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Alan J. Dettlaff  
*University of Illinois at Chicago*

Megan Finno-Velasquez  
*University of Southern California*

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## **Child Maltreatment and Immigration Enforcement: Considerations for Child Welfare and Legal Systems Working with Immigrant Families**

Alan J. Dettlaff & Megan Finno-Velasquez<sup>\*</sup>

### **I. Introduction**

Changes in immigration patterns and trends over the past two decades have shifted considerably the demographic profile of the United States.<sup>1</sup> Not only have the numbers of foreign-born immigrants living in the United States increased, but also a larger proportion of this foreign-born population consists of children and families.<sup>2</sup> In 2010, foreign-born immigrants represented 12.9 percent of the total U.S. population.<sup>3</sup> As a result of these changing trends, Hispanic children and families are the largest growing population in the United States, as well as in the child welfare system.<sup>4</sup>

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<sup>\*</sup> Alan J. Dettlaff, Ph.D., MSW is Associate Professor in the Jane Addams College of Social Work, University of Illinois at Chicago. His research focuses on improving outcomes for immigrant children and families in the child welfare system, improving cultural competence, and responding to racial and ethnic disparities. Megan Finno-Velasquez, MSW, is a Ph.D. Student in the School of Social Work at the University of Southern California. She is a recipient of the Doris Duke Fellowship for the Promotion of Child Well-being-Seeking Innovations to Prevent Child Abuse and Neglect. Her research interests include immigration policy, culturally competent practice and policy in child welfare, and services for Latino immigrants at risk for child maltreatment.

<sup>1</sup> See ELIZABETH M. GRIECO ET AL., U.S. CENSUS BUREAU, THE FOREIGN BORN POPULATION IN THE UNITED STATES: 2010, at 10 (2012), <http://www.census.gov/prod/2012pubs/acs-19.pdf>.

<sup>2</sup> *Id.* at 14.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> Michelle Johnson-Motoyama et al., *Parental Nativity and the Decision to Substantiate: Findings from a Study of Latino Children in the Second National Survey of Child and Adolescent Well-Being (NSCAW II)*, 34 CHILD. & YOUTH SERVICES REV. 2229, 2229 (2012).

Immigrant Children and Child Welfare

Most adult immigrants are not U.S. citizens and many are undocumented.<sup>5</sup> As of 2010, nearly 12 million undocumented immigrants lived in the United States, representing approximately 30 percent of the total foreign-born population.<sup>6</sup> Approximately one million of these undocumented immigrants were children, most of Hispanic origin.<sup>7</sup> The majority of the foreign-born population is split between legal permanent residents and naturalized U.S. citizens, while another four percent of the foreign-born population is composed of legal temporary residents, consisting of students and temporary workers.<sup>8</sup>

Children with at least one foreign-born parent represent nearly one-fourth (26 percent) of all children in the United States.<sup>9</sup> Over half (56 percent) of these children are of Hispanic origin,<sup>10</sup> followed by 18 percent non-Hispanic White, 18 percent non-Hispanic Asian, and 8 percent non-Hispanic Black.<sup>11</sup> Most children of immigrants (87 percent) are born in the United States and are U.S. citizens.<sup>12</sup> However, 44 percent of all children of immigrants live in families where neither parent is a U.S. citizen, and nearly one-third (32 percent) live in mixed-status families, or families in which the children are citizens, but at least one parent is not.<sup>13</sup> Children with non-citizen parents may have an increased vulnerability for contact

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<sup>5</sup> JEFFREY S. PASSEL & D'VERA COHN, PEW HISPANIC CTR., UNAUTHORIZED IMMIGRANT POPULATION: NATIONAL AND STATE TRENDS, 2010, at 5, 10 (2011), <http://www.pewhispanic.org/files/reports/133.pdf>.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.* at 13.

<sup>8</sup> *Id.* at 10.

<sup>9</sup> KARINA FORTUNY ET AL., THE URBAN INST., CHILDREN OF IMMIGRANTS: NATIONAL AND STATE CHARACTERISTICS 1 (2009), [http://www.urban.org/UploadedPDF/411939\\_childrenofimmigrants.pdf](http://www.urban.org/UploadedPDF/411939_childrenofimmigrants.pdf).

<sup>10</sup> In the context of these data, the terms "Hispanic origin" and "Hispanic" are used to identify individuals of Hispanic origin as defined by the United States Census Bureau. This includes individuals who self-identify as being of Hispanic, Latino, or Spanish origin.

<sup>11</sup> KARINA FORTUNY & AJAY CHAUDRY, THE URBAN INST., CHILDREN OF IMMIGRANTS: IMMIGRATION TRENDS, FACT SHEET NO. 1, at 3 (2009), [http://www.urban.org/UploadedPDF/901292\\_immigrationtrends.pdf](http://www.urban.org/UploadedPDF/901292_immigrationtrends.pdf).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4.

## Immigrant Children and Child Welfare

with child welfare systems if one or both parents are detained or deported as a result of immigration enforcement efforts.<sup>14</sup> Additionally, once children become involved in this system, they may face considerable barriers to reunification with their parents as a result of their parents' citizenship status.<sup>15</sup>

This Article reviews the current knowledge regarding children in immigrant families and their involvement in the child welfare system. Part II examines research findings that describe patterns of child maltreatment among immigrant families, risks associated with child welfare involvement, and child placement issues for immigrant families. Part III discusses immigration enforcement activities<sup>16</sup> as risk factors for child maltreatment and involvement in the child welfare system. Part IV then presents challenges that child welfare and legal systems face when immigrant families come to the attention of the child welfare system as a result of either maltreatment or immigration enforcement. Part V concludes with recommendations for child welfare and legal systems to work collaboratively, as well as with other child and immigrant serving systems, to facilitate positive outcomes for children.

## II. Children in Immigrant Families and Involvement in the Child Welfare System

Children in immigrant families have historically been considered at increased risk for maltreatment as a result of the challenges experienced by their families following immigration to the United States.<sup>17</sup> The process of migration to the United States is often a difficult and arduous one, characterized by loss, trauma, fear, and

<sup>14</sup> APPLIED RESEARCH CTR., SHATTERED FAMILIES: THE PERILOUS INTERSECTION OF IMMIGRATION ENFORCEMENT AND THE CHILD WELFARE SYSTEM 6 (2011) [hereinafter SHATTERED FAMILIES], available at <http://arc.org/shatteredfamilies>.

<sup>15</sup> *Id.*

<sup>16</sup> Immigration enforcement activities as discussed in this Article include any efforts by U.S. Immigration and Customs Enforcement ("ICE") or relationships between ICE and local law enforcement agencies to enforce federal laws governing border control and immigration.

<sup>17</sup> Ilze Earner, *Immigrant Families and Public Child Welfare: Barriers to Services and Approaches for Change*, CHILD WELFARE, July–Aug. 2007, at 63, 69–70.

