



STRATEGY BRIEF

STRONG FAMILIES

How can child protection agencies support families and children who lack lawful immigration status?

Approximately 5 million children in the United States live with at least one parent who lacks lawful immigration status, and the number of births to immigrant families appears to be growing.¹ Information about child protection agencies' interactions with these families is not regularly collected at state or national levels. Nonetheless, local child protection agencies do encounter immigrant families, many of whom face risk factors such as poverty, trauma (including separations from family that occur during migration), and isolation (due to language differences and distance from extended family members), as well as stresses associated with acculturation and their undocumented status.

The impact of immigration enforcement on families has been spotlighted by recent events, including family separations at the border and large workplace raids in several states. [Immigration and Customs Enforcement \(ICE\)](#) also [routinely executes smaller-scale enforcement actions](#), and most of the affected children remain under federal jurisdiction, not state or local.



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Some of the more common circumstances in which child protection agencies may encounter children and families whose immigration status is at issue include:

- Detention or deportation of parents involved in an active child protection case, such that their ability to participate in dependency hearings and/or make progress toward reunification becomes compromised.
- Discovery by a child protection agency that a child they have taken into custody lacks legal status.
- Outreach from ICE to a local child protection agency when taking parents of a U.S. citizen child into custody during enforcement activity, if no other arrangements can be made. (Under no circumstances can ICE take a U.S. citizen child into custody.)

This strategy brief presents some federal context, common challenges child protection agencies face when serving undocumented and mixed status families, and recommendations to address them. For additional information, see: [What do child welfare leaders need to know about supporting families when caregivers are facing immigration-enforced detention or deportation?](#)

Federal context

Child protection agencies are not required by federal law to report families' immigration status. This is important, as it likely allows more families to engage in

child welfare services without the fear of immigration enforcement. However, it also inhibits data collection about this issue, which is essential to identify and determine the extent of problems and to measure the effectiveness of potential solutions. The situation is further complicated by a lack of coordination between immigration and child protection agencies at all levels of government. Clearer federal policy and guidance are needed to help jurisdictions respond effectively to the needs of these families. This should include:

- **Unambiguous guidance regarding the [trauma of separating children from their families](#).** Federal policy should be driven first and foremost by the overwhelming evidence that family separation harms children. Such separation should be avoided except when there is an imminent threat to child safety.
- **More consistent practice guidelines across agencies.** Currently, treatment of families and children varies greatly depending on their immigration status, which agencies are involved, and even by local jurisdiction. The actions of all agencies that touch children and families — including ICE, [U.S. Customs and Border Protection](#) (CBP), and the [Office of Refugee Resettlement](#) (ORR) — should be trauma-informed and guided by the principles of [family-centered practice](#) and the best interests of children. This must include consistently high licensing standards to protect the safety and well-being of all children and youth cared for in foster homes and residential care facilities. Decisions

It is important to think of planning to address immigration enforcement not just as a child protection response, but as a human services response. We want to avoid children being inadvertently shifted to child protection, which isn't the right response. We want children to be taken care of and safe — and to help make sure that they have someone to whom they can go, that there are family plans in place, and that the schools and other social services systems are well trained about what to do next.

— PRUDENCE BEIDLER-CARR,
DIRECTOR, AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW

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about child well-being must be driven by social workers and clinicians, not left to the discretion of immigration officials.

- **Immigration enforcement protocols that minimize trauma and harm to children.** This begins at the federal level. [A recent report by the U.S. Department of Health and Human Services \(HHS\) Office of Inspector General](#) found that “poor interagency communication and internal management decisions that failed to protect children’s interests left HHS unprepared for the zero-tolerance policy” that was implemented in 2018, resulting in inappropriate detainment of children, difficulties identifying separated children, and delayed family reunifications. ICE policies that intersect with child protection — including notifying child protection agencies prior to large-scale enforcement actions and facilitating detained caregivers’ participation in child protection proceedings — should not be left to local discretion.

Common challenges

Families in which one or more members lack lawful immigration status face a number of unique challenges that may complicate their child protection cases.²

In many instances, **families may not be eligible for employment or needed services.** Parents who lack lawful status are banned from accessing federal public programs that could help their

families, including Temporary Assistance for Needy Families (TANF), housing assistance, food stamps, and most Medicaid services. These services are particularly critical because undocumented parents may be ineligible for legal employment, and the jobs they can get often pay less than minimum wage. Once their children are removed, [lack of status prevents many parents from meeting case plan requirements](#), such as obtaining verifiable employment or a driver’s license.

