

# Immigrants in the Child Welfare System

## Case Studies

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*Child Welfare and Immigration Project, ABA Center on Children and the Law*



### Immigrant children and families in the U.S.

Of the 70 million children under age 18 in the United States, 26% (18.2 million) live with at least one immigrant parent.<sup>1</sup> Many of the U.S. and foreign-born children live in families with members who have mixed status—

- some adults and/or children are U.S. citizens,
- others are Lawful Permanent Residents or hold other types of lawful status through work and other visas,
- others have temporary status, and
- others lack lawful status (also known as being an “undocumented immigrant”).



### Growing agency and court involvement

Given these numbers, it is not surprising that child welfare agencies and juvenile courts are becoming increasingly involved with immigrant families—particularly as recent immigration enforcement efforts have created growing pressures for families and communities. When immigrant adults and children interact with the child welfare system, their attorneys and advocates should know how best to address their clients’ needs.



### A need for guidance

How parents, children, and caregivers are affected by immigration law and procedure may seem daunting to child welfare and other professionals at the state and local levels. This guide is intended to help child welfare professionals feel less overwhelmed by describing common situations and providing guidance through issues where there may be areas of intersection between child welfare and immigration law.

The following hypothetical—but realistic—child welfare cases are followed by questions for attorneys, caseworkers, judges, and others to consider and issues to spot about the impact of the client’s immigration status on involvement with the child welfare system. Though these case examples address many different crossover issues, the list is not comprehensive.

These case studies highlight forms of immigration relief that may help the youth and children involved, but they do not provide full details of the conditions of eligibility or related benefits and risks. In addition to identifying and advocating for their clients’ goals and priorities, attorneys for all parties in child welfare proceedings should seek input from immigration attorneys on possibilities for immigration relief. Child welfare agencies can develop procedures for appropriate eligibility screening of immigrant clients for relief, and either hire immigration law experts on staff or develop agreements with immigration legal services providers to refer parents, youth, children, and caregivers when immigration relief is needed.

## Overarching principles

The following principles apply in all cases and may be relevant to multiple scenarios. As a result, we have not repeated them in each instance, but have instead reflected them here as overarching principles to keep in mind in all child welfare cases that may involve immigration.

- ✓ Immigration-related procedures and processes, including grounds for deportation and forms of humanitarian relief are governed by federal law. Child welfare and family law decisions are governed primarily (although not exclusively) by state law.
- ✓ The Vienna Convention requires child welfare agencies to inform the relevant foreign consulate when any foreign national child comes into state custody.<sup>2</sup> (See, e.g., Cases One, Two, Three, and Four) Many child welfare agencies and courts have Memoranda of Understanding with foreign consulates to facilitate this notification process.<sup>3</sup>
- ✓ Any child protection agency that receives federal funding is prohibited from discriminating against parents or others based on their national origin. This includes discrimination based on limited English language proficiency.<sup>4</sup>
- ✓ Federal law does not require child protective workers to contact immigration enforcement authorities when they encounter individuals without authorized immigration status.
- ✓ Immigration detention or deportation do not alone constitute grounds for termination of parental rights in child welfare proceedings.
- ✓ Parents who lack lawful immigration status have the same constitutional rights as U.S. Citizen parents in child welfare proceedings.
- ✓ Parents are entitled to participate in hearings while in detention or if they live abroad. Similarly, parents are entitled to reasonable efforts that support reunification goals even if they do not live in the United States.
- ✓ Federal law does not require foster parents to have lawful immigration status. State laws and requirements vary.
- ✓ Some states have explicit statutory or policy exceptions to federal and state timeliness requirements regarding termination of parental rights when cases involve a parent who has been detained or deported through immigration enforcement. Even in states without articulated exceptions, child, parent, and agency attorneys can advocate for such exceptions in individual cases.

## Case List

- 1 **Sara and Nicole:** A child who lacks immigration status is experiencing abuse in the home by a nonparent.
- 2 **Lizette, Tomas and Ana:** A mother who lacks immigration status is detained by immigration enforcement authorities and fears separation from her son, who was born in Guatemala, and her U.S. Citizen daughter.
- 3 **Marco:** A child who arrived in the United States as an unaccompanied minor becomes homeless after his sponsor placement with relatives falls through.
- 4 **Victor and Christopher:** A child who lacks immigration status suffers from neglect at home while residing with his father, who is also undocumented.
- 5 **Fatima and Ami:** The mother of a U.S. Citizen child is held in immigration detention and faces possible deportation from the United States.
- 6 **Ade, Abiola and Emmanuel:** A father in a foreign country seeks reunification with his child after the baby is removed from his mother in the United States.
- 7 **Jennifer:** A mother with deferred action experiences domestic violence in her home but is scared to contact authorities.

