

The newsletter of *The Judges' Page* website – February 2008

The *Judges' Page* newsletter is a publication of **The National CASA Association** in partnership with **The National Council of Juvenile and Family Court Judges**. Find *The Judges' Page* newsletter at [www.nationalcasa.org/JudgesPage](http://www.nationalcasa.org/JudgesPage).

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*"The era of extended family members residing in the same home town or even the same state is over. Child welfare cases increasingly involve interstate and international placement options. This issue of The Judges' Page newsletter addresses the complex issues that face judges and other child welfare professionals dealing with international issues in dependency court cases."*

~ Judge J. Dean Lewis, Editor

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## Editor's Page— International Issues in Dependency Court Cases



*J. Dean Lewis, Judge (retired), Former Member, National CASA Association Board of Directors and Past President, National Council of Juvenile and Family Court Judges*

### Summary

The era of extended family members residing in the same home town or even the same state is over. Child welfare cases increasingly involve interstate and international placement options.

The dependency court is charged with establishing a permanent plan—in an expeditious manner—for each foster child. In order to develop an appropriate permanency plan, the court must have reliable information regarding all potential relative caregivers who may be able to provide the dependent child a safe and stable home. The era of extended family members residing in the same home town or even the same state is over. Child welfare cases increasingly involve interstate and international placement options. These examples illustrate only a few of the possibilities:

- A child is illegally transported into the US by human traffickers and comes into foster care as a victim of sexual exploitation. There are allegations that her parents in South America allowed her to be taken to the US.
- Two parents and their three children enter the US illegally and give birth to a sibling in this country. All children are placed in foster care as a result of a dependency finding. The parents are deported, leaving their four children—three of whom are in the US illegally.
- Mother and father meet while attending college in the US. Mother is a US citizen and father is a German citizen. They have a child in the US and later separate. Father returns home to Germany. The child comes into foster care as a result of his mother's mental health problems and use of illegal drugs. Mother is not a permanent placement option.
- Father and mother marry while father is stationed in the US military in Japan. Mother is Japanese and has a child born prior to the marriage. The parents have two children together. The family is stationed in the US when the mother dies. The father petitions to be relieved of the care of his stepchild. The court grants the petition and the child enters foster care.

The child welfare agency and the court-appointed special advocate play important roles in securing information regarding potential permanency placements for the children involved in these cases. In some instances, the child welfare agency will need to employ an attorney well versed in immigration law. In all of the cases, it will be necessary to prepare a family tree and seek information regarding the location of relatives living both inside and outside of the US. What issues arise when the child in foster care is not a US citizen? Is reunification with relatives outside the US in the child's best interest? Is separation of siblings who are in the US legally and illegally appropriate? Where does the court turn to secure a home study on those potential international placements?

Thanks go to Julie Gilbert Rosicky, executive director of International Social Service-United States of America Branch, Inc. (ISS-USA) for bringing the expertise of the authors of the articles in this issue together to help address these important issues. This issue includes the following articles:

- [Julie Rosicky](#) enunciates many of the important issues raised in international placement decisions and provides a unique vantage point as a former CASA program coordinator in New York.
- [Felicity Sackville Northcott and Jamie Rae Harvey](#) express concern regarding the lack of data currently being collected on American children placed overseas and question whether appropriate home studies and transitional services are being provided.
- [Jacqueline Bhabha](#) reminds us that while the law favors family reunification, this may not always be in the best interest of children involved in certain international placements.

- [Howard Davidson](#) addresses that issue and proposes five principles for juvenile courts and child welfare agencies to follow when determining the appropriate placement for unaccompanied and undocumented immigrant children.
- [Ilze Earner](#) offers significant insights regarding factors to consider when working with immigrant families.
- [Alan Dettlaff](#) offers advice to child welfare agencies working with immigrant children and their parents.
- [Chris Nugent](#) explains the provisions of Special Immigrant Juvenile Status (SIJS) and encourages all members of the child welfare community to integrate considerations of a child's eligibility for SIJS in their work with immigrant children.
- [National CASA announces that registration is now open for the 2008 National Conference](#), held in Washington, DC June 7 – 10.
- [Paula Campbell](#) offers web resources.

As a judge presented with the issue of a potential placement of a foster child with parents or relatives located outside of the US, know that you can secure a home study by working with your local child welfare agency. The local agency will process this request through the state agency, which will work with ISS-USA to secure the home study you need to make this important permanency placement decision.

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## Guest Editor's Note



*Julie Gilbert Rosicky, M.S., Executive Director,  
International Social Service-United States of  
America Branch, Inc. (ISS-USA)*

### Summary

For this issue of *The Judges' Page*, I have collected articles from some of the top experts in the fields of child migration, immigration, law and international social work to present key issues that will help the courts understand more about the issues and available resources when making international permanency decisions in the best interests of children.

I first became involved with my local CASA organization as a program coordinator, implementing a CASA program in three counties in central New York. Although my zip code and job title have changed a few times over the years, I continue to be a passionate advocate of the organization's mission and methodology. Now, as the executive director of International Social Service, United States of America Branch, Inc. (ISS-USA), I am thrilled to be partnering with National CASA and J. Dean Lewis, editor of *The Judges' Page*, to produce this issue.

I have collected articles from some of the top experts in the fields of child migration, immigration, law and international social work to present key issues that will help the courts understand more about the issues and available resources when making international permanency decisions in the best interests of children.

