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Foster care, uncertain futures loom for thousands of immigrant children

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Immigration and the Church

WASHINGTON -- More than 5,000 children of immigrants are languishing in state foster care nationwide because their parents were living in the United States illegally and were detained or deported by federal immigration authorities.

These children can spend years in foster homes, and some are put up for adoption after termination of their parents' custody rights. With neither state nor federal officials addressing the problem, thousands more are poised to enter the child welfare system every year.

"They can be dropped into the foster care system for an indefinite period of time," says Wendy D. Cervantes, vice president for immigration and child rights policy at First Focus, a bipartisan advocacy organization in Washington, D.C. "This causes severe long-term consequences to a child's development. It has a negative impact on the country as a whole and a direct impact on taxpayers. The fact that these children have parents means they shouldn't be in the system in the first place."

A recent report by the Applied Research Center (ARC), a national racial-justice think tank, found that when immigration enforcement methods intersect with the child welfare system, consequences for immigrant families can be devastating and long-lasting.

Jailed or deported parents are prevented from reuniting with their children, and parents held in immigration detention centers are penalized for being unable to attend hearings in family court. They are also penalized for not meeting court-ordered requirements for regaining custody of their children. The requirements are impossible to meet from jail.

In addition, detained parents often aren't aware that they can request that their children be returned upon deportation, placed with relatives in the United States, or allowed to return to their home countries. Parents unable to speak, read or write English, let alone understand complicated legal rulings, are often uninformed of their legal rights or where their children have been sent. They often don't have lawyers to help navigate the child welfare system.

"Immigration policies and laws are based on the assumption that families will, and should, be united, whether or not parents are deported," the ARC report states. "Similarly, child welfare policy aims to reunify families whenever possible. In practice, however, when mothers and fathers are detained and deported and their children are relegated to foster care, family separation can last for extended periods. Too often, these children lose the opportunity to ever see their parents again when a juvenile dependency court terminates parental rights."

Encarnación Bail, an undocumented immigrant from Guatemala who is in a prolonged fight to regain custody of her son, has confronted many of these obstacles.

She lost custody of her infant son, Carlos, in 2008, a year and a half after she was arrested and jailed by federal immigration authorities during a raid of the poultry plant where she worked in Cassville, Mo. Awaiting deportation, she spent two years in federal detention, first in a local county jail in Missouri and then in a federal prison in West Virginia. During her imprisonment, relatives caring for Carlos gave the baby to a childless local couple. After a county court terminated Bail's parental rights on grounds that she had abandoned the baby, the couple adopted her son.

The court sent an official letter to Bail informing her that the couple was caring for her son, but the letter never reached her and was returned unopened to the court. When a formal adoption petition did reach her, Bail was stunned. With the assistance of a prison guard and an English-speaking visitor from Guatemala, Bail wrote back that she did not want her son put up for adoption and wanted him placed in foster care until she was released. She also requested visitation with Carlos. She never received a response from the court and was never informed about the custody hearings.

The Guatemalan government learned of her case through news reports and intervened on her behalf, prompting the American government to put the deportation order against her on hold and grant her temporary legal status allowing her to work in the United States while she continues a legal battle to regain custody of Carlos.

"I'm very sad, I very much want to be reunited with him," Bail said through her lawyer. "I suffered an injustice. I'm the mother of Carlos, and I was worried for Carlos during my entire detention. I was always thinking about him, and I never gave my consent for his adoption."

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The Obama administration now says it is no longer targeting immigration enforcement activities on undocumented workers, such as Bail, and is instead focused on seeking out and deporting immigrants who have committed major crimes. However, immigrant advocates say that federal immigration agents, state law enforcement agencies and local county police departments participating in federal immigration enforcement programs do not follow that policy uniformly.

In fact, the government deported more than 46,000 parents of children with U.S. citizenship in the first

half of 2011, according to the ARC report.

"It's clearly un-American to take kids away from loving families," says Rinku Sen, president and executive director of ARC. "It should give Americans real pause about what we're engaged in. We need to take a very hard look at these policies and practices."

Hispanics make up the majority of undocumented immigrants in the United States and, as a result, children of color born to parents from poor countries in Latin and Central America and the Caribbean are affected disproportionately.

