Promoting Family Integrity: The Child Citizen Protection Act and its Implications for Public Child Welfare

SUNNY HARRIS ROME
George Mason University, Fairfax, VA, USA

Family integrity, although central to child welfare, is undermined by immigration laws that fail to consider the best interests of the child. This article discusses the threat that deportation poses to family integrity and analyzes the Child Citizen Protection Act of 2009, a potential remedy pending before the United States Congress. It also addresses the roles that public child welfare agencies can play to ensure the well-being of children in mixed-status immigrant families.

KEYWORDS immigration, deportation, family, policy, unification

Family unification has long been a goal of both American immigration law and child welfare policy. In child welfare, the priority is on keeping families safely together whenever possible. The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) promotes family unification and reunification by requiring states to make “reasonable efforts” to prevent the removal of children from home and, if removed, to return children home as quickly as possible. The Family Preservation and Support Services Program Act of 1993 (P.L. 103-66) provides financial incentives for states to provide intensive family preservation and family support services, both designed to avoid unnecessary removal of children from home. While the Adoption and Safe Families Act of 1997 (P.L. 105-89) focuses on the primacy of child safety and shortens the allowable time for making permanent placements, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) gives states additional tools to link children with relative caregivers.
Since 1965, American immigration law has also prioritized family unification. The Immigration and Nationality Act of 1965 (P.L. 89-236) initiated a system, still in force today, that gives preference to relatives of immigrants already in the United States. Under current law, immediate relatives (spouses, minor children, and parents of adult American citizens) are entitled to apply for legal status without a waiting period, while other eligible relatives receive a priority date based on their preference category and their country of origin. Family-sponsored immigration is the largest source of legal immigration to the United States, accounting for approximately 65% of new legal permanent residents (Monger & Rytina, 2009). Family unification is relied on especially heavily by applicants from the Dominican Republic, Mexico, Jamaica, Columbia, and the Philippines, where it is the basis for more than 75% of each country’s total immigration to the United States (McKay, 2003).

The principle of keeping families together is also central to international agreements on human rights, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (Human Rights Watch, 2007). Unfortunately, despite the fact that American child welfare and immigration policy both purport to value family unity, other aspects of American law subvert family integrity and undermine the best interests of the child when it comes to noncitizen families. Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), for example, undocumented immigrants are ineligible for most federal benefit programs including food stamps, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), non-emergency Medicaid, and State Children’s Health Insurance Program (SCHIP), whereas most legal permanent residents (“green card” holders) are subject to a 5-year waiting period. These benefit restrictions create a hardship for children in immigrant families, who are disproportionately poor and more likely than children in native families to lack health insurance, live in overcrowded housing, and experience food insecurity (Capps, 2008). Additional risk stems from immigrant parents’ lower levels of educational achievement, higher unemployment rates, limited English proficiency, and linguistic isolation (Passel & Cohn, 2009). Compounded by lack of access to federal financial assistance, these vulnerabilities may impede the ability of parents to provide a safe and stable environment for their children, increasing the likelihood of separation and reducing the likelihood of reunification (Borelli, Earner, & Lincroft, 2007; Rome, 2008).

Work site raids and other enforcement actions comprise another threat to family integrity. In keeping with its unabashedly aggressive strategy, Immigration and Customs Enforcement (ICE) conducted a record number of raids during the Bush administration; they skyrocketed from approximately 500 in 2005 to more than 1,000 in 2006 (Dettlaff & Phillips, 2007). In 2007, these raids resulted in approximately 5,000 arrests, most for non-criminal conduct (United States Immigration and Customs Enforcement, 2007). The effects
of these raids on young children have been well documented. Some were stranded at school or in day care, and others left unsupervised, bewildered, and frightened while their parents were processed and detained (Capps, Castaneda, Chaudry, & Santos, 2007). Beyond the immediate trauma, there is evidence of long-term detrimental consequences:

Psychologists, teachers, and family members have reported significant increases in instances of anxiety, depression, feelings of abandonment, eating and sleeping disorders, post-traumatic stress disorder, and behavioral changes among children who have experienced the loss of a loved one or who witnessed ICE in action. (Kremer, Moccio, & Hammell, 2009)