The authors highlight what we do and don't know about how many children and families are affected by international placements. They also reveal that many of the factors that influence permanency decisions are the same for children regardless of whether they are being placed within or outside of the US. However, contributing experts have highlighted that the following must *also* be evaluated when determining what is best for a child being considered for an *international* placement:

- The circumstances of entry into foster care (e.g., immigration enforcement, undocumented migration, differing cultural values and behaviors)
- The immigration status of the child and family and how and when to seek the assistance of an immigration attorney
- The potential risks of an international placement compared to the potential benefits
- The affect of language, cultural identity and religion on the current situation and the permanency plan
- The transnational or international resources available to gather information about placement and service options outside the US
- The multilateral agreements, international laws and conventions that inform the decision making process
- The additional information and resources needed to better understand the culture of the child and his/her family

These are just a few factors that require special consideration when making determinations about international placements. Many more are highlighted in the articles that follow. Best interests and permanency can only be synonymous when we have truly explored *all* options by taking into account *all* facts of the case. Nobody does a better job of this than a CASA volunteer.

However, as the populations change within the child welfare system, so must the information we gather. There is a vast need to expand our knowledge in this area, and ISS-USA's newly founded Arthur C. Helton Institute for the Study of International Social Service was founded to work with child advocates, lawyers, social workers and judges to improve the information available and provide training for service providers that work on transnational issues within the child welfare system. Similarly, the ISS-USA case management team is available to assist with many of the transnational issues that CASA volunteers, judges, lawyers and case workers may encounter. Specifically, ISS-USA can search for documents, advertise for missing relatives (for TPR cases), locate family members and perform home studies and follow-up placement reports in more than 150 countries worldwide.

In the US anyone involved with a child welfare proceeding can request an intercountry home study (or any of the other services described above). If the judge agrees, the court order for the specific transnational service requested can be sent to the ISS-USA. The casework supervisor will assess whether a home study (or other service) can be performed in that country. In many situations, states can use their Title IV-E funds to pay for these services.

ISS-USA and its social work partners worldwide have an excellent understanding of the cultures, sociopolitical situations, economics, laws and child welfare systems in the countries in which we work. All requested services are conducted by trained social workers in that country. ISS-USA coordinates the exchange of information from the foreign country back to the parties to the proceedings so that it may be used to make a decision regarding permanency placement.

ISS-USA has been providing international social work services for over 80 years. For more information please go to our website: [www.iss-usa.org](http://www.iss-usa.org).

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## **Where Have All Our Children Gone? Examining Documentation Standards for International Placement**

*Felicity Sackville Northcott, PhD, Director, Arthur C. Helton Institute for the Study of International Social Service, ISS-USA*

*Jamie Rae Harvey, ISS-USA Intern MSW Candidate, University of Maryland at Baltimore School of Social Work*

### **Summary**

We must amend the current documentation standards and identify the weaknesses at the intersection of migration and child welfare in order to understand the extent of the issues surrounding international placement of children and ultimately ensure the best interests of all children entering and exiting the US.

The US Department of States' records indicate that international adoptions by American citizens have increased by more than 140% since 1995. While data is readily available for the number of foreign children *entering* the country, there is little accurate data on the number of American children *exiting* the country for international placement (for adoption, foster care or family reunification). The discrepancy in data illustrates that current methods of tracking international placements of American children are inefficient and also raises questions about the practical aspects of these placements. Was a comprehensive home study, including background checks, completed by a professionally trained social worker? What percentage of children who have international placement options available to them were placed outside the US? Do cases involving an international placement take longer and cost more to resolve? International Social Service-United States of America Branch, Inc. (ISS-USA) is one of the few agencies able to provide the type of international social services necessary to assist in these cases. However, the lack of data at the local, state and national levels on the number of American children relocating overseas for adoption, foster care or family reunification prevents ISS from accurately quantifying the current situation.

ISS-USA received approximately 300 requests for international social work services in both 2006 and 2007. From these cases, we wanted to determine how many involved a request by a US resident for an international home study and how often American children were placed abroad. Although ISS-USA, in collaboration with ISS partnering branches, bureaus and correspondents, collected detailed information about the requested home studies, there is no data available regarding the final outcome of the cases. In most cases, the services of ISS-USA were not needed beyond the average 10.5 months of case activity; the cases closed (internally) before the court reached a resolution.

In 1982, the Department of Health and Human Services (DHHS) implemented the Voluntary Cooperative Information System to collect cumulative data on children in foster care and special needs adoptions from state child welfare agencies. However, intermittent reporting practices produced poor quality data. As a result, the addendum of section 479 (Title IV-E) to the Social Security Act required DHHS to establish a national data collection system. The system proposed, Adoption and Foster Care Analysis and Reporting System (AFCARS), instituted uniform methodologies and definitions. To ensure consistency, intercountry adoptions were defined as "those that occur in another country or those adoptions that are finalized in the US after the foreign child has been brought into the country for the purposes of adoption."<sup>1</sup> Unfortunately, the definition fails to include any language regarding the international adoption of American children. Without consistently measuring intercountry adoptions of American children, statistics vary from 300 to 800 annually.<sup>2</sup> There is no corresponding data for intercountry placement of American children.

