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Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught Up in the Child Welfare System

One of the many consequences of an aggressive immigration enforcement system is the separation of children, often U.S. citizens, from their unauthorized parents. Take the case of [Felipe Montes](#), a father who has spent the past two years fighting to reunite with his three young children, who were placed in foster care in North Carolina following Montes' deportation to Mexico in late 2010. Such cases only scratch at the surface of a growing problem. Our immigration policies often fail to address the needs of millions of children whom they directly impact.

According to the Pew Hispanic Center, approximately 5.5 million children in the United States, including 4.5 million U.S.-born citizens, live in mixed-legal status families with at least one unauthorized parent.¹ These children are at risk of being separated from a parent at any time. Parents facing removal must frequently make the decision whether to take their children with them or leave their children in the U.S. in the care of another parent, relative, or friend. In many cases, a parent may determine that it is in their child's best interest to remain in the U.S. However, in some cases, a parent's ability to make such decisions is compromised when their child enters the child welfare system, which can prompt a series of events leading to the termination of parental rights. The lack of consistent protocols across the different public systems that encounter separated families further exacerbates the problem.

This paper outlines the unique challenges that federal and state immigration enforcement measures pose to child well-being and family unity, including the implications for children and families involved in the child welfare system.

How Many Families Are Separated By Immigration Enforcement?

The precise number of children and families separated by immigration enforcement is unknown. Prior to 2010, the Department of Homeland Security (DHS) did not track this information consistently. As of 2011, DHS was required by Congress to document only the number of *parents* of U.S.-citizen children *removed* each year. Therefore, neither the number of parents detained² nor the precise number of U.S.-citizen children impacted by a parent's removal or detention is known. What we do know is:

- A 2007 Urban Institute [study](#) on immigration worksite raids found that, on average, **for every two adults apprehended in a worksite raid, at least one child is impacted.**³

- The DHS Office of the Inspector General [estimated](#) that over **108,000 parents of U.S.-citizen children were removed from the U.S. between 1997 and 2007.**⁴
- Reflecting a dramatic increase in recent years, a [report](#) by DHS reveals that **46,486 parents of U.S.-citizen children were removed from the U.S. during the first six months of 2011**, accounting for over 20 percent of all individuals deported during that period.⁵ This is likely an underestimate since parents may be reluctant to reveal that they have children.

Why Have Removals Of Parents Of U.S.-Citizen Children Increased?

- **Partnerships with local police agencies:** The rise in parental removals is correlated with a shift in immigration enforcement policy in late 2007 from worksite operations to cooperation with the criminal justice system. The most prominent jail-based immigration enforcement program, called Secure Communities, is a DHS program that identifies immigrants who are booked into U.S. jails and who are suspected of violating immigration law. It has been implemented in a majority of county jails and is expected to operate nationwide in 2013.
 - According to a 2011 DHS [report](#), 83 percent of individuals arrested through Secure Communities are placed in immigration detention and **37 percent of those arrested report that they have a U.S. citizen-child.**⁶ ICE reports that nearly half of all removed individuals in 2011 were “criminal aliens,” but this includes many who committed non-violent offenses.⁷
 - A [study](#) by the Applied Research Center (ARC) reveals that **in localities where local police participate aggressively in immigration enforcement through 287(g) agreements, children in foster care are 29 percent more likely to have a detained or deported parent.**⁸
- **Prosecutorial discretion and mandatory detention laws:** Parents continue to be removed due to conflicting ICE policies regarding enforcement priorities and the limited use of prosecutorial discretion. In 2011, Immigration and Customs Enforcement (ICE) released [guidance](#) to further clarify their enforcement priorities and to define the factors to be considered by ICE personnel when exercising prosecutorial discretion in any given case.⁹ These factors include consideration of whether an individual or their spouse is pregnant or nursing and whether the individual has a U.S.-citizen child. However, too often parents are unable to benefit from prosecutorial discretion because they are subject to “mandatory detention” under immigration law. Mandatory detention laws apply to all individuals who attempt to enter the U.S. unlawfully, those who return to the U.S. following a previous removal, and those with certain criminal convictions.¹⁰

What Happens when a Parent Is Detained By Immigration Authorities Or Local Law Enforcement?

