

IMMIGRATION ENFORCEMENT CONSIDERATIONS FOR CHILD WELFARE SYSTEMS

NOVEMBER 2007

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The ICE-man Cometh

After the United States Immigration and Customs Enforcement (ICE) was criticized in 2005 for not doing enough to end the unlawful employment of undocumented immigrants,¹ it increased efforts to reduce the number of people entering the United States illegally, deport undocumented individuals who were already in the U.S., and identify employers who hire or provide fraudulent documents to immigrants. ICE operations, or raids as they are commonly called, are on the rise. They have taken place in states across the nation including Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, and Washington.

ICE operations target various categories of immigrants. *Criminal aliens* are non-citizens who are convicted of crimes while in the U.S. and, because they have been convicted of a criminal offense, are subject to deportation. Even before ICE increased operations, the number of people in federal prisons with immigration violations was on the rise. Between 1995 and 2003, there was a 400% increase in federal inmates with immigration violations.²

Fugitive immigrants or *absconders* are individuals who have been ordered deported because of an immigration violation, but have not complied with the order. As of early 2007, 52 fugitive operation teams were in place to identify fugitive immigrants, with a goal of 75 teams in operation by the end of 2007.³

ICE has also increased efforts to identify and arrest people who are in the U.S. illegally, but who have not yet come to the attention of immigration authorities. In 2006, more than 3,600 immigrants were apprehended as a result of these efforts.⁴

Finally, ICE is cracking down on employers who hire undocumented workers. In 2005, only about 500 worksite investigations were conducted; in 2006, this figure increased to over 1,000.⁴ Although the intent of worksite enforcement operations is to bring criminal charges against employers, undocumented workers are typically apprehended and detained for civil immigration violations during these raids.

Consequences for Children

Following the arrest or apprehension of an undocumented parent, what happens to children can vary greatly depending on the nature and location of the operation. Some children may be placed with relatives or kin if they are immediately available, while others may be held in federal family detention centers along with their parents. On other occasions, the child welfare system may be asked to intervene.

Perhaps the most infamous ICE operation to date is a worksite enforcement operation that took place at a garment factory in Massachusetts. More than 300 immigrants were arrested and detained, many of whom were mothers. In preparation for the operation, ICE worked with state officials to establish a child welfare triage team and promised that special consideration would be given to individuals who were the sole caregivers of their children.⁵ Nonetheless, there were allegations of “toddlers stranded at day care centers or handed over to ill-equipped relatives”, and of parents who did not know how to find their children.⁶

As this incident helps to illustrate, ICE operations have implications for children and, by extension, the child welfare system. Raids like the one described above, can potentially leave children unsupervised and parents panicked about their children. Child welfare agencies may be called upon to develop strategies for minimizing the adverse consequences of raids for children in advance of these operations, as was the case in Massachusetts. In other cases, however, they may be called upon after raids have been conducted and the community becomes aware that children have been separated from their parents.

Considerations for Child Welfare

The exact number of children who come to the attention of child welfare agencies as a result of ICE raids is unknown. Nonetheless, because of the increased enforcement of immigration laws and the potential for children to be separated from their parents, it is important that child welfare agencies equip themselves to respond to this population of children and families. Culturally competent practice requires child welfare staff to be knowledgeable of the impact that immigration and acculturation may have on immigrant children and their families. However, this knowledge alone is not enough to adequately respond to children who become separated from their parents as a result of immigration enforcement. To effectively work with these families, child welfare staff must be knowledgeable of the multiple state and federal policies that affect families’ options and children’s well-being. They also must be able to navigate systems in which child welfare has not typically interacted in order to facilitate parent-child reunification or identify alternate permanency arrangements that are in the best interests of the children.

Children’s Immigration Status

One of the first things child welfare staff should do when they encounter children who have been separated from their parents due to an immigration violation is to determine the child’s immigration status. Some children of undocumented parents are themselves undocumented, but a substantial proportion are U.S. citizens as a consequence of being born in the U.S. Approximately two-thirds of all children living with undocumented parents are U.S. citizens living in mixed status families.⁷ A child’s immigration status can influence the services he or she needs and is eligible to receive. For this reason, children’s immigration status should be determined as soon as possible from birth records or collateral information.

Legal Representation

It is important for children who are undocumented immigrants in the care of child welfare agencies to obtain legal representation as quickly as possible. Immigration attorneys who have expertise in immigration laws and policies can assist child welfare staff and children in navigating complex immigration procedures and in providing the information necessary to make informed decisions. *Guardian ad litem*s should also be informed about how immigration laws and policies affect the children for whom they are advocating.

