



**ASSEMBLY COMMITTEES ON HUMAN SERVICES AND JUDICIARY
ASSEMBLY MEMBERS CALDERON AND STONE
CHAIRS**

Joint Informational Hearing

Family Separations at the Border: How Can California Further Support Immigrant Families?

Tuesday, January 26, 2021
1:30 p.m. – State Capitol, Assembly Chamber

BACKGROUND PAPER

Separations of Immigrant Families

In early 2017, the federal government began implementing new policies and protocols aimed at decreasing rates of immigration to the United States (U.S.). What initially began as bans on travel from several majority-Muslim countries, led to increased enforcement of immigration violations in the country's interior, and eventually a "zero tolerance policy" that ultimately resulted in thousands of children being forcibly separated from their parents at the U.S. border.

The lasting impact of these policies, particularly the effects of family separation, is evident, as described in an October 21, 2020, article, which found that hundreds of separated families had still not yet been reunited.¹ At the time the article was written, the parents of 545 migrant children had not been located, and the families had endured months, and, in some cases, years of separation from their loved ones. Approximately 60% of the children were under the age of five when they were separated from their parents.² Despite court orders to reunify these families, poor record-keeping, increased criminal prosecutions of adult family members, and deportations of parents without their children have hindered reunification efforts.

Many immigrants arrive at the U.S. border fleeing war and violence in their home countries; the stress and trauma of witnessing this violence, coupled with the trauma of forced family separations at the border, can result in lifelong effects and increased risk of mental illnesses, such as depression, anxiety, and post-traumatic stress disorder.³ These experiences can have lasting impacts on the individuals, but also on their communities. With over 10 million immigrants living in California, it is vital that the state continue to address the legal, emotional, cultural, and mental health needs of immigrant families through advocacy, legislation, and litigation.

U.S. Immigration Trends

An August 2020 report on immigration found that, in 2018, the U.S. foreign-born population reached a record 44.8 million people, and the number of immigrants living in the U.S. had nearly quadrupled since 1965.⁴ In 2017, the top countries of origin for immigrants living in the U.S. included Mexico, China, India, the Philippines, and El Salvador. Nearly half (45%) of the

country's immigrants reside in California, Texas, and Florida; in 2018, California had the largest immigrant population of any state with approximately 10.6 million immigrant residents.

Beginning in 1980 with the creation of the Refugee Resettlement Program, an estimated three million refugees have resettled in the U.S. – more than any other country. In fiscal year 2019, approximately 30,000 refugees resettled in the U.S., and the largest group of refugees arrived from the Democratic Republic of the Congo, followed by Burma (Myanmar), Ukraine, Eritrea, and Afghanistan. More than a quarter of these refugees resettled in Texas, Washington, New York, and California.

While a vast majority of immigrants (approximately 77% of the immigrant population in 2017) reside in the U.S. legally, the number of immigrants living in the U.S. without authorization more than tripled between 1990 and 2007 (from 3.5 million to 12.2 million, respectively). By 2017, the number of individuals living in the U.S. without authorization had declined from 2007 levels by 14% for a total of 10.5 million.

According to federal data, Customs and Border Patrol (CBP) agents apprehended more migrants at the U.S.-Mexico border in fiscal year 2019 than in any other year since fiscal year 2007, and the number of apprehensions at the U.S.-Mexico border doubled between fiscal year 2018 and fiscal year 2019 (from 396,579 to 851,508, respectively). In 2019, for the fourth consecutive year, the number of migrants arriving from other countries surpassed the number of migrants arriving from Mexico. Seventy-one percent of migrants arrived from nations referred to as the Northern Triangle: Guatemala (264,168), Honduras (253,795), and El Salvador (89,811). Of the total number of apprehensions at the border in 2019, 473,682 (56%) were members of a family unit. Apprehensions of unaccompanied children ages 17 and younger also reached their highest level on record, with 76,020 in fiscal year 2019, compared with the previous high of 68,541 in 2014.

Treatment of children and families in federal immigration custody

Flores v. Barr

Long before the Trump Administration implemented its zero tolerance policy toward immigration violations, advocates challenged various policies governing the treatment of minors in immigration detention, including, crucially, the policy of housing unaccompanied minors in adult detention.⁵

Flores v. Barr (C.D. Cal.), No. 2:85-cv-04544, filed July 11, 1985, originated in a class action lawsuit based on the experience of Jenny Flores, a 15-year-old girl who had been apprehended trying to enter the U.S. without authorization and who was subsequently detained in an Immigration and Naturalization Service (INS) facility. During Jenny's time in INS custody, "...She was 'handcuffed, strip searched, and placed...in a juvenile detention center where she spent the next two months waiting for her deportation hearing.' The INS placed Jenny in a facility that did not provide educational, nor many recreational opportunities. Furthermore, some of the minors in the facility had to share 'bathrooms and sleeping quarters with unrelated adults of both sexes.'"⁶

The result of the class action lawsuit was the 1997 *Flores* settlement agreement that established minimum standards for initially-detained children.

