



Caught Between Systems: The Intersection of Immigration and Child Welfare Policies

THE IMPACT OF IMMIGRATION ENFORCEMENT ON CHILD WELFARE

By Wendy Cervantes and Yali Lincroft, MBA

While children of immigrants have a lot at stake in the discussions surrounding U.S. immigration policy, their interests remain largely ignored in the debate. For instance, little consideration is given to the impact of immigration enforcement on the 5.5 million children, the vast majority of whom are native-born U.S. citizens, living with at least one undocumented parent.¹ Similarly overlooked are the significant challenges experienced by public child welfare agencies that encounter children separated from their parents due to immigration enforcement measures.

The U.S. child welfare system is based on the notion of ensuring the safety and best interest of the child; however, this principle is often compromised in the face of conflicting federal immigration policies and practices. This policy brief examines the intersection of immigration enforcement and child welfare and the difficulties facing immigrant families caught between the two systems. Recommendations are provided to prioritize keeping children with their families and out of the public child welfare system whenever

possible and to ensure that separated children who do encounter the child welfare system receive appropriate care and parents receive due process.

An Overview of Immigration Enforcement

Immigration enforcement activities conducted by Immigration and Customs Enforcement (ICE), the interior enforcement arm of the Department of Homeland Security (DHS), have increased significantly over the past decade. The number of immigrants in ICE detention has risen 45% from about 21,000 in FY 2005 to about 31,000 in FY 2008.² Under the Bush administration, there was a particularly dramatic increase in enforcement activities with several large, highly publicized worksite raids. The practice of large-scale worksite raids generally ended under the Obama administration in early 2009. However, the historically high level of arrests, detentions and deportations has remained consistent since 2006.³

Beginning in late 2007, a new enforcement strategy was adopted to prioritize the apprehension of serious criminals, resulting in the merging of several programs under the ICE ACCESS Initiative (Agreements of Cooperation in Communities to Enhance Safety and Security). One of the most well known programs within ICE ACCESS are 287(g) agreements, formal collaborations between ICE and local officials which allow local police to be deputized to enforce immigration laws. Other related programs within the criminal justice system include the Secure Communities and the Criminal Alien Program, which use fingerprint and database checks and detainers or holds to ensure transfer to immigration officials once a person’s criminal case is concluded. The National Fugitive Operations Program (NFOP) is another widely used initiative which utilizes Fugitive Operation Teams (FOTs) to arrest immigrants with outstanding deportation orders or other immigration-related violations, often through targeted home raids.⁴

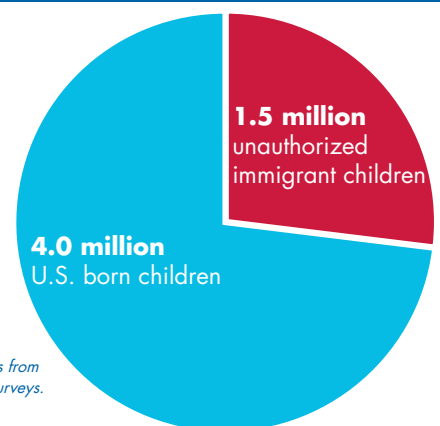
While the ultimate goal of ICE ACCESS programs is to target the most serious criminals, recent studies demonstrate that many of these programs have resulted in the apprehension of thousands of immigrants for minor non-criminal offenses as well as the deportation of thousands of lawful permanent residents (LPRs).⁵ Nonetheless, these programs have grown exponentially over recent years, with 287(g) agreements up from just 8 agreements in 2006 to 66 agreements in 2009 and plans to implement the Secure Communities program nationwide by 2013.^{7,8} The rapid growth of these new enforcement activities raises serious concerns for child and family well-being.

