



# FOSTER CARE WORK GROUP

## ▶▶ CHILD WELFARE AND IMMIGRATION: IMPLICATIONS FOR FUNDERS

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In the past year, policies impacting immigrant children have changed in profound and alarming ways. The precise impact on the child welfare system – a system established for children experiencing abuse or neglect, *not* for children whose families are being ostracized and attacked – is still unclear. While the route of children entering the child welfare system as a result of having a parent detained or deported is fairly narrow, a far broader and more indirect route is being paved as immigrant families and children are under ever-increasing stress.

Due to recent policies detailed below, immigrant families are being destabilized by the growing uncertainty about their fate and the fate of loved ones. Fear and anxiety about deportation has led to a decrease in families accessing supportive services to which they are entitled. This is a destructive storm that is brewing and one that will bear down for many years and possibly even generations to come. Understanding these forces, and acting to

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Cecilia, born in the United States, just turned nine years old. She has a younger brother, Mateo, who is also a United States citizen. Cecilia and Mateo's mother and father are both undocumented and fled to the United States to escape extreme violence in their home country of Honduras. Recently, Cecilia and Mateo's father was arrested in a workplace raid by ICE and was deported. Terrified of being apprehended by ICE, their mother refuses to access the public services she needs (and to which she's entitled), while working three different jobs to support her children. Cecilia's teachers notice the children coming to school in dirty clothes and call CPS. CPS is now alleging neglect against the mother and has removed Cecilia and Mateo from their home.

