



Women's Refugee Commission
Research. Rethink. Resolve.



Torn Apart by Immigration Enforcement:

Parental Rights and Immigration Detention

December 2010



**WOMEN'S
REFUGEE
COMMISSION**

Research. Rethink. Resolve.

Since 1989, the Women's Refugee Commission has advocated vigorously for policies and programs to improve the lives of refugee and displaced women, children and young people, including those seeking asylum—bringing about lasting, measurable change.

The Women's Refugee Commission is legally part of the International Rescue Committee (IRC), a non-profit 501(c)(3) organization, but does not receive direct financial support from the IRC.

Acknowledgments

This report was written by Emily Butera, with research, editing and drafting support from a team of individuals from the Women's Refugee Commission and the law firm of Steptoe & Johnson, LLP. Content, research and editing review was conducted by Michelle Brané and Katharina Obser. Thanks to Women's Refugee Commission interns Lauren Groth, Jessica Jones and Carly Stadum for assistance with research and drafting of the Due Process and International Human Rights Law Appendices. A special thank you to George Grandison, partner at Steptoe and Johnson, LLP, for his extensive pro bono support, research and guidance. Designed and edited by Diana Quick.

The Women's Refugee Commission wishes to acknowledge the contributions of various pro bono attorneys and NGOs who shared their clients stories with us and assisted us with access to interview detainees.

Above all, we thank the courageous families who shared their stories with us.

The Women's Refugee Commission is grateful for the support of the Oak Foundation, the Moriah Fund and the Herb Block Foundation.

© 2010 Women's Refugee Commission

ISBN:1-58030-088-X

Women's Refugee Commission
122 East 42nd Street
New York, NY 10168-1289
212.551.3115
info@wrcommission.org

womensrefugeecommission.org

Contents

Definitions	i
Executive Summary	1
Key Findings	2
Key Recommendations	3
Introduction and Background: Parental Rights and Immigration Enforcement	4
Scope of this report	5
How Are Parental Rights Challenged by Immigration Enforcement, Detention and Deportation: A Hypothetical	5
Why Are Challenges to Family Unity and Parental Rights Occurring?	6
Lack of appropriate guidelines	6
Lack of effective screening and phone calls.....	7
Problems arising from limited communication and frequent transfers	8
A note about detention reform and the detention of parents	9
How Does Detention Compromise Parental Rights?	10
A note about the detention standards	12
How does deportation impact parental rights and family unity?	12
Conclusion	14
Recommendations	14
Notes	18
Appendices	21
Appendix A: How Children Move Through the Child Welfare System	21
Appendix B: Legal Rights of Detained Immigrant Parents.....	22
Appendix C: International Law on Family Separation and Parental Rights	24



Definitions

Caregiver: An individual who provides regular financial, physical and other direct support to children, the elderly, the physically or mentally disabled, or any other category of dependent person.

Caretaker: An individual who is temporarily designated by a custodial parent, legal guardian or caregiver to provide financial, physical and other direct support to a child or dependent.*

Child: As defined in Section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)), a child is typically considered to be unmarried and under 21 years of age.

Dependency Action: The legal proceedings governing the adjudication of child abuse and neglect cases. These actions may include trials to determine whether the child was abused or neglected, removals of the child from his or her home into foster care, extensions of foster placement, terminations of parental rights and other related proceedings until the child has achieved permanency or aged out of care.

Dependent: An individual whose support and maintenance is contingent upon the assistance of another. Typical dependents include children and individuals who are seriously ill or disabled.

Detention: Government custody or any other deprivation of the freedom of movement of an individual by government agents in the context of immigration-related enforcement activity.

Immigration Enforcement Action: The apprehension of, detention of, request for or issuance of a detainer for an individual(s) for suspected or confirmed violations under the Immigrant and Nationality Act by the Department of Homeland Security or a cooperating entity/surrogate.

NGO: An independent, nongovernmental organization that provides social services or humanitarian assistance to the immigrant community.

* Note that the definitions for caregiver and caretaker used in this report are not derived from any statutory definition for these terms. We use them simply to distinguish between a person other than a parent or legal guardian who provides regular care for a child or dependent and a person who becomes a temporary caretaker for a child or dependent after their parent, legal guardian or caregiver is detained or deported.

Executive Summary

Joanna is an attorney who regularly visits men and women in immigration detention to assess conditions and immigration relief options. Maria¹ is one of the women she visited. When Joanna sat with Maria to begin her interview, Maria handed her a document and asked her to tell her what it said. The document was written in English, which Maria did not speak. When Joanna took a closer look she realized that the document was a letter from a family court informing Maria that her parental rights had been terminated while she was in immigration detention. Maria had not even been aware that a termination process had been initiated.

Approximately 5.5 million children in the United States live with at least one undocumented parent.² Three million of them are U.S. citizens.³ These children are uniquely situated in relation to federal immigration law because immigration enforcement activities against their parents can have a particularly dramatic and disproportionate effect on them. According to a report by the Department of Homeland Security, Office of the Inspector General, more than 108,000 alien parents of U.S. citizen children were removed from the United States between 1998 and 2007.⁴ Deportation forces countless parents to make heart-wrenching decisions about what to do with their children. For some families, however, there is no choice to be made. Immigration apprehension, detention and deportation can trigger a complex series of events that undermine parents' ability to make decisions about their children's care, complicate family reunification and can—in some circumstances—lead to the termination of parental rights.

With the exception of parents⁵ apprehended in large worksite enforcement operations, few parents benefit from time-of-apprehension protocols designed to minimize adverse consequences of detention and deportation on children. There is no guarantee that apprehended parents can make a phone call within a reasonable time of apprehension in order to make care arrangements for children. While Immigration and Customs

Enforcement (ICE) makes efforts to identify and release parents apprehended in large worksite raids, the majority of parents are not subject to any humanitarian protections and immigration officers struggle with how to handle apprehensions where children will be impacted. Many parents are transferred from the area in which they are apprehended to an immigration detention center without knowing what care arrangements have been made for their children and without knowing how to remain in contact with their children. For these parents, it can be difficult, if not impossible, to locate and reunite with their children at the conclusion of their immigration case.

The legal systems governing immigration law and family and child welfare law are not well calibrated. The awkward intersection of these two disciplines can create challenges to parental rights and family unity, violations of due process, significant trauma for children and an undue burden for our social services system. Yet adverse effects that arise at the crossroads of the two systems could be reduced or avoided through policies and procedures that are not inconsistent with the enforcement of existing immigration or child welfare laws.

Since the Women's Refugee Commission began focusing on this issue in 2007, we have found that challenges to parental rights are becoming more frequent as immigration enforcement expands.⁶ Our interviews with detained parents continue to reveal cases in which parents are unable to locate or communicate with their children, unable to participate in reunification plans and family court proceedings, and unable to make arrangements to take their children with them when they leave the country. With the increased participation of states and localities in immigration enforcement programs like Secure Communities⁷ and the expansion of this program nationwide by 2013 we can expect the number of parents who are apprehended and deported to remain stable or increase. Unless ICE takes steps to reduce the unnecessary detention of parents, to ensure that detained parents can take steps to protect their parental rights and to facilitate the ability of parents facing deportation to make decisions in the best interest of

their children, challenges to parental rights will remain a very real problem for children, families and society.

Key Findings

Challenges at the time of apprehension

The release of parents, whether on their own recognizance or into an alternatives to detention program, is the most economical and effective means of keeping families together. However, ICE has extremely limited time-of-apprehension protocols to identify parents and prioritize them for release. In the absence of clear and consistent guidance from headquarters, the decision whether or not to detain a parent is ad hoc and decisions that can have significant impact on parental rights and children's welfare come down to an individual immigration officer. The guidance that does exist prioritizes the involvement of child welfare services in certain circumstances, which can create unnecessary complications for parental rights. In addition, there are no clear procedures to guide immigration officers in ensuring that parents who must be detained are able to make care arrangements for their children before they are transferred to a detention facility.

Parents' inability to make childcare arrangements can result in children being left in an unsafe environment or being unnecessarily placed into state child welfare custody. While ICE is developing a risk assessment tool that will identify the most vulnerable and those who do not need to be detained and will preference them for release, countless barriers remain for parents who are detained and the tool only classifies sole caregivers (not all parents) as vulnerable.

Challenges arising during detention

Once a parent is transferred to a detention facility, it can be extremely difficult to remain in contact with a child, to communicate with the child welfare system and to reunify with the child. Child welfare agencies

struggle to locate detained parents, particularly when a parent is transferred between detention facilities. Though ICE has taken steps to improve the public's ability to locate detainees, the online locator system does not completely resolve the difficulties that arise when trying to locate parents.

Once a child is in state child welfare custody, a parent must comply with a reunification plan in order to be reunited with the child. These plans may include requirements such as regular phone calls and contact visits. Immigration detention significantly impairs parents' ability to comply with these plans.

Detention also impairs parents' ability to participate in family court proceedings. Some parents never receive notification of a hearing because the child welfare system and family courts do not know how to find the parent. Other times, parents are aware of proceedings but are not able to be present, even by phone, because the detention facility cannot or will not assist with participation. Although ICE has indicated its willingness to facilitate appearance there is no requirement that facilities do so. While the forthcoming 2010 Performance Based National Detention Standards will for the first time contain language addressing parents' access to and ability to participate in family court proceedings, language we have seen suggests there is no guaranteed right to access and that access will continue to be dependent on the deportation officer's discretion.

Challenges arising at the time of deportation

Family reunification is often compromised by the logistical challenges of deportation. In most cases, parents learn of their deportation date only shortly before their departure and this information is not shared outside of ICE. Arranging for a child to reunify with a parent who is being deported becomes extremely difficult; obtaining travel documentation and the money necessary for a flight are both barriers to a parent's ability to reunify with his or her child.

Finally, immigration judges have no discretion to consider the adverse impact of parental deportation on a

U.S. citizen child. The gaps and failures in our immigration laws and child welfare system can create long-term family separation, compromise parents' due process rights and leave children with lasting psychological trauma and dependency on the state.

