



# Working With Immigrant Families

The Impact of Increased Immigration Enforcement on  
Child Welfare



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Our goal is to improve legal representation and the legal systems that affect children and families.

# Presentation Structure

How has immigration policy changed over the past 18 months?



What do these changes mean for children and families?



Why are these policies changes relevant for your practice?



What tools, tactics, and promising practices exist to help you in your work with immigrant children and children of immigrants?

# Immigration Enforcement: Impact on Children

- A 2015 report by Migration Policy Institute and Urban Institute found that immigration enforcement impacts child and family well-being and can result in:
  - Family economic hardship;
  - Psychological trauma to children;
  - Difficulty accessing social services because of language barriers, difficulty documenting eligibility, mistrust and fear; and
  - Family separation, child welfare involvement, potential termination of parental rights.

<http://www.migrationpolicy.org/research/health-and-social-service-needs-us-citizen-children-detained-or-deported-immigrant-parents>





# Introduction

# Children Most Affected By Enforcement

- U.S. citizen children with undocumented parents
- Undocumented children with undocumented parents
- Unaccompanied and separated children

*Immigration enforcement creates many different scenarios.*

*Be aware of where parents are and how a child was separated from them!*

# Key Statistics: Immigrant Children and Children of Immigrants



There are 70 million children under age 18 in the U.S.



26% (more than 18 million) live with at least one immigrant parent



Nearly 16 million of these children were born in the U.S.



More than 5 million children in the U.S. have at least one undocumented parent

- 79% are U.S. citizens
- 19% are undocumented
- 2% are lawfully present non-citizens

# U.S. Citizen Children with Undocumented Parents

- Many children live in mixed status households
- **Children and communities living with increased fear due to enforcement**
  - More than 273,000 USC children of TPS holders
  - At least 200,000 USC children of DACA holders
  - Parents will lose both status and work authorization
- **Children already experiencing detention and deportation of parents**
  - Home raids
  - Check-ins (silent raids)
  - Traffic checkpoints and cooperation with local police

*Fear in communities is carrying over to friends and classmates.*

# Undocumented Children with Undocumented Parents

- Includes various groups of children
- Generally apprehended at the border with parents
  - May be released with conditions
  - May be held at one of three family detention facilities
  - May be separated from parents and placed in ORR
- Some interior apprehensions of families
- In FY18 to date, over 77,000 individuals in family units apprehended at Southwest border

# Unaccompanied Children

- An unaccompanied child:
  - Has no lawful immigration status in the U.S.
  - Has not attained 18 years of age
  - With respect to whom— (i) there is no parent or legal guardian in the U.S.; or (ii) no parent or legal guardian in the U.S is available to provide care and physical custody
- In FY18 to date, over 41,000 unaccompanied children apprehended at Southwest border

# Separated Children

- Term used to describe children apprehended with a parent or legal guardian at the Southwest border
- Separated from their caregiver by U.S. immigration officials, rendered unaccompanied, and placed in ORR care
- Primarily from El Salvador, Guatemala, and Honduras, and escaping violence
- Since “zero tolerance” policy took effect in May 2018, between 2,600 and 3,000 children were separated at the Southwest border



What Key Policy Changes Are Affecting  
Immigrant Children and Children of  
Immigrants?



## Case Example 1: Family Separation at the Border

Five-year-old **Mariella** traveled to the United States from **Guatemala** with her father **Daniel** in search of protection. They were apprehended by CBP at the Southwest border and separated. Mariella, who only speaks a Mayan language, was left in a cell with other children. Eventually, Mariella was sent to an ORR foster care program, and her father was sent to ICE detention. While in ORR care, Mariella could not identify any other family members to whom she could be reunified. As a result, **Mariella would have to remain in ORR custody unless her father was released**. Mariella's father requested a credible fear interview because of death threats he received in Guatemala. But **the difficulty of detention and separation from his daughter** were so great that he ultimately changed his mind and gave up the family's case. Daniel and Mariella were removed to Guatemala.