Child welfare staff may need to forge new relationships with attorneys that are knowledgeable about immigration laws. Several legal organizations, including the American Bar Association and the National Center for Refugee and Immigrant Children, offer information and referrals to *pro bono* legal assistance for immigrant youth.

Funding

The primary source of federal child welfare funding is Title IV-E of the Social Security Act, which provides federal matching funds for services to children in state custody. However, there is a provision in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act that limits eligibility to children who are deemed “qualified aliens”. This consists primarily of legal permanent residents, refugees, and asylees. As a result, services for undocumented children are generally not reimbursable under Title IV-E. That means that states may be responsible for paying for services to the undocumented children of immigrants, thus potentially limiting the services children receive from state agencies.

Placement with Relatives

Whenever possible, placement with relatives is preferable to placing children in foster homes. However, when children of immigrants enter the child welfare system, these placements may be more difficult to identify and facilitate. Relatives who are immigrants themselves may be unwilling to become caregivers due to fears concerning their own immigration status. Relatives who are undocumented may fear discovery and deportation, while those who are applying for residency may be fearful that being involved with a social service agency may deem them a public charge under immigration law, which can jeopardize an immigrant’s ability to become a legal resident. Child welfare staff must be knowledgeable of relevant federal and state immigration laws in order to respond to these concerns and facilitate placement with appropriate relatives when possible.

Permanency Decision-Making

In determining the best permanency option for separated children, many factors must be considered. To the extent possible, children’s parents and other important family members and advocates should be actively involved in the decision-making process. Whenever possible, reunification with parents should

always be considered. However, for children who are U.S. citizens, reunification may not be possible, or parents may prefer that their children remain in the U.S. In these cases, permanency arrangements should be actively sought with relatives or other kin to preserve children's cultural connections. For children who are undocumented, reunification with parents or other appropriate relatives in the child's country of origin may be possible. However, reunification with parents may require considerable transnational cooperation for which child welfare agencies may not be prepared. Similarly, child welfare agencies often do not have the means of looking for relatives in other countries or the collaborative relationships necessary to obtain international home studies. International Social Service is an international social work agency that can assist in facilitating some of these processes. Additionally, cooperative relationships with foreign consulates should be explored as a means of initiating transnational collaboration.

Immigration Relief

Child welfare staff should be familiar with the various forms of immigration relief that may be available for undocumented children. Special Immigrant Juvenile Status (SIJS) is a form of immigration relief intended for undocumented children in long-term foster care who have no possibility of reunification due to abuse, abandonment, or neglect. Undocumented children who have been victims of crime or trafficking may be eligible for T-visas, U-visas, or asylum claims. As applications for immigration relief may be time-sensitive to the age of the child and often require considerable transnational collaboration, staff should be familiar with the application and eligibility criteria for each. When options for immigration relief are available for undocumented children, caseworkers should carefully balance these options along with the best interests of the children, as certain forms of immigration relief may prevent reunification options in the future.

Conclusion

Child welfare agencies must examine and adapt their practices to ensure they are equipped to adequately respond to children whose parents are targets of ICE's efforts to enforce immigration laws. Staff must be knowledgeable about state and federal policies that affect immigrant children and families and how these policies may affect service delivery and permanency options. They should also be able to educate their clients about these matters and make appropriate referrals to address issues resulting from a child or parent's immigration status. Finally, policies should be developed to ensure that all children, regardless of immigration status, are provided the services necessary to promote positive outcomes of safety, permanency, and well-being.

Helpful Resources

There are a growing number of agencies and organizations that can provide technical assistance and services to address the challenges facing immigrant children and families. Some of them are listed below:

The American Bar Association Commission on Immigration provides information and services to ensure fair treatment and full due process rights for immigrants and refugees within the United States. www.abanet.org/immigration

Bridging Refugee Youth and Children's Services (BRYCS) is a national technical assistance program that provides information and referrals to strengthen services for immigrant and refugee children and their families. www.brycs.org

International Social Service (ISS) is a non-profit, international social work agency that provides services to children, families, and adults impacted by migration and international crises including searching for documents and securing international home studies. www.iss-usa.org

The National Center for Refugee and Immigrant Children provides pro bono legal and social services to unaccompanied immigrant children. www.refugees.org/nationalcenter

The National Immigration Law Center protects and promotes the rights of low-income immigrants and their family members. NILC staff specialize in immigration law and the employment and public benefits rights of immigrants. www.nilc.org

The National Immigration Project of the National Lawyers Guild is a national-level, legal support group that specializes in defending the rights of immigrants facing incarceration and deportation. www.nationalimmigrationproject.org

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Suggested citation:

Dettlaff, A. J. and Phillips, S. D. (2007). Immigration Enforcement: Considerations for Child Welfare Systems. Jane Addams College of Social Work, Chicago: IL.

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