Key Recommendations⁸

- Congress should move quickly to pass legislation that reaffirms our nation's commitment to family unity and that reduces the adverse consequences that immigration enforcement has on parental rights, including the Humane Enforcement and Legal Protections for Separated Children Act and the Child Citizen Protection Act.⁹
- ICE should prioritize the best interest of children when making detention decisions that impact upon their well-being.
- ICE should establish procedures to ensure detained parents are able to meaningfully participate in all plans and proceedings impacting upon custody of their children.
- DHS, the Department of Justice, the Department of Health and Human Services and nongovernmental organizations should work together to improve communication between the immigration, child welfare and family court systems.
- ICE should facilitate the ability of parents, legal guardians and caregivers to reunify with their children at the time of deportation.
- Reinstate judicial discretion to consider the best interest of children in decisions related to deportation of parents.



Raquel was eventually granted immigration status and reunited with her children. However, while she was detained her children spent months in the care of distant relatives who did not care for them properly and were eventually placed in foster care. Her children are still traumatized by the experience.

Introduction and Background: Parental Rights and Immigration Enforcement

The Women's Refugee Commission advocates for the protection, access to safety and right to due process of refugees, asylum seekers and migrant women, children and families. To realize this goal, we regularly engage in field research and fact-finding to constructively comment on current policies and promote positive policy reforms.

Since 1997, we have advocated for improved protections for women, children and families impacted by the U.S. immigration system. Our groundbreaking reports, including most recently *Locking Up Family Values: The Detention of Immigrant Families* and *Halfway Home: Unaccompanied Children in Immigration Custody*, helped shine a light on inappropriate and unsafe treatment of children and families in immigration detention and led to significant reforms, such as the end to family detention at the T. Don Hutto facility in Taylor, Texas, in September 2009.

In the course of researching medical care provided to adult women in immigration detention we began to uncover an alarming trend: women we spoke with told us that they did not know where their children were. Upon further inquiry we learned that many parents¹⁰ are not given an opportunity to make decisions about care for their children before they are placed in immigration custody. All of these parents live with the fear that they will not be able to reunite with their children when they are released or deported. In many of these cases, permanent family separation occurs because it is simply too difficult or too expensive to reunite in a parent's home country after the parent is deported, or because a parent—faced with a Sophie's Choice—decides to leave a child behind in the United States.¹¹ In the worst cases, parents actually have their parental rights terminated, often because they cannot participate in cus-

tody proceedings from detention or because of a bias against immigrant parents in the family courts and child welfare system.

In the years that we have worked on this issue we have found that the potential for family separation as a result of immigration enforcement is significant and is not improving. In our interviews with detained parents we continue to hear reports of custody concerns. Attorneys and advocates across the country bring us new stories on a regular basis. Immigration enforcement is on the rise¹² and with the increased participation of states and localities through programs like Secure Communities¹³ we can expect the number of people apprehended and deported to remain stable or increase.

Although the government does not keep consistent data on the number of parents who are deported¹⁴ we can make certain inferences about the real and potential impact of family separation. As of 2008, there were roughly 11.9 million undocumented immigrants living in the United States.¹⁵ Of those who are working age, approximately half have at least one child.¹⁶ Approximately 5.5 million children live with at least one parent who is an undocumented immigrant.¹⁷ That is roughly one-tenth of all children in the United States.¹⁸ Three million of these children are themselves U.S. citizens by virtue of having been born here.¹⁹

In short, in millions of families in the United States there is at least one parent who is an undocumented immigrant and one child who is a citizen. Such families are uniquely situated in relation to federal immigration law because immigration enforcement activities against the parents can have a particularly dramatic and disproportionate effect on the children. According to a report by the Department of Homeland Security, Office of the Inspector General, over 108,000 alien parents of U.S. citizen children were removed from the United States between 1998 and 2007.²⁰ Many of these families are forced to make heartwrenching decisions about who will leave the country and who will stay. For other families, however, there is no decision to be made. When a parent is taken into immigration custody and a child

is placed into the state child welfare system a complex series of events is triggered that can lead to permanent family separation and even termination of parental rights.

We believe that enforcement and detention policies and procedures, and immigration law itself, must be revised to reaffirm family unity, protect children, unburden state social service organizations and strengthen society as a whole. It is possible to enforce the rule of law without unnecessarily violating basic principles of parental rights, family rights, due process and child welfare.

Scope of this report

This report will focus on infringement on parental rights as a result of immigration enforcement, detention and deportation as well as on the collateral damage our current immigration practices cause for parents and children.²¹ Our recommendations focus on preserving family unity—a founding principle of U.S. immigration



Immigrant mothers and their U.S. citizen children are often separated when parents are deported.

law—by reducing the likelihood that children will be unnecessarily placed in the child welfare system and by protecting a parent's right and ability to make decisions in the best interest of his or her child.

How Are Parental Rights Challenged by Immigration Enforcement, Detention and Deportation? A Hypothetical

Rosa²² was an undocumented mother living in South Carolina. One afternoon on the way to pick up Rebecca and Thomas, her two young, U.S. citizen children, from school she was pulled over for driving with a broken taillight and found to be in an immigration database. The local police decided not to charge her, but were not able to release her because ICE had placed a hold on her. Several days later she was transferred to an immigration detention center in Texas. Rosa had been too afraid to tell police that she had children, and by the time she was granted a phone call, school officials had already contacted her cousin to pick the children up at school. Eventually they were placed in foster care.

Rosa was unable to afford phone calls from detention and did not know what had happened with her children. The children's case worker did not know where to look for Rosa and no contact was made until many months later, when Rosa's immigration attorney intervened. The caseworker finally contacted Rosa and told her she would have to take parenting classes and have regular contact visits with her children if she wanted to reunite with them after she was released. But the facility where she was held did not offer parenting classes and there was no one who could bring the children to Texas to visit with her. Months passed without Rosa being able to comply with her reunification plan.

Eventually the state of South Carolina filed a petition to terminate Rosa's parental rights. Rosa received little advance notification of her court date. She asked her deportation officer for assistance in participating in court by video-teleconference but her request was ignored. Her immigration attorney filed multiple petitions for humanitarian release so that she could appear in court but they were rejected. Just a few weeks before her family court date Rosa was deported. Once in El Salvador she had no way to comply with her reunification plan, no money to hire an attorney and no way to present her case in court. Her parental rights were terminated shortly thereafter.

Why Are Challenges to Family Unity and Parental Rights Occurring?

When a child is placed into the child welfare system following a parent's apprehension, challenges to family unity and parental rights can arise. This is a result of the complicated intersection of the immigration and child welfare systems. In general, these two systems and the actors working within them do not understand each other. Child welfare workers do not know how to navigate the detention system to locate a parent. Family courts do not understand that parents may not appear for custody proceedings because they are in detention and there is no way for them to do so. Immigration and Customs Enforcement (ICE) does not recognize the child welfare implications of its actions. The agency unnecessarily holds parents for long periods, far from home, family courts, their children and their children's case workers and gives them no way to comply with the family reunification requirements that they are expected to meet in order to reunite with their children at the conclusion of their immigration case. Adding to the complexities that arise at the intersection of these two worlds are restrictive immigration laws that do not afford immigration judges the discretion necessary to

Mother at Risk of Deportation Fears Having to Leave Daughter Behind

Maribel, a citizen of Mexico with a one-year-old U.S. citizen child, was stopped while driving in Manassas, Virginia. She did not have papers and had a fake identification document with her. She was arrested, prosecuted for the false document, and once she completed her sentence, transferred into ICE custody. Her child was taken into foster care. Once in ICE custody, she immediately agreed to be deported to Mexico and wanted to take her child with her. After a month of detention, Maribel was released on an ankle bracelet and has been trying ever since to find a way to coordinate her deportation so that she can leave with her child. It has been three months and the child is still in state custody. Maribel is afraid she will be given a date to report for deportation and that she will not have found a way to take her child with her before it is time for her to go. She is desperately working to try and make sure this doesn't happen.

keep parents and children together.

Lack of appropriate guidelines

Release of parents, whether on their own recognizance or into an alternatives to detention program,²³ is the most economical and effective means of ensuring that families stay together and that parents are able to make decisions in the best interest of their children. However, aside from narrow guidelines that apply only in isolated circumstances, ICE does not have any effective and consistent time of apprehension guidance to identify parents and prioritize them for release.

In 2007, following public outcry about the separation of children from their parents after worksite raids in New Bedford, Massachusetts,²⁴ ICE released "Guidelines for Identifying Humanitarian Concerns Among Administrative Arrestees When Conducting Worksite Enforcement Operations."²⁵ These guidelines instruct

ICE officers to plan in advance for the humanitarian screening of all individuals identified in worksite raids involving 150 or more people to ensure that vulnerable persons are identified and considered for release shortly after apprehension. In 2009, these guidelines were expanded to apply to worksite raids involving 25 or more people.

While these guidelines have been helpful in reducing cases of family separation during large worksite raids, the guidelines do not apply to the majority of immigration apprehensions. Most family separation cases arise out of small-scale immigration enforcement actions such as home raids, fugitive operations, traffic stops or jail screening programs. We expect these methods of apprehension will increase as local law enforcement²⁶ cooperation with ICE increases. We are unaware of any provisions in Memoranda of Understanding between ICE and local law enforcement entities carrying out enforcement actions that require humanitarian screening at apprehension.

In addition to the worksite raids guidelines, ICE has issued a memorandum instructing agents on what to do when juveniles are encountered during fugitive operations.²⁷ However this memorandum is not consistently implemented across ICE field offices²⁸ and does not apply to local law enforcement. It is also inconsistent with the maintenance of family unity and respect for a parent's right to make decisions involving the best interest of his or her child.²⁹ The memorandum prioritizes contacting child welfare and the police over permitting a parent to select placement for a child present during an enforcement operation.³⁰ This policy undermines a parent's ability to decide what is best for his or her child and creates an unnecessary burden on the state and local child welfare systems.

In addition to undermining the well-being of children and families, the absence of clear and appropriate guidelines creates a lack of consistency and a great deal of confusion on the part of ICE agents. Some ICE agents use their discretion to not detain parents based on their concerns about children who may be left



Children separated from parents who are in immigration detention or have been deported may end up in foster care or with unknown relatives.

behind. Others decide to detain parents even if they know children will be impacted. Enforceable guidelines are critically needed to establish screening and release parameters at the point of apprehension. These guidelines must apply to local law enforcement and must require that any individual who is apprehended be screened within a window of time that does not exceed the average school day. When parents are not identified and prioritized for release, children are needlessly left in unsafe situations or placed into foster care, which can trigger events that compromise parental rights.

