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Divided Families and Devalued Citizens: Money Matters in Mixed-Status Families in the Netherlands

JUDITH DE JONG AND BETTY DE HART

Introduction

This contribution is informed by our research interest in *mixed-status families*: one family member has no residence status – illegalized migrant – while the other family members are legal residents or citizens.¹ Although a familiar issue in American literature, such mixed-status families are seldom studied in the European context.² By means of a case study in the Netherlands, we explore how the precarious residence status of one of the family members affects the others who are not directly illegalized themselves.

We focus, specifically, on the financial consequences of being a mixed-status family. In the Netherlands, such financial consequences chiefly result from the Dutch Linkage Act 1998 (*Koppelingswet*), which excludes illegalized migrants from social welfare and benefits. A subsequent Act also extended this exclusion to the legal, permanent resident, or citizen partner in mixed-status families. The latter are now excluded from certain social benefits paid by the tax services, e.g. benefits for housing,

¹ Following Kalir and Wissink 2016 we use the term ‘illegalized’ to underscore the process by which states move to categorize and treat certain people as being ‘illegal’. These people can be failed asylum seekers, undocumented migrants, visa over-stayers, and/or migrants with a criminal record. Our selection of respondents also included migrants with 1F-status and migrants who lost an earlier residence status. According to the Geneva Refugee Convention, people who are in danger of prosecution in their country of origin cannot be deported. However, exclusion clause 1F states that if a migrant is suspected of having committed crimes against humanity or human rights, he or she can be denied asylum. This leaves ‘1F migrants’ in the Netherlands with no possibility of acquiring rights, but also no way of returning to their country of origin.

² Bernhard et al. 2007; Schueths 2012; Castañeda and Melo 2014; López 2015; Kanstroom and Lykes 2015; Romero 2015.

health, or child care. Hence, although not illegalized themselves, the legal partners, especially those who depend on social benefits to make ends meet, are both directly and indirectly affected by the illegalized status of their partner.

This chapter is structured as follows. We first explore the position of the legal partner in mixed-status families from a theoretical perspective. Building on Bridget Anderson's work on 'failed citizenship', we demonstrate how inclusion and exclusion intersect in mixed-status families, resulting in the exclusion of the 'insider' legal partners from the normative community of value. Furthermore, Saskia Sassen's work on the 'logics of expulsions' directs our focus to the financial consequences of illegalized migrant status and their impact on mixed-status families.³ Taken together, we provide new insights into the meaning of citizenship, and illustrate how financial instruments linked to migration policies draw borders within families, relegating them to the margins of society.

Following on from this, we sketch the political and legal background of excluding legal partners from social benefits in mixed-status families, as it applied in the period of our fieldwork in 2017 and 2018. We show how their exclusion ensued without any substantial political debate, making mixed-status families and their precarious financial situation effectively invisible. Thereafter, we address the impact of being in a mixed-status family on the partners with legal residence status, based on interviews with members of mixed-status families, lawyers, and NGOs. We demonstrate how the invisibility of mixed-status families in the political debate is exacerbated in the highly specialized field of 'legal aid' in the Netherlands. We argue that the financial consequences not only heavily influence the family resources, but also threaten to divide the family. Couples have to make a choice between staying together and economic survival. Finally, we draw conclusions on how the case of mixed-status families enhances theoretical understandings of citizenship, migration, and the welfare state.

Mixed-Status Families, Deportability, and Exclusion from 'Good' Citizenship

Although 'migrant' and 'citizen' are commonly thought of as separate categories, such categorization does not reflect the lives of many families who are composed of both citizens and illegalized migrants.⁴ The

³ Sassen 2014.

⁴ López 2015.

increasing but limited amount of literature on these so-called mixed-status families demonstrates the profound ways in which the illegalized migration status of one family member influences the lives of all family members, including those with legal status or citizenship.⁵ Hence, migration laws have repercussions at the family level, including financially.

As mentioned earlier, academic literature on mixed-status families is mainly from the United States and largely absent from the European academic context.⁶ European scholarship focuses on how illegalized migrants are affected by citizenship boundaries that complicate their everyday lives by producing limited access to proper working conditions, social welfare, and security.⁷ However, this literature mainly treats illegalized migrants as isolated individuals, to an extent aligning with a state logic that posits 'citizens' and 'migrants' as binary opposites, in which exclusion of migrants from social welfare serves to protect citizens.⁸ This restricted focus on migrants as isolated individuals provides few insights into their embeddedness in society through family links or how relatives are affected by the precarious status of the migrant; family members are mentioned as 'support networks' offering housing at most.⁹ Instead, we look specifically at the experiences of these permanent resident or citizen family members. Their mere existence and intimate links with illegalized migrants challenge understandings of restrictive migration and social welfare policies, supposedly 'protecting' the resident citizen population who 'deserve' social benefits by keeping the 'others' out.

Thus, the position of legal partners in mixed-status families is best understood by building on Bridget Anderson's argument that immigration and citizenship are not simply about legal status but fundamentally about status in the sense of worth and honour, i.e. membership of the community of value.¹⁰ While the Foreigner/Non-Citizen can demarcate who belongs to the nation from the outside, the community of value can also be defined from the inside, by the 'Failed Citizen'.¹¹ Citizens can be excluded from 'good citizenship' as Failed Citizens: they are imagined as incapable of achieving national ideals, or failing to live up to them.¹²

⁵ Castañeda and Melo 2014; Romero 2015, among others (see above footnote 2).

