

# CAGED BY A MARRIAGE: HOW CHILD MARRIAGES IN THE UNITED STATES ARE ENABLED BY OUR IMMIGRATION SYSTEM

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## ABSTRACT

*Despite hundreds of years of legal reform to prevent children from marrying, the United States has yet to enact federal laws that would ban child marriage. While the United States is quick to point fingers at the issue globally, it allows American children to be treated as passports and incentivizes the practice of child brides.*

*Academic legal research has focused on the lack of reform on a state level and the cultural norms that promulgate the practice of child marriage, yet there has not been a critical examination of the U.S. laws governing child marriage and immigration. Without reforming the Immigration and Nationality Act, children are not protected from being caged into this institution at a young age.*

*The United Nations Sustainable Development Goals aim at eliminating child marriage by 2030, and some countries have enacted national laws that ban child marriage and require both spouses be over the age of 18 for immigration purposes. Sweden has implemented a rigid model that I analyze and modify to better meet the needs of all children.*

*This Article explores the operation of the Immigration and Nationality Act on the frequency of child marriage. It discusses the risks to children when they marry before turning 18. It compares national laws in place in other countries to prevent child marriages and it deliberates the permissibility of child marriages when a humanitarian waiver may be granted.*

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## I. INTRODUCTION

The fundamental human rights of children—those rights intended to meet basic human needs—include alleviation of hunger; education; healthcare and reproduction; freedom of expression; an adequate standard of living; and protection from violence, exploitation, torture, and cruel, inhuman, or degrading treatment or punishment—but also the choice to enter or refuse marriage.<sup>1</sup> Child marriage is not a new phenomenon, dating back as far as 530 A.D., and some scholars speculate that it originated back even further with the reign of Augustus.<sup>2</sup> Child marriage is defined in various conventions, treaties, and international agreements including the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women,

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1. See G.A. Res. 44/25, Convention on the Rights of the Child, arts. 13, 19, 24, 27, 37 (Nov. 20, 1989); G.A. Res. 29/8, at 1 (July 2, 2015).

2. M. K. Hopkins, *The Age of Roman Girls at Marriage*, 18 POPULATION STUD. 309, 313 (Mar. 1965).

the Universal Declaration of Human Rights and recent resolutions of the U.N. Human Rights Council as “any legal or customary union involving a boy or girl below the age of 18.”<sup>3</sup> In these various conventions, treaties, and international agreements it is declared that the marriage of a child “shall have no legal effect,” as children lack capacity to give their full consent to marriage.<sup>4</sup> Therefore, a country that is a signatory to one of these treaties and does not put in place legislation to prevent child marriages, violates a child’s fundamental human rights.<sup>5</sup>

Child marriages also impede upon social, economic, educational, and physical development of children.<sup>6</sup> Although child marriages affect both boys and girls, it is largely a human rights abuse that is “rooted in gender inequality.”<sup>7</sup> Due to child marriage being such a concern, “the United Nations Sustainable Development Goals called for global action to end [the] human rights violation by 2030” and without more effective efforts globally, it is anticipated that more than “120 million girls will be married before the age of 18 by 2030.”<sup>8</sup>

The United States fails to protect the fundamental human rights of children in numerous ways, but one of which is allowing child marriages to be legally permissible on American soil. This is due to the lack of legal protections provided to children by the laws of the federal and state governments. Approximately 41 states allow, or even encourage, child marriages.<sup>9</sup> However, one of the most

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3. Jennifer Parsons et al., *Economic Impacts of Child Marriage: A Review of the Literature*, 13 REV. FAITH & INT’L AFFS. 12, 12 (2015).

4. UNICEF, *Early Marriage: Child Spouses*, INNOCENTI DIG., Mar. 2001, at 3, <https://www.unicef-irc.org/publications/pdf/digest7e.pdf> [<https://perma.cc/29ZC-JXA6>] (quoting G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, art. 16 (Dec. 18, 1979)).

5. G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, art. 19 (Dec. 18, 1979).

6. *See id.*

7. Parsons et al., *supra* note 3, at 12.

8. Hüseyin Dağ et al., *A Child Abuse: Marriage at Childhood Age.*, 56 TURKISH ARCHIVES PEDIATRICS 548, 549 (2021), [link.gale.com/apps/doc/A683035102/HRCA?u=nysl\\_ca\\_albanlaw&sid=bookmark-HRCA&xid=222ad0eb](http://link.gale.com/apps/doc/A683035102/HRCA?u=nysl_ca_albanlaw&sid=bookmark-HRCA&xid=222ad0eb) [<https://perma.cc/PC2A-WXYU>].

9. Only Connecticut, Delaware, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont have set the minimum marriage age to 18 and eliminated all exceptions. *Child Marriage in the United States*, EQUAL. NOW, [https://www.equalitynow.org/learn\\_more\\_child\\_marriage\\_us/#:~:text=Child%20marriage%20](https://www.equalitynow.org/learn_more_child_marriage_us/#:~:text=Child%20marriage%20)

significant laws facilitating child marriages can be found in the United States' Immigration and Nationality Act (INA).<sup>10</sup> The INA does not set a minimum age requirement for petitions for immigration benefits for spouses or fiancés.<sup>11</sup> So a U.S. child can petition for a visa for a spouse or fiancé(e) living abroad and a U.S. adult can petition for a visa for a spouse or fiancé(e) living abroad who is under the age of 18.<sup>12</sup> So even if all states had laws requiring parties to be over the age of 18 to marry with no exceptions, the INA could still be used to encourage child marriages, and children—the majority of which are girls—would continue to have their fundamental human rights, according to international law, violated.<sup>13</sup>

The existing legal literature on child marriage has focused on states implementing laws that would limit the right to marriage to those who have reached the age of 18, or regarding states that have a minimum of age 18 with exceptions carved out (i.e., North Carolina, Virginia, Texas, and Florida).<sup>14</sup> Most scholars agree that a total ban on child marriage is in the best interest of children; however, few have argued that for religious reasons, or when a child has shown

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is%20currently%20legal,a%20parental%20or%20judicial%20waiver [https://perma.cc/FK3A-B8U6] (July 12, 2023); *About Child Marriage in the U.S.*, UNCHAINED AT LAST, <https://www.unchainedatlast.org/laws-to-end-child-marriage/> [https://perma.cc/C6QF-PVQZ].

10. Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952).

11. *Id.*; U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., HOW THE U.S. IMMIGRATION SYSTEM ENCOURAGES CHILD MARRIAGES (2019), <https://www.hsgac.senate.gov/imo/media/doc/Child%20Marriage%20staff%20report%201%209%202019%20EMBARGOED.pdf> [https://perma.cc/3H4H-7MCA] (citing Letter from L. Francis Cissna, Dir., U.S. Citizenship & Immigration Services, to Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affs. 6 (Oct. 4, 2018) (on file with Comm. Staff)); see Memorandum from William A. Kandel to S. Comm. on Homeland Sec. & Governmental Affs., Forced Marriage and Child Marriage in the Context of U.S. Immigration Policy (2018) (on file with Comm. Staff).

12. U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., *supra* note 11, at 1 (citing Letter from L. Francis Cissna to Ron Johnson, *supra* note 11).

13. See 66 Stat. at 163; U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., *supra* note 11.

14. See Vijayasri G. Aryama, Note, "I Don't": The Need for a Solution to the Child Marriage Problem in the United States, 39 WOMEN'S RTS. L. REP. 386, 396 (2018); Mary Templeton, Comment, *Engaged and Underage: Advocating for a Child Marriage Ban in North Carolina*, 10 WAKE FOREST J.L. & POL'Y 311, 311 (2020); Wendy Ross, *Protecting the Child Bride: Following Texas' Middle-Ground Approach*, 44 UNIV. ARK. LITTLE ROCK L. REV. 99, 119 (2021); Elisa K. Schneider, *Ban Child Marriages: Florida Is Not Acting in the Best Interest of the Child*, 14 FLA. A & M U. L. REV. 257, 258 (2020); Andrea Jeglum, Comment, *The Alignment of U.S. Child Marriage Laws to Data and Consent: Time for a Bright-Line Rule at the Age of Majority*, 36 WIS. J.L. GENDER & SOC'Y 213, 219–20 (2021).

themselves to be mature enough for marriage by an inquest of court and able to financially support themselves, then they ought to be afforded the right to marry.<sup>15</sup>

Another approach argues that federal intervention is the proper avenue for limiting child marriage and that a uniform rule must be created.<sup>16</sup> Others discuss the lack of programming tailored for survivors of child marriages escaping their unsafe environment.<sup>17</sup> Some scholars have also done research and conducted studies on the issue of child marriage and point to a misunderstanding of the issues within child marriages and the overwhelming lack of legal framework enforcement.<sup>18</sup> Lastly, legal literature has also analyzed the issue of child marriage by applying human trafficking laws and the theory of undue influence as ways to combat child marriage within the current existing legal scheme.<sup>19</sup>

As we reflect upon the history of the United States and child marriage, it took a combination of both legislative action and change in social norms to actively discourage child marriage, not dissimilar to what is needed today. This Article

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15. See Raquel Wildes Genet, Note, *Child Marriage in America: An Interim Solution Pending a Total Ban*, 40 CARDOZO L. REV. 2999, 3027–28 (2019); Marie Johnson-Dahl, Note, *Sixteen Candles on My Wedding Cake: Implication of Banning Child Marriage in America*, 2020 U. ILL. L. REV. 1045, 1049 (2020).

16. See Caylin Jones, *Saying “I Don’t” to Child Marriage: Creating a Federal Minimum Marital Age Requirement Through the Treaty Power*, 26 SW. J. INT’L L. 396, 398 (2020); see also Rachel L. Schuman, Note, *State Regulations Are Failing Our Children: An Analysis of Child Marriage Laws in the United States*, 60 WM. & MARY L. REV. 2337, 2341 (2019).

17. See Jenna Mark, Note, *Married at Eight Years Old: How United States Current Legal Remedies Are Inadequate to Protect the Victims of Child Marriages*, 18 NEW ENG. J. INT’L & COMPAR. L. 411, 412–13 (2012); see also Julia Alanen, *Custom or Crime?: Part III of IV: Crafting a Competent Framework to Combat Forced Marriage*, 30 AM. J. FAM. L. 121, 121–23 (2016).

18. See Julia Alanen, *Too Young to Tie the Knot*, BLOOMBERG BNA FAM. L. REP., Sept. 2014, at 5; Julia Alanen, *Shattering the Silence Surrounding Forced and Early Marriage in the United States*, CHILD.’S LEGAL RTS. J., SUMMER 2012, at 1, 1; Kathleen Maloney, *Ending Impunity for Forced Marriage in Conflict Zones: The Need for Greater Judicial Emphasis on the Human Rights of Girls*, 19 J. INT’L CRIM. JUST. 327, 327 (2021); David W. Lawson et al., *What Does the American Public Know About Child Marriage?*, PLOS ONE, Sept. 2020, at 1, 2; Ayako Kohno et al., *Investigation of the Key Factors that Influence the Girls to Enter into Child Marriage: A Meta-Synthesis of Qualitative Evidence*, PLOS ONE, July 2020, at 1, 19.

19. Robin Boyle-Laisure, *Preventing Predatory Alienation by High-Control Groups: The Application of Human Trafficking Laws to Groups Popularly Known as Cults, and Proposed Changes to Laws Regarding Federal Immigration, State Child Marriage, and Undue Influence*, 1 INT’L J. COERCION, ABUSE & MANIPULATION 27, 36–40 (2021); see also Elizabeth Warner, *Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls*, 12 AM. U. J. GENDER SOC. POL’Y & L. 233 (2004).

acknowledges the issue of state level legal reform, but argues that the federal government must act now to stop encouraging child marriage by reforming the INA.<sup>20</sup> Despite child marriage rates steadily reducing,<sup>21</sup> there are compelling reasons for lawmakers to address immigration reform as that number is still too high. Comparing the United States to other countries provides actionable guidance on how to reform our immigration laws.

Part II of this Article describes the severe harm that child marriage causes to a child's well-being by focusing on the physical, psychological, educational, and economic impacts.<sup>22</sup> Part III examines the history of child marriage in the United States and the legal reform steps taken in the last 300 years.<sup>23</sup> Part IV discusses the INA and its impact on the rate of child marriage in the United States.<sup>24</sup> Part V compares the United States' immigration laws to other countries as it relates to child marriage.<sup>25</sup> Finally, Part VI proposes reforms to the INA to address a minimum marriage age.<sup>26</sup> These reforms include a humanitarian waiver that utilizes a best interest analysis to ensure that the lives of some children are not further endangered by being denied entry into the United States through a fiancé(e) or spousal visa.<sup>27</sup>

## II. RISKS TO CHILDREN WHO MARRY BEFORE TURNING 18

As Julie Freccero and Audrey Taylor note, “[c]hild marriage is a well-recognized global phenomenon, which may disproportionately impact girls in humanitarian crisis and displacement, such as armed conflict or natural disaster. The consequences of such marriages are dire.”<sup>28</sup> Today, child marriage in the

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20. Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952).

