

IMMIGRANT FAMILIES AND CHILD WELFARE SYSTEMS

Emerging Needs and Promising Policies



By Mark Greenberg, Randy Capps, Andrew Kalweit,
Jennifer Grishkin, and Ann Flagg

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Executive Summary

Since the 1970s, the number and share of children in the United States with a foreign-born parent have more than quadrupled. Nearly 90 percent of these children are U.S. citizens, and about one-quarter have an unauthorized immigrant parent. These demographic changes, along with developments in immigration policy and enforcement, have important implications for state and local child welfare agencies. Some jurisdictions have responded by developing specialized policies and practices, but there are significant variations around the country.

Demographic changes, along with developments in immigration policy and enforcement, have important implications for state and local child welfare agencies.

To better understand state and local child welfare systems' policies and practices for working with immigrant families, the Migration Policy Institute (MPI) and the American Public Human Services Association (APHSA) reviewed relevant literature and conducted discussions with APHSA's National Association of Public Child Welfare Administrators and interviews with administrators in 21 jurisdictions. Drawing from this work, this report describes a set of key policy issues for child welfare agencies and examples of promising agency approaches.

A. Immigration Enforcement, Children of Immigrants, and Child Welfare

Like other children, children with immigrant parents can enter the child welfare system when there are reports of abuse or neglect by a parent or caretaker. Those with unauthorized immigrant parents face additional paths for entry, however, if U.S. Immigration and Customs Enforcement (ICE) arrests, detains, or deports a parent.

Immigration enforcement policies and practices can have important implications for family economic security and cohesion, and for the mental health and wellbeing of children. During the Bush and early Obama administrations, deportations reached historically high levels and there were no explicit priorities for which unauthorized immigrants should be arrested and removed. The Obama administration later narrowed enforcement priorities to focus on unauthorized immigrants who posed national security risks, serious criminals, recent arrivals, and those with recent removal orders. Immigration officers were also instructed to give consideration in decisions about arrest, release, and deportation to whether an individual was a primary caretaker, parent, or legal guardian. With these changing federal priorities and some states and localities placing limits on cooperation with ICE, removals of immigrants claiming to be parents of U.S.-citizen children fell from 92,000 in calendar year 2011 to 29,000 in 2016.

Shortly after taking office, the Trump administration reset enforcement priorities to allow for the removal of any unauthorized immigrant and eliminated provisions that gave consideration in enforcement to whether an immigrant was a parent. With this revised approach, ICE arrests rose by 44 percent between fiscal year (FY) 2016 and FY 2018, and removals resulting from ICE arrests increased by 46 percent. Both remain at about half their peak during the early years of the Obama administration, principally because of ongoing state and local limits on ICE cooperation. Data available through calendar year 2017 do not show an uptick in removals of parents.



Other Trump administration decisions could increase the number of immigrant parents vulnerable to arrest, detention, and removal in the future. The administration has announced that it will terminate Temporary Protected Status (TPS) designations for six countries and end the Deferred Action for Childhood Arrivals (DACA) program, though litigation seeking to block these actions is pending in federal courts. If the courts allow the administration to end these six TPS designations and the DACA program, parents of nearly half a million U.S.-citizen children will be forced to choose between leaving the United States with their children, departing but leaving their children behind, or staying in the United States with their children while risking deportation.

The nature of apprehensions along the U.S.-Mexico border has also changed in recent years, with potential implications for child welfare agencies. Between FY 2010 and FY 2017, the share of apprehensions involving migrants from Mexico fell from 87 percent to 42 percent, while those involving nationals of El Salvador, Guatemala, and Honduras grew from 10 percent to 54 percent. At the same time, the share of apprehensions involving families or children traveling without a parent has grown substantially. From October 2018 through January 2019, the majority of apprehensions were of members of families (50 percent) or unaccompanied children (10 percent). Many of these families and unaccompanied children apply for asylum. Asylum seekers are often released into the United States while their cases are pending, a process that can last months or years due to substantial backlogs in the U.S. asylum system. As asylum applicants, these families are likely to be eligible for few, if any, public benefits or services.

Regardless of immigration status, immigrant adults and children may face challenges when interacting with child welfare professionals. Cultural misunderstandings and limited English proficiency can pose significant barriers to effective engagement. Immigrant parents may also come from societies where state involvement in private life is minimal, or where state entities are mistrusted. This can translate into resistance towards or fear of child welfare personnel in the United States. Additionally, immigrant parents may have different parenting styles and expectations than caseworkers, making conversations about caregiving more difficult and susceptible to miscommunication. And while it is widely acknowledged that growing up with one's parents or other relatives is generally in the best interest of a child, there are reports of child welfare agencies and courts expressing reluctance to place children with unauthorized immigrant relatives because of the perception that they will provide a less stable placement. Inconsistent awareness of issues relating to cross-border care arrangements, potential avenues for attaining immigration status or other immigration benefits, and eligibility and access to services has also been shown to affect agencies' decision-making.

B. Key Policy and Practice Issues and Child Welfare Agency Approaches

MPI and APhSA researchers interviewed child welfare officials from 14 states, six counties, and New York City to learn about how they were approaching issues that arise when serving children of immigrants. For each of nine key issues, the researchers identified a recommended approach, accompanied by examples of relevant policies and practices.

I. Organizational Structure

Some jurisdictions have developed specialized staffing or structures to more effectively serve immigrant children and their families. Interviewees described two principal organizational approaches: creation of a dedicated office with immigration-related responsibilities and designation of a dedicated liaison or resource person. New York City and Los Angeles County have dedicated offices whose primary role is to support their agencies on immigration-related issues and to provide resources to caseworkers who encounter questions related to immigration. Several jurisdictions—Connecticut, Illinois, Minnesota, New Jersey, New Mexico, and Fresno and San Diego Counties, CA—employ a dedicated liaison or resource person, who typically functions as a point of contact within the child welfare agency and provides resources on cases with an international or immigration component. In Texas, regional immigration specialists coordinate between caseworkers and attorneys to address the immigration issues of all



noncitizen children within their jurisdiction, and with border liaisons employed by the child welfare agency who specialize in cross-border cooperation with Mexican officials. Connecticut has an Office of Multicultural Affairs and Immigration Practice that combines some aspects of an immigration liaison within an office focused on expanding the agency's capacity for working with families of diverse backgrounds more generally.

Recommendation: Employ specialized staff or provide access to a skilled point of contact for caseworkers to reach out to for guidance and support on immigration issues in child welfare cases.

2. Training on Immigration-Related Issues

A number of jurisdictions have developed training materials on immigration-related issues. Florida and New Jersey offer training on immigration issues to all child welfare agency staff who work with clients. New Mexico provides training that outlines both caseworker and immigration liaison responsibilities. Connecticut's Office of Multicultural Affairs and Immigration Practice surveys caseworkers to gauge their awareness and implementation of immigration-related policies and then provides training to build staff capacity. California's core curriculum for child welfare workers and supervisors includes information on state laws and immigration statuses, which a county can supplement with more in-depth training. In Fresno County, CA, some training is available to all staff, and other training opportunities are designed specifically for those newly hired or provided as a topical refresher course. New York City has developed trainings specific to immigration liaisons, foster-care agencies, and court legal staff. Florida, Georgia, Minnesota, and New Jersey have developed additional materials beyond mandatory training that staff can elect to review.

Florida and New Jersey offer training on immigration issues to all child welfare agency staff who work with clients.

Trainings frequently discuss the details of different immigration statuses and benefits and important policies, procedures, and laws staff should follow when assisting a child in applying for immigration status. Information is often provided on how to access important resources or points of contact, and staff are directed to additional resources they can refer to, including information on different cultures represented within their service population. Agency staff can also benefit from training on best practices in family reunification, placement across borders, engagement strategies for families with unauthorized immigrant members, placement with unauthorized caregivers in accordance with state law, making reasonable efforts to work with detained or deported parents when a permanency goal for their child is reunification, and the legal rights of detained or deported parents in court proceedings.

Recommendation: Develop preservice and ongoing training for frontline workers concerning immigration issues in child welfare cases, with content emphasizing cultural competency and issues relating to legal status.

3. Language Access

Agencies must provide language assistance services that allow Limited English Proficient (LEP) individuals to effectively participate in or benefit from a child welfare agency's programs and activities. Bilingual staff and free interpretation services are common approaches. New Mexico and Montgomery County, MD, have a pay differential for multilingual caseworkers. Washington State maintains a listserv where certified staff can register their written and/or spoken fluency for a salary increase. Montgomery County also emphasizes the hiring of foreign-trained professionals who are not yet licensed when filling paraprofessional roles in its programs.



Connecticut, Florida, and Illinois all provide interpreters when a family's preferred or primary language is not English. Georgia caseworkers are instructed to contact the state Department of Human Services' LEP/Sensory Impaired program to request interpreters to avoid situations in which one family member must interpret for the others. Connecticut's Office of Multicultural Affairs maintains an updated list of approved interpreter and translation services, and provides social workers with guidance on working with families via interpreters, including tips on body language, using key terms or phrases, and maintaining a respectful tone during interactions. It also asks caseworkers to double the expected length of their meetings when working with interpreters. A number of agencies also contract with language lines to supplement in-house capacity.

Even when interpreters are available, Illinois works to ensure that therapeutic services are performed in the child's first language, whenever possible. And if children who primarily speak Spanish are removed from their homes, the state also mandates that they be placed with Spanish-speaking foster parents within 60 days.

Recommendation: Review whether language access policies adequately reflect the characteristics and needs of the service population, with attention to translation of forms and availability of multilingual staff and interpreters who are not children or other family members.

4. Licensing

When a child must be placed in out-of-home care, the caregiver must be licensed if they are to receive financial assistance to help with the costs of caring for the child. Licensure brings additional benefits, including training, services, and other supports. States vary as to whether an unauthorized immigrant relative of a child can qualify for licensing; depending on state policy, this may be explicitly permissible, permissible under limited circumstances, impermissible, or the state's policies may not expressly address the issue.

Illinois and California explicitly provide that immigration status does not affect whether a relative is eligible to become a licensed caregiver. In New Jersey, children can be placed with an unauthorized immigrant relative if the placement is determined to be in the child's best interest and there is a compelling justification. In Connecticut, unauthorized immigrants can be considered for licensed placements in "special circumstances." Other states have general waiver authority, are silent on this issue, or expressly provide that unauthorized immigrants are ineligible. In Georgia, licensure of an unauthorized immigrant is not permitted, but placement can be approved via departmental waiver and subsidized at a reduced rate. And in Texas, unauthorized immigrant relatives are not eligible to become foster parents but may apply for a waiver to adopt the child.

Even when unauthorized immigrant kin are potentially eligible for licensing, certain state policies may make it more difficult to meet licensing requirements. For example, applications that require Social Security numbers (SSNs) for caregivers and/or other household members may deter otherwise qualified unauthorized caregivers from applying as many lack SSNs. As an alternative, Illinois, Connecticut, and New Jersey allow caregivers to use an Individual Taxpayer Identification Number (ITIN) for subsidy payments. Illinois also provides instructions for immigrant caregivers on how to obtain and use an ITIN to receive payments, allows caregivers of Illinois children who live in other states to use ITINs, and allows for retroactive payments to be made, in recognition of lengthy ITIN processing times.

Recommendation: In light of the importance of placing children with relatives when possible and appropriate, identify and address barriers that may prevent noncitizen caregivers, including unauthorized immigrants, from becoming licensed providers.



5. Placement of a Child with a Caregiver outside the United States

Agency rules for approving placements with a parent or other potential caregiver living in another country also vary. Some jurisdictions have detailed procedures for potential placements abroad and have memoranda of understanding (MOUs) with foreign consulates to facilitate such placements, while others provide caseworkers with minimal guidance.

In an initial step for an international placement, a foreign social service agency must evaluate the potential home and caregiver to ensure the child will be safe if placed there. In San Diego County, CA, an international liaison coordinates with Mexico's child welfare agency (Desarollo Integral de la Familia, or DIF) to perform background checks and home evaluations of prospective caregivers in Mexico. In New York State and Georgia, caseworkers evaluating children's potential caregivers abroad are instructed to follow the same guidelines they would in a domestic case, including standard safety, home study, and background vetting procedures. Fresno County, CA, ensures preplacement visitation between children and potential caregivers through Skype or a trip to the U.S.-Mexico border. Texas border liaisons and caseworkers coordinate with DIF in Mexico and authorities in other countries to research the social services available in a parent's community and then design a service plan ensuring the parent can safely care for their child.

After the evaluation, U.S. child welfare personnel must decide whether to recommend placement into the home, and generally must ask a court to order the placement. In San Diego, caseworkers must schedule a special hearing in juvenile court to consider the caseworker's recommendation. If the court orders the placement, the caseworker will coordinate travel, subsidy payments, and monitoring arrangements for the child. In Texas, caseworkers coordinate with a border liaison or consulate staff to make these arrangements. When placing children in Mexico, San Diego caseworkers ensure the child obtains a tourist permit to travel to Mexico and coordinate with the relative abroad to obtain a family immigrant permit for the child. For children who are U.S. citizens, San Diego caseworkers also help them obtain a passport and apply for a Consular Report of Birth Abroad.

When placing a child internationally, agencies often refer cases to International Social Service (ISS)—a nonprofit organization with expertise in cross-border case management. ISS establishes a link between child welfare agencies in different countries to facilitate the placement and provides international child welfare case management through services that include tracing family members in a foreign country; organizing home studies and criminal background checks on potential caregivers; evaluating the community abroad; and performing postplacement evaluations to check up on the child. Arizona, Connecticut, Florida, New Jersey, New York City, and San Diego County have all partnered with ISS for cases involving out-of-country placement.

Recommendation: Review policies concerning placement of children with a parent or guardian abroad, develop MOUs with consulates for countries with significant numbers of placements, and ensure that the jurisdiction either has skilled staff or contracts for access to such staff for involvement in these cases.

6. Memoranda of Understanding with Foreign Consulates

Some jurisdictions use MOUs with foreign consulates to lay out each party's responsibilities when foreign nationals or children of foreign nationals are involved with U.S. child welfare agencies. Although all of the MOUs described by agency officials during interviews with the authors were between a child welfare agency and Mexican consulates, MOUs can be signed with any country. Jurisdictions with MOUs with Mexico include Fresno, Los Angeles, Monterey, and San Diego Counties, CA; Illinois; New Jersey; New Mexico; and North Carolina.

In MOUs, common child welfare agency responsibilities include notifying the consulate when a child or parent who is a Mexican national is involved in a child protective services case; responding to consular



inquiries about cases and providing verbal updates and copies of court reports; ensuring communication between a consulate and the child, including allowing a consular representative to interview the child and attend the child's juvenile dependency court hearings; and complying with confidentiality rules and providing formal processes for accessing confidential information.

Common Mexican consular obligations include requesting a home evaluation and preplacement services through Mexico's child welfare agency; obtaining vital legal documents, such as birth certificates; complying with confidentiality rules; assisting with parent or relative searches or coordinating with DIF to conduct family tracing in Mexico; conducting outreach to Mexican communities in the United States to orient them to U.S. child welfare services; and providing training for U.S. child welfare staff and other local employees on how to access consular services.

Common joint responsibilities include facilitating the return of minors from the United States to Mexico, and facilitating visitation when the child is in the United States and the parent is in Mexico (this is limited to certain U.S. agencies near the U.S.-Mexico border).

Recommendation: Reach out to consulates whose nationals comprise substantial service populations to coordinate and explore developing MOUs to address respective roles when foreign nationals or children of foreign nationals are involved with the agency.

7. Screening for Immigration Benefits

Noncitizen children who come into child welfare custody may be eligible for different forms of immigration benefits, including naturalization, humanitarian protection, or relief from deportation. Some jurisdictions have comprehensive procedures for screening immigrant children to determine their immigration options. Parents associated with a child's case might also benefit from such screening, but jurisdictions typically do not routinely screen parents for immigration benefits.

Jurisdictions often have procedures for screening and assisting potentially eligible minors with SIJ status applications, but comprehensive screening for other immigration benefits is less common.

Unauthorized immigrant children have five common options to obtain legal status: Special Immigrant Juvenile (SIJ) status for children who have been abused, neglected, or abandoned and cannot be reunified with a parent; self-petitioning for lawful permanent resident (LPR) status under the *Violence Against Women Act*; U visas for crime victims; T visas for trafficking victims; and asylum. Each of these provides a path to permanent residency and employment authorization for children old enough to work. Jurisdictions often have procedures for screening and assisting potentially eligible minors with SIJ status applications, but comprehensive screening for other immigration benefits is less common.

In a number of jurisdictions, when caseworkers encounter children or youth who are not U.S. citizens or LPRs, or whose immigration status is unclear, they refer them to an immigration liaison or dedicated immigration office. In Los Angeles County, caseworkers initially screen unauthorized immigrant minors for potential eligibility for immigration benefits and refer those who may be eligible to the central Special Immigrant Status Unit for further assistance. In New York City, the Office of Immigrant Services and Language Access requires that each contracted foster-care agency employ an immigration liaison who works to ensure that all noncitizen children and youth who come into care are automatically screened for immigration benefits, with subsequent referral and tracking. In Illinois, caseworkers ask children a



set of questions to determine if they should be referred to the immigration liaison for a more thorough assessment. Florida's Administrative Code requires caseworkers to refer all unauthorized immigrant children for immigration benefits screening once they have a U.S.-based permanency plan and to provide documentation to enable immigration legal services providers to file SIJ and other benefit applications on their behalf.

Child welfare agencies may refer children to immigration attorneys for additional screening or to assist with applying for immigration benefits. The New Jersey Department of Children and Families refers every immigrant child client to Rutgers University Law School for screening, and Rutgers handles cases through the entire process, including appeals.

Recommendation: Develop a process, using internal staff or a grant or contract with an outside entity, to ensure that all noncitizen children in care, and parents associated with children in care, are screened for immigration benefits such as naturalization, humanitarian protection, and relief from deportation.

8. Confidentiality and Information Sharing

Child welfare systems generally have strong confidentiality protections, based on federal and state requirements. There are special considerations for families with unauthorized immigrant members. Since federal law does not require states to collect information relating to immigration status in the context of child welfare service provision, and collecting such information may make families with unauthorized members wary of engaging, a number of agencies do not do so. Agencies must also navigate issues relating to when and how they share the information they do collect.

Some child welfare agencies are subject to an executive order, law, or regulation concerning collecting or sharing immigration-related information. In Washington State, an executive order mandates that information collected from clients be "limited to that necessary to perform agency duties," and that information concerning "immigration or citizenship status or place of birth shall not be collected except as required by federal or state law or agency policy." In New York State, state employees are barred from disclosing information to federal immigration authorities for the purpose of immigration enforcement, unless required by law.

Several jurisdictions have immigration-specific confidentiality provisions in child welfare guidance or policies. Connecticut's Immigration Practice Guide for Child Welfare specifies that "identification of undocumented persons . . . does not require reporting this information" to ICE. The guide provides staff with sample language to use when explaining to clients that the agency will not report them to immigration authorities and will hold their immigration status information "in strict confidence." San Diego County's guidance manual for child welfare staff instructs that immigration status information pertaining to children in care or their family members "is confidential" and shall not be disclosed "to any person or agency, including law enforcement, without first consulting with a supervisor and with County Counsel."

Other jurisdictions indicated that, apart from more general confidentiality provisions, they had no formal policies governing the sharing of information with federal immigration authorities; some of these reported that their practice is not to share such information.

Recommendation: Review confidentiality policies to ensure that they explicitly limit information sharing with federal immigration authorities and provide workers with guidance about how to inform adults and children about confidentiality protections, as failure to address concerns about immigration enforcement can prevent child welfare agencies from effectively engaging with immigrant families.



9. Policies When Parents Are in Immigration Detention

A parent in immigration detention may have an open child welfare case under a variety of circumstances. The case may already have been open at the time of their immigration arrest; the same facts that led to immigration arrest may also have led to the opening of a child welfare case (e.g., alleged child abuse or violence in the home); or the child may have been left without care or in an unstable care situation after detention or deportation of a parent.

Detention and removal proceedings can make it challenging for parents to meet the conditions of their case plans and court proceedings. Strict visitation rules, costly telephone calls, and detention far from arrest locations can make it difficult for immigrant parents to communicate with lawyers, social workers, and family members. In addition, parents may face difficulties complying with a reunification plan because the programming it orders does not exist in detention.

ICE's directive on Detention and Removal of Alien Parents or Legal Guardians describes key ICE policies and practices regarding detained parents. However, interviewees typically indicated either that they were unaware of the original or revised ICE directive or that key directive provisions had not been incorporated into guidance for caseworkers. San Diego County is a notable exception. San Diego's policy manual includes a step-by-step guide on how to find a person in ICE custody, points of contact for three California ICE field offices, a list of documentation ICE requires for visitation ordered by a dependency court, and relevant ICE visitation guidelines. The manual also provides helpful tips social workers should follow while working with asylum-seeking parents detained by ICE at the border.

More broadly, California is distinctive in having passed state legislation that addresses child welfare issues connected with parental detention. California's *Reuniting Immigrant Families Act*, enacted in 2012, aims to address barriers to reunification faced by families when a parent is detained or deported. To do so, it extended the period within which reunification can occur and made it easier for children to be placed with a qualified caregiver regardless of their immigration status. Counties in California often maintain communication or a point of contact with ICE, but some interviewees reported difficulties establishing visitation when parents are detained out of state.

Recommendation: Develop policies for communicating with and engaging detained parents in child welfare case planning and hearings, and for sharing the parent's location with the court and any parent attorney group so that the parent may be assigned counsel; review ICE's directive on Detention and Removal of Alien Parents or Legal Guardians, incorporate its key provisions into agency policy manuals or guidance to caseworkers, and identify and build a relationship with the appropriate ICE field office point of contact for child welfare matters.

I. Introduction

Since 1970, the number and share of children in the United States with a foreign-born parent have more than quadrupled. Families with immigrant members can present distinctive issues for child welfare agencies, from language barriers to a need for assistance navigating unfamiliar government systems. In addition, the current immigration climate presents additional challenges, as unauthorized immigrants face an increasing risk of deportation, and both unauthorized and lawfully present immigrants may fear interacting with government agencies. Some jurisdictions have developed specialized policies and practices that respond to the needs and circumstances of children with foreign-born parents, but approaches vary considerably.

To better understand state and local child welfare systems' policies and practices for working with immigrant families, the Migration Policy Institute (MPI) and the American Public Human Services



Association (APHSA) undertook a project that included discussions with APHSA's National Association of Public Child Welfare Administrators and interviews with state and county administrators in 21 jurisdictions, along with a review of relevant literature.