Lack of effective screening and phone calls

The worksite raids guidelines specify that every apprehended individual be screened by ICE or the Division of Immigration Health Services (DIHS) to determine whether they have any humanitarian concerns, including whether they are a parent or caretaker to a dependent, or are pregnant, nursing, disabled or seriously ill. Those determined to be

vulnerable are preferenced for release or some sort of alternative to detention. However, as stated in the previous section, no such screening provisions apply outside the worksite raids context.

Policies to protect family unity and parental rights must be well calibrated to the fear of police and ICE that is present in many immigrant communities. Expanding the worksite raids guidelines in their current form to all enforcement actions is not likely to go far enough to protect parental rights. Most people who are apprehended will not disclose to ICE or local law enforcement that they have children out of fear that their children, or their children's caretaker, will also be apprehended. One solution is for ICE to engage local, independent and neutral nongovernmental organizations (NGOs) to screen all apprehended individuals to determine whether they are parents or have other humanitarian concerns that would necessitate release. Thus far ICE has not been willing to explore suggestions that outside screeners conduct the screening.

Phone calls are a particularly critical measure to preserve parental rights and ensure that the best interest of children is protected, regardless of whether or not effective screening mechanisms are in place.³¹ There is currently no requirement that an apprehended individual be granted a phone call when they are apprehended on suspicion of an immigration violation. They may receive a phone call when they are booked into a local jail, but this may be some time after they are apprehended. In addition, when brought into a local jail, individuals are often unaware at that time that they will be detained on an immigration charge. We have heard stories of parents who used the phone call provided by local police to notify their child's caretaker that they would be released, only to find out that because of an ICE detainer they would be transferred to ICE once local police had finished with them.³² At this stage, they do not receive a second phone call to make more permanent arrangements for their children.³³

Granting all apprehended individuals a phone call within a short time of apprehension,³⁴ regardless of

whether the person is known to be a parent, would result in a significant reduction in challenges to parental rights. This could be done with minimal expense to the federal government or local law enforcement as many people have a cell phone with them when they are apprehended.

Problems arising from limited communication and frequent transfers

When parents are not identified and considered for release, or at a minimum granted phone calls in a timely manner, children are at risk of being left behind at home or school or placed into the child welfare system. In some cases, children end up living with the other parent, with relatives or with friends. Such arrangements can make it easier for a parent to reunite with a child post-release by keeping children out of the child welfare system. However, we have heard a number of stories in which informal arrangements with relatives or friends have resulted in children ultimately entering the child welfare system when the caretaker can no longer provide care or when the care situation becomes unsafe. In other cases, children are placed into the child welfare system directly following their parent's apprehension, either because the apprehending entity contacts child welfare or because a good Samaritan (school employees, day care workers, neighbors, etc.) contacts child welfare when a child is left alone at home or school.

Once a child is in the child welfare system, child welfare will look for a placement with relatives. When this is not available or appropriate, child welfare will generally place the child with a foster family. Once children are outside of relative care it can be very difficult for the parent to locate them, especially if the parent is transferred out of state.

Currently there is no requirement that a parent and child (or child's caretaker) have information about where the other is going before the parent is transferred from the area in which he or she was apprehended to a detention center. As a result many parents find that once they are

Children Scattered to the Four Winds When Their Mother Is Detained

Jeanne, from Haiti, has four U.S. citizen children who lived with her in the U.S. The sheriff's department appeared at her home two months after an abusive boyfriend made a false 911 call against her. She was placed under arrest, booked, strip searched in front of male deputies and then sent to a detention facility for immigrant female detainees in Key West—over 400 miles away from her children.

She was unable to make arrangements for her children and for months had no idea where they were, how to contact them or even whether they were safe. It is unclear who arranged placements for the children.

When a nonprofit attorney was able to get her out of detention after six months she discovered that the children also had no idea where she had been or how to contact her. They had been scattered to the four winds. One child spent most of his time in his abusive father's taxi cab, even sleeping there. One was found living with an unknown family that had taken him in and a third was living with a school friend's family after having been kicked out of her abusive father's home.³⁵

in detention they cannot find their children. Many do not even know that their children have been placed into the child welfare system. This may be because the parent does not understand the child welfare system and does not know who to contact for help in locating his or her child, or because the parent is not able to communicate with the child's caseworker, either due to a language barrier or a lack of funds for phone calls.

The challenge of communication goes two ways. In addition to obstacles parents face in locating children, many child welfare case workers struggle to find detained parents usually because they do not know the immigration detention system exists, or because they do not know how to navigate it. These difficulties are

further compounded when parents are later transferred between detention centers, sometimes from one state to another.³⁶ The result of these barriers is that parents cannot find their children, cannot comply with (and often do know about) family reunification plans and are significantly more likely to face challenges to parental rights.

While ICE is not—and should not be—responsible for placement arrangements for a child, the agency, if it wishes to detain a parent, should not transfer the parent from the area in which he or she was apprehended to a detention center until the parent is aware of the arrangements made for his or her child and is able to communicate with the child, the child's caretaker and the child's case worker (if child welfare is involved).

A note about detention reform and the detention of parents

In 2010, ICE began piloting a risk assessment tool intended to identify apprehended individuals who may be eligible for release or an alternative to detention. Under this tool, which is expected to be rolled out nationwide once cleared through the agency, every person who comes into the custody of ICE will be screened to determine whether they are eligible for release or alternatives to detention. The tool bases determinations about eligibility for release on whether the person has certain vulnerabilities (one of which is whether they are a sole caregiver) as well as whether they have ties to the community, pose any threat to public safety or are deemed to be a flight risk. It is expected to prevent the detention of parents in some instances. However because the tool only considers "sole caregivers" as eligible for release, many parents will still be detained if there is another parent in the home.³⁷ In addition to the parental rights implications of this limitation the standard is also problematic because it could result in a child being left in an unsafe situation with an abusive parent. Furthermore, the risk assessment tool does not currently apply until a parent comes into ICE custody. This can be days or weeks

Family Reunited at Airport as Mother Is Deported

Blanca and her husband were pulled over in a routine traffic stop and detained when the police discovered that their immigration papers were not in order. Their two sons, who were in their care at the time they were detained, watched as their mother and father were handcuffed and taken away. The children were placed in foster care, despite the fact that Blanca's sister in Texas—a green card-holder—was willing and able to care for the children.

For two months, Blanca had no idea where her children were as she was transferred to various jails and detention facilities. Her husband was deported. Unbeknownst to Blanca, her children were in the process of dependency proceedings. Fortunately, Blanca was able to meet with an immigration attorney and her consulate who were able to help find out where her children were and explain the situation to the court before her parental rights were terminated.

After months of being unnecessarily separated from family members, the judge ordered the children to be reunited with their mother at the airport when she was deported. The family now lives together in Honduras.

after local law enforcement officials apprehend them. By this time children may have already been placed into the child welfare system.

In 2010, ICE also launched an online detainee locator system, which enables anyone with the alien registration number (A#) or name and country of birth of a detainee to determine where he or she is being detained. The locator system should increase caseworkers' ability to locate detained parents. However, this does not make it any easier for a detained parent to comply with a reunification plan or participate in family court proceedings.

How Does Detention Compromise Parental Rights?

When a child is in the custody of the child welfare system there is usually a reunification plan established as a precursor to family reunification. The reunification plan³⁸ sets forth steps a parent must take in order to reunite with his or her children, and may include things like regular contact visits and phone calls, and parenting and anger management classes. Often, the child welfare system interprets a parent's failure to comply with the reunification plan as a sign that the parent is not committed to reunifying with his or her child or does not have the capacity to ensure the child's well-being. Immigration detention significantly impairs parents' ability to comply with reunification plans, as well as to appear at court proceedings impacting upon custody of their children. Such impediments increase the likelihood that parental rights will be terminated. Additional obstacles to reunification and the preservation of parental rights arise from the unintended consequences of child welfare laws designed to promote permanent and stable placements for children.³⁹

Immigration detention centers do not provide access to the kinds of classes mandated under reunification plans, even though access to such programming is often available for parents in the criminal justice system.⁴⁰ In many immigration detention centers phones do not work or cut off after a certain time, limiting detainees' ability to communicate with their children. In addition, even if they know where their children are, individuals in immigration detention often cannot afford the expensive phone cards necessary to have regular conversations.⁴⁵ Complicating reunification plan compliance even further, it is extremely difficult for parents to have contact visits with their children. Often parents are detained far away from where they were apprehended and there is no one to transport children to the facility. Even if parents manage to have the children brought to the facility, many immigration detention facilities do not allow contact visits. Visits are conducted through glass or even

Fourteenth Amendment Guarantees Due Process Under the Law, Including for Immigrants

The Fourteenth Amendment of the U.S. Constitution ensures that all persons, including undocumented immigrants, are entitled to due process and equal protection under the law.⁴¹ This means that all parents, no matter what their immigration status, must be accorded due process of law.⁴² Parents possess a fundamental right to family, which includes determining how their children are to be cared for and raised.⁴³ At its most practical level, these rights require that parents, including those in detention, have the opportunity to make decisions regarding the care and well-being of their children (including—in the case of a final order of deportation and in cases involving U.S. citizen children—the right to decide whether to take the children with them or leave them behind). These rights also include the opportunity to fight for the custody of their children when it is challenged, to attend all family court proceedings and to participate in any reunification plans or remedial measures states may develop in response to child welfare concerns. Immigration status itself is not sufficient cause for termination of parental custody and detained parents must be able to defend against collateral claims of abandonment or neglect. When immigrant parents and other guardians are denied their fundamental right to participation, it can have serious or detrimental consequences for family unity and prevent family courts from fulfilling their obligations towards the best interest of the child. The procedural divide between immigration authorities and family law effectively denies them due process.⁴⁴ For more information on the due process and equal protection rights of undocumented parents see Appendix B (p. 22).

by video. In some cases children are undocumented, and it is not safe for them to enter a detention center, or even to travel. Some detained parents are aware of the reunification plan and desperately want to comply but there is simply no way for them to do so. Others do not understand the reunification plan or do not know how to take the steps necessary to comply. A third category of parents has had no contact with their children or the children's case worker and does not even know that the clock is ticking on their parental rights.