Specifically, the settlement requires that:

- “Facilities provide children in [government] custody with access to sanitary and temperature-controlled conditions, water, food, medical assistance, ventilation, adequate supervision, and contact with family members;
- Facilities ensure that children are not held with unrelated adults;
- The government release children from detention without unnecessary delay to parents or other approved sponsors; and,
- If a child cannot be released from care, the child be placed in the ‘least restrictive’ setting appropriate, based on his or her age or needs.”⁷

Additionally, the *Flores* settlement agreement required Office of Refugee Resettlement (ORR) facilities to: comply with all applicable state child welfare laws and regulations; and, be licensed by an appropriate state agency to provide residential, group, or foster care services for dependent children.⁸ Litigation alleging repeated violations of the *Flores* settlement by the federal government is ongoing. In California, the state agency with licensing oversight over these facilities is the California Department of Social Services (CDSS). CDSS currently licenses Foster Family Agencies (FFA) and Group Homes (GH) to provide these services to unaccompanied undocumented minors (UUMs). In January 2021, CDSS reported 6 FFA providers and 8 GH providers that serve a total of 17 GH sites in our state.

Family Separations

While the issue of family separation is often characterized by families arriving at the border together and then being forcibly separated for months or years at a time, it should be noted that family separation can also occur as a result of increased enforcement efforts by Immigration and Customs Enforcement (ICE) officials. Often, undocumented individuals live with family members in communities throughout the U.S.; as a result of increased enforcement and raids by ICE officials, individuals who are undocumented are apprehended and detained in detention facilities, while their loved ones remain behind in the community. Additionally, family separation can occur in instances where a child arrives at the border with a parent, is forcibly separated and placed in ORR custody, and is placed with a caregiver in the community who, due to their own immigration status, is then apprehended and detained by ICE officials.

While family separations at the border garnered increased attention under the Trump Administration due to drastic increases in the number of separated families, separations did occur, albeit rarely, under previous federal administrations. Prior to the adoption of the zero tolerance policy, migrant families apprehended while attempting to enter the country without authorization were usually referred to civil deportation proceedings. Family separations were rare and occurred when there was concern over the child’s health or welfare, as is required by

provisions of the *Flores* settlement. In November 2016, only 0.3% of migrant children in the U. S. Department of Health and Human Services (HHS) custody were known to be separated from their parents.⁹

Instances of family separation under the Trump Administration first began in July 2017 when CBP implemented the El Paso Pilot Program. The goal of the program was to increase criminal prosecutions of apprehended individuals, including parents arriving with minor children. The pilot program lasted five months, during which Trump Administration officials learned that the federal government was unable to track separated family members in a way that allowed for later reunification of children and their parents.¹⁰ Still, the federal government proceeded to expand the El Paso Pilot Program into a permanent, nationwide policy.

On April 6, 2018, U.S. Attorney General Jeff Sessions formally announced the federal government's zero tolerance policy for certain immigration offenses. The policy required each U.S. Attorney's Office on the Southwest border to prosecute all referrals for illegal entry violations, including misdemeanors, referred by the Department of Homeland Security (DHS). A January 2021 report by the Department of Justice (DOJ) Office of Inspector General found that, "...Following the DOJ issuance of the zero tolerance policy, DHS changed its practice and began referring family unit adults to DOJ for criminal prosecution and the [DOJ] agreed to prosecute these cases. As a result, more than 3,000 children were separated from their families and issues regarding reuniting children with their parents remain as of this date."¹¹

Placement of UUMs

Many children who are subject to forced family separations at the border are initially detained by CBP officials. Various news articles and reports have described the conditions in these detention facilities, as well as violations of the *Flores* settlement. Specifically, an October 2020 report found that, "In fiscal year 2019, conditions in the holding facilities at the border were dire. Children, including babies, were held in deplorable and unsanitary conditions. After almost a decade without child deaths in CBP custody, at least five deaths of innocent children have been reported since December 2018."¹² That the federal government argued in June 2019 that it should not be required to provide children in CBP custody with basic toiletries, such as soap and toothbrushes, or provide adequate sleeping arrangements, is further testament to the conditions in which these children were forced to live.

Pursuant to requirements of the *Flores* settlement, UUMsⁱ must be transferred to the custody of ORR, an office within the Administration for Children & Families, which is a division of HHS that provides various forms of support for refugees, asylees, and UUMs.

