



INFORMATION PACKET

Deportation and Child Welfare in Mixed Status Families with Unauthorized Parents and Citizen Children

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May 2015

Introduction

Deportation of immigrant parents has a large negative impact on their families. The number of immigrants who are deported has risen, from approximately 190,000 in 2001 to close to 400,000 in the last four years. What is even more concerning is that in the first 6 months of 2011, more than 460,000 parents of U.S. citizen children were deported (Dreby, 2012). These numbers continue to rise. There are more than 11 million undocumented immigrants living in the US, and these deportations not only affect those being deported, they deeply affect their families' unification and their citizen children. 16.6 million people currently live in mixed status families with at least one unauthorized immigrant, and a third of children of undocumented parents born in the U.S. live in mixed-status families (Dreby, 2012). Deportations cause economic hardship, emotional distress, and family separation. Families are separated and children are left without a parent or in some cases, without either parent.

A study done by the NYU School of Law's Immigrant Rights Clinic in New York City found that between 2005 and 2010, 87% of processed cases in New York City in which individuals were undocumented with U.S. citizen children resulted in deportation. The ripple effects split families as well as communities apart. They have a wider effect on the community as a whole – not just the individuals and the family involved. Deportation sometimes forces children into foster care, for no reason other than parental deportation. The total cost to foster each child is close to \$26,000 per year (Dreby, 2012). Citizen children fear that their families could be separated at a moment's notice due to the constant and sometimes impending threat of deportation. According to the ARC's report, there are at least 5,100 children in foster care due to parental deportation or detainment. It estimates that another 15,000 children will enter the foster care system within the next five years. Children under age 5 whose parents are deported are often adopted. The likelihood of these children being reunified with family is slim. These children face psychological trauma and economic hardship.

Fact Sheet

- The United States Constitution guarantees that all people born in the United States are citizens with equal protection under the law. But in today's America, the US-born children of undocumented immigrants--over four million of them--do not fully enjoy the benefits of citizenship or the feeling that they belong (Zayas, 2015).
- Unauthorized parents face impossible decisions: bring their children back to their home country with them, or leave them (Zayas, 2015).
- The number of undocumented immigrants who get deported has grown from nearly 190,000 in 2001 to close to 400,000 in the last four years (Dreby, 2012).
- With more than 11 million undocumented immigrants living in the United States, being deported affects both the undocumented immigrants as well as citizens who employ them (Dreby, 2012).
- The federal government spends billions of dollars each year to detain and deport these immigrants, many of whom are parents.
- In the last ten years, over 100,000 immigrant parents of U.S. citizen children have been deported from the United States (Chaudry, et al., 2010).
- There are an estimated 5.5 million children with unauthorized immigrant parents, about three-quarters of whom are U.S. born citizens (Chaudry, et al., 2010).
- For every two immigrants taken into custody, one child is left behind (Capps, et al., 2007).
- Approximately 44,000 children were under the age of 5 when their parent was deported (International Human Rights Law Clinic, 2010).
- Children with parents who have been deported face economic hardship, stress and psychological trauma (Capps, et al., 2007).
- The number of undocumented immigrants arrested at workplaces increased more than sevenfold from 500 to 3,600 between 2002 and 2006 (Capps, et al., 2007).
- Child welfare departments and the federal government aren't required to track cases of families separated by deportation, so it's almost impossible to know the extent of the problem (Rodriguez & Hauser, CNN, 2013).
- An estimated 340,000 babies born in the United States in 2008 were the children of unauthorized immigrants, according to the Pew Hispanic Center. That number is projected to grow (Rodriguez & Hauser, CNN, 2013).
- On average, 17 children are placed in state care each day as a result of the detention and removal of immigrant parents, according to ICE (Rodriguez & Hauser, CNN, 2013).
- Some children get lost in the child welfare system, while younger children may be put up for adoption, and may never see their parents again (Rodriguez & Hauser, CNN, 2013).
- The Child Citizen Protection Act (CCPA) is a bill pending before congress that would restore discretionary authority to immigration judges to determine whether a non-citizen parents of a U.S. citizen child should be deported (congress.gov).

- As of 2011, a conservatively estimated 5,100 children of undocumented parents were foster-care recipients, a number that is expected to grow to at least 15,000 by 2016, given existing record deportation rates (ARC 2011).

