

# **Torn Apart: The Struggle for Reunification in Mixed Status Immigrant Families**

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Felipe Montes is a man who desperately wants to be with his children. In a letter to his young sons written from Mexico he writes "What I want you to know is that I never left you behind. I never wanted to leave you. I love you and I want to give you the best life you could have. The only problem is the immigration stuff, you see, the government stuff" (Wessler, Letters). Monte was arrested by federal immigration officers in 2010 for driving without a license. He is an undocumented immigrant from Mexico who had lived in the United States for over 10 years. His three sons are U.S. citizens. After two months in detention he was deported in late 2010. With his wife left to support three children on no income and with health issues, shortly after his leave they were taken to foster care by Child Social Services. Both parents agree that they would be best to live with their father in Mexico. The task that lies ahead of Montes is one no fit and able parent should have to undergo- gaining legal custody of his own children.

The situation of Felipe Montes is not unique but reflects a growing pattern in immigration and child welfare practices that are separating undocumented parents from their children, often permanently. Around 5.5 million U.S. citizen children have parents who are undocumented. When an immigrant parent is arrested they are frequently kept in detention centers for an indefinite period of time, and hundreds of miles away from where they were living. An increasing number of U.S. citizen children are being put into foster care during this time or even adopted, unable to contact their parents. The tangled web between the child welfare system and immigration law currently lacks policies to ensure parent and child will remain together through the deportation process. Furthermore, cultural assumptions that American children are better off in the U.S. with strangers than with their own parents in native countries are influencing court decisions.

This essay will examine how the fragile relationship between child welfare services and the federal immigration system combine to create barriers towards family reunification, making it difficult, and at times impossible, for a parent to reunite with their child. The topic of immigration soars in political campaigns and personal debate, but public awareness of the personal experience of the family remains quietly waiting in the shadows. What we are facing as a nation is a human rights crisis, one that is hardly known and accounted for. The love and commitment of a parent to a child should never be denied based upon immigration status.

## **Understanding U.S. Immigration Enforcement**

The journey of families from one geographic landscape to another can be thought of as old as humanity itself. As you read this paper the blood flowing through your veins holds a history of ancestral travels. “Give me your tired, your poor, your huddled masses yearning to breathe free”, proclaims the poetry of Lazarus inscribed on the Statue of Liberty. “Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!” As a country which proclaims itself to have family unity as the cornerstone of its immigration policies, the United States is deporting a record numbers of immigrant parents. Between July 2010 and September 2012 alone, nearly 205,000 parents of U.S. citizen children were deported. Total numbers of deportations are reaching record highs, with 397,000 deportations taking place in just 2011. Approximately 23 percent of those deported were the parents of U.S. citizen children.

In November 2011 the Applied Research Institute published a research report titled “Shattered Families” which conservatively estimates that at least 5,100 children are in foster care whose parents are in detention or have been deported. A week following the distribution of their findings President Obama acknowledged the situation to Latino journalists stating, “It’s a real problem... I don’t think this is functioning perfectly now. I’m not here to pretend that this hasn’t happened, and I think we have to keep putting pressure on those responsible for administering the program, to make sure that children aren’t torn from their parents without due process and the possibility to stay with their children.”(Khan) The Obama administration has deported more undocumented immigrants—including parents—within his first four years in office than any other first term president in the history of the United States. If immigration enforcement continues at the same rate, and policies to protect families in the deportation process are not enacted, an estimated 15,000 more children could be separated from their families and face reunification difficulties with their parents within the next 5 years.

Immigration family law is not protected by the constitution and thus subject to changes within congress as it sees fit. In 1996 the Illegal Immigration Reform and Responsibility Act (IIRIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA) were signed into law, representing a new area of restrictions within immigration policies. These policies effectively stripped undocumented immigrants of the right to judicial review and due process regarding their deportation proceedings. Whereas prior to these laws judges had the ability to postpone or cancel a deportation if it was found to pose hardship for a U.S. citizen family member, now “exceptional and extremely unusual hardship” was needed to be proven. The 1996 laws also functioned to vastly expand the usage of detention centers in a process called “Expedited Removals” which places immigrants in indefinite custody

without bond before being deported. Immigration cases no longer undergo review and the categories of those who are able to be deported have changed from criminal to anyone lacking permanent status.