Under the Homeland Security Act of 2002,¹³ ORR is responsible for the care and placement of UUMs who are apprehended by DHS. Under the Trafficking Victims Protection Reauthorization Act of 2008,¹⁴ UUMs must "be promptly placed in the least restrictive setting that is in the best

ⁱ Though this paper uses the term "unaccompanied undocumented minor," the pertinent statutes delineating ORR's responsibilities use the term "unaccompanied alien child," commonly abbreviated as "UAC." See 6 U.S.C. § 279(g)(2).

interest of the child.”¹⁵ In making such placements, ORR “may consider danger to self, danger to the community, and risk of flight.”¹⁶

ORR seeks to place unaccompanied minors with a sponsor, typically a family member. The *Flores* settlement outlines the following preference ranking for sponsor types: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an adult individual or entity designated by the child’s parent or legal guardian; (5) a licensed program willing to accept legal custody; or, (6) an adult or entity approved by ORR. Pending such a placement, children are placed in different types of facilities, most in state-licensed shelters in 23 states. Other possible placement settings pending placement with a sponsor include foster care (whether transitional or long-term), residential treatment centers, and secure facilities.¹⁷

A minor may be held in a secure facility only if the minor:

- Is charged with a criminal or delinquent offense;
- Threatens or commits violence, or displays unacceptably disruptive conduct in a shelter;
- Presents an escape risk;
- Is in danger and is detained for their own safety; or,
- Is part of an influx of minors that results in insufficient bed space at standard facilities.¹⁸

Removal proceedings continue apace regardless of where a child is placed.¹⁹

Health effects of family separation on children and parents

Impacts on children

Due to the overwhelming data connecting family separations with long-term adverse effects, several entities have released public statements to voice their disapproval of the zero tolerance immigration policy, including the American Psychiatric Association (APA)²⁰, the American Academy of Pediatrics (AAP)²¹, and the American Nurses Association.²² Although the statements released provide various reasons for eliminating the family separation policy, a majority cite this practice as unethical due to the resulting lifelong trauma it causes.

The stress and trauma caused by forced family separations, the conditions in which children reside when in CBP custody, and the confusion of legal proceedings can be catastrophic to the emotional and mental well-being of children and parents alike. Children separated from their families at the border not only face the trauma caused by disruptions in their attachments to caring adults, but are also processing the circumstances that led them to seek asylum in the first place such as war and violence in their home countries. When a person experiences a traumatic event, particularly when the experience is frequent or prolonged, the body’s biological stress response activates what is known as the toxic stress response. When toxic stress occurs in young children, the hormones released can cause cognitive delays, increase one’s risk for psychological disorders, and stunt physical and emotional growth.²³

Forced family separations at the border can also result in a disruption in the attachment bond between a child and parent. This trauma, known as relational trauma, can lead to delays in emotional, mental, and even physical development. The importance of secure attachment is a key tenet of child welfare policy throughout the country, particularly in California where maintaining family units whenever possible is a primary goal of the child welfare system. In 2015, AB 403 (Stone)²⁴ implemented major systemic changes to California's child welfare system through what is known as Continuum of Care Reform (CCR). Core components of CCR include:

- Increased emphasis on meeting the emotional, behavioral, and mental health needs of children who have often experienced trauma;
- Maintaining familial bonds whenever possible, and increasing placements of children and youth with relatives or non-relative extended family members; and,
- Decreased use of congregate care facilities in order to improve outcomes for youth in the child welfare system.

Adverse Childhood Experiences (ACEs)

In 1995, the ACEs Study, conducted by the Centers for Disease Control and Prevention (CDC) and Kaiser Permanente,²⁵ found that ACEs, which are defined as potentially traumatic events that occur in childhood, can affect a child's biological system and can lead to a variety of lifelong concerns, including continued elevated stress levels and persistent inflammation. These factors can leave individuals at higher risk for health issues such as arthritis, Alzheimer's, heart disease and cancer. Examples of ACEs include experiencing violence, abuse, neglect, mental health problems, and instability due to parental separation or incarceration of a household member.

The increased health risks associated with ACEs have led many states to adapt their child welfare policies to include identification and prevention of traumatic childhood experiences. In California, the ACEs Aware initiative led by Surgeon General Dr. Nadine Burke Harris focuses on reducing ACEs and toxic stress in half by one generation through a variety of prevention services, including ACEs screenings for children up to age 18.

Impacts on adults

Although there is less data on the long-term effects that family separation has on adults, the immediate trauma of the event is apparent. Adults in families who are separated commonly experience anxiety, post-traumatic stress, and depression. Psychologists who focus on these populations have also reported the emotional complications and unique challenges that these parents face while undergoing reunification with their children. After the exhaustive process of legal reunification is complete, research has shown both the child and parent in these situations can feel disoriented and disconnected from their family. Specific training models and therapy techniques are used in the supports provided to these families to address the difficult transitions and complex emotions that they often experience.²⁶ Advocacy efforts and litigation have

ensured mental health and legal services are available to a portion of those families separated at the border; however, there is little codifying these supports in state law. In addition, the provision of mental health services and care coordination is often limited by the specific parameters of court orders, as well as limitations in funding. These limitations, coupled with the knowledge of how trauma and stress affects an individual over time, has led many advocates, including legal and health experts, to push for further reform and increased supports for immigrant families.

