a Fundamental Human Right*, 15 *BUFF. HUM. RTS. L. REV.* 215, 266 (2009) ("Impressively, Uruguay was the first Latin American country to legalize same-sex [civil] unions, which have been available since January 1, 2008.").

<sup>133</sup> See Graycar & Millbank, *supra* note 127, at 123 (describing the civil unions law in New Zealand).

<sup>134</sup> Civil Solidarity Pacts exist in France. Loi 99-994 du 15 novembre 1999 relative au pacte civil de solidarité [Law 99-944 of November 15, 1999 on the Pact of Solidarity], *JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE]*, Nov. 16, 1999, p. 16959, translated in 39 *I.L.M.* 224, 224 (2000); Loi 2006-728 du juin 2006 portant réforme des successions et des libéralités [Law 2006-728 of June 23, 2006 on the Inheritance and Gifts], *JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE]*, June 24, 2006, p. 9513; Boele-Woelki, *supra* note 120, at 1957.

<sup>135</sup> See *IGLA EUR.*, *supra* note 115.

<sup>136</sup> See Doty, *supra* note 119, at 138 n.153 ("The states with a registered domestic partnership system are the Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland,

de facto unions.<sup>137</sup> Although referred to by various titles, each of these legally recognized statuses provides rights and benefits to non-marital couples.

Furthermore, a number of countries, regardless of the degree of recognition provided in their domestic family laws, acknowledge the inclusion of non-marital relationships within global definitions of family by recognizing same- and/or opposite-sex non-marital relationships for immigration sponsorship purposes. Under Australia's immigration law, for example, an Australian citizen may sponsor a same- or opposite-sex non-marital partner provided the two individuals "[H]ave a mutual commitment to a shared life to the exclusion of all others;" the relationship between them is "genuine and continuing;" they live together or, do not live separately and apart on a permanent basis; and the relationship has continued for the period of twelve months immediately preceding the date of application.<sup>138</sup> Under Finland's immigration law, a citizen may sponsor a same- or opposite-sex non-marital partner if the couple has entered into a registered partnership under Finnish law, has cohabitated for at least two years, or shares joint custody of a child.<sup>139</sup> New Zealand immigration law also allows citizens to sponsor their same- or opposite-sex non-marital partners.<sup>140</sup> A couple applying for sponsorship under this law must show proof that the two individuals have lived together in a committed relationship for at least one year, and must also submit evidence demonstrating the relationship is genuine and stable.<sup>141</sup> Similar immigration laws allowing for the sponsorship of non-marital partners exist in Belgium,<sup>142</sup> Brazil,<sup>143</sup> Canada,<sup>144</sup> Denmark,<sup>145</sup> France,<sup>146</sup>

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Luxembourg, Slovenia, Sweden, Switzerland, and the United Kingdom."); Fellmeth, *supra* note 118, at 857 n.267 (describing the registered partnership law in the Czech Republic).

<sup>137</sup> See Kukura, *supra* note 128, at 18 (describing the de facto union law in Portugal).

<sup>138</sup> See AUSTL. GOV'T DEP'T OF IMMIGRATION AND CITIZENSHIP, PARTNER MIGRATION 35-36 (2009), available at <http://www.immi.gov.au/allforms/booklets/1127.pdf>.

<sup>139</sup> Ulkomaalaislaki [Aliens Act], 301/2004 § 37 (Apr. 30, 2004) (Fin.), available at <http://www.finlex.fi/fi/laki/ajantasa/2004/20040301>; see *Frequently Asked Questions: Family, FINNISH IMMIGR. SERVICES*, <http://www.migri.fi/netcomm/content.asp?article=3410#3> (last visited Feb. 8, 2011).

<sup>140</sup> See *infra* note 141 and accompanying text.

<sup>141</sup> See *What Is Required?—Residence*, IMMIGR. N.Z., <http://www.immigration.govt.nz/migrant/stream/live/partner/canimovetonz/whatisrequired/> (last updated Nov. 29, 2010).

<sup>142</sup> HUMAN RIGHTS WATCH, FAMILY, UNVALUED: DISCRIMINATION, DENIAL, AND THE FATE OF BINATIONAL SAME-SEX COUPLES UNDER U.S. LAW 152 (2006), available at <http://www.hrw.org/en/reports/2006/05/01/family-unvalued> ("Belgium has recognized same-sex relationships for immigration purposes since 1997. A partner in a 'stable relationship' with a person residing legally in Belgium may apply for a Type D visa, which allows an extended (longer than ninety days) stay in the country. The application procedure is identical for same-sex and opposite-sex relationships.")

<sup>143</sup> *Id.* at 154 (describing the sponsorship options for non-marital couples under the immigration laws of Brazil).

<sup>144</sup> *Sponsoring Your Family: Sponsoring a Spouse, Partner, or Dependent Child*, CITIZENSHIP & IMMIGR. CAN., <http://www.cic.gc.ca/english/immigrate/sponsor/spouse-apply-who.asp> (last updated Feb. 9, 2010) (describing requirements under Canadian immigration law for sponsorship as a common-law partner or conjugal partner).

<sup>145</sup> *Spouses, Registered Partners and Cohabiting Partners*, NEW TO DEN., DK, [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/familyreunification/spouses/spouses.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/spouses.htm) (last updated Dec. 29, 2010) ("If you and your partner are not legally married or registered partners, your relationship must be of a permanent and lasting nature. The Immigration Service will assess, based on all relevant information, if this is the case. Normally, you must be able

Germany,<sup>147</sup> Iceland,<sup>148</sup> Israel,<sup>149</sup> the Netherlands,<sup>150</sup> Norway,<sup>151</sup> Portugal,<sup>152</sup> South Africa,<sup>153</sup> Sweden,<sup>154</sup> and the United Kingdom.<sup>155</sup>

Countries across the world include non-marital significant others within legal definitions of family. Even among those countries that do not include non-marital significant others within domestic definitions of family, a substan-

to document that you have lived with your partner for at least 18 months at a shared address.”).

<sup>146</sup> See HUMAN RIGHTS WATCH, *supra* note 142, at 158 (“A foreign partner in a PACS with a French citizen can obtain a temporary residence permit. . . after a one-year waiting period. It is subject to annual renewal through the local mayor’s office. After five years, [the] holder is eligible to apply for permanent residency . . . . Article 12 of the PACS law states that in considering the grant of permanent residency to a foreign partner, the existence of a Pact is ‘one of the elements for assessing personal connections in France.’”).

<sup>147</sup> See *id.* at 159-60 (describing immigration benefits for non-marital couples under German law).

<sup>148</sup> *Cohabiting Partner of an Icelandic Citizen*, UTL ÚTLENDINGASTOFNUN, [http://www.utl.is/index.php?option=com\\_content&view=article&id=12&Itemid=10&lang=](http://www.utl.is/index.php?option=com_content&view=article&id=12&Itemid=10&lang=) (last visited Apr. 22, 2011) (“In order to be granted a residence permit, the applicant must have been in a registered co-habitation, or otherwise verified co-habitation with his/her partner for a minimum of two years, intending to continue residing with the partner. Furthermore, neither party may be married.”).

<sup>149</sup> See HUMAN RIGHTS WATCH, *supra* note 142, at 161 (stating that in order to sponsor an unmarried partner for immigration purposes in Israel “the couple must satisfy ministry officials that their relationship is genuine or ‘sincere’ and that they are running a home together; the foreign national is then granted a one-year work permit. After a year and after a reexamination, the foreign national can receive temporary resident status. This status is renewed yearly. After seven years, the foreign national can become a permanent resident.”).

<sup>150</sup> IMMIGRATION & NATURALISATION SERV., APPLICATION FOR RESIDENCE PERMIT WITH MVV 7, available at [http://english.ind.nl/Brochures\\_en\\_Formulieren/index.aspx](http://english.ind.nl/Brochures_en_Formulieren/index.aspx) (follow “Application residence permit with MVV” hyperlink) (last visited Feb. 8, 2011) (describing the requirements mandated by the immigration laws of Netherlands for the sponsorship of non-marital significant others).

<sup>151</sup> Memorandum from Hans-Henrik Hartmann, Head of Section, Directorate of Immigration, to Chiefs of Police and Foreign Service Missions (Sept. 18, 2002), available at [http://www.udi.no/upload/Rundskriv/Eng%20Rundskriv%202002/rs2002\\_089e.doc](http://www.udi.no/upload/Rundskriv/Eng%20Rundskriv%202002/rs2002_089e.doc) (describing the requirements for the immigration sponsorship of non-marital partners under Norway’s immigration laws).

<sup>152</sup> See HUMAN RIGHTS WATCH, *supra* note 142, at 7 (explaining that to sponsor a non-marital partner for immigration to Portugal based upon a *de facto* union, the couple must provide “[p]roof of unmarried status; [o]ther documents proving common-law partnership for at least two years, including joint bank accounts, joint individual tax return and other relevant means of proof; [p]roof of accommodation in Portugal; [p]roof of means of subsistence in Portugal . . .” and “[a]ny criminal records.” (internal quotation marks omitted)).

<sup>153</sup> *Permanent Residence Frequently Asked Questions*, THE BEEHIVE, <http://durban.thebeehive.org/content/596/1456> (last visited Feb. 8, 2011) (explaining the requirements of Immigration Act 13 of 2002 § 26(b)(ii) (S. Afr.)).

<sup>154</sup> *Moving to Someone Who Is Not an EU/EEA Citizen or Is a Swedish Citizen*, SWEDISH MIGRATION BOARD, [http://www.migrationsverket.se/info/470\\_en.html](http://www.migrationsverket.se/info/470_en.html) (last visited Feb. 8, 2011) (“You are entitled to be granted a residence permit if you are married, have entered into a registered partnership or are a common law spouse with someone living in Sweden.”).