# Policies on Family Separation at the Border

- Practice of family separation is not new
- Scale increased massively since announcement of “zero tolerance” policy in May 2018
  - ORR claimed 2,654 separated children in its custody
- “Zero tolerance” did not direct DHS to separate families; *de facto separation policy*
- June 20th Executive Order to “maintain family unity”
  - Reaffirms prosecution policy and mandates family detention
- June 26th preliminary injunction in *Ms. L v ICE*
  - Certified class of parents and timeline for reunification
  - Requires reunification but not release

What Does This Mean For Your  
Practice?

# Separated Families: Child Welfare Litigation

- “Absent a finding the parent is unfit or presents a danger to the child, it is unclear why separation...would be necessary” & family separation has expanded “beyond its lawful reach.” *Ms. L., et al. v. ICE. et al.*, Case No. 18cv0428, 13, 14 (S.D. Cal. Feb. 26, 2018).
- Government violated the children’s constitutional rights by forcibly removing them from their parents without due process of law. *J.S.R. v. Sessions, et al.*, Case No. 3:18-cv-01106, 16 (D. Conn. July 13, 2018)
- 17 states & D.C. allege that zero-tolerance policy is an attack on state sovereignty that, *inter alia*, renders States unable to comply with their own requirements to respect family integrity absent a finding that a parent is unfit or unavailable to care for a child. *State of Washington, et al. v. United States, et al.*, Case No. C18-939-MJP (W.D. Wash. June 26, 2018)

# Policies Affecting Family Separation in the Interior

Two **January 2017 executive orders** placed immigrant children and families, and children of immigrants, in a precarious position:

- Made **all undocumented people an enforcement priority** (DHS no longer exercises discretion not to detain parents)
- **Deportations occur more quickly** (weeks or even days) with **no notice to dependency court, criminal court or child welfare agency**
- **More parents immigration detention**, often far from children
- Decreased likelihood a parent will be paroled or bond out of detention
- **Increased fear of police and social services**
- Decreased likelihood a parent will be able to return for a TPR proceeding

What Does This Mean For Your  
Practice?

# Protections for Unaccompanied Children

- Same enforcement changes that apply to adults also place unaccompanied children at risk of apprehension in the interior
- Administration and Congress have been trying to roll back longstanding protections for unaccompanied children
  - TVPRA
  - Flores Settlement Agreement
- Efforts to discourage parents and other sponsors from coming forward to care for children
  - Sponsor raids
  - May 2018 MOA between DHS and HHS increases sponsor risk of being placed in removal proceedings

What Does This Mean For Your  
Practice?





# Child Welfare Cases Involving Immigrant Families

# Child Welfare Laws Apply to Non-Citizen Families



***Child Protective Services*** – Federal law does not base eligibility for reimbursement of state child protection services, which include prevention services, on a parent or child's immigration status if certain conditions are met. 8 U.S.C. § 1611(b)(1)(D) and Attorney General Order No. 2049 (1996) (see 61 Fed. Reg. 45985-01)



***Reunification with Parents*** – No part of Title IV-E prohibits reunification with parents who are undocumented or who live outside the U.S. 42 U.S.C. § 671(a)(15)(A)&(B).



***Notice to Relatives*** – No exception to requirements to search for and notify child's adult relatives is included in the statute for relatives who live outside the U.S.; a sole exception is articulated for family or domestic violence cases. 42 U.S.C. § 671(a)(29).



***Relative Placements*** – Title IV-E does not preclude placements with (or seeking other assistance from) relatives who are undocumented or living outside the U.S. 42 U.S.C. § 671(a)(19); ACF Child Welfare Policy Manual, 8.4B Title IV-E, General IV-E Requirements, Aliens/Immigrants.



***Foster care maintenance payments*** – Undocumented adults providing placement may receive IV-E foster care maintenance payments as long as the *child* is IV-E eligible.