21. See *Child Marriage – Shocking Statistics*, UNCHAINED AT LAST, <https://www.unchainedatlast.org/child-marriage-shocking-statistics/> [<https://perma.cc/CWS8-7MV3>].

22. See *infra* Part II.

23. See *infra* Part III.

24. See *infra* Part IV.

25. See *infra* Part V.

26. See *infra* Part VI.

27. See *infra* Part VI.A.

28. JULIE FRECCERO & AUDREY TAYLOR, CHILD MARRIAGE IN HUMANITARIAN CRISES: GIRLS AND PARENTS SPEAK OUT ON RISK AND PROTECTIVE FACTORS, DECISION-MAKING, AND SOLUTIONS 1 (U.C. Berkely Sch. of L. Hum. Rts. Ctr. 2021), [https://humanrights.berkeley.edu/sites/default/files/publications/child\\_marriage\\_in\\_humanitarian\\_crisis\\_report\\_2021.pdf](https://humanrights.berkeley.edu/sites/default/files/publications/child_marriage_in_humanitarian_crisis_report_2021.pdf) [<https://perma.cc/7RVM-E5LL>]; see also *Child Marriage*, UNICEF, <https://www.unicef.org/protection/child-marriage> [<https://perma.cc/NV3L-WB35>] (July 2023).

United States is still an issue.<sup>29</sup> When children marry, they face inferior educational outcomes, serious physical and sexual violence, poor mental and physical health, and complications or death while giving birth.<sup>30</sup> It also triggers severe negative health ramifications in not only the child who was married, but also in their subsequent offspring, resulting in a higher risk of death.<sup>31</sup>

#### *A. Physical Impact, Domestic Violence, and Divorce*

Child marriage is a prevalent and pressing issue in both the United States and abroad. Child marriage has an overwhelmingly negative effect on multiple domains of the child's life.<sup>32</sup> It detrimentally effects educational attainment; economic earning and risk of poverty; physical, reproductive, and mental health; physical, emotional, and financial abuse and violence; and the likelihood of divorce and abandonment.<sup>33</sup> Given the adverse impacts of child marriage on a child's life, the United States needs to act to limit child marriages from occurring on its own soil or, at the very least, stop encouraging it through its own federal laws.

As shown in Table 1, child marriage has negative consequences on women's health, both physical and mental, and the health of their children.<sup>34</sup> It can lead to girls having sex before they are physically and emotionally ready, which can lead to adolescent pregnancy, and carries serious health risks, including maternal and fetal mortality.<sup>35</sup> “[C]omplications linked to pregnancy and childbirth are among the leading causes of death for girls between the ages of 15 and 19.”<sup>36</sup> “Girls who marry under the age of fifteen are five times as likely to die during pregnancy and childbirth than adult women, and 70,000 adolescents die annually in developing countries as a result of child marriage.”<sup>37</sup> Young girls are not physically ready for

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29. MARCI A. HAMILTON, 2020 REPORT ON CHILD MARRIAGE IN THE UNITED STATES: A NATIONAL OVERVIEW OF CHILD MARRIAGE DATA AND LAW 7 (Child USA 2020), <https://childusa.org/wp-content/uploads/2020/04/2020-Report-on-Child-Marriage-in-the-US.pdf> [<https://perma.cc/R6DY-3YBE>].

30. *See id.* at 8–9.

31. *Id.*

32. *See id.* at 7–9.

33. *Id.*

34. *See The Public Health Consequences of Child Marriage*, GLOB. HEALTH ADVOC. INCUBATOR (July 26, 2021), <https://advocacyincubator.org/2021/07/26/the-public-health-consequences-of-child-marriage/> [<https://perma.cc/UES5-622X>].

35. HAMILTON, *supra* note 29, at 8–9.

36. *The Public Health Consequences of Child Marriage*, *supra* note 34.

37. HAMILTON, *supra* note 29, at 8.

pregnancies, which leads to risky and dangerous pregnancies that can result in lifelong health issues or death.<sup>38</sup> “[G]irls who are married before the age of 18 . . . are 50% more likely to suffer from intimate partner violence, 23% more likely to experience cancer, heart disease, diabetes, and stroke, and at a heightened risk of becoming infected with HIV and other sexually transmitted infections.”<sup>39</sup> Moreover, early marriage affects a woman’s mental health by increasing their risk of developing major psychiatric “disorders which often push them into nicotine, drug and alcohol dependence.”<sup>40</sup>

Table 1. Physical Impact and Domestic Violence<sup>41</sup>

Marriage Age	Impact	
Less than 19	<ul style="list-style-type: none"> <li>• Pregnancy and childbirth complications as the leading cause of death</li> </ul>	<ul style="list-style-type: none"> <li>• Heightened risk of psychiatric disorders</li> <li>• Nicotine, drugs, and alcohol dependence</li> </ul>
Less than 18	<ul style="list-style-type: none"> <li>• 50 percent more likely to suffer from intimate partner violence</li> <li>• 23 percent more likely to experience cancer, heart disease, diabetes, and stroke</li> <li>• Heightened risk of HIV infection and sexually transmitted infections</li> </ul>	
Less than 15	<ul style="list-style-type: none"> <li>• Five times as likely to die during pregnancy and childbirth</li> </ul>	

38. Camellia Burris, Comment, *Why Domestic Institutions Are Failing Child Brides: A Comparative Analysis of India’s and the United States’ Legal Approaches to the Institution of Child Marriage*, 23 TUL. J. INT’L & COMPAR. L. 151, 152 (2014); Nawal M. Nour, *Child Marriage: A Silent Health and Human Rights Issue*, 2 REVS. OBSTETRICS & GYNECOLOGY 51, 54 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2672998/> [<https://perma.cc/4P5P-D86X>].

39. *The Public Health Consequences of Child Marriage*, *supra* note 34.

40. *Id.*

41. *Id.*



There is strong qualitative evidence showing that physical, sexual, emotional, and financial abuse and reproductive coercion are common within child marriages.<sup>42</sup> Eighteen out of 21 individuals (20 women) who participated in a 2019 study of child marriage in the United States reported experiences of physical, sexual, or emotional abuse by their husbands during their marriage.<sup>43</sup> Eleven reported financial abuse by their spouse, including being forced to surrender their earnings or having restricted access to the financial resources of their household.<sup>44</sup> Furthermore, most participants experienced reproductive coercion by their spouses; and fewer than half reported that they could have used birth control if they had wanted to.<sup>45</sup>

In a seven-year study to measure long-term health and functioning outcomes of mothers who reported intimate partner violence,

47 (17%) reported a forced marriage attempt with 45% of the women younger than 18 years of age at the time of the attempt. Among the 47 women, 11 (23%) reported death threats, 20 (43%) reported marriage to the person, and 28 (60%) reported a pregnancy. Women younger than 18 years old reported more threats of isolation and economic deprivation associated with the attempt as well as pressure from parents to marry.<sup>46</sup>

The abuse associated with child marriage is correlated with poor mental health outcomes.<sup>47</sup> In a study released in 2011 that included nearly 25,000 women, more than 10 percent had married before the age of 18.<sup>48</sup> These women were found to have higher rates of both lifetime and 12-month psychiatric disorders.<sup>49</sup>

Nationally, women aged between 16 to 24 experience the highest rates of intimate partner violence, and girls aged 16 to 19 face victimization rates almost

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42. *Id.*; HAMILTON, *supra* note 29, at 7–9.

43. Aditi Wahi et al., *The Lived Experience of Child Marriage in the United States*, 34 SOC. WORK PUB. HEALTH 201, 201 (2019).

44. *Id.* at 205.

45. *Id.*

46. Judith McFarlane et al., *Child Brides, Forced Marriage, and Partner Violence in America*, 127 AM. COLL. OBSTETRICIANS & GYNECOLOGISTS 706, 706–07 (2016).

47. See Yann Le Strat et al., *Child Marriage in the United States and Its Association with Mental Health in Women*, 128 PEDIATRICS 524, 524 (2011).

48. *Id.* at 526.

49. *Id.* at 524.

triple the national average.<sup>50</sup> “The probability of marital disruption is highest for the youngest married; controlling for marriage duration, approximately four out of five marriages involving girls below the age of 15 end in death, divorce, or separation.”<sup>51</sup> “Early marriage is often linked to . . . abandonment, as shown by its association with divorce and separation.”<sup>52</sup> Divorce or abandonment, with the accumulation of the other health, education, and economic factors, inevitably leads to the victim falling deeper into poverty.<sup>53</sup> Child marriages often result in divorce, which then can create unstable households for future generations, impacting the children that are born with a child parent.<sup>54</sup> This trickle-down effect creates social and financial burdens on state resources in the form of increased healthcare and social services costs.<sup>55</sup>

### B. Psychological Impact

The physical trauma and damage are not the only lasting consequences of child marriage—young girls face serious lasting mental health issues as a result of child marriage. Women and girls who marry before reaching the age of 18 are more likely to have psychiatric disorders, including, but not limited to: mood, anxiety, and major depressive disorders and antisocial personality disorder (occurring

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50. TAHIRIH JUST. CTR., CHILD MARRIAGE IN THE UNITED STATES: A SERIOUS PROBLEM WITH A SIMPLE FIRST-STEP SOLUTION 2 (2016), <https://www.tahirih.org/wp-content/uploads/2016/11/Tahirih-Child-Marriage-Backgrounder-1.pdf> [<https://perma.cc/9PZQ-GQPZ>].

51. MARA STEINHAUS & LYRIC THOMPSON, CHILD MARRIAGE IN THE UNITED STATES: A SYNTHESIS OF EVIDENCE ON THE PREVALENCE & IMPACT 4 (Int’l Ctr. for Rsch. on Women 2020), [https://www.icrw.org/wp-content/uploads/2020/08/child-marriage-in-the-US-prevalence-impact\\_8-2020\\_ICRW.pdf](https://www.icrw.org/wp-content/uploads/2020/08/child-marriage-in-the-US-prevalence-impact_8-2020_ICRW.pdf) [<https://perma.cc/VTA8-W3B2>].

52. UNICEF, *supra* note 4, at 12.

53. *Id.*

54. Erin K. Jackson, *Addressing the Inconsistency Between Statutory Rape Laws and Underage Marriage: Abolishing Early Marriage and Removing the Spousal Exemption to Statutory Rape*, 85 UMKC L. REV. 343, 358 (2017) (“Another host of problems arise with the children of teenage brides. Children of teenage mothers have lower birth weights and higher rates of infant homicide, child abuse and neglect, academic and behavioral problems in school, and a greater likelihood of engaging in criminal activity.”).

55. *See* TAHIRIH JUST. CTR., FALLING THROUGH THE CRACKS: HOW LAWS ALLOW CHILD MARRIAGE TO HAPPEN IN TODAY’S AMERICA 4 (2017), <https://www.tahirih.org/wp-content/uploads/2017/08/TahirihChildMarriageReport-1.pdf> [<https://perma.cc/95BR-7RVK>] (“Between 70% and 80% of marriages involving individuals under age 18 end in divorce. For teen mothers, getting married and later divorcing can more than double their likelihood of poverty.”); *see also* JUDITH AREEN ET AL., FAMILY LAW: CASES AND MATERIALS 79 (6th ed., Found. Press 2012); Anjani Chandra et al., *Fertility, Family Planning, and Reproductive Health of U.S. Women: Data from the 2002 National Survey of Family Growth*, VITAL & HEALTH STAT., Dec. 2005, at 1, 25.

nearly three times higher) in their lifetime.<sup>56</sup> Social isolation and feeling a lack of control over their lives can contribute to a child bride's poor mental health.<sup>57</sup> According to reports from the National Forced Marriage Working Group (comprised of agencies that provide services to girls facing or trying to escape forced marriages), nearly all these girls facing or trying to escape forced marriages have considered or attempted suicide.<sup>58</sup> Although there is no documented causal correlation between child marriage and suicide, there is a link between early marriage and poor mental health.<sup>59</sup> Research shows that women who got married as children are more likely to suffer from psychiatric disorders when compared to women who got married as adults.<sup>60</sup> Adolescence is a pivotal point in a young girl's life and those who are forced to marry lack autonomy during a critical time of development.<sup>61</sup>

### *C. Educational and Economic Impact*

Early marriage magnifies the negative effects of the lack of education on a woman's future earnings and likelihood of living in poverty.<sup>62</sup> Early marriage denies a child their right to essential education for "personal development, their preparation for adulthood, and their effective contribution to the future well-being of their family and society."<sup>63</sup>

"[A]s young girls enter marriages, they are significantly less likely to receive education and the countless life-changing benefits that follow. For girls, increased educational attainment contributes to fewer child births, increased lifetime earnings, improved household income, reduced likelihood of experience[ing]

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56. Jackson, *supra* note 54, at 374. "Another host of problems arise with the children of teenage brides. Children of teenage mothers have lower birth weights and higher rates of infant homicide, child abuse and neglect, academic and behavioral problems in school, and a greater likelihood of engaging in criminal activity." *Id.* at 358.

