



## Immigrants and the Child Welfare System: Current Issues Facing Dependency Judges

*Panelists:*

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- Judge Katherine Lucero, Superior Court of Santa Clara County, [KLucero@scscourt.org](mailto:KLucero@scscourt.org)
- Felicity Sackville Northcott, PhD, Director, The Arthur C. Helton Institute for the Study of International Social Service (ISS-USA), [fnorthcott@iss-usa.org](mailto:fnorthcott@iss-usa.org)
- Howard Davidson, Director, American Bar Association Center on Children and the Law, [DavidsonHA@staff.abanet.org](mailto:DavidsonHA@staff.abanet.org)

# Workshop Objectives

NEEDS-- To provide an overview of the themes and policy areas emerging involving immigrant families in the dependency court system.

PRACTICE-- To provide specific practice examples from local and national experts regarding best practice involving immigrant families in the dependency court system.

POLICY-- To provide local, state and federal policy recommendations for how to improve court practice for immigrant families in the dependency system.



- A national coalition looking at the intersection between immigration and the public child welfare system.
- Increasing effectiveness of the child welfare system's and other corresponding systems' response to issues of migration.
- Members learn from experience and expertise of others, share knowledge and strategies, participate in collaborative efforts to improve services for immigrant children and families.
- Acknowledges that a single field or organization would not have the necessary knowledge or resources to adequately protect the millions of children from immigrant families with legal, human rights, and child well-being resources.

**JOIN MCWNN! It's free!** Download membership forms at  
<http://www.americanhumane.org/protecting-children/programs/child-welfare-migration/>

# Two Resources from MCWNN – Social Worker Toolkits

Immigration Status and Relief Options (21 pages)  
A Child Welfare Flowchart (10 pages)

<http://www.americanhumane.org/assets/docs/protecting-children/PC-migration-sw-toolkit-status-relief.pdf>

<http://www.americanhumane.org/assets/docs/protecting-children/PC-migration-sw-toolkit-flowchart.pdf>



## Additional Resources

CASA – Jan. 2010 (Special Issue) International Solutions for Connecting U.S. Foster Care Children with Families

[http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5332551/k.D500/Current\\_Newsletter.htm](http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5332551/k.D500/Current_Newsletter.htm)

Immigrant Legal Resource Center ([www.ilrc.org](http://www.ilrc.org))

... Judges Benchbook, Publications on SIJS, VAWA, U-Visa

... Webinars and “lawyer of the day” service

International Social Service–USA (<http://www.iss-usa.org/>)

BRYCS/US Conference of Catholic Bishops (<http://www.brycs.org/>)

# Judicial Checklist on Child Welfare Services to Undocumented Child Immigrants

- ✓ Have I helped assure that child immigrants -- victimized by abuse, neglect, or abandonment, or otherwise fleeing violence in their families -- are served by our child welfare agency as *a child protection case*, without constraints on our agency and its caseworkers providing all the services and referrals the child needs that would be available to U.S. citizen children
- ✓ Have I taken steps to assure that our child welfare agency serves immigrant children & families regardless of immigration status, and that they accept prompt custody (including foster care if needed) of unaccompanied or separated children to assure child safety, permanency, and well-being

- ✓ Have I helped assure that our child welfare agency provides culturally-sensitive support and language-appropriate services to immigrant children and families, using the resources of grass roots immigrant community resources
- ✓ Have I helped, for unaccompanied/separated immigrant minors, facilitate our child welfare agency's prompt inquiries and decisions on the safety of child repatriation, including -- after diligent family-finding efforts -- expeditious checks on the suitability of a child's parents or relatives as placements for the child, both within the U.S. and in other countries

- ✓ Have I helped assure that -- if our child welfare agency decides to help repatriate a child -- that this is only done through close coordination with child welfare authorities in the country of return, with special attention given to each child's safety
- ✓ Have I encouraged our child welfare agency's attorneys to -- where appropriate -- promptly file petitions (including proceedings that provide a predicate for a child's later SIJS status, or that can result in a finding that a child has been a victim of family violence or trafficking if the facts support it) so as to help unaccompanied or separated children remain in the U.S., when appropriate for their safety, permanency, and well-being

