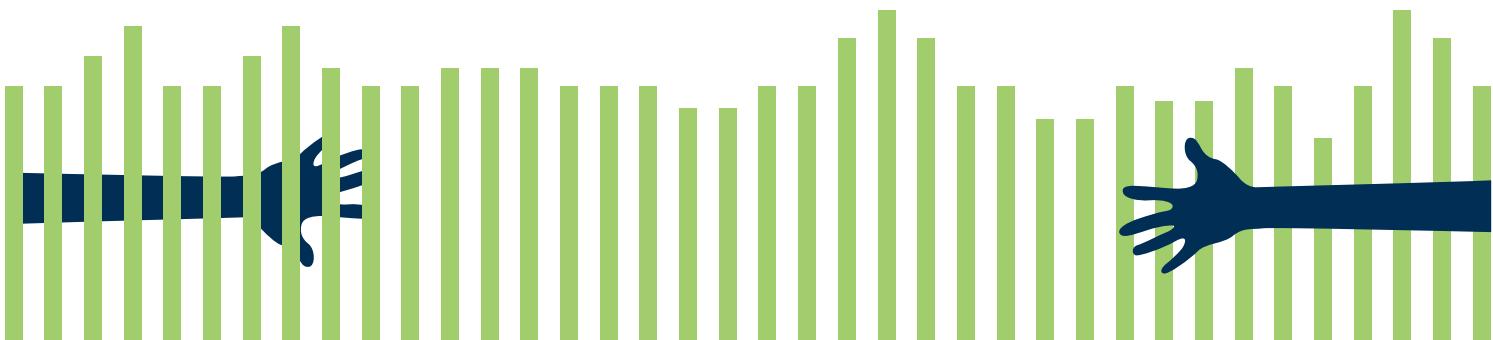




Immigration Enforcement & the Child Welfare System

The Trump Administration has made immigration enforcement and the criminalization of immigrants one of its top policy priorities. In his first hundred days in office, President Trump issued multiple immigration-related executive orders that seek to revamp and wildly expand the ways in which the federal government targets undocumented people for deportation. These include more Immigration & Customs Enforcement (ICE) raids, increased pressure on local law enforcement to work with ICE in tracking down and detaining people, and threatening to pull federal funding from so-called “sanctuary” jurisdictions. They also direct ICE officers to prioritize deportation of essentially all undocumented people in the United States, with no exceptions for people with U.S. citizen children and those without any criminal history. Naturally, immigrant communities are living in fear of what lies ahead.

Many immigrants are experiencing a high level of fear in particular when interacting with government officials, including child welfare workers. As a result of the constant threat of deportation, some families are afraid to do anything that could expose them to heightened risk, including sending children to school,¹ accessing necessary public benefits and services for which parents or children are lawfully eligible,² reporting crimes to the police, and cooperating with law enforcement in the investigation and prosecution of crimes.³ With an estimated 11 million undocumented people living in the United States, and more than 5 million children in the United States currently living with at least one undocumented parent,⁴ these trends have the makings of a public education, public health, and public safety crisis of great proportion.



1. Sanchez, Ray, CNN, After ICE arrests, fear spreads among undocumented immigrants (Feb. 12, 2017), <http://www.cnn.com/2017/02/11/politics/immigration-roundups-community-fear>.

2. See, e.g., National Immigration Law Center, Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients’ Rights (April 2017), available at <https://www.nilc.org/issues/immigration-enforcement/healthcare-provider-and-patients-rights-imm-enf/>.

3. See, e.g., Lindsay Bever, Washington Post, Hispanics ‘are going further into the shadows’ amid chilling immigration debate, police say (May 12, 2017), available at https://www.washingtonpost.com/news/post-nation/wp/2017/05/12/immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say/?utm_term=.7c30a7e8964c.

4. Migration Policy Institute, “A Profile of U.S. Children with Unauthorized Immigrant Parents” (2016), available at <http://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>.

