

## Fact Sheet on State v. Maria L.

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**In re Interest of Angelica L., 277 Neb. 984 (2009)**

**Unanimous Nebraska Supreme Court Decision on the Legal Rights of Immigrant Parents**

**November, 2009**

**Issue: The separation of US 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 US 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 an immigration enforcement action 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 provider seeking technical assistance, please contact NIWAP at (202) 274-4457 or [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu).**