Unintended Consequences for Children and Families

The exact overall number of children impacted by immigration enforcement, including those that end up in the care and custody of state or local child welfare agencies, is unknown since this information is currently not collected in a consistent way by DHS, the Department of Health and Human Services, or by state and local child welfare agencies themselves. However, a 2007 study of worksite raids by the Urban Institute found that on average for every two adults apprehended in a raid, at least one child is impacted.⁹ Furthermore, according to a January 2009 report for the DHS Security Inspector General’s Office, over 108,000 undocumented parents of U.S. citizen children were removed from the U.S. between 1997 and 2007.¹⁰ Another recent study focusing on the deportation of LPRs during the same ten-year period reveals that nearly 88,000 U.S. citizen children were impacted by the deportation of an LPR parent, and over a third of the impacted children were under the age of five at the time of the parent’s deportation.¹¹ It is important to note that these numbers are likely to be an underestimate since many arrested parents are reluctant to share information about the presence of their children.¹²

Children with at Least One Unauthorized Immigrant Parent by Status, 2008

Most children of unauthorized immigrants - 73% in 2008 - are U.S. citizens by birth.



Source: Pew Hispanic Center tabulations from augmented March Current Population Surveys.

Separation from a parent poses a variety of serious risks for a child, and in the context of immigration enforcement, a child can sometimes face sudden separation from both parents. A recent report by the Urban Institute demonstrates that in addition to emotional trauma, separated children face other short-term and long-term threats to their safety, economic security, and overall well-being.¹³ For example, housing insecurity and food shortages were common hardships experienced by children in the study due to the loss of one or more parental income.¹⁴ Adverse behavior changes such as more frequent crying and increased fear and anxiety were also noted in two-thirds of children in the six months following a parental arrest, and these changes were most significant in children who witnessed a parental arrest in the home.¹⁵ Nearly a quarter of families included in the study ultimately had to make the difficult decision whether children—many of whom are U.S. citizens—would accompany a deported parent or remain behind in the United States.¹⁶

In 2007, following the aftermath of a series of raids which impacted hundreds of children, ICE developed humanitarian policies for enforcement activities involving more than 150 arrests (recently changed to more than 25 arrests so as to include smaller operations).¹⁷ These guidelines include screening and expedited release of pregnant women, nursing mothers, and parents who are the sole caretakers of minor children; long-term alternatives to detention programs for arrestees that do not pose a threat or flight risk such as electronic monitoring devices (EMDs); and coordination with relevant federal and local social service agencies to determine the humanitarian needs

of arrestees.¹⁸ When operationalized properly during larger worksite raids, these humanitarian guidelines have generally proven effective in minimizing the duration of parent-child separations or preventing separation altogether.¹⁹

ICE Humanitarian Guidelines

During 2007, ICE developed policy guidelines that considered the needs of children during worksite immigration enforcement activities.²⁷ Some key provisions include:

ICE officials must develop comprehensive plans to quickly identify the sole caregivers of children prior to conducting workplace raids that result in the arrest of 150 people (reduced to arrests of 25 people in 2009). ICE should collaborate with the Division of Immigration Health Services (DIHS) within the Department of Health Human Services, or with an appropriate state or local social service agency, to assist in the screening process.

In coordination with DIHS and the local social service agency, ICE should provide notification to key area nongovernmental organizations once an operation is underway.

ICE should make determinations regarding the release of arrestees through their own recognizance or through some alternative to detention based on recommendations made by DIHS or the local social service agency.

ICE should facilitate communication between detainees and their family members by providing detainees with access to a telephone and staffing a toll-free hotline so that relatives seeking information about the location of a family member will have reliable up-to-date information.

ICE should provide an arrestee adequate notice before removal to contact relatives so that arrangements can be made for the care of dependents. If the family should require assistance from a local social service agency, ICE should facilitate contact.*

**Actual practice varies in different locations in the country, and these guidelines do not apply to non-worksite operations.*

However, these guidelines do not apply to enforcement activities targeting individuals or small groups, which are types of arrests typically associated with 287(g) programs, FOTs, and the other criminal justice screening initiatives.²⁰ Thus, parents arrested under these currently prioritized programs are left vulnerable to long-term and sometimes permanent separation from their children and are often more isolated from legal and social service providers without a highly publicized raid to trigger a collaborative community response.²¹ The possibility of a child being present during these smaller enforcement operations, some which take place in the home, is also much higher, creating the risk for increased emotional trauma. Furthermore, the lack of national protocols designed to protect children and families during non-worksites enforcement operations forces local immigration enforcement agencies, partner law enforcement agencies, and child welfare agencies to use an ad-hoc and often disconnected approach when handling the complex needs of separated families in these cases.

