

Immigration Issues in Child Welfare

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Immigrant Legal Resource Center



Topics for Today



Context & Background for Immigrant Families

Protections for Immigrant Families in Child Welfare

Best Practices & Policies for Working with Immigrant Families

I. Context & Background

Executive Orders on Immigration



Trump's Executive Orders

President Trump has issued multiple immigration-related Executive Orders

Many lawsuits have been filed challenging various provisions of Executive Orders

Many provisions require funding which would need to be approved by Congress, e.g. border wall, addt'l ICE officers

New Enforcement Priorities

Priorities are so broad that everyone is at risk

- individuals who have had any contact with law enforcement, including youth in the juvenile justice system, may be at particular risk

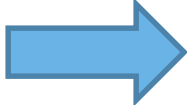
Creates a culture of fear in the immigrant community

New Enforcement Priorities

Huge impact on children and families

- Living in fear of parental deportation
- Afraid to go to school, access benefits, report crime, etc.
- More than 5M children in the U.S. currently live with at least one undocumented parent, 4.1M of whom are U.S.-born citizens

Impact of Immigration Enforcement on Children

- Arrests, deportation, detention  parents may leave children behind
- Trauma of family separation
- Lower income, families become one-parent families
- Children suffer social isolation / stigma
- U.S. born (citizen) children may need to leave with parents
- Whole families may be detained and deported to situations of increased risk and poverty

Rescission of Deferred Action for Childhood Arrivals (DACA)

President Trump promised to eliminate DACA throughout his campaign. The government issued a memo ending DACA on 9/5/17.

What is DACA?

Program created by Pres. Obama in 2012: Dept. of Homeland Security policy not to deport certain undocumented youth who came to the U.S. as children

DACA applications are no longer being accepted

2 years of work authorization + protection from deportation

NOT a path to permanent residency or citizenship

The End of DACA

DHS issued a Memo terminating the DACA program on 9/5/17

- People **who had DACA as of 9/5/17** can keep their work authorization until it expires
 - If DACA/work authorization expires before March 5, 2018, were able to renew prior to October 5, 2017 and potentially have 2 additional years of work authorization
- People **who did not have DACA as of 9/5/17** were/are not able to submit new applications
 - Applications pending as of 9/5/17 were/are still being adjudicated

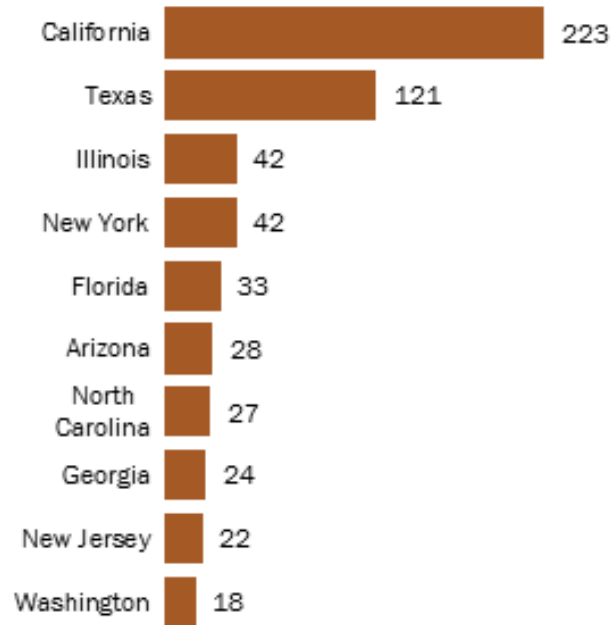
The End of DACA

- DACA was a victory achieved by the immigrant community in the midst of decades of inaction on federal immigration reform
- Benefited close to 800,000 young people
 - Study found the loss to GDP of ending DACA over a decade would be \$433.4 billion
 - Harvard researchers found DACA reduced depression among recipients
- Immigrant community is continuing to push for a permanent solution for immigrant youth through legislation (DREAM Act, RAC Act, etc.)

The End of DACA

California leads nation in DACA recipients

Number of DACA initial applications approved, in thousands



Note: Totals are initial applications approved under the Deferred Action for Childhood Arrivals program from August 2012 to March 31, 2017. Renewals are not shown.

Source: U.S. Citizenship and Immigration Services.