Background of Policy and Practices

The developmental and cognitive immaturity of children, by law, calls for parental and state protectionism and leads to a legal conflict between their unauthorized parent's migration decisions and the well-being of the citizen child (Oliviero, 2013). Often, when an unauthorized parent or parents are deported, the courts force the parent to bring their citizen children with them, leave them behind, or at times, leave the parent without choice when parental rights are terminated and children are taken into custodial institutions (Oliviero, 2013). A few pieces of formative legislation have greatly affected the outcomes of mixed immigration family outcomes.

The Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA) set forth mandated detention to immigrants the government tries to “deport based on criminal history — no matter how minor the offense” while also expanding the kinds of offenses that subject one to detention. Under IIRIRA, detention is continued even if the person “poses no danger or flight risk...[and] has already served his criminal sentence” (ACLU, 2011). Although an unauthorized person can be held for the most minor of offenses (e.g. traffic violation, illegal voting), detention length can remain undetermined. The holding of a parent for any length of time can be devastating for children, whose overall needs—especially that of secure and primary emotional attachment—are dependent on a consistent parental presence. The Immigration and Nationality Act of 1996 made immigrants eligible for cancellation of removal, which initially seems like relief to undocumented parents with citizen children, although the criteria are narrow and difficult to meet. Under INA, one must be able to prove that the “immigrant’s U.S.-citizen or permanent-resident spouse or child would suffer ‘exceptional and extremely unusual hardship’ if the undocumented immigrant were removed from the United States” (Zayas, 2014, p.169). Although deportation severely impacts emotional, economic and psychological wellness of families and children, these factors are often not considered as meeting the criteria and courts routinely rule that “parental deportation does not infringe upon children’s constitutional rights to family integrity” (Oliviero, 2013).

In 2008, the Secure Communities Program began, which enables local police to “investigate an individual’s immigration status and detain non-citizens in county jails, which means that any interaction...can result in ICE involvement, detention, and deportation” (Miranda-Wolff, 2012). When unauthorized parents are detained, they frequently lack counsel and are “commonly relocated to detention facilities without adequate communication to lawyers or child welfare advocates” (Oliviero, 2013). This is compounded by the physical separation of detention, constraining parents’ ability to attend court dates and meet requirements to regain custody of their children. “The combined obstacles therefore increase the likelihood that parental rights will be terminated and children will be adopted—thus making family fragmentation permanent” (Oliviero, 2013). Processes are further complicated by the entangled yet disconnected relationship between immigration agencies and child protective services. Because

each operates independently, they “consequently often fail to coordinate their practices in a manner that adequately identifies and protects the best interests of the child” (Zayas, 2014, p.170). It is only when foreign consulates become involved that children are reunited with their deported parents. But few child welfare departments in the United States will routinely notify a foreign consulate when a citizen-child’s parent has been removed” (Zayas, 2014, p.170). The right of a U.S. citizen to family unity is routinely violated in these cases, as ruled by the Inter-American Commission on Human Rights in 2010 (Oliviero, 2013).

Recent Policy Action

Child Citizen Protection Act—H.R. 182 (2009)

This bill it was introduced to the House in 2009, and proposes to “restore discretionary authority to immigration judges to determine whether a non-citizen parent of a U.S. citizen child should be ordered removed from the United States” (Baum, 2010). This would give parents a “meaningful opportunity to present evidence of the adverse impact that their deportation will have on their U.S. citizen children” (Baum, 2010). There has been no movement since the bill was passed along to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law in 2009.

Parental Interest Directive—Immigration and Customs Enforcement (2013)

This directive is intended to help undocumented families and “prevent such separations in the future by permitting the monitored release of parent caregivers when possible, placing detained parents in facilities close to their children and by helping detained parents reunite with their children prior to deportation. Such changes are encouraging, but their effects are limited. Courts and state welfare agencies are still facilitating the removal of hundreds, perhaps thousands, of children from their undocumented parents” (Zug, 2014).

S.744 Reform Bill Obama Immigration Accountability Executive Action (2014)

President Obama’s Deferred Action for Parental Accountability (DAPA) is an executive action that will be carried out by USCIS and will enact temporary deportation relief and work

authorization to unauthorized parents of U.S. citizens or Lawful Permanent Residents who are not “an enforcement priority”—although this includes a wide range of criminal convictions (Zayas, 2014).

