



# The Immigration/Child Welfare Nexus

APHSA Conference  
(San Diego, CA) – Sept 10, 2012

**Migration**  
and **Child Welfare**  
NATIONAL NETWORK

# Presentors

- **Howard Davidson**, JD, Director, American Bar Association – Center on Children and the Law
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- **Kristen Jackson**, JD, Staff Attorney, Public Counsel
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# Workshop Overview

1. INTRODUCTION & REVIEW of important state child welfare court cases (Howard)
2. SHATTERED FAMILY - issue of intersection between child welfare and immigration enforcement (Yali)
3. IMMIG 101 - basic vocabulary of immigration terms and review of immigration relief options(Kristen)

# Workshop Overview

4. Child Welfare and Immigration – Roles & responsibilities to immigrant families (Janet)
5. RESOURCES - for more information about legal resources, immig resources, etc.
6. Q&A or Case Scenario

# Rules re: Immigration Cases

## CA Rules of Professional Conduct. Rule 2-400. Prohibited Discriminatory Conduct in a Law Practice.

(A) For purposes of this rule:

(1) "law practice" includes sole practices, law partnerships, law corporations, corporate and **governmental legal departments**, and **other entities which employ members to practice law**;

(2) "knowingly permit" means a failure to advocate corrective action where the member knows of a discriminatory policy or practice which results in the unlawful discrimination prohibited in paragraph (B); and

(3) "unlawfully" and "unlawful" shall be determined by reference to applicable state or federal statutes or decisions making unlawful discrimination in employment and in offering goods and services to the public.

**(B) In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in:**

(1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or

**(2) accepting or terminating representation of any client.**

(C) No disciplinary investigation or proceeding may be initiated by the State Bar against a member under this rule unless and until a tribunal of competent jurisdiction, other than a disciplinary tribunal, shall have first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred. Upon such adjudication, the tribunal finding or verdict shall then be admissible evidence of the occurrence or non-occurrence of the alleged discrimination in any disciplinary proceeding initiated under this rule. In order for discipline to be imposed under this rule, however, the finding of unlawfulness must be upheld and final after appeal, the time for filing an appeal must have expired, or the appeal must have been dismissed.

# Important Court Cases

- ***In the Matter of the TPR of John Doe*** (Supreme Court of **Idaho**, \_\_\_ P.3d \_\_\_, 2012 WL 1432619, April 26, 2012)
- ***In Re. Dependency of M.R.*** (Court of Appeals of **Washington**, Division One, 270 P.2d 607, February 16, 2012).
- ***In Re. P.S.S.C. and P.D.S.C (Appeal of R.S.A., Father)***, (Superior Court of **Pennsylvania**, 32 A.3d 1281, Nov. 29, 2011).
- ***In Re. R.W. and N.W.*** (Supreme Court of **Vermont**, 39 A.3d, 682, Nov 18, 2011).
- ***In Re. Adoption of C.M.B.R.*** (Supreme Court of **Missouri**, 332 S.W.3d 793, January 25, 2011) – UPDATE Aug 2012
- ***In Re. Interest of Angelica L. and Daniel L.*** (Supreme Court of **Nebraska**, 767 N.W.2d 74, June 26, 2009).

# CPS/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 are not “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”

- 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 204 [<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



# 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.**”

# American Bar Association – Resolution on Policies on Children Impacted by U.S. Immigration Enforcement

Adopted by the House of Delegates, 2011,

[http://www.americanbar.org/content/dam/aba/administrative/house\\_of\\_delegates/resolutions/2011\\_hod\\_annual\\_meeting\\_103b.doc-2011-08-24](http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2011_hod_annual_meeting_103b.doc-2011-08-24)

RESOLVED, That the American Bar Association urges Congress to enact legislation, and the Department of Homeland Security to adopt policies, that:

Assure information pertaining to location and transfer either of immigration detainees who are parents, legal guardians or primary caregivers of minor children, or of the minor children themselves, or of changes of placement of those minor children, is shared among immigration authorities, state and local child welfare agencies, and state courts;

Assure the length of one's status as an immigration detainee, or one's removal or pending removal from the country, can not be the sole basis for a state not to provide legally mandated reasonable efforts to reunify children with their parent, legal guardian, or primary caretaker; and

Mandate the Department of Homeland Security to collect and report aggregate annual data on the number of U.S. citizen children impacted by the detention or deportation of a parent, legal guardian, or primary caregiver and resulting cost to child welfare agencies.