On December 12, 2007, the assistant secretary of state for consular affairs formalized the US ratification of the Hague Convention on Intercountry Adoption. On April 1, 2008, the US will become a full member. Section 96.43 of the Hague Convention requires comprehensive data collection on the total number of intercountry adoptions undertaken by the agency annually in both convention and non-convention cases.<sup>3</sup>

Despite the implementation of new legislation, there still is no consistent method of collecting data on the number of children who have potential intercountry placements, on whether those placements are being considered and on whether the child is actually being placed outside the US. Although ISS-USA is made aware of and offers assistance in a small percentage of these cases, ISS-USA does not have the ability or the mandate to collect national data. Ultimately, there is a need for legislation requiring consistent collection of data at the local, state and national levels that provides the following:

- Demographic information on children in the child welfare system, including country of origin, language(s) spoken, immigration status, immigration status of primary caregivers and all options for permanency within and outside the US
- Measures taken to explore the viability of international placements and to monitor the placement whether the child is within or outside the US
- The length of time it takes to achieve permanency—from removal to placement—and the relative or average cost per case for international placements

We need to understand the scope of the problem this paucity of data can cause so that we can make appropriate decisions on how to best serve children who leave the US for adoption or other placement. Having this information will help us prepare the children, assess their well-being and link them with services in their new country. We must amend the current documentation standards and identify the weaknesses at the intersection of migration and child welfare in order to understand the extent of the issue so that, ultimately, we can ensure the best interests of all children entering and exiting the US.

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## Family Reunion and Best Interest: Why the Two are Not Synonymous

Jacqueline Bhabha, Jeremiah Smith Jr. Lecturer in Law, Harvard University

### Summary

As a matter of domestic and international law, there is a presumption in favor of family unity and family reunification when that unity has been interrupted. However, family reunion is not always in the best interest of a child, even absent evidence of abuse or neglect.

On February 23, 2006, a Texas court sided with an unaccompanied Chinese minor, Young Zheng, who was seeking to avoid deportation to China.<sup>1</sup> Though neither of his parents was in the US, and though the child was in close touch with his father, the court accepted that the child's best interest may not be furthered by forcing him to return home. The facts in that case were not atypical. The boy's father had arranged for smugglers ("snakeheads" as the Chinese professional people-smugglers are called) to secure his son's entry into the US. In return for this service, the snakeheads were demanding \$50,000 over-and-above the deposit already paid over to them. While he was detained in a juvenile detention facility, pending a review of his immigration case, the snakeheads started threatening Zheng's family. "They will kill me if I go back," the child said in a press interview.<sup>2</sup> The court agreed that the risks of maltreatment outweighed the immigration authorities' interests in removing the child from the US and reunifying him with his family.

Many other cases of unaccompanied immigrant children suggest the same answer. To be sure, as a matter of domestic and international law, there is a presumption in favor of family unity and family reunification when that unity has been interrupted. The 1989 United Nations Convention on the Rights of the Child—the most important and nearly universally ratified international law treaty dealing with children—describes the family "as the fundamental group of society and the natural environment for the growth and well-being of all its members *and particularly children*."<sup>3</sup> One of the convention's central tenets, that the "best interest" of the child should be a primary consideration in all actions concerning children<sup>4</sup>, is usually taken to justify family unity unless there is strong countervailing evidence, for example, of child abuse or neglect. The fact that a child's family is poor or disadvantaged in other ways is not of itself acceptable as a reason for removing or separating the child, even if more affluent or advantageous child rearing settings are available. That is why routine separations of indigenous children from their families and transnational adoptions by Hollywood stars and wealthy American families raise so much controversy.

However, family reunion is not always in the "best interest" of a child, even absent evidence of abuse or neglect. Sometimes immigration authorities adduce the argument of family reunification to justify the removal or deportation of a child, when it is clear that immigration control enforcement rather than child welfare is the driving motivation. Take the typical case of an independent child migrant, say from Guatemala or Honduras or El Salvador, who decides to travel to the US to seek work to support his indigent family. There is no coercion, trafficking, or exploitation involved, it is the child's own decision to seek a better life—an education, a regular income, a secure future. In this sort of case, it is not acceptable to simply trot out the mantra of "best interest" as a justification for removal of the child; one needs much more information about what would await the child back home. Would living as a street child, or as a destitute son of poverty stricken and unemployed parents, or as the sole companion of a mother with AIDS, trump the chance to learn and earn? Should the right to family life eclipse all other child rights, such as the right shelter and adequate health care?

The answer is neither self evident nor straightforward. It depends on a careful analysis of the facts of the individual case. In some cases to be sure, children should be returned to their parents, particularly where there is evidence that deceit, exploitation and coercion have played a part in the child's migration. The cases of children ostensibly brought to the US for education who then end up in domestic servitude or prostitution speak for themselves. But even in those cases, one needs to ascertain what will await the child if he is sent home. Will it be re-trafficking? Will it be punishment for not having successfully accomplished the family's migration goals? Will it be—as it was in the infamous case of the Guatemalan street child Edgar Chocoy—death at the hands of a gang?

While it may well be policy not to grant permanent or legal residence to undocumented and unaccompanied children who arrive without a regular immigration status, it should be clear that the reasons for refusing such residence are truly in the child's best interest.

## Footnotes

- [1.](#) *Zheng v. Pogash*, 416 F.Supp.2d 550
- [2.](#) Edward Hergstom, "Teen from China Sees Asylum as Only Hope; Immigrant Fears a Smuggling Gang Will Kill Him if He Is Deported", *The Houston Chronicle*, June 8, 2005, B01.
- [3.](#) 1989 Convention on the Rights of the Child, Preamble. [hereafter CRC]
- [4.](#) CRC Art. 3.

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# International Legal Principles for Judges and Child Welfare Agencies to Apply with Unaccompanied and Undocumented Immigrant Children

Howard Davidson, JD, Director, ABA Center on Children and the Law

## Summary

It is more critical than ever to understand exactly how our current system fails unaccompanied children from other countries and to develop improved practices that will help prevent such children from falling through the cracks.

“A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance....”

Article 20, *Convention on the Rights of the Child*

It is not uncommon for children to find themselves deprived of a family environment in countries other than that of their habitual residence or citizenship. It is critical that juvenile court judges and child welfare professionals do more to ensure the care and protection of immigrant minors unaccompanied by a suitable adult caretaker.