This report begins with an overview of demographic trends, recent developments in immigration enforcement, and their intersections with child welfare. It then describes a set of key policy issues for child welfare agencies, with examples of how state and local agencies are addressing these issues.

II. Children of Immigrants, Immigration Enforcement, and Child Welfare

Between 1970 and 2017, the share of children in the United States with at least one foreign-born parent rose from 6 percent to 26 percent, and the number of children with a foreign-born parent grew from 4 million to 18 million. In 2017, 88 percent of children of immigrants were U.S. citizens, most having been born in the United States.¹ In the 2012–16 period, 73 percent of children of immigrants had parents who were U.S. citizens or lawfully present immigrants, while the remainder had at least one unauthorized immigrant parent.² Of children with unauthorized parents, 80 percent were U.S. citizens.³ Slightly more than 4 percent of children of immigrants (about 800,000 children) were unauthorized themselves.⁴

While most children of immigrants live in one of five states—California, Texas, New York, Florida, and New Jersey—every state experienced growth in the number of children of immigrants since 1990.⁵ More than one-fourth (27 percent) of children of immigrants lived below the federal poverty level in 2017, and one-third (33 percent) of children in poverty were the children of immigrants.⁶

Box I. Who Are the Children of Immigrants?

Children of immigrants have at least one foreign-born parent, whether a naturalized citizen, lawfully residing immigrant (such as a green-card holder or someone with a temporary visa), or an unauthorized immigrant who either entered the country without inspection or overstayed a visa. Some children in immigrant families are themselves foreign born and fall into one of these categories, though a majority are U.S.-born citizens.

This report uses the term “children of immigrants” to encompass both U.S.-born children with a foreign-born parent and immigrant children. “Children of unauthorized immigrants” refers to those with at least one unauthorized immigrant parent—an important group in the context of child welfare, given their parents’ vulnerability to arrest and deportation.

- 1 Migration Policy Institute (MPI) Migration Data Hub, “Children in U.S. Immigrant Families,” accessed February 21, 2019, www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families.
- 2 MPI analysis of U.S. Census Bureau data from pooled 2012–16 American Community Survey (ACS) and 2008 Survey of Income and Program Participation (SIPP), with legal status assignments using a unique MPI methodology developed in consultation with James Bachmeier of Temple University and Jennifer Van Hook of The Pennsylvania State University, Population Research Center.
- 3 Julia Gelatt and Jie Zong, *Settling In: A Profile of the Unauthorized Immigrant Population in the United States* (Washington, DC: MPI, 2018), www.migrationpolicy.org/research/profile-unauthorized-immigrant-population-united-states.
- 4 Ibid.
- 5 MPI tabulation of U.S. Census Bureau data from 2017 ACS and 1990 Decennial Census; 1990 data were accessed from Steven Ruggles, J. Trent Alexander, Katie Genadek, Ronald Goeken, Matthew B. Schroeder, and Matthew Sobek, “Integrated Public Use Microdata Series: Version 5.0 [machine-readable database]” (University of Minnesota, Minneapolis, 2010).
- 6 U.S. Census Bureau, “Ratio of Income to Poverty Level in the Past 12 Months by Nativity of Children Under 18 Years in Families and Subfamilies by Living Arrangements and Nativity of Parents,” accessed November 16, 2018, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_B05010&prodType=table; MPI Migration Data Hub, “State Immigration Data Profiles—United States: Demographics and Social,” accessed November 16, 2018, www.migrationpolicy.org/data/state-profiles/state/demographics/US.



A. Recent Trends in Immigration Enforcement

To understand how recent changes to immigration enforcement may affect some immigrant parents and their children, basic terminology can be helpful. While unlawful *entry* to the United States is a criminal offense, unlawful *presence* is a civil infraction.⁷ A person can be unlawfully present without having committed unlawful entry if they overstayed a valid visa (e.g., a tourist, business, student, or temporary work visa). Unlawful presence can result in removal from the United States and can prevent an individual from obtaining lawful status in the future or delay their ability to legally return to the United States for either three or ten years.⁸ An individual *apprehended* at the border by U.S. Customs and Border Protection (CBP) may be *removed* (i.e., deported). Individuals who are unlawfully present in the interior of the country may be subject to *administrative arrest* and removal by U.S. Immigration and Customs Enforcement (ICE).

In general, *interior* arrests and removals have greater potential to affect U.S.-citizen children and lawful permanent resident (LPR) family members than *border* apprehensions. Unauthorized immigrants removed at or near the border are typically recent arrivals, while those arrested in the interior often have been in the United States for a number of years and are more likely to have U.S.-citizen or LPR family members.⁹

Who gets deported from the United States is partially determined by the federal government's use of *prosecutorial discretion*—that is, whom ICE targets for arrest inside the United States, detains, releases, and deports. At the border, CBP usually swiftly removes all apprehended migrants unless they apply for asylum or another form of humanitarian protection, so prosecutorial discretion generally does not apply to border removals.

I. Immigration Enforcement Affecting Families in the Obama and Trump Administrations

The recent upward trend in arrests and deportations of unauthorized immigrants has spread fear throughout immigrant communities, but enforcement-related issues for families began long before the Trump administration. During the Bush and the early Obama administrations, there were no explicit priorities for which unauthorized immigrants should be arrested and deported, and removals reached historically high levels.¹⁰ This changed during the Obama administration. In 2013, the administration instructed immigration officers to consider whether unauthorized immigrants were primary caretakers, parents, or legal guardians when deciding whether to arrest them, release them after their arrest,

7 For definitions of unlawful presence and its administrative consequences, see “Inadmissible Aliens,” Title 8 *U.S. Code*, Section 1182(a)(9)(B)(ii) 2012 Edition, Supplement 4, www.gpo.gov/fdsys/granule/USCODE-2016-title8/USCODE-2016-title8-chap12-subchapII-partII-sec1182; “Deportable Aliens,” Title 8, *U.S. Code*, Section 1227(a)(1)(B) 2012 Edition, Supplement 4, www.gpo.gov/fdsys/granule/USCODE-2016-title8/USCODE-2016-title8-chap12-subchapII-partIV-sec1227/content-detail.html.

8 Whether an individual is barred from re-entering the United States for three or ten years depends on the length of their unlawful presence; those in the country for more than 180 days but less than a year are barred for three years, while those in the country for a year or more are barred for ten years. See American Immigration Council, “The Three- and Ten-Year Bars: How New Rules Expand Eligibility for Waivers” (fact sheet, American Immigration Council, Washington, DC, October 28, 2016), www.americanimmigrationcouncil.org/research/three-and-ten-year-bars.

9 During the 2012–16 period, 62 percent of unauthorized immigrants had at least ten years of U.S. residence, 19 percent had a U.S.-citizen or lawful permanent resident (LPR) spouse, and 31 percent had U.S.-citizen children. See MPI Migration Data Hub, “Profile of the Unauthorized Population: United States,” accessed November 15, 2018, www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US. Some persons apprehended at the border are caught while seeking to return to the United States after a prior deportation and may have U.S.-citizen children, though data on this population are unavailable.

10 For a review of policy development during the Obama administration, see Randy Capps et al., *Revvng Up the Deportation Machinery: Enforcement under Trump and the Pushback* (Washington, DC: MPI, 2018), www.migrationpolicy.org/research/revving-deportation-machinery-under-trump-and-pushback.



or suspend their deportation.¹¹ Then in 2014, the administration narrowed enforcement priorities to unauthorized immigrants posing national security risks, serious criminals (i.e., those with felony convictions, or with substantial or multiple misdemeanor convictions), recent arrivals, and individuals with recent removal orders.¹² Complementing this narrowing of federal immigration enforcement priorities, some states and local law enforcement agencies began to limit their compliance with ICE “detainers”—requests that they hold deportable noncitizens they had arrested on non-immigration charges for up to two days to allow ICE officers to pick them up.¹³

On January 25, 2017, President Trump ... reset enforcement priorities to allow for the removal of any unauthorized immigrant.

As a result of changing federal arrest priorities and state and local compliance with ICE requests, between fiscal year (FY) 2009 and FY 2016, total ICE administrative arrests in the U.S. interior fell from 298,000 to 110,000; arrests of individuals without criminal convictions dropped from 182,000 to 15,000; and the share of arrests involving individuals without criminal convictions fell from 61 percent to 14 percent.¹⁴ Interior removals followed suit, also falling by about two-thirds over this period.¹⁵

On January 25, 2017, President Trump issued Executive Order 13768, “Enhancing Public Safety in the Interior of the United States,” which reset enforcement priorities to allow for the removal of any unauthorized immigrant.¹⁶ The order and an implementing memo made clear that prosecutorial discretion should not be exercised routinely for any category of noncitizens; this effectively ended the practice of giving special consideration to parents or other caretakers.¹⁷ With this revised approach, between FY 2016 and FY 2018, total ICE arrests rose by 44 percent; arrests of individuals without criminal convictions grew by 248 percent; and their share of the total rose from 14 percent to 34 percent. Nonetheless, total ICE arrests in FY 2018 were still only about half their level in FY 2009—mostly because California and several other jurisdictions with large unauthorized immigrant populations continue to

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- 11 U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), “11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities” (directive, Federal Enterprise Architecture Number 306-112-002b, August 23, 2013), https://web.archive.org/web/20180314153717/https://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf.
 - 12 Memorandum from Jeh Charles Johnson, Secretary, DHS, to Thomas S. Winkowski, Acting Director, ICE; R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection (CBP); Leon Rodriguez, Director, U.S. Citizenship and Immigration Services (USCIS); and Alan D. Bersin, Acting Assistant Secretary for Policy, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, November 20, 2014, www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.
 - 13 For further detail on Obama era enforcement priorities, see Capps et al., *Revving Up the Deportation Machinery*.
 - 14 DHS, ICE, “ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-25779, Administrative Arrests FY 2009-2016,” accessed January 29, 2019, www.ice.gov/doclib/foia/immigration_statistics/eroAdminArrestsFY2009-2016.xlsx; DHS, ICE, *Fiscal Year 2017 ICE ERO Operations Report* (Washington, DC: ICE, 2017), www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf.
 - 15 Total removals (border and interior) peaked at 410,000 in fiscal year (FY) 2012 and were 240,000 in FY 2016. By the end of FY 2016, 99 percent of ICE removals fell within DHS priority areas. Over this time, interior removals dropped from 238,000 to 65,000 and the interior share of all removals fell from 61 percent to 27 percent. See DHS, ICE, “FY 2016 ICE Immigration Removals,” updated December 5, 2017, www.ice.gov/removal-statistics/2016#wcm-survey-target-id.
 - 16 Donald J. Trump, “Executive Order 13768 of January 25, 2017: Enhancing Public Safety in the Interior of the United States,” *Federal Register* 82, no. 18 (January 30, 2017): 8799–8803, www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02102.pdf.
 - 17 Memorandum from John Kelly, Secretary, DHS, to Kevin McAleenan, Acting Commissioner, CBP; Thomas D. Homan, Acting Commissioner, ICE; Lori Scialabba, Acting Director, USCIS; Joseph B. Maher, Acting General Counsel; Dimple Shah, Acting Assistant Secretary for International Affairs; and Chip Fulghum, Acting Undersecretary for Management, *Enforcement of the Immigration Laws to Serve the National Interest*, February 20, 2017, www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.



limit their cooperation with ICE.¹⁸ Interior removals increased by a similar amount from FY 2016 to FY 2018,¹⁹ but also remained at about half their peaks in the early Obama years.

ICE collects data on removals of individuals who claim to be parents of U.S.-citizen children. According to these data, such removals fell from 92,380 in calendar year 2011 to 28,860 in 2016, and fell again to 27,080 in 2017 (see Table 1).²⁰ As ICE removes more people from the U.S. interior and restricts prosecutorial discretion, it seems likely that the agency will remove more parents of U.S. citizens, but such an increase was not seen in the 2017 data, and data for 2018 are not yet available.

Table 1. ICE Removals of Immigrants Claiming U.S. Citizen Children, 2011–17

| Year | Number of Removals |
|------|--------------------|
| 2011 | 92,380 |
| 2012 | 88,517 |
| 2013 | 72,410 |
| 2014 | N/A |
| 2015 | 31,411 |
| 2016 | 28,860 |
| 2017 | 27,080 |

Sources: 2011–12 data: U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), “FOIA #13-00678 Final Orders Sought, Final Orders Obtained, and Removals of Parents Claiming USC Children” (dataset obtained by Colorlines through a *Freedom of Information Act* request, ICE, Washington, DC, December 17, 2012), www.colorlines.com/articles/primary-data-deportations-parents-us-citizen-kids; 2013 and 2015–17 Data: DHS, ICE, *Deportation of Aliens Claiming U.S.-Born Children, Fiscal Years 2013–2017* (Washington, DC: ICE, multiple years), www.hsdl.org/?search=&searchfield=title&all=Deportation+of+Aliens+Claiming+U.S.-Born+Children&collection=public&advanced=1&submitted=Search.

2. Changing Immigration Statuses and New Vulnerabilities

In addition to changing enforcement priorities, the Trump administration has taken additional actions that have the potential to affect some immigrant families with children. The administration’s decisions to end a number of Temporary Protected Status (TPS) designations and terminate the Deferred Action for Childhood Arrivals (DACA) program, if implemented, could increase the number of parents in unauthorized status and therefore vulnerable to arrest, detention, and removal.

TPS is a temporary form of humanitarian protection for migrants already in the United States who cannot safely return to their country of nationality due to a natural disaster or protracted conflict. As long as the U.S. government finds it unsafe for them to return home, TPS beneficiaries are protected from deportation and can work legally in the United States. Many TPS holders have U.S.-citizen children because they have been in the United States for many years. TPS holders from the three largest countries

¹⁸ Capps et al., *Revvig Up the Deportation Machinery*.

¹⁹ From FY 2016 to FY 2018, the number of interior removals increased from 65,000 to 95,000, and their share of total removals grew from 27 percent to 36 percent.

²⁰ DHS, ICE, “FOIA #13-00678 Final Orders Sought, Final Orders Obtained, and Removals of Parents Claiming USC Children” (dataset obtained by Colorlines through a *Freedom of Information Act* request, ICE, Washington, DC, December 17, 2012), www.colorlines.com/articles/primary-data-deportations-parents-us-citizen-kids; DHS, ICE, *Deportation of Aliens Claiming U.S.-Born Children: First Half, Calendar Year 2016* (Washington, DC: ICE, 2016), www.dhs.gov/sites/default/files/publications/Immigration%20and%20Customs%20Enforcement%20-%20Deportation%20of%20Aliens%20Claiming%20U.S.-Born%20Children%20-%20First%20Semiannual%2C%20CY%202016.pdf; DHS, ICE, *Deportation of Aliens Claiming U.S.-Born Children: Second Half, Calendar Year 2016* (Washington, DC: ICE, 2017), www.dhs.gov/sites/default/files/publications/ICE%20-%20Deportation%20of%20Aliens%20Claiming%20U.S.-Born%20Children%20-%20Second%20Semiannual%2C%20CY%202016_0.pdf.



with current designations (El Salvador, Haiti, and Honduras) together are the parents of an estimated 273,000 U.S.-citizen children.²¹ The Trump administration has announced the end of TPS designations for six countries: El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan.²² Lawsuits against the administration's decisions to end TPS designations have been filed in the federal courts, and one court temporarily enjoined TPS termination for four countries (El Salvador, Haiti, Nicaragua, and Sudan).²³

Another group of noncitizens who could become vulnerable to deportation are the nearly 700,000 DACA recipients.²⁴ The DACA program, an executive action of the Obama administration, shields from deportation and provides work authorization in periods of two years to unauthorized immigrants who arrived in the United States when they were younger than 16, have continuously lived in the country since 2007, are enrolled in school or have at least a high school diploma, and meet other eligibility criteria. An estimated 200,000 U.S.-born children have parents participating in the DACA program.²⁵ The Trump administration announced the rescission of the DACA program on September 5, 2017, but three federal courts have blocked its termination, allowing persons who have or previously had DACA to continue to submit renewal applications.²⁶ The federal government has asked the Supreme Court to hear these cases.²⁷

If the courts allow the administration to end these TPS designations and the DACA program, the parents of nearly half a million U.S.-citizen children will be forced to choose between leaving the United States with their children, departing but leaving their children behind, or staying in the United States with their children while risking deportation.

3. Southwest Border Apprehensions of Families and Children

In recent years, apprehensions of individuals crossing the Southwest border between ports of entry has fallen, and the characteristics of those apprehended have changed significantly. After peaking at 1.6 million in FY 2000, apprehensions fell due to changing economic conditions and border enforcement

- 21 Robert Warren and Donald Kerwin, "A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti," *Journal on Migration and Human Security* 5, no. 3 (2017): 577–92, <http://cmsny.org/publications/jmhs-tps-elsalvador-honduras-haiti/>.
- 22 Jill H. Wilson, *Temporary Protected Status: Overview and Current Issues* (Washington, DC: Congressional Research Service, 2018), <https://fas.org/sgp/crs/homsec/RS20844.pdf>; DHS, USCIS, "Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for Sudan, Nicaragua, Haiti, and El Salvador," *Federal Register* 83, no. 211 (October 31, 2018): 54764–69, www.gpo.gov/fdsys/pkg/FR-2018-10-31/pdf/2018-23892.pdf. DHS posts information about the current status and termination dates for these TPS designations online at USCIS, "Temporary Protected Status," updated March 8, 2019, www.uscis.gov/humanitarian/temporary-protected-status.
- 23 For details on each lawsuit, see Jennifer Riddle, "Challenges to TPS Terminations," Catholic Legal Immigration Network, Inc., January 23, 2019, <https://cliniclegal.org/resources/challenges-tps-terminations>; *Crista Ramos et al. v. Kirstjen Nielsen et al.*, No. 18-cv-01554-EMC (U.S. District Court, Northern District of California, preliminary injunction granted on October 3, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/ramos-v-nielsen-order-granting-preliminary-injunction-case-18-cv-01554-emc.pdf.
- 24 MPI Migration Data Hub, "Deferred Action for Childhood Arrivals (DACA) Data Tools," accessed December 11, 2018, www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles.
- 25 Tom K. Wong, *Results from Tom K. Wong et al., 2017 National DACA Study* (Washington, DC: Center for American Progress, 2017), https://cdn.americanprogress.org/content/uploads/2017/11/02125251/2017_DACA_study_economic_report_updated.pdf.
- 26 National Immigration Law Center, "Litigation Related to the DACA Program" (fact sheet, National Immigration Law Center, Washington, DC, February 13, 2019), www.nilc.org/issues/daca/litigation-related-to-the-daca-program/.
- 27 *Kirstjen M. Nielsen et al. v. Martin Jonathan Batalla Vidal et al.*, No. 18-589 (Supreme Court of the United States, 2018), www.supremecourt.gov/DocketPDF/18/18-589/71034/20181105135249732_Nielsen%20v%20Battalla%20Vidal%20-%20Pet%20-%20REVISED.pdf; *United States Department of Homeland Security et al. v. Regents of the University of California et al.*, No. 17-1003 (Supreme Court of the United States, 2018), www.supremecourt.gov/DocketPDF/17/17-1003/28381/20180119100226711_DACA%20Rule%2011%20Petition.pdf; *Donald J. Trump v. National Association for the Advancement of Colored People et al.*, No. 18-588 (Supreme Court of the United States, 2018), www.supremecourt.gov/DocketPDF/18/18-588/71025/20181105134008371_Trump%20v%20NAACP%20-%20Pet%20-%20REVISED.pdf.



improvements to reach a more than 40-year low of 304,000 in FY 2017.²⁸ Though U.S.-Mexico border apprehensions rose substantially to 397,000 in FY 2018,²⁹ they remained lower than during 14 of the 18 years since FY 2000.

The demographics of migrants apprehended at the border have also shifted. Between FY 2010 and FY 2017, the share of apprehensions involving migrants from Mexico fell from 87 percent to 42 percent, while those involving nationals of the Northern Triangle countries of Central America (El Salvador, Guatemala, and Honduras) grew from 10 percent to 54 percent.³⁰

At the same time, the shares of apprehensions involving families or children traveling without a parent have grown substantially. Between FY 2012 and the first half of FY 2019, family-member apprehensions rose from 3 percent to 52 percent of all apprehensions, while those of unaccompanied children rose from 7 percent to nearly 15 percent in FY 2016 before falling to 10 percent in the first half of FY 2019.³¹ From October 2018 through February 2019, the majority of apprehensions were of members of families (51 percent) or unaccompanied children (10 percent).³² Many arriving families and children seek asylum. Asylum seekers are often released into the United States while their cases are pending, a process that can last months or years due to substantial backlogs in the U.S. asylum system.

The shares of apprehensions involving families or children traveling without a parent have grown substantially.

Public and political attention to family arrivals grew in Spring 2018, when the Trump administration announced a “zero-tolerance” policy.³³ The policy directed the Justice Department to criminally prosecute all adult border-crossers referred by DHS to the extent feasible, including parents crossing with children. Under this policy, parents were arrested, detained, and prosecuted for illegal entry or re-entry, and their children were sent to shelters funded by the federal Office of Refugee Resettlement (ORR) and operated by its grantees or contractors, resulting in the prolonged separation of parents from their children. New separations of families at the border mostly ended when the president issued an executive order on June 20, 2018 that instructed DHS to keep families together in immigration detention, even when the parents

28 DHS, CBP, U.S. Border Patrol, “Southwest Border Sectors: Total Illegal Alien Apprehensions by Fiscal Year (Oct. 1st through Sept. 30th),” accessed April 15, 2019, www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-southwest-border-sector-apps-fy1960-fy2018.pdf.

29 DHS, CBP, “Southwest Border Migration FY2018,” updated November 9, 2018, www.cbp.gov/newsroom/stats/sw-border-migration/fy-2018.

30 DHS, CBP, “Nationwide Apprehensions by Citizenship and Sector in FY2010” and “Nationwide Apprehensions by Citizenship and Sector in FY2017,” accessed February 15, 2019, www.cbp.gov/sites/default/files/assets/documents/2018-Jul/usbp-nationwide-apps-sector-citizenship-fy07-fy17.pdf.