- **There are no guidelines to screen for parents apprehended outside of worksite operations.** ICE has plans to implement a risk classification assessment tool to help agencies identify individuals eligible for release or alternatives to detention, including

sole caregivers. However, there is currently no mechanism to screen for parents at the time of apprehension in non-worksite related actions. In 2007, ICE established humanitarian guidelines for the identification and potential release of pregnant or nursing mothers and primary caregivers during a worksite enforcement operation involving 150 or more individuals (later expanded to include operations of 25 or more).¹¹ These guidelines have proven effective in reducing family separation, but do not apply to the majority of arrests associated with the new criminal justice model of enforcement.¹² **ICE does not have a consistent policy that permits individuals to make a phone call at the time of arrest, limiting the ability of parents to make care arrangements for their children.** If a parent is booked into a local jail, they may be allowed a phone call to make short-term care arrangements for their children, only to discover later that an immigration hold has been issued (also known as a “detainer”). But they are not allowed to make a second phone call to make further arrangements for their children and alert caregivers about their possible transfer to an immigration detention center.¹³ As a result, family members or friends looking after a child may be left with the burden of determining a child’s long-term care. When a parent is denied the opportunity to make care arrangements for a child, the safety and well-being of the child are compromised and the likelihood of the child entering the child welfare system is significantly increased

What Are The Short And Long-Term Risks For Children Who Have Been Impacted By State And Federal Immigration Enforcement Policies?

Several studies have documented the negative impacts of immigration enforcement on children and families. These studies confirm that even a short-term separation from a parent, or the fear of separation, can have significant consequences for children, including the following:

- **Short and long-term disruption to the family unit.** When a parent is detained or deported, the entire family unit undergoes a traumatic shift. In the short and long-term, difficult decisions must be made regarding a child’s care. When a parent is deported, he or she may choose to bring their children with them, which studies have shown can present a very difficult transition for children who must suddenly adjust to a different culture and school system.¹⁴ In other cases, a parent may choose to have a child stay with another family member or friend, which still has a significant emotional and social impact on the child. Children may also end up entering the child welfare system, a trend that has grown in recent years.
- **Social and emotional stress.** A [study](#) by the Urban Institute documented that within the first six months following separation from a parent, about two-thirds of children demonstrated adverse behavior changes, such as frequent crying, increased fear and anxiety, and changes in sleeping and eating patterns.¹⁵ Following the initial six months of separation, behavioral changes were still notable among more than 40 percent of children.¹⁶ Additional studies have found that the fear of possibly losing a parent can negatively impact a child’s emotional well-being. For example, one [study](#) conducted by the University of Arizona following the passage of the state’s immigration law (S.B.1070) revealed that students demonstrated increased anger and stress-related ailments, including stomach aches, migraines, and panic attacks.¹⁷

- **Poor educational outcomes.** Increased stress and anxiety associated with immigration enforcement can have a detrimental impact on a child's school performance. In addition to disruption in learning as a result of absences, studies have shown that children who have been separated from a parent experience difficulty in concentrating and other negative behavioral changes in the classroom.¹⁸
- **Weakened economic security.** When one or both parents are detained for immigration reasons, a family's income often drops significantly, particularly in cases when the detained parent is the primary breadwinner. The Urban Institute [study](#) documented increased housing insecurity, including crowded living quarters, and food shortages as a result of the loss of a detained or deported parent's income.¹⁹ Another [study](#) released by the Center for American Progress (CAP) revealed that the high number of fathers being deported has led to many single-mother households, many of whom may not have access to a well-paid job, child care assistance, or public benefits due to the mother's immigration status.²⁰
- **Reduced mobility.** Fear of immigration enforcement actions can lead to changes in family routines, including reduced activity outside the home. After S.B. 1070 was passed in Arizona, the University of Arizona [study](#) found that children were afraid to leave their houses to go to the store or out to eat.²¹ The fear of enforcement may also motivate immigrant parents to keep their children home from school, as was evidenced when more than 2,285 Latino students were reported absent from school on the day following enactment of Alabama's immigration law, H.B. 56.²²
- **Mistrust of law enforcement.** Several studies reveal that children of immigrants often do not differentiate between local law enforcement and immigration enforcement officers, even in communities where local law enforcement is not engaged in enforcing immigration law.²³ As a result, children of immigrants view all law enforcement officials as a potential threat and avoid police officers, reducing the likelihood of crime reporting.²⁴
- **Conflating "immigrant" with "illegal."** Children of all ages and all immigration statuses have begun to equate "immigrant" with "illegal," according to the CAP [report](#). Children fear that their immigrant parents and family members will be taken away, regardless of their status, while young children view "immigration" as something negative and shameful.²⁵

How Many Children Are In The Child Welfare System Due To A Parent's Detention Or Deportation?

