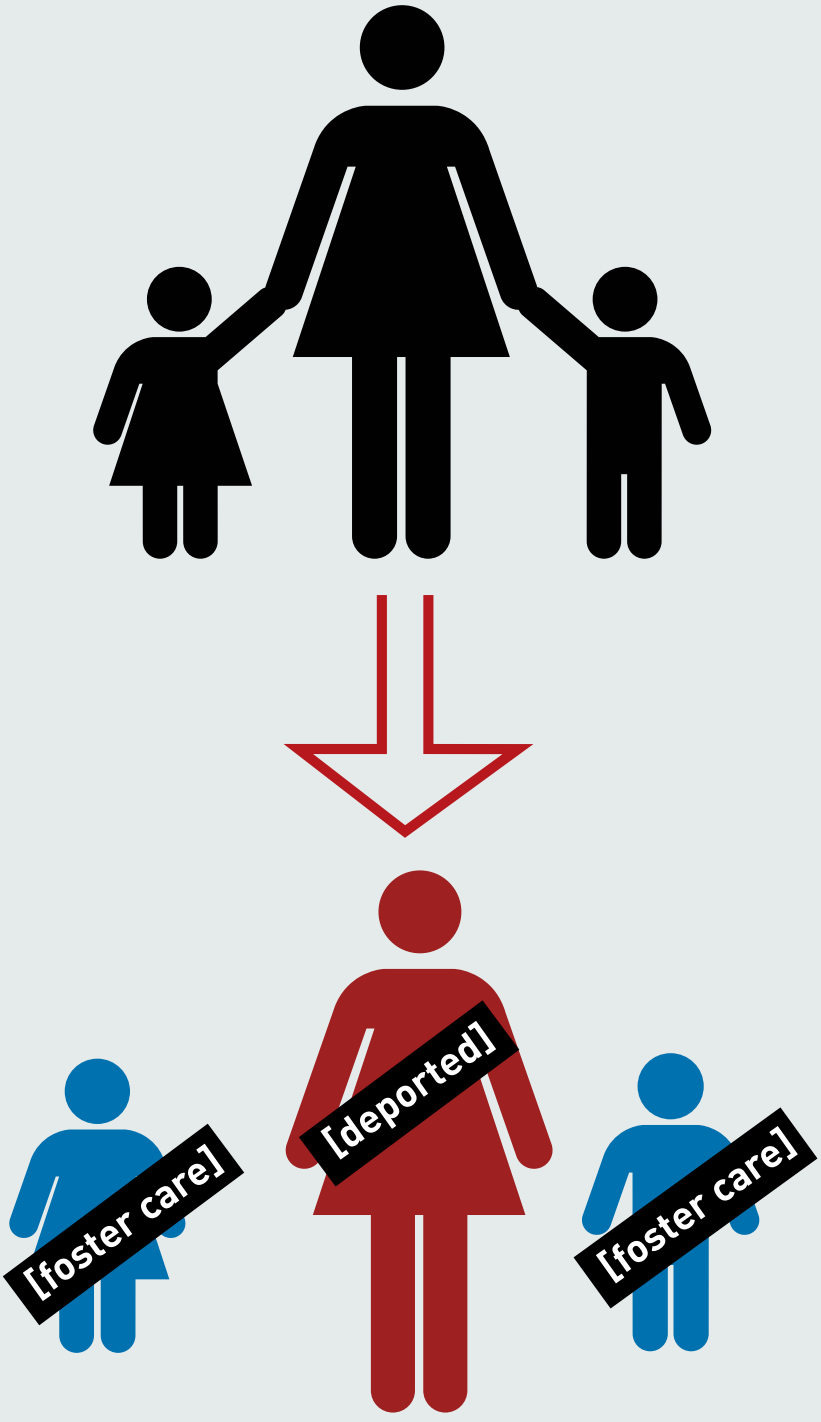
SHATTERED FAMILIES

The Perilous Intersection of Immigration Enforcement and the Child Welfare System



APPLIED RESEARCH CENTER
Racial Justice Through Media, Research and Activism
arc.org

publisher of
COLORLINES.com

NOVEMBER 2011

ACKNOWLEDGEMENTS

About ARC

The Applied Research Center (ARC) is a thirty year old racial justice think tank using media, research, and activism to promote solutions. ARC's mission is to popularize racial justice and prepare people to achieve it. For more information on ARC's work, please visit www.arc.org.

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Thanks are due to the detained and deported mothers and father who agreed to speak to ARC about their families.

ARC is grateful to the Atlantic Philanthropies for funding this project.

Thanks to the following people for reviewing all or portions of the report: Gaylynn Burroughs; Emily Butera (Women's Refugee Commission); Raha Jojani (UC Davis); Yali Lincroft (Policy Consultant for First Focus); Nina Rabin (University of Arizona), and Dorothy Roberts (Northwestern University)

Thanks to the following people for their support in research design or execution: Emily Butera (Women's Refugee Commission); Randy Capps (Migration Policy Institute); Alan Dettlaff (University of Illinois, Chicago); Kara Finck (Bronx Defenders); Jennifer Friedman (Bronx Defenders); Tanya Krupat (Obsorne Association); Romy Lerner (Florida Immigrant Advocacy Center); Patricia Manning (University of Arizona); Lindsay Marshall (Florence Immigrant and Refugee Rights Project); Nina Rabin (University of Arizona); Cindy Schlosser, (Florence Immigrant and Refugee Rights Project); Wendy Sotolongo (North Carolina Office of Indigent Defense Services); David Thronson (Michigan State University); Karen Winston (Jacksonville Area Legal Aid, Inc.), and Nathan Freed Wessler

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I: INTRODUCTION

SHATTERED FAMILIES: The Perilous Intersection of Immigration Enforcement and the Child Welfare System

Josefina's baby was just 9-months old and Clara's[1] children were 1 and 6 when they were placed in foster homes with strangers. Clara and Josefina, sisters in their early 30s who lived together in a small New Mexico town, had done nothing to harm their children or to elicit the attention of the child welfare department.

In the late summer of 2010, a team of federal immigration agents arrived at the front door of Clara and Josefina's trailer home in New Mexico. Immigration and Customs Enforcement (ICE) had received a false tip that the sisters, who were undocumented immigrants, had drugs in their home. Though they found nothing incriminating in the trailer and the sisters had no criminal record, ICE called Child Protective Services (CPS) to take custody of the children and ICE detained the sisters because of their immigration status.

For the four months that ICE detained them, Josefina and Clara had no idea where their children were. In December, the sisters were deported, and their children remained in foster care. Josefina was very quiet as she talked by phone from Mexico a year after she was deported: "I don't know where my child is; I have no contact with my baby. I didn't do anything wrong to have my children taken away from me."

"SHATTERED FAMILIES," A REPORT BY THE APPLIED RESEARCH CENTER (ARC), is the first national investigation on threats to families when immigration enforcement and the child welfare system intersect. It explores the extent to which children in foster care are prevented from uniting with their detained or deported parents and the failures of the child welfare system to adequately work to reunify these families. ARC's yearlong research project found that Clara and Josefina's children are among thousands of children currently in foster care who are separated from their family because of immigration enforcement.

Immigration policies and laws are based on the assumption that families will, and should, be united, whether or not parents are deported.[2] Similarly, child welfare policy aims to reunify families whenever possible. In practice, however, when mothers and fathers are detained and deported and their children are relegated to foster care, family separation can last for extended periods. Too often, these children lose the opportunity to ever see their parents again when a juvenile dependency court terminates parental rights.

In fiscal year 2011, the United States deported a record-breaking 397,000 people and detained nearly that many. According to federal data released to ARC through a Freedom of Information Act request, a growing number and proportion of deportees are parents. **In the first six months of 2011, the federal government removed more than 46,000 mothers and fathers of U.S.-citizen children.** These deportations shatter families and endanger the children left behind.

Anecdotal evidence drawn from news and advocacy reports and ARC's initial research over the last half decade have shown that a disturbing number of children with detained or deported parents are now in foster care.[3]

Systematic research on this topic is challenging, because child welfare departments and the federal government fail to document cases of families separated in this way. This "Shattered Families" report is the first to provide evidence on the national scope and scale of the problem. As more noncitizens are detained, the number of children in foster care with parents removed by ICE is expected to grow. Without explicit policies and guidelines to protect families, children will continue to lose their families at alarming rates.

KEY RESEARCH FINDINGS

- **ARC conservatively estimates that there are at least 5,100 children currently living in foster care whose parents have been either detained or deported** (this projection is based on data collected from six key states and an analysis of trends in 14 additional states with similarly high numbers of foster care and foreign-born populations). This is approximately 1.25 percent of the total children in foster care. If the same rate holds true for new cases, **in the next five years, at least 15,000 *more* children will face these threats to reunification with their detained and deported mothers and fathers.** These children face formidable barriers to reunification with their families.
- In areas where local police aggressively participate in immigration enforcement, children of noncitizens are more likely to be separated from their parents and face barriers to reunification. For example, **in counties where local police have signed 287(g) agreements with ICE, children in foster care were, on average, about 29 percent more likely to have a detained or deported parent than in other counties.** The impact of aggressive immigration enforcement remains statistically significant when our research controls for the size of a county's foreign-born population and a county's proximity to the border.
- **Immigrant victims of domestic violence and other forms of gender-based violence are at particular risk of losing their children. Approximately one in nine of the stories recounted to ARC in interviews and focus groups involved domestic violence.** As a result of ICE's increased use of local police and jails to enforce immigration laws, when victims of violence are arrested, ICE too often detains them and their children enter foster care. Many immigrant victims face an impossible choice: remain with an abuser or risk detention and the loss of their children.
- **ARC has identified at least 22 states where these cases have emerged in the last two years.** This is a growing national problem, not one confined to border jurisdictions or states. Across the 400 counties included in our projections, more than one in four (28.8 percent) of the foster care children with detained or deported parents are from non-border states.

Whether children enter foster care as a direct result of their parents' detention or deportation, or they were already in the child welfare system, immigration enforcement systems erect often-insurmountable barriers to family unity.

The ANATOMY of a CASE

How Families are Separated at the Intersections of the Child Welfare System and Parental Detention/Deportation

IMMIGRATION ENFORCEMENT

Immigration and Customs Enforcement: ICE is the federal agency tasked with detaining and removing noncitizens from the interior of the U.S. ICE also conducts raids and investigates immigration violations.

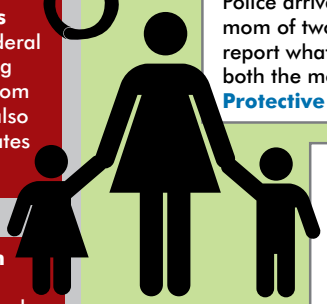
Local Immigration Enforcement: The increasing use of local police to enforce federal immigration law turns any interaction with the police into a possible route to detention and deportation. "**Secure Communities**" checks immigration status of anyone booked into local jail and will soon be operational in every county in the country. The federal government forces states to participate in the program despite resistance from numerous governors and local law enforcement officials.

ICE "Hold": When ICE identifies a noncitizen in a local jail, through Secure Communities or another program, the agency will issue an ICE "hold" to require local authorities to keep the person in custody until ICE can move them to a detention center.

Detention: Detainees are held for an indeterminate length of time while their case is being processed and are transferred an average of 370 miles from their homes. In 2010, ICE detained 363,000 people in a network of 350 detention centers

Deportation: The federal government deported close to 400,000 people in 2010.

THE FAMILY



BARRIER: Aggressive Immigration Enforcement

Police arrive at the home of an undocumented immigrant mom of two U.S. citizens after neighbor calls 911 to report what sounds like domestic violence. Police arrest both the mother and her boyfriend. **Police call Child Protective Services (CPS).**

CPS investigator places children in temporary foster care with strangers instead of with loving undocumented aunt. CPS says undocumented relatives cannot take custody because they "could be deported at any time". Mother is charged with assault.

At the time of booking, mother's fingerprints are automatically sent to Immigration and Customs Enforcement (ICE) and checked against the **Secure Communities** database. **ICE flags her for deportation and issues "hold."**

BARRIER: Detention Obstructs Communication Between Parent and CPS

Within three days, mother is sent to immigration detention center 300 miles away. Her court-appointed attorney cannot find her, and she misses dependency court hearing. Court keeps children in foster care.

Three months later, mother's attorney locates her and informs her of next hearing, but **ICE refuses to transport her.** After much effort, mother arranges to call the court. CPS presents "reunification plan" that includes visiting her children, parenting classes and securing housing. **ICE detention prevents mother from complying with any part of child welfare case plan.**

Nine months pass. Children remain in foster care; the youngest begins to forget Spanish. **CPS writes "permanency plan"** with two possible outcomes: 1) If mother is released, CPS will attempt to reunify the family; 2) Children will be put up for adoption with foster care providers after mother's parental rights are terminated.

BARRIER: Lack of CPS Policy on Reunification with Deported Parents

After 11 months in detention, **mother is deported to Mexico. CPS does not know where to find her and does not contact Mexican consulate for help.**

The mother arrives at relative's house in Mexico. She contacts the child welfare caseworker to say she wants her children in Mexico. **CPS replies that it will not consider reunification in Mexico unless mother arranges a home study, completes parenting classes and finds a job.**

Within 8 months, mother completes the plan. Still, **CPS petitions to terminate parental rights** as federal deadline approaches.

CHILD WELFARE AND JUVENILE DEPENDENCY

When an allegation of maltreatment is reported to **Child Protective Services (CPS)**, a caseworker investigates. If deemed to be unsafe, child may be placed in foster care.

After children are removed from home, CPS petitions **juvenile dependency court** to stop child from being returned home.

Parent is issued a **case plan**, an outline of tasks to complete to regain custody of children. Case plans can include finding new housing or enrolling in parenting classes, drug treatment, or domestic violence prevention courses.

Once child has been in foster care for one year, and in some cases less than a year, child welfare department drafts a "**permanency plan**." Permanency plans include a goal for the placement of the child, which might be reunification with parents, adoption or guardianship with kinship caregivers or others. If parent fails to complete case plan, or child is out of parent's custody for 15 months of any 22-month period**, federal law requires CPS to petition the court to terminate parental rights.**

Permanency Outcome: If parent completes case plan and is deemed fit to care for child, CPS will reunify the family. If not possible, CPS must first seek placement with a relative. However, if CPS decides not to place child with relatives, CPS petitions the court to **terminate parental rights.**

KEY BARRIERS TO FAMILY UNITY

- **Federal immigration enforcement uses local police and jails to detain noncitizens.** As a result of aggressive local immigration enforcement, especially the expansion of Secure Communities, any interaction with police can spur ICE involvement and lead to detention and deportation. An incident with police that would not separate children from a citizen parent can result in a long-term or permanent separation if the parent is not a U.S. citizen.
- **ICE does not protect families at the time of apprehension.** ICE and arresting police officers too often refuse to allow parents to make arrangements for their children. Existing ICE guidelines are largely outdated and insufficient for the current immigration enforcement context in which ICE has shifted from high-profile raids to more-hidden and devolved forms of enforcement that operate through local police and jails and smaller-scale ICE enforcement actions.
- **ICE detention obstructs participation in CPS plans for family unity.** ICE consistently detains parents when they could be released on their own recognizance or expand the use of community-based supervisory programs. Once detained, ICE denies parents access to programs required to complete CPS case plans. Due to the isolation of detention centers and ICE's refusal to transport detainees to hearings, parents can neither communicate with/visit their children nor participate in juvenile court proceedings. Child welfare caseworkers and attorneys struggle to locate and maintain contact with detained parents.
- **Child welfare departments lack proactive policies to reunify children with deported parents.** ARC's research found that children are reunited with their deported parents only if foreign consulates are involved with the case. However, few child welfare departments systematically contact a foreign consulate when they take custody of the U.S. citizen children of a detained or deported noncitizen.
- **Systemic bias against reunifying children with parents in other countries is pervasive in child welfare practice.** CPS administrators, caseworkers, judges, and attorneys (including the children's own lawyers) often believe that children are better off in the United States, even if those children are in foster care. This belief often supersedes the child welfare system's mandate to move toward family reunification and places borders on family and parental rights.
- **Structural barriers and systemic bias against undocumented parents and relatives threaten the reunification of families.** Despite clear child welfare policy that prioritizes placing children with their own families, many child welfare departments will not place children with their undocumented non-custodial parents, aunts, uncles, grandparents or other relatives. As a result, children of detained and deported parents are likely to remain in foster care with strangers when they could be with their own family.

As the federal government continues to expand its immigration enforcement infrastructure, detention and deportation will continue to pose barriers to family unity for families involved in the child welfare system. **Federal, state and local governments must create explicit policies to protect families from separation.**

These polices should stop the clock on the child welfare process and the immigration enforcement process to ensure that families can stay together and allow parents to make the best decisions for the care and custody of their children.

STRUCTURE OF THE REPORT

This "Shattered Families" report will explore the treacherous intersection of immigration enforcement and the child welfare system. The report is divided into six sections. Section II, "Background on Immigration Enforcement, Child Welfare and Anti-Immigrant Bias," will provide important background of the immigration enforcement and child welfare/juvenile dependency systems. It will then present ARC's findings on systemic anti-immigrant bias in the child welfare system. Section III, "Immigration Enforcement, Detention and Shattering of Families," explores ARC's research findings on the treacherous intersection of immigration enforcement and child welfare and maps the paths that lead to children entering or remaining in foster care while their parents are detained or deported. Section IV, "Deportation, Systemic Bias and Barriers to Reunification", discusses ARC's findings on threats to family unity after a parent is deported and the failure of the child welfare system to adequately move toward reunifying these children with their parents or place them with family members in the United States. This report concludes with a set of recommendations for change. An appendix that includes a full explanation of ARC's research methods follows the report.

About ARC

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A NOTE ON METHODOLOGY

To arrive at our national estimates, ARC gathered county-level survey data from child welfare caseworkers, attorneys and judges in 19 jurisdictions in six key states: Arizona, California, Florida, North Carolina, New York and Texas. These states account for more than half of the noncitizen population in the U.S. and more than one-third of the children in foster care. Jurisdictions were selected to provide a mix of border and non-border regions, varied levels of aggression in local immigration detention practices, and high and low foreign-born populations.

The foster care cases with deported or detained parents ranged from under 1 percent to 8 percent of the total foster care cases for each of the counties surveyed. Using these percentages, we then utilized regression analysis to calculate the typical independent impact of three variables: the border county status, the presence of 287(g) immigration enforcement agreements, and the percentage of foreign-born individuals in each state. We then projected the prevalence of detained/deported parent cases in the remaining major jurisdictions in these six states and in 14 other similarly situated states (Colorado, Georgia, Illinois, Indiana, Maryland, Michigan, Missouri, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Virginia and Washington) using the resulting coefficients from the regression analysis. These 20 states account for almost 85 percent of the country's undocumented population and more than 70 percent of foster care rolls.

The estimates provided in this report are conservative as far as the actual number of children affected nationally. Therefore, many more children in foster care may be adversely affected by the detention and deportation of noncitizen parents.[4]

II: BACKGROUND ON IMMIGRATION ENFORCEMENT, CHILD WELFARE AND ANTI-IMMIGRANT BIAS

BEFORE EXPLORING HOW IMMIGRATION ENFORCEMENT AND CHILD WELFARE INTERSECT, it's important to have a clear understanding of how each system works (or in some cases, doesn't work). To this end, this section of the report introduces the following topics: Immigration Enforcement, Child Welfare and Juvenile Dependency and ARC's findings on the systemic racial and anti-immigrant bias in the child welfare system.