31 DHS, CBP, U.S. Border Patrol, “Total Illegal Alien Apprehensions by Month,” accessed April 10, 2019, www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-total-monthly-apps-sector-area-fy2018.pdf; DHS, CBP, U.S. Border Patrol, “Total Unaccompanied Alien Children (0-17 Years Old) Apprehensions by Month,” accessed April 10, 2019, www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-total-monthly-uacs-sector-fy2010-fy2018.pdf; DHS, CBP, “United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016,” updated October 18, 2016, www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016; DHS, CBP, U.S. Border Patrol, “Total Family Unit Apprehensions by Month,” accessed April 10, 2019, www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-total-monthly-family-units-sector-fy13-fy18.pdf; DHS, CBP, “U.S. Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2019,” updated April 9, 2019, www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions.

32 From October 2018 through February 2019, there were 26,937 unaccompanied child apprehensions and 136,150 family-unit apprehensions, out of a total of 268,044 apprehensions at the Southwest border. See DHS, CBP, “Southwest Border Migration FY 2019,” updated March 5, 2019, www.cbp.gov/newsroom/stats/sw-border-migration.

33 Memorandum from Jeff Sessions, Attorney General, U.S. Department of Justice, to Prosecutors along the Southern Border, *Zero Tolerance for Offenses under 8 U.S.S. §1325(a)*, April 6, 2018, www.justice.gov/opa/press-release/file/1049751/download.



are prosecuted.³⁴ Questions remain about the criteria under which some parents and children are still being separated.³⁵

While the separation of immigrant families at the border has been highly controversial, it has likely had little direct effect on state and local child welfare agencies since separated children either remained in ORR care or were released to family members or other sponsors. The most direct effects for child welfare agencies would likely be for those cases in which a parent arrives at the border with a U.S.-citizen child, the parent and child are separated, and the child is referred to a state or local child welfare agency.³⁶

Apart from any future developments relating to family separation, the greatest implications for child welfare agencies of the increase in family arrivals at the Southwest border will likely arise from an increased number of families seeking asylum. As asylum applicants, these families are likely to be eligible for few, if any, public benefits or services.

B. Consequences of Parental Detention or Removal for Children

The detention and removal of a parent can have serious implications for family economic security, cohesion, and mental health. Most children of unauthorized immigrants reside in two-parent, married households.³⁷ The arrest and removal of unauthorized family members place significant stress on those who remain, principally on mothers,³⁸ and can result in disrupted parenting or a decline in household income—usually both.³⁹ Studies based on U.S. Census Bureau data and on interviews with families experiencing ICE arrests of parents have estimated that family income can drop between 40 and 90 percent following such arrests.⁴⁰

Detention and removal of parents—even the fear of their removal—can have detrimental short- and long-term effects on the mental health and wellbeing of children.⁴¹ In a sample of U.S.-citizen children

34 Donald J. Trump, “Executive Order 13841 of June 20, 2018: Affording Congress an Opportunity to Address Family Separation,” *Federal Register* 83, no. 122 (June 25, 2018): 29435, www.gpo.gov/fdsys/pkg/FR-2018-06-25/pdf/2018-13696.pdf.

35 Separations are reportedly occurring based on a parent’s criminal history or gang affiliation, among other reasons, but the criteria and process for making these determinations remains unclear. See U.S. Department of Health and Human Services (HHS), Office of the Inspector General (OIG), “Separated Children Placed in Office of Refugee Resettlement Care” (HHS OIG Issue Brief, Washington, DC, January 2019), <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>; Ginger Thompson, “Families Are Still Being Separated at the Border, Months after ‘Zero Tolerance’ Was Reversed,” *ProPublica*, November 27, 2018, www.propublica.org/article/border-patrol-families-still-being-separated-at-border-after-zero-tolerance-immigration-policy-reversed.

36 Data on the incidence of separation of migrant parents from U.S.-citizen children at the border are unavailable. For a description of one such case, see Miriam Jordan, “A Guatemalan Mother Could Lose Her Daughter, Because She’s an American,” *The New York Times*, November 23, 2018, www.nytimes.com/2018/11/23/us/migrant-family-separation-citizen-domestic-abuse.html.

37 Annie E. Casey Foundation, Kids Count Data Center, “Children in Married-Couple Families by Family Nativity in the United States,” accessed November 21, 2018, <https://datacenter.kidscount.org/data/tables/130-children-in-married-couple-families-by-family-nativity?loc=1&loct=1&loc=1&loct=1#detailed/2/2-52/true/870,573,869,36,868/78,79/474,475>.

38 Fathers are more likely to be arrested than mothers: more than 90 percent of DHS removals during FYs 2013–17 were men. See Capps et al., *Revving Up the Deportation Machinery*, 29.

39 Joanna Dreby, “The Burden of Deportation on Children in Mexican Immigrant Families,” *Journal of Marriage and Family* 74, no. 4 (2012): 829–45.

40 Ajay Chaudry et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement* (Washington, DC: Urban Institute, 2010), www.urban.org/sites/default/files/publication/28331/412020-Facing-Our-Future.PDF; Randy Capps et al., *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA’s Potential Effects on Families and Children* (Washington, DC: MPI, 2016), 18–19, www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effects-families; Robert Warren and Donald Kerwin, “Mass Deportations Would Impoverish US Families and Create Immense Social Costs,” *Journal on Migration and Human Security* 5, no. 1 (2017): 1–8, <http://cmsny.org/publications/mass-deportations-impoverish-us-families-create-immense-costs/>.

41 Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature* (Washington, DC: MPI and Urban Institute, 2015), 5–14, www.migrationpolicy.org/research/implications-immigration-enforcement-activities-well-being-children-immigrant-families.



with unauthorized parents from Mexico and Central America, parental detention or deportation was associated with increased reports of psychological distress.⁴²

Children experiencing or fearing deportation of a parent may undergo behavioral changes, such as problems eating or sleeping, increases in headaches and stomachaches, anger or detachment, and depression and anxiety.⁴³ Pediatricians worry that toxic stress stemming from such experiences can have damaging long-term effects on children's physical and mental wellbeing.⁴⁴ For example, traumatic separation can have the neurobiological effects of reducing children's ability to distinguish danger cues from safety, even after being reunited with their parents.⁴⁵

Pediatricians worry that toxic stress stemming from such experiences can have damaging long-term effects on children's physical and mental wellbeing.

In some circumstances, no parent is available to care for a child after one or both parents are removed. This does not necessarily lead to child welfare involvement, because families with unauthorized immigrant members often develop family preparedness plans that identify family or friends to care for children should their parents be detained or removed.⁴⁶ But the existence of a preparedness plan does not necessarily ensure a stable living environment. Welcoming additional children into a home can place financial and other stresses on designated caretakers, and such arrangements may break down over time.

Because most children of immigrants reside in two-parent families, and families with unauthorized immigrant members often develop preparedness plans, there is no reason to believe that removal of a parent frequently results in child welfare involvement. However, since the removal of a parent has a significant financial impact and new family arrangements may lead to additional psychological stressors, it remains possible that a parent's removal may increase the risk of child welfare engagement in the long run.

C. Children of Immigrants and Child Welfare Systems

Children with immigrant parents can enter the child welfare system in the same ways that other children do—that is, based on reported abuse or neglect by a parent or caretaker. Children with unauthorized parents face additional paths for entry if ICE arrests, detains, or deports a parent.

42 Lisseth Rojas-Flores, Mari L. Clements, J. Hwang Koo, and Judy London, "Trauma and Psychological Distress in Latino Citizen Children Following Parental Detention and Deportation," *Psychological Trauma: Theory, Research, Practice, and Policy* 9, no. 3 (2017): 352–61.

43 Samantha Artiga and Petry Ubri, "Living in an Immigrant Family in America: How Fear and Toxic Stress Are Affecting Daily Life, Well-Being, and Health" (issue brief, Henry J. Kaiser Family Foundation, Menlo Park, CA, December 13, 2017), www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/; National Child Traumatic Stress Network, "Giving Immigrant Children a Voice: Understanding Traumatic Separation" (webinar, National Child Traumatic Stress Network, 2018).

44 Artiga and Ubri, "Living in an Immigrant Family in America."

45 National Child Traumatic Stress Network, "Giving Immigrant Children a Voice."

46 Preparedness plans are also often referred to as emergency plans and contingency plans. See Immigrant Legal Resource Center (ILRC), *Immigration Enforcement and the Child Welfare System* (San Francisco: ILRC, 2017), www.ilrc.org/sites/default/files/resources/immigration-childwelfare-report.pdf; ILRC, *Family Preparedness Plan* (San Francisco: ILRC, 2017), www.ilrc.org/sites/default/files/resources/family_preparedness_plan_v3-20170323.pdf.



I. Risk and Preventative Factors for System Involvement

States typically do not have information about the number of foreign-born or noncitizen children in their child welfare systems, or the number of foreign-born or noncitizen parents or other caregivers associated with these children, because this information is not required to determine eligibility for services or for federal data reporting requirements.⁴⁷ In 2016, the federal government mandated that states begin reporting in 2019 on instances in which detention or deportation of a parent was a circumstance at the time a child was removed from the home.⁴⁸ Federal officials have delayed implementation of this and other new data reporting requirements for at least two years.⁴⁹

Despite these data limitations, some research has shed light on the scope of the involvement of children of immigrants in child welfare systems. A study using data from the 2000 National Survey of Child and Adolescent Well-Being found that 8.6 percent of children in families investigated for child abuse or neglect had foreign-born parents, at a time when 19.1 percent of all U.S. children had foreign-born parents.⁵⁰ Although reports of maltreatment were substantiated at the same overall rates among children with immigrant and U.S.-born parents, children of immigrants were more than twice as likely to be confirmed as victims of emotional abuse and nearly eight times *less* likely to be confirmed as victims of physical neglect (i.e., failure to provide).⁵¹ Most common parental and family risk factors were not significantly different between the two groups, but immigrant parents were more than three times less likely to be abusing drugs or alcohol. The study's authors hypothesized that family strengths protect many children of immigrants against abuse and neglect, while at the same time, immigrant families may experience social isolation and interact less frequently with social service agencies than other families, reducing the odds of investigation by child welfare systems.

Other research has focused specifically on families with unauthorized members. A 2011 report from the Applied Research Center identified risk factors specific to unauthorized immigrant parents that could prevent reunification after a child has been removed by a child welfare agency. The report highlighted how unauthorized status can contribute to poverty; an inability to document income for family courts; parent ineligibility for psychiatric evaluations, therapy, and other services; inability to legally transport children without a driver's license; and risk of deportation.⁵²

2. Parents in ICE Detention

Parental detention can have important implications for unauthorized immigrant parents and their children. In 2010, the Women's Refugee Commission published a report highlighting the challenges that

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- 47 To be eligible for federal funding for foster-care maintenance payments under Title IV-E of the *Social Security Act*, a child must, in addition to meeting other applicable requirements, be a citizen or meet the federal definition of "qualified alien," which generally includes LPRs (also known as green-card holders) but excludes individuals with temporary visas and unauthorized immigrants. Accordingly, a jurisdiction may need to know if a child is a U.S. citizen or "qualified alien" to determine eligibility for federal matching funds, but it does not need to record whether the child is foreign born or unauthorized. The parent's citizenship or immigration status is not relevant to a child's eligibility for services.
- 48 HHS, Administration for Children and Families (ACF), "Adoption and Foster Care Analysis and Reporting System: Final Rule," *Federal Register* 81, no. 240 (December 14, 2016): 90524–76, www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29366.pdf.
- 49 HHS, ACF, "Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking: Delay of Compliance and Effective Dates," *Federal Register* 83 no. 51 (March 15, 2018): 11450, www.gpo.gov/fdsys/pkg/FR-2018-03-15/pdf/2018-05038.pdf.
- 50 Alan J. Dettlaff and Ilze Earner, "Children of Immigrants in the Child Welfare System: Characteristics, Risk, and Maltreatment," *Families in Society* 93, no. 4 (2012): 295–303, www.indigo.lib.uic.edu:8080/bitstream/handle/10027/10810/Show.pdf?sequence=2&isAllowed=y.
- 51 As to the differences in emotional abuse, Dettlaff and Earner state that "this finding is difficult to interpret as definitions of emotional abuse vary widely across states and the available data do not provide information on the types of behaviors that are associated with allegations of emotional abuse. Given the broad and somewhat vague criteria used to define emotional abuse in some states, it is possible that cultural differences or misunderstandings can contribute to this difference." See *ibid.*
- 52 Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* (New York: Applied Research Center, 2011), www.atlanticphilanthropies.org/research-reports/report-shattered-families-perilous-intersection-immigration-enforcement-and-child-welfare-s.



many parents face when apprehended, during detention, and upon deportation.⁵³ The report presented evidence that ICE did not consistently identify parents at the time of their arrest to prioritize their release or allow them to make alternative child-care plans before being transferred to a detention facility. Instead, ad hoc decision-making meant that some children were unnecessarily placed in child welfare custody and others were left in insecure environments.⁵⁴ Parents reportedly found it difficult to contact their children or comply with reunification plans once in detention, and when family court proceedings followed, parents were often either not notified, not contacted by the attorney assigned to represent them, or unable to be present in court.⁵⁵ Finally, removal plans were not shared outside of ICE prior to deportation, lengthening the period of separation and making it difficult for welfare agencies to contact parents, create logistically sound permanency plans for the children to either be reunited or placed in other permanent arrangements, or conduct timely cross-border placements to reunify them with their parents.⁵⁶

Ad hoc decision-making meant that some children were unnecessarily placed in child welfare custody and others were left in insecure environments.

Additional research further highlighted concerns about the impacts of parental detention on children and families. Nina Rabin of the University of Arizona described these concerns in a 2011 study that drew on a case study involving one of her clients and on surveys and interviews with judges, attorneys, and caseworkers. This research highlighted how child welfare agencies struggled to implement decisions that reflected the best interests of the child in light of the ad hoc approach to immigration issues taken by all actors involved, timelines for dependency hearings that were difficult to reconcile with ICE's removal timelines, and the underutilization of consular offices as a "go-between" or facilitator.⁵⁷ In another 2011 study, the Applied Research Center estimated that 5,100 children in foster care in the United States had detained or deported parents,⁵⁸ though this was not necessarily *because of* their detention or removal; some may have been placed into the system long before their parents' detention or removal for unrelated reasons.

Based on these reports, it became apparent that DHS, immigration and juvenile or family courts, and child welfare agencies would all benefit from better communication and clearer guidelines on their responsibilities when working with parents in detention.⁵⁹ On August 23, 2013, ICE issued "Facilitating Parental Interests in the Course of Civil Immigration Activities," also known as the Parental Interests Directive, or PID.⁶⁰ The PID instructed ICE officers to consider exercising prosecutorial discretion (i.e., decline to arrest, detain, or deport) for a parent or guardian of a U.S.-citizen or LPR minor, or the primary caretaker of *any* minor child (whether the child was a citizen, LPR, or unauthorized immigrant).

53 Emily Butera, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention* (New York: Women's Refugee Commission, 2010), www.womensrefugeecommission.org/images/zdocs/parental_rights_report-final.pdf.

54 Ibid.; Chaudry et al., *Facing Our Future*.

55 Butera, *Torn Apart by Immigration Enforcement*.

56 Ibid.

57 Nina Rabin, "Disappearing Parents: Immigration Enforcement and the Child Welfare System," *Connecticut Law Review*, 44, no. 1 (2011): 101–59, <http://uconn.lawreviewnetwork.com/files/2012/01/Rabin.pdf>; Nina Rabin, *Disappearing Parents: A Report on Immigration Enforcement and the Child Welfare System* (Tucson, AZ: University of Arizona, 2011), https://sirow.arizona.edu/sites/sirow.arizona.edu/files/disappearing_parents_report_final.pdf.

58 The Applied Research Center arrived at this number by starting with survey and focus group estimates from child welfare caseworkers, attorneys, and judges in key jurisdictions, and then building a regression model to predict how local demographic, geographic, and law enforcement variables affected the estimates from these jurisdictions. By expanding this regression model to similar locations across the country, the study established a national estimate of 5,100 children—or 1.25 percent of the foster-care population in 2011. See Wessler, *Shattered Families*.

59 Chaudry et al., *Facing our Future*; Butera, *Torn Apart by Immigration Enforcement*; Rabin, "Disappearing Parents."

60 DHS, ICE, "11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities."



In addition, the PID established ICE Points of Contact for Parental Rights; directed ICE Field Office Directors to, with some exceptions, detain parents near their children and/or family courts and other places that would facilitate their involvement in child welfare cases; outlined ICE's role in facilitating family communication; directed Field Office Directors to facilitate parent involvement (in-person, video, or telephonic) in ongoing child welfare or family law cases; and indicated that ICE would consider facilitating parole for deported parents so they could return to the United States to attend proceedings that could result in the termination of their parental rights.

On August 29, 2017, ICE issued a new directive, "Detention and Removal of Alien Parents or Legal Guardians," to supersede the prior PID; it was not formally released to the public until 2018.⁶¹ While the new directive is narrower in purpose and removes language on prosecutorial discretion and humanitarian parole, it retains many of the other provisions of the prior directive,⁶² including requirements that:

- ICE personnel should not take custody of or transport U.S.-citizen or LPR children during enforcement proceedings.
- ICE personnel should accommodate a parent/guardian's alternative arrangements for children during enforcement, absent indications of abuse or neglect, and should only refer children to child welfare or law enforcement when alternative arrangements cannot be made or there is an indication of abuse or neglect by the parent/caregiver.
- ICE should not place or transfer detained parents/guardians outside the ICE Area of Responsibility (AOR) where they were apprehended if they are involved in a family court or child welfare proceeding within this AOR, unless it is "operationally necessary."
- When practicable, ICE should arrange for a parent or guardian to appear in person at a family court/child welfare proceeding when the presence is required to maintain/regain custody of a child, and it should accommodate video or teleconferencing, to the extent technologically feasible, if transportation to the proceeding is impracticable.
- ICE will facilitate a means of regular visitation between a detained parent/guardian and their child, as well as visitation required by a court or child welfare authority in order for the parent to maintain/regain custody.
- If a parent/guardian is subject to an order of final removal and ICE is effectuating removal, ICE should accommodate, when practicable, efforts to make arrangements for minor children, such as arranging guardianship or travel documents for the child.

3. Unaccompanied Children

Unaccompanied children—unauthorized immigrant children principally apprehended at the U.S.-Mexico border without an accompanying parent or guardian⁶³—are typically not initially involved with a state or county child welfare agency. After they are apprehended by CBP, unaccompanied children are placed in a shelter operated by an ORR grantee or contractor, or with a state-licensed foster-care provider under contract to an ORR grantee to provide temporary care. While in federal custody, ORR and shelter staff

61 DHS, ICE, "11064.2: Detention and Removal of Alien Parents or Legal Guardians" (directive, Federal Enterprise Architecture Number 306-112-002b, August 29, 2017), www.ice.gov/doclib/detention-reform/pdf/directiveDetainedParents.pdf.

62 Mark Greenberg, *Immigration Detention, Families, and Child Welfare: A Summary of ICE's Directive on Detention and Removal of Parents and Guardians* (Washington, DC: MPI, 2018), 1–3, <https://cimmcw.org/wp-content/uploads/Summary-of-ICE-Directive-FINAL.pdf>.

63 By statute, an unaccompanied alien child is one who is without lawful immigration status in the United States, is under age 18, and either lacks a parent or guardian in the United States or has no parent or legal guardian in the country able to provide care and physical custody. See "Children's Affairs," Title 6 *U.S. Code*, Section 279(g), 2000 Edition, Supplement 4, www.gpo.gov/fdsys/granule/USCODE-2004-title6/USCODE-2004-title6-chap1-subchapIV-partE-sec279/content-detail.html.



work to determine if the child has a parent, relative, or other appropriate sponsor with whom they can live while in the United States and awaiting resolution of their asylum or other claims to remain in the country. If ORR approves the parent, relative, or other sponsor, the child is released to their custody. State or county child welfare agencies are not likely to be involved with released unaccompanied children unless a child's sponsorship arrangement breaks down and an allegation of abuse or neglect is made.

The number of unaccompanied children in the child welfare system is unknown. However, when they do become involved, it is important for child welfare professionals to appreciate their distinct needs and risk factors. Unaccompanied children often flee conditions of instability or violence in their countries of origin. Trauma caused by these origin-country conditions, the journey to the United States, or both can manifest into mental illness or disability later in life if untreated.⁶⁴ Although unaccompanied immigrant children may eventually receive legal status, their immediate needs can be difficult to address while they lack such status.⁶⁵ Unaccompanied children may fare better in foster-care placements that enable them to maintain aspects of their culture and language, and when their foster parents are of the same ethnic background; placements might thus be further strengthened if caseworkers and foster parents receive cultural competency training.⁶⁶

4. Experiences of Immigrant Families Involved with Child Welfare

Immigrant families face a set of distinctive issues when they interact with child welfare systems. For instance, immigrant parents may come from societies where state involvement in private life is minimal or where state entities are mistrusted. This can translate into resistance towards and mistrust or fear of child welfare personnel in the United States. Additionally, immigrant parents may have different parenting styles and expectations than caseworkers, making conversations about caregiving susceptible to miscommunication.⁶⁷ When caseworkers are not skilled in working across cultures or aware of the biases that are common in their own, parents may feel judged or that the system is unfair.⁶⁸ Language barriers also can impede communication and can delay court-required case evaluations or participation in parenting programs.⁶⁹ These considerations have led to calls for promoting cultural competency within child welfare agencies, including by hiring multicultural and bilingual staff and communicating with families in person rather than over email.⁷⁰

When caseworkers are not skilled in working across cultures or aware of the biases that are common in their own, parents may feel judged or that the system is unfair.

Preconceived notions about legal status can also negatively affect the child welfare decision-making process. Caseworkers may believe that an unauthorized immigrant has committed a crime, although their initial entry into the country may have been legal and the lack of immigration status in and of itself is not

64 Jodi Berger Cardoso, "Running to Stand Still: Trauma Symptoms, Coping Strategies, and Substance Use Behaviors in Unaccompanied Migrant Youth," *Children and Youth Services Review* 92 (2018): 143–52.

65 Jodi Berger Cardoso et al., "Integration of Unaccompanied Migrant Youth in the United States: A Call for Research," *Journal of Ethnic and Migration Studies* 45, no. 2 (2019).

66 Thomas M. Crea et al., "Unaccompanied Immigrant Children in Long Term Foster Care: Identifying Needs and Best Practices from a Child Welfare Perspective," *Children and Youth Services Review* 92 (2018): 56–64.

67 Ilze Earner, "Immigrant Families and Public Child Welfare: Barriers to Services and Approaches for Change," *Child Welfare* 86, no. 4 (2007): 63–91.