Challenges for the Public Child Welfare System

There are multiple ways in which a child may enter the child welfare system due to immigration enforcement. In some cases, arrested parents may simply not be provided with the opportunity to make child care and temporary custody arrangements at the time of apprehension. Or, a child may enter the child welfare system as a result of a parent's criminal arrest or conviction, which can then precipitate the parent's deportation. As mentioned, ICE has prioritized immigration enforcement against such parents and other persons deemed to be "criminal aliens." These persons can be mandatorily detained and deported even if they have some form of protected legal status, are responsible for the care of dependent U.S. citizen children, and/or are now rehabilitated.

Once an immigrant family is involved in the child welfare system, there are several challenges immigrant parents face in reunifying with their child. In some cases, biased family court judges may inappropriately

Children Left Behind



After more than a year of separation, a single mother is overjoyed to be reunited with her four sons. In May of 2009, Herrendia was arrested by authorities for using someone else's social security number while working as hotel cleaner in Norfolk, Nebraska. She remained in jail until she was deported in July, and she did not see her sons during the 10 months after her arrest. The boys were placed in a foster care home because Hernandez had no relative nearby to care for them. A regional ICE spokesman stated that in cases when a felony is involved, state child protective services officials typically step in and court battles can ensue. Ultimately, a Madison County Judge determined that Herrendia was not the cause for the children's special needs and ordered reunification.

A few weeks later, the four U.S. citizen brothers departed on a plane to Cuernavaca. Since January 2010, the Mexican Consulate in Omaha has transported four children in addition to Hernandez's to be with their deported parents. In the five-state region that includes Nebraska and Iowa, the number of overall deportations jumped 200 percent this past decade and hit a high of 6,317 last year.

Source: Omaha World Herald (March 12, 2010). "Kids are collateral damage in push."

base their decision on a parent's immigration status rather than their demonstrated parenting capacity.²² Language and cultural barriers, limited access to services, and the difficulty of navigating both the immigration and child welfare systems also threaten an immigrant parent's ability to meet case plan requirements and timelines. For instance, the Adoption and Safe Families Act (ASFA) is federal legislation that imposes a strict timetable for child welfare agencies to file termination of parental rights (TPR) petitions for children who have been in care for 15 of the previous 22 months. The debate surrounding ASFA is based on the need to strike a balance between the amount of time a child spends in foster care without a permanent solution and allowing sufficient time for parents to make a reasonable effort towards reunification. Exceptions are made for situations in which children are placed with relatives, if there are compelling reasons why TPR is not in the child's best interests, or the family has not received services that were part of their case plan.²³ Some immigrant parents may qualify for the ASFA "exception process" provision if they are limited English proficient and appropriate language services were not made available.²⁴

Losing Parental Rights

The Nebraska Supreme Court ruled that the state had acted improperly in terminating a Guatemalan mother's parental rights to her two U.S. born children after she was deported in May 2005. The Supreme Court reversed a previous decision against the mother and said it was not enough for the state to argue that the children would have fewer opportunities in Guatemala and that there was not sufficient proof that she was an unfit mother. The lower court was cited as erring for not providing adequate notice to the Guatemalan Consulate, fixating on the mother's immigration status, and permitting fundamentally unfair procedures in violation of due process.