Immigrant Children and Child Welfare

isolation.<sup>18</sup> Immigration experiences vary depending on country of origin, type of migration, and individual motivations;<sup>19</sup> however, the decision to migrate is often driven by financial necessity or dangerous political climates that pose a risk of exposure to robbery, violence, physical persecution, and sexual assault.<sup>20</sup> Many challenges that immigrants face—financial distress, personal dissatisfaction, depression, social isolation, and stressful life events—are factors associated with child maltreatment.<sup>21</sup> Additional pressures resulting from acculturation and acculturative stress<sup>22</sup> can lead to further strains and conflict within families, as parents and children negotiate language barriers and face unfamiliar customs and loss of previously established support systems.<sup>23</sup> Combined with possible cultural differences in parenting styles and expectations,<sup>24</sup> as well as in child

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<sup>18</sup> See Uma A. Segal & Nazneen S. Mayadas, *Assessment of Issues Facing Immigrant and Refugee Families*, 84 CHILD WELFARE 563, 564-66 (2005) (describing the “Framework for the Immigrant Experience” as including factors such as unique family experiences, and conditions and status in one’s home country that contribute to unique experiences among immigrants in their process of migration, and highlighting that most immigrants feel little choice regarding the necessity of migration).

<sup>19</sup> *Id.* at 564.

<sup>20</sup> *Id.* at 566.

<sup>21</sup> Child maltreatment literature has consistently identified factors such as poverty, parental depression, social isolation, and stress as risk factors for maltreatment. See, e.g., Susan P. Cadzow et al., *Stressed Parents with Infants: Reassessing Physical Abuse Risk Factors*, 23 CHILD ABUSE & NEGLECT 845, 846 (1999).

<sup>22</sup> Acculturation refers to the internal process of change experienced by all immigrants upon exposure to a new culture. Acculturative stress is a distinct concept from acculturation, referring to the stress that results from the acculturative process. Upon immigration, individuals are faced with a multitude of challenges as they attempt to navigate the new culture. Acculturative stress results when individuals lack the necessary skill or means to interact and be successful in the new environment. See J.W. Berry et al., *Comparative Studies of Acculturative Stress*, 21 INT’L MIGRATION REV. 491, 492 (1987).

<sup>23</sup> Segal & Mayadas, *supra* note 18, at 567.

<sup>24</sup> Saigeetha Jambunathan et al., *Comparisons of Parenting Attitudes Among Five Ethnic Groups in the United States*, 31 J. COMP. FAM. STUD. 395, 400 (2000).

## Immigrant Children and Child Welfare

discipline,<sup>25</sup> these factors can affect the safety and wellbeing of children in immigrant families, and lead to involvement in the child welfare system. For example, while norms concerning acceptable child rearing and punishment vary by culture, a number of studies have documented the use of authoritarian parenting styles and corporal punishment as a disciplinary strategy prevalent among immigrant parents.<sup>26</sup> When combined with other stressors such as poverty and acculturative stress, this parenting style may result in harsh physical discipline that can lead to child welfare involvement.<sup>27</sup>

Curiously, although speculation of increased immigrant risk of maltreatment has existed for years,<sup>28</sup> very little empirical data has been available to determine the extent to which these perceptions of increased risk are accurate. This lack of evidence is largely due to the fact that information on the nativity and immigration status of children and families is not routinely collected by child welfare agencies. This results in the inability to determine the extent of immigrant involvement with child welfare systems and to characterize their risk exposure and experience of maltreatment.<sup>29</sup>

Thus, although children in immigrant families have been viewed as a population that may be at increased risk for maltreatment due to the stressors associated with immigration and acculturation experiences, empirical data to support these views has largely been

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<sup>25</sup> Lisa Aronson Fontes, *Child Discipline and Physical Abuse in Immigrant Latino Families: Reducing Violence and Misunderstandings*, 80 J. COUNSELING & DEV. 31, 33 (2002).

<sup>26</sup> See Martha Frías-Armenta & Laura Ann McCloskey, *Determinants of Harsh Parenting in Mexico*, 26 J. ABNORMAL CHILD PSYCHOL. 129, 135 (1998); Emiko A. Tajima & Tracy W. Harachi, *Parenting Beliefs and Physical Discipline Practices Among Southeast Asian Immigrants: Parenting in the Context of Cultural Adaptation to the United States*, 41 J. CROSS-CULTURAL PSYCHOL. 212, 223 (2010).

<sup>27</sup> Earner, *supra* note 17, at 79.

<sup>28</sup> Dorit Roer-Strier, *Reducing Risk for Children in Changing Cultural Contexts: Recommendations for Intervention and Training*, 25 CHILD ABUSE & NEGLECT 231, 232 (2001); Earner, *supra* note 17, at 65.

<sup>29</sup> Alan J. Dettlaff et al., *Emerging Issues at the Intersection of Immigration and Child Welfare: Results from a Transnational Research and Policy Forum*, 88 CHILD WELFARE 47, 48 (2009) [hereinafter Dettlaff et al., *Emerging Issues at the Intersection of Immigration and Child Welfare*].

### Immigrant Children and Child Welfare

absent through the middle of the last decade. The availability of empirical data began to increase following completion of the National Survey of Child and Adolescent Well-Being ("NSCAW"), the first national survey of families investigated by the child welfare system, which shed some light on immigrant experiences with the child welfare system.

#### A. Maltreatment Patterns

A seminal study using data from NSCAW<sup>30</sup> concluded that children living with a foreign-born parent comprise 8.6 percent of all children who came to the attention of the child welfare system in the United States, despite representing 23 percent of the overall population.<sup>31</sup> The finding suggested that children of immigrants are considerably underrepresented among children who become involved with child welfare,<sup>32</sup> contradicting the prevailing view that children in immigrant families were at increased risk for child welfare involvement.<sup>33</sup>

Two reasons could explain the findings of this study. First, although immigrant families indeed face a number of risks resulting from their immigration experience,<sup>34</sup> the strengths embedded within many immigrant families may serve as buffers against some of these

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<sup>30</sup> ALAN J. DETTLAFF & ILZE EARNER, MIGRATION & CHILD WELFARE NAT'L NETWORK, CHILDREN OF IMMIGRANTS IN THE CHILD WELFARE SYSTEM: FINDINGS FROM THE NAT'L SURVEY OF CHILD AND ADOLESCENT WELL-BEING 1 (2009) [hereinafter DETTLAFF & EARNER, CHILDREN OF IMMIGRANTS IN THE CHILD WELFARE SYSTEM], <http://www.americanhumane.org/assets/pdfs/children/pc-childofimmigrantpdf.pdf>.

<sup>31</sup> *Id.* at 2. This number includes children who were involved in an investigated report of child maltreatment by a child welfare agency.

<sup>32</sup> *Id.* at 1-2.

<sup>33</sup> *Id.* at 1-2. Data from NSCAW showed that children in immigrant families were underrepresented among children involved in the child welfare system compared to their proportion in the general population, suggesting that prior speculation about their increased risk for maltreatment and involvement in this system is not supported empirically.

<sup>34</sup> Examples of stressors include increased stress, poverty, social isolation, and changing cultural contexts. For a review see Alan J. Dettlaff & Ilze Earner, *Children of Immigrants in the Child Welfare System: Characteristics, Risk, and Maltreatment*, 93 FAMILIES IN SOC'Y 295, 295 (2012) [hereinafter Dettlaff & Earner, *Characteristics, Risk, and Maltreatment*].