68 Ibid.

69 Ibid.

70 HHS, ACF, Children's Bureau. "Immigration and Child Welfare" (issue brief, HHS, Washington, DC, April 2015), www.childwelfare.gov/pubPDFs/immigration.pdf.



a criminal violation.⁷¹ Agencies and courts may be reluctant to place children with unauthorized relatives if they believe that caregivers without immigration status necessarily provide a less stable placement,⁷² and they may refuse to place children with caregivers abroad because they believe that children are better off in the United States, even if that means placing them with a caregiver who is not a relative.⁷³

Cases involving parents or relatives in other countries can be particularly complex. Parents living abroad may have difficulty identifying and contacting U.S. social workers, establishing representation in U.S. courts, and meeting employment or other family court expectations.⁷⁴ Coordinating the placement of a child with a parent or guardian outside the United States can pose challenges, as such international placements may require foreign agencies to conduct home evaluations, and parents to acquire birth records and travel authorization for the children. Consular involvement can facilitate cross-border work, but in some U.S. jurisdictions, coordination with consulates is not routine or is initiated only for termination of parental rights.⁷⁵

Issues related to immigration status can complicate cases, and child welfare workers and family attorneys may be unfamiliar with these issues and relevant options to gain an immigration benefit.⁷⁶ Immigration status can also shape the dynamics of abuse itself, how it is reported, and its resolution. Domestic violence victims who lack immigration status may be reluctant to report abuse based on the threat that their abusers will disclose their immigration information to enforcement authorities.⁷⁷ However, parents can face charges of criminal negligence under “failure to protect” laws if they fail to report abuse of their children after finding out about it, and the resulting criminal proceedings for failure to protect can lead to immigration detention and removal proceedings.⁷⁸ Immigration options such as applying for a U visa for victims of crime or self-petitioning under the *Violence Against Women Act* (VAWA), discussed in Sections III.B. and III.G., can alleviate some of these problems by protecting parents from the threat of removal that either reporting abuse or failing to do so can present.⁷⁹

Each of these cultural, linguistic, and legal issues can be compounded by service access barriers. Cultural and linguistic issues and limited English proficiency can be significant for immigrant families regardless of legal status. In addition, unauthorized immigrant parents may find that their lack of status makes it

71 Wessler, *Shattered Families*.

72 HHS, ACF, Children’s Bureau, “Immigration and Child Welfare”; Child Welfare League of America (CWLA), “Critical Issues at the Intersection of Immigration and Child Welfare and How You Can Help Prepare Families Who Are Immigrants” (webinar, CWLA, February 8, 2018); Wessler, *Shattered Families*; Michelle Brané, Wendy Cervantes, Sara Harlow, and Katharina Obser, “Family Separation as a Result of Immigration Policies in the United States,” in *Childhood and Migration in Central and North America: Causes, Policies, Practices, and Challenges* (San Francisco and Buenos Aires: Center for Gender and Refugee Studies and the Justice and Human Rights Center, 2015): 428–52, https://cgrs.uchastings.edu/sites/default/files/Childhood_Migration_HumanRights_FullBook_English.pdf.

73 Howard Davidson, “Improving How Our Child Welfare System Addresses Children, Youth, and Families Affected by the U.S. Immigration Process,” *Child Legal Rights* 33, no. 1 (2013): 9, <http://lawecommons.luc.edu/clrj/vol33/iss1/4>.

74 Brané, Cervantes, Harlow, and Obser, “Family Separation as a Result of Immigration Policies in the United States.”

75 Ibid.; Alan J. Dettlaff and Megan Finno-Velasquez, “Child Maltreatment and Immigration Enforcement: Considerations for Child Welfare and Legal Systems Working with Immigrant Families,” *Children’s Legal Rights Journal* 33, no. 1 (2013): 37–63, <http://lawecommons.luc.edu/clrj/vol33/iss1/5>; Wessler, *Shattered Families*; C. Elizabeth Hall, “Where Are My Children ... and My Rights? Parental Rights Termination as a Consequence of Deportation,” *Duke Law Journal* 60, no. 6 (2011): 1459–1503, <https://scholarship.law.duke.edu/dlj/vol60/iss6/4/>.

76 HHS, ACF, Children’s Bureau, “Immigration and Child Welfare”; CWLA, “Critical Issues at the Intersection of Immigration and Child Welfare.”

77 A 2011 Applied Research Center report documented two cases in which domestic violence victims said their abusers reported them to ICE. It also describes a case in which a domestic violence victim did not report abuse because her abuser threatened to disclose her unauthorized status. When she discovered that her abuser was also molesting her daughter and reported that abuse, she was charged with failure to protect and eventually placed in removal proceedings. See Wessler, *Shattered Families*.

78 Ibid.; Sarah Rogerson, “Unintended and Unavoidable: The Failure to Protect Rule and Its Consequences for Undocumented Parents and Their Children,” *Family Court Review* 50, no. 4 (2012): 580.

79 For more information, see Meaghan Fitzpatrick and Leslye E. Orloff, “Abused, Abandoned, or Neglected: Legal Options for Recent Immigrant Women and Girls,” *Penn State Journal of Law and International Affairs* 4, no. 2 (2016): 615–85, <http://niwaplibrary.wcl.american.edu/wp-content/uploads/Abused-Abandoned-or-Neglected-Legal-Options-Recent-Imm-Women-and-Girls.pdf>.



more difficult to access mental health treatment, parenting classes, or other needed services.⁸⁰ And child welfare professionals may create reunification plans without awareness of these accessibility challenges or with the assumption that parents' unauthorized status will likely prevent reunification.⁸¹

III. Children of Immigrants and Child Welfare: Key Policy and Practice Issues and Agency Approaches

Between March and August 2018, MPI and AHPA researchers interviewed child welfare officials from 14 states,⁸² six counties,⁸³ and New York City to hear about the issues that arise when serving children of immigrants and immigrant children, and about policy and practice responses by states and counties.⁸⁴ In each instance, initial contact was made with the agency head, and the subsequent interview was with that individual, their designee(s), or both. The researchers prioritized outreach to officials in states with the largest unauthorized populations on the premise that such jurisdictions were more likely to have had more experience dealing with issues specific to families experiencing detention or deportation, in addition to those that may affect immigrant families regardless of legal status, and to have developed relevant policies and practices as a result. Since officials in all states were not interviewed, the examples are not intended to suggest that a particular number of states do or do not have a particular policy or practice.

In some instances, differences in approach turn on whether a state's child welfare system is state administered, or state supervised and county administered. Generally, in a state-administered child welfare system, the state has direct control over how local service delivery is organized; in a county-administered system, the state is responsible for overall policy and compliance with federal law and controls the state resources available to counties for guidance and technical assistance, but local workers are county employees and counties organize the specifics of service delivery.

Drawing on interviews, the subsections that follow explore nine components of state and local policy and practice:

1. Does the jurisdiction have a dedicated unit or specialized staff for addressing issues involving children of immigrants and immigrant children?
2. What training is provided to agency staff on immigration-related issues?
3. How does the jurisdiction address language access for persons with limited English proficiency?
4. Does the jurisdiction have policies addressing the placement of a child with an unauthorized or other noncitizen family member?
5. What are the jurisdiction's policies for cases in which a parent or other potential placement is in a foreign country?
6. Has the jurisdiction entered into a Memorandum of Understanding with any foreign countries for cases that cross national boundaries?

80 HHS, ACF, Children's Bureau, "Immigration and Child Welfare."

81 Brané, Cervantes, Harlow, and Obser, "Family Separation as a Result of Immigration Policies in the United States."

82 California, Colorado, Connecticut, Florida, Georgia, Illinois, Maryland, Minnesota, New Jersey, New Mexico, New York State, Texas, Virginia, and Washington State.

83 Fresno County, CA; Los Angeles County, CA; Mecklenburg County, NC; Monterey County, CA; Montgomery County, MD; and San Diego County, CA.

84 Unless otherwise noted, the information and examples discussed in Section III are drawn from author interviews with agency officials in these jurisdictions between March and August 2018.



7. Does the jurisdiction have policies and practices governing the screening of children and parents for potential eligibility for immigration statuses, such as Special Immigrant Juvenile (SIJ) status, asylum, or T or U visas?
8. Does the jurisdiction have confidentiality policies for immigration-related information it collects while managing child welfare cases? Does it have policies regarding the sharing of information with immigration authorities?
9. Does the jurisdiction have policies concerning parents with child welfare cases who are in immigration detention?

A. Organizational Structure

Some jurisdictions have developed specialized staffing or organizational structures to more effectively address issues distinctive to children in immigrant families. The approach an agency takes depends on multiple factors, particularly the number of such cases and whether the system is state administered versus state supervised and county administered.

Recommendation: Employ specialized staff or provide access to a skilled point of contact for caseworkers to reach out to for guidance and support on immigration issues in child welfare cases.

State and county interviewees described two principal organizational approaches to addressing immigration-related issues: the creation of a dedicated office with immigration-related responsibilities, or the designation of a dedicated liaison or resource person.

Dedicated offices with immigration-related responsibilities are centralized resource hubs for the child welfare agencies within which they work. Both Los Angeles County and New York City have dedicated offices of this sort, each with a small staff whose primary role is to support their agencies on immigration-related issues and to provide resources to caseworkers who encounter questions related to immigration.

Los Angeles County's Special Immigration Status (SIS) Unit, whose members are known as legalization workers and are not social workers themselves, supports social workers in the county's Department of Children and Family Services. The unit focuses on screening children to help determine their eligibility for SIJ status and other immigration relief. The SIS Unit also coordinates with U.S. Citizenship and Immigration Service (USCIS) and attends regional meetings with the ORR, including after cases involving a disruption in the placement of an unaccompanied child.

New York City's child welfare agency, the Administration for Children's Services (ACS), has implemented extensive Immigrant Services and Language Access initiatives to guide the agency in acting as a resource hub and overseeing screening programs. ACS liaises with the Mayor's Office of Immigrant Affairs and other city agencies, continually monitors the success of status-relief applications, certifies U and T visas, and ensures that agency staff and service providers comply with local laws regarding immigration (such as those that prohibit asking about someone's immigration status unless required to determine benefit eligibility).⁸⁵ New York City also requires each foster-care agency to designate an immigration liaison, who acts as a point person for screening, referral, monitoring, and reporting of cases to support implementation of city policies.

A set of jurisdictions—Connecticut, Illinois, Minnesota, New Jersey, New Mexico, and San Diego and Fresno Counties, CA—each employ a dedicated liaison or resource person. These individuals are

⁸⁵ City of New York, Office of the Mayor, "Executive Order No. 34: City Policy Concerning Immigrant Access to City Services," May 13, 2003, www1.nyc.gov/assets/immigrants/downloads/pdf/eo-34.pdf; City of New York, Office of the Mayor, "Executive Order No. 41: City-Wide Privacy Policy and Amendment of Executive Order No. 34 Relating to City Policy Concerning Immigrant Access to City Services," September 17, 2003, www1.nyc.gov/assets/immigrants/downloads/pdf/eo-41.pdf.



sometimes referred to as international or immigration liaisons. They typically function as a point of contact within the child welfare agency who provides resources on cases with an international or immigration component. In some cases, this is not a full-time position and the individual in this role may have other responsibilities. Some coordinate both legal and social work aspects of care, such as coordinating a home visit with a foreign child welfare agency while obtaining travel authorization for a child who may be placed abroad. Where the point person is a social worker, as in Minnesota, they coordinate responses to legal questions with a child's attorney.

In Texas, regional immigration specialists coordinate between caseworkers and attorneys to address the immigration issues of all noncitizen children within their jurisdiction, and with border liaisons who specialize in cross-border cooperation with Mexican officials.⁸⁶

Connecticut has an Office of Multicultural Affairs and Immigration Practice that combines some aspects of an immigration liaison within an office focused on expanding the agency's capacity for working with diverse families more generally.⁸⁷ The office develops tools that caseworkers can use when working with immigrant families, surveys local capacity to implement these tools, monitors local population groups, and provides staff training accordingly. It also acts as a liaison with ORR and ICE, assists with trafficking cases, and certifies U visas.

Whether administered through a liaison or a larger office, responsibilities typically include:

- answering questions from caseworkers on immigration or international issues affecting cases;
- ensuring caseworkers comply with policies governing such issues;
- organizing and administering training for other agency staff on immigration-related issues;
- organizing and administering training for field staff and subcontracted agencies on how to make use of liaison services;
- coordinating with foreign consulates and/or foreign social service agencies for child repatriations or international placements of children;
- coordinating with federal agencies such as USCIS, CBP, and ICE;
- screening children for potential immigration benefits and assisting them as they file their applications;
- applying for employment authorization for immigrant children over age 15;
- obtaining documents such as birth, death, and marriage certificates in cooperation with foreign consulates;
- translating these documents or arranging for their translation;
- obtaining Social Security number documentation, local IDs, or replacements for lost or stolen Permanent Resident Cards;

86 Texas Department of Family and Protective Services, "Child Protective Services Handbook: 6700 International and Immigration Issues," updated August 2017, www.dfps.state.tx.us/HANDBOOKS/CPS/FILES/CPS_pg_6700.asp.

87 Connecticut Office of Multicultural Affairs and Immigration Practice, "A Message from William Rivera, Director," accessed October 5, 2018, <https://portal.ct.gov/DCF/Multicultural-Affairs/Home>.



- submitting a Verification Request (Form G-845)⁸⁸ with USCIS in California or another state where Permanently Residing under Color of Law (PRUCOL)⁸⁹ status grants noncitizens access to state funds for foster care or Medicaid;
- referring children and parents to community resources or local partner organizations for additional services, including legal consults and representation in immigration law matters;
- monitoring cases with international or immigration components; and
- arranging for home studies in other countries prior to international placement.

In California, the state also employs an ombudsperson for youth in foster care who occupies a unique role that complements the work of each county's immigration liaison(s). The ombudsperson advocates for youth and caregivers in cases where the immigration relief application process was not completed while the case was open with a local agency. While the ombudsperson is housed in the California Department of Social Service's Children and Family Services Division, the ombudsperson operates quasi-independently with access to the Chief Counsel and other state legal supports.

B. Training on Immigration-Related Issues

A number of jurisdictions have developed training materials on immigration-related issues. Child welfare systems that are state administered may or may not have state-prescribed training materials or requirements for local child welfare staff; in state-supervised systems, counties may have developed specialized training.

Recommendation: Develop preservice and ongoing training for frontline workers concerning immigration issues in child welfare cases, with content emphasizing cultural competency and issues relating to legal status.

Jurisdictions vary as to who receives training and the training content. Florida and New Jersey offer training on immigration issues to all staff who work with clients, including frontline caseworkers, supervisors, and executive supervisors. In Fresno County, CA, some training is available to all staff, and other training opportunities are designed specifically for those newly hired or provided as a topical refresher course. New Mexico provides training to child welfare agency staff that outlines both caseworker and immigration liaison responsibilities. California's core curriculum for child welfare workers and supervisors includes information on state laws and immigration statuses, which a county can supplement with more in-depth training tailored to its local agency and the populations it serves. New York City has developed trainings specific to immigration liaisons, foster-care agencies, and court legal staff. Connecticut's Office of Multicultural Affairs and Immigration Practice surveys caseworkers to gauge their awareness and implementation of immigration-related policies and then provides training to build staff capacity. Florida, Georgia, Minnesota, and New Jersey have developed additional materials beyond mandatory training that staff can elect to view.

Trainings are generally administered by agency staff, partner organizations, or consulates, and often depend on the administrative structure of the immigration liaison(s) in the state. New Mexico's training materials are designed and presented by its immigration liaisons. In Fresno County, the immigration liaison is assisted in these tasks by the staff development training team. In New York State, where state

88 DHS, USCIS, "Verification Request" (Form G-845, USCIS, Washington, DC, May 29, 2018), www.uscis.gov/files/form/g-845.pdf.

89 PRUCOL—Permanently Residing under Color of Law—is a category of public benefits eligibility used in some states in which certain state-funded programs are made available to individuals when the government knows of their presence and has no current intent to require their departure. For a discussion of PRUCOL in California, see California Department of Health Care Services, Research and Analytic Studies Division, "Medi-Cal's Non-Citizen Population: A Brief Overview of Eligibility, Coverage, Funding, and Enrollment" (Medi-Cal Statistical Brief, October 2015), www.dhcs.ca.gov/dataandstats/statistics/Documents/noncitizen_brief_ADAfinal.pdf.



policy expressly reaffirms that all legal resident children are entitled to appropriate services regardless of their caregiver’s immigration status, local departments receive state guidance on the obstacles that children with unauthorized immigrant caregivers frequently face, including poverty, language barriers, and a lack of health care.⁹⁰ New York State determines the immigration-related content of training for child welfare professionals in the state, but local agencies can supplement the state-provided training with their own additional content.

In Illinois, one part of training involves procedures to screen children for different immigration status and make referrals to the Department of Children and Family Services’ Immigration Services Unit; another part, delivered by outside partners, concerns social and cultural aspects of working with immigrant families. In New Jersey, trainings on the processes involved in applying for different immigration benefits are provided for all staff by the Department of Children and Families’ immigration legal specialist, and supplemental modules on cultural competency are offered as electives that count toward required continuing education credits. In Monterey County, CA, the Consulate General of Mexico provides social workers with specialized trainings on communicating with consulates. The Consulate General of Mexico in Raleigh, NC, participates in training employees of county welfare departments from across the state and also conducts outreach to Mexican communities to orient them to child welfare services.⁹¹ In Florida and Georgia, online training materials are available as the result of a partnerships between child welfare service agencies and state universities. Online trainings offered in Florida count towards continuing education requirements, and staff are required to complete a course focused on immigration issues in human trafficking before handling any trafficking cases.⁹²

Illinois has leveraged larger-scale partnerships to build out training offerings. Loyola University Chicago’s School of Social Work used support from a grant from the federal Administration for Children and Families to develop a training partnership between the school, the Illinois Department of Children and Family Services, the Consulate General of Mexico in Chicago, and the Latino Consortium (a group of subcontracted nonprofits that serve the majority of Latino child welfare cases in Cook County).⁹³ The project used a “train-the-trainer” model to train more than 750 child welfare staff and court personnel within three years, and led to the creation of a field-placement university student exchange program between child welfare agencies in the United States and Mexico.⁹⁴

New Jersey’s Department of Children and Families has a partnership with Rutgers School of Social Work to provide continuing education courses.⁹⁵ The state requires that child welfare workers pass a minimum number of these elective courses each year, with topics including providing culturally relevant services, cultural competency with different immigrant family groups, and understanding immigration law.⁹⁶

90 New York State, Office of Children and Family Services, “Providing Services to Children of Undocumented Immigrants” (administrative directive, transmittal no. 17-OCFS-ADM-06, NY, June 27, 2017), https://ocfs.ny.gov/main/policies/external/OCFS_2017/ADFs/17-OCFS-ADM-06.pdf.

91 State of North Carolina and Consulate General of Mexico, “Memorandum of Agreement between the Consulate General of México in Raleigh, North Carolina and the Government of the State of North Carolina of the United States of America Regarding Consular Notification and Access in Cases Involving Minors,” March 25, 2015, www2.ncdhhs.gov/info/olm/manuals/dss/csm-05/adm/CWS-AL-01-15a.pdf.

92 Adriana Dinis and Camille Frazer, “Human Trafficking and Immigration: Options Available to Undocumented Juvenile Victims” (training presentation, 2016), www.centerforchildwelfare.org/Training/2016cpsummit/Human%20Trafficking%20and%20Immigration.pdf.

93 Maria Vidal De Haymes, *Site Visit Report: Culturally Responsive Child Welfare Practice with Latino Children and Families: A Child Welfare Staff Training Model* (Chicago: Loyola University Chicago School of Social Work, 2008), www.childwelfare.gov/pubPDFs/illinoisfinal.pdf.

94 Ibid.

95 Rutgers School of Social Work, “New Jersey Child Welfare Training Partnership,” accessed February 4, 2019, <https://socialwork.rutgers.edu/centers/institute-families/office-child-welfare-initiatives/new-jersey-child-welfare-training-partnership>.

96 Rutgers School of Social Work, “Training Opportunities: New Jersey Child Welfare Training Partnership” (course catalog 2016–17, Rutgers School of Social Work, New Brunswick, NJ, September 2016), <https://socialwork.rutgers.edu/file/2950/download>.



Across these training models, materials are generally designed to familiarize staff with important vocabulary, policies, and resources related to working with immigrant children and families. Trainings frequently define and discuss the details of immigration statuses and benefits, including U and T visas, self-petitioning for a visa under VAWA, and obtaining SIJ status. Trainings in New York City, Los Angeles County, and Fresno County have included DACA and TPS, and caseworkers in Montgomery County are trained in specific welcoming language to address fears DACA participants and TPS holders may have when contacting a government agency.

Trainings frequently define and discuss the details of immigration statuses and benefits.

Trainings generally outline important policies, procedures, and laws staff should follow when assisting a child in applying for immigration status. In New York City, the immigration liaison receives training on the state's SIJ policies and procedures. Trainings for New Jersey child welfare staff place emphasis on how to apply for SIJ status. New Jersey also includes training on U visas for children and family members, and on procedures to ensure that application supplements for these visas are certified by either law enforcement or an appropriate party in the department. New York State and Connecticut have offered statewide trainings regarding the certification of U visas and endorsement of T visas. In addition to information on immigration options, trainings in Fresno County offer updates on state laws relating to immigration and the coordination of care under different status designations. Florida's online training materials provide information on the intersection of child welfare and immigration enforcement policies.

Office trainings often include information for caseworkers on how to access important resources or points of contact. In offices that employ an immigration liaison, trainings may specifically outline the liaison's roles and responsibilities, and instruct the rest of the staff on when to contact the liaison—this is the case in Fresno County, Illinois, New Mexico, and New York City. Trainings may also explain when and how to contact and communicate with foreign consulates and the consulates' roles in child welfare proceedings and placements. This is done in Monterey County, where the Consulate General of Mexico trains agency staff on how to contact its offices and assists child welfare officials in creating personal connections with consulate staff.

Finally, trainings typically direct staff to additional resources they can refer to when working with immigrant children, parents, and families, including information on different cultures. For example:

- Illinois' training partnership included content for social workers on acculturative stress, traditional help-seeking behaviors, and migration patterns alongside legal status.⁹⁷
- New York City has a training module for child protection service workers that emphasizes the importance of cultural competency during an investigation and is centered around building empathy and knowledge of the factors that can motivate people to migrate, practical issues during interpretation, the lasting effects of political oppression, acculturation and family stress, among others.⁹⁸
- Georgia's university partners center trainings around developing cultural competency with immigrant families through discussion of personal stories and complex sample cases that reflect similar themes, with staff prompted on decision points in responding to reports of abuse and assisting clients in pursuing immigration status.