The exponential increase in deportations currently taking place has been largely enhanced by relatively recent programs such as Secure Communities, the National Fugitive Operations Program and 287 (g) agreements. While Immigration and Customs Enforcement (ICE) claims that such programs fundamentally work towards deporting criminals, the majority of people arrested by ICE under these policies have no criminal background and are deported on the basis of being undocumented alone. Figures used by ICE to determine the criminality of those deported can be deceiving, as even an immigrant who was found driving without a license is listed under the category of “criminal”.

Secure Communities began when George Bush was president, but really began to be implemented on a large scale during the Obama Administration. Secure Communities is a database that checks immigration status and provides communication between local police and jails with ICE. When an immigrant without legal documentation has an interaction with police and is taken to a local jail, their fingerprints are checked to verify immigration status. If they are found to be here illegally, ICE places a hold upon their case. Once a hold is placed, even if they are not charged with any crime, police are required to keep them in jail until the person is transferred to an immigration detention center. Secure Communities is currently in place in over 3,000 jurisdictions throughout the country, and the Department of Homeland Security plans to implement this program nation-wide within 2013.

The National Fugitive Operations Program began in 2003 as a way to remove immigrants who have “failed to leave the United States after he or she receives a final order of removal, deportation or exclusion, or who has failed to report to ICE after receiving notice to do so” (Fugitive Operations). This program functions as a subset of Immigration and Customs Enforcement to purposefully identify, locate, and arrest undocumented immigrants. NFOP officers enter residential homes in teams to arrest mostly non-criminal immigrants. The NFOP may also detain and arrest individuals they suspect of potentially having undocumented status.

The 287(g) program was created along with the IIRIRA and extends the job of immigration enforcement to local police officers whose jurisdictions formed agreements with ICE. There are currently 57 law enforcement agencies in 21 states that have agreements with ICE. Under these policies, police officers are able to detain and interrogate any person they believe may be in the country without legal documentation. The 287(g) program has been cited by human rights organizations and critics as a form of racial profiling and institutionalized racism.

There are currently over 250 detention centers in the United States that hold immigrants without legal status, both private and federal. ICE states that these centers are not intended to provide punitive punishment, but rather be a waiting center for immigrants while their deportation is being processed. In reality, however, they are more like prisons than ICE would like to admit. Immigrants in detention usually wear uniforms, are kept indoors, put in handcuffs when transferred between facilities, and have very limited access to communication with their families or those outside of detention. Sexual and physical abuse has been widely reported in many of these facilities, leaving immigrants with physical and emotional scars that extend beyond their own deportation.

When a parent is detained they are transferred an average of 370 miles away from their homes to one of the hundreds of detention centers in the United States. Parents are routinely not allowed by ICE at the time of apprehension to make arrangements for their children, and are not offered the phone calls necessary to ensure families are informed of their whereabouts. These two factors alone create major obstacles which complicate the ability for families to remain together. After an outcry from immigrants' rights proponents in reaction to large scale workplace raids conducted by ICE in 2000, which left many children without a caregiver, guidelines were enacted to decrease the time caregivers are detained by ICE. But these guidelines only apply to raids which arrest over 25 people and are not relevant to the vast majority of immigration arrests that take place.

Parents who have been taken to detention and have not been able to communicate with their families often have no idea where their children are. Researchers from the Women's Refugee Commission who frequently visit detention centers to assess if the treatment of detainees is adequate have noted that detainees with no children will speak of the often horrid conditions within detention while parents ask only for help in communicating with or locating their children. Immigrants who are held in detention are kept there for an indefinite period of time, a factor which further complicates their ability to make arrangements for care of one's children. Children often end up in the child welfare system not because their parents choose to put them there, but due to a lack of ability to coordinate, or even inform others that a caregiver has been detained.

### **The Role of the Child Welfare System**

The child welfare system (also called child protective services) was originally created with the ideal of protecting the most vulnerable members of society – our children. When parents are found to be at neglect, or children are abused, the state will intervene to insure their safety. The majority of children in foster care are there for reasons of neglect, though the term “neglect” can encompass a variety of different definitions. Once a child has been removed from their home a caseworker is

assigned to work with the family and create a case plan for the parent/s to follow in order to reunite with their children. A caseworker may work towards family reunification or petition the state for the permanent termination of parental rights. The claim of the best interest of the child is at the forefront of the work that child protective services provide. However, the idea of “best interest” is far from unbiased and is subject to many varying interpretations both within state laws and among individual case workers.

