



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

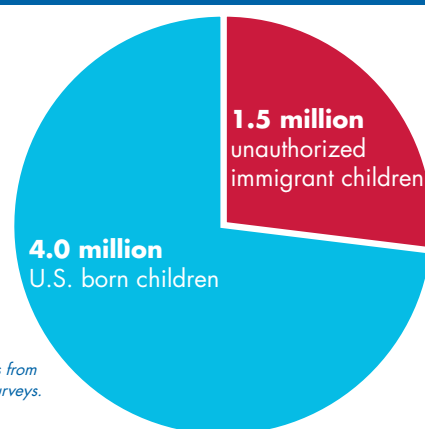
While the ultimate goal of ICE ACCESS programs is to target the most serious criminals, recent studies demonstrate that many of these programs have resulted in the apprehension of thousands of immigrants for minor non-criminal offenses as well as the deportation of thousands of lawful permanent residents (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.*

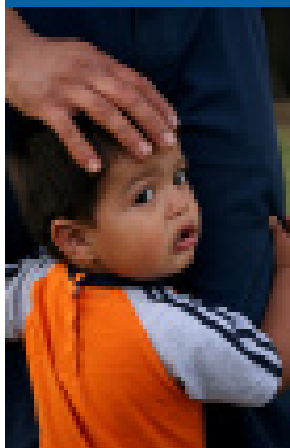
However, these guidelines do not apply to enforcement activities targeting individuals or small groups, which are types of arrests typically associated with 287(g) programs, FOTs, and the other criminal justice screening initiatives.²⁰ Thus, parents arrested under these currently prioritized programs 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-worksite 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. Color-lines – 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.

Endnotes:

- ¹ Terrazas, A., Batalova, J. (2009). *Frequently Requested Statistics on Immigrants and Immigration in the United States*, DC: Migration Policy Institute.
- ² Ibid.
- ³ Ibid.
- ⁴ Mendelson, M., Strom, S. Wishnie, M. (2009). *Collateral Damage: An Examination of ICE's Fugitive Operations Program*. DC: Migration Policy Institute.
- ⁵ Mendelson, M., Strom, S. (2009). *Collateral Damage: An Examination of ICE's Fugitive Operations Program*. DC: Migration Policy Institute.
- ⁶ Ibid.
- ⁷ ICE Fact Sheet (January 2010) "Delegation of Immigration Authority Section 287(g) Immigration and Naturalization Act."
- ⁸ ICE Fact Sheet (2009). "Secure Communities Fact Sheet." www.ICE.gov/Secure_Communities.
- ⁹ Capps, R., Castaneda, R. (2007). *Paying the Price: The Impact of Immigration Raids on America's Children*. DC: Urban Institute for the National Council of La Raza.
- ¹⁰ Office of the Inspector General – Department of Homeland Security (2009), *Removals Involving Illegal Alien Parents of United States Citizen Children*.
- ¹¹ *In the Child's Best Interest? The Consequences of Losing a Lawful Immigrant Parent to Deportation*. (March 2010). University of California, Berkely School of Law and University of California, Davis, School of Law.
- ¹² Chaudry, A., Capps, R. (2010). *Facing our Future: Children in the Aftermath of Immigration Enforcement*, DC: Urban Institute.
- ¹³ Ibid.
- ¹⁴ Ibid.
- ¹⁵ Ibid.
- ¹⁶ Ibid.
- ¹⁷ ICE Release (November 2007). "Guidelines for Identifying Humanitarian Needs among Administrative Arrestees."
- ¹⁸ Ibid.
- ¹⁹ Chaudry, A., Capps, R., Pedroza, J.M., Castaneda, R.M., Santos, R., Scott, M. (2010). *Facing Our Future: Children in the Aftermath of Immigration Enforcement*. DC: The Urban Institute.
- ²⁰ ICE Release (November 2007) "Guidelines for Identifying Humanitarian Needs among Administrative Arrestees."
- ²¹ Chaudry, A., Capps, R., Pedroza, J.M., Castaneda, R.M., Santos, R., Scott, M. (2010). *Facing Our Future: Children in the Aftermath of Immigration Enforcement*. DC: The Urban Institute.
- ²² Thronson, D. (Fall 2005). Of borders and best interests: Examining the experiences of undocumented immigrants in U.S. family courts." *Texas Hispanic Journal of Law & Policy* – The University of Texas School of Law, Vol 11: 47-72.
- ²³ Lincroft, Y., Bettencourt, B. (2009). "The impact of ASFA on immigrant children the child welfare system." *Intentions and results: A look back at the Adoption and Safe Families Act*. 116-129. DC: Urban Institute and the Center for the Study of Public Policy Priorities.
- ²⁴ Suleiman, L. (2001). *Building a Better Future for Latino Families*. NY: The Committee for Hispanic Children and Families, Inc.
- ²⁵ Press Release Issued by the Florida Immigrant Coalition (March 25, 2009), *Community Angered by State Agency Calling Immigration on Client Families* .www.floridaimmigrant.org.
- ²⁶ Ibid.
- ²⁷ Yali Lincroft (September/October 2008). Helping Immigrant Families – Interview with four California social workers. *Children's Voices – Child Welfare League of America*, Vol. 17(5): 16-23.

About the Authors:

Wendy Cervantes is the Senior Director for Child and Family Immigrant Policy at First Focus. She leads the organization's work in cross-cutting policy areas that impact children of immigrants including child welfare, immigration, education, human rights, and family economics. She has worked at the local, national, and international level to promote policies and programs to improve the lives of vulnerable immigrant and refugee families.

Yali Lincroft, MBA is a Child and Family Policy Consultant. Her current clients include First Focus, the Annie E. Casey Foundation, and the American Humane Association. She was a founding member of the Migration and Child Welfare National Network (MCWNN). For more than a decade, she has been a consultant to government, foundations, and nonprofit agencies and has written extensively on issues related to child welfare, children of incarcerated parents, and early childhood/childcare.

Legal Editors: **Howard Davidson, JD**, Director, Center on Children and the Law at the American Bar Association and **Angie Junck, JD**, Staff Attorney, Immigrant Legal Resource Center.