⁹⁷ Vidal De Haymes, *Site Visit Report*.

⁹⁸ New York City, Administration for Children's Services, "The Role of Culture in Conducting the CPS Investigation" (CPS training module 2, unit A5, New York City Child Protective Services).



- Florida and Minnesota include information on the unique needs of unaccompanied youth in their trainings.⁹⁹
- Connecticut’s caseworkers receive guidance on engaging unaccompanied minors from a trauma-informed framework, including through screening, assessment, and referral in the child’s native languages for appropriate behavioral health services.¹⁰⁰

Coordinating with another nation’s consulate can be a strategy for enhancing training. Illinois’ partnership developed video materials for the Mexican consulate to orient recent immigrants on topics such as their rights, U.S. child welfare practices, and protection services offered through the consulate. Meanwhile, the Consulate General of Mexico provides Monterey County social workers with books and brochures they can reference when working with children who are Mexican nationals or have Mexican-national parents.

Agency staff can also benefit from training on best practices in family reunification, placement across borders, engagement strategies for families with unauthorized immigrant members, placement with unauthorized caregivers in accordance with state law, making reasonable efforts to work with detained or deported parents when a permanency goal for their child is reunification, and legal rights of detained or deported parents in court proceedings—topics discussed in the subsections that follow.

C. Language Access

U.S. Department of Health and Human Services (HHS) regulations implementing Title VI of the *Civil Rights Act* require recipients of federal financial assistance to ensure no person is discriminated against or prevented from receiving the benefits of a program based on national origin.¹⁰¹ These regulations have been interpreted as requiring recipients to take reasonable steps to provide meaningful access to Limited English Proficient (LEP) persons. A child welfare agency’s policies determine the extent to which interpretation and translation services are provided to facilitate verbal and written communication between caseworkers and clients. While policies vary, all agencies must provide language assistance services that allow LEP individuals to effectively participate in or benefit from a child welfare agency’s programs and activities.

Recommendation: Review whether language access policies adequately reflect the characteristics and needs of the service population, with attention to translation of forms and availability of multilingual staff and interpreters who are not children or other family members.

Agencies utilize multiple methods to facilitate language assistance. Along with having bilingual staff, a common approach is to make interpreters available without charge to the client. Interviewees in Connecticut, Florida, Illinois, New York City, San Diego, and Texas all described providing interpreters when a family’s preferred or primary language is not English. A number of interviewees emphasized the undesirability of having children or other family members interpret for parents; this is both to ensure accuracy and impartiality and to prevent tensions, conflicts, and difficult family dynamics. Georgia caseworkers are instructed to contact the state Department of Human Services’ Limited English Proficient/Sensory Impaired program to request interpreters who are trained to translate

99 Adriana Dinis, “Unaccompanied Immigrant Children AKA Unaccompanied Alien Children” (training presentation, 2016), www.centerforchildwelfare.org/Training/2016cpsummit/Unaccompanied%20Immigrant%20Children.pdf.

100 Connecticut Department of Children and Families, “Immigration Practice Guide,” updated May 1, 2017, <https://portal.ct.gov/-/media/DCF/Policy/BPGuides/21-13-PG-Immigration.pdf?la=en>.

101 HHS, Office for Civil Rights, “Guidance to Federal Financial Assistance Recipients Regarding Title VI and the Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons – Summary,” accessed February 6, 2019, www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/guidance-federal-financial-assistance-title-vi/index.html.



for all family parties to avoid situations in which one family member has to translate for the others.¹⁰² Connecticut's Office of Multicultural Affairs maintains an updated list of approved interpreter services and provides social workers with guidance on working with families via interpreters, including tips on body language, using key terms or phrases, and maintaining a respectful tone during interactions. It also asks caseworkers to double the expected length of their meetings when working with interpreters, allocating some of this time for a separate briefing between the worker and interpreter to prepare the latter for topics that will likely come up.¹⁰³ Minnesota's counties maintain lists of qualified in-department interpreters and volunteers.¹⁰⁴ Minnesota also sets standards for reimbursement across all counties while assisting those with service populations that frequently utilize language services to develop their own access plans. Minors are not allowed to be used as interpreters, and staff are directed not to suggest or encourage family members or friends to interpret except in an emergency. In Illinois it is illegal for child welfare services to use minors as interpreters.

Montgomery County also includes continuous staff training and dedicated funding for language services in their language access policy and implementation plan.

Some jurisdictions have developed additional approaches to facilitating language access. Even when interpreters are available, Illinois works to ensure that therapeutic services are performed in the child's native language, whenever possible. Montgomery County is using a *Victims of Crime Act* (VOCA) grant from the federal Office of Justice Programs to incorporate services for LEP populations. Monterey County works with nonprofits to coordinate multiple translators in cases where a client is most comfortable in a nonwritten indigenous language; in this model, one interpreter translates from English to Spanish, and another from Spanish to an indigenous language.

Agencies have taken a range of approaches to increase bilingual staffing. New Mexico and Montgomery County have a pay differential for multilingual caseworkers. Montgomery County also includes continuous staff training and dedicated funding for language services in their language access policy and implementation plan. Washington State maintains a listserv where certified staff can register their written and/or spoken fluency for a salary increase. Montgomery County also emphasizes the hiring of foreign-trained professionals who are not yet licensed when filling paraprofessional roles in its programs. Texas recruits bilingual foster caregivers, adoptive parents, and staff to provide language access to clients.¹⁰⁵ And in Illinois, the Burgos Consent Decree mandates that a bilingual staff member be available in the Chicago office and that signage and materials be available in Spanish.¹⁰⁶ Further, in Illinois, if children who primarily speak Spanish are removed from their homes, they must be placed with Spanish-speaking foster parents within 60 days.¹⁰⁷

102 Georgia Division of Family and Children Services, "Chapter 1, Policy 1.4: Non-Discriminatory Child Welfare Practices" (Child Welfare Policy Manual, Georgia Division of Family and Children Services, Atlanta, March 2016), <http://odis.dhs.state.ga.us/ViewDocument.aspx?docId=3006254&verId=1>.

103 Connecticut Department of Children and Families, "Practice Guide for Delivery of Service in a Client's Preferred Method of Communication," updated March 1, 2016, <https://portal.ct.gov/-/media/DCF/Policy/BPGuides/21-3-PGCommunication.pdf?la=en>.

104 Hennepin County Human Services and Public Health Department, "Hennepin County Limited English Proficiency Plan," updated April 2018, www.hennepin.us/-/media/hennepinus/business/work-with-hennepin-county/mfip-forms-contacts-child-care/hclep-plan-2018.pdf?la=en.

105 Texas Department of Family and Protective Services, "Child Protective Services Handbook: 1250 Clients with Limited English Proficiency (LEP)," updated December 8, 2003, www.dfps.state.tx.us/HANDBOOKS/CPS/FILES/CPS_pg_1200.asp.

106 Layla Suleiman, "Burgos Consent Decree Summary," accessed February 16, 2019, http://cssr.berkeley.edu/cwscmsreports/LatinoPracticeAdvisory/Illinois/IL_Burgos-Consent-Decree-Summary.pdf.

107 Ibid.



Many agencies contract with language lines to supplement in-house linguistic capacity. New York State does so, and also provides resources, technical support, and ongoing assistance to counties that develop their own meaningful access plans.¹⁰⁸ New York City law requires the availability of telephonic interpretation in at least 100 languages as well¹⁰⁹ and monitors usage of this resource as one factor in tailoring its language access plan to its population.¹¹⁰

New York State translates its vital documents into the six most commonly spoken non-English languages for counties,¹¹¹ which are responsible for ensuring subcontractors comply with language access standards. New York City expands translation to include the ten most common languages its child welfare agency encounters in its caseload and provides oral interpretation of documents for clients who do not speak one of the ten.¹¹² Minnesota provides versions of the most widely used Department of Human Service materials in a variety of languages spoken in the state (Hmong, Russian, Somali, Spanish, and Vietnamese), translating documents into other languages as needed. Connecticut translates all documents related to a particular case into the preferred language of the clients. Los Angeles and San Diego provide clients with a form during case intake so they can indicate the language in which they would like to receive services and documents.

Besides direct document translation, some agencies use other tools to facilitate language access. Illinois has a 24/7 language hotline with dozens of language options that families can call in to with child welfare questions. Minnesota has “I need a language interpreter” request cards in ten languages and language assistance posters in its offices. New York City places pamphlets and flowcharts in its offices with child welfare information translated into multiple languages.¹¹³

D. Licensing

When a child must be placed in out-of-home care, the caregiver must be licensed in order to qualify for financial assistance to help with the costs of caring for the child. Licensure also brings additional benefits, including training, services, and other supports. A comprehensive review of state licensing policies by the American Bar Association¹¹⁴ found that states vary as to whether an unauthorized immigrant relative of a child can qualify for licensing: depending on state policy, this may be explicitly permissible, permissible under limited circumstances, impermissible, or the state’s policies may not expressly address the issue.

Recommendation: In light of the importance of placing children with relatives when possible and appropriate, identify and address barriers that may prevent noncitizen caregivers, including unauthorized immigrants, from becoming licensed providers.

108 New York State, Office of Children and Family Services, “Provision of Services to Persons with Limited English Proficiency (LEP)” (informational letter, April 26, 2016), [https://ocfs.ny.gov/main/policies/external/OCFS_2016/INFs/16-OCFS-INF-05%20Provision%20of%20Services%20to%20Persons%20with%20Limited%20English%20Proficiency%20\(LEP\).pdf](https://ocfs.ny.gov/main/policies/external/OCFS_2016/INFs/16-OCFS-INF-05%20Provision%20of%20Services%20to%20Persons%20with%20Limited%20English%20Proficiency%20(LEP).pdf).

109 City of New York, Office of the Mayor, “Executive Order No. 120: Citywide Policy on Language Access to Ensure the Effective Deliver of City Services,” updated July 22, 2008, www.nyc.gov/html/om/pdf/2008/pr282-08_eo_120.pdf; New York City Council, “A Local Law to Amend the New York City Charter and the Administrative Code of the City of New York, in Relation to Improving Access to City Services for Limited English Proficiency Individuals,” *Local Law 2017/030*, March 18, 2017, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2735477&GUID=D0A0ECA1-4D71-47EB-B44D-5919777ED818&FullText=1>.

110 New York City, Administration for Children’s Services, “Language Access Plan,” updated July 2015, www1.nyc.gov/assets/acs/pdf/immigrant_services/NYC_ACS_Language_Access_Plan_July_2015.pdf.

111 New York State, Office of Children and Family Services, “Provision of Services to Persons with Limited English Proficiency (LEP).”

112 New York City, Administration for Children’s Services, “Language Access Plan.”

113 Ibid.

114 See American Bar Association, “Immigrant Caregivers: The Implications of Immigration Status on Foster Care Licensure” (policy brief, American Bar Association, Chicago, June 2017), www.americanbar.org/content/dam/aba/administrative/child_law/Immig-FosterLicensing-June%202017.authcheckdam.pdf.



I. Eligibility

Some states expressly provide that immigration status does not affect whether a relative is eligible to become a child's licensed caregiver. California state law provides that placements are to be made regardless of the immigration status of the caretaker or relative.¹¹⁵ Illinois policy provides that "Immigration status of a relative caregiver should not hinder the placement of a relative child in the home" as long as other applicable requirements are met.¹¹⁶

A second set of jurisdictions generally require relatives to be U.S. citizens or LPRs to be licensed providers, but explicitly allow some exceptions for other noncitizen (including unauthorized) relative caregivers.

- In New Jersey, children can be placed with unauthorized immigrant kin if the placement is determined to be in the child's best interest and the family member meets other standard eligibility criteria. However, the state presumes that unauthorized immigrant families will have difficulty providing stability for the child due to the risk of deportation and uncertainty in employment and housing. Caseworkers must show a "compelling justification" to overcome this presumption and submit the placement for waiver of the home study and approval by the agency director.¹¹⁷
- In Connecticut, unauthorized immigrants can be considered for licensed placements in "special circumstances" that are left undefined in the state policy, as long as they meet the established licensing criteria and have a valid Individual Taxpayer Identification Number (ITIN).¹¹⁸
- Although Georgia's policy manual does not permit the licensure and subsidy of unauthorized immigrant foster homes,¹¹⁹ relative placements can be approved via departmental waiver and subsidized at a reduced rate.¹²⁰

A third group of states have general waivers or alternative approval procedures that can be used in a range of circumstances. For example, North Carolina's *Foster Home Licensing Manual* states that

115 State of California, "Dependent Children—Judgments and Orders," *California Welfare and Institutions Code* §§ 361.2(e), effective January 1, 2019, http://leginfo.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=2.&part=1.&awCode=WIC&article=10.

116 Illinois Department of Children and Family Services, "Licensing, Payment and Placement of Children with Undocumented Relatives" (Policy Guide 2008.01, May 16, 2008), www2.illinois.gov/dcf/aboutus/notices/Documents/policy_guide_2008.01.pdf#search=2008.01.

117 New Jersey Department of Children and Families, "Placement of Children with Kinship Caretakers who Are Undocumented Immigrants" (Child Protection and Permanency Manual, New Jersey Department of Children and Families, Trenton, NJ, February 29, 2019), www.nj.gov/dcf/policy_manuals/CPP-IV-A-11-200.pdf.

118 Connecticut Department of Children and Families, "Immigration Practice Guide." For more information about the ITIN program, which the Internal Revenue Service (IRS) created to enable individuals without Social Security numbers (SSNs)—including unauthorized immigrants—to pay taxes, see American Immigration Council, "The Facts About the Individual Tax Identification Number (ITIN)" (fact sheet, American Immigration Council, Washington, DC, January 2, 2018), www.americanimmigrationcouncil.org/research/facts-about-individual-tax-identification-number-itin.

119 Georgia Division of Family and Children Services, "Chapter 10: Foster Care, Policy 10.8: Financial and Non-Financial Supports for Children in Foster Care or Who Have Achieved Permanency" (Child Welfare Policy Manual, Georgia Division of Family and Children Services, Atlanta, July 2017), <http://odis.dhs.state.ga.us/ViewDocument.aspx?docId=3005854&verId=1>; American Bar Association, "Immigrant Caregivers."

120 Georgia Division of Family and Children Services, "Chapter 10: Foster Care, Policy 10.17: Service Needs of an Immigrant Child" (Child Welfare Policy Manual, Georgia Division of Family and Children Services, Atlanta, August 2014), <http://odis.dhs.state.ga.us/ViewDocument.aspx?docId=3005762&verId=1>.



“applicants must be citizens of the United States through birth or naturalization or be able to verify lawful immigration status,”¹²¹ but this is not listed among the nonwaivable licensing requirements.¹²²

A fourth group of states does not explicitly outline citizenship requirements for licensure. For example, New York and Minnesota do not specify whether children can be placed with noncitizen caregivers. In Florida, placement can occur if the adult otherwise meets foster-care licensing requirements, although some immigrants seeking licensing may not meet the requirement that at least one adult in the home “be able to effectively communicate” with both the children and the agency.¹²³

A fifth group of states, including Maryland and New Mexico, expressly provide that individuals must be U.S. citizens or LPRs in order to qualify for subsidy for relative placements.¹²⁴ In Texas, only citizens, LPRs, and other qualified noncitizens are eligible to become foster parents, and the requirement cannot be waived. Unauthorized immigrants may apply for a waiver to adopt the child.¹²⁵ In deciding whether to grant the waiver, factors include the quality of the adoptive parent’s community connections, the plan for the child should the adoptive parent be deported, and the recommendation of regional staff.¹²⁶

2. Practical Issues Concerning Placement

If unauthorized kin are potentially eligible to qualify for subsidy for placement, they still must still meet generally applicable requirements for placement. These can include background checks of caregivers and other household members, state residency requirements, and proof of educational attainment, among others. While these requirements may serve important goals, they can also prevent some unauthorized and other immigrant adults from qualifying for subsidy unless the state or locality takes additional steps to accommodate these caregivers.

One of these barriers concerns required identification. California law explicitly allows child welfare agencies to use a foreign passport or consular ID card to run a criminal records check.¹²⁷ New Jersey has allowed unauthorized immigrant applicants to use municipal IDs that are not tied to immigration status to complete these checks. When an applicant does not live within a municipality that issues these, New Jersey’s Department of Children and Families permits applicants to obtain a state-issued ID from the department for the purposes of fingerprinting as long as they are able to provide documentation of identity (generally, consular authentication of a foreign passport). Unauthorized immigrants may hesitate to attend a scheduled fingerprinting session for fear of identification by immigration enforcement officials; in light of this, some California agencies now use mobile scanners for this step.

An overly narrow definition of kinship can present another practical obstacle to placing children with unauthorized kin. New York State recently broadened its policy for the kinship placement process to

121 North Carolina Department of Health and Human Services, “Citizenship Status of Foster Parents,” *Foster Home Licensing Manual* sec. VIII.I. (May 1, 2014), www2.ncdhhs.gov/info/olm/manuals/dss/csm-94/man/PDF%20docs/FHLMcVIII.pdf.

122 North Carolina Department of Health and Human Services, “Waiver of Licensing Rules,” *North Carolina Administrative Code* 10A, Section 70L.0102 (October 3, 2017), <http://reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2070%20-%20children's%20services/subchapter%201/10a%20ncac%2070l%20.0102.pdf>.

123 State of Florida, “Standards for Licensed Out-of-Home Caregivers,” *Florida Administrative Code* 65C-13.030 (March 6, 2018), www.flrules.org/gateway/ruleNo.asp?id=65C-13.030.

124 State of Maryland, “Technical Requirements for Resource Home Approval and Reapproval,” *Code of Maryland Regulations* § 07.02.25.04.B. (updated January 29, 2019), <http://mdrules.elaws.us/comar/07.02.25.04>; State of New Mexico, “Licensing Requirements for Foster and Adoptive Homes,” *New Mexico Administrative Code* § 8.26.4.12.F.6. (amended August 15, 2011), <http://164.64.110.134/parts/title08/08.026.0004.html>.

125 Texas Department of Family and Protective Services, “Child Protective Services Handbook: 7226.1 The Citizenship Requirements of Foster Parents – 7226.2 The Citizenship Requirements of Adoptive Parents,” updated October 2017, www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_7000.asp#CPS_7226.

126 Texas Department of Family and Protective Services, Child Protective Services, *Foster and Adoptive Home (FAD) Resource Guide* (Austin: Texas Department of Protective Services, 2018), www.dfps.state.tx.us/handbooks/CPS/Resource_Guides/FAD_Resource_Guide.pdf.

127 State of California, *The Reuniting Immigrant Families Act*, SB 1064 (2012), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1064.



require courts to locate and notify all parents who are not alleged to have abused or neglected a child of the pendency of a child protective proceeding and the options for kinship placement; this must also be done for all “suitable persons” identified by any parent (regardless of allegations) and for all relatives, including those identified by children older than age 5.¹²⁸ This broadens the pool of kin who could potentially become a child’s caregivers in general, building on the creation of a state assistance program—New York Kinship Guardian Assistance Program (KinGAP)—for children and guardians in permanent non-foster placements.¹²⁹ This program was also recently expanded to allow caregivers to be eligible as a prospective relative guardian if they are related to the half-sibling of a child or had a prior positive relationship with the child (such as a step-parent, godparent, neighbor, or family friend).¹³⁰ New York’s KinGAP allows foster parents to leave the foster-care system, receive financial assistance, and keep siblings together, yet with more inclusive eligibility standards than those required to qualify for federal funding.¹³¹ Effectively, this creates the space for all local social service districts to provide subsidies to a larger number of long-term caregivers through a unified set of procedures, regardless of whether the child and/or caregiver is an unauthorized immigrant. Furthermore, this mainstreams immigration-related legal concerns into discussions with caregivers, with a central online resource navigator that provides them with information about deportation-related emergency planning and disclosure of citizenship status alongside more universal concerns such as visitation, custody, and education enrollment.¹³² After the passage of the federal *Fostering Connections to Success and Increasing Adoptions Act of 2008*, states have been able to more easily adopt programs such as these that widen the availability of caretakers for all children.¹³³

In California and Illinois, caregivers can be reimbursed for taking care of U.S.-citizen children regardless of their own legal status.

Applications that require Social Security numbers for caregivers and/or other family members in the household may deter unauthorized caregivers from applying. In California¹³⁴ and Illinois,¹³⁵ caregivers can be reimbursed for taking care of U.S.-citizen children regardless of their own legal status. Instead of requiring a Social Security number, Illinois,¹³⁶ Connecticut,¹³⁷ and New Jersey¹³⁸ allow caregivers to use an ITIN for state subsidy payments. Illinois also provides instructions for immigrant caregivers on

128 New York State, Office of Children and Family Services, “Changes to the Family Court Act Regarding Child Protective and Permanency Hearings, Including Changes Affecting the Rights of Non-Respondent Parents” (administrative directive, transmittal no. 17-OCFS-ADM-02, April 13, 2017), https://ocfs.ny.gov/main/policies/external/OCFS_2017/ADFs/17-OCFS-ADM-02-Changes-to-the-Family-Court-Act-CPS.pdf.

129 New York State, Office of Children and Family Services, “Kinship Guardianship Assistance Program (KinGAP)” (administrative directive, transmittal no. 11-OCFS-ADM-03, April 1, 2011), [https://ocfs.ny.gov/main/policies/external/OCFS_2011/ADMs/11-OCFS-ADM-03%20Kinship%20Guardianship%20Assistance%20Program%20\(KinGAP\).pdf](https://ocfs.ny.gov/main/policies/external/OCFS_2011/ADMs/11-OCFS-ADM-03%20Kinship%20Guardianship%20Assistance%20Program%20(KinGAP).pdf).

130 New York State, Office of Children and Family Services, “Expansion of the Kinship Guardianship Assistance Program (KinGAP)” (administrative directive, transmittal no. 18-OCFS-ADM-03, March 2, 2018), https://ocfs.ny.gov/main/policies/external/ocfs_2018/ADM/18-OCFS-ADM-03.pdf.

131 New York State, Office of Children and Family Services, “Kinship Guardianship Assistance Eligibility Checklist” (form OCFS-4685, April 2016), <https://ocfs.ny.gov/main/Forms/kinship/OCFS-4685%20KinGAP%20Guardianship%20Assistance%20Eligibility%20Checklist.dot>.