57. *See id.* at 373.

58. TAHIRIH JUST. CTR., CHILD MARRIAGE POSES SERIOUS RISKS TO CHILDREN (2020), <https://www.tahirih.org/wp-content/uploads/2020/05/Child-Marriage-Impacts-One-Page-updated-5.8.-2020-REGULAR-PRINT.pdf> [<https://perma.cc/D2JG-JEPU>].

59. Parsons et al., *supra* note 3, at 17.

60. Le Strat et al., *supra* note 47, at 524.

61. Akanksha A. Marphatia et al., *Women's Marriage Age Matters for Public Health: A Review of the Broader Health and Social Implications in South Asia*, NAT'L LIBR. OF MED.: NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Oct. 18, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5651255/> [<https://perma.cc/3C6J-WY6B>].

62. STEINHAUS & THOMPSON, *supra* note 51, at 4.

63. UNICEF, *supra* note 4, at 11.

intimate partner violence, and increased decision-making ability.”<sup>64</sup> Furthermore, removing a child bride from school limits her opportunities to develop her intellect, develop her own independent identity, socialize, make friends, and obtain many other useful skills.<sup>65</sup> Girls often forfeit the right of agency over their education to their husbands post-marriage, are prevented from returning to school, and are subject to violence for attempting to return.<sup>66</sup> This results in generations of girls who grow up with no sense of the right to assert their own point of view, which can lead to a lack of self-esteem or sense of ownership of their own body.<sup>67</sup> Lack of self-esteem or a sense of ownership of their own body exposes women to unwanted pregnancies and makes them vulnerable to isolation, depression, infection, HIV, risks during labor and delivery, risks to the infant, and death.<sup>68</sup>

As shown in Table 2, in the United States, if girls marry before age 19 they are 50 percent more likely than unmarried girls to drop out of school and four times less likely to complete college.<sup>69</sup> Women with less than 12 years of schooling are 11 percent more likely to live at or below the poverty line, and girls who marry before age 16 are 31 percent more likely to live in poverty as adults.<sup>70</sup> “Child brides tend to come from poverty and remain in poverty.”<sup>71</sup> If a child marries before reaching 18 and later divorces, they more than double their probability of living in poverty.<sup>72</sup> Married teenagers are 130 percent more likely to conceive a child than couples who just live together.<sup>73</sup> When compared to unmarried teenage mothers, married teen mothers are 40 percent more likely to have a second birth within two

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64. HAMILTON, *supra* note 29, at 9 (citing Quentin Woden & Suzanne Petroni, *The Rippling Economic Impacts of Child Marriage*, WORLD BANK BLOGS (June 27, 2017), <https://blogs.worldbank.org/education/rippling-economic-impacts-child-marriage> [<https://perma.cc/9P95-4BFM>]). See generally Vivian E. Hamilton, *The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage*, 92 B.U. L. REV. 1817 (2012); Gary R. Lee, *Age at Marriage and Marital Satisfaction: A Multivariate Analysis with Implications for Marital Stability*, 39 J. MARRIAGE & FAM. 493 (1977); Larry L. Bumpass & James A. Sweet, *Differentials in Marital Instability: 1970*, 37 AM. SOCIO. REV. 754, 757 (1972).

65. See UNICEF, *supra* note 4, at 12.

66. See STEINHAUS & THOMPSON, *supra* note 51, at 4; see also UNICEF, *supra* note 4, at 13–14.

67. See UNICEF, *supra* note 4, at 12.

68. *Id.*; Nour, *supra* note 38, at 51.

69. STEINHAUS & THOMPSON, *supra* note 51, at 3.

70. *Id.* at 4 (citing Gordon B. Dahl, *Early Teen Marriage and Future Poverty*, 47 DEMOGRAPHY 689 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3000061/> [<https://perma.cc/FP3G-GZ5V>]).

71. See TAHIRI JUST. CTR., *supra* note 58 (citing Le Strat et al., *supra* note 47).

72. See *id.* (citing Hamilton, *supra* note 64, at 1820).

73. See Wendy D. Manning & Jessica A. Cohen, *Teenage Cohabitation, Marriage, and Childbearing*, 34 POPULATION RSCH. & POL’Y REV. 161, 167 (2015).

years of their first birth.<sup>74</sup> And compared to women who marry later, teenagers who marry are almost three times more likely to have at least five children.<sup>75</sup> When child brides, who lack education, qualifications, or skills, must work to earn a living, they are often “forced into commercialized versions of their work as wives: cleaning, cooking, child-minding,” or sex trafficking.<sup>76</sup> Child marriage has a substantial impact on women’s potential earnings and productivity, curbs their influence within the household, and limits their bargaining power.<sup>77</sup> “Child marriage reduces [the child’s] ability to acquire economic resources and perpetuates their oppression.”<sup>78</sup>

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74. Dahl, *supra* note 70, at 689 (citing Debra S. Kalmuss & Pearla Namerow, *Subsequent Childbearing Among Teenage Mothers: The Determinants of a Closely Spaced Second Birth*, 26 FAM. PLAN. PERSPS. 149, 149–53 (1994)).

75. TAHIRIH JUST. CTR., *supra* note 55, at 2.

76. UNICEF, *supra* note 4, at 12.

77. *Child Marriage Has a Significant Economic Impact*, New World Bank Research States, GIRLS NOT BRIDES (June 27, 2017), <https://www.girlsnotbrides.org/articles/child-marriage-significant-economic-impact-new-world-bank-research-states/> [<https://perma.cc/UUL9-RZ6Y>].

78. Parmita Das, *The Economics of Child Marriage*, BERKELEY ECON. REV. (Oct. 18, 2018), <https://econreview.berkeley.edu/the-economics-of-child-marriage> [<https://perma.cc/E3ZN-49MC>].

Table 2. Educational and Economic Impact of Child Marriage<sup>79</sup>

Marriage Age	Impact	
Less than 19	<ul style="list-style-type: none"> <li>• 50 percent more likely to drop out of high school</li> <li>• Four times less likely to complete college</li> </ul>	<ul style="list-style-type: none"> <li>• Less than 12 years of schooling = 11 percent more likely to live at or below poverty line</li> </ul>
Less than 18	<ul style="list-style-type: none"> <li>• Two times more likely to living in poverty if subsequently divorced</li> </ul>	<ul style="list-style-type: none"> <li>• 130 percent more likely of conceiving a child</li> </ul>
Less than 16	<ul style="list-style-type: none"> <li>• 31 percent more likely to live in poverty</li> </ul>	<ul style="list-style-type: none"> <li>• 40 percent more likely to have second child within 24 months of their first child</li> <li>• Three times more likely to have five children</li> </ul>

III. BACKGROUND ON CHILD MARRIAGES IN THE UNITED STATES

“Since the early nineteenth century many Americans have believed that child marriage is practiced only in other places . . . or, if in the United States, only by religious sects [or immigrants] . . .<sup>80</sup> “The truth is that many thousands of girls below the age of eighteen will marry legally in the United States this year.”<sup>81</sup> The Centers for Disease Control estimates that the likelihood of marriage by the age of 18 in modern day United States is six percent for women and two percent for men.<sup>82</sup>

Obtaining data on child marriages in the United States can be difficult. The most up to date numbers are from the 2010s. According to the Pew Research Center, “[a]bout 57,800 minors in the U.S. ages 15 to 17 were married as of 2014”

79. See *supra* Part II.B.

80. NICHOLAS L. SYRETT, AMERICAN CHILD BRIDE: A HISTORY OF MINORS AND MARRIAGE IN THE UNITED STATES 6 (Univ. of N.C. Press 2016).

81. *Id.*

82. PAULA GOODWIN ET AL., WHO MARRIES AND WHEN? AGE AT FIRST MARRIAGE IN THE UNITED STATES: 2002, at 2 (U.S. Dep’t of Health & Hum. Servs. 2009), <https://www.cdc.gov/nchs/data/databriefs/db19.pdf> [<https://perma.cc/Z34W-GQ9F>].

or about five of every 1,000 in that age group.<sup>83</sup> Looking at the years 2000 to 2015, the Tahirih Justice Center found that over 200,000 children were married in the United States.<sup>84</sup> According to *Unchained at Last*, nearly 300,000 children under the age of 18 were married in the United States between 2000 and 2018.<sup>85</sup> That number includes 232,474 marriages based on actual data plus 64,559 marriages based on estimates.<sup>86</sup> The organization obtained these figures through a previous study “for the period 2000 to 2010 was based on available data from 38 states plus estimates for the other 12 states based only on state population.”<sup>87</sup> That study was extended to 2015 by PBS Frontline (reported by the Tahirih Justice Center, mentioned above).<sup>88</sup>

Data is also not entirely available that can reflect the impact of the COVID-19 pandemic on child marriages in the United States as it is still under review globally by various programs working toward ending child marriage.<sup>89</sup> The various lockdown measures implemented to control the COVID-19 pandemic, specifically “the closure of schools, have exacerbated these existing vulnerabilities” and the lives of children and families were adversely affected around the globe.<sup>90</sup>

Looking at the issue of child marriage, it is important to delve into the history of the laws regulating these marriages throughout the United States dating back to the eighteenth century through modern day, as child marriage has been occurring in the United States for many decades.<sup>91</sup> A majority of the states have made vast changes to their laws in the past hundred years, but these reforms did not happen

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83. David McClendon & Aleksandra Sandstrom, *Child Marriage is Rare in the U.S., Though This Varies by State*, PEW RSCH. CTR. (Nov. 1, 2016), <https://www.pewresearch.org/fact-tank/2016/11/01/child-marriage-is-rare-in-the-u-s-though-this-varies-by-state/> [https://perma.cc/A6JW-2BLS].

84. TAHIRIH JUST. CTR., *supra* note 55, at 1.

85. *United States' Child Marriage Problem: Study Findings*, UNCHAINED AT LAST (Apr. 2021), <https://www.unchainedatlast.org/united-states-child-marriage-problem-study-findings-april-2021/> [https://perma.cc/642B-G7KU].

86. *Id.*

87. *Id.*

88. *See, e.g.*, Anjali Tsui et al., *Child Marriage in America: By the Numbers*, PBS (July 6, 2017), <http://apps.frontline.org/child-marriage-by-the-numbers> [https://perma.cc/E9T9-3QY4]; TAHIRIH JUST. CTR., *supra* note 58.

89. *See* Julitta Onabanjo & Mohamed M. Malick Fall, *Urgent Action Needed to Meet SDG to End Child Marriage by 2030*, UNICEF (March 9, 2021), <https://www.unicef.org/esa/stories/urgent-action-needed-meet-sdg-end-child-marriage-2030> [https://perma.cc/GB97-BXPA].

90. *Id.*

91. *Child Marriage a Problem for States*, SCI. NEWS-LETTER, May 2, 1925, at 8.

quickly or without strong opposition. “Despite numerous waves of reform, child marriage has been relatively common and relatively accepted throughout US history, a fact that evinces Americans’ ‘great faith’ in the ‘powers of marriage.’”<sup>92</sup>

#### A. *Revolutionary War Through the Antebellum Period*

Although the English colonies did not maintain marriage records, historians have demonstrated that in some seventeenth- and eighteenth-century communities, early marriages were common.<sup>93</sup> This was particularly the case in southern colonies where there were significantly more men than women and so parents had a “vested interest” in selecting spouses for their children.<sup>94</sup>

After the American Revolution, some of the original 13 colonies passed, amended, or updated their marriage laws, setting an age at which a child could get married either with or without parental consent.<sup>95</sup> As new states in the Midwest and South joined the Union, some kept marriage laws they had in place from their time as territories and some modified their laws.<sup>96</sup> Although the laws varied between the 13 colonies and the newer states, they had some similarities as to why a child’s right to marry should be regulated. That right dealt more with the parents’ ability to decide when their child should be able to get married as opposed to the well-being of the child.<sup>97</sup> In the South, marriage laws at this time were intended to regulate access to inheriting family’s wealth as opposed to protecting the child from marriage.<sup>98</sup> And the majority, if not all the laws, in place allowed for girls to marry earlier than boys.<sup>99</sup> Ultimately, the children of the new United States were protected from marriage unless their parents thought it was in their best interest to marry.<sup>100</sup> However, in the Midwest and West, the emphasis on a child’s chronological age began to grow in importance.<sup>101</sup>

#### B. *The Late Nineteenth Century Through the Early 1900s*

In the late 1800s, stories regarding child brides were regularly published in newspapers across the country, placing an emphasis on the girls’ child-likeness as

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92. James Schmidt, 10 J. HIST. CHILDHOOD & YOUTH 470, 470 (2017) (reviewing SYRETT, *supra* note 80).