Additional Reviewers: **Ken Borelli**, Consultant to the Annie E. Casey Foundation; **Linda Brandmiller**, Catholic Charities; **Emily Butera**, Women's Refugee Commission; **Elena Cohen**, Safe Start; **Alan Dettlaff**, Jane Addams School of Social Work/University of Illinois; **Soraya J. Fata**, Legal Momentum; **Shadi Houshyar**, First Focus; **Julie Rossicky** and **Felicity Northcott**, International Social Service – United States of America Branch, Inc. (ISS-USA); **Jorge Cabera**, Casey Family Programs; **Amy C. Thompson**, Program and Policy Consultant; **Sonia Velazquez** and **Lara Bruce**, American Humane Association.

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.

Funding for this series was provided by the Annie E. Casey Foundation.



LANGUAGE, CULTURE AND IMMIGRATION RELIEF OPTIONS

By Yali Lincroft, MBA and Wendy Cervantes

Despite the fact that children of immigrants represent the fastest growing segment of the child population, their unique needs are often overlooked in child welfare public policy discussions at the local, state, and federal level. It is essential that public child welfare agencies assess their ability to serve children of immigrants and their families, including providing linguistically and culturally appropriate services and understanding immigration relief options. This policy brief discusses some of the key challenges that face the child welfare system in serving immigrant children and families and provides recommendations to promote effective practice and positive child welfare outcomes.

Language Access Issues

The dramatic growth of the immigrant community in the United States poses significant challenges for the ability of child welfare systems to meet the diverse linguistic needs of their clients. In 2006, 19% of children of immigrants' ages 5-17 were Limited English Proficient (LEP), and over 60% had at least one parent that was LEP.¹ Many of the new immigrant growth states, such as Nebraska, South Dakota, North

Carolina, and Nevada, have very limited experience serving LEP families.²

Title VI of the 1964 Civil Rights Act requires any recipient of federal funding (including state and local social service agencies) to make its services or programs reasonably accessible to eligible LEP individuals. Yet, despite federal law and the increasing demand for language accessible services, there remains a severe shortage of interpretation/translation services or bilingual or bicultural staff members throughout the child welfare system, including hotline staff, caseworkers, volunteers, psychologists, and attorneys.

The inability of families to communicate with child welfare system personnel in their primary language can result in investigations, assessments, and case plans based on insufficient and inaccurate information which can ultimately have a devastating impact on families. In addition to verbal communication, written materials such as guide books on understanding the investigation

Parents Without a Voice

A panel of judges in Iowa's Court of Appeals upheld a lower court ruling to terminate the parental rights of an immigrant couple to their two children, both of whom had special medical needs. Attorneys for the couple, who spoke the Chatino language, said they were not afforded translation services and had been unable to adequately defend their rights as parents.

SOURCE: Joyner, Chris (June 15, 2009). Immigrant fights to keep baby girl – Group says child taken away because of language barriers. <http://www.clarionledger.com/article/20090615/NEWS/096150320/1001/news>.

process, and important legal documents with timelines and court dates, are often only provided in English.

Interviews with frontline caseworkers reveal the concern that children of immigrants often remain in care far longer than non-immigrant families due to the complicated nature of the cases as well as the shortage of language access services.³ Adequate legal representation is difficult if the court appointed attorney does not speak the parent's language, is unfamiliar with their families' cultural practices, or does not understand basic issues in immigration law. Additional language barriers within the child welfare system include a lack of linguistically or culturally appropriate services such as parenting classes or drug treatment programs targeted to immigrant adults, and a limited number of linguistically matched foster homes. Foster care is difficult enough for any child, but when immigrant children are placed in an unrelated home where the caretakers do not speak their language or is of a markedly different religious or cultural background, the sense of alienation can only heighten the fear and traumatic impact to the child. All these issues contribute to possible service delays and threats to child well-being, ultimately compromising permanency goals and timelines.

In some cases, family members or friends are used as translators which raises confidentiality concerns. There are alarming stories of minors asked to translate for a parent, creating the risk for additional trauma, especially in cases of suspected abuse or neglect. Furthermore, the use of untrained interpreters unfamiliar with child welfare concepts or immigrant culture can result in the intentional or unintentional censoring or filtering of information.

Cultural Competency Issues

Access issues for non-English speakers go beyond language, and include the culture, values and faith of the immigrant community, as well as understanding events and experiences that may have an impact on the family's mental, physical and emotional state. Other unique aspects of the immigrant experience include family structure, socialization, migratory experiences, acculturation stress, and help-seeking behaviors.⁴ It is widely recognized that culturally informed practices help foster good child welfare outcomes, especially among immigrant families where cultural norms and child rearing practices in the home countries are often very different from those in the United States.⁵

Unfortunately, there remains a shortage of cultural competency training specifically on immigrant culture for those who work in the child welfare system. In many cases, immigrant families come from countries where corporal punishment is generally accepted, or where authoritarian parenting styles require that children do not challenge their elders. Many immigrant families also live in multi-generational households where grandparents and other extended relatives play a substantial role in the rearing of a child, and older children often share responsibility for the care

of younger siblings. A caseworker or interpreter who does not fully understand a family's distinct culture or migratory experience may make inaccurate assumptions about a parent's interest in the well-being of his or her child.

Furthermore, many immigrant families may be reluctant to provide information to the child welfare agency based on their experiences in their country of origin with oppressive governments, increased immigration enforcement within the U.S., or discrimination they may have faced in the United States. Many immigrants assume that any information they provide to the child welfare agency will be used against them and possibly relayed to immigration authorities or to the police. The child welfare concept of client confidentiality may not exist in their language or culture and must be carefully explained.⁶

Immigration Relief Options

Since many immigrant families include undocumented family members, it is important that child welfare workers understand immigration relief options and develop partnerships with immigration legal agencies that can provide consultation to their clients. Case workers and court staff are sometimes the first and only persons an immigrant child or family encounters who may be able to identify their eligibility for certain immigration relief options. Careful screening of a case may also reveal that the client may be a U.S. citizen without knowing it (such as through derivative citizenship) or is able to petition for legal status or citizenship based on a number of factors.