Article 3 of the *Convention on the Rights of the Child* (CRC) establishes—for the world—a commonly accepted criterion for decisions regarding unaccompanied or separated children: the best interests of the child. In 2006 the United Nation’s high commissioner for refugees issued a commentary entitled *UNHCR Guidelines on Formal Determination of the Best Interests of the Child*. These guidelines state that in most cases it will be in a child’s best interests to be reunified with parents or substitute family caretakers. Furthermore, Article 9 of the CRC is intended to ensure that a child will not remain separated from parents against their will (except, of course, when there has been abuse, neglect or abandonment by parents that renders them unsuitable caretakers).

In September 2005, the UN Committee on the Rights of the Child issued *Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*. Using the CRC as a framework, it provides one hundred suggestions for government actions. It indicates that return of a child to his or her country of origin should *not be an option* if “it would lead to a ‘reasonable risk’ that such return would result in the violation of fundamental rights of the child.” Factors to be taken into account in return decisions include:

- Safety, security and other conditions, including socio-economic ones, awaiting the child upon return
- Child’s expressed views about return
- Child’s level of integration in the host country and duration of absence from home country
- Child’s right to preserve his or her identity, including nationality, name and family relations
- Desirability of continuity in a child’s upbringing and to their ethnic, religious, cultural and linguistic background

Another useful document in guiding judicial and agency responses to these children is the *Interagency Guiding Principles on Unaccompanied and Separated Children* published by the International Committee of the Red Cross. It includes detailed suggestions for tracing parents and family members and conducting the cross-border family reunification process.

The *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children* (Child Protection Convention) is an important international convention, to date ratified only by a handful of countries (the US is not among them, but the US State Department has begun action to move toward ratification). The convention could be especially useful due to the frequent cross-border movement of children that is creating a pressing need for non-criminal-law-focused solutions to the retention and repatriation of children separated from parents. Its cooperation procedures can be helpful in instances where unaccompanied minors cross borders and find themselves in vulnerable situations where they may become subject to exploitation and other risks. Its enactment will help establish a global framework—in child protection situations—for transnational coordination of legal systems and international judicial and administrative cooperation.

This convention could be used to facilitate mediated resolution of intercountry family disputes involving an unaccompanied child. It could be the mechanism through which judicial authorities in one country consult with authorities in another country regarding placing that child in care or repatriating the child. When a child is to be

transferred to a receiving country for foster or other institutional care, the Child Protection Convention requires consultation with authorities in the receiving country, a written report on the child's case and a description from the sending country of the reasons for the proposed placement. This convention would also provide access to an early determination of conditions under which the child would live if sent to a receiving country.

### **Five Principles for Juvenile Courts and Child Welfare Agencies**

Based upon an analysis of relevant international instruments and best practices noted by those who have been involved with cases of unaccompanied alien minors, I propose the following principles for juvenile courts and child welfare that handle their cases:

1. We should collectively respond to unaccompanied child immigrant victim cases through a child welfare, not a criminal justice, system.
2. Juvenile courts and child welfare agencies should assure prompt repatriation decision-making.
3. Juvenile courts and child welfare agencies should not hesitate to serve immigrant children and families, regardless of immigration status, as well as accept prompt custody of those children into agency foster care when needed.
4. Juvenile courts and child welfare agencies should provide culturally-sensitive support to immigrant children and families.
5. Juvenile court judges and child welfare agency attorneys should, where appropriate, ensure initiation of local intervention that helps permit unaccompanied or separated children to remain in-country when necessary for their care and protection.

It is our duty to uphold the rights of *all* children and to promote separated children's safety, permanency and well-being *regardless* of where they came from or to where they may be returning. It is more critical than ever to understand exactly how our current system fails unaccompanied children from other countries and to develop improved practices that will help prevent such children from falling through the cracks.

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This article is adapted from a longer article co-written with Julie Rosicky and appearing in the most recent issue of *Protecting Children*, a journal of the American Humane Association's Children's Division. The journal discusses issues related to working with immigrant children and families in the child welfare system and can be purchased by going to [www.americanhumane.org](http://www.americanhumane.org) and clicking on "store" then on "children's catalog."

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## **Immigrant Parents and the Child Welfare System: New Factors to Consider in the Era of Globalization**

*Ilze Earner, PhD, LCSW, Assistant Professor, Hunter College School of Social Work*

### **Summary**

While there is no data that indicates the exact numbers of immigrant families and children who come into contact with the child welfare system, those who do present service providers with many unique challenges. Child welfare practitioners must become equipped to work with new migrant populations in this era of globalization.

In the last several years, much needed attention has been directed to understanding the special needs of immigrant families, children and youth who become involved with the child welfare system. While there is no data that indicates the exact numbers of immigrant families and children who come into contact with the system, those who do present service providers with many unique challenges. These may include profound differences in parenting styles and child discipline; family role expectations; language; and levels of acculturation. In addition, immigration status, which may vary among family members, affects accessing health care, social services and educational opportunities, and also affects family members' abilities to reside and work legally in the US. Less obvious but equally important to consider when addressing the issues facing immigrant families are transnationalism and the deepening effects of prejudice, discrimination and fears of deportation that affect all immigrants, whether legal or undocumented. Both factors have an impact on family dynamics and functioning and should be considered by service providers in assessment, intervention and permanency planning.