Of course, the ultimate threat to family integrity is deportation, now termed removal. As noted by Thronson (2006), “Although the role of family is critical in shaping who qualifies to immigrate to the United States, when a person faces removal from the United States, it is as an individual, not as a family unit” (p. 1188). For mixed-status families, estimated to include approximately 4 million United States-born children with at least one noncitizen parent, the prospect of deportation is devastating. In these families, where the children remain legally entitled to citizenship in the United States, a parent’s deportation poses a Catch-22: either the children exercise their rights, remain in the country, and suffer the tragedy of separation from their parents—or they relinquish their legal rights, their home, and often the only life they know to face potentially hazardous conditions in an unfamiliar country. This article discusses the threat that deportation poses to family integrity and analyzes the Child Citizen Protection Act of 2009, a potential remedy pending in the United States Congress. It also addresses the roles that public child welfare can and should play in ensuring the well-being of children in immigrant families.

Throughout this article, the terms unauthorized immigrant and undocumented immigrant are used interchangeably. Both terms refer to noncitizens lacking legal permanent residency status, most of whom either entered the country without authorization or overstayed legal visas. Similarly, the terms deportation and removal are used interchangeably to refer to residents compelled by immigration authorities to leave the country; the former term was replaced by the latter in the mid-1990s.

DEPORTATION UNDER CURRENT LAW

Two laws enacted in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA), had the effect of drastically altering American deportation policy. Together, they significantly increased the likelihood of family separation
by expanding the circumstances under which noncitizens can be removed, limiting judicial discretion, and restricting opportunities for relief.

Under current law, those who enter the country without authorization are subject to deportation. Once deported, they are prohibited from returning to the United States for up to 10 years. In addition, so-called “legal” or “documented” immigrants are subject to mandatory deportation if they commit an “aggravated felony.” Contrary to what the term *aggravated felony* would suggest, these acts are neither limited to the most egregious crimes nor are they necessarily felonies. Aggravated felonies include drug offenses, traffic offenses, assault, larceny, weapons violations, forgery, invasion of privacy, liquor violations, tax evasion, obstruction of justice, gambling, threats, obscenity, and others, many of which qualify as misdemeanors under state law. Relatively few immigrants are deported for serious, violent crimes, while examples abound of immigrants being removed for comparatively minor, non-violent offenses including shoplifting, forging checks, marijuana possession, disorderly conduct, and unauthorized use of a vehicle. According to Human Rights Watch (2007), 64.6% of deportations in 2005 were for non-violent offenses, while only 20.9% were for violent offenses and 14.7% were for “other crimes.” Similarly, between 1997 and 2007, an estimated 72% of deportations were for non-violent offenses while 27.8% were for violent or potentially violent offenses (only 14% of which involved violence against persons). The most common offenses underlying deportation were: entering the United States illegally (24%), driving under the influence (7.2%), assault (5.5%), and falsifying immigration documents (5.5%). By comparison, robbery accounted for 2.2% of removals, aggravated assault for 1%, and homicide for 0.3% (Human Rights Watch, 2009). Once removed, aggravated felons are permanently barred from reentering the United States (Office of Inspector General, 2009). Furthermore, the law can be applied retroactively; that is, even if a legal permanent resident committed an offense before the law was in effect and has lived peacefully and productively in the United States for decades, that resident can nonetheless be apprehended and deported. This broadly expanded definition of the crimes that render an immigrant subject to mandatory deportation belies common sense and runs contrary to the public’s understanding. Lives are ruined and families torn apart, in many cases because of offenses committed long ago and considered under state law to be minor. Estimates suggest that the 897,099 deportations on criminal grounds that occurred between 1997 and 2007 left more than 1 million spouses and children (including American citizens and legal permanent residents) separated from their loved ones (Human Rights Watch, 2009).

From the 1950s to the 1990s, the law provided noncitizens with a range of opportunities to defend against deportation. Most have since been eliminated. Up until 1996, legal permanent residents who had lived in the United States for at least 7 years and were facing deportation were entitled to
a hearing, during which the judge would balance mitigating factors against those weighing in favor of deportation. Among the positive considerations were:

- family ties in the United States;
- residence in the United States for a long time or having entered the country as a child;
- service in the United States military;
- an employment history;
- property or business ties in the United States;
- making valuable contributions to the community;
- providing evidence of good character or proof of rehabilitation; and
- showing that deportation would cause hardship to oneself or one’s family (Immigration and Nationality Act, 1952).