Impacts of the COVID-19 pandemic

The detrimental effects of family separation have also been exacerbated by the COVID-19 pandemic, particularly as it relates to the health conditions for those detained in congregate care settings. In early 2020, it became evident that congregate care settings were hotspots for infection. Conditions in detention centers were of concern well before COVID-19; however, the nature of these settings, namely the closeness with which detainees are housed, leaves them vulnerable to outbreaks, substantially increasing the health risks to those in detention. Based on these data, in March 2020, “[T]he U.S. District Court issued an order to the Trump Administration to ‘make every effort to promptly and safely release’ migrant children from government custody.”²⁷ Attorneys argued that ICE and ORR response to the pandemic failed to comply with their obligations under the *Flores* settlement,²⁸ specifically, the requirement that children in ORR shelters for more than 20 days be immediately released into the care and custody of a sponsor in order to reduce health risks.

Federal efforts to support immigrant children and families

In order to address the myriad needs of immigrant children and families, including those who have been forcibly separated at the border, the federal government provides an array of services and supports.

Legal services

Since 2005, the nonprofit Vera Institute of Justice has administered the Unaccompanied Children Program, which is funded by ORR. The Unaccompanied Children Program provides access to legal services for people who are under the age of 18, lack lawful immigration status, and have no parent or legal guardian in the U.S. able to provide them with care and physical custody.²⁹ The Vera Institute subcontracts with nonprofit legal services providers throughout the country, including in California, to provide a variety of services, including, but not limited to, the following:³⁰

- *Court preparation:* Subsequent meetings with children, individually and in groups, to prepare them for their first immigration court hearing.
- *Pro bono legal representation:* Representation is provided either directly by the subcontracted legal services provider or by pro bono attorneys trained by the subcontractor. Due to a shortage of resources, not every child receives legal representation.

- *Assistance in immigration court:* In order to maximize resources, rather than provide direct legal representation, some legal services providers provide “friend of the court” services in which they assist children in court and even sometimes speak on their behalf, but do not act as attorneys of record.

It is worth noting that, under the Homeland Security Act of 2002, ORR is “responsible for...coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act [i.e., November 25, 2002].”³¹ Unfortunately, more than 18 years after the Act’s passage, no such plan for provision of counsel has ever been implemented. As a result, most children in immigration court are unrepresented by counsel.

Services resulting from class action litigation

Many of the parameters of the federal government’s legal obligations to unaccompanied minors have been established through class action litigation. In addition to *Flores*, significant cases include:

- *C.J.L.G. v. Barr* (9th Cir.), No. 16-73801, was an appeal from a decision of the Board of Immigration Appeals that presented the question of whether a child was entitled to court-appointed counsel at government expense in an immigration removal proceeding. On January 29, 2018, a three-judge panel of the Ninth Circuit Court of Appeals held that the child was not so entitled. This decision was vacated when the Ninth Circuit took the case up *en banc*. Unfortunately, the resulting *en banc* decision failed to address the question of right to counsel.³² As a result, minors must continue to represent themselves in removal proceedings. The Ninth Circuit did hold, however, that immigration judges must inform minors of their eligibility for certain benefits, including Special Immigrant Juvenile Status (SIJS) status.
- *Ms. L. v. U.S. Immigration and Customs Enforcement* (S.D. Cal.), No. 3:18-cv-00428, filed February 26, 2018, is a national class action seeking to halt and undo the Trump Administration’s family separation policy. On June 26, 2018, the district court issued a preliminary injunction ordering the U.S. government to do so, and to reunify all families that had already been separated. The court also stayed the deportation of separated families. The case is ongoing.
- *Ms. J.P. v. Barr* (C.D. Cal.), No. 2:18-cv-06081, filed July 12, 2018, is a national class action filed on behalf of parents separated from their minor children upon entering immigration detention in the U.S. as a result of the Trump Administration’s family separation policy. The plaintiffs seek injunctive relief requiring the federal government to provide mental health services to these parents and children. Under the terms of a preliminary injunction, class members may elect to receive mental health screenings, diagnosis, and treatment by qualified

professionals. The case is ongoing, though currently stayed by agreement of the parties.

HHS has contracted with the Seneca Family of Agencies to provide free mental health services for *Ms. J.P.* class members within the U.S. In a report dated November 13, 2020, Seneca reported the following data regarding its provision of mental health services. Of 496 class members who had been verbally informed of the availability of mental health services, 237 requested services. At the time the report was published, 208 of these individuals had been referred for services; 34 of them were located in California. Overall, 2,103 class members have received notices by mail.³³

- *J.O.P. v. U.S. Dept. of Homeland Security* (D. Md.), No. 8:19-cv-01944, filed July 1, 2019, is a national class action that challenges a Trump Administration policy stripping children of their unaccompanied (UAC) status,³⁴ and, crucially, the related asylum protections which flow from that status, when a child is reunited with a parent or guardian following release from detention. On August 2, 2019, the U.S. district court enjoined the policy via a temporary restraining order (TRO), and on October 15, 2019, issued a preliminary injunction, the terms of which were identical to the TRO.
- *J.L. v. Cissna* (N.D. Cal.), No. 5:2018-cv-04914, filed August 14, 2019, challenged the Trump Administration's refusal to grant special immigrant juvenile status (SIJS) to immigrants between the ages of 18 and 20 when the findings supporting SIJS were made by a California superior court pursuant to Probate Code Section 1510.1(a).³⁵ On December 15, 2019, the U.S. district court approved a settlement of the plaintiffs' claims that removed restrictions on superior courts' ability to make the requisite findings and required the U.S. Citizenship and Immigration Services to adjudicate class members' SIJS petitions.

