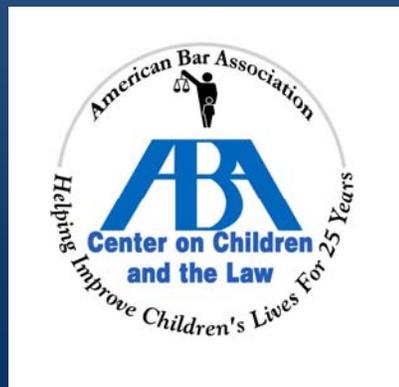


Child Welfare Law, Immigration Policy, and Their Intersection

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Child Protective Services / Child Welfare System Mandates

- **Titles IV-B and IV-E**, Social Security Act helps fund state home-based and foster care services. Although unaccompanied immigrant children/non-citizen children of undocumented parents aren't "IV-E eligible", **all** states provide some foster care that is fully state-funded, and some foster care may also be federal Title XX funded (so its not part of the federal \$ ban)
- **CAPTA**: Child Abuse Prevention and Treatment Act (42 U.S. Code §5101) mandates CPS provide protective services to **all** children

Eligibility for Federal Benefits for Those Not “Qualified Aliens”

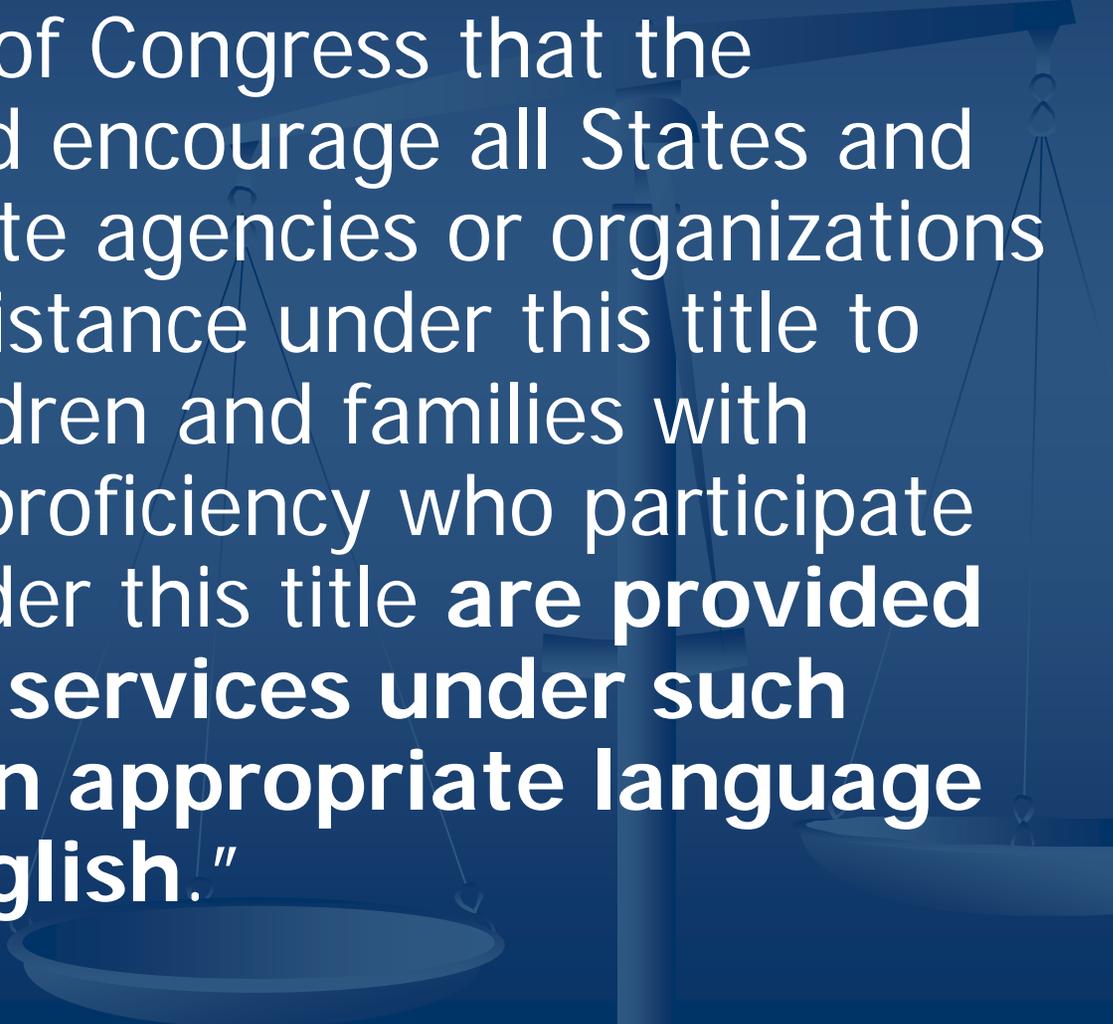
- 8 U.S. Code § 1611(b)(D): **Exception** to federal benefit ineligibility: “necessary services” to protect life or safety (e.g., CPS; foster care placement & family preservation services)
- Attorney General’s Order 2049
[<http://www.usdoj.gov/archive/opd/agorderf.htm>]
Specifies “necessary services” to be-- crisis counseling and intervention, services/assistance relating to child protection, violence and **abuse prevention**, and short-term housing/shelter for runaway, abused or abandoned children