# Deportation Trends

- Highest number of deportations in US history (about 400,000 a year in 2011)
- SECURE Communities: interacting with law enforcement can lead to deportation
- ICE new report shows that from Jan 1 – June 30, 2011, ICE removed 46,486 undocumented parents who claimed to have at least one US citizen children

# Immigration Policy Trends

Increasing anti-immigrant hostilities in work, school, home

- e-verification
- education access to k-12/higher education
- birthright citizenship battle in the 111<sup>th</sup> Congress
- Arizona copycat legislation in Georgia, Alabama, Mississippi, and Missouri with more to come
- deny child tax credit and food stamp benefits for US born children of undocumented immigrants

# The Criminalization of Immigration ...

Aggressive immigration enforcement has had a chilling effect on the willingness of the immigrant community to seek assistance during a crisis, such as reporting crimes or domestic violence, as well as utilization of eligible services.

# Immigrant Parents in Detention

Challenges facing immigrant parents in detention include:

- trauma exposure to children at time of arrest; abandonment of children; children coming home to empty homes
- difficulty in locating and staying in communication during detention
- logistical challenges at deportation
- immigration judges have no discretion to consider the adverse impact of parental deportation on US citizen children

# About SB1064 (de León)

- Authorize the court to provide an extension in the family reunification period
- Prohibit the use of immigration status as a disqualifying factor in evaluating placement of a child with a relative. Authorize use of a relative's foreign consulate id card or passport to be used to initiate criminal records or fingerprint clearance
- Require CDSS to provide guidance to social workers on referring children eligible for immigration relief options like Special Immigrant Juvenile Status to receive assistance in acquiring protective status
- Require CDSS to provide guidance to counties to establish MOUs with appropriate foreign consulates in child custody cases

# Immigration 101 – 3 Branches of DHS

After 9/11/01, INS (Immigration and Naturalization Services) was made into the three branches of the Department of Homeland Security

1. Citizenship and Immigration Services (CIS)
2. Immigration and Customs Enforcement (ICE)
3. Customs and Border Protection (CBP)



# Immigration 101 – Main Categories of Immigrants

1. U.S. Citizen (can be born here, derivative citizenship or naturalized citizen) – ONLY category which cannot be deported
2. Legal Permanent Resident (i.e. “green card” holders, eligible to apply for citizenship in 5 years)
3. Temporary visa (travel or work visa)
4. Undocumented immigrant (border crosser or lapsed temporary visa)

# Immigration 101 – Mixed Status

- One or both parents and the older siblings are undocumented, and the younger children are U.S.-born citizens
- Most immigrant household include extended family members
- While child citizen client is eligible for benefits and services, family “fear factor” including being considered “public charge”

# How to Acquire Immigration Status?

- Most common is a family based petition (limited # visas available each year, so may take 10-15 years)
- Employment skills, employer-sponsored, and other special categories
- Special categories of immigration relief (i.e. Asylum, SIJS, TPS, U, T and VAWA self petition).

# Immigration Relief Options

- Asylum
- Special Immigrant Juvenile Status (SIJS)
- U visas (victims of serious crimes)
- T visas (victims of severe forms of human trafficking)
- VAWA visas (victims of domestic violence, where the abuser is a LPR or a U.S. citizen)
- Temporary Protected Status (TPS)
- Deferred Action for Childhood Arrivals (DACA)

# Refugees & Asylees

- Does the child come from a country that's recently experienced *civil war, natural disaster*?
- Does the child fear return to home country because of *persecution*?
- Granted lawful status b/c of past or future persecution
- Can apply to become LPRs after 1 yr
- Subject to deportation if violate immigration laws

# Special Immigrant Juvenile Status (SIJS)

- Is the child currently under dependency court jurisdiction where the court has ruled that (a) the *child cannot be reunified with one or both* parents because of abuse, neglect or abandonment or other similar basis under state law and (b) that it would not be in the child's best interest to be returned to the home country?
- Victim of abuse, neglect or abandonment or similar basis under state law
- Dependent on a juvenile court (dependency, delinquency or guardianship)
- Reunification with one or both parents not viable
- Not in the minor's interest to return to his or her home country
- Under 21 and unmarried

# Special Immigrant Juvenile Status (SIJS)

- Findings must be made in a written juvenile court order that makes clear its findings are based on abuse, neglect or abandonment of the child or similar basis under law, NOT based on the desire to obtain immigration benefits.
- SIJS can be granted up to age 21, but most juvenile courts will not maintain jurisdiction past 18. State court jurisdiction must be maintained through the entire application process, but new law effective March 23, 2009 changes this requirement.
- Child will not be denied SIJS based on age as long as qualified at time of application.
- With SIJS, child is immediately eligible for permanent residence.