<sup>155</sup> *Partners*, UK BORDER AGENCY, <http://www.ind.homeoffice.gov.uk/partnersandfamilies/partners/> (last visited Feb. 8, 2011) (“If you are in a relationship with a person who is settled here, or is applying to settle here, you can apply for permission to enter or remain in the UK with a view to settlement as their: husband, wife or civil partner; fiance(e) or proposed civil partner; or unmarried/same-sex partner.”).

tial number, acknowledging the global importance of non-marital significant others, recognize such relationships through their immigration sponsorship laws.<sup>156</sup> United States immigration law remains far behind the laws of these countries with regard to its willingness to recognize that not all important adult relationships involve marriage.<sup>157</sup>

## 2. *Same-Sex Marital Relationships*

Same-sex marriage is currently legal in a number of countries, including Canada, Spain, the Netherlands, Belgium, South Africa, Sweden, Argentina, Iceland, Portugal, and Norway.<sup>158</sup> Moreover, in the coming years, a number of countries are expected to consider legislation providing for the legalization of same-sex marriage.<sup>159</sup> These countries include Albania,<sup>160</sup> Slovenia,<sup>161</sup> Uruguay,<sup>162</sup> Venezuela,<sup>163</sup> and Nepal.<sup>164</sup> Recognizing the significant number of

<sup>156</sup> See *supra* notes 138-155 and accompanying text.

<sup>157</sup> See *supra* notes 56-57 and accompanying text.

<sup>158</sup> Alexei Barrionuevo, *Argentina Legalizes Same-Sex Marriage*, N.Y. TIMES, July 15, 2010, at A3, available at <http://www.nytimes.com/aponline/2010/07/15/world/americas/AP-LT-Argentina-Gay-Marriage.html?pagewanted=1&r=2&hp> (“Argentina’s Senate narrowly approved a law early on Thursday authorizing same-sex marriages, making Argentina the first country in Latin America to allow gay couples to wed.”); Arlene G. Dubin & Sheila Agnew, *As the Same-Sex Landscape Evolves Prepare to Serve This New Group of Clients*, N.Y. L.J., Aug. 10, 2009, at 9; Michelle Garcia, *Iceland Legalizes Gay Marriage*, THE ADVOCATE.COM (June 11, 2010) [http://www.advocate.com/News/Daily\\_News/2010/06/11/Iceland\\_Legalizes\\_Gay\\_Marriage/](http://www.advocate.com/News/Daily_News/2010/06/11/Iceland_Legalizes_Gay_Marriage/); Michael Winter, *Portugal Is 6th European Nation to Legalize Gay Marriage*, USA TODAY (May 17, 2010, 4:07 PM), <http://content.usatoday.com/communities/ondeadline/post/2010/05/portugal-is-6th-european-nation-to-legalize-gay-marriage/1>.

<sup>159</sup> See *infra* notes 160-164 and accompanying text.

<sup>160</sup> Reuters, *Albania Plans to Allow Gay Marriage*, BOS. GLOBE, Aug. 1, 2009, at A3, available at [http://www.boston.com/news/world/europe/articles/2009/08/01/albania\\_plans\\_to\\_allow\\_gay\\_marriage](http://www.boston.com/news/world/europe/articles/2009/08/01/albania_plans_to_allow_gay_marriage) (“Albania’s homosexuals won more than they had hoped for after the government said it planned to allow same-sex marriages despite opposition from religious leaders and politicians. The proposal put forward by Prime Minister Sali Berisha on Thursday faces a tough fight in Parliament.”).

<sup>161</sup> *Slovenia to Legalize Soon Same-Sex Marriage: Minister*, GOOGLE NEWS (July 2, 2009), <http://www.google.com/hostednews/afp/article/ALeqM5hjrgMMgg5JR4WuLYjqWx5dRrRGOQ?docId=CNG.8254fedde3bfd8e0fd9f84ff79760937.391&index=0> (“Slovenia’s government could soon prepare a law to legalise same-sex marriage and in certain cases the adoption of children by homosexual couples, a Slovenian official said here on Thursday.”); Barbara Stor, *Homophobic Slovenia: A Cruel Awakening*, SLOVN. TIMES (July 8, 2009), <http://www.sloveniatimes.com/en/inside.cp2?uid=59225D08-168C-FCE7-5CFE-A3364DED E614&linkid=news&cid=BEAF1BF5-A047-2FFA-3BC2-D2EA2CC627CE> (“Now it seems that Slovenia might legalize gay marriage with all the privileges of heterosexual marriage and, in certain cases, the adoption of children by homosexual couples.”).

<sup>162</sup> *Uruguayan Socialists Prepare “Gay Marriage” Legislation*, CHRISTIAN TELEGRAPH (May 26, 2009), <http://www.christiantelegraph.com/issue5897.html> (“A senator from Uruguay’s ruling ‘Broad Front’ coalition says that if the grouping of socialist political parties wins the national elections in October it will introduce legislation to create ‘homosexual marriage,’ . . .”).

<sup>163</sup> Will Grant, *Venezuela ‘Silent’ on Hate Crimes Rise*, BBC NEWS (June 2, 2009, 7:43 PM), <http://news.bbc.co.uk/2/hi/americas/8076379.stm> (“President Hugo Chavez has referred to gay rights several times on his TV programme *Alo Presidente*, and a change to family law has been introduced in the national assembly which would include the right to marriage for gay couples.”).

countries and cultures that define family to include same-sex spouses, Israel and France (in addition to those countries where same-sex marriage is legal) recognize these marriages for immigration, family law, and other purposes if entered into legally under the laws of the jurisdictions where they were performed.<sup>165</sup> A number of countries are expected to do the same in the coming years.<sup>166</sup>

Thus, as demonstrated by the applicable laws and practices, conceptions of family in a substantial number of countries include same-sex spouses, and more countries are expected to formally adopt into law this conception of family.<sup>167</sup> United States immigration law, however, completely ignores these relationships, as it continually fails to recognize same-sex marital relationships entered into validly under the laws of the jurisdictions in which they were performed.<sup>168</sup>

### 3. Parent-Child and Co-Parent Relationships

Similar to the trend within the United States, it is increasingly common in other countries for members of non-marital couples to raise children together.<sup>169</sup> For example, in Canada, approximately 732,900 children age fourteen and under (13 percent of all Canadian children within this age range) live with two parents who share a non-marital, common law relationship.<sup>170</sup> In Norway, unmarried cohabitating couples are more likely to be raising children than are their married counterparts.<sup>171</sup> Finally, “most of Western, Central, and Eastern Europe experienc[e] 20-30 [percent] of births outside of marriage, and all of Northern Europe, the U.K., Austria, and France experienc[e] over 40 [percent] of births outside of marriage,” with “[t]he vast majority of the increase in non-marital childbearing in Europe over the past several decades occur[ing] within cohabitating unions.”<sup>172</sup>

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<sup>164</sup> Elizabeth J. Berns, *Gay Marriage: A Changing Legal Landscape*, N.J. L.J., July 27, 2009, at 317 (“In November 2008, the High Court in Nepal published a decision that directs its government to enact new laws and amend all existing discriminatory laws so that all citizens can exercise equal rights.”).

<sup>165</sup> See Gerald T. Hathaway, *Same-Sex Marriage, Civil Unions and Domestic Partnerships as a Factor in the Workplace*, in *EMPLOYMENT DISCRIMINATION CLAIMS 2009*, at 513, 519 (Practising Law Inst. ed., 2009); Hanna, *supra* note 77.

<sup>166</sup> See Hanna, *supra* note 77 (“Same-sex marriages performed abroad are recognized in Israel and France; more countries, particularly in the European Union, are likely to follow suit.”).

<sup>167</sup> See *supra* notes 158-166 and accompanying text.

<sup>168</sup> See *supra* note 40.

<sup>169</sup> See generally *ORG. FOR ECON. CO-OPERATION & DEV.*, SF3.3: COHABITATION RATE AND PREVALENCE OF OTHER FORMS OF PARTNERSHIP (2010), available at <http://www.oecd.org/dataoecd/52/27/41920080.pdf>.

<sup>170</sup> *Families, Households and Housing*, *STAT. CAN.*, [http://www41.statcan.ca/2007/40000/ceb40000\\_000-eng.htm](http://www41.statcan.ca/2007/40000/ceb40000_000-eng.htm) (last updated Sept. 7, 2007).

<sup>171</sup> See *ORG. FOR ECON. CO-OPERATION & DEV.*, *supra* note 169, at 3 tbl.SF3.3.B.

<sup>172</sup> Brienna Perelli-Harris et al., *Examining Nonmarital Childbearing in Europe: How Does Union Context Differ Across Countries?* 3 (Max Planck Inst. for Demographic Research, Working Paper 2009-021, 2009), available at <http://www.demogr.mpg.de/papers/working/wp-2009-021.pdf>.

Recognizing the increasing number of children around the world raised by parents not married to each other, many countries have implemented immigration laws that allow non-marital parents to immigrate on the basis of their relationships with their co-parents and children. First, as discussed above, many countries allow citizens to sponsor non-marital partners.<sup>173</sup> Thus, many co-parents can use this mechanism for family reunification. Second, a number of other countries have immigration laws that specifically provide for the sponsorship of a non-marital co-parent, regardless of the nature of the relationship shared between the two co-parents.<sup>174</sup> Under Finland's immigration law, for example, a citizen may sponsor her same- or opposite-sex non-marital co-parent if the two individuals share joint custody of a child, even if they do not meet the cohabitation requirement for general sponsorship of a non-marital partner.<sup>175</sup> Similarly, under the immigration laws of Brazil, citizens can sponsor individuals with whom they share "a common dependent child."<sup>176</sup>

U.S. immigration law ignores the global reality that non-marital co-parents are raising children together with increasing frequency. A non-marital co-parent cannot gain admittance to the United States through his or her relationship with a citizen co-parent or through his or her relationship with a citizen child who is under the age of twenty-one.<sup>177</sup> The failure of U.S. immigration law to provide any avenue for the family-based sponsorship of non-marital co-parents can have serious consequences: a non-marital co-parent might be separated from his or her co-parent and child, the other co-parent might lose his or her support system, and the child might lose a parent.