Identifying the immigration status of a client and family member is a controversial issue and must be handled sensitively and, if possible, in a way that

Understanding Cultural Differences

"Many immigrant parents think that a 9- or 10-year-old child can assume the responsibility for taking care of younger children, but here [in the U.S.], it's considered neglect if you leave children home alone. Sometimes parents keep teens home from school to take care of siblings. Or, when the family arrives in the U.S., they're struggling financially and they want their 13- or 14-year old children to work. That's accepted in other countries, but if your child is under 16 and not attending school, you can be charged with educational neglect."

SOURCE: RISE Magazine Interview with social worker from New York City's Administration for Children's Services, http://www.risemagazine.org/issues/Issue_9/issue_9.html.



The use of certain traditional medicinal practices (going to a traditional healer rather than an emergency room) may be construed as medical neglect. Certain medicinal practices like "coining" or "spooning" which involve rubbing a coin or spoon firmly on the skin to relieve illnesses may leave marks on children. These marks may lead to reports of abuse.

SOURCE: "Connecting the Dots – Improving Neighborhood-Based Child Welfare Services for Asian Pacific American Families" from the Coalition for Asian American Children and Families

assures confidentiality. The following is not an exhaustive list, but provides an overview of some of the most common forms of immigration relief options applicable to undocumented children who are involved in the child welfare system:⁷

- **Special Immigrant Juvenile Status (SIJS) and the Violence Against Women Act (VAWA).** These two relief options are for youth who are victims of family violence and abuse. A child is eligible for legal permanent residency under SIJS if the all following requirements are met: 1.) the child is either under dependency court jurisdiction

A Brighter Future: Securing Immigration Relief

Jaime* had once been a street child in Guatemala City who was mentally, physically and sexually abused, abandoned and neglected by all, including his own family members. After frequent child welfare agency meetings with Jaime to gain his trust, meetings with the Consulate of Guatemala, and preparation of multiple documents demonstrating evidence of the abuse, neglect and abandonment of Jaime, a petition for adjudication of his dependency in court was filed and Jaime was deemed a dependent of the State of Florida. On Friday, Dec. 8, 2006, three days before Jaime turned 18, the Miami District Office of USCIS granted Jaime Special Immigrant Juvenile Status, a form of immigration relief which affords many youth in the foster care system lawful permanent residency.

SOURCE: Case description by Holland and Knight and Florida Immigrant Advocacy Center, <http://bibdaily.com/pdfs/HK%20L.A.pdf>

*name changed to protect privacy

(including delinquency) or committed to the custody of the agencies, departments of a State, or to court-appointed individuals or entities 2.) the child's "reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law" and, 3.) the child's return to his or her country of nationality or last habitual residence is not in their best interest. Until further guidance is given, the child should remain under juvenile court jurisdiction until the entire SIJS application is adjudicated. Therefore, it is critical that child welfare and court staff screen children for eligibility for this relief early in the process. A child is eligible for permanent residency under the immigration provisions of VAWA if he or she has been "battered or subject to extreme cruelty" (including purely emotional abuse) by a U.S. citizen or permanent resident spouse, parent, or

stepparent. The parent or step-parent must have the required immigration status, but there is no requirement that the child remain under juvenile court jurisdiction. The youth may also qualify if his/her parent was a victim of domestic violence.

- **T- and U-Visa.** The T- and U-Visa are options for children who are victims of human trafficking or a serious crime. Child and adult victims of certain serious crimes may be eligible for the U visa, which is designed to protect the victims and provide them with lawful status. The victim must suffer substantial physical or mental abuse resulting from a wide range of criminal activity, possess information concerning the activity and be helpful to the investigation and prosecution of the criminal activity.⁸ In order to qualify for the U visa, a judge, prosecutor, investigator or similar official must sign a certification regarding this requirement.⁹ The T-Visa is more specialized and is available to victims of severe forms of trafficking (i.e. for sexual acts or involuntary servitude). Eligible victims must comply with reasonable requests for assistance in investigation or prosecution of the offense (unless they are under the age of 16) and must show they have suffered extreme hardship.¹⁰
- **Asylum.** People who fear returning to their home country because of an individualized fear of persecution can apply for asylum or withholding of removal. A person who fears torture by the home government for any reason can apply for benefits under the Convention Against Torture.
- **Temporary Protected Status (TPS).** Congress, via the Immigration Act of 1990, created

temporary protected status (TPS) so that persons from certain countries affected by civil strife or natural disaster may remain legally, through temporarily, in the U.S. and receive temporary work authorization. After the January 12, 2010 earthquake in Haiti, the U.S. government designated Haiti as a TPS country. Applicants need to prove they are nationals of the TPS designated country, not have past criminal convictions, and must prove that they have been in the U.S. since a certain required date.

- **Citizenship and Family Immigration.**

Sometimes a child in the child welfare system may be a U.S. citizen without knowing it. A U.S. citizen is anyone born in the U.S., Puerto Rico, Guam, American Samoa, or Swain Island. Some children may be derivative citizens based on the U.S. citizenship of parents and in some cases, grandparents. They can also gain legal residency if certain U.S. citizen or permanent resident family members (e.g., parent or spouse) are willing to petition for the child. The child may qualify through one natural or adoptive parent (as long as the adoption is completed by the child's 16th birthday). It is also important to note that when the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption applies in any given case, it complicates the case.

appropriate services. For immigrant children and families, such services must be language accessible and culturally appropriate. Furthermore, child welfare agency staff must be provided with support in navigating the complicated immigration system so that children or parents who might be eligible for some form of immigration relief do not fall through the cracks.

Many child welfare agencies have had success in improving services to immigrant families through partnerships with immigrant serving community-based agencies, including legal organizations. Depending on the number of cases involving immigrant families, child welfare agencies have adopted different models of services, such as dedicated staff/bilingual units or service contracts with agencies that specialize in working with immigrant families. Regardless of the models adopted, it is clear that as the U.S. child population continues to diversify the child welfare system must prepare to meet the needs of all children and families it encounters.

