

What happens to children when parents are detained or deported?

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Some 5,100 children were living in foster care last year because their undocumented parents were either in detention or were deported. (VOXXI/Griselda Nevarez)

Often left out of the immigration debate is what happens to children when their undocumented parents are detained or deported.

A recent [report](#) by the Applied Research Center finds that children often end up in foster care, leaving their parents to fight to regain custody from inside a detention center or from outside the country if they've already been deported. As many as 5,100 children were living in the child welfare system last year.

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For some parents, it's worse. The report finds that there have been cases of detained or deported parents who lost their parental rights.

Why does this happen?

Wendy Cervantes, vice president of immigration and child rights policy for First Focus, explained that many detained or deported parents often lose their parental rights because some existing child welfare policies make it "really difficult" for these parents to reunify with their children.

She said the child welfare system oftentimes establishes requirements that parents must meet within certain timelines in order to regain custody of their children. This includes attending family court hearings, participating in child-parent visitations and attending parenting classes.

"Usually these timelines don't correspond with how much time a parent might be detained, especially because detention isn't quite like the criminal justice system where there's a set sentence for how long a parent is going to be in there," Cervantes said. "Parents can be in detention indefinitely."

Another challenge, she said, is that for years there has been a lack of collaboration between the child welfare system and the immigration enforcement system.

"They're driven by different missions," she said. "Immigration enforcement is about detaining undocumented immigrants whereas the child welfare system is fully focused on a different mission, which is the best interest of the child. None of their policies work together."

But that is starting to change.

ICE directive brings change

Last August, U.S. Immigration and Customs Enforcement issued a [directive](#) asking ICE officials to take into account a parent's "rights and responsibilities" when enforcing immigration law.

"ICE personnel should ensure that the agency's immigration enforcement activities do not unnecessarily disrupt the parental rights of both alien parents or legal guardians of minor children," the directive states.

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The directive also states that when parents are detained, they should be placed in detention centers that are "as close as practicable" to their children and the location of their family court or child welfare proceedings, if there are any.

It also calls for parents to be allowed to participate in family court hearings or child welfare proceedings as well as parent-child visitations, which are often required in order for parents to regain custody of their children.

In the case of parents who receive an order of deportation, the directive states these parents should be allowed to coordinate care of travel for their children before they're deported. This includes making the arrangements necessary to take their children with them.

For parents who've already been deported, the directive mandates ICE officials to allow some deported parents to return to the U.S. if their physical presence is required in termination of parental rights proceedings.

"We're still trying to figure out how effective it's been," Cervantes said of the ICE directive. "It's our hope that it will definitely help parents that are in detention to have improved chances of reunifying with their kids if they're in foster care."

Cervantes added that [First Focus](#) has been working closely with ICE to implement the directive. She said the group has been helping train ICE field officers on how the child welfare process works.

Role of foreign consulates

What's also starting to change is the increasing number of child welfare agencies that are working closely with foreign consulates on cases involving children of undocumented parents. They do so through a formal agreement dubbed Memorandum of Understanding.

Under the agreement, a child welfare agency notifies the consulate when one of its nationals or the child of one of its nationals is in the agency's custody.

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Felix Herrera of the Mexican consulate office in Phoenix said when his office gets this type of notification, staff members begin helping with the process to reunify parents with their children. This includes helping parents navigate through the child welfare system and connecting them with attorneys.

“If a parent is deported, we are able to intervene in a more direct way,” Herrera said.

This includes serving as an intermediary between the U.S. child welfare agency and the Mexican social services agency, known as Sistema para el Desarrollo Integral de la Familia (DIF). One of the biggest roles of DIF is to perform home studies on a parent or relative who is being considered as a placement for the child. The Mexican consulate then reports the information to the U.S. child welfare agency.

If a family court judge grants custody of a child to a parent or relative in Mexico, consulate officials arrange for the child to be taken to Mexico. They also help ensure the child has all the documents necessary, such as a passport or identification card.

Cervantes said consulates play a big role in helping detained and deported parents reunify with their children.

“The cases that we have seen where parents have been able to reunify with a child and avoid having their parental rights terminated have usually been cases where the consulate is very involved,” she said.

Problems remain

Despite the new ICE directive and increasing collaboration between child welfare agencies and foreign consulates, Cervantes said some problems remain that make it difficult for detained or deported parents to reunify with their children.

For example, she said some child welfare agencies and family court judges don’t want to place children with an undocumented family member. She said this happens even though “the goal is to keep children with their families whenever possible.”

She added that some caseworkers and family court judges don’t want to send children — particularly if they are U.S. citizens — to live in other countries if their parents have been deported.

State legislators and members of Congress have tried to address these and other issues through legislation.

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In 2012, California became the first state to implement a law aimed at reducing family reunification barriers for immigrant parents whose children end up in foster care. The California law includes four key components, such as making detention or deportation a compelling reason to extend the family reunification period.

At the federal level, the immigration reform bill approved by the Senate last year includes several provisions promoting the reunification of detained or deported parents with their children. One provision calls for states to consider a parent's detention or deportation as a compelling reason to delay terminating parental rights. Another provision calls for child welfare agencies to allow the placement of children with relatives whenever appropriate, regardless of immigration status.

Cervantes said the Senate bill, which stalled in the House, would help improve the child welfare system considerably.

“Even if we do pass reform one day — and I really hope we do — there will always be some level of enforcement and some parents who don't qualify for the citizenship path,” she added. “So there always needs to be protections in place so that if enforcement happens, family unity and parental rights and child well-being are taken into consideration.”

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