These hearings allowed judges to exercise discretion on a case-by-case basis. Instead, current law mandates deportation using one-size-fits-all criteria that fail to take an immigrant’s background, contributions, and family situation into account. This policy is at odds with the European Union, where judges must consider an immigrant’s duration of residence, age, connection to the expelling and receiving countries, and consequences for family before deportation decisions are made (Human Rights Watch, 2009). In fact, most other major democracies around the world consider family relationships and other ties to the country before making deportation determinations (Human Rights Watch, 2007). The loss of judicial discretion in American removal proceedings, coupled with the expansion of non-violent triggering offenses, has greatly increased opportunities for family separation while obscuring the system’s ostensible purpose of ensuring community safety and national security.

Meanwhile, noncitizens who commit crimes that are not aggravated felonies also face reduced opportunities for relief. Instead of having to show that their removal would cause “extreme hardship” to themselves or to a spouse, parent, or child—as they did under previous law—they now must show that their removal would cause “exceptional and extremely unusual hardship” (National Immigration Law Center, 2001, p. 7). This standard for “cancellation of removal” is so difficult to meet that approvals have averaged only 1,268 annually, despite the fact that the government is permitted to grant up to 4,000 petitions each year (Feinstein, 2004, p. 2). While no court has questioned the validity of the standard itself, the right to present evidence in support of an application for cancellation of removal has been confirmed. In *Cardenas-Morfin v. Ashcroft* (2004), the Ninth Circuit Court of Appeals found that an immigration judge violated an immigrant’s due process rights when she precluded him from testifying about the hardship his 2-year old daughter would suffer if separated from her father.
IMPACT ON FAMILY INTEGRITY

According to the Pew Hispanic Center (Passel & Cohn, 2009), the number of United States-born children with unauthorized immigrant parents (children in “mixed status” families) grew from 2.7 million in 2003 to 4 million in 2008. Of all children with undocumented immigrant parents, 73% are born in the United States. Children with parents from Mexico and Central America are especially likely to live in mixed-status families (Fortuny, Capps, Simms & Chaudry, 2009), as are younger children. Of those younger than age 6 years whose parents are undocumented immigrants, 91% are born in the United States (Passel & Cohn, 2009). Because undocumented immigrants are by far the most likely to face deportation (Human Rights Watch, 2009) and such a large number (3.8 million) of them have citizen children, they are at the greatest risk for family separation.

Undocumented immigrants also have the fewest resources with which to navigate the immigration system. As a group, they are far less educated than residents born in the United States, with 47% of those between ages 25 and 64 years having less than a high school education. In 2007, their median household income was $36,000, considerably less than that of residents born in the United States. This disparity is even more striking since household sizes in these families tend to be larger, and incomes are less likely to rise in accordance with time spent in the United States. Not surprisingly, unauthorized immigrants are more likely than American-born residents to live in poverty and less likely to have health insurance (Passel & Cohn, 2009).

Despite the gravity of what is at stake in immigration trials (loss of home, work, family, and community), they are considered to be “civil” rather than “criminal” proceedings. As such, the government is under no obligation to provide free legal representation. In 2006, only 35% of the 113,140 individuals appearing in immigration court were represented (Schoenholtz & Bernstein, 2008); in some areas of the country, as few as 10% of detainees have counsel (Families for Freedom, n.d.). Not surprisingly, immigrants without legal representation are far less successful than those who have representation. For example, in fiscal year 2003, 34% of non-detained immigrants with attorneys won their cases compared to 23% without. Among those seeking asylum, 39% with attorneys won their cases, compared to 14% of those without (Ferguson, 2007). Immigration law is highly complex. Imagine how daunting it is for those with little education or income and few basic English skills. Whatever claims for relief may exist (premised on refugee status, domestic violence, human trafficking, or being a victim of a serious crime), the chances for success are greatly diminished absent legal representation. The consequences can be, and often are, devastating for families.

The Department of Homeland Security estimates that of the 2,199,138 removals conducted between fiscal years 1998 and 2007, 108,434 involved
parents of American-citizen children. If multiple removals of the same parent are included (those who are deported, return, and are deported again), the number increases by an additional 72,000 (Office of Inspector General, 2009). No data, however, are available on how many children are affected or on what becomes of those who are left behind. Parents facing deportation confront a no-win proposition: they can rip their children, who have legal citizenship rights, from the only home they have known and return them to an alien land and uncertain future in order to keep the family intact, or they can relinquish their children to relatives or child welfare authorities in the United States and endure indefinite separation. Our immigration law forces parents into a “choiceless choice” (Thronson, 2006, p. 1211).