Conclusion: Serving All Children

Given the significant growth in the number of children of immigrants in the past decade, it is imperative that the child welfare system respond to this demographic shift by ensuring that all children and families receive

Policy Recommendations:

Language Access:

- **Child welfare agencies should implement comprehensive language access policies.** These policies should provide for the immediate assessment of clients' English abilities and ensure that all verbal and written communication is provided in the client's preferred language.
- **If interpreters and language telephone lines must be employed, contractual agreements should be made with qualified bilingual interpreters.** Interpreters should not only be familiar with the child welfare field but also knowledgeable about the values and cultures of the immigrant group for whom they are interpreting.
- **Child welfare agencies should maintain a linguistic and demographic profile of the community they serve as well as conduct a needs assessment to accurately plan for and implement culturally and linguistically appropriate services.**¹¹ In order to be effective in serving immigrant populations, systems must address the specific needs of their client population, and policies and practices must be revisited on a regular basis to ensure that they address relevant demographic changes.

Staffing & Training:

- **Child welfare agencies should implement strategies to recruit, retain and promote at all levels bilingual child protection staff and identify additional relevant resources to support them.**¹² Job descriptions for bilingual and non-bilingual staff should be clearly stated so that the overall workloads of bilingual staff remain comparable to non-bilingual staff. Too often, bilingual child welfare staff is overburdened by agencies requiring they provide translation services to their colleagues in addition to their regular workload, leading to worker burnout and inequality.¹³
- **Child welfare agencies should consider establishing Specialized Immigration Units either within the agency or contract with community-based agencies to act as a cultural bridge to immigrant families.** For example, California child welfare jurisdictions with large immigrant populations such as Los Angeles, Riverside, Fresno, and San Diego Counties have created international liaison units or positions that provide internal technical assistance including translation help, document searches, repatriation inquiry assistance, aid in placements abroad, and requisite coordination with foreign consulates.¹⁴
- **Child welfare agencies should review current assessment and investigation procedures to see if there are any structural biases against immigrant families.** In addition to removing barriers to services, such

an assessment can help ensure that those who work with immigrant clients have an understanding of the immigrant experience. Diversion programs that emphasize prevention and maximize the use of culturally consistent services should also be developed and supported.

- **Cultural and linguistic competency in working with immigrant families should be operationalized through training, consultation, hiring of staff, and program design.** The internal staff training should also include attorneys, judges, court appointed special advocates (CASA) and other court personnel.

Community Partnerships:

- **Child welfare agencies should develop participatory, collaborative partnerships with community-based agencies, including faith-based groups, to provide critical outreach to the immigrant community to educate them about the child welfare system and vice versa.** Some jurisdictions have developed a “cultural broker” model, hiring brokers who have the same ethnicity as their clients to help caseworkers understand cultural differences.¹⁵
- **Child welfare agencies should consider developing formal partnerships with foreign consulates to provide ongoing technical support and sharing of resources with child welfare agencies.** Mexico has taken a leadership role in many localities where there are large settled populations of Mexican nationals, and several child welfare agencies have established best practice protocols or memorandums of understanding with Mexico.¹⁶ The consulate may help as a broker between the child welfare agency and the immigrant parent/family, finding translators and other resources.
- **Child welfare agencies should connect more closely with immigrant communities to develop the knowledge and skills needed to work with them.** This could include field placement of social work students or targeted recruitment to increase the number of linguistically/culturally appropriate staff and licensed foster care homes, and increased funding to support and develop prevention and intervention services in newer and emerging immigrant communities.

Immigration Relief:

- **Child welfare agencies should screen all children who enter the child welfare system as early on as possible to determine whether they are eligible for a form of immigration relief and document agency efforts to assist eligible children in applying for immigration relief.** Child welfare agencies need to

develop assessments and information collection mechanisms for their immigrant clients and be knowledgeable about the various immigration relief options.

- **Court improvement funds should be used to educate and train judges, lawyers, and case workers on immigration relief options available to foster youth.** In order to prevent the tragedy of children exiting the child welfare system without receiving legal status for which they qualify, it is important for judges, lawyers, and case workers to receive training on immigration relief options so that there are multiple entities ensuring no eligible child falls through the cracks.
- **Child welfare agencies should assist eligible children and parents in obtaining immigration relief by developing partnerships with local immigrant serving legal providers or other community-based organizations.** Due to the complicated nature of immigration law, child welfare agency staff often require the assistance of immigration experts to assist clients with their immigration applications.

ENDNOTES:

- 1 Lincroft, Y., Resner, J. (2006). *Undercounted, Underserved: Immigrants and Refugees in the Child Welfare System*. Baltimore, MD: Annie E. Casey Foundation.
- 2 Mather, M. (2009). *Reports on America: Children in Immigrant Families Chart New Path*, Population Reference Bureau.
- 3 Ibid.
- 4 Wilmot, L., Gerald, R., Harper, C. J. (2005). *The Influence of Culture and Cultural Competence on Child and Family Well-being*, Denver, CO: American Humane Association.
- 5 Ibid.
- 6 “Bridging Refugee Youth and Children Services.”(2009). Washington DC: Bridging Refugee Youth & Children Services. www.brycs.org
- 7 Excerpt with permission from Lincroft, Y (June 2009). *A Social Worker’s Tool Kit for Working with Immigrant Families: Immigration Status and Relief Options*. Denver, CO: Migration and Child Welfare National Network – American Humane Association.
- 8 INA § 101(a)(15)(U), 8 USC § 1101(a)(15)(U).
- 9 For information on the U visa see www.ilrc.org and www.nationalimmigrationproject.org
- 10 For information on the T visa see www.lafla.org (the Legal Aid Foundation of Los Angeles)
- 11 Ibid.
- 12 *National Standards on Culturally and Linguistically Appropriate Services (2001)*. Office of Minority Health, office of Public Health and Science, U.S. Department of Health and Human Services.
- 13 Information about implementing language access programs in social services is available at the Migration and Policy Institute website, http://www.migrationinformation.org/integration/language_portal/
- 14 Lincroft, Y. (September/October 2008). Helping Immigrant Families: Interviews with Four California Social Workers. *Children’s VOICE – A Publication of Child Welfare League of America*, 19-20.
- 15 ABC/KFSN-TV Fresno (August 14, 2009), *Cultural Brokers*. <http://abclocal.go.com/kfsn/story?section=news/local&id=6966091>
- 16 Borelli, K., Earner, I., Lincroft, Y. (2008). Administrators in Public Child Welfare: Responding to Immigrant Families in Crisis. *Protecting Children – A Professional Publication of American Humane Association*, 22(2), 8-13.

