



The Intersection of Immigration Law, Its Enforcement, and Social Work Practice

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About First Focus/SPARC

A bipartisan advocacy organization dedicated to making children and families a priority in federal policy and budget decisions located in Washington DC.

Policy areas include children's health, child welfare, early childhood, immigrant children, education, tax and budget policy, family economics.

In 2012, First Focus to establish the State Policy
eform Center (SPARC)



About MCWNN housed at UIC

Formed in 2007 by leading organizations focused on the intersection of immigration and child welfare.

Three main areas of focus

- (1) policy
- (2) research
- (3) practice

Membership is FREE, provides peer-to-peer support, with eNews on the latest information.

www.mcwnn.uic.edu

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Workshop Overview

Understand the structure of DHS, current immigration practices, primary immigration categories, and how individuals acquire lawful status.

Understand the impact of immigration deportation fears on immigrant communities and social work practice.

Identify ethical and practice standards, additional resources related to immigration and child welfare.

Video - Deported Moms Struggle to Reunite with Kids

<http://newamericamedia.org/2012/10/in-tijuana-deported-moms-struggle-to-reunite-with-kids.php>

Child Protective Services / Child Welfare System Mandates

- Titles IV-B and IV-E, Social Security Act (42 U.S. Code Sections 620 et seq. and 670 et seq.)– helps fund state home-based and foster care services. Although a child’s family may not be “IV-E eligible”, all states provide foster care that is **fully state-funded** & some foster care may be federal Title XX (non means-tested) funded
- CAPTA: Child Abuse Prevention and Treatment Act (42 U.S. Code Section 5101 et seq.)– state CPS mandates protective services to all children

Federal Child Abuse Prevention and Treatment Act (CAPTA) -- 2003 Sense of Congress Amendment

“It is the sense of Congress that the Secretary should encourage all States and public and private agencies or organizations that receive assistance under this title to ensure that children and families with limited English proficiency who participate in programs under this title **are provided materials and services under such programs in an appropriate language other than English.**”

Federal Multi-Ethnic Placement Act of 1994

MEPA (P.L. 103-382, 42 U.S. Code Section 622): A state or other entity covered by MEPA-IEP may not delay or deny the placement of a child for adoption **or into foster care** on the basis of the race, color, or **national origin** of the adoptive **or foster parent, or the child involved**. And foster parents must be recruited that are reflective of a state's ethnic diversity.

Children of Immigrants' Involvement in the Child Welfare System

- State and national data are not collected on the involvement of children of immigrants in the child welfare system.
- However, analyses of the National Survey of Child and Adolescent Well-being (NSCAW) indicate that children living with a foreign-born parent comprise 8.6% of all children who come to the attention of the child welfare system.
- More than 4 out of 5 (82.5%) are U.S.-born citizens
- More than two-thirds (67.2%) are Hispanic
 - Non-Hispanic White (14.8%)
 - Non-Hispanic Black (10.0%)
 - Non-Hispanic Asian (7.5%)
- The extent to which this involvement is the result of immigration enforcement is unknown.

Immigration Enforcement in the US

- FY 2011 had the highest number of deportations in U.S. history with strict border enforcement, workplace enforcement and partnership with local law enforcement.
- Expanded grounds for deportation include broader range of offenses has lead to increased deportation for both legal permanent residents and immigrants.
- Aggressive immigration enforcement has lead to “fear factor” among immigrant community engagement with ANY government systems including law enforcement and social services.

Immigration Enforcement: Consequences on Family & Children

- Family separation
- Emotional trauma
- Economic insecurity
- Impact on academic performance
- Sudden “single-motherhood”
- Limited mobility
- Confusion about the terms “illegal” and “immigrant”
- Mistrust of law enforcement

... And What About the Children?

- Child stays with another parent, family member, or friend in the U.S.
- Child returns to the country of origin with parent
- Child enters the U.S. child welfare system

Challenges for Detained/Deported Children with Children in Foster Care

- Lack of coordination between local ICE and child welfare agencies, including lack of universal policies across the two systems
- Inability for parents to visit with their child, meet child welfare case plan requirements, or participate in family court proceedings
- Bias among child welfare staff & family court judges against detained or deported parents and undocumented caregivers
- Strict child welfare timelines that can result in the inappropriate termination of parental rights
- Difficulty in coordinating reunification at the time of a parent's release, removal, or after removal

Sample of Important State Court Decisions

In re: Doe (Supreme Court of Idaho, 2012) – reversed
TPR case to place child with father in Mexico

In re: MR (Court of Appeal, Washington State, 2012) –
erred in removing MR from grandparents' home
based solely on their immigration status

In re: Adoption of CMBR (Missouri, 2012) – appeal TPR
case re: deported Guatemalan mother and due
process issues