Even more anxiety inducing than the inability to comply with a reunification plan, and even more problematic, are difficulties related to accessing family court proceedings. We have met detained parents who are aware of an upcoming family court date but who have no way to participate in the proceedings. There is no requirement that ICE facilitate parents' access to family court. Some parents have persuaded facility staff to allow them to participate by telephone or video-teleconference and a smaller number have been transported to court. However, others tell us that they have asked for assistance in participating but ICE has denied their request. ICE

has advised us⁴⁶ that parents with family court dates simply have to submit a request to their deportation officer and the deportation officer will facilitate their participation, either by telephone, video-teleconference or in person. However, few of the parents we have met in detention were aware of this right and only one managed to gain access to proceedings.⁴⁷ We have also heard stories of parents who had no contact with their court-appointed attorney and did not even know that a motion to terminate their parental rights had been filed. As a result of the many impediments to participating in family court proceedings some parents only learn that their parental rights were terminated after the fact.

We acknowledge that the intersection of the immigration and child welfare systems is complicated by geography (including the detention of parents far from where they were apprehended) and the fact that there are 50 different state child welfare systems with different rules, policies and understandings about the detention system. This provides further evidence that parents should not be detained unless absolutely necessary. Alternatives to detaining parents do exist and are ap-

propriate in most cases. ICE should utilize all options other than detention so as not to interfere with a parent's due process rights and fundamental right to make decisions in the best interest of his or her children and to protect the best interest of children.⁴⁸ When a parent must be detained, ICE must guarantee his or her ability to protect his or her parental rights by ensuring that he or she is able to comply with reunification plans and participate in family court proceedings.

A note about the detention standards

ICE is expected to begin applying the 2010 Performance Based National Detention Standards at the largest detention facilities once cleared through the agency and to roll these enhanced standards out gradually at other facilities in the years to come. For the first time the standards are expected to have language addressing parents' access to and ability to participate in family court proceedings. The draft language that we have seen does not go far enough in guaranteeing parents' access (stipulating that it is at the discretion of the deportation officer and available resources). In addition, the standards are not codified and are not enforceable under law.

How Does Deportation Impact Parental Rights and Family Unity?

Many parents are ordered deported long before they face any legal challenge to their parental rights. This does not mean, however, that their rights have not been compromised by detention and it does not mean that family unity will be easily restored. The deportation process is extremely unpredictable, and when combined with difficulty obtaining travel documents for children and the high cost of travel, many parents have to return to their country of origin without their children.

Woman Deported Without One-Year-Old Baby

Luz was detained with her 15-year-old son and held at the Berks Family Facility in Pennsylvania. At the time she was detained she had left her one-year-old U.S. citizen child with her neighbor for what she expected to be a brief time. Detained and ordered deported, she was desperate to take her child with her to her home country but she had no way to make arrangements. She had no passport or travel documents for the baby. It was virtually impossible for her to obtain documents, pay for an airline ticket or arrange for the child to travel with her while she was in detention. Luz desperately called the Women's Refugee Commission office, her consulate, her neighbor and her deportation officer for help in taking her child with her. In the end she was deported without her baby. The last she heard of her child, the baby's father, who had never before acknowledged the child, had picked him up from the neighbor.

Some families are able to reunify at a later date. But in many cases, reunification does not occur, either because there is no way to facilitate it or because a parent makes the difficult decision to leave his or her child in the United States.

Few parents know in advance the date on which they will be deported. ICE deports the majority of adults on flights operated by the agency that depart whenever there are a sufficient number of persons being deported to a particular country. ICE does not share information about deportees' travel arrangements outside the agency for security reasons. We have heard accounts of cases in which a parent's date of travel was changed at the last minute because a child's caretaker had learned of travel plans. In these situations families may have purchased a plane ticket for a child that cannot be refunded, and the family may not have extra money to purchase a second ticket or to pay for a caretaker to accompany a child to the parent's country of origin. Such situations put children and parents in



Countless children live with the trauma of separation from detained or deported immigrant parents.

unnecessarily vulnerable positions and can create de facto permanent separation. ICE has the capacity to arrange for family reunification prior to deportation, and can arrange for transportation of families on commercial carriers when necessary.

Family reunification can also be compromised by logistical challenges that are far less likely to exist if a parent is living in the community and able to make preparations for deportation. It is extremely difficult for parents to obtain passports and other travel documents for children from detention. In addition, it can be difficult for a parent to obtain a passport or take a child out of the country without the other parent's consent.⁴⁹ In these cases there is little a parent facing imminent deportation can do to obtain the documents necessary to take children with them.

In some particularly troublesome cases⁵⁰ children have been prevented from reunifying with a parent following deportation because the child's caseworker did not believe it was in the best interest of the child to live in the parent's home country. While many caseworkers are extremely sympathetic to the needs of children whose parents face detention and deportation and work hard to reunify families, there is also evidence that bias against immigrant parents exists.⁵¹

State Prevents Family Reunification

Mateo and Isabel were removed from their mother—Stefanie's—care following a series of voluntary interactions with a state healthy child program that resulted in a call to child welfare services and the local police. Although the state never pursued the charges against her, Stefanie was transferred to ICE custody and quickly ordered deported on immigration charges. During her time in immigration detention she was allowed only one visit with her children. The state was aware of the pending deportation but refused to allow Stefanie to take her children with her. A custody hearing was scheduled for after Stefanie's deportation. She was represented by appointed counsel who presented no evidence on her behalf. The children remained in state custody and a reunification plan was established.

Stefanie struggled to comply with the reunification plan because the state child welfare agency repeatedly failed to communicate with her and never provided her with a copy of the plan in her native language, Quiché. Eventually her parental rights were terminated. Following appeal and with the assistance of pro bono counsel, Stefanie has reunited with her children. In restoring custody, the state Supreme Court found that the state failed to demonstrate that Stefanie was an unfit mother and inferred that the actions taken by the state were driven by an unproven assessment that the children would be better off living in the United States.

All of this trauma could have been avoided if protections had been in place. Stefanie could have been released while her case was pending so that she could care for her children. She also should have been provided with clear instructions in a language she understood and a way to comply fully with the reunification plans. Absent a finding of negligence or abuse she should also have been able to take her children with her when she was deported.⁵²

Some parents facing deportation decide that they would prefer their children to stay in the U.S.—as is their right. Since 1996, when the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) stripped immigration judges of their discretion to consider the adverse impact of deportation on U.S. citizen children, there is no way for a parent to stay in the United States with their children if they make this choice. These situations usually result in long-term separation of the family. In addition to the psychological implications arising from the loss of parental support, the inability of parents to remain with their children can result in children becoming dependent on the state.

Conclusion

It is generally in the best interest of children to remain with their parents, absent any evidence of abuse, abandonment or neglect. Parents do not lose their right to make decisions regarding the care and well-being of their children simply because they are detained and deported. Yet when ICE apprehends immigrant parents it all too frequently puts children at risk and violates parents' due process rights by preventing them from making child care decisions of their choosing; detaining parents unnecessarily and often far from home; and—when the parents' detention results in children being placed in the child welfare system—preventing parents from participating in reunification plans and accessing family court proceedings. The failure of ICE policy and practice to respect parental rights and to protect the sanctity of the family is compounded by a lack of discretion in our immigration laws that would enable judges to recognize and support the best interest of children by considering the impact that deportation of parents has on the U.S. citizen children left behind.

However, the failures depicted in this report are not the fault of ICE or immigration law alone. The child welfare system is a complicated web of federal, state and local laws that do not mesh well with immigration law and

the complex system of detention and deportation. As a result, the rights of immigrant parents and best interest of their children can suffer. Child welfare workers and child welfare law should be applauded for their efforts to promote appropriate and permanent solutions for children in unstable circumstances. Yet too often when children are placed in foster care because a parent is detained, the child welfare and family court systems fail in their duty to make reasonable efforts to locate the parent, notify her of court proceedings, facilitate her ability to participate in court, provide them with case information and effective counsel and support her reunification plan.⁵³ Furthermore, it would be imprudent to ignore the fact that bias against immigrant parents exists in the child welfare system. In addition to the barriers to reunification created by detention and deportation, immigrant parents who face termination of their parental rights are held to a different set of standards when courts factor language, nationality or immigration status into decisions about custody rights. Decisions about whether or not it is appropriate for a child to be with his or her parent should be made on the basis of findings of abuse or neglect, and not on the parent's immigration status.

In the face of ongoing family separation and challenges to parental rights there is a real need to better calibrate immigration policy and child welfare practice. Both the immigration and child welfare systems must develop and implement improved protocols and practices to ensure that the systems understand each other and can communicate in a way that reduces adverse consequences for parents and children and protects parental rights.

Recommendations

The Women's Refugee Commission believes that the following recommendations will preserve parents' ability to make decisions in the best interest of their children and will reduce the unnecessary separation of

families as a byproduct of immigrant enforcement:

Legislative recommendations

Congress should move quickly to pass legislation that reaffirms our nation's commitment to family unity and that reduces the adverse consequences that immigration enforcement is having for parental rights. Several such bills have already been introduced, including the Humane Enforcement and Legal Protections for Separated Children Act—introduced in the House of Representatives by Representative Lynn Woolsey (D-CA6) and in the Senate by Senator Al Franken (D-MN) and Senator Herb Kohl (D-WI)—and the Child Citizen Protection Act, introduced in the House of Representatives by Representative José Serrano (D-NY16).⁵⁴

Recommendations related to risk assessment and screening

In many cases, the risk assessment tool is expected to establish vulnerabilities too late to avoid family separation, to diminish collateral effects on children and to reduce the burden on state resources. Risk assessment could be made more effective by making the following changes:

- Issue guidance directing ICE officers and state and local law enforcement entities cooperating with ICE to consider the best interest of children or dependents in all decisions related to detention, release or transfer of a parent, legal guardian or caregiver. **(DHS)**
- Expand the risk assessment tool's list of vulnerabilities to include all parents, legal guardians and caregivers, not just sole caregivers. Ensure that the risk assessment tool succeeds in reevaluating parents, legal guardians and caregivers for release at regular intervals so they can care for children and participate in family court proceedings (if applicable) and instruct ICE field offices to prioritize release on humanitarian grounds if new information becomes avail-

able regarding a humanitarian situation after a person has been detained. **(DHS)**