#### 4. *Extended Family Relationships*

Extended family members comprise an essential role in the lives of individuals across the world. Within certain cultures and countries, extended family plays an especially important role.<sup>178</sup> In Saudi Arabia, for example, the

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<sup>173</sup> See *supra* notes 138-55 and accompanying text (identifying and discussing the countries that allow for the immigration sponsorship of non-marital significant others).

<sup>174</sup> See *infra* notes 175-76 and accompanying text.

<sup>175</sup> INT'L ORG. FOR MIGRATION, FINLAND FACT SHEET 20 (2006), available at <http://www.migrantservicecentres.org/userfile/Destination%20Country%20Fact%20Sheet%20FINLAND.pdf>. In addition, a child under the age of eighteen can sponsor his or her guardian, regardless of the guardian's marital status. *Id.* at 21. "Usually, the guardian is the mother or the father or both. In exceptional cases, the guardian may be some other person, for example the child's grandparents or some other close relative. Such a person can also apply for a Finnish residence permit on the basis of family ties." *Id.*

<sup>176</sup> See HUMAN RIGHTS WATCH, *supra* note 142, at 2-3.

<sup>177</sup> See *supra* notes 40-49 and accompanying text (describing the relationships that qualify for immigration benefits under the INA).

<sup>178</sup> That a significant number of individuals who immigrate to the United States from other countries live with extended family members further demonstrates the global importance of extended family members. ROBERTA L. COLES, RACE & FAMILY: A STRUCTURAL APPROACH 66 (2006) ("In 1960, about 16 percent of immigrants resided in some type of extended [family] household; by 1990, the use of extended households among immigrants . . . had nearly doubled to 30 percent."); Martha Minow, *All in the Family & in All Families: Membership, Loving, and Owing*, 95 W. VA. L. REV. 275, 281 (1992-1993) ("Moreover, many immigrants share households and treat as family members nieces or nephews, grandparents, or cousins, which the INS will not include under its definition of family unit.").

extended family of parents, siblings, grandparents, aunts, uncles, and cousins comprises the core family unit.<sup>179</sup> In Mexico, a nation that traditionally places great importance on family, individuals generally consider extended family members to be as important to their daily lives as immediate family members.<sup>180</sup> Likewise, “[t]he basic unit of solidarity in Latin American societies is the extended family.”<sup>181</sup> In Sudan, “Western notions of nuclear family do not exist as Sudanese customs and traditions are intrinsically linked to ‘extended’ family.”<sup>182</sup>

Household composition statistics further demonstrate the global importance of extended family members. Extended family households account for more than 31 percent of all households in Venezuela.<sup>183</sup> In addition, more than 25 percent of all households in Colombia and more than 16 percent of all households in Brazil include one or more extended family members.<sup>184</sup> In both Nicaragua and the Dominican Republic, more than 26 percent of all households are extended family households.<sup>185</sup> Britain, like the United States, has seen a recent resurgence in extended family households, with the number of extended family households in Britain expected to continue increasing in the coming years.<sup>186</sup>

<sup>179</sup> Tina Schultz, *Saudi Arabia Basic Facts*, SCASD.ORG, <http://www.scasd.org/2497125813142435/site/default.asp> (follow “Countries in Asia & the Middle East” hyperlink; then follow “Saudi Arabia” hyperlink) (last visited Feb. 8, 2011) (“Despite the furious pace of change and modernization that has occurred in Saudi Arabia over the last half century, the traditional extended family - parents, siblings, aunts and uncles, cousins and grand and great grandparents still form the basic unit of the society.”).

<sup>180</sup> MACOMB CNTY. DEP’T OF PLANNING & ECON. DEV., DIVERSITY AWARENESS & UNDERSTANDING: MEXICO (2001), available at <http://www.macombcountymi.gov/MCPED/Documents/Diversity/Diversity%20Brochure-Mexico.pdf> (“Family sizes [in Mexico] are traditionally large, and extended families are as important as immediate families in providing stability.”).

<sup>181</sup> Nelly P. Stromquist, *The Political Experience of Women: Linking Micro- and Macro-Democracies*, 116 LA EDUCACION 541, 549 (1993), available at [http://www.educoas.org/portal/bdigital/contenido/laeduca/laeduca\\_116/articulo3/index.aspx?culture=es](http://www.educoas.org/portal/bdigital/contenido/laeduca/laeduca_116/articulo3/index.aspx?culture=es).

<sup>182</sup> REFUGEE COUNCIL, A GUIDE TO SUDANESE CULTURAL AND SOCIAL NORMS 6 (2005), [http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/practice/advisers\\_info/sudanese\\_culture\\_Mar05.pdf](http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/practice/advisers_info/sudanese_culture_Mar05.pdf).

<sup>183</sup> ELIZABETH JELIN & ANA RITA DÍAZ-MUÑOZ, U.N. DEP’T OF ECON. & SOC. AFFAIRS, MAJOR TRENDS AFFECTING FAMILIES: SOUTH AMERICA IN PERSPECTIVE 4 (2003), available at <http://www.un.org/esa/socdev/family/Publications/mtjelin.pdf> (“Variations among countries are large: [11.7 %] of households in Argentina and [31.8%] in Venezuela are extended households.”).

<sup>184</sup> *Id.* at 4-5 (“In some countries, such as Brazil and Colombia, their proportion has increased in the last decade (from [11.2%] of Brazilian households in 1986 to [16.8%] in 1999; from [18.8%] to [25.2%] in Colombia in the same period.”).

<sup>185</sup> Mariano Sana, Project Manager, Latin Am. Migration Project, Address at the 2003 Meeting of the Latin American Studies Association: Household Composition, Family Migration and Community Context: Migrant Remittances in Four Countries 6 (Mar. 27-29, 2003), available at <http://lasa.international.pitt.edu/Lasa2003/SanaMariano.pdf> (“The Dominican Republic and Nicaragua show a lower, and similar, incidence of nuclear households (40%). These two countries also show the same proportion of extended households (about 26-27%) . . . .”).

<sup>186</sup> Zoe Dare Hall, *Return of the Extended Family*, DAILY TELEGRAPH (London), Feb. 2, 2008, at 1, available at <http://www.telegraph.co.uk/property/3360341/Living-together-Return-of-the-extended-family.html> (“The Skipton Building Society has also spotted this

Recognizing the significance of extended family relationships, a number of other countries provide immigration rights to extended family members. For example, Spain recently provided immigration rights to individuals who have at least one extended family member who is a citizen of Spain.<sup>187</sup> In addition, Canada allows a citizen to sponsor one relative, no matter how distant, if the citizen sponsor has no relatives that fall within any of the other family-based admission categories.<sup>188</sup> Australia takes a slightly different approach, allowing its citizens to sponsor aged, dependent, non-nuclear relatives.<sup>189</sup> Similarly, the immigration laws of the United Kingdom grant citizens the right to sponsor elderly dependent relatives.<sup>190</sup> Finally, Iceland allows its citizens to sponsor grandparents over the age of sixty-six.<sup>191</sup>

Overall, while in “legislation and administrative policy concerning the family, there has been for some decades a sustained trend toward permitting individuals greater freedom in defining the content and terms of their own relationships,”<sup>192</sup> immigration law continues to adhere to a static, outdated definition of *family*.<sup>193</sup> The current system’s problems are twofold: First, to deny reunification rights to a citizen and a non-citizen on the grounds that the relationship they share is not familial, when the law would recognize the individuals as family if they both happened to be U.S. citizens, is unfair and makes little sense. Second, it appears disingenuous to citizens, as well as to the rest of the world, for lawmakers to claim that reuniting families is a major goal of immigration law while simultaneously attempting to attain reunification through a standard they recognize does not represent the familial reality for the vast majority of people. As one scholar notes, “[T]he legal rules defining ‘family’ for immigration purposes notably chafe people’s actual practices of family life—no doubt reflecting a public policy to restrict immigration rather than a conscientious effort to define ‘family.’”<sup>194</sup>

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kind of cohabitation as a growing trend, predicting that the number of three-generation ‘extended financial families’ will triple in Britain over the next 20 years from 75,000 to 200,000.”)

<sup>187</sup> Nora V. Demleitner, *How Much Do Western Democracies Value Family and Marriage?: Immigration Law’s Conflicted Answers*, 32 HOFSTRA L. REV. 273, 291 (2003).

<sup>188</sup> See Immigration and Refugee Protection Regulations, SOR/2002-227 § 117(1)(h)(Can.).

<sup>189</sup> See AUSTL. GOV’T DEP’T. OF IMMIGRATION & CITIZENSHIP, FORM 40: SPONSORSHIP FOR MIGRATION TO AUSTRALIA 1, 7 (2010), available at <http://www.immi.gov.au/allforms/pdf/40.pdf>.

<sup>190</sup> *Elderly Dependent Relatives*, UK BORDER AGENCY, <http://www.ukba.homeoffice.gov.uk/partnersandfamilies/elderlydependentrelatives/> (last visited Feb. 8, 2011) (“If you are a parent, grandparent or other dependant relative of a British citizen or a person settled in the UK (known as your ‘settled relative’), you can apply for permission to settle permanently here (known as ‘indefinite leave to enter or remain’).”).

<sup>191</sup> *Relative of an Icelandic Citizen/Spouse*, UTL ÚTLENDINGASTOFNUN, [http://www.utl.is/index.php?option=com\\_content&view=article&id=14&Itemid=15&lang=en/](http://www.utl.is/index.php?option=com_content&view=article&id=14&Itemid=15&lang=en/) (last visited Feb. 8, 2011) (“In order to be granted a residence permit, the applicant must be a relative of an Icelandic citizen or his/her spouse in direct line of ascent, i.e. parents, grandparents etc., 67 years of age or older and be supported by him/her.”).

<sup>192</sup> David D. Meyer, *Self-Definition in the Constitution of Faith and Family*, 86 MINN. L. REV. 791, 796 (2002).