93. SYRETT, *supra* note 80, at 16.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*; *see, e.g.*, Parton v. Hervey, 67 Mass. (1 Gray) 119 (1854).

100. SYRETT, *supra* note 80, at 34.

101. *Id.* at 30.



they entered marriages.<sup>102</sup> The tone of the publications “called attention to the inappropriateness of the marriage of children.”<sup>103</sup> Simultaneously, there was a movement for marriage reform throughout the United States with the focus on preventing divorce as the rates were increasing.<sup>104</sup> The way this linked to child marriages was that the reformers sought to prevent the wrong people from marrying each other, including those who were too young.<sup>105</sup> They also thought if couples had to wait longer to get marriage licenses, through mandatory waiting periods, it may prevent unsuitable matches from quickly being legally wed.<sup>106</sup> So they moved to abolish common law marriages, and relied on marriage licenses as a way to prevent child marriages and certain other groups from marrying.<sup>107</sup> Through these reformers’ efforts, the minimum marriage age was raised in more than half of the states by the early 1900s.<sup>108</sup> The modifications in the laws in these states included: raising the minimum age for marriage, enforcing a minimum marriage age where it did not exist, and changing the age at which parental consent was required for marriage (superseding the child’s wishes or intent to marry).<sup>109</sup> By changing the laws and publicizing the start and end of childhood marriages, parents were given the tools necessary to prevent early marriages and to exert their control over their children.<sup>110</sup>

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102. *Id.* at 119.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 122.

109. *Id.* at 130.

110. *Id.*; see also VIVIANA A. ZELIZER, *PRICING THE PRICELESS CHILD: THE CHANGING SOCIAL VALUE OF CHILDREN* 11 (Basic Books Inc., Publishers 1985) (discussing the changes in childhood in this era); GLENDA RILEY, *DIVORCE: AN AMERICAN TRADITION*, chs. 3, 5 (Univ. of Neb. Press 1997); NORMA BASCH, *FRAMING AMERICAN DIVORCE: FROM THE REVOLUTIONARY GENERATION TO THE VICTORIANS*, ch. 3 (Univ. of Cal. Press 1999). See generally NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* (Harv. Univ. Press 2000) (discussing the changes in marriage and divorce); STEVEN MINTZ, *HUCK’S RAFT: A HISTORY OF AMERICAN CHILDHOOD* (Belknap Press of Harv. Univ. Press 2004).

### C. *The Roaring 1920s*

In the 1920s, reformers of marriage laws framed their arguments around child protection and the dangers that marriage posed to children.<sup>111</sup> These reformers comprised various professionals, including social workers who relied on social sciences in furthering their goal of raising the minimum age of marriage.<sup>112</sup> However, despite the minority of child marriages occurring in immigrant communities throughout the country, immigrant families were blamed, and there was an attempt to control class and ethnic breeding.<sup>113</sup>

As states changed their minimum marriage age and the age parental consent was required, children who wished to marry went to more age-lax jurisdictions to marry.<sup>114</sup> Reformers during this time advocated for a constitutional amendment that would have created uniform marriage laws throughout the country.<sup>115</sup> However, opposition grew both among those who did not want this federal oversight of states and progressives who feared the progress that had been made in some states of not only raising the minimum age, but also in enforcing waiting periods would be undone.<sup>116</sup>

### D. *The Great Depression, the South, and Early Marriages*

As a result of the Great Depression, marriage rates were dropping and the age of those marrying increased in the 1930s compared to the 1920s.<sup>117</sup> However, in the South, early marriages continued to remain common.<sup>118</sup> Laws in some southern states accommodated early marriages (i.e., no minimum age, no common law age minimum, no parental consent requirement, and no waiting periods), but age was not “engrained” in these communities to distinguish adults from

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111. SYRETT, *supra* note 80, at 168; *see also* Becky Little, *When a Millionaire Married a Teen and Sparked Opposition to U.S. Child Marriage*, HISTORY, <https://www.history.com/news/child-marriage-scandal-millionaire-married-teenager> [https://perma.cc/EPP6-SYUT] (Aug. 30, 2018).

112. SYRETT, *supra* note 80, at 168.

112. *Id.*

114. *Id.* at 183; *see* Little, *supra* note 111.

115. SYRETT, *supra* note 80, at 183.

116. *Id.* at 185.

117. *Id.* at 203.

118. *Id.*

children.<sup>119</sup> Children had fewer protections afforded to them by nature of them being children.<sup>120</sup>

During the 1930s, perhaps as a break from reporting on the state of the nation, newspapers began to publish stories about early marriages occurring in the United States.<sup>121</sup> They focused on states' "lack of civilization" to allow such marriages to occur and reported on girls who needed saving—always white girls—ignoring the similar, if not worse, early marriage issues impacting communities of color.<sup>122</sup>

Culturally, age was not as important in rural communities during this time. Rural states "lagged behind the rest of the country" in the 1930s, with fewer bureaucratic systems in place to document births and ages, fewer interactions with medical professionals to assess development progress, and less "age-graded schooling to produce uniformity among same-age peers."<sup>123</sup> These issues were amplified in communities of color where "systemic racism and poverty structured life for many nonwhites no matter where they lived."<sup>124</sup> These circumstances, in addition to lack of access to contraception and exposure to sex at young ages, led to youthful pregnancies.<sup>125</sup> This in turn led to early marriages, including common law marriages.<sup>126</sup> Loopholes for child marriages continued to be an issue during the 1930s, regardless of states changing their child marriage laws.

#### *E. Post-World War II*

Following World War II, an increase of teenage marriages occurred throughout the United States, in both rural and urban areas.<sup>127</sup> Teenagers

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119. *See id.* at 204 ("If childhood was not strictly demarcated from adulthood, then some legal children were going to behave like adults."); *see also Famous Child Bride, Hubby Scheduled to Appear Here*, KINGSPORT TIMES, Oct. 28, 1937, <https://www.newspapers.com/clip/9700213/child-bride-hancock-county-tenneunice/> [<https://perma.cc/UX4B-F6HX>].

120. *See* SYRETT, *supra* note 80, at 205 ("As concerned citizens called for an annulment, most papers explained in cursory but accurate fashion why that was not possible: although the clerk should not have issued a marriage license for a girl below the common-law age of twelve, if neither Eunice and Charlie nor her parents sought to annul the marriage, officials were powerless to do so.").

121. *See id.* at 202–03.

122. *See id.* at 213.

123. *Id.* at 218.

124. *Id.* at 222.

125. *Id.* at 223.

126. *Id.*

127. *See id.* at 226–27.

increasingly married in the 20 years following World War II for a variety of reasons: the societal pressure on having a nuclear family; marriage being the solution for pre-marital sex, pregnancy, or both; and the “pursuit of adulthood” which included the desire to avoid parental regulation and control.<sup>128</sup>

How children bypassed the law to get married in the 1950s and 1960s varied, but was determined by the discrepancy between vital records and census data.<sup>129</sup> They lied to their parents and government officials in order to obtain licenses.<sup>130</sup> This was possible due to states’ lax laws on how applicant could obtain licenses and the lack of proof required to determine age.<sup>131</sup> Not until after 1960, and in some states the 1970s, were marriage applicants widely required to produce documentary proof of age, often in the form of a birth certificate.<sup>132</sup> Children also crossed state lines to friendly jurisdictions to marry during this time—referred to as “migratory marriage.”<sup>133</sup> To tackle this issue, states passed mandatory waiting periods between the application and issuance of a marriage license.<sup>134</sup> States that still had low minimum marriage ages began to raise such ages during this time, but allowed agencies to waive such requirement if proof was provided of pregnancy.<sup>135</sup>

As opposed to the previous decades, there was less momentum to change the laws during this time period.<sup>136</sup> The general public alongside sociologists and commentators looked to the cultural and familial causes for child marriages.<sup>137</sup>

#### F. Late Twentieth and Early Twenty-First Centuries

One study reported that the probability of American women being married before turning 18-years-old was six percent.<sup>138</sup> The Centers for Disease Control reported in 2010 that in the prior five years, four percent of all women and one percent of men married before turning 18.<sup>139</sup>

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128. *Id.* at 228–29.

129. *Id.* at 241.

130. *Id.* at 240–41.

131. *Id.* at 241; *see also* Little, *supra* note 111.

132. SYRETT, *supra* note 80, at 241.

133. *Id.*

134. *Id.* at 243.

135. *Id.* at 243–44.

136. *Id.*

137. *Id.* at 244.

138. *See* GOODWIN ET AL., *supra* note 82, at 2.

139. *See* CASEY E. COPEN ET AL., FIRST MARRIAGES IN THE UNITED STATES: DATA FROM THE 2006–2010 NATIONAL SURVEY OF FAMILY GROWTH 1, 5–6 (Nat’l Health Stat. Reps. 2012), <https://www.cdc.gov/nchs/data/nhsr/nhsr049.pdf> [<https://perma.cc/Q4LK-MQ6P>]. *But see* Le

Child marriages still take place in America today; in part, because age norms vary between rural and urban communities, poverty, race and religion.<sup>140</sup> Poverty can lead to early marriages because of higher rates of early pregnancies, the lack of sexual education, lack of access to contraceptives, poorly funded education systems, and fewer opportunities for children—especially girls.<sup>141</sup> Marriage is not only the solution to pregnancy in rural and religious communities, but also for statutory rape.<sup>142</sup> “Many judges and prosecutors are willing to waive charges if a man takes responsibility for his actions by marrying the girl he has statutorily raped and impregnated . . . .”<sup>143</sup> The more conservative a child or their family is, the more likely they will find that marriage is the only acceptable solution to their pregnancy.<sup>144</sup>

While child marriages still occur throughout the country and mostly in the South, the age Americans first get married has been climbing since the 1960s.<sup>145</sup> Marriage altogether has become less popular for African Americans and has been declining since then.<sup>146</sup> As Professor Ralph Banks notes, black women are the “most unmarried group of people” in the United States today.<sup>147</sup> He found that 7 out of 10 Black women are not married and 3 out of 10 Black women may never marry.<sup>148</sup> The decline in marriage for the lower income Black American population is attributable to slavery, cultural practices from ancestors, and incentives of government welfare programs.<sup>149</sup> Banks indicates that the decline of marriage in the middle class has to do with the ability of all genders to enter the workforce,

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Strat et al., *supra* note 47, at 524; GOODWIN ET AL., *supra* note 82, at 2 (using random period samples to determine the number of women in their sample who *had married* by age 18).

140. See generally Le Strat et al., *supra* note 47, at 524; HAMILTON, *supra* note 29.

141. See Das, *supra* note 78.

142. See Jackson, *supra* note 54, at 344; Johnson-Dahl, *supra* note 15, at 1069–70. The United States Code at 18 U.S.C. § 2243(c)(2) provided a marital defense to statutory rape until the 2022 amendment (Pub. L. No. 117-103, 136 Stat. 49, § 1312) eliminated such defense. However, a similar defense still exists in the United States Military Code under 10 U.S.C. § 920b and under some state laws (N.Y. PENAL LAW §130.10 (McKinney 2023)).

143. SYRETT, *supra* note 80, at 254.

144. See *id.* at 253–54.

145. *Id.* at 254.

146. RALPH RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE? HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE 6 (Dutton 2011).

