

TESTIMONY

**Local Law Requiring the NYC Administration for Children's Services
to Review Strategies and Create a Plan of Action to
Protect Immigrant Youth**

New York City Council
Committee on Immigration
Daniel Dromm, Chair

THE LEGAL AID SOCIETY
199 Water Street, 3rd Fl.
New York, NY 10038
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Contacts:

Katherine A. Fleet, Civil Practice, Immigration Law Unit; 212-577-3328; kafleet@legal-aid.org
Theresa B. Moser, Juvenile Rights Practice; (212) 577-3284; tbmoser@legal-aid.org

My name is Katherine Fleet and I am a Staff Attorney with The Legal Aid Society's Immigration Law Unit. I work on the Immigrant Youth Representation Project, assisting NYC youth in obtaining legal status here in the United States.

My name is Theresa Moser and I am a Staff Attorney in the Special Litigation and Law Reform Unit of the Juvenile Rights Practice at Legal Aid.

We submit this testimony on behalf of The Legal Aid Society and want to thank Council Members Dromm, Cabrera, Arroyo and Jackson, for their initiative on the proposed Local Law regarding the NYC Administration for Children's Services' (ACS's) efforts to protect immigrant youth. We would also like to thank the Committee for the opportunity to participate in this hearing.

New York City has long been committed to addressing the needs of immigrant youth, and we applaud the City Council for pursuing new efforts to benefit this vulnerable population. The Legal Aid Society strongly supports the proposed law requiring ACS to review its strategies and propose a new plan aimed at protecting the urgent needs of immigrant youth. We offer some suggestions that we think will strengthen the bill and help to ensure that its important goals are met.

The Legal Aid Society is the nation's oldest and largest non-profit public interest law firm for low-income families and individuals. Founded in 1876 to provide legal assistance to poor immigrants, the Society is organized into three practice areas: criminal, civil, and juvenile rights. Annually, Legal Aid staff provide direct legal assistance in approximately 300,000 cases involving poor families and individuals. The Civil Practice Immigration Law Unit provides low-income New Yorkers with immigration services ranging from deportation defense to adjustment of status to Legal Permanent Residence and citizenship applications. Legal Aid's Juvenile

Rights Practice provides comprehensive legal representation to children who appear before the New York City Family Courts in all five boroughs, in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children. In addition to representing many thousands of children each year in trial and appellate courts, Legal Aid also pursues impact litigation and other law reform initiatives on behalf of our clients.

In 2002, the Civil Practice Immigration Law Unit launched the Immigrant Youth Representation Project (Youth Project) to respond to the special needs of undocumented youth in New York City. Since its inception, the Youth Project has provided training, outreach, direct representation, and policy advocacy, assisting many New York City undocumented youth in obtaining Special Immigrant Juvenile Status (SIJS) or other immigration benefits. The Society acknowledges the Department of Youth and Community Development, the Gimble Foundation, Kids In Need of Defense (KIND) and the New York Community Trust for their invaluable financial support, which has made a tremendous difference in the lives of hundreds of immigrant youth.

In representing undocumented youth in foster care, Legal Aid has seen first-hand the successes and failures of the current identification, training, and application support practices that are the focus of this proposal. Legal Aid has been involved in cases where ACS and its contract foster care agencies have identified cases, referred them to the Youth Project for legal services, supported Legal Aid staff in getting critical documents such as birth certificates, and assisted in various ways throughout the SIJS process. Legal Aid has also observed the extraordinary difference obtaining SIJS can make in young people's lives, allowing them to remain legally in the United States and putting them on the path toward educational and

professional opportunities. There have also been breakdowns in the system, resulting in devastation and disappointment for children who miss out on the benefit of legal status. Youth who leave foster care with no legal immigration status face the constant threat of deportation, are unable to work legally, and lack access to important services such as Medicaid, federal financial aid, and housing assistance.

One of the most important responsibilities ACS has to every child in its care is to help him or her achieve “permanency” – this can mean returning to family, being adopted or leaving care to live independently, but in any situation, a young person must leave care equipped with the tools to become a successful, participating member of society. A failure to provide immigration assistance to a child who is entitled to an immigration benefit renders any other efforts toward permanency for that child virtually meaningless.

Protecting immigrant youth requires ACS and contract agency action at several critical points. First, consistent with regulations of the NYS Office of Children and Family Services, ACS should ensure that the uniform case record for each family it comes into contact with contains a copy of each child’s birth certificate. Second, ACS and its provider agencies must timely identify youth who are in need of immigration assistance. Third, they must refer them to immigration legal service providers in a timely fashion. If a young person is identified too late, there will be insufficient time to complete an application to U.S. Citizenship and Immigration Services, and an invaluable opportunity will be lost. Fourth, once an immigration legal service provider evaluates a young person’s situation and determines that a young person is eligible for SIJS or another immigration benefit, ACS and its provider agency must promptly and consistently support the application process by obtaining documents such as birth certificate and passport, ensuring that the young person undergoes an immigration medical examination, and

providing documentation to support fee waivers for immigration applications when necessary.

In recent years, the City has made some progress toward meeting the needs of immigrant youth. Legal Aid and other legal service providers have met regularly with ACS staff, shared information and perspectives, and received many case referrals. The relationships developed with ACS have enabled Legal Aid to ensure that undocumented youth referred to the Youth Project get the immigration legal assistance they need. We are grateful – as are many of our clients – for the efforts of Mark Lewis and his staff in the Office of Immigrant Programs, and Harry Gelb from Family Court Legal Services.

Still, there are many challenges and gaps in services that undermine the ability of qualifying youth to apply for SIJS, and there is much left to be done. Although ACS has been open to working with advocates in recent years, it has failed to develop a systematic mechanism for identifying SIJS-eligible youth. Many foster care agency staff still have limited knowledge about SIJS. Many youth are identified only after they miss out on important educational and work-related