Best Practice Tips

- Ensure staff training and education within the child welfare system around various immigration relief programs to provide early assessment for eligibility (e.g. SIJS, VAWA, U or T Visas). Be aware of the services and rights afforded to immigrant children and families of mixed legal status in the realms of education, healthcare, and other necessary services (CYFD, 2011).
- Provide culturally and linguistically appropriate services to immigrant families; this includes the availability of interpreters (not the children) during all child welfare meetings and court proceedings (CYFD, 2011).
- Ensure that immigration status is not used as a reason to deny services or kinship placement of children in foster care as much as possible (CYFD, 2011).

Recommendations

- Further data collection and research on U.S. citizen children impacted by parental deportation to study the psychological, educational, social, and economic impact of separation on U.S. citizen children (Baum, 2010).
- Establish guidelines for discretion in cases involving mixed status families while extending access to expert training to judges to reduce harm to citizen children (Baum, 2010).

- Bolster due process of citizen children's rights by using the Mathews balancing test as a guide to expand and focus judicial discretion to prioritize and safeguard the rights and interests of the child. This standard would require the child's constitutional rights to be properly weighed against the government's interest in preserving uniform immigration policy (Joseph, 2014).
- Citizen children, being directly and uniquely impacted by these proceedings, should have the right to separate legal counsel in efforts to recognize the rights of citizen children given their special circumstances (Joseph, 2014).
- Allow a Limited Transfer of Benefits from Child to Parent. Once the child has reached an age in which parental care is not as vital, parents may then be removable under Congress' broader discretion, an approach which will hold the parent accountable for breaking immigration laws while lessening the immediate and severe effects of removal to their innocent U.S. citizen children in their formative years. (Joseph, 2014).
- Given the severe consequences for unauthorized parents and their U.S. citizen children, Congress should amend the current aggravated felony definition and revise it to include only serious felony offenses (Baum, 2010).

Model Program

A judicial balancing test is used in European countries that considers the nation's interest in public safety in light of the right to the family and the best interests of the child. Similar to U.S.

immigration law prior to 1996, the current European model provides a feasible alternative to mandatory detention and deportation (Baum, p.11).

Websites & Resources

Immigrant Services Directory (ACLU Immigrants Rights Project)

https://www.aclu.org/files/assets/ImServDir_20101229.pdf

This directory contains a substantial set of resources and service referrals (by state) useful to undocumented individuals and families. The Project is committed to protecting the civil rights and civil liberties of immigrants and leads the nation's largest impact litigation program dedicated to defending and "expanding the rights of immigrants, enforcing the guarantees of the Constitution and achieving equal justice under the law."

Niño's: A Guide to Help You Protect Your U.S.-born Child in the Event You Are Detained or Deported

<http://www.jdsupra.com/post/documentViewer.aspx?fid=f929927d-244c-459c-9f8f-bd39cf516f60#resources>

This guide contains information and forms families will need to protect children in the event parents become detained or deported.

A Guide to the Immigration Accountability Executive Action

<http://www.immigrationpolicy.org/special-reports/guide-immigration-accountability-executive-action>

A more detailed look at President Obama's November 2014 executive action. He hoped for successfully well-operated programs, benefit policies for immigrants across agencies, further business innovation, and an attempt to use immigration as a tool for social and economic change.

New Mexico Juvenile Justice Handbook

<http://childlaw.unm.edu/resources/index.php>

This handbook provides the New Mexico judiciary and other members of the juvenile justice community with a comprehensive guide to delinquency proceedings. It summarizes the steps in the legal process, describes the roles and responsibilities of the participants, explains the different hearings that may take place, and addresses different topics, such as competency, defenses, discovery, evidence, and sentencing.

Congressional Records—H.R.182

<https://www.congress.gov/bill/111th-congress/house-bill/182>

This website is useful to find proposed bills and track movement and contains access to public congressional records with details on H.R. 182—text, summary and cosponsors. A goal of the bill was to provide open, unrestricted authority to an immigration judge to determine that an undocumented parent of a U.S. born child should not be "removed, deported or excluded from the United States" by declining an order.

Center for Immigrant Rights—St. Marks Place

http://courts.state.ny.us/courts/nyc/family/faqs_safetyplanning.shtml

Counseling and referrals on immigration issues. It provides domestic violence services, and assistance for immigrants. Languages that are spoken are English, Spanish, Chinese, Greek and Polish.

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