147. *Id.*

148. *Id.*

149. *Id.* at 11–13.

and their freedom to have sex, have children, and live with a partner—all not being contingent on marriage.<sup>150</sup>

Looking at the rates of child marriages in states based on the laws they have in place is difficult. Do stricter laws result in lower child marriages? Or does the culture of the state children live in have more to do with whether children will marry at a higher rate? As Professor Nicholas Syrett of the University of Kansas states so pointedly, “[t]he law can certainly be read as an expression of the will of the people; whether minors take advantage of it has everything to do with the world around them.”<sup>151</sup>

Currently, 41 states allow for children under 18 to get married as of 2023.<sup>152</sup> The seven states that have banned child marriage entirely include: Delaware, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania and Rhode Island.<sup>153</sup> Massachusetts, which was the seventh to join the short list of states banning child marriage, did so in the summer of 2022.<sup>154</sup>

Out of the 41 states remaining, 20 include exceptions that do not require any minimum age to be married so long as there is parental or judicial consent.<sup>155</sup> Thus, it may not be sufficient to change a state’s laws to discourage child marriages given the exceptions that exist to grant a waiver of the minimum age requirement.<sup>156</sup> The U.S. Citizenship and Immigration Services’ (USCIS) policy on a marriage involving minors is that the law of the jurisdiction where the marriage took place governs the legality of a marriage, unless it “offends the strong public policy of the United States or the state of residence.”<sup>157</sup> When 41 states allow child marriages to occur and nearly half provide no minimum age so long as there is parental or judicial consent, it is fair to say that USCIS is unlikely to find that child marriages offend the public policy of the United States.<sup>158</sup> Furthermore, unless an applicant

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150. *Id.* at 20.

151. SYRETT, *supra* note 80, at 262.

152. *Child Marriage in the United States*, *supra* note 9.

153. *Help End Child Marriage*, UNICEF USA, <https://www.unicefusa.org/help/advocate/child-protection-and-inclusion/take-action-end-child-marriage> [<https://perma.cc/AX82-FX2A>].

154. Alba Ibraj, *Massachusetts Becomes 7th State to End Child Marriage*, UNICEF USA (Aug. 4, 2022), <https://www.unicefusa.org/stories/massachusetts-becomes-7th-state-end-child-marriage/40259> [<https://perma.cc/X537-C6XQ>].

155. *Child Marriage in the United States*, *supra* note 9.

156. *See id.*

157. *See* U.S. DEP’T OF HOMELAND SEC.: U.S. CITIZENSHIP & IMMIGR. SERVS., AFM PA-2019-01, MARRIAGE INVOLVING MINOR(S) (2019), [https://www.uscis.gov/sites/default/files/document/policy-alerts/2019-0215\\_AFM21-3.pdf](https://www.uscis.gov/sites/default/files/document/policy-alerts/2019-0215_AFM21-3.pdf) [<https://perma.cc/P8YZ-7GAA>].

158. *Id.*

is in one of the seven states that has completely banned child marriage, a USCIS agent would not be violating their procedures in granting a visa for a fiancé(e) or spouse that is a child.<sup>159</sup>

Alongside a legal change, resources need to be provided for rural and poor communities within states, including access to contraception, sexual education in school, more public education funding, and opportunities for education and careers for children to look forward to. What is just as troubling is that in addition to the state laws in place which allow for children to get married, children can still be engaged and married abroad and have their marriage take effect in the United States due to the Immigration and Nationality Act (INA).<sup>160</sup> Congress needs to prioritize reforming the INA to meet the needs of their constituents, the vast majority of whom do not know that child marriage is legal in the United States.<sup>161</sup>

#### IV. THE INA AND FREQUENCY OF SPOUSAL AND FIANCÉ(E) VISAS GRANTED

The Immigration and Nationality Act, since its enactment in 1952, has provided an organized structure of the United States' immigration laws and Congress has amended it over the years.<sup>162</sup> Since the INA does not specify any age minimums in its allocation of immigrant visas section, a U.S. child can petition for a visa for a spouse or fiancé(e) living in another country and a U.S. adult can petition for a visa for a minor spouse or fiancé(e) living in another country.<sup>163</sup> Congress provides immigration agencies extensive discretion to “determine what constitutes a valid, bona fide marriage for immigration purposes.”<sup>164</sup> To obtain spouse and fiancé(e) visas, two federal government agencies must approve the applications.<sup>165</sup> First, a petition is made to the USCIS.<sup>166</sup> Regardless of the ages involved, USCIS does not require any parental or judicial consent for the petitions

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159. *See generally id.*; *Help End Child Marriage*, *supra* note 153.

160. A marriage is valid for immigration purposes if the marriage is valid under the law where the marriage took place. *See Marriage and Marital Union for Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-2> [<https://perma.cc/X38B-USYY>] (Sept. 12, 2023).

161. Lawson et al., *supra* note 18, at 1; *see* Kohno et al., *supra* note 18.

162. Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952).

163. *See* 8 U.S.C. § 1153.

164. Medha Makhoul, *Theorizing the Immigrant Child: The Case of Married Minors*, 82 BROOK. L. REV. 1603, 1617 (2017).

165. *Immigrant Visa Process: Step 1 Submit a Petition*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition.html#ExternalPopup> [<https://perma.cc/QY2C-SGNA>].

166. *See id.*

to be filed or granted.<sup>167</sup> Once USCIS has approved a petition, the Department of State makes the determination on whether to issue a visa.<sup>168</sup> The Department of State returns or rejects few petitions once they are approved by USCIS.<sup>169</sup> Based on a report provided by USCIS analyzing petitions between fiscal year (FY) 2007 and FY 2017, the Department of State returned 2.6 percent of fiancé(e) and spousal petitions to USCIS and 37 percent of such petitions were revoked.<sup>170</sup>

Throughout the 11 years USCIS reported on, 8,686 petitions for spousal or fiancé(e) visas to the United States involved a child.<sup>171</sup> More than 5,500 petitions were completed by adults to bring a child spouse or fiancé(e) to the United States.<sup>172</sup> Almost 3,000 of the petitions involved a child bringing over an adult spouse or fiancé(e).<sup>173</sup> In 95 percent of the petitions approved by USCIS, the child involved in the petition identified as a girl.<sup>174</sup> In that same timeframe, FY 2007 to FY 2017, 4,749 children in the United States who were recipients of spousal or fiancé(e) visas obtained green cards and became lawful permanent residents.<sup>175</sup>

USCIS awarded some petitions where significant age differences existed.<sup>176</sup> Some examples include a 71-year-old U.S. citizen's petition for a 17-year-old spouse, a 14-year-old U.S. citizen's petition for a 48-year-old spouse, and 149 petitions where a child was engaged or married to someone over the age of 40.<sup>177</sup>

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167. *See id.*

168. *Immigrant Visa Process: Step 2 Begin National Visa Center (NVC) Processing*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition/step-2-begin-nvc-processing.html> [<https://perma.cc/D8X6-M3Q4>].

169. U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., *supra* note 11.

170. *Id.*

171. *Id.*

172. *Id.* at 14.

173. *Id.*

174. *Id.* at 2.

175. *Id.*

176. *Id.* at 3.

177. *Id.*



Figure 1. Petitions and Approvals Involving Minors 2007–2017<sup>178</sup>

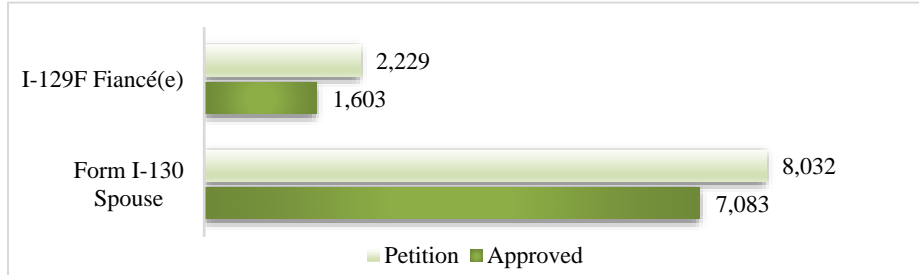
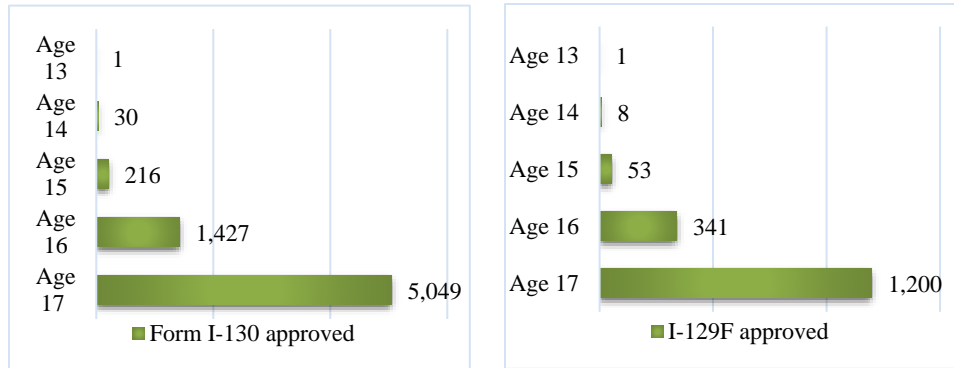
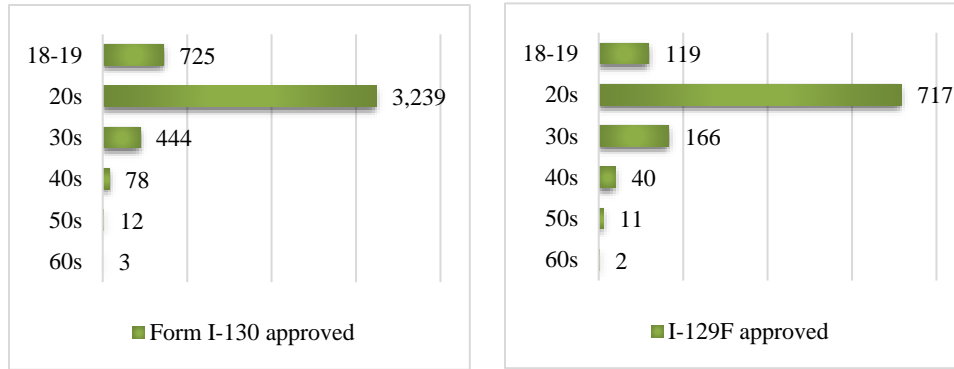


Figure 2. Age of Minor Involved in Approval<sup>179</sup>



178. *Id.* at 12; Colleen Long, *Requests to Bring in Child Brides OK'd; Legal Under US Laws*, AP (Jan. 11, 2019, 8:39 PM), <https://apnews.com/article/north-america-us-news-ap-top-news-marriage-immigration-19e43295c76d4d249aa51c9f643eb377> [<https://perma.cc/N73A-57UA>].

179. U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., *supra* note 11, at 13; Long, *supra* note 178. The Department of State rejected or terminated the petitions involving 13-year-olds that were approved by USCIS.

Figure 3. Age Ranges of Adult Petitioners for Minor Beneficiaries<sup>180</sup>

USCIS will only raise concern if the petitioner’s age at the time of marriage “violates the laws of the place of celebration or the public policy of the U.S. state in which the couple plans to reside.”<sup>181</sup> However, USCIS does not require the minor to provide parental or judicial consent, regardless of the state they plan to live in and its laws involving consent.<sup>182</sup>

There is little comprehensive data available on child marriages in the United States. The data referenced above was obtained from the USCIS by Senators Ron Johnson and Claire McCaskill for a committee report.<sup>183</sup> In an interview conducted by AP News, Senator Johnson indicated that it took over a year to get information on spouse and fiancé(e) visa petitions from USCIS.<sup>184</sup> The head of USCIS, Michael Bars, responded that as a result of this report, the agency created systems to flag applications that include a child.<sup>185</sup> However, in this interview Bars asserted that Congress needs to implement a change “to bring more certainty and legal clarity to this process for both petitioners and USCIS officers.”<sup>186</sup>

180. U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., *supra* note 11, at 15; Long, *supra* note 178.

181. U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., *supra* note 11, at 6.

182. *Id.* at 2.

183. *Id.*

184. Long, *supra* note 178.

185. *Id.*

186. *Id.*

Many of these spouse and fiancé(e) visa requests are reviewed at embassies and consulates.<sup>187</sup> Brett Bruen, a former foreign service officer and White House official under President Barack Obama, shared in an NBC News interview that employees at these embassies and consulates are instructed to approve applications to avoid receiving complaints from Congress or family members.<sup>188</sup>

As Professor Medha Makhoulf noted, the number of children who fall into the category of spouse and “become involved in the U.S. immigration system is difficult to estimate.”<sup>189</sup> However, based on records from the Department of Homeland Security’s Office of Immigration Statistics (OIS) from 1973 to 2014, about “20,500 immigrants under the age of eighteen obtained lawful permanent residence (LPR) status based on their relationship with a spouse.”<sup>190</sup> This number does not reflect children who sought entry through other types of visas, indicating that the actual number of married children entering the United States is higher.<sup>191</sup>

If the USCIS and Department of State were bound by the INA to reject applications where an applicant or beneficiary was under the age of 18, a government officer would not have to decide on whether granting a fiancé(e) or spousal visa violates public policy.<sup>192</sup> It would allow for a uniform system that would not be grounded on the reviewing officer’s discretion as to what violates public policy. Only the applications that include a humanitarian waiver request would be up to the discretion of a USCIS or Department of State officer to review and decide.<sup>193</sup> This would in turn save time for government agencies that are already backlogged, create a national standard of uniformity in application reviews, and prevent the United States’ immigration system from further encouraging child marriages.<sup>194</sup>

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187. Dartunorro Clark, *Advocates Slam Thousands of Child Marriages in U.S., Demand Congress Act*, NBC NEWS (Jan. 22, 2019, 3:25 AM), <https://www.nbcnews.com/politics/pollitics-news/us-immigration-system-approved-thousands-child-marriages-past-decade-n960416> [<https://perma.cc/M89E-3UQY>].