<sup>193</sup> Hawthorne, *supra* note 58, at 809 (“U.S. immigration policy incorrectly focuses on a static concept of family . . .”).

<sup>194</sup> Minow, *supra* note 178, at 280.

## IV. THE PLUS ONE POLICY

By granting citizens the autonomy to choose with whom they wish to reunite, the Plus One Policy would further the underlying goals of family reunification law more effectively than the current purely bounded model.<sup>195</sup>

A. *Family Reunification Law's Humane and Practical Goals*

Courts, commentators, and legislators have identified both the humane and practical goals that family reunification law seeks to further. The humane goals simply involve keeping families together.<sup>196</sup> More specifically, because most people define family as the individuals in their lives who provide the greatest amount of love, care, and support, family reunification is meant to be, in significant part, a humane undertaking.<sup>197</sup>

In terms of practical goals, lawmakers often assume that family reunification results in greater overall stability for the sponsoring citizens or LPRs and a decreased risk that they will require government assistance.<sup>198</sup> Additionally, family reunification benefits society “through the promotion of the public order and well-being of the nation,” as “[p]sychologically and socially, the reunion of family members with their close relatives promotes the health and welfare of the United States.”<sup>199</sup> Many lawmakers also believe the stability furthered through family reunification increases overall economic productivity and decreases crime.<sup>200</sup>

B. *The Plus One Policy's Furtherance of Family Reunification Law's Goals*

The Plus One Policy is an autonomous model of family reunification in which citizens decide for themselves which relationships they value most and

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<sup>195</sup> See *infra* Part IV.B.

<sup>196</sup> *Kaliski v. Dist. Dir. of Immigration & Naturalization Serv.*, 620 F.2d 214, 217 (9th Cir. 1980) (discussing the INA's “humane purpose . . . to reunite families”); SELECT COMM'N ON IMMIGRATION & REFUGEE POLICY, U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 357 (1981) [hereinafter SCIRP STAFF REPORT] (“The reunification of families . . . is a humane policy.”).

<sup>197</sup> The vast majority of Americans define family as “a group of people who love and care for each other” regardless of marital status or blood ties. SAM ROBERTS, WHO WE ARE: A PORTRAIT OF AMERICA BASED ON THE LATEST U.S. CENSUS 32 (1994).

<sup>198</sup> See, e.g., SCIRP STAFF REPORT, *supra* note 196, at 357 (“Society benefits from the reunification of immediate families, especially because family unity promotes the stability, health and productivity of family members.”).

<sup>199</sup> STAFF OF S. & H. COMMS. ON THE JUDICIARY, 97TH CONG., U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 112 (Comm. Print 1981) [hereinafter FINAL REPORT].

<sup>200</sup> Demleitner, *supra* note 187, at 285-86 (“Families assist in integration and help stabilize the migrant. Therefore, they contribute to the reduction of crime, tend to increase the economic productivity of the migrant and assure that less of the money earned by the migrant is remitted to his or her home country. For these reasons, permitting family migration is not a mere exercise of state generosity but rather a crucial aspect of integrating and stabilizing migrant populations.”).

identify as family.<sup>201</sup> Specifically, the Policy permits an adult citizen to sponsor, in his or her lifetime, one important individual who does not fit within any of the pre-existing family reunification categories.<sup>202</sup> Thus, under the Policy, citizens can reunite with the individuals of their choice, regardless of whether the relationships fit within immigration law's narrow, formalistic definition of family.<sup>203</sup> In contrast to the current purely bounded model of family reunification, where lawmakers decide whom citizens value most and consider family, the Plus One Policy grants citizens the autonomy to make this personal decision for themselves based upon their unique circumstances. The previous section's discussion of current U.S. family structures demonstrates that a one-size-fits-all definition of family is unrealistic.<sup>204</sup> As scholars advocate, it makes sense on a practical level for legislators to evaluate the overall purposes of the laws they establish and to support any relationships that can effectively further such purposes.<sup>205</sup> The relationships furthered by granting citizens the autonomy to choose with whom they would most like to reunite will further family reunification law's humane and practical goals.<sup>206</sup>

### 1. *Non-Marital Relationships and Same-Sex Marital Relationships*

Unlike the United States, several countries recognize the value of same-sex marital relationships, as well as non-marital relationships between members of the same or opposite sex, for immigration sponsorship purposes.<sup>207</sup> Despite the high divorce rate within the United States, family reunification law fails to recognize that obtaining a marriage license recognized by the U.S. government does not necessarily make a relationship stable, productive, loving, supportive, or enduring.<sup>208</sup> Interestingly, lawmakers recognize the value of non-marital relationships in the context of non-citizens admitted to the country on a temporary basis (non-immigrants). Immigration officials may grant the cohabitating partner of a long-term non-immigrant entry and an extended period of admis-

<sup>201</sup> As compared to the current bounded model of family reunification. See *supra* Part II (describing the current categories of individuals eligible for sponsorship under the family reunification provisions).

<sup>202</sup> Only adult citizens over age twenty-one may sponsor a non-citizen through the proposed Plus-One Policy. Immigration law currently requires that citizens be at least age twenty-one in order to sponsor parents or siblings. See *supra* notes 42, 49 and accompanying text. Including an age requirement will prevent citizens from using the Plus-One Policy to circumvent the requirements of current law.

<sup>203</sup> See *supra* Part II.

<sup>204</sup> See *supra* Part III.A (discussing the variety of family structures currently in existence within the United States).

<sup>205</sup> See, e.g., Nancy D. Polikoff, *Ending Marriage as We Know It*, 32 HOFSTRA L. REV. 201, 206 (2003) (quoting LAW COMM'N OF CAN., BEYOND CONJUGALITY: RECOGNIZING AND SUPPORTING CLOSE PERSONAL ADULT RELATIONSHIPS 18 (2001)) ("The state ought to support any and all relationships that have the capacity to further relevant social goals, and to remain neutral with respect to individuals' choice of a particular form or status.'").

<sup>206</sup> The Plus One Policy will also likely further the important practical goal of restricting illegal immigration, as allowing individuals to reunite with those people to whom they feel closest will result in the lawful admittance of non-citizens who might otherwise have tried to enter the country illegally.

<sup>207</sup> See *supra* Part III.B.1-2 (discussing the countries that recognize same-sex marital and opposite- and same-sex non-marital relationships for immigration purposes).

<sup>208</sup> See generally Hamilton, *supra* note 79.

sion as the “accompanying partner” of the non-immigrant.<sup>209</sup> Thus, for immigration purposes, the United States recognizes the value of the non-marital relationships of those who merely visit, but refuses to recognize such relationships for permanent immigrants or citizens.<sup>210</sup> Implementation of the Plus One Policy would help to alleviate the obvious policy discrepancy between immigrant and non-immigrant visas and would further the goals of family reunification law.

Regarding the humane goals of family reunification law, members of same-sex relationships who enter into legal marriages under the laws of their jurisdictions make the same lifetime commitments to love and support each other as members of opposite-sex couples who undertake civil marriages. Like the individuals who enter into opposite-sex marriages, those who enter into same-sex marriages generally do so with the one person they value most.<sup>211</sup> These are often the individuals who have provided, and will continue to provide, the greatest amount of happiness, love, and emotional support to the lives of their significant others.<sup>212</sup> U.S. immigration law treats the relationships between opposite-sex spouses as one of its highest family reunification priorities,<sup>213</sup> yet completely disregards same-sex marriages.<sup>214</sup> The apparent contention underlying this distinction—that it is somehow less inhumane to separate two individuals who have committed to each other through a legal marriage simply because they happen to be of the same sex—makes little sense.<sup>215</sup>

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<sup>209</sup> Memorandum from Colin L. Powell, U.S. Sec’y of State, to All Diplomatic and Consular Posts, B-2 Classification for Cohabiting Partners (July 9, 2001), *available at* [http://travel.state.gov/visa/laws/telegrams/telegrams\\_1414.html](http://travel.state.gov/visa/laws/telegrams/telegrams_1414.html) (“Posts are reminded that B-2 classification is appropriate for cohabiting partners of longterm nonimmigrants, provided the alien is able to overcome INA 214(b). The FAM is being revised to expressly incorporate this long-standing interpretation . . . . This is true for both opposite and same-sex partners.”).

<sup>210</sup> *See supra* Part II (describing the categories of relationships recognized by immigration law for family reunification purposes).

<sup>211</sup> This is, of course, an assumption by the author. Since the legalization of same-sex marriage has been a relatively recent occurrence in most jurisdictions, little research has been undertaken thus far regarding the reasons individuals enter into same-sex marriages.

<sup>212</sup> *See supra* note 211.

<sup>213</sup> *See supra* note 40 and accompanying text.

<sup>214</sup> *See supra* note 40.

<sup>215</sup> Some might question why U.S. immigration law should allow for the sponsorship of same-sex spouses while federal law and the laws of most states do not recognize same-sex marriages. First, it is important to note that this Article does not propose that immigration law recognize same-sex marriages as valid marriages. That would be a proposal for another article, one that advocated expanding immigration law’s definition of “spouse” to include same-sex spouses so that those individuals could be sponsored pursuant to the family reunification categories that allow for the sponsorship of spouses of citizens and LPRs. This Article, by contrast, identifies same-sex spouses as one category of individuals who could be sponsored as “Plus Ones,” not as spouses. There would be no change to immigration law’s definition of spouse (although it should be noted that the author would strongly support such a change to the definition). In addition, as compared to the issue of state legalization of same-sex marriage, there are different concerns and consequences underlying the proposal for granting immigration sponsorship benefits to members of same-sex marital couples pursuant to the Plus One Policy. For example, because immigration law does not provide any avenue for the sponsorship of same-sex spouses, the two individuals in the relationship cannot, for all intents and purposes, continue their relationship within the United States. Meanwhile, even if same-sex marriage is not recognized by a particular state, the two citizens in

As to non-marital relationships, few people would argue that the trend away from marriage has occurred because individuals generally love or value their significant others less. Instead, unmarried partners increasingly show the extent to which they love and value each other in ways other than marrying, such as deciding to cohabit and care for each other in daily life or raising children together.<sup>216</sup> Moreover, many people simply question whether the institution of marriage should constitute a necessary component of their lives.<sup>217</sup> Some individuals prefer that the government have as little involvement as possible in their personal relationships, while others might reject marriage because of its exclusionary, patriarchal, or heterosexist characteristics.<sup>218</sup> Finally, some couples who share loving, committed, and valuable relationships might simply be unable to obtain civil marriages in their jurisdictions.<sup>219</sup> A humane approach would allow for the reunification of two individuals who love and value each other to the point of wanting to share a life together, regardless of whether they have the desire or ability to define their relationship through marriage.<sup>220</sup>

Similarly, the many practical benefits of allowing citizens to reunite with romantic partners whom they love and value, and with whom they wish to spend their lives, most likely do not hinge on the existence of a federally recognized marriage license. Rather, individuals are happier, more stable, and more productive when they are not separated from the people who provide them with love and support on a daily basis.<sup>221</sup> Additionally, allowing citizens to reunite

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the relationship can nonetheless maintain their relationship within that state (or any other state).