- Expand the use of the risk assessment tool to all instances in which a detainer is requested or issued and incorporate this expansion into detainer guidance. **(DHS)**
- Create an exemption to issuance of a detainer for misdemeanors, minor offenses and other nonviolent felonies. **(DHS)**
- Utilize designated independent screeners, which could include representatives of local social services or community-based NGOs, to assist with evaluating all apprehended individuals for vulnerabilities via the risk assessment tool. **(DHS/NGOs)**
- Issue guidance requiring that all screening is done in a nonconfrontational environment by experienced persons able to communicate in the language of the individual arrested. **(DHS)**

Recommendations related to appropriate time of apprehension guidelines

ICE should prioritize the best interest of children when making decisions that could impact upon their well-being. ICE should, at a minimum:

- Issue new guidelines applicable to all operations conducted by ICE and state and local law enforcement entities cooperating with ICE that grant all apprehended individuals phone calls within a short time of apprehension. **(DHS)**
- Affirmatively retract the 2007 Fugitive Operations memo directing ICE fugitive operations teams to preference contacting child welfare when children are present and issue new guidance instructing all ICE officers and state and local law enforcement entities cooperating with ICE to prioritize care arrangements designated by parents, legal guardians or caregivers over notification of child welfare, absent any indication that such an arrangement would place a child in

imminent danger. **(DHS)**

- Immediately provide apprehended individuals with contact information for local immigrant service organizations, pro bono family law attorneys and state child welfare services in all 50 states, the District of Columbia and all U.S. territories to assist parents, legal guardians and caregivers in finding necessary legal representation. If parents require assistance from a social service agency, ICE or state and local law enforcement entities cooperating with ICE should facilitate such assistance by providing the individual with an opportunity to contact that agency. Post contact information for child welfare entities in all 50 states, the District of Columbia and all U.S. territories in detention center housing pods so that parents, legal guardians and caregivers can more easily locate their children, communicate with case workers and notify the appropriate agency of any concerns about their children's safety. **(DHS)**
- Issue guidance barring ICE and state and local law enforcement entities cooperating with ICE from using children as translators or to assist in the apprehension of others. **(DHS)**
- Issue guidance discouraging ICE and state and local law enforcement entities cooperating with ICE from conducting enforcement operations when children are present. **(DHS)**
- Issue guidance prohibiting transfer of parents, legal guardians and caregivers from the area in which they were apprehended until care arrangements have been made for children or wards and parents, legal guardians or caregivers and children know how to contact each other; if bed space limitations are a factor instruct field offices to reconsider release or alternatives to detention. **(DHS)**
- Develop and communicate to ICE officers and state and local law enforcement entities cooperating with ICE a consistent policy for timely release of parents, legal guardians and caregivers detained in enforcement operations. Parents, legal guardians and care-

givers of young children or dependents should be released early enough in the day so that school children and children in childcare do not experience disruptions in care. **(DHS)**

- Provide all ICE officers and state and local law enforcement officers in jurisdictions that cooperate with ICE with training and instruction, developed and administered by independent NGOs with relevant child welfare expertise, on what steps to take to ensure that the arrest and detention of a person on suspicion of immigration violations does not adversely affect children or dependents or raise other humanitarian concerns. **(DHS/NGOs)**

Recommendations related to guidelines for detention of parents, legal guardians and caregivers

Parents and legal guardians have a right to due process with regards to custody of their children. Because state child welfare systems require parents, legal guardians and caregivers to maintain a relationship with their children in order to reunify post-release, ICE's policies should not deprive a parent, legal guardian or caregiver of their ability to comply with reunification case plans and to participate in custody proceedings. Instead ICE should undertake the following steps:

- Ensure that the 2010 Performance Based National Detention Standards guarantee all parents, legal guardians and caregivers access to all proceedings impacting upon custody of their children, including transporting parents, legal guardians and caregivers to proceedings when practicable. Monitor all facilities used to detain people on suspicion of immigration violations for compliance with the standards and apply penalties for noncompliance to ensure that these guarantees are implemented in all facilities. **(DHS)**
- Establish a detainee advocate who is physically available and accessible to all immigration detainees in order to facilitate communication and coordination of social welfare needs that arise due to detention

and to prepare detainees for safe reintegration or repatriation. This advocate should have experience in social work and the role should include, but not be limited to, facilitating compliance with reunification plans and participation in proceedings impacting upon custody of children. **(DHS)**

- Institute a dedicated toll-free telephone hotline (in a minimum in English and Spanish) so that family members, attorneys, family courts, guardians ad litem, court-appointed attorneys, persons caring for or representing children and children can locate parents, legal guardians and caregivers even if they do not have access to the Internet. **(DHS)**
- Provide all parents, legal guardians and caregivers with regular and flexible contact visits in a child-friendly space and regular free phone calls to their children or dependents for the purpose of complying with reunification plans. **(DHS)**
- Ensure through training and dissemination of information that family court judges, child welfare workers and other professionals in disciplines that may interact with immigrant families are informed about immigration law and the immigration detention system and are aware of options to facilitate detained parents' appearance in family court proceedings, including provisions in the detention standards. **(DHS/HHS/DOJ/NGOs)**
- When a reunification plan is in place, consider releasing a parent, legal guardian or caregiver to participate in case management services as a mechanism to preserve family unity while ensuring appearance in proceedings. **(DHS)**
- Include basic information on the child welfare system and rights pertaining to custody proceedings in all legal orientation presentations to assist parents, legal guardians and caregivers in locating children, communicating with the children's case worker and exercising their right to participate in proceedings impacting upon custody of children. **(DOJ/NGOs)**

Recommendations related to reunification upon release or deportation

Reunification with the parent, legal guardian or caregiver is generally in the best interest of children and should not be undermined by logistical impediments. To streamline reunification we recommend:

- Notify ICE of court proceedings impacting upon custody of a child and request that ICE facilitate a parent, legal guardian or caregiver's participation in court proceedings. **(State Family Courts/Legal and Child Welfare Representatives Operating in Family Courts)**
- Issue guidance instructing ICE personnel to facilitate the ability of parents, legal guardians and caregivers to reunify with their children at the time of deportation, including delaying deportation pending travel arrangements for children and assisting in obtaining passports, birth certificates and other necessary documents so that children can accompany parents. **(DHS)**
- Create procedures through which parents' travel information can be released for the purpose of facilitating family unity at the time of deportation. **(DHS)**
- Utilize commercial flights for the deportation of individuals known to be parents, legal guardians or caregivers of minor children. **(DHS)**
- Institute a pilot point of contact project to facilitate communication between detained parents, legal guardians and caregivers and the child welfare system. **(DHS/NGOs)**

Recommendations related to judicial discretion

Family unity is generally in the best interest of the child and would be best served by considering the impact that deportation has on children's well-being. To expand protections for children we recommend:

- Reinstate judicial discretion to consider the best interest of children in decisions related to deportation of parents. (Congress)

Notes

¹ Names have been changed throughout this report to protect individuals' identities. This case study is a hybrid designed to give the reader an overview of the many problems parents can face as a result of immigration enforcement.

² Terrazas, Aaron and Batalova, Jeanne, *U.S. in Focus: Frequently Requested Statistics on Immigrants and Immigration in the United States*. October 2009. <http://www.migrationinformation.org/USfocus/display.cfm?id=747>.

³ Ibid.

⁴ Department of Homeland Security, Office of Inspector General, "Removals Involving Illegal Alien Parents of United States Citizen Children" p. 4. January 2009.

⁵ The same issues facing parents also face legal guardians and caregivers of minor children in the U.S. For simplicity's sake we have chosen to use the term parent. When we refer to parents, we are also referring to legal guardians and caregivers.

⁶ See <http://www.ice.gov/news/releases/1010/101006washingtondc2.htm> for more information on increasing enforcement.

⁷ One of a range of programs through which state and local law enforcement cooperate with Immigration and Customs Enforcement (ICE) in the identification and apprehension of individuals suspected of being in violation of immigration law. For more information, see <http://www.ice.gov/access/>.

⁸ For a complete and detailed list of recommendations, see page 14.

⁹ Both HELP bills would require the Department of Homeland Security to institute critical protections to reduce infringement on parental rights as a result of detention and deportation, including: considering the impact on the child of decisions to detain parents, legal guardians and caregivers; ensuring that detained parents can comply with reunification plans and participate meaningfully in family court proceedings; and facilitating family unity at the time of deportation if a parent wishes to leave the country with their child. For more information see <http://www.womensrefugeecommission.org/programs/detention/parental-rights/1051-advocacy-for-the-help-act-hr-3531-congress-version> and <http://www.womensrefugeecommission.org/programs/detention/parental-rights/1052-advocacy-for-the-help-act-senate-version>. The CCPA would restore the ability of Immigration Judges to use discretion, in certain cases,

to allow the parents of U.S. children to remain in the United States and avoid separation that would be caused by the parent's deportation.

¹⁰ The same dynamics and problems facing parents also face non-parental caregivers of children and other dependents. For simplicity we have chosen to use the term parent in the body of this report to refer to parents, legal guardians and caregivers. However, as reflected in the recommendations, we note that the same policy changes necessary to protect parents must also apply to legal guardians and caregivers in order to fully protect the best interest of their children and wards.

¹¹ There is often no mechanism for immigration relief based on family unity and therefore no way for the family to remain together in the U.S. when a parent is ordered deported. There are also bars to reentry for people who have been deported.

¹² <http://www.ice.gov/news/releases/1010/101006washingtondc2.htm>.

¹³ One of a range of programs through which state and local law enforcement cooperate with Immigration and Customs Enforcement (ICE) in the identification and apprehension of individuals suspected of being in violation of immigration law. For more information, see <http://www.ice.gov/access/>.

¹⁴ In FY 2010, Congress directed the Department of Homeland Security (DHS) to begin gathering data on the number of parents of U.S. citizen children who are removed from the United States. DHS reports that it has begun tracking this information but has yet to make the figures public. As discussed in the House and Senate reports, ICE does not currently track in any meaningful or comprehensive way information about the removal of alien parents of U.S.-born children. In order to better understand the scale and intricacies of this issue, the conferees direct ICE to submit, within 60 days after the date of enactment of this Act, an evaluation of the process and data management system changes necessary to track the information discussed in both the House and Senate reports, including a timeline for implementing the required changes in fiscal year 2010. ICE is directed to begin collecting data on the deportation of parents of U.S.-born children no later than July 1, 2010, and to provide the data at least semi-annually to the Committees and the Office of Immigration Statistics." Department of Homeland Security Appropriations Act, 2010: report together with additional views (to accompany H.R. 2892), 111th Congress, 1st session, 2009, H. Rep. 111-298.