# Caselaw Supports Engagement of Parents Outside U.S.

*In re E.N.C., et al*, 384 S.W.3d 796 (Tex. 2010)

Father had been deported but remained a regular presence and source of support for his children. Court found that although the father had engaged in a criminal act before his children were born, thus increasing his risk of future deportation, that action could not be considered child endangerment because the **“mere threat of deportation or incarceration” does not constitute endangerment.**

*In re Oreoluwa O.*, 139 A.3d 674 (Conn. 2016)

**Agency had not made reasonable efforts to reunify a father in Nigeria** with his infant son because the agency presumed that the father must be present in the U.S. to engage in reunification efforts and presumed the child could not travel to Nigeria. Court concerned that though the agency was uncertain about the medical care available to the child in Nigeria, they never attempted to investigate what the options were there.

# Caselaw, cont.

*State of New Mexico ex rel. Children, Youth and Families Dep't v. Alfonso*, 366 P.3d 282 (New Mex. 2015)

Agency not relieved of its statutory mandate to make **reasonable efforts** to assist the parent in addressing the causes and conditions of a child's entry into the child welfare system **simply because the parent has been deported** to another country. The agency bears the burden of showing the parent is unlikely to alleviate those causes and conditions in the foreseeable future. **A parent's rights may not be terminated simply because a child might be better off in a different environment.**

*In re Interest of Angelica L.*, 767 N.W.2d 74 (Neb. 2009) Agency made no efforts to reunify the deported mother with her children because the case worker had decided the children would be "better off" staying in the U.S. The Nebraska Supreme Court rejected this analysis and explained that **as long as a parent is capable of providing for the children's needs, the country a parent lives in is not a controlling factor in determining reunification.**

# Kinship Foster Care



32% of children in the foster care system in 2016 were placed with relatives.



Children who cannot remain with their parents thrive when raised by relatives and close family friends.



States must consider giving preference to a relative when placing a child.



Each state has its own eligibility and licensing criteria for placing a child with a relative.

# State Licensing Requirements: Immigration Status

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20 states with explicit citizenship or immigration-related foster care licensing standards

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Administrative Code: Arizona, Colorado, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, Oklahoma, Oregon, Utah

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Policy Manual: Georgia, Hawaii, Iowa, Mississippi, North Carolina, Tennessee, Virginia

# Exceptions to Citizenship Requirements

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Explicit Kinship Exception: Massachusetts, New Jersey, Oregon

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Non-Waivable: Arizona, Georgia\*, Michigan, Mississippi, Missouri

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General Waiver/Variance Provisions: Colorado, Hawaii, Iowa, Louisiana, New Jersey, North Carolina, Oklahoma, Tennessee, Virginia

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Alternative Approval Processes: Colorado, Hawaii, Kentucky, Louisiana, Maryland, New Mexico, North Carolina, Utah

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Explicit acceptance of undocumented caregivers as foster parents: California, Indiana, Massachusetts, New York City, Oregon

# Additional Challenges to Undocumented Kinship Caregivers

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## Background checks

- Interaction with government authority
- May 2018 MOA between DHS and HHS
- Government-issued identification, e.g. state-issued driver's license or a Social Security Number
- Fingerprinting

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## Potential barriers

- Language/communication requirements, state residency requirement, requests for citizenship-related information





# Tools, Resources & Promising Practices

## Case Example 2: Interior Enforcement

Maria Luis took her infant daughter to a hospital for care. Medical staff treated the girl and sent her home with follow-up instructions. The child seemed to be improving, so Maria skipped the doctor's appointment and the doctor notified child welfare. **When a police officer and child welfare worker came to her house, Maria panicked and said she was the babysitter.** The police officer took Maria into custody on a charge of obstruction. Police later dropped the charge, but **Maria was transferred to ICE and her daughter and 7 year old son were placed in custody of child welfare agency.** Maria was not assigned an attorney when she appeared in court in the child welfare case. The interpreter spoke Spanish, which Maria - an indigenous language speaker - struggled to understand. Ultimately, **Maria accepted voluntary departure, thinking she would be reunified with her children.** She didn't understand that there was a child welfare proceeding and that the state would decide whether she got her children back. From Guatemala, Maria had to figure out how to get a psychological evaluation, take parenting classes, prove she was a fit parent, and convince a judge that Guatemala was safe. With the help of pro bono attorneys, **Maria's case went to the Nebraska Supreme Court, which ruled that the state acted improperly in terminating her parental rights.** After five long years, Maria was finally reunified with her children in Guatemala.