Moreover, the overall argument that federal law cannot recognize certain types of marriages entered into validly under the laws of the jurisdictions in which they were performed because not all states recognize such marriages is unpersuasive. For example, federal immigration law recognized interracial marriages for sponsorship purposes even when many state laws banned such marriages. See Kerry Abrams, *Immigration Law and the Regulation of Marriage*, 91 MINN. L. REV. 1625, 1670-73 (2007).

<sup>216</sup> See *supra* notes 64, 79 and accompanying text (discussing the increasing prevalence of non-marital cohabitation and the reality that non-marital cohabitating couples are as likely as married couples to be raising children).

<sup>217</sup> HANDBOOK OF CONTEMPORARY FAMILIES: CONSIDERING THE PAST, CONTEMPLATING THE FUTURE 62 (Marilyn Coleman & Lawrence H. Ganong eds., 2004). See generally NANCY D. POLIKOFF, BEYOND (STRAIGHT AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW (2008).

<sup>218</sup> See generally Tucker Culbertson, *Arguments Against Marriage Equality: Commemorating and Reconstructing Loving v. Virginia*, 85 WASH. U. L. REV. 575 (2007) (identifying various judges' interpretations of marriage as exclusionary, patriarchal, and heterosexist).

<sup>219</sup> For example, U.S. immigration law does not recognize marriages between two individuals of the same sex, even if the marriages were performed in states or jurisdictions where same-sex marriage is legal. See *supra* note 40.

<sup>220</sup> The Uniting American Families Act (UAFAs), which would allow a citizen or LPR to sponsor her non-citizen same-sex partner for immigration purposes, has most recently been considered by the 111th Congress. H.R. 1024, 111th Cong. (2009). The UAFAs, however, applies only to individuals involved in a financially interdependent relationship, who are "unable to contract [into] . . . a marriage cognizable under [the INA]," and who are not blood related. *Id.* § 2. Thus, although the Act's purpose is commendable, it excludes many of the important relationships the Plus One Policy supports.

<sup>221</sup> See Demleitner, *supra* note 187, at 285-86 ("As the English proposal indicates, the unification of couples and families is often assumed to have a salutary effect on the migrant.

with significant others who will care for them in times of distress or emergency likely results in an overall decreased reliance on government resources.<sup>222</sup> Overall, many of the practical benefits of allowing individuals to reunite with their significant others will likely remain regardless of marital status.

## 2. Co-Parent and Parent-Child Relationships

The Plus One Policy will also further the relationships between individuals who function as co-parents. Individuals raising children domestically and abroad often receive significant child-rearing support from people to whom they are not married.<sup>223</sup> Parents, however, are often unable to sponsor the people from whom they receive parental support.<sup>224</sup> An individual who is raising a child may receive support from an unmarried partner,<sup>225</sup> a former spouse or partner who is the child's other legally recognized parent,<sup>226</sup> family members,<sup>227</sup> or friends.<sup>228</sup> Domestic law widely recognizes this diversity in avenues of parental support and parent-child relationships and protects these relationships regardless of the parents' marital status.<sup>229</sup> Additionally, in many communities within the United States and abroad, individuals commonly take on an important role in co-parenting the children of friends, community members, or extended family members without seeking formal legal recognition.<sup>230</sup>

Allowing a parent to sponsor an individual whom the parent, as well as the child, relies on as a co-parent furthers the humane goals of family reunification law. The emotional burdens of raising a child without adequate support are immense. Parents raising children without support have high levels of stress,

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Families assist in integration and help stabilize the migrant. Therefore, they contribute to the reduction of crime, tend to increase the economic productivity of the migrant and assure that less of the money earned by the migrant is remitted to his or her home country. For these reasons, permitting family migration is not a mere exercise of state generosity but rather a crucial aspect of integrating and stabilizing migrant populations.”).

<sup>222</sup> See Carl F. Stychin, *Couplings: Civil Partnership in the United Kingdom*, 8 N.Y. CITY L. REV. 543, 564-65 (2005) (discussing the “privatized notion of care, wherein the state facilitates the taking on of private responsibility rather than expanding its own public, active role,” and its utility as a “cost-saving device”).

<sup>223</sup> See Jennifer R. Johnson, *Preferred by Law: The Disappearance of the Traditional Family and Law's Refusal to Let It Go*, 25 WOMEN'S RTS. L. REP. 125, 128-29 (2004) (discussing the variety of family structures currently in existence).

<sup>224</sup> See *supra* Part II (describing the categories of relationships recognized by immigration law for family reunification purposes).

<sup>225</sup> See *supra* note 79 and accompanying text.

<sup>226</sup> Every state provides for child support obligations for non-marital (or post-divorce) biological or adoptive parents. Zanita E. Fenton, *Colorblind Must Not Mean Blind to the Realities Facing Black Children*, 26 B.C. THIRD WORLD L.J. 81, 95 n.69 (2006).

<sup>227</sup> Natalia Sarkisian et al., *Extended Family Ties Among Mexicans, Puerto Ricans, and Whites: Superintegration or Disintegration?*, 55 FAM. REL. 331, 338 (2006).

<sup>228</sup> See *infra* note 230 and accompanying text.

<sup>229</sup> See *supra* Part III.A.

<sup>230</sup> See, e.g., Ann Osborn, *Compadrazgo and Patronage: A Colombian Case*, 3 J. ROYAL ANTHROPOLOGICAL INST. 593 (1968) (describing the prevalent practice in the Latin American and European Roman Catholic communities of *compadrazgo* (co-parenthood) where the parents' close friends are intimately involved in child-rearing); Dorothy E. Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 209, 270-71 (1995) (discussing the significant role of “othermothers” in the African-American community and describing how community members often informally adopt unrelated children).

often feel isolated and overwhelmed,<sup>231</sup> and are significantly more likely to struggle financially.<sup>232</sup> As to the value of the relationship between non-marital co-parents, rearing a child together represents one of the most important commitments that two individuals can make, both to each other and to the child, and the lack of a marriage license in and of itself does not make the commitment any less significant. Moreover, separating a child from a person upon whom he or she relies as a parent can have devastating emotional effects on the child.<sup>233</sup>

Having another individual to provide care for a child also furthers the practical goals of family reunification law. Having two or more individuals from whom to receive financial support increases the likelihood that families with children will maintain economic stability.<sup>234</sup> Additionally, if a parent does not have sole responsibility for rearing a child, he or she will more likely be able to take on full-time employment, thus increasing his or her economic productivity.<sup>235</sup> The greater overall economic productivity and stability of families with multiple individuals serving in parental roles results in a decreased likelihood that such families will live in poverty<sup>236</sup> or require government assistance.<sup>237</sup> Finally, the psychological well-being of a parent, and consequently that of the child, will likely improve if a co-parent is available to assist in undertaking the significant responsibility of raising a child.<sup>238</sup>

### 3. *Extended Family Relationships*

Allowing citizens to sponsor extended family members with whom they share important relationships likely will further the humane goals of family reunification law.<sup>239</sup> As the Supreme Court highlighted in *Moore*, and commentators continue to acknowledge, individuals within our country have signif-

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<sup>231</sup> Martha T. Mednick, *Single Mothers: A Review and Critique of Current Research*, 7 APPLIED SOC. PSYCHOL. ANN. 184, 187-89 (1987).

<sup>232</sup> HEATHER KOBALL & AYANA DOUGLAS-HALL, NAT'L CTR. FOR CHILDREN IN POVERTY, RATE OF CHILDREN IN LOW INCOME FAMILIES VARIES WIDELY BY STATE 2 (2004), available at [http://www.nccp.org/publications/pdf/text\\_560.pdf](http://www.nccp.org/publications/pdf/text_560.pdf) ("Single-parent families are more than twice as likely to be low-income as two-parent families. Across the United States, 59 percent of single-parent families are low income compared to just 23 percent of two-parent families.").

<sup>233</sup> JOSEPH GOLDSTEIN ET AL., THE BEST INTERESTS OF THE CHILD: THE LEAST DETRIMENTAL ALTERNATIVE 12 (1996) (discussing how many psychiatrists believe that serious emotional consequences result when a child is separated from a person who has taken on a parental role in the child's life).

<sup>234</sup> See *supra* note 232 and accompanying text (discussing how single-parent families are significantly more likely to be low-income than two-parent families).

<sup>235</sup> See *Single Parents and the Challenge of Work and Family Balance*, THE BALANCING ACT, Jan. 12, 2005, at 4-5, available at [http://wfnetwork.bc.edu/downloads/EPF/EPF\\_Single.pdf](http://wfnetwork.bc.edu/downloads/EPF/EPF_Single.pdf).

<sup>236</sup> See *supra* note 232 and accompanying text.

<sup>237</sup> Lisa A. Gennetian et al., *Regional Differences in the Effects of Welfare Reform: Evidence from an Experimental Program in Rural and Urban Minnesota*, 13 GEO. J. ON POVERTY L. & POL'Y 119, 124 (2006) ("[T]he majority of the welfare caseload, statewide and nationally, is comprised of single-parent families.").