¹⁵ Terrazas and Batalova.

¹⁶ Randy Capps et al., The Urban Institute, "Paying the Price: The Impact of Immigration Raids on America's Children," p. 15. 2007.

¹⁷ Terrazas and Batalova.

¹⁸ David B. Thronson, *Custody and Contradictions: Exploring Immigration Law as Federal Family Law in the Context of Child Custody*, 59

HASTINGS L.J. 453, 454 (2008) (“Custody and Contradictions”). at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1155223.

¹⁹ Terrazas and Batalova.

²⁰ Department of Homeland Security, Office of Inspector General, “Removals Involving Illegal Alien Parents of United States Citizen Children” p. 4. January 2009.

²¹ There are numerous resources available that focus more generally on the impact of enforcement on children and families. See <http://www.firstfocus.net/library/reports/caught-between-systems-the-intersection-of-immigration-and-child-welfare-policies>; <http://www.urban.org/publications/411566.html>; <http://www.urban.org/publications/412020.html>.

²² This hypothetical represents the most extreme infringement on parental rights. However, in many cases children are not in the state child welfare system or parents are deported before they face any legal challenge to their parental rights. While rights are not terminated under a court order, these parents face a de facto loss of custody because they have no way to reunify with their children once they have left the U.S.

²³ Alternatives to detention include community-based programs that help ensure appearance in court, periodic check-ins or even ankle bracelets. For more information see <http://www.women-srefugeecommission.org/programs/detention/detention-reform/our-work-on-detention-reform>.

²⁴ See www.washingtonpost.com/wp-dyn/content/article/2007/03/17/AR2007031701113.html.

²⁵ These guidelines were the product of discussions between Senator Edward Kennedy, Representative Bill Delahunt and ICE following the raid: ICE Guidelines for Identifying Humanitarian Concerns Among Administrative Arrestees When Conducting Worksite Enforcement Operations (www.nilc.org/immsemplymnt/wkplce_enfrcmnt/ice-hum-guidelines.pdf); April 2009 Worksite Enforcement Strategy Memo (www.ice.gov/doclib/foia/dro_policy_memos/worksite_enforcement_strategy4_30_2009.pdf); memo on Juveniles encountered during Fugitive Operations (www.ice.gov/doclib/foia/dro_policy_memos/juvenilesencounteredduringfugitiveoperations.pdf).

²⁶ Both states and localities can have agreements with ICE to enforce immigration law. For simplicity’s sake we use the term “local law enforcement” in the body of this report but this phrase refers to both state and local law enforcement entities cooperating with ICE.

²⁷ August 24, 2007 ICE memo from John P. Torres, “Juveniles Encountered During Fugitive Operations.” http://www.ice.gov/doclib/foia/dro_policy_memos/juvenilesencounteredduringfugitiveoperations.pdf.

²⁸ The Director of the ICE Office of Policy informed the Women’s Refugee Commission that the agency was undergoing a review of

previous policy guidance and it was unclear whether this guidance remains in effect. Meeting, 2010.

²⁹ August 24, 2007 ICE memo from John P. Torres, “Juveniles Encountered During Fugitive Operations.”

³⁰ In some jurisdictions local time of arrest protocols between police and child welfare services require police to contact child welfare whenever a child is present at the time a parent is arrested. These geographic distinctions must be taken into account in developing a comprehensive national strategy for preventing family separation.

³¹ Even if screening is conducted by NGOs phone calls will be essential in preserving family unity and should be provided to all apprehended individuals within a short time of apprehension.

³² Interview by Michelle Brané, Austin, Texas, March 19, 2009.

³³ Everyone who arrives at a detention center is granted one free, three-minute phone call. However parents may not arrive at a detention facility until days or weeks after they are apprehended.

³⁴ This window must constitute a window of time that enables parents to make care arrangements before their child’s care is in jeopardy.

³⁵ Example provided by Florida Immigrant Advocacy Center, Miami, Florida.

³⁶ For more information on telephone access and transfers see *Jailed Without Justice*, Amnesty International, March 25, 2009. p.34-36. See also *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison*, Human Rights First, revised June 2009.

³⁷ Though they may be eligible for release on the basis of some other vulnerability. On December 8, 2009 and June 30, 2010, ICE Assistance Secretary John Morton issued memos indicating that certain caretakers of children who are not subject to mandatory detention, should not be detained. Because of the increased number of parents entering the immigration system through contact with local law enforcement and who are subject to mandatory detention, these policies appear to be having a limited impact. http://www.ice.gov/doclib/detention-reform/pdf/nfop_priorities_goals_expectations.pdf; http://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf.

³⁸ Also called a case plan. Before a state can formally terminate parental rights it must establish a case plan that gives a parent an opportunity to rehabilitate. Even in the case of detention, the state must make reasonable efforts to enable the parent to comply. The state must also maintain contact with the parent and provide the plan in the parent’s native language. To avoid having parental rights terminated, a parent must participate in case planning, remain involved in her child’s life and demonstrate her commitment to reform. If the parent is then found to be fit, he or she is entitled to maintain custody of the child and to designate a caretaker for the child during detention. For more information on how children move through

the child welfare system see Appendix A (p. 21).

³⁹ As an example, obstacles to reunification for detained parents have been created by the Adoption and Safe Families Act (ASFA), a law passed in 1997 to prevent children from languishing in the foster care system. ASFA triggers certain permanency actions once a child has been out of a parent's care for a designated period of time. While the aim of ASFA was appropriate, the law is having unintended consequences for parents who are detained.

⁴⁰ For more information on programs serving the families of offenders see <http://www.fcnetwork.org/Dir2001/dir2001al-fl.html>.

⁴¹ *Plyler v. Doe*, 457 U.S. 202 (1982).

⁴² *Ibid.*

⁴³ *Santosky v. Kramer*, 455 U.S. 745,753 (1982).

⁴⁴ See David Thronson, "Custody and Contradictions: Exploring Immigration Law as Federal Family Law in the Context of Child Custody," *Hastings Law Journal*, vol. 59 (February 2008): p. 453 (Thronson explains how family law inappropriately acts as de facto immigration law and vice versa).

⁴⁵ See Amnesty International, *Jailed Without Justice*, March 25, 2009.

⁴⁶ Conversation with Andrew Strait, Chief Public Engagement Officer, Office of State, Local and Tribal Coordination, U.S. Immigration and Customs Enforcement, October 26, 2010.

⁴⁷ "Migrant Women and Children at Risk: In Custody in Arizona," Women's Refugee Commission, October 2010. http://www.womensrefugeecommission.org/reports/cat_view/68-reports/71-detention-a-asylum.

⁴⁸ For more information on parents' due process rights see Appendix B (p. 22).

⁴⁹ This can be particularly problematic and worrisome in cases where a child is with an abusive parent.

⁵⁰ Anonymous case relayed to Michelle Brané, Women's Refugee Commission, by social workers attempting to facilitate the reunification of four children who remained in foster care in Washington state while their mother tried to reunite with them in Guatemala.

⁵¹ "Deported Woman Keeps Custody," Martha Stoddard, World-Herald Bureau. June 27, 2009. <http://www.omaha.com/article/20090627/NEWS01/706279922>.

⁵² Supreme Court of Nebraska. In *re Interest of Angelica L. and Daniel L.*, children under 18 years of age. State of Nebraska, Appellee, v. Maria L., Appellant. 277 Neb. 984, 767 N.W.2d 74.

⁵³ Absent findings of abuse or neglect that indicate reunification is not in the best interest of the child.

⁵⁴ Both HELP bills would require the Department of Homeland Security to institute critical protections to reduce infringement on

parental rights as a result of detention and deportation, including: considering the impact on the child of decisions to detain parents, legal guardians and caregivers; ensuring that detained parents can comply with reunification plans and participate meaningfully in family court proceedings; and facilitating family unity at the time of deportation if a parent wishes to leave the country with their child. For more information see <http://www.womensrefugeecommission.org/programs/detention/parental-rights/1051-advocacy-for-the-help-act-hr-3531-congress-version> and <http://www.womensrefugeecommission.org/programs/detention/parental-rights/1052-advocacy-for-the-help-act-senate-version>. The CCPA would restore the ability of Immigration Judges to use discretion, in certain cases, to allow the parents of U.S. children to remain in the United States and avoid separation that would be caused by the parent's deportation.