Federal legislative efforts

In addition to the supports and services resulting from federal initiatives and litigation, a number of measures introduced in the 116th Congress sought to address the ongoing crisis at the border and the mistreatment of immigrant children and families, as well as establish consistent procedures. While the newly sworn-in 117th Congress will undoubtedly pursue immigration legislation, as of the writing of this paper, no such legislation has been introduced. For a list of measures introduced in the 116th Congress, please see Appendix A.

State efforts to support immigrant children and families

While states cannot take direct action on most immigration issues (the federal government has broad and exclusive power to regulate immigration, effectively preempting state laws that seek to do so³⁶), there are still many opportunities for states to assist and protect immigrant children and their families, including those who have experienced separation. California – both the Legislature and advocates – has been at the forefront of helping these groups.

SIJS Applications

“Special Immigrant Juvenile Status” is a federal immigration classification that can help undocumented, vulnerable children and youth remain in the U.S. Under the Trafficking Victims Protection Reauthorization Act of 2008,³⁷ any unmarried person under age 21 who has been abused, neglected, or abandoned by a parent may seek classification as a Special Immigrant Juvenile and then immediately apply for lawful permanent resident status.

To be eligible for SIJS, a state juvenile court must first find that:

- The child is a dependent of a juvenile court or committed to the custody of a state agency or a court-appointed individual;
- Reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and,
- Return to the child's country of nationality or last habitual residence is not in his or her best interest.³⁸

The first finding originally only applied to children under the direct jurisdiction of the juvenile court, thus limiting eligibility for SIJS. This was expanded in 2008 to include children with a court-appointed custodian, thus allowing the required findings to be made on behalf of children with guardianships established by a probate court and custodial arrangements established by a family court.

Once a state court makes the requisite findings, the child may apply to the U.S. Citizenship and Immigration Services for SIJS,³⁹ and California has taken the following steps to make it easier for children eligible for SIJS to receive the necessary state court findings:

- In 2014, the Legislature specifically provided that superior courts can make the findings necessary for a child to be eligible for SIJS.⁴⁰ In particular, Code of Civil Procedure Section 155 provides that the superior court, including a juvenile, probate, or family court, has jurisdiction to make judicial determinations regarding the custody and care of juveniles within the meaning of the federal Immigration and Nationality Act, and requires the court to make an order containing the necessary findings for SIJS, if there is evidence to support them.
- California expanded guardianships to youths over 18 years of age but less than 21 years of age to ensure that all those eligible for SIJS – those under 21 years of age – could have the necessary state court findings made even after they turned 18. AB 900 (Levine)⁴¹ closed that gap by allowing probate courts to establish guardianships for youth who are at least 18-years-old, but less than 21-years-old, and to extend existing guardianships up to 21 years of age, if done in connection with a petition to make the necessary SIJS findings. As the bill's legislative findings make clear, the bill connects immigrant youth who have been abused, neglected or abandoned with a caring adult “as they adjust to a new cultural context, language, and education system, and recover from the trauma of abuse, neglect or abandonment. These custodial arrangements promote permanency and the long-term well

being of immigrant children present in the United States who have experienced abuse, neglect, or abandonment.”⁴²

- AB 2090 (Gonzalez)⁴³ extended those who may qualify for the first requisite SIJS finding – the child is a dependent of a juvenile court or committed to the custody of a state agency or a court-appointed individual – by authorizing a probate court to appoint a parent as guardian for the limited purpose of obtaining the preliminary state court findings necessary to file with the federal government for SIJS status.
- AB 2642 (Gonzalez)⁴⁴ helped vulnerable, unaccompanied immigrant children in California move out of federal detention facilities and into more home-like settings, and qualify for SIJS, by expanding the number of charitable corporations that can be appointed as a corporate guardian of children who do not have family members who can act as guardians. Under AB 2642, a charitable corporation incorporated outside of California, but licensed in California, can be appointed as a guardian for these children under specified conditions.

Legal Services

In addition to actions related to SIJS, California supports the provision of legal services to immigrants through budget appropriations. First, CDSS administers a funding program to nonprofit organizations that provide an array of legal services to immigrants, including: (1) assistance with obtaining or renewing Deferred Action for Childhood Arrivals (DACA) status; (2) legal representation for undocumented immigrants facing deportation; (3) consultations for undocumented individuals to discuss with an attorney options for obtaining legal immigration status; and, (4) providing community-based outreach and education to immigrants.⁴⁵ The budget support, which began in the 2015-16 fiscal year, amounts to approximately \$45 million annually.