<sup>238</sup> See Mednick, *supra* note 231, at 187-89.

<sup>239</sup> See *infra* notes 240-45 and accompanying text.

icant and enduring relationships with extended family members.<sup>240</sup> Indeed, a substantial number of people within the United States value extended family members immensely—so much so that they invite their extended family members to join their households and share in the intimate aspects of everyday life.<sup>241</sup> Individuals across the world also consider extended family members indispensable parts of their daily lives, with many cultures refusing to differentiate between immediate and extended family members in defining and conceptualizing family.<sup>242</sup> Studies demonstrate that extended family members provide a great deal of emotional support to each other.<sup>243</sup> In fact, “extended families are usually [a] primary source of support for their members,” especially in times of crisis or emergency.<sup>244</sup> In addition, the presence of extended family members often yields significant emotional benefits to children.<sup>245</sup>

The furtherance of family reunification law’s practical goals in this context is also likely.<sup>246</sup> Research indicates that, “[f]or many Americans, multigenerational bonds are becoming more important than nuclear family ties for well-being and support over the course of their lives.”<sup>247</sup> The sheer number of extended family members who have decided to live together demonstrates the significant degree to which extended family members rely upon each other for various kinds of essential support.<sup>248</sup> Research confirms that extended family members exchange valuable goods, services, and information.<sup>249</sup> In particular, extended family members supply a significant amount of financial assistance, childcare, and other instrumental support, thus providing for a more stable, healthy population.<sup>250</sup> While immigration law is able to draw a bright line identifying which relatives are important and which are not, many individuals cannot.<sup>251</sup>

#### 4. Friendship

Scholars refer to friendship as “a relationship of increasing social significance in the contemporary world.”<sup>252</sup> Today, friendships represent the most

<sup>240</sup> See, e.g., Demleitner, *supra* note 187, at 290.

<sup>241</sup> See *id.* (noting that grandparents, other extended relatives, and nonrelatives often live with members of the nuclear family).

<sup>242</sup> See *supra* Part III.B.4.

<sup>243</sup> See Sarkisian et al., *supra* note 227, at 338.

<sup>244</sup> U.S. COMM’N ON CHILD & FAMILY WELFARE, PARENTING OUR CHILDREN: IN THE BEST INTERESTS OF THE NATION 51 (1996), available at <http://www.thelizlibrary.org/site-index/site-index-frame.html#soulhttp://www.thelizlibrary.org/liz/007.htm> (follow “MAJORITY REPORT OF 1996 U.S. COMMISSION-4” hyperlink; then follow “Chapter 4” hyperlink).

<sup>245</sup> See Hyman L. Kempler, *Extended Kinship Ties and Some Modern Alternatives*, 25 FAM. COORDINATOR 143, 144 (1976).

<sup>246</sup> See *infra* notes 247-51 and accompanying text.

<sup>247</sup> Vern L. Bengtson, *Beyond the Nuclear Family: The Increasing Importance of Multigenerational Bonds*, 63 J. MARRIAGE & FAM. 1, 5 (2001).

<sup>248</sup> See *supra* note 236 and accompanying text.

<sup>249</sup> See Sarkisian et al., *supra* note 241, at 337-38.

<sup>250</sup> See *id.*

<sup>251</sup> See *supra* Part I (describing the categories of relationships eligible for sponsorship under the family reunification provisions of U.S. immigration law).

<sup>252</sup> Sasha Roseneil, *Why We Should Care About Friends: An Argument for Queering the Care Imaginary in Social Policy*, 3 SOC. POL’Y & SOC’Y 409, 411 (2004).

important relationships in the lives of many people.<sup>253</sup> Researchers have studied the effects of friendship extensively,<sup>254</sup> and their findings suggest that allowing citizens to reunite with their closest friends will further both the humane and practical goals of family reunification law.<sup>255</sup>

In terms of family reunification law's humane goals, "[m]any unmarried individuals have another person . . . to whom they feel strongly attached but do not wish to marry."<sup>256</sup> The majority of individuals who do not reside with their nuclear family members report having greater contact with their close friends than with their family members.<sup>257</sup> Additionally, it is friends, not family members, upon whom people increasingly rely for emotional intimacy and guidance.<sup>258</sup> In fact, approximately two-thirds of married women report feeling more emotionally intimate with their close female friends than with their spouses.<sup>259</sup> Finally, friendships provide people with happiness<sup>260</sup> and an increased sense of self-worth.<sup>261</sup>

<sup>253</sup> See Chambers, *supra* note 63, at 1352 ("Many unmarried individuals have another person . . . to whom they feel strongly attached but do not wish to marry."); Laura A. Rosenbury, *Friends with Benefits?*, 106 MICH. L. REV. 189, 209 (2007) ("As set forth below, friendship is an increasingly important aspect of many people's lives. In addition, many of these people prefer to experience personal connection, and give and receive care, through friendship rather than family."); Roseneil, *supra* note 252, at 413 ("We found that, across a range of lifestyles and sexualities, friendship occupied a central place in the personal lives of our interviewees . . . There was a high degree of reliance on friends, as opposed to biological kin and sexual partners, particularly for the provision of care and support in everyday life, and friendship operated as key value and site of ethical practice for many.").

<sup>254</sup> See Rosenbury, *supra* note 253, at 209-11 (discussing various research studies on friendships).

<sup>255</sup> See *infra* notes 256-70 and accompanying text.

<sup>256</sup> Chambers, *supra* note 63, at 1352.

<sup>257</sup> Roseneil, *supra* note 252, at 412 (discussing the findings of a recent study in England and concluding "[m]oreover the British Social Attitudes report suggests that people are more likely to have seen their 'best friend' than any relative who does not live with them in the previous week, and whilst there has been a decline in the proportion of respondents seeing relatives or friends at least once a week between 1986 and 1995, the decline in contact with friends was considerably smaller.").

<sup>258</sup> *Id.* at 413 ("It was friends far more than biological kin who offered support to those who suffered from emotional distress or mental health problems, and who were there to pick up the pieces when love relationships ended."); E. Kay Trimberger, *Friendship Networks and Care* 5 (Ctr. for Working Families, Univ. of Cal., Berkeley, Working Paper No. 31, 2002), available at <http://wfnetwork.bc.edu/berkeley/papers/31.pdf>.

<sup>259</sup> SUSAN MAUSHART, WIFEWORX: WHAT MARRIAGE REALLY MEANS FOR WOMEN 81 (2001).

<sup>260</sup> Robert E. Lane, *The Road Not Taken: Friendship, Consumerism, and Happiness*, 8 CRITICAL REV. 521, 529 (1994) ("[A] priority for friendship over commodities is a promising route to happiness, an effective protection against depression, and a step toward a more benign environment.").

<sup>261</sup> GRAHAM ALLAN, FRIENDSHIP: DEVELOPING A SOCIOLOGICAL PERSPECTIVE 1 (1989) ("Not only do our friends help to provide us with our sense of identity, but they also confirm our social worth."); Ethan J. Leib, *Friendship & the Law*, 54 UCLA L. REV. 631, 655 (2007) ("[F]riends confirm our sense of social and moral worth. They allow us to feel cared for and loved, that [we are] esteemed and valued . . . . Indeed, [s]elf-esteem, the most important disposition associated with happiness and a prime protector against depression, is . . . closely related to friendship." (second and fourth alterations in original) (footnotes omitted) (internal quotation marks omitted)).

Friendships also further the practical goals of stability, health, and productivity that family reunification law seeks to attain.<sup>262</sup> Friends assist each other in a number of ways. First, friendships contribute to people's emotional health and well-being.<sup>263</sup> Many people rely exclusively upon friends for assistance in times of serious emotional distress.<sup>264</sup> In turn, emotionally healthy people have greater productivity and contribute more to society.<sup>265</sup> Moreover, studies of cultures that include close friends in their definition of family indicate the relationships between non-biologically related family members remain as strong and lasting as those established by blood.<sup>266</sup> Second, friends provide each other with a substantial amount of instrumental care, including financial assistance.<sup>267</sup> In fact, research indicates that many people receive a greater amount of instrumental care from their friends than from their family members.<sup>268</sup> Friends also provide an immense practical service to society at large by assuming caretaking functions that the government may otherwise need to provide.<sup>269</sup> Finally, the mutual support and care provided by friendships results in increased health and stability for the parties involved.<sup>270</sup>

## V. ADDRESSING THE LIKELY CONCERNS

Lawmakers must weigh numerous considerations when deciding how to implement the Plus One Policy. This section discusses the three most likely concerns regarding implementation of the Policy, and explores a variety of methods through which lawmakers could address these concerns.<sup>271</sup> This sec-

<sup>262</sup> Leib, *supra* note 261 at 655-57 (discussing how friends are critical to an individual's care, health, and safety).

<sup>263</sup> *Id.* at 655-56 ("Not only do friends help us avoid depression, they are more generally good for our health: Friends appear to reduce the levels of stress experienced [by their counterparts], improve health, and buffer the impact of stress on health." (alteration in original) (footnotes omitted) (internal quotation marks omitted)).

<sup>264</sup> Trimberger, *supra* note 258, at 5.

<sup>265</sup> 2 NAT'L INSTS. OF HEALTH & SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., HEALTHY PEOPLE 2010, at 18-3 (2d ed. 2001), available at <http://www.healthypeople.gov/2010/Document/pdf/Volume2/18Mental.pdf> ("Mental health is indispensable to personal well-being . . . and contribution to community or society.").

<sup>266</sup> Peggye Dilworth-Anderson et al., *The Importance of Values in the Study of Culturally Diverse Families*, 42 FAM. REL. 238, 240 (1993) ("For example, in ethnographic studies of black families, some researchers . . . have found that relations between *fictive kin* (non-blood kin who relationally define themselves as family) are as strong and lasting as those established by blood.").