Source: Nebraska Supreme Court Case Summary

Relevant Legislation

Federal legislation has been introduced to protect the best interest of children during immigration enforcement activities and immigration proceedings. Some key bills include:

- Humane Enforcement and Legal Protections (HELP) for Separated Children Act:** The HELP Separated Children Act, sponsored by Representative Lynn Woolsey (D-CA), would implement reforms to protect children and families impacted by immigration enforcement. The bill provides for the release of designated vulnerable individuals, limits the presence and involvement of children in enforcement activities, and ensures that family members are able to locate those who are detained. Additionally, it ensures that U.S. citizen and lawfully present children that are consequently placed in the foster care system receive appropriate care and provides for improved coordination and communication between all entities involved to safeguard the best interest of the child and preserve family unity whenever possible. The bill also requires the Secretary of Homeland Security to compile an annual report on the impact of immigration enforcement on U.S. citizen and other lawfully present children.
- Child Citizen Protection Act:** This bill, introduced by Representative Jose Serrano (D-NY), would provide discretionary authority to an immigration judge to determine whether a parent of a U.S. citizen child should be ordered removed or deported, thus allowing the judge to consider the best interest of the child in removal proceedings.
- Immigration Oversight and Fairness Act:** This legislation, introduced by Representative Lucille Roybal-Allard (D-CA) would ensure that conditions in immigration detention facilities are humane, and provide for the release of vulnerable individuals into the community on their own recognizance, bond, or through non-custodial alternatives to detention. The bill also provides protections for unaccompanied immigrant minors who are taken into DHS custody by ensuring that their basic needs are met and that they are provided with the appropriate access to medical and mental health services.

Immigrant parents who are detained for immigration purposes encounter additional challenges that threaten their ability to meet ASFA's requirements. In some cases, child welfare staff is unable to locate a parent's whereabouts, either because the information is not made readily available by the local ICE agency office, or because the parent has been transferred out of the state or deported. If a parent is detained, it is virtually impossible for that parent to meet case plan requirements, such as participating in parenting classes or regular visits with their child. Detained parents are also unlikely to be able to participate meaningfully in child welfare agency case meetings or in state court proceedings related to a child's care and custody. Deportation cases often can and do last longer than the ASFA 15 month timeline. Furthermore, child welfare agency's attempts to place children with family members may be complicated by the fact that undocumented adults are often considered ineligible to become foster parents by most child welfare agencies. All these obstacles increase the time in which separated children are involved in the child welfare system and create the risk for inappropriate termination of parental rights under ASFA's strict timetable and requirements.

Cross Reporting with Law Enforcement

Additional unintended consequences may occur when a child welfare case is opened and the parent or other caregiver involved in the case is cross-reported to law enforcement. This can happen when there is a joint investigation of a child abuse allegation with law enforcement or when there is a need for a criminal background check prior to potential placement with an adult care taker. While the child welfare agency

A Race Against Time

A single mother of a two-year old child in the Yuba County Jail in Marysville, California, is convicted of hitting her son. The child is placed in foster care, and the Family Court in Sonoma County agrees that it is in the child's best interest to return home if the mother completes her short jail sentence and six-month probation. The terms of her probation require that she enroll in parenting and anger-management classes, seek counseling, and begin a course of medication to manage her depression. Two days after her sentencing, however, she finds that ICE has put a hold on her record. There is now a race against time because every day she remains in ICE custody is another day she has violated the terms of her probation and risks losing her son permanently to the foster care system.

Source: Julianne Ong Hing and Seth Wessler (July-August 2008). When An Immigrant Mom Gets Arrested – More women – and their children – are getting trapped by the intersection of policies governing deportations, prisons and foster care. Colorlines – Applied Research Center.

is addressing issues in these cases in front of a state juvenile court, law enforcement may be simultaneously cross-reporting the family to immigration officials, resulting in conflicting outcomes that will affect the overall outcome of the child protection case.

For example, in one case in February 2009, a social worker operating as a private contractor for the Florida Department of Children and Families filed a cross report to the sheriff's department on the immigration status of a Guatemalan woman who had two U.S. citizen children in the child welfare system.²⁵ Due to the police department's 287(g) agreement, the mother was turned over to ICE officials, and subsequently the social worker called in the grandparents of the child who were also turned over to ICE during a visit at the child welfare office.²⁶ Actions such as these

raise serious concerns about the effects on immigrant communities' trust of the public child welfare system, creating a high risk of immigrant citizens not reporting suspected or severe child maltreatment.