## Immigrant Children and Child Welfare

risks. Primary among these strengths might be immigrants' reasons for migration.<sup>35</sup> For many immigrant families, the desire for a better life for their children can be a strong motivating factor.<sup>36</sup> Research has also shown that immigrant families' cultural values and connections to their countries of origin serve as important strengths that may protect them from experiencing certain negative outcomes.<sup>37</sup> This phenomenon, often referred to as an "immigrant paradox," suggests that despite more challenges, immigrants fare better than their native U.S.-born counterparts.<sup>38</sup>

The second reason is that immigrants have remained under the radar of the child welfare system because of their low rates of contact with social services systems. This makes immigrants less likely to come to the attention of agencies and professionals considered "mandated reporters" who are required to identify and report potential maltreatment.<sup>39</sup> Thus, although underrepresentation in the child welfare system may indicate lower rates of maltreatment in immigrant families, it may also suggest that immigrant families who are in need of intervention are not being identified by child welfare systems; this lack of identification may be due to social isolation, avoidance of social service systems due to concern over immigration status, lack of enrollment in school, or lack of access to service providers.<sup>40</sup> While both of these explanations may be plausible, additional research is needed to more fully understand the factors that contribute to the observed underrepresentation of children in immigrant families in the child welfare system.

Findings from this study further showed that among families referred to the child welfare system, no significant differences were found in overall rates of maltreatment between children with

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<sup>35</sup> *Id.* at 301.

<sup>36</sup> *Id.*

<sup>37</sup> Lori K. Holleran & Margaret A. Waller, *Sources of Resilience Among Chicano/a Youth: Forging Identities in the Borderlands*, 20 CHILD & ADOLESCENT SOC. WORK J. 335, 340, 346 (2003).

<sup>38</sup> Fernando S. Mendoza, *Health Disparities and Children in Immigrant Families: A Research Agenda*, 124 PEDIATRICS S187, S188 (2009).

<sup>39</sup> DETTLAFF & EARNER, CHILDREN OF IMMIGRANTS IN THE CHILD WELFARE SYSTEM, *supra* note 30, at 5, 7.

<sup>40</sup> *Id.* at 8.



Immigrant Children and Child Welfare

immigrant parents and children with U.S.-born parents.<sup>41</sup> Children of immigrants, however, were found to be more likely than children of U.S.-born parents to experience emotional abuse.<sup>42</sup> Though definitions of emotional abuse vary widely across states,<sup>43</sup> the disproportionate number of children of immigrants identified as experiencing emotional abuse could be the result of cultural differences in parenting styles, or parenting expectations among some immigrants that may be considered inappropriate by child welfare caseworkers unfamiliar with diverse cultures.<sup>44</sup> For example, research indicates that children in Mexican immigrant families hold significant responsibilities, including conducting basic household tasks, caring for younger siblings, and providing financial support.<sup>45</sup> Further, a 2000 study found that immigrant mothers were identified as being more likely than non-immigrant mothers to have inappropriate developmental expectations of their children when rated on a measure of parenting attitudes used to identify risk for abuse or neglect.<sup>46</sup>

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<sup>41</sup> *Id.* at 4.

<sup>42</sup> *Id.*

<sup>43</sup> As with all forms of maltreatment, statutory definitions of emotional abuse are defined by state law. Although there are national guidelines that identify the categories of psychological maltreatment (*e.g.*, AM. PROF'L SOC'Y ON THE ABUSE OF CHILDREN, PRACTICE GUIDELINES: PSYCHOSOCIAL EVALUATION OF SUSPECTED PSYCHOLOGICAL MALTREATMENT IN CHILDREN AND ADOLESCENTS (1995)), variation often exists in the level of inclusiveness of parental behaviors that fall into these categories. For a more thorough discussion of this variation, see Stephanie Hamarman et al., *Emotional Abuse in Children: Variations in Legal Definitions and Rates Across the United States*, 7 CHILD MALTREATMENT 303, 303 (2002).

<sup>44</sup> The lack of understanding of the influence of culture has been cited as a significant barrier to adequate assessment and intervention in cases of child maltreatment among immigrant families. *See, e.g.*, Ron Shor, *Inappropriate Child Rearing Practices as Perceived by Jewish Immigrant Parents from the Former Soviet Union*, 23 CHILD ABUSE & NEGLECT 487, 487 (1999).

<sup>45</sup> Marjorie Faulstich Orellana, *The Work Kids Do: Mexican and Central American Immigrant Children's Contributions to Households and Schools in California*, 71 HARV. EDUC. REV. 366, 374 (2001).

<sup>46</sup> Jambunathan et al., *supra* note 24, at 402.

## Immigrant Children and Child Welfare

Additional studies have suggested that children of immigrants from specific racial or ethnic backgrounds may be vulnerable to specific forms of maltreatment. For example, one study using data from NSCAW showed that Latino children of immigrants were over five times more likely to experience sexual abuse than Latino children of U.S.-born parents, although overall rates of maltreatment were the same between the two sub-groups.<sup>47</sup> Other studies have found that children in various Asian immigrant families were more likely to come to the attention of the child welfare system for physical abuse than children in other ethnic groups.<sup>48</sup> These studies have begun to shed light on the unique maltreatment experiences among children in immigrant families, although much additional research is needed to fully understand the role that cultural differences might play in these patterns in order to draw accurate conclusions.

### **B. Risk Factors Associated with Child Welfare Involvement**

Apart from identifying patterns of maltreatment in immigrant families, some studies have examined the risk factors associated with child maltreatment in immigrant families involved in the child welfare system.<sup>49</sup> These studies have consistently found that such factors are more likely to be present in families with U.S.-born parents than in those with immigrant parents.<sup>50</sup> For example, in a

<sup>47</sup> Alan J. Dettlaff et al., *Latino Children of Immigrants in the Child Welfare System: Prevalence, Characteristics, and Risk*, 31 CHILD. & YOUTH SERVS. REV. 775, 779 (2009) [hereinafter Dettlaff et al., *Latino Children of Immigrants in the Child Welfare System*].

<sup>48</sup> Janet Chang et al., *Characteristics of Child Abuse in Immigrant Korean Families and Correlates of Placement Decisions*, 30 CHILD ABUSE & NEGLECT 881, 888 (2006); see also Siyon Rhee et al., *Child Maltreatment Among Immigrant Chinese Families: Characteristics and Patterns of Placement*, 13 CHILD MALTREATMENT 269, 275 (2008).

<sup>49</sup> See, e.g., DETTLAFF & EARNER, CHILDREN OF IMMIGRANTS IN THE CHILD WELFARE SYSTEM, *supra* note 30, at 5; Dettlaff et al., *Latino Children of Immigrants in the Child Welfare System*, *supra* note 47, at 779; Johnson-Motoyama et al., *supra* note 4, at 2229.