132 New York State Kinship Navigator, “Legal Fact Sheets,” accessed January 24, 2019, www.nysnavigator.org/?page_id=47.

133 For more information, see Children’s Defense Fund et al., *Making It Work: Using the Guardianship Assistance Program (GAP) to Close the Permanency Gap for Children in Foster Care* (N.p.: Children’s Defense Fund et al., 2012), www.grandfamilies.org/Portals/0/Making%20it%20Work%20-%20GAP%20report%202012.pdf.

134 State of California, *The Reuniting Immigrant Families Act*.

135 Illinois Department of Children and Family Services, “Licensing, Payment and Placement of Children with Undocumented Relatives.”

136 Ibid.

137 Connecticut Department of Children and Families, “Immigration Practice Guide.”

138 New Jersey Department of Children and Families, “Placement of Children with Kinship Caretakers who Are Undocumented Immigrants.”



how to obtain and use an ITIN to receive subsidy payments, explicitly applies this rule to caregivers of Illinois children who live in other states, and allows for retroactive payments to be made in recognition of lengthy ITIN processing times.¹³⁹ Washington State provides equal state funding for children residing with approved unauthorized caregivers, prohibits the collection of Social Security numbers except when no alternative is available, and in 2018 removed the “U.S. citizen” checkbox from its centralized electronic records system so that staff are no longer prompted to consider or ask this question, apart from in eligibility assessments.¹⁴⁰ Given that unauthorized immigrants may fear that information they provide about their legal status during the kinship care application process may be disclosed to immigration authorities, New York State provides a fact sheet for applicants that lists when Social Security numbers are used during the public assistance process.¹⁴¹

One expressed concern about placing children with unauthorized immigrant caregivers is that a caregiver’s vulnerability to deportation may lead to future instability for the children. To address this, Illinois policy ensures that an emergency care plan is in place while a child is living with an unauthorized caregiver.¹⁴² Staff of the state’s Department of Children and Family Services help caregivers develop an action plan—but do not provide legal advice—to address circumstances such as what will happen to the child if the caregiver is detained by law enforcement, becomes the victim of a serious crime, or is absent due to a medical accident or some other unforeseen reason.¹⁴³ Specialized guidance documents created through the state’s partnership with a local university are available to help caregivers identify relevant considerations when making their plan—including the implications of different forms of alternative guardianship in detention or deportation situations.¹⁴⁴ Caseworkers have a responsibility to ensure that a plan for alternative care is in place, and that alternative caregivers have consented to have their updated contact information on file.¹⁴⁵

E. Placement of a Child with a Caregiver outside the United States

When a child’s parent or another potential placement is in another country, a child welfare agency’s rules or policies determine who can be approved as a caregiver and the circumstances under which a child should be placed in out-of-home care in a foreign country. While some jurisdictions have detailed procedures for addressing such cases and have developed memoranda of understanding (MOUs) with foreign consulates, others have minimal guidance for caseworkers.

Recommendation: Review policies concerning placement of children with a parent or guardian abroad, develop MOUs with consulates for countries with significant numbers of placements, and ensure that the jurisdiction has either skilled staff or contracts for access to such staff for involvement in these cases.

All states are required to follow the Vienna Convention on Consular Relations, which triggers responsibilities whenever a foreign-national child from a signatory country enters child welfare agency custody, and whenever a guardian for such a child is being considered.¹⁴⁶ If an agency is

139 Illinois Department of Children and Family Services, “Licensing, Payment and Placement of Children with Undocumented Relatives.”

140 Washington State, Department of Social and Health Services, “Administrative Policy No. 5.01: Privacy Policy—Safeguarding Confidential Information,” updated January 12, 2015.

141 New York Kinship Navigator, “Who May Apply for Benefits and What Is Required” (application guidelines, August 2015), www.nysnavigator.org/wp-content/uploads/2015/08/Who-May-Apply-for-Benefits-and-What-is-Required.pdf.

142 Illinois Department of Children and Family Services, “Guardianship Services—Emergency Care Plan for Children with Undocumented Caregivers,” *Illinois Administrative Code 327*, Appendix F, Attachment 2 (February 23, 2018), www2.illinois.gov/dcf/aboutus/notices/Documents/procedures_327.pdf.

143 Ibid.

144 Loyola University Chicago School of Law, Legislation and Policy Clinic, *A Guide for Parents in Illinois Who Are Undocumented: Planning for Your Children in Case of Detention or Deportation* (Chicago: Loyola University Chicago, 2017), www.luc.edu/media/lucedu/law/centers/childlaw/pdfs/Immigration_Safety_Planning_Guide_LS_10-4-17.pdf.

145 Illinois Department of Children and Family Services, “Guardianship Services—Emergency Care Plan for Children with Undocumented Caregivers.”

146 United Nations General Assembly, “Vienna Convention on Consular Relations,” Arts. 36–37, April 24, 1963, http://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf.



considering appointing a guardian for a noncitizen child covered by this convention, the agency must notify the appropriate consulate with the child's name and the date and time of the relevant hearing.¹⁴⁷ Consular authorities have the right to visit these children in person, can arrange legal representation, and can express any interest their government might have in the child's case.¹⁴⁸ The United States also has bilateral treaties with 56 countries that require U.S. agencies to provide either the same or more detailed notification of such cases to consulates.¹⁴⁹ While consular services may vary according to a country's level of representation in the United States, child welfare agencies may ask the consular officer to assist with searching for or communicating with a child's relatives in that country, obtaining identification documents, obtaining medical or school records, and providing assistance with repatriation.¹⁵⁰

Consular services may vary according to a country's level of representation in the United States.

Some child welfare agencies instruct their caseworkers to notify appropriate foreign consulates when U.S.-citizen minors born to an immigrant parent come into custody as well, with a formal agreement or MOU between the consulate and the agency laying out each party's responsibilities. (MOUs are described further in Section III.F.). In practice, child welfare agencies often reach out to consulates on a case-by-case basis even where such agreements do not exist and work with third-party agencies to facilitate out-of-country placement, although many agencies report working with the Mexican consulate directly within the guidelines of an MOU.

There are important considerations relating to confidentiality in a jurisdiction's relationships with consulates. To protect foreign nationals who fear persecution or mistreatment by their own government, U.S. State Department guidance warns that agencies should never reveal to consulates when a child has an application for asylum or withholding of removal.¹⁵¹ Georgia's policy manual provides a sample consular notification form with reminder warnings to ensure that no mention of refugee or asylum status is made.¹⁵² For cases involving claims of asylum, withholding of removal,¹⁵³ or other "privacy concerns," the State Department instructs that consular notification must still be honored where it is mandatory, but it should be accomplished without divulging more information than is necessary to fulfill the notification requirements.¹⁵⁴

The following steps must be taken for international placement of a child currently in the United States:

- 1. *The foreign social service agency must conduct an evaluation of a potential home and caregiver to ensure it is safe for the child to be placed there.*** Once a potential home is identified, home evaluations and background checks must be run on the potential placement. These evaluations can help determine if international placement is safe for the child. In San Diego, when Mexican nationals come into custody, the county child welfare agency's international

147 The U.S. Department of State provides sample notification forms for welfare agencies in a variety of languages. See U.S. Department of State, "Consular Notification and Access—Consular Notification Statements," accessed December 05, 2018, <https://travel.state.gov/content/travel/en/consularnotification.html>.

148 Every child in custody and adult in detention should be informed of their right to request consular access and communication at any time. See U.S. Department of State, *Consular Notification and Access, Fifth Edition* (Washington, DC: U.S. Department of State, 2018), https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Manual%205th%20Edition_September%202018.pdf.

149 *Ibid.*, 55.

150 *Ibid.*

151 The State Department requests that it is contacted for guidance in cases where notification is mandatory but a foreign national is afraid for it to occur. See *ibid.*, 8 and 27.

152 Georgia Division of Family and Children Services, "Consular Notification Form Letter" (Child Welfare Policy Manual, policy no. 10.17, n.d.), <http://odis.dhs.state.ga.us/ViewDocument.aspx?docId=3005820&verId=1>.

153 DHS, USCIS, "I-589, Application for Asylum and for Withholding of Removal," updated October 11, 2018, www.uscis.gov/i-589.

154 U.S. Department of State, *Consular Notification and Access, Fifth Edition*, 8 and 27.



liaison coordinates with Mexico's child welfare agency (Desarollo Integral de la Familia, or DIF) to perform background checks and home evaluations of the prospective caregiver. Whenever possible, San Diego coordinates visits between the child and the prospective caregiver under the auspices of the Mexican consulate, which maintains an office at the U.S. border facility in San Ysidro. In New York State and Georgia, when caseworkers evaluate children's potential caregivers abroad, they are instructed to follow the same guidelines they would in a domestic case, including standard safety, home study, and background vetting procedures. Fresno County ensures visitation between children and potential caregivers through either Skype or a trip to the border prior to reunification. Illinois encourages the use of Skype and phone calls before reunification and may facilitate pre-reunification visitation in other countries; on one occasion, an immigration specialist accompanied the child on this visitation trip when a guardian could not go. Texas border liaisons and caseworkers work with DIF in Mexico and authorities in other countries to research the social services available in a parent's community in that country to design a service plan ensuring the parent can safely care for their child. They also coordinate with child protection authorities abroad to set up services to support the child's placement, if necessary.

- 2. U.S. child welfare personnel decide whether to recommend placement into a home that has been positively evaluated, and generally must ask a court to order the placement.** After receiving the results from the home evaluation and background checks, caseworkers at a U.S. child welfare agency can decide whether to recommend placing the child abroad. Should they decide to do so, jurisdictions may require a court order for the placement to go forward. In Texas, for example, caseworkers are required to obtain certified copies of the court order for international placement to facilitate recognition of the placement by authorities abroad.

In San Diego, caseworkers must schedule a special hearing in juvenile court to consider the caseworker's recommendation. At the hearing, the court can issue an order for placement abroad based on factors that affect the child's wellbeing.¹⁵⁵ These factors are:

- whether the child will be placed with a relative;
- whether their siblings will be placed in the same home;
- the amount and nature of any contact the child has had with their potential guardian or caretaker;
- the child's physical and medical needs;
- the child's psychological and emotional needs;
- the child's social, cultural, and educational needs; and
- the wishes of any child who is 12 years of age or older.

If after this hearing a foreign adoption is recommended, the state court must be provided with a letter from the government of the receiving country stating that the child is eligible for permanent residence.¹⁵⁶ The U.S. State Department provides guidance to state family courts and adoption providers on how to perform these adoptions in accordance with the Hague Convention on Intercountry Adoption.¹⁵⁷

- 3. Finally, if the court orders the placement, the caseworker will coordinate travel, subsidy payments, and monitoring arrangements for the child.** If the court orders the placement abroad, the final step is to ensure the child's documents and travel arrangements are in order. In Illinois, the international liaison makes arrangements for children who are to be placed abroad. In Texas, caseworkers coordinate with a border liaison or consulate staff to do this. When placing children in Mexico, San Diego caseworkers ensure the child obtains a tourist permit to travel to

155 San Diego County, "Child Welfare Services Manual: Placement of a Child in Mexico or Outside the United States" (guidance manual, June 23, 2017).

156 U.S. Department of State, *The Hague Convention on Intercountry Adoption: A Guide to Outgoing Adoption Cases from the United States* (Washington, DC: U.S. Department of State, 2011), https://travel.state.gov/content/dam/NEWadoptionassets/pdfs/OutgoingCasesFAQs_2011.pdf.

157 *Ibid.*, 12.



Mexico and coordinates with the relative abroad so they can obtain a family immigrant permit for the child. When the child is a U.S. citizen, San Diego caseworkers also facilitate obtaining a passport and arrange for a Consular Report of Birth Abroad application. New York State, when coordinating intercountry adoptions, will ask the adoptive family abroad to obtain any visas necessary for the child to enter the receiving country, as well as a U.S. passport to facilitate the departure of U.S.-citizen children. In Illinois, the welfare agency continues to monitor children after placement through a local social service agency until their cases are closed. Procedures exist to ensure that nonresident caregivers without Social Security numbers can still receive subsidy payments for qualified children while their cases remain open.¹⁵⁸

If the placement is an adoption, there are additional reporting requirements that adoption service providers must complete with the U.S. State Department for the adoption to be certified and completed.¹⁵⁹ After adoption, some countries require periodic reporting; New York State provides assistance to international adoptive parents for such reporting.¹⁶⁰

Although rarely used, Illinois has a process for allowing a child placed abroad to return to the United States in certain circumstances. This may be initiated if ongoing monitoring or an open case shows that the placement is not in the best interest of the child, or when an organization abroad notifies the local U.S. embassy of a child protection concern. Santa Clara County also lists this as a best practice for U.S.-citizen children placed with families in Mexico and outlines the procedure for doing so.¹⁶¹

San Diego has separate instructions that allow child welfare services to place children with relatives in Mexico on a voluntary basis without a court order when each of the following four conditions is met:

- parents are detained at the border after arriving and claiming asylum;
- the parent is likely to be held for an undeterminable period and/or deported;
- the custodial parent signs an agreement with child welfare services; and
- there are no other identifiable child protective issues.

In such cases, CBP officers contact a 24-hour emergency shelter that dispatches a social worker to the border.¹⁶² The social worker provides contact information to the child's parents, gathers all emotional and medical information relevant to the child's care, obtains the parents' Alien Registration Numbers (or "A-numbers") and the names of all potential caregivers, and asks parents to sign a form consenting to the child's placement in Mexico.¹⁶³ This information can be used for placement and to ensure parental rights in conjunction with ICE's parental interests directive. The social worker then contacts the international liaison to let them know whether DIF services are required, and the liaison coordinates with DIF to conduct home evaluations, criminal background checks, and notify the Mexican consulate. Voluntary placement services use county funds to cover costs and nonmedical emergencies for a maximum of six months while placing these children with extended family members.¹⁶⁴

158 Illinois Department of Children and Family Services, "Procedures 301.80. Relative Home Placements Part J," updated October 18, 2016, www2.illinois.gov/dcf/aboutus/notices/Documents/Procedures_301.pdf.

159 U.S. Department of State, *The Hague Convention on Intercountry Adoption*.

160 New York State, Office of Children and Family Services, "Intercountry Adoptions" (administrative directive, transmittal no. 09-OCFS-ADM-12, July 1, 2009), https://ocfs.ny.gov/main/policies/external/OCFS_2009/ADMs/09-OCFS-ADM-12%20Intercountry%20Adoptions.pdf.

161 Santa Clara County, Department of Family and Children's Services, "Best Practices for Mexican Children: Protocol for Cases Involving Mexican Families and Children," accessed January 24, 2019, www.f2f.ca.gov/res/BestPracticesProtocol.pdf.

162 San Diego County, "Child Welfare Services Manual: Border Asylum Cases" (guidance manual, n.d.).

163 San Diego County, "Child Welfare Services Manual: Tip Sheet for SWs Working with Asylum Seeking Parents" (guidance manual, April 2015).

164 San Diego County, "Child Welfare Services Manual: Voluntary Out-of-Home Placement" (guidance manual, January 6, 2017).



When a child is being considered for an international placement, agencies often refer cases to International Social Service (ISS)—a third-party with expertise in cross-border case management. ISS utilizes its network of partners to obtain the necessary services and information to determine if the placement of the child in the foreign country is in the child’s best interest. These services include tracing family members in a foreign country; organizing home studies and criminal background checks on potential caregivers in a foreign country; conducting a community resource survey in the community where a child would prospectively be sent; and performing postplacement evaluations to check up on the child once they have been placed abroad. ISS can also facilitate child repatriations and reintegration services for children entering or exiting the United States. ISS has a strong network of partners in Mexico and the Northern Triangle countries of Central America. Arizona, Connecticut, Florida, New Jersey, New York City, and San Diego child welfare agencies, among others, have partnered with ISS for cases involving out-of-country placement. New Jersey includes instruction on referring cases to ISS in its policy manual for social workers, delineating which responsibilities belong to the ISS case manager and which to the state Department of Child Protection and Permanency’s international liaison.¹⁶⁵

F. Memoranda of Understanding with Foreign Consulates

As noted above, some states and counties use MOUs between their child welfare agencies and foreign consulates to lay out each party’s responsibilities when foreign nationals or the children of foreign nationals are involved with U.S. child welfare agencies. Such MOUs are often used in border states or locales with large foreign-born populations.

Recommendation: Reach out to consulates whose nationals comprise substantial service populations to coordinate and explore developing MOUs to address respective roles when foreign nationals or children of foreign nationals are involved with the agency.

The specific provisions in MOUs vary between agencies and consulates.¹⁶⁶ Although all of the MOUs described by agency officials during interviews with the authors were between a child welfare agency and Mexican consulates, MOUs could be signed with any country. As of December 2018, 34 U.S. jurisdictions had signed MOUs with Mexico.¹⁶⁷ They include Fresno,¹⁶⁸ Los Angeles,¹⁶⁹

165 New Jersey Department of Children and Families, “International Social Services” (Child Protection and Permanency Manual, New Jersey Department of Children and Families, Trenton, NJ, October 15, 2012), www.nj.gov/dcf/policy_manuals/CP-IV-C-9-200.pdf.

166 For more information on memoranda of understanding (MOUs), see HHS, Office of the Assistant Secretary for Planning and Evaluation, “Emerging Child Welfare Practice Regarding Immigrant Children in Foster Care: Collaborations with Foreign Consulates” (issue brief, HHS, Washington, DC, December 2013), <https://aspe.hhs.gov/report/emerging-child-welfare-practice-regarding-immigrant-children-foster-care-collaborations-foreign-consulates>; Alan J. Dettlaff and Caitlin O’Grady, “Memoranda of Understanding with Foreign Consulates” (issue brief, Center on Immigration and Child Welfare, Las Cruces, NM, December 2014), http://cimmcw.org/wp-content/uploads/CICW_MOUs-with-Foreign-Consulates.pdf. Both documents provide detailed information on common and notable components of MOUs between child welfare agencies and Mexican consulates. The HHS brief describes a cross section of MOUs throughout the United States, while the brief by Dettlaff and O’Grady focuses on county-level MOUs in California.

167 Mexican Secretariat of Foreign Affairs, Undersecretary for North America, General Directorate for Protection of Mexicans Abroad, Deputy General Directorate of Family Law, “Memoranda of Understanding Signed by Mexican Consular Posts and Local Authorities Regarding Consular Notification and Access in Cases Involving Minors” (table, received by authors December 2018).

168 County of Fresno and Consulate General of Mexico, “Memorandum of Understanding between the Consulate of Mexico in Fresno, California and the County of Fresno, California of the United States of America Regarding Consular Function in Dependency Proceedings Involving Mexican Minors,” June 12, 2012 <http://cimmcw.org/wp-content/uploads/FresnoMOU-with-Mexico-Consulate.pdf>.

169 County of Los Angeles and Consulate General of Mexico, “Protocol of Cooperation between the Consulate General of Mexico in Los Angeles, and the Los Angeles Juvenile Dependency Court,” February 24, 2009, www.f2f.ca.gov/res/pdf/ProtocolMexicanConsulateLAJuvenileCourt2009.pdf.



Monterey,¹⁷⁰ and San Diego Counties in California;¹⁷¹ Illinois;¹⁷² New Jersey;¹⁷³ New Mexico;¹⁷⁴ and North Carolina.¹⁷⁵

In MOUs signed with a Mexican consulate, common child welfare agency responsibilities include:

- notifying the Mexican consulate of child protective services cases in which children or parents are Mexican nationals;
- responding to inquiries from the Mexican consulate about relevant cases and/or providing verbal updates and copies of court reports;
- ensuring communication between a consulate and the child, including allowing for a consular representative to interview the child and to attend the child's juvenile dependency court hearings; and
- complying with confidentiality rules and providing formal processes for accessing confidential information.

Common Mexican consulate obligations include:

- requesting a home evaluation and preplacement services through DIF, Mexico's child welfare agency;
- obtaining vital legal documents, such as birth certificates;
- complying with confidentiality rules;
- assisting with parent or relative searches or coordinating with DIF to conduct family tracing if this is being performed in Mexico;
- conducting outreach to Mexican communities in the United States to orient them to U.S. child welfare services; and
- providing training for U.S. child welfare staff and other local employees, including by providing literature, presentations, and information on how to access consular services.

170 County of Monterey and Consulate General of Mexico, "Memorandum of Understanding Between the Monterey County Department of Social and Employment Services, Family and Children Services and the Consulate General of México in San José, California Regarding Consular Involvement in Cases Involving Minors," 2007, www.f2f.ca.gov/res/pdf/MontereyMOUMexicanconsulate.pdf.

171 County of San Diego and Consulate General of Mexico, "Memorandum of Understanding between the Consulate General of Mexico in San Diego, California and the County of San Diego Health and Human Services Agency, State of California of the United States of America Regarding Consular Assistance in Cases of Custody Involving Mexican Minors," n.d., <http://cssr.berkeley.edu/cwscmsreports/LatinoPracticeAdvisory/San%20Diego/MOU-Mexican-Consulate.pdf>.

172 State of Illinois and Consulate General of Mexico, "Memorandum of Understanding between the State of Illinois, Department of Children and Family Services and the Consulate General of Mexico in Chicago Regarding Consular Notification and Access in Cases Involving Minors," September 28, 2011.

173 State of New Jersey and Consulate General of Mexico, "Memorandum of Understanding between the Consulate General of Mexico in New York and the Consulate of Mexico in Philadelphia and the Department of Children and Families of the State of New Jersey of the United States of America Regarding Consular Notification and Access in Cases Involving Mexican Minors," December 5, 2017.

174 State of New Mexico and Consulate General of Mexico, "Memorandum of Understanding between the Consulate General of Mexico in El Paso, Texas, and the Consulate of Mexico in Albuquerque, New Mexico, and the Children, Youth and Families Department of the State of New Mexico of the United States of America Regarding Consular Functions in Certain Proceedings Involving Mexican Minors as well as Mutual Collaboration," March 5, 2009, www.f2f.ca.gov/res/pdf/MOU_MexicanConsulate.pdf.

175 State of North Carolina and Consulate General of Mexico, "Memorandum of Agreement."



Common joint responsibilities include:

- facilitating the return of minors from the United States to Mexico; and
- facilitating visitation when the child is in the United States and the parent is in Mexico (this is limited to certain U.S. agencies near the U.S.-Mexico border).

