

*Testimony Before*

*California Blue Ribbon Commission on Children in Foster Care*

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and Consultant to the Annie E Casey Foundation**

**San Diego CA December 11, 2007**

Thank you Commissioners for this opportunity to testify to you. I am representing two organizations – the **Annie E Casey Family to Family Initiative** and the **Migration and Child Welfare National Network (MCWNN)**. Twenty-five California counties currently participate in Family to Family, a national child welfare reform initiative. **The Migration and Child Welfare National Network** is a coalition of leading child welfare organizations interested in the intersection of immigration issues and child welfare and includes the following groups, including the American Humane Association, the American Bar Association, Annie E Casey Foundation, Casey Family Programs, BRYCS/US Conference of Catholic Bishops, University of Illinois at Chicago, Hunter College, Loyola University of Chicago, Family Violence Prevention Fund, and many others. Most of the speakers in today’s hearing are active members of the Network, including Commissioner Escobedo who is a member of the public policy committee.

The Migration and Child Welfare National Network has adopted the following key elements that represent our core values.

1. The migration of children and families to the United States is a very important, but largely unaddressed issue affecting the child welfare system.
2. Immigrant children who are involved in the programs that provide child protection and child welfare services must be afforded services that will address their needs for safety, permanency, and well-being.
3. **Children welfare services should be available to all children. Immigration status should not impede the delivery of child welfare services.**
4. All child welfare agencies, courts, and the professionals who work within these settings must, individually and through their

membership organizations, become better informed about immigration law and best practices affecting immigrant children and families they are serving.

5. Delivering services to migrating children and families should be a focus at major national child welfare conferences, in the work of the federal child welfare resources centers, and in new research and demonstration projects.

While the debate about immigration is controversial, services to immigrant children in the child welfare system should reflect the fundamental principle that all children deserve protection, regardless of immigration status. Working in the best interest of these children requires coordinated efforts between child welfare, the courts, and social services provider to bring about meaningful improvements in providing appropriate and responsive child welfare services to immigrant families. While this will require the development of new service resources, policies, and even consular agreements, significant progress may also be made through improving communication and multidisciplinary collaboration.

Each of the presenters today will offer their testimony on the needs and policy recommendations for this population from a different perspective – research, immigration law, child welfare practice, and language and culture. The presenters will testify on the need for greater awareness and attention to this issue, for greater collaboration among different disciplines who serve this population, and finally, for greater integration of this topic into the larger conversation regarding improving the overall child welfare system.

Tomorrow, there will be an all day workshop at Beyond the Bench conference with over 120 registrants from child welfare, court, immigration law, and others discussing the needs and recommendations for improving services for immigrant families in the child welfare system. The Network will be developing a report from the Beyond the Bench preconference findings and submit this report to the Commission at the end of the month. Thank you.

*Testimony Before  
California Blue Ribbon Commission on Children in Foster Care*  
**Randy Capps, The Urban Institute**  
**San Diego, December 11, 2007**

Thank you very much for the opportunity to present testimony this morning, and would like to thank the Annie E. Casey for the support to come to this meeting. This morning I would like to briefly discuss three topics: (1) the demographics of the growing population of children of immigrants in California, (2) our research on children of immigrants in the Texas child welfare system, and (3) the implications of increasing immigration enforcement for children's well-being and system involvement.

**(1) Demographics of children of immigrants in California and Los Angeles**

First of all, the demographics of the state mean that California child welfare authorities will inevitably come into contact with immigrant families.

The population of immigrants is growing rapidly nationally, but nowhere faster in absolute numbers than in California. In 2007 California had 10 million out of the nation's 38 million immigrants. California also has the fastest growing immigrant population in numbers, though not the fastest growth rate. The number of immigrants in the state grew by almost 1 million between 2000 and 2007, and by 2 million between 1995 and 2007. In 2005, California had over 2.5 million unauthorized immigrants, about one quarter of the national total.

About half of the children in California now are children of immigrants. In 2004, there were 4.6 million children in California with at least one immigrant parent, representing 48 percent of all children. There were 1.3 million children with at least one unauthorized parent, or about 14 percent of all children statewide.

There are even higher concentrations of immigrants and their children in certain parts of the state. Los Angeles County, for instance, has over one third (3.6 million) of all the immigrants in the state. In Los Angeles County, 62 percent of all children (1.7 million children) have immigrant parents; over 500,000 children have unauthorized parents.

Poverty rates are relatively high in immigrant families. Almost two thirds of poor children (62 percent in California and 65 percent in Los Angeles County) are children of immigrants, and their poverty rate is about one third.

Poverty is associated with higher economic hardship in the form of food insecurity, high housing cost burdens, and overcrowding in immigrant households. Poorer children also tend to be in poorer health. These factors all suggest that immigrant families and children might be at relatively high risk of abuse and neglect, and therefore *over-represented* in California child welfare systems.