⁶ See, however, Bhabha 2004; Chauvin et al. 2019; Bonjour and de Hart 2020; Griffiths 2019.

⁷ Kritzman-Amir and Spijkerboer 2013.

⁸ Koning 2020.

⁹ Engbersen et al. 2003.

¹⁰ Anderson 2013.

¹¹ Anderson 2013.

¹² Anderson and Bauder 2014, 4.

Failed Citizens are imagined as the undeserving poor, e.g. in the figure of the 'welfare queens' or 'benefit scoundrels'. Hence, Non- and Failed Citizens are fundamentally normative categories.

While in Anderson's understanding a fuzzy line can still be drawn between Failed Citizens and Non-Citizens, mixed-status families bring together both categories into one family, placing this divide even further into question. Rather than bringing migrants up to the level of the permanent resident or citizen partner, the legal partner is pulled down towards the position of illegalized migrant, both legally and normatively, and is placed outside the community of value, as a 'Failed Citizen'. Therefore, it is useful to see the permanent resident or citizen family members as Failed Citizens, who are no longer considered members of the community of value and no longer deserve protection due to their family ties with illegalized migrants.¹³

Anderson's work fits very well with that of Sassen on the 'logics of expulsions'.¹⁴ Mixed-status families are pushed from the core social and economic orders of the community of value to its margins, where they cease to be of value as workers and consumers. This is the result of the shrinking neoliberal state that leaves regulating social issues to the market, withdrawing support from groups of people who are considered vulnerable and exploitable due to their own misfortune: in this case, being part of a mixed-status family. Their punishment is financial: withdrawal of social benefits and fines for 'fraudulently' making use of such benefits which they were no longer entitled to as Failed Citizens in a family relationship with an illegalized migrant.

Mixed-status families are also dynamic units: they can be made up of any combination of illegalized migrants and (naturalized) citizens. They are subject to change: legal residents may lose their residence permit, citizens may lose their citizenship, and previously 'illegalized' migrants may gain residence or citizenship rights.¹⁵ Thus, partners in mixed-status families find themselves in legally uncertain, liminal categories.¹⁶ This is confirmed by our interviews: in some cases the family relationship started when the migrant partner had a legal status, but was subsequently re-categorized as 'illegal', e.g. due to loss of a job, which implied that social benefits were also retroactively considered incorrectly obtained.

¹³ López 2015, 94.

¹⁴ Sassen 2014.

¹⁵ Fix and Zimmerman 1999, 397.

¹⁶ Fix and Zimmerman 1999, 397.

A Short Overview of Mixed-Status Families and the Dutch Welfare State

In Esping-Anderson's typology of welfare states based on the relationship between state, family household, and market, the Netherlands has been typified as a pro-family caring state.¹⁷ Such states are typified as viewing care as primarily located in the family, but increasingly provide public resources and support care. Eggebø has pointed out that typologies of welfare states do not take into account immigration policies, the inclusion of which may provide a different picture.¹⁸ Indeed, the Netherlands is one of the more restrictive states in terms of social welfare for migrants.¹⁹ Such welfare policies, intersecting with migration policies (the migration control–social policy nexus), affect mixed-status families in profound ways.²⁰

The Dutch erosion of the relatively strong post-war welfare state model started in the 1980s, instigated by the economic crisis. It continued during the 1990s, defended with a normative discourse of individual responsibility to provide for oneself. At the same time, public awareness of fraud in the context of social security law increased and more people were subjected to assessment checks of their personal lives.²¹ Also during the 1990s, migration law became increasingly restrictive, as migrants came to be seen as a burden on the welfare state. As a result of these developments, Bonjour and Duyvendak have noted how being Dutch in government policies came to be increasingly defined in middle-class terms, as citizens living up to an ethos of hard work, excluding lower-class Dutch citizens and equating them to migrants.²²

Against this background, illegalized migrants became an increasingly problematized category, targeted by several means of exclusion. In 1998, the so-called Linkage Act [*Koppelingswet*] excluded illegalized migrants from social benefits, welfare benefits, and healthcare (Article 10, Aliens Act). This Linkage Act aimed to make a direct link between migrants' residence status and their rights to social welfare and benefits provided by the state. Moreover, it became more difficult for illegalized migrants to regularize their residence. The consequence of the Linkage Act was not

¹⁷ Esping-Andersen 1990; Daly 2000.

¹⁸ Eggebø 2010.

¹⁹ Koning 2020.

²⁰ Ataç and Rosenberger 2019.

²¹ Walsum 2008, 69, 80.

²² Bonjour and Duyvendak 2018, 894.

that residence was terminated by actual expulsions but that residence was made more difficult.²³ Policymakers hoped that illegalized migrants would leave the country independently. Following the increasingly strict citizen–migrant dichotomy in this period, policymakers did not take into account that families may consist of (illegalized) migrants as well as permanent residents or citizens. Policymakers conceived of illegalized migrants mainly as single, economically motivated males. Families were merely mentioned as ‘offering housing’ to illegalized migrants, not as sharing households and family life.²⁴ In reality, many of them established families and had children with partners who were legal residents or citizens.

Hence, how did the illegalized residence status of one of their members affect mixed-status families? Fix and Zimmerman discern three ways in which migration and citizenship policies impact mixed-status families.²⁵ First, through *differentiation* between family members, excluding some members from access to public institutions, while including others. Second, *spillover effects* of restrictions targeting illegalized migrants may impact the life of the permanent migrant and citizen family members. Finally, couples may be divided by keeping families physically apart across borders. What these authors did not envision, and what is central in this contribution, is the direct legal exclusion of the permanent resident or citizen partner from social welfare and benefits because of the family relationship with the illegalized partner.