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# Case 1: Sara and Nicole

**A child who lacks immigration status is experiencing abuse in the home by a nonparent.**

Sara came to the United States from the Philippines as a child with her mother, Nicole. Neither Sara nor Nicole have legal status here. Sara is now 14 years old. She attends school regularly and has never had any contact with immigration authorities. Six months ago, Sara's mother's new boyfriend moved into the home. Three months ago, he started making sexual advances towards Sara. Sara's grades plummeted and she started missing school. When the school counselor reached out to Sara, she learned what had been happening. The counselor made a Child Protective Services (CPS) report and Sara was removed from Nicole's home and placed with an aunt, with whom Sara has a close relationship. Sara's aunt also lacks immigration status.

## Issues to consider



### Child Welfare Agency Involvement

Should the child welfare agency get involved?

- The child welfare agency has full responsibility to make sure Sara is safe, and to provide needed supports and services no matter the immigration status of Sara or her mother.



### Foster Care Placement

How might immigration status impact Sara's placement?

- Sara's status: Sara's lack of immigration status should not affect her foster care placement. The state would not be able to receive Title IV-E federal reimbursement for foster care maintenance costs, however, and would need to support the placement with state or local funds.
- Her aunt's status: Although federal law does not require immigration status as a prerequisite for foster care licensure, state policy and law vary on this issue. As a result, the aunt's eligibility to become a licensed foster parent depends on where she lives. In jurisdictions that exclude caregivers without immigration status from being certified as foster parents, the attorney for the child, agency, or parent could seek a waiver of those rules, or advocate for a nonformal foster care placement with Sara's aunt and help her pursue other financial support to stabilize the placement.<sup>5</sup>



### Permanency Planning

How might immigration status impact reunification with her mother?

- Nicole's status: To achieve safe reunification, Nicole's boyfriend likely will need to leave the home and not be involved in Sara's life. It is possible Nicole is dependent on the boyfriend for income, especially because she likely lacks work authorization. This means she may need to find another way to support Sara in her home. If there are any other safety concerns, Nicole's eligibility for federally funded services as part of a reunification plan may be restricted by her lack of lawful immigration status. The parent attorney and child welfare agency should seek services that are available to support individuals who lack immigration status.

- Sara’s status: Sara may benefit from counseling and other services; the agency will need to identify services for which Sara is eligible as a youth without lawful status.



## Immigration Relief

What type of immigration relief might Sara and her mother qualify for?

- **U Visa:** If Sara or Nicole assists with the investigation or criminal prosecution of Nicole’s boyfriend, one or both of them may be eligible for a U Visa, which is for immigrants who are victims of crimes (and their immediate family members) who have suffered substantial mental or physical abuse and are willing to assist law enforcement and government officials in the investigation or prosecution of the criminal activity.<sup>6</sup> The child welfare agency may play a role by signing the certification needed as part of a person’s U Visa application process.<sup>7</sup>
- **Special Immigrant Juvenile Status (SIJS):** Special Immigrant Juvenile classification allows certain children who have been subject to state court proceedings the ability to seek lawful permanent residence (i.e., a green card) in the United States. In this case, if the juvenile court finds that Sara’s reunification with either Nicole or her father, who may be in the Philippines, is not viable due to neglect, abuse, abandonment, or a similar basis in state law, and determines it is not in Sara’s best interest to return to the Philippines, then Sara could apply for SIJS through the federal government.<sup>8</sup> If the father is identified as the offending parent (e.g., as having abandoned Sara) Sara may be able to return to her mother’s home. If Nicole is identified as the offending parent for SIJS predicate findings, the juvenile court would need to find reunification with Nicole “not viable,” which would affect the outcome of Sara’s permanency plan. Notably, SIJS does not support derivative immigrant applications so if Sara were eventually to obtain Lawful Permanent Resident status through SIJ findings, she could never sponsor a parent or other relative for lawful status.
- Sara and Nicole should be screened for immigration relief options as soon as possible, as those procedures may take months or even years to resolve, and include age limits (in the case of SIJS) and deadlines.
- If Sara or Nicole becomes involved in immigration removal proceedings, other options for relief may apply.



## Education

Can Sara stay in her same school even if placed with her aunt out of the school boundary?