# Children's Bureau IM

Encourages agencies to adopt best practices, such as:

- Prioritize identifying immigration status as a factor in permanency planning and “communicate any confounding issues to courts and service providers.”
  - Example given is considering detention as a compelling factor in deciding not to file TPR petition when child has been in care for 15 of last 22 months.
- Develop legal services referrals or other ways for families to assess immigration relief options for which they may be eligible.
- Screen all youth in care without immigration status for Special Immigrant Juvenile Status and provide eligible children with necessary information.
- Adopt best practices for working with families in which the parents are at risk of/are being detained or deported.

# Children's Bureau IM, cont.

“Any allegations of abuse after a child is released from HHS care is reported through the state's child welfare system which in turn is responsible for investigating and following up on the allegations, just as with other reported allegations for other children and families in the state.”

*Information Memorandum 15-02: Immigration Enforcement and Child Welfare; Case Planning; Foster Care*, (February 20, 2015), <https://www.acf.hhs.gov/sites/default/files/cb/im1502.pdf>

# ICE Resources

- *Detention and Removal of Alien Parents or Legal Guardians*  
<https://www.ice.gov/parental-interest>
- <https://locator.ice.gov> – To find a detained parent, use Alien Number & country of birth or exact name, country of birth, and date of birth
- Detention Reporting Information Line (DRIL): 1-888-351-4024
- **New ICE webform forthcoming** → will be primary ICE point of contact when detained parent involved in child welfare system

## U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

### **Policy Number 11064.2: Detention and Removal of Alien Parents or Legal Guardians**

**Issue Date:** August 29, 2017

**Effective Date:** August 29, 2017

**Superseded:** ICE Policy 11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities (Aug. 23, 2013) and ICE Policy 11031.1: Juveniles Encountered During Fugitive Operations (Aug. 24, 2007).

**Federal Enterprise Architecture Number:** 306-112-002b

1. **Purpose/Background.** This Directive provides guidance regarding the detention and removal of alien parents and legal guardians of a minor child(ren), to include those who have a direct interest in family court or child welfare proceedings in the United States. It is intended to complement the detention standards and policies that govern the intake, detention, and removal of alien parents or legal guardians.



# Frequently Asked Questions

## **ICE Directive on Detention and Removal of Alien Parents or Legal Guardians (ICE Policy Number 11064.2)**

On August 29, 2017 Immigration and Customs Enforcement (ICE) issued Policy Number 11064.2 on Detention and Removal of Alien Parents or Legal Guardians. This Directive was not made public until April 2018. This new Directive replaces ICE's 2013 Parental Interests Directive,<sup>1</sup> and eliminates certain key pieces of the 2013 policy, specifically the emphasis on applying prosecutorial discretion to parents and primary caregivers and the use of humanitarian parole to assist parents in returning to the U.S. to participate in proceedings that would lead to termination of their parental rights.

This document is a preliminary analysis of the new Directive current as of April 17, 2018 and may be updated as additional information becomes available. Women's Refugee Commission does not provide legal services and this document does not constitute legal advice.<sup>2</sup> Affected persons should consult a qualified immigration attorney for guidance on using the Directive in their individual case.