Alternatively, **parents may decline benefits, even when they are eligible.** When determining whether a person can enter the United States or qualify for lawful permanent resident status, immigration officials consider whether that person is able to support him or herself (a “public charge test”).³ Due to recent uncertainty around federal immigration policy, many immigrants are reluctant to accept a broad range of public services, for fear that they may put their legal status or a citizenship application at risk. This can be a factor in families coming to the attention of child protection for poverty-related reasons, or parents declining to engage or participate in services required by their case plan, delaying or even preventing reunification.

Timely placements with relatives also can be challenging to secure. In many jurisdictions, legal status is not a requirement for relative placement. Nonetheless, research indicates that children in foster care who have undocumented family members are [less likely to be placed with relatives](#). This may be due to agency biases against such placements, parental

If we can get children into alternative placements before they go into foster care, it does not matter to me whether the relatives have status or not. The question is whether the relative will be willing to participate and provide a loving home. A lot of people shy away because of immigration backlash. But as long as they have a safe home — if we can do a background check and walk-through — then we will consider them.

— HON. CARLOS VILLALON, JR.,
ASSOCIATE JUDGE, CHILD PROTECTION COURT, RIO GRANDE VALLEY WEST, HIDALGO COUNTY, TEXAS

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reluctance to bring undocumented relatives to the attention of a public agency, or relatives' concerns about the implications of accepting financial support. Placement with undocumented relatives across state lines is also particularly challenging, as the Interstate Compact on the Placement of Children requires a background check with a Social Security number.

Concerns about immigration enforcement and family separation are constant stressors for many immigrant families.

Such concerns can cause families to leave stable housing, lose employment due to absenteeism, and/or keep children home from school. Any of these actions may make subsequent involvement with child protection more likely. Rumors about nearby enforcement actions also cause tremendous anxiety for many parents and children (even those with legal status). These concerns may affect family members' willingness to engage with child protection staff, participate in required services, or attend dependency hearings.⁴

Detention poses a number of logistical challenges for families. Locating, communicating with, and engaging parents who have been detained can be very difficult. Parents may be detained far from where their children live and may be moved between facilities without notice. ICE detention facilities do not have programming available to support parents in fulfilling the requirements of their case plans. In addition, there are no set timelines for immigration detention. Parents can be detained for weeks or for years — making compliance with child welfare timelines extremely difficult.

Deportation adds another layer of complexity to already complex family situations. Many child protection agencies, especially those located far from the southern border, have little experience in facilitating transnational contact, visitation, or reunification between children and their parents.

TO LOCATE A DETAINED PARENT

- Call the ICE detention reporting and information hotline (1.888.351.4024)
- Use the online detainee locator system (www.ice.gov/locations)
- Email the parental interests mailbox (Parental.Interests@ice.dhs.gov)

Immigration relief tends to be difficult to obtain. Immigration law is complex, and child protection staff cannot be expected to understand all of the options that may be available based on individual child and family circumstance, nor should they try to provide legal advice to clients.

Professional staff may carry assumptions about children's best interests.

The potential impact of racial and ethnic bias on transnational families cannot be ignored. In the absence of cultural humility and understanding, caseworker staff, attorneys, and/or judges sometimes assume that remaining in the United States must be in children's best interests, even if it means permanent separation from their families.

Strategies

Despite these challenges, it is important to understand that **parents' immigration status does not affect their legal rights with regard to their children.** Child protection agencies can [communicate and enforce a set of core principles](#) to ensure that family-centered practice is maintained, even when families are experiencing immigration issues. In addition, some jurisdictions have found the following strategies to be helpful:

- **Gather information about family immigration status to support casework.** If a family's status is known, it may help caseworkers better

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understand and engage caregivers, comply with consular notification requirements, and determine eligibility for federally funded services. New Mexico's Children, Youth, and Families Department Protective Services Division considers the immigration status of family members to be a primary factor in assessing and determining appropriate interventions. Investigators at the agency are trained to ask about immigration status while assuring families that the information is not released to law enforcement.⁵

