

**BIG
IDEAS**

CHILDREN IN THE SOUTHWEST

Families on the Front Lines

How Immigration Advocates Can Build a Bridge
Between the Immigration & Child Welfare Systems

by

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FIRST FOCUS

MAKING CHILDREN & FAMILIES THE PRIORITY

Keeping families together is a common rallying cry among advocates pushing for more just and humane immigration policies. Yet, with toxic dialogue surrounding the immigration debate, the real impact of immigration enforcement on families is rarely illuminated and discussed. The family unit has always been relevant to immigration policy and migration patterns. Anyone who has seen historical images of Ellis Island can picture a travel weary family huddled together in travel worn clothing, perhaps the image is of a mother with her arms around her young children. And today, most migrants cross our southern border to find work in order to send money home to support family members, or come to reunite with parents, spouses, siblings, or children who made the journey themselves years before. Legally speaking, familial relationships also remain a principal way for individuals to gain lawful immigration status in the U.S. as family members may petition for relatives to obtain status based on their own.

Whether acknowledged or not, the family unit must also stand front and center in any examination of the human impact of current immigration enforcement initiatives. Mixed-legal status families are extremely common in the United States. It is conservatively estimated that approximately 5.5 million children, most of whom are U.S. Citizens, are living with at least one undocumented parent who is at risk of apprehension by Immigration & Customs Enforcement, or ICE, the enforcement division of the Department of Homeland Security.¹ As immigration enforcement continues to intensify – with over 400,000 immigrants estimated to be deported in fiscal year 2012 - the axiom of “family separation” plays out in its most literal sense when parents are forcibly separated both physically and legally from their U.S. Citizen children, sometimes permanently.

The Florence Immigrant & Refugee Project, where I work in Arizona, assists thousands of parents each year who are detained in remote immigration detention facilities and facing civil deportation court proceedings without the right to public counsel. While our focus is providing legal education, screening, and assistance with immigration cases, time and time again we meet parents in detention who express urgent concern about the whereabouts and well-being of their young children. As we began to dig into more individual child custody cases, we learned that many of the children of detained parents were in highly precarious living situations or were already in the child welfare system as a result of their parent being in immigration custody. In most cases it also seemed that no one in the child welfare system knew where the parent was located and dependency cases could move forward without their participation.

To illustrate, one recent case involves a young parent, “Maria”, and her three year old daughter “Briana”, who was born in the United States. Maria has sole custody of Briana, after her father struggled with drug use and practically speaking abandoned her daughter. Maria had been living in Phoenix working at a convenience store and taking care of Briana. Maria came to the United States in 2003 and was placed into removal proceedings after she was pulled over for a traffic violation and it was revealed that she did not have legal immigration status. She ended up detained in Eloy, Arizona, where our staff screened her for relief from deportation through our Legal Orientation Program.² When we met with Maria she knew her daughter was in Child Protective Services (CPS) custody because there was no one available to care for Briana. As Briana was placed in a foster home, dependency proceedings were initiated and Maria was assigned an attorney³ to represent her interests in family court. While in detention, Maria had not received any communication from her daughter’s CPS case manager or her attorney. She didn’t know the status of Briana’s dependency case or how she could participate in any court hearings since she was detained. She was given a bond to be released from immigration detention but could not afford to pay the bond, which was several thousand dollars. As she presses forward with her immigration case to prevent her deportation to Mexico and faces months of detention she is steadfast in her desire to maintain her parental rights and continue to raise her daughter if she is able to stay in the United States.

As the Florence Project has struggled over the last several years to assist parents like Maria with navigating both the immigration and child welfare systems, we have asked many questions and have confronted many systemic obstacles. This article shares the approaches we have taken in working to bridge the two systems, reflects on lessons learned, and makes recommendations based on our experience in Arizona. Despite the challenging and often frustrating nature of this work, this article's framework is positive and optimistic. If we can make notable progress over a relatively short period of time in a state with an enforcement climate like Arizona, the future should be considered bright and ripe for change throughout the country.