But immigrant families have some key strengths as well. Nationally, about 80 percent of children of immigrants live with both their parents, versus 70 percent of children with U.S.-born parents. Immigrant families are also more likely to include more than two adults. The presence of these additional adults and what demographers refer to as “migrant selectivity” (i.e., the physically and mentally strongest people are likely to take the risks involved with international migration) may protect immigrants’ children from adverse outcomes and lower the risks of abuse, neglect and system involvement.

Additionally, many immigrant families are relatively new to the state, and many parents have relatively low levels of formal education and English proficiency. These factors, along with fears of the government in the unauthorized population, may mean that immigrant families are less likely to come into contact with mandatory reporters and that abuse in these families may be more likely to go unnoticed than in other families. It also means that working with these families can be more challenging for child welfare agencies.

Given the all of these factors—relatively high poverty, strong families, and barriers to interaction with government agencies—it is difficult to predict whether or not immigrant families would be over- or under-represented in child welfare systems, and what their experiences would be.

## **(2) Research on children of immigrants in the Texas child welfare system**

My second topic addresses these issues using unique data we obtained from the State of Texas. With support from the Annie E. Casey Foundation, we

analyzed data on about 30,000 children who had been removed due to abuse or neglect and placed in out of home care as of March 2006. We focused solely on Latino children, because the vast majority of immigrants in Texas are Latino; in fact most are from Mexico.

We found great *under-representation* of Latino immigrants' children in out-of-home care relative to both Latino children with U.S.-born parents and non-Latino children. In 2006 just 1 percent of children in out of home care were foreign-born (i.e., the children themselves were born in Latin American countries), compared with 7 percent in the state's general population. About 8 percent of children in care were second-generation Latinos (i.e., born in Texas with parents born in Latin America), compared with 20 percent of all children in the state. In other words, first generation Latino children were underrepresented by a ratio of about one to seven, and second generation children were underrepresented by a ratio of two to five.

On the other hand, Latino children with parents born in United States were *over-represented* in the child welfare population: at 33 percent, versus 22 percent of all children (or a ratio of about three to two). In fact, we found more variation in representation in the child welfare system by parental and child nativity than we found by ethnicity.

There were far more U.S.-born children of immigrants than foreign-born children in the Texas out-of-home care population (about 2,000 versus 200), and the foreign-born children were much older than other children. About three quarters of the foreign-born children in care were adolescents (ages 11 to 18), compared with just one third of U.S.-born children of immigrants. This is in keeping with national data, which show that foreign-born children are older than U.S.-born children with immigrant parents; in fact, there are very few foreign-born children in the infant, toddler and preschool years.

It is also important to bear in mind that all of the U.S.-born children are citizens and therefore eligible for Title IV-E along with the full range of other public benefits even if their parents are unauthorized. Foreign-born children, however, are almost all noncitizens, and many are unauthorized and therefore ineligible for Title IV-E and other services. We estimated that in Texas about 70 percent of foreign-born children in out-of-home care were unauthorized, and only 8 percent of foreign-born children in care were determined IV-E eligible by the state, compared with half of other children. Thus, although small in number (there were only a total of about 200 in the

Texas data), foreign-born children may be expensive for child welfare systems because they are often ineligible for federal reimbursement.

Children of immigrants in Texas were much less likely than children with U.S.-born parents to be placed with relatives, and their case goals were less likely to be associated with relatives. Only 8 percent of foreign-born children in care were living with relatives, compared with 20 percent of U.S.-born children of immigrants and 28 percent of children with U.S.-born parents. The foreign-born children were also significantly less likely to have a case goal of family reunification or relative adoption than other children. However, U.S.-born children with immigrant parents were just as likely to have these case goals as other children. Thus, it seems to be more difficult to find relatives who can take care of children of immigrants—especially foreign-born children. It may also be that it is more difficult to reunify foreign-born children with their families because they are older when they are taken into care; in fact, they were significantly more likely than other children to have a case goal of independent living.

Another major finding of the study is the relatively high share of immigrant children removed because of sexual abuse. In Texas, about a third of foreign-born children were removed for sexual abuse (as opposed to neglect or physical or emotional abuse); this share was twice as high as for U.S.-born children of immigrants and three times as high as for children with U.S.-born parents. The foreign-born children in the Texas child welfare system were also disproportionately girls and tended to live in the largest cities in the state, especially Houston. We did not explore the reasons for removal in depth, but concluded some reasons for sexual abuse could include the higher age of foreign-born children, referrals from juvenile justice or anti-trafficking programs, or populations of runaways or unaccompanied migrant children in large Texas cities.

Our conclusions about Latino children of immigrants in Texas may be applicable to Latino immigrant populations elsewhere in the country, although we have not yet analyzed data for any other states. We saw earlier that Latinos overall are *under-represented* in the California dependency system, but we do not know how patterns of disproportionality differ by child generation within the Latino population. Moreover, California has a much more diverse immigrant population, and it is likely that the patterns we uncovered in Texas would be different for immigrants with origins in Asia,

Europe and elsewhere. It would only be by looking at the data for California that such questions could be answered with any certainty here.