The ARC estimated that **in 2011, approximately 5,100 children with a detained or deported parent were in the public child welfare system.**²⁶ ARC further concluded that if deportations continued at those levels, **over the next five years an additional 15,000 children in the child welfare system could be at risk of permanent separation from their detained or deported parent.**²⁷

How Do Children Enter The Child Welfare System?

ARC has identified three paths through which a child may enter the child welfare system due to immigration enforcement:²⁸

- **Straight Path.** In this case, a child is turned over to the custody of Child Protective Services (CPS) as a direct result of a parent's arrest or detention by immigration authorities, either because no other caregiver was available or the arrested parent was not provided the opportunity to make child care arrangements.
- **Parallel Path.** In this case, a child may be brought to the attention of CPS, perhaps due to an allegation of abuse or neglect, and as a result the local law enforcement agency is notified, leading to the cross-reporting of an unauthorized parent or other caregiver to immigration authorities. A child who may have been quickly reunited with a parent following a child welfare investigation is now forced to remain in foster care due to a parent being consequently held by immigration authorities.
- **Interrupted Path.** In this case, a family has already been involved in the child welfare system when immigration authorities detain the parent. As a result, detention poses an additional barrier to the parent's ability to reunify with a child.

What Are The Challenges For Family Reunification When A Parent Is In Immigration Detention?

It is difficult for a parent in immigration detention to reunify with their child, especially when their child is in CPS custody. Local ICE and child welfare agencies rarely collaborate, and both systems lack effective and consistent policies to promote family reunification. Some of the unique challenges to reunification facing detained parents include:

- **Transfer of parents to detention centers outside of the home community.** Several studies have documented that it is difficult for child welfare workers, lawyers, judges, and family members to locate parents when they have been transferred without notice to a detention center, sometimes even out of state.²⁹ The various parties involved in the child welfare case often find it increasingly difficult to communicate with parents, and the incorrect assumption may be made that parents are uninterested in reunifying with their child. In 2010, ICE launched an [Online Detainee Locator System](#) to help establish whether an individual is in detention and where. However, few child welfare personnel are familiar with this new tool.
- **Inability to abide by child welfare case plans.** When a child welfare case is opened, a reunification plan is established that may include requirements for the parents such as regular visitation with their child, parenting classes, substance abuse treatment, or job attainment. According to a [report](#) by the Women's Refugee Commission, currently no ICE detention facility provides the type of programming required by child welfare agencies or family-friendly visitation space.³⁰
- **Strict family reunification timelines.** The Adoption and Safe Families Act (ASFA) of 1997 requires that child welfare agencies file for termination of parental rights (TPR) in cases when a child has been in care for 15 of the previous 22 months.³¹ The ultimate goal

of ASFA was meant to minimize the amount of time a child spends in foster care, and specific exceptions are permitted, including when there is a compelling reason that TPR is not determined to be in the child's best interest. However, a parent's detention or deportation is not necessarily considered a compelling reason, and therefore the ASFA timetable creates the risk of inappropriate termination of parental rights in cases when parents are in immigration detention.

- **Lack of access to family court proceedings.** Detained parents are also unlikely to be able to participate meaningfully in family court proceedings since ICE does not have an effective policy in place to ensure a parent's ability to attend these hearings, either via teleconference or in person. If a parent is not present at these important hearings, the court may make the determination that a parent is unwilling or unable to reunify with their children, often resulting in the decision to move towards the termination of parental rights.³²
- **Systemic bias in the child welfare system against unauthorized immigrant parents and family members.** The ARC [report](#) documents the prevalent bias against unauthorized immigrant parents and caregivers based on interviews with frontline child welfare staff and family court judges.³³ The child welfare system may conclude that it is not in the child's best interest to be returned to an unauthorized parent because of assumptions that the individual faces imminent removal. There are also concerns regarding an unauthorized parent's limited access to public benefits or services and the inability to demonstrate sufficient employment or to attain a driver's license. The same bias also applies to the frequent reluctance of child welfare agencies to place a child in the care of another unauthorized parent or relative.

What Are The Challenges For Family Reunification When A Parent Is Removed Or Facing Removal From The U.S.?