Transnationalism—a situation in which family members live in different countries but remain intimately connected through regular communication, contact and economic support—is a phenomenon related to globalization. Unlike previous waves of migration during which individuals or families left their country of origin permanently, new migrants often go back and forth frequently, remain in close contact with relatives through technological advances (cell phones, videophones or the internet) and maintain economic ties through remittances (sums of money sent home regularly to family or extended kin for the purposes of support). How transnationalism affects families and children has not been adequately studied, but it is clear that immigrant families often have very close ties to relatives and extended kin in their home countries that affect how they live in the US. For example, immigrant parents often expect that children who were left behind will later join them in the US; however, when they do, these children may encounter new siblings born in the US or find newly formed and blended families if their parents have separated and remarried. This can affect parents and children who are forced to adjust to new roles and expectations in new family formations; it can also raise problems associated with the “mixed status,” of siblings, i.e., the US born children are citizens while those left behind are not.

In a reverse phenomenon of transnationalism, some immigrant parents living in the US choose to send their adolescent children back to grandparents or other extended kin in their country of origin to address behavior problems and enforce discipline. While for some children this can be beneficial and can help them maintain cultural and language ties to their homeland, for others it can be disastrous. The children have no real ties to their country of origin, are viewed as having “Americanized” attitudes and behaviors, and (with inadequate supervision) may quickly become involved with gangs.

A second factor to consider when working with immigrant families is how the hostile political and social climate is affecting family behavior and their ability to function. Many state and local governments have passed legislation requiring that immigrants provide proof of eligibility (based on their immigration status) to obtain a driver's license and access social services, housing and health care. These laws keep many immigrant parents from using state-funded healthcare programs for children and have resulted in tragic incidents in which undocumented parents who are fearful of being deported have failed to seek emergency medical care for their children. Additionally, the children of immigrant parents enroll less often in early intervention programs, youth programs and other community recreational and educational activities.

Immigration enforcement activities, which have doubled in size and scope since 2005, create an additional level of fear, driving many families even deeper into the shadows. One can only begin to imagine the level of trauma and the long-term negative effects this could have on the children of immigrant parents who are detained and deported.

Child welfare practitioners must become equipped to work with new migrant populations in this era of globalization. This means understanding the role of immigration law, the fear of deportation and the hostile and discriminatory attitudes that affect families' abilities to access educational, economic and health care systems. Service providers must also understand the dynamics of migration, especially of transnational life. This may mean asking questions about family members who are not in the country and understanding how distant relatives can in fact be valuable resources to families here. It also means developing new relationships with entities such as consulates, international social service providers and others who can assist in accessing documents, finding extended family members and conducting international home studies and other permanency planning activities.

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## Immigration Enforcement: Considerations for Child Welfare Systems

*Alan Dettlaff, PhD, MSW, Assistant Professor, Jane Addams College of Social Work*

### Summary

To effectively work with immigrant families and ensure best-interest outcomes for children, child welfare staff must be knowledgeable about state and federal policies that affect permanency planning and be able to navigate systems with which child welfare has not typically interacted.

After the US Immigration and Customs Enforcement (ICE) was criticized in 2005 for not doing enough to end the unlawful employment of undocumented immigrants, the agency increased its efforts to reduce the number of people entering the US illegally, deport undocumented individuals who were already in the US and identify employers who hire undocumented immigrants. ICE operations (or raids as they are commonly called) are on the rise, increasing from approximately 500 in 2005 to more than 1,000 in 2006. Although the intent of worksite operations is to bring criminal charges against employers, undocumented workers are typically apprehended and detained for immigration violations during these raids. In 2006, more than 3,600 immigrants were apprehended as a result of these efforts.

What happens to children following the apprehension of an undocumented parent can vary greatly depending on the nature and location of the operation. Some children may be placed with kin if they are immediately available; others may be held in federal family detention centers with their parents. On other occasions, the child welfare system may be asked to intervene. In other cases, however, the children may be called upon after raids have been conducted and the community becomes aware that children have been separated from their parents.

Because of increased enforcement efforts and the potential for children to be separated from their parents, it is important that child welfare agencies equip themselves to respond to this population. While culturally competent practice requires child welfare staff to be knowledgeable of the impact that immigration may have on families, this knowledge alone is not enough to adequately respond to children who become separated from their parents as a result of immigration enforcement. To effectively work with these families, child welfare staff must be knowledgeable about the multiple state and federal policies that affect permanency planning. They also must be able to navigate systems with which child welfare has not typically interacted in order to facilitate parent-child reunification or identify alternate permanency arrangements that are in the best interests of children.

### Permanency Decision-Making

Many factors must be considered when determining the best permanency option for separated children. Primary among these is the children's immigration status, as this can significantly affect most other considerations. While some children of undocumented parents are themselves undocumented, nearly two-thirds of all children living with undocumented parents are US citizens. As this can significantly affect permanency options as well as the steps necessary to achieve permanency, the children's immigration status should be determined as soon as possible from birth records or collateral information.

Children's parents and other family members should be actively involved in all aspects of decision-making. Whenever possible, reunification with parents should always be considered. However, for children who are US citizens, reunification may not be possible, or parents may prefer that their children remain in the US. In these cases, permanency arrangements should be actively sought with relatives or kin. For undocumented children, reunification with parents or other relatives in the child's country of origin may be possible. However, reunification may require considerable transnational cooperation for which child welfare agencies may not be prepared. Similarly, child welfare agencies often do not have the means of looking for relatives in other countries or the collaborative relationships necessary to obtain international home studies. Child welfare staff should be familiar with the services provided by agencies such as International Social Service in order to facilitate these processes. Cooperative relationships with foreign consulates should also be explored as a means of initiating transnational collaboration.