Federal/State Legislation Sponsored by First Focus Campaign for Children

- HELP for Separated Children's Act (Franken S 1399/
Woolsey, HR 2607)
- Help Separated Families Act (Roybal-Allard, HR 6128)
- California "Call for Kids Act" (Mitchell AB 2015):
signed into law
- California "Reuniting Immigrant Families Act" (de
León SB 1064): signed into law Oct 1, 2012

Anti-Immigrant Hostilities at Work, School, and Home

- e-verification
- educational access to K-12/higher education
- birthright citizenship battle in the 111th Congress
- Arizona copycat legislation in Georgia, Alabama, Mississippi, and Missouri
- deny child tax credit and food stamp benefits for US born children of undocumented immigrants

Examples of Anti-Immigrant Climate

- In *Plyer v. DOE*, Supreme Court says school districts cannot exclude children based on immigration status
- Enrollment problems for states like Georgia and Arizona
- Zero tolerance at school

About DHS

Prior to 9/11/01, immigration services was handled by the Immigration and Naturalization Services (INS). After 9/11, INS was divided into three branches under the direction of the Department of Homeland Security (DHS).

- Citizenship and Immigration Services (CIS)
- Immigration and Customs Enforcement (ICE)
- Customs and Border Protection (CBP)

Major Immigration Categories

1. U.S. Citizen (born here, derived or acquired citizenship, or applied & granted citizenship) – ONLY category which cannot be deported
2. Legal Permanent Resident (i.e. “green card” holders, eligible to apply for citizenship in 3-5 years)
3. Temporary visa (travel or work visa)
4. Undocumented immigrant (border crosser or lapsed temporary visa)

Most immigration households are “mixed status.”

Legal Permanent Status

- Most common is a family based petition (limited # visas available each year, some countries may take 10-15 years)
- Employment skills, employer-sponsored, and other special categories
- Special categories of immigration relief include asylum, Special Immigrant Juvenile Status (SIJS), Temporary Protected Status (TPS), U-visa, T-visa, VAWA, and Deferred Action for childhood arrivals

What does it mean to be undocumented?

- Entered on a visa that later expired or entered without inspection
- Cannot work lawfully (in many cases), cannot receive federal financial aid
- Can be deported if found by the DHS even with no criminal history

Why is Immigration Law so Complicated?

- Constantly changing
- Multiple layers of bureaucracy
- Much discretion and exceptions from immigration officials
- Many barriers for consideration in each case
- Different immigration laws apply based on when and how the client arrived in the U.S., which country they left, if they have a criminal conviction
- Can take a long time to fight a case

Relief Options

- **Asylum** is for noncitizens who fled their home country because they had a well-founded fear of persecution based on their race, religion, nationality, political opinion or membership in a particular social group.
- **Special Immigrant Juvenile Status (SIJS)** is a pathway to legal permanent status for undocumented minors who are under the jurisdiction of a juvenile court and cannot be reunified with a parent due to abuse, abandonment or neglect.

Relief Options

- **Temporary Protected Status (TPS)** is for noncitizens from certain countries who have experienced natural disasters, civil wars or other destabilizing events.
- **U-Visas** are for those who have been victims of serious crimes and are able to obtain the signature of a law enforcement or child welfare agency certifying that they cooperated in the investigation of the crime.
- **T-Visas** are available to victims of severe forms of trafficking
- **VAWA** are for victims of domestic violence, where the abuser is a legal permanent resident or US citizen.

About Deferred Action for Childhood Arrivals

- On June 15, 2012, the Obama Administration announced that it would not deport certain undocumented persons who entered the U.S. as children.
- While deferred action does not provide a pathway to getting lawful permanent resident status (a greencard) or citizenship, it will allow young people to remain in the U.S. and apply for a work authorization document from the government that entitles them to legally work in the U.S.

From Jail/Prison to Detention

- After finishing a jail or prison sentence, ICE can place a 48-hr “immigration detainer/hold”
- Each case is different and some individuals are detained by ICE for a few days while others are for weeks, months, or even years
- Some may be deported immediately since they may already have an order of deportation

No Right to Appointed Counsel

- U.S. Supreme Court held immigration proceedings are civil, not criminal, and therefore no constitutional right to appointed counsel
- Detainees must use their own financial resources for an attorney unless they can find pro bono attorney. Thus, most detainees are unrepresented by counsel in immigration proceedings (“pro se”).



CAUTION - “Notarios”



Someone who is not a lawyer but assists with immigration papers must:

- Provide written contract with fee of what they will and will not do
- 72 hour cancellation provision for any reason
- Not tell a client that s/he is a lawyer
- Never file a document without going over it with client or refuse to give client documents

After ICE Transfer ...

