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April 23, 2009

After Losing Freedom, Some Immigrants Face Loss of Custody of Their Children

By GINGERTHOMPSON

CARTHAGE, Mo. — When <u>immigration</u> agents raided a poultry processing plant near here two years ago, they had no idea a little American boy named Carlos would be swept up in the operation.

One of the 136 illegal immigrants detained in the raid was Carlos's mother, Encarnación Bail Romero, a Guatemalan. A year and a half after she went to jail, a county court terminated Ms. Bail's rights to her child on grounds of abandonment. Carlos, now 2, was adopted by a local couple.

In his decree, Judge David C. Dally of Circuit Court in Jasper County said the couple made a comfortable living, had rearranged their lives and work schedules to provide Carlos a stable home, and had support from their extended family. By contrast, Judge Dally said, Ms. Bail had little to offer.

"The only certainties in the biological mother's future," he wrote, "is that she will remain incarcerated until next year, and that she will be deported thereafter."

It is unclear how many children share Carlos's predicament. But lawyers and advocates for immigrants say that cases like his are popping up across the country as crackdowns against illegal immigrants thrust local courts into transnational custody battles and leave thousands of children in limbo.

"The struggle in these cases is there's no winner," said Christopher Huck, an immigration lawyer in Washington State.

He said that in many cases, what state courts want to do "conflicts with what federal immigration agencies are supposed to do."

"Then things spiral out of control," Mr. Huck added, "and it ends up in these real unfortunate situations."

Next month, the Nebraska Supreme Court is scheduled to hear an appeal by Maria Luis, a Guatemalan whose rights to her American-born son and daughter were terminated after she was detained in April 2005 on charges of falsely identifying herself to a police officer. She was later deported.

And in South Carolina, a Circuit Court judge has been working with officials in Guatemala to find a way to send the baby girl of a Guatemalan couple, Martin de Leon Perez and his wife, Lucia, detained on charges of drinking in public, to relatives in their country so the couple does not lose custody before their expected deportation.

Patricia Ravenhorst, a South Carolina lawyer who handles immigration cases, said she had tried "to get our judges not to be intimidated by the notion of crossing an international border."

"I've asked them, 'What would we do if the child had relatives in New Jersey?' "Ms. Ravenhorst said. "We'd coordinate with the State of New Jersey. So why can't we do the same for a child with relatives in the highlands of Guatemala?"

Dora Schriro, an adviser to Homeland Security Secretary <u>Janet Napolitano</u>, said the agency was looking for ways to deal with family separations as it prepared new immigration enforcement guidelines. In visits to detention centers across the country, Ms. Schriro said, she had heard accounts of parents losing contact or custody of their children.

Child welfare laws differ from state to state. In the Missouri case, Carlos's adoptive parents were awarded custody last year by Judge Dally after they privately petitioned the court and he terminated Ms. Bail's rights to Carlos.

In February, immigration authorities suspended Ms. Bail's deportation order so she could file suit to recover custody. Ms. Bail's lawyer, John de Leon, of Miami, said his client had not been informed about the adoption proceedings in her native Spanish, and had no real legal representation until it was too late.

The lawyer for Carlos's adoptive parents, Joseph L. Hensley, said his clients had waited more than a year for Ms. Bail to demonstrate her commitment to Carlos, but the judge found that she had made no attempt to contact the baby or send financial support for him while she was incarcerated. The couple asked not to be named to protect Carlos's privacy.

Ms. Bail came to the United States in 2005, and Carlos was born a year later. In May 2007, she was detained in a raid on George's Processing plant in Butterfield, near Carthage in southwestern Missouri.

Immigration authorities quickly released several workers who had small children. But authorities said Ms. Bail was ineligible to be freed because she was charged with using false identification. Such charges were part of a crackdown by the Bush administration, which punished illegal immigrants by forcing them to serve out sentences before being deported.

When Ms. Bail went to jail, Carlos, then 6 months old, was sent to stay with two aunts who remembered him as having a voracious appetite and crying constantly. But they also said he had a severe rash and had not received all of his vaccinations.

The women — each with three children of their own, no legal status, tiny apartments and little

money — said the baby was too much to handle. So when a local teachers' aide offered to find someone to take care of Carlos, the women agreed.

Then in September 2007, Ms. Bail said, the aide visited her in jail to say that an American couple was interested in adopting her son. The couple had land and a beautiful house, Ms. Bail recalled being told, and had become very fond of Carlos.