<sup>50</sup> DETTLAFF & EARNER, CHILDREN OF IMMIGRANTS IN THE CHILD WELFARE SYSTEM, *supra* note 30, at 5; Dettlaff et al., *Latino Children of Immigrants in the Child Welfare System*, *supra* note 47, at 779; Johnson-Motoyama et al., *supra* note

Immigrant Children and Child Welfare

nationally representative sample, U.S.-born parents were three times more likely to be actively abusing alcohol or drugs than immigrant parents, and were also more likely to have a physical or cognitive impairment or recent history of arrests.<sup>51</sup> Notably, immigrant families involved in the child welfare system were not found to have a higher prevalence of risk factors typically associated with immigrants, such as the use of excessive discipline, active domestic violence, low social support, and difficulty meeting their family's basic needs.<sup>52</sup> The research suggests that families who immigrate to the United States may bring with them several strengths and protective factors that are associated with their reasons for migration and their desire to achieve a better life for their children that may mitigate risk and are less present in U.S.-born families.<sup>53</sup>

Among Latino families involved with the child welfare system, U.S.-born parents were five times as likely to be actively abusing drugs when compared to immigrant Latino parents.<sup>54</sup> U.S.-born Latino parents were also significantly more likely to have a cognitive impairment, recent history of arrests, or to be assessed as having poor parenting skills and high family stress.<sup>55</sup> Latino immigrant families, in comparison to all types of immigrant families, were not found to have higher rates of domestic violence, lower social support, or excessive discipline, again contradicting prevailing views regarding risk exposure for maltreatment among immigrant families.<sup>56</sup>

Thus, although differences in the types and patterns of maltreatment exist between children in immigrant families and children in U.S.-born families, available empirical evidence indicates

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4, at 2229; Shawna J. Lee et al., *Hispanic Fathers and Risk for Maltreatment in Father-Involved Families of Young Children*, 2 J. SOC'Y FOR SOC. WORK & RES. 125, 132 (2011).

<sup>51</sup> DETTLAFF & EARNER, CHILDREN OF IMMIGRANTS IN THE CHILD WELFARE SYSTEM, *supra* note 30, at 5.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 7.

<sup>54</sup> Dettlaff et al., *Latino Children of Immigrants in the Child Welfare System*, *supra* note 47, at 779.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

## Immigrant Children and Child Welfare

that children in immigrant families are likely at a lesser risk of maltreatment and of involvement in the child welfare system than children in U.S.-born families. Yet, once children in immigrant families become involved in this system, emerging evidence shows that they may experience different outcomes than their U.S.-born counterparts.

**C. Child Placement**

Very little information is available about the placement patterns of children in immigrant families and how they may differ from children in U.S.-born families. A 2007 study using data from the Texas child welfare system on Latino children, found that immigrant children and children of immigrants were less likely to be placed with relatives than children of U.S.-born parents.<sup>57</sup> Immigrant children were also more likely than other children to be placed in group homes and institutions.<sup>58</sup> Additionally, immigrant children were less likely to have case goals of reunification or relative adoption than U.S.-born children, and were more likely to have goals of long-term foster care or independent living.<sup>59</sup> These discoveries are troubling, given the research findings identifying lower rates of risk exposure among immigrant families.<sup>60</sup> The findings suggest that despite these lower rates of risk, children in immigrant families may be vulnerable to poorer outcomes than children in U.S.-born families. One explanation may be that factors associated with parents' immigration status may be interfering with decisions regarding the child's best interest.<sup>61</sup> Additional research is needed to identify the sources of these disparities and to determine whether these findings are consistent in other states.

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<sup>57</sup> TRACY VERICKER ET AL., THE URBAN INST., FOSTER CARE PLACEMENT SETTINGS AND PERMANENCY PLANNING: PATTERNS BY CHILD GENERATION AND ETHNICITY 2 (2007), [http://www.urban.org/UploadedPDF/311459\\_foster\\_care.pdf](http://www.urban.org/UploadedPDF/311459_foster_care.pdf).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 3.

<sup>60</sup> DETTLAFF & EARNER, CHILDREN OF IMMIGRANTS IN THE CHILD WELFARE SYSTEM, *supra* note 30, at 5.

<sup>61</sup> Qingwen Xu, *In the "Best Interest" of Immigrant and Refugee Children: Deliberating on Their Unique Circumstances*, 84 CHILD WELFARE 747, 759 (2005).

### Immigrant Children and Child Welfare

In sum, currently available data indicates that although children in immigrant families are likely exposed to a number of risk factors as a result of their families' experiences with immigration and acculturation, they are considerably underrepresented among children involved in the child welfare system. This data further suggests that children in immigrant families are at no greater risk of maltreatment than children in U.S.-born families, and are less likely to experience many of the risks often associated with child maltreatment and child welfare system involvement. Yet, once children in immigrant families become involved in this system, emerging evidence suggests that they may be vulnerable to less favorable outcomes than their U.S.-born counterparts. As a result, immigration enforcement impacts children's experience in the system.

### III. Immigration Enforcement as a Risk for Child Welfare Involvement

Although an expanding body of research has begun to emphasize immigrant family involvement in the child welfare system,<sup>62</sup> the extent to which immigration enforcement has affected this involvement is unknown. As of 2010 in the United States, an estimated 5.5 million children had undocumented immigrant parents who were at risk for deportation, and about three-quarters of these children were U.S. citizens.<sup>63</sup> This statistic is, in part, due to federal legislation passed in 1996 that created barriers for obtaining legal status and expanded the grounds under which to deport immigrants charged with crimes.<sup>64</sup> Thus, although children in immigrant families may be less vulnerable to entering the child welfare system through the traditional pathway of a maltreatment investigation, they may be at an increased risk of entering this system as a result of expanded immigration enforcement activities.

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<sup>62</sup> See, e.g., Dettlaff et al., *Latino Children of Immigrants in the Child Welfare System*, *supra* note 47, at 775; Dettlaff & Earner, *Characteristics, Risk, and Maltreatment*, *supra* note 34; Earner, *supra* note 17, at 65.

<sup>63</sup> PASSEL & COHN, *supra* note 5.

<sup>64</sup> Earner, *supra* note 17, at 69 (discussing the expansion of the grounds for deportation to include non-violent offenses).

## Immigrant Children and Child Welfare

Deportations and enforcement activities conducted by Immigration and Customs Enforcement (“ICE”) have increased considerably over the past two decades.<sup>65</sup> A particularly notable increase in enforcement efforts between 2005 and 2008 included several large, highly publicized worksite enforcement operations.<sup>66</sup> Child advocates criticized these operations based upon the failure of ICE to address the needs of vulnerable children that were displaced following the apprehension of their parents.<sup>67</sup> As a result, humanitarian guidelines were put into place that delineated terms for parental release during worksite raids in sites with more than 25 arrests.<sup>68</sup> These guidelines include a plan to identify individuals who are the sole caregivers of minor children or who have other humanitarian concerns, including individuals with serious medical conditions, nursing mothers, pregnant women, or caregivers of spouses or relatives with serious medical conditions.<sup>69</sup> To implement this plan, ICE coordinates enforcement actions with the U.S. Department of Health and Human Services Division of Immigration Health Services, or with an appropriate state or local social service agency such as the state’s child welfare agency, to assist in identifying those with special concerns and in providing appropriate responses.<sup>70</sup>

Recent evidence suggests that when administered appropriately, these guidelines have been effective in preventing or minimizing parent-child separations because the guidelines mandate

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<sup>65</sup> WENDY CERVANTES & YALI LINCROFT, FIRST FOCUS, THE IMPACT OF IMMIGRATION ENFORCEMENT ON CHILD WELFARE 1 (2010), <http://www.firstfocus.net/sites/default/files/r.2010-4.7.cervantes.pdf>.