- ✓ Have I helped our child welfare agency understand that they should not institute TPR proceedings against deported or immigration-detained parents without giving them full opportunities to be present and participate actively, through competent counsel, in such proceedings; and that deportation/detention should never -- alone -- be used as a basis for TPR
- ✓ Have I assured that our court and child welfare agency are promptly following the consular notice requirements of the *Vienna Convention on Consular Relations* as soon as a foreign national child is placed into child protective custody, or when our agency institutes a court action that could affect foreign nationals' parental rights

# 10 Suggested Elements of Judicial Advocacy for Child Welfare Agency Aid if a Parent is in *Immigration Detention*

1. Judges should encourage their child welfare agency to incorporate protections for separated U.S. citizen/permanent resident children into their agency policies and practices, for when this occurs
2. Judges should encourage these policies and practices to be family (both biological and kinship) focused
3. Judge should encourage MOUs/protocols between their child welfare agency, ORR, and other agencies/services, and that there be training of local police to minimize child trauma as a result of a parent's immigration apprehension/detention

4. Judges should encourage their child welfare agency to have capacity to communicate in a child's and family members' native language, and to provide interpreter services when needed
5. Judges should encourage their child welfare agency to maintain a list of programs qualified to provide linguistically appropriate *services* to the separated child, including if possible same-language lawyers/GAL/CASA
6. Judges should assure that all these cases are guided by *best interests of the child and family* factors, without making predictions/conclusions of the parent's "immigration case" outcome before it is formally resolved

7. Judges should help maintain confidentiality of information gathered while providing services to each separated child and family member
8. Judges should encourage their child welfare agency to have case plans for these children regularly updated with the parents' current location & that of other relatives of the child
9. Judges should encourage their child welfare agency to work with DHS to provide for a parent's presence at court hearings
10. Judges should -- if a child wants to accompany their parent back to the parent's country of origin -- coordinate with ICE and aid in the child's obtaining necessary travel documents, health, & school records *before* that repatriation



# Immigrant Children and The Child Welfare/Court System

NCJFCJ

Juvenile & Family Law Conference

Judge Katherine Lucero

March 2010

# Why should judges know about immigration issues?

- 1) While state court judges do not have jurisdiction to make decisions about immigration status, state court decisions can have a conclusive impact on immigration issues
- 2) A large number of persons appearing before family and juvenile courts are not U.S. citizens and their lives may be profoundly affected by these decisions
- 3) In some cases, Congress has requested state courts to participate directly in the immigration process

# The Problem

- Two-thirds of the children of undocumented immigrants are American citizens
- However, because of their age and vulnerability, these children are subject to the impact of immigration enforcement efforts of their parents
- A lack of resources to families such as housing and health care and the lack of extended family support often cause families to come to the attention of the authorities
- This predicament raises the important issue of the status of immigrant children, particularly in dependency proceedings

# Other Issues Involving Undocumented/Unaccompanied Youth in Santa Clara County

- Delinquency Issues with holding Kids
- Human Trafficking
- Child Endangerment Cases/Poverty Related
- Older men/teen aged girls here with Parent approval
- Immigration Raids

# Undocumented Kids at the courthouse door-

- 3 obvious choices for the Court in Dependency Cases-
- Placement in Country of Birth
- Reunification to parents here in U.S.
- Permanency with foster home in U.S. and SJIS
- There are other statutes but they are not currently used in SCC.

# What is Special Immigrant Juvenile Status (SIJS)?

The Special Immigrant Juvenile Status (SIJS) is a federal law that helps immigrant children who are in a permanent placement in child welfare dependency proceedings obtain lawful immigration status and a “green card.”

