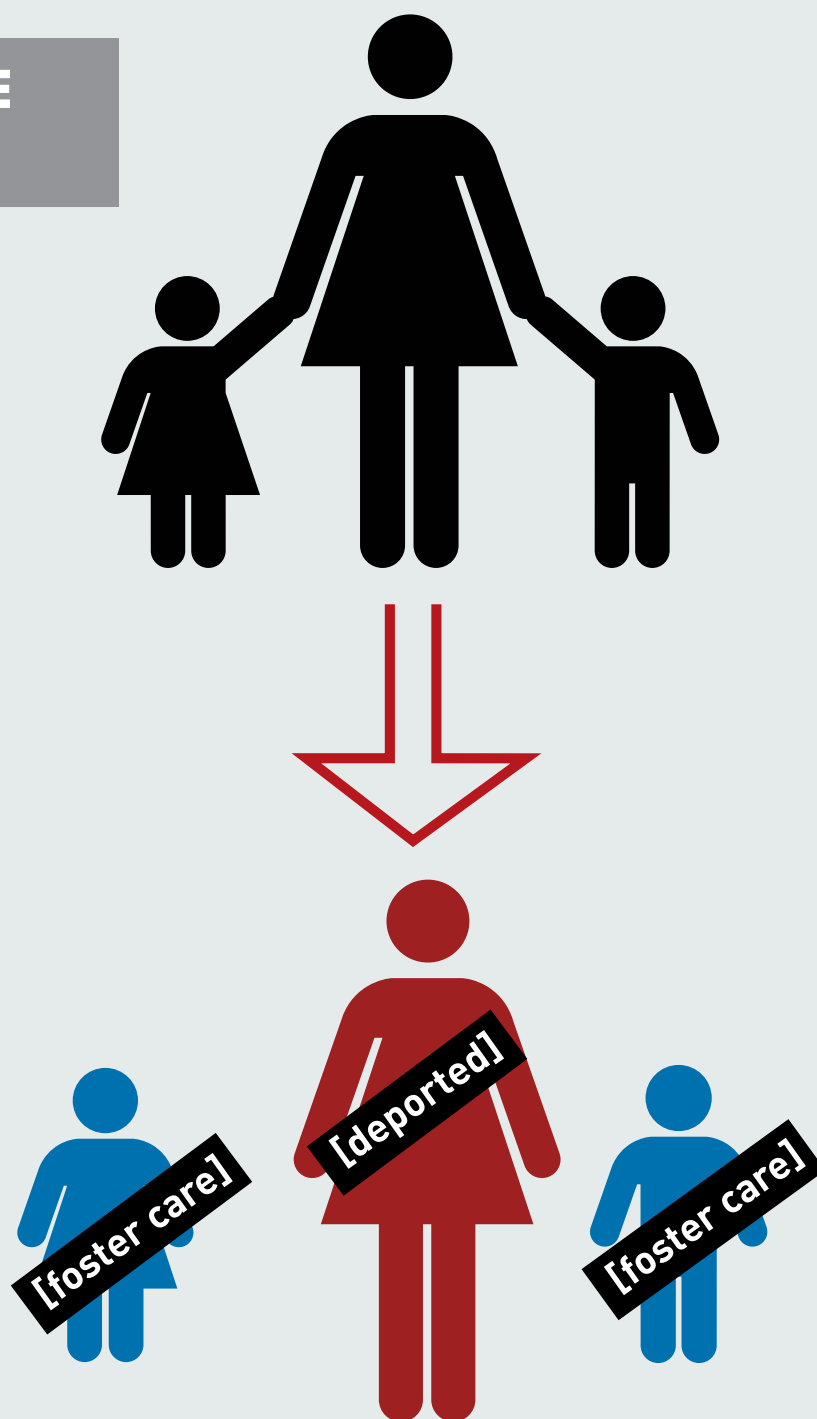


SHATTERED FAMILIES

The Perilous Intersection of Immigration Enforcement and the Child Welfare System

EXECUTIVE SUMMARY



ACKNOWLEDGEMENTS

About ARC

The Applied Research Center (ARC) is a thirty year old racial justice think tank using media, research, and activism to promote solutions. ARC's mission is to popularize racial justice and prepare people to achieve it. For more information on ARC's work, please visit www.arc.org.