188. *Id.*

189. Makhoulf, *supra* note 164, at 1606.

190. *Id.*

191. *Id.* at 1606–07.

192. *See id.* at 1619.

193. *See infra* Part VI.A.

194. *See* Clark, *supra* note 187.

## V. COMPARISON TO OTHER COUNTRIES

How could the United States go about reforming its immigration laws? Certain countries have taken steps to prevent child marriages on a national level. The United States could follow those models and see a reduction in child marriages, as has been shown in Sweden, discussed below.

Comparative legal analysis is a tool utilized for identifying similarities and differences amongst competing laws and guiding legislative changes.<sup>195</sup> Through legal analysis and comparison, knowledge is acquired as “[t]he unknown is seen in terms of the known in a constant process of identifying both similarity and difference.”<sup>196</sup> The benefit of a comparative legal analysis is to identify legal approaches in other jurisdictions which may have value and applicability in our own legal system.<sup>197</sup> Comparative law is increasingly important to help “solve important public policy questions that often transcend national borders.”<sup>198</sup> By examining the similarity and dissimilarity among various nations, one can determine policies which should be rejected, retained, or imitated.<sup>199</sup> It is perhaps “the surest basis of legal reform.”<sup>200</sup>

In the field of comparative law, scholars have identified key purposes: broadening perspectives to analyze how people can do things differently; “examin[ing] a source of ideas [and] examples of different ways of defining and dealing with common social problems;” and studying the relationship between a certain set of laws and the society that created them.<sup>201</sup> In using comparative legal analysis, O. Kahn-Freund identifies three purposes that may be pursued when creating laws: “preparing the international unification of law, . . . giving adequate legal effect to a social change shared by the foreign country with one’s own country, and . . . promoting at home a social change which foreign law is designed either to express or to produce.”<sup>202</sup> Doing legal comparisons of the United States’

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195. Hiram E. Chodosh, *Comparing Comparisons: In Search of Methodology*, 84 IOWA L. REV. 1025, 1027 (1999); Rebecca Lefler, Note, *A Comparison of Comparison: Use of Foreign Case Law as Persuasive Authority by the United States Supreme Court, the Supreme Court of Canada, and the High Court of Australia*, 11 S. CAL. INTERDISC. L.J. 165, 171 (2001).

196. Chodosh, *supra* note 195, at 1058–59.

197. *See id.* at 1027–28.

198. Edward J. Eberle, *The Methodology of Comparative Law*, 16 ROGER WILLIAMS U. L. REV. 51, 54 (2011).

199. Federico Cammeo, *The Present Value of Comparative Jurisprudence*, 41 ANN. REP. A.B.A. 303, 304 (1918).

200. *Id.*

201. Chodosh, *supra* note 195, at 1049–50; Vivian Grosswald Curran, *Cultural Immersion, Difference and Categories in U.S. Comparative Law*, 46 AM. J. COMPAR. L. 43, 46 (1998).

202. O. Kahn-Freund, *On Uses and Misuses of Comparative Law*, 37 MOD. L. REV. 1, 2 (1974).

immigration laws to that of other countries as it relates to child marriage pursues each purpose, particularly in reference to the fundamental rights of children as outlined in various conventions, treaties, and international agreements.<sup>203</sup>

Comparative law is particularly salient with immigration law.<sup>204</sup> The development of immigration law in the United States and globally emphasizes that the power to regulate immigration is incidental to state sovereignty.<sup>205</sup> The idea of autonomous national regulation of immigration matters can be questionable, given the inter-dependent character of national immigration.<sup>206</sup> Comparative law—including the regular exchange of information on legislation, national procedures, statistics, and policy analyses—is therefore essential for policy-making and information-sharing agreements occurring throughout the world.<sup>207</sup> Legislators and administrators commonly commission comparative studies of law in connection with legislation in Europe.<sup>208</sup> International organizations also play an important role in disseminating information to further internationally shared goals.<sup>209</sup>

As it relates to child marriage, other countries have taken strong positions in ensuring their laws reflect the International UN Sustainable Development Goals to end child marriage by 2030.<sup>210</sup> The Mexican government's rationale is that by banning child marriage, it would be a proactive and expressive step, which will change social norms and reduce the occurrence of both formal and informal child marriages.<sup>211</sup> Other countries, such as Canada and some European countries, have

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203. *See id.*

204. *See* H. Patrick Glenn, *Comparative Law, Immigration and Human Rights*, 3 AFR. J. INT'L & COMPAR. L. 668, 674–76 (1991).

205. *See id.* at 674.

206. *Id.*

207. *Id.*

208. Ernst C. Stiefel & James Maxeiner, *Why are U.S. Lawyers Not Learning from Comparative Law?*, in *THE INTERNATIONAL PRACTICE OF LAW: LIBER AMICORUM FOR THOMAS BÄR AND ROBERT KARRER 3* (Nedin Peter Vogt et al. eds., Kluwer L. Int'l 1997).

209. *See, e.g., Help End Child Marriage, supra* note 153.

210. *See* UNICEF, *TOWARDS ENDING CHILD MARRIAGE: GLOBAL TRENDS AND PROFILES OF PROGRESS 11* (2021), <https://data.unicef.org/resources/towards-ending-child-marriage/> (download the report here).

211. Cristina Bellés-Obrero & María Lombardi, *Will You Marry Me, Later?: Age-of-Marriage Laws and Child Marriage in Mexico*, 58 J. HUM. RES. 221, 222–23 (2023).

limited child spouse and partner immigration applications by requiring that both spouses be over the age of 18.<sup>212</sup>

A marriage entered into, in which one or both parties were under the age of 18, is not legal in Scandinavian countries.<sup>213</sup> Since 2004, Sweden has moved to outlaw child marriage and did so completely in 2019.<sup>214</sup> In 2017, Denmark prohibited child marriage and has seen a reduction in child marriages.<sup>215</sup> Further, Denmark has a law known as the 24-year rule which has a restriction that nonresident spouses can be reunited and cohabit with their spouse only when both parties have reached the age of 24 (if the marriage took place when at least one party was a child).<sup>216</sup> In 2019, Finland similarly ceased toleration of child marriages.<sup>217</sup>

In Germany, a foreigner's spouse will not be granted a temporary residence permit unless both spouses are at least 18 years of age.<sup>218</sup> In France, the spouse must be over the age of 18 on the date of filing the immigration application.<sup>219</sup> In England and Wales, there has been concern about the loopholes in their legal system which allow for child marriages to occur, much like the United States.<sup>220</sup> A

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212. *Sponsor Your Spouse, Partner or Children: Who You Can Sponsor*, GOV'T OF CAN., <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/spouse-partner-children/who-you-can-sponsor.html> (Aug. 4, 2023); *Denmark – Analysis of Legislation on Spouse Reunification*, NAT'L HUM. RTS. INSTS. F. (Oct. 18, 2004), <https://web.archive.org/web/20071013084429/http://www.nhri.net/news.asp?ID=713>.

213. See Michael Bogdan, *Some Critical Comments on the New Swedish Rules on Non-recognition of Foreign Child Marriages*, 15 J. PRIV. INT'L L. 247, 247 (2019); *Denmark*, GIRLS NOT BRIDES, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/denmark/> [<https://perma.cc/85KY-JWQP>]; *Finland*, GIRLS NOT BRIDES, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/finland/> [<https://perma.cc/2WTC-UQW6>].

214. Bogdan, *supra* note 213, at 247, 249.

215. *Denmark*, *supra* note 213.

216. *Denmark – Analysis of Legislation on Spouse Reunification*, *supra* note 212.

217. *Finland*, *supra* note 213.

218. Aufenthaltsgesetz [AufenthG] [Residence Act], Feb. 25, 2008, BGBI I at 162, last amended by Article 4b, Oct. 30, 2017, BGBI I at 166 (Ger.), [https://www.gesetze-im-internet.de/englisch\\_aufenthg/](https://www.gesetze-im-internet.de/englisch_aufenthg/) [<https://perma.cc/39BC-X5PG>].

219. Chantal Pacôme, *Regroupement familial: Quelles sont les conditions à remplir pour le demandeur et sa famille?*, AIDE-SOCIALE.FR (Dec. 22, 2022) (Fr.), <https://www.aide-sociale.fr/regroupement-familial-conditions/#conditions> [<https://perma.cc/B69A-MGDT>].

220. Emma Batha, *UK Set to End Legal Loophole Allowing Child Marriage*, REUTERS (June 16, 2021, 5:42 AM), <https://www.reuters.com/article/us-britain-law-child-marriage-trfn/uk-set-to-end-legal-loophole-allowing-child-marriage-idUSKCN2DS11T> [<https://perma.cc/ZP7G-YW7B>].

change was made, as a law came into effect on February 27, 2023, that impacted child marriages.<sup>221</sup> Unlike the United States, the laws in effect prior to that date still required that both spouses be over the age of 18 to apply for a partner or spousal visa.<sup>222</sup> The Marriage and Civil Partnership (Minimum Age) Act 2022 requires both spouses to be over the age of 18 for foreign registered partnerships.<sup>223</sup> The act requires that any marriage solemnized before a party turns 18 will be deemed void.<sup>224</sup> The new law applies to both civil and religious marriages.<sup>225</sup> It criminalizes the act of causing a child to get married before turning 18, regardless of whether it is coercion or not.<sup>226</sup>

#### A. Sweden Background

A country that has extensive research, data, and criticism readily available on immigration and child marriages is Sweden. IÄL (1904:26) on Certain International Relationships on Marriage and Guardianship, was first introduced in Sweden in 1905 with the signing of the Hague Convention and also the CRC; it was related to the registration of marriage, divorce, and annulment.<sup>227</sup>

[A] citizen from a foreign country could get married in Sweden if there were no impediments . . . in the legislation of the person's home country. However, if a child under 15 years old wanted to get married in Sweden, even if the marriage would have been approved by its home country's legislation, a permission from the county administration would be required. On the other side, if the child had got married in the home country [that allowed underage

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221. Ministry of Just. & Lord Bellamy KC, *Implementation of the Marriage and Civil Partnership (Minimum Age) Act 2022*, GOV.UK (Aug. 9, 2022), <https://www.gov.uk/government/news/implementation-of-the-marriage-and-civil-partnership-minimum-age-act-2022> [<https://perma.cc/UR4C-74DX>].

222. Marriage and Civil Partnership (Minimum Age) Act 2022, c. 28 (UK), <https://www.legislation.gov.uk/ukpga/2022/28/contents/enacted> [<https://perma.cc/SY2R-TFD9>].

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. María Noel López Melonio, Asking “The Child Question” - An Analysis of the Child Perspective of Swedish Legislation Concerning Child Marriage with Special Focus on the Recognition of those Enacted in Other Countries 10 (2020) (Master's Thesis in Law, Umeå University), <https://www.diva-portal.org/smash/get/diva2:1471406/FULLTEXT01.pdf> [<https://perma.cc/U8ZW-YRTN>].

marriage], the marriage was recognized in Sweden even if there could be impediments for it in Swedish legislation.<sup>228</sup>

In 2003, there was an amendment concerning marriage between foreign citizens in which one partner who had a connection with Sweden at the time of registration would be subject to Swedish impediments.<sup>229</sup> However, if both parties lacked a connection with Sweden at the moment of marriage, it was still recognized.<sup>230</sup> In 2014, a “special reasons” exception was introduced in which marriages where the partners had children or had lived together for a long time could be recognized.<sup>231</sup> At this point,

marriage would not be recognized . . . if 1) there was an impediment for it according to Swedish legislation, 2) there was reasons to believe that one of the partners was forced to get married or 3) the marriage was enacted with an authorization . . . because the partners were not both present in the same place at the time of the marriage. . . . If, on the opposite, one of the partners had a connection with Sweden at the moment of marriage . . . “special reasons” [could still hold the marriage valid].<sup>232</sup>

In 2014, the “special reasons” exception was changed to “serious reasons” and was more restrictively applied.<sup>233</sup> “It had been made clear that the previous laws had loopholes which made it harder to fight the [child] marriages.”<sup>234</sup> In 2017, and later enacted in 2019, the Swedish Government proposed a more restrictive approach to recognizing child marriages performed outside of Sweden, aimed at contracting and not accepting the occurrence of child marriage in Sweden.<sup>235</sup>

[A] marriage that has been enacted in accordance with foreign law will not be recognized if: 1) one of the partners is under 18 at the moment of the marriage; 2) at the moment when the marriage was enacted, existed other obstacles against the marriage according to the Swedish law and if at least one of the partners was a Swedish citizen or a resident of the country; 3) there is reason to believe that the marriage was enacted under coercion, or 4) not both

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228. *Id.*

229. *Id.* at 10–11.