<sup>66</sup> *Id.*

<sup>67</sup> AJAY CHAUDRY ET AL., THE URBAN INST., FACING OUR FUTURE: CHILDREN IN THE AFTERMATH OF IMMIGRATION ENFORCEMENT 13 (2010) [hereinafter CHAUDRY ET AL., FACING OUR FUTURE], [http://www.urban.org/UploadedPDF/412020\\_FacingOurFuture\\_final.pdf](http://www.urban.org/UploadedPDF/412020_FacingOurFuture_final.pdf).

<sup>68</sup> CERVANTES & LINCROFT, *supra* note 65, at 3.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

Immigrant Children and Child Welfare

release of single parents and those with special needs children.<sup>71</sup> The guidelines do not, however, apply to enforcement actions targeting individuals or small groups, including home raids and other small criminal justice operations. This leaves children vulnerable to experiencing separation from their parents<sup>72</sup> and subsequent child welfare intervention when alternative caregivers are not immediately available.<sup>73</sup>

Although worksite raids conducted by ICE for the purpose of apprehending undocumented immigrants were suspended under the first Obama administration, this same administration oversaw the highest number of deportations in the United States in recent history.<sup>74</sup> In 2009, over 600,000 immigrants were arrested, and ICE detained a record total of 383,524 immigrants.<sup>75</sup> In large part, these record numbers can be attributed to federal programs that increased cooperation between local law enforcement and the Department of Homeland Security.<sup>76</sup> Throughout the first Obama administration, ICE expanded operations to arrest and deport immigrants with serious criminal records, classified as “Level 1 Offenders,” defined as those immigrants convicted of aggravated felonies or two or more felonies.<sup>77</sup> However, recent data has demonstrated that this program,

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<sup>71</sup> *Id.* Guidelines call for the release of parents who are needed to support their spouses in caring for sick or special needs children. *Id.* Special needs children may refer to those with physical or mental health concerns.

<sup>72</sup> Although ICE does not collect data on the number of children impacted by immigration enforcement efforts, statistics made available from ICE in late 2012 showed that between July 1, 2010, and September 30, 2012, ICE removed 204,816 parents of U.S. citizen children from the United States. Seth Freed Wessler, *Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years*, COLORLINES (Dec. 17, 2012), [http://colorlines.com/archives/2012/12/us\\_deports\\_more\\_than\\_200k\\_parents.html](http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html).

<sup>73</sup> CHAUDRY ET AL., *FACING OUR FUTURE*, *supra* note 67, at 63.

<sup>74</sup> *Id.*

<sup>75</sup> U.S. DEP'T OF HOMELAND SEC., OFFICE OF IMMIGRATION STATISTICS, IMMIGRATION ENFORCEMENT ACTIONS: 2009, at 3 (2010), [http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement\\_ar\\_2009.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_2009.pdf)

<sup>76</sup> CHAUDRY ET AL., *FACING OUR FUTURE*, *supra* note 67.

<sup>77</sup> MICHELE WASLIN, IMMIGRATION POLICY CTR., THE SECURE COMMUNITIES PROGRAM: UNANSWERED QUESTIONS AND CONTINUING CONCERNS 3 (2011),



## Immigrant Children and Child Welfare

called "Secure Communities," has resulted in the deportation of thousands of immigrants who are not within this classification.<sup>78</sup> Over one-quarter of immigrants who are deported through Secure Communities have no criminal conviction and another 30 percent only have minor charges, including misdemeanors such as driving without a license.<sup>79</sup> In fact, data from ICE indicate that less than 30 percent of individuals who have been deported since the implementation of Secure Communities have been Level 1 Offenders.<sup>80</sup> Nevertheless, Secure Communities operates as a partnership between local law enforcement and ICE throughout the country and is scheduled for full implementation by 2013.<sup>81</sup>

Although the exact number of children who have become involved in the child welfare system as a result of immigration enforcement is unknown, children clearly have been impacted by these efforts. The Department of Homeland Security ("DHS") estimates that between 1998 and 2007, over 100,000 parents with U.S. citizen children were deported.<sup>82</sup> This is most likely an underestimate because many deported parents do not divulge that they have children.<sup>83</sup> Additionally, a study of worksite raids found that for every two adults apprehended during a raid, at least one child

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[http://www.immigrationpolicy.org/sites/default/files/docs/SComm\\_Exec\\_Summary\\_112911.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/SComm_Exec_Summary_112911.pdf).

<sup>78</sup> U.S. DEP'T OF HOMELAND SEC., U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, SECURE COMMUNITIES: MONTHLY STATISTICS THROUGH APRIL 30, 2012, IDENT/IAFIS INTEROPERABILITY 1-2 (2012) [hereinafter UDHS, SECURE COMMUNITIES], [http://www.ice.gov/doclib/foia/sc-stats/nationwide\\_interop\\_stats-fy2012-to-date.pdf](http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 1-2.

<sup>81</sup> CERVANTES & LINCROFT, *supra* note 65.

<sup>82</sup> U.S. DEP'T OF HOMELAND SEC., OFFICE OF INSPECTOR GEN., REMOVALS INVOLVING ILLEGAL ALIEN PARENTS OF UNITED STATES CITIZEN CHILDREN 5 (2009), [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_09-15\\_Jan09.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_09-15_Jan09.pdf).

<sup>83</sup> Many families may not divulge to immigration authorities that they have children because they fear that ICE will take their children into custody as well. RANDY CAPPS ET AL., THE URBAN INST., PAYING THE PRICE: THE IMPACT OF IMMIGRATION RAIDS ON AMERICA'S CHILDREN 29 (2007), [http://www.urban.org/UploadedPDF/411566\\_immigration\\_raids.pdf](http://www.urban.org/UploadedPDF/411566_immigration_raids.pdf).



Immigrant Children and Child Welfare

experienced a threat to their safety or wellbeing.<sup>84</sup> Some children separated from their parents experienced not only emotional trauma, but also housing instability and food insecurity due to the loss of parental income.<sup>85</sup> Children also faced considerable behavioral changes, including more frequent crying and increased fear and anxiety.<sup>86</sup> These behavioral fluctuations were particularly prevalent among children who witnessed a parent's arrest in their home.<sup>87</sup> Unlike other children in the United States, children of immigrants live under the constant threat that their parents might be arrested and deported, making them even more vulnerable to family separation, instability, economic hardship, and other dramatic changes in their lives.<sup>88</sup> These changes may result in potentially severe and lasting psychological and behavioral impacts.<sup>89</sup>

Additionally, advocates express concern that children who are not maltreated may be entering foster care solely because the detention of their parents left the children without anyone responsible for their care.<sup>90</sup> One recent study estimates that as many as 5,100 children currently in foster care have parents who have been detained or deported.<sup>91</sup> Statutes require juvenile and family courts to consider the child's best interests in decisions regarding their custody and placement.<sup>92</sup> In contrast, immigration courts do not recognize child's best interests as a mitigating factor in their parents' immigration proceedings.<sup>93</sup> This can lead to profound implications for families

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<sup>84</sup> *Id.* at 68.

<sup>85</sup> *Id.* at 47.