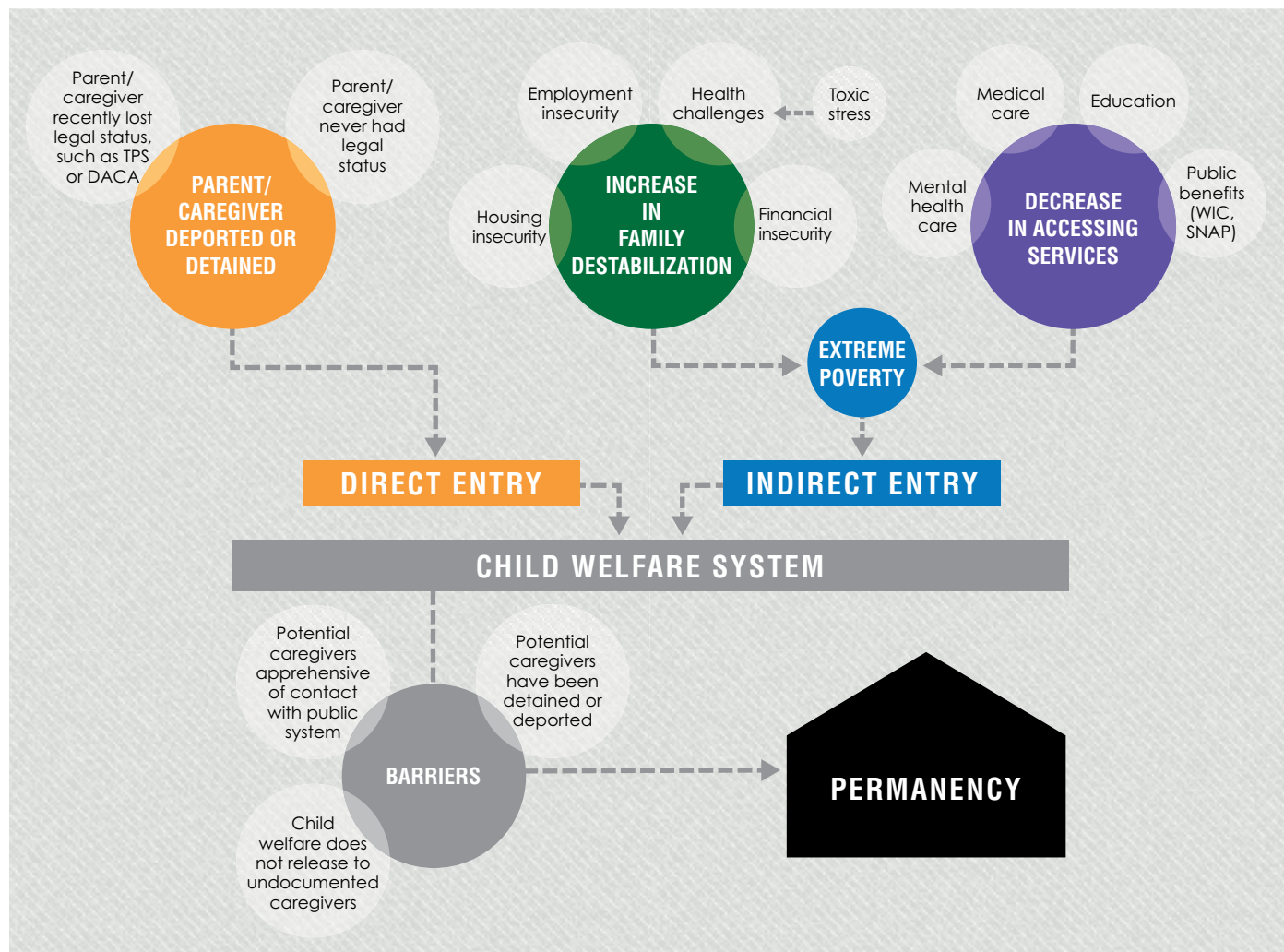


prevent them, is our collective responsibility if we are to ensure children are raised by their families whenever possible.

This issue brief, prepared by the National Center for Youth Law for the Foster Care Work Group of the Youth Transition Funders Group, summarizes some of the policy shifts that have occurred over the past two years and the impact these policies have on immigrant families. It concludes with concrete actions that philanthropy can take now to support children and families who may intersect with the immigration and child welfare systems.

As illustrated in Figure A below, some immigrant children may intersect with the child welfare system directly due to the detention or deportation of a primary caregiver. There are also an increasing number of factors pushing families into extreme poverty – factors that may pave a path to the child welfare system. While the exact number of undocumented children in foster care is unknown, in 2011 an estimated 5,100 U.S. citizen children in foster care had a detained or deported parent.<sup>1</sup> Once placed into the foster care system, immigrant children face unique barriers in achieving permanency.

FIGURE A; IMMIGRANT FAMILIES & CHILD WELFARE SYSTEMS



## Who are Immigrant Children?

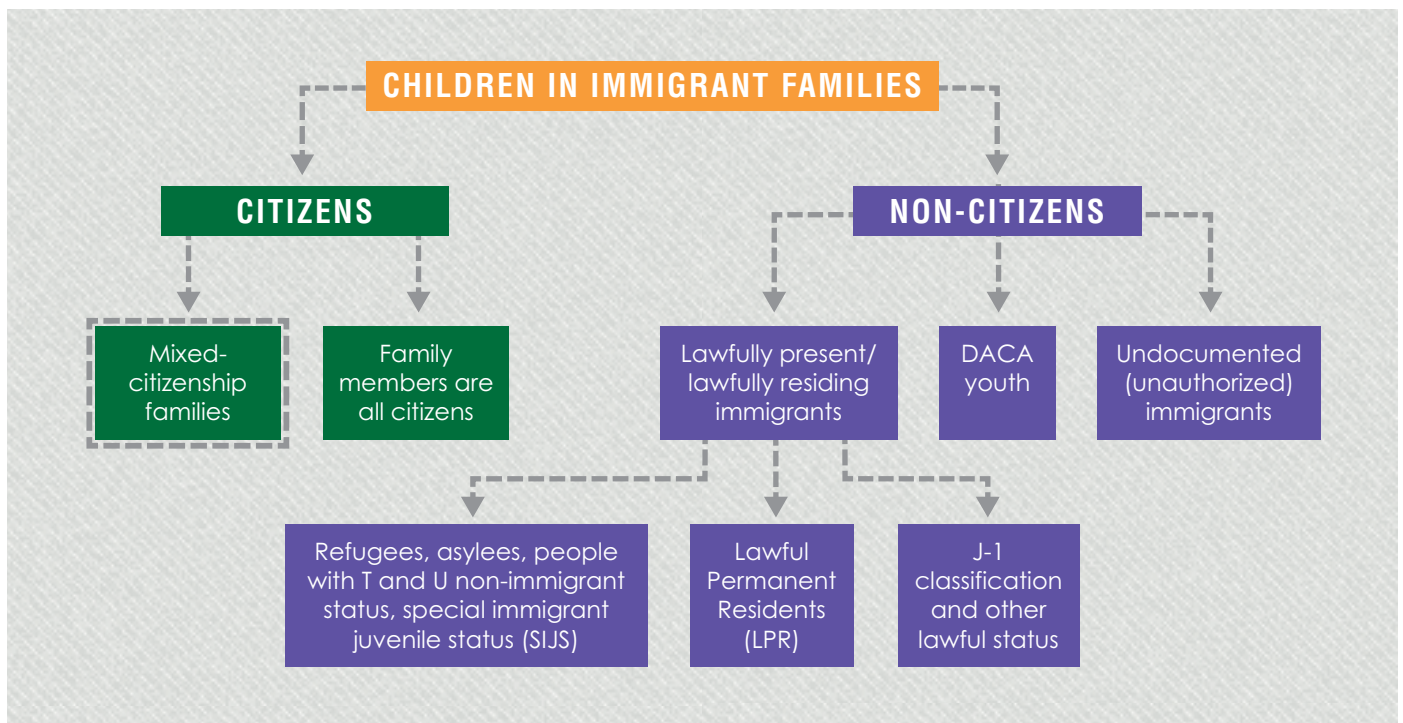
Children and youth living in immigrant families are the fastest growing group of American children.<sup>2</sup> One in four children in the United States lives in immigrant families<sup>3</sup> and 4.5 million U.S. citizen children under 18 live with at least one undocumented parent.<sup>4</sup> “Immigrant children” living in the United States is a broad and overlapping category that describes documentation status (documented or undocumented), as well as the way in which they came to this country (accompanied or unaccompanied).