Child Protective Services aims, in theory, to keep families together when parents are fit. In practice, however, when a parent is undocumented they are at a great disadvantage within this system regardless of parental ability. ICE is often what first separates parent and child, and if a child is placed in CPS a second separation takes place. If caseworkers are willing to navigate the system of immigration and help undocumented parents who are in detention to work towards reuniting with their children, the likelihood of family reunification is much higher. When caseworkers decide it is too difficult to stay connected with a parent in detention and determine a parent's forced absence means they have “abandoned or are neglectful of” their family, the termination of parental rights is likely to occur. Due to a lack of knowledge regarding how immigration enforcement works, many caseworkers erroneously think all immigrants are deported as a result of criminal charges rather than on the basis of being undocumented alone. Personal biases against undocumented immigrants and lack of understanding regarding the immigration system by CPS are factors in practices that are separating children from their parents forever.

There are currently no laws, policies, or guides in any states for child protective services to refer to when working specifically with children of parents in detention or facing deportation. Parents who have been deported or detained are subject to laws regardless of their actual ability to willingly comply. Child protective services does not work with the federal immigration system and remains generally unaware of the restraints and regulations placed upon parents while in detention. The two systems not only lack communication, but often work against one another in their fulfillment of goals.

In a “Shattered Families” interview, researchers spoke with a father named Ricardo in detention at Pinal County jail in Arizona. Ricardo has two babies who are one and two years old. He has not seen the youngest since she was 2 weeks old. His children were taken away from him by Child Protective Services after a babysitter left them alone for an hour, and he was charged with child endangerment. The Secure Communities database found him to be living in the country undocumented and took him to a detention center where he has been detained for more than 8 months. His wife is a citizen but is prone to seizures and CPS will not let the babies remain with her unless the father is there to assist the family.

His children are living in foster care with strangers in Napa, California. Even if his family, or caseworker, were able to come visit him they would only be allowed to communicate through a video in separate rooms. As he is in detention, he has been unable to participate in dependency court proceedings and was only notified of a hearing regarding his parental rights after it took place. He was recently informed that an attorney for Child Protective Services in Napa is trying to have his children adopted by the foster parents with whom they are living now. "I love them like nothing else," he told researchers (Wessler, *Shattered Families* 36). Stuck inside a detention center, the future of his family together disappears with the passing of each day.

The situation that Ricardo faces is one that most citizens in the United States will never have to think about. Had Ricardo been a parent and citizen, his parental rights would not have been terminated for such a small incident. International agreements such as the Convention on the Rights of the Child recognize the inherent rights a child has to be with their family regardless of immigration status, yet the United States remains one of only two countries in the United Nations that have yet to ratify the agreement (with Somalia being the second). While such agreements internationally are used more as guidelines than policy, the reluctance of the U.S. to participate even from an ideological stance shows just how far away we are as a nation from including human rights into our Child Welfare System.

To better understand the obstacles that immigrants face towards reunification within child protective services, it's helpful to examine the basic framework of how this system works. When a child is put into foster care (as can happen when an undocumented parent is put into detention, or in cases of neglect or abuse) CPS files a petition to the juvenile dependency court to stop the child from returning home. A case plan is created by a caseworker that contains specific guidelines for the parent to abide by in order to regain custody with examples being to find new housing, visitation with the child, parenting classes etc. Federal law requires that within 12 months a permanency plan will be created and a hearing had to determine if the goal of the case is family reunification, adoption, or placement with an alternative caregiver. If the parent was found to have not complied with their case plan, or has not been with their child for 15 out of the last 22 months, the caseworker is legally obliged to petition the termination of parental rights. A hearing is then given and if the court finds a parent to be "unfit", the best interests of the child are considered and parental rights are terminated.