In addition to these common responsibilities, some child welfare agencies have MOUs with more distinctive methods for promoting cooperation, joint outreach efforts, and information sharing.¹⁷⁶ The Illinois Department of Children and Family Services' MOU sets an expectation for ongoing communication: requiring department and consulate staff to meet at least three times a year to discuss, clarify, and coordinate activities; the two directors to meet at least once a year; and the communication divisions of each entity to make every effort to exchange ideas in a timely fashion on high-profile concerns that may result in media attention.¹⁷⁷ New Jersey has similar requirements in its agreements with the Mexican consulates in New York City and Philadelphia, but with fewer meetings.¹⁷⁸ New Mexico's agency officials meet with consulate officers quarterly.¹⁷⁹ The New Mexico Children, Youth, and Families Department's MOU with the Mexican consulate requires department staff to participate in "mobile consulates" to provide relevant workshops, literature, and general orientation on child and family services to Mexican communities throughout the state, as identified by the consulate.

The Illinois Department of Children and Family Services' MOU sets an expectation for ongoing communication.

While the state of California does not enter into child-welfare-focused MOUs with other nations, it encourages county agencies to establish MOUs and provides a minimum list of responsibilities they must cover.¹⁸⁰ In addition to an MOU, Los Angeles County has a supplementary "Protocol of Cooperation" between the Consulate General of Mexico and the county juvenile dependency court. The protocol was established primarily to facilitate the sharing of information and transfer of documents between Department of Children and Family Services (DCFS), the Consulate General, and the Juvenile Dependency Courts. The court must share any statistics with the consulate when requested and assist the consulate in obtaining any statistics from DCFS. DCFS, the Los Angeles County Superior Court, and the Mexican consulate work collaboratively to ensure that Mexican nationals are aware of the services provided by the consulate. A representative of the consulate is also co-located at the county children's court a minimum of one day per week so court personnel can refer Mexican families to them for any needed services. Finally, the consulate provides parenting classes in Spanish for families involved in the dependency court system, free of charge.

176 Georgia is in the process of finalizing an MOU with the Consulate General of Mexico in Atlanta that will improve communication between the state Division of Family and Child Services and Mexican authorities, and will cover notification when children are in custody, assistance in finding Mexican parents who have returned to Mexico, procedures for conducting home evaluations of parents and relatives in Mexico, and other assistance in cases involving cross-border families.

177 State of Illinois and Consulate General of Mexico, "Memorandum of Understanding."

178 State of New Jersey and Consulate General of Mexico, "Memorandum of Understanding."

179 State of New Mexico and Consulate General of Mexico, "Memorandum of Understanding."

180 State of California, *The Reuniting Immigrant Families Act*.



G. Screening for Immigration Benefits

Noncitizen children who come into child welfare agencies' custody may be eligible for different forms of immigration benefits—such as naturalization, humanitarian protection, or relief from deportation. Several jurisdictions, mindful that legal status or other immigration options will offer protection from deportation and may increase service access, have comprehensive procedures for screening immigrant children to determine their options; others take a more limited approach. While parents associated with a child's case might also benefit from screening, jurisdictions typically do not routinely screen parents for immigration legal options.

Recommendation: Develop a process, using internal staff or a grant or contract with an outside entity, to ensure that all noncitizen children in care, and parents associated with children in care, are screened for immigration benefits such as naturalization, humanitarian protection, and relief from deportation.

In some circumstances, immigrant children in care are lawful permanent residents who could qualify for naturalization.¹⁸¹ In the child welfare context, the mostly likely scenario for naturalization would occur where a child in care is age 18 or older and has been a lawful permanent resident for at least five years. Naturalization would bring significant benefits to such children. Some human services agencies have been actively involved in supporting naturalization efforts.¹⁸² Potential eligibility for naturalization would likely only be identified if the agency provides for screening of all noncitizen children.

For unauthorized immigrant children and youth, there are five common humanitarian protection possibilities: Special Immigrant Juvenile (SIJ) status, self-petitioning under the *Violence Against Women Act*, U nonimmigrant status (U visa), T nonimmigrant status (T visa), and asylum. Each of these provides a path to permanent residency (LPR status, also known as a “green card”) and employment authorization. While jurisdictions commonly have established procedures for screening and assisting potentially eligible minors in applying for SIJ status, comprehensive screening for other protections is less common.

To briefly summarize each of these humanitarian protection possibilities:

- **Special Immigrant Juvenile (SIJ) Status.** Unauthorized immigrants under age 21 may be eligible to receive SIJ status from USCIS if a state court finds: (1) they are dependent on the court or are placed in the custody of a state agency or department or an individual or entity appointed by the court; (2) they are unable to reunify with at least one parent due to abuse, neglect, abandonment, or similar reasons; and (3) it is not in their best interest to return to their previous country or that of their parent. Children in HHS custody who apply for SIJ status must also obtain HHS consent to the state court's jurisdiction to determine their custody status or placement.¹⁸³
- **Violence Against Women Act (VAWA).** Under VAWA, immigrants can self-petition for LPR status if they, their child(ren), or their stepchild(ren) have experienced domestic violence or been subject to extreme cruelty by a U.S. citizen or LPR who is the petitioning individual's spouse;

181 DHS, USCIS, “I Am a Permanent Resident: How Do I Apply for U.S. Citizenship?” (fact sheet, USCIS, Washington, DC, October 2013), www.uscis.gov/sites/default/files/USCIS/Resources/B3en.pdf.

182 Marion Coddu, “A Case Study in Innovative Partnerships: How Human Services Agencies Can Help Increase Access to U.S. Citizenship” (online toolkit, The New Americans Campaign, Immigrant Legal Resource Center, March 2016), <http://newamericascampaign.org/wp-content/uploads/2017/05/Best-Practices-Toolkit-Case-Study-Innovative-Partnership.pdf>.

183 “Definitions,” Title 8 *U.S. Code* Section 1101(a)(27)(J), amended January 17, 2014, www.law.cornell.edu/uscode/text/8/1101; “Special Immigrant Status for Certain Aliens Declared Dependent on a Juvenile Court (Special Immigrant Juvenile),” Title 8 *Code of Federal Regulations* Section 204.11, amended June 5, 2009, www.law.cornell.edu/cfr/text/8/204.11; DHS, USCIS, “Special Immigrant Juveniles—Eligibility for SIJ Classification,” updated April 10, 2018, www.uscis.gov/green-card/sij; DHS, USCIS, “Green Card Based on Special Immigrant Juvenile Classification,” updated April 5, 2018, www.uscis.gov/green-card/special-immigrant-juveniles/green-card-based-special-immigrant-juvenile-classification. For an overview of SIJ requirements and recent developments affecting access to SIJ status, see Austin Rose, “For Vulnerable Immigrant Children, A Longstanding Path to Protection Narrows,” *Migration Information Source*, July 25, 2018, www.migrationpolicy.org/article/vulnerable-immigrant-children-longstanding-path-protection-narrows.



former spouse (within two years); parent; stepparent; or U.S.-citizen child (including adopted children and stepchildren) age 21 or older.¹⁸⁴

- **U visa.** Immigrants may be eligible to receive a U visa if they are the direct or indirect victim of certain criminal activities, such as domestic violence or fraud in foreign labor trafficking, that have either occurred in the United States or violate U.S. law.¹⁸⁵ Applying for a U visa requires that the applicant cooperate with law enforcement to provide information about the criminal activity, and that the law enforcement agency certify this cooperation. Child welfare agencies are qualified to process this certification.
- **T visa.** Immigrants may be eligible for T visas if they have been or are a victim of human trafficking and can demonstrate that they would face extreme hardship and suffering if removed from the United States.¹⁸⁶
- **Asylum.** Any noncitizen can apply for asylum when physically present in or after arriving at the border of the United States. Applicants must prove that they meet the legal definition of a “refugee,” meaning they are unable or unwilling to return to their country due to prior persecution or a well-founded fear of persecution on account of their race, religion, nationality, political opinion, or membership in a particular social group.¹⁸⁷

In addition to these options, unauthorized immigrants whose families are in active removal proceedings may be eligible for relief from deportation. The most common form of relief is cancellation of removal.¹⁸⁸ Cancellation of removal is available to certain foreign nationals who have resided in the United States for long periods of time. If granted cancellation, not only are the recipient’s removal proceedings terminated, but he or she also receives permanent residency.

In a number of jurisdictions, when children or youth enter care who are not U.S. citizens or LPRs, or whose citizenship status is unclear to caseworkers, they are referred either internally or to external immigration legal services providers:

- In Los Angeles County, caseworkers screen unauthorized immigrant minors for status eligibilities and refer cases to the central Special Immigration Status Unit that processes applications.¹⁸⁹
- In New York City, the Office of Immigrant Services and Language Access requires that each foster-care agency employ an immigration liaison who works to ensure that all children and youth who come into care are screened for immigration needs, evaluating relevant documentation, referring

184 DHS, USCIS, “Green Card for VAWA Self-Petitioner,” updated July 26, 2018, www.uscis.gov/green-card/green-card-va-wa-self-petitioner.

185 DHS, USCIS, “Victims of Criminal Activity: U Nonimmigrant Status,” updated June 12, 2018, www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status#U%20Nonimmigrant%20Eligibility.

186 DHS, USCIS, “Victims of Human Trafficking: T Nonimmigrant Status,” updated May 10, 2018, www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status.

187 “Asylum,” Title 8 *U.S. Code* Section 1158, amended December 23, 2008, www.law.cornell.edu/uscode/text/8/1158; “Procedures for Asylum and Withholding of Removal,” Title 8 *Code of Federal Regulations* Sections 208.1–208.31, 1208.1–1208.31, accessed February 19, 2019, www.law.cornell.edu/cfr/text/8/.

188 DHS, USCIS, “Cancellation of Removal,” accessed March 17, 2019, www.uscis.gov/tools/glossary/cancellation-removal. Deferred Action for Childhood Arrivals (DACA) is another form of protection from deportation, but at the moment USCIS is only accepting renewal requests from current or prior DACA recipients. See DHS, USCIS, “Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction,” updated February 22, 2018, www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction.

189 Los Angeles County Department of Children and Family Services, “Immigration Options for Undocumented Children and Families 1200-500.86,” updated December 7, 2016, http://m.policy.dcfslacounty.gov/Content/Immigration_Options.htm.



those who could benefit from legal assistance to partner organizations, and tracking applications in accordance with local laws.¹⁹⁰

- In Illinois, caseworkers ask children a set of questions to determine if they should be referred to the immigration liaison for a more thorough assessment.¹⁹¹
- In Texas, caseworkers must interview children and families about citizenship and immigration status,¹⁹² fill out a referral to the regional immigration specialist for all noncitizens, and assist with any subsequent SIJ applications.¹⁹³
- Florida's Administrative Code requires caseworkers in the state to refer all unauthorized immigrant children for immigration legal screening once they have a U.S.-based permanency plan and to provide documentation to enable the immigration legal services provider to file SIJ and LPR applications on the child's behalf.¹⁹⁴
- Colorado's Division of Child Welfare Services has created a step-by-step "Citizenship Assessment Instrument" for county caseworkers. This screening tool guides the caseworker to identify children who are U.S. citizens¹⁹⁵ or who may be eligible for immigration benefits such as SIJS, VAWA, U or T visas, or asylum, and ends with referral instructions to a state pro-bono legal advocacy network.¹⁹⁶

Child welfare agencies may refer children to legal assistance services for additional screening, or to assist them in applying for immigration benefits. The New Jersey Department of Children and Families has an MOU with Rutgers University Law School to refer every immigrant child client to be screened for immigration options. Rutgers' Child Advocacy and Immigrant Justice Clinics see cases through the entire process, including appeals, with the state child welfare agency handling a variety of logistical responsibilities. Rutgers triages and tracks these applications, and reports the number of newly opened, pending, closed, and successful cases back to DCF each quarter.¹⁹⁷ San Diego County partners with the San Diego Volunteer Lawyers Program to ensure all children recommended for SIJ status have an appointed attorney. Montgomery County engages outside counsel to assist with SIJ status applications and other immigration-related legal work for unauthorized immigrant youth in care.

Immigration liaisons and caseworkers cannot themselves provide legal assistance, but can support attorneys by staying up-to-date on the case, locating and providing any necessary documents in a timely

190 New York City Council, "A Local Law to Amend the Administrative Code of the City of New York, in Relation to Requiring the Administration for Children's Services to Review Strategies and Create a Plan of Action to Protect Children Who Qualify for Special Immigrant Juvenile Status," *Local Law 2010/006*, April 14, 2010, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=648832&GUID=2505C80F-DEBE-4398-BF44-AA30D2467F23>.

191 Illinois Department of Children and Family Services, "Guardianship Services—Immigration Services Alert," *Illinois Administrative Code* 327, Appendix F, Attachment 1 (June 15, 2017), www2.illinois.gov/dcf/aboutus/notices/Documents/procedures_327.pdf.

192 Texas Department of Family and Protective Services, "Child Protective Services Handbook: 6700 International and Immigration Issues."

193 Texas Department of Family and Protective Services, "Child Protective Services Handbook: 6713 Caseworker Responsibility for Citizenship and Immigration," updated August 2017, www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_6700.asp.

194 State of Florida, "Case Management Responsibilities after Case Transfer," *Florida Administrative Code* Rule: 65C-30.007(12)(a)2-3, amended August 22, 2016, www.flrules.org/gateway/RuleNo.asp?id=65C-30.007.

195 The tool seeks to identify cases of automatic citizenship, such as where a child was born outside the United States to a U.S.-citizen parent or where a foreign-born child before their 18th birthday (1) became an LPR and (2) had at least one natural or adoptive parent with custody who was or had become a U.S. citizen. See Colorado Department of Human Services, Division of Child Welfare Services, "Citizenship Assessment Instrument" (assessment form, August 13, 2012), www.ucdenver.edu/academics/colleges/medicalschoo/departments/pediatrics/subs/can/DR/Documents/Conference_2013_Handouts/Friday_ARCHIVED_UNPUBLISHED/Working_with_Immigrant_Children_handouts.pdf. In such cases, rather than naturalizing, the child would apply for a Certificate of Citizenship. See DHS, USCIS, "N-600, Application for Certificate of Citizenship," updated January 29, 2019, www.uscis.gov/n-600.

196 Colorado Department of Human Services, "Citizenship Assessment Instrument."

197 New Jersey Department of Children and Families, "Memorandum of Agreement between the New Jersey Department of Children and Families, Division of Child Protection and Permanency and Rutgers Law School," May 2, 2017.



manner, and attending any hearings or interview proceedings. In California, a special ombudsperson is employed at the state level who can further support legal proceedings for children, youth, and caregivers in the foster-care system in cases where the immigration application process has not been completed; this ombudsperson has access to state legal support.

Some agencies have developed protocols for SIJ screening. New Mexico policy requires that SIJ status is pursued if the child appears eligible¹⁹⁸ and outlines the responsibilities of caseworkers, immigration liaisons, and children's court attorneys in an application guide.¹⁹⁹ Orange County's immigration liaison works with caseworkers to determine whether children in care are eligible for SIJ status. In Fresno, the liaison ensures that caseworkers can assist with any necessary medical examinations or follow-up appointments.²⁰⁰ New York State's Office of Children and Family Services directs all local social service departments and voluntary authorized agencies to assess children and youth in foster care who are neither U.S. citizens nor LPRs to determine whether they are eligible for SIJ status.²⁰¹ New York also advises on managing the complex timeline of the application, filing fee waivers, and obtaining Medicaid for applicants.²⁰² Georgia allows 60 days for caseworkers to decide whether reunification or repatriation to another county is in the child's best interest, and if not, convenes a joint committee of the Social Services Supervisor, County Director, Regional Field Program Specialist, and Special Assistant Attorney General to determine whether the child is eligible for SIJ status or another form of relief.²⁰³ In San Diego County and Washington State, if a juvenile court recommends a minor for SIJ status, child welfare services must ensure that an attorney is appointed for the child who can aid with further eligibility screening, help the child through the application process, and attend the child's interview with USCIS.

Although the age cutoff to file an SIJ application is 21, the requirement that state juvenile courts be involved at the time of application may effectively limit the period in which a child welfare agency can assist with this application process to whatever the local age of majority is.²⁰⁴ Maryland has expanded juvenile court jurisdiction to include applicants 21 years old or younger who meet all requirements for SIJ status, thus preventing children who would otherwise qualify from "aging out" of this option.²⁰⁵ Florida juvenile court maintains jurisdiction over SIJ cases until an applicant's 22nd birthday.²⁰⁶ And the

198 State of New Mexico, "Social Services—Child Protective Services—Permanency Planning—Special Immigrant Juvenile Status (SIJS)," *New Mexico Administrative Code* 8.10.8.22, <http://164.64.110.134/parts/title08/08.010.0008.pdf>.

199 New Mexico Children Youth and Families Department, "Protective Services Special Immigrant Juvenile Status and Legal Permanent Residency Application Guide and Instructions" (guidance document, March 2009), http://cssr.berkeley.edu/cwscmsreports/LatinoPracticeAdvisory/New%20Mexico/SIJS_Legal%20Permanent%20Resident%20Guide.pdf.

200 County of Fresno, "Child Welfare Services Policy and Procedures Guides, Immigrant Child and Family Program" (guidance document, March 23, 2012), www.co.fresno.ca.us/Home/ShowDocument?id=17736.

201 New York State, Office of Children and Family Services, "Special Immigrant Juvenile Status (SIJS)" (administrative directive, transmittal no. 11-OCFS-ADM-01, February 7, 2011), [www.ocfs.state.ny.us/main/policies/external/OCFS_2011/ADMs/11-OCFS-ADM-01%20Special%20Immigrant%20Juvenile%20Status%20\(SIJS\).pdf](http://www.ocfs.state.ny.us/main/policies/external/OCFS_2011/ADMs/11-OCFS-ADM-01%20Special%20Immigrant%20Juvenile%20Status%20(SIJS).pdf).

202 Ibid.

203 Georgia Division of Family and Children Services, "Chapter 10: Foster Care, Policy 10.17: Service Needs of an Immigrant Child."

204 In February 2018, USCIS began operating under guidance specifying that an applicant who was 18 years old or older could only qualify for SIJ status if the state court had the authority to order reunification, which had the practical effect of denying SIJ applications for applicants ages 18 and older. See Rose, "For Vulnerable Immigrant Children, A Longstanding Path to Protection Narrows"; Ted Hesson, "Travel Ban at SCOTUS," Politico, April 25, 2018, www.politico.com/newsletters/morning-shift/2018/04/25/travel-ban-at-scotus-182935. A federal court in California has preliminarily enjoined USCIS from using the policy to deny SIJS to 18-to-20-year-olds in California, and a federal court in New York has granted summary judgment to the plaintiff class on this issue. See *J.L. et al. v. Cissna et al.*, No. 5:18-cv-04914 (U.S. District Court for the Northern District of California, filed August 14, 2018), www.courtlistener.com/docket/7657940/jl-v-lee-francis-cissna/; *M. et al. v. Nielsen et al.*, No. 1:18-cv-05068 (U.S. District Court for the Southern District of New York, filed June 7, 2018), www.courtlistener.com/docket/7077824/m-v-nielsen/.

205 Maryland House of Representatives, "Equity Court Jurisdiction—Immigrant Children—Custody or Guardianship," HB 315 (2014).

206 State of Florida, "Proceedings Relating to Children—Procedures and Jurisdiction; Right to Counsel," *Florida Statutes* Section 39.013(2)(d), www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0039/Sections/0039.013.html.



immigration liaison in Fresno is responsible for helping SIJ applicants transition into the county's Independent Living Program for youth between ages 16 and 21 who are about to age out of foster care.²⁰⁷

In Illinois, following SIJ screenings, caseworkers act as a conduit to provide children with the forms that they will need to file to apply for SIJ status, a green card, and employment authorization. Caseworkers flag cases on a number of items,²⁰⁸ including whether the child has an arrest record, experiences mental health or substance abuse problems, is married or interested in gaining immigration benefits for family members, or has been previously deported, has an outstanding deportation order, or is in removal proceedings. Apart from efficiently referring complex cases out for appropriate support with immigration options, these questions also help refer children to other legal services.

Some agencies have developed protocols specific to U- and T-visa screening. Social workers for Connecticut's abuse and neglect hotline (known as "Careline") are given guidance to identify potential human trafficking victims at intake and a Response Priority Tool to determine how to proceed. The state's Department of Children and Families employs a Human Anti-Trafficking Response Team (HART) liaison that caseworkers must notify when a child who is suspected to be a victim of trafficking comes into care. Caseworkers initiate all emergency, medical, and psychological care, while the HART liaison assists the Office of Multicultural Affairs and Immigration Practice with longer-term services, monitoring, and the certification of the child's application for a U or T visa.²⁰⁹ New York advises its counties using detailed guidelines, procedures, and required timelines for certifying U visas and endorsing T visas, and includes instructions for identifying indirect victims and family members who may benefit from these humanitarian visa programs.²¹⁰ New Jersey trains its social workers to provide family members who may be eligible for immigration benefits with a list of local organizations that may be able to help, as well to identify situations where multiple members of a family may be eligible for U visas.

Applying for immigration benefits also carries the risk that the government may initiate removal proceedings against an unsuccessful applicant.

Even if they do not have a specific screening protocol for these cases, child welfare agencies qualify as certifying agencies for U-visa applications.²¹¹ For example, agencies in Mecklenburg County, NC, and Montgomery County, MD, have processed these applications when they arise from cases of juvenile abuse and/or neglect. New Jersey includes contact information for a legal specialist who can certify U-visa application supplements in its training materials.

Applying for immigration benefits can come with significant drawbacks. In the context of SIJ status, youth must forfeit the right to later petition for a family-based immigration benefit for any parent, even a non-abusive one.²¹² Applying for immigration benefits also carries the risk that the government may

207 County of Fresno, "Child Welfare Services Policy and Procedures Guide."

208 Illinois Department of Children and Family Services, "Guardianship Services—Immigration Services Alert."

209 See Connecticut Department of Children and Families, "Special Populations: Human Trafficking, 21-14," updated January 2, 2019, <https://portal.ct.gov/-/media/DCF/Policy/Chapters/21-14.pdf?la=en>.

210 New York State, Office of Children and Family Services, "Protocols for Signing Forms for Non-Immigrant Clients Applying for U Visas and T Visas" (local commissioners memorandum, transmittal no. 18-OCFS-LCM-15, August 14, 2018), https://ocfs.ny.gov/main/policies/external/ocfs_2018/LCM/18-OCFS-LCM-15.docx.

211 DHS, USCIS, "Victims of Criminal Activity: U Nonimmigrant Status"; DHS, *U and T Visa Law Enforcement Resource Guide* (Washington, DC: DHS, 2016), www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource-Guide_1.4.16.pdf.