230. *Id.* at 11.

231. *Id.*

232. *Id.*

233. *Id.*

234. Johanna Sabel, *Child Marriage, Only for Some – An Argumentation Analysis of the Arguments Regarding Child Marriage in the Swedish Political Arena 23* (2018) (Bachelor Thesis, Malmö University), <https://www.diva-portal.org/smash/get/diva2:1483368/FULLTEXT01.pdf> [<https://perma.cc/C6HX-EFJE>].

235. Melonio, *supra* note 227, at 12–13.



partners were present at the moment of the marriage and at least one of them was a Swedish citizen or had residence in Sweden.<sup>236</sup>

To reiterate, no marriage shall be recognized in Sweden if either of the parties were under the age of 18 years old at the time of marriage, unless there are exceptional reasons to recognize the marriage after both parties reach 18 years old or the parties may remarry.<sup>237</sup> This new amendment does not apply to marriages conducted before January 2019, thus those previous requirements are still relevant for older marriages.<sup>238</sup>

### B. *Critical Comments and Analysis of Swedish Law*

The Swedish stance is that everyone under the age of 18 is a child, and “Swedish law should work as a protection for people” most vulnerable to having their human rights violated: women and children.<sup>239</sup> “Children have the right to go to school and to an education, to have opportunities for leisure interests and to develop as an individual. Living in a marriage means responsibilities that a child should not have.”<sup>240</sup> Therefore, marrying a child is forbidden and foreign child marriages are generally not recognized as valid in Sweden.<sup>241</sup> Across the board, child marriage is viewed as a violation of the rights of the child and leads to widespread negative consequences for the child and their future offspring.<sup>242</sup> However, some critics of the Swedish law assert that automatic nonrecognition of foreign child marriages may not protect the child spouse from the harmful effects of being in an underage marriage and could strip the spouse of the legal and economic rights they would otherwise have in a recognized marriage.<sup>243</sup>

There is no publicly available government data on child marriage in Sweden, and the reports that are mentioned in the literature are either hard to find or not translated. One report that is mentioned several times is a 2016 report from the

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236. *Id.* at 13.

237. Giesela Ruehl, *Sweden: New Rules on Non-Recognition of Underage Marriages*, CONFLICT OF LAWS.NET (Feb. 6, 2019), <https://conflictoflaws.net/2019/sweden-new-rules-on-non-recognition-of-underage-marriages/> [<https://perma.cc/Y7Q4-VKXW>].

238. Bogdan, *supra* note 213, at 252.

239. Sabel, *supra* note 234, at 31 (emphasis omitted).

240. SOCIALSTYRELSEN, ABOUT CHILD MARRIAGE – LAWS AND REGULATIONS IN SWEDEN 1–2 (2020), <https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/vagledning/2019-2-3-about-child-marriage.pdf> [<https://perma.cc/G4ER-5T29>].

241. *Id.*

242. See Onabanjo & Malick Fall, *supra* note 89.

243. Bogdan, *supra* note 213, at 252.

Swedish Migration Agency, which found “information on 132 married children: 97 [percent] were girls, and a majority were 16 or 17 years old.”<sup>244</sup> These 132 married children were asylum seekers who were married when they arrived in Sweden, mostly coming from Syria, Afghanistan, and Iraq.<sup>245</sup> One article mentions a report that in 2011 “there were 13 children between 15 and 17 years old that were registered as married in Sweden.”<sup>246</sup> The author continues by saying that figure is likely several times larger due to illegal or invalid marriages.<sup>247</sup>

With the lack of data on child marriages before and after the enactments of these child marriage regulations in Sweden, it is hard to know the implications of such a restrictive law. Sweden’s intentions are to protect children by eradicating child marriages from occurring in, and coming to, Sweden.<sup>248</sup> However, the invalidation and nonrecognition of foreign child marriages may leave those who are most vulnerable—the ones these regulations are meant to protect—in compromised positions.

Sweden, in drafting its law, created an “escape clause” permitting child marriages in rare circumstances; however, it left much of the details up for interpretation via case law.<sup>249</sup> Michael Bogdan discusses that the government agency which maintains and controls the population records has not had reason to register any child marriage since 2014.<sup>250</sup> This indicates that the governing body in interpreting the escape clause is strict when determining what is sufficient to meet the extraordinary reasons.<sup>251</sup>

### C. *How the United States Can Learn from Sweden*

While the Swedish model has been effective at deterring child marriages from happening, it has done so at a cost.<sup>252</sup> It has led to vulnerable children being

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244. EU AGENCY FOR FUNDAMENTAL RIGHTS, CURRENT MIGRATION SITUATION IN THE EU: SEPARATED CHILDREN 10 (2016), [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-december-2016-monthly-migration-report-separated-childr.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-december-2016-monthly-migration-report-separated-childr.pdf) [<https://perma.cc/7BTY-NYAJ>].

245. Emma Batha, *Child Bride Refugees Spur Sweden to Tighten Marriage Law*, REUTERS (Oct. 23, 2018), <https://www.reuters.com/article/us-sweden-childmarriage-law/child-bride-refugees-spur-sweden-to-tighten-marriage-law-idUSKCN1MY01J> [<https://perma.cc/V4VG-U97D>].

246. Melonio, *supra* note 227, at 22.

247. *Id.*

248. SOCIALSTYRELSEN, *supra* note 240, at 1–2.

249. Melonio, *supra* note 227, at 16–17.

250. Bogdan, *supra* note 213, at 250.

252. *See* Melonio, *supra* note 227, at 16–17.

252. Bogdan, *supra* note 213, at 250.

revictimized, abandoned, and left in worse conditions.<sup>253</sup> Sweden provides an exception to the nonrecognition of child marriages, but has not registered one child marriage since 2014.<sup>254</sup> Leaving it up to the courts to determine what counts as an extraordinary reason may be providing too much deference to jurists, practitioners, or families when determining how to proceed. More guidance is needed to assist governing bodies in determining whether to grant such exceptions.

When drafting its own immigration law reforms, the United States needs to provide a humanitarian waiver exception to allow for some children who are living in conflict zones to marry. Leaving it up to the courts or government officials to make that determination without proper guidelines could lead to the same result as what is occurring in Sweden, where no exceptions are ever granted.<sup>255</sup> Having the INA ban all child marriages and deny all child fiancé(e) and spousal visas from being granted may be more harmful than the repercussions of child marriage to some children who are living in high conflict and war zones. That is because there are disproportionate impacts on children who live in conflict.<sup>256</sup> Some of the impacts include: death, injury, disability, illness, rape or sex work for subsistence (potentially leading to sexually transmitted diseases), psychological suffering, moral and spiritual impacts, social and cultural losses, and becoming child soldiers.<sup>257</sup>

#### VI. AMENDING THE INA TO STOP ENCOURAGING CHILD MARRIAGES

As discussed in Part III, the INA is where the U.S. immigration laws are codified.<sup>258</sup> Various sections address spousal and fiancé(e) visas and throughout there is no age minimum outlined as to who can petition or be a beneficiary of such a visa.<sup>259</sup>

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253. *See id.* at 252–53. In a case decided in 2012, a Swedish Court refused to register a marriage validly concluded in Palestine by a Swedish resident because the ceremony took place 10 days before her 18th birthday. *Id.* at 250. The court found no reasons to apply the escape clause regardless of the minimal deviation and the woman being pregnant. *Id.*

254. *Id.*

255. *See id.*

256. *Countries in Conflict*, SAVE THE CHILDREN, <https://www.savethechildren.org/us/charity-stories/impact-of-syria-conflict-children-mental-health#:~:text=The%20Emotional%20Effects%20of%20War,the%20end%20of%20the%20conflict> [https://perma.cc/GRV4-YYXL].

257. Joanna Santa Barbara, *Impact of War on Children and Imperative to End War*, 47 CROATIAN MED. J. 891, 891–92 (2006).

258. Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952).

259. *Id.*

Age is addressed in regards to parents in 8 U.S.C. § 1151(b)(2)(A)(i) where “immediate relatives” is defined as the “children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age.”<sup>260</sup> The drafters of this section set the minimum age of 21 when it is regarding petitioning for parents, but they did not address the age requirement or minimum for spouses.<sup>261</sup>

Under 8 U.S.C. § 1153(a)(2), a qualified immigrant includes spouses of an alien lawfully admitted for permanent residence.<sup>262</sup> Under 8 U.S.C. § 1154(a)(1)(A)(i) the petitioning procedure for immigrant status is outlined for an “alien” spouse.<sup>263</sup> In neither of these provisions is a minimum age included.<sup>264</sup>

Under 8 U.S.C. § 1184(d)(1), the issuance of visas to fiancé(e)s is described.<sup>265</sup> It states what information should be included regarding criminal convictions and restraining orders against the petitioner.<sup>266</sup> It explains that there must be “satisfactory evidence” regarding how long the parties have known each other, their bona fide intention to marry, and their ability to legally marry within 90 days of the beneficiary entering the United States.<sup>267</sup>

All of these provisions are examples of where fiancé(e), spousal, or both types of visas are discussed in detail.<sup>268</sup> Yet no limitations are included as to what age is permissible for someone to petition for a fiancé(e) or spousal immigrant visa, or what age the beneficiary must be in order to be granted a fiancé(e) or spousal visa.<sup>269</sup> It does indicate that the marriage has to legally take effect in the United States within 90 days of entry for a fiancé(e) visa.<sup>270</sup> However, given that 41 states currently allow children to get married, satisfying that 90 day fiancé(e) requirement does not prevent a child from getting married in the United States.<sup>271</sup>

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260. 8 U.S.C. § 1151(b)(2)(A).

261. *See id.*

262. *Id.* § 1153(a)(2)(A).

263. *Id.* § 1154(a)(1)(A)(i).

264. *See id.* § 1153(2)(A); § 1154(a)(1)(A)(i).

265. *Id.* § 1184(d)(1).

266. *Id.*

267. *Id.*

268. *See id.* §§ 1151, 1153, 1154, 1184.

269. *See* §§ 1151, 1153, 1154, 1184.

270. *Id.* § 1184(d)(1).

271. *Id.*; *Child Marriage in the United States*, *supra* note 9.

The INA has been amended numerous times.<sup>272</sup> It has included updates, for example, for petitioners who fall under the protections of the Violence Against Women Act of 1994 (VAWA).<sup>273</sup> “VAWA modified the INA to permit certain abused spouses, children, and parents of U.S. citizens and [Legal Permanent Residents] to petition for legal status independently of their abusive sponsors.”<sup>274</sup> The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) amended § 319(a) of the INA to change residency requirements for survivors of domestic violence to naturalize at three years as a lawful permanent resident from five years.<sup>275</sup> “The VTVPA expanded this provision to include spouses, former spouses and children of U.S. citizens who have been battered or subjected to extreme mental cruelty by their U.S. citizen spouse or parent.”<sup>276</sup> These are a few examples of the numerous times the INA has been amended. Therefore, amending the INA to reflect a change in the minimum age of petitioners or beneficiaries of a fiancé(e) or spousal visa and a humanitarian waiver discussed in Part VII would not be groundbreaking.<sup>277</sup>

#### A. Humanitarian Waiver to Grant Spousal and Fiancé(e) Visas

While there is a need to discourage child marriages from occurring, banning all applications for spousal or fiancé(e) visas that involve a child may actually cause more harm to some children. If the INA were to be reformed to stop issuing fiancé(e) and spousal visas when a child is involved, there should be a humanitarian waiver exception that is granted in specific circumstances where it would be in the *best interest of the child* and for their basic human rights to be brought to the United States on a spousal or fiancé(e) visa.

In circumstances where a child resides in a conflict zone, country, state, or territory that has been flagged by the U.S. Department of State as dangerous, or a

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272. *Immigration and Nationality Act*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act> [https://perma.cc/YJ9W-Y3BY].

273. See 34 U.S.C. § 12471.

274. WILLIAM A. KANDEL, IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (VAWA) 3 (2012), <https://sgp.fas.org/crs/misc/R42477.pdf> [https://perma.cc/7JU7-NYEC] (internal citations omitted).