- **Identify services that families can access safely.** “Parents are often doing everything they can do to show they are independent and can contribute to society,” said Berta Norton, area administrator for the Department of Children, Youth, and Families in Washington state. “They are not going to want to do anything to jeopardize their ability to stay in the U.S. The number one priority must be to identify and share information about services that families can access without risking their immigration status.” When referring a family to services, determine whether the family qualifies if not U.S. citizens, ensure services can be provided in the family’s language, and conduct warm hand-offs to providers. Families may not have the trust to contact the provider on their own.
- **Support immigration relief for parents.** Some parents may be eligible for visas, for example, if they are victims of crimes or spousal abuse. Every agency should develop connections with someone

knowledgeable about immigration law (either within the agency or on a referral basis) who can help find relief for the parents who are eligible.

- **Help children and youth secure immigration status whenever possible.** If youth lack lawful status and are not able to reunify with either parent, they may be eligible for Special Immigrant Juvenile Status (SIJS), which allows them to remain in the country legally and eventually become permanent residents. This is a complex and lengthy process, but it is an essential step, particularly for youth who are likely to age out of foster care. Child protection agencies can help. For example, the Los Angeles County Department of Children and Family Services created a Special Immigrant Status (SIS) unit in 1991 to process SIJS applications for eligible youth (among other immigration services). SIS contracts with a local immigration law attorney, and the Children’s Law Center reviews all orders prior to submission. As of October 2019, the SIS unit has filed more than 3,200 permanent residency card applications, with a 95% success rate.⁶
- **Establish a relationship with the local ICE field office to engage its support with participation of detained parents in dependency cases.** According to the [ICE Parental Interests Directive](#), officers have some discretion to detain parents and legal guardians

If foster youth have potential eligibility or Special Immigrant Juvenile Status, the state has an obligation to assist them in obtaining an attorney who can help. The immigration status is crucial to help these youth, who have been abused, abandoned, or neglected, to obtain employment and successfully transition to adulthood. And there is a time limit; youth will lose the ability to pursue this path to a green card if the child welfare agency fails to act.

— SARAH HELVEY,
DIRECTOR, CHILD WELFARE PROGRAM, NEBRASKA APPLESEED

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near their minor children, facilitate parent-child visitation, and/or arrange transportation so that detained parents can participate in family or dependency court proceedings. In the absence of clearer federal guidance, some agencies may want to offer education to the local ICE officers about the impact of family separation on children and families.

- **Form and participate in local immigrant support networks.** Such networks may be formal or informal. In communities with a large immigrant presence, such as Yakima, Wash., informal collections of nonprofit organizations, faith communities, media, and others serve as informal “grapevine” networks to spread the word about ICE enforcement activity in the area. In some communities, formal community task forces have come together to share information and problem-solve difficult cases. Pima County’s Southern Arizona Transnational Taskforce, with members from the state Department of Child Safety, probation, community groups, the judiciary, and parents’ and children’s attorneys, as well as the local Mexican Consulate, formed in 2015 to address the challenges of dependency cases involving detained and deported parents. The group has since developed a [toolkit](#) and training to help other communities learn from its experience.
- **Plan ahead for the impact of immigration enforcement on families.** In the case of large-scale enforcement actions such as worksite raids, communities need to identify a place for children to go while their parents’ wishes for their care are identified and carried out. “In most cases, there

are relatives and family members who can take responsibility for the children, but they need a safe space to figure that out so that children do not get pushed into the child welfare system,” said Sarah Helvey, child welfare director of Nebraska Appleseed. Schools may be a good option. Other community-level supports to consider include communication plans, mental health resources, and [legal resources to support families](#). The Tennessee Immigrant & Refugee Rights Coalition offers an extensive [toolkit](#) that local communities can use to prepare in advance for ICE actions (or to help them respond in a moment of crisis). Undocumented parents also should be encouraged to make advance plans for who they would like to care for their children in the event of a sudden detention.