<sup>86</sup> *Id.* at 52.

<sup>87</sup> *Id.* at 50.

<sup>88</sup> CHAUDRY ET AL., *FACING OUR FUTURE*, *supra* note 67, at vii.

<sup>89</sup> *Id.* Long-term effects reported in this study included withdrawn and angry or aggressive behaviors, disruptions to eating and sleeping patterns, behavior problems in school, and declining school performance. *Id.* at ix.

<sup>90</sup> SHATTERED FAMILIES, *supra* note 14.

<sup>91</sup> *Id.*

<sup>92</sup> See generally CHILD WELFARE INFO. GATEWAY, DETERMINING THE BEST INTERESTS OF THE CHILD: SUMMARY OF STATE LAWS (2010), [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/best\\_interest.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf) (summarizing best interest standards nationwide).

<sup>93</sup> Angela D. Morrison & David B. Thronson, *Beyond Status: Seeing the Whole Child*, 33 EVALUATION & PROGRAM PLAN. 281, 282 (2010).

## Immigrant Children and Child Welfare

with mixed immigration statuses.<sup>94</sup> These repercussions can include permanent separation of parents and children, termination of parental rights, and ultimately adoption of those children, all due to the detention and deportation of a non-citizen parent combined with the failure of immigration courts to consider the best interests and wellbeing of the parents' American children.

**IV. Challenges for Child Welfare and Legal Systems**

Although some children of immigrants are entering the child welfare system as a result of immigration enforcement actions, most children of immigrants who become involved in this system likely do so through traditional means—the result of a maltreatment report.<sup>95</sup> Once the children become involved, immigrants face unique challenges that threaten the system's ability to facilitate family reunification and positive outcomes for children related to their health and wellbeing.<sup>96</sup> Most child welfare systems lack expertise in immigration policies and are ill-equipped to assist children or parents in addressing these issues.<sup>97</sup> Many social workers and legal professionals are unfamiliar with challenges resulting from immigrant families' experiences with immigration and acculturation.<sup>98</sup> Considerable efforts have been made over the past two decades to increase cultural competence of child welfare agency staff, but these efforts have largely focused on U.S.-born racial and ethnic groups.<sup>99</sup> A lack of cultural sensitivity to immigration related issues can lead to inaccurate assessments that fail to consider these

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<sup>94</sup> *Id.*

<sup>95</sup> *See, e.g.,* DETTLAFF & EARNER, CHILDREN OF IMMIGRANTS IN THE CHILD WELFARE SYSTEM, *supra* note 30, at 5 (documenting the various reasons by which children of immigrants come to the attention of the child welfare system).

<sup>96</sup> Dettlaff et al., *Emerging Issues at the Intersection of Immigration and Child Welfare*, *supra* note 29, at 48.

<sup>97</sup> *Id.* at 59.

<sup>98</sup> *Id.*

<sup>99</sup> Alan J. Dettlaff & Yali Lincroft, *Issues in Program Planning and Evaluation with Immigrant Children and Families Involved in the Child Welfare System*, 33 EVALUATION & PROGRAM PLAN. 278, 278 (2010).

### Immigrant Children and Child Welfare

underlying issues or provide needed services to immigrant families.<sup>100</sup>

#### A. Access to Child Welfare Services

A related concern for child welfare agencies serving immigrant children and families is the ability to access culturally and linguistically sensitive services.<sup>101</sup> For parents, language and cultural barriers can result in miscommunication and misunderstandings, which can considerably affect families' engagement in interventions.<sup>102</sup> A lack of available services in an immigrant's preferred language can also result in delays in receiving services.<sup>103</sup> Beyond language, undocumented immigration status can create additional barriers to reunification, as parents may be unable to obtain employment or participate in certain mandated or supportive services due to legal restriction of benefits.<sup>104</sup> This can affect parents' abilities to comply with child welfare service mandates in a timely manner, placing them at risk for termination of parental rights under federal law.<sup>105</sup>

The Adoption and Safe Families Act ("ASFA") of 1997 calls for permanency decisions to be made within twelve months, and requires that the state file for termination of parental rights for children who have been in substitute care for fifteen of the previous twenty-two months.<sup>106</sup> Given the barriers that may delay the receipt of services or otherwise prevent immigrant families from meaningfully participating in services, the expedited process required by the ASFA may place immigrant families at a further disadvantage for meeting case requirements.<sup>107</sup> Although the presiding judge may grant extensions to this twelve-month period, this initial disadvantage

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<sup>100</sup> Dettlaff et al., *Emerging Issues at the Intersection of Immigration and Child Welfare*, *supra* note 29, at 59.

<sup>101</sup> *Id.* at 60.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Cecilia Ayón, *Shorter Time-Lines, Yet Higher Hurdles: Mexican Families' Access to Child Welfare Mandated Services*, 31 CHILD. & YOUTH SERVS. REV. 609, 609 (2009).

<sup>105</sup> *Id.*

<sup>106</sup> Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115.

<sup>107</sup> Ayón, *supra* note 104, at 609.

## Immigrant Children and Child Welfare

is compounded by possible biases against immigrant families and continued language barriers. These factors may contribute to inequitable outcomes for immigrant families that result in longer periods of separation and increased likelihood of termination of parental rights and parents' permanent separation from their children.<sup>108</sup>

Furthermore, immigrant families often have non-custodial parents and relatives residing in other countries. The federal Fostering Connections to Success and Increasing Adoptions Act of 2008<sup>109</sup> places added emphasis on locating biological family members and requires that all adult relatives be identified and notified of their options to participate in the care and placement of the child.<sup>110</sup> Child welfare agencies, however, often encounter many barriers to locating family members outside the United States.<sup>111</sup> If family members are identified, additional barriers include conducting home studies of that family member, facilitating placement of children in other countries, and complying with court and case requirements for monitoring those placements.<sup>112</sup>

A lack of culturally or linguistically appropriate services can limit the ability of immigrant children in foster care to receive services needed to address physical and mental health needs.<sup>113</sup> Additionally, funding for services for immigrant children may be limited due to restrictions within Title IV-E of the Social Security

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<sup>108</sup> *Id.* at 613.

<sup>109</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949.

<sup>110</sup> *Id.* Note that the Fostering Connections to Success and Increasing Adoptions Act of 2008 does not provide any specific guidance or requirements concerning the identification of relatives that do not live in the United States.

<sup>111</sup> Dettlaff et al., *Emerging Issues at the Intersection of Immigration and Child Welfare*, *supra* note 29, at 62.

<sup>112</sup> *Id.*

<sup>113</sup> Alan J. Dettlaff & Jodi Berger Cardoso, *Mental Health Need and Service Use Among Latino Children of Immigrants in the Child Welfare System*, 32 CHILD. & YOUTH SERVS. REV. 1373, 1377 (2010).