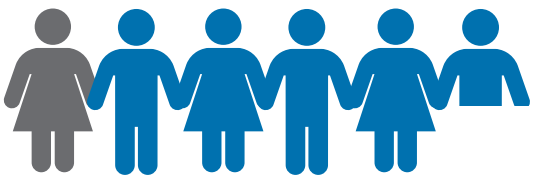
IMMIGRATION ENFORCEMENT

For the last decade and a half, rates of deportation have steadily risen. In 1992, the U.S. government removed 44,000 people, a historical number at the time. In less than two decades, that number has grown ninefold. In fiscal year 2011, a record-breaking 397,000 people were removed from the U.S. because of their immigration status.[5] There are an estimated 22 million noncitizens living in the U.S., and of those noncitizens, 11 million have some sort of documentation that allows them to stay in the U.S. on a provisional basis. About 11 million immigrants are undocumented, which means that either they came to the U.S. without paperwork or their documentation is expired and they now live in a state of immigration limbo. Though undocumented immigrants are at risk of deportation based on their immigration status alone, all noncitizens, including green card holders, can be deported if they are convicted of a crime. As hundreds of thousands of noncitizens are removed from the U.S. each year—over one million in the last three years—their children are often left behind.

There are approximately 5.5 million children in the U.S. who have an undocumented parent, and about 4.5 million of these children are U.S. citizens.[6]

Federal immigration enforcement policy is based on the assumption that families will remain together. The Bureau of Immigration Appeals has held that "When an alien-parent's child is a United States citizen and the child is below the age of discretion, and if the alien-parent is deported, it is the parent's decision whether to take the minor child along or to leave the child in this country."[7] The U.S. Supreme Court affirmed that the Immigration and Naturalization Act "establishes that congressional concern was directed at 'the problem of keeping families of United States citizens and immigrants united.'"[8] In practice, however, many families are separated by parental deportation. As this "Shattered Families" report shows, when children of deported parents are in foster care, families are at risk of extended and even permanent separation.

THERE ARE APPROXIMATELY 5.5 MILLION CHILDREN WITH AN UNDOCUMENTED PARENT



ABOUT 4.5 MILLION OF THESE CHILDREN ARE U.S. CITIZENS

Deporting Parents

By submitting a Freedom of Information Act request to Immigration and Customs Enforcement, ARC was able to obtain previously unreleased data on the deportation of immigrant parents in the U.S. According to this new data, **in the six months between January and June 2011, Immigration and Customs Enforcement removed 46,486 parents of U.S.-citizen children from the United States.** This signifies a marked increase in the deportation rate of parents of U.S. citizens. The last time the federal government released equivalent data, the Department of Homeland Security, Office of the Inspector General reported that it carried out more than 180,000 removals of noncitizen parents of U.S.-citizen children between 1998 and 2007.[9] The new figures obtained by ARC suggest that if parent deportation continues at the current rate, ICE will deport more parents in just two years as it did in the previously reported ten year period. (The current figure represents a 400 percent increase in annual removals of parents of U.S. citizens.)

1998-2007 (fiscal years)
2,200,000 total deportations
8% were **parents** of U.S.-citizen children.

2011 (fiscal year)
397,000 total deportations
22% were **parents** of U.S.-citizen children.

Modes of Immigration Enforcement

There are two primary modes of immigration enforcement that lead to detention and deportation: border enforcement and interior enforcement.

BORDER ENFORCEMENT: The mandate of the Border Patrol, which is a division of the DHS U.S. Customs and Border Protection, it to regulate migration at ports of entry as well as prevent undocumented immigrants from crossing borders into the U.S. without authorization. The vast majority of border enforcement funding is allocated to the southwest, near the U.S. border with Mexico. The Border Patrol maintains checkpoints at border crossings, on public transportation, on various roads, and in local jails to verify citizenship. In federal courts, the Border Patrol also prosecutes undocumented immigrants who cross the border without permission.

INTERIOR ENFORCEMENT: The apprehension and detention of noncitizens who are already within U.S. boundaries, including areas that overlap with Border Patrol territory within 100 miles from the border. This was originally one of the functions of the DHS Immigration and Naturalization Service, but in 2003, **Immigration and Customs Enforcement (ICE)** was created to coordinate these interior enforcement efforts.

- **Local enforcement:** ICE relies increasingly on local jails and police to detain noncitizens. Its local enforcement policy is primarily based on three programs: 287(g), the Criminal Alien Program (CAP), and Secure Communities. ICE claims that all three programs focus on identifying and deporting noncitizens convicted of serious crimes. However, these programs have thus far operated somewhat indiscriminately, targeting all noncitizens.
- **287(g) program:** The 287(g) program establishes agreements between ICE and a local police department that gives that department the authority to essentially act as ICE agents—questioning people about their immigration status and detaining them until ICE can take custody. Effectively, the program empowers local police officers to turn an alleged traffic violation or an arrest of any kind into an immigration enforcement operation.

SECURE COMMUNITIES

When ICE launched Secure Communities in 2008, the federal government described it as a good faith partnership between the federal government and localities—states and jurisdictions that wished to participate in the program could do so and others could opt out. However, the federal government recently announced that Secure Communities is mandatory and that all local jails will participate in identifying and holding noncitizens.[11] Despite widespread resistance from states, counties and cities around the country as well as from advocates, the Obama Administration plans to implement Secure Communities in every jurisdiction across the U.S. by 2013.[12] The program is already expanding rapidly and, according to ICE statistics, is now operational in 1508 jurisdictions in 44 states covering 74.7 percent of the total population of noncitizens in the U.S.[13] As of August 31, 2011, Secure Communities has led to the deportation of over 134,000 people since it started in 2008.[14]

287(g): Currently, 287(g) programs operate in 69 jurisdictions, including the state police or highway patrol in 24 states.[15] Last year, almost 50,000 people were detained through 287(g) programs.[16] The program has been widely criticized for facilitating racial profiling by local police departments[17] and for obstructing effective community policing.[18] 287(g) agreements have been established between county law enforcement agencies and the federal government in seven of the 19 counties where ARC conducted surveys (Pima and Maricopa counties in Arizona; Cabarrus and Mecklenburg counties in North Carolina; Los Angeles County, California; and Duval and Collier counties in Florida).

ICE "HOLDS": Through local immigration enforcement programs, ICE flags noncitizens for deportation and issues a hold, asking the jail or prison to maintain custody of an individual after the person's jail or prison term ends. ICE may then detain the suspect and move toward deportation.[19] Immigration holds are the primary tool that ICE employs to detain noncitizens who come to the attention of local, state or federal criminal justice systems. The purpose of an ICE hold is to move noncitizens into ICE custody and to initiate their removal from the U.S. Holds block the release of noncitizens even if their charges are dropped, preclude release on bail, and prevent access to alternatives to incarceration programs. Once ICE issues a hold, the agency has 48 hours to take that person into custody after the time when the person would otherwise have been released.

- **Criminal Alien Program (CAP):** This program operates within federal prisons and under agreement with state and local jails to identify, detain and deport noncitizens. ICE does not release information on the reach of the program, but it is operational in many federal and state prisons and some local jails.
- **Secure Communities:** Starting in 2008, ICE began broadly implementing Secure Communities across the country. Unlike CAP and 287(g), Secure Communities does not rely on local agreements with ICE. Instead, **when local police departments run a standard background check through the FBI database, that data is automatically sent to ICE.**

  The overwhelming majority of those detained and deported through the Secure Communities program were convicted of no crime at all or some low-level violation like driving without a license or petty theft.[10]

Detention

When ICE identifies noncitizens for deportation, many are transported to one of over hundreds of **immigration detention centers** scattered around the country. The number of people detained during fiscal year 2010 was 363,000. On averages, 33,400 people were detained each day, at a cost of $122 per day per detainee.[20] In the year to come, the government is expected to spend over $2 billion on immigration detention.[21] ICE operates some detention centers, but the majority are owned and operated by private correctional companies or by county governments with contracts to detain noncitizens. Immigrants may be held in detention centers (many of which are like jails and prisons) for an indeterminate length of time while their case is being resolved. Detainees are often moved to detention centers in other parts of the country, an average distance of 370 miles from their homes.[22] These transfers make it very difficult for detained parents to maintain contact with their families.

In late 2009, the Obama Administration announced plans to reform the detention system. These reforms include stated efforts to decrease the number of immigrants and asylum seekers held in penal jails or jail-like facilities, and to detain people closer to their homes by building new facilities near urban centers. Yet, detainees continue to be held in prisons far away from their families. According to an October 2010 report by Human Rights First, "In July 2009, approximately 50 percent of ICE's [detained] population was held in actual correctional facilities that also housed criminal detainees.[23] Since DHS announced its intention to reform the detention system, there has been no decrease in that proportion. The remaining 50 percent of ICE immigration detainees—those who are not held in actual jails or prisons—are still held in jail-like facilities."[24]

All indications from ARC's visits to detention centers confirm that these detention reforms have been scarcely implemented and significant change remains to be seen. Even if current planned changes are implemented and new facilities are built, only approximately 14 percent of detainees will be housed in these facilities while the remaining 86 percent will remain in penal facilities.[25]

Perhaps more significantly, the construction of these new facilities is likely to correspond with a net growth in the number of noncitizens detained and incarcerated even if some are held in more "humane" facilities. For example, ICE recently announced plans to close one facility, Willacy Detention Center in South Texas, which held close to 1000 detainees when ARC visited it in

early 2011. The facility, which has been cited for a number of serious abuses and in which detainees were housed in cavernous Kevlar tents with dozens of others and no privacy, will not actually be closed. Instead, it will shift to the control of Federal Bureau of Prisons and will hold thousands of non-citizens convicted in federal court of charges like "illegal reentry".[26] They will be deported immediately following their incarceration. Meanwhile, the federal government has announced any clear plans to construct facilities for several thousand new detention beds around the country without any plans to close other facilities.[27]

CHILD WELFARE AND JUVENILE DEPENDENCY

Parents have a constitutional right to the custody of their children, and unless parents are deemed unfit, families are supposed to be protected from state-sanctioned separation and parents safeguarded from losing custody of their children without cause.[28] However, when children are unsafe or have been the victims of maltreatment, the federal government requires that states protect them.[29]

Once a child is removed from the home, the integrity of that family becomes a matter of intense intervention by the state. While placement of children in substitute care is meant to be a temporary remedy for child maltreatment, if a court determines that a father or mother is ultimately unfit to care for his or her children, that parent's right to legal custody of the child in question can be terminated.

Foster care is the institutional mechanism to provide children deemed unsafe with an alternative place to live. Foster homes, which can be provided by institutions, strangers or relatives ("kinship care") receive government subsidies to serve as caregivers. At the end of fiscal year 2010, there were 408,000 children in foster care.[30] 254,000 of all foster children in 2010 were removed from their homes that year.[31] The remaining 154,000 children were still in foster care after entering it in a previous year.[32] Though foster care is designed as a temporary living arrangement for children, in 2010 the average amount of time that a foster child spent in foster care was 25 months, and many children remained in foster care much longer.[33] Most children who exit foster care return to their parents or live with other relatives. Just over half of the children who exited foster care last year were reunified with their parent or caregiver.[34] A fifth of children were adopted by strangers or by relatives, and others remain in foster care or in long-term guardianship arrangements with other caregivers.[35]

408,OOO children
in foster care at end of fiscal year 2010

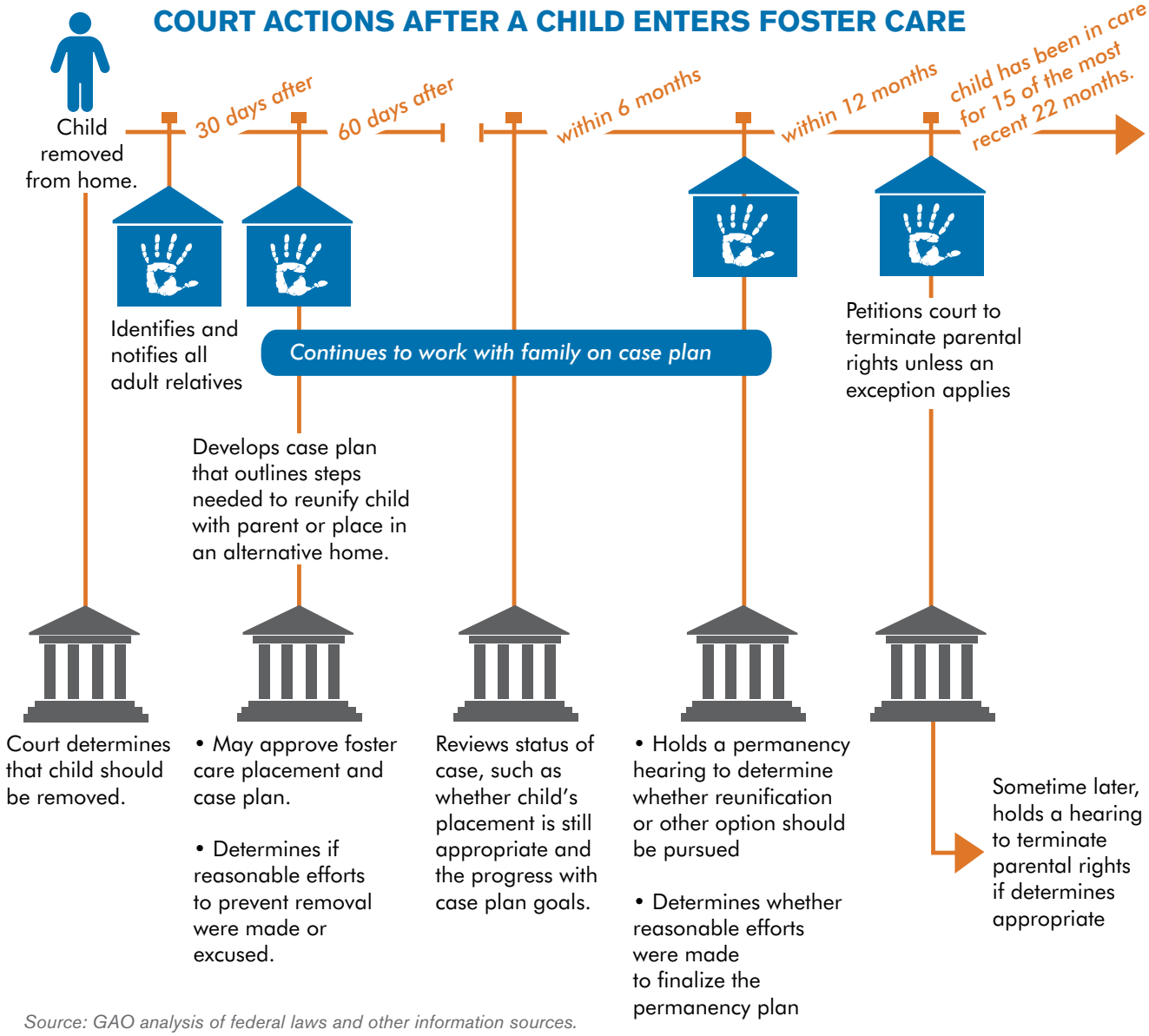
Child Protective Services (CPS), which exists in every state, investigates reports of child maltreatment, removes children from homes when children are deemed unsafe (even if simply because children's parents are detained), supervises the placement of children with alternative caregivers and manages the process of a child welfare or "dependency" case. In some states, the control and administration of CPS is tightly run from a state office, while in others, counties retain vast power to make rules about the child welfare process. A number of states have contracted out parts of their child welfare work to private entities.[36]

How the Child Welfare System Works

Once a report of child maltreatment is called into CPS, the department will start an investigation and make an initial determination about the veracity of the report. If the investigation does not substantiate the report, the maltreatment case will generally be closed. But if the investigator believes that

the child's safety may be at risk, then the child is either allowed to stay with their families and services are provided to minimize the risk of harm, or the child is removed from their family and placed in foster or kinship care.

SAMPLE TIMELINE FOR CHILD WELFARE AGENCY AND DEPENDENCY COURT ACTIONS AFTER A CHILD ENTERS FOSTER CARE



Source: GAO analysis of federal laws and other information sources.

Note: This timeline is illustrative. For example, it does not include instances in which a court determines that reasonable efforts to reunify the family are not required or when a child is removed through a voluntary placement agreement with the child's parent or legal guardian. As a result, this timeline may vary based on a child's individual circumstances.

Once a child is removed from their parent's care, or if the child welfare department seeks to remove a child, CPS is required to file a petition to a **juvenile dependency court** (sometimes called family court or child protective court). These courts make essential decisions about family reunification and parental rights.

Once CPS files a petition to the court, the department creates a **permanency plan** that moves a case toward closure. Federal law mandates that courts hold "permanency hearings" no later than 12 months after a

child enters foster care. In over half of all CPS cases, the permanency plan goal is to reunify children with their parent or caregiver. In another quarter of all cases, the end goal is termination of parental rights and adoption by someone else. The goal of the remaining cases is permanent placement with relatives or other caregivers or long-term foster care.[37]

Parents with children in the child welfare system are issued a set of tasks, or a **reunification plan**, that they are required to complete if they are to be reunified with their children. If a child is removed from their mother or father because he or she left them unattended, for example, then the parent might be required to attend parenting classes and find childcare. Additional tasks can be added to a reunification plan that have nothing to do with the reason for the initial removal but that the child welfare department and/or dependency court deem would make the home safer.

Federal laws require child welfare agencies to make **"reasonable efforts"** to help families access the services they need in order to reunify. According to the U.S. Department of Health and Human Services:

> Laws in all States, the District of Columbia, Guam, and Puerto Rico require the provision of services that will help families remedy the conditions that brought the child and family into the child welfare system. Generally, these efforts consist of accessible, available, and culturally appropriate services that are designed to improve the capacity of families to provide safe and stable homes for their children. These services may include family therapy, parenting classes, drug and alcohol abuse treatment, respite care, parent support groups, and home visiting programs.[38]

However, if a child welfare department has made reasonable efforts and a court determines that a parent is incompliant with her or his case plan, or if the child was removed for a reason that's especially egregious and extreme, then the permanency plan changes to either long-term foster care, permanent custody with a relative, or adoption. A child cannot be adopted unless the dependency court terminates the parental rights of their mother and father.

Research shows that as a general matter, except for cases of extreme abuse or neglect, children are better off in the long run if they stay with their families than if they are placed in foster care. Studies find that foster youth are more likely than other children to become homeless, abuse drugs, be arrested or drop out of school. An MIT economist performed a study of 15,000 child welfare cases in Illinois, which provided empirical evidence that children who faced similar home circumstances consistently had better life outcomes if they stayed with their own families than if they were placed in foster care.[39] Other research has shown that children in foster care are actually more likely to be abused than children out of foster care.[40]

Termination of Parental Rights (TPR)

The Adoption and Safe Families Act (AFSA), enacted in 1997, is a federal law designed to make it easier for children in the child welfare system to be adopted or placed in permanent homes through the speedy termination of parent's rights. At the time of its passage, many advocates were concerned that children were languishing in foster care without any hope of a permanent home. By requiring the rapid termination of parental rights, ASFA sought to "free" children for adoption.

ASFA requires that if a child has been out of their parent's custody for 15 of the last 22 months, the state child welfare department must petition the dependency court for the termination of parental rights. Broadly, ASFA

Children in families with an annual **income below $15,000** were **22 times more likely to be considered maltreated** than those in families with incomes above $30,000.

curtailed the reach of parental rights so that the extended separation of children and parents can itself be a basis for the severance of family bonds.