Important Change for Child Welfare Agencies in P.L. 109-432

- Tax Relief and Health Care Act of 2006
- Amends federal child welfare law to require states, as part of their child welfare state plan, to verify citizenship or immigration status of any child in foster care using **either** IV-E or IV-B funding (and so certify by 6/20)
- Law also requires HHS to determine through the CFSR process whether state is in conformity with this
- Will states be expected to do this for *purely* state-funded foster care and other services?

CAPTA 2003 Sense of Congress Amendment

"It is the sense of Congress that the Secretary should encourage all States and public and private agencies or organizations that receive assistance under this title to ensure that children and families with limited English proficiency who participate in programs under this title **are provided materials and services under such programs in an appropriate language other than English.**"



Special Immigrant Juvenile Status

8 U.S. Code § 1101(a)(27)(J)

- Gives visa authority for an **under 21 child's** permanent residency **if**: under jurisdiction of juvenile court (including legal guardianship); can't be reunited with parents due to abuse, neglect, or abandonment; eligible for "long term foster care"; return home not in child's best interests; & found "dependent" by court **or** legally committed to a state agency
- Judicial education critical: Benchbook / SIJS & VAWA Manual at www.ilrc.org

Immigrant Child Victim Protections in the Violence Against Women Act

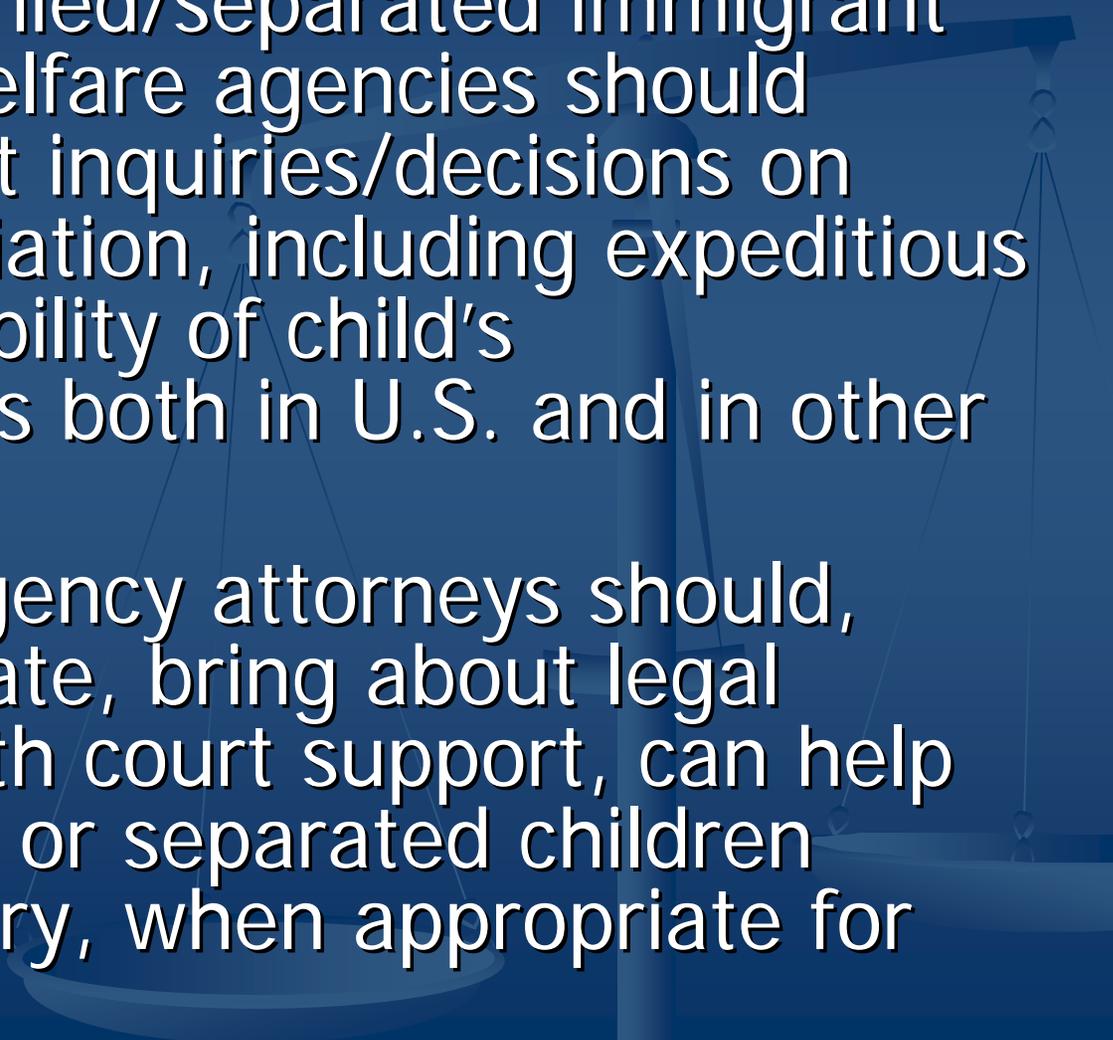
- VAWA (provisions in 8 U.S. Code § 1154)-- Non-citizen **child** (up to age 21) may “self-petition” for lawful permanent residency in U.S. if “**abused**” by their U.S. citizen or lawful permanent resident parent (including an adoptive parent).
 - Or, non-citizen “**protective**” parent who is victim of battering can petition on behalf of both themselves **and their children**

Children's Eligibility for "U" and "T" Visas, and for "Asylum"

- 8 U.S Code §§ 1101(a)(15)(T) and (U) and § 1158
- For victims of serious crimes cooperating with police (U) or "trafficked" either for sexual purposes or for unlawful labor or services(T) [Cooperation with police NOT a requirement for T visas]