When parents sacrifice their children’s constitutional right to remain in the United States for the sake of family integrity, the children suffer what some have termed de facto or “constructive” removal. Despite legal guarantees that prohibit the deportation of U.S. citizens, that is effectively what occurs for thousands of U.S.-born children each year. While these children may possess a right to remain in the country, they are not necessarily at liberty to exercise that right. Judges generally expect that children will remain with their parents if the parents are deported; yet the child’s life chances—for education, safety, and freedom—may be better served by remaining in the United States. No parent should be forced to weigh their children's interest in remaining with family against the prospects for a better life, yet that is exactly what our immigration laws require. It is clear that “protecting children and their interests is not a priority of immigration law” (Thronson, 2006, p. 1180).

This holds equally true when parents facing deportation leave their citizen children behind. Not only are parents and children separated, but deportation may result in what some have termed de facto termination of parental rights. Under the Adoption and Safe Families Act of 1997, states must petition to terminate parental rights for any child who has been in out-of-home care for 12 of the most recent 22 months. Parents facing deportation, despite their best efforts, are highly unlikely to be able to reunify with their children within this timeframe. At best, they will have to return to their home countries and initiate the immigration process. At worst, they will be barred from reentry for 5 to 10 years (in the case of unauthorized immigrants) or permanently (in the case of aggravated felons). The outcome here flies in the face of family law’s recognition of the sanctity of parent–child relationships.Ordinarily, termination of parental rights requires a finding that the parent is unfit. No such finding is present here. Furthermore, “in contrast to the safeguards provided to parents facing a termination of their parental rights, immigration removal hearings are largely devoid of such procedural safeguards” (Ferguson, 2007, p. 96). By deporting the parent, we may be subverting what is in the child’s best interests and
what drives our child welfare policy: safety, stability, and well-being. “A parent’s immigration status or citizenship status per se is irrelevant to the determination of a child’s best interests because it says absolutely nothing about the parenting of any person or rights of that person in the parent–child relationship” (Thronson, 2008, p. 466). By the same token, in two-parent households where one parent is deported, a *de facto* child custody determination can result. Again, the best interests of the child are irrelevant to the actual decision. Reflecting on a case in which an unauthorized immigrant was removed with his child, Thronson (2008) observes, “Whatever decision regarding child custody would have resulted from a family law proceeding is unknown because immigration law effectively resolved the issue without consideration of any of the factors that would have been relevant to a court determining the best interests of the child” (p. 510). Custody determinations are designed to be flexible; immigration proceedings are unyielding.

Whatever decision is made, there are enormous consequences for the child and for the integrity of the family:

If a parent is deported, the action can initiate a child’s entry into the foster care system. On the other hand, a child may accompany the deported parent while other family members remain in the United States, but then the family is separated. If the deported parent is the primary wage earner, the family members who remain in the United States may be catapulted into economic jeopardy. (Pine & Drachman, 2005, p. 549)

Unfortunately, legal challenges to the failure of immigration judges to consider family ties have been uniformly unsuccessful. In one notable case, however, a federal judge in Brooklyn ruled that immigration authorities must consider the potential impact on a child before deporting the child’s parent (*Beharry v. Reno*, 2002). The case concerned a man from Trinidad who had entered the country at age 7 years as a legal permanent resident. Nineteen years later, still living in the United States, he was convicted of stealing $714 from a coffee shop. During his incarceration, passage of the 1996 immigration laws led to his designation as an aggravated felon. He was ultimately deported, leaving his U.S.-citizen daughter in the care of a grandmother. The District Court found that his removal violated the United Nations Convention on the Rights of the Child and the Universal Declaration of Human Rights since it failed to consider the best interests of the child. On appeal (*Beharry v. Ashcroft*, 2003), the decision was overturned on procedural grounds. Circuit Court Judge (now U.S. Supreme Court Justice) Sonia Sotomayor, writing for the court, never reached the merits of the “best interests” argument. Subsequent cases, however, have been unanimous in rejecting the proposition that a child’s best interests must be considered as part of removal proceedings.
Motivated largely by security fears and opposition to “illegal” immigration, the United States Congress has made repeated attempts to reform our immigration laws. Pressure for comprehensive reform during the 110th Congress led to the introduction of multiple bills and exhaustive negotiations around immigration enforcement, guest worker provisions, and a path to citizenship for undocumented residents. With pressure mounting from both the right and the left, a fragile coalition supporting the compromise measure in the Senate (S.1639) fell apart and the bill died after failing to survive a cloture vote to end debate. Lost in the shuffle was a modest bill introduced by Representative Jose Serrano (D-NY), entitled the Child Citizen Protection Act. Originally introduced in the 109th Congress, it would restore the ability of immigration judges to consider the best interests of the child in making removal determinations. The bill applies only to immigrant parents of citizen children and outlines exceptions for parents who pose a security threat or have engaged in human trafficking. As Representative Serrano explains,

