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How can child protection agencies address the immigration needs of non-citizen children in foster care?

Children served by the child welfare system require special care and attention paid to their safety, permanency, and well-being, and those who lack stable immigration status are even more vulnerable. Understanding and addressing the immigration needs of non-citizen children in foster care is unfortunately an underdeveloped area of child welfare practice.

Child protection agencies are responsible for ensuring the safety and well-being of all children in their care, regardless of immigration status or country of origin. Permanency is also a key responsibility of child welfare agencies, as they strive to reunify children with their families as soon as safely possible. When this is not an option, loving, permanent families should be identified for children through adoption, guardianship, or another form of legal permanency. For permanency to be meaningful, it should include addressing a child's immigration needs. **Immigration-related stability is an integral component of non-citizen children's safety, well-being, and permanency** and must be considered in all child welfare services and case plans. Without stable immigration status, non-citizen children will face immense challenges as independent adults, as they will not qualify for most state and federal benefits, receive federal financial aid for college, or be able to legally work. Perhaps most critically, they will continue to live in constant fear of deportation.¹

When non-citizen children are in the care of a child protection agency, they need the agency to take the necessary steps to identify, protect, and support their immigration needs. Their reliance on the child protection agency isolates them from their communities and hinders their access to immigration relief outside the child welfare system. Implementing processes and improving support for non-citizen children can reduce family separations and increase children's overall safety, well-being, and prospects for permanency.

The reality is that child protection caseworkers, children's representatives, and family courts often are not equipped to identify or pursue immigration remedies for these children. Children in foster care may be eligible for a time-limited form of immigration relief, such as [Special Immigrant Juvenile Status](#), or other relief options such as asylum, or visas for survivors of crimes, including human trafficking. Without identification of non-citizen status and referrals for proper legal representation, however, children risk aging out of eligibility for some of these solutions, thereby exiting foster care without legal status and with greater risks of homelessness, exploitation/trafficking, detention by U.S. Immigration and Customs Enforcement, and/or deportation. **Legal representation matters.** A review of data from fiscal years 2018 to 2021 showed that without a lawyer, 90% of unaccompanied children were removed from the U.S., but with representation, that rate drops to 37%.²

Spotlight on Tennessee

Since child welfare staff are not experts in immigration law and policy, specialized staff — such as those within the [International, Immigration, and Cultural Affairs Division](#) of the Office of General Counsel at Tennessee's Department of Children's Services — can provide immigration-related guidance and support to child welfare case managers. Once assigned to a case, these specialists become part of the Child and Family Team, focusing particularly on the child's immigration needs.

This brief highlights foundational issues identified by non-citizen children with lived experience in the child welfare system, and describes three promising models for child protection agencies to consider as they strengthen their ability to meet these needs. For more information about the federal context and common challenges child protection agencies face, see: [How can child protection agencies support families and children who lack lawful immigration status?](#) and [What do child welfare leaders need to know about supporting families when caregivers are facing immigration-enforced detention or deportation?](#)

“It is impossible for children to have permanency, be safe, and be self-sufficient adults who can work and continue their educational pursuits if we do not assist them in stabilizing their immigration status.”

—Randi Mandelbaum, Professor of Law, Annamay Sheppard Scholar, Director, Child Advocacy Clinic, Rutgers Law School

Foundational issues

According to the [National Foster Care Youth and Alumni Policy Council](#), agencies should prioritize three foundational issues to improve support for non-citizen children in foster care:³

1. Equip caseworkers to support non-citizen children in foster care with their immigration cases.
2. Support non-citizen children in understanding, accessing, and exercising their basic human rights.
3. Ensure that non-citizen children have obtained legal immigration status when they exit foster care.

Equipping caseworkers to support non-citizen children in foster care with their immigration cases is especially vital. Caseworkers must be **skilled in having conversations about immigration needs**, which starts by understanding the child protection agency's [policy on non-disclosure](#) to U.S. immigration authorities. If the agency does not have such a policy in place, clear guidance should be developed. Under federal law, child protection agency staff and mandated reporters have no obligation to report anyone to U.S. immigration authorities, and a clear agency policy can help to reinforce this for staff.