How does immigration enforcement impact the child welfare system?

Due to broad immigration enforcement priorities and increased deportations, more children are at risk of entering the child welfare system due to a parent or a caregiver being detained or deported. However, to prevent against this immigrant communities are gearing up to put family preparedness plans into place. This includes talking with close family members and/or friends to decide who can step in and care for children (temporarily or long-term) if a parent is detained or deported, and discussing this plan with the children. In some cases, it may also include preparing legal documents to aid the back-up caregiver in case the parent is unavailable, such as the Caregiver's Authorization Affidavit and/or the GC-211 Form that can be used to nominate a non-parent to serve as guardian should that become necessary. In addition, it includes gathering important documents and emergency contact numbers, and updating schools and daycare providers on who is authorized to pick up children if parents are unavailable. This kind of planning should ensure that children do not end up in the child welfare system simply because a parent is detained or deported.⁵ However, if President Trump follows through on his promise to deport large

swaths of immigrant communities, inevitably at least some immigrant children and/or children of immigrants will come into contact with the child welfare system. In California, special protections exist for these cases, as highlighted below.

Immigration enforcement also makes the work of emergency response child welfare workers more difficult. Since the federal government continues to pressure local law enforcement to engage in immigration enforcement, immigrants are often concerned about cooperating with local police who may work in tandem with emergency response child welfare workers. In addition, because ICE agents regularly wear uniforms labeled "Police," it is difficult for people to distinguish between local police and ICE officers; immigrants may resist opening the door if law enforcement comes to their home because they are exercising their Constitutional rights not to allow ICE to enter without a warrant. If immigrants are fearful of cooperating with child welfare workers, children may be exposed to increased risk, and situations may escalate unnecessarily.

Important Points When Working with Immigrant Children & Families

- 1.** Many families may be resistant to sharing that they are undocumented for fear of being reported to Immigration & Customs Enforcement. It is always advisable to tell them who you are, what your role is, and explain the purpose of your inquiry before asking about immigration status (for example, to determine eligibility for a program or benefits).
- 2.** Information about immigration status should be kept confidential, and children and families should be informed of department policies that protect this information.
- 3.** Undocumented relatives can be considered for placement, as can relatives outside the U.S.
- 4.** When an undocumented child is in care and reunification services have been terminated to at least one parent, immediately investigate the child's eligibility for Special Immigrant Juvenile Status (and other paths to legal immigration status). This should be done as soon as possible, as children can age out of eligibility.
- 5.** Assisting family members with their immigration needs, even through a simple referral to a nonprofit immigration legal services provider, is incredibly important to the child's long-term stability and well-being, as immigration status allows individuals to obtain work authorization, access certain public benefits, and live without fear of deportation.

5. For further background information on this issue, see Applied Research Center, Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System (Nov. 2011), available at <https://www.raceforward.org/research/reports/shattered-families>. Note that under California law, a child cannot be made a dependent of the juvenile court unless there is evidence of abandonment, abuse, or neglect. Cal. Welf. & Inst. Code § 300.

What protections exist for immigrant families in California?

In cases where the child welfare agency does become involved with immigrant families, California law provides particular protections. California enacted the Reuniting Immigrant Families Act (SB 1064) in 2012 – the nation’s first law addressing the reunification barriers faced by many immigrant families involved with the child welfare system. This law clarifies that maintaining children’s ties to their families remains the priority despite barriers imposed by immigration status. The law provides five main protections for immigrant families:

1. Relatives cannot be disqualified based on immigration status alone, and they remain the preferred placement regardless of immigration status.⁶ When relatives are being considered for placement and must complete background checks, the child welfare agency may use the relative’s foreign passport or consular ID card as valid forms of ID, allowing noncitizens who lack other forms of identification to complete the checks.⁷ In addition, children can be placed with a relative abroad (for example, in Mexico), if the court finds that the placement is in the best interest of the child.⁸
2. Reasonable efforts must be made to assist parents in reunifying with their children, even when parents have been detained or deported by immigration authorities.⁹ This includes, for example, facilitating phone calls, visitation, and transportation when parents are detained.¹⁰ For parents who have been deported, it includes helping parents contact their country’s child welfare authorities and identifying services that can assist them in meeting case plan goals, documenting parents’ participation in those services, and accepting reports from child welfare authorities abroad.¹¹
3. The juvenile court can extend the timelines for family reunification services based on barriers imposed by the parent’s detention or deportation, such as the parent’s limited access to services or difficulty in maintaining contact with their child while detained or deported.¹²
4. The California Department of Social Services (CDSS) must provide guidance to child welfare agencies on assisting children eligible to apply for Special Immigrant Juvenile Status (SIJS), T and U visas, and VAWA self-petitions.¹³
5. Child welfare agencies are encouraged to enter into Memoranda of Understanding with foreign consulates to help facilitate information-sharing and cooperation regarding children in the California child welfare system. CDSS must provide guidance to county agencies on creating MOUs, and in cases where MOUs are entered into, the law sets forth minimum standards for what they must cover.¹⁴ Foreign consulates can help with many different things, including providing birth certificates and other documentation for children, locating a parent detained in ICE custody, facilitating family reunification after a parent has been deported, and working with foreign child welfare authorities to identify service plans in the country of origin.

To find referrals to legal services providers in your area, visit [Ready California](#)

6. Cal. Welf. & Inst. Code §§ 309(a), 361.2(e)(1)-(2).

7. Cal. Welf. & Inst. Code §§ 309(d)(1), 361.4(b)(2).

8. Cal. Welf. & Inst. Code § 361.2(f). This provision was added by AB 2209, Section 1, enacted July 17, 2012.

9. Cal. Welf. & Inst. Code §§ 361.5(a)(3), 361.5(e)(1).

10. Cal. Welf. & Inst. Code § 361.5(e)(1).

11. Cal. Welf. & Inst. Code § 361.5(e)(E).

12. Cal. Welf. & Inst. Code § 388(c)(2), 361.5(a)(3).

13. Cal. Welf. & Inst. Code § 10609.97. See California Department of Social Services, All County Letter No. 14-21 (Mar. 19, 2014), available at <http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2014/14-21.pdf>. For additional information about immigration remedies available to children and youth, see ILRC, Immigration Options for Undocumented Children, available at <https://www.ilrc.org/immigration-options-undocumented-immigrant-children>.

14. Cal. Welf. & Inst. Code § 10609.95(a)-(b).

What federal policies exist to help keep immigrant families intact?

In 2013, U.S. Immigration and Customs Enforcement (ICE) issued a Parental Interests Directive to provide federal guidelines regarding immigration enforcement against parents and legal guardians. The Directive emphasizes that ICE should respect an immigrant parent's rights and responsibilities, and seeks to ensure that "immigration enforcement activities do not unnecessarily disrupt" parental rights.¹⁵ The ICE Parental Interests Directive is currently being revised by the Trump Administration. For updated information about the Directive, visit <https://www.ice.gov/parental-interest>.

- While ICE officers have discretion in how to handle cases, the Parental Interests Directive provides guidance to try to minimize the negative impact of immigration actions on families, such as that ICE should consider not prosecuting parents for immigration violations, consider not detaining parents, and – if they will be prosecuted and detained – consider detaining parents as close as practicable to their child or child's court case.
- When possible, ICE should arrange for transportation to child welfare proceedings for detained parents and guardians, and if transportation is impractical, ICE should allow other participation, such as by video or phone.
- ICE must facilitate visitation if required by the court and documented to ICE through a court order, case plan, or other documentation, to the extent practical.
- When a detained parent or guardian is subject to a final order of deportation, to the extent possible, ICE should accommodate parents' and guardians' efforts to make provisions for their children before deportation, such as arranging for a guardianship for children to remain in the U.S. or obtaining travel documents for the child to accompany parents to the foreign country.
- On a case-by-case basis, ICE may facilitate the return of a parent to the U.S. who has been removed to attend termination hearings where in-person participation in court is required.