APPENDIX A: How Children Move Through the Child Welfare System

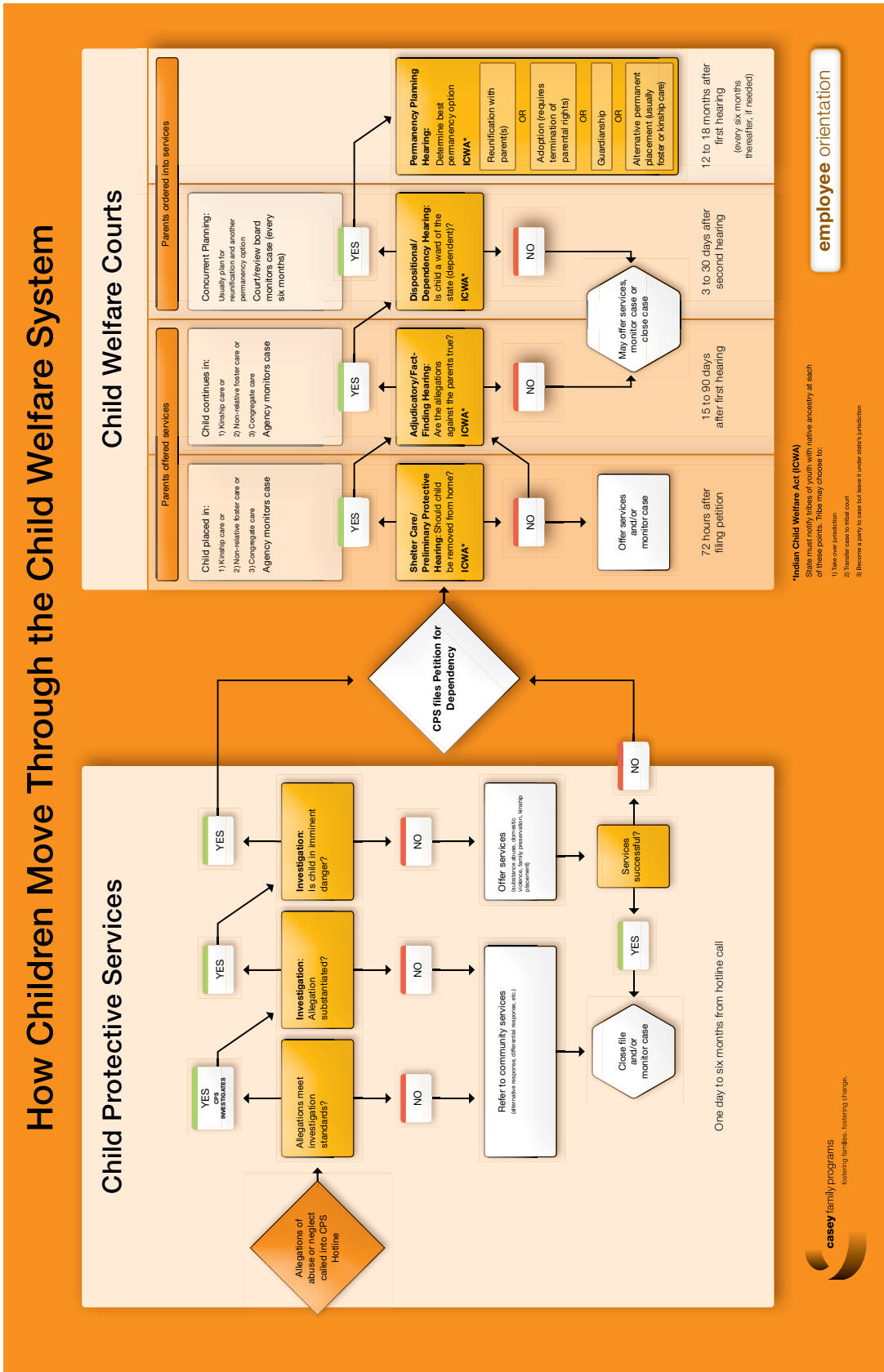


Chart provided by Casey Family Programs. See www.casey.org/Resources/Publications/pdf/HowChildrenMoveThroughCW.pdf

APPENDIX B: Legal Rights of Detained Immigrant Parents

The Fourteenth Amendment of the U.S. Constitution declares that “[n]o State shall . . . deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”¹ The Supreme Court has determined that undocumented immigrants are considered to be “persons” under the Fourteenth Amendment, and thus are entitled to the same due process and equal protection guarantees as U.S. citizens.² Due process requires both a protection against certain government infringements on liberty and a procedurally fair process that protects against arbitrary decisions and also a substantive component that bars certain government actions regardless of the fairness of their procedures.³

Amongst the constitutional guarantees afforded undocumented immigrants, the right of a parent to the care, custody and management of her children is considered to be a fundamental interest protected by the Fourteenth Amendment that is “far more precious than any property right.”⁴ While states do have the obligation to protect minor children from neglect or abuse, there is a strong public policy in favor of protecting the family unit.⁵ So long as a parent is providing for children “adequately” and “the minimum requirements of child care are met,” the parent’s rights cannot be infringed.⁶

While the laws on child custody vary by state, the Supreme Court has determined that procedures used by the state to terminate parental rights must meet the requirements of due process.⁷ To terminate a detained immigrant’s parental rights, a court must first determine (a) whether the parent is unfit under state law and (b) whether such termination will be in the child’s best interest.⁸ The court must have clear and convincing evidence that the parent is unfit, such as evidence of chronic abuse, abandonment or failure to maintain contact with the child.⁹

Often, before a state can formally terminate the parental rights of a detained parent, it must establish

a case plan that gives the parents an opportunity to rehabilitate.¹⁰ Even in the case of detention, the state must make reasonable efforts to enable the parent to comply.¹¹ The state must also maintain contact with the parent and provide the plan in the parent’s native language.¹² To avoid having parental rights terminated, a detained parent must participate in case planning, remain involved in his or her children’s lives and demonstrate his or her commitment to reform. If the parent is then found to be fit, she or he is entitled to maintain custody of the child and to designate a caretaker for the child during detention.¹³

If the state proceeds to a hearing with the intention of terminating a detained parent’s rights, the hearing must be fair and include an opportunity to present objections, confront witnesses and defend against the charges raised. While the exact procedures of a hearing will vary by state, the interests of the parent strongly favor allowing for any necessary safeguards so that the parent’s rights are not unfairly terminated.¹⁴ Detained parents are entitled to notice of an action against them, written in their native language,¹⁵ but the parents often have the burden of informing the courts of their whereabouts, unless the state can reasonably determine their location.¹⁶ Many states also require that detained parents receive a court-appointed lawyer for custody hearings, even though they are not normally entitled to one in immigration court.¹⁷ However, detained parents are not always entitled to be physically present at the hearing and may instead have to participate telephonically.¹⁸

Parental detention or deportation does not by itself justify terminating parental rights.¹⁹ However, courts have considered whether the separation resulting from such circumstances may lead to abandonment or failure to maintain contact with a child, two widely recognized justifications for severing the parent-child relationship. In certain circumstances, the deportation or detention of a parent, combined with other extenuating factors,

has been sufficient to terminate a detained immigrant's custody of his or her child.²⁰ For example, in 2004, an undocumented mother of a young child was deported and her parental rights terminated because, in addition to being deported, she refused to see her child before being removed and had maintained infrequent contact with the child since her deportation.²¹ However, other courts have held that when a state takes action to knowingly deport parents who have children in the United States, with the "purpose of virtually assuring the creation of a ground for termination of parental rights," and then proceeds to seek termination, the state violates the due process rights of the parent.²² Because the grounds for termination of parental rights vary so greatly, detained parents may be forced to navigate a confusing and difficult process where their rights are not always clear.

have generally shied away from finding per se unfitness based on broad categories).

²⁰ See *In re Christian M-R*, 2008 Conn. Super. LEXIS 1783 (Conn. Super. Ct. July 8, 2008) (terminating parental rights of an undocumented father on the basis of failure to maintain an ongoing relationship with the child); Cf. *In the Interest of M.M.*, 587 S.E.2d 825 (Ga. App. 2003) (finding that since an illegal father had cooperated with the court, was trying to obtain residency, and consistently visited his child, termination of his parental rights on grounds that he might someday be deported could not be sustained).

²¹ See *In re L.A.R.*, 695 N.W.2d 42 (Iowa Ct. App. 2004).

²² See *In re Shane P.*, 58 Conn. App. 234, 753 A.2d 409, 2000. See also *Mainor, T. and Estela, T.* 674 N.W.2d at 462-63 (mother's deportation did not equate to abandonment).

Appendix B: Notes

¹ U.S. Const. amend. XIV, § 1.

² *Plyler v. Doe*, 457 U.S. 202 (1982).

³ *Daniels v. Williams*, 474 U.S. 327, 331 (1986).

⁴ *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

⁵ *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977).

⁶ *Reno v. Flores*, 507 U.S. 292, 303-04 (1993).

⁷ *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981).

⁸ Child Welfare Information Gateway, *Grounds for Involuntary Termination of Parental Rights* (2007). http://www.childwelfare.gov/systemwide/laws_policies/statutes/groundtermin.cfm.

⁹ *Santosky*, 455 U.S. at 747-48.

¹⁰ See e.g., *In re Maria S.*, 98 Cal. Rptr. 2d 655, 659 (Cal. App. 2000).

¹¹ *Id.* at 660.

¹² *Interest of Angelica L. & Daniel L.*, 767 N.W.2d 74 (2009).

¹³ *In the Matter of Huff*, 969 A.2d 428, 432 (N.H. 2009).

¹⁴ *Lassiter*, 452 U.S. at 27.

¹⁵ *In re Interest of Mainor, T. and Estela, T.*, 674 N.W.2d 442, 462-63 (Neb. 2004).

¹⁶ *In re A.R.*, 673 S.E. 2d 586-87 (Ga. App. 2009).

¹⁷ S. Adam Gergusson, Note, *Not Without My Daughter: Deportation and the Termination of Parental Rights*, 22 GEO. IMMIGR. L.J. 85 (2007).

¹⁸ *Mainor T.*, 674 N.W.2d at 460.

¹⁹ See *In re A.E.*, 208 P.3d 1323 (Wyo. 2009) (noting that states

APPENDIX C: International Law on Family Separation and Parental Rights

International law prohibits arbitrary family separation and provides due process protections to children and parents in order to strengthen family unity. In the past two decades, the United Nations and other multilateral organizations have increasingly addressed this problem through treaties, declarations and judicial decisions. In consequence the prohibition against arbitrary family separation is developing into a fundamental principle (*jus cogens*) that may soon become binding through customary international law.¹ According to the Vienna Convention on the Law of Treaties, customary international law may bind a country to certain legal norms even if the country does not recognize it as law.² A norm or treaty becomes customary international law when states practice the norm(s) and believe they are bound to do so by law (*opinio juris*).³ While the United States has not ratified many of the international instruments that guarantee protections to families against separation, the United States should seek to comply with accepted international humanitarian legal principles.⁴

1. Family as the fundamental group unit

States have long recognized a right to family as a fundamental human right, which merits protection by law. Article 16 of the Universal Declaration of Human Rights stresses, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”⁵ This principle has been reaffirmed by numerous treaties, such as the International Covenant on Civil and Political Rights (“ICCPR”) in Article 23,⁶ the International Covenant on Economic Social and Cultural Rights (“ICESCR”) in Article 10,⁷ the Riyadh Guidelines,⁸ the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter “Convention on Migrants”) in Article 44,⁹ the American Convention on Human Rights in Article 17,¹⁰ the European Council’s Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, “CPHRFF”) in

Article 8¹¹ and the American Declaration on the Rights and Duties of Man in Articles V, VI and VII.¹²

International courts have also interpreted law to conform with the principle of the right to family. The European Court of Human Rights wrote in the *Case of Buchberger v. Austria*, “The mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention [CPHRFF].”¹³