Currently, an immigration judge presiding over cases that would separate parents from children, has no choice but to order permanent removal of the undocumented parent from the United States. There is no room to consider the harm such separation would cause to the child, who is a citizen. As a result of this, the parents who do have citizenship have been forced to become single parents, dependents have become breadwinners, and working American families have joined the welfare rolls. Most importantly, the children, who bear no blame, have lost contact with a parent and intact families are broken apart. The present immigration system does little to protect the best interests of the children and keep families together… Children deserve better than to lose a parent because of an inflexible law. (2006, p. 1)

The bill was reintroduced in the current Congress as H.R. 182. Two primary arguments have been lodged against it. Some maintain that parents who face separation from their children due to deportation have only themselves to blame; they should have considered the consequences before acting illegally. Others believe that allowing parents to avoid deportation because they have U.S.-born “anchor babies” will only encourage illegal immigration. Both arguments miss the point. A society that purports to value family should exercise every reasonable opportunity to keep parents and children together—especially when, as under current law, parents can be deported for a whole host of reasons that have little to do with domestic security and may well be outweighed by the best interests of their children.

Many mainstream immigration rights groups agree with the bill in principle, but have been hesitant to throw their weight behind it because they perceive it as being too radical in the current, anti-immigrant climate. The
most visible support comes from a grassroots organization in New York called Families for Freedom. Together with Representative Serrano’s office, they have used the bill to educate the public about who “illegal” immigrants really are and what “criminal” really means in the immigration context. In this way, they hope to alter the terms of the debate. Another organization, American Fraternity, has taken a different approach. Using many of the same arguments that underlie the Child Citizen Protection Act, they sought (unsuccessfully) to file a class action lawsuit to halt the deportation of undocumented parents with citizen children (Sandigo v. Obama, 2009). These and other groups have organized rallies, town hall meetings, and vigils to sensitize the public and politicians to the plight of citizen children with noncitizen parents.

Meanwhile, preparation for another round of immigration reform continues on Capitol Hill. On December 15, 2009, Representative Solomon Ortiz (D-TX) introduced the Comprehensive Immigration Reform for America’s Security and Prosperity Act (CIR ASAP, H.R. 4321). Tucked into this 645-page bill, as one small provision, is the text of the Child Citizen Protection Act. The Comprehensive Immigration Reform bill has 102 co-sponsors to date and the support of the Congressional Hispanic Caucus whose Immigration Task Force is chaired by Representative Luis Gutierrez (D-IL), a social worker. It was referred to nine different Congressional committees and is expected to move forward as the House immigration bill when Congress takes up the issue later this year.

ALTERNATIVE REMEDIES

While inclusion of the Child Citizen Protection Act in the larger immigration reform bill provides it with some political cover, its future remains uncertain. It is therefore important to pursue other strategies to reduce the number of families separated through deportation. Providing indigent parents facing removal with free legal counsel should be a high priority. “Many times individuals slated for removal hearings have difficulty procuring representation because they do not know how to go about finding counsel, do not have the resources to pay a private-sector lawyer, and/or are detained and thus even more limited in their information about and access to counsel” (Schoenholtz & Bernstein, 2008). The American Bar Association adopted a resolution in 2006, supporting “the due process right to counsel for all persons in removal proceedings, and the availability of legal representation to all non-citizens in immigration-related matters” (Pena, 2006, p. 1). Most states already provide low-income parents with lawyers when child custody or termination of parental rights is at issue. As we observed earlier, deportation proceedings that threaten to separate parents from their citizen children can be tantamount to child custody determinations or de facto terminations of
parental rights. If counsel is necessary to ensure due process in these family court proceedings, it should be considered equally indispensable in federal immigration cases. A guarantee of representation by counsel could assist thousands of parents in understanding and navigating the complexities of the immigration system, thereby maximizing the likelihood of positive outcomes for them and their children.