ICE has not always been consistent about following the guidance set out in the Parental Interests Directive and with other emerging immigration policies that clearly conflict with respecting the rights of parents, holding them accountable to this guidance will likely be more challenging. Nonetheless, the Parental Interests Directive remains an important advocacy tool that should be used to push ICE to minimize disruptions of families in immigration enforcement.

Special Concerns for “Sponsors” of Unaccompanied Minors:

As of June 29, 2017, ICE confirmed that it has begun targeting individuals in the United States (including parents) who may have paid a guide to smuggle children into the United States. Although ICE has failed to disclose any details regarding the enforcement action, the apparent focus has been on “sponsors” (individuals, often parents or other close family members, who agree to sponsor a child out of immigration detention). This means that individuals who have or will sponsor a child out of immigration detention may be at increased risk of being picked up by immigration authorities and/or charged criminally for involvement in smuggling. This policy runs counter to the ICE Parental Interests Directive in many ways and has been the subject of alarm in the immigrant and immigrant rights communities.

15. U.S. Immigration & Customs Enforcement, 11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities, 1, (2013); available at http://www.ice.gov/doclib/detentionreform/pdf/parental_interest_directive_signed.pdf.

What can social workers do to help support immigrant children and families?

Social workers have a unique opportunity to support immigrant families during a time of great fear and tumult. In addition to ensuring that the special protections provided by SB 1064 are provided in all cases involving immigrant children and families, social workers can also help to:

- identify potential eligibility for immigration relief for children and their families,
- make important referrals to legal services providers, and
- work to build trust with families by distinguishing themselves from federal immigration authorities and assuring families that they will not disclose confidential information about their immigration status to the federal government.

Child welfare workers can also help families stay informed of their rights by connecting them with good information and resources (see below), and encouraging them to have a family preparedness plan in place in

the event of contact with immigration officials. Family preparedness plans help families identify an alternate caregiver in case they are detained and/or deported, gather important documents and emergency contact information, prepare any necessary documents to assist the alternate caregiver, and ensure schools and other childcare providers are aware of their emergency plans. For more information, and copies of a family preparedness plan in English, Spanish, and Chinese, see <https://www.ilrc.org/family-preparedness-plan>.

In addition, like all concerned Americans, social workers can advocate for an end to the U.S.'s inhumane immigration detention and deportation policies that tear families apart by sharing the real impact of these practices on immigrant families and communities in their locality. It is important for the public to hear about the everyday implications of immigration policy on the safety and wellbeing of families, and social workers are uniquely situated to bear witness to that. For more information about how to get involved in advocating for fairness to immigrants, contact Rachel Prandini at rprandini@ilrc.org.

Where can I find more resources?

Additional resources for immigrant children and families are available on the ILRC's website, including:

- [Know Your Rights and What Immigrant Families Should Do Now;](#)
- [Fact Sheets On Immigration Options for Undocumented Children;](#)
- ["Living in the U.S.: A Guide for Immigrant Youth."](#)

For information about local referrals to legal services providers, visit Ready California:

- www.Ready-California.org

Further resources on working with immigrant children and families in the child welfare system are available from the Center on Immigration and Child Welfare: www.cimmcw.org/resources/practice/practice-toolkits

- [A Social Worker's Toolkit for Working with Immigrant Families – Immigration Status and Relief Options;](#)
- [A Social Worker's Toolkit for Working with Immigrant Families – Healing the Damage: Trauma and Immigrant Families in the Child Welfare System;](#)
- [A Social Worker's Toolkit for Working with Immigrant Families – A Child Welfare Flowchart.](#)