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EXECUTIVE SUMMARY

SHATTERED FAMILIES: The Perilous Intersection of Immigration Enforcement and the Child Welfare System

Josefina's baby was just 9-months old and Clara's¹ children were 1 and 6 when they were placed in foster homes with strangers. Clara and Josefina, sisters in their early 30s who lived together in a small New Mexico town, had done nothing to harm their children or to elicit the attention of the child welfare department.

In the late summer of 2010, a team of federal immigration agents arrived at the front door of Clara and Josefina's trailer home in New Mexico. Immigration and Customs Enforcement (ICE) had received a false tip that the sisters, who were undocumented immigrants, had drugs in their home. Though they found nothing incriminating in the trailer and the sisters had no criminal record, ICE called Child Protective Services (CPS) to take custody of the children and ICE detained the sisters because of their immigration status.

For the four months that ICE detained them, Josefina and Clara had no idea where their children were. In December, the sisters were deported, and their children remained in foster care. Josefina was very quiet as she talked by phone from Mexico a year after she was deported: "I don't know where my child is; I have no contact with my baby. I didn't do anything wrong to have my children taken away from me."



“SHATTERED FAMILIES,” A REPORT BY THE APPLIED RESEARCH CENTER (ARC), is the first national investigation on threats to families when immigration enforcement and the child welfare system intersect. It explores the extent to which children in foster care are prevented from uniting with their detained or deported parents and the failures of the child welfare system to adequately work to reunify these families. ARC's yearlong research project found that Clara and Josefina's children are among thousands of children currently in foster care who are separated from their family because of immigration enforcement.

Immigration policies and laws are based on the assumption that families will, and should, be united, whether or not parents are deported.² Similarly, child welfare policy aims to reunify families whenever possible. In practice, however, when mothers and fathers are detained and deported and their children are relegated to foster care, family separation can last for extended periods. Too often, these children lose the opportunity to ever see their parents again when a juvenile dependency court terminates parental rights.

In fiscal year 2011, the United States deported a record-breaking 397,000 people and detained nearly that many. According to federal data released to ARC through a Freedom of Information Act request, a growing number and proportion of deportees are parents. **In the first six months of 2011, the federal government removed more than 46,000 mothers and fathers of U.S.-citizen children.** These deportations shatter families and endanger the children left behind.

Systematic research on this topic is challenging, because child welfare departments and the federal government fail to document cases of families separated in this way. This “Shattered Families” report is the first to provide evidence on the national scope and scale of the problem. As more noncitizens are detained, the number of children in foster care with parents removed by ICE is expected to grow. Without explicit policies and guidelines to protect families, children will continue to lose their families at alarming rates.

KEY RESEARCH FINDINGS

- **ARC conservatively estimates that there are at least 5,100 children currently living in foster care whose parents have been either detained or deported** (this projection is based on data collected from six key states and an analysis of trends in 14 additional states with similarly high numbers of foster care and foreign-born populations). This is approximately 1.25 percent of the total children in foster care. If the same rate holds true for new cases, **in the next five years, at least 15,000 more children will face these threats to reunification with their detained and deported mothers and fathers.** These children face formidable barriers to reunification with their families.
- In areas where local police aggressively participate in immigration enforcement, children of noncitizens are more likely to be separated from their parents and face barriers to reunification. For example, **in counties where local police have signed 287(g) agreements with ICE, children in foster care were, on average, about 29 percent more likely to have a detained or deported parent than in other counties.** The impact of aggressive immigration enforcement remains statistically significant when our research controls for the size of a county’s foreign-born population and a county’s proximity to the border.
- **Immigrant victims of domestic violence and other forms of gender-based violence are at particular risk of losing their children. Approximately one in nine of the stories recounted to ARC in interviews and focus groups involved domestic violence.** As a result of ICE’s increased use of local police and jails to enforce immigration laws, when victims of violence are arrested, ICE too often detains them and their children enter foster care. Many immigrant victims face an impossible choice: remain with an abuser or risk detention and the loss of their children.
- **ARC has identified at least 22 states where these cases have emerged in the last two years.** This is a growing national problem, not one confined to border jurisdictions or states. Across the 400 counties included in our projections, more than one in four (28.8 percent) of the foster care children with detained or deported parents are from non-border states.