This was exactly what happened in 2005, with the introduction of the AWIR (General Act Income-dependent Benefits). This Act aimed to provide social benefits for low-income families. It excluded the legal partner of an illegalized migrant from social benefits paid by the tax services for rent, healthcare, and child care.²⁶ Additionally, the partner in the Netherlands has no right to benefits granted for child daycare if the other partner resides outside the EU, or is illegalized.²⁷ In 2015, the Participation Act maintained the exclusion of the illegalized partner from social welfare, but still included this partner in determining the

²³ Van Eijl 2012, 185.

²⁴ Second Chamber 2003–2004, 29 537, nr. 2, p. 11 and 13. In the Memorandum of Clarification families were mentioned several times, mainly as a hindrance to expelling irregular migrants. Second Chamber 1994–1995, 24 233, nr. 3, p. 10.

²⁵ Fix and Zimmerman 1999, 401.

²⁶ Highest Administrative Court Council of State. 22 October 2014, ECLI NLRVS2014:3788. *Jurisprudentie Vreemdelingenrecht*, 2014/393, annotation Paul Minderhoud.

²⁷ Art. 1.6 Child Daycare Act.

level of welfare allocated to the permanent resident or citizen partner, resulting in substantial financial reductions. The effects of these exclusions from social benefits are exacerbated by the fact that in Dutch migration law, residence permits are withdrawn with retroactive effect to the moment when the right of residence was lost.²⁸ In such cases of retroactive withdrawal, not only the right to benefits may be lost, but the family may also have to pay back the benefits that were received during this period. Additionally, they may be fined for not informing the immigration or other authorities properly and on time, e.g. about the break-up of a family relationship or loss of employment.²⁹

As Sassen argues, the expelled become invisible by being pushed to the margins and this certainly counts for mixed-status families.³⁰ Political debates on illegalized migrants failed to even acknowledge their existence. Consequently, the exclusion of the legal partner in the 2005 AWIR took place without any political or public debate. The political debates on the Linkage Act were already predominantly technical in nature, rendering invisible the underlying moral and normative implications.³¹ The Memorandum of Clarification to the 2005 AWIR merely stated:

Without such a stipulation, an alien without legal residence could profit indirectly from benefits that are granted to the interested party [the legal partner, authors]. This would be contrary to what was aimed at by the Linkage Act.³²

This justification of exclusion of the legal partner was not further explained, or questioned in parliament. However, the consequences of this provision have become increasingly apparent, although most attention has been directed at the position of children and children's rights.³³ Part of the invisibility of mixed-status families resulting from these

²⁸ Boeles 2019.

²⁹ Only if the family is in a legal procedure against the withdrawal of a residence permit, some of the financial benefits may stay in place if this procedure is started immediately after the decision to withdraw (73 lid 1 Aliens Act).

³⁰ Sassen 2014.

³¹ Pluymen 2008.

³² Second Chamber, 2004-2005, 29764, nr. 3, p. 44. Only on one occasion did the Labour Party enquire about the exclusion of citizen children with an illegalized parent from funding for school books. Proceedings 20 January 2005, p. 46-2952. The amendment put forward by the Labour Party did not obtain the required majority. Second Chamber Proceedings 3 February 2005, p. 49-3183.

³³ E.g. Children's Ombudsman, *Nederlandse kinderen ontkoppeld. Als de verblijfsstatus van je ouders je levensstandaard bepaalt* 2017. www.ombudsmanrotterdam.nl/web/uploads/2017/12/2017.KOM014-Nederlandse-kinderen-ontkoppeld.pdf. Last visited 10 February 2019.

policies is that their numbers are unknown, and that they cannot be found in statistics. Estimates made by the Children's Ombudsman in 2017, on the number of mixed-status families with children excluded from social benefits, indicate it may involve around 4,000 families with children in 2015.³⁴

Both national and international courts have accepted the justification of the exclusion of the legal partner as being in line with Article 8 (right to family life) and 14 ECHR (non-discrimination) and necessary for effective migration control. Exceptions were thought necessary only in exceptional circumstances, such as in case of a chronically ill partner and young baby.³⁵ Nevertheless, the Dutch Highest Administrative Court acknowledged that, although not the aim, the effect of the Act may be dividing families.³⁶

Methodology

In order to explore how the above legal framework affects mixed-status families' everyday lives, we conducted seventeen semi-structured interviews between May 2017 and March 2018: nine with experts in the field, lawyers and NGOs, and two with state agencies: one interview with the social benefit taxation authorities and one with the office 'Title and Identity' of the Immigration and Naturalisation Service (IND).³⁷ We subsequently conducted six interviews with couples in a mixed-status relationship.³⁸ The limited number of interviews with families is not only due to the explorative nature of our research, but also due to the vulnerability of mixed-status families; they sometimes declined participation, or we decided to not pursue the interview ourselves because of ethical

³⁴ Children's Ombudsman, 2017.

³⁵ ABRvS 22 October 2014, ECLI NLRVS2014:3788, *JV* 2014/393 annotation Minderhoud.