Another remedy would be to roll back some of the changes instituted under the 1996 immigration and welfare reform laws. These laws pander to the public’s anxiety about immigration and move us away from rationally addressing the legitimate goals of immigration policy. The current definition of what constitutes a deportable “aggravated felony” should be repealed in favor of a narrower definition that targets violent crime. Representative Bob Filner (D-CA) has introduced a bill (H.R. 938) to that effect. Similarly, the provision that requires a showing of “exceptional and extremely unusual hardship” for cancellation of removal should be repealed in favor of one that permits consideration of deportation’s potentially devastating consequences for families with children. Meanwhile, access to federal benefit programs curtailed by the 1996 welfare reform bill should be restored; in the event that one family member is deported, remaining family members would have the resources they need to keep the family intact.

Reducing the number of deportations within families could also be achieved by limiting the role of local law enforcement in apprehending and reporting undocumented immigrants. Under agreements authorized by Section 287(g) of the Immigration and Nationality Act, state and local law enforcement officials can partner with ICE to enforce federal immigration laws. Between 2006 and 2009, more than 120,000 undocumented immigrants were identified for removal as a result of 287(g) agreements in 77 jurisdictions across 25 states (Feere, 2009). Data confirm that most of these immigrants are held on alcohol-related charges or for possession of fake identification (Green & Walker, 2007), not for violent crimes. Law enforcement professionals in many jurisdictions—including Arizona, which recently passed the nation’s harshest anti-immigration law—oppose participation in 287(g) agreements; they fear that the program will jeopardize community safety by dissuading victims and witnesses from cooperating with police. Speaking out at the local level against implementation of these partnerships could result in fewer immigrants being detained and deported for minor offenses.

There is no question that family integrity is best protected by preventing unnecessary detentions and removals. Much can be done in the meantime, however, to mitigate the effects of family separation when it does occur. The Comprehensive Immigration Reform bill referenced earlier contains numerous provisions that aim to do just that. Many of these provisions address government raids at work sites and private homes. Some center on ensuring access to information about legal counsel, while others are designed to
facilitate the involvement of state or local service agencies “including relevant nongovernmental organizations, child welfare agencies, child protective service agencies, school and head start administrators, mental health and legal service providers, and hospitals” (H.R. 4321, Sec. 151(8)). Families with children are afforded special protections in relation to both apprehension and detention, including an:

- opportunity for parents to arrange for the care of dependent children;
- confidential psychosocial and mental health services;
- free legal advice about child welfare and custody determinations;
- contact information for child welfare service providers; and
- access to communication with extended family members.

Steps are also required to minimize the trauma experienced by children including avoiding apprehensions, interrogations and screenings in the child’s presence. Other provisions make special accommodations for vulnerable populations including women who are pregnant or nursing; children; parents detained with one or more of their children; those who provide financial, physical, and other direct support to minor children, parents, or other dependents; people with disabilities, older adults, and victims of abuse (H.R. 4321, Sec. 160). The bill would generally prohibit families with children from being separated or taken into custody except in limited circumstances, and would require that those who are detained be placed in “non-penal, residential, home-like facilities that enable families to live as a family” and that are managed by staff with demonstrated expertise in child welfare (H.R. 4321, Sec. 162(c)(2)). Finally, the bill would require various memoranda of understanding and collaborations among the Department of Homeland Security, the Department of Health and Human Services, state and local child welfare agencies, law enforcement, and local mental health professionals, including mandatory joint training and the development of joint protocols that prioritize the best interests of the child and family (H.R. 4321, Sec. 164-167).

**IMPLICATIONS FOR CHILD WELFARE**

When immigration law fails to consider the best interests of the child, family integrity is compromised. Child welfare agencies can play a role in minimizing the resulting harm—both with families already in the system, and with families that are impacted by immigration enforcement. Child welfare staff should be knowledgeable not only about the many practice issues that arise with immigrant families, but also about the policies that affect their well-being. The legal interactions between the immigration and child welfare systems are complex; consulting with immigration attorneys, or developing
in-house expertise on immigration matters, can help workers avoid inadvertent missteps that might jeopardize a child or family’s future.