▶ **“Undocumented” children** are born outside of the United States and reside in the United States without legal status. This group may include children who entered the country without status, as well as children who entered the country with status and stayed after their visa or status expired.

- ▶ **Documented children** have legal status. They may be U.S. citizens or non-citizen children with special legal status, including lawful permanent residence (green card), temporary visa, refugee, or asylum status.
- ▶ **Unaccompanied children**<sup>5</sup> are children under 18 who arrive at the border without a parent or guardian or who have no parent or legal guardian in the U.S. available to provide care and physical custody. Often these children are fleeing violence in their home country and are eligible for legal relief in the U.S.
- ▶ **Accompanied children** are children that enter the U.S. with a parent or legal guardian.

Figure B depicts the many possible family permutations for both citizen and non-citizen children.

FIGURE B: CHILDREN IN IMMIGRANT FAMILIES



Data from Ricky Choi, MD, MPH, and Julie M. Linton, MD.



## How Have Immigration Policies Shifted Under the Trump Administration?

One of President Trump's most prominent campaign promises was to significantly increase border security and drastically increase the intensity and scope of immigration enforcement throughout the United States. Upon taking office in January 2017, the Administration immediately moved forward with this anti-immigrant agenda by enhancing immigration enforcement, increasing family separation at the border, undermining protections for unaccompanied immigrant children, and removing protections from previously protected individuals.

Each of these actions, described more fully below, creates its own set of challenges for immigrant families. When taken together, these actions exact a profound toll on families and communities and by extension, child welfare systems designed to protect children and keep families together.

### ENHANCED IMMIGRATION ENFORCEMENT

Under new immigration policies, effectively every undocumented immigrant in the United States is a deportation priority. The Trump Administration has methodically targeted or eliminated policies and protections issued over the course of multiple previous Administrations. An Executive Order issued just five days after President Trump's inauguration rescinded the deportation priorities established by the Obama Administration, incentivized increased collaboration between ICE and local police departments, and called for a tripling in the number of ICE agents.<sup>6</sup> Subsequent guidance released by the Secretary of Homeland Security greatly narrowed the scope of prosecutorial discretion in deportations.<sup>7</sup> In 2017, arrests of non-criminals more than tripled<sup>8</sup> and there was a marked increase in the number of deportations in the interior of the United States.<sup>9</sup>

Additionally, the administration has:

- ▶ **Expanded locations for carrying out ICE enforcement actions** to include courthouses, only restricting enforcement actions in non-criminal courts.<sup>10</sup> ICE agents have also increasingly targeted locations that were considered to be "sensitive locations" under guidance issued by the Obama Administration, such as schools, hospitals, and places of worship. In 2017, a multi-state review documented reports from around the country of ICE agents apprehending parents in hospitals and outside their children's school and daycare centers.<sup>11</sup>
- ▶ **Weakened protections for parents during immigration enforcement actions** by issuing a new Directive, posted in April 2018, that eliminates guidance requiring immigration officials to consider an individual's role as a parent or caretaker of a child when deciding whether to exercise prosecutorial discretion. It also eliminates guidance for ICE to facilitate a parent's temporary return to the U.S. to participate in child welfare proceedings and eliminates training instructions and compliance mechanisms related to parental rights and interests.<sup>12</sup> These changes foreshadow increased family separation, a key goal of Trump's larger anti-immigrant agenda.
- ▶ **Reinforced anti-immigration sentiments** through a variety of policy directives that are facing ongoing litigation from states and legal organizations. These include withholding public safety grants from sanctuary cities that don't cooperate in immigration enforcement,<sup>13</sup> restricting travel from certain countries via "travel bans,"<sup>14</sup> ending the DACA program,<sup>15</sup> and preventing minors from accessing reproductive health services while in custody.<sup>16</sup>

### FAMILY SEPARATION AT THE BORDER

The Administration has escalated the abhorrent practice of separating families at the border to deter future asylum-seeking families.<sup>17</sup> Recent data released by the Department of Homeland Security reveals that nearly 2,000 children have been taken from their families between April 19, 2018 and May 31, 2018.<sup>18</sup> On May 7, 2018, Attorney General Sessions announced that the Department of Homeland Security will refer “100 percent of illegal southwest border crossings” to the Department of Justice, and all referrals will be prosecuted for the misdemeanor of illegal entry.<sup>19</sup> Practically, this means that even more families will be unnecessarily torn apart as parents are transferred to ICE custody and children are treated as unaccompanied minors and transferred into ORR custody.

Additionally, while there is no agency-wide policy defining what relationships constitute a family unit, DHS has relied on language defining unaccompanied children to create a restrictive definition.<sup>20</sup> In practice, this means children and adult caregivers are frequently separated during border processing without documentation or justification. Once separation occurs, individuals have little ability to locate, contact, or reunite with their loved ones. This also means that parents or legal guardians could potentially lose their parental rights as they remain in immigration custody or are removed from the country.<sup>21</sup>

### UNDERMINING PROTECTIONS FOR UNACCOMPANIED CHILDREN

The Trump Administration has propagated a number of policies that target unaccompanied children and their potential sponsors. Advocates suspect that these multiple and mounting obstacles to children’s immigration cases are not accidental – delaying cases means that children are more likely to become desperate and agree to voluntarily depart the country without fighting for the immigration relief to which they may be legally



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Fleeing death threats in Guatemala, Javier and his four-year-old daughter Mariela presented at the United States border as asylum seekers and were placed in a family detention facility. A few days later, an ICE official told Javier that he had to be separated from his daughter. Despite resisting, Javier and Mariela were separated – Javier stayed in ICE custody and Mariela was sent to ORR custody. While Javier was given a phone number for ORR to call Mariela, he was not allowed to call her from detention. Soon thereafter, Javier was deported back to Guatemala. Mariela was not given the option of joining her father when he was deported. Mariela did not have any other family or friends in the United States that could serve as her sponsor, so ORR ultimately placed her into long-term federal foster care.

entitled.<sup>22</sup> Challenges that children in federal immigration custody face include:

- ▶ **Prolonged Detention** – Attorneys report that “[r]eleases seem to be at a near standstill” and “[t]he Administration is detaining immigrant children indefinitely”<sup>23</sup> and without due process protections. The indefinite detention that some children experience is tied directly to the failure to release to qualified sponsors, described below.
- ▶ **Failure to release to qualified sponsors** – Although the government is required to release unaccompanied children to qualified sponsors, pursuant to the Flores Settlement Agreement (see text box), the government is increasingly creating unreasonable hurdles for potential sponsors to overcome before children are released to their care.
- ▶ **Targeting sponsors for immigration enforcement** – In the past, sponsors that stepped forward to care for unaccompanied minors were not targeted for immigration enforcement. The Trump Administration, however, has begun to target sponsors for enforcement action. Further, the government is expanding the ability to share information amongst agencies so that information about a sponsor’s immigration status can be turned over to ICE.<sup>24</sup> These actions are likely to inhibit potential sponsors from stepping forward, resulting in an increase in unaccompanied children who languish indefinitely in federal immigration custody.
- ▶ **Re-arrest of youth previously released from ORR custody** – On the basis of specious evidence regarding gang involvement, ICE has re-arrested numerous children that had been released to their sponsors. As a result of successful litigation challenging this practice, children that are re-arrested must now be provided a hearing in which they can contest their re-detention.<sup>25</sup>