³⁶ ECtHR, *Yeshitla v. the Netherlands*, 7 February 2019, (Appl.No. 37115/11); ECtHR *Aghmadi en Jaghubi – Nederland*, 4 April 2019, (Appl. Nos. 70475/14, 70530/14), ECLI: CE:ECHR:2019:0312DEC007047514, EHRM, *Dorani en Khawati – Nederland*, 4 April 2019, (Appl. Nos. 71815/14, 71827/14) ECLI:CE:ECHR:2019; *Bah v. United Kingdom*, ECtHR 27 September 2011, 56328/07 (*Bah*), *JV* 2012/33, annotation Slingenberg.

³⁷ This department was established following the Linkage Act. It registers or changes codes referring to different residence statuses, which then become visible for municipalities and taxation authorities.

³⁸ We would like to thank all our interviewees, especially the families, for sharing their stories with us.

considerations. Still, taken together, the seventeen interviews provided important insights into the lives of mixed-status families.

We recruited respondents through lawyers and NGOs that offered support to illegalized migrants. In the family interviews, we spoke to partners together. Although this may have influenced what they shared with us, we made this decision because of the precariousness of their situation. Partners often provided mutual support during the conversation. We asked them about their relationship; the legal process; the implications for marriage and legal establishment of paternity of children; the impact on their family life; the financial, psychological, and emotional consequences; their support system; and their perspectives for the future. To guarantee anonymity of respondents, pseudonyms were used and retraceable personal characteristics were removed. Each interview was transcribed and analysed in Atlas.Ti. We used a directed content analysis, in which we coded and grouped the different consequences for mixed-status families. We paid close attention to how other variables, such as income, disabilities, or illness, affected the identified effects.

(In)visibility of Mixed-Status Families

The invisibility of mixed-status families in the political debates discussed above can also be found in the social field of legal aid and NGOs supporting illegalized migrants. This is the result of strong specialization of this field in the Netherlands, meaning that most lawyers are experts either in migration law or in social security law, but not both. Migration lawyers are mostly in contact with the illegalized migrant, while lawyers specialized in social security support the legal partner. Couples are often engaged in multiple legal procedures, sometimes with different lawyers and relevant NGOs, looking at various aspects of their family situation. Consequently, the 'mixed-status family' is rarely seen as a whole. The legal partners frequently act as 'gatekeepers', as their knowledge of the Dutch system and language make them the main actor in dealing with state institutions.³⁹ However, they are not always on the radar of the authorities, lawyers, or NGOs who deal with the illegalized partner.

This invisibility results in a lack of awareness of the impact of decisions made in the field of migration law for social security rights and vice versa. A lawyer specialized in social security law mentioned an example:

³⁹ De Hart 2003.

The [illegalized] father [...] wanted to live with his family, but if the municipality finds out they will get into trouble with social welfare. So, we tell them: you really shouldn't live with them, and now he wanders around, so that at least the woman is not cut back on benefits. But that is difficult.

The husband being homeless not only affected the family situation, but also seriously imperilled his chances of regularizing his legal status, which requires sharing a household.

Hence, the specialization of legal aid can result in an orientation towards the interests of one of the partners and not the family as a whole. Even in their access to aid, mixed-status families can become invisible and divided.

Making Ends Meet: Economic Precariousness

The following is an explanation how the legal partner's exclusion from social benefits in a mixed-status family has severe financial consequences for the family as a whole: making it difficult for them to make ends meet, often over a longer period of time and without much prospect of solving the financial problems. In many cases, the economic situation of the legal partner was already precarious before the relationship with the illegalized partner. This was largely due to an inability to work caused by medical or psychological problems; or a disadvantaged position in the labour market.

Frequently, these financial consequences are unexpected: on occasion significant benefit cuts were imposed by surprise even after following advice from authorities or the legal professionals to solve a particular legal issue. For some couples this resulted in a sense of loss of rights, making them take on their 'un-deservingness', by not claiming financial rights to which they were legally entitled. Exclusion from social benefits constituted a major problem in their lives. This included mixed-status couple Nicole and Robert. Robert was a Dutch citizen and had worked all his life until he became chronically ill. As he was no longer able to work, he received social benefits. After the birth of their children, Robert and Nicole decided to start a procedure to regularize Nicole's residence, during which they continued to receive benefits. Nicole narrates what happened after her request for residence was rejected:

Our lawyer said: don't give up, we persevere, we can appeal on the basis of your chronic disease and minor children. So we started. But I had to register [at Robert's address] and then the misery really started. Because I registered, not knowing that my partner's income would be stopped, no

more benefits. We only received €666 in benefits, and our rent is €619. So we didn't have anything to live on.

The Linkage Act's official aim of preventing the illegalized partner from 'profiting' from social welfare had the opposite effect of depriving the legal partner and children of any liveable income. Mixed-status couples come to rely on churches, food banks, municipalities, and loans from family and friends. Furthermore, the continuing stress, health, and psychological problems severely affected Robert and Nicole's family. Although they describe these years as a hell, they continued to make the most of their situation, supporting each other and focusing on making ends meet to keep their home and have food on the table:

Nicole: We didn't have any money, we had to borrow money to survive or to do some groceries. He [Robert] always said: even if we only receive 600 euros, I have to pay my rent, because if we don't, where can we stay? So, he always said: even if we have to sit in the dark, we will light candles but we have to pay rent. And so we did.

After years of living in poverty, Robert and Nicole's lawyer was able to arrange for some extra benefits from the municipality, until Nicole finally received her residence permit. For Nicole and Robert, the financial trouble came as a surprise: they did not know in advance that registering Nicole would result in social benefit cuts. For another mixed-status couple, Fatana and Ahmed, the social benefit reduction was the unexpected consequence of following the municipality's advice to register Ahmed at Fatana's address, to make it easier to arrange for a Dutch passport for their son without Ahmed having the required identity papers.