Conclusion: Protecting Child Well-being and Family Unity

As policymakers consider the future of U.S. immigration policy, the interests of children and families must be made a priority. The enforcement of our immigration laws should not conflict with our American values of protecting all children and keeping families together. Policies and practices should be developed to preserve family unity and prevent the unnecessary involvement of children in the child welfare system during all immigration enforcement activities.

The lack of national protocols to guide effective collaboration between immigration enforcement entities and child welfare agencies also threatens family unity and child well-being in cases where intervention by child protective services is necessary. Furthermore, when an immigrant parent has outstanding criminal charges, they are then caught in the dangerous intersection of three separate government systems -- immigration, criminal justice, and child welfare. Thus, there is a need for agencies that have historically not coordinated their efforts to actively communicate, develop collaborative protocols, and work with one another to protect the interests of children and families across these different systems.

Policy Recommendations for Immigration Court:

- **Immigration judges should be given discretion in determining the deportation or removal of a parent of a U.S. citizen child.** The Illegal Immigration Reform Immigrant Responsibility Act (IIRIA) of 1996 took away the discretion immigration judges once had to consider the potential harm that could be suffered by a U.S. citizen child should a parent be deported. Such discretion should be restored to immigration judges so that they can weigh important factors such as possible psychological or economic hardship to U.S. citizen children into deportation decisions.
- **A national network of deportation defense lawyers should be established who are coordinated with the child welfare court system.** While legal representation is provided for parent and children in the child welfare system, dependency attorneys are not immigration experts. Legal resources for deportation defense are uneven throughout the country and given the complication of cases involving children and there is a great need to develop a national, state, and local network of deportation defense lawyers, perhaps through chapters of the American Bar Association and the American Immigration Lawyers Association.

Policy Recommendations for ICE:

The 2007 humanitarian guidelines adopted by ICE should be codified into law and translated into regulation. They should be expanded to include all enforcement activities, including non-worksite operations and arrests targeting individuals.

Arrest Procedures:

- **Screening guidelines should be developed to determine if arrested individuals have children or other dependents.** Given the reluctance of many arrested parents to disclose the existence and whereabouts of their children to immigration officials, it is critical that immigration authorities solicit the assistance of local nonprofit service providers or local social service agencies with experience working with the immigrant community to act as third-party intermediaries to aid in the identification and assessment of child welfare needs.
- **Protocols should be developed to allow parents to make free phone calls upon apprehension so as to make child care arrangements.** Only after it is determined that there are no other safe child care alternatives of the parent's choosing should ICE officials ask state or local child welfare agencies to intervene.
- **A toll-free hotline or database should be created to allow for attorneys, families, state courts, social workers and others to obtain up-to-date information about the location of detained parents and how to contact them.** Currently, there are inconsistent policies related to the amount of information that is shared with the public with regards to the whereabouts of immigration detainees. Sometimes, detainees are transferred out of state without the opportunity to notify family members, lawyers, or other critical contacts, including child welfare agency staff.
- **Children should not be present or involved in immigration enforcement procedures, except in emergency or life-threatening situations.** A child should not be interrogated during enforcement procedures or asked to translate for a parent as such practices could result in unnecessary trauma to the child.
- **Education and training should be provided to immigration and law enforcement officials to better understand how to reduce a child's trauma during a parental apprehension or arrest.** The Department of Homeland Security, in coordination with the Department of Health and Human Services, should provide training to all enforcement personnel, including local law enforcement personnel working in cooperation with ICE that may come into contact with children. Social service providers, including child welfare agencies, can provide valuable information on how to handle arrest situations when children are present so as to minimize their short-term and long-term trauma.

- **A designated liaison officer at DHS should be available to facilitate cases involving child welfare agencies and detained parents.** The creation of a liaison position would help streamline requests for assistance on child welfare/immigration enforcement issues and ensure consistency in policy and practice across states.