Focus on Due Process

Like any nonprofit legal services organization, the Florence Project operates with severely limited resources. Our small staff of sixteen supports close to ten thousand clients each year in a complex legal landscape that is rapidly changing. When working with a high volume of clients in a detained setting, our one-on-one interactions with individual clients tend to be brief and narrowly tailored to the client's deportation defense case. This is not to suggest that we don't strive to see and advocate for our clients holistically, but we recognize the very limited nature in which we "know" the people we serve. Because they are detained, we don't generally see our clients interact with their family or have them come into our office before or after their work day, and aren't exposed to the complex everyday lives they led before coming into immigration custody. The scope within which we work with our clients is quite narrow.

As such, when the Florence Project initially began delving into the child custody issues of some of our clients it was easy to become sympathetic and angry about what we were hearing. A client may tell us they were a model parent who made one error in judgment by, for example, leaving her youngest child at home alone while she worked a night shift. It was therefore easy to direct our frustration at the child welfare system – the inner workings of which we know little - and bemoan the unfairness of a perfectly fit parent at risk of permanently losing her child.

Despite these initial reactions and temptations, it became important for us to quickly take a step back and realize our limitations both in terms of resources and knowledge. As immigration practitioners and advocates, we are not family law attorneys and are not even in a position to access or digest all of the facts involved in any dependency action. While some cases seem clear cut on the merits (where, for example, the only basis for abandonment is the parent being picked up by ICE) and others are more complex (where there may be a history of CPS involvement with the family) our commitment to certain basic tenants of due process should be the standard for all detained parents. Focusing on compelling substantive cases is powerful but it tends to create more divisions and tensions around talking about this issue in a more fundamental way.

Our focal point therefore quickly became and remains due process and the fundamental importance of parents having the opportunity to be involved in the dependency actions pertaining to their children, despite being in immigration custody. When stakeholders in the child welfare system do not know where the parent is located we see enormous obstacles to the parent being afforded due process in family court. Our work has therefore centered on remedying this deficiency of information about how to find parents in immigration custody, their rights in the immigration system, and their ability to participate in dependency proceedings from immigration detention. When reaching out to a parent's case manager or attorney our message is therefore not "this mother deserves to be with her children!" but is instead "this mother is at the Eloy Detention Center and needs to be included in the dependency court process, here are tools for you to ensure this occurs." We focus our energy on practical points of access and information sharing instead of trying to navigate our way through the merits of a parent's dependency case with limited information.

Focusing on due process ensures our work is concrete and is aligned with our organization’s mission and our resource limitations. It separates the procedural and substantive issues and brings clarity and focus to our communication with child welfare stakeholders. In addition to opening more doors, it has also enabled us to push back when appropriate since all of the stakeholders seem to agree that a parent has the right to be party in her child’s dependency proceedings.

Perhaps most importantly, this approach is also consistent with what we are asking child welfare stakeholders to do themselves, which is to not make assumptions about parents based on limited information outside one’s area of expertise. We have seen how dangerous novel interpretations based on a lack of information or a quick judgment can be. At the practitioner level, it happens when a parent’s family court attorney assumes the long term resident parent will automatically be deported because they were picked up by ICE, not knowing they have the opportunity to argue a case in front of an immigration judge and may qualify for relief from deportation. At the court level, it has occurred in dependency actions where family court judges may skip the fitness of the parent analysis and move directly to considering whether it is in the best interests of the U.S. Citizen children to grow up in the United States or their parent’s native country with the parent.⁴ Assumptions based on misinformation or limited information can unjustly threaten family unity in both systems.