For more WRC resources to help you serve children and families see:

<https://www.womensrefugeecommission.org/rights/resources/1409-resources-for-families-facing-deportation-separation>

# Old vs. New ICE Directives

## 2013

- Prosecutorial discretion highlighted
- Facilitation of return for TPRs
- Detain parent/guardian near pending child welfare or family court case
- Arrange & ensure parent's participation in case

## 2017

- Prosecutorial discretion section deleted
- Facilitation of return section deleted - but parole possibility still exists
- Limits language on location of parent
- Adds language on parent/child visitation
- New section on Minor Children



### **5.1. Minor Child(ren) Encountered During Enforcement Actions.**

- 1) ICE personnel should not take custody of or transport a minor child(ren) they encounter during an enforcement action who is either a USC or LPR, or who is otherwise not removable from the United States.
- 2) Absent indications of child abuse or neglect, ICE personnel should accommodate, to the extent practicable, an alien parent or legal guardian's efforts to make alternative care arrangements for his or her minor child(ren). ICE personnel should document the alien parent or legal guardian's request for transfer of custody of a USC or LPR minor child(ren) to a verifiable third party.
- 3) If the alien parent or legal guardian cannot make an alternative care arrangement for the minor child(ren), or if there is an indication that the minor child(ren) has been subject to abuse or neglect by a parent or other adult who may be asked to take custody of the minor child(ren), ICE personnel should contact the local child welfare authority or law enforcement agency to take custody of the minor child(ren).
- 4) Once a detained alien has been determined to be a parent or legal guardian of a USC or LPR minor child(ren), ICE personnel should enter this information in ENFORCE Alien Removal Module (EARM), or its successor system.

# Foreign Consulates

- The Vienna Convention on Consular Relations requires child welfare agencies to inform the relevant foreign consulate when any foreign national child comes into state custody. Article 37, 21 U.S.T. 77; T.I.A.S. No. 6820
- Sample MOUs between agencies/courts and Foreign Consulates:  
<http://cimmcw.org/resources/state-specific-resources/>
- HHS ASPE Issue Brief, *Emerging Child Welfare Practice Regarding Immigrant Children in Foster Care: Collaborations with Foreign Consulates* (December 2013),  
[http://aspe.hhs.gov/hsp/14/MOUsWithConsulates/ib\\_MOUsWithConsulates.pdf](http://aspe.hhs.gov/hsp/14/MOUsWithConsulates/ib_MOUsWithConsulates.pdf)

# Role of Consulates in Your Cases

Consulates can assist attorneys and agencies with

- Locating parents or relatives in the U.S. or abroad
- Locating a detained parent
- Identifying service providers in the parent's country of origin
- Facilitating reunification for parents in other countries
- Working with U.S. immigration officials to secure a temporary parole to the U.S. of a parent for participation in dependency court proceedings or to meet case plan requirements
- Bridging language and other communication barriers with the family in U.S. to find parents or relatives in the other country
- Accessing documentation for child
- Assisting with process for dual citizenship of child

# Engaging Deported Parents

Consulates

Agencies in foreign country – e.g. DIF in Mexico

Service providers such as International Social Services

Maintaining child/parent contact through phone, Skype, letters

Can still ask ICE for temporary parole

# Arizona Committee to Support Transnational Families

- Partnership between Pima County (Tucson) & Santa Cruz County (Nogales) Juvenile Court judges, attorneys, child welfare agency administrators and staff, Florence Project, Mexican Consulate, DIF, et al.
- Mission: To improve communication for families impacted by immigration enforcement when one or more minors is in the care of the state, and to facilitate reunification of these families.
- Created toolkit on transnational cases for child welfare judges and stakeholders:  
[http://www.azcourts.gov/Portals/46/Resources/TOOLKIT\\_FINAL\\_WORD\\_NATIONAL\\_5-10-18.pdf](http://www.azcourts.gov/Portals/46/Resources/TOOLKIT_FINAL_WORD_NATIONAL_5-10-18.pdf)

## Other court-led initiatives

### Hillsborough County, Florida: Unaccompanied Immigrant Children Committee

- Mission: To ensure that all unaccompanied immigrant children in Hillsborough county have access to the services and supports needed to ensure they remain safe and well.
- <http://centerforchildwelfare.fmhi.usf.edu/Circuit13UICC.shtml>

# CA Reuniting Immigrant Families Act of 2012

- Requires reunification services to be provided to detained and deported parents
- Extends reunification periods
  - Added immigration-related issues to the list of compelling reasons for which the court can extend the period of family reunification services.
  - Court may extend time period for agency's diligent search for a parent who may have been detained or deported, or to find a potential relative placement.
- Confirms equal treatment of relatives, regardless of immigration status