<sup>267</sup> Leib, *supra* note 261, at 656; Trimberger, *supra* note 251, at 5.

<sup>268</sup> Roseneil, *supra* note 252, at 413 ("There was a high degree of reliance on friends, as opposed to biological kin and sexual partners, particularly for the provision of care and support in everyday life, and friendship operated as key value and site of ethical practice for many.").

<sup>269</sup> Leib, *supra* note 261, at 656-57 (explaining that "friendship is linked to the provision of public services so as to enhance both efficiency and community and can furnish important emotional and financial aid in times of crisis when public services are overextended," and "the state clearly reaps a public health benefit from friends who take care of the sick and handicapped, a cost that Medicaid or Medicare need not absorb if there are able-bodied friends willing and able to pitch in") (footnotes omitted) (internal quotation marks omitted)).

<sup>270</sup> See *id.* at 654-57.

<sup>271</sup> See *infra* notes 272-309 and accompanying text.

tion does not aim to resolve the exact manner through which lawmakers should implement the Plus One Policy; rather, it is meant to serve as a springboard for thought and discussion regarding the implementation of an immigration policy that grants individuals greater autonomy in defining family.

#### A. *Fraud*

For decades, lawmakers and officials have sought to ensure that immigrants are not admitted to the United States based upon fraudulent relationships.<sup>272</sup> Consequently, USCIS investigates every relationship through which the members seek immigration sponsorship benefits.<sup>273</sup> For most relationships (parents, children, and siblings), USCIS generally only requires the individuals to provide birth certificates or similar documents and evidence proving the claimed relationships exist in the most basic, technical sense.<sup>274</sup> Because the Plus One Policy's core purpose is to allow citizens to sponsor the individuals most important to them, regardless of marital status or biological or adoptive familial ties, this type of documentation will sometimes be inapplicable, and thus new standards will have to be introduced to verify the existence of some of the relationships claimed through the Plus One Policy.

A viable way to detect fraud without compromising the efficiency of the current system is for immigration officials to judge the bona fides of relationships claimed under the Plus One Policy in the same way that they judge whether two individuals have entered into a marriage simply for immigration purposes. In this context, officials interview the sponsor and potential immigrant, and often seek proof of the relationship beyond a marriage license.<sup>275</sup> USCIS may require members of claimed marital relationships to provide affidavits, photos, correspondence, or other evidence demonstrating the relationships

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<sup>272</sup> See LEGOMSKY, *supra* note 3, at 271-75 (describing the efforts of the United States to ensure immigration benefits are based on genuine spousal or familial relationships).

<sup>273</sup> See U.S. CITIZENSHIP & IMMIGRATION SERV., DEP'T OF HOMELAND SEC., INSTRUCTION FOR I-130, PETITION FOR ALIEN RELATIVE 1-5 (2010), available at <http://www.uscis.gov/files/form/i-130instr.pdf> (describing the process for sponsoring a family member and the necessary evidence that must be provided in order for immigration officials to make a determination regarding the validity of the claimed familial relationship).

<sup>274</sup> *Id.* at 2-4.

<sup>275</sup> See Timothy R. Carraher, Comment, *Some Suggestions for the UAGA: A Bill for Same-Sex Binational Couples*, 4 NW. J.L. & SOC. POL'Y 150, 153 (2009) ("Applicants are told to bring a number of documents to the interview, including their marriage certificate, proof of the dissolution of any previous marriages, and any evidence to substantiate that the marriage is real (i.e., not fraudulently undertaken solely for immigration purposes). The USCIS suggests bringing wedding photos to prove that the marriage is genuine, though the interviewing agent can ask other questions and may demand more information or documentation."), available at <http://www.law.northwestern.edu/journals/njls/v4/n1/9/>; Zaske, *supra* note 70, at 650-51 ("Under the PPIA, permanent partners would need to go through many of the same steps as married opposite-sex couples. Proof that the partnership is a bona fide relationship would therefore include being interviewed by a USCIS agent and providing documentation to show the relationship is genuine, such as proof the couple lives together, photographs of the couple together, and other evidence that shows the couple is in a committed long-term relationship."); Brian Thomas, *Prosecuting Sham Marriage Under 18 U.S.C. § 1546: Is Validity of Marriage Material?*, 11 SUFFOLK J. TRIAL & APP. ADVOC. 201, 206 & n.6 (2006).

are genuine.<sup>276</sup> It is realistic for the government to take similar steps to ensure that individuals did not enter into the relationships claimed under the Plus One Policy simply for immigration purposes.

Alternatively, the law could treat relationships sponsored under the Plus One Policy in the same manner that it treats marriages that have existed for less than two years.<sup>277</sup> In this context, after initially presenting proof of the genuine nature of the relationship and gaining admittance to the country, the sponsored individual's status as an LPR remains conditional for a two-year period.<sup>278</sup> If during the conditional period USCIS finds that the relationship is not bona fide, the sponsored individual loses her status as a conditional LPR and is subject to removal.<sup>279</sup> Barring that, near the end of the two-year period, the couple presents further evidence of the genuine nature of their relationship in order for the sponsored spouse to gain non-conditional LPR status.<sup>280</sup>

This approach could raise significant problems. The government has implemented at least some baseline standards for measuring whether a marriage is bona fide over the course of two years, including co-residency, reproduction, and intermingling of finances.<sup>281</sup> These standards, however, would remain largely inapplicable to many individuals admitted through the Plus One Policy<sup>282</sup> (whether these standards are an appropriate measure of the genuineness of a marital relationship is also questionable).<sup>283</sup> Additionally, because all of the relationships sponsored under the Policy will be unique, with the only similarity being their significant value to those involved, it would be impossible to establish a universal set of standards by which to measure them over a two-year period. Thus, the government would likely waste a great deal of its time and resources monitoring these relationships for two years. In addition, there is a

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<sup>276</sup> See *supra* note 275.

<sup>277</sup> See *infra* notes 278-80.

<sup>278</sup> INA § 216(a)(1), 8 U.S.C. § 1186a(a)(1) (2006) (“[A]n alien spouse . . . and an alien son or daughter . . . shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.”).

<sup>279</sup> INA § 216(b), 8 U.S.C. § 1186a(b)(1) (“In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the Attorney General determines, before the second anniversary of the alien’s obtaining the status of lawful admission for permanent residence, that . . . the qualifying marriage . . . was entered into for the purpose of procuring an alien’s admission as an immigrant . . . [the Attorney General] shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.”).

<sup>280</sup> INA § 216(c)(1)(A), 8 U.S.C. § 1186a(c)(1) (stating that in order for conditional status to be removed “the alien spouse and the petitioning spouse . . . jointly must submit . . . during the period described in subsection (d)(2) of this section, a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1)[.]”).

<sup>281</sup> DEPARTMENT OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, INSTRUCTIONS FOR I-751, PETITION TO REMOVE CONDITIONS ON RESIDENCE 2, available at <http://www.uscis.gov/files/form/i-751instr.pdf>; Kerry Abrams, *Immigration Law and the Regulation of Marriage*, 91 MINN. L. REV 1625, 1686 (2007); Thomas, *supra* note 275, at 206 (“Such evidence may include, but is not limited to, proof that the petitioner listed his spouse on numerous legal transactions, as well as testimony regarding courtship, wedding ceremony, shared residence, and common experiences.”); see also *id.* at 206 n.26.

<sup>282</sup> For example, many close friends do not live together or co-mingle their finances.

<sup>283</sup> See Abrams, *supra* note 281, at 1691-94.

strong argument that the government's monitoring of any familial relationship in this context is undesirable (and perhaps even outside its power)<sup>284</sup> because it results in individuals attempting to adhere to what the federal government decides their personal relationships should look like, and denies them the freedom to structure their familial relationships in the manner they see fit.<sup>285</sup>

The government could also choose to make no inquiry into relationships claimed under the Plus One Policy. Here, the government would assume that if a citizen may choose only one person to sponsor pursuant to the Plus One category in his or her lifetime, the person chosen will in fact constitute an extremely important part of the citizen's life. While it reduces administrative costs, this approach also allows the greatest opportunity for fraud. Because immigration officials currently conduct an inquiry into all relationships claimed for immigration purposes, this option seems unlikely.<sup>286</sup>

Finally, the government could determine whether the relationship represents the requisite level of importance to the individuals involved. This approach also suffers from a lack of universal standards by which to judge the importance of the claimed relationships. Additionally, it involves granting significant discretion to immigration officers, and thus likely would lead to great inconsistencies. Instead of furthering the goals of the Plus One Policy, this approach likely would simply shift the normative judgments regarding which relationships are the most valuable from Congress to individual hearing officers.

Consequently, a middle ground approach, such as the approach that the government currently uses for marriages that have existed for more than two years, appears to be the strongest alternative. This method provides for the identification of relationships entered into solely for immigration purposes, without sacrificing efficiency.<sup>287</sup> It is, however, possible that lawmakers would criticize this approach for treating individuals sponsored under the Policy more favorably than sponsored spouses whose marriages have existed for less than two years and are thus subject to the conditional residency requirement.<sup>288</sup> A response to this concern is that the current system already tolerates such discrepancies: Neither individuals sponsored under any of the other main family reunification provisions, nor sponsored spouses whose marriages have existed for over two years, are generally subject to conditionality requirements.<sup>289</sup> Additionally, there is an alternative guarantee of genuineness for a relationship sponsored through the Plus One Policy, as a citizen may only sponsor one person through the Policy in his or her lifetime.<sup>290</sup>

Whichever approach lawmakers choose, the severe consequences for committing fraud that currently exist in the spousal reunification context should

<sup>284</sup> See generally *id.*

<sup>285</sup> See *id.*, at 1685-87, 1691-94.

<sup>286</sup> See *supra* note 273.

<sup>287</sup> See *supra* notes 275-76 and accompanying text.

<sup>288</sup> See *supra* notes 278-80 and accompanying text.