212 DHS, USCIS, "Policy Manual, Volume 6: Immigrants, Part J: Special Immigrant Juveniles, Chapter 2: Eligibility Requirements," updated February 12, 2019, www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ-Chapter2.html.



initiate removal proceedings against an unsuccessful applicant. New Mexico’s application guide warns that the greatest personal risk to a child applying for SIJ status stems from the fact that the application is not confidential, and its filing will alert DHS to the unlawful presence of the child within the country; DHS may use this information to begin removal proceedings if the child’s SIJ application is denied.²¹³ This also true when USCIS denies a VAWA, U visa, T visa, or asylum application of any immigrant who is removable.²¹⁴

Screening procedures can also be used to identify opportunities for children to receive public services while they are awaiting a decision on their immigration applications. New York State provides a variety of services for all immigrants through its Office for New Americans (ONA) and has plans to begin providing special supportive services to children who have been separated from their families, including access to health care, education, peer support, counseling, and legal service referrals.²¹⁵ In California, noncitizen victims of domestic violence, human trafficking, and other serious crimes are eligible for state-funded food assistance and other services available to refugees.²¹⁶ Noncitizen children in the state can also access emergency assistance foster care and state-funded Medi-Cal using PRUCOL (Permanently Residing under Color of Law) status, but only after a caseworker has filed a verification request form with USCIS.²¹⁷ Fresno County instructs its immigration liaisons to train caseworkers on these eligibilities and on how to file verification requests.²¹⁸ To identify potentially eligible children, Monterey County usually relies on the branch of social services that determines eligibility for benefits, but the county also makes use of the Commercial Sexual Exploitation Identification Tool (CSE-IT).²¹⁹

Interviewees from several jurisdictions described individual instances of assisting a parent with immigration status issues, but none described consistent, routine screening of parents for immigration options. Exploring opportunities to assist eligible parents with obtaining legal status or other immigration benefits could offer jurisdictions an important tool for helping some immigrant families stay together and build a more stable home environment.

213 New Mexico Children, Youth and Families Department, “Protective Services Special Immigrant Juvenile Status and Legal Permanent Residency Application Guide and Instructions.”

214 DHS, USCIS, “Policy Memorandum: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens PM-602-0050.1,” updated June 28, 2018, www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf; DHS, USCIS, “USCIS to Continue Implementing New Policy Memorandum on Notices to Appear,” updated November 8, 2018, www.uscis.gov/news/alerts/uscis-continue-implementing-new-policy-memorandum-notices-appear; DHS, USCIS, Refugee, Asylum, and International Operations Directorate, Asylum Division, *Affirmative Asylum Procedures Manual (AAPM)* (Washington, DC: USCIS, 2016), www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AAPM-2016.pdf.

215 New York State, “Governor Cuomo Announces New Services to Aid Immigrant Children in New York” (press release, June 27, 2018), www.governor.ny.gov/news/governor-cuomo-announces-new-services-aid-immigrant-children-new-york.

216 State of California, *An Act to Amend Section 14005.2 of, to Add Section 13283 to, and to Add Chapter 10.4 (Commencing with Section 18945) to Part 6 of Division 9 of, the Welfare and Institutions Code, Relating to Human Services*, SB 1569, Chapter 672 (September 29, 2006), www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1551-1600/sb_1569_bill_20060929_chaptered.pdf.

217 Other states may use similar PRUCOL procedures for locally funded programs, depending on the program and whether the applicant is an adult or child. For more information, see California Department of Health Care Services, Research and Analytic Studies Division, “Medi-Cal’s Non-Citizen Population;” Ruth Ellen Wasem, *Unauthorized Aliens’ Access to Federal Benefits: Policy and Issues* (Washington, DC: Congressional Research Service, 2012), <https://fas.org/sgp/crs/homesecc/RL34500.pdf>.

218 County of Fresno, “Child Welfare Services Policy and Procedures”; State of California, Health and Human Services Agency, “CDSS Manual Letter NO. FS-09-01” (letter to holders of the food stamp manual, division 63, May 4, 2009), www.cdss.ca.gov/ord/entres/getinfo/pdf/fs0901.pdf.

219 Hannah Haley, Danna Basson, and Jodie Langs, *Screening to Identify Commercially Sexually Exploited Children* (Oakland, CA: WestCoast Children’s Clinic, 2017), www.westcoastcc.org/wp-content/uploads/2017/09/WCC-CSE-IT-ImplementationGuide-FINAL.pdf.



H. Confidentiality and Information Sharing

Child welfare systems generally have strong confidentiality protections, based on requirements of both federal and state law.²²⁰ There are special considerations for families with unauthorized immigrant members. Since federal law does not require states to collect information relating to immigration status in the context of child welfare service provision, and attempting to collect such information may make some families with unauthorized members wary of engaging, a number of agencies do not do so. Agencies must also navigate issues relating to when and how they share the information they do collect.

Recommendation: Review confidentiality policies to ensure that they explicitly limit information sharing with federal immigration authorities, and provide workers with guidance about how to inform adults and children about confidentiality protections, as failure to address concerns about immigration enforcement can prevent child welfare agencies from effectively engaging with immigrant families.

In addition to more general child welfare confidentiality provisions, a number of child welfare agencies noted that they were also subject to a generally applicable executive order, law, or regulation concerning collecting or sharing immigration-related information:

- In Washington State, an executive order mandates that information that agencies collect from clients must be “limited to that necessary to perform agency duties,” and that information concerning “immigration or citizenship status or place of birth shall not be collected except as required by federal or state law or agency policy.”²²¹ The order further specifies that no agency funds or personnel may be used to target or apprehend persons for violating federal civil immigration laws, except as required by federal or state law or otherwise authorized by the governor.²²²
- In New York State, an executive order bars state employees, other than law enforcement, from inquiring about an individual’s immigration status unless needed to determine eligibility for a benefit or service or required by law.²²³ State employees are barred from disclosing information to federal immigration authorities for the purpose of immigration enforcement, unless required by law.²²⁴
- In New York City, two mayoral executive orders “act as a confidentiality policy that allows all New Yorkers, regardless of immigration status, to access important city services.”²²⁵ The orders prohibit city employees from disclosing information related to immigration status except in limited circumstances or from inquiring about immigration status except where necessary to determine program or benefit eligibility or where required by law. Law enforcement officers may make such inquiries if they are “investigating illegal activity other than mere status as an undocumented alien.”²²⁶

220 See HHS, ACF, Children’s Bureau, “Disclosure of Confidential Abuse and Neglect Records” (fact sheet, HHS, Washington, DC, June 2017), www.childwelfare.gov/topics/systemwide/laws-policies/statutes/confide/; HHS, ACF, Children’s Bureau, “Ethics and Confidentiality,” accessed February 26, 2019, www.childwelfare.gov/topics/management/ethical/confidentiality/.

221 State of Washington, Office of the Governor, “Executive Order 17-01: Reaffirming Washington’s Commitment to Tolerance, Diversity, and Inclusiveness,” February 23, 2017, www.governor.wa.gov/sites/default/files/exe_order/eo_17-01.pdf.

222 Ibid.

223 State of New York, “Executive Order 170: State Policy Concerning Immigrant Access to State Services,” September 15, 2017, www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_%23_170.pdf.

224 Ibid.

225 New York City, Mayor’s Office of Immigrant Affairs, “Legal Library: Local Laws and Executive Orders: Executive Orders 34 & 41,” accessed March 3, 2019, www1.nyc.gov/site/immigrants/about/local-laws-executive-orders.page.

226 City of New York, Office of the Mayor, “Executive Order No. 34”; City of New York, Office of the Mayor, “Executive Order No. 41.”



In several instances, jurisdictions described having immigration-specific confidentiality-related provisions in child welfare guidance or policies.

- Connecticut’s Immigration Practice Guide for Child Welfare specifies that “identification of undocumented persons . . . does not require reporting this information” to ICE.²²⁷ The guide encourages staff to “proactively engage families” to determine whether parents or children are unauthorized because that may affect eligibility for benefits and services.²²⁸ It provides staff with sample language to use when explaining to clients that the agency will not report them to immigration authorities and will hold their immigration status information “in strict confidence.”²²⁹
- San Diego County’s guidance manual for child welfare staff instructs that immigration status information pertaining to children in care or their family members “is confidential” and shall not be disclosed “to any person or agency, including law enforcement, without first consulting with a supervisor and with County Counsel.”²³⁰

Some jurisdictions indicated that they have no formal policies governing the sharing of information with federal immigration authorities about the location or immigration status of a parent or child. Others indicated that although they had no formal policies, their practice is not to share such information.

I. Policies When Parents Are in Detention

A parent in immigration detention may have an open child welfare case under a variety of circumstances. The case may already have been open at the time of their immigration arrest; the same facts that led to arrest may have led to the opening of a child welfare case (e.g., alleged child abuse or violence in the home); or the child may have been left without care or in an unstable care situation after detention or deportation of a parent.

Detention and removal proceedings can make it challenging for parents to meet the conditions of their case plan and court proceedings. In the 24 to 72 hours after immigrants are arrested, detainees are often difficult to locate as they are transferred between holding and detention centers. Furthermore, inadequate communication can occur when immigrant parents are detained far from where they were apprehended, thus making in-person contact difficult. These issues can be compounded by other factors, such as strict visitation rules and the high cost of telephone calls from within detention centers. In addition, parents may face difficulties complying with a reunification plan because the programming it orders does not exist in detention.

Recommendation: Develop policies for communicating with and engaging detained parents in child welfare case planning and hearings, and for sharing the parent’s location with the court and any parent attorney group so that the parent may be assigned counsel; review ICE’s directive on Detention and Removal of Alien Parents or Legal Guardians, incorporate its key provisions into agency policy manuals or guidance to caseworkers, and identify and build a relationship with the appropriate ICE field office point of contact for child welfare matters.

ICE’s Directive on Detention and Removal of Alien Parents or Legal Guardians, discussed in Section II.C., describes key provisions of ICE policies and practices for situations in which parents are in ICE detention. However, in interviews with state and county officials, interviewees typically indicated either that they were unaware of the original or revised ICE directive or that the key provisions of the directive had not been incorporated into guidance for caseworkers.

227 Connecticut Department of Children and Families, “Immigration Practice Guide,” 1.

228 Ibid.

229 Ibid. 15–16.

230 San Diego County, “Child Welfare Services Manual: Undocumented Children” (guidance manual, February 6, 2015).



San Diego County is a notable exception. San Diego’s policy manual includes a step-by-step guide on how to find a person in ICE custody, points of contact for three California ICE field offices, a list of documentation ICE requires for visitation ordered by a dependency court, and relevant ICE visitation guidelines. The manual also provides helpful tips social workers should follow while working with asylum-seeking parents detained by ICE at the border

The ICE directive complements other guidance and tools such as language in the Performance Based National Detention Standards on access to family courts and visitation with minor children, and ICE’s Online Detainee Locator System, which can be used if there are questions as to whether and where a parent is being detained, or if they have been released or deported.²³¹ Connecticut’s Immigration Practice Guide also provides guidance for finding a person in ICE custody using the Online Detainee Locator System.²³²

California is distinctive in having passed state legislation that addresses child welfare issues connected with parental detention. California’s *Reuniting Immigrant Families Act*, enacted in 2012, aims to address barriers to reunification faced by families when a parent is detained or deported. To do so, it extended the period within which reunification can occur and made it easier for children to be placed with a qualified caregiver regardless of their immigration status. Counties in California often maintain communication or a point of contact with ICE, but some interviewees reported difficulties establishing visitation when parents have been sent out of state.

San Diego’s policy manual includes a step-by-step guide on how to find a person in ICE custody.

Florida law takes a different approach, requiring that all indigent parents be provided legal representation throughout every phase of a dependency hearing, including when immigrant parents are in detention or deportation proceedings.²³³ And in Georgia, where state law requires that its child welfare officers seek out, contact, and facilitate reunification of children with foreign-born parents who have been deported or have returned to their home countries, the state Department of Human Services’ Division of Family and Children Services is in the process of updating its policies to better meet this requirement.

At the national level, Section 475(5)(E) of the *Social Security Act* requires child welfare agencies to file a petition for termination of parental rights when a child has been in foster care under the responsibility of the state for 15 out of the most recent 22 months, unless the child is being cared for by a relative or the state agency documents a compelling reason that such a petition would not be in the best interests of the child.²³⁴ Guidance from the federal Administration for Children and Families suggests that state and local child welfare agencies should include the “impact of detention or removal on efforts of otherwise fit parents to maintain connections with their children” when considering compelling reasons that might warrant an exception to termination of parental rights filing timelines.²³⁵ California state law requires that, when deciding whether to extend court-ordered services, the court must consider the special circumstances of “a parent who has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her country of origin, including,

231 This tool is a public, online database that can be used to locate current ICE detainees or identify if a parent has been released or removed within the last 60 days. See DHS, ICE, “Online Detainee Locator System,” accessed January 24, 2019, <https://locator.ice.gov/odls/#/index>; DHS, ICE, “How Do I Locate Someone in Immigration Detention? Online Detainee Locator System,” updated June 2010, www.ice.gov/doclib/news/library/factsheets/pdf/odls-brochure.pdf.

232 Connecticut Department of Children and Families, “Immigration Practice Guide.”

233 State of Florida, “Proceedings Relating to Children—Procedures and Jurisdiction; Right to Counsel.”

234 *Social Security Act*, Public Law 74-271, *U.S. Statutes at Large* 49 (1935): 620, § 475(5)(E), www.ssa.gov/OP_Home/ssact/title04/0475.htm.

235 HHS, ACF, “Immigration Enforcement and Child Welfare; Case Planning; Foster Care” (information memorandum ACYF-CB-IM-15-02, February 20, 2015), www.acf.hhs.gov/sites/default/files/cb/im1502.pdf.



but not limited to, barriers to the parent’s or guardian’s access to services and ability to maintain contact with his or her child.” Review hearings for termination of parental rights can continue after this extended period and must consider “good faith efforts that the parent or guardian has made to maintain contact with the child.”²³⁶

Agencies in some states encourage unauthorized immigrant caregivers to create family preparedness plans that include details on care of children should the parent or guardian be detained. Illinois policy requires unauthorized immigrant caregivers with an open child welfare case to have such a plan in place.²³⁷ New York State recently modified its policies governing extended standby guardianship to include “administrative separations” due to immigration enforcement, allowing for the immediate transfer of temporary guardianship in such cases.²³⁸ The state also funds a Kinship Navigator program, run by the Catholic Family Center, that offers comprehensive planning documents with advice on arranging kinship care in the event of detention or deportation, without necessarily involving the child welfare agency.²³⁹ Connecticut offers similar documents in nine languages, which state officials view as helpful in building trust through community outreach efforts.²⁴⁰ New Jersey’s university partner, Rutgers, has developed power of attorney documents and accompanying FAQ sheets in English and Spanish to help execute these placements without the involvement of the state’s Department of Children and Families when there is no claim of abuse or neglect.²⁴¹ In Los Angeles, the county child welfare agency has partnered with the Office of Immigrant Affairs to include this alternative caregiver planning in its community engagement programming.²⁴² And in Monterey County, nonprofit partners recommend that copies of family preparedness plans be attached to the refrigerator and given to children so that, should their parents be detained, local law enforcement will know there is a plan in place.

IV. Compilation of Recommendations

Based on this exploration of state and local policies and practices and of the evolving immigration policy landscape, the following nine recommendations hold the potential to improve how child welfare agencies engage with immigrant families:

1. Employ specialized staff or provide access to a skilled point of contact for caseworkers to reach out to for guidance and support on immigration issues in child welfare cases.
2. Develop preservice and ongoing training for frontline workers concerning immigration issues in child welfare cases, with content emphasizing cultural competency and issues relating to legal status.

236 State of California, “Dependent Children—Judgments and Orders,” *California Welfare and Institutions Code* §§ 361.5(a)(3) and (4), 366.21(g)(2), 366.22(b), http://leginfo.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=2.&part=1.&lawCode=WIC&article=10.

237 Illinois Department of Children and Family Services, “Guardianship Services—Emergency Care Plan for Children with Undocumented Caregivers.”

238 New York State, “Standby Guardians,” *New York Consolidated Laws, Surrogate’s Court Procedure Act* § 1726 (amended June 27, 2018), www.nysenate.gov/legislation/laws/SCP/1726.

239 New York State Kinship Navigator, “Deportation of Parents and Children Remaining in USA,” accessed September 24, 2018, www.nysnavigator.org/?page_id=1897.

240 Connecticut Office of the Governor, “Immigration Resources: Connecticut Family Preparedness Plan,” accessed October 5, 2018, <https://portal.ct.gov/FamilyPreparedness>.

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3. Review whether language access policies adequately reflect the characteristics and needs of the service population, with attention to translation of forms and availability of multilingual staff and interpreters who are not children or other family members.
4. In light of the importance of placing children with relatives when possible and appropriate, identify and address barriers that may prevent noncitizen caregivers, including unauthorized immigrants, from becoming licensed providers.
5. Review policies concerning placement of children with a parent or guardian abroad, develop MOUs with consulates for countries with significant numbers of placements, and ensure that the jurisdiction either has skilled staff or contracts for access to such staff for involvement in these cases.
6. Reach out to consulates whose nationals comprise substantial service populations to coordinate and explore developing MOUs to address respective roles when foreign nationals or children of foreign nationals are involved with the agency.
7. Develop a process, using internal staff or a grant or contract with an outside entity, to ensure that all noncitizen children in care, and parents associated with children in care, are screened for immigration benefits such as naturalization, humanitarian protection, or relief from deportation.
8. Review confidentiality policies to ensure that they explicitly limit information sharing with federal immigration authorities and provide workers with guidance about how to inform adults and children about confidentiality protections, as failure to address concerns about immigration enforcement can prevent child welfare agencies from effectively engaging with immigrant families.
9. Develop policies for communicating with and engaging detained parents in child welfare case planning and hearings, and for sharing the parent's location with the court and any parent attorney group so that the parent may be assigned counsel; review ICE's directive on Detention and Removal of Alien Parents or Legal Guardians, incorporate its key provisions into agency policy manuals or guidance to caseworkers, and identify and build a relationship with the appropriate ICE field office point of contact for child welfare matters.



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About the Authors



Mark Greenberg joined the Migration Policy Institute (MPI) as a Senior Fellow in July 2017. His work focuses on the intersections of migration policy with human services and social welfare policies.

From 2009 to 2017, Mr. Greenberg worked at the Administration for Children and Families (ACF) in the U.S. Department of Health and Human Services. He served as ACF Deputy Assistant Secretary for Policy from 2009–13; Acting Commissioner for the Administration for Children, Youth, and Families from 2013–15; and Acting Assistant Secretary from 2013–17. ACF includes the Office of Refugee Resettlement, which has responsibility for the refugee resettlement and unaccompanied children program, and has a strong research agenda relating to the programs under its jurisdiction. Among these are a wide range of human services programs, including Head Start, child care, child support, child welfare, and Temporary Assistance for Needy Families.

Previously, Mr. Greenberg was Executive Director of the Georgetown Center on Poverty, Inequality, and Public Policy, a joint initiative of the Georgetown Law Center and Georgetown Public Policy Institute. In addition, he previously was Executive Director of the Center for American Progress' Task Force on Poverty, and the Director of Policy for the Center for Law and Social Policy (CLASP).

He is a graduate of Harvard College and Harvard Law School, and was a legal services lawyer in Florida and California for ten years after graduating law school.



Randy Capps is Director of Research for U.S. Programs at MPI. His areas of expertise include immigration trends, the unauthorized population, immigrants in the U.S. labor force, the children of immigrants and their wellbeing, and immigrant health-care and public benefits access and use.

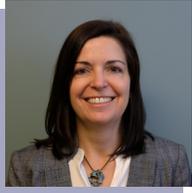
Dr. Capps, a demographer, has published widely on immigrant integration at the state and local level, including profiles of immigrant populations in Arkansas, Connecticut, and Maryland, as well as Los Angeles, Washington, DC, Louisville, KY, and Napa County, CA. He also has examined the impact of the detention and deportation of immigrant parents on children. Prior to joining MPI, Dr. Capps was a researcher in the Immigration Studies Program at the Urban Institute (1993–96 and 2000–08).

He received his PhD in sociology from the University of Texas in 1999 and his master of public affairs degree, also from the University of Texas, in 1992.



Andrew Kalweit was an Intern at MPI, where he provided research and writing support on projects related to the integration of immigrant youth and families in social service systems. Prior to MPI, Mr. Kalweit worked at the intersection of behavioral sciences and population health research, including field research on psychosocial support and educational programming with children on the move through Serbia. He has conducted research projects on topics including sleep health, LGBT smoking interventions, and environmental health disparities in immigrant communities.

Mr. Kalweit holds a master of public health degree from the Harvard T.H. Chan School of Public Health with an emphasis in the social determinants of health and health disparities, and bachelor's degrees in chemistry and comparative human development from the University of Chicago.



Jennifer Grishkin is a Research Associate at MPI, where her work focuses on the impacts of U.S. immigration policy and enforcement trends on children and families. She is an attorney and for several years has volunteered to provide direct representation to immigrants with humanitarian claims. Before working in the field of immigration law and policy, she was a trial attorney in the U.S. Department of Justice's Office of Consumer Litigation, and a litigation associate at the DC law firm of Wilmer, Cutler, and Pickering. She began her career as a judicial clerk to the Honorable Walter K. Stapleton of the U.S. Court of Appeals for the Third Circuit.

Ms. Grishkin received a BA in sociology from Wake Forest University and a JD from Yale Law School.



Ann Flagg is the Director of the American Public Human Services Association (APHSA)'s Collaborative Centers for Policy and Practice. Since joining APHSA in October 2017, Ms. Flagg has overseen its policy and practice work in child welfare, child care, economic assistance, and workforce and family-supporting systems. She is the lead policy liaison with both the federal agencies and APHSA's membership on child welfare issues, including implementation of child welfare finance reform.

Prior to joining APHSA, Ms. Flagg served in a variety of leadership positions in the Maryland Department of Human Services, providing leadership and process improvement support to the state's child welfare, economic and emergency assistance, and child support programs, including high-profile initiatives such as the *Affordable Care Act* and Title IV-E waiver implementation. She also has more than ten years of management, program design, performance management, and external affairs experience in the nonprofit and philanthropic sectors, including three years of implementing performance management systems in a child welfare direct service provider.

Ms. Flagg has an undergraduate degree in sociology from Towson University and a Master of Public Administration from the University of Baltimore.



The Migration Policy Institute is a nonprofit, nonpartisan think tank dedicated to the study of the movement of people worldwide. MPI provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world.

www.migrationpolicy.org

1400 16th Street NW
Suite 300
Washington, DC 20036

Tel: 001 202-266-1940
Fax: 001 202-266-1900