"My parents were poor, and they never gave me to anyone," Ms. Bail recalled. "I was not going to give my son to anyone either."

An adoption petition arrived at the jail a few weeks later. Ms. Bail, who cannot read Spanish, much less English, said she had a cellmate from Mexico translate. With the help of a guard and an English-speaking Guatemalan visitor, Ms. Bail wrote a response to the court.

"I do not want my son to be adopted by anyone," she scrawled on a sheet of notebook paper on Oct. 28, 2007. "I would prefer that he be placed in <u>foster care</u> until I am not in jail any longer. I would like to have visitation with my son."

For the next 10 months, she said, she had no communication with the court. During that time, Judge Dally appointed a lawyer for Ms. Bail, but later removed him from the case after he pleaded guilty to charges of domestic violence.

Mr. Hensley, the lawyer for Carlos's adoptive parents, said he had sent a letter to Ms. Bail to tell her that his clients were caring for her son, as did the court, but both letters were returned unopened. "We afforded her more due process than most people get who speak English," Mr. Hensley said.

Ms. Bail said she had asked the public defender who was representing her in the identity theft case to help her determine Carlos's whereabouts, but the lawyer told her she handled only criminal matters. "I went to court six times, and six times I asked for help to find my son," she said. "But no one helped me."

Ms. Bail got a Spanish-speaking lawyer, Aldo Dominguez, to represent her in the custody case only last June. By the time he reached her two months later — she had been transferred to a prison in West Virginia — it was too late to make her case to Judge Dally, Mr. Dominguez said.

"Her lifestyle, that of smuggling herself into the country illegally and committing crimes in this country, is not a lifestyle that can provide stability for a child," the judge wrote in his decision. "A child cannot be educated in this way, always in hiding or on the run."

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June 28, 2009

Court Rules for Deportee on Custody

By GINGER THOMPSON

WASHINGTON — The Nebraska Supreme Court has ruled that the state acted improperly when it terminated a Guatemalan woman's rights to her two American-born children after she was detained on charges of falsely identifying herself to a police officer and then deported.

The woman, Maria Luis, had immigrated to Grand Island, Neb., in 2004 and was working in a local meat-processing plant a year later when social service workers, acting on a tip, went to her house with a police officer to check on whether she was properly tending to her severely ill daughter. Frightened that she would be arrested on <u>immigration</u> charges, Ms. Luis told the officer she was a babysitter.

She was arrested that day, after the police discovered the lie. Her daughter, Angelica, 1 at the time, and her son, Daniel, who was 7, were placed with protective services.

At that point, the State Supreme Court said in a ruling issued Friday, Ms. Luis's parental rights under state juvenile law "collided with the sanction imposed on her by federal immigration law." Ms. Luis was deported without being given an opportunity to appeal in state court for custody of her children.

It is unclear how many children share the predicament of Angelica and Daniel, who remained in the United States and have lived in three foster homes, though lawyers and advocates for immigrants say that cases are popping up across the country as crackdowns against illegal immigrants leave thousands of children in limbo. The court signaled as much in its ruling, saying the decision was aimed at addressing the needs of children caught in the "clash of laws, culture and parental rights that occur when parents cross international boundaries."

The court also said that parental custody of children is perhaps the "oldest of the fundamental liberty interests recognized by the <u>United States Supreme Court</u>."

The burden falls on the state, the court said, to make sure that parents facing immigration charges receive the legal representation and guidance they need to protect their rights to their children — even in cases where the parent has been deported.

The court pointed out, for example, that the authorities did not provide Ms. Luis with adequate legal representation while she was in Nebraska. Her first language is Quiche, a Mayan dialect, and her interpreters spoke Spanish. The court faulted state authorities as failing to contact consular officials to intervene on Ms. Luis's behalf. And, the court said, social workers failed to nytimes.com/2009/06/.../28deport.html...

provide her with proper guidance on how to recover custody of her children after she was deported.

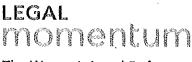
The state did not prove Ms. Luis was unfit, the court found. Instead, it said the record showed that the state made no effort to reunify the family, largely because social service workers "thought the children would be better off staying in the United States." State officials would not comment on the ruling.

It has been four years since Ms. Luis's children were taken away. She last saw them in February 2008, when she came to the United States for a hearing. Ms. Luis said she never gave up hope she would get her children back, and that she could not wait to have them join her in Guatemala.

"I knew this day would come," she said. "I asked God for it."