The Power of Information Sharing

This is where information sharing becomes a vital tool for building bridges and assisting immigrant parents. As immigration practitioners initially confronted with detained parents desperate for help with navigating the child welfare system we felt as though we were stumbling in the dark. To try to retrieve helpful information and advocate for parents, we started making calls in individual cases to CPS case workers and attorneys assigned to represent parents in their child’s dependency action. In those interactions, we also learned what little information these players had about the immigration system. Most thought – and sometimes stubbornly held onto the belief that - if a parent was “in immigration” they were on a fast track to deportation and had no chance of lawfully remaining in the United States. Others thought parents were already deported and were shocked to know they were actually detained an hour away and had the opportunity to see a judge to raise a case for relief from deportation. In these early calls, we would explain the overall immigration court and detention process and the parent’s specific case, trying to give them a sense of the timelines and the limitations the parent was facing from detention. Conversations focused on practical information such as parents’ ability to receive mail and their language and literacy abilities, as well as their ability to make phone calls and receive visitors from detention. In turn, we learned about the status of their dependency case and whether there were upcoming hearings or reunification plans for parents to try to comply with from detention. Our main goal in these conversations has and continues to be to connect the parent’s attorney with her client and clarify that the parent is not yet deported and needs to be involved in the dependency action as best as she can from detention.

From these early experiences with individual cases it quickly became clear that developing broader resources for both immigrant parents in detention and child welfare stakeholders would be useful. This desire to develop resources opened many doors as lawyers and social workers in the child welfare system face many of the same resource obstacles we face at the Florence Project. We first developed a very basic guide about the detention and deportation system and the nuts and bolts of locating a parent, setting up visitation, and limitations in detention and began distributing it to CPS case workers and attorneys in individual cases. This guide allowed us to begin to have broader conversations and initial meetings with local CPS offices to introduce it as a resource and discuss the larger issue of working with immigrant parents. Expecting some resistance to a discussion about immigration issues, we were surprised that our audience was much more

receptive when we focused the conversation on our ability to serve as a resource and the exchange of information. We also used these meetings to ask our own questions in preparing a comprehensive packet for detained parents about the dependency court process. While there is no doubt still much work to be done to more proactively implement changes with regards to how CPS deals with these sensitive cases, we have succeeded in forming an initial relationship and a portal through which to share basic information that can be vital for parents isolated in detention.

After developing resources, we began simply talking locally about this issue with anyone we could think of, especially contacts in child and family advocate networks, family law attorneys we knew through handling Special Immigrant Juvenile Status⁵ cases, and individuals affiliated with the Arizona State Bar. It seemed everyone agreed in the power of information sharing as well as the need to provide training for court appointed attorneys for parents, CPS representatives, and even family court personnel about the immigration system. By that point we had established ourselves as an ideal organization to provide that type of training and were later integrated into our state bar mandatory ethics training for court appointed attorneys and into periodic court improvement program trainings. We have also subsequently been invited to train at relevant local family law conferences and Arizona's annual judicial conference for all state court judges. The training presented in all forums is essentially the same and presents an "Immigration Law 101" for child welfare stakeholders and explains the detention and immigration court process and challenges parents face when trying to participate in dependency proceedings from detention. The reception to these resources and trainings has been overwhelmingly positive and has only strengthened our growing relationships, which in turn serves us in assisting detained parents in individual cases.

Creating Accountability through Exposure and Advocacy

It was through our journey that we discovered how exactly bridging these two systems can assist immigrant parents in protecting their parental rights while in detention. Most critically, we've experienced that building this bridge exposes the extremely restrictive and punitive circumstances immigrant parents face in civil immigration detention. The immigration detention system still largely operates in secrecy and parents are geographically isolated in prison facilities in rural locations such as Florence and Eloy, Arizona. Thousands of immigrant parents are administratively detained in nearly 300 of these facilities around the country on any given day. By simply making child welfare stakeholders aware of where parents may be located we have opened up the detention system in Arizona and prompted more inquiry about its operation and the conditions parents face, including the limited access to counsel (which stands in stark contrast to the dependency system), lack of programming in detention (making complying with court ordered reunification plans from detention nearly impossible), and day-to-day challenges including extremely expensive phone calls and restricted visitation and access to personal materials.