Whether children enter foster care as a direct result of their parents’ detention or deportation, or they were already in the child welfare system, immigration enforcement systems erect often-insurmountable barriers to family unity.

The ANATOMY of a CASE

How Families are Separated at the Intersections of the Child Welfare System and Parental Detention/Deportation

IMMIGRATION ENFORCEMENT



Immigration and Customs Enforcement: ICE is the federal agency tasked with detaining and removing noncitizens from the interior of the U.S. ICE also conducts raids and investigates immigration violations.

Local Immigration Enforcement: The increasing use of local police to enforce federal immigration law turns any interaction with the police into a possible route to detention and deportation. "Secure Communities" checks immigration status of anyone booked into local jail and will soon be operational in every county in the country. The federal government forces states to participate in the program despite resistance from numerous governors and local law enforcement officials.

ICE "Hold": When ICE identifies a noncitizen in a local jail, through Secure Communities or another program, the agency will issue an ICE "hold" to require local authorities to keep the person in custody until ICE can move them to a detention center.

Detention: Detainees are held for an indeterminate length of time while their case is being processed and are transferred an average of 370 miles from their homes. In 2010, ICE detained 363,000 people in a network of 350 detention centers

Deportation: The federal government deported close to 400,000 people in 2010.

THE FAMILY

BARRIER: Aggressive Immigration Enforcement

Police arrive at the home of an undocumented immigrant mom of two U.S. citizens after neighbor calls 911 to report what sounds like domestic violence. Police arrest both the mother and her boyfriend. **Police call Child Protective Services (CPS).**

CPS investigator places children in temporary foster care with strangers instead of with loving undocumented aunt. CPS says undocumented relatives cannot take custody because they "could be deported at any time". Mother is charged with assault.

At the time of booking, mother's fingerprints are automatically sent to Immigration and Customs Enforcement (ICE) and checked against the **Secure Communities** database. **ICE flags her for deportation and issues "hold."**

BARRIER: Detention Obstructs Communication Between Parent and CPS

Within three days, mother is sent to immigration detention center 300 miles away. Her court-appointed attorney cannot find her, and she misses dependency court hearing. Court keeps children in foster care.

Three months later, mother's attorney locates her and informs her of next hearing, but **ICE refuses to transport her.** After much effort, mother arranges to call the court. CPS presents "reunification plan" that includes visiting her children, parenting classes and securing housing. **ICE detention prevents mother from complying with any part of child welfare case plan.**

Nine months pass. Children remain in foster care; the youngest begins to forget Spanish. **CPS writes "permanency plan"** with two possible outcomes: 1) If mother is released, CPS will attempt to reunify the family; 2) Children will be put up for adoption with foster care providers after mother's parental rights are terminated.

BARRIER: Lack of CPS Policy on Reunification with Deported Parents

After 11 months in detention, **mother is deported to Mexico.** **CPS does not know where to find her and does not contact Mexican consulate for help.**

The mother arrives at relative's house in Mexico. She contacts the child welfare caseworker to say she wants her children in Mexico. **CPS replies that it will not consider reunification in Mexico unless mother arranges a home study, completes parenting classes and finds a job.**

Within 8 months, mother completes the plan. Still, **CPS petitions to terminate parental rights** as federal deadline approaches.

CHILD WELFARE AND JUVENILE DEPENDENCY



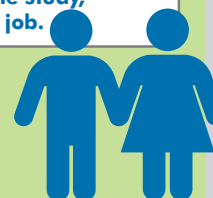
When an allegation of maltreatment is reported to **Child Protective Services (CPS)**, a caseworker investigates. If deemed to be unsafe, child may be placed in foster care.

After children are removed from home, CPS petitions **juvenile dependency court** to stop child from being returned home.

Parent is issued a **case plan**, an outline of tasks to complete to regain custody of children. Case plans can include finding new housing or enrolling in parenting classes, drug treatment, or domestic violence prevention courses.