Three things may happen:

1. Consent to Deportation (“voluntary departure”)
2. Hearing before an immigration judge
3. Automatic deportation (i.e. for those previously deported, if they are undocumented and convicted of an aggravated felony, if they are caught 100 miles from a border)

Release from Detention

Three main ways to be released from detention:

- (1) Bond
- (2) Released on individual recognizance
- (3) Parole

Humanitarian Guidelines (2007 ICE memo)

- Internal guidelines for expedited release of pregnant women, nursing mothers, and sole caretakers of minor children
- “Prosecutorial discretion” for individuals with longstanding ties to the community, US citizen family members or other characteristics that merit favorable exercise of discretion
- Important that detained parents tell their deportation officers IMMEDIATELY if they fit these criteria

Using SKYPE for communication



Council of Social Work Education (Capital Hilton, Washington DC, Nov 11, 2012)

Role of Foreign Consulate

- All arrestees have the right to contact their consulate and to an in-person, in-custody interview (Vienna convention)
- Check that arrestees have not been subject to abuses or other rights violations
- Assist with travel documents, notify families about the deportation process
- Assist with process of dual citizenship for children
- Assist as liaison with foreign child welfare agency
- May not be best to contact when families have faced or fear persecution in home country (i.e. asylee or asylum applicants)

Coming Soon!

Anthology of Articles on the Intersection of Criminal Justice, Immigration, and Child Welfare, published by First Focus/Sentencing Project (Dec 2012), <http://firstfocus.org>

Online Curriculum for Social Workers, written by Yali Lincroft and Kathleen Creamer for the New York Initiative for Children of Incarcerated Parents/Osbourne Association (Dec 2012), <http://www.osborneny.org/>

Research Articles on Children of Immigrants and Child Welfare

- Children of immigrants:
 - Dettlaff, A. J., & Earner, I. (2012). Children of immigrants in the child welfare system: Characteristics, risk, and maltreatment. *Families in Society: The Journal of Contemporary Social Services*, 93, 295-303.
- Latino Children of Immigrants:
 - Dettlaff, A. J., Earner, I., & Phillips, S. D. (2009). Latino children of immigrants in the child welfare system: Prevalence, characteristics, and risk. *Children and Youth Services Review*, 31, 775-783.
- Recommendations for Child Welfare & Legal Systems:
 - Dettlaff, A. J. (2012). Immigrant children and families and the public child welfare system: Considerations for legal systems. *Juvenile and Family Court Journal*, 63(1), 19-30.

For More Information

Families on the Front Lines: How Immigration Advocates can Build a Bridge Between Systems, by Lindsay Marshall, Florence Project, First Focus

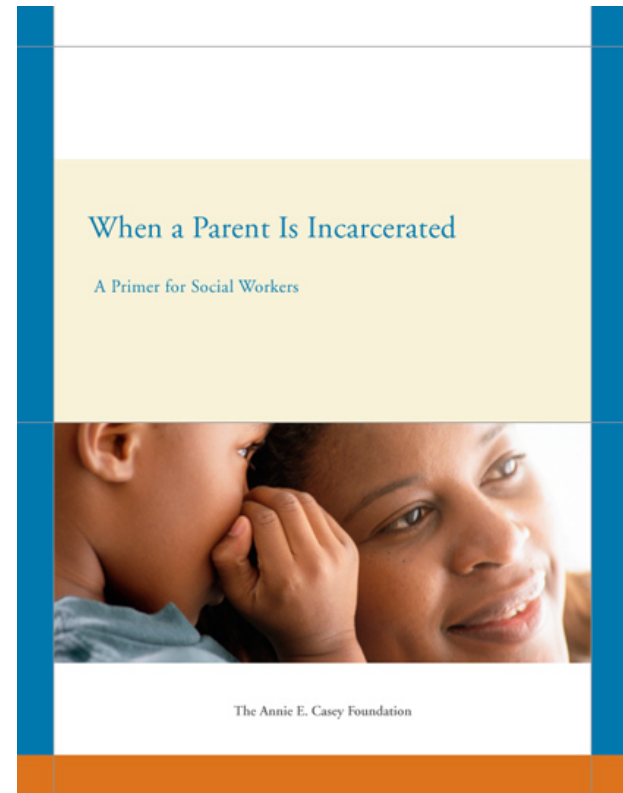
Caught Between Systems policy series on the intersection of the immigration and child welfare systems published by First Focus



For More Information

Yali Lincroft and Ken Borelli (2011) – **When a Parent is Incarcerated: A Primer for Social Workers.** (see chapter 4 on immigrants, incarceration, and child welfare, www.aecf.org)

National Association of Social Workers/CA - Online Course (2 free CEU Units) – **“The Intersection of Immigration law, Its Enforcement and Social Work Practice”**



For More Information

Migration and Child Welfare National Network – “A Social Worker’s Toolkit for Working with Immigrant families.”

<http://www.americanhumane.org/children/professional-resources/program-publications/child-welfare-migration/tool-kits.html>