Detention Procedures:

- **Parents in deportation proceedings who have minor children and are not considered a public safety or flight threat should be released into non-custodial alternatives to detention.** These alternatives could include release on own recognizance without bond, release with a reasonably-priced bond, or monitored release through electronic monitoring devices (EMDs).
- **If a parent of a minor child must be detained, policies and programs should encourage regular, meaningful contact between children and their detained parents.** For example, detained parents should be assigned to facilities close to their children and/or detention facilities should require child-friendly visiting areas within the facility to provide contact visits with their children.
- **Information in the individual's preferred language should be given to every detained parent to help them understand their rights and responsibilities when their child has entered the public child welfare system.** This information should include relevant contact information for nonprofit service providers or Ombudsman's office that can assist them in understanding their rights under the child welfare system.
- **Procedures should be established in coordination with the local child welfare agency to ensure that detained parents are able to participate meaningfully in all state family and juvenile court care and custody proceedings and to fulfill obligations under child welfare agency case plans.** For instance, parents should have regular phone contact and/or visitation with their children and access to parenting education and other services specified in their family case plans. If the parent is deported, temporary visas for him or her to return to the U.S. to participate in state court hearings should be issued. Parents awaiting deportation should also be assisted in making necessary arrangements to take their children with them if they choose.
- **A comprehensive annual report should be developed which documents the impact of immigration enforcement activities on U.S. citizen children.** This report should include the number of U.S. citizen children separated from a parent due to detention or deportation, the number of children placed into the care and custody of state or local child welfare agencies as a result of enforcement, the number of parents of U.S. citizen children deported, the number of U.S. citizen children deported with their parents, etc.

Policy Recommendations for Child Welfare:

- **Protocols should be created and implemented to guide federal, state, and local child welfare staff, and their contractors, in handling cases involving children separated from their parents due to immigration enforcement.** For example, Memorandums of Understanding should be developed between child welfare agencies and DHS, other federal, state and local agencies, the judiciary, dependency and immigration attorneys, and consulates/embassies. These MOUs should ensure coordination among all the entities involved so that parents are able to participate in all state court proceedings that affect their child and that parents facing deportation are provided with adequate time and assistance to make arrangement for their children to either accompany them or remain in the U.S. after their parents' departure.
- **Guidelines for privacy and confidentiality should be established for separated children and their families.** These guidelines should prevent the disclosure by child welfare agency personnel or their contracting agencies of sensitive information, including the immigration status of children or potential substitute caretakers, to other government agencies or individuals.
- **Exceptions to ASFA timelines should be allowed in the event of complicated immigration cases when such an exception is in the best interest of the child.** Immigrant families face many challenges which justify a longer time period than allowed under ASFA's timeframe. These extensions should consider delays in the immigration court process, parent language barriers, lack of accessible services, required international relative searches and home studies, and working with foreign consulates and embassies.
- **Undocumented children who are separated from their parents due to immigration enforcement should be provided with child welfare services, including foster care placement, when needed.** Sometimes, a child left behind after a parent is apprehended in an immigration enforcement action will not be a U.S. citizen but rather an undocumented immigrant. Immigration status should not be a barrier to the provision of all appropriate child protective services, including foster care placement and services, by a state/local child welfare agency.

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About First Focus: First Focus is a bipartisan advocacy organization committed to making children and families a priority in federal policy and budget decisions. Further information can be found at www.firstfocus.net.

About the Migration and Child Welfare National Network (MCWNN): MCWNN is a coalition of leading child welfare organizations interested in the intersection of immigration and child welfare issues. Formed in 2006, the network has four main areas of focus: advocacy and policy, promising practices, research, and transnational relations. Members share knowledge and strategies with colleagues throughout the country to improve services for immigrant families in the child welfare system. MCWNN's fiscal and program agent is the American Humane Association. Salient activities developed by American Humane Association on behalf of the network include three policy roundtables, two journals, several research projects, numerous state and national technical assistance and dissemination efforts, and specialized toolkits. Further information can be found at www.americanhumane.org/migration.

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