Importantly, parental rights can be terminated before 22 months. Once the child welfare department can show that it has made "reasonable efforts" to reunify a family and that the parent has nonetheless failed to comply with the reunification plan, the department can stop offering parents services toward that end and change the plan to termination of parental rights and adoption. **Terminating parental rights does not necessarily lead to adoption. Many children remain in foster care after they are severed from their parents and become, in effect, legal orphans.**

Importantly, ASFA created a number of exceptions to the TPR time clock. If children are placed in a permanent guardianship arrangement or another legal custody arrangement with a relative, the child welfare department does not need to petition to terminate parental rights. As a result, placement with family leaves open the possibility that families may be reunified even if a child is out of a parent's custody for longer than 22 months.

Race, Poverty and the Child Welfare System

POVERTY AS NEGLECT

As noted above, children enter CPS custody because the child welfare department suspects that those children are unsafe, often because of parental maltreatment, abuse or ne glect. In some instances, children are indeed seriously harmed and the child welfare system responds appropriately. In other cases, however, child welfare practice results in the unnecessary removal of children from their mothers and fathers.[41]

The terms abuse and neglect can be misleading because they are broad categories, subject to the interpretation and discretionary judgment of a long list of actors, from the person who initially makes a report to the investigating caseworker, long-term caseworker, attorneys, children's advocates and judges. Importantly, the majority of child welfare cases involve neglect, not abuse. Seventy-two percent of children come to the attention of child welfare because of neglect, as opposed to physical or sexual abuse.[42]

The predominance of neglect as the reason for child welfare system involvement should raise concerns because neglect, which is already ill-defined by federal and state law, can be practically indiscernible from the effects of poverty.43 Indeed, poverty is the single best predictor of allegations of abuse and neglect. A 1996 study which remains among the clearest research on the links between poverty and child welfare found that children in families with an annual income below $15,000 were 22 times more likely to be considered maltreated than those in families with incomes above $30,000.44 If a parent is too poor to feed, clothe or house her child, or to pay for childcare, she may be deemed neglectful.

Though the effects of poverty are often the basis of abuse and neglect allegations, the attorneys, caseworkers and judges who perform the day-to-day functions of the child welfare system rarely name economic inequality outright. Martin Guggenheim, a professor of law at New York University (NYU) analyzed the case of a mother found to be neglectful because she was discovered living with her seven children inside "an unsafe and unsanitary motel room." In his analysis, Guggenheim noted the following:

> It is important to observe that poverty is unmentioned anywhere in the case. This is almost always true. The point about the connection between poverty and child neglect prosecutions is not that any [parent] is charged explicitly with being poor. It is, rather, that but for being poor, there would never be a prosecution.[45]

RACIAL DISPROPORTIONALITY

Poverty does not operate in isolation. Children in foster care are disproportionally children of color. Black children make up 14 percent of children in the U.S. but 29 percent of foster children. American Indian children are 1 percent of the total population but 2 percent of foster care population. White children are significantly underrepresented in foster care. While Latino children enter foster care at rates just slightly lower than their representation in the general population—21 and 23 percent respectively—they are more likely to be in foster care than white children and are overrepresented in many states with large foster care populations. Black and Latino children are both more likely to be placed in out-of-home care more quickly and for longer periods of time than white children.[46]

One reason for these disparities is that children of color are far more likely to live in poor families and so are more vulnerable to face the conditions of poverty that child welfare departments consider neglect. Another reason that children of color are more likely to enter and remain in foster care is child welfare practice is laden with extensive discretion at every point a decision is made. As a result, the unconscious biases held by child welfare investigators, caseworkers, attorneys and judges can significantly shape the outcomes of a case. Even when controlling for poverty, research shows that child welfare departments are more likely to remove children of color (Black children in particular) from their parents rather than offering services to help them stay together.[47] This is not because these children are more likely to be abused—when the child welfare system deems that white children have been abused or neglected, it is twice as likely to offer that family services so that the child can stay at home as compared to Black families.[48]

Importantly, bias in the child welfare system is rarely intentional. It is usually the result of the complex interplay of disparities in poverty, income and wealth with unconscious and systemic racial biases that play out in the everyday and often mundane decision making of child welfare practice.[49]

CHILD WELFARE SYSTEM BIAS AGAINST UNDOCUMENTED PARENTS

In the context of immigrant families, it is important to note that immigrants are more likely to be poor and face significant racial and anti-immigrant bias. Consequently, immigrant families, who face both economic and political exclusion as well as the constant threat of deportation, are situated inequitably in relation to the child welfare system.

Many child welfare caseworkers interviewed for this project described a pervasive relationship of fear on the part of immigrant communities because of anxieties that involvement with the child welfare system could result in deportation. As a result, immigrant families are likely to make particular efforts to stay clear of the child welfare system. However, once children of undocumented immigrants enter foster care, our research indicates that their families face significant barriers to family reunification.

There are no firm figures on the number of children of noncitizens in foster care though research shows that children of foreign-born parents are less likely to come to the attention of CPS investigations.[50] However, **ARC's research clearly indicates that once children of noncitizens are removed from the custody of their parents, their families are subjected to particular and deep systemic barriers to reunification.** As this report makes clear, this is especially true for families when parents have been detained or deported, but it is also the case for families with undocumented parents in general.

A judge in Southwest Florida described the effect of a parent's undocumented status when combined with related factors:

> Our child protection system has had very little, almost non-existent success at reunifying children, whether born in the USA or in a foreign country, with parents who come the USA (1) undocumented, (2) poor, (3) uneducated/illiterate, (4) unable to communicate in English, (5) culturally segregated. …If children of these parents come into care, they are virtually doomed by these five factors and the probability of permanent loss of these children is overwhelmingly high.

The judge added, "It's been my impression over the years that even if a parent has some of these other factors—like lack of English language ability and cultural segregation—they still have a fighting chance of getting their kids back but if you had the factor of being an undocumented immigrant, it makes it impossible."

Disproportionate Immigrant Poverty

Like other communities of color, noncitizens, especially undocumented immigrants who are predominantly from Latin America and Asia, are concentrated in low-wage job sectors and are more likely to be poor. Children of immigrants are significantly more likely than children of non-immigrant parents to live in low-income families (below 200% poverty line)—35% to 49%.[51] In the context of the current rise in deportation rates, families who previously relied on two incomes but were still low income, or those that relied on one parent's income while the other parent cared for children, become especially vulnerable to deep poverty when a breadwinner is deported. Meanwhile, the threat of deportation is often wielded as a mechanism of control by employers, making it difficult for noncitizen parents to secure more equitable labor practices.

Parents Are Denied Access to Services

Economic inequity is compounded by legal bans on immigrants' access to many public programs, such as Medicaid and Temporary Aid for Needy Families (TANF), that might help them avoid the worst conditions of deep poverty. The Personal Responsibility and Work Opportunity Act of 1996, which limited access to TANF for all U.S. residents, explicitly barred all undocumented immigrants from access to TANF and non-emergency Medicaid services. The Act also barred permanent residents who have lived in the U.S. less than five years from access to these programs. The federal government has given each state significant power to determine whether undocumented immigrants are eligible for state benefits, but many of these states have continued to block undocumented immigrants from most programs.[52]

Though most of the children of noncitizen parents are U.S. citizens themselves and are therefore eligible for many government programs, the exclusion of their mothers and fathers from these vital services means that immigrant families are marginalized from systems of support.[53]

Respondents in ARC's focus groups and interviews described undocumented parents struggling to maintain custody of their children because of immigration status–related barriers to services,[54] including lack of access to Medicaid, public housing or TANF.[55] A child welfare caseworker in Orlando (Orange County), Florida, recalled a recent case of a mother of two U.S. citizens who could not regain custody because federal laws block undocumented immigrants from accessing many services:

> We removed the kids because of a dirty house issue, poverty basically, and we reunified [initially] with her because there was no reason not to.
>
> But then once we placed we were caught in a situation where she could not get a baby sitter because all her network is undocumented and they would not be approved by our background check, she could not drive without a license and she could not get services… Not having papers was the number one barrier for her. This has nothing to do with this woman maliciously abusing or neglecting her children but it was a situation where we did not feel safe reunifying with her because she does not have the means to get the services or help she needed. We ended up having to remove them from her.

With the clock ticking, undocumented parents who are unable to access services due to their status can lose parental rights because they have not completed their plan in time. The longer the period that a child stays out of their parent's custody, the greater the chances that their family will never be reunified.[56] Ultimately, if these barriers are so great that a child cannot be reunified with their family before the ASFA deadline approaches its end, barriers that immigrants face can themselves lead to the legal end of a family.

A parents' attorney in Durham, North Carolina, described a mother who was ordered to get a psychiatric evaluation but could not because of her immigration status. "The judge brings [the psychiatric exam] up every time we go to court," said the attorney. "[The mother] keeps getting the finding against her that she's not doing it, and it's been slightly over a year now. There's a possible adoptive parent waiting, and this woman wants her kids back but she's not getting the services because she can't pay for them."

For undocumented parents who are more likely to work in low-wage jobs, paying for services out-of-pocket may be simply impossible. An attorney who has represented many undocumented parents in New York City said that the lack of access to Medicaid can be an insurmountable barrier for undocumented parents struggling with mental health issues:

> There are very few places that will offer free services. There are some places where you can get someone in on a sliding scale but even then it's very hard and without Medicaid that can be too expensive. This is especially hard for mental health issues where they are told they simply cannot get their kids back without treatment. When your client is bi-polar, say, and needs meds and you can't get anyone to see them or prescribe them drugs or pay for them, that's a problem. If you need services and you can't get them then you can't get your kids back.

Caseworkers said they often have to get creative to find alternatives to traditional services. In Duplin County, North Carolina, a rural county with a significant immigrant farm labor population and a thin infrastructure of social services, several caseworkers said they have approached clergy to provide undocumented parents with counseling and other services. These clergy do not have any formal training but, according to one of the caseworkers, "sometimes it works."

A clergy member from Duplin County said that he had been asked to provide an undocumented mother with counseling services even though, as he said, "I'm trained in spiritual counseling."

Children of immigrants are significantly more likely than children of non-immigrant parents to **live in low-income families (below 200% poverty line)—35% to 49%.**

Discrimination Against Parents with "Unverifiable" Employment

In some jurisdictions, undocumented parents face barriers to completing their case plans because their income is not considered "verifiable or legal." Child welfare laws do not require parents to have a job in order to reunify with their children. They must only prove that they can support their children. However, in some jurisdictions, undocumented parents are not given the opportunity to do so.

In Osceola County, Florida, a caseworker said, "If we can't show that [parents] have a legal source of income, we have to note in that part of the file that they are not complying. It slows up the case when a parent can't show that they are working. If a parent can't show that they are working, it makes it difficult to move forward with these cases."

In Maricopa and Pima counties in Arizona, dependency attorneys said they had recently faced barriers to reunifying families because undocumented parents cannot be legally hired.

"Undocumented parents face the issue where the parent's rights are severed and the fact that they are undocumented and working under the table plays a factor," said one Maricopa County attorney. "Their status is never asked outright; well sometimes it is, but usually it's 'do you have a job, do you have pay stubs?' It's usually about work and not being able to prove it."

Driving Without a License

In some rural areas that lack significant public transportation infrastructure, ARC found that child welfare departments and dependency courts are barring family reunification because undocumented parents cannot acquire driver's licenses. A case manager in Duplin County, a small farming area in North Carolina said:

> I had a case yesterday; the mother is transporting the children without a license. She has no means of getting a license. She has to work. She has to get her kids to school. She is going to keep driving. That definitely reflects badly in the eyes of the judge but she really does not have a choice. A lot of times the judge will say they have to abide by the law. The judge is saying that she is not complying with the plan.

According to two Texas caseworkers who spoke on the condition of anonymity, it may be official policy there that children are not to be placed with people without licenses. One of these caseworkers had this to say:

> What I'm hearing now from Austin is that if they are illegal and don't have a driver's license, you can't place the child. The problem is that if you place with an illegal immigrant or someone without a license, if they get stopped or arrested, then we have to go pick up the kids. The problem comes more from Austin, from the policy makers in [the child welfare department]. From a caseworker perspective, there's no problem placing with illegal families. We try to ignore it if possible. But meanwhile, Austin is saying that we can't place the children if the people don't have a valid driver's license because if they get picked up it's a danger.

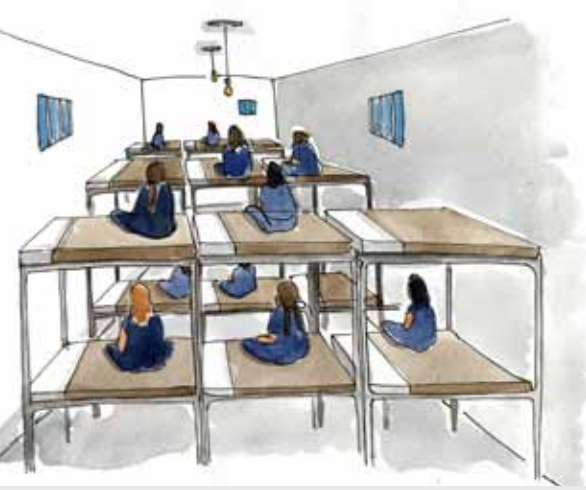
In border regions, undocumented immigrants face additional barriers to mobility because of Border Patrol checkpoints. Near Nogales, an Arizona border town south of Tucson, an undocumented man could not make it to his children's juvenile dependency court hearings because he would have to cross a border checkpoint. As a result, he's been excluded from the dependency process.

CONCLUSION

As more noncitizens are deported, families are being shattered. Immigration enforcement practices, most significantly the rapid spread of local immigration enforcement programs, threaten to make any interaction with local police into a path to deportation. Meanwhile, undocumented immigrant parents and their children in the child welfare system face significant barriers to reunifying as a result of bans on access to services and social support systems as well as a systemic bias against immigrants. Children of immigrants often experience the worst outcomes, including extended periods in the child welfare system and the prospect of losing their parents forever.

Child welfare departments should make every attempt to locate services for undocumented parents and nonprofits should step in to help provide needed services. States should also provide funding to child welfare agencies for services that can help families reunify. In addition, child welfare departments should ensure that parents are not penalized because they are poor or because their income from an informal job is not considered verifiable.

III: IMMIGRATION ENFORCEMENT, DETENTION AND THE SHATTERING OF FAMILIES



Inside the Baker County Jail, a few minutes outside of the 4500 person town of Macclenny in northeastern Florida, several hundred immigrants are held in prison cells because of their immigration status. A few times a day, guards enter the pods and yell for the men and women to line up so they can be counted. Then the detainees move back into groups of four or five around metal tables where they wait again until night, when they can sleep, and yet again until morning, when the whole waiting cycle begins again. What they wait for varies, but for some in detention, the wait could mean they lose their children.

In March, ARC spoke with several dozen men and women inside the cell-lined pods in the Baker County jail where detainees eat, sleep and wait. One of the women, who'd immigrated to the United States from Jamaica two decades ago and lived for years in central Florida, could not say where her four U.S.-citizen children were; she knew only that they were in foster care and that she'd had no contact with her case-worker since she arrived in detention.

Through tears, the woman said, "They stole my babies from me. They took them from me." With the prospect of deportation looming, she added, "I don't know if I'll ever see them again."

Two pods away, a British woman also struggled from inside the detention center to maintain contact with her daughter in foster care. She had received a letter in the mail from a child welfare case management agency with a list of tasks she was required to complete to reunify with her daughter—parenting classes and visits with her daughter. But the sheriff who runs the jail and the federal immigration authorities do not allow detainees to participate in classes and her child is too far away to visit her, so she waited inside as the clock ticked further and further toward the termination of her parental rights.

On the other side of the detention center, a Jamaican man who lived in Brooklyn for most of his adult life said he had not been able to call his wife even once since he arrived in the detention center, because collect calls home were too expensive for his family. He worried that his wife would not able to support their daughters without his help, and feared that his children might slip into foster care.

HOW MANY CHILDREN ARE AFFECTED?

Based on data collected from six key states and an analysis of trends in 14 other states with similarly high numbers of foster care and foreign-born populations, ARC estimates that there are at least 5,100 children who are presently in foster care whose parents have been detained or deported. These children and their parents face formidable barriers to reunification. ARC's projection is consciously conservative, and many more children may currently be affected.

ARC's research found that an increasing number of families are separated by the intersection of immigration enforcement and the child welfare system. Immigration and child welfare policies must change to address the needs of

families; otherwise, thousands more children will be subjected to the same treatment. ARC's conservative estimate of at least 5100 detained/deported parent foster care cases comprise approximately 1.25% of the total children in foster care. I**f these rates continue through the next five years, at least 15,000 additional children will face threats to reunification with their detained and deported mothers and fathers.**

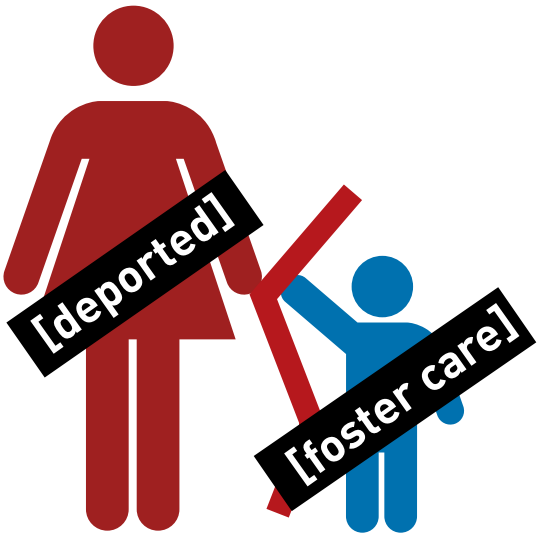
Until now, no research has systematically explored the extent to which children of detained and deported parents are pushed into or remain in foster care, and only a few studies have explored the impact of parental deportation on children in general. One such study, called "Paying the Price: The Impact of Immigration Raids on America's Children," was released by the Urban Institute in 2007 in the wake of workplace-based immigration raids in Colorado, Nebraska and Massachusetts.[57] The report found that the raids left children alone without caregivers, that one child was affected for every two immigrants arrested, and that after the heat of the raids cooled, the children who were left behind experienced growing isolation, fear, economic hardships, depression and other psychological effects.[58]

For years, the media has published accounts of detained and deported parents struggling to maintain custody of their children. Policy advocates have warned of a growing trend. A policy report released in December 2010 by the Women's Refugee Commission concluded that ICE is not doing enough to protect parents from losing their children.[59] And a study released in May 2011 by the Southwest Institute for Research on Women at the University of Arizona found that in Pima County, Arizona, parents who are detained are at significant risk losing their parental rights.[60] "Shattered Families" is the first study to systematically investigate the extent to which children of detained or deported parents enter or remain in foster care.

Over the course of our research, ARC visited six detention centers and interviewed almost 70 parents. Nineteen had children in foster care. Many more feared that their children might enter foster care because the child welfare system might decide that their children are not safe with their current caregiver or that the caregiver is too poor to support them.

Each parent was clear: their children's well-being was their greatest concern. For parents with children in the custody of the child welfare departments, that concern became a matter of consuming distress. These parents faced the already devastating prospect of separation from their children as well as the very real possibility that their legal right to parent their sons and daughters could be terminated. Their children—at least 5100 of them today and thousands more in the future—face a corresponding nightmare: that they will never see their mothers and fathers again.