About the Authors:

Yali Lincroft, MBA is a Child and Family Policy Consultant. Her current clients include First Focus, the Annie E. Casey Foundation, and the American Humane Association. She is a founding member of the Migration and Child Welfare National Network (MCWNN). For more than a decade, she has been a consultant to government, foundations, and nonprofit agencies and has written extensively on issues related to child welfare, children of incarcerated parents, and early childhood/childcare.

Wendy Cervantes is the Senior Director for Child and Family Immigrant Policy at First Focus. She leads the organization's work in cross-cutting policy areas that impact children of immigrants including child welfare, immigration, education, human rights, and family economics. She has worked at the local, national, and international level to promote policies and programs to improve the lives of vulnerable immigrant and refugee families.

Legal Editors: **Howard Davidson, JD**, Director, Center on Children and the Law at the American Bar Association and **Angie Junck, JD**, Staff Attorney, Immigrant Legal Resource Center.

Additional Reviewers: **Ken Borelli**, Consultant to the Annie E. Casey Foundation; **Linda Brandmiller**, Catholic Charities; **Elena Cohen**, Safe Start; **Alan Dettlaff**, Jane Addams School of Social Work/University of Illinois; **Julie Rossicky** and **Felicity Northcott**, International Social Service – United States of America Branch, Inc. (ISS-USA); **Jorge Cabrera**, Casey Family Programs, **Amy C. Thompson**, Program and Policy Consultant; **Ilze Earner**, Hunter College; **Lyn Morland**, United States Conference of Catholic Bishops, **Sonia Velazquez** and **Lara Bruce**, American Humane Association.

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 <http://www.americanhumane.org/migration>

Funding for this series was provided by the Annie E. Casey Foundation.



PUBLIC BENEFITS & CHILD WELFARE FINANCING

By Yali Lincroft, MBA and Ken Borelli, ACSW, LCSW

A critical role of a child welfare social worker is to untangle and address the reasons why a child may enter the child welfare system. There is a need to assess family strengths and how to support the family's ability to protect a child or reunify with the child if they are in out of home care. The child welfare system is difficult to comprehend and navigate, even for the general English-speaking, U.S. citizen population. Immigrant parents, caretakers or relatives are at an even greater disadvantage when their immigration status prevents them from accessing critical public resources, court-mandated reunification services, or permanency options. This policy brief provides an overview of public benefits, placement, and financing issues within the child welfare system.

Demographics of Immigrants and Mixed Status Families

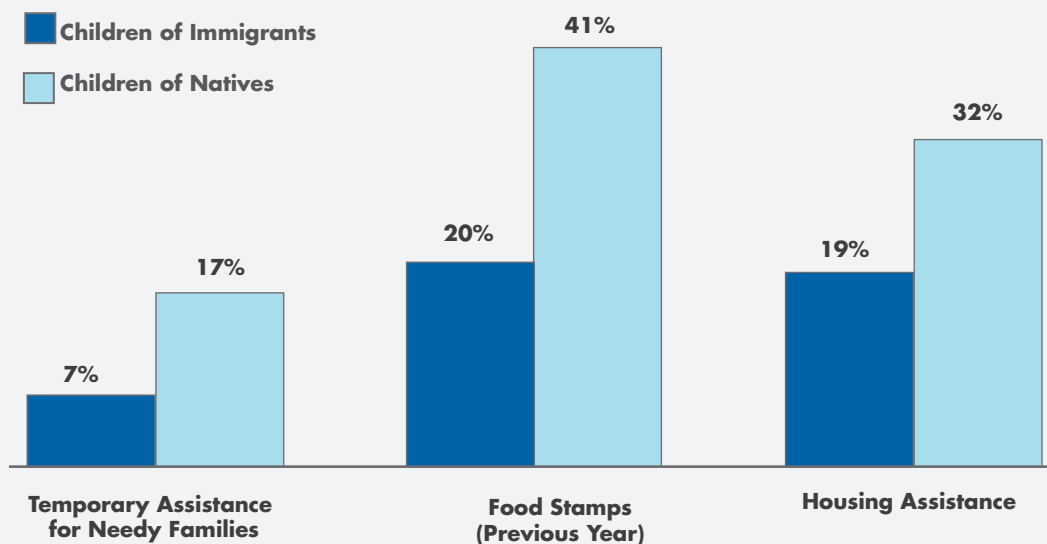
About 23% of the children in the United States have at least one foreign-born parent.¹ Children of immigrants are more likely to live in families with low incomes and to experience higher levels of economic hardship.² They are also less likely to utilize public benefit programs than children of natives. For example, children of natives are more than twice

as likely to receive Food Stamps as children of immigrants.³

Research from the National Survey of Child and Adolescent Well-Being (NSCA) found 8.6% of all children who come to the attention of the child welfare system are children of immigrants.⁴ Among children of immigrants, more than 4 out of 5 are U.S.-born citizens.⁵ These “mixed immigration status” households may include citizens, legal permanent residents, and undocumented immigrants. In these families, while the children may be eligible for public benefits and services, their parents may not and may be fearful of the immigration-related consequences of accessing government services.

While a child is within the child welfare system, services and support are generally covered by the state or federal government. Problems may arise when the social worker has reunified the child with his or her family or is placed with relatives, and these services are discontinued because the child welfare agency is no

Share of Low-Income Children under 6 Receiving Public Benefits, 2002



Source: Urban Institute analysis of 2002 National Survey of America's Families.

Note: Low-income is income below 200 percent of the federal poverty level.

longer providing them. The family may not be eligible for supportive services, and the placement may be in jeopardy as a result of the loss of benefits.