In 1997 the Adoption and Safe Families Act was passed, which changed the guidelines under which reunification procedures had previously operated in important ways. The ASFA mandates that if a parent is not in custody of their children for 15 out of the last 22 months, the termination of parental rights must be petitioned by child protective services to the courts. In California, if the child is under

three and has been in foster care for six months a termination of parental rights must be petitioned. In all cases CPS may decide to petition for the termination of parental rights earlier if they feel it is in the “best interest” of the child. As mentioned earlier, much of the work that CPS does is dependent upon the discretion of an individual caseworker.

The ASFA was created with the aim of reducing the time that a child spends in foster care to increase the likelihood of more numerous and speedy adoptions. While the focus of Child Protective Services had previously been centered upon family preservation, this law shifted their focus to be equally centered upon efforts related towards adoption. However, when parental rights are terminated adoption is not guaranteed and many children become, in essence, legal orphans. Children who are legally orphaned or in temporary foster care have been found in general to be at higher risk for physical and sexual abuse than children who remain within their homes. The ASFA decrees that states which receive federal funding for foster care or adoption services abide by its requirements.

One possible exception to the 22 month rule is if the child is put into a legal guardianship or custodial situation with a relative under state supervision, in which case an omission can be made. While such exceptions may seem at first glance to provide some relief of extra time for a parent being held in indefinite detention, it quickly becomes clear upon examining child welfare practices that the undocumented immigrant community is generally unable to benefit from such exemptions. Child welfare case workers routinely refuse to place a U.S. citizen child with an undocumented relative rather than in a foster care situation, stating that the undocumented status of the family member leads them to be at risk for deportation at any time.

There are many major obstacles presented to a detained or deported parent within the way the child welfare system works. For one, lack of protective policies has created a situation where there is too much room for biased interpretation among caseworkers regarding undocumented families. While some caseworkers may work towards reunification, others may choose not to based upon conscious or unconscious personal ideologies that children are always better off in the United States. Though parents have been separated from their children through no desire of their own, if that forced separation occurs for more than 22 months the termination of rights is much more likely to happen due to the ASFA. The ASFA presents a major threat towards family dissolution to a parent in indefinite detention. Case plans become virtually impossible for parents in detention to follow, as ICE does not allow for visitation, classes, etc. Another barrier parents face is lack of judicial system oversight to ensure that correct law practices are being followed through in cases involving undocumented immigrants.

By law a parent has to be found unfit before the court system can permanently separate a child from their family. In practice, however, attorneys, judges, and cps administration as well as caseworkers are ignoring this important procedure when determining custodial decisions involving an immigrant parent in detention or deportation. The courts are routinely making decisions that are not based upon parental ability. Often, a parent's undocumented status alone is being used as cause enough for a parent to be considered unfit. An attorney in Michigan spoke of how Child Protective Services administration claimed an undocumented father was "abusive or neglectful of his child because he is an illegal alien who is in danger of being arrested every time he walks out the door" providing a clear example of this bias (Wessler, Shattered Families 53).

The state is responsible for determining if a parent is "fit", and there are basic guidelines that define parental unfitness. These definitions include abandonment, failure to complete a rehabilitation or reunification case plan, or the inability to remedy a persistent problem that created their separation from the child in the first place. Any one of these conditions would be sufficient evidence to terminate parental rights. Upon further analysis it becomes clear how easily these guidelines could be used against an otherwise fit undocumented parent. The charge of abandonment can be placed upon parents in detention or who have been deported, without the courts recognition that it was through no free will of their own to leave their children. When a parent is being held by ICE, they are not afforded the opportunities necessary to complete reunification or rehabilitation case plans. And addressing the third point, a parent who was taken away from their child because of their undocumented status has little opportunity to claim legality through an immigration system that separated them in the first place.

The immigrant parent in detention faces enormous obstacles towards reunification with their children. As we have seen, when an undocumented parent is arrested by ICE they are usually held in detention for an indefinite period of time and on average 370 miles from their home. The lack of communication or understanding of policies between CPS and federal immigration law has created a situation where parents are not able to complete case plans and most often do not even know that they exist. Many caseworkers are unsure of how to locate parents when they are in detention, and even if they are able to, are not always ensured the ability to communicate with them. When parents are notified of an upcoming hearing, it is extremely rare that ICE will allow them to leave to attend. Furthermore, case plans often contain requirements such as visitation with the child, classes, counseling etc. which parents are denied access to when they are in detention. Detention itself has become a precursor to the termination of parental rights.