The federal government has expanded immigration detention and deportation dramatically in the last decade, and in the last three years, deportation rates have taken a particularly steep upward turn. Before immigrants are deported, they are usually detained in a network of hundreds of immigration detention centers scattered across the country. While the average length of detention is 32 days, many detainees spend far longer behind bars, especially those who are legally challenging their deportation. **Detained parents interviewed for this report almost uniformly challenged their deportation, because it threatens to separate them from their children.**



At least 5100 children who are presently in foster care whose parents have been detained or deported

GEOGRAPHY AND DEMOGRAPHICS OF THE PROBLEM

Children of detained and deported parents are entering foster care in every corner of the U.S. While rates of detained/deported parent cases vary from place to place, foster care populations in states from the East Coast to the West Coast, on the border and in the interior, from large urban counties to small agricultural counties include a growing number of children separated from their parents by immigration enforcement and stuck in the child welfare system. While the cases did not approach a majority of the foster care population in any one jurisdiction, they accumulate at the national scale and in some places account for one in every 12 children in foster care. The following table shows the local percentages and numbers of children in foster care with detained or deported parents from a selection of the jurisdictions where ARC conducted field research. Local differences in rates of detained/deported parent foster cases vary. Rates depend on a number of factors, including the number of noncitizens in the county, the aggressiveness with which local authorities participate in immigration enforcement and the county's proximity to the border.

Selected Jurisdictions from ARC's Research: Estimated Current Children in Foster Care with Detained/Deported Parents

County	Percentage	Current Number of Children in Foster Care
Maricopa	4.5%	274
Pima	5.2%	130

County	Percentage	Current Number of Children in Foster Care
Los Angeles	6.2%	1178
San Diego	5.9%	219

County	Percentage	Current Number of Children in Foster Care
Collier	6.6%	17
Duval	1.8%	19
Lee	2.6%	10
Orange	3.0%	26
Polk	2.9%	28

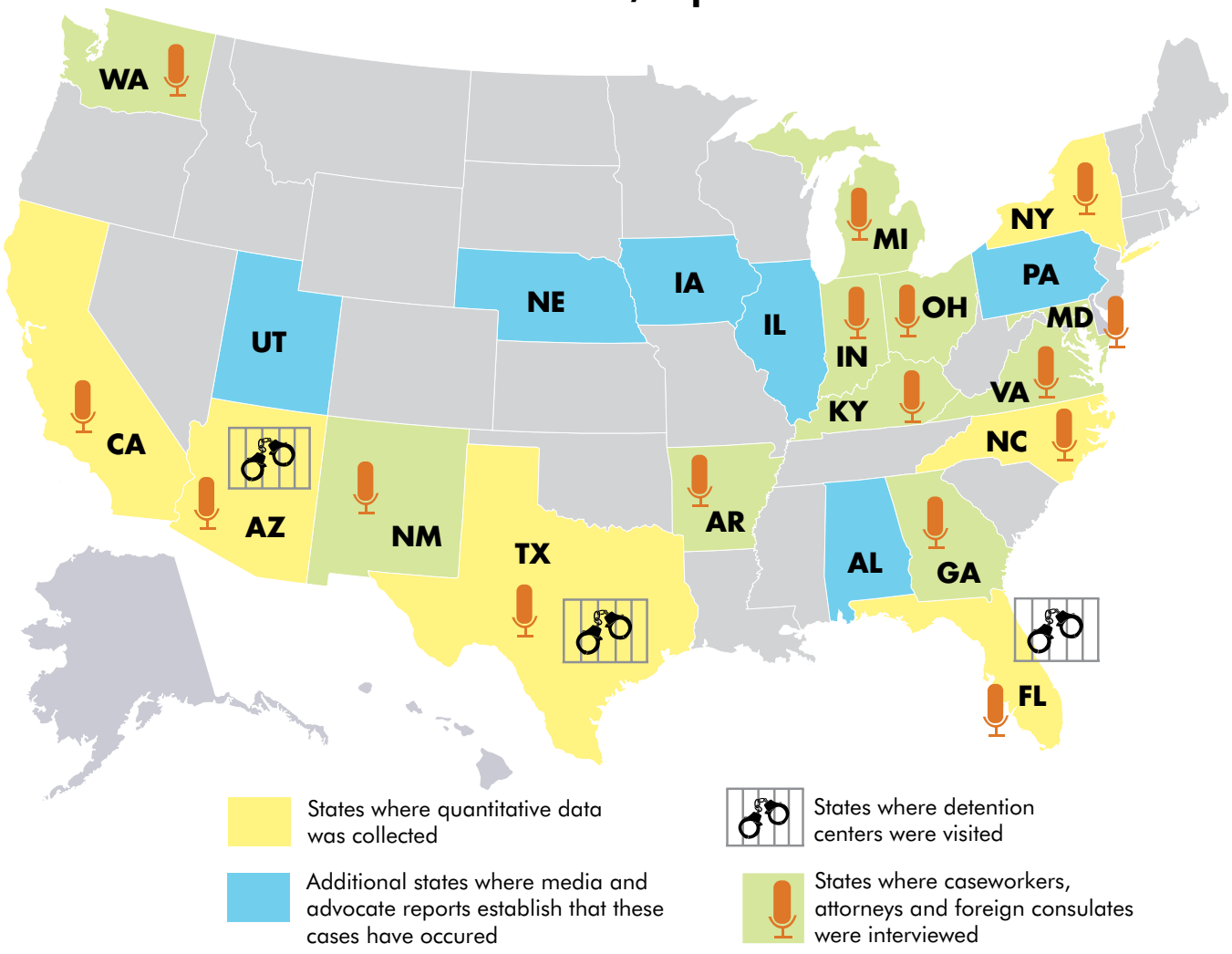
County	Percentage	Current Number of Children in Foster Care
Cabarrus	5.5%	3
Mecklenburg	4.5%	28

County	Percentage	Current Number of Children in Foster Care
Bronx	0.7%	30

County	Percentage	Current Number of Children in Foster Care
El Paso	7.5%	46
Rio Grande Valley East, Child Protection Court jurisdiction	7.8%	55

In addition to the six states where ARC collected quantitative data on the percent of current foster care cases with detained/deported parents, we spoke to attorneys, child welfare caseworkers and foreign consulates in 10 other states where these cases have recently emerged in the past several years and tracked media reports of cases from at least six additional states. Collectively, that means ARC has identified at least 22 states where cases in which the detention or deportation of mothers and fathers put families at risk of permanent separation.

States Where ARC Identified Detained/Deported Parent Foster Care Cases



The parents we interviewed and those we heard about from interview and focus group respondents were immigrants from all over the world. The distribution of their countries of origin was roughly equivalent to the countries of origin of all deportees. The significant majority of the noncitizen parents we interviewed or heard about were from Mexico, and the majority of the others were from South and Central America (El Salvador, Ecuador, Honduras, Guatemala or Peru) and the Caribbean (Jamaica, Bahamas or Haiti). ARC also heard accounts of parents from England, Germany, Pakistan, Portugal and the Democratic Republic of the Congo.

UNDOCUMENTED CHILDREN: Although in the overwhelming majority of cases reported to ARC, the children in foster care with detained and deported parents were themselves U.S. citizens, some of these children were undocumented. Their status raises some important issues. Undocumented children who are deemed to have no fit caregiver are eligible to apply for Special Immigrant Juvenile Status (SIJS). In order to qualify for SIJS, a juvenile court must first declare the child dependent on the court or a child welfare department. The child must not be able to reunify with at least one of their parents and the court must determine that it is not in the child's best interest to be returned to the home country. In most cases, SIJS is a vital path for undocumented children without caregivers to gain status. However, SIJS also poses concerns about parental rights, because in certain instances reported to ARC, child welfare departments are confronted by a difficult choice: help an undocumented child to gain authorized immigration status and terminate parental rights, or reunify children with their parents in another country. As discussed in Section IV, bias against placing children in other countries can sway CPS decision-making against placement in other countries even when the parents of these children are deemed fit.

PATHS TO SEPARATION

Detained parents' children enter foster care for a variety of reasons, and the child welfare system and immigration enforcement can intersect in a number of ways. However, **there are three common routes that lead to the separation of families in this way**. In each of these scenarios, detention and deportation resulted in extended family separation and left children in foster care for long periods.

Straight Path

The first common route is that children entered foster care as a direct result of their parent's arrest or detention. In these cases, when parents are detained by ICE directly or arrested by police and then issued an ICE hold, parents are not able to care for their children because they are detained so CPS takes custody. A dependency attorney in Tucson, Arizona (60 miles from the U.S.-Mexico Border) described a case where a mother's detention kept her family from being together:

> A mother was picked up on charges that were entirely unrelated to the children. Considering the nature of the relatively minor allegations, had she been a citizen, there is no doubt that she would have bonded out in a day or two. We have here a good mom who had some issues. In this particular case, it was her inability to be with her kids because of detention and deportation that got them into care. The kids are a little older and if she had been a citizen, the children would have made do for a day and then she would have been out and back with them. But the fact that she was incarcerated with an ICE hold and then detained and deported means it's considered to be neglect now by our state's statutory regime. This case has been open two months and the kids are still in foster care.

In these cases, even if parents are released from detention after a long period, the fact that their children are in CPS custody can mean that the family is not immediately reunified. In Phoenix, Arizona, a 2-year-old girl was placed in foster care when her mother was pulled over by police and arrested because she was undocumented and was driving without a license. ARC spoke with the girl's foster care provider who said without equivocation, "The only reason they're not back together yet is the bureaucracy of the system. Before they can return her to her mother, they have to verify that the mom has a stable home, everyone else in the home passes background checks and that takes time." He added if the mother had not been detained, the child welfare system would never have been involved in this family's life. "None of these were made into problems until she was detained."

Parallel Path

The second route that results in children of detained/deported parents entering foster care is similar to the first. These cases entail an allegation of child maltreatment that brings a family to the attention of both CPS and ICE at the same time. When police are involved in CPS investigations, what might have been a normal CPS case that would likely have resulted in prompt reunification, leads to an ICE hold, detention and extended separation when parents are undocumented. Parents in detention are denied the due process right to advocate for themselves in juvenile court, and the child welfare system poses obstacles to reunifying families.

A California man was arrested and his babies placed in foster care because a babysitter left the children alone for less than an hour and the police were called. When he arrived home, he was arrested for child endangerment, and when his information was run through the Secure Communities database, he was picked up and moved to detention.

Interrupted Path

The third route to this sort of separation involves families that were already involved with the child welfare system when parents are detained. In these cases, parental detention interrupts, sometimes irreparably, the process of family reunification. ARC heard many of these stories including one from a woman in a Florida detention center who was just weeks away from fully reunifying with her son when she was detained:

Magda, a green card holder from Portugal, and her U.S.-citizen son were weeks away from reunification, when she was detained in January after stealing clothes for her son. At the time, the son was already in foster care because Magda had previously struggled with addiction, but mother and son were soon to be reunified. They were spending the afternoon together on one of their biweekly supervised visits when Magda's son soiled his pants. With little money to spare, she decided to go to the dollar store across the street and steal the clothes he needed. She wanted to avoid taking her son back to the foster home without changing his clothes first. The security guard called the police, who arrested Magda for petty theft. The officers drove her son back to his foster home and Magda was placed in deportation proceedings. From detention, she could do little to maintain contact with her son, and their path to reunification was interrupted.

As a result of expanding local immigration enforcement, an interaction with police that for a U.S. citizen might not have entailed temporary family separation, threatens to sever family bonds permanently for noncitizen mothers and fathers and their children. Parents' due process right to meaningfully participate in their case is denied. As long as aggressive immigration enforcement continues, parents are at risk of being detained and deported.

IMPACT OF LOCAL IMMIGRATION ENFORCEMENT ON CHILD WELFARE

As most of the stories included in this report suggest, in jurisdictions where local police aggressively participate in immigration enforcement (e.g. 287(g) and Secure Communities), children are more likely to be separated from their parents and face barriers to reunification.

ARC's research found that in counties included in our surveys where local police have signed 287(g) agreements with Immigration and Customs Enforcement, children in foster care were, on average, about 29 percent more likely to have a detained or deported parent than in other counties (an average of 4.9% of foster care kids in 287(g) counties compared to 3.8% in others). This type of aggressive immigration enforcement exerts a statistically significant impact when ARC controls for the size of the noncitizen population and proximity to the border.

The significance of aggressive local enforcement is put in clear relief when comparing counties that except for 287(g) programs are otherwise similar. Based on our survey data, Collier and Lee counties (two adjacent counties in

Secure Communities resulted in 277,826 detentions between 2008 and June 2011.

Southwest Florida) have vastly divergent rates of foster children with deported or detained parents. The average percent of such cases reported by respondents in Collier County was 6.6% as opposed to 2.6% in Lee County. While Collier has a higher foreign-born population—23 percent compared to Lee County's 14 percent—the difference is not great enough to account for the significantly higher rate of deported/detained parent cases. The fact that Collier County has implemented a 287(g) agreement while Lee County has not may account for much of that difference. Additionally, significantly larger numbers of people have been deported per month from Collier County through Secure Communities as compared to Lee County. Local immigration enforcement drives up the likelihood that children in foster care have detained and/or deported parents.

This finding is of particular importance because as the federal government implements Secure Communities in more and more counties around the country, the rate of detained/deported parents foster care cases is likely to increase. Secure Communities is an ICE program that checks the immigration status of anyone booked into a local jail that resulted in 277,826 detentions between 2008 and June 2011.

CHILD WELFARE CASEWORKERS AND ATTORNEYS LACK KNOWLEDGE ABOUT IMMIGRATION ENFORCEMENT

Often, attorneys, caseworkers and judges who work in the juvenile dependency and child welfare system know little about immigration law and policy. Despite the expansion of Secure Communities, few caseworkers and attorneys interviewed for this study were aware of the program, although it operates in most of the counties we examined. In counties where ICE operates 287(g) agreements, child welfare workers were only slightly more aware of that program.

The lack of knowledge about immigration policy is manifest in an inaccurate assumption among many child welfare workers that to be deported, immigrants must have committed a serious crime.

An attorney who works in the child welfare system in Florida said, "It comes up when there is an ICE hold and that typically happens when the parent has a criminal background and becomes incarcerated for whatever reason. *They don't come in solely because of immigration status* [emphasis added by ARC]. Once law enforcement finds out they are illegal, that's when the deportation ball gets rolling. Law enforcement only gets involved in these if there is a criminal issue." But as the data on the rates of Secure Communities deportations of people without convictions makes clear, **"criminal issue" does not mean a person has been convicted of a crime but rather that an individual without immigration status interacts with local police and is booked into a local jail.**

ARC's research found that **expanding local, police-based immigration enforcement has increasingly meant that the trigger that pushes children into foster care or that bars parents from carrying out a reunification plan only *appears* to be criminal justice system involvement. In fact, it is often immigration detention absent of a conviction.**

Yet most child welfare workers remain unclear about how immigration enforcement works and who gets detained and deported. This misunderstanding about the routes to deportation affects the way in which child welfare workers think about detained and deported parents.

FEW PROTECTIONS FOR PARENTS AT THE TIME OF APPREHENSION

ICE has offered few protections for families. Following a series of workplace raids in the mid-2000s that left a number of children uncared for, ICE released "Guidelines for Identifying Humanitarian Concerns among Administrative Arrestees When Conducting Worksite Enforcement Operations." These guidelines demand that ICE screen those who are detained in raids to ensure that sole caretakers of minors are not detained for extended periods.

These time-of-apprehension guidelines, however, apply only to ICE-administered raids of 25 or more people.[61] They do not pertain to smaller-scale ICE-enforcement actions or Border Patrol activities. Most significantly, **the protections are largely outdated and insufficient for the current context** in which ICE has shifted from high-profile raids to more hidden and devolved forms of enforcement that operate through local police and jails or smaller-scale ICE enforcement actions. Now, whether or not parental rights and children's needs are respected is increasingly contingent upon the policies and practices of local law enforcement agencies and on the discretion of single ICE agents.

In stories told to ARC by parents and attorneys, local police officers and federal ICE agents did not allow mothers and fathers to arrange for their children's care when they were arrested or detained. If local police or ICE had allowed parents to contact relatives or friends of their own choosing, children may never have entered foster care in the first place.

Late one December night, in Tucson, Arizona, police arrived at Elena's home to break up a party that her 16-year-old son was hosting. Elena came home shortly after the police arrived. The police arrested her for buying alcohol for minors, though she said her son threw the party without her permission and she had not bought any alcohol. Before the police took her away, Elena asked one of the officers if she could call a friend who could come and pick up her children. The police officer threw her phone on the ground and told her that she could not make any calls. The officer then called CPS, put Elena in cuffs, led her into the back of a cruiser and booked her in the county jail.

Her three children were placed in foster care and Elena was detained an hour and a half north of her home.

Elena's case is not uncommon and could have been avoided. Numerous detained parents whose children were not in foster care said that they'd avoided this because they were allowed to make arrangements for their children at the time of apprehension.

ICE DISCRETION IS ALLOWED, BUT NOT USED

After failing to allow parents to make appropriate arrangements for their children at the time of arrest and apprehension, ICE has continued to needlessly separate families once a mother or father is detained. While ICE officials hold broad discretion in determining who to continue detaining and who to release, many parents remain behind bars for extended periods while their families move closer and closer to permanent severance.

In many cases, this extended detention without release is in direct contradiction with ICE's own instructions for its staff. In June 2011, ICE Director John Morton released a memo reiterating past ICE memos stating that ICE

officers and attorneys have broad power to determine who they will target, seek to deport, detain, or release from detention.[62] The long list of factors to be considered by ICE officials when deciding whether to detain noncitizens or pursue a removal case against them is divided into 19 categories, including the following:

- The person's ties and contributions to the community, including **family relationships**
- Whether the person has a U.S.-citizen or permanent-resident spouse, **child**, or parent
- Whether the person is the primary caretaker of a person with a mental or physical disability, **minor**, or seriously ill relative

Though the memo could have significant impact, all indications from our research suggest that this discretion has been used inconsistently at best for mothers and fathers who risk losing their parental rights. One reason that ICE may not be using discretion to release the parents is that ICE officers and agents are simply not consistently asking detainees whether they have children.

Only four of the almost 70 detained parents we met in six detention centers said that ICE officers had actually asked them if they had children. The four who said they'd been asked were detained in the Hutto Detention center in Texas, a women's detention center that ICE says is a model facility, despite a record of sexual abuse by guards.[63] The other seven mothers interviewed in Hutto said that they had not been asked about children. Since only 16 of all detainees have legal representation and few have information about their ability to petition for themselves, many who might be eligible for release are not granted relief.[64]

When ICE discretion appeared to be used to release parents, which according to ARC's research happens with some greater regularity for single mothers than for other parents, mothers and fathers almost always had to petition for their own release and often spent significant periods of time in detention— in some cases close to a year—before they were released. This contradicts the language of the memo, which states that it is "preferable for ICE officers, agents, and attorneys to consider prosecutorial discretion in cases without waiting for an alien or alien's advocate or counsel to request a favorable exercise of discretion."

LIMITS OF DISCRETION

The ICE discretion memo is also very clear about its limits, and lists the following broad categories as "negative factors" that should weigh against release:

- Individuals who pose a clear risk to national security
- Serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind
- Known gang members or other individuals who pose a clear danger to public safety
- Individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud

While discretionary relief does result in some parents being released or avoiding detention altogether, the narrow field of eligibility raises questions about the extent to which the memo can protect children from remaining

in foster care and parents from losing their parental rights. The list contains "lengthy criminal record of any *kind* [italics added by ARC]," a broad category that can include minor violations. For example, "Criminal Traffic Offenses" comprise the third largest group. This can include violations as small as driving without a license. There are indications that ICE may slow deportations for this particular violation; however, ARC's research found that, as of June 2011, parents continued to be deported for such minor infractions.