Obstacles to Public Benefits

One of the biggest obstacles facing social workers is the restrictions barring certain classes of immigrants from receiving publicly funded services. Undocumented immigrants and persons in the U.S. on temporary visas have always been prevented from securing assistance from the major federal public benefits programs such as food stamps, nonemergency Medicaid, Supplement Security Income (SSI), and Temporary Assistance for Needy Families (TANF).⁶ With the passage of the 1996 federal welfare and immigration laws, the federal government greatly limited access to major federal benefits to lawful permanent resident immigrants by barring them from receiving assistance for five years or longer. Even when eligibility for some programs was restored by

subsequent legislation or by states attempting to fill some of the gaps through noncitizen coverage, many immigrant families were hesitant to enroll due to fear and confusion over the law. Thus, research shows a sharp reduction in the participation of lawfully present immigrants in public benefit programs following the passage of the 1996 law.⁷

The 1996 welfare laws created two categories of immigrants for benefits purposes. “Qualified aliens” include certain legal permanent residents, humanitarian immigrants and certain classes of abused immigrants, their children and/or their parents under approved immigration relief options.⁸ In 2000, Congress established a new category of non-U.S. citizens for victims of trafficking who, while not listed among the qualified immigrants, are eligible for federal benefits to the same extent as refugees.⁹ All other immigrants, including undocumented immigrants are considered “not qualified.”

The federal government left it largely up to states to define to what extent undocumented immigrants were eligible for state benefits.¹⁰ Some states with traditionally large immigrant populations, such as New York and California, have taken steps to support services for a subset of their immigrant families, even undocumented immigrants, through supplemental state programs such as children's health care and prenatal services.¹¹ The federal reauthorization of the Children's Health Insurance Program (CHIP) in 2009 granted states with the option to remove the five-year waiting period for children under 18 and pregnant women, which many states have opted to do. Other states, like Nebraska, have adopted formal rules barring prenatal services for undocumented immigrant women as the result of federal rulings about the state's improper Medicaid billing.¹²

There are some support programs where immigration status is not considered for eligibility, such as some subsidized childcare (i.e. Migrant Head Start), Victim Witness or Violence of Crime Assistance (VOCA), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), immunization and/or treatment of communicable disease, and the Early Periodic Screening, Diagnosis, and Treatment (EPSTD) program. However, most child welfare workers are unfamiliar with the eligibility criteria and immigration relief options associated with these programs. Furthermore, their immigrant clients, intimidated by interaction with public agencies in addition to language and cultural difficulties, are unlikely to push for access to these benefits.

For mixed immigration status families, regardless of their status or eligibility, an immigrant's access to

Barriers to Services

"When they took me in front of the judge, he asked me if I was illegal and I replied yes. Then [CPS] required a drug test, they asked for a psychological evaluation, parent training and domestic violence counseling. After two months, they came back and they said that they were not going to pay for any of this because I was illegal. Why didn't they tell me this at the beginning? I don't have the money to pay for this. It seems that because I am an immigrant, because I don't have papers, they want to rob me of my children."

SOURCE: Earner, I., (November 2004). "Immigrant Families and Public Child Welfare: Barriers to Services and Approaches for Change." *The Journal of Child Welfare*. Washington DC: Child Welfare League of America.

benefits is constrained by many factors. This would include the lack of bilingual staff assisting them in the application process and confusion about eligibility and the application process. Many fear that accessing public benefits will result in future denials of a "green card" if they are deemed "a public charge" or hurt their ability to sponsor family members in the future. There are eligibility restrictions and liabilities on immigrants who have family sponsors. Under enforceable affidavit, the sponsor promises to support the sponsored immigrant and to repay certain benefits the sponsored immigrant may use.¹³ Finally, there is the justifiable fear of cross-reporting to immigration officials leading to deportation. For example, a state law from Arizona requires public workers to alert Immigration and Customs Enforcement when illegal immigrants apply for benefits that they are not legally entitled.¹⁴

Social workers may misinterpret an immigrant client as "non-compliant" or label them unwilling to engage in a preventative services plan if they are unfamiliar

with these immigration dynamics. By demonstrating an awareness of their client's fears and realities, the agency may eliminate a major obstacle to engaging the family. Likewise, the ability of the child welfare agency to connect and refer clients to supportive service such as a community free health clinic can help reduce the factors that brought the child to the child welfare agency in the first place and likewise reduce costly placement and intervention cost.

Obstacles to Placement with Relative Caregivers

The goal of the U.S. child welfare system is to protect and prevent children from abuse and neglect from their parents or caregivers. Prevention services are provided at the lowest level of intervention whenever possible while not compromising the child's safety. When prevention services are not possible, permanent alternative caregiver arrangements are arranged, ideally with relative placement. For immigrant children who may have vastly different cultural background and language, placement in non-relative foster homes or institutional care may be particularly difficult and traumatic.

Becoming a licensed foster care placement is often difficult for immigrant relatives and individuals who are not related by blood or marriage but have important emotional ties to the family, such as a godparent. In most child welfare jurisdictions, the licensing process requires applicants to produce a social security number and to become fingerprinted, often at a police station in order to preform a criminal background check. Many potential immigrant families hesitate to become licensed placement options for fear of exposure to immigration authorities or that the foster care payment will result in a public charge

Finding Culturally-Appropriate Homes

Shifting demographics have left [foster home' recruiters] struggling to keep up with the need to find new foster parents, especially ones willing to take teenagers and siblings and ones who speak Spanish and understand Latino culture. "While many children may be bilingual and have a comfort level in English, their parents may not. And the cultural context is important," said Rosie Ratto (foster parent) ... Spanish- speaking foster parents not only help children adjust to out-of-home placement, they also are better able to communicate with birth parents, an important step toward reunifying families. No single Spanish phrase translates neatly the concept of licensed foster care, a system that doesn't exist in many Latin American countries ... so it's important to have people who can communicate the complexities.