To understand a child's immigration needs, caseworkers can start by ascertaining certain information from the case file itself, then asking simple and non-threatening questions to help children determine their immigration status if that is not clear from the file. It is important that [caseworkers ask only what is necessary](#) and avoid asking for additional confidential information that is not needed. The caseworker

should communicate to the child how any of the information they share will be used and who that information will be shared with, including any limits to the agency's confidentiality policy. Children in foster care often are unaware of their own immigration status, and a safe, exploratory conversation can be key to the discovery process. Caseworkers also can involve the child's dependency attorney in this process, who can help determine if a [referral to immigration counsel](#) is needed. In addition to the "typical" anxieties of being in foster care, non-citizen children often worry about not having documentation of their legal status. They fear for their safety and that of their families, and they have concerns about planning for the future, such as whether they will be able to work or pursue higher education. A skilled caseworker can assuage some of these fears and help children understand options for legal referral and how to best advocate for their needs.

Caseworkers should **obtain a birth certificate** for every child in foster care as soon as they enter the system, as this is a standard way to determine non-citizen status and the need for an immigration legal referral. If a birth certificate is foreign or missing, the best practice is to refer to an immigration legal service provider for a complete consultation. In cases of a foreign birth certificate, there is no need for the caseworker to elicit any additional sensitive information from the child. Immigration cases are lengthy and often extend far beyond the child's time in foster care. It therefore is imperative that a child's non-citizen status is determined as early as possible and that immigration assistance begins immediately on identification of need. In most cases, pursuing immigration relief also will allow a child to be eligible for Social Security number and government-issued identification documents. Conversely, a lack of documentation can create problems for a child, in obtaining government-issued identification, accessing public benefits, and obtaining lawful employment. A lack of documentation also can slow down a legal adoption process.

Youth with lived experience of being a non-citizen child in foster care have described restrictions on their ability to self-direct and advocate for themselves and their families. Supporting children in **understanding, accessing, and exercising their fundamental human rights** includes educating them on the caseworker's responsibilities so they know if they are missing out on or being denied required services. María,⁴ who was born in Mexico, found her caseworker to be dismissive of her immigration needs and failed to understand the urgency of her case. Fortunately, María received support from other agency staff and the court, which ultimately helped her understand her rights. Non-citizen children must have **access to an immigration attorney and receive support for preserving their cultural and familial relationships**, including identifying the best way to contact their [parents who might be in immigration detention](#) and extended relatives in their country of origin. Where available, advocates such as the [Young Center's Technical Assistance Program](#) can be an important ally in working on behalf of a non-citizen child's best interests.

Agency challenges

Several jurisdictions have identified agency challenges in addressing the legal needs of non-citizen children and families involved with child welfare systems, including systematic identification and tracking of non-immigrant children, support and training for caseworkers, workload management, and outdated policies. Systemic reforms are required to fully address the needs of non-citizen children, and this can be achieved through workgroups tasked with identifying policy and practice changes and community partnerships, as well as agency-wide training for staff on any new processes. Many child protection leaders acknowledge that their staff typically do not apply an immigration lens when children initially have contact with their agencies. Given [workforce turnover as well as the daily challenges](#) in doing child protection work, caseworkers tend to intently focus on their core responsibilities and therefore may be neither skilled nor comfortable in having conversations about immigration status with children or families.

External factors also can complicate access to legal services for non-citizen children. A **dearth of pro bono attorneys and immigration support services** in some regions may make it difficult to fully address the legal representation needs of non-citizen children in foster care in a timely and cost-efficient manner.

Legal aid organizations are essential service providers to meet this need but often are under-resourced or lack funding. The politicization and polarization of immigration is an additional issue impacting all jurisdictions. A strong anti-immigrant sentiment exists in many communities. Agency leaders therefore need to engage with staff and providers about how to handle outside resistance, including from judges who may not want to help non-citizens access legal services.

Models for providing legal representation

The following program models describe how three jurisdictions are striving to ensure that non-citizen children have access to immigration legal representation before they exit foster care.⁵ There remains much to learn on this topic, but these models can serve as a starting point for other jurisdictions as they seek to better serve and support the non-citizen children in their care.