### **(3) Implications of increasing immigration enforcement for children's well-being and system involvement**

Finally, I would like to present some findings from our study of immigration raids in three communities, and their impact on children. According to recent estimates, there are about five million children with at least one unauthorized parent in the United States, and about a quarter of these children live in California. Over a thousand unauthorized immigrants were arrested—mostly in their homes—during an Immigration and Customs Enforcement (ICE) sweep across Southern California this summer. Across the country, over five thousand unauthorized immigrants have been arrested at their workplaces during 2007, a tenfold increase over 2002. Our research suggests that these types of enforcement actions cause separation between children and their parents, increase economic hardship, and have other detrimental impacts on children.

We studied the aftermath of three of the largest-scale raids that ICE has conducted. Two sites—Greeley, Colorado, and Grand Island, Nebraska (with about 275 arrests each)—were part of the largest raid ever, at six Swift meat packing plants on same day last December. Our third site—New Bedford, Massachusetts—was largest single site raid—about 360 arrests—at Michael Bianco, a contractor that made backpacks for the military in Iraq.

Across the three sites, just over 500 children had at least one parent arrested; this was just over half the number of arrestees (about 900). Two thirds of the children were U.S.-born citizens, and two-thirds were ages 10 or under. Other children were indirectly affected if they lived in households that took in directly affected children; I'll say a few more words about this in a minute.

These were large-scale enforcement actions, but there was little communication between ICE and state and local agencies. Massachusetts was the only state where social workers were notified ahead of the raid. In all three sites, it was several days (and in Greeley weeks) before ICE provided a full and accurate list of the names of arrested immigrants to state and local governments.

According to lawyers, a large number of arrested immigrants were deported within a few days, in some cases without contact with families or lawyers. In one of the sites, even the Mexican Consulate could not get to see many parents before they were deported. It was mostly the Mexican-origin parents who accepted voluntary departure, because they knew they would be returned to the border.

Other arrestees were held in detention for days or weeks, up to six months in a few cases. Guatemalans and other Central Americans were more likely to fight deportation because of dire home country conditions. Conditions were especially poor in the Maya Quiche region of Guatemala, and many of the New Bedford arrestees were Mayan. Most of the long-term detainees were moved out of state, for example from Nebraska to Georgia and from Massachusetts to Texas.

Once in detention, parents sought to communicate with their spouses or others to let them know that they might not get out in time to pick up the children from school, or that the children need milk, food, clothes or other necessities. But they often could not find working telephones or pay to use them. Lack of telephone access made finding children and arranging care more difficult.

Small numbers of arrestees were released during the day of the raids or within a few days because they were single parents or the parents of young or sick children. ICE has an official policy of “humanitarian releases” but this policy was implemented inconsistently across the study sites. While some single parents and other primary caregivers were released by mid-day, many parents were held until late into the evening, overnight or for several days, thus prolonging the period of separation from their children. It required a visit by three dozen state social workers to Texas, and intervention by the Governor and U.S. Senators to get some of the single parents from New Bedford out of detention.

Further complicating things, many of the arrested parents were reluctant to divulge that they had children out of fear that ICE or child welfare agencies would also take their children into custody. It is difficult to communicate the depth of fear that these families had of government authorities following the raids—and this fear extended to child welfare agencies as much as to the federal government.

In the study we documented four different impacts on children: family separation, economic hardship, fear and isolation, and stigma associated with parents being “illegal.”

#### a. Family Separation

The majority of children went from having two parents in the home (formerly a major strength of these families) to living with a single parent after the other was arrested. Children felt that their parents “disappeared” and especially young children could not understand why their parents left them. Some of the children had both parents arrested, and others had a single parent arrested; in a few cases these children wound up with other relatives, babysitters, or neighbors for a period of time. But usually single parents were released relatively quickly.

Extended family and other informal networks were mostly responsible for meeting children’s short-term needs. These networks helped avoid the most dangerous circumstances for most children such as homelessness or living alone without supervision.

Other than three adolescents arrested at the worksite in New Bedford, no children wound up in foster care.

#### b. Economic Hardship

Families lost their breadwinners, usually the adults with the best jobs. For instance the Swift meat packing jobs paid \$10-12 per hour; these jobs were full-time (often overtime), unionized, and carried health insurance and other benefits. Without these wages, family incomes plunged.

Over time, hardship generally increased as savings eroded, last paychecks were spent, and privately-offered assistance declined. Extended networks were strained to meet children’s needs, so that they eventually also needed assistance for housing costs, food, milk, diapers, clothes, or medicine for children. More formal support from the public and non-profit sectors generally lasted for three or four months, but some parents were still in detention for six months, and many more were released but awaiting adjudication of their cases for more than six months.

Some parents lost their homes. Utilities and services were cut off for periods of time, and there was an increase in food insecurity. Because families moved in together, overcrowding increased.

#### c. Fear and Isolation

Follow-up raids continued, with agents going door-to-door for days, and up to two weeks in Grand Island. We heard about and spoke to families that hid in their homes (sometimes in closets or basements), and generally stayed away from the outside world, for days or even weeks at a time. We were unable to document the psychological impact on children of living in hiding for a prolonged period of time.