#### THE FLORES SETTLEMENT

*Flores* is a national, class action lawsuit filed in 1985 on behalf of children in federal immigration custody. The Flores Settlement Agreement, entered into in 1997, governs the detention, release, and treatment of children in federal immigration custody. The case remains open with active federal oversight of the parties’ agreement. In the past year, as destructive new immigration policies and practices have been implemented, the harms that *Flores* class members experience daily have intensified dramatically. In response to these harms, a motion to enforce the Settlement was filed on April 16, 2018.

Now, after 21 years of being in effect, the Flores Settlement Agreement is under threat as the Trump administration has initiated the process of attempting to replace the agreement with federal regulations. If the Administration is successful, basic legal protections for these vulnerable children would be eliminated and family separation would increase.

- ▶ **Inappropriate transfer of unaccompanied minors to more restrictive placements** – Children are routinely being moved from lower level placements (similar to group homes) to higher level placement (“staff secure” or “secure”) placements without due process.
- ▶ **Lack of access to counsel** – Unaccompanied children do not have a right to a government funded attorney. Data from the Executive Office of Immigration Review shows that 78% of minors in deportation cases do not have a

lawyer.<sup>26</sup> Although the lack of counsel has always been a significant issue, the federal government has made numerous threats to withdraw the limited federal funding that currently exists to support attorneys representing unaccompanied minors. If this were to occur, the percentage of unrepresented unaccompanied minors would increase even further.

### REMOVING PROTECTIONS FROM PREVIOUSLY PROTECTED POPULATIONS

Under the Trump Administration, previously protected populations are systematically being stripped of legal status. These populations include individuals protected by Deferred Action for Childhood Arrivals (DACA), Temporary Protective Status (TPS) and the Central American Minors (CAM) program. Now at risk of deportation, these individuals may be parents of U.S. citizen children, foster parents, or relative caregivers for children at risk of or already involved in the child welfare system. The sudden removal of protections from these groups has further fueled the profound fear suffocating immigrant communities.

- ▶ **DACA** – As of 2017, DACA had provided temporary work authorization and deportation relief to nearly 800,000 people.<sup>27</sup> Approximately 25 percent of DACA recipients have U.S. citizen children or have been designated as guardians for children with undocumented parents.<sup>28</sup>
- ▶ **TPS** – Over the past year, the Trump Administration has announced the cancellation of TPS protections for approximately 195,000 Salvadorans,<sup>29</sup> 57,000 Hondurans,<sup>30</sup> 46,000 Haitians,<sup>31</sup> 8,950 Nepalese,<sup>32</sup> 2,550 Nicaraguans<sup>33</sup> and over 1,000 Sudanese.<sup>34</sup>
- ▶ **CAM** – Created as a response to the thousands of unaccompanied minors fleeing violence in Central America, CAM provided protections

for certain eligible minors from El Salvador, Guatemala, and Honduras. As of August 2017, more than 13,000 minors had applied for the program and approximately 1,500 had been granted parole to enter the country.<sup>35</sup> In September 2017, the Trump Administration notified Congress that it intended to phase out the CAM program throughout 2018.<sup>36</sup>

### OBSTRUCTING ACCESS TO LEGAL STATUS FOR CHILDREN AND YOUTH

The Administration is exploring multiple ways to limit the definition of “unaccompanied minors”<sup>37</sup> and restrict eligibility for Special Immigrant Juvenile Status (“SIJS”).<sup>38</sup> SIJS allows children under the age of 21 who have been neglected, abandoned, or abused by one or both parents to obtain a green card. However, pursuant to an unannounced policy change by the Administration, U.S. Citizenship and Immigration Services is now no longer accepting SIJS applications from children who were over 18 when they began the application process.<sup>39</sup> Further, advocates throughout the country have reported that overall SIJS grants have declined significantly and some youth that were granted SIJS previously have had their status revoked.