What's clear, say immigrant advocates, is that racial bias toward Latinos and other people of color play a significant role in separating children from parents and relatives.

Court transcripts strongly indicate that social workers' decisions about foster-care placements and judges' rulings on custody are sometimes driven by the feeling that the children are better off living in the United States with middle-class, white Americans rather than uneducated and unemployed parents who have been deported to poor home countries.

Furthermore, children in foster care are often not placed with relatives unless the relatives are here legally. Child-welfare workers consider undocumented relatives unsuitable foster parents because their status in the United States is unstable and they, too, can be detained or deported at any time.

"There are definite judgments being made about the value of one particular family over another family," Sen says. Immigrants and their lawyers "have been told by officials in the child welfare and court system that a child placed in foster care is better off than being with family in Guatemala. There are racial biases that language and immigration status play into that we should be very careful about."

In Encarnación Bail's case, the judge who terminated her parental rights made clear in his ruling that he believed the adoptive parents, who make a comfortable living, were more suitable parents than Bail, whom he characterized as a serial lawbreaker. He wrote in his opinion that she "would be unable to provide adequate food, clothing or shelter" to Carlos in the future.

"Encarnación is a human being," said Omar Riojas, her pro bono attorney. "There's nothing quote unquote illegal about her. She lacked proper documentation to work. Her defunct crime was one of immigration status, not of violence, not of larceny, not of any crime involving moral turpitude. Being undocumented does not render her unfit to be a parent."

Seth Freed Wessler, senior research associate at ARC and author of the report, says caseworkers told him that when parents are detained, "they fall off the face of the earth and when they are deported, it's even worse. It makes their job to reunify families all but impossible.

"Most caseworkers want that to happen but when immigration enforcement is involved, that outcome starts to rise. A whole set of systemic biases starts to emerge and take hold, a revealing assumption that children are better off in the United States no matter what, which ensures that children are not reunited with their families."

Marty Rosenbluth is executive director of the North Carolina Immigrant Rights Project, a nonprofit in Durham that works to protect rights of people in deportation proceedings. He says laws give judges and child-welfare workers little latitude to reunify parents and children more easily.

"People will get picked up on some minor violation and end up being deported without any due process or

hearing," Rosenbluth says. "We try to slow down the process enough so people can make some plans."

The biggest fear of parents in the immigrant community, he says, is that they're going to be deported and forced to abandon their children. "My clients talk about it all the time," Rosenbluth says. "They ask, 'If I get deported, what's going to happen to my kids?' "

He says he tells them to grant power of attorney in advance to someone who can take custody of their children.

"But even that is risky," says Rosenbluth, an attorney. "Do you want to sign over custody of your children to someone you may not know simply because they are legal? A lot of Latino organizations are now telling undocumented immigrants with children to have an action plan and to have certain documents prepared and signed.

"I've seen several different models of these action-plan packs. They include power of attorney and representation forms to have others sell their car or their property. I tell them to have someone who they can trust and who has some kind of legal status. They ask if they can sign over custody to their pastor or to their priest, but there's only so many children pastors can take."

Cervantes says that since release of the ARC report, First Focus has been "in more intense conversations" with the Obama administration about adjusting current enforcement policies to ensure that nonviolent, non-negligent parents are not detained, and if they are, that they can make arrangements for the care of their children.

Her organization also lobbies for congressional passage of legislation that would establish "nationwide protocols to help keep children with their parents or caregivers while immigration proceedings are underway, and guidelines for certain immigration enforcement activities that involve parents, guardians, or primary caregivers of minor children."

"Responsible enforcement includes letting parents have due-process rights and ensure the well-being of their children," she said.

The Humane Enforcement and Legal Protections for Separated Children Act, also known as the HELP Act, was introduced in the Senate by Al Franken (D-Minn.), and Lynn Woolsey (D-Calif.) introduced a companion bill in the House. Both are stalled. Cervantes says the ARC report gives advocates momentum to make a new push for passage.

Meanwhile, Bail is back in Missouri and working in a turkey processing plant. A year ago, the Missouri Supreme Court unanimously overturned the judgment terminating her parental rights and the adoption of Carlos and ordered a new trial scheduled to begin Feb. 28. She is optimistic that the court will rule in her favor.

"God is listening to my prayers," she said.

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