Another startling finding is that child protective service caseworkers are treating parents who have been deported as though they do not exist when they are formulating future plans for the child. It is extremely rare that a caseworker will continue efforts toward reunification if a parent has been deported before being able to reunite with their child. Most often parental rights will be terminated and the child will be placed for adoption. Parents in detention are usually given very little notice of when deportation will take place, further complicating their ability to make arrangements for children to go with them even when they are able. It is all too often just not possible to coordinate such details from within detention. Once deported, the process towards reunification becomes even more difficult. Many parents have child custody determination court cases but are not able to attend them as they are not legally allowed to re-enter the country. Parents entering illegally to attend a court hearing risk the possibility of violence and even death that crossing the U.S. border brings. If a parent does enter illegally to attend such hearings and are charged, they will face years in prison. The only successful cases in which deported parents have been able to reunite with their children are when an international consulate becomes involved to advocate upon behalf of the parent. Even so, a parent who has been deported has to face the difficulty of not only proving their own parental ability to the courts from afar, but also proving that their lifestyle abroad is acceptable enough for American standards.

### **Families Torn Apart**

Perhaps the most widely publicized case to have gone through the U.S. courts is that of Encarnacion Bail Romero and her struggles to reunite with her son. I myself first became aware that these tragic separations were taking place when I learned of her story. A native of Guatemala, Romero lived in Missouri with her infant before being caught up in a workplace raid that arrested over 137 people on suspected immigration status in May of 2007. Her son Carlos was only 6 months old at the time. She was kept in jail and eventually charged with using a fake social security number to gain employment. Though the law that put her in jail was eventually revoked after being found unconstitutional, she was kept in jail for 2 years.

While she was in prison, Romero was under the impression that her baby was being cared for by her extended family. Over time the responsibility of caring for an infant became too much for them and help was sought from a local couple in a nearby church who offered babysitting services. Without consulting Romero, the babysitters offered Carlos up for adoption to a couple whom they knew were hoping to expand their family. Only 5 months after Romero's arrest, Seth and Melinda Moser were trying to adopt her son whom they renamed "Jaimson".

In October of 2007 Romero received a court date notice just two days before the hearing, in English which she did not fluently speak or read. As she was not allowed to attend, Romero wrote a declaration on a piece of notebook paper stating that she did not consent to adoption and if her family was unable to care for him she wished for her son to be placed in foster care until she got out of jail. An attorney was hired by the Mosers to act on her defense, presenting an obvious conflict of interest. The judge ignored Romero's plea and claimed that she had “abandoned” her son, stating that “[Her] lifestyle, that of smuggling herself into a country illegally and committing crimes in this country, is not a lifestyle that can provide any stability for a child” (Tucker 3). The judge effectively used her immigration status as reason enough to terminate parental rights, but failed to take into account the criminal and drug abuse history of Seth Moser, the to-be adoptive father. Encarnacion Bail Romero's parental rights were terminated.

When Romero was released from jail she found the help of the Guatemalan Embassy as well as pro bono lawyers to appeal the case, and was granted temporary permission to remain in the country for her court hearings. Her lawsuit went to the Missouri Supreme Court, though large stretches of time passed before a hearing took place. The Supreme Court found that her parental rights had been illegally terminated and called the original ruling “a travesty of justice” (Katrandjian). While they proclaimed the terms of adoption was based upon faulty evidence and illegal practices, they ordered through a slim majority for the trial to be held again in the lower courts for both sides to present their case. The boy continued to live with the Mosers, and though Romero was living nearby the couple denied her the right to visit her son. Carlos, or 'Jaimson”, is now 5 years old and speaks only English.

On July 19th, 2012 a lower courts judge disregarded the Supreme Court hearing and stated that Romero's consent for adoption was not required because she had “abandoned and neglected the minor child” (Findings of Facts 134) when she was arrested. The judge said it was in the child's “best interest” to be with the Mosers and gave them authority to fully adopt the child. The court cited Romero's lack of ability to speak English as a factor that would make her son potentially never bond with her and stated, “of even more concern is if the minor child is replaced with her, he will return with her to Guatemala” (Findings of Facts 110). The judge harshly criticized Romero as a mother, claiming that she did not love her son and had not made sufficient efforts to contact him while she was in jail. Records from that period, however, frequently detail statements such as this one: “I cry day and night because my family says there must be a way for my son to go with me. I feel tortured because I don't have my son” (Tucker Jail Transcript). As of November 2012, Romero is appealing the decision once again to the Supreme Court and hopes to one day be reunited with her son.