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California's Response: Pending Legislation

- Aggressive defense of our immigrant communities
- Budget Trailer: includes \$45 million in funding to support legal defense of immigrants
 - funding for immigration relief services, including naturalization, deportation defense, DACA, and post-conviction relief;
 - one-time allotment of funding to support training public defender offices to represent noncitizen defendants.
 - Budget also includes moratorium on immigration detention contract expansion & creation of state detention facility oversight

California's Response: Pending Legislation

- California Values Act (SB 54 De Leon): would ensure California is not complicit in the business of deportation, including limiting cooperation between local and state law enforcement and federal immigration authorities
- Dignity not Detention Act (SB 29 Lara): would keep local governments out of the business of contracting with private prison corporations for private immigration detention; would require all other detention facilities to follow the National Detention Standards



II. Protections for Immigrant Families in Child Welfare

SB 1064: The Reuniting Immigrant Families Act

On Oct 1, 2012, Governor Brown signed SB 1064 into law, making it the first bill in the country to address the barriers to family reunification for detained and deported immigrant families



SB 1064: Background

- Between July 1, 2010 and Sept. 31, 2012, nearly **23 percent** of all **deportations**—or, 204,810 deportations—were issued for **parents with U.S. citizen children**
- In 2013, ICE reported 72,410 deportations of parents with U.S. citizen children
- As of 2011, there were at least **5,100 children** currently living in foster care as a result of detained or deported parents

SB 1064: Background

ICE enforcement separates families, and children may end up in the child welfare system

ICE detention limits parental participation in the reunification process

Immigration proceedings can result in parents' removal (though not always)

SB 1064: Background

Challenges facing immigrant parents include:

- trauma exposure for children at time of arrest;
- children coming home to empty homes;
- difficulty in locating and staying in communication during detention;
- logistical challenges at deportation;
- immigration judges often have no discretion to consider the adverse impact of parental deportation on U.S. citizen children

Five Areas of Focus of SB 1064

1

- An adult's undocumented status alone cannot bar her from placement consideration.

2

- Workers are required to make & document reasonable efforts to aid detained & deported parents in receiving reunification services.

3

- Courts have special case continuance options that take immigration issues into account.

Five Areas of Focus of SB 1064

4

- Encourages agencies to enter into MOUs with foreign consulates to help facilitate information-sharing and cooperation regarding children in the child welfare system.

5

- Encourages efforts to assist undocumented children in DSS custody obtain immigration relief.

ICE Parental Interests Directive



ICE Parental Interests: Background

Issues detained parents have faced:

- Lack of notice of dependency court hearings
- Inability to attend dependency court hearings
- Inability to speak with counsel
 - Or no counsel appointed because cannot attend hearings
- Inability to visit with children or comply with court-ordered plans given lack of services

ICE Parental Interests: Background

Issues detained parents have faced:

- No right to government-appointed counsel in adversarial proceedings
- Lengthy proceedings (months or years), especially if appeal is needed
- Detention with no date set for release
- Immigration judges have very limited ability to consider children's interests

ICE Parental Interests: Background

Significance for dependency proceedings:

- The two courts operate on different timelines
- Not all parents will be removed (deported), although that is often presumed
 - Detention ≠ deportation
- Removed parents may lose parental rights because of procedural hurdles

ICE Parental Interests Directive

- ICE instituted a Parental Interests Directive August 23, 2013
- Policy 11064.1, “Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities”
- Currently being revised by Trump Administration



ICE Parental Interests Directive

- Treat parents differently if responsible for the care of minor children
- Consider exercising ICE prosecutorial discretion, for example:

- Dropping the ICE detainer
- Withholding initiation of deportation proceedings
- Terminating the deportation case or having it administratively closed

ICE Parental Interests Directive

Aid detained parents in involvement with state courts.

Whenever possible, detain parents close to children & near court proceedings.

Facilitate parental attendance at hearings unless undue logistical, safety, or security concerns (or use alternative means).

Facilitate visitation when required for reunification.

ICE Parental Interests Directive

Deport in a way that permits parents to make arrangements for their children, including:

- Coordination of the child's travel
- Providing time to obtain a legal guardian for a child remaining in the U.S.
- Coordinate a parent's need to access attorney, consulate, court, and family members before deportation
- Help the parent make guardianship arrangements, file child passport applications, and arrange child's travel

ICE Parental Interests Directive

What can help?

Locate and contact parents in ICE custody

Make certain parents receive notice of hearings and a reunification plan, scheduling letter, or other document stating visitation requirement

- Ensure parents have evidence of hearings to request physical transportation; arrange phone or video participation if ICE will not transport
- Ensure parents have evidence of the TPR hearing and that physical presence is required.
- Notification and involvement of foreign consulate can help ensure the parents' (and perhaps child's) interests are represented – unless parents are pursuing asylum.

