



Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention

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 (DHS), 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 mini-

mize 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.
 - o Expand the forthcoming risk assessment tool to include parents, legal guardians and caregivers.
 - o Grant all apprehended individuals a phone call within a short time of apprehension and preference care decisions made by a parent, legal guardian or caregiver over placing a child with child welfare services (absent any evidence of abuse or neglect).
 - o Utilize social service agencies or independent NGOs to screen every person who is apprehended to determine whether they have humanitarian concerns.
- o Release clear and consistent guidance to the field to assist immigration officers in making determinations about release when children are likely to be affected by a parent's, legal guardian's or caregiver's detention.
- o Prohibit the transfer of a parent, legal guardian or caregiver from the area of apprehension to a detention facility until childcare arrangements have been made and parent and child know how to contact one another.
- ICE should establish procedures to ensure detained parents are able to meaningfully participate in all plans and proceedings impacting upon custody of their children.
 - o Ensure that the 2010 Performance Based National Detention Standards guarantee parents, legal guardians and caregivers access to all family court proceedings.
 - o 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.
 - o Provide all parents, legal guardians and caregivers with regular and flexible contact visits with children, regular free phone calls to children, child welfare services and consulates and a contact number for child welfare services.
- DHS, the Department of Justice (DOJ), 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.
 - o DOJ should include basic information on the child welfare system and rights pertaining to custody proceedings in all legal orientation programs.
 - o State family courts and the child welfare system should notify ICE of family court proceedings impacting upon immigration detainees and re-

quest that ICE facilitate a parent's, legal guardian's or caregiver's participation in court.

- o Ensure through training and dissemination of information that family court judges and child welfare workers are familiar with the immigration system and are aware of procedures to facilitate a parent's, legal guardian's or caregiver's appearance in court.
- ICE should facilitate the ability of parents, legal guardians and caregivers to reunify with their children at the time of deportation.
 - o Delay deportation pending travel arrangements for children and arrival of passports, birth certificates and other documents.
 - o Create procedures through which parents' travel information can be released for the purpose of facilitating family unity at the time of deportation.
- Reinstate judicial discretion to consider the best interest of children in decisions related to deportation of parents.

forcement 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 the full report at <http://bit.ly/eTcLaO>.

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 his or her child. For more information see www.womensrefugeecommission.org/programs/detention/parental-rights/1051-advocacy-for-the-help-act-hr-3531-congress-version and 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.

FOR THE FULL REPORT, SEE
<http://bit.ly/eTcLaO>

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 en-

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