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The Women's Legal Defense and Education Fund

Immigration Raids Separate Children from Parents

Impact of Immigration Raids on Families The separation of U.S. citizen children and immigrant parents due to immigration raids and detentions has emerged as a nation-wide issue. Detention can have a devastating impact on families, especially if immigrant parents are separated from their children. A pattern is emerging in which some state departments of social services are taking U.S. born children from undocumented immigrant parents and placing them in foster care, in violation of the undocumented immigrant parent's right to custody of their children. According to a report by the Inspector General's Office of DHS, at least 108,434 undocumented parents of US citizen children were removed from the US between 1998 and 2007. This number is likely to be underreported, but still indicates that this is an issue even according to DHS. Once children are separated from their immigrant parents, it can be difficult for those parents to get their children back. They may not be able to pursue a custody case before removal from the United States, especially if parents are detained in a different state. If immigrant parents are able to pursue a custody case, their deportation may hinder their case.

Legal Momentum's Role Legal Momentum advocates around the issue of separation of U.S. citizen children and immigrant parents. Most recently, Legal Momentum assisted with the recent Nebraska Supreme Court case, State v. Maria L., which dealt with this very issue. The Nebraska Supreme Court affirmed the constitutional right of immigrant parents to care for, have custody of, and control over their children. The Court ruled that Maria Luis, a Guatemalan woman, should not lose custody of her children because she was deported from the United States. This ruling by the Supreme Court of Nebraska is a great victory for immigrant women because it protects mothers from the unconstitutional deprivation of their children without a showing of parental unfitness. Thus, it is now clear that immigrant women, both documented and undocumented, in deportation proceedings and not, deported and having had no contact with DHS, all have a constitutional right to raise and nurture their children whether or not they remain in the U.S.

What You Can Do to Protect Your Parental Rights

- Immigrant families with undocumented immigrant family members must have a safety plan for caring for children if undocumented parents are detained. This might include: appointing a U.S. citizen friend or relative as designated guardian during detention; providing emergency contact information to children's schools; carrying prepaid phone cards on oneself at all times.
- In case of a raid or detention, immigrant parents who are the primary caretakers of children should tell DHS this fact immediately and ask not to be detained while DHS processes any case against them. DHS may allow humanitarian release from detention to primary caretakers and mothers who are breastfeeding until their case is decided.
- Those who are detained should contact an immigration attorney immediately and, if applicable, alert the immigration attorney about any history of domestic violence, sexual assault, trafficking, or other criminal victimization.

If you are an immigrant facing deportation or detention of yourself or a family member and you would like a referral for an attorney OR if you are a service provide seeking technical assistance, please contact Legal Momentum at 202.326.0040 or iwp@legalmomentum.org.

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Immigration Enforcement and Family Separation

Incarnacion is a Guatemalan national and the mother of a two-year-old son. She was apprehended during a workplace raid in 2007. Through a series of events out of Encarnacion's control, her son was handed over to a local church which ultimately placed him with an American couple. The couple later filed a motion to terminate Encarnacion's parental rights and adopt the boy. Encarnacion was never aware that family court proceedings were underway and was therefore not able to fully participate in decisions regarding her son's well-being. The notice to terminate her parental rights and the right to appeal were only provided in English, although her notive language is Spanish. Encarnacion did not receive counsel until after the custody hearing and judgment was entered. Custody was terminated, and she is still fighting to get her son back.

Children of immigrants currently comprise 1 in 5 of all U.S. children. It is estimated that approximately 5 million of these children, the majority of whom are native-born U.S. citizens, live in mixed-status families with one or more undocumented parent. While the debate over comprehensive immigration reform has often overlooked these citizen children, inaction on immigration reform and ongoing enforcement measures are having a significant impact on thousands of America's most vulnerable children.

Particularly in the last five years, immigration enforcement activities by U.S. Immigration and Customs Enforcement (ICE) and local law enforcement agencies operating under ICE have significantly increased through both worksite and home raids. Although undocumented adults are the direct targets of such activities, the rights of American citizens, those who need to be protected the most - children - are being compromised. Findings from a joint report by the National Council of La Raza and the Urban Institute demonstrate that, on average, one child is affected for every two adults arrested in a worksite raid. According to a report by the DHS Inspector General's Office, at least 108,434 undocumented parents of U.S. citizen children were removed from the U.S. between 1998 and 2007. This figure does not include the thousands of parents who remained in detention facilities during this time period.