When families are already involved with the child welfare system, ascertaining the immigration status of each family member (including nuclear family, extended family, and fictive kin) is a crucial starting point. It enables the agency to work with the family to develop a plan around who should provide short-term, emergency care for the children if a noncitizen parent is apprehended. It can also help the agency identify who might qualify to serve as a foster parent, adoptive parent, or legal guardian if a parent is deported. Agency staff should familiarize themselves with state policies defining eligibility to serve in these capacities. In Texas, for example, only citizens and legal permanent residents can be foster or adoptive parents; however, the Director of Child Welfare has the authority to grant a waiver if it is in the child’s best interests (Texas Department of Family and Protective Services, n.d.). Having a plan in place to address unexpected separations can minimize confusion and help ensure child safety. It can make the transition as seamless as possible by increasing the chances of placement with relatives, friends, or trusted members of the family’s own community.

Implementing such a plan may require extraordinary efforts on the agency’s part to locate and engage family members who can assume responsibility for separated children. A number of states have had success using family group conferencing for this purpose. In situations where extended family members reside both in the United States and in a foreign country, cross-border family group conferencing can be initiated. The goal is to “involve, engage, and encourage permanent connections with the broadest family constellations” (Howard & Bruce, 2008, p. 1). This goal can be facilitated by collaborations with foreign consulates, social service agencies, and non-governmental organizations. A number of border towns have established international liaison offices within their departments of health and human services. In San Diego and El Paso, for example, “in addition to helping search for parents and relatives, the liaison office helps complete background checks and home studies, and assists with visitation, placement, and services across borders” (Howard & Bruce, 2008, p. 3).

To do justice to immigrant families involved with the child welfare system, agency social workers should also be familiar with the various circumstances under which noncitizen family members might be eligible for immigration relief. For example, special consideration is available for victims of human trafficking (asylum, T-Visa), victims of abuse (Violence Against Women Act [VAWA]), and victims of serious crime (U-Visa). If parents are successful in adjusting their immigration status and moving toward citizenship, family stability is enhanced. Consulting with an immigration attorney is critical in these instances since making an application can be risky; it can place the applicant’s noncitizen status on Homeland Security’s radar, thus rendering the parent even more vulnerable to detection and removal.
Determining a family’s immigration status, while important, is not always easy. Parents may be confused about their immigration status, particularly in mixed-status families. Children may be misinformed and language barriers may make accurate communication difficult. Finally, concerns about deportation may make families hesitant to disclose their status; to many, child welfare workers and immigration officials are indistinguishable. For this reason, some recommend using proxy questions including country of origin, language spoken at home, or length of time in the United States (New Mexico Children’s Law Center, n.d.), rather than asking clients directly about their status. It is likewise advisable to partner with grass-roots organizations that have already developed trusting relationships with a particular immigrant community. In any case, workers should assure their clients that the information will be kept confidential. They must also be clear about their obligation as service providers to safeguard their clients’ rights. Unfortunately, some professionals—including police, probation officers, juvenile detention staff, prosecutors, public defenders, judges, eligibility workers, and child welfare staff—may mistakenly believe they have a legal duty to report undocumented immigrant parents and children to ICE. In 2009, a social worker under contract with the Florida Department of Children and Families turned in an undocumented Guatemalan mother while she was visiting with her two U.S. citizen children. A week later, that same social worker arranged a visit between the children and their Guatemalan grandparents so that local authorities could apprehend them as well (Florida Immigrant Coalition, 2009). Having information about a client’s immigration status should trigger the ethical obligation to use it only in ways that promote the child’s best interests. Immigration laws explicitly preserve the right to legally access child welfare services, regardless of one’s immigration status.

There are other ways in which social workers’ biases can jeopardize a child’s best interests. Working with foreign countries to resolve placement issues can tax one’s professional objectivity and cultural humility. It requires child welfare staff to weigh “the benefits and opportunities for children that may be available in the United States against the loss of culture, language, family traditions, values, and beliefs that each family holds” (Howard & Bruce, 2008, p. 4). In addition, agencies must guard against using a family’s immigration status as a reason to deny services or to avoid pursuing kinship placements. Assumptions that such placements would necessarily be unstable are erroneous; the fact “that undocumented immigrants are here without authorization does not necessarily mean that their deportation is imminent” (Morrison & Thronson, 2010, p. 6). Given the unique challenges faced by children in immigrant families, the benefits of kinship care may be especially important. Finally, determinations of parental fitness should never be premised on immigration status. Recently, the Supreme Court of Nebraska considered the case of a Guatemalan mother with four children whose parental rights had been terminated (In re Interest of Angelica L.,
2009). In reversing the termination decision, the court found that the state had failed to provide clear and convincing evidence of the mother’s unfitness as a parent, relying instead on the fact of her arrest and deportation.