#### d. Stigma

Some children experienced backlash from teachers, students, and others in the community. They were told that their parents were “illegal.” One child said that his father was “arrested for working.” Some older children went to the raid sites and saw their parents or friends’ parents taken away in handcuffs.

The combination of these factors led to aggressive behaviors, mood swings, changes in sleep patterns and appetites, and prolonged bouts of crying. Mental health professionals relayed stories about depression, stress disorders, and other mental health conditions. One child whose parent we interviewed was diagnosed with suicidal thoughts.

We were not in field long enough to document long-term impacts on these children, but we plan to return to the same sites as well as others for future work—funded by the Foundation for Child Development and other sources.

We also examined community responses to the raids and found that these efforts were intensive and broad-based—in the words of one respondent they were “disaster-level responses.” Most of the aid was delivered by private agencies, and churches emerged as central distribution points for relief because they were trusted by immigrant families.

Public health and social service agencies also played roles in assisting families, but their roles varied substantially across the sites. In general few families came forward requesting cash benefits or food stamps. The

Massachusetts Department of Social Services sent workers to Texas to interview detainees about their children. In Massachusetts, virtually all the children were enrolled in public health insurance.

In Colorado last December, the counties had just implemented a state law requiring identification for benefit applicants and setting penalties for presenting fraudulent identification. Signs in the welfare offices in Greeley kept everyone away following the raids.

In Nebraska, there had been a high-profile case a few years earlier in which a Guatemalan mother had lost custody of her child for a period of time due to an abuse report. Following the report, the child was removed from the home, and the mother was removed from the country. She could not get back for her court date and lost custody. It took lawyers more than a year to get her back into the country to argue her case and be reunified with the child. Guatemalan communities across Nebraska remembered this case, and so affected families stayed away from the State Department of Human Services following the raid in Grand Island.

In the report, we recommend that state and local social service and child welfare agencies prepare plans to respond to immigration raids. But realistically it may be very difficult for child welfare agencies to get involved. New guidelines require ICE to contact the U.S. Department of Health and Human Services or state social service agencies in advance of a major raid. But in smaller raids such contact is discretionary. We found that once a raid is in progress, there is a lot of confusion and there are communications difficulties among federal, state and local governments.

The hardest things are often getting names from the federal government and determining whether arrested immigrants have children. Our report recommends that ICE allow social workers to interview arrestees to determine if they have children. ICE accepted this recommendation in their new guidelines, but again these guidelines are only mandatory for large-scale raids.

After raids, affected immigrant families tend to go into hiding, and they rely primarily on their extended networks of families and friends. Faith-based organizations are often the only institutions they trust or approach for assistance. Immigrants who have not been arrested often fear child welfare agencies as much as they fear ICE. Clearly, those agencies with greater

cultural competence and better relations with immigrant communities may fare better, but in general it is very difficult for these agencies to address concerns about children's safety and well-being.

Immigration raids create humanitarian crises in immigrant communities and put children at risk for prolonged economic hardship, psychological problems, and other adverse outcomes. During the course of our research, we learned a lot about how children fare immediately after raids, but little is known about longer-term impacts or about how best to protect children in these circumstances. With over a million children with unauthorized parents, California has a huge population at risk for abuse, neglect and other adverse outcomes if these immigration enforcement actions continue.

*Testimony Before*

*California Blue Ribbon Commission on Children in Foster Care*

**Ken Borelli, Former Deputy Director Santa Clara County/Co-Author of the SIJS Legislation/Consultant to the Annie E Casey Foundation**

**December 11, 2007**

The changing immigration demographic noted in this series of presentations both in California and at the national level also has ongoing implications for the Child Welfare System. In order to meet some of the specific challenges in carrying out State and Federal mandates to this population certain changes and modifications of our child welfare service delivery system needs to be considered. Before noting some of these changes it is important to also affirm that while immigration issues may impact or influence a child welfare matter, the underlying reason for engaging a family remains consistent with standard W&I guidelines.

The dual purposes and goals of the child welfare system and improving services to immigrant families in many ways is an evolving one. We in California can build upon prior practice; learn from counties and communities that have a long history of outreach and service development, and share with communities that may require new or modified service delivery models. Today's challenges are to develop and build effective and comprehensive service models to this population, and avoid the tragic implications of "service drift". And key to developing relevant child welfare services to this population rest upon the integration of immigration services and assessments within a basic child welfare infrastructure. Applying a differential service response model to the child welfare system, the follow model is offered to assist in addressing the needs of immigrant families and their children.

Part I: Key to building upon the family's needs and strengths is a **Family Immigration Assessment**. When it is determined that a family may be dealing with immigration issues, and or, immigration issues may be impacting a child welfare service plan, a relevant assessment needs to be done as soon as possible. In order for this to be done an agency must have access to knowledgeable information, including skilled social workers with awareness and understanding of basic immigration terms and the realities this may hold for an immigrant family/community. Staff Development

Training plays a major role at this foundation level, and becomes a critical building block for the development of future relevant services.

**Part II: Differential Response Strategies** for Immigrant Families must build upon an accurate early assessment, and follow the life of the case in the child welfare system from diversion to permanency.