Once child has been in foster care for one year, and in some cases less than a year, child welfare department drafts a "**permanency plan.**" Permanency plans include a goal for the placement of the child, which might be reunification with parents, adoption or guardianship with kinship caregivers or others. If parent fails to complete case plan, or child is out of parent's custody for 15 months of any 22-month period, **federal law requires CPS to petition the court to terminate parental rights.**

Permanency Outcome: If parent completes case plan and is deemed fit to care for child, CPS will reunify the family. If not possible, CPS must first seek placement with a relative. However, if CPS decides not to place child with relatives, CPS petitions the court to **terminate parental rights.**



KEY BARRIERS TO FAMILY UNITY

- **Federal immigration enforcement uses local police and jails to detain noncitizens.** As a result of aggressive local immigration enforcement, especially the expansion of Secure Communities, any interaction with police can spur ICE involvement and lead to detention and deportation. An incident with police that would not separate children from a citizen parent can result in a long-term or permanent separation if the parent is not a U.S. citizen.
- **ICE does not protect families at the time of apprehension.** ICE and arresting police officers too often refuse to allow parents to make arrangements for their children. Existing ICE guidelines are largely outdated and insufficient for the current immigration enforcement context in which ICE has shifted from high-profile raids to more-hidden and devolved forms of enforcement that operate through local police and jails and smaller-scale ICE enforcement actions.
- **ICE detention obstructs participation in CPS plans for family unity.** ICE consistently detains parents when they could be released on their own recognizance or expand the use of community-based supervisory programs. Once detained, ICE denies parents access to programs required to complete CPS case plans. Due to the isolation of detention centers and ICE's refusal to transport detainees to hearings, parents can neither communicate with/visit their children nor participate in juvenile court proceedings. Child welfare caseworkers and attorneys struggle to locate and maintain contact with detained parents.
- **Child welfare departments lack proactive policies to reunify children with deported parents.** ARC's research found that children are reunited with their deported parents only if foreign consulates are involved with the case. However, few child welfare departments systematically contact a foreign consulate when they take custody of the U.S. citizen children of a detained or deported noncitizen.
- **Systemic bias against reunifying children with parents in other countries is pervasive in child welfare practice.** CPS administrators, caseworkers, judges, and attorneys (including the children's own lawyers) often believe that children are better off in the United States, even if those children are in foster care. This belief often supersedes the child welfare system's mandate to move toward family reunification and places borders on family and parental rights.
- **Structural barriers and systemic bias against undocumented parents and relatives threaten the reunification of families.** Despite clear child welfare policy that prioritizes placing children with their own families, many child welfare departments will not place children with their undocumented non-custodial parents, aunts, uncles, grandparents or other relatives. As a result, children of detained and deported parents are likely to remain in foster care with strangers when they could be with their own family.

POLICY RECOMMENDATIONS

As the federal government continues to expand its immigration enforcement infrastructure, detention and deportation will continue to pose barriers to family unity for families involved in the child welfare system. **Federal, state and local governments must create explicit policies to protect families from separation.**

These policies should stop the clock on the child welfare process and the immigration enforcement process to ensure that families can stay together and allow parents to make the best decisions for the care and custody of their children.

Congress

- Institute protections for detained parents including: alternatives to detention for parents; provisions to enable detained parents to comply with child welfare case plans and participate meaningfully in dependency proceedings; and policies to facilitate family unity at the time of deportation if a parent wishes to leave the country with their child. (i.e., the Humane Enforcement and Legal Protections for Separated Children Act).
- Reinstate judicial discretion to consider the best interests of children and families in decisions about deportation (i.e., the Child Citizen Protection Act).

Executive Branch, Department of Homeland Security (DHS)

- Suspend the Secure Communities program and other programs including 287(g) and the Criminal Alien Program that use local criminal justice systems as arms of the immigration enforcement apparatus.
- Amend the June 2011 ICE discretion memo to clarify that all parents of minor children in the U.S. should be granted discretionary relief with an emphasis on parents with children in foster care.
- Release parents on their own recognizance and expand the use of community-based supervisory programs.
- The DHS Office of Inspector General should initiate a study on the prevalence of practices that result in children entering or remaining in foster care as a result of detention and deportation.

State Legislatures

- Create exceptions to the termination of parental rights timelines for incarcerated, detained and deported parents.
- Institute “time-of-arrest” protocols for local law enforcement agencies to enable parents to decide who should take custody of their children.