# Judge's Ruling Required for SIJS

- Judge has ruled that it is not in the child's best interest to return to parents or relative due to:
  - severe abuse
  - neglect or abandonment
- Because of the severity of the abuse, the judge will order
  - permanent placement in foster care;
  - a guardianship; or adoption
    - In order to receive immigration benefits (become a U.S. citizen), the adoption must be finalized by the child's 16th birthday; if there are siblings, only one sibling must be adopted by age 16, the others must have their adoptions finalized by age 18



# Judge's Ruling Required for SIJS

- The court also must find that it is not in the child's best interest to return to the country of origin
- In practice, the evidence for this finding may range from a home study conducted by a foreign social service agency to determine that a grandparent's home is not appropriate, to simply interviewing the child to learn that there are no known appropriate family in the home country



# Other SIJS Requirements

- In order to qualify, an applicant must not be married
- Applicant must be under 21 years of age
  - At the time of the application and also at the time of adjustment
- An applicant remains eligible even if he/she has dependents
- The child must not come within certain "grounds of inadmissibility"

# "Grounds of Inadmissibility"

- Unless a waiver is available and granted (such as humanitarian purposes, family unity or in the public interest), SIJS applicants might be barred from permanent residency if they:
  - Have a record of involvement with drugs, prostitution, or other crimes
  - Are HIV positive
  - Are classed as mentally ill, suicidal, or a sexual predator
  - Committed visa fraud or were previously deported
    - Note: An adjudication in a juvenile proceeding is not a "conviction" for any immigration purposes; however, the disposition can be used as evidence as a basis for inadmissibility

# If child meets criteria under SIJS what happens next?

- DFCS social worker will complete immigration application
- Obtain the photographs, child's fingerprints, and other required paperwork
- DFCS worker will then meet with a legal representative contracted by the County to review the legal paperwork
- DFCS social worker will then schedule an interview with the CIS officer to submit application package

# Obtaining Proof of Age - Challenges

- Applicant must submit proof of age
  - use home contacts or consulates to contact local or national registry of birth; retain letters stating records are not available to show diligent search
  - Use substitute documents such as affidavits, church letters, hospital or school records
  - When all else fails, use judicial or medical declarations

# What happens during the CIS interview?

- CIS officer will interview child
- If application is granted, child will receive a work permit
- If approved, legal residency status begins same day - CIS will stamp passport indicating legal residency status
- Applicant is then able to apply for a Social Security card

# CIS Requesting Additional Info

- If CIS requires additional information or documents, the officer may ask applicant to return for a second interview
- If case is denied, applicant may be placed in removal proceedings; an attorney for the child may pursue an appeal



# How long is the process?

- Application process in this area takes approximately 6 months

# Santa Clara County Statistics for the Past 5 Years for Completed & Pending SIJS Applications

- 2004      4 cases      4 approved
- 2005      9 cases      9 approved
- 2006      5 cases      5 approved
- 2007      9 cases      9 approved
- 2008      4 cases      4 approved
- 2009      2 cases      1 approved, 1 pending  
for interview on 1/15/2010



# Santa Clara County Protocols & Practice

Working with the Mexican Consulate  
and Catholic Charities in San Jose,  
California

# The Protocol: Notifying the Mexican Consulate

- DFCS has entered into an agreement with the Mexican Consulate addressing the protocol when Mexican nationals become involved with the child welfare system
- The protocol is to be applied to all clients with citizenship in countries other than the United States

# Purpose of the Protocol

- Guide for Social Workers working with Mexican families in order to insure the best practices
- Guide for working with the Mexican Consulate on behalf of these families
- Ensure that the rights of incarcerated Mexican Nationales are honored in accordance with the Vienna Convention of Consular Relations Treaty

# Objectives of the Protocol

- Provide the best services to children and their families
- Ensure appropriate, safe placement with the family and/or relatives
- Improve communication between DFCS, General Consulate of Mexico, the Desarrollo Integral de la Familia (D.I.F.) and DFCS' Families