Fatana: The civil register said, why isn't [your husband] registered at your address? I said, yes it was never possible because he couldn't identify himself. Then this civil servant said: well, since I have just ascertained his identity, I could register him if you would like that. [...] Then they registered him and I had something in the back of my mind like, I hope I won't get into trouble. So then they stopped everything [social benefits] upward from the date that he was registered with me. Meanwhile, with a lot of effort, I managed to unsubscribe him again. [...] Now we are still left without these social benefits, because they say, he is your allowance partner. I say: yes, he has been that for fifteen years. But, apparently, I stirred up the hornet's nest.

As already mentioned, not all families started out as mixed-status families, but became so *retroactively*, after a residence permit was withdrawn.

A NGO worker recalls how a husband became illegalized after losing his residence permit as a labour migrant because his employer went bankrupt, retroactively invalidating his contract. The family had to pay back the healthcare and rent benefits they had received during his employment period, starting at the moment he lost his residence permit. In some cases, authorities recover months or even years of paid benefits, causing families to end up with debts which they cannot possibly pay off. It is especially this retroactive recovery of benefits that may make families lose any sense of legal certainty, as a social security lawyer explains:

With people who have a changing residence status, you can see that constantly new decisions are made and amounts recovered. With one of these families, there was a big recovery of money and she [the citizen partner] paid this. But then later I said: you are now entitled to benefits, because at that moment the [illegalized] partner had submitted a request for residence and, thus, they were entitled for a while. But they did not dare to request it because they were afraid of recoveries. And I said: no, that is impossible, because you are entitled at least for these months, but they didn't dare risk it.

Thus, the financial consequences of the illegalized status of the migrant partner for the legal partner pushes mixed-status families to the margins of society, to the extent that they are silenced, made invisible, and do not claim the rights to which they are entitled. It does not make the illegalized partner leave, but families are divided all the same, as we demonstrate in the next section.

Dividing Families

As explained above, the Linkage Act and subsequent Acts are measures of deterrence and discipline: they do not effectuate the direct expulsion of illegalized migrants, but make their life in the Netherlands difficult, so that they decide to leave on their own account. In none of our cases was actual deportation at stake, but families were in danger of being divided in other ways. The financial consequences may be such that the illegalized partner is pushed out of the family home as a form of self-surveillance, a forced living apart together, to safeguard at least some income to the legal partner. A lawyer commented on the consequence of dividing families:

I find it an unlawful stretch of the Linkage Act. Equally from a legal perspective. What happens is that someone who has a residence permit

is equated with someone who doesn't have a residence permit. Nobody can explain this. Certainly with the effects it has, it's just perverse. [...] The government says: that's your own choice, your own problem that you can solve by applying for divorce or a legal separation. [...] My objection as a lawyer is that it's a violation of art 8 [the right to family life of the ECHR]. To provide in your minimal livelihood you just have to divorce your husband.

However, contrary to this lawyer's statement, as explained in par. 3, national and international courts have ruled that Art. 8 ECHR is not violated, as states have the authority to regulate migration and may use exclusion from social welfare and benefits to do so, even if it excludes the legal partner. Consequently, an intimate relationship with an illegalized family member is constructed as a *choice*, the 'wrong' choice for which legal partners, as Failed Citizens, are held responsible and become punishable. Their self-surveillance, staying together or not, means that they may even hold themselves responsible.⁴⁰

In the interviews, we learned of one case in which what started out as a 'paper' separation to maintain benefits ended up in an actual breakup of the family relationship. However, in the family interviews, partners persisted in keeping the family together against such severe pressures (which is obviously also due to our selection of interlocutors). Staying together thus may be seen as a form of resistance, a 'weapon of the weak'⁴¹, against policies that are meant to keep them apart. Legal partner Aisha says:

Yes, if he [her husband Farid] is deregistered, we do receive [benefits], but I don't want to deregister him, he belongs with us. Our financial problems do not play a major role in the relationship itself. We sleep badly and worry a lot, that he doesn't have a job or this or that. But it's not like I expect him to leave.

Aisha strongly dismisses the scenario that Farid leaves the household. However, her statement also reflects that staying together is no longer self-evident and requires an explanation; this further demonstrates the precariousness of family life of mixed-status families. In response, couples emphasize their perseverance in overcoming their problems together as a family:

⁴⁰ Van Houdt, Suvarierol, and Schinkel 2011, 411.

⁴¹ Scott 1985.

Robert: She is always there for me. When I see her and if she sees me and the children, that is mental support, we didn't give up. So, the support is. . . just when you see each other and listen and talk to one another.

Nicole: If he wasn't at home, I always wandered around on the street, I didn't have anything else to do but walking on the street. But if he got home he called me: where are you? [. . .] But if he wasn't at home, I didn't feel comfortable, I never wanted to stay at home alone until now.

Other respondents reported taking in and caring for the illegalized partner as a 'civic duty', as a matter of good citizenship, which directly runs counter to the exclusionary definition of 'good citizenship' as implied in the Linkage Act. This indicates that the financial precarity affects families differently: while some families no longer perceive living together as a given, others instead become closer as they feel the need to support one another and step in where the state has taken a step back.