SOURCE: Sara Steffens (August 5, 2007). "Foster mom offers hope." Contra Costa Times.

denial for their own citizenship application. They may have difficulties meeting foster care regulations due to fingerprint clearances without government-issued identification. Due to poverty, the household may be deemed ineligible for placement because of minimum space per occupant requirements, or minimum family income qualifications. In addition, searches for relative placement out of country and cross-border are often skipped, to expedite permanency and avoid costly overseas home studies.¹⁵

According to a study in Texas, Latin American children in out-of-home care were placed with relatives less often than other children in care.¹⁶ In addition, the study found fewer Latin American immigrants have case goals associated with relatives – reunification and relative adoption – than other children in care, and more have case plan outcomes of long-term foster family care and independent living.¹⁷ Possible explanations by the researchers included differences

associated with the number of available relatives in the country, the legal status of the potential relative placement, and the age associated with the placement.¹⁸

Federal Reimbursement to Child Welfare Agencies

The U.S. Department of Health and Human Services (DHHS) is the primary federal agency that regulates and provides partial funding for services to maltreated children and their families. The majority of federal child welfare financing comes through Title IV-B and Title IV-E of the Social Security Act.¹⁹ Federal, state, and local government funding supports the full array of services provided by public child welfare agencies. However, the amount of funding coming from these sources varies greatly by state and can be affected by both national and state-specific activities.

Some of these federal funds are uncapped (unlimited) entitlements (like Title IV-E), while others like Title IV-B are capped (limited) allocations given to states to support a wide range of prevention, early intervention, and permanency-related services.²⁰ Because many children in the child welfare system have extensive

physical and mental health issues, Title XIX of the Social Security Act is another important funding stream which provides coverage for the physical and mental health services to foster children through the federal Medicaid program and other health-related social services.

An undocumented immigrant is not eligible for federally funded Title IV-E foster care and has limited eligibility for Title XIX and public health benefits.²¹ Child welfare services, such as interpretation, visiting the child's native country for evaluation for potential placement or hiring immigration legal counsel can be supported by Title IV-B funds. However, Title IV-B is capped and relatively small in comparison to Title IV-E funds. Thus most child welfare agencies must depend on scarce, discretionary local funds to support these cases. In interviews, child welfare agencies have universally voiced their need for federal reimbursements and increased access to specialized staff and services to assist them with their immigrant clients.²²

Fostering Connections to Success and Increasing Adoptions Act

In October 2008, an important new federal legislation was enacted, the "Fostering Connections to Success and Increasing Adoptions Act" (Public Law 110-351). This law tied Federal Title IV-E funding to states (currently over \$6 billion annually) to requirements that are relevant to immigrant children who have been abused, neglected, trafficked, or abandoned and who are in foster care. The following are the seven key issues impacting immigrant families through the Fostering Connections legislation.²³

Consequences of Immigration Status

A social worker is trying to place a child with an aunt or uncle. The uncle's brother lives with the family and is undocumented. In the process of doing a license clearance, the uncle's brother is found to be undocumented and is placed in immigration removal proceedings. Had there been a [family meeting] conducted prior to placement, this issue may have been identified and evaluated to the benefit of all parties concerned.

SOURCE: Lincroft, Y., Borelli, K. (2010). A Social Worker's Toolkit for Working with Immigrant Families. Denver, CO: Migration and Child Welfare National Network – American Humane Association. <http://www.americanhumane.org/assets/docs/protecting-children/PC-migration-sw-toolkit-status-relief.pdf>

1. The law requires that within 30 days of all children entering foster care, relatives must be notified, and that notice must explain their options to participate in the care and placement of the child.
2. The law permits states to waive normal foster care licensing standards in order to approve a child's placement with a relative, but only on a case-by-case basis and only for non-safety standards (as determined by the State).
3. The law gives states the option in 2010 to extend federally subsidized (IV-E payments) foster care and other child welfare services up to a child's twenty-first birthday.
4. The law requires that for youth transitioning to adulthood from foster care is provided with assistance and support in developing a personalized "transition plan prepared at the direction of the child" which includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services.
5. The law requires that every child in foster care remain in, and regularly attend, the school they were enrolled in at the time of foster care placement, and that they be regularly attending an appropriate school program, with federally supported transportation funds to help assure this.
6. The law requires a plan for ongoing oversight and coordination of health care services for every child in foster care, including mental health and dental health needs .
7. The law mandates that siblings be placed in the same placement, unless the State documents such a joint placement would be contrary to the safety or well-being of any sibling. If not jointly placed, the State must provide frequent visitation or ongoing interaction between the siblings, unless documented that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

The principle elements of this new federal law have important application to the provision of child welfare services to children from immigrant families, documented or not. Some examples include the need for international relative notifications, extending foster care to age 21 particularly for those applying for immigration relief options, and keeping immigrant siblings together to maintain cultural and linguistic support. Educational challenges facing immigrant foster youth include difficulties enrolling and attending school with missing documentation as well as identification of limited English Proficient (LEP) or English Learners (EL) for eligibility for specialized services.

Conclusion

Barriers to benefits and services should not determine the outcome of a child welfare case. Immigrant parents who are under court-mandate to fulfill certain requirements in order to regain custody of their children must be afforded the ability to meet those requirements. And, while immigrant children who are in state child welfare custody have their housing, medical treatment and other array of services generally covered while in care, the state agency has limited access to federal reimbursement of these services.

While it may initially appear costly to provide the essential services to help an immigrant family reunify, there is no greater cost than negative outcomes to a child or family or the cost of a child growing up in foster care.

Recommendations

- **Title IV-E of the Social Security Act should be amended to allow foster care funding for non-citizen children of immigrants, regardless of their legal status.** If this is not possible, once a court dependent child's immigration status is resolved positively, the child should then be deemed eligible for federal reimbursement for child welfare service. There should be waivers by the Department of Health and Human Services of certain requirements of the Titles IV-B and IV-E of the Social Security Act to facilitate the demonstration of new models of service delivery to immigrant children and families, such as specialized units, which would use a dedicated federal funding stream.²⁴
- **Parents and adult caretakers of children in the foster care system should be able to lawfully access all necessary services which will facilitate their child's safety, permanency, and well-being.** These should include child abuse and neglect prevention services, drug and alcohol abuse treatment, mental health services, special education, case and food assistance programs and housing subsidies.²⁵
- **Resources should be available for training child welfare agency staff on the needs of specific ethnic and cultural groups regarding their eligibility and access to support services.** These trainings may help children of immigrants, most of whom are U.S. citizens and are eligible for programs that would alleviate some of the hardship that brought their families to the attention of child welfare agencies.
- **Federal incentives should be created to encourage child welfare agencies to develop linguistically and culturally appropriate foster homes.** Creating new incentives (or penalties) under the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provision of 1996 (MEPA-IEP) will bring greater attention to these issues and may help institutionalize mechanisms for culturally and linguistically appropriate recruitment and placement practices.²⁶
- **States should review their policies in regards to the "Fostering Connections to Success and Increasing Adoptions Act" as they relate to immigrant children and families.** Technical assistance and additional resources should be provided to assist states in the implementation of the Fostering Connections Act.