The impacts on child well-being and family unity resulting from such enforcement activities are immeasurable. They include separation (sometimes permanent) from one or both parents due to detention and/or deportation, interruptions in schooling because parents fear sending their children to school, short and long-term emotional trauma for separated children, and economic hardship due to the detention of the family breadwinner. In many cases, schools,

early learning and child care centers, social service agencies, and communities are unprepared to respond adequately to protect the best interests of children left behind. Often, detained parents are not able to make child care arrangements, resulting in the unnecessary placement of their children in the child welfare system. Once a child is placed into foster care, it is extremely difficult for a detained parent to reunify with his or her child, especially if that parent is transferred to an out-of-state detention facility or deported before regaining custody of his or her child.

The Humane Enforcement and Legal Protections (HELP) for Separated Children Act, sponsored by Representative Lynn Woolsey (D-CA), would implement critically needed reforms to protect children and families impacted by immigration enforcement.

The HBLP Separated Children Act would also establish a protocol for the release of designated vulnerable individuals, either into the community on bond or parole, or into non-custodial alternatives to detention programs. This bill limits enforcement activities in safe zones and the involvement of children in enforcement activities, and would help family members locate those who are detained. It would also ensure that U.S. citizen and lawfully present children that are consequently placed in the foster care system receive appropriate care and would provide for improved coordination and communication between all the entities involved to safeguard the best interest of the child and preserve family unity whenever possible.

First Focus is a bipartisan advocacy organization that is committed to making children and their families a priority in federal policy and budget decisions.

To learn more contact Wendy Cervantes, Senior Director of Child & Family Immigrant Policy at First Focus. 202.657.0637; WendyC@firstfocus.net



HUMANE ENFORCEMENT & LEGAL PROTECTIONS (HELP) FOR SEPARATED CHILDREN (H.R. 3531)

Enforcement activities conducted by Immigration and Customs Enforcement ("ICE") and local law enforcement agencies operating under agreement with ICE too often result in unnecessary harm to children, families and communities. Parents who are detained are separated from their children, sometimes permanently, and always at great cost to the family's well-being and the community.

The Humane Enforcement and Legal Protections (HELP) for Separated Children Act (H.R. 3531), sponsored by U.S. Representative Lynn Woolsey (D-CA), implements critically needed reforms to protect children, families and communities impacted by immigration enforcement.

The bill provides nationwide protocols to help keep children with their parents or caregivers and out of the child welfare system while immigration proceedings are underway. It establishes guidelines for immigration enforcement activities involving designated vulnerable populations, including pregnant or nursing women, individuals with impacted children and individuals with serious medical or mental health needs or disabilities.

It ensures that the best interests of children are considered throughout enforcement and immigration proceedings. Specifically, the bill includes provisions that:

- » Provides state and local social service agencies working in cooperation with local community organizations with an opportunity to screen for vulnerable populations;
- » Enables parents, legal guardians or primary care givers who are apprehended to arrange for the care of their children upon apprehension and throughout the immigration process;
- » Ensures that professional interpreters are available for translation assistance;
- » Provides vulnerable individuals and separated children information about legal services;
- » Ensures that vulnerable individuals are not interrogated while their children are present;
- » Minimizes trauma to children by preventing enforcement activities from taking place in areas such as day care centers, schools, hospitals, places of worship and other areas considered as safe zones;
- » Enables child welfare providers, family members and legal counsel to determine the whereabouts of detained family members and the status of vulnerable individuals' immigration proceedings;
- » Establishes a protocol for the release of vulnerable individuals who are not considered a threat, either into the community on bond or parole, or into non-custodial alternatives to detention programs;
- » Ensures that children in foster care who are U.S. citizens or lawfully present are cared for appropriately and that parents are informed of their child's whereabouts and case plan requirements;
- » Ensures that parents of separated children who wish to have their children accompany them to their country of origin are given adequate time to obtain travel documents and other documents; and
- » Protects children by requiring that all decisions related to the care, custody and placement of a separated child be based upon the best outcome for the child and the family.

Ultimately, the bill improves coordination and communication between all the entities involved to safeguard the best interest of the child and preserve family unity whenever possible. In addition to keeping children safe and families together, this bill saves taxpayers millions of dollars by keeping children who don't need to be in the child welfare system out of it.

For more information about the HELP Separated Children Act or to co-sponsor the bill, please contact Jason Feld at 202-225-5161 or Jason.Feld@mail.house.gov.