- Sara is legally entitled to attend public school even though she lacks immigration status. That entitlement does not change based on moving to a new school district.<sup>9</sup>
- Unless it is in her best interests to change schools, the presumption is that Sara should remain in her current school to avoid further disruption and instability. Any education decisions should comply with federal, state, and agency rules about the education of youth in foster care.<sup>10</sup>

## Case 2: Lizette, Tomas and Ana

**A mother who lacks immigration status is detained by immigration enforcement authorities and fears separation from her son, who was born in Guatemala, and her U.S. citizen daughter.**

After her husband was killed by a gang in Guatemala, Lizette traveled to the United States with her four-year-old son, Tomas. She and Tomas were stopped at the border, then released and issued Notices to Appear in Immigration Court. An Immigration Judge subsequently issued *in absentia* removal orders for each of them when they did not appear for proceedings.

Tomas is now 11 years old, and has a six-year-old sister, Ana, who was born in the United States and whose father left the family soon after Ana's birth. Lizette is detained when U.S. Immigration and Customs Enforcement (ICE) raids her workplace and picks up any employee who cannot provide evidence of lawful immigration status. ICE asks if anyone needs to make plans for children in their care before being detained. Scared that Tomas could be detained as well, Lizette does not tell ICE about her children.

When Lizette fails to pick up the children from school, the school calls Lizette's emergency contact—a family friend named Marta. Marta, also from Guatemala and a Lawful Permanent Resident (LPR), has agreed to take care of the children if Lizette is ever detained or deported as a “contingency plan.” Marta begins caring for Ana and Tomas but quickly becomes overwhelmed because she has her own children and has started serving as a contingency caregiver for one other child as well. She tries to find Lizette in immigration detention but cannot track her down. Ultimately, Marta calls CPS and asks the agency to place Ana and Tomas in foster care while their mother is in immigration detention.

### Issues to consider



#### Child Welfare Agency Involvement

Should the child welfare agency get involved?

- Many parents without immigration status create “contingency plans” or safety plans of varied formality to provide for the immediate care of minor children in case the parents are detained and/or deported.<sup>11</sup> These contingency plans are often created with a relative or family friend whom the child knows and who may or may not have lawful status in the United States. Child welfare agencies need then only become involved if the caregiving arrangement with the selected adult disrupts, as in the case with Marta. If ICE contacts CPS at the time of a parent's detention, CPS should ask the child and parent about any pre-planned contingency plan and either facilitate the plan or explore the named caregiver as a kinship caregiver resource, if foster care placement is needed.



#### Foster Care Placement

How might immigration status affect the children's placement?

- If, after Marta reaches out, the child welfare agency chooses to file a petition against Lizette for failing to provide care and control and takes the children into state custody, Marta could be explored as a nonrelative kinship placement resource for the children. As a result, she could have better access to financial support for caring for Tomas and Ana within the foster care system. There are risks to this approach, however, because Lizette would have substantially less control of what happens with her children and Marta could be subjecting other children in her care to CPS involvement unnecessarily.



- Marta or other kinship resources may be reluctant to engage with government agencies because of experiences in their native countries or of anxieties about treatment of others in the United States. There are also sensitivities in this case because Tomas has a pending removal order issued against him. The caseworker should build a trusting relationship with these individuals, provide any needed service referrals to organizations known within and trusted by the local immigrant community, and recognize the increased vulnerabilities of immigrants, even those with lawful status.



## Permanency Planning

How might immigration status impact the case plan for Lizette, Tomas, and Ana?

- If a dependency case is filed, the agency should include Lizette in case planning while she is in detention. To locate where she is being held, the caseworker can visit <https://locator.ice.gov>. (Lizette's Alien Number or "A-Number" and country of birth, or exact name, country of birth, and date of birth are needed to perform a search.) The caseworker, agency attorney, and/or Lizette's attorney then can reach out to the appropriate ICE Field Office Director to coordinate Lizette's involvement in agency meetings and court hearings, whether in person or by video or conference call.
- Lizette should be appointed an attorney for the dependency case as soon as possible, and that person or the caseworker can also make a referral to an immigration attorney. Both attorneys could advocate for Lizette's release, or at least for her detention close to the children and the dependency court. An immigration attorney also could pursue any relief options available before Lizette is deported, which might allow the children to return to her care safely in the United States.
- If Lizette is removed and requests that her children accompany her as part of a reunification plan, several options exist.<sup>12</sup>
  - Because Tomas is also subject to a removal order, ICE may arrange for him to accompany his mother on the trip back to Guatemala and pay for their tickets on a commercial flight. ICE would not necessarily provide for Ana's transportation in the same way, because she is a U.S. Citizen. The Guatemalan foreign consulate may be able to support Ana's transfer (or that of both children) to join her mother in Guatemala, logistically and even financially. Additionally, the agency can facilitate an easier transfer with staff accompanying Ana and Tomas on the trip there, if they cannot travel with their mother.
  - Though no concerns about Lizette's parental fitness have been raised in the past, if the court or agency wants additional information about her home situation in Guatemala, requests for a home study can be made through an agency in Guatemala or an organization such as International Social Services.<sup>13</sup>



## Immigration Relief

- Several options may be available to Lizette and Tomas for trying to contest removal to Guatemala. Those options will depend on many different factors and an immigration attorney should be consulted as early in the case as possible to identify potential defenses to removal based on their factual circumstances.