CDSS also administers a specific program to provide legal services for UUMs by funding organizations that provide legal representation in the filing of, preparation for, and representation in asylum, SIJS, and other immigration remedies available to children.⁴⁶ The children can be in ORR custody or residing with a family member or other sponsor. The legal services include “culturally and linguistically appropriate services provided by attorneys, paralegals, interpreters and other support staff for state court proceedings, federal immigration proceedings, and any appeals arising from those proceedings.”⁴⁷ The 2020-21 state budget included \$2.9 million for these services.

CDSS is also in the process of implementing a pilot program to provide post-placement family reunification wraparound services to immigrant youth and their families. The program, which was enacted in the 2018-19 budget, includes \$5 million in one-time funding and is expected to run through the end of 2022. CDSS is contracting with providers across the state to provide these reunified youth and their families with case management, program navigation, youth mentoring and coaching, and family support workgroups.

Finally, the state funds California’s higher education public institutions – community colleges (CCs), California State Universities (CSUs), and Universities of California (UCs) – to assist their immigrant students, including undocumented students, and their employees with immigration issues. The program for the CCs and the CSUs is administered by CDSS, while the UCs

administer their own program. Begun with one-time funds (\$10 million for the CCs, \$7 million for CSUs, and \$4 million for UCs in 2018-19), the program was expanded to \$7 million annually for the CSUs in 2019-20, and this budget year added \$10 million annually for the CCs and \$345,000 annually for the UCs. On-campus services at the CCs and CSUs have focused on more basic legal services for students and staff, such as completing DACA renewal forms, while the UCs have offered more extensive services, including direct representation in immigration court, and have included students' family members.⁴⁸

Limitation of Detention Centers Operating in California

California has also taken steps to limit the operation of for-profit detention centers in the state. AB 29 (Lara),⁴⁹ passed in 2017 and co-sponsored by Community Initiatives for Visiting Immigrants in Confinement and the Immigrant Legal Resource Center, prohibited local governments and law enforcement from entering into new contracts with companies that operate for-profit immigration detention facilities if an existing contract was not already in place, and subjected these facilities to transparency by applying the California Public Records Act to them and requiring public notice and an opportunity to be heard before any local government entity could approve the transfer of land or issuance of a building permit to one of these facilities.

Going even further to protect both immigrant detainees and prisoners, AB 32 (Bonta),⁵⁰ signed into law in 2019 by Governor Newsom, prohibited the operation of private, for-profit detention facilities as of 2020, with some exceptions. AB 32 also prohibited the California Department of Corrections and Rehabilitation from entering into, or renewing contracts with private for-profit prisons after January 1, 2020, other than contracts necessary to comply with court-ordered prison population caps, and eliminated their use entirely by January 1, 2028.

Finally, AB 263 (Bonta),⁵¹ introduced on January 15, 2021, would require private detention facility operators to comply with, and adhere to, all local and state public health orders and occupational safety and health regulations. Further, AB 263 states, "It is the intent of the Legislature, in keeping with its obligation to safeguard the humane and just treatment of all individuals located within California, to ensure that private detention facility operators in the State of California respect and adhere to public health orders and occupational health and safety regulations, thus ensuring the welfare of those detained in these facilities and protecting public health with respect to the threat posed by COVID-19."

Many of the protections and services California provides to immigrant families could not have been achieved without the dedicated and diligent efforts of advocacy organizations around the state. In particular, some of these groups banded together to form the Dignity Not Detention coalition to advocate for the abolishment of immigrant detention and helped end the operation of private, for-profit detention centers in California.

Medical Care for Immigrant Children and Young Adults.

In order to better support the health needs of immigrant children, in 2015, California expanded its Medi-Cal program to offer full-scope medical benefits to all children under 19 years of age who otherwise qualify for these benefits, regardless of immigration status.⁵² Just last year, California expanded that coverage to include all young adults under 26 years of age.⁵³

Expansion of the Earned Income Tax Credit to Undocumented Families

The California Earned Income Tax Credit (CalEITC) and the Young Child Tax Credit are refundable tax credits that help support working families struggling to make ends meet. Last year, as part of the 2020-21 budget, the Legislature expanded these tax credits to include undocumented tax filers who are otherwise eligible.⁵⁴ When signing the bill, Governor Newsom noted: “Expanding the CalEITC will provide a critical boost to undocumented and mixed-status families across the state, stimulate the economy and make us all stronger in the face of economic uncertainty. These Californians are taxpayers and should be treated like taxpayers, eligible for the same credits, and pay the same tax rates.”⁵⁵

Support for Immigrant Families in the Child Welfare System

When parents are detained or deported by DHS, their children may become dependents of the juvenile court. All too often in these cases, reunification efforts fail within the required timeframe because the parents are unable to participate. If these children are not taken in by relatives, they may remain in the foster care system with strangers and their parents’ rights may be terminated. California sought to change those dismal outcomes with SB 1064 (De León),⁵⁶ which helped create uniform, statewide policies and practices that eliminate family reunification barriers for immigrant families in the child welfare system. First, SB 1064 granted an extension of time for family reunification where parents are detained or deported. Second, SB 1064 ensured that the immigration status of a parent, relative, or guardian, could not be considered when deciding where to temporarily or permanently place dependent children. Lastly, SB 1064 required CDSS to provide guidance to counties on (1) establishing memoranda of understanding with foreign consulates in the handling of these cases; and, (2) how to identify and aid children eligible for Special Immigrant Juvenile Status and other forms of relief available for immigrant children. These provisions have helped protect immigrant families involved with California’s child welfare system.