- See DOJ 1998 guidelines on child asylum claims:
http://www.uscis.gov/graphics/lawsregs/handbook/10a_ChldrnGdlns.pdf

Five Suggested Principles for Law and Policy Regarding Child Welfare Services to Undocumented Child Immigrants

- 1) Cases of child immigrants who have been victimized should be handled by a child welfare agency, and not through a criminal justice system process
- 2) Child welfare agencies should be required to serve immigrant children and families regardless of immigration status, and accept prompt custody of unaccompanied or separated children where necessary for child's safety, permanency, and well-being

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- 3) Child welfare agencies should provide culturally-sensitive support and services to immigrant families
 - 4) For unaccompanied/separated immigrant minors, child welfare agencies should facilitate prompt inquiries/decisions on safety of repatriation, including expeditious checks on suitability of child's parents/relatives both in U.S. and in other countries
 - 5) Child welfare agency attorneys should, where appropriate, bring about legal actions that, with court support, can help unaccompanied or separated children remain in-country, when appropriate for their protection

Connecticut Department of Children and Families Policy 31-8-13 (12/05)

- Clearly states that agency services are available regardless of immigration status, including “family preservation efforts to avoid family members being separated through incarceration due to violation of immigration status of deportation procedures” and that CPS shall serve children who don’t have documentation papers. Identification of undocumented persons “shall not result in” reporting to DHS. Says that workers should aid children in their care to get Green Cards.

New York City's Implementation of "Local Law 73"

- *Immigration and Language Guidelines for Child Welfare Staff* addressing immigration status issues in CPS investigations and foster care placements, working with immigrant clients, & language issues [at: http://www.nyc.gov/html/acs/downloads/pdf/immigration_language_guide.pdf]
- Provides "*Language Identification Card*" to help determine family's primary language and then provide language-specific services (ACS clients speak 35-plus languages)