As immigration enforcement is increasingly devolved to local police departments, the day-to-day risks of becoming detained grow, especially when undocumented immigrants are driving because that augments their exposure to police. When parents in jurisdictions without public transportation infrastructure are undocumented, their only option is to drive. Only three states—Washington, New Mexico and Utah—continue to allow undocumented immigrants to get driver's licenses, and these policies are embattled.

Fernando, a father of three U.S.-citizen children, had lived in North Carolina for a decade when he was deported after repeatedly being pulled over by North Carolina police for driving without a license. Because the state of North Carolina does not permit undocumented immigrants to get licenses, Fernando was forced to drive to work without one. He was arrested and quickly issued an ICE hold. According to Fernando's attorney, Fernando's girlfriend could not afford to pay rent or to pay for other basics for their children without her boyfriend's support. As a result, the children are now in foster care.

Fernando has been deported, and both he and the children's mother are facing the termination of their parental rights. Fernando's attorney said, "Here in this area, it seems like before, to get deported you had to do something with blood involved. Now, a simple traffic violation gets you deported and a slew of other consequences happen."

"ILLEGAL REENTRY"

Also included in the discretion memo's list of "negative factors" are individuals with a "record of illegal re-entry and those who have engaged in immigration fraud." Immigration-related criminal charges were the second-largest category of deportable offenses among those deported as a result of a conviction. Both "illegal re-entry" and "immigration fraud" charges criminalize the very act of being an undocumented immigrant, because most undocumented immigrants, with no route to gain documentation use some sort of fake paperwork just to obtain work to support themselves.[65]

The charge of "illegal reentry" has put parents behind bars who, after they've been deported, cross back over the border into the U.S. just to be with their children. In October 2011, *The New York Times* reported that about half of all noncitizens detained by Border Patrol at the U.S.-Mexico border had been deported previously.[66] The report stated that a growing number of immigrants who are caught reentering the U.S. had previously been living in this country for many years and are merely attempting to rejoin their families.[67]

In certain border areas, respondents said that parents who had been deported regularly risk a return journey so that they can make it to court. Because juvenile courts usually maintain a "don't ask, don't tell" policy on reporting immigration status, these parents are sometimes able to return to participate in their hearings and regain custody of their children. But in some instances, they are picked up by Border Patrol and prosecuted criminally, sometimes for extended periods, before being deported again.

Many immigrants who enter without inspection or proper documentation are subject to misdemeanor and felony charges and can be sentenced to significant periods in jail or prison. First-time entrants can be sentenced to as much as 180 days in jail. Those convicted of "illegal reentry" for entering without papers after a previous deportation can be charged with a felony that carries prison terms from 2 to 20 years.[68] Immigration-related criminal prosecutions have overwhelmed the federal courts. In 2009, there were 91,899 federal criminal prosecutions related to immigration issues in the country. Fifty-four percent of these were for immigration charges, mostly "illegal entry" and "illegal reentry".[69]

In Brownsville, Texas, a mother's parental rights were terminated and her children were put up for adoption because she is undocumented and was charged with "illegal reentry." A dependency attorney who represented the children described the case:

> I had a case where the single mom of six U.S.-citizen children lived close to a major thoroughfare and the kids were out near the highway playing. Someone saw them and was afraid that the 3-year-old was going to wander into the road. The police and CPS arrived and the mother was arrested on neglectful supervision and child endangerment charges. Because she is undocumented, Border Patrol checked her criminal record, found she had been deported before so she got an illegal reentry charge and was not released. If she hadn't gotten the 'hold'... she probably would have been released and the child endangerment charges would have been dropped. But here, the feds prosecute her for illegal reentry. It was a minimum of two years' incarceration and she was going to be deported after that. We terminated her parental rights. Now, we are having difficulty getting the sibling group adopted together. If she were a citizen, she would have been bonded out in 24 hours. She would not have lost her kids.

UNREPRESENTED IN MANDATORY DETENTION

While our research did uncover instances in which ICE agents used their discretion to release parents with children in foster care, most were among the shockingly low 16% of detainees with legal representation[70] or were among a very small number of parents whose caseworker actively contacted ICE to ask for their release.

Without a broader basis for relief, many families will continue to be separated by detention and deportation. For some parents, ICE discretion offers little hope because their detention and deportation is mandatory based on federal law. **Mandatory detention and deportation** means that even immigration judges are denied the prerogative to release detainees or cancel an order of removal. Immigrants convicted of a broad category of charges are subject to mandatory detention and deportation. Others are detained for extended periods because ICE officers believe that if they were released while waiting for the decision of an immigration judge, they would flee. However, immigration attorneys as well as parents interviewed for this report made it very clear that **parents with children in foster care are categorically a low flight risk because their primary concern is almost always to regain custody of their children.** Few parents would leave town without their sons and daughters.

THE CHILD CITIZEN PROTECTION ACT: "Amends the Immigration and Nationality Act, in the case of an alien subject to removal, deportation, or exclusion who is the parent of a U.S. citizen child, to authorize an immigration judge to decline to order such removal if the judge determines that such action is against the child's best interests."

VICTIMS OF GENDER-BASED VIOLENCE AT RISK

In a disturbing number of cases uncovered by ARC, ICE detained victims of family and gender-based violence, and their children entered foster care. Immigrant victims of gender-based violence are at particular risk of losing their children to foster care for several reasons. First, victims of domestic violence and human trafficking are often isolated from their networks because traffickers and abusers cut them off from families and friends. As a result, if they are detained by ICE, their children may have no other family or close family friends who are available to care for them. Second, police often call CPS automatically when children are present in homes where family violence occurs. As a result, children are sometimes automatically removed from their homes. In some instances, victims are also arrested and ICE detains them because of their immigration status.

Many of these women should have been protected from detention in the first place, because victims of crimes can apply for visas in the U.S. Federal law maintains specific categories of visas for victims of domestic violence and human trafficking in particular. Additionally, in his June 2011 memo on ICE discretion, ICE director John Morton explicitly included "victim[s] of domestic violence, human trafficking, or other crime," in the long list of factors that "ICE officers, agents, and attorneys should consider" when deciding who to detain and deport. Nonetheless, victims appear to be detained in immigration detention centers with disturbing regularity and for extended periods.

Domestic Violence

The Applied Research Center found that victims of domestic violence are too often detained in immigration detention centers and their children enter foster care. **Immigrant victims of domestic violence are faced with an impossible choice: remain with an abuser or risk detention and loss of their children. Approximately one in nine of the stories recounted to ARC in interviews and focus groups involved domestic violence.**

In most jurisdictions, if a report of domestic violence is made to the police and children are present, the police department will call CPS immediately and an investigation will ensue. A parents' attorney in Maricopa County, Arizona, described a case in which a report of domestic violence caused the initiation of the CPS case and a mother's arrest and detention:

> I have a Mexican immigrant client detained by ICE for a year. She was a [domestic violence] victim and the police got involved and that's when they found out that she was undocumented and so they had to go ahead and detain her. Eventually, they released her and permitted her to stay here in the U.S. based on a Violence Against Women Act visa. But the fact that she was detained by ICE was enough to push the kids into foster care.
>
> Her kids were in care for a whole year and there was no other family to take them. Now CPS is trying to help her get her sons back but the process is slow.

In numerous cases, police arrested victims of domestic violence while investigating a report of abuse. At least two women that ARC met in detention centers said that their abusers reported them to ICE. In other cases, victims were arrested on assault charges after they defended themselves.

Immigrant victims of domestic violence are faced with an impossible choice: remain with an abuser or risk detention and loss of their children.

VIOLENCE AGAINST WOMEN ACT (VAWA): (*From: "Protecting Children: The Intersection of Migration and Child Welfare: Emerging Issues and Implications"*)[71] "A collection of federal laws, known generally as VAWA, was first enacted in 1994 to address a widespread problem: non-citizen spouses who stay in abusive relationships because their partners and abusers have U.S. citizen or legal permanent resident status and are sponsoring the family's visa petition. Until a non-citizen has legal immigration status, she or he can be deported at any time and cannot get permission to work legally. Often, the abusive spouse will use the immigration sponsorship as a way to control the undocumented spouse. The VAWA legislation attempted to acknowledge and address these complexities by helping lawful permanent residents leave dangerous situations without prejudicing pre-existing immigration petitions.

…Domestic violence clients only qualify for VAWA when their abusers are either legal permanent residents or U.S. citizens. While a VAWA petition is not automatic, it can lead to residency for the spouse and children in question. Credible evidence of abuse must be provided, but this does not necessarily include a police record."

Hilaria was arrested in Phoenix, Arizona, because she tried to defend herself against her abusive husband. In October 2010, her husband attacked her and she says she fought back, drawing blood. A neighbor heard screams and called the police. When officers arrived, they arrested Hilaria for assault. ICE quickly detained her.

Because their children were home at the time of the report, the police called CPS. When the CPS caseworker arrived, the officers and Hilaria's husband said that Hilaria was the assailant, so the caseworker left the children with the husband. Two weeks later, the child welfare department returned to check on the children. The caseworker suspected that Hilaria's husband was using drugs and removed the children from him, placing them in foster care.

Two months later, sitting in a visitation room over an hour from her children, Hilaria said tearfully, "I've had domestic violence before but I took it for my kids. Now they've robbed me. I did what I did to defend myself and my kids."

Victims of Human Trafficking

ARC also met victims of human trafficking, who were detained and are at risk of permanently losing their children.

In May, 30-year-old Paula was one of almost 1000 detainees held at the time inside the Willacy Detention Center, in the Rio Grande Valley of Texas. For more than a dozen years, Paula lived with a man 20 years her senior who she says brought her to the U.S. after he met her in Mexico. The man presented himself to the outside world as her partner, but behaved more like her owner, keeping her on a short leash and forcing her to work without pay cleaning the homes of his family and contacts. He forbade her from having contact with her family in Mexico and she has not spoken with them for more than a decade. An attorney who represents her says she is a victim of human trafficking.

She had seven children with him since she came to the U.S. One of her daughters was very ill and at intervals required a machine to breath.

Paula tearfully recalled the night that, while the man slept, she piled her children into his vehicle and drove away. Because of the hasty escape, Paula could not take her daughter's breathing machine. The next day, knowing that her girl could not survive without this machine, she drove to the closest CPS office and made the decision to voluntarily place her daughter in foster care until she could arrange to get the breathing machine or a buy a new one. She took her other children to a domestic violence shelter. But several months later, a sheriff's deputy arrived and arrested Paula, charging her with neglect because she'd failed to provide her ill child with necessary care. She was brought to the local jail and the rest of her children were placed in foster care. Rather than being released on bond or spending a short time in jail, Paula was soon moved to Willacy. When ARC interviewed her, she had already been at Willacy for seven months, with no word of when she might be released or deported.

Victims of trafficking may be at particular risk of having their children placed in foster care if they are detained. As an attorney familiar with the case explained, "Trafficking victims are by definition isolated. They have no support network at all. A lot of immigrants have extended networks, but trafficking victims don't. Because of that, there's nobody to take the kids to."

Failure to Protect

In a number of cases reported to ARC, children were removed from their homes after incidents of domestic violence or sexual assault perpetrated by the mother's partner. These mothers were then themselves charged with neglect because the child welfare department claimed that the mothers knew about the violence or abuse and did nothing to stop it. Immigrant women who fear that calling police will result in deportation are at particular risk of being charged with "failure to protect." These charges can result in jail time and then lead immediately to ICE detention.

In New York State, an advocate reported the story of an undocumented woman who was convicted on a "failure to protect" charge when her adolescent daughter was sexually abused by the mother's boyfriend. The man battered the mother for years and regularly threatened to have her deported if she reported the violence. When she found out that he was sexually molesting her daughter, however, she reported him to police. She was charged with "failure to protect" based on the assumption that she knew about the abuse but failed to stop it. Her two children were removed from her custody and placed in foster care. After several months in jail, her attorneys succeeded in convincing the criminal court judge that the woman was not a perpetrator but rather a victim whose charges should be dropped. But before she was released from jail, ICE moved her to a detention center. Collectively, she was incarcerated and detained for a year until she was finally released on her own recognizance while waiting for the conclusion of her deportation proceedings. The family is still not reunified.

When a parent is charged with "failure to protect," or any other kind of child maltreatment, it may be held against her/him if she/he applies for immigration status, including VAWA-based immigration relief. The fact that a victim is charged criminally as a perpetrator may stand in the way of that parent's ability to regain custody *and* block access to immigration relief.

Children of Detained Mothers Remain With Abusers

Numerous detained women said that since being detained, their children were now in the custody of their abusers. Unlike Hilaria, whose children were removed from her abuser, these women were tormented by a dual fear: on the one hand, they worried that their children were unsafe living with men who abused them; on the other hand, they feared that if they called CPS to protect the children, they themselves might lose their parental rights if they remained in detention or were deported.

Numerous **detained women** said that since being detained, their **children were now in the custody of their abusers.**

A 34-year-old Ecuadoran woman named Maria who has lived in Minneapolis, Minnesota, for almost a decade was pulled over by a state police officer as she drove her daughter to school one morning. The Minnesota Department of Public Safety has signed a 287(g) agreement with ICE, and when Maria rolled down her window, the officer asked her for her papers. Because she is undocumented, she had no driver's license, so the officer arrested her.

Before taking her to the station, the police officer said that she could call someone to pick up the girl, but Maria told the officer that she had no family in the area. When the officer told her that the only other option was to call CPS, Maria called her elderly landlady who agreed

to take the girl. Maria was soon detained by ICE and moved over 1000 miles away to the Hutto women's detention center in Texas.

A few days later, Maria's former boyfriend, who was the girl's father and who had abused Maria for years, arrived at the caregiver's house and took his daughter away. The girl had no previous relationship with the man, who now has several other children and according to Maria, makes her daughter sleep in the living room. Maria does not know whether to call CPS and risk losing her daughter, or leave the girl in what might be an unsafe home with a man who she knows is violent.

ICE OBSTRUCTS DUE PROCESS

Once parents are detained and their children are in CPS custody, parents are largely separated from their children and are prevented from participating in case plans and advocating for their families. Detention makes it nearly impossible for mothers and fathers to comply with court-mandated case plans, denies them access to services in which they are required to participate to get their children back, erects barriers to visits between children and parents, and makes it very difficult for parents to communicate with their attorneys or caseworkers or to appear in court.

In none of the accounts shared by detained parents with children in foster care or by attorneys, caseworkers and judges was a detained parent allowed to physically appear at their dependency hearings.

Ricardo has spent nine months in immigration detention 800 miles away from his two babies, who are now almost 1-year-old and 2-years-old and living in foster care with strangers in Napa, California. Ricardo looked through the double-paned window of the visitation booth at the Pinal County Jail in Arizona where he is detained and said, "I love them like nothing else." He has not seen the younger one since she was 2-weeks-old. His children were removed from his custody because a babysitter left them alone for less than an hour and he was arrested for child endangerment. When his information was run through the Secure Communities database, ICE moved him to detention.

None of his family, let alone the caseworker responsible for his children's case, can make the drive to visit him. Even if they did, the detention center forces visitors to communicate with detainees through a video feed from another room in the facility.

Weeks after the fact, Ricardo learned that the dependency court held a hearing about his case without informing him. His children have now been in foster care for 10 months and he has been almost fully excluded from proceedings because he is detained. He does not know if he has been issued a case plan and the CPS worker, whom Ricardo was finally able to call Collect from the detention center, says the attorney for the child welfare department in Napa is pushing to have the children adopted by the foster home where they now live. From inside detention, there is little he can do to stop the dissolution of his family.

A judge in Pima County, Arizona, explained:

> Detention becomes a factor because [detainees] can't participate in court hearings. If they are in a detention center, hardly anyone knows how to find them. … Parents [should] have an absolute right to be present in a court hearing. … We order that if they are in custody they appear, but these orders are not honored by the detention facilities. We don't have the authority over the federal center.

Parents are often cut off entirely from the juvenile court and child welfare process when they are detained. "If [parents] are in detention," said a children's attorney in Charlotte, North Carolina (Mecklenburg County), "they have to do the work to get in touch because we can't reach them. It ends up being like a black hole." Caseworkers and attorneys say that contacting and adequately involving detained parents in the dependency legal process is often impossible.

From the perspective of detained parents with children in foster care, detention is experienced as a legal no-man's-land as they struggle to contact their attorneys and CPS caseworkers and are often left in the dark as to the progress of their dependency court case or the whereabouts of their children. "I don't know anything about a reunification plan," said one detainee. "They haven't told me anything. The CPS lawyer has not called or contacted me; the caseworker hasn't either. I'm in the dark here."

Some child welfare workers stop trying to contact detained parents altogether. A child welfare investigator in another county in North Carolina lamented, "We are supposed to make contact with them and supposed to involve them in the process. When they're in detention, we don't. We contact them before they are moved there, but when they are detained, we can't talk to them."

Attorneys and judges made clear that ICE obstructionism is a matter of policy. **Even detainees in the same jurisdiction as where their dependency hearings are held were not allowed to appear in court.** In San Diego, an attorney who represents parents said, "You can basically see where the detainees are held, you could walk right over there, but ICE won't bring them over for court, ever."

Inconsistent Phone Access

Typically, juvenile dependency courts allow parents who are unable to be physically present in the court to appear by phone. While ICE detainees are sometimes able to arrange telephone calls for their juvenile court dates, ICE appears to have no uniform practice to ensure that this can happen. Detainees said that their ability to arrange calls depended entirely on the discretion of the particular ICE officer in charge of their case. **All of the parents we interviewed with children in foster care missed at least one and usually more than one of their hearings because they were detained and could not appear in person or by phone.**

> "Basically, ICE is obstructionist to the process. It makes it basically impossible for the court to do its job."

A Maricopa County, Arizona parents' attorney said:

> In general, one of the problems we've had as attorneys is that when clients are in ICE detention, [juvenile] courts will routinely allow them to appear telephonically for the hearings, but the problem is that a lot of times ICE detention for whatever reason doesn't let them get on the phone. I have had that problem on a couple of cases, even though there's an order from the [juvenile] court [for ICE to produce the parent].

In all of the six states that ARC focused on, some of the attorneys interviewed said that they have not once had a detained client who was allowed to participate in a hearing, even by phone. As a result, parents lose the opportunity to advocate for their families as courts are deliberating their future relationship with their children.

The legal processes of determining where a child should be placed either temporarily or long-term and then whether a parent is fit to maintain or

regain legal custody almost always occur without the detained parent's regular involvement. A county attorney who represents CPS in El Paso County, Texas, juvenile court put it most clearly: "Basically, ICE is obstructionist to the process. It makes it basically impossible for the court to do its job."

DETENTION EXCLUDES PARENTS FROM PARTICIPATION IN FAMILY REUNIFICATION PLAN

Parents in detention are almost universally denied access to the services they need to comply with their reunification plans because ICE, or the counties and private companies contracted to run many detention centers, simply do not provide detainees access to any services. As a result, the termination of parental rights and permanency timelines move forward while detained parents are largely powerless to complete their case plans.

A caseworker in the Compton neighborhood of Los Angeles described an open case involving a detained mother: "It's kind of like a catch-22. You know, in a sense, we're asking her to do something, but we're not allowing her to do it. You know, so it's kind of like [detainees] are not in a good position."