Partnership Model of Legal Access: New Jersey Department of Children and Families

The New Jersey Department of Children and Families recognized that the state had a large immigrant population with scattered legal resources and was concerned about the varying quality of legal representation for non-citizen children. Not addressing this issue led to problems and inconsistencies in service. For example, if a child protection caseworker had immigration-specific knowledge and training, then the child might get support, but conversely if a caseworker lacked that knowledge, the child might lose the opportunity to obtain immigration relief. Moreover, child welfare leaders were not always aware of immigration services available in their communities, nor were they tracking how many children with immigration-related needs were being served. In 2016, one year after creating an in-house position focused on the immigration needs of children in its care, the agency entered into a memorandum of understanding with two clinics at Rutgers University to provide immigration representation to all non-citizen children in foster care. What started as a program with one attorney has grown to four attorneys, one supervising attorney, and three staff members, along with a paralegal who screens and tracks cases. The in-house agency attorney acts as a liaison who manages communication between the agency and the university, and helps the partners collaborate. State child welfare funds cover the costs of the contract with Rutgers.

It nevertheless continues to be a challenge for the agency to identify which children need immigration support. Most non-citizen children are identified early in case conferences, but some remain unidentified. State policy requires early identification, but agency staff attorneys must constantly provide local area offices with training and resources to counteract the impacts of worker turnover and heavy workloads. Tracking the number and status of immigration cases, the types of immigration relief sought, and the assurance of high-quality legal representation by a trusted provider helps the agency understand the impact of services and identify delivery gaps in New Jersey.

Once a child is identified, caseworkers use a central referral form and process to access Rutgers' immigration legal services. Consistent representation throughout the life of an immigration case is essential because unique complexities can make it very difficult to transfer a case to a new attorney when child welfare involvement ends. Rutgers attorneys therefore handle immigration cases until the youth reaches Lawful Permanent Resident status, which typically extends past the end of the child welfare case.

Agency caseworkers and Rutgers attorneys talk frequently to address issues, explain referral processes, discuss the child's situation, and determine needed records. This helps the caseworkers understand their role in supporting the immigration case. For example, caseworkers may be helpful in locating immigration documents or a birth certificate in a foreign country.

Pro Bono Model of Legal Access: New York City Administration for Children's Services

In 2013, the New York City Administration for Children's Services (ACS) developed a policy on Special Immigrant Juvenile Status (SIJS) and Immigration Services stating that all non-U.S. citizen children in the agency's care shall be identified and referred to immigration legal services providers. To support this policy,

the agency created an Immigration Services for Youth in Care program within its Division of External Affairs' Immigrant Services and Language Affairs office. Since children in foster care in New York City receive case management through private foster care agencies, the success of this program requires collaboration between those foster care agencies, ACS, and immigration legal services providers. The program oversees foster care provider agencies' assistance to non-citizen children, coordinates the efforts of all the collaborative partners, trains staff on policy and best practices, helps with individual cases, and tracks and keeps records of case progress.

The New York City metropolitan area is fortunate to have over 150 pro bono legal service providers who can provide immigration legal services, as well as three immigration courts and two U.S. Citizenship Immigration Services asylum offices. This multitude of services means that the city's children do not have to travel far to attend immigration court or appointments. ACS has no in-house attorneys providing direct legal representation on immigration matters. Instead, it employs an attorney and social worker team to track the pro bono immigration referrals and maintain relationships with the legal teams, which are comprised of experienced attorneys with expertise in immigration and family court. Since legal services are provided pro bono, the costs for this model to ACS are relatively low, with occasional filing fees and costs for language support.

Hybrid Model of Legal Access: Children's Law Center of California, Los Angeles

The Children's Law Center of California is the largest children's legal services organization in the U.S. that provides legal representation for children impacted by abuse or neglect. The center annually represents over 20,000 children in Los Angeles, Sacramento, and Placer counties. Out of approximately 20,000 children in foster care, about 875 are non-citizens.