## Case Example 3: Unaccompanied Child Seeking SIJS

**Marco**, who just turned 17, came from Honduras fleeing gang violence. **He had been living on his own for several years, mostly on the street. He has never known his father and his mother died three years ago.** He was apprehended at the border, transferred to a shelter operated by a grantee of the HHS Office of Refugee Resettlement, and placed in removal proceedings before the Immigration Court. At the ORR-funded shelter, Marco shared the name of an uncle who he had not seen in many years. The uncle agreed to be Marco's sponsor and Marco was released to the uncle. As is standard with ORR sponsor arrangements, **Marco's uncle did not have a formal legal order of custody or guardianship.** Although he helped Marco enroll in school, soon after Marco's arrival it **became clear the uncle did not have space for Marco or a desire to care for him.** Marco began couch surfing with different friends he met at school and sometimes sleeping outside or in an area youth shelter. One of the staff at the shelter learned about Marco's background and contacted CPS to report that he should be taken into care. The CPS hotline worker suggested that perhaps he could be "sent back" to the ORR shelter. **Because Marco was abandoned by his father and could not reunify with his mother due to her death, Marco could be eligible for Special Immigrant Juvenile Status (SIJS).** Because he is about to turn 18, a predicate order from the state court for his SIJS application should be pursued quickly.





# Promising Practices Working With UC: Texas

- Obtain Mexican birth records directly from consulate
- Genetic testing can be done in Mexico through the TX Office of Attorney General
- DFPS Border Liaisons work directly with DIF in the appropriate state in Mexico on home studies, background checks and setting up services for parents. (Common request is for court ordered services for parents in Mexico.)
- Offices on international bridge used when a parent can't get a permit for entry and needs to appear to sign a document or for other reasons
- When clients need to attend court hearings, appear for DNA testing, family group conferencing, etc., DFPS liaisons work with CPS caseworkers and the Mexican Consulate to request humanitarian parole from ICE for entry.
- In some jurisdictions, parents able to cross for hearings.
- Judges rely on DIF to assess parent's progress. At times, DIF has come to testify in CPS case.

# Promising Practices: New York ACS Office of Immigration Services

- In-house immigration expert who provides training and technical assistance to ACS staff.
- Early and regular screening for potential immigration needs.
- Screening includes determining if the child has a birth certificate, passport, certificate of naturalization or original unexpired green card.
- If immigration need identified, child referred to immigration attorney.
- New York has network of nonprofit legal service providers who meet regularly on SIJ. ACS is part of meetings.
- Attorneys reimbursed for representing children in SIJ process. Foster care agency pays expenses and \$1,000 in fees.

## Case Example 4: Mixed Status Family

After her husband was killed by a gang in Guatemala, Lizette traveled to the United States with her four-year-old son, Tomas. She and Tomas were stopped at the border, then released and issued Notices to Appear in Immigration Court. An Immigration Judge subsequently issued **in absentia removal orders** for each of them when they did not appear for proceedings.

Tomas is now 11 years old, and has a six-year-old sister, Ana, who was born in the United States and whose father left the family soon after Ana's birth. Lizette is detained when ICE raids her workplace and picks up any employee who cannot provide evidence of lawful immigration status. ICE asks if anyone needs to make plans for children in their care before being detained. Scared that Tomas could be detained as well, Lizette does not tell ICE about her children.

When Lizette fails to pick up the children from school, the school calls Lizette's emergency contact—a family friend named Marta. Marta, also from Guatemala and a Lawful Permanent Resident (LPR), has agreed to take care of the children if Lizette is ever detained or deported as a **“contingency plan.”** Marta begins caring for Ana and Tomas but quickly becomes overwhelmed because she has her own children and has started serving as a contingency caregiver for one other child as well. She tries to find Lizette in immigration detention but cannot track her down. Ultimately, Marta calls CPS and asks the agency to place Ana and Tomas in foster care while their mother is in immigration detention.



Questions?



# Presenters

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