Deportability and Anxiety in Everyday Life

Obviously, financial precariousness and the pressure of dividing families impact the psychological and physical well-being of mixed-status family members. As De Genova⁴² posits, migrant 'illegality' is experienced as a palpable sense of *deportability*. Even if risks of deportation are low, as is the case in the Netherlands, the fear of deportation is always lingering in the background and prevents families from making long-term plans. This 'revocability of the promise of the future' hinders partners in building a durable life.⁴³ Consequently, stress, anxiety, and insecurity are an intrinsic part of daily life. Mariam, a Dutch citizen who fled Afghanistan twenty years ago, tells us:

I came to the Netherlands and I thought that everything would get better. [. . .] but instead of my life improving, it is getting worse. When I was in Afghanistan, the situation was almost the same. Then, I was worrying about the future, and I do so now. There, I thought that I wasn't going to get any food. I also do here too, and if I can't pay my bills, I will have to live on the street. While, when you leave your country, to better countries – you expect that you will have a good life or a good future, but where is that future?

Mariam's partner has been illegalized for nine years. The authorities were alerted to their situation when they moved to another home, and withdrew her benefits in response. Shortly after that, she also lost her job as

⁴² De Genova 2002, 439.

⁴³ De Genova 2002, 427.

a financial administrator. The stress kept her awake at night; she was unable to make long-term plans, postponing even seemingly simple ones such as buying a cupboard.

When we moved here, I wanted to buy a cupboard, but I didn't do it. I didn't know whether he [her illegalized husband] would stay here or not. [...] Until now I haven't bought the cupboard. This was the effect of [not having] his residence permit. All these things that happen in our life, they do have effect. What will happen tomorrow?

In mixed-status families, deportability is extended to the legal or citizen partner. As gatekeepers, legal partners are caught up in a dual responsibility: one towards the state to keep the migrant out and one towards the family, to maintain their unity and keep the illegalized partner in. NGO workers asserted that legal partners experience the anxiety of deportation even more, as they fear whether they will see their partner at the end of the day and may have to raise their family alone. Mariam notes how this responsibility includes curtailing her emotions:

I have to arrange everything. I always have to go to the authorities. I can't discuss everything. [...] I don't say that I slept badly, or that I didn't sleep all night. Such a thing I won't tell my children or husband, because it is something for myself. [...] I am already broken; I don't want to break someone else. What if the entire family breaks, what would that accomplish? And if I would say something, they wouldn't be able to help. If I would tell him, I can't pay the rent, he can't help me, right? Besides, he probably has a lot of problems himself.

This gatekeeping extended to the interview situation, during which Mariam was talking about her responsibility for managing the household, with her husband sitting next to her. He did not understand Dutch and Mariam did not involve him in the conversation. It exemplifies how even *within* families partners can become divided, in not always sharing their experiences and protecting each other from their fear and emotions.

Mixed-status families' abilities to handle the economic, social, and emotional impacts can depend on their social network. A lawyer explained how he catered to one specific nationality client group, who work illegally within a closed, tight-knit community, in which they offer each other support, thus reducing some of the direct financial effects of the Linkage Act. Robert and Nicole were able to maintain a living because they borrowed from family and friends. Such social networks may mitigate the consequences of the Linkage Act for one family, but it also shifts the burden of providing for families' welfare to entire communities.

Conclusions

Migration control is deemed necessary to protect citizens' access to the welfare state. The welfare state is seen as a system that organizes citizens and Non-Citizens into multilayered hierarchies in which immigration status and non-status open or close doors to access welfare benefits.⁴⁴ In such discourses, 'citizens' or permanent residents, on the one hand, and illegalized migrants, on the other hand, are constructed as separate categories, making families that include both categories invisible, escaping political, public, and academic attention.

Laws that function as a form of post-entry migration control by blocking access to social benefits have, unsurprisingly, largely *failed* to make the illegalized migrant leave.⁴⁵ Instead, legal partners in mixed-status families are pushed into poverty, putting them in a tight spot with at least a dual role as (failed) gatekeeper for the state, while also struggling to keep the family together. Our findings contribute to understandings of citizenship as well as the welfare state. As to citizenship, Anderson already notes that distinctions between Failed Citizens and Non-Citizens are blurred.⁴⁶ Mixed-status families complicate this picture further by uniting Failed Citizens and Non-Citizens in one family. Legal partners turn into Failed Citizens, not only because they depend on social benefits to have a liveable family income and are seen as not living up to the neoliberal workers ethos, but also because of their choice for a migrant partner. Civic membership as automatically acquired through residence is transformed into a process in which the citizen has to prove to be a worthy bearer of rights by fulfilling economic and cultural requirements.⁴⁷ As restrictive migration policies result in 'status mobility'⁴⁸ the consequences of being a mixed-status family are *not* the result of permanent resident or citizens starting a relationship with an illegalized partner, as in many cases the migrant partner started as a legal migrant. This 'backdoor' of restrictive migration policies deserves more academic attention.

Mixed-status families raise pressing questions about the increasingly blurred moral judgements associated with both poverty and illegality as axis of Othering. Under a neoliberal 'workfarist' regime, employment

⁴⁴ Sabates-Wheeler and Feldman 2011, xii.

⁴⁵ Ataç and Rosenberger 2019.

⁴⁶ Anderson 2015, 73.

⁴⁷ van Houdt, Suvarierol, and Schinkel 2011, 419.

⁴⁸ Schuster 2005.

becomes a civic obligation.⁴⁹ Moreover, their case points to the state as central to setting normative standards about what an ‘appropriate’ family relationship looks like.