- Changes to immigration laws in 1996 revoked the discretion of immigration judges to consider the harm suffered by a U.S.-citizen child should his or her parent be removed. This makes it more difficult for a parent to be granted relief to stay in the United States with a U.S.-citizen child.
- Detained parents are often not informed of when they will be removed, and it is difficult to make arrangements for a child to travel with them without assistance in getting travel documents, passports, and important school and medical records.³⁴
- If a detained parent's child is currently in the child welfare system, the challenges are even greater since reunification at the time of removal would require significant coordination between the local ICE and child welfare agency.
- A family court judge or child welfare caseworker may determine that it is in the child's best interest to remain in the U.S. rather than move to another country to be reunited with a deported parent, particularly in cases when the child is a U.S. citizen. Once removed, it is nearly impossible for a parent to fulfill case plan requirements or participate in family court proceedings, resulting in the risk of permanent separation of parent and child.

What Are Possible Solutions To Minimize Family Separation Due To Immigration Enforcement?

In the face of continued immigration enforcement, preventing the unnecessary breaking apart of families requires a coordinated set of solutions across the different systems that interact with those families. DHS has introduced administrative reforms which have the potential to increase the chances for family reunification, including the Online Detainee Locator System, updated transfer policy, and pending risk classification system. But there is still more that can be done to protect a parent's due process rights and the ability to make decisions with regards to a child's care.³⁵ State child welfare agencies can also implement reforms to promote child welfare practices that prioritize placing a child with a parent or relative caregiver whenever possible and to ensure that child welfare personnel (including frontline staff, lawyers, and judges) are trained on the immigration enforcement system.

Congress must also act to reinstate judicial discretion and revise or eliminate mandatory detention laws as they relate to parents. State legislatures can also pass legislation, such as two laws that were recently passed in California in 2012, to guide child welfare practice as it relates to children with detained or removed parents. Organizations such as First Focus, the Women's Refugee Commission, and the Applied Research Center have offered extensive recommendations for reform in their recent reports.³⁶ This issue calls for federal and state coordination because many of the specific family separation challenges faced by children living in mixed-legal status families have been exacerbated over the years by the clash of policies across the immigration enforcement, criminal justice, and child welfare systems.

While some of the pressure on these systems would be reduced by federal legislation that legalizes many unauthorized parents, thereby reducing the number of parental deportations, this is not an issue that can be resolved solely at the federal level. States are beginning to take action to put into place protections that would be necessary even after passage of national immigration reform. California has led the way in this regard, with the October 2012 enactment of two bills that place safeguards in the state child welfare process:

- The Call for Kids Act (AB 2015) strengthens the existing provisions of an existing California penal code by requiring law enforcement officials to notify a parent of the right to make two phone calls at the time of arrest, regardless of immigration status or language, and to post this information in jails in multiple languages.
- The Reuniting Immigrant Families Act (SB 1064) authorizes child welfare courts to provide an extension in the family reunification period so that child welfare agencies can provide a diligent search for detained or deported parents or a relative. The law also ensures that immigration status alone is not a disqualifier for a child welfare placement and that foreign documents may be used for purposes of background checks for relative caregivers. In addition, it requires the California Department of Social Services (CDSS) to provide guidance to social workers regarding possible immigration relief options for children and parents, including Special Immigrant Juvenile Status. Finally, the law requires CDSS to provide guidance to local agencies on how to establish agreements with relevant foreign consulates for the purpose of facilitating family reunification in child custody cases.

These measures bear repeating in other states given that the negative impact of federal immigration policy on immigrant families demands changes in the practices of child welfare systems across the country.