**PATH ONE: Community Diversion Services**, inclusive of referral to CBO's, including Legal services with "verifiable" knowledge of immigration issues. These services will need to be coordinated with the referring child welfare agency, including feedback loops into the child welfare system for safety reassessments.

**PATH TWO: Voluntary Child Welfare Departmental Diversion Services**, including Informal Supervision Services. While the core immigration concerns may be contract out to immigration specialist, the overriding child welfare concerns will need to be monitored, and provided by the agency. It is likewise at this point to begin to consolidate the collection of key documentation to support possible immigration relief, either to help a family member resolve an immigration issue, or in the event further immigration relief is needed and a parent is not willing or able to assist the agency, protect the child in question.

**PATH THREE: In the event court intervention is needed**, then the previous immigration assessment work would have to be included in the court reviewed service plan for FM, FR, PP. Critical at this point is not only the child welfare matter, but where the attention to the immigration plan is to be focused, i.e.: the child, parent, relative, or all. Key immigration relief measures also need to be paid attention to, including VOWA, T and U Visas, Special Immigrant Juvenile Status, and other forms of immigration relief. Emerging to as a part of best practice is the cooperation and coordination of services with a foreign national's consulate via special protocols, relative assessments abroad, and the level of connectedness of a child with his family nationally, and internationally.

**AFTER CARE AND PERMANENCY SUPPORT:** If a minor finds him/herself in a permanency modality in the child welfare system then it is critical to support the minor by attempting to legalize his/her stay via SIJS, assess for guardianship, and adoption, maintain family supports locally, and

internationally and integrate these services with the mandated Independent Living Plan.

Part III: A Child Welfare Agency Inventory that can also apply to the court system in general: These factors include

- A) Court System Training, including sensitivity to the needs of immigrant families
- B) Knowledge of current Immigration Relief Resources,
- C) Community / Agency models and protocols** for how immigration services to be delivered in your community and child welfare agencies (contracts, specialized workers, consultants, task forces, liaisons, specialized units)
- D) Development of support documents, protocols** (ie. with relevant consulates) and procedures amongst the juvenile court system
- E) Integration of immigration services into overall child welfare service delivery model**, including DV services, ILP plans, Relative Searches and the international component of FM/FR/PP services.

**Part 4: Resource Development**-- To outreach and effectively relate to families with immigration issues also needs some special community partnerships. The same critical need for a family assessment also may require a community needs assessment, particularly for communities newly developing these services. Likewise too there may need to be special placement protocols developed for international placements, relative foster care concerns, international travel, and maintaining family connections.

*Testimony Before  
California Blue Ribbon Commission on Children in Foster Care  
Kristen Jackson, Staff Attorney, Public Counsel  
San Diego CA December 11, 2007*

Thank you for the opportunity to present some key information on immigration law and its intersections with the juvenile court and child welfare systems, particularly for children in foster care. This topic is potentially a very broad one, but I will focus my remarks on several areas. I will first cover the basic categories of legal status that the immigration law creates and what benefits, and in some cases disadvantages, attach to each. I will then provide you with information about a range of immigration benefits available to children and families involved in the child welfare system – including one specific to children under the jurisdiction of a juvenile court. I will next discuss issues of adoption and immigration and special concerns for immigrant youth in the delinquency system. Finally, I will highlight some resources that may guide you as you consider how best to address the immigration needs of children and families.

### **Immigration Status**

Many of you know the basic rule that those born in the U.S. are U.S. citizens. This is true – and it is true for those born in Guam, Puerto Rico, and the U.S. Virgin Islands. Some people born outside the U.S. may also be U.S. citizens, depending upon their parent’s citizenship and residence in the U.S. Other lawful immigrants in the U.S. may gain U.S. citizenship through naturalization. U.S. citizenship brings many benefits, including the rights to vote and not to be deported. Lawful permanent residents – also called “green card holders” – have the right to live and work in the U.S., although they could be subject to deportation if they break certain rules. They, like their U.S. citizen counterparts, qualify for federal financial aid, Social Security numbers, and state IDs. Other immigrants with permission to be in the U.S. include those with temporary legal status or non-immigrant visa holders. A final group of persons in the U.S., but not born in the U.S., are those people often referred to as “undocumented” or “unauthorized.” These people may have entered the country with or without permission, but are currently here without the approval of the U.S. government. As Randy Capp has outlined, in your work you will undoubtedly come in contact with children and families with a range of immigration statuses.