With regards to family unity, ICE's aggressive enforcement practices cause consequential damages for not only the parent in custody but for her U.S. Citizen children and the larger child welfare system. Yet in our experience ICE is systemically deficient in its acknowledgement of these problems and the relatively simple measures it could take to minimize them while still achieving its enforcement goals. Opening the immigration enforcement and detention regime up to practitioners in the child welfare system will necessarily result in ICE being held more accountable for the consequential impact of its practices on families and children, if only at first in a handful of individual cases. For example, when parties to a dependency action become aware that the parent is in immigration detention, the attorney can make a request for ICE to transport the parent to appear in a critical hearing in person. Though routinely denied, accommodations can and have been made in

detention for the parent to then appear by telephone. This step forward in one case eases the path for the next parent to make a similar request of ICE and the detention facility. Some family court judges have also experimented with their subpoena power to push back and seek the parent's participation in person and attorneys may initiate requests for prosecutorial discretion⁶ or release from ICE custody on humanitarian grounds if termination of parental rights is imminent.

We have seen firsthand that when child welfare stakeholders are knowledgeable about the immigration system and involved they can be instrumental in advocating for parents and holding ICE more accountable on issues of family separation. This is especially critical in light of the reality that despite public announcements to the contrary, ICE continues to prosecute and deport immigrant parents with U.S. Citizen children on a regular basis.⁷

Recommendations

Increase and Expand Legal Resources and Attorney Expertise to Encompass Both Immigration and Family Law.

Rarely is it popular to make a recommendation that a system needs more lawyers but when it comes to bridging the immigration and child welfare systems, having lawyers with expertise in both systems is critical. While focusing on due process and sharing information has allowed us to make progress, ideally the Florence Project would be in a position to staff an attorney who could specialize in both immigration and family law and have the time and resources to represent parents in both proceedings. By assisting parents across both systems, this attorney could become knowledgeable about and involved in the substantive dependency actions and advocate on behalf of the parent and concurrently raise child custody issues more directly in immigration court as grounds for relief from deportation or release on humanitarian grounds. Relatedly, developing some immigration expertise within the family law bar could better serve immigrant parent clients both in the community and in detention and could also enhance the number of Special Immigrant Juvenile Status visas provided to abused, abandoned, and neglected immigrant youth in the child welfare system. As awareness of this issue continues to increase, it would be ideal if more law students and young attorneys were drawn to developing expertise in the overlap of these systems to more holistically assist immigrant families. Methods for cultivating this expanded expertise could include developing fellowships and funding opportunities for young lawyers to work at legal service organizations working with immigrant parents like the Florence Project or expanding the national Legal Orientation Program for immigrants in detention to include assistance with ancillary legal issues including child custody issues and dependency.

Provide Practical and Comprehensive Immigration Related Resources to State Child Welfare Stakeholders.

Similarly, state child welfare systems are underfunded and working with limited resources. There is little desire or incentive for CPS case workers to delve into the world of navigating the immigration enforcement system, which should not be surprising. If Arizona had a designated resource within the child welfare system or a contact for child welfare practitioners to call upon for assistance with tasks like locating parents in immigration custody and setting up visitation or case reunification planning, parents would be better served and less likely to disappear from the system. This contact could also serve as a state-wide resource for trainings and information sharing for parents, immigration practitioners, and child welfare practitioners.

Forums for information sharing can continue to flourish and take the form of multi practitioner task forces, websites with helpful information, and ongoing court improvement training programs.

Use Partnerships Between Immigration and Child Welfare Advocates to Promote Policy and Legislative Changes that Foster Family Unity.