In the Baker County Jail in Florida, Sarah, a British woman who'd been a U.S. resident for almost two decades, was one of two women among over 20 in the detention pod whose children were in CPS custody. Sarah was able to contact her caseworker through a friend. The caseworker, who was employed by a private case management agency, sent Sarah a letter that read as follows:

> This letter is to advise you that as part of your outstanding dependency case plan tasks, you are court ordered to complete:
>
> 1. Parent Educational Training for Teens
> 2. Psychological Evaluation and follow all Court approved recommendations
> 3. Substance Abuse Evaluation and follow all Court approved recommendations
> 4. Family Counseling upon release
> 5. Stable Housing and Income….

Sarah could do none of these things from within detention.

The document that the caseworker sent to Sarah went on to read, "One of the tasks in your case plan is to visit with your child."

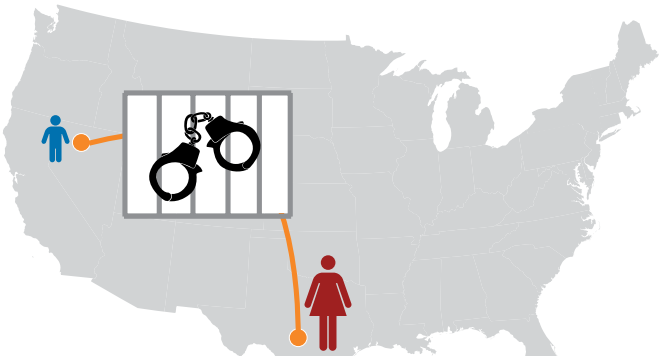
Most reunification plans require parents to visit with their children. In a normal case plan for a family in which the children have been taken from the parents, parents are first allowed to visit with their children under caseworker supervision and then move to unsupervised visits and eventually to reunification.

However, visitation can be impossible for detained parents. Detainees are often transferred to detention centers far from their homes, and child welfare departments and dependency courts have little knowledge of where immigrant detainees are taken or how to find them. In New York City, an advocate for parents said a client was incarcerated locally and then just before she was to be released, "ICE grabbed her and brought her to detention. We could not find her. Turns out, she was transferred to Pennsylvania and then to Arizona. We ended up connecting with an immigration attorney and finally found her after several months."

Detainees are transported an average of 370 miles from the place of their initial detention.[72] Many are moved even farther. Non-citizens identified by

ICE in New York City's Rikers Island, for example, are often moved first to Pennsylvania or New Jersey and then flown to South Texas—a total of almost 1800 miles.

While the Obama administration has said that it plans to overhaul immigration detention practices, including making efforts to keep detainees closer to home, as of August 2011, this promise does not appear to have taken effect in any significant way. Most of the detainees we interviewed and those we heard about had been transferred far away from their children.



Detainees are transferred an average of 370 miles from their homes.

In the summer of 2010, ICE implemented an online detainee locator system, which anyone with accurate basic information about a detained person can use to find out where that detainee is being held. When discussions of detainee transfers arose among focus groups in the six key states we explored, **few child welfare caseworkers or dependency attorneys had ever heard of the locator system**. Furthermore, while the locator is a needed step in the process of making immigration detention more transparent, when detainees are located, it does not mean they are able to communicate any more easily with those on the outside.

Even when parents are detained close enough to their homes to make visits possible, those visits rarely happen. First, ICE detention centers are not hospitable places and it can sometimes be difficult to organize visits. The Eloy Detention Center in Arizona, for example, is a sprawling barbed wired complex. To get in, visitors must be buzzed through two locked gates, all surrounded by barbed wire, and then wait in line at a metal detector for a guard to check if they've been approved for the visit. In at least two of the six detention centers where we travelled, visitors can only speak with their family members through video feeds.

Sarah is detained at the Baker County Jail where, if her daughter's caseworker were to drive her to see her mother, they would not be allowed to have a contact visit.

Sitting at a metal table in the common area outside, a large open concrete triangle lined on its hypotenuse with two stories of prison cells where the women sleep, Sarah spoke over the voices of other detainees. "Look at this line," she said," pointing to a part of the letter from the child welfare agency that read, "Should the services that you need to complete your case plan tasks not be available at your present facility, you should inquire… about transferring to another facility where you can complete your case plan tasks."

ICE detainees cannot request their own transfers, and even if they could no detention center offers services.

For many parents, incarceration in jail or prison can actually be more conducive to completing a case plan than detention. Many local jails provide inmates with drug treatment programs, parenting classes and counseling, among other programs that can help a parent to carry on with the tasks in their case plans. None of this is available to ICE detainees.

A caseworker in Mecklenburg County, North Carolina, explained:

> In local jails they can get parenting and domestic violence classes and counseling, but not in detention. I have had cases where parents were

> engaged in services in the local jail and then when they got moved to Georgia, we lose touch. …If you are [detained], you are not given the same opportunities even as those given in the jail system.

The caseworker added that even those detainees held in local jails are not allowed to participate in services available to other inmates. "They offer services to people inside the jails, but these services are not available to the ICE detainees in the local jail because they don't want to waste their resources in the jail on people who will be sent away quickly."

Courts sometimes fault parents who are detained for their inability to participate in their case plan. An attorney in Maricopa County, Arizona, explained: "The court will find them to not be compliant with case plan tasks and parental rights are terminated. Once ICE gets a hold of an individual and they're in the system, they're likely going to be deported [and] parents usually end up losing their kids."

LONG DETENTION AND SHORT PERMANENCY DEADLINES

Even when courts recognize the significant barriers facing detained parents and do not find them to be incompliant, courts will rarely slow the ASFA time clock or wait to move forward with a permanency plan to account for the needs of families when parents are detained. According to focus group participants and interviewees, judges usually deny requests to issue a "continuance" based on a parent's detention. A San Diego parents' attorney explained, "We can always request a continuance but really, the courts have never granted one in my experience for a detained parent."

The attorney said judges deny requests to extend a case while parents are detained because, "ICE holds are indefinite. They have no clear time period attached to them and we have no concrete idea of when they can get them to court. [The court] won't extend for that because they don't know how long they're extending for."

Detention itself can result in children moving into permanent placements and ultimately into adoption

Because courts generally will not stop the clock for detained parents, detention itself can result in children moving into permanent placements and ultimately into adoption. An attorney who represents the child welfare department in Hardee County, a small rural area in southeast Florida, told a story about a mother whose detention contributed directly to the termination of her parental rights and the adoption of her children. In the case, the central problem with detention was the extended time she spent in it.

As a general matter, the attorney said:

> A delay could well mean that if returning the child to that parent was a viable option, we are delayed just trying to find out what is going on, if that parent is looking at being deported or is looking at being detained a long time, then all of a sudden the gears shift on where we are going with that case.

In one of these cases, the attorney explained:

> The children have now been adopted. We spent five months locating this father, figuring out whether he will be deported, whether they will be released. We were moving toward reunification locally with the father and then he was deported. The detention slowed down the reunification process. It delayed the process. It would have just taken a week to get a home study and it would have been finished and done. Had he not been detained, we would have reunified and we would have closed the case. If he had been released after arrest [rather than

being detained] he could have reunified. Then, if he'd been deported, he could have been on his way to Mexico [with his son].

In at least three state states—Nebraska, New York and Colorado—there now exist statutory exceptions to termination of parental rights deadlines when parents are incarcerated. Colorado law does not require courts terminate parental rights in the normal deadline of 15 of the most recent 22 months if the child's extended stay in foster care is due to circumstances beyond the parent's control, including a parent's incarceration.[73] New York allows child welfare agencies stop the termination of parental rights clock and extend it beyond standard timelines in cases where a parent is incarcerated.[74]

However, although immigration detention is certainly "beyond a parent's control" and very similar to incarceration (albeit more isolating), the aforementioned exceptions do not apply. Because states have not passed exceptions for detainees, detention can lead directly to the termination of parental rights.

CHILD WELFARE CASEWORKERS AND ATTORNEYS LACK KNOWLEDGE ABOUT IMMIGRATION ENFORCEMENT

Because detainees have such a difficult time advocating for themselves in juvenile dependency courts, and few are represented by attorneys in immigration court, child welfare caseworkers and departments are among the only possible voices that detainees have in advocating discretionary release of a parent. To be clear, the instances in which this advocacy occurs are exceedingly rare. Of all the hundreds of cases reported to ARC, there were only five where CPS involved itself in advocating for a parent's release.

In at least one jurisdiction we explored—Maricopa County, Arizona—administrators of the child welfare department reportedly prohibited caseworkers from assisting an immigration attorney who was advocating for the discretionary release of a detainee. The caseworker, who spoke with one of our researchers on the condition of anonymity, explained that an immigration attorney representing a detained mother of several children called the caseworker to ask for some information about the children that could help win her release:

> I had to go through my attorney general to get these documents and I asked her and she said the department is absolutely not open to sharing anything. She said, 'You are not to pass on these children's birth certificates or anything else.' Of course these things would help her to argue for release.

In a handful of cases, caseworker involvement did help secure a parent's release. In Cabarrus County, North Carolina, a case manager described a 2009 case in which a mother was arrested for driving without a license and then detained by ICE. Her children were in CPS custody at the time she was detained but were about to be reunified with her. According to a supervisor in Cabarrus County, the department "provided ICE a letter saying that it was our intention to place the child with her but that we needed to ensure that she would not be deported. ICE actually released her and we returned the child to her and closed the case."

In a county in Maryland, a supervising attorney in a dependency representation office called a friend who worked for ICE in Washington, D.C., to advocate for the release of a parent. "It was a very, 'who do you know' kind of scenario," said an attorney involved with the case. The parent was eventually released.

Because child welfare departments are tasked with reunifying children with their parents whenever possible, this sort of advocacy would seem well within the bounds of their mandate. In fact, not doing so could be liberally construed as a failure to make "reasonable efforts" to reunify families.

THE TRAUMA OF SEPARATION

The prolonged separation of children from their parents has traumatic effects on both parent and child, according to parents, caseworkers, and others involved in the child welfare system to whom we spoke. This includes foster care providers, who are intimately involved in the lives of children separated from their parents.

A man in Arizona who has served as a foster parent for dozens of children over the past decade described the impact of extended separation of a mother from her baby daughter after the mother was detained for driving without a license and her 2-year-old baby was placed in foster care. The baby was with a babysitter when the mother was detained. At day's end, when the woman did not arrive as she always did to pick up her daughter, the babysitter called CPS.

The girl, now 3-years-old, has lived in foster care with this man and his wife for a year. The man helped the girl's mother secure pro bono immigration legal representation, and after six months in detention, she was released. The department is now moving toward reunification, but that process is slow and, according to the foster father, is only happening because "this particular caseworker is totally committed to getting them reunified. She said from the onset, 'we are going to reunify this family here or in Mexico.' If it were a different caseworker who didn't speak Spanish and had a different outlook, this girl would have been on her way to adoption."

If eventually this girl is able to return to her mother, they have been through more than any family should have to endure. Speaking of the emotional impact that the separation has had on the 3-year-old, the foster care provider said:

> The girl is so deeply tormented now. First was the initial trauma of the separation. Now she spends time with her mother three times a week as they move toward reunification. They have weekend sleepovers when we can get them approved. But she's been with us for a long time. She calls my wife mommy and me daddy. You can tell she's tormented. It's like, 'who am I supposed to love, these strangers who I call mommy and daddy or this woman who speaks Spanish?' She has to speak English in our house because my wife does not speak Spanish. She's lost some of her Spanish. That was a significant source of contention. The mom was furious that her daughter does not speak Spanish.

Caseworkers and attorneys repeatedly described cases in which children were placed with foster families where a language other than the parent's language was spoken. In some cases, children's attorneys and caseworkers actually argued that because of this loss of language, reunification no longer made sense for the child since communication between parent and child would become difficult.

A parents' attorney in Maricopa County, Arizona, recounted, "I have a case that has been open for three years. [The department] will not give her kids back, in large part because the case has been open for so long and the older girls don't speak Spanish anymore and the younger one has virtually no relationship with mom."

Other interviewees talked about a number of other troubling results of time spent in foster care. A Mexican woman, detained for nine months before she was deported, says her 14-year-old daughter, the oldest of her five children, became pregnant while living in a foster care group home. She also believes two of her younger children were abused in the foster home where they now live. Indeed, numerous studies have found that rates of physical and sexual abuse of children in foster care are significantly higher than the rates in the general population.[75]

CONCLUSION

After long periods of isolation while in detention, parents are often deported with little notice and are not allowed to reunify with their children between detention and deportation. While some deported parents choose to leave their children in the U.S. with family or friends, all of the 19 detained or previously detained parents with children in foster care that we interviewed said they wanted to take their children with them if they were deported.

As the federal government sets deportation records, children and families are shattered. Parents in detention are not only separated from their children but also denied the ability to meaningfully participate in their court-ordered reunification plans. Immigration enforcement is obstructing the juvenile justice system and violating families' rights to remain together.

Immigration and Customs Enforcement should halt deportations of parents of U.S.-citizen children. If deportation proceedings occur, ICE should release parents on their own recognizance and expand the use of community-based supervisory programs. Meanwhile, child welfare departments should develop clear policies for ensuring that detained parents can maintain contact with their children and are not penalized because they are detained. Child welfare departments should also work to support undocumented victims of family violence who may be eligible for relief from deportation through the Violence Against Women Act.

IV: DEPORTATION, CHILD WELFARE PRACTICE AND THREATS TO FAMILY REUNIFICATION

In January, Roberta was deported to Mexico after spending seven months in an Arizona detention center. Roberta's five young children were placed in foster care.

A children's attorney familiar with Roberta's case explained, "The mom is detained right now and she's likely going to be deported." The attorney said that as long as Roberta remained in detention and there was still a chance that she might be released, the child welfare department would maintain a plan to reunify the family. "But it's only going to remain that way until she's deported. In that case, then it's likely going to be severance and adoption."

Separated now by the U.S.-Mexico border, Roberta cannot make the journey back to fight for her kids. An arrest for a heedless mistake in Phoenix that would likely have triggered only a short interruption in the custody of her children were she a citizen, threatens to result in the termination of the 35-year-old's parental rights because she was deported.

Roberta's children are now in two different foster homes, while Roberta is in Mexico with no money and only a shallow network of connections to support her. She has lost all contact with her children and caseworker.

REUNIFICATION WITH DEPORTED PARENT

Parental deportation too often marks the end of any prospects for family unity when children are in the child welfare system. Child welfare departments and courts often move to terminate the parental rights of mothers and fathers who have been deported. Even when undocumented parents are not detained, some child welfare departments and attorneys object to placing children with them because of the possibility that they might be deported. The assumption is clear: children should not be allowed to live with their parents if their parents have been deported to another country or if they are at risk of being deported. Although research shows that outcomes for children are ultimately better when they are reunified with their own parents or placed with relatives, children of deported parents and with adult family members who are undocumented face barriers to this end. Parental deportation should not be tantamount to the termination of family bonds.

Lack of Policy

With some exceptions, most child welfare departments lack clear protocols on reunifying children with deported parents.

An attorney for Florida's child welfare department in Tallahassee explained: "[The child welfare department] does not have policies on much of anything because we make it all case by case. We want to make the best decision for the child. But of course, sometimes people's ideology gets in the way when we don't have policy."

In some jurisdictions, policy has not been created because relevant cases do not emerge with enough regularity to generate the will to do so. In other states, however, it is clear that child welfare department administrators have made the intentional decision to forego explicit policy to remain under the radar of anti-immigrant politicians and groups.

In Arizona, a child welfare administrator spoke to ARC on the condition of anonymity and said, "There's no policy here because there is pushback from the powers that be in the state… There are legal objections from the attorney general and policy objections from administrators. Ever since SB 1070 was passed, there's no discussion at all."

STATE ANTI-IMMIGRATION BILLS

In 2010, the state of Arizona passed what at the time was the most extreme immigration restriction bill ever passed by a state legislature. The bill, SB 1070, required local police to check the immigration status of anyone suspected of being an undocumented immigrant and made it a criminal violation for undocumented immigrants to be present within the state. A federal court blocked most components of the bill, yet numerous other states soon moved to pass similar laws. While the legislation was defeated in most states, Georgia, Alabama, Indiana and Utah all passed laws that mimic Arizona's. Alabama's bill went significantly further than Arizona's by requiring schools to verify students' immigration status. A court recently blocked that portion of Alabama's bill.

ARC's interviews with caseworkers and attorneys in Arizona, and in Florida where an SB 1070-like bill was proposed but defeated, found that the presence of such laws, or the prospect of their passage, significantly impacts child welfare work. In Arizona, numerous caseworkers and attorneys said that the law generated significant confusion among child welfare staff as to what services and supports they are allowed to provide to families with undocumented parents. Meanwhile, child welfare staff in Arizona said that since the passage of SB 1070, it has become more difficult to locate relatives willing to act as kinship caregivers for their young family members. Caseworkers said that these families now fear that if they come forward, they will be deported.

ARC conducted research in Florida at the same time that the state's legislature was debating an SB 1070-like bill. Even though the Florida bill did not become law, caseworkers and attorneys said that its introduction alone had a chilling impact on child welfare work and made it more difficult to work with immigrant communities to maintain family unity.

Importantly, while ARC's research found that state immigration restriction legislation had a negative effect on day to day child welfare work, the most significant driver of detained/deported foster care cases is the federal government's immigration policy, especially regarding its use of local jails and law enforcement to deport noncitizens.

In other cases, the failure to make policy is articulated as a means of protecting the department from conservative attack. A CPS administrator in Texas said, "We keep the policies vague. Every so often we get an inquiry from a conservative legislator who wants to know what we are doing with our funding so we don't try to make any policy about it to stay away from that controversy."

A parent's attorney in North Carolina, who had represented several deported parents, asked a CPS administrator whether there was a policy on working with parents in another country. The response: "We specifically do not put it in writing. We don't want to be bound by anything like that. … Once we come out with a [policy], we'll get a backlash."

Systemic Bias and Borders on Parental Rights

Whatever the reason, this policy silence leaves a wide-open space for systemic bias to prevent reunification of children and parents. Without explicit or enforced policies to facilitate reunification with detained or deported parents, systemic bias against placing children with their parents in other countries can take hold. One of the central barriers to the reunification of children with parents who have been deported is a deep bias often articulated as a belief that children are better off in the U.S., regardless of who they live with. The objection often supersedes the child welfare system's mandate to move toward family reunification whenever possible, and places **borders on family and parental rights.**

Because most child welfare departments lack explicit policy or practice guidelines for addressing the needs of children and deported parents, including little protocol for involving foreign consulates to pursue an international reunification process, these biases can flourish.

An attorney in a rural county in North Carolina said, "There is no education or policy really about how to deal with these cases."

The attorney's client, an undocumented father, was recently deported to Mexico for driving without a license and his children are in foster care.

Before the father's deportation, he was supporting his family and by all accounts, a loving father. But when he was deported, his children entered foster care because their mother could not afford to support them without his income. Now the man wants his children to be placed with him in Mexico, but the department has thus far refused to do so because of concerns that it is not in the children's best interest to live in the relative poverty that their father has found himself in since deportation.

According to the father's attorney, "He is a good father and the fact that he may be living in different standards now because he's in Mexico should not prevent children from reunifying with their father."

Many of the attorneys, social workers, children's advocates and judges who we spoke to raised questions about whether any consideration should be given to reunifying U.S.-citizen children with their deported noncitizen parents. These biases were especially pronounced from children's attorneys and advocates and some caseworkers.

An attorney in El Paso, Texas, who represents parents and children said, "When you break down the cases, placement with parents in Mexico happens very rarely. In my cases it might have happened every five years. The kneejerk reaction of almost everyone is that the children are better off in U.S."