Immigrant Children and Child Welfare

Act, the primary source of federal child welfare funding to states.<sup>114</sup> The state's receipt of Title IV-E funds is restricted to children who meet eligibility requirements, one of which is U.S. citizenship.<sup>115</sup> Undocumented immigrant children do not meet this eligibility requirement, thus states must bear the full cost of foster care and other services for these children.<sup>116</sup> In an era of shrinking resources for child welfare systems, this burden may limit states' abilities to adequately care for Title IV-E ineligible immigrant children.<sup>117</sup>

**B. Options for Immigration Relief**

Undocumented children have options for immigration relief.<sup>118</sup> Although these options may not increase the quality of service provision while children are in the custody of the state, the services can benefit children by providing a pathway to citizenship upon their exit from care.<sup>119</sup> Some of these options, however, only become available once a judicial decision has been made that parental reunification is not in a child's best interests.<sup>120</sup> For example, Special Immigrant Juvenile Status ("SIJS") is a legal remedy for undocumented children in the United States who are dependents of a juvenile court and the court has found that the child cannot be reunited with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.<sup>121</sup> Another relief option that can serve undocumented parents and children is the U-Visa, which provides residence and work authorization to victims of serious crimes, including forms of child maltreatment.<sup>122</sup>

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<sup>114</sup> YALI LINCROFT & KEN BORELLI, FIRST FOCUS, PUBLIC BENEFITS & CHILD WELFARE FINANCING 5 (2010), [http://www.firstfocus.net/sites/default/files/PublicBenefits\\_0.pdf](http://www.firstfocus.net/sites/default/files/PublicBenefits_0.pdf).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> IMMIGRANT LEGAL RES. CTR., IMMIGRATION OPTIONS FOR UNDOCUMENTED IMMIGRANT CHILDREN 1-8 (2010), [http://www.ilrc.org/files/factsheets\\_immigrant\\_children.pdf](http://www.ilrc.org/files/factsheets_immigrant_children.pdf).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 1.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 3. U nonimmigrant status, commonly known as the U Visa, is available for noncitizens who are victims of serious crimes. *Id.* The noncitizen who is a victim of

## Immigrant Children and Child Welfare

**C. Challenges Resulting From Parental Detention**

For children who enter the child welfare system solely due to an immigrant parent's detention or deportation, many complexities arise. Parents detained in immigration facilities clearly face considerable challenges that could prevent them from meaningfully participating in a reunification plan. In some cases, child welfare staff cannot locate parents who have been deported, making their participation in court proceedings and other decisions concerning their children unlikely.<sup>123</sup> Parents lingering in detention are also unlikely to be able to participate in court proceedings related to their children's care and custody.<sup>124</sup> Deportation proceedings may last longer than the timeframes under which child welfare agencies must make decisions, further complicating child welfare agencies' ability to act in a child's best interest.<sup>125</sup>

When children of immigrants are U.S. citizens, the prospect of parental deportation poses a uniquely difficult situation for families and child welfare systems.<sup>126</sup> The options available for families in this situation are that children may remain in the United States and be permanently separated from their parents; alternatively, children can leave their home and everything they know to move to an unfamiliar country and remain with their parent. Although this conundrum has been described as a "choiceless choice" for

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the crime must be certified by law enforcement or a child protective services agency as being helpful in the investigation or prosecution of the crime. *Id.* If the noncitizen is a child under sixteen years of age, a parent or guardian may fill this role. *Id.* U.S. Citizenship and Immigration Services can issue the U Visa to the eligible child and to certain family members, including the child's siblings and parents. *Id.* If a parent is the perpetrator of the crime, the child and the non-offending parent remain eligible for the U Visa, although the requirement to help in the investigation and prosecution of the crime remains. *Id.* A potential benefit to the U Visa versus SIJS is that the child does not need to be a dependent of the court, meaning that children who are victims of abuse may be eligible for the U Visa even if they do not enter state custody as a result of that abuse. *Id.* at 1, 3.

<sup>123</sup> CERVANTES & LINCROFT, *supra* note 65, at 6.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> David B. Thronson, *Choiceless Choices: Deportation and the Parent-Child Relationship*, 6 NEV. L.J. 1165, 1165 (2006).

### Immigrant Children and Child Welfare

immigrant parents,<sup>127</sup> it seems clear that best practices would call for both the child welfare and legal professionals involved to honor deported parents' decisions regarding their children when maltreatment is absent. However, no empirical data exists on whether parents' and children's preferences are considered in these situations.

### V. Recommendations for Child Welfare and Legal Systems

When children enter foster care, child welfare workers have considerable influence concerning the outcomes of these cases as they develop service plans specifying the steps necessary for reunification or for an alternative form of permanency.<sup>128</sup> Working with immigrant families requires a multidisciplinary approach that involves coordination and collaboration across local, state, federal, and international agencies.<sup>129</sup> Child welfare agencies are in a unique position to advocate for immigrant families and can be instrumental in coordinating not only with juvenile courts but also with other systems to help facilitate positive outcomes for immigrant families.<sup>130</sup>

First, child welfare agencies should work to ensure that all children, including those who are undocumented, receive appropriate and comprehensive child welfare services.<sup>131</sup> The majority of children from immigrant families who enter the child welfare system are U.S. citizens,<sup>132</sup> but a small number of children may be undocumented and particularly vulnerable to receiving inadequate services as a result of their immigration status. Child welfare agencies should support policies and practices that ensure that the

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<sup>127</sup> *Id.*

<sup>128</sup> DIANE DEPANFILIS & MARSHA K. SALUS, U.S. DEP'T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILDREN & FAMILIES, CHILD PROTECTIVE SERVICES: A GUIDE FOR CASEWORKERS 26 (2003), <https://www.childwelfare.gov/pubs/usermanuals/cps/cps.pdf>.

<sup>129</sup> CERVANTES & LINCROFT, *supra* note 65.

<sup>130</sup> *Id.*

<sup>131</sup> Dettlaff et al., *Emerging Issues at the Intersection of Immigration and Child Welfare*, *supra* note 29, at 57.

<sup>132</sup> See FORTUNY ET AL., *supra* note 9 (discussing the prevalence of immigrant parents with children who are citizens).

## Immigrant Children and Child Welfare

immigration status of a child is not a barrier to receiving needed services. Further, courts should monitor these cases to confirm that appropriate and necessary services are provided.

Second, child welfare agencies should make certain that children in foster care are placed, whenever possible, with relatives or other kin caregivers to preserve cultural and familial ties, thereby reducing trauma.<sup>133</sup> This outcome has become particularly challenging for child welfare systems when a child's relatives in the U.S. are undocumented, due to state and local policies requiring Social Security numbers or other licensing requirements that undocumented relatives may not be able to meet.<sup>134</sup> Undocumented relatives may also be particularly fearful of child welfare policies that require fingerprinting due to the potential immigration consequences.<sup>135</sup> Yet, these barriers should not prevent relative or kinship placements from occurring when well-intended and appropriate relatives are available to act as the child's caregiver.

Child welfare agencies should also search for relatives in other countries that may be appropriate for permanent placement. Several local child welfare jurisdictions, including Illinois, Texas, New Mexico, and several California counties, have developed formal relationships with foreign consulates and foreign child welfare agencies through Memoranda of Understanding ("MOUs") to coordinate the location of relatives, home studies, psychological assessments, background checks, placement, and monitoring of children with parents or relatives in other countries when appropriate.<sup>136</sup> These MOUs require that the child welfare agency notify the consulate when a foreign national child is taken into state custody.<sup>137</sup> The MOUs further provide that the equivalent child welfare agency or another governmental agency assist in locating relatives, obtaining necessary documentation, and other tasks to

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<sup>133</sup> Earner, *supra* note 17, at 65.