The Administration has also begun constructing new barriers for children seeking asylum. Whereas all children deemed “unaccompanied” previously had access to a more child-friendly and less adversarial path for processing their asylum claims, the administration’s new approach would significantly increase the number of youth that would be forced to appear before an Immigration Judge in an adversarial hearing against the government, in order to pursue a claim for asylum. For the many youth who are unrepresented, this is all but an impossible task.



## How Have Shifting Immigration Policies Impacted Immigrant Children & Families?

The combination of actions detailed above has resulted in intense fear and unease in immigrant communities – unease that is leading to family destabilization, a significant increase in mental health issues for children and their parents/caregivers, and a troubling decrease in access to medical care, education, and other public programs.

### FAMILY DESTABILIZATION

Increased immigration enforcement jeopardizes the well-being of children by financially and emotionally destabilizing the family environment. Families facing potential deportation are more likely to experience problems with housing, employment, and financial security. Surveys indicate that immigrant families are increasingly crowding into smaller spaces to save money,<sup>40</sup> changing addresses to avoid detection,<sup>41</sup> and increasingly vulnerable to exploitation by landlords.<sup>42</sup> Unauthorized immigrant parents have reported increased job loss and difficulty finding work.<sup>43</sup> As these parents move to less formal jobs to avoid the risk of ICE detection, they become more vulnerable to exploitation by employers<sup>44</sup> and more likely to lose employee benefits and the income needed to support their families.

Increased enforcement action also poses a serious threat to the emotional stability of families – affecting children and parents alike. As parents are placed under enormous stress and lack the resources to meet the needs of their children, they may have more difficulty focusing on caregiving and become more withdrawn from their children.<sup>45</sup> This stress on parents, in turn, negatively affects children<sup>46</sup> and strains family

relationships,<sup>47</sup> increasing the likelihood that the family will become involved with the child welfare system.

### COMPROMISED MENTAL HEALTH

Research finds that children as young as three are “deeply aware of the Trump Administration’s anti-immigrant sentiment and the possibility of losing a parent.”<sup>48</sup> Parents and teachers have reported seeing disturbing new behaviors from children, including increased aggression, hyperactivity, decreased engagement, and withdrawal from their environments.<sup>49</sup> Pediatricians from multiple states have reported “increases in child patients with sleep and eating disorders, anxiety, depression and stress that they said have been induced by President Trump’s policies and words.”<sup>50</sup>

Studies also find that the threat of parental deportation to a child can produce a toxic stress response, which occurs when a child experiences strong, frequent, and/or prolonged adversity without adequate adult support.<sup>51</sup> There is extensive research indicating that toxic stress has both short and long-term effects on physical, mental, and behavioral health.<sup>52</sup> The American Academy of Pediatrics recently warned that the stress of deportation among immigrant children could harm brain development and lead to long-term health concerns.<sup>53</sup> This elevated stress is compounded by the fact that immigrant families are also losing access to health care, nutrition services, and education.

Family separation has numerous mental health implications for children and families, particularly the disruption in the parent-child relationship. Forced separation of children from their parents also puts children at a heightened risk of physical illness, mental health disorders, and stunted development.<sup>54</sup> This disruption is often exacerbated by the government’s hindrance of direct communications between family members and children in custody.



## DECREASED ACCESS TO MEDICAL CARE AND EDUCATION

Mixed-status families are increasingly afraid of encountering ICE agents in their communities, and many have become severely isolated in their homes – only leaving for necessary activities such as going to work or buying groceries. Parents, advocates, and providers report that families are now much less likely to visit doctors, parks, stores, and even school, citing a fear of deportation.<sup>55</sup> This isolation can also impact children’s emotional development as they are denied the opportunity to participate in community spaces that offer them essential skills, such as regulating emotions, emulating behaviors, and interacting with others.<sup>56</sup>

## DECREASED ACCESS TO PUBLIC PROGRAMS

Mixed-status families are also increasingly dropping out of federal and local public benefit programs. This is due to two separate concerns: first, that location information will be shared with immigration agencies, and second, that participation in such programs will affect future

eligibility for lawful status. To date, the biggest impact has been seen in federally-funded programs such as the Special Supplemental Food Program for Women, Infants, and Children (WIC) and Supplemental Nutrition Assistance Program (SNAP), which provide essential nutritional services to children and families.