For undocumented children, it is important to obtain legal representation as quickly as possible. Immigration attorneys with expertise in immigration law can assist child welfare staff in navigating complex immigration procedures and in providing the information necessary to make informed decisions. Staff should also be familiar with the various forms of immigration relief that may be available for undocumented children. As applications for relief may be time-sensitive to the age of the child and often require considerable transnational collaboration, staff should be familiar with the application and eligibility criteria for each. When options for immigration relief are

available, caseworkers should carefully balance these options with the best interests of children, as certain forms of immigration relief may preclude future reunification options.

## **Conclusion**

Child welfare agencies must work proactively to ensure an effective response to children whose parents are targets of immigration enforcement efforts. Staff must be knowledgeable about state and federal policies that affect immigrant children and families and how these policies may affect permanency options. Child welfare agencies must also work collaboratively with other agencies, systems and countries to ensure that the best interests of children remain at the forefront of decision-making.

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## **Special Immigrant Juvenile Status: An Ideal Path to Permanency for Vulnerable Undocumented Abused, Neglected or Abandoned Youth**

*Christopher Nugent, Senior Pro Bono Counsel, Community Services Team, Holland and Knight, LL*

### **Summary**

It is incumbent upon and imperative for all stakeholders in the child welfare system to integrate considerations of a child's eligibility for Special Immigrant Juvenile Status—which enables vulnerable abused, abandoned or neglected undocumented youth to obtain lawful permanent residence—into their case management and adjudications.

Despite its enactment 18 years ago in the Immigration Act of 1990, Special Immigrant Juvenile Status (SIJS)—which enables vulnerable abused, abandoned or neglected undocumented youth to obtain lawful permanent residence ("green cards")—remains a relatively unknown, seemingly complex and unfortunately underutilized creature of law. Countless children in the child welfare system ultimately "age out" of eligibility for this relief because no legal authority identified them as SIJS candidates and referred them to competent counsel to pursue SIJS and permanent residence. (On an annual basis, the Department of Homeland Security US Citizenship and Immigration Services (DHS USCIS) adjudicates only 500 or so applications for permanent residence based on underlying SIJS eligibility.) Individuals who age out of eligibility become part of this country's undocumented immigrant underclass, currently estimated at 12 million people. This underclass lacks any ability to regularize or legalize their immigration status in the US, given the restrictiveness of current immigration law, which was compounded by the lack of action on comprehensive immigration reform by the 110th Congress. It is incumbent upon and imperative for all stakeholders in the child welfare system to proactively and positively integrate considerations of a child's eligibility for SIJS into their case management and adjudications.

Codified as the Immigration and Nationality Act (INA) S. 101(a)(27)(J), 8 USC.S 1101(a)(27)(J), SIJS is a hybrid of federal and state laws; it is composed of several tiers. First, assuming a child is not in DHS or Office of Refugee Resettlement (ORR) custody, a state court with appropriate custodial jurisdiction over the child including family, juvenile or even probate must make a predicate order finding. It may find that 1) the child is dependent on the court or a state agency; 2) the child (whether in the US or a foreign country) is eligible for long-term foster care due to abuse, neglect or abandonment; and 3) it would not be in the child's best interests to be returned to his or her home country. If in DHS or ORR actual or constructive custody—including refugee foster care—the child may also need to seek consent from DHS to seek a state court best-interest order for SIJS purposes.

However, the state of the law regarding consent is in flux given *Perez-Olano-Gonzalez*, CV 05-03604 (C. California January 8, 2008). This class-action lawsuit provides for a permanent injunction enjoining DHS from requiring DHS consent to obtain state court best-interest orders for children in federal custody, assuming that the state court order does not alter or usurp federal custody over the child (through actions such as ordering the child's placement in foster care or a guardianship). DHS has appealed this decision to the court of appeals for the ninth circuit.

Once the state court makes what immigration practitioners refer to as this "best-interest order," the child is now eligible to file for SIJS with DHS using an I-360 petition; for an adjustment of status to permanent residence using an I-485 form; and for employment authorization using the I-765 form (all available at [www.uscis.gov](http://www.uscis.gov) under forms). It is notable that if granted permanent residence through SIJS, the child is permanently barred from immigrating his or her parents- even after he or she naturalizes and becomes a US citizen. See INA § 101(a)(27)(J)(iii)(II). Children granted permanent residence through SIJS are not eligible for any federal welfare benefits other than emergency Medicaid for five years and matching foster care funding under Title IV-E of the Social Security Act. Given the lack of Title IV-E matching funds, there has been a significant understandable but unfair disincentive for states to take undocumented children into their child welfare systems, despite their prima facie eligibility based on abuse, neglect and abandonment. Fortunately, for purposes of SIJS, children are eligible when a best-interest order is issued by a court in the context of a guardianship with an adult under court supervision—a scenario which triggers no state expenditure.

For purposes of the best-interest order, it is notable that DHS gives the order full faith and credit and will not attempt to second-guess the state court, assuming that the order has requisite specificity and underlying substantiating evidence. See Memorandum, William R. Yates, Associate Director for Field Operations, Memorandum #3—Field Guidance on Special Immigrant Juvenile Status Petitions (May 27, 2004) available at [www.nationalimmigrationproject.org/DVPage/FieldGuidance\(SIJS\)AdjMemoJuv3.pdf](http://www.nationalimmigrationproject.org/DVPage/FieldGuidance(SIJS)AdjMemoJuv3.pdf). Additionally, DHS does not require that states demonstrate compliance with the Vienna Convention on Consular Relations which requires that the parent or guardian in the child's country of origin has been notified of the proceeding. *Id.*

DHS further is cognizant that the term "long-term foster care" is no longer operative in state statutes per The Child Abuse Prevention and Treatment Act (CAPTA) but still seeks the use of such magic language for SIJS purposes as a matter of course. Some states, including Illinois, have accordingly modified their (CAPTA) statutes to explain how their language under CAPTA is consistent for DHS requirements.