<sup>289</sup> INA §§ 201(b)(2)(A)(i), 203(a), 8 U.S.C. § 1151(b)(2)(A)(i), 1153(a) (2006 & Supp. 2010) (the conditionality requirement for spouses that have been married for two years only exists in the limited context of when the U.S. citizen or LPR spouse dies before the application is processed).

<sup>290</sup> See *infra* text accompanying note 295.

apply to the Plus One Policy.<sup>291</sup> This will further dissuade individuals from engaging in fraudulent activity.

### B. Excessive Immigration

An essential aspect of immigration law involves setting strict limits on the number of individuals who can enter the country.<sup>292</sup> This practice centers on the belief that such limits remain necessary for society and the economy to continue functioning effectively.<sup>293</sup> As exists with most of the current family reunification categories, immigration law could set an annual cap for the number of visas that officials issue under the Plus One Policy.<sup>294</sup> Thus, the United States would have direct control over the number of individuals who are able to immigrate pursuant to the Plus One Policy each year.

In addition, the fundamental limit contemplated under the Plus One Policy, implicit in its name, provides an individual can sponsor only one person through the Policy during his or her lifetime.<sup>295</sup> This limit forces citizens to make carefully considered decisions regarding the relationships they value most. A possible further restriction could mandate that if a citizen chooses to sponsor someone through the Plus One Policy, that citizen can no longer sponsor anyone under the other family reunification provisions. This restriction, however, could have harsh consequences. As a result, time limitations might present a better alternative. The law could provide that when individuals sponsor someone under the Plus One Policy, they will remain unable to sponsor anyone under the other family reunification provisions for a set number of years. This approach would help ensure that citizens do not take their sponsorship decisions lightly, but would still accommodate unforeseen changes in personal circumstances.

Another possible option would be to restrict the future sponsorship rights of individuals who immigrate to the United States pursuant to the Plus One Policy. There is, of course, always the fear of chain migration when non-citizens gain admittance to the United States. This is a risk Congress has chosen to take in establishing any family-based admission provisions. Except for the immediate family members of citizens, however, all of the family reunification

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<sup>291</sup> A person who commits marriage fraud faces imprisonment of up to five years, and fines of up to \$250,000. INA § 275(c), 8 U.S.C. § 1325(c). More importantly, not only is a non-citizen who engages in this type of fraud deportable, but she is also permanently ineligible to return to the United States in any capacity. INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i).

<sup>292</sup> See *supra* notes 35, 44 and accompanying text.

<sup>293</sup> See SCIRP STAFF REPORT, *supra* note 196, at 560, 681; FINAL REPORT, *supra* note 199, at 41; Daniel H. Foote, *Japan's "Foreign Workers" Policy: A View from the United States*, 7 GEO. IMMIGR. L.J. 707, 717-22 (1993) (discussing various reasons for the placement of numerical restrictions on immigration).

<sup>294</sup> See *supra* note 44 and accompanying text.

<sup>295</sup> Under Canadian immigration law, a citizen may sponsor a distant relative only if the citizen does not have any relatives who fit within one of the other family reunification provisions. Immigration and Refugee Protection Regulations., SOR/2002-227 § 117(1)(h) (Can.). This type of rule, however, would thwart the purpose of the Plus One Policy, which is to reunite citizens with the individuals to whom they feel closest regardless of whether their relationships fit within a traditional definition of family.

categories are subject to annual caps.<sup>296</sup> The United States therefore has complete control over the number of individuals sponsored pursuant to these categories and this would not change with the implementation of the Plus One Policy. In addition, although pursuant to the “accompanying or following to join” provision of the INA, the spouses and minor children of individuals who immigrate under the preference categories are immediately entitled to the same immigration status as the sponsored individual,<sup>297</sup> Congress presumably accounts for this when setting the annual immigration caps. Thus, even if immigrants sponsored pursuant to the Plus One Policy have the same sponsorship rights as immigrants sponsored pursuant to the other categories, excessive immigration is unlikely due to the annual caps placed on most of the family reunification categories.

### C. Significant Government Spending to Support Plus One Policy Immigrants

All individuals who sponsor family members through the current family-reunification provisions undertake legal obligations to support their sponsored family members financially.<sup>298</sup> To minimize the expenditure of government money to support immigrants who enter through the Plus One Policy, the support obligations that currently exist for sponsorship through all other familial categories should apply to sponsorship under the Plus One Policy as well. Specifically, a sponsor must execute an affidavit stating that he or she agrees to support the sponsored individual at 125 percent of the poverty line,<sup>299</sup> and demonstrate the ability to do so.<sup>300</sup> The sponsor also must agree to reimburse any entity that provides the sponsored individual with means-tested public benefits within a certain period of time.<sup>301</sup> In addition, if the immigrant applies for public benefits within that time period, the sponsor’s assets are deemed available to the immigrant.<sup>302</sup>

The advantages of such obligations are twofold. First, the affidavit of support creates a legally recognized economic commitment between the sponsor and the sponsored immigrant.<sup>303</sup> The government, as well as the sponsored

<sup>296</sup> See *supra* note 44 and accompanying text.

<sup>297</sup> INA § 203(c)(d), 8 U.S.C. § 1153(d) (2006).

<sup>298</sup> See *infra* notes 299-302 and accompanying text.

<sup>299</sup> INA § 213A(a)(1), 8 U.S.C. § 1183a(a)(1) (“No affidavit of support may be accepted . . . unless such affidavit is executed by a sponsor of the alien as a contract . . . in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line . . .”).

<sup>300</sup> INA § 213A(f)(1)(E), 8 U.S.C. § 1183a(f)(1)(E) (stating that in order to be a sponsor, an individual must demonstrate “the means to maintain an annual income equal to at least 125 percent of the Federal poverty line”).

<sup>301</sup> INA § 213A(b)(1)(A), 8 U.S.C. § 1183a(b)(1)(A) (“Upon notification that a sponsored alien has received any means-tested public benefit, the appropriate nongovernmental entity which provided such benefit or the appropriate entity of the Federal Government, a State, or any political subdivision of a State shall request reimbursement by the sponsor . . .”).

<sup>302</sup> 8 U.S.C. § 1631(a) (“[T]he income and resources of the alien shall be deemed to include the following . . . [t]he income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act . . . on behalf of such alien”).

<sup>303</sup> See *infra* note 304.

immigrant, can sue the sponsor if she withholds the promised support,<sup>304</sup> thus reducing the likelihood that immigrants will deplete the funds of public assistance programs.<sup>305</sup> Second, the requirement means that by sponsoring someone, an individual is “potentially making [himself or herself] financially responsible for that [person] in perpetuity.”<sup>306</sup> The sponsor’s obligation ceases only if the sponsored immigrant obtains naturalization, works for forty Social Security quarters,<sup>307</sup> permanently leaves the United States and relinquishes his or her LPR status, obtains a new status in a removal proceeding, or dies.<sup>308</sup> This is a substantial commitment for a sponsor to undertake. Consequently, like numerical limits, support obligations help ensure that people sponsor only those individuals with whom they share valuable relationships.

Additionally, to balance the possibility that immigrants sponsored through the Plus One Policy still might receive some type of governmental support, lawmakers could make aspects of the support obligations mutual. A sponsored immigrant, upon entering, could incur an obligation of some kind to support his or her sponsor in the event the sponsor comes to require governmental assistance.<sup>309</sup> This requirement would also help ensure that both the sponsor and the immigrant highly value the relationship.

## VI. CONCLUSION

Lawmakers and courts identify reuniting families as a core purpose of immigration law. Yet, they purport to further this goal through a narrow, outdated, and formalistic definition of family that includes only traditional familial relationships. Domestic and foreign laws and policies widely recognize that this definition of family serves as an ineffective proxy for identifying the important relationships of most individuals. In fact, no bounded model of family reunification will be more successful in identifying citizens’ important relationships than an autonomous model, such as the Plus One Policy, which allows citizens to identify these relationships themselves.

<sup>304</sup> INA § 213A(a)(1)(B), 8 U.S.C. § 1183a(a)(1)(B) (stating that the affidavit of support is a contract “that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, any State (or any political subdivision of such State) or by any other entity that provides any means-tested public benefit (as defined in subsection (e) [of this section]), consistent with the provisions of this section”) (bracketed words contained in 8 U.S.C. § 1183a(a)(1)(B)).

<sup>305</sup> Abrams, *supra* note 215, at 1706 (“The enforcement procedures whereby . . . welfare agencies may seek reimbursement from the sponsoring spouse seek to ensure that the immigrant will not become a public charge in a very real sense—they prevent him from keeping money taken directly from the public fisc for his support and require his spouse to support him instead.”).

<sup>306</sup> *Id.* at 1703.

<sup>307</sup> Or, in the case of a married immigrant, the obligation ceases when a legally recognized spouse works for forty social security quarters during the marriage. INA § 213A(a)(3)(A)(ii), 8 U.S.C. § 1183a(a)(3)(A).

<sup>308</sup> 8 C.F.R. § 213a.2(e)(2)(i) (2007).

<sup>309</sup> For example, the law could require immigrants who enter through the Plus One Policy to guarantee to provide a set percentage of their income, dependent on income level, should the sponsor require assistance within a certain period of time. Additionally, different requirements could apply to people under a certain age, students, the elderly, and individuals living below the poverty line.

The Plus One Policy would help family reunification law further both its humane and practical goals more effectively. On the humane side, the formalistic definition of family advanced under the current bounded model of family reunification denies many citizens the ability to reunite with the people whom they love and value most. Allowing citizens the autonomy to choose with whom they wish to reunite would help alleviate these harsh, and often devastating, results. Additionally, allowing citizens to reunite with individuals with whom they share close, supportive relationships would have positive practical benefits for society as a whole. These benefits include a more stable, productive, and healthy population.

Finally, implementing the Plus One Policy would demonstrate to citizens, as well as to the rest of the world, that the United States does not devalue important relationships simply because they happen to involve non-citizens. If immigration law truly seeks to reunite individuals with the people they value most, then it must recognize the diversity of valuable relationships in existence today.