On February 8, 2018, a leaked document indicated the Trump Administration’s intent to consider non-cash benefits (such as WIC and SNAP) in deciding whether applicants for lawful permanent residency are likely to become public charges.<sup>57</sup> Under the current definition, a “public charge” is a person who is primarily dependent on the government for subsistence. Currently, certain categories of immigrants can be denied lawful permanent residence if they are considered likely to become a public charge in the future. The Public Charge Notice of Proposed Rulemaking was sent to the Office of Management and Budget (OMB) for review on March 29, 2018 and is expected to be posted for public comment on the Federal Register shortly.<sup>58</sup> This potential policy shift is especially troubling because 45.3 percent of all immigrant-headed households with children use a food assistance program.<sup>59</sup> This means that thousands of children will likely be deprived of vital nutrition and health care services.



## ▶▶ OPPORTUNITIES FOR FUNDERS

The policy shifts impacting immigrant children and families are dramatic and wide-ranging. The precise implications that these shifts will have on the child welfare system are still to be determined. In the meantime, there is plenty of critical work that can be done now to prevent the unnecessary entry of youth into the child welfare system, improve outcomes for children that do enter, and accelerate the pace of immigrant children achieving permanency. The philanthropic community has a crucial role to play in mitigating the impact of this new wave of anti-immigration policies on families who are at risk of or already involved in the child welfare system. There are many ways that this can be done, including support for the following:

### PREVENTING INVOLVEMENT IN THE CHILD WELFARE SYSTEM

- ▶ Advocacy and communications efforts aimed at limiting the ability of federal immigration authorities to separate families
- ▶ Advocacy and communications efforts to stop the enactment of regulations that prevent families from accessing needed services for their children, such as proposed “public charge” rules
- ▶ Increased access to existing resources for parents at risk of detention or deportation, such as Family Preparedness Plans designed to help families make a plan for care and protection of their children
- ▶ Research by legal advocacy organizations to explore the full range of state legal custody and guardianship options that allow caregivers of children whose parents who are deported or detained to have legal authority to care for the child, while also protecting parents’ ability to regain full parental rights in the future
- ▶ Increased access to quality legal counsel for all family members impacted by immigration

policies, including undocumented parents, children, and youth

- ▶ Increased training for dependency attorneys and Guardians Ad Litem representing immigrant children and parents
- ▶ Training for dependency judges on how their rulings impact immigrant children and families
- ▶ Support for child welfare organizations to be actively involved in Rapid Response Networks being developed across the country to support families impacted by deportation or other immigration enforcement activities

### IMPROVING OUTCOMES FOR IMMIGRANT CHILDREN INVOLVED WITH THE CHILD WELFARE SYSTEM

- ▶ Development of a comprehensive “Blueprint” that establishes concrete goals and benchmarks for a child welfare system that effectively addresses the needs of immigrant children and families
- ▶ Creation of model policies and practices that child welfare agencies can adopt which effectuate the goals established in the Blueprint
- ▶ Communities of learning for agencies and experts to connect with each other, share best practices with peers, help each other troubleshoot challenges, and develop resources for the field
- ▶ Advocacy to protect access to Special Immigrant Juvenile Status (SIJS), Asylum, and U and T visas

### INCREASING THE NUMBER OF IMMIGRANT CHILDREN WHO QUICKLY EXIT THE FOSTER CARE SYSTEM TO FAMILIES

- ▶ Training and technical assistance for child welfare agencies to ensure that undocumented relatives can become temporary and/or permanent caregivers

- ▶ Exploration of how family finding efforts can be most effectively implemented for immigrant families
- ▶ New approaches to connecting and strengthening relationships between immigrant children in the system and their family in other countries

#### INCREASING CAPACITY OF ORGANIZATIONS TO CHALLENGE NEW POLICIES THAT ARE HARMFUL TO IMMIGRANT CHILDREN

- ▶ Factual investigation into the impact of harmful new policies, including interviewing affected youth and families

- ▶ Challenging policies and practices in federal court when needed
- ▶ Cross-disciplinary campaigns (including pediatricians, mental health professionals, teachers, clergy, and other non-traditional partners) on the harms that specific policies have on children

#### INCREASING TIMELY ACCESS TO FUNDING FOR THESE EFFORTS

- ▶ Increased collaboration between immigration funders and child welfare funders to share perspectives, understand barriers, and brainstorm solutions
- ▶ A multi-foundation rapid response fund to increase community access to resources that support families impacted by new anti-immigration actions





## Select Resources

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