## Documentations Required for SIJS

- Copy of Birth Certificate (Certified Translation)
- Passport
- National identification
- 4 passport photographs
- Declaration of Indigency
- Summary of court file and findings made re abuse, neglect, and abandonment



# VAWA (Violence Against Women Act)

- Has the child been abused by a *U.S. citizen or permanent resident* spouse or parent, including adoptive, natural or step-parent?
- Has the child's parent been abused by *his/her U.S. citizen or permanent resident* spouse?
- For children being abused by a parent/ stepparent who is a LPR or citizen
- For children whose parent is being abused by her lawful permanent resident/citizen spouse
- For parents of abusive adult US citizen children (over 21)
- Abuse = physical or subjected to extreme cruelty
- Can petition for non-abusive parent subsequently

## Victim of Crime or Trafficking

- Has the child been a victim of serious crime, or of alien trafficking?
- Is the child willing to cooperate with authorities to investigate or prosecute the offense?
- Consider the ***S, T, or U visas***.

## “T” Visas for Trafficking Victims

- Must be a victim of human trafficking (sex or labor trafficking)
- Labor trafficking is the recruitment, harboring, transportation, provision or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude or debt bondage.
- Sex trafficking is a commercial sex act induced by force, fraud or coercion or in which the person has not yet obtained 18 years of age.

## “U” Visas for Victims of Violence

- Suffered substantial physical or mental abuse as having been victim of certain crimes
- The criminal activity described violated the laws of the United States or occurred in the United States or the territories and possessions of the United States
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# Complications of Immigration Law

- Constantly changing
- Multiple layers of bureaucracy
- Much discretion and exceptions from immigration officials
- Many barriers for consideration in each case
- Different immigration laws applies based on when and how the client arrived in the U.S., which country they left, if they have a criminal conviction,
- Can take a long time

# Overview of San Diego MOU with Mexican Consulate

## **Objectives of this protocol:**

1. Provide best services to children and their families.
2. Ensure appropriate, safe placement with the family and/or relatives.
3. Serve as a guide for the Social Worker and other staff.
4. Ensure compliance with the treaty of Vienna Convention on Consular Relations Treaty.
5. Improve communication between the San Diego child welfare and General Consulate of México, theDesarrollo Integral de la Familia (D.I.F.) and DFCS' Families.
6. Maintain and/or establish relationships with the Consulate General of México.
7. Provide assistance to foreign national parents who are incarcerated.

# Role of Foreign Consulates

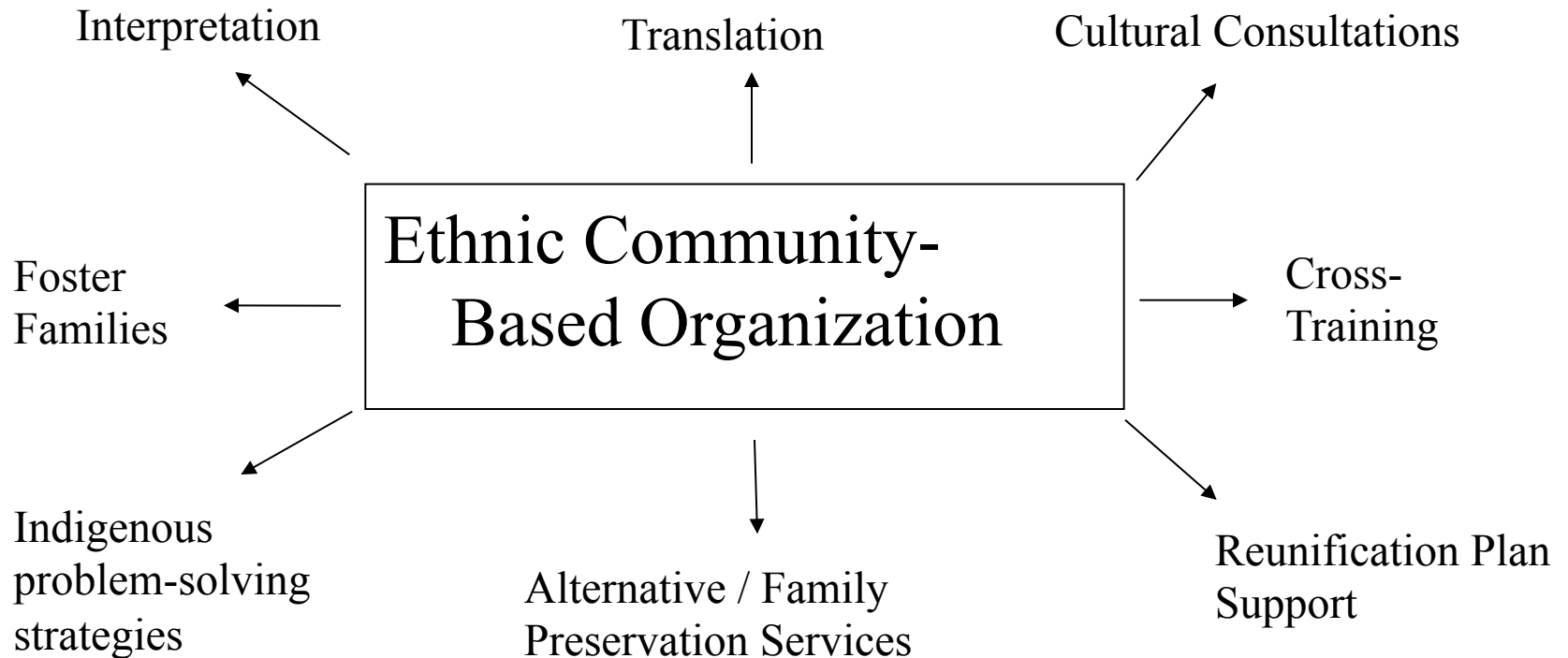
- All arrestees rights to contact their consulate and in-person, in-custody interview (Vienna convention)
- Check that arrestees have not been subject to abuses or other rights violations
- Assist with travel documents, notify families about the deportation process
- Assist with process dual citizenship for children