The available European research on social rights of migrants starts from the migrant–citizen binary and consequently does not pay any attention to mixed-status families. Hence, we do not know whether the Dutch case is unique, or exemplary of what happens in other European states. European case law gives some indication that exclusion of family members in mixed-status families from social rights also occurs in other European states.⁵⁰ Despite the fact that European Court of Justice judgements in *Ruiz Zambrano* and *Chávez-Vilchez* have increased opportunities for illegalized migrants to regularize their residence, at least if the family includes an EU citizen child (art. 20 Treaty of the Functioning of the European Union), the situation of legal uncertainty continues because of restrictive enforcement practices and the lack of a clear legal framework.⁵¹ The legal and normative justification of the exclusion of permanent residents and citizens in mixed-status families remains a pressing issue.

References

- Anderson, Bridget. 2015. *Migration, Precarity, and Global Governance. Challenges and Opportunities for Labour*. Oxford: Oxford University Press: 68–82.
- Anderson, Bridget. 2014. ‘Exclusion, Failure, and the Politics of Citizenship’. RCIS Working Paper 2014/1.
- Anderson, Bridget. 2013. *Us and Them? The Dangerous Politics of Immigration Control*. Oxford: Oxford University Press.
- Anderson, Bridget. 2011. ‘Citizenship, Deportation and the Boundaries of Belonging’. *Citizenship Studies* 15, no. 5: 547–563. At <https://doi.org/10.1080/13621025.2011.583787>.
- Ataç, Ilker and Sieglinde Rosenberger. 2019. ‘Social Policies as a Tool of Migration Control’. *Journal of Immigrant and Refugee Studies* 17, no. 1 Routledge: 1–10. At <https://doi.org/10.1080/15562948.2018.1539802>.
- Bernerri, Chiara. 2018. ‘Family Reunification between Static EU Citizens and Third Country Nationals: A Practical Way to Help Families Caught in the Current

⁴⁹ Chauvin, Garcés-Mascreñas, and Kraler 2013, 81.

⁵⁰ See the *Bah* case mentioned in note 35, in which a permanent resident mother in the United Kingdom was excluded from public housing because her illegalized son lived with her.

⁵¹ CJEU Case C-34/09, *Gerardo Ruiz Zambrano v. Office national de l’emploi (ONEm)*, 8 March 2011; CJEU Case 133/15, *H.C. Chavez-Vilchez and Others v. Raad van Bestuur van de Sociale verzekeringsbank and Others*, 10 May 2017. Berneri 2018, Maas 2008.

- Immigration Crisis'. *European Journal of Migration and Law* 20, no. 3: 289–313. At <https://doi.org/10.1163/15718166-12340028>.
- Bernhard, K. Judith, Luin Goldring, Julie Young, Carolina Berinstein, and Beth Wilson. 2007. 'Living with Precarious Legal Status in Canada: Implications for the Well-Being of Children and Families'. *Refuge: Canada's Journal on Refugees* 24, no 2: 101–115. At <https://doi.org/10.25071/1920-7336.21388>.
- Bhabha, Jacqueline. 2004. 'The "Mere Fortuity" of Birth? Are Children Citizens?' *Differences: A Journal of Feminist Cultural Studies* 15, no 2: 91–117. At www.muse.jhu.edu/article/170544.
- Boeles, Pieter. 2019. 'Wat Is de Ruimte Voor Intrekking van Verblijfsvergunningen Met Terugwerkende Kracht?' [What is the Room for Withdrawing a Residence Permit with Retroact?] *Asiel & Migrantenrecht* 3: 95–109. At <https://research.vu.nl/en/publications/what-is-the-room-for-withdrawing-a-residence-permit-with-retroact>, accessed 27 November 2020.
- Bonjour, Saskia and Betty de Hart. 2020. 'Intimate Citizenship: Introduction to the Special Issue on Citizenship, Membership and Belonging in Mixed-Status Families'. *Identities* 1–17. At <https://doi.org/10.1080/1070289X.2020.1737404>.
- Bonjour, Saskia and Jan Willem Duyvendak. 2018. 'The "Migrant with Poor Prospects": Racialized Intersections of Class and Culture in Dutch Civic Integration Debates'. *Ethnic and Racial Studies* 41, no. 5: 882–900. <https://doi.org/10.1080/01419870.2017.1339897>.
- Bosniak, Linda. 2006. *The Citizen and the Alien. Dilemmas of Contemporary Membership*. Princeton and Oxford: Princeton University Press.
- Castañeda, Heide and Milena Andrea Melo. 2014. 'Health Care Access for Latino Mixed-Status Families: Barriers, Strategies, and Implications for Reform'. *American Behavioral Scientist* 58, no. 14: 1891–1909. At <https://doi.org/10.1177/0002764214550290>.
- Chauvin, Sébastien, Blanca Garcés-Mascareñas, and Albert Kraler. 2013. 'Employment and Migrant Deservingness'. *International Migration* 51, no. 6: 80–85. At <https://doi:10.1111/imig.12123>.
- Chauvin, Sébastien, Manuela Salcedo Robledo, Timo Koren, and Joël Illidge. 2019. 'Class, Mobility and Inequality in the Lives of Same-Sex Couples with Mixed Legal Statuses'. *Journal of Ethnic and Migration Studies* 1–17. At <https://doi.org/10.1080/1369183X.2019.1625137>.
- Daly, Mary. 2000. *The Gender Division of Welfare*. Cambridge: Cambridge University Press.
- De Genova, Nicholas P. 2002. 'Migrant "Illegality" and Deportability in Everyday Life'. *Annual Review of Anthropology* 31: 419–447. <https://doi.org/10.1146/annurev.anthro.31.040402.085432>.