Resolutions to Support Immigrant Children

The Legislature has repeatedly expressed its concern over the Trump Administration’s mistreatment of immigrants, especially children, through various legislative resolutions. For a list of these resolutions, please see Appendix B.

Recent federal actions: what to expect moving forward

The Biden Administration’s priorities to address immigration

During his campaign, President Biden promised to address the flawed state of the U.S. immigration system by introducing a program for immigration reform.⁵⁷ Since the election, President Biden’s Administration has followed up on those promises with specific priorities to modernize America’s immigration system by prioritizing the reunification of separated families, as well as:

- Reversing the Trump Administration’s policies that separate parents from their children at the border by focusing on reunification efforts for separated families and ending prosecution of parents for minor immigration violations;
- Supporting family-based immigration to keep families together by allowing eligible immigrants to join their American relatives in the U.S; and,
- Fully reinstating the DACA program and investigating all legal options to protect DACA families from separations.⁵⁸

To fast-track family reunifications, the Biden Administration has vowed to create a task force to reunite the more than 500 children who have yet to be reunified with their parents.⁵⁹

Priorities to reassert America’s commitment to asylum-seekers include, but are not limited to:

- Ending prolonged detention of asylum seekers and reinvesting in community-based case management programs⁶⁰;
- Ensuring ICE and CBP personnel abide by professional standards and are held accountable for inhumane treatment⁶¹; and,
- Doubling the number of immigration judges, court staff, and interpreters to quickly process asylum cases, among others.

A hopeful path forward

The Trump Administration’s zero tolerance policy resulted in numerous effects on the physical, emotional, and mental health of thousands of migrant families. While state and federal policies exist to address these needs, there is still much to be done, and the future of immigration reform in the U.S. remains in question. In recognition of this, on January 15, 2021, the Biden Administration announced its plans to introduce a comprehensive legislative package aimed at expanding immigrant rights and providing a faster path to citizenship for approximately 11 million people.⁶² While comprehensive immigration reform will require years of effort, this package offers hope for the millions of immigrants living in the U.S. and works to restore the nation’s reputation as a country that welcomes the numerous contributions made by its immigrant population.

¹ Caitlin Dickerson, *Parents of 545 Children Separated at the Border Cannot be Found*, New York Times (Oct. 21, 2020).

² *Ibid.*

³ American Psychiatric Association, *APA Statement Opposing Separation of Children from Parents at the Border*, (May 30, 2018).

⁴ Abby Budiman, *Key findings about U.S. Immigrants*, (Aug. 20, 2020).

⁵ National Center for Youth Law, *The Flores Settlement Agreement & Unaccompanied Children in Federal Custody*, (Feb. 2019).

⁶ R. López, *Codifying the Flores Settlement Agreement: Seeking to Protect Immigrant Children in U.S. Custody*, *Marquette Law Review* (2012).