## Case 3: Marco

**A child who arrived in the United States as an unaccompanied minor becomes homeless after his sponsor placement with relatives falls through.**

Marco, who just turned 17, came from Honduras fleeing gang violence approximately one year ago. He had been living on his own for several years, mostly on the street. He has never known his father and his mother died three years ago. He was apprehended at the border, transferred to a shelter operated by a grantee of the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR) shelter, and placed in deportation (removal) proceedings before the Immigration Court.

At the ORR-funded shelter, Marco shared the name of an uncle who he had not seen in many years. The uncle agreed to be Marco's sponsor and Marco was released to the uncle and his family. As is standard with ORR sponsor arrangements, Marco's uncle did not have a formal legal order of custody or guardianship. Although he helped Marco enroll in school, soon after Marco's arrival, it became clear the uncle did not have space for Marco or a desire to care for him.

Marco began couch surfing with different friends he met at school and sometimes sleeping outside or in an area youth shelter. One of the staff at the shelter learned about Marco's background and contacted CPS to report that he should be taken into care. The CPS hotline worker suggested that perhaps he could be "sent back" to the ORR shelter.

### Issues to consider



#### Child Welfare Agency Involvement

Should CPS become involved or is this a federal matter?

- Although Marco has a pending immigration case, because he is homeless and his sponsor placement has fallen through, the question of current child welfare involvement is a local one that needs to be handled by the state and local authorities. The agency could file a petition asserting that Marco's uncle is not providing proper care and custody in his current situation and/or, depending on the underlying circumstances, alleging abandonment, abuse, or neglect by Marco's parents in Honduras. In very rare circumstances, ORR may reassume custody if Marco has become a danger to himself or to others.



#### Foster Care Placement

What are Marco's placement options?

- Marco likely needs a foster care placement where he can live safely and also be supported in processing the trauma of his experiences in Honduras and his travel to the United States.



#### Permanency Planning

What should Marco's permanency plan be?

- Whether Marco can reunify with his uncle depends on whether Marco wants to live with the uncle and his family and whether the uncle will welcome him back. The agency and Marco's attorney should explore other placement options and permanency goals including Another Planned Permanency Living Arrangement (APPLA).

- It is important to help Marco establish meaningful positive connections with adults and gain support to make the transition to adulthood. Marco’s attorney and caseworker should explore available housing and education opportunities at the local, state, and federal levels.<sup>14</sup>



## Immigration Relief

What type of immigration relief might Marco qualify for?

- Marco may be eligible for Special Immigrant Juvenile Status (SIJS — See Case Example One) because of his abandonment by both parents (in some states, death of a parent constitutes “abandonment” or a “similar basis to abandonment”) and his inability to reunify with either of them. The SIJ program was originally created to provide immigration status to eligible youth placed in “long-term foster care,” though the terms of eligibility include other youth now. His immigration attorney should also explore whether Marco could qualify for asylum based on fear of persecution in Honduras.
- Because he is about to turn 18, a predicate order from the state court for his SIJS application should be pursued quickly. In some states, state court jurisdiction terminates at age 18, while in others it continues until 19, 20, or 21. At times, this extension of jurisdiction is connected to an extension of foster care beyond age 18. However, some jurisdictions permit jurisdiction to be extended at the court’s discretion if it is in the best interest of the child.



# Case 4: Victor and Christopher

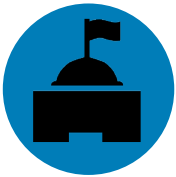
**A child who lacks immigration status suffers from neglect at home while residing with his father, who also lacks status.**

Victor and his four-year-old son Christopher fled El Salvador to the United States in 2015 and crossed the border together without inspection. Victor decided to flee because his wife (Christopher's mother) had been killed in an attack on a bus while coming home from work and he felt unsafe trying to raise his son there.

In the United States, Victor suffered from depression and PTSD. Initially, he was able to work as a day laborer and found day care for Christopher. Because of his depression, however, Victor eventually became unable to work and he has struggled to care for his young son.