Endnotes

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- ¹ Jeffrey Passel and D'Vera Cohn, [*Unauthorized Immigrant Population: National and State Trends, 2010*](#) (Washington, DC: Pew Hispanic Center, February 1, 2011).
 - ² John Simanski and Lesley M. Sapp, [*Immigration Enforcement Actions: 2011*](#) (Washington, DC: Office of Immigration Statistics, U.S. Department of Homeland Security, September 2012).
 - ³ Randy Capps, Rosa Maria Castañeda, Ajay Chaudry, and Robert Santos, [*Paying the Price: The Impact of Immigration Raids on America's Children*](#) (Washington, DC: National Council of La Raza and Urban Institute, October 2007).
 - ⁴ U.S. Department of Homeland Security, Office of Inspector General, [*Removals Involving Illegal Alien Parents of United States Citizen Children*](#), January 2009.
 - ⁵ U.S. Immigration and Customs Enforcement, [*Deportation of Parents of U.S.-Born Citizens*](#), March 26, 2012.
 - ⁶ Aarti Kolhi, Peter L. Markowitz, and Lisa Chavez, [*Secure Communities by the Numbers: An Analysis of Demographics and Due Process*](#) (Berkeley, CA: The Chief Justice Earl Warren Institute on Law and Social Policy, University of California, Berkeley Law School, October 2011).
 - ⁷ U.S. Immigration and Customs Enforcement, [*Secure Communities: Monthly Statistics through August 31, 2012*](#), October 2012.
 - ⁸ Seth Freed Wessler, S. (2011), [*Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*](#). (New York, NY: Applied Research Center, November 2011).
 - ⁹ U.S. Immigration and Customs Enforcement, [*Memorandum: Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*](#), June 17, 2011.
 - ¹⁰ U.S. Immigration and Customs Enforcement, [*Memorandum: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*](#), June 30, 2010.
 - ¹¹ U.S. Immigration and Customs Enforcement, [*Guidelines for Identifying Humanitarian Needs Among Administrative Arrestees When Conducting Worksite Enforcement Operations*](#), November 28, 2007.
 - ¹² Wendy Cervantes and Yali Lincroft, [*Caught Between Systems: The Intersection of Immigration and Child Welfare Policies*](#) (Washington, DC: First Focus, March 2010).
 - ¹³ Emily Butera, [*Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*](#) (New York, NY: Women's Refugee Commission, December 2010).
 - ¹⁴ Joanna Dreby, [*How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground*](#) (Washington, DC: Center for American Progress, August 2012).
 - ¹⁵ Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, Rosa Maria Castañeda, Robert Santos, and Molly M. Scott, [*Facing Our Future: Children in the Aftermath of Immigration Enforcement*](#) (Washington, DC: Urban Institute, February 2010).
 - ¹⁶ Ibid.
 - ¹⁷ Tomas Lopez, [*Left Back: The Impact of SB1070 on Arizona's Youth*](#) (Tucson, AZ: University of Arizona, September 2011).
 - ¹⁸ Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, Rosa Maria Castañeda, Robert Santos, and Molly M. Scott, [*Facing Our Future: Children in the Aftermath of Immigration Enforcement*](#) (Washington, DC: Urban Institute, February 2010).
 - ¹⁹ Ibid.
 - ²⁰ Joanna Dreby, [*How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground*](#) (Washington, DC: Center for American Progress, August 2012).
 - ²¹ Tomas Lopez, [*Left Back: The Impact of SB1070 on Arizona's Youth*](#) (Tucson, AZ: University of Arizona, September 2011).
 - ²² Tom Baxter, [*Alabama's Immigration Disaster: The Harshes Law in the Land Harms the State's Economy and Society*](#) (Washington: Center for American Progress, February 2012).
 - ²³ Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, Rosa Maria Castañeda, Robert Santos, and Molly M. Scott, [*Facing Our Future: Children in the Aftermath of Immigration Enforcement*](#) (Washington, DC: Urban Institute, February 2010); Joanna Dreby, [*How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground*](#) (Washington, DC: Center for American Progress, August 2012).

²⁴ Ibid.

²⁵ Joanna Dreby, [*How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground*](#) (Washington, DC: Center for American Progress, August 2012).

²⁶ Seth Freed Wessler, [*Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*](#) (New York, NY: Applied Research Center, November 2011).

²⁷ Ibid.

²⁸ Ibid.

²⁹ Nina Rabin, [*Disappearing Parents: A Report on Immigration Enforcement and the Child Welfare System*](#) (Tucson, AZ: University of Arizona, May 2011).

³⁰ Emily Butera, [*Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*](#) (New York, NY: Women's Refugee Commission, December 2010).

³¹ Wendy Cervantes and Yali Lincroft, [*Caught Between Systems: The Intersection of Immigration and Child Welfare Policies*](#) (Washington, DC: First Focus, March 2010).

³² Seth Freed Wessler, [*Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*](#) (New York, NY: Applied Research Center, November 2011).

³³ Ibid.

³⁴ Emily Butera, [*Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*](#) (New York, NY: Women's Refugee Commission, December 2010).

³⁵ Emily Butera and Wendy Cervantes, "Family Unity in the Face of Immigration Enforcement: Past, Present, and Future" (Washington, DC: First Focus and The Sentencing Project, forthcoming).

³⁶ Emily Butera, [*Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*](#) (New York, NY: Women's Refugee Commission, December 2010); Wendy Cervantes and Yali Lincroft, [*Caught Between Systems: The Intersection of Immigration and Child Welfare Policies*](#) (Washington, DC: First Focus, March 2010); Seth Freed Wessler, [*Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*](#) (New York, NY: Applied Research Center, November 2011).