Immigration and child welfare advocates – both locally and nationally – should also continue to strategically partner to work toward policy and legislative changes that promote family unity. This joining of forces brings this compelling issue into the spotlight and puts much needed pressure on ICE to curtail enforcement practices that unnecessarily separate parents from U.S. Citizen children. On a micro level, these partnerships can take the form of requests for release from detention or supporting raising defenses to removal on behalf of individual parents at risk of permanently losing custody of their children. On a macro level, they can include outreach to legislative officials, strategic media campaigns, raising the profile of this issue among respective immigration and child welfare networks, and developing and pushing alternative policy and legislative recommendations at the state and national level such as Senate Bill 1064 (Reuniting Immigrant Families) in California⁸ and the Humane Enforcement and Legal Protections (HELP) for Separated Children Act⁹ and Help Separated Families Act¹⁰ nationally.

Conclusion

The immigration enforcement system's devastating impact on immigrant families continues to resonate loudly among immigration practitioners and advocates. Following individual cases into the child welfare system may feel like moving into dangerous uncharted territory. It most certainly is. Yet, building bridges between the immigration and child welfare system can result not only in protecting the due process rights of parents in detention but can help pave the way to a less destructive and more humane immigration enforcement system. Based on our progress thus far in Arizona, we believe it is well worth the journey.

¹ Terrazas, A. & Batalova, J. (2009). *Frequently Requested Statistics on Immigrants and Immigration in the United States*, DC: Migration Policy Institute.

² The Legal Orientation Program (LOP) is a national program funded by the Department of Justice Executive Office of Immigration Review (EOIR) which supports legal service organizations like the Florence Project in providing comprehensive legal orientation services to detained immigrants facing removal proceedings. It has been in operation since 2003 and operates in 25 detention facilities across the country. The Florence Project's model of providing services at the Eloy Detention Center served as the blueprint for the national Legal Orientation Program.

³ In Arizona, an attorney is appointed to represent the parent's interests in the dependency proceedings of her child.

⁴ Yablon-Zug, M. (2012), at 28, *Separation, Deportation, Termination*, Boston College Journal of Law & Social Justice Vol. 32. See also *In re Angelica L.*, 767 N.W.2d 74, 94 (Neb. 2009); *Anita C. v. Superior Court*, No. B213283, 2009 WL 2859068, at *9 (Cal. Ct. App. Sept. 8, 2009).

⁵ Special Immigrant Juvenile Status (SIJS) is a special visa for immigrant children who have been abused, abandoned, or neglected and therefore can apply to many undocumented youth in the child welfare system. The SIJS process involves a special dependency finding in state court and an immigration application before U.S. Citizenship and Immigration Services. Children who obtain SIJS visas become lawful permanent residents and eventually can naturalize to become U.S. Citizens.

⁶ A request for prosecutorial discretion asks ICE to exercise its discretion not to prosecute a parent for deportation based on any number of grounds such as the parent having no criminal history, being at risk of losing her parental rights,

and not meeting one of ICE's enforcement priorities. If exercising prosecutorial discretion ICE may close the case temporarily, through a process called administrative closure, and may still decide to prosecute the parent in the future.

⁷ A report to Congress released on March 26, 2012 indicated that in the first half of 2011 ICE removed nearly 46,686 parents of U.S. citizen children. See Department of Homeland Security, Immigration & Customs Enforcement (2012), *Deportation of Parents of U.S.-Born Citizens: Fiscal Year 2011 Report to Congress Second Semi-Annual Report*.

⁸ CA Senate Bill 1064 was introduced in 2012 by Senator Kevin de León. See <http://sfreentry.com/wp-content/uploads/2012/06/SB1064-information.pdf>

⁹ S. 1399 and H.R. 2607 were introduced in 2011 by U.S. Senator Al Franken (D-MN) and U.S. Representative Lynn Woolsey (D-CA). See "Humane Enforcement and Legal Protections (HELP) for Separated Children Act." First Focus Campaign for Children Fact Sheet, July 2011. <http://www.ffcampaignforchildren.org/>

¹⁰ H.R. 6128 was introduced in 2012 by U.S. Representative Lucille Roybal-Allard. See "Help Separated Families Act." First Focus Campaign for Children Fact Sheet, July 2012. <http://www.ffcampaignforchildren.org/>