For SIJS and related permanent residency purposes, stakeholders should be aware of the following:

- Children over age 18 are ineligible for benefits unless the state specifically provides for continued jurisdiction over the child until age 21.
- Children with juvenile delinquency offenses or adult convictions involving narcotics or other crimes might be ineligible for benefits.
- Children who have continued drug addiction or alcoholism are ineligible for benefits.
- Children who are HIV positive cannot adjust their status to permanent resident absent a parent, spouse or child to whom they can show extreme hardship who is a US citizen or permanent resident.
- Children with previous removal or deportation orders have difficulty adjusting to permanent residence, absent returning to their home country and seeking a waiver if eligible.
- Children with psychological difficulties posing threat to themselves or others can be required to provide psychological evidence for purposes of a waiver the Center for Disease Control.

The most effective means to ascertain immigration status is by providing the child with a protected space to feel free to disclose information without the risk of reprisals. This can be accomplished by immediate referrals to competent immigration counsel with expertise in SIJS, professionals who will not only protect the attorney-client privilege but also prevent the legal record of proceedings from containing inaccuracies or misstatements. For a reputable agency in your area, please consult [www.usdoj.gov/eoir/probono/states.htm](http://www.usdoj.gov/eoir/probono/states.htm).

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## Online Resources: International Placements and the ICPC

Paula Campbell, Permanency Planning for Children Department, NCJFCJ

### Summary

Several publications and websites address intercounty and immigrant children and protective statutes to ensure against child trafficking and illegal adoption processes. The following website links are just some of the resources available on international placements and the Interstate Compact on the Placement of Children.

The Interstate Compact on the Placement of Children (ICPC) was created to ensure that protection and services are provided to children who are placed across state lines for foster care or adoption. The compact is a uniform law that has been enacted by all 50 states, the District of Columbia and the US Virgin Islands. It establishes orderly procedures for the interstate placement of children and fixes responsibility for those involved in placing the child. The compact defines the types of placements and placers subject to the law; the procedures to be followed in making an interstate placement; and the specific protections, services and requirements brought by enactment of the law. Children placed out of state need to be assured of the same protections and services that would be provided if they remained in their home states.

Much like the ICPC, there are international laws regarding adoption and placement of foreign born children with foster and adoptive parents across national borders. There are various publications and websites that address intercounty and immigrant children and protective statutes to ensure against child trafficking and illegal adoption processes. The following website links are just some of the resources available on international placements and the ICPC.

### International Adoption and Placement Information and Publications

Intercounty Adoption of a Relative

<http://international.adoption.com/foreign/intercountry-adoption-of-a-relative.html>

Military Family Placement and Adoption Information

[www.military.adoption.com/army/pluses-of-military-families.html](http://www.military.adoption.com/army/pluses-of-military-families.html)

Oregon Department of Human Services, International Placement of Children Information

[www.dhs.state.or.us/policy/childwelfare/im/2006/cw\\_im\\_06\\_004\\_att1.pdf](http://www.dhs.state.or.us/policy/childwelfare/im/2006/cw_im_06_004_att1.pdf)

US Department of State, Bureau of Consular Affairs, Intercounty Adoption Information

[www.travel.state.gov/family/adoption/adoption\\_485.html](http://www.travel.state.gov/family/adoption/adoption_485.html)

Intercounty Social Work Services, International Social Service Website

[www.iss-usa.org/site/subsection.asp?ldSection=2&ldSub=25](http://www.iss-usa.org/site/subsection.asp?ldSection=2&ldSub=25)

Intercounty Adoption, *Innocenti Digest*, UNICEF International Child Development Centre

[www.unicef-irc.org/publications/pdf/digest4e.pdf](http://www.unicef-irc.org/publications/pdf/digest4e.pdf)

Innocenti Research Center, UNICEF, offers many publications and pamphlets on international child issues.

[www.unicef-irc.org/cgi-bin/unicef/series\\_featured\\_top.sql](http://www.unicef-irc.org/cgi-bin/unicef/series_featured_top.sql)

### Immigrant Children and Placement

Child Protection Best Practices Bulletin, Working with *Undocumented and Mixed Status Immigrant Children and Families*, New Mexico Court Improvement Project

[www.cyfd.org/bestpractices/Best\\_Practices\\_Bulletin-Working\\_with\\_Immigrant\\_Families.pdf](http://www.cyfd.org/bestpractices/Best_Practices_Bulletin-Working_with_Immigrant_Families.pdf)

Securing Home Assessments—Overview of Child Welfare Cases. Information about children in the child welfare system—in the US or in an ISS network country—who are under the *guardianship* of the state or country's child welfare program and have been placed in foster care or a residential placements for children.

[www.iss-usa.org/site/subsection.asp?ldSection=10&ldSub=32](http://www.iss-usa.org/site/subsection.asp?ldSection=10&ldSub=32)

## **Publications Available to Download or Order**

*Guide to the Interstate Compact on the Placement of Children 2002*, American Public Human Services Association. *Must become a member to receive.*

[www.aphsa.org/Publications/BooksMonographs.asp](http://www.aphsa.org/Publications/BooksMonographs.asp)

*Interstate Compact on the Placement of Children (ICPC) Compact Administrators' Manual* from the Child and Family Services Department.

[www.aphsa.org/Publications/BooksMonographs.asp](http://www.aphsa.org/Publications/BooksMonographs.asp)

National Center for State Compacts Promoting Multistate Problem-Solving Toolkit, available from The Council of State Governments.