A caregiver at Christopher's day care noticed that Christopher was frequently ill and hungry. Christopher also has asthma, which appeared to be untreated. She hesitated to contact CPS, however, given Victor and Christopher's lack of immigration status and because she was not sure CPS would have many services to assist non-English speakers.

## Issues to consider



### Child Welfare Agency Involvement

Should CPS become involved?

- Victor and Christopher's lack of immigration status is not a reason for the agency to remain uninvolved, especially if agency staff can help establish a prevention plan for Victor and Christopher. Without support, Christopher is at risk of maltreatment.
- The agency should seek to help Victor access services to stabilize his life and Christopher's. If eligibility rules for certain services (e.g., health care, mental health, employment, housing) exclude participants who lack lawful immigration status, the agency may need to explore other options of providing the family with needed help through local community groups that may have greater access to Spanish-speaking members.



### Foster Care Placement

If foster care does become necessary, how might immigration status impact Christopher's placement?

- Christopher's lack of immigration status should not affect his foster care placement even though the state would not be able to receive Title IV-E federal reimbursement for foster care maintenance costs.



### Permanency Planning

How might immigration status impact reunification with Victor?

- If Christopher is placed into foster care, Victor's lack of immigration status would not be a lawful basis upon which to delay reunification. To achieve safe reunification, however, Victor would likely need help for his own mental health challenges and his eligibility for services may be restricted by his immigration status.
- Christopher will also benefit from health care and other services tailored to his age

and language abilities; the agency will need to identify services for which he is eligible as a youth without lawful status.



## Immigration Relief

What type of immigration relief might Victor and Christopher qualify for?

- Christopher may be eligible for SIJS based on abandonment by his mother; in some states death qualifies as abandonment. (See the Case Study One for details on SIJS.) Victor may qualify for asylum depending on the circumstances surrounding his wife's death and other threats he may have experienced in his home country.<sup>15</sup>

## Case 5: Fatima and Ami

**The mother of a U.S. Citizen child is held in immigration detention and faces possible deportation from the United States.**

Fatima is originally from Haiti and has lived in the United States for 20 years. She is a Lawful Permanent Resident (LPR) of the United States (green card holder) who has a 10-year-old U.S. Citizen daughter named Ami. When Ami was eight, Fatima's husband (Ami's father) died and Fatima was left to support the family. In her job as a maintenance worker at a local office building she has not been able to earn enough to support her family, however, and she has begun to fall short on her rent.

Desperate, one night she stole a laptop from the office building to sell it. Caught on surveillance video, she was arrested and subsequently convicted of theft and sentenced to one year in jail. Though her sentence was suspended in exchange for three years probation, her conviction constituted an "aggravated felony," which can result in LPRs losing their immigration status. When the police arrested Fatima at her home they called CPS to take custody of Ami. Ami told CPS she had never been mistreated by her mother. She said she has an aunt who might be willing to care for her but she did not have her number.

Following her criminal conviction, Fatima was put into removal proceedings and transferred to immigration detention. Fatima had never imagined she could be arrested or face deportation and had not designated a potential guardian for Ami.

### Issues to consider



#### Child Welfare Agency Involvement

Should CPS become involved?

- Because there were no allegations of abuse or neglect, it may have been possible to prevent unnecessary CPS involvement if Fatima had had an opportunity to call a substitute caregiver who could have come for Ami when she was arrested. Many immigrant families who fear the possibility of sudden detention by ICE have created contingency plans for this kind of situation. Once Ami did come into CPS care, the agency was required to notify adult relatives of Ami's placement, so the caseworker should identify, reach out to, and explore the aunt as a placement resource.<sup>16</sup> If the aunt is also Haitian, the Haitian Consulate may be able to help locate Ami's aunt in the United States.



#### Foster Care Placement

If foster care becomes necessary, how might immigration status impact Ami's placement?

- Because Ami is a U.S. Citizen, immigration status is not relevant to her own placement. If CPS seeks to maintain her in child welfare custody and place her in the home of a relative, however, that relative's immigration status may have an impact on whether the relative can become a licensed foster parent and receive corresponding support from the state. If Ami enters foster care but still wants to live with the originally suggested aunt, her attorney should follow up on the agency's identification and notification to the aunt and advocate for Ami's placement with her.
- Placement considerations may need to evolve as more is learned about Fatima's detention and potential removal to Haiti.

- Ami’s attorney should talk to Ami about options for visiting her mother in detention and reunifying with her mother in Haiti if she is deported there.
- Immigration status will also impact communication with Fatima insofar as she will need to be contacted through the detention facility. Fatima’s attorney and the case-worker should try to meet with her in person and engage her in case planning to the extent possible. At minimum, the attorney could request that Fatima be held in a location near the active child welfare case so Ami could visit her mother and Fatima could participate in court hearings and agency meetings in person or remotely.<sup>17</sup>



## Permanency Planning

What should Ami’s permanency plan be?