A parents' and children's attorney in Brownsville, Texas, said, "With the climate in Mexico, nobody wants to send any of the kids to that—it's unsafe there now. Most of the attorneys don't want to send the kids back to Mexico and their arguments are, one, poor conditions in that county and, two, they only get public education up to a certain age before the parents have to pay for it. Most of our parents don't have education themselves; they are poor and they don't have the ability to pay for further education."

After clearly stating that the barrier to reunification in these cases is an objection to the conditions in Mexico, not to the parents' ability to parent, the attorney argued that life in the U.S. provides a better alternative:

"The kids can stay here, get a good education, and get it publicly paid for. It would be contradictory if we want to protect the kids but then we send them to Mexico..."

As this attorney's comments suggest, these concerns appear to arise not in relation to the parent's "fitness" or ability to raise children but, rather, stereotypes about conditions in the country to which a parent has been deported. Because child welfare systems are tasked primarily with reunifying children with fit parents, the impact of this bias raises serious due process questions.

A CPS caseworker in Los Angeles objected to what he sees as a systemic bias against placing children with their parents internationally. "Ultimately, as social workers our role is to reunify families. I'm not saying that ICE is right or wrong; what I'm saying is, let us do our job, let us reunify families. We are not here to deal with immigration; we are here to reunify children [with parents]. That's our goal and that's our job. That's what social workers do."

A central barrier to placing children in other countries is an anxiety among child welfare attorneys and courts about giving up jurisdiction over a dependency case, even if that case was near closure.

A judge in Pima County took this position explicitly. "As a general matter, everyone is hesitant about placing a kid in another country because from a practical standpoint we are going to lose control of the case. Once I place the child [in another country], the judge basically ends up being asked to dismiss the dependency."

Child welfare departments and courts object with some regularity to placing children internationally because they cannot continue to supervise a family. Stories of these objections emerged from almost every county we explored. While these concerns may sometimes be justified, there appears to be a clear predisposition against sending U.S.-citizen children to another country, regardless of the considerations of a parent's fitness.

A case described by a parents' attorney in Orange County, California, makes it clear that the final obstacle to reunification in another country is often less about the parent and more about a belief that children are better off in the U.S. The attorney described a case that did not involve a deported parent, but rather, an undocumented father who wished to take his children with him back to Mexico because he felt that life in Mexico would be safer for his children based on the rising number deportations and the lack of access to medical care for undocumented immigrants in the U.S. The attorney explained:

> The father had taken sole custody of the children after charges were filed against the mother. He had never been accused of any neglectful behavior. Through the judge was otherwise ready to close the case entirely and let the family live without CPS supervision, the judge refused to do so because the father said he wanted to go to Mexico. The lawyer for the department made the allusion that the kids couldn't be better off in Mexico, so why would we want them to go there? I argued that it was in best interest of children to let them be with their father, but the court did not see it that way.

The most serious effect of this reluctance to turn over jurisdiction combined with objections to placing children in other countries is that **deportations can lead almost seamlessly to termination of parental rights.**

Consulate Involvement

The deportation of parents with children in foster care does not always spell the irreparable shattering of that at family. However, child welfare departments must make particular efforts to facilitate reunification after parents are deported.

ARC's research found that children are reunified with their families following parental deportation only if foreign consulates are involved in a case. Consulates can serve as a bridge between deported parents and the child welfare departments. They can help parents access case plan services in other countries, facilitate home studies, conduct searches for parents who may have been deported and now have a child in foster care, process passports so that children are allowed to leave the U.S., and help facilitate visits between parents and their children in border regions. Consulates can also transport children to be reunified with parents who have been deported.

Few child welfare departments systematically contact consulates when child welfare departments take custody of the U.S.-citizen children of a detained noncitizen. Based on interviews, the practice of involving consulates when a foreign national is involved in a case is increasing in some jurisdictions.

However, even in these jurisdictions, rarely are those relationships formalized. As a result, consulates interviewed for this report believed that they heard of only a fraction of cases involving detained or deported parents from their countries. Our research confirms this.

ARC surveyed 14 Mexican consulates in 10 states and the Dominican Consulate in New York. All of these consulates were currently involved in reunification efforts for families with deported parents. **However, consular offices are aware of only a fraction of the cases that emerge in their regions.**

For example, in Maricopa County, Arizona, ARC's analysis found that there are approximately 250 children currently in foster care with detained or deported parents. However, the Mexican consulate in Maricopa County reported that it is currently assisting with only 31 cases involving detained or deported parents. The average child welfare investigation involves two children, which would mean the consulate is likely involved with 62 children. This suggests that the consulate in Maricopa County may be aware of only about one in four cases. In certain areas, the consulates were aware of an even smaller proportion of cases.

BORDER COUNTY

children in foster care are **32% more likely** to have a detained or deported parent

CONSULATES IN BORDER COUNTIES

Counties we explored that are adjacent to the border with Mexico were more likely than non-border counties to have high rates of CPS cases involving detained and deported parents. This comes as no surprise because child welfare departments in border counties have higher rates of cases with detained and deported parents. **ARC's research found that in counties included in our within Border Patrol's jurisdiction 100 miles from the border, children in foster care were, on average, about 32 percent more likely to have a detained or deported parent than in other counties (an average of 4.9% of foster care kids in border communities compared to 3.7% in others).** Aggressive border enforcement exerts a statistically significant impact when ARC research controls for the size of the noncitizen population and existence of a 287(g) agreement.

Perhaps because of the relatively high percentages of detained/deported parent cases in border areas, **border counties are generally more likely than others to have established policies or protocols for dealing with cross-border cases. The result is that border counties may ultimately be more likely to successfully reunify families with deported parents.**

Of the counties we explored on the U.S.-Mexico border, several have established formal or semi-formal relationships with the Mexican consulates and in some instances with Mexico's federal child welfare agency called DIF (*Desarollo Integral de la Familia*). Among the counties where we conducted focus groups, El Paso, Texas, San Diego, California, and Los Angeles, California, have established international liaison positions to coordinate with foreign consulates and with DIF.

A judge in El Paso said: "The liaison will be in touch regularly with the Mexican authorities and will also work with the TV stations in Mexico to get the word out that CPS is looking for parents. The liaison arranges for home studies and services in Mexico. He is an employee of State of Texas, Region 10."

San Diego's international liaison works similarly to El Paso's, and interview respondents there explained that the liaison has even helped work directly with parents in detention. Interview respondents in Los Angeles said that the liaison position there works predominantly on cases involving undocumented youth and is less involved with detained/deported parent cases.

In El Paso, San Diego, and parts of the Rio Grande Valley in Texas, and to a lesser extent in Los Angeles, child welfare staff, attorneys, judges and consulates described facilitating visitation between parents in Mexico and their children in the U.S. CPS would take children to the border and parents would meet them there for a designated period of time. In El Paso and the Rio Grande Valley, Texas, judges and attorneys said that on occasion, parents who had been deported were even escorted over the border by an officer of the court to attend hearings.

As a general matter, respondents in border counties with these agreements between child welfare departments and consulates were more likely to say that reunification with deported parents happens with greater regularity, although respondents were unanimously clear that even in these jurisdictions, immigration enforcement significantly diminishes the chances of reunification.

And not all border counties have developed these policies and practices. For example, in Pima County, Arizona (which comprises both the city of Tucson and a swath on the U.S.-Mexico border), the judges, attorneys and caseworkers we spoke to said that the Arizona child welfare administration has refused to sign agreements with the Mexican Consulate to create clear protocols for facilitating international reunifications. Staff at the Mexican Consulates in Pima and Maricopa counties said that while particular caseworkers and supervisors may sometimes be in touch with the consulates, there is no uniform practice.

CONSULATES IN NON-BORDER JURISDICTIONS

Counties and states without the benefit of geographic proximity to Mexico face additional challenges and more pronounced hesitation about international reunification. A staff person in a Mexican consulate that covers Michigan and Northern Ohio said that she will randomly be called by Child Welfare caseworkers from both states, but she says they usually get her phone number through colleagues and there is nothing formal in place to ensure that consulates are contacted:

> There is no signed agreement with CPS in either state. It's more on the case-by-case basis. It's on the level of individual caseworkers. I have been here for five years. What I do see is an increase of case managers or social workers hearing about us. So more and more I get calls from social workers saying, 'I have a case, can you help me?' But it really is not formal. The connection is even less strong in Ohio because we are far away from there and it can be hard to get there through the snow.

And even in places where some policy has been established, it is often vague and there can be a lack of uniformity in implementation. A Mexican consular staff person in Santa Ana, California, described the relationship between the consulate and the Orange County Child welfare department: "We have a Memorandum of Understanding but it really does not say much. All it says is that CPS and [the consulate] will work together to exchange information, and that's it. It doesn't say to what extent the social worker has to have contact with us. This has been a black hole for us."

The staff person also described the effect of caseworker discretion when polices are not clearly established: "We have issues such as social workers saying to us, 'Why do I have to talk to you about this case? This child is a U.S. citizen.' And I respond, 'Because this child is also protected by the Mexican constitution, because at least one parent is Mexican.'"

CPS gives me a name, maybe something like Jose Perez. They don't tell us anything more than this. They don't even give us the full name with both last names.

DILIGENT SEARCHES

Some consulates say that CPS only contacts them when they need help finding a parent. Child welfare departments are required to conduct what's called a "diligent search" for parents involved in dependency cases whose location is unknown. In practice, child welfare departments in many jurisdictions do little to contact parents who have been deported.

Further, most Mexican consulates said that they encountered serious problems locating parents in other countries because the information that the child welfare department gives them is often very sparse. A Mexican consular staff person explained: "CPS gives me a name, maybe something like Jose Perez. They don't tell us anything more than this. They don't even give us the full name with both last names. When we look for that name, it's impossible. There are millions of men with the name Jose Perez in Mexico. I try to ask more questions to figure out what state they are in. We would at least need the complete name and date of birth."

A Mexican consular staff person in South Texas said that when child welfare departments give the consulate names of parents to locate, it's usually only in order to inform parents that their parental rights are being terminated. The staff person explained: "Last year, CPS asked us to find parents in Mexico about 40 times. In almost every single one, we do not have enough information to actually find the person. **Sometimes [CPS] contacts us to see if they can place the kids in Mexico, but normally it's just to be able to terminate on the parent's rights."**[Emphasis added by ARC.]

Home Studies and Case Plans after Deportation

For parents in other countries, completing case plans can be difficult. However, some foreign governments have child welfare agencies that can help facilitate the process of reunification, provide services to deported parents and even take jurisdiction over a case. By contacting the Mexican consulate, for example, child welfare departments in the U.S. can coordinate with DIF (*Desarollo Integral de la Familia*) to conduct home studies, offer services to children and parents and conduct background checks. The structure of child welfare in other countries varies, but consulates can usually help facilitate the provision of needed case plan services.

However, caseworkers and attorneys said that child welfare departments in the U.S. do not always respect these home studies, even when the home studies report on the parents in a positive light.

In 2010, a father who was deported from a county in Washington state lost his parental rights and his children were adopted despite what the attorney described as "a glowing home study" that had been provided by DIF.

After his deportation, the man had established himself in Mexico, was living in his own house, had a car and was working at a decent-paying job. DIF conducted a home study and found the house and father to be a fully fit placement for the children. When it was time to reunify, the [child's attorney] objected because at least one of the children was asthmatic. "It's dusty there and we don't know what kind of care they'd get," the GAL apparently said. The department filed for termination, and the children were adopted.

Geographic Disparities

Barriers to international reunification efforts increase dramatically based on geography. ARC did not identify agreements between child welfare departments and the consulates of any country other than Mexico. This does not mean that children of parents from countries other than Mexico are never reunified with their deported parents. However, it does indicate that these reunifications to countries other than Mexico are always facilitated on an ad hoc basis.

Meanwhile, high barriers exist to reunification with parents in countries without established infrastructures of social services or rural and remote areas without significant services in any country. When parents are not easily able to access case plan services, child welfare departments appeared less willing to consider reunification. Geography appeared to exacerbate existing blanket biases against placements with parents in other countries.

A child welfare department attorney in Miami, Florida, said that the department sometimes encountered issues with maintaining a case and supervising a placement in areas with thin service infrastructure. "The issue is how you do placement and post placement supervision when they are living up in the mountains. A lot of these places are up in the mountains and you can only get there by taking a car, a bicycle, and then a donkey.

A dependency attorney from San Diego county said, "The problems you see come up are when people are not in the major metro areas and some delivery by way of a donkey did not happen. The border area with Mexico works well, but go farther into the country or to a country like Guatemala, and there is a struggle to get evidence about whether the services will work. Trying to work with the agencies there is very difficult."

BARS AND BARRIERS TO PLACEMENT WITH UNDOCUMENTED CAREGIVERS

In Washtenaw County, Michigan, an 11-year-old boy has languished in foster care with strangers for 16 months because the child welfare department refuses to allow his aunt and uncle to care for him for no other reason than that they are undocumented.

The boy entered foster care in 2010 after both of his parents were deported. The boy's aunt and uncle tried to take custody of their nephew, but the child welfare department would now allow it even though they had a strong relationship with their nephew, have lived in the U.S. for a decade and half, and have their own children. The child welfare department argued that the chance that they could be deported makes it too risky for their nephew to live there.

Michigan's child welfare department maintains no written policy that requires foster parents or family guardians to be documented, and in lieu of guidelines is blocking kinship placement. The foster home where the boy now lives has allowed his aunts and uncle to maintain contact with their nephew; however, that foster family says that they are uninterested in adopting, which means the boy may well remain in foster care indefinitely or be moved to another family of strangers for adoption. That family may not be willing to allow him to maintain contact with his family.

Children in foster care whose parents and extended families are undocumented are less likely to reunify with their parents and then less likely to be placed with relatives

Child welfare experts agree that as a general rule, children are better off living with their mothers, fathers or other relatives than in foster care. Federal policy supports this by requiring child welfare departments to make diligent efforts to reunify families. In a more recent policy shift, in 2008 Congress passed "Fostering Connections," a bill that increased federal funding for subsidized family guardianship and encouraged child welfare departments to more fully include extended family members in the dependency process.

Research studies indicate that children who enter the child welfare system and are placed with family or friends are less likely to be moved around from foster home to foster home,[76] are more likely to continue living with their siblings[77] and, perhaps most importantly, are more likely to say that they "always felt loved."[78] Because of this, Fostering Connections eased requirements on relatives who wished to care for their own young family members.

Ultimately, child welfare departments are not required to petition for the termination of parental rights when children live with their own family. As a result, **children in kinship care are more likely to reunify with their parents later. For detained or deported parents who may be separated from their children for long periods through no fault of their own, kinship care can stop the total dissolution of their families.**

Yet, despite the focus and clear benefits of relative placement, child welfare departments regularly conjure objections to placement with undocumented relatives. **ARC's research indicates that children in foster care whose parents and extended families are undocumented are less likely to reunify with their parents and then less likely to be placed with relatives.** Previous research supports this. A study of the child welfare system in Texas found that "Latin American immigrants were placed with relatives much less frequently than other children in care."[79] The study also found that Latin American children "were much less likely than other children to have reunification and relative adoption as case goals."[80] Among the reasons for this disparity listed in the study was the undocumented immigration status of potential relative caregivers.[81]

"Could be Deported at Any Time": CPS Refusal to Place Children With Their Families

Child welfare departments, caseworkers, childrens' advocates and attorneys too often argue that they cannot place children with undocumented family members because they believe that the caregiver "could be deported at any time." These objections arise when children have entered foster care and child welfare departments are moving to place the children in permanent homes. CPS and attorneys regularly say that this possibility of caregiver deportation puts children at risk of an interruption in their permanent placement.

FOR PARENTS

These objections emerge not only in the context of placement with extended family, but also with non-custodial parents (usually fathers) who wish to take custody of their own children in the foster care system.

In Jacksonville, Florida, a children's attorney expressed the opinion that undocumented parents are sometimes considered unfit because they might be deported. The attorney explained:

> Typically, as a policy, we are reluctant to recommend a placement with a parent that we know is not legally here, because our position

> representing the best interests of the child is to ensure [they] have permanency and not set them up for further disappointment. To be placed back with a parent that may at any time be deported is not truly in the best interest of children… [A]s a policy for the program, we typically don't like to make those recommendations knowing full well that the parent is not documented.

The attorney stressed that the Guardian ad Litem program he/she works for always tries to help locate relatives with whom a child can live rather than place them in non-relative foster care. However, ultimately, the bias against undocumented parents can result in children remaining in foster care.

In a handful of instances, child welfare departments have gone so far as to include the possibility of deportation in the list of allegations against a parent. In Michigan, a non-custodial father was actually named in a dependency petition by the child welfare department. According to an attorney involved in the case, the department argued not only that his undocumented status made him an unfit caregiver, but also that "he is abusive or neglectful of his child because he is an illegal alien who is in danger of being arrested every time he walks out the door. The attorney added, "Basically, the theory is that because of his immigration status and lack of contingency plans for his child, should he be arrested on an immigration hold, he places his child at a substantial risk of harm."

Similarly, in Maricopa County, Arizona, a parents' attorney said that the child welfare department had "recently started including in the allegation section of dependency petitions, 'since the parent is undocumented, they are at risk of deportation and not a secure placement.'"

> "Typically, as a policy, we are reluctant to recommend a placement with a parent that we know is not legally here."

Once a parent is detained, that assumption is exacerbated. In some instances, judges refuse to slow the permanency clock and CPS moves toward terminating parental rights because they assume that detention will necessarily lead to deportation. Many child welfare departments and dependency courts treat deportation as the end of all prospects for family reunification.

In Cabarrus County, North Carolina, a case supervisor told ARC about a Central American woman facing deportation who was not issued a reunification plan because she was detained and the child welfare department expected that she'd be deported:

> When [the children entered foster care], the mom was detained and facing deportation so trying to reunify with this mother is futile, Reunification has been taken off the table on this one in part because of the deportation that's coming. We would have been working toward reunification had it not been for the fact that she'll be deported. So we made no case plan at all.
>
> It would be totally different if she were a citizen… If she were not going to be deported, we could work toward reunification while she was in jail and then see what happened when she was released.

Even when a parent manages to maintain contact with the dependency court while detained and the department and the judge keep open the possibility of reunification after release, deportation can signal the end of the road for that family.

Collier County in Southwest Florida, has a 287(g) agreement and a population of undocumented immigrants that's grown significantly in the last decade. A caseworker from that county said that as soon as a parent is deported, the default is often to terminate their parental rights. "As long as

they are not deported, we give them a case plan, even in detention, but as soon as [they're] deported, a lot of times it goes straight to termination of parental rights… Once they're gone, it's usually over for them."

FOR RELATIVES

Child welfare departments and agencies are turning away family members and family friends who wish to care for their young kin because of their immigration status. This practice, which is not actually supported by any written policy, means that children are remaining in foster care when they could be placed with their own families.

Undocumented relatives and family friends face these "could be deported" objections with even more regularity than parents. A children's attorney in Bartow, Florida, told of one such case:

> In one recent instance, placement was denied because the individual, who was not a family member but a friend, had limited documentation, expired visa and was subject to deportation and so the worry was that we were trying to create stability and permanency for that child and we place them there and then two months later, we'd be back to the same place. They *could* have been deported.