# When a child is taken into temporary custody:

- The social worker determines the child's citizenship/resident status
- If the child is a citizen of a country other than the U.S., then the social worker contacts the Consulate of the child's country of birth and notifies the Consulate staff that the child is in temporary custody

# When a child is taken into temporary custody:

- If the child has dual citizenship (U.S. and another country) or is eligible for dual citizenship status, then the social worker advises the parents of the right to contact their consulate and include the consulate in their case

# When a child is taken into temporary custody:

- If the parents are citizens of Mexico, the social worker has the parents complete the Request and Consent to Notify the Mexican Consulate of Dependency Proceedings (SCZ 331)
- The social worker offers to contact the consulate if the parents state that they want the consulate included in their case



# If a petition is filed...

- On behalf of a child who is a citizen of a country other than the United States, then the social worker notifies the child's consulate of the date, time, and location of the Jurisdiction/Dispositional Hearing
- On behalf of a child who is a citizen of Mexico, then the social worker completes the Notification to Mexican Consulate (SCZ 330)
  - Notifications to consulates are made preferably by fax but may also be made by telephone or email (the social worker documents the notification in the CWS/CMS Contact Notes)



# Court Proceedings & Actions

- The Mexican Consulate may come to court to request permission to attend the hearing
- However, the Mexican Consulate is not a party to the action and may not receive documents from the case file without approval from the Court

# Confidentiality

- Welfare and Institution's Code Section 827 allows DFCS to share court reports and other confidential information with the Consulate only pursuant to court authorization
- Information that can be shared: Only the parents and children's names and address, DOB, telephone numbers, overview of parent's situation, and type of abuse and extent
- Information can be shared with other service providers

# Family Conference/TDM (Team Decision Making)

- Once the Mexican Consulate's office has become involved in the case, they can participate in TDMs at the request of the parents

# Factors to Consider When Placing Child/ren in Mexico (non-adoption)

- 1) Appropriateness of the family
- 2) Services available to the children and/or the family in Mexico
- 3) Meeting the special needs of the child/ren and/or the family in Mexico

# Procedures for Returning (or taking) Child/ren to Mexico

- 1) Travel (Arranging travel, fiscal issues, safety & migratory issues)
- 2) Notification (The family in the U.S. and in Mexico, and the Consulate's Office)
- 3) Court Orders (Under the U.S. and Mexican laws the court with jurisdiction is the one where the child/ren is residing)
- 4) INS Issues (documentation, special immigrant status)

# Procedures for Placing Child/ren with Relatives in Mexico

- Home Studies (non-adoption)
- 1) Request a homestudy from D.I.F.
- 2) If D.I.F. is unable to do the homestudy: If a pre-visit placement is necessary, the U.S. Social Worker may accompany the D.I.F. social worker responsible for the home study
- Once placement is approved, then take care of: notifications, Court Orders from U.S. and Mexico, travel documents for children, fiscal issues, and safety issues



# Returning Child/ren to the U.S. After Temporary/Failed Placement in Mexico

- Note: returning children from Mexico to the U.S. requires authorization from the Mexican courts
- 1) Immediately notify the Mexican Consulate's office by phone & in writing
- 2) Mexican Consulate's office will contact Secretaria de Relaciones Exteriores (SRE) and D.I.F.
- 3) Notify parties involved and obtain necessary documentation

# Returning Child/ren to the U.S. After Temporary/Failed Placement in Mexico

- 4) Migratory Issues:
  - Child/ren placed in Mexico who are not U.S. citizens or permanent U.S. residents will not be able to return to the U.S. (parents should be informed of this from the beginning)
  - For U.S. citizen child/ren a migratory form (forma migratoria de turista, FMT) is needed to leave Mexico. To re-enter the U.S. proof of citizenship is mandatory.
    - NOTE: Other issues to consider include arranging travel, fiscal & safety concerns