275. PRAKASH KHATRI, RECOMMENDATION FROM THE CIS OMBUDSMAN TO THE DIRECTOR, USCIS (2004), [https://www.dhs.gov/sites/default/files/2021-11/recommendation\\_to\\_correct\\_natz\\_policy\\_memo\\_to\\_comply\\_with\\_ina\\_section\\_319a\\_0.pdf](https://www.dhs.gov/sites/default/files/2021-11/recommendation_to_correct_natz_policy_memo_to_comply_with_ina_section_319a_0.pdf) [https://perma.cc/UU27-EJ2W].

276. *Id.*

277. See *supra* Part VII.

country, state, or territory that has been reported from various reliable sources as being unsafe, they should be permitted to submit an affidavit in support of their spousal or fiancé(e) visa application that requests a humanitarian waiver. Their affidavit should outline the following: risks that the spouse or fiancé(e) face in their home country, the benefits of coming to the United States, and how the beneficiary would provide for them and their well-being.

USCIS would have the opportunity to review the application with supplemental affidavits and evidence and grant a waiver for the specific individual involved. This would require that USCIS have discretion in their determination upon review of affidavits and evidence, not unlike the discretion USCIS has in regards to other types of immigration relief.<sup>278</sup> However, there are issues that will arise if the USCIS and Department of State are to provide an exception for a humanitarian waiver.

There should be a limit as to when a waiver can be granted to children based on their age. While there is presently little to no data that demonstrates a clear line of when a child would be at graver risk for death, information is available as to the risks associated with a girl's physical health and maternal mortality if a girl gives birth before turning 18 years old.<sup>279</sup> As Syrett explains in *American Child Bride: A History of Minors and Marriage in the United States*, the basis for common law marriage ages came from presumptions about puberty and intellectual capacity.<sup>280</sup> When North American colonial legislatures raised these ages, they did so largely to protect parental interest in their children's labor and possible fortunes, not as a means to protect youthful people.<sup>281</sup> The CRC is explicit in determining what standard to apply for children when courts of law, administrative authorities, or legislative bodies are concerned.<sup>282</sup> So now that we are in the twenty-first century, when deciding what age a child should be permitted to marry for immigration visa purposes, we must make a determination based on numerous factors in line with the best interest of the child.<sup>283</sup> The best interest analysis may include: the capacity of the child to understand they are entering a marriage, their mental and physical health, their opportunities for education and career advancement, and balancing the benefits and risks of staying in their home country versus coming to the United

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278. See U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., *supra* note 11, at 2.

279. See *supra* Part II (describing the negative impacts of child marriages).

280. See SYRETT, *supra* note 80, at 191.

281. See *id.* at 19–27.

282. G.A. Res. 44/25, Convention on the Rights of the Child, art. 3 (Nov. 20, 1989).

283. UNHCR: THE UN REFUGEE AGENCY, UNHCR GUIDELINES ON DETERMINING THE BEST INTERESTS OF THE CHILD 23 (2008), <https://www.unhcr.org/us/media/unhcr-guidelines-determining-best-interests-child> [<https://perma.cc/9QNF-TLVT>].

States and being married.<sup>284</sup> The age difference between a child and their adult spouse matters when determining whether a waiver should be granted due to the higher risks associated with domestic violence, lack of agency, and decision-making ability when a child marries.<sup>285</sup> When determining what age difference is permissible for a humanitarian waiver exception to a fiancé(e) or spousal visa application, numerous factors should be considered when looking at the ages of the two parties involved. The determination should include an *in camera* interview with a USCIS officer separately with each child petitioner or beneficiary similar to what the legislature required in New York for marriages involving children in 2017 until the latest reform in 2021 that banned all child marriages.<sup>286</sup> Like a judge in New York was required to make a finding, a USCIS officer should make a report indicating that the child is not being compelled by force, threat, persuasion, fraud, coercion, or duress.<sup>287</sup> The officer should reach a conclusion concerning if it is in the best interest of the child for the visa to be granted. Some of the relevant factors the USCIS officer can look at are: the age gap between the parties, the power dynamics and imbalance between the parties, whether the parties are capable of consenting, whether there is a history or heightened risk “of domestic violence between the parties, and whether there is a history of domestic violence between a party and either parties’ or legal guardians’ family members.”<sup>288</sup> In addition, the

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284. Best interest of the child is a legal standard utilized in state jurisdictions, but also has been referenced in the Amendments to the Constitution, various federal statutes and cases from the Supreme Court of the United States. *See* U.S. CONST. amend. XIV, § 1; 25 U.S.C. § 1916; 50 U.S.C. § 3938; *Reno v. Flores*, 507 U.S. 292 (1993); *Hodgson v. Minnesota*, 497 U.S. 417 (1990); *Troxel v. Granville*, 530 U.S. 57 (2000).

285. *See* HAMILTON, *supra* note 29, at 7–9.

286. MELISSA L. BREGER ET AL., *NEW YORK LAW OF DOMESTIC VIOLENCE* § 1:5 (3d ed., Thomson Reuters 2022) (“In 2017, the legislature not only increased the age of minors who are prohibited from marrying to under 17 from under 14, but also required that the judge shall hold an *in camera* interview, separately with each minor party, and make written affirmative findings that, among other things, the minor was not being compelled by force, threat, persuasion, fraud, coercion or duress, and that in making its findings the court must consider, among other relevant factors, the age difference between the parties, whether there is a power imbalance between the parties, whether the parties are incapable of consenting to a marriage for want of understanding, whether there is a history of domestic violence between the parties, and whether there is a history of domestic violence between a party and either parties’ or legal guardians’ family members. The law was amended again in 2021 to disallow any marriages of persons under age 18. In amending the law, the Legislature reasoned, ‘In waiting an additional year to marry, there is a greater likelihood that women are making their own decision to marry, are not pressured into coercive sex, and are not experiencing emotional or physical abuse.’”).

287. *See id.*

288. *Id.*

officer can look to whether the parties are related by blood, the child's own desire for marriage via an affidavit in support, and if the risks in the child's own country outweigh the risks associated with child marriage.

*B. Draft Amendments to the INA*

Various sections of the INA address spousal and fiancé(e) visas.<sup>289</sup> These provisions define an immediate relative, explain who a qualifying immigrant is along with the allocation of visas to such immigrants, and outline the parameters for a fiancé(e) to obtain a visa or permanent immigration status.<sup>290</sup> Given that none of these sections address any age limitations for petitioners or beneficiaries, the proposed amendments should include a minimum age of 18 at the time of marriage and application for the spousal and fiancé(e) visa.<sup>291</sup> In addition to the minimum age requirement, they should incorporate a humanitarian waiver exception. The amendments should be reflected in the notes of each section. Relevant sections of

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289. Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952).

290. See 8 U.S.C. §§ 1101, 1151(b)(2)(A)(i), 1153(a)(2)(A), 1184(d)(1).

291. See §§ 1101, 1151(b)(2)(A)(i), 1153(a)(2)(A), 1184(d)(1).



the INA that must address the amendments include: § 1151(b)(2)(A)(i),<sup>292</sup> § 1153(a)(2),<sup>293</sup> § 1184(d)(1),<sup>294</sup> and 8 U.S.C. § 1101.<sup>295</sup>

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292. § 1151(b)(2)(A)(i) (“For purposes of this subsection, the term ‘immediate relatives’ means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen’s death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen’s death but only if the spouse files a petition under section 1154(a)(1)(A)(ii) of this title within 2 years after such date and only until the date the spouse remarries. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 1154(a)(1)(A) of this title remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.”).

293. § 1153(a)(2) (“Qualified immigrants- (A) who are the spouses or children of an alien lawfully admitted for permanent residence, or (B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence, shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (A).”).

294. § 1184(d)(1) (“(1) A visa shall not be issued under the provisions of section 1101(a)(15)(K)(i) of this title until the consular officer has received a petition filed in the United States by the fiancée or fiancé of the applying alien and approved by the Secretary of Homeland Security. The petition shall be in such form and contain such information as the Secretary of Homeland Security shall, by regulation, prescribe. Such information shall include information on any criminal convictions of the petitioner for any specified crime described in paragraph (3)(B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in paragraph (3)(B)(i). It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien’s arrival, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the admission of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be removed in accordance with sections 1229a and 1231 of this title.”).

295. § 1101(a)(15)(K) (“[S]ubject to subsections (d) and (p) of section 1184 of this title, an alien who- (i) is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 1154(a)(1)(A)(viii)(I) of this title) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission; (ii) has concluded a valid marriage with a citizen of the United States (other than a citizen

When defining “immediate relative” under § 1151(b)(2)(A)(i) and “qualified immigrant” under § 1153(a)(2), the proposed amendments should state both spouses must be over the age of 18 at the time of marriage and when submitting their application for an immigrant visa.<sup>296</sup> When discussing the issuance of a visa for a fiancé(e) under § 1184(d)(1), the proposed amendment should say that issuance of a visa for a fiancé(e) is contingent on both petitioner and beneficiary being over the age of 18 when submitting their application for an immigrant visa.<sup>297</sup> When discussing relief available to a fiancé(e) under § 1101, the proposed amendment should state that both the petitioner fiancé(e) and beneficiary fiancé(e) must be over the age of 18 at the time of entry and state that a valid marriage is contingent on both the petitioner and beneficiary being over the age of 18 when submitting their application for an immigrant visa.<sup>298</sup> These amendments should incorporate a special exemption for the age minimum limitation if the parties are seeking a humanitarian waiver.

## VII. CONCLUSION

The Violence Against Women Act, which Congress passed in 2013 and was reauthorized in 2022, requires the Secretary of State to develop a strategy to prevent child marriage in developing countries.<sup>299</sup> But there is a dire need to address child marriages that happen in the United States and how our own immigration system is encouraging children to marry before turning 18. While child marriages in the United States have declined in the past several decades, without reforming our federal laws and taking legislative action, that number will not get to zero.<sup>300</sup> If the United States were to take steps to reform the INA, to prevent fiancé(e) or spousal visas from being granted if a child is one of the parties, unless there is a humanitarian waiver, this could discourage marriages from happening in the United States as well as abroad. If the federal government makes

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described in section 1154(a)(1)(A)(viii)(I) of this title) who is the petitioner, is the beneficiary of a petition to accord a status under section 1151(b)(2)(A)(i) of this title that was filed under section 1154 of this title by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien[.]”).

296. See §§ 1151(b)(2)(A)(i), 1153(a)(2).

297. See § 1184(d)(1).

298. See § 1101.

299. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 1207, 127 Stat. 54; *Fact Sheet: Reauthorization of the Violence Against Women Act (VAWA)*, THE WHITE HOUSE (Mar. 16, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/16/fact-sheet-reauthorization-of-the-violence-against-women-act-vawa/> [<https://perma.cc/4QJ9-PC6P>].

300. *Child Marriage – Shocking Statistics*, *supra* note 21.

changes acknowledging that a valid marriage is only one where both parties are over the age of 18, it would stop the immigration incentive which currently promotes child marriage. If the United States takes this concrete step, it may impact the social norms happening in the United States, but also abroad and in developing countries where the rates at which children marry are higher than in the United States. In order to change social norms, it takes time and effort, and by taking such a step it will help preserve the human rights of children.<sup>301</sup> The United States must learn from other countries' shortcomings and make the necessary changes. Not only does the United States need to reform the INA, but the 41 states currently not prohibiting child marriage that also need to change their laws, and in due time there would be a change in social norms that would prevent many child marriages from taking place on our soil.<sup>302</sup> However, the United States should avoid immigrant-blaming or shutting out all immigrant children from seeking this type of immigration relief. There must be a humanitarian waiver option available where it would be less harmful to a child to marry and leave their home country than remain. Both USCIS and Department of State officers are provided with discretion when reviewing immigration applications,<sup>303</sup> and by making such changes to the INA, it would provide a uniform system of reviewing fiancé(e) and spousal visa applications, but also allow for evidence to be reviewed as it relates to a humanitarian waiver and determining whether it is necessary.

The negative consequences for children who enter into marriage are numerous.<sup>304</sup> It impacts their physical and mental well-being, their education and financial trajectory, and increases their chance at being in a relationship where there is domestic violence.<sup>305</sup> Children need protection through the laws we have in place, so the INA should be reformed to set a minimum age of 18 for the petitioner or beneficiary of a fiancé(e) or spousal visa, to ensure children's basic human rights are protected.

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301. *See, e.g.,* Bellés-Obrero & Lombardi, *supra* note 211.

302. *About Child Marriage in the U.S., supra* note 9.

303. U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., *supra* note 11, at 2.

304. *See supra* Part II.A.

305. *See supra* Part II.A.