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- ⁷ Justice for Immigrants, *What is the Flores Settlement Agreement and What Does it Mean for family Separation and Family Detention?*
- ⁸ National Center for Youth Law, *The Flores Settlement Agreement & Unaccompanied Children in Federal Custody*, (Feb. 2019).
- ⁹ U.S. Government Accountability Office, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, (Oct. 2018).
- ¹⁰ U.S. House of Representatives Committee on the Judiciary Majority Staff Report, *The Trump Administration's Family Separation Policy: Trauma, Destruction, and Chaos*, (Oct. 2020).
- ¹¹ Department of Justice Office of the Inspector General, *Review of the Department of Justice's Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services*, (Jan. 2021).
- ¹² Americans for Immigrant Justice, *Do My Rights Matter? The Mistreatment of Unaccompanied Children in CBP Custody*, (Oct. 2020).
- ¹³ Pub. L. 107-296, 116 Stat. 2135 (2002). See 6 U.S.C. § 279.
- ¹⁴ Pub. L. 110-457, 122 Stat. 5044 (2008).
- ¹⁵ 8 U.S.C. § 1232(c)(2).
- ¹⁶ *Ibid.*
- ¹⁷ Congressional Research Service, *Unaccompanied Alien Children: An Overview* (last updated Oct. 9, 2019) at 9-10. See also Office of Refugee Resettlement, U.S. Dep't of Health & Human Servs., *What We Do*, available at <https://www.acf.hhs.gov/orr/programs/uac> (last visited Jan. 6, 2021).
- ¹⁸ *Ibid.*
- ¹⁹ *Ibid.*
- ²⁰ American Psychiatric Association, *APA Statement Opposing Separation of Children from Parents at the Border*, (May 30, 2018).
- ²¹ American Academy of Pediatrics, *AAP renews call for an end to family separation at the border*, (Jan. 18, 2019).
- ²² American Nurses Association, *American Nurses Association Calls for an Immediate End to Immoral and Cruel Practice of Separating Children from Their Families*, (June 19, 2018).
- ²³ National Center for Youth Law, *The Flores Settlement Agreement & Unaccompanied Children in Federal Custody*, (Feb. 2019).
- ²⁴ AB 403 (Stone), Chap. 773, Stats. of 2015.
- ²⁵ CDC-Kaiser, Adverse Childhood Experiences Study, (1997).
- ²⁶ Ryan Matlow, PhD. and Marisol Romero, PsyD, *Trauma and Diversity: Addressing Trauma and Attachment in Latino Immigrant Youth and Their Families*, *International Society for Traumatic Stress Studies* (Feb. 2016).
- ²⁷ Tyche Hendricks, *Judge Orders Release of Detained Migrant Children to Halt Coronavirus Spread*, KQED (Mar. 20, 2020).
- ²⁸ *Ibid.*
- ²⁹ Vera Institute of Justice, *The Flow of Unaccompanied Children Through the Immigration System* (Mar. 2012) at 4.
- ³⁰ *Id.* at 23-24.
- ³¹ 6 U.S.C. § 279(b).
- ³² 923 F.3d 622 (9th Cir. 2019). Note that Judge Richard Paez, in a separate concurrence, was willing to find that appointed counsel is constitutionally-required for indigent children in removal proceeding.
- ³³ *Ms. J.P. v. Barr* (C.D. Cal.), No. 2:18-cv-06081, Dkt. 305, Exh. 2 (filed Nov. 20, 2020).
- ³⁴ UAC status is defined under the Homeland Security Act of 2002, 6 U.S.C. § 279(g)(2).
- ³⁵ Enacted by AB 900 (Levine, Chap. 694, Stats. 2015).
- ³⁶ See, e.g., *Hines v. Davidowitz* (1941) 312 U.S. 52.
- ³⁷ Pub. L. No. 110-457.
- ³⁸ 8 U.S.C. Section 1101(a)(27)(J).
- ³⁹ 8 U.S.C. Section 1153(b)(4).
- ⁴⁰ AB 873 (Budget and Fiscal Review), Chap. 685, Stats. 2014.
- ⁴¹ Chap. 694, Stats. 2015.
- ⁴² *Id.* at Section 1 at (a)(6).
- ⁴³ Chap. 209, Stats. 2018.
- ⁴⁴ Chap. 103, Stats. 2018.
- ⁴⁵ Welfare & Institutions Code Section 13302 *et seq.*
- ⁴⁶ Welfare & Institutions Sections 13300-01.

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- ⁴⁷ Welfare & Institutions Code Section 13300(d).
- ⁴⁸ Legislative Analyst's Office, *The 2020-21 Budget: Immigrant Legal Services at the Public Higher Education Segments* (May 21, 2020).
- ⁴⁹ Chap. 494, Stats, 2017.
- ⁵⁰ Chap. 739, Stats. 2019.
- ⁵¹ AB 263 (Bonta) of 2021.
- ⁵² SB 75 (Committee on Budget and Fiscal Review), Chap. 18, Stats. 2015, as amended by SB 4 (Lara) Chap. 709, Stats. 2015, adding Section 14007.8 to the Welfare & Institutions Code.
- ⁵³ SB 104 (Committee on Budget and Fiscal Review), Chap. 67, Stats. 2019, amending Welfare & Institutions Code Section 14007.8(b).
- ⁵⁴ AB 1876 (Committee on Budget), Chap. 87, Stats. 2020.
- ⁵⁵ Office of Governor Newsom, *Governor Newsom Signs Bill Putting Money Back into the Pockets of More California Workers and their Families*, Press Release (Sept. 18, 2020).
- ⁵⁶ Chap. 845, Stats. 2012.
- ⁵⁷ Andy J. Semotiuk, *U.S. Immigration Reform to be a Biden Priority*, Forbes Magazine (Dec. 23, 2020).
- ⁵⁸ Nick Miroff and Maria Sacchetti, *Biden plans to spurn Trump immigration restrictions, but risk of new border crisis looms*, Washington Post (Dec. 2, 2020).
- ⁵⁹ Reuters Staff, *Biden pledges task force to reunite children separated at the U.S-Mexico border*, Reuters (Oct. 29, 2020).
- ⁶⁰ Joe Biden Campaign, *The Biden Plan for Securing Our Values as a Nation of Immigrants*, available at <https://joebiden.com/immigration/>.
- ⁶¹ Madhuri Grewal, *Biden can end the mass incarceration of immigrants*, Washington Post (Dec. 11, 2020).
- ⁶² Cindy Carcamo, Andrea Castillo, and Molly O'Toole, *Biden plans early legislation to offer legal status to 11 million immigrants without it*, L.A. Times (Jan. 15, 2021).