Since 2001, California's dependency model has included mandatory appointment of counsel for children who are the subject of a dependency petition (appointed as guardians ad litem). In cases where the Children's Law Center is the court-appointed counsel for a non-citizen child, the child's attorney will refer them to the center's in-house immigration unit. The unit also takes direct referrals from the three counties' child protection agencies. The center's immigration unit was created in 2019 to assess eligibility for immigration relief, provide technical assistance to dependency attorneys filing requests for Special Immigrant Juvenile Findings, and provide some individual representation. The center seeks referrals from child protection agencies for all children in foster care believed to have been born outside the U.S. The preference is to err on the side of over-referral rather than miss a child who may be in need of immigration relief.

The center's model is a hybrid that includes both in-house representation and outsourcing to pro bono attorneys in the community. The center keeps the immigration case whenever possible in cases where a youth has experienced severe abuse or trafficking (in order to prevent possible re-traumatization of the child) or for grant-specific obligations, but other cases are referred to pro bono lawyers. The team utilizes a multi-disciplinary model with a social worker and attorneys working closely together, where the unit's social worker provides case management services and other support, such as answering questions about financial aid and public benefits, and the attorneys provide representation and technical assistance. The team is funded through a grant from the California Department of Social Services, which pays per case of direct representation. The technical assistance provided by the immigration attorneys is not funded, and a separate state grant funds the social worker position.

The county child protection agency in Los Angeles also has an immigration unit, but it is staffed by social workers, not attorneys. This unit is responsible for identifying non-citizen children, referring them to the Children's Law Center, and obtaining documents, such as birth certificates. If the center is unable to take a case, the county's unit refers those cases to reputable immigration legal services organizations with which the county has contracted to accept cases.

Additional considerations

Non-citizen children in foster care are beholden to two systems: immigration and child welfare. Although immigration processes are complex, the first steps for a child protection agency can be as straightforward as developing a list of [available pro bono legal services](#) and training staff on identifying non-citizen children. The agency's initial steps also should include helping children [access public benefits](#) and legal services, and identifying language access resources to support communication in the child's preferred language. Concurrently, jurisdiction leaders can collect data to identify the scope of immigration needs for the children in their agency's care, and use this data to advocate for resources. Additional examples of possible strategies can be found in [Strengthening Child Welfare Practice for Immigrant Children & Families: A Toolkit for Child Welfare Professionals in California](#) and the [Child Protective Services Agency Toolkit](#).

Child protection agencies with a mission to support child and family well-being must elicit feedback from impacted non-citizen children on the immigration-related support they are receiving while in foster care — as well as from young adults who were previously in foster care — and look for opportunities to improve those interventions. Survey or focus group data can provide ideas for additional strategies to improve services and help non-citizen children stabilize their immigration status as a means toward achieving permanency.

Since immigration is regulated by federal laws and policies, additional avenues for meeting the needs of non-citizen children in foster care also can include identifying immigration legal services outside of a state if resources are unavailable locally. Implementing standardized processes that support identification of immigration need and referral, such as ensuring language access, obtaining educational records, and getting birth certificates for all children shortly after a child enters foster care, will ultimately benefit all children, including non-citizens.

¹ Gottesman, J., Mandelbaum, R., & Pindar, M. (2018). A Pathway to Permanency: Collaborating for the Futures of Children who are Immigrants in the Child Welfare System. *Child Welfare*, 96(6), 25–46.

² Kandel, W.A., (2021). [Unaccompanied Alien Children: An Overview](#) (R43599, Version 29, updated).

³ This information was informed by a facilitated panel of four adults who experienced foster care as non-citizen children at the Casey Family Programs and Rutgers University convening on Addressing the Legal Needs of Non-Citizen Foster Children, June 14, 2024.

⁴ María (a pseudonym), shared this information during the Casey Family Programs and Rutgers University convening on Addressing the Legal Needs of Non-Citizen Foster Children, June 14, 2024.

⁵ Unless otherwise noted, information about these three models was derived from presentations at the June 14, 2024, convening on Addressing the Legal Needs of Non-Citizen Foster Children hosted by Casey Family Programs and Rutgers University.

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