State Child Welfare Departments and Juvenile Dependency Courts

- State child welfare departments should initiate research to explore the extent to which children in foster care have detained or deported parents.
- All caseworkers, supervisors, attorneys and judges who practice in dependency court should be mandated to participate in training on immigration law and immigration enforcement policies.
- All state and/or county child welfare departments should sign agreements with foreign consulates to ensure that as soon as noncitizen parents of foster children are detained, consular involvement is commenced.
- Adopt clear policies ensuring equal treatment of undocumented parents and families in the child welfare system, including clear guidelines on the rights of undocumented parents and extended families to be treated equitably as viable caregivers for children.
- Create state- or county-level staff positions dedicated to facilitating reunification for families impacted by immigration enforcement.

METHODOLOGY

To arrive at our national estimates, ARC gathered county-level survey data from child welfare caseworkers, attorneys and judges in 19 jurisdictions in six key states: Arizona, California, Florida, North Carolina, New York and Texas. These states account for more than half of the noncitizen population in the U.S. and more than one-third of the children in foster care. Jurisdictions were selected to provide a mix of border and non-border regions, varied levels of aggression in local immigration detention practices, and high and low foreign-born populations.

The foster care cases with deported or detained parents ranged from under 1 percent to 8 percent of the total foster care cases for each of the counties surveyed. Using these percentages, we then utilized regression analysis to calculate the typical independent impact of three variables: the border county status, the presence of 287(g) immigration enforcement agreements, and the percentage of foreign-born individuals in each state. We then projected the prevalence of detained/deported parent cases in the remaining major jurisdictions in these six states and in 14 other similarly situated states (Colorado, Georgia, Illinois, Indiana, Maryland, Michigan, Missouri, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Virginia and Washington) using the resulting coefficients from the regression analysis. These 20 states account for almost 85 percent of the country's undocumented population and more than 70 percent of foster care rolls.

The estimates provided in this report are conservative as far as the actual number of children affected nationally. Therefore, many more children in foster care may be adversely affected by the detention and deportation of noncitizen parents.⁴

ENDNOTES

1. The names of all parents in this report have been changed to protect the identity of families with ongoing child welfare cases
2. The Bureau of Immigration Appeals has held that “When an alien-parent’s child is a United States citizen and the child is below the age of discretion, and if the alien-parent is deported, it is the parent’s decision whether to take the minor child along or to leave the child in this country.” *B & J Minors*, 279 Mich. App. 12, 20 n.5 (2008) (citing *Liu v. United States Department of Justice*, 13 F.3d 1175, 1177 (CA 8 1994)). The U.S. Supreme Court affirmed that the Immigration and Naturalization Act “establishes that congressional concern was directed at ‘the problem of keeping families of United States citizens and immigrants united.’” *Fiallo v. Bell*, 430 U.S. 787, 795 (1977).
3. Sources included the following: Nacha Cattan, “Courtroom Skype Helps Reunite Mexican Family.” *The Christian Science Monitor*, July 22, 2011, www.csmonitor.com/World/Americas/Latin-America-Monitor/2011/0722/Courtroom-Skype-helps-reunite-Mexican-family (accessed September 1, 2011); Julianne Hing and Seth Wessler, “When An Immigrant Mom Gets Arrested,” *Colorlines.com*, July 1, 2008, 216.92.102.223/archives/2008/07/when_an_immigrant_mom_gets_arrested.html (accessed September 1, 2011); Nina Rabin, “Disappearing Parents: A Report on Immigration Enforcement and the Child Welfare System,” University of Arizona, May 2011; Emily Butera, “Torn Apart By Immigration Enforcement: Parental Rights and Immigration Detention,” Women’s Refugee Commission, December 2010.
4. We consider our estimates conservative for a host of reasons, including: a) The fact that while states with medium to small numbers of foreign-born residents and foster care rolls were left out of this analysis, there is no reason to assume that no children within those jurisdictions are impacted by this problem; b) We consistently utilized our respondents’ more conservative estimates when they reported a range of affected cases within their current caseloads to calculate a county average (e.g., when a caseworker reported that “three to five percent of my current cases involve a detained/deported parent,” we invariably utilized the lower bound for our calculations); c) to buffer against projecting an over-count, we placed a dampening weight on counties where the federal government had not yet implemented the Secure Communities program and a buoying weight on counties with 287(g) agreements; d) The federal government does not make sufficient data available on immigration enforcement. For example, Immigration and Customs Enforcement releases little data about its local jail-based Criminal Alien Program. As a result, we were not always able to account for variables that might drive up the local rate of deported/detained parent cases.