## **Immigration Benefits: SIJS**

In 1990, through the hard work of committed advocates for California's children in foster care including Ken Borelli, who will follow my remarks, Congress recognized that undocumented children in the juvenile court system who cannot be reunited with their parents may face serious barriers to permanency and well-being. As undocumented persons, they may live in fear of deportation. They cannot work legally nor obtain Social Security numbers or, in many cases, state IDs. They cannot obtain federal financial aid or many other government benefits. No matter the amount of resources expended by states to prepare these children for independent living, their life options remain limited by their immigration status. To address this situation, Congress created a unique route to lawful permanent residency: Special Immigrant Juvenile Status. For a child to be eligible for this benefit, the juvenile court must make certain findings, including that the child is eligible for long-term foster care due to abuse, abandonment or neglect and that it is in the child's best interests to remain in the United States. With these findings, immigration attorneys or experienced social workers (like those in L.A. County's DCFS SIJ Unit) can help eligible children apply for permanent residency. As with all immigration benefits, however, special care must be taken so that only applications for children with a high likelihood of approval are submitted to the immigration service, since denial of an application may place the child at risk for deportation. California has made strides in helping children obtain SIJS. Indeed, in early 2007 the Judicial Council issued its JV-224 – a form that, unlike any other in the nation, is the official document on which juvenile dependency and delinquency courts issue SIJS findings. Yet more remains to be done. In 2006, nationwide, only a few more than 900 children became lawful permanent residents through SIJS. Eligible children are clearly falling through the cracks. To prevent this from happening, immigrant children in the juvenile court system should have access to competent immigration counsel who can assist them in seeking SIJS benefits, or benefits under the other forms of immigration relief outlined below.

## **Immigration Benefits: VAWA**

SIJS, by definition, is designed to help only those children who cannot reunite with their parents. Other immigration benefits, however, are available to a broader range of children and some of their parents who have suffered domestic violence or abuse. Relief under the Violence Against

Women Act is one such benefit. Some undocumented persons who are the spouses or children of U.S. citizens or lawful permanent residents and who have suffered abuse from those parents or spouses may qualify to become lawful permanent residents without the assistance of the abusers. This removes the abuser from the immigration process; rather than being held hostage to an abusive spouse's threats of deportation, the survivor of domestic violence may help herself and her children to gain lawful immigration status and the work authorization and government benefits likely needed to make a life free from domestic abuse. A good number of legal nonprofits throughout the state have experience working on VAWA cases, and may be able to provide assistance to families brought into the child welfare system because of the cycle of abuse.

### **Immigration Benefits: U Visas**

What immigration relief, however, might be available to survivors of domestic violence who lack a family relationship with an abusive U.S. citizen or lawful permanent resident or to victims of other serious crimes? These individuals might be able to avail themselves of the protections of a U visa. This special visa is available to victims of certain crimes (for example, domestic violence, rape, attempted murder) who have suffered substantial harm and who have cooperated with law enforcement in the investigation or prosecution of the crime. Law enforcement must sign a certification that confirms the applicant's cooperation. The U visa confers temporary legal status – along with work authorization – and may lead to lawful permanent residency in the future. This fall, new regulations governing U visas were issued. These regulations increase the your collective ability to protect victims by allowing both traditional and non-traditional law enforcement—including judges, prosecutors, and child protective services – to sign law enforcement certifications attesting to a child and/or parent's cooperation and thus open a path for legalization. Look for outreach and information from organizations that work on U visas in the coming year.

### **Immigration Benefits: T Visas**

From time to time, victims of human trafficking – either children or adults – may come in contact with the child welfare system. They might qualify for T visas, a special kind of immigration benefit that allows victims of severe forms of trafficking in persons to obtain temporary lawful status and the possibility to become lawful permanent residents. To qualify for a T visa, a

person must, among other things, cooperate with reasonable requests from law enforcement if she is 15 or older and must show that she would suffer a high level of hardship if she were removed from the U.S. Some legal non-profit organizations have expertise in handling this somewhat unusual type of immigration case.

### **Immigration Benefits: Asylum**

Asylum is the one form of immigration relief that many people have heard of, but it is also one that is often very difficult to obtain – particularly given the requirement that an asylum application, to be timely, must be filed within one year of a person's arriving in the U.S. The area of asylum law is very complex and the qualifications are many. In the broadest sense, a person may qualify for asylum if she has a well-founded fear of persecution on account of race, religion, political opinion, nationality or membership in a particular social group and that persecution is by the government or a group that the government cannot control. Some people may have domestic violence based asylum claims, or claims that they may become street children or be recruited by gangs were they to return to their home countries. A parent who has an asylum claim might include her children as derivatives on her asylum application, just as parents can include, in some cases, their children as derivatives on VAWA, U and T applications. Children with these claims might also benefit their parents.

### **Adoption Issues for Immigrant Children**

Our immigration law does allow benefits to accrue between children adopted before the age of 16 (or the age of 18 if part of an adopted sibling group) and their adoptive parents. This can be good news for children in the foster care system who will make their way into permanent adoptive homes. But, *before* the adoption is complete, it is important to ensure these children can take advantage of what the immigration law has to offer. One of the common myths that we often hear is that an undocumented child automatically becomes a U.S. citizen if that child is adopted by a U.S. citizen. This is, sad to say, not the case. No automatic U.S. citizenship transfers to the child. Instead, the parent will have to take the child through a whole immigration process, which could likely involve the parent's having to take the child abroad and ask for government permission to allow the child to re-enter the U.S. Not surprisingly, this often induces shock, and dismay, in both parent and child. But if a child is a lawful permanent resident (perhaps through

SIJS) and adoption by a U.S. citizen takes place, the child may have the opportunity to gain U.S. citizenship by operation of law.