- The permanency goal should be reunification. There are no underlying allegations of maltreatment and immigration detention, deportation, residence outside the United States, and another country’s standard of living are not alone grounds to terminate parental rights.
- While in immigration detention, Fatima retains her parental rights and she should be represented by counsel in the child welfare proceeding and should have an opportunity to participate. To locate where she is being held in immigration custody, the case-worker and Fatima’s attorney can visit <https://locator.ice.gov>. (Fatima’s Alien Number or “A-Number” and country of birth or exact name, country of birth, and date of birth are needed to perform a search.) The caseworker, agency attorney, and/or Fatima’s attorney then can reach out to the appropriate ICE Field Office Director to coordinate Fatima’s involvement in agency meetings and court hearings in person or by video or conference call.
- Prolonged detention can impede a parent’s engagement in reunification efforts. The agency should consider requesting, and Fatima’s attorney should advocate for, alternatives to seeking a termination of Fatima’s parental rights if there is a risk that Ami might remain in foster care for 15 of 22 months.<sup>18</sup> That delay could take the form of the court’s extension of the reunification period beyond 15 months or as classification of Fatima’s detention as a compelling reason why terminating Fatima’s rights would not be in Ami’s best interest.<sup>19</sup>
- If Fatima is removed to Haiti and seeks to have Ami reunify with her there, then the agency would need to develop a realistic reunification plan. If a home study is required, the agency could seek help from organizations such as International Social Services, which can facilitate noncustodial parent/relative finding services, home studies, and more in foreign countries. The Haitian Consulate could also provide information on Ami’s eligibility for citizenship in Haiti (which may be necessary for accessing school and other public services there) and help facilitate Ami’s transportation to Haiti for visits and reunification.
- Fatima’s attorney should remain in contact with her in Haiti, continue to advocate for Fatima’s remote participation in court hearings and agency meetings and, if needed, seek an additional extension of the reunification period.



## Immigration Relief

- As a U.S. Citizen, Ami does not need any immigration relief. As an LPR convicted of a removable offense, several options may be available to Fatima for trying to contest her removal to Haiti. Those options will depend on many different factors and an immigration attorney should be consulted as early in the case as possible to identify potential defenses to removal based on her factual circumstances.

# Case 6: Ade, Abiola and Emmanuel

**A father in foreign country seeks reunification with his child after the baby is removed from his mother in the United States.**

Ade and his wife Abiola live in Nigeria. When Abiola was pregnant, she traveled to the United States to visit her sister and gave birth to Emmanuel in the United States. Four months later, a CPS report from hospital staff led to identification of Abiola's substance abuse addiction and neglect of the baby; Emmanuel was placed in foster care. Ade initially supported the plan to reunify Emmanuel with Abiola. He also attempted to secure a visa to visit the United States from Nigeria so he could be with his son. After his visa request was denied, he asked that the child welfare agency arrange for Emmanuel's travel to Nigeria to his care. He maintains regular phone and email contact with the caseworker, seeks help participating in court hearings from the Foreign Consulate of Nigeria, and provides contact information for relatives in the U.S. who may be placement options. The foster parents have indicated they are interested in adopting Emmanuel and have asserted it is in his best interest to remain in the United States. After seven months, the agency petitions to terminate Abiola's parental rights for failure to pursue any components of her case plan.

## Issues to consider



### Child Welfare Agency Involvement

How should the agency and others involve the family?

- Agency involvement should not be affected by Abiola's lack of immigration status or by Ade's residence in another country.
- The agency must explore the kinship resources Ade has provided as placement or support options.
- Cultural sensitivities should be considered in the foster care placement, and the agency should seek to engage the foster parents in a plan to facilitate communication with Emmanuel's father.



### Permanency Planning

How might the family's location and immigration status affect the permanency goal and case planning?

- Reunification with Ade should be prioritized because there are no allegations of abuse, neglect, or abandonment and he has tried actively to be with his son.
- Whether or not he is named a respondent in the dependency petition, Ade should be appointed an attorney to represent his interests in that proceeding. Ade also needs to be effectively served the pleadings, according to the local jurisdiction's rules.
- The court can help Ade participate in court hearings by phone or video, making efforts to account for time zone differences and Ade's access to the needed technology.
- Despite Ade's residence in another country, the agency has a duty to provide reasonable efforts to reunify Ade with his son. The agency can engage him in several ways, and his attorney can support and monitor that interaction. The agency can facilitate electronic visitation with Emmanuel, so Ade can foster a relationship with his son. The caseworker can include Ade by phone in case planning and other meetings.
- If any valid concerns of Ade's fitness as a parent exist, the agency could reach out to international organizations to explore options for a home study or social services.