In addition to tending to their own clients, social workers have been instrumental in addressing the needs of other children who become entangled in immigration enforcement activities. In Massachusetts, for example, child welfare workers served as first responders following a mass work site raid in New Bedford. It was the child welfare workers who offered support to detainees and took responsibility for children who were abandoned and traumatized by the sudden disappearance of their parents. They worked to obtain the release of adults who were primary caretakers of underage children and aided parents in planning for the possibility of deportation (Capps et al., 2007). These are functions that public child welfare agencies can implement even in the absence of changes to federal law. Relationships with community-based immigration organizations should be forged now, and plans for a coordinated response developed, so that help can be mobilized on short notice whenever the need arises.

While child welfare professionals continue to care for children who are separated from their parents, they must also be vigilant in pressing for policy changes that will minimize the number of deportations. This vigilance includes seeking to limit the number of 287(g) agreements between local law enforcement and ICE, pressuring the Obama administration to limit enforcement activities and to ensure that they are conducted in a manner that respects the special needs of children, and generating public support for rolling back the draconian changes instituted in the 1996 immigration and welfare reform laws. As Congress again considers comprehensive immigration reform, potential impacts on children must be kept front and center; legislators need to understand the dilemmas confronting mixed status families and be convinced that stable, intact families of all kinds make our nation stronger. Finally, whatever its prospects, we must persist in supporting the principles behind the Child Citizen Protection Act. An immigration system that ignores the best interests of the child is unacceptable.

CONCLUSION

Approximately four million U.S. citizen children are currently living in mixed-status families. More than 100,000 parents in these families have been deported over the past 10 years. Immigration enforcement has been accelerated at the local, state, and national levels and current policies make removal easier and exceptions fewer. U.S. citizen children with noncitizen parents continue to be burdened by the intolerable prospect of family separation. Meanwhile, critical information is lacking, creating important opportunities for research. When faced with deportation, how many children leave the
country with their parents? How many remain in the United States? What becomes of those children who remain in this country? Anecdotal evidence suggests that some are cared for by relatives while others enter foster care. Unless we actively engage in advocating for proposals that protect family integrity, such as the Child Citizen Protection Act, we are destined to see more traumatized children come through our doors—victims of America’s misguided immigration laws. “Immigration policy must respect the importance of human relationships. No policy should result in family separation” (Padilla, Shapiro, Fernandez-Castro & Faulkner, 2008, p. 6).

The truth is that much of our immigration policy is at odds with the goals of child welfare. Rather than promote children’s safety, stability, and well-being, “immigration law results in decisions about children that are not motivated in the least by consideration of the children’s best interests” (Thronson, 2008, p. 511). Conflicting policies have created a perverse situation in which “family integrity can be maintained only by violating the nation’s immigration laws and vice versa” (Ferguson, 2007, p. 87). Child welfare advocates have been passionate and effective in pressing for improved child welfare laws. We need to remain equally passionate in challenging policies in other spheres that impact vulnerable children. With comprehensive immigration reform again on the national horizon, opportunities abound. Meanwhile, there is much that child welfare agencies can do here and now, including assisting eligible families in regularizing their status, preparing families for the possibility of separation, and identifying kin and fictive kin who might qualify as temporary or permanent caregivers. Child welfare professionals can also play a leadership role in assisting families and children displaced by immigration enforcement activities. Finally, it is essential to forge new partnerships: with grass-roots organizations in immigrant communities, with foreign embassies and social service agencies, with local law enforcement, and with immigration attorneys. The U.S. child welfare system needs to broaden its horizons by assuming nontraditional roles and engaging in new collaborative relationships. In this way, the system can successfully promote family integrity and ensure that children in immigrant families achieve the safety, stability, and well-being they deserve.

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CONTRIBUTOR

**Sunny Harris Rome** is Associate Professor, George Mason University, Department of Social Work, Fairfax, VA.