Endnotes

- 1 Terrazas, A., Batalova, J. (October 2009). *Frequently Requested Statistics on Immigrants and Immigration in the United States*. Washington, DC: Migration Policy Institute. <http://www.migrationinformation.org/USfocus/display.cfm?ID=747>
- 2 Capps, R., Fix, M. (2004). *The Health and Well-Being of Young Children of Immigrants*. Washington, DC: Urban Institute.
- 3 Ibid.
- 4 Dettlaff, A., Earner, I. (Manuscript in preparation). Children of immigrants in the child welfare system: Characteristics, risk, and maltreatment.
- 5 Ibid.
- 6 Broder, T., Blazer, J. (October 2008). *Overview of Immigrant Eligibility for Federal Programs*. Los Angeles, CA: National Immigration Law Center.
- 7 Fix, M., Passel, J. (Jan 2002). "The Scope and Impact of Welfare Reform's Immigrant Provisions" (Discussion Paper no. 02-03), *Assessing the New Federalism*. Washington DC: Urban Institute.
- 8 Broder, T., Blazer, J. (October 2008). *Overview of Immigrant Eligibility for Federal Programs*. Los Angeles, CA: National Immigration Law Center.
- 9 Ibid.
- 10 Michelle Johnson (May 2007). The social ecology of acculturation: Implications for child welfare services to children of immigrants. *Children and Youth Services Review*, 29 (2007) 1425-1438.
- 11 Ibid.
- 12 Medical News Today (March 25, 2010). "Nebraska Private Donors Offer Funds to Restore Prenatal Services to Undocumented Low Income Women." <http://www.medicalnewstoday.com/articles/183451.php>
- 13 Broder, T., Blazer, J. (October 2008). *Overview of Immigrant Eligibility for Federal Programs*. Los Angeles, CA: National Immigration Law Center.
- 14 Nicholas Riccardi (January 10, 2010). "Immigration law: Arizona illegal immigrants wary over benefits law." Chicago Tribune. http://articles.chicagotribune.com/2010-01-10/news/1001100052_1_illegal-immigrants-cristina-law
- 15 Howard Davidson and Julie Gilbert Rosicky (November 2007). Overcoming Government Obstacles to the Proper Care and Custody of Unaccompanied and Separated Alien Minors. *Protecting Children – A Professional Publication of American Humane Association*, 22 (2) 84-98.
- 16 Vericker, T., Kuehn, D. (May 2007). *Foster Care Placement Settings and Permanency Planning – Findings from Texas*. Washington DC: Urban Institute.
- 17 Ibid.
- 18 Ibid.
- 19 Scarcella, C., Bess, R. (2004). *The Cost of Protecting Vulnerable Children IV: How Child Welfare Funding Fared During the Recession*. Washington DC: Urban Institute.
- 20 Reed, D., Karpilow, K. (June 2009). *Understanding the Child Welfare System in California*. Berkeley, CA: California Center for Research on Women and Families.
- 21 Kaiser Commission on Key Facts (April 2006). *Medicaid and SCHIP Eligibility for Immigrants*. Washington, DC: Henry J. Kaiser Foundation.
- 22 Lincroft, Y., Resner, J. (2006). *Undercounted, Underserved: Immigrants and Refugee Families in the Child Welfare System*. Baltimore, MD: Annie E. Casey Foundation.
- 23 Information provided by Howard Davidson, Director of the American Bar Association, Center on Children and the Law (Jan 2008).
- 24 Michelle Johnson (May 2007). The social ecology of acculturation: Implications for child welfare services to children of immigrants. *Children and Youth Services Review* 29 (2007) 1425-1438.
- 25 Howard Davidson, Julie Rosicky (2007). Overcoming Government Obstacles to the Proper Care and Custody of Unaccompanied and Separated Children. *Protecting Children – A Professional Publication of American Humane*, 22(2) 84-98.
- 26 Michelle Johnson (May 2007). The social ecology of acculturation: Implications for child welfare services to children of immigrants. *Children and Youth Services Review* 29 (2007) 1425-1438.

ABOUT THE AUTHORS:

Yali Lincroft, MBA is a Child and Family Policy Consultant. Her current clients include First Focus, the Annie E. Casey Foundation, and the American Humane Association. She was a founding member of the Migration and Child Welfare National Network (MCWNN). For more than a decade, she has been a consultant to government, foundations, and nonprofit agencies and has written extensively on issues related to child welfare, children of incarcerated parents, and early childhood/childcare.

Ken Borelli, ACSW, LCSW, is the former deputy director of the Department of Family and Children's Services in Santa Clara, California. He has worked on immigration issues for over 25 years, including developing the landmark "Special Immigrant Juvenile Status for Children in Dependency" legislation. He has chaired and participated in immigration task forces and advisory boards both regionally and nationally, including supervising an Immigrant Services Unit.

LEGAL EDITORS: **Howard Davidson, JD**, Director, Center on Children and the Law, American Bar Association and **Angie Junck, JD**, Staff Attorney, Immigrant Legal Resource Center.

ADDITIONAL REVIEWERS: **Jorge Cabera**, Casey Family Programs; **Amy C. Thompson**, Program and Policy Consultant; **Wendy Cervantes**, First Focus; **Shadi Houshyar**, First Focus; **Linda Brandmiller**, Catholic Charities; **Elena Cohen**, Safe Start; **Alan Dettlaff**, Jane Addams School of Social Work/University of Illinois; **Julie Rossicky** and **Felicity Northcott**, International Social Service – United States of America Branch, Inc. (ISS-USA); **Lyn Morland**, United States Conference of Catholic Bishops, **Sonia Velazquez** and **Lara Bruce**, American Humane Association.

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 <http://www.americanhumane.org/migration>.

Funding for this series was provided by the Annie E. Casey Foundation.