## Case 7: Jennifer

**A mother with deferred action experiences domestic violence in her home but is scared to contact authorities.**

Jennifer was born in Mexico and was brought to the United States by her parents when she was three. When Jennifer was 20, she applied for and was granted Deferred Action for Childhood Arrivals (DACA), which does not provide lawful status to undocumented immigrants but does provide work authorization and temporary protection from deportation (deferred action).<sup>20</sup>

Jennifer is now 24 and married to a Lawful Permanent Resident (green card holder) with whom she has two young children. She has worked for the same company for three years. The children's father, George, abuses Jennifer physically, emotionally, and sexually. A neighbor calls the police after hearing an abusive incident, and the police call CPS. When interviewed by the CPS investigator, Jennifer explains that her children have never been physically harmed and that she has not sought help for herself because her deferred action is set to expire soon and cannot be renewed unless the federal government resumes the DACA program. As a result, she fears that if she contacts local authorities they will alert ICE and she will be subject to deportation. If that happens, she believes the children would be unsafe in George's care.

### Issues to consider



#### Child Welfare Agency Involvement

Does the agency need to become involved?

- Jennifer's expiring deferred action is not a reason for CPS involvement. Additionally, her fear about the potential ramifications of seeking help to protect herself from domestic violence may provide a sufficient defense to any potential grounds for a dependency petition alleging she exposed her children to danger by not contacting authorities sooner.
- Jennifer should be counseled about the benefits and risks of securing a protective order against George, which can keep him away from her and provide safeguards for any contact with the children. She can also seek a custody order. These formal legal protections and arrangements can keep Jennifer and the children safe without the need for child welfare agency involvement.



#### Foster Care Placement

What are the children's placement options?

- Most likely the children can remain in Jennifer's care and do not require foster care placement. Her continued ability to provide for the children and their needs may be complicated slightly by Jennifer's worries about work authorization and a lack of access to other support services. DACA provides access to work authorization, a social security number, and possible tax credits for low-income workers. DACA recipients do not become eligible for many public benefits, however, such as TANF. While poverty alone cannot be grounds for removing children from parents, lack of access to many of the financial and other supports that assist families in similar situations (those within the child welfare system or at risk of involvement) leaves Jennifer and her children in a more precarious situation.



## Permanency Planning

If a child welfare case is initiated, what should the children's permanency plan be?

- If a child welfare petition is filed, Jennifer's attorney should argue that George be excluded from the home and the children remain in Jennifer's care. That way, the agency's safety concerns can be addressed without unnecessarily removing the children or uprooting them and Jennifer from their home.



## Immigration Relief

What type of immigration relief may Jennifer or the children qualify for?

- Since George is a Lawful Permanent Resident, Jennifer may be eligible for immigration relief under the Violence Against Women Act (VAWA).<sup>21</sup> Her children were born in the United States so are U.S. citizens. But immigrant children in similar circumstances could access derivative relief or themselves qualify for VAWA, or possibly be eligible for SIJS based on maltreatment by their abusive parent.

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## Endnotes

1. See Migration Policy Institute, *Children in U.S. Immigrant Families*: <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families?width=1000&height=850&iframe=true>.
2. See *Vienna Convention on Consular Relations*, Article 37, 21 U.S.T. 77; T.I.A.S. No. 6820.
3. There may be instances where notification is not in the child or parent's interest because there are sensitivities surrounding an application for asylum or other request for immigration relief. As a result, different stakeholders should consider whether notifying the Foreign Consulate may compromise the child or parent's interests, including when individuals are seeking asylum and alleging they fear harm if returned to their home country.
4. See Title VI of the Civil Rights Act of 1964, codified in relevant part at 42 U.S.C. §§ 2000d-2000d-7; see also Joint Letter from the U.S. Department of Health and Human Services, Office for Civil Rights, Administration for Children and Families and the U.S. Department of Justice, Civil Rights Division, Federal Coordination and Compliance Section (October 2016): <https://www.hhs.gov/sites/default/files/title-vi-child-welfare-guidance-10-19-16.pdf>.
5. For information about the eligibility of kin caregivers without immigration status to become certified foster parents, see *Immigrant Caregivers: The Implications of Immigration Status on Foster Care Licensure* (ABA Center on Children and the Law 2017) at [www.ambar.org/cwimmigration](http://www.ambar.org/cwimmigration).
6. For more information about U Visas, Special Immigrant Juvenile Status, and other forms of immigration relief, see resources by the Immigrant Legal Resource Center (ILRC) and KIND: <https://www.ilrc.org/u-visa-t-visa-vawa>, <https://www.ilrc.org/overview-special-immigrant-juvenile-status-updated-march-2015>, and <https://supportkind.org/wp-content/uploads/2015/04/Chapter-4-Special-Immigrant-Juvenile-Status-SIJS.pdf>. See also Cristina Cooper, *A Guide for State Court Judges and Lawyers on Special Immigrant Juvenile Status*, *Child L. Practice* 36(2) (March/April 2017).
7. The U.S. Department of Homeland Security has indicated that child and adult protective services agencies may sign the certifications needed for the U Visa application process. See [Dept. of Homeland Security U Visa Certification Guide for Federal, State, Local, Tribal and Territorial Law Enforcement](#), at p. 9; see also 8 C.F.R. § 214.14(a)(2) (defining "certifying agency" to include child protective services).
8. See *supra* text and resources accompanying note 6.
9. See *Plyler v. Doe*, 457 U.S. 202 (1982).
10. For more information about laws that support children's access to the same schools while in foster care,