<sup>134</sup> VERICKER ET AL., *supra* note 57.

<sup>135</sup> *Id.*

<sup>136</sup> See Megan Finno & Maryellen Bearzi, *Child Welfare and Immigration in New Mexico: Challenges, Achievements, and the Future*, 4 J. PUB. CHILD WELFARE 306, 317 (2010).

<sup>137</sup> *Id.*



Immigrant Children and Child Welfare

facilitate permanency for the child.<sup>138</sup> It is the child welfare agency's responsibility to ensure that the consideration of suitable relative placements for immigrant children is not limited to the United States.<sup>139</sup>

Third, courts should establish procedures to ensure that immigrant parents can meaningfully participate in all juvenile court cases related to their child's care and custody. This may require collaboration with federal immigration officials and immigration courts, as the serious and often permanent nature of these decisions requires cooperation between child welfare and immigration systems. Child welfare workers can petition the State Department for temporary humanitarian visas for parents to return to the U.S. to participate in court hearings.<sup>140</sup> Parents may also participate in hearings via telephone, and attorneys can be appointed to represent parents who are in detention or in another country.<sup>141</sup> Most importantly, parents' wishes concerning their child's placement and country of residence should be heard and respected. If parents choose to have their children reunified with them in their country of origin, efforts should be made to assist parents in making necessary arrangements, regardless of the child's U.S. citizenship status.

Similarly, when children of immigrants enter into state custody, child welfare agencies should make diligent efforts to locate non-custodial parents and relatives in the immigrant family's country of origin that could potentially serve as a permanent placement for the child. The child welfare agency is legally bound by international convention to notify the appropriate foreign consulate when taking custody of an immigrant child.<sup>142</sup> Beyond notification, child welfare agencies should make efforts to establish strong working relationships with their corresponding local foreign consulates. In increasing numbers of jurisdictions, foreign consulates and, in some circumstances, U.S. Embassies in foreign countries are able to assist

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<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> Vienna Convention on Consular Relations, *done* Apr. 24 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 (entered into force Mar. 19, 1967).

## Immigrant Children and Child Welfare

in a range of caseworker activities.<sup>143</sup> These include locating parents or relatives, obtaining birth records and criminal background checks, serving parents with necessary court documents, coordinating home studies, conducting psychological evaluations, connecting parents with attorneys, facilitating parent participation in court hearings, and transporting children to foreign countries when it is in the best interest of the child.<sup>144</sup>

In light of increased immigration enforcement activities over the past decade,<sup>145</sup> child welfare and court systems should establish procedures for immigrant parents who have been separated from their children due to immigration enforcement activities to ensure that parents have access to immigration attorneys and appropriate legal counsel related to their immigration case. Parents and children receive legal defense as part of a child welfare case, but these attorneys are usually not experts in immigration law and cannot well-represent parents in an immigration case. Yet this counsel is essential for parents who must manage not only the complexities of their child's welfare case, but also the implications of their immigration case on the decisions concerning their children.

Additionally, child welfare agencies should be screening children for eligibility for Special Immigrant Juvenile Status ("SIJS"). The agencies should move forward with applying for such status after all efforts at reunification have been made and the court has determined that reunification with at least one parent is not possible. In assessing the appropriateness of SIJS, child welfare agencies need to carefully consider whether possible biases favoring legal permanent residency are not overriding or interfering with the wishes of immigrant parents or their children. Potential SIJS eligibility for undocumented children should not be a primary reason for discontinuing efforts at parental reunification. SIJS can provide many undocumented children with a path toward citizenship, but the consequences of SIJS in severing the legal relationship between parents and children can be permanent.

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<sup>143</sup> See Finno & Bearzi, *supra* note 136, at 317-18.

<sup>144</sup> *Id.* at 318.

<sup>145</sup> CERVANTES & LINCROFT, *supra* note 65.

### Immigrant Children and Child Welfare

Furthermore, SIJS was established largely to ensure that undocumented children who had been abused or neglected by their parents could remain in the United States.<sup>146</sup> This is in contrast with children who have been separated from their parents solely due to immigration enforcement actions, but who have not been abused or neglected. In such instances, every effort should be made to reunify children with their parents. Even in cases involving abuse or neglect, reunification with one or both parents is often possible and appropriate.<sup>147</sup> In circumstances where reunification with the sole parent or both parents is possible, an alternative immigration relief option may be to seek out a U-Visa, which can offer a path to citizenship for victims of certain serious crimes, including forms of child maltreatment and domestic violence.

Finally, child welfare agencies should advocate for legislation and court rulings that allow exceptions to the short ASFA timelines when parents are also involved in complex immigration proceedings. Parent involvement in immigration proceedings can create several inherent barriers to reunification. These include, but are not limited to, an inability to ensure a physically stable home, and limited parental ability to participate in court proceedings and comply with all mandated service requirements within the predetermined time frame. While courts need to make timely decisions regarding reunification in the interest of moving towards a permanent home for a child, it is difficult to make such decisions when the status of their parents' immigration case is uncertain. Such cases warrant a time extension to provide families with a fair chance at reunification and ensure that the child's best interests are considered. Where such extensions are not pursued or granted, child welfare agency staff

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<sup>146</sup> ANGIE JUNCK ET AL., SPECIAL IMMIGRANT JUVENILE STATUS AND OTHER IMMIGRATION OPTIONS FOR CHILDREN AND YOUTH 3-3 (3d ed. 2010).

<sup>147</sup> CHILD WELFARE INFO. GATEWAY, SUPPORTING REUNIFICATION AND PREVENTING REENTRY INTO OUT-OF-HOME CARE 1 (2012), [https://www.childwelfare.gov/pubs/issue\\_briefs/srpr.pdf](https://www.childwelfare.gov/pubs/issue_briefs/srpr.pdf) (stating that except in the most severe cases of abuse or neglect, reunification with one or both parents is most often the first goal of child welfare agencies, and is accomplished when parents satisfactorily comply with court-mandated activities that address the reasons for child welfare involvement and reduce risk of future maltreatment).

## Immigrant Children and Child Welfare

should make appropriate inquiries to confirm that such decisions are warranted.

**VI. Conclusion**

Although children in immigrant families enter the child welfare system in large part due to abuse or neglect, in recent years, parent involvement with immigration enforcement activities is increasing the risk for child welfare involvement in this population. Once involved with the child welfare system, immigrant children and their parents can experience significant language, cultural, and legal barriers to receiving services and achieving reunification. Child welfare agencies play a principal role in this process, and child welfare workers bear significant responsibility for making certain that children in immigrant families receive appropriate treatment. Similarly, it is the responsibility of the child welfare agency to ensure that decisions made regarding children's needs and best interests are reached in the most cautious and thoughtful manner, given the lifelong consequences of those decisions. While the child welfare system holds much of the responsibility for decision-making, other entities, such as courts and foreign consulates, may also provide considerable influence and oversight in this process. Efforts should be made to facilitate cooperation and collaboration from all stakeholders, including parents, children, child welfare professionals, legal professionals, foreign consulates, and federal immigration systems, to ensure that a child's best interests remain at the forefront of decision-making.