[www.csg.org/pubs/Documents/ToolKit05InterstateCompacts.pdf](http://www.csg.org/pubs/Documents/ToolKit05InterstateCompacts.pdf)

ICPC Sending State Checklist

[www.216.38.216.37/adoptusa/documents/ICPCSendingStateChecklist.pdf](http://www.216.38.216.37/adoptusa/documents/ICPCSendingStateChecklist.pdf)

## **Information Regarding ICPC Regulations**

Specific Areas of the New ICPC legislative materials, broken down by topic area

[www.aphsa.org/Policy/icpc2006rewrite.htm](http://www.aphsa.org/Policy/icpc2006rewrite.htm)

Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) The AAICPC has authority under ICPC to “promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.” Website shares current news of the organization.

[www.icpc.aphsa.org/Home/home\\_news.asp](http://www.icpc.aphsa.org/Home/home_news.asp)

The Interstate Compact for the Placement of Children

[www.csg.org/programs/ncic/documents/InterstateCompactonthePlacementofChildren-OriginalCompact-circa1960.pdf](http://www.csg.org/programs/ncic/documents/InterstateCompactonthePlacementofChildren-OriginalCompact-circa1960.pdf)

Highlights of Proposed Changes to the ICPC

[www.csg.org/programs/ncic/documents/HighlightsofRevisedICPC.pdf](http://www.csg.org/programs/ncic/documents/HighlightsofRevisedICPC.pdf)

*Interjurisdictional Placement of Children in the Child Welfare System Report (September 2006)*, Children’s Bureau, Administration for Children and Families, US Department of Health and Human Services.

[www.acf.hhs.gov/programs/cb/pubs/ij\\_adopt/index.htm](http://www.acf.hhs.gov/programs/cb/pubs/ij_adopt/index.htm)

## **Juveniles and the ICPC**

The Interstate Compact on Juveniles and the Association of Juvenile Compact Administrators were formed out of a need for an interstate agreement to cover multi-state problems involving juveniles. Identified needs included procedures to permit the return of runaways, absconders and escapees who were found in other states, and also for a system under which juvenile offenders could be supervised in other states. The AJCA website has many helpful guidelines on this topic. [ajca.us/](http://ajca.us/)

*Association of Juvenile Compact Administrators Interstate Compact on Juveniles Policy and Procedure Manual*

[www.ajca.us/manual.php](http://www.ajca.us/manual.php)

*Interstate Compact for Juveniles Resource Kit*, available from The Council of State Governments

[www.csg.org/programs/ncic/documents/ICJ-ResourceKit.pdf](http://www.csg.org/programs/ncic/documents/ICJ-ResourceKit.pdf)

*Interstate Compact for Juveniles State Officials Guide*

[www.csg.org/programs/ncic/documents/StateOfficialsGuide-InterstateCompactforJuveniles-2006.pdf](http://www.csg.org/programs/ncic/documents/StateOfficialsGuide-InterstateCompactforJuveniles-2006.pdf)

## **Websites with Information Regarding Interstate Compacts**

National Center for Interstate Compacts

[www.csg.org/programs/ncic/default.aspx](http://www.csg.org/programs/ncic/default.aspx)

Interstate Compact for Juveniles

[www.csg.org/programs/ncic/InterstateCompactforJuveniles.aspx](http://www.csg.org/programs/ncic/InterstateCompactforJuveniles.aspx)

Interstate Compact for the Placement of Children

[www.csg.org/programs/ncic/InterstateCompactforthePlacementofChildren.aspx](http://www.csg.org/programs/ncic/InterstateCompactforthePlacementofChildren.aspx)

Child Welfare Information Gateway includes information on the Interstate Compact on the Placement of Children (ICPC) and the Interstate Compact on Adoption and Medical Assistance (ICAMA), including state and local examples.

[www.childwelfare.gov/adoption/types/interjurisdictional/](http://www.childwelfare.gov/adoption/types/interjurisdictional/)

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# How Are the Children?

The 2008 National CASA Conference, held June 7 – 10 at the Omni Shoreham Hotel in Washington, DC, offers more than 60 workshops appropriate for juvenile and family court judges and other child welfare professionals. Examples of workshop topics include:

- Opening Doors Project: Improving the Legal System's Approach to LGBTQ Youth in Foster Care
- Child Abuse Prevention and Treatment Act (CAPTA)
- Chafee Act: Resources for Older Youth
- *Amp It Up*: Heightening Youth Voices in Planning for Permanence

The theme of the conference is *How Are the Children?* More than 1,400 attendees will explore issues related to the current state of abused and neglected children and learn what more can be done to improve their lives. To join them, go to [casanet.org/conference](http://casanet.org/conference) to learn more or register online.

Special conference events include the June 8 recognition banquet honoring the 2008 Judge of the Year and June 9 induction of the Hon. Ernestine Gray as president of the National CASA Association Board of Trustees. Gray is the chief judge of the Orleans Parish Juvenile Court and a past president of the National Council of Juvenile and Family Court Judges.

Following the conclusion of the conference, the optional *CASA Meets Congress* day on Tuesday, June 10 offers a special opportunity to meet members of Congress and their legislative staff and acquaint them with the work of CASA/GAL programs on behalf of abused and neglected children. Visit the *CASA Meets Congress* page ([www.casanet.org/conference/congress.htm](http://www.casanet.org/conference/congress.htm)) for details and registration information.

**“Speakers presented practical, common sense information that helps me to maneuver through systems—excellent presenters!” ~ 2007 conference attendee**

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