## **Juvenile Delinquency Proceedings & Immigration**

Immigration law, generally speaking, contains harsh penalties for persons convicted of criminal activity. Luckily for youth, the immigration law has been clear that juvenile delinquency dispositions are not “convictions” for immigration purposes. Although the draconian immigration consequences of “crimes” spare children, involvement with the juvenile justice system can still create serious issues for immigrant youth. Evidence that a lawful permanent resident child is deportable for certain conduct might come from their delinquency record. Similar conduct reflected in a juvenile record might create some barriers to lawful permanent residency for an undocumented child. More troubling, undocumented youth might find themselves on the radar of the immigration enforcement agency through a breach of the confidentiality of juvenile proceedings. It is important that those attorneys representing youth in delinquency proceedings, as well as others involved in the juvenile justice system, understand the immigration consequences of actions taken in this setting and take steps to protect immigrant children from unnecessary harm.

## **Resources**

Through the activities of groups like the Annie E. Casey Foundation and the Migration and Child Welfare National Network, awareness of the connections between immigration law and the child welfare system is growing. As our immigrant population grows, so too is our awareness of the need for more people experienced in both realms – immigration and child welfare – to help ensure children and families receive the quality immigration assistance they may need. The Immigrant Legal Resource Center is an excellent source of information on the complexities of immigration law and its relation to the juvenile court and child welfare systems. For in-depth discussions of the issues I have touched upon here, I recommend that you obtain ILRC publications, including the Immigration Benchbook for Juvenile and Family Courts and the SIJS Handbook, from their site at [www.ilrc.org](http://www.ilrc.org). Knowledge of immigration law by those in the juvenile court and child welfare systems, used to positive ends, can have substantial benefits for California’s immigrant children and families.