## **Ethnocentric Biases in U.S. Courts**

The case of Encarnacion Bail Romero sets a heavy precedent for future trials of undocumented parents trying to keep their families together. Courts are too often siding towards terminating parental rights and leaving children in foster care rather than placing them with their competent parents who are being deported. Ethnocentrism, the belief in an inherent superiority of one's own group or culture, is influencing court decisions regarding who deserves parental rights. The concept of "best interest" is being used in the courts to represent personal biases more than parental ability. The lawyer for the Mosers frequently stated that the couple could provide a middle class American upbringing for the child, in comparison to his birth mother who would raise her son working class in Guatemala. An educational social worker that assisted Romero during her time in jail frequently pushed her to accept the adoption, telling her in private, "You are only thinking about yourself. It is true you are the mother, you did give birth to him. But that is not true love when you're not thinking about the best for your child. Because the future of your child in Guatemala is not good. He's not going to have an education. He will just be a factory worker" (Tucker Jail Transcript). Her sentiments seem to echo the resounding message given to Romero, that American middle class lifestyle was more valuable to Carlos than her role as a mother and love for her son.

Even if children in some cases could be afforded greater economic "opportunities" growing up in the U.S. than in another country such ideologies should not be factors in decisions to terminate parental rights. Children ought not be taken away from poor parents and given to wealthy ones only because they can have more material opportunities, and such material opportunities do not imply that one is a better parent. Poverty, differences in cultural backgrounds, and undocumented immigration status should hold no weight within a case, yet are becoming commonly used against parents in court. Caseworkers and attorneys seem to be weighing the perceived benefits of growing up in the U.S. with the benefits of remaining with one's parents, a juxtaposition and ill-used interpretation of what "best interest" means that simply should not take place. Judges are too often deciding to terminate parental rights even when parents are fit and able based upon stereotypes of conditions in other countries being considered "sub-par" to our own American lifestyle.

The case of Felipe Montes, the man whose story introduced us to this paper, provides a clear example of how biases are being brought to the courts. Though he shows exceptional ability as a father and after being deported is stable with a full time job in Mexico, he lives with his extended family in a large home that has no running water. In assessing his case, judges cited the lack of running water as reason enough to postpone his immediate reunification with his children and prolong his case, thus

endangering the prospects for future reunion. Caseworkers in Mexico point out that he has water, a refrigerator, a satellite television and other modern appliances as well as a school nearby his home and that in parts of Mexico water systems often function differently than in the U.S. In recent hearings, the children's court appointed attorney advocates changed their argument to include allegations that Monte's undocumented status was paramount to a life of criminality, thus making him an unfit father. "So your testimony is that you are going to follow the rule of law?" the attorney argued, "But you didn't follow the rules when you decided to follow the country illegally. The truth is that you pick and choose which laws you will follow" (Wessler Final Days).

On November 27th of 2012, two years after being deported, Montes was granted a partial victory—a trial reunification period with his children. He is to stay with them in the U.S. from December 2012 to February of 2013 and if all goes well the courts will allow the family to return together to Mexico. Montes had been granted a temporary visa to be able come back to the United States to fight for his children's custody- an extremely rare move by ICE which allowed him the possibility for reunification. Had it not been for the help Montes received from the Mexican Consulate and public international pressure put upon the case (a Latino organization Presente.org garnered more than 20,000 signatures against terminating his rights) it is certain his family would have been forever torn apart. Nonetheless, Montes had to miss over 2 years of his children's lives, including the birth of his son when he was taken away. "I did not know what would happen today," he commented after the hearings. "I am relieved. For the last two years, everything I do is for my kids" (Wessler, Deported Father). For over a year the Allegheny County Department of Social Services pushed for the termination of his parental rights, but in the recent case they changed opinions and changed their plan towards reunification. This fact was the major point of interest for the Judge, who said he trusts the assessments of social workers and relies on their allegations of neglect to make decisions.

