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

By GINGER THOMPSON APRIL 22, 2009

CARTHAGE, Mo. — When immigration 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 Janet Napolitano, 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 foster care 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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