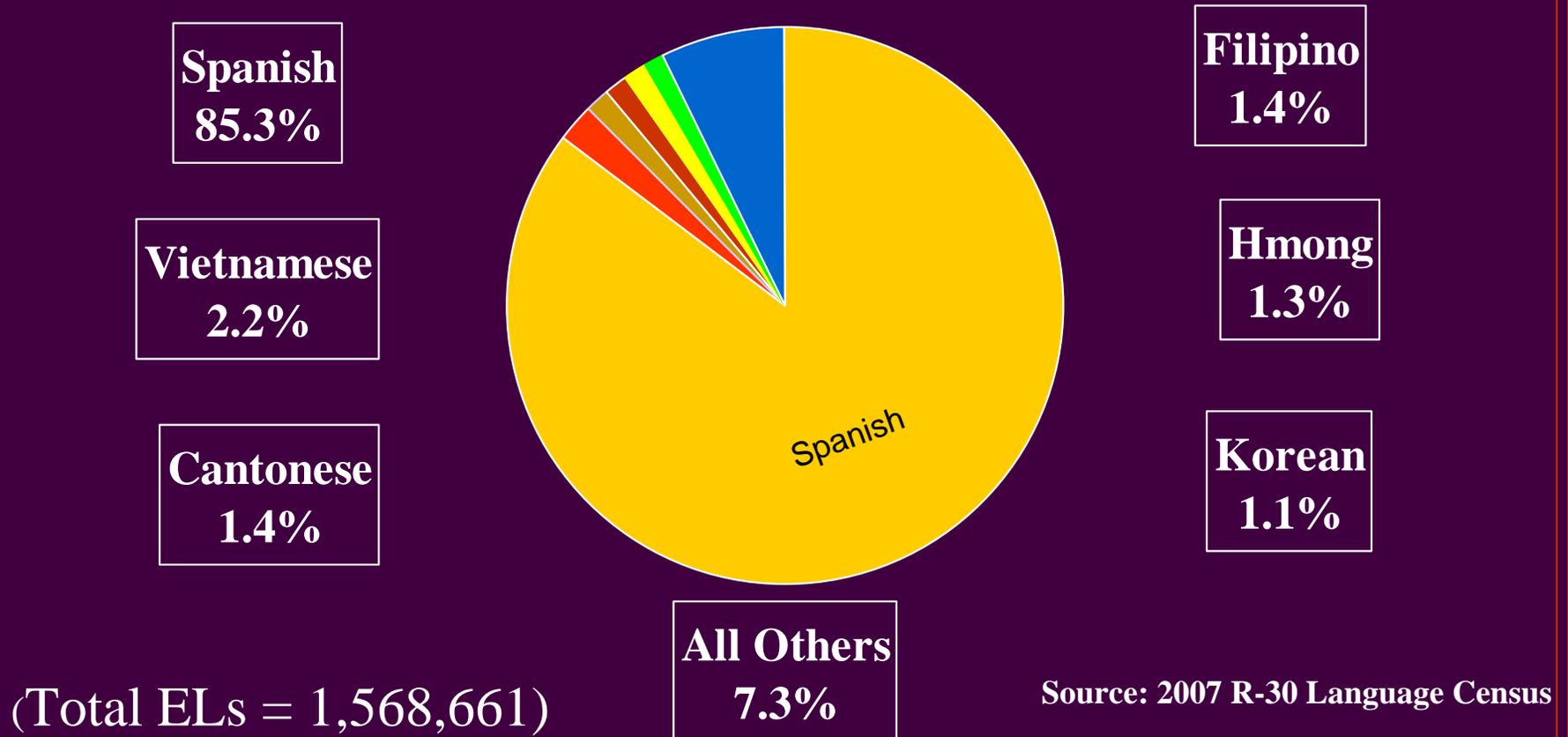
# CA LEP Enrollment

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- 25% of all students are Limited English Proficient (LEP) or English Learner (EL) students.
- 43% of all students speak a language other than English in their homes (LEP/Fluent English Proficient (FEP)).
- 47% of all CA students in P-K to 5<sup>th</sup> grade are children of immigrants! (Urban Institute)

# Languages Spoken by LEP Students in California



# Language and Culture Issues in Foster Care

Presentation for the Blue Ribbon  
Commission December 11, 2007

by Jennifer Rodriguez, Staff Attorney  
Youth Law Center



# Youth Law Center's Birth to Six Initiative

- Child welfare systems struggle to meet needs of young children with serious long term impacts.
- YLC partnering with SF, Fresno Counties
- First Phase: Focus groups with biological parents, foster parents, relative caregivers, department staff and youth to gather info on current policies and practices.
- Language and culture issues for children and parents major issue.



# SF Focus Group Findings

- **Ethnicity** - belonging to a group that shares the same characteristics, such as country of origin, language, religion, ancestry and culture. Ethnicity is a matter of biological and historical fact and is not changed by the culture in which a person grows up.
- **Culture** - describes what people develop to enable them to adapt to their world, such as language, gestures, tools to enable them to survive and prosper, customs and traditions that define values and organize social interactions, religious beliefs and rituals, and dress, art, and music. Culture determines the practices and beliefs that become associated with an ethnic group and provides its distinctive identity.
- **Identity** - classified as an individual's personal identity, social identity or ethnic identity.
- Bottom line: Preserving what the child is FAMILIAR with



# Impacts on Child

- Continuity and consistency in caregiver and basic needs particularly important for young children's brain development and mental health
- Current lack of planning or focus on care continuity and consistency.
- No focus on culture and language continuity



# Cultural Misunderstandings

- Cultural misunderstandings impact removal, permanency, positive outcomes
- Caregivers and workers, attorney, court may not be culturally aware- may label cultural practices or stress as child having “issues”- i.e. co-sleeping, eating difficulties, not speaking, toileting



# Placements

- Many children are placed in homes that do not speak their primary language, do not understand culture, and/or are outside of their home community
- Child's well being impacted- trauma of foster care and separation intensified with inconsistency (food, language, routine, environment).
- Over time, children lose connection to culture and language and lose guidance for understanding identity and adapting



# Easing transitions

- Language differences can make communication between bio family and caregiver impossible
- Visitation occurs less frequently or not at all when placement is distant
- Reunification more difficult
- When child reunified- language, culture barriers between child and parent



# Reunification- Issues for Parents

- Immigrant parents have added fear and intimidation of govt. “systems”- specifically court
- Navigating system particularly difficult- language barriers
- Immediate crisis and concerns need to be addressed in order to deal with reasons child in system
- Parents may feel pressured to leave children in foster care
- Engaging families and children difficult



# Services and Interventions

- Lack of service providers that are bilingual/bicultural who will understand needs
- Parents may have less access to services- (visitation, parenting classes, drug treatment, employment)
- Culture effects way ppl view problems and respond, so interventions may not be effective
- Parents who lack legal status have difficulty taking time off work for visitation and services, and have special problems accessing supportive services or complying with case plan



# Other issues

- Lack of visitation with extended family
- Later permanency more difficult
- Group homes
- Educational needs



# What Can Agency do?

- Assess language and culture diversity of child and family population
- Recruit homes with language and culture in mind
- Cultural awareness training for staff and resource parents
- Child development training for staff and resource parents
- Ensure services meet language and cultural needs of parents and children



# What Can Agency Do?

- Implement transition planning for removal and placement moves that is sensitive to language and culture
- Be prepared to give immigration advice and referrals- develop collaborative relationships with immigrant service providers
- Ensure that school placements address the language needs of the child
- Ensure that all notices are language accessible



# What Can Agency Do?

- Require resource families to have relationship with bio parents
- Access to bilingual/bicultural svcs. for non-English speaking families
- Evaluate visitation policies and practices
- Provide support after reunification
- Make all efforts to keep child connected



# What Can Court Do?

- Be Aware and Hold Accountable
- Ask the right questions
- Ensure court staff and attorneys are culturally and language proficient
- Parent and child court mentors
- Visitation monitoring



# What Can Court Do?

- Help identify system issues
- Make all efforts to keep child connected
- Ensure child, resource families and bio families get supportive services
- Ensure all notices are language accessible
- Assist in facilitating transnational collaboration when necessary