While for now the future of Monte's family looks bright, thousands of other children remain in foster care after being separated from their undocumented parents. Without national protective legislation enacted, thousands more will be taken away from their parents and struggle for reunification in the next few years alone. Though immigration and child welfare policy claims to work against unnecessary separations, as we have seen in practice too many families are being torn apart for lack of current protective measures. The rapid increase of deportations coupled with the child welfare system's general lack of understanding regarding immigration practices has created a situation where fit undocumented parents are being denied their right to have custody of their children. Protective policies that are in place are simply outdated and unable to handle the large numbers of parents that are being

apprehended by immigration enforcement.

### **Towards a More Humane System**

All too often, human rights abuses faced within immigrant communities remain generally unknown to the public at large. While news organizations focus mostly on the immigration debate, who should be allowed within the country and who shouldn't, the human effects of escalating immigration enforcement remains of relatively little focus. With greater public awareness, pressure upon those administrating policies could be increased and be great enough to enact protective legislation that could help insure children are not unnecessarily kept from their parents.

One such bill that would help close the certain gaps in policies is the Help Separated Families Act (HR6128) introduced in July of 2012 by Representative Lucille Roybal-Allard of California. Roybal-Allard calls the situation families face today as “heartbreaking... that in the U.S., immigration status in itself has become grounds to permanently separate families. It is absolutely, unquestionably inhumane and unacceptable, particularly for a country that values family and fairness so highly” (O’Neill). The HELP bill would enact national policy to ensure that parents are able to make phone calls to arrange for care of children at the time of being taken away by ICE, and would prohibit the child welfare system from acting to terminate parental rights when the main reason a child is in foster care is due to immigration proceedings, unless other conditions were present. It would also enable foreign identification to be used in purposes of background checks, thus enabling children whose parents have been detained to have greater ability to remain with other family members who may be undocumented. Though the HELP bill is supported by hundreds of religious, women's, civic, immigrants’ rights, Asian American and Latino groups nationwide, government websites list the bill of having only a 2% chance of being enacted.

In October of 2012, Governor Jerry Brown enacted AB2015 (Calls for Kids) and SB1064 (Reuniting Immigrant Families), the first policies put in place in the country that work towards protecting the rights of undocumented parents. Calls for Kids requires that parents are given the opportunity to make phone calls to coordinate child care when they are taken by law enforcement, specifically requiring officers to ask detainees if they are a parent. Reuniting Immigrant Families gives juvenile court judges the ability to allow extra time for parents who are detained or deported to work towards reunification with their children. It also allows a foreign passport to be used during background checks so that children have greater chance of being placed with an undocumented family member than put in foster care when their parents are detained, and encourages child welfare workers to become familiar with international consulates when determining custody cases.

While California has begun steps to enact policy that protects certain rights for families, much more is needed on a national level to effectively halt these separations. Ultimately, my intention is to provide the reader with an understanding of how families are being torn apart but that solutions to these problems are within our grasp if we so choose. The termination of parental rights need not be a necessary bi-product of any immigration system, regardless of how restrictive or stringent it may be. The basic human right for a fit parent to be with their child should be paramount to any person's immigration status. Though the immigration debate continues in heated conversations and disputes, regardless of what direction our country's policies move towards, parent and child should not be unnecessarily separated. One does not cease to be less human upon immigrating to another land, and children need the love of their undocumented parents no less. As a country we have much to gain from incorporating the concept of equal human rights into our political practices, regardless of nationality, class, or immigration status.