III. Best Practices & Policies for Working with Immigrant Families



Best Practices

1

- Create & share clear policies on sharing information with immigration authorities

2

- Put policies in place to implement SB 1064 & ensure workers receive sufficient training

3

- Equip workers to screen for possible immigration relief, such as Special Immigrant Juvenile Status

4

- Establish relationships with local immigration non-profits to facilitate referrals for noncitizen clients

5

- Encourage workers to support immigrant families to prepare for possible immigration enforcement

Policies on Information Sharing

- Information about immigration status should be kept confidential, and children and families should be informed of department policies that protect this information
- If it is your policy to share information with immigration authorities for certain purposes (i.e. eligibility for benefits), explain to families the rationale for this and the purpose for which the information will be used

Policies on SB 1064

- Create policies that reflect that:
 - Undocumented relatives can be considered for placement, as can relatives outside the U.S.
 - Workers must make reasonable efforts to provide detained/deported parents with reunification services
 - Special continuance options are available and alternative resources may be available when parents are detained/deported
 - Undocumented children should be assisted in obtaining immigration relief
- Set up MOUs with foreign consulates to facilitate information-sharing

Screening for Immigration Relief

Many undocumented minors are eligible to obtain legal status in the U.S.

- Special Immigrant Juvenile Status
- Violence Against Women Act (VAWA)
- U Visas for Victims of Crime
- T Visas for Victims of Trafficking
- Asylum
- ~~DACA~~
- Family Immigration and Adoption

Important Points on SIJS

- Eligibility for long term foster care not a requirement
- Available to children who cannot be reunified with “one or both” parents
- If file SIJS with USCIS before 21, will not “age out”
- Currently a “visa backlog” for youth from Mexico, El Salvador, Guatemala, Honduras, & India meaning they will face a wait to get their green card (possibly years), and should apply as soon as possible

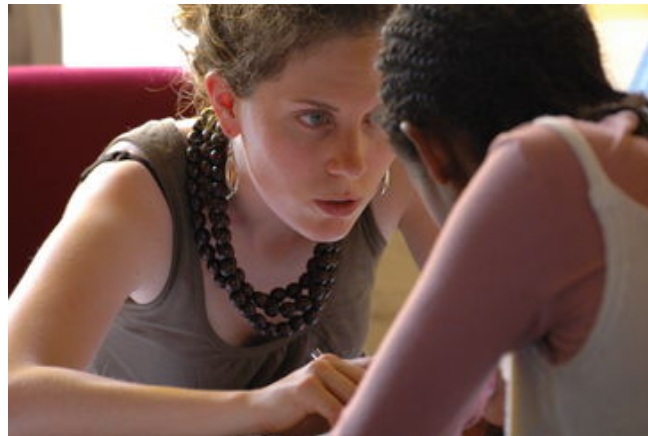
Making Referrals for Legal Services

- Immigrants have no constitutional right to appointed, free legal counsel
- To locate free and reduced cost immigration legal services in your area, visit:
 - <https://www.immigrationlawhelp.org>
- To check an attorney's record, go to the State Bar website
 - <http://members.calbar.ca.gov/fal/membersearch/quicksearch>

Supporting Immigrant Families

Encourage immigrant children & families to:

- Talk to an immigration services provider about immigration options
 - If a green card holder, naturalize!
 - If undocumented, get screened for potential eligibility for immigration relief



Supporting Immigrant Families

Encourage immigrant children & families to:

- Put a **family preparedness plan** in place
 - Figure out who can pick up children if parents are unable to
 - Keep a file with important documents and emergency contact information
 - Caregiver's Authorization Affidavit
 - Consider nominating a Guardian for child(ren)

Supporting Immigrant Families

Encourage immigrant children & families to:

- Know their rights and practice asserting them!
- Figure out which documents they should and should not carry with them
- Continue to avoid negative interactions with law enforcement (something like a DUI or drug conviction can have irreversible negative immigration consequences)

Additional Resources

FAQ on Termination of DACA

- <https://www.ilrc.org/end-of-daca-faqs>

SB 1064 Resources

- <https://www.ilrc.org/reuniting-immigrant-families-act-sb-1064>

Parental Interests Directive Resources

- <https://www.ilrc.org/applying-ice-parental-interests-directive-child-welfare-cases>

Family Preparedness Plan

- <https://www.ilrc.org/family-preparedness-plan>

Screening Sheet for Immigration Relief

- <https://www.ilrc.org/child-welfare-screening-sheet-determining-potential-avenues-legal-status>

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