# Social Worker's Role in Mexico

- A U.S. SW's Role:
  - Follow the regulations of S.R.E., D.I.F., and all the laws of the host country
  - Cannot practice social work in the host country (considered a visitor)
  - All official activities of the U.S. SW must be accompanied by a D.I.F. SW or an office from S.R.E.
- Mexico's SW (D.I.F.):
  - Will accompany U.S. social worker to visit families
  - Will provide most of the resources needed by the client and the family
  - If requested, D.I.F. (in most cases) will provide updated information about the family

# Mexican Consulate's Role

- 1) Assist parents in juvenile process once contacted by the family
- 2) Participate in TDMs and Family Conferences
- 3) Assist in obtaining the following documents:
  - Mexican birth certificates (Actas de Nacimiento) from child/ren born abroad and Presumption of Nationality documents if the birth certificate cannot be located
  - Matricula Consulare (photo ID)
  - FM3 (Mexican Visa)- No longer necessary
  - Dual Citizenship (assist a child being placed in Mexico to obtain dual citizenship status)

# Mexican Consulate's Role

- 4) Obtain placement homestudy (non-adoption)
- 5) Locate specific service providers & special services in Mexico to meet the needs of the child/ren and/or family
- 6) Contact the S.R.E. for protection of the traveling social worker
- 7) Presumption of Nationality

# Mexican Consulate's Role

- 8) Assist with Special Immigration Juvenile Status (SIJS) for Mexican child/ren
  - In cases where a Mexican child/ren has been placed as a ward of the State of California and become eligible for SIJS, the Consulate will assist the Department in obtaining the necessary documentation from Mexico for completion of the SIJS application

# Questions?

- Contact Information
  - Judge Katherine Lucero  
Santa Clara County Dependency Court  
Supervising Judge  
[klucero@scscourts.org](mailto:klucero@scscourts.org)  
408-491-4740

# TRANSNATIONAL CHILD WELFARE AND THE COURTS: EXPANDING THE MEANING OF INTERJURISDICTIONAL

- **Dr. Felicity Sackville Northcott**  
Director, The Arthur C. Helton Institute for the Study of International  
Social Service.  
International Social Service-United States Branch





# THE VISION AND MISSION OF ISS-USA

**Vision:** ISS-USA envisions a world in which all interested parties have access to the technical, structural and practical support to achieve the best interest of children, adults and families separated by international borders.

**Mission:** The mission of ISS-USA is to promote resolutions in the best interests of children, adults and families separated by international borders. ISS-USA accomplishes its mission through the provision of intercountry social services, research, training, technical assistance and advocacy.





# ISS-USA : WHAT WE DO

**Intercountry case management:** Bridging families and agencies throughout the world.

**Repatriation of U.S. Citizens:** Giving temporary care and assistance to U.S. citizens living abroad who return to the United States due to a variety of extreme circumstances.

**Research, Training and Technical Assistance:** Providing support to social workers, lawyers and judges on best practices when working with children in the US whose cases have an international dimension.



# HOW CHILDREN BECOME SEPARATED FROM THEIR FAMILIES

- Parent(s) are sent to their home country through immigration enforcement-the child is a U.S. citizen and is taken in to social service custody;
- Parent(s) are incarcerated;
- Parent(s) are deceased;
- Parent(s)' rights are terminated due to abuse and/or neglect;
- Parent(s) abandon the child;
- Parent abducts the child and moves her to another country;
- Child is trafficked.



# TRANSNATIONAL CHILD WELFARE ISSUES

- International Adoption
- Repatriation and Reintegration
- Immigration enforcement
- Cross-border custody and visitation
- International child support enforcement
- Family reunification
- International abduction
- International home studies
- Permanency determinations



# THE QUESTION

- What do you do when the child's most viable option for a safe and permanent home, is with biological or adoptive family that resides outside of the U.S.?