visit the Legal Center for Foster care and Education at <http://www.fostercareandeducation.org/>.

11. For more information about contingency plans, see Women's Refugee Commission, *Making a Plan: Migrants' Parents Guide to Preventing Separation* (2017), [file:///C:/Users/cooper/Downloads/Make-a-plan-english-FINAL-FINAL-6-29-17%20\(1\).pdf](file:///C:/Users/cooper/Downloads/Make-a-plan-english-FINAL-FINAL-6-29-17%20(1).pdf) and Appleseed, *Protecting Assets and Child Custody in the Face of Deportation* (2017 updates) <http://www.appleseednetwork.org/deportationmanual/>.

12. In 2018, ICE issued *Detention and Removal of Alien Parents or Legal Guardians*. This new directive, dated August 2017 and made public April 2018, provides guidance on ICE management of cases involving the detention of parents and legal guardians of minor children. Touching on a few topics, the directive addresses accommodating the coordination of care and travel for minor children by a parent who will be deported and facilitating detained parents' involvement in child welfare or custody proceedings. The directive is available at [https://www.ice.gov/doclib/detention-reform/pdf/parental\\_interest\\_directive\\_signed.pdf](https://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf) and supersedes the 2013 ICE directive entitled *Facilitating Parental Interests in the Court of Civil Immigration Enforcement Activities*.

13. For more information, see <http://www.iss-usa.org/>.

14. Immigrant and other youth who experience homelessness in certain states can also learn about their rights and available resources from *The Homeless Youth Handbook* at <https://www.homelessyouth.org>. Additionally, in some jurisdictions, attorneys for older youth who are not involved with the child welfare agency have helped those young people access supports and services by filing a "private" dependency case or by seeking an order of non-parental custody.

15. For more information about asylum, see resources from ILRC: <https://www.ilrc.org/u-visa-t-visa-vawa> and <https://www.ilrc.org/asylum>.

16. See The Fostering Connections to Success and Improving Adoptions Act of 2008 (P.L. 110-351).

17. For additional information about access to parents detained by ICE, see *Detention and Removal of Alien Parents or Legal Guardians*, *supra* note 12.

18. For more information about requirements regarding termination of parental rights petitions, see The Adoption and Safe Families Act of 1997 (P.L. 105-89), codified in relevant part at 42 U.S.C. 675(5) and relevant state law.

19. For example, California law not only requires that reasonable services be provided to a family after the court and agency consider the particular barriers a detained or deported parent faces in accessing services and maintaining contact with the child, but also authorizes courts to extend the reunification period for parents who have been detained or deported. See Cal. Welf. & Inst. Code §§ 361.5(a)(3)-(4), § 361.5(e)(1), 366.21(g)(2), 366.22(b).

20. For more information about Deferred Action for Childhood Arrivals and the program's status, see [www.nilc.org/daca](http://www.nilc.org/daca) and [www.ilrc.org/daca](http://www.ilrc.org/daca).

21. For more information about VAWA, see resources from ILRC: <https://www.ilrc.org/u-visa-t-visa-vawa> and <https://www.ilrc.org/asylum>.

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For more resources on the intersection between child welfare and immigration, visit the Child Welfare and Immigration Project website at the ABA Center on Children and the Law: [https://www.americanbar.org/groups/child\\_law/project-areas/immigration.html](https://www.americanbar.org/groups/child_law/project-areas/immigration.html)

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