# Finding Competent Immigration Legal Services

- Detainees no constitutional right to appointed, free legal counsel (civil not criminal proceedings)
- Supply pro bono attorneys scarce so most represent themselves in immigration court
- BEWARE dubious immigration “consultants” or “notarios”



# Collaboration with Ethnic Community-Based Organizations



## Case Example from “Shattered Families” (Nov 2011)

<http://arc.org/shatteredfamilies>

- Clara and Josefina, sisters in their early 30s who lived together in a small New Mexico town. In 2010, ICE arrived at the front door of Clara and Josefina’s trailer home in New Mexico, having received a false tip that the sisters, who were undocumented immigrants, had drugs in their home.
- Though they found nothing incriminating in the trailer and the sisters had no criminal record, ICE called Child Protective Services (CPS ) to take custody of the children and ICE detained the sisters because of their immigration status.
- Josefina’s baby was 9-months old and Clara’s children were 1 and 6 when they were placed in foster homes with strangers.
- For the four months that ICE detained them, Josefina and Clara had no idea where their children were.
- In December, the sisters were deported, and their children remained in foster care.

# What additional resources do immigrant clients need?

- If the case is complicated, may need advise of an immigration lawyer to understand possible immigration consequence of legal actions.
- May need an interpreter (person's native language may be indigenous) and translation of documents.
- May need more time to engage client and understand their culture and past experience.

# Case Example – What To Do

- Contacted the Mexican Consulate in New Mexico to help locate and communicate with the mothers in Mexico.
- Shared information about the mothers' location with the court assigned attorney for both the children and the mothers in absentia
- Facilitate phone, mail or skype communication with the mothers in Mexico.
- Change the children's placement from non-relative caregivers to an eligible and appropriate family member (kinship placement) if one was available.
- Failure for the parent to receive proper notification can often result in court continuance and possible sanctions against the child welfare agency. Unless the court has suspended the child welfare agency's requirements to use reasonable efforts to reunify the parent and child, child welfare jurisdictions are mandated to work on reunification efforts with incarcerated parents just as they would in any other cases.

## Linking with National Resources To Locate Local Resources

- Office of Refugee Resettlement/BRYCS,  
<http://www.brycs.org/>
- Detention Watch Network,  
<http://detentionwatchnetwork.org/>
- Immigrant Children Lawyer Network – USCIR
- <http://www.refugees.org/our-work/child-migrants/immigrant-childrens-lawyers.html>
- Migration and Child Welfare National Network – American Humane Association  
<http://www.americanhumane.org/children/programs/child-welfare-migration/>

# Immigration Law Resources

- Immigrant Advocates: National Immigration Legal Services Directory  
<http://www.immigrationadvocates.org/nonprofit/legaldirectory/>
- Immigrant Legal Resource Center (ILRC) [www.ilr.org](http://www.ilr.org)
- National Immigration Law Center (NILC)  
<http://www.nilc.org/>
- American Immigration Lawyer Association (AILA)  
[www.aila.org](http://www.aila.org)
- CLINIC (Catholic Legal Immigration Network Inc.),  
<http://cliniclegal.org/about-us/affiliate-directory>

# Resources for Clients/Child Welfare Agencies

Annie E. Casey Foundation – “When A Parent is Incarcerated: A Primer for Social Workers,” <http://www.aecf.org>

Immigrant Legal Resource Center – “Living in the US: A Guide for Immigrant Youth”  
<http://www.ilrc.org/for-immigrants-para-inmigrantes/living-in-the-us-guide>

BRYCS (Bridging Refugee Youth and Children’s Services) – “Raising Children in a New Country – An Illustrated Handbook,”  
<http://www.brycs.com/clearinghouse/clearinghouse-resource.cfm?docNum=2247>

American Humane Association – “A Social Worker’s Toolkit for Working with Immigrant Families,”  
<http://www.americanhumane.org/children/professional-resources/program-publications/child-welfare-migration/tool-kits.html>