# STEPS TO AN ANSWER:

- Judges, lawyers and social workers MUST be more proactive in identifying children with potential kinship placement overseas.
- Family can be an invaluable resource for identifying potential kinship placements.
- If no viable domestic kinship option is available we MUST ask the question: **Is there a potential viable kinship placement outside of the United States that can be explored?**



# STEPS TO AN ANSWER, CONT'D

## ISS-SA can assist in:

1. Tracing family members outside of the United States;
2. Arranging for a comprehensive home study, criminal background check and/or child abuse registry check;
3. Translating these documents;
4. Helping social workers and lawyers present the findings to the court,
5. Provide any technical assistance that the court may need in understanding a foreign home study, and;
6. If the child is placed with family overseas, ISS-USA can arrange for post-placement follow-up.



# LEGAL TEMPLATES FOR BEST PRACTICES IN INTERNATIONAL KINSHIP PLACEMENTS

## **1) The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351)**

“...provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence...”

## **2) Interstate Compact on the Placement of Children: The ICPC:**

- ensures that children placed across state lines for foster care or adoption are placed with persons who are safe, suitable, and able to provide proper care;
- assigns legal and financial responsibility, and responsibility for supervision and the provision of services for the child;
- is a binding contract among the States intended to ensure that children who are placed across State lines receive adequate protection and services.
- provides clear guidelines on what steps must be taken to make certain that the child is placed in a safe home and provided with consistent monitoring and follow-up.





# WHAT MORE DO WE NEED TO KNOW TO MANAGE THESE INTER- JURISDICTIONAL CASES?

- A basic understanding of International Law, particularly as it relates to child welfare;
- A comprehensive view of child welfare services in other countries;
- An awareness of the potential for political and/or cultural biases both at home and abroad;
- Differing state and national jurisdictional issues;
- The resources that may be available to assist you with case management.



# CONTACT ISS-USA

- On the web: [www.iss-usa.org](http://www.iss-usa.org). You can inquire about any topic related to transnational child welfare issues.
- By phone: 443-451-1201
- By fax: 443-451-1230
- By e mail: [iss-usa@iss-usa.org](mailto:iss-usa@iss-usa.org) –or- [fnorthcott@iss-usa.org](mailto:fnorthcott@iss-usa.org)





WORKSHOP: Immigrants and the Child Welfare System: Current Issues Facing Dependency Judges

CONFERENCE: National Conference on Juvenile and Family Court Law (March 14-17, 2010/Las Vegas, NV)

PANELISTS: Howard Davidson, Director, American Bar Association Center on Children and the Law, [DavidsonHA@staff.abanet.org](mailto:DavidsonHA@staff.abanet.org), Judge Katherine Lucero, Superior Court of Santa Clara County, [KLucero@scscourt.org](mailto:KLucero@scscourt.org), Felicity Sackville Northcott, PhD, Director, The Arthur C. Helton Institute for the Study of International Social Service (ISS-USA), [fnorthcott@iss-usa.org](mailto:fnorthcott@iss-usa.org), David Thronson, Professor of Law and Associate Dean for Clinical Studies, William S. Boyd School of Law, University of Nevada Las Vegas, [david.thronson@unlv.edu](mailto:david.thronson@unlv.edu)

## For More Information

PLEASE JOIN! Free membership to the Migration and Child Welfare National Network (MCWNN)- a national coalition looking at the intersection between immigration and the public child welfare system.

- Download membership forms at <http://www.americanhumane.org/protecting-children/programs/child-welfare-migration/>

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CASA – Judges Page

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- Webinars and "lawyer of the day" service  
International Social Service – USA (<http://www.iss-usa.org/>)  
BRYCS/US Conference of Catholic Bishops (<http://www.brycs.org/>)

Sample Forms developed by Child Welfare Jurisdictions and Courts are available at <http://www.f2f.ca.gov/sampleMOUs.htm> (website hosted by the California Department of Social Services) including Santa Clara County's Best Practice for Working with Mexican Families, <http://www.f2f.ca.gov/res/BestPracticesProtocol.pdf>