## Works Cited

- Butera, Emily. *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*. Rep. Women's Refugee Commission, Dec. 2010. Web. Sept. 2012.
- Editorial Board. "Thanksgiving a Good Time to Examine Immigration Policies." *St. Louise Today*. N.p., 21 Nov. 2012. Web. Dec. 2012.
- Findings of Facts, Conclusions of Law, and Judgement and Order Terminating Parental Rights*. Circuit Clerk, Green County. 18 July 2012. Web. Nov. 2012.  
<<http://www.intheinterestofjamison.com/judgment-7-18-12.pdf>>.
- Golash-Boza, Tanya Maria. *Immigration Nation: Raids, Detentions, and Deportations in Post-9/11 America*. Boulder, CO: Paradigm, 2011. Print.
- Hagan, Jacqueline, Karl Eschbach, and Nestor Rodriguez. "U.S. Deportation Policy, Family Separation, and Circular Migration." *International Migration Review* 42.1 (2008): 64-88. Web. Oct. 2012.
- Hall, C. Elizabeth. "Where Are My Children ... and My Rights? Parental Rights Termination as a Consequence of Deportation." *Duke Law Journal* (2011): n. pag. Web. Oct. 2012.
- Hawthorne, Monique Lee. "Family Unity in Immigration Law: Broadening the Scope of 'family'" *Lewis & Clark Law Review* (2007): n. pag. Web. Sept. 2012.
- "H.R. 6128: Help Separated Families Act of 2012." *GovTrack*. N.p., Dec. 2012. Web. Dec. 2012.
- Katrandjian, Olivia, and Angela M. Hill. "Illegal Immigrant Fights for Custody of Young Son." ABC News, 28 Feb. 2012. Web. Nov. 2012.
- Khan, Mahwish. "President Obama Condemns Anti-Immigrant Law, HB 56, in Alabama." *America's Voice*. America's Voice, 14 Nov. 2011. Web. Nov. 2012.
- Lincroft, Yali. "California Passes Groundbreaking Legislation to Prevent "Shattered Families"" *Immigration Impact*. Immigration Impact, 15 Oct. 2012. Web. Nov. 2012.
- Mendelson, Margot, Shayna Strom, and Michael Wishnie. *Collateral Damage: An Examination of ICE's Fugitive Operations Program*. Rep. Migration Policy Institute, Feb. 2009. Web. Nov. 2012.
- Nessel, Lori A. "Families at Risk: How Errant Enforcement and Restrictionist Integration Policies Threaten the Immigrant Family in the European Union and the United States." *Hofstra Law Review* (2008): n. pag. Web. Sept. 2012.

- O'Neill, Helen. "U.S.-Born Kids Of Deported Parents Struggle As Family Life Is 'Destroyed'" *The Huffington Post*. TheHuffingtonPost.com, 25 Aug. 2012. Web. Oct. 2012.
- Rabin, Nina. *Disappearing Parents: A Report on Immigration Enforcement and the Child Welfare System*. Rep. The University of Arizona, May 2011. Web. Oct. 2012.
- "Secure Communities." *Immigration and Customs Enforcement*. The U.S. Department of Homeland Security, n.d. Web. Dec. 2012.
- Tucker, John H. "In a Tiny Town Just outside Joplin, a Landmark Adoption Case Tests the Limits of Inalienable Human Rights." *RiverFront Times*. N.p., 20 Oct. 2011. Web. 26 Nov. 2012.
- Tucker, John H. "Jail Transcript Between Encarnacion Bail and Laura Davenport." *RiverFront Times*. N.p., 20 Oct. 2011. Web. Nov. 2012.
- U.S. Department of Homeland Security. Immigration and Customs Inforcement. *Fugitive Operations Program*. N.p., n.d. Web. Nov. 2012.
- Wessler, Seth Freed. "A Deported Dad's Father's Day Letter to His Sons." *ColorLines*. Applied Research Center, 15 June 2012. Web. Sept. 2012.
- Wessler, Seth Freed. "A Deported Father Wins a Long, Painful Fight to Keep His Kids - COLORLINES." *ColorLines*. Applied Research Center, 28 Nov. 2012. Web. 28 Nov. 2012.
- Wessler, Seth Freed. "Felipe Montes Enters Final Day Of Testimony In Fight For His Kids - COLORLINES." *ColorLines*. Applied Research Center, 20 Nov. 2012. Web. 21 Nov. 2012.
- Wessler, Seth Freed. "How the "Best Interest" Bias of Family Court Threatens Immigrant Parents." *Colorlines*. Applied Research Center, 8 Aug. 2012. Web. Sept. 2012.
- Wessler, Seth Freed. "Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years." *ColorLines*. Applied Research Center, 17 Dec. 2012. Web. 17 Dec. 2012.
- Wessler, Seth Freed. "Obama: Kids Stuck in Foster Care Due to Deportation a 'Real Problem'." *ColorLines*. Applied Research Center, 14 Nov. 2011. Web. Nov. 2012.
- Wessler, Seth Freed. *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*. Rep. Applied Research Center, Nov. 2011. Web. Sept. 2012.