To underscore the family as a fundamental group unit, many of the international conventions stress respect for parental rights. The Convention on the Rights of a Child (CRC) mandates that states “[r]espect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community...”¹⁴ While the United States has not ratified the CRC for reasons not necessarily relating to the principles it articulates, the convention represents international law in most of the world and is the most widely ratified human rights treaty.¹⁵ This principle is repeated in other treaties, including the ICCPR¹⁶ and the Convention on Migrants.¹⁷ The CRC also demands respect for a child’s right to maintain his or her identity, including his or her name, nationality and family relations.¹⁸ The Inter-American Commission on Human Rights recently determined in the case of *Wayne Smith and Hugo Armendariz et al v. United States*, that U.S. deportation policy violates fundamental human rights because it fails to consider evidence concerning the adverse impact of the destruction of families, the best interest of the children of deportees and other humanitarian concerns.¹⁹

2. Migrant families’ need for protection by states

International law also reinforces human rights guarantees to all, regardless of their status. While the United

States, as well as most of the states of the Northern Hemisphere, has not signed the Convention on Migrants,²⁰ the treaty highlights the need for greater protections of human rights for migrants because their vulnerable status will more likely produce a scattering of the family. In Article 17, the convention requires: “Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.”²¹

3. Children’s best interest considered first in family separation

A prevailing principle in determinations affecting family separation is the consideration of the best interests of the child. Article 9 of Convention on the Rights of a Child requires, “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”²² Article 3 specifically states that in “all actions concerning a child” the best interests should be of primary consideration. Other treaties, including the African Charter on the Rights and Welfare of the Child²³ and the European Convention on the Exercise of Children’s Rights,²⁴ also mandate weighing the child’s best interests in matters affecting a child. In the Human Rights Council Resolution, “Human Rights of Migrants: Migration and the Human Rights of the Child,” the Council also called upon states to model their laws on this principle and to make best interests a factor in decisions on whether to detain parents.²⁵ In the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children (hereafter “Child Welfare Declaration”), the UN General Assembly called upon states to be guided by the principle that “the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration.”²⁶

Generally, international law interprets the best interests of the child to presume family unity and a right of children to know and/or preserve their familial identity.²⁷ For instance, the CRC explicitly states that a child has the right “to know and be cared for by his or her parents” and “to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”²⁸ The European Convention on the Exercise of Children’s Rights explicitly mandates that children be given a right to express their views in proceedings affecting their welfare, as well as having their viewpoint considered by judicial authorities.²⁹ The Inter-American Commission on Human Rights has determined and reaffirmed on various occasions that under the American Declaration, “the absence of any procedural opportunity for the best interest of the child to be considered in proceedings involving the removal of a parent or parents raises serious concern” and that “removal proceedings for non-citizens must take into consideration the best interests of the non-citizen’s children and the deportee’s rights to family, in accordance with international law.”³⁰

4. Right to procedural protections when family unity is threatened by state action

International law also specifies procedural protections to be afforded to parents and children in situations of state-imposed family separation. Notice, access to courts and reunification facilitation are key guidelines for the protection of children and parents in state-imposed family separation.

Notice. Article 9(4) of the CRC mandates that information on the whereabouts of missing family members must be provided to parents, children and other affected family members unless such information is detrimental to a child’s well-being.³¹ The Vienna Convention on Consular Relations, which the United States has ratified, compels states to permit consular officers to visit those detained and requires states to notify consular offices when respective citizen-children are taken into custody by the child welfare agencies.³² The Convention on Migrants also reiterates this right, as well as

mandating the right to notice of rights and a right to an attorney.³³

Access to Courts. Article 9(2) of the CRC requires that all parties have the opportunity to participate in child welfare proceedings and make their views known.³⁴ Article 3(2) of the CRC also guarantees protection of parental rights as well as the legal rights of children. The Child Welfare Declaration requires that “sufficient time and adequate counseling should be given to the child’s own parents, the prospective adoptive parents and, as appropriate, the child in order to reach a decision on the child’s future as early as possible.”³⁵ In the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the General Assembly declared that any form of detention and all collateral effects on a person’s human rights must be subject to effective control of a judicial authority.³⁶

Reunification. Article 10 of the CRC requires states to permit parents and children entrance for the purposes of reunification and to allow reunification to happen in the most humane and expeditious manner.³⁷ Article 44 of the Convention on Migrants also requires states to facilitate reunification of migrant families.³⁸ The Human Rights Council resolution, “Human Rights of Migrants: Migration and the Human Rights of the Child,” also calls upon states to put in place repatriation mechanisms that consider both family unity and the best interests of the child.³⁹

These international humanitarian principles vouchsafe family unity and afford minimum protection in the midst of state-imposed detention and family separation. By effectively implementing such standards, states can ensure children’s and parents’ rights are protected from arbitrary, harmful interference.

Appendix C: Notes

¹ “Given the widespread occurrence of family separation, the state element is probably lacking. Furthermore, few sources of international opinion have addressed this problem in any kind of comprehensive manner. We believe, however, that such a norm is beginning to evolve in fragmentary ways. Sufficient consensus

exists against particular types of family separation...to constitute customary international law.” Sonja Starr and Lea Brilmayer, “Family Separation as a Violation of International Law,” 21 Berkeley J. Int’L. 213, 230. 2003.

² See Vienna Convention on the Law of Treaties, Article 38. http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

³ For more on customary international law see Anthea Elizabeth Roberts, “Traditional and Modern Approaches to Customary International Law: A Reconciliation,” <http://www.asil.org/ajil/roberts.pdf>.

⁴ For a discussion on U.S. approach to Treaties see, Frederic Kirgis, “Reservations to Treaties and U.S. Practice,” ASIL Insights. May 2003. <http://www.asil.org/insigh105.cfm>.

⁵ *Universal Declaration of Human Rights*, U.N. Doc A/810/71. December 10, 1948. <http://www.ohchr.org/en/udhr/pages/introduction.aspx>.

⁶ UN Doc A/RES/21/2200. December 16, 1966. <http://www2.ohchr.org/english/law/ccpr.htm>.

⁷ *Ibid.*

⁸ Principle 12, A/Res/45/112 of 14 December 1990. <http://www2.ohchr.org/english/law/juvenile.htm>.

⁹ This treaty, while not customary law, still represents human rights concerns of countries that are more affected by migration. International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, U.N. Doc A/45/158. December 18, 1990. <http://www2.ohchr.org/english/law/cmwh.htm>.

¹⁰ “Pact of San Jose, Costa Rica,” November 22, 1969. <http://www.oas.org/juridico/english/treaties/b-32.html>.

¹¹ <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>.

¹² American Declaration on the Rights and Duties of Man (American Declaration). <http://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>.

¹³ *Application no. 32899/96* (20 March 2002), at § 35.

¹⁴ Article 5. December 18, 1990. <http://www2.ohchr.org/english/law/crc.htm>.

¹⁵ Family law traditionally is a state jurisdiction and recent U.S. policy has also advocated for strict U.S. sovereignty. See Luisa Blanchfield, “The United Nations Convention on the Rights of the Child: Background and Policy Issues,” (Congressional Research Service, December 2, 2009). <http://fpc.state.gov/documents/organization/134266.pdf>.

¹⁶ Article 18. <http://www2.ohchr.org/english/law/ccpr.htm>.

¹⁷ Article 12. <http://www2.ohchr.org/english/law/cmwh.htm>.

¹⁸ Article 8. December 18, 1990. <http://www2.ohchr.org/english/law/crc.htm>.

¹⁹ IACHR, Report No 81/10, case 12.562, July 12, 2010.

²⁰ International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, U.N. Doc A/45/158. December 18, 1990. <http://www2.ohchr.org/english/law/cmwh.htm>.

²¹ *Ibid.*

²² <http://www2.ohchr.org/english/law/crc.htm>.

²³ Article 4. http://www.unicef.org/zimbabwe/zimbabwe_AC-WRC-2010.pdf.

²⁴ Article 6. <http://conventions.coe.int/Treaty/en/Treaties/Html/160.htm>.

²⁵ U.N. Doc A/HRC/Res/12/6 (12 October 2009). <http://access-dds-ny.un.org/doc/RESOLUTION/GEN/G09/165/57/PDF/G0916557.pdf?OpenElement>.

²⁶ *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*, A/Res/41/85 (3 December 1986). <http://www.un.org/documents/ga/res/41/a41r085.htm>.

²⁷ Sonja Starr and Lea Brilmayer, "Family Separation as a Violation of International Law," 21 *Berkeley J. Int'L.* 213, 222 (2003).

²⁸ Articles 7 and 8. <http://www2.ohchr.org/english/law/crc.htm>.

²⁹ See Articles 3 and 6. <http://conventions.coe.int/Treaty/en/Treaties/Html/160.htm>.

³⁰ IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, (2000), paragraph 159 – 160, 163.

³¹ <http://www2.ohchr.org/english/law/crc.htm>.

³² Articles 36 and 37. T.I.A.S. No. 6820, 21 U.S.T. 77. April 24, 1963. http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf; see also Pamela Kemp Parker, "When A Foreign Child Comes into Care, Ask: Has the Consul Been Notified?" *ABA Child Law Practice*, vol.19, no.12. February 2001.

³³ Article 16, International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, U.N. Doc A/45/158. December 18, 1990. <http://www2.ohchr.org/english/law/cmww.htm>.

³⁴ <http://www2.ohchr.org/english/law/crc.htm>.

³⁵ Article 15, *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*, A/Res/41/85. December 3, 1986. <http://www.un.org/documents/ga/res/41/a41r085.htm>.

³⁶ A/RES/43/173. December 9, 1988. <http://www.un.org/documents/ga/res/43/a43r173.htm>.

³⁷ <http://www2.ohchr.org/english/law/crc.htm>.

³⁸ International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, U.N. Doc A/45/158. December 18, 1990. <http://www2.ohchr.org/english/law/cmww.htm>.

³⁹ U.N. Doc A/HRC/Res/12/6. October 12, 2009. <http://access-dds-ny.un.org/doc/RESOLUTION/GEN/G09/165/57/PDF/G0916557.pdf?OpenElement>.



**WOMEN'S
REFUGEE
COMMISSION**

122 East 42nd Street
New York, NY 10168-1289
212.551.3115
info@wrcommission.org

womensrefugeecommission.org