- **Establish Memorandums of Understanding (MOUs) with foreign consulates.** Consulates are essential partners in identifying, assessing, and reunifying children with parents or family members who have been deported or who are living in other countries. Notifying the appropriate consulate should be a first step when taking a foreign national child into custody, or a U.S. citizen child of a detained or deported noncitizen. Pima County’s Transnational Task Force held early meetings with both the Mexican consulate and the Mexican government’s family services agency, Sistema para el Desarrollo Integral de la Familia (DIF). Pima County Superior Court Judge Kathleen Quigley said “the meetings helped everyone understand the services that are offered in Mexico, and they established trust. Now

Local conversations are so important. We found that the more we talked to each other, the more we realized what we didn’t know. In some circumstances, we found out that we were doing unintentional harm to children because of what we didn’t know.

— HON. KATHLEEN QUIGLEY,
PIMA COUNTY (ARIZ.) SUPERIOR COURT

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when DIF sends a psychological evaluation or home study, it's much more likely to be accepted by the county child protection agency. It also helped us all see that we all have the same goal.”

- **Consider creative ways to preserve transnational family ties.** Many children can be reunified with their families, even if their parents are facing deportation or not living in the United States.

- * **Reunification prior to removal** may be an option for some detained parents, and voluntary deportation may speed the reunification process. If a child and parent are reunified prior to their parents' deportation and the parent chooses for their child to return to their home country with them, it is important to help secure proper documentation for the child prior to leaving the United States, including a birth certificate and passport if possible.

- * If parents are not in the United States, **transnational reunification** may be possible. The appropriate consulate, International Social Services, or other international human service

organizations may be able to help locate the parents and complete a home study to ensure the child's safety.

- * In some cases, a form of **immigration parole** can allow parents to return to the United States for termination of parental rights hearings after deportation.
 - * Child protection agencies also can request [extensions to timelines](#) to allow detained or deported parents time to make and carry out the best decisions for the care and custody of their children.
- **Build cultural competence and humility.** Some examples include:
 - * **Recognize the role that trauma and exploitation may have played in a transnational family's life.** These experiences can impact parenting decisions and parent/child roles (including “parentification” of children). Sensitive, culturally appropriate health is critical to resolve trauma and strengthen family bonds.



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- * **Acknowledge that children may have strong attachments to extended family members.** For example, some transnational children have spent more time living with a grandmother or aunt than with their biological parents. Invest the effort to find these relatives, include self-defined extended family members in meetings and discussions, and consider workarounds for placements with kin when possible.
- * **Use culturally competent assessment tools and intervention practices.**

- * **Provide information in families' native languages.** Hire bilingual staff, provide educational materials in different languages, and ensure access to culturally competent translators and interpreters when needed. Failure to do this may violate a family's constitutional rights.
- * **Recognize and address cultural misconceptions and bias.** Learn about the cultures of immigrant groups in your community. Ask families their preferences about communication, inclusion of extended family members, and other practices.

- 1 Carr, P. D. (2019). Parental detention and deportation in child welfare cases. *Child Welfare*, 96(5), 81–101.
- 2 Information from this brief (unless otherwise noted) is derived from interviews with Prudence Beidler-Carr and Cristina Cooper, ABA Center on Children and the Law; Hon. Carlos Villalon, Jr., Child Protection Court, Rio Grande Valley West; John Rodriguez, JD; Hon. Kathleen Quigley, Pima County Superior Court; Nansi Naranjo, Office of the Arizona Attorney General; Sarah Helvey and Darcy Tromanhauser, Nebraska Appleseed; Claudia Rocha-Rodriguez and Berta Norton, Washington State DCYF; Leo Lopez, Yolanda Quintero, and Carlos Saldivar, Casey Family Programs Yakima Field Office; Elizabeth Thornton, independent consultant; Dr. Luis Zayas, University of Texas at Austin Steve Hicks School of Social Work, Dr. Monica Faulkner, Texas Institute for Family and Child Wellbeing, University of Texas at Austin.
- 3 The National Immigration Law Center offers a [helpful overview of the latest developments](#) regarding the public charge rule.
- 4 Held, M. L., Nulu, S., Faulkner, M., & Gerlach, B. (2020). Climate of fear: Provider perceptions of Latinx immigrant service utilization. *Journal of Racial and Ethnic Health Disparities*. <https://doi.org/10.1007/s40615-020-00714-w>
- 5 Finno, M., and Bearzi, M. (2010). Child welfare and immigration in New Mexico: Challenges, achievements, and the future. *Journal of Public Child Welfare*, 4:3, 306–324.
- 6 Los Angeles County Department of Child and Family Services. *It Takes a Village* [video].

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