- De Hart, Betty. 2003. *Onbezonnen Vrouwen. Gemengde Relaties in het Nationaliteitsrecht en het Vreemdelingenrecht*. Amsterdam: Aksant.
- Eggebo, Helga. 2010. 'The Problem of Dependency: Immigration, Gender, and the Welfare State'. *Social Politics* 17, no. 3: 295–322. <https://doi.org/10.1093/sp/jxq013>.
- Engbersen, Godfried, Joanne van der Leun, Richard Staring, and Jude Kehla. 2003. *De Ongekende Stad 2: Inbedding En Uitsluiting van Illegale Vreemdelingen*. Amsterdam: Boom.
- Esping-Andersen, Gosta. 1990. *The Three Worlds of Welfare Capitalism*. Cambridge: Polity Press and Princeton, NJ: Princeton University Press.
- Fix, E. Michael and Wendy Zimmerman. 1999. 'All Under One Roof: Mixed-Status Families in an Era of Reform'. *International Migration Review* 35, no. 2: 397–419. At <https://doi.org/10.1111/j.1747-7379.2001.tb00023.x>.
- Griffiths, Melanie. 2019. "My Passport is Just My Way Out of Here." Mixed-Immigration Status Families, Immigration Enforcement and the Citizenship Implications'. *Identities*, 1–19.
- Kalir, Barak and Lieke Wissink. 2016. 'The Deportation Continuum: Convergences Between State Agents and NGO Workers in the Dutch Deportation Field'. *Citizenship Studies* 20, no. 1: 34–49. At <https://doi.org/10.1080/13621025.2015.1107025>.
- Kanstroom, Daniel and M. Brinton Lykes, eds. 2015. *The New Deportations Delirium: Interdisciplinary Responses*. New York: New York University Press.
- Koning, Edward A. 2020. 'Accommodation and New Hurdles: The Increasing Importance of Politics for Immigrants' Access to Social Programmes in Western Democracies'. *Social Policy and Administration*, <https://browzine.com/libraries/320/journals/9184/articles-in-press?showArticleInContext=doi%3A10.1111%2Fspol.12661>
- Kritzman-Amir, Tally and Thomas Spijkerboer. 2013. 'On the Morality and Legality of Borders: Border Politics and Asylum Seekers'. *Harvard Human Rights Journal* 26, no. 24: 0–39.
- López, Jane Lilly. 2015. "Impossible Families": Mixed-Citizenship Status Couples and the Law'. *Law and Policy* 37, no. 1–2: 93–118. At <https://doi.org/10.1111/lapo.12032>.
- Maas, Willem. 2008. 'Migrants, States, and EU Citizenship's Unfulfilled Promise'. *Citizenship Studies* 12, no. 6: 583–596.
- Nicholls, J. Walter. 2016. 'Producing-Resisting National Borders in the United States, France and The Netherlands'. *Political Geography* 51: 43–52. At <https://doi.org/10.1016/j.polgeo.2015.12.001>.
- Pluymen, Manon. 2008. *Niet Toelaten Betekent Uitsluiten: Een Rechtssociologisch Onderzoek naar de Rechtvaardiging en Praktijk van Uitsluiting van Vreemdelingen van Voorzieningen*. Den Haag: Boom Juridische Uitgeverij.

- Romero, Mary. 2015. 'Foreword'. In April Schueths and Jodie Lawston, eds., *Living Together, Living Apart: Mixed Status Families and US Immigration Policy*. Seattle: University of Washington Press.
- Sabates-Wheeler, Rachel and Rayah Feldman. 2011. 'Introduction: Mapping Migrant Welfare onto Social Provisioning'. In Rachel Sabates-Wheeler and Rayah Feldman, eds., *Migration and Social Protection: Claiming Social Rights Beyond Borders*. Basingstoke: Palgrave Macmillan.
- Sassen, Saskia. 2014. *Expulsions: Brutality and Complexity in the Global Economy*. Harvard University Press.
- Schueths, M. April. 2012. "'Where Are My Rights?'" Compromised Citizenship in Mixed-Status Marriage: A Research Note'. *Journal of Sociology and Social Welfare* 39, no. 4: 97–109.
- Schuster, Liza. 2005. 'The Continuing Mobility of Migrants in Italy: Shifting between Places and Statuses'. *Journal of Ethnic and Migration Studies* 31, no. 4: 757–774. At <https://doi.org/10.1080/13691830500109993>.
- Scott C. James. 1985. *Weapons of the Weak: Everyday Forms of Peasant Resistance*. New Haven: Yale University.
- Van Eijl, Corrie. 2012. *Tussenland: Illegaal in Nederland, 1945-2000*. Hilversum: Verloren.
- Van Houdt, Friso, Semin Suvarierol, and Willem Schinkel. 2011. 'Neoliberal Communitarian Citizenship: Current Trends towards "Earned Citizenship" in the United Kingdom, France and the Netherlands'. *International Sociology* 26, no. 3: 408–432. At <https://doi.org/10.1177/0268580910393041>.
- Van Walsum, Sarah. 2008. *The Family and the Nation: Dutch Family Migration Policies in the Context of Changing Family Norms*. Cambridge: Cambridge Scholars Publishing.