Even in jurisdictions where caseworkers assume that children can be placed with undocumented family, the dearth of policy means that the biases of caseworkers or the internal policies of case management agencies can derail the maintenance of extended families. In South Texas, the CPS caseworkers and supervisors, attorneys and judges we interviewed were in almost unanimous agreement that immigration status should not impede placing children with their families. Yet, this belief is not always put into practice, as evidenced by a home study that a CPS worker in San Antonio, Texas, read to one of our researchers. The home study, which had been conducted by a private case management agency, recommended against placing two foster children with their grandparents because of the couple's immigration status. The grandparents had a strong relationship with the children and their home was deemed to be an otherwise perfectly safe place for their grandchildren, who they loved and had helped raise. The home study reads:

> [The grandparents have] many years of child care experience. [Their home] seems stable with regard to physical and emotional health, … [for] happy, healthy thriving kids [who] went to the caregivers for love and attention. [Although the] caregivers appear willing and able and…agreed to install cabinet locks, have the yard cleaned… and get a fire extinguisher and carbon monoxide alarm… it's a major concern that both of the caregivers are undocumented aliens… both unable to remain here permanently. Should they be deported [the children] would be put at risk of displacement; Their ability to maintain a crime free lifestyle is a concern considering their immigration status and their current use of a vehicle without a Texas driver's license.

The San Antonio caseworker was livid that the home study read as it did, but said that a bad home study from the agency can affect the case in negative ways even if she were to present a different view in court.

Barriers to Services and Subsidies For Undocumented Relatives

Even in instances where departments consider placement with undocumented relatives, federal and state bans on access to public benefits and on foster care reimbursement funds for undocumented immigrants exclude relatives

from taking custody of their young kin. While caseworkers are instructed by federal policy to pursue family placements, undocumented relatives cannot receive many of the federal subsidies available to citizen families who care for their young family members.[82]

In Brownsville, Texas, an attorney said that sometimes the lack of subsidies mean that children have to be removed from their caretakers:

> [They] have a grandma who can probably care of them, but the problem is then [the] grandma needs financial assistance. And because she's not a citizen, she's undocumented, there are no programs within the department or federal programs that will help her financially to take care of these kids long term. It's kind of an 'immigration makes poverty' issue.

Background Checks on Undocumented Caregivers

Many caseworkers and attorneys said that undocumented family members could not take custody of children because in order to license a relative as a caregiver, the relative must produce a Social Security number and be fingerprinted to pass a background check. Many caseworkers and attorneys mistakenly believed that it is impossible to check the criminal histories of undocumented immigrants because they lack Social Security numbers. In other jurisdictions, caseworkers said that immigrants' fear of deportation and a worry that they may be denied future citizenship because they will become a "public charge" stops potential relative caregivers from coming forward.

In fact, child welfare departments could run background checks on undocumented immigrants with a name and date of birth. However, because there is a lack of clear policy establishing this practice, it rarely happens. A foster care supervisor in Arizona said, "The problem is that it's not written in policy. If it comes to my section, then we'll do a check. But a lot of the workers in the field, because we don't have a policy, they don't know if they can place with illegal [immigrant] relatives so the workers in the field don't place with them, they rule it out. The case managers are scared because there is no clear policy. They are scared to run a background check and that if they work with illegal immigrant family members, [they] will get in trouble or get indicted if something happens."

Even relatives who are citizens but live with an undocumented person can have trouble gaining custody of the child, because CPS requires fingerprinting from everyone who lives in the household. Child welfare departments' failure to proactively address the needs of mixed immigration status families threatens to leave children in foster care.

Community Fears of Deportation

Some undocumented relatives decline to come forward to take custody of children who they have relationships with because they fear that interacting with the foster care system could result in their detention and deportation. As local law enforcement is increasingly implicated in immigration enforcement, fear of local government workers may grow. Respondents in every one of our focus groups indicated that this fear is a significant problem.

A caseworker in Mecklenburg County, North Carolina, said, "I think when [family] are undocumented, they are afraid to come to the system. In one of my cases, the father in Honduras has provided me with three family members in North Carolina and in Virginia. But they are afraid of us getting involved in their lives and getting deported."

A caseworker in Miami, Florida, echoes this: "There are cases where they have a lot of family, but the family members are scared to get involved with the state because then they [fear they] could have their kids removed or it could get them deported. They are worried about all of this."

The caseworker was clear that these fears have increased in Miami in recent years. "In the past, there was not a fear of deportation. A lot of the families I dealt with were much more cooperative. Now… they are scared because of the laws and the culture around. Because of what's been happening in the last couple years, people are more fearful."

Policy Confusion

The blanket policy silence when it comes to placing children with undocumented relatives leads to understandable confusion, and sometimes disagreement among child welfare staff. In Polk County, Florida, a caseworker and her supervisor argued about placing children with family members who are undocumented.

The supervisor said to the caseworker, "We can't do a background check on an undocumented person. We can't do a placement without a background check….they can't get any services so that's a big problem too."

The caseworker responded, "But if we want to place a child with someone that does not have paperwork, we would rather do that than place a child in foster care."

The supervisor continued to object. "Yes but you would have to take into account that if they are illegal, where were they working, how are they working, where is their income coming from…"

The caseworker became upset at the idea that the department would have to keep a child in foster care when there was loving family willing to take custody. She said, "But I'm saying if this guy is picking oranges, he gives us documentation that he makes X amount a week? I don't want to place a kid in the foster home!

The supervisor replied: "If it's under the table though…," and then stopped and changed the subject.

CONCLUSION

The children of deported parents in the child welfare system are subjected to extended periods of separation and the risk of termination of parental rights while their parents are detained. However, because of barriers and biases to reunifying U.S.-citizen children with their parents in other countries, many of these families remain in the custody of child welfare departments. Despite laws that explicitly privilege kinship placement over foster care with non-relatives, many child welfare departments refuse to place children with their families. The result is that children, who were once separated from their parents and denied the opportunity to be reunified, may also be severed from the other adults in their communities. Policy changes are necessary to ensure that families may stay together regardless of their immigration status.

V: CONCLUSION AND RECOMMENDATIONS

IN LATE SEPTEMBER 2011, JOSEFINA AND CLARA, THE SISTERS WHOSE STORY OPENED THIS REPORT, received a call in Michoacán, Mexico from the Mexican consulate in New Mexico.

"They told us to go to the airport the next day," said Clara.

In the morning, they drove three hours to the airport. Two employees of the Mexican government escorted the three children off the plane. In the middle of a waiting room at the airport, after 14 months apart, Josefina and Clara took the children into their arms. The next day, now back at their mother's home, Clara said over the phone, "It hurts me so much to talk about this. I don't want to remember anymore."

Their family was separated for well over a year and the sisters say that the younger two children, who are now both walking and talking, did not remember their mothers when they arrived. Indeed, Josefina's baby, who was 9 months old when they were separated, is now almost two; he's spent more of his life in foster care than with his own mother. They will have to work to rebuild a family that few could argue should ever have been separated.

Ultimately, Clara and Josefina and their children are only now back together because of the concerted efforts of the Mexican Consulate. Yet, their reunification should not have taken so long. Even worse, many others are never reunified—their families are irreparably shattered because there are no policies in place to facilitate their reunification. As the federal government continues to expand its immigration enforcement infrastructure, and continues to detain and deport parents at historical levels, more families will face threats to family unity.

POLICY RECOMMENDATIONS

Federal, state and local governments must create explicit policies to protect families from separation and facilitate family unity. These polices should stop the clock on the child welfare process and the immigration enforcement process to ensure that families can stay together and allow parents to make the best decisions for the care and custody of their children.

Congress

- Institute protections for detained parents including: alternatives to detention for parents; provisions to enable detained parents to comply with child welfare case plans and participate meaningfully in dependency proceedings; and policies to facilitate family unity at the time of deportation if a parent wishes to leave the country with their child. (i.e., the Humane Enforcement and Legal Protections for Separated Children Act).
- Reinstate judicial discretion to consider the best interests of children and families in decisions about deportation (i.e., the Child Citizen Protection Act).

Executive Branch, Department of Homeland Security (DHS)

- Suspend the Secure Communities program and other programs including 287(g) and the Criminal Alien Program that use local criminal justice systems as arms of the immigration enforcement apparatus.
- Amend the June 2011 ICE discretion memo to clarify that all parents of minor children in the U.S. should be granted discretionary relief with an emphasis on parents with children in foster care.
- Release parents on their own recognizance and expand the use of community-based supervisory programs.
- The DHS Office of Inspector General should initiate a study on the prevalence of practices that result in children entering or remaining in foster care as a result of detention and deportation.

State Legislatures

- Create exceptions to the termination of parental rights timelines for incarcerated, detained and deported parents.
- Institute "time-of-arrest" protocols for local law enforcement agencies to enable parents to decide who should take custody of their children.

State Child Welfare Departments and Juvenile Dependency Courts

- State child welfare departments should initiate research to explore the extent to which children in foster care have detained or deported parents.
- All caseworkers, supervisors, attorneys and judges who practice in dependency court should be mandated to participate in training on immigration law and immigration enforcement policies.
- All state and/or county child welfare departments should sign agreements with foreign consulates to ensure that as soon as noncitizen parents of foster children are detained, consular involvement is commenced.
- Adopt clear policies ensuring equal treatment of undocumented parents and families in the child welfare system, including clear guidelines on the rights of undocumented parents and extended families to be treated equitably as viable caregivers for children.
- Create state- or county-level staff positions dedicated to facilitating reunification for families impacted by immigration enforcement.

VI: METHODOLOGY

This study explores the extent to which immigration enforcement threatens parental rights and creates barriers to family reunification for families in the child welfare system.

The research consisted of three parts: interviews, focus groups, and quantitative data collection.

Interviews: Between August 2010 and August 2011, ARC conducted approximately 200 interviews with individual caseworkers and supervisors, dependency attorneys, immigration attorneys and advocates, dependency judges, foreign consulates and detained parents.

Interviews were also conducted with 60 parents in six detention centers (in Arizona, Florida and Texas) and with seven other parents who had already been deported or were released from detention. Nineteen of these parents had children in foster care. Many more feared that their children were unsafe and might enter foster care. ARC interviewed approximately nine juvenile court judges, 120 dependency attorneys, 10 immigration attorneys, and did eight not-for-attribution interviews with child welfare caseworkers in jurisdictions where we were not able to conduct focus groups because the child welfare departments declined to work with ARC on this study.

Child welfare departments in the states of Texas and Arizona and in San Diego County, California all declined to participate in focus groups. In Texas and San Diego, the departments cited excessive workloads and budget cuts as the reason. In Arizona, several mid-level supervisors informed ARC that the department would not allow staff to speak with ARC researchers but no reason was given. After receiving these responses, ARC did not seek permission from the state child protection agency to conduct focus groups or interviews.

In many jurisdictions, attorneys were contacted randomly from full lists of private-contract attorneys made available by the county court administration. Other attorneys, as well as caseworkers, other advocates and judges, who we reached out to as a means of gathering stories and/or to better understand the dynamics at the intersections of immigration and child welfare, were contacted in a snowball approach where existing respondents suggested future respondents from among their professional circles.

Interview questions with judges, caseworkers, attorneys and advocates generally remained consistent but were tailored slightly to the particulars of each category. Like focus groups, questions were divided into three categories: immigration status, detention/deportation, and reunification.

Detained parents were contacted in three ways: 1) through nonprofit legal organizations that represent detained noncitizens; 2) through sign-up sheets that ICE agreed to hang on the walls of "pods" in several detention centers; and 3) randomly during detention center visits. All detainees were informed at the beginning of the interviews that ARC was a research organization, not a legal advocacy organization. Many of their stories are included in this report.

ARC spoke with an additional seven parents who had already been deported or released from detention and had children in foster care. ARC contacted these parents through their immigration attorneys and while visiting centers for deportees in Mexico.

Focus groups: ARC conducted 35 focus groups in 23 counties in six states over an eight-month period beginning in January 2011. Focus groups were approximately one hour long and included between 4 and 10 child welfare caseworkers or attorneys who represent parents or children in juvenile dependency court. Because of county-by-county variations in the particular structure of the child welfare/dependency system and varying degrees of openness on the part of child welfare departments to participate in our study, we were not always able to complete focus groups with precisely comparable respondents in each jurisdiction. Focus groups also varied in terms of recruitment. In some jurisdictions, attorneys and caseworkers were compelled to come by their supervisors, though in most jurisdictions, they came voluntarily. Focus groups were audio-recorded, but participants were informed that their names would not be used in the report or in any other resulting publications.

Focus group questions were broken down into three subsections: 1) Impact of immigration status on child welfare cases; 2) Impact of parental detention or deportation on child welfare cases; 3) Policies and practices for facilitating reunification of children with detained or deported parents.

Quantitative data: To arrive at our national estimates, ARC began by gathering select survey and focus group data from child welfare caseworkers, attorneys and judges to determine the average percentage of foster care cases involving detained or deported parents in their respective counties. These individuals were located in 19 jurisdictions in six key states—Arizona, California, Florida, North Carolina, New York and Texas—which account for more than half of the noncitizen population in the U.S. and more than one-third of the children in foster care. Jurisdictions were selected to provide a mix of border and non-border regions, more and less aggressive local immigration detention practices, and high and low foreign-born populations.

Based on these local percentages, which ranged from under one percent to eight percent of all child welfare cases in a given jurisdiction, we utilized regression analysis to calculate the typical independent impact of three variables on this percentage of foster care cases with deported or detained parents: 1) the percentage of foreign born individuals, 2) the presence of 287(g) immigration enforcement agreements, and 3) border county status. The regression analysis provided an estimated "average" impact of each of these variables on a hypothetical county's rate, which allowed us to then project the extent of the problem in the remaining major jurisdictions in these six states and in 14 other similarly situated states (Colorado, Georgia, Illinois, Indiana, Maryland, Michigan, Missouri, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Virginia and Washington). These 20 states account for almost 85 percent of the country's undocumented population and more than 70 percent of foster care rolls.

ARC's estimates are a conservative count for a variety of reasons. First, because our regression did not include every state, there are hundreds of jurisdictions in the remaining 30 states that contain approximately 15 percent of the undocumented population, as well as almost 30 percent of the foster care rolls that are not included in our projection. Second, when survey respondents reported a range of relevant cases, we only included the low end of that range. (For example, when a respondent said, "About three to five of my 36 current cases involve a detained or deported parent," we used 3 of 36 cases, or 8.3% of cases.) Third, given our analysis of interviews and survey data, we utilized a dampening weight on non-border counties where the federal government had not yet implemented the Secure Communities program for at least three months, and where the county had not entered into a 287(g) agreement. This dampening weight prevented an over-count from our regression-based projections in areas with similarly passive enforcement of immigration laws (at least in comparison to many other areas of the nation). Because our projected number is a conservative count, many more children may be affected than we were able to estimate.

The federal government does not make sufficient data available on immigration enforcement. For example, Immigration and Customs Enforcement releases little data about its local jail–based Criminal Alien Program. As a result, we were not always able to account for variables that might drive up the local rate of deported/detained parent cases.

NOTES

1. The names of all parents in this report have been changed to protect the identity of families with ongoing child welfare cases

2. The Bureau of Immigration Appeals has held that "When an alien-parent's child is a United States citizen and the child is below the age of discretion, and if the alien-parent is deported, it is the parent's decision whether to take the minor child along or to leave the child in this country." B & J Minors, 279 Mich. App. 12, 20 n.5 (2008) (citing Liu v. United States Department of Justice, 13 F.3d 1175, 1177 (CA 8 1994). The U.S. Supreme Court affirmed that the Immigration and Naturalization Act "establishes that congressional concern was directed at 'the problem of keeping families of United States citizens and immigrants united.'" Fiallo v. Bell, 430 U.S. 787, 795 (1977).

3. Sources included the following: Nacha Cattan, "Courtroom Skype Helps Reunite Mexican Family." *The Christian Science Monitor*, July 22, 2011, www.csmonitor.com/World/Americas/Latin-America-Monitor/2011/0722/Courtroom-Skype-helps-reunite-Mexican-family (accessed September 1, 2011); Julianne Hing and Seth Wessler, "When An Immigrant Mom Gets Arrested," Colorlines.com, July 1, 2008, 216.92.102.223/archives/2008/07/when_an_immigrant_mom_gets_arrested.html (accessed September 1, 2011); Nina Rabin, "Disappearing Parents: A Report on Immigration Enforcement and the Child Welfare System," University of Arizona, May 2011; Emily Butera, "Torn Apart By Immigration Enforcement: Parental Rights and Immigration Detention," Women's Refugee Commission, December 2010.

4. We consider our estimates conservative for a host of reasons, including: a) The fact that while states with medium to small numbers of foreign-born residents and foster care rolls were left out of this analysis, there is no reason to assume that no children within those jurisdictions are impacted by this problem; b) We consistently utilized our respondents' more conservative estimates when they reported a range of affected cases within their current caseloads to calculate a county average (e.g., when a caseworker reported that "three to five percent of my current cases involve a detained/deported parent," we invariably utilized the lower bound for our calculations); c) to buffer against projecting an over-count, we placed a dampening weight on counties where the federal government had not yet implemented the Secure Communities program and a buoying weight on counties with 287(g) agreements; d)The federal government does not make sufficient data available on immigration enforcement. For example, Immigration and Customs Enforcement releases little data about its local jail-based Criminal Alien Program. As a result, we were not always able to account for variables that might drive up the local rate of deported/detained parent cases.

5. Of those deported in 2010, 282,000 were removed to Mexico, and another 93,000 to other Latin American countries and the Caribbean. The remaining 11,000 were deported to other countries all over the world.

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10. Kohli; Aarti, Markowitz, Peter; Chavez, Lisa, "Secure Communities by the Numbers: An Analysis of Demographics And Due Process," Chief Justice Earl Warren Institute on Law and Social Policy, Berkeley Law, October 2011.

11. Hing, Julianne. "DHS Tells States: We Don't Need Your Approval for Secure Communities." *Colorlines*, August 9, 2011. http://colorlines.com/archives/2011/08/dhs_tells_states_we_dont_need_your_approval_for_secure_communities.html (accessed August 10, 2011).

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Garnder II, Trevor and Kohli, Aarti. "The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program." The Warren Institute, University of California, Berkeley Law School, September 2009. www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf.

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ICE and participating localities contend that CAP targets only serious criminal offenders. For example, the Deputy Sheriff in Travis County, Texas, told *Colorlines* magazine in 2008, "We know for a fact that we are only getting the bottom of the barrel, so to speak. These guys are really the undesirables. Most people wouldn't want them getting out of jail and being their neighbor. They'd like to see them deported out of the country." Yet, analysis that has been conducted on CAP indicates that the program has been used as an immigration dragnet, rather than as a means of targeting the most serious offenders.

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50. The children of immigrants in the child welfare system are mostly people of color. Over two-thirds of children of immigrants who come to the attention of the child welfare system are Latino, almost 15 percent are white, 10 percent are Black and 7.5 percent are Asian. Nationally, children of immigrants are underrepresented among those who come to the attention of the child welfare system. Children with at least one foreign-born parent make up about 24 percent of the population, but only 9.6 percent of children that come to the attention of the child welfare system were living with a foreign-born primary caregiver.

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Crime category	Number removed	Percent of total
Total	168,532	100.0
Dangerous Drugs	42,692	25.3
Immigration	31,585	18.7
Criminal Traffic Offenses	30,808	18.3
Assault	12,105	7.2
Larceny	5,406	3.2
Burglary	4,188	2.5
Fraudulent Activities	3,849	2.3
Robbery	3,628	2.2
Family Offenses	3,318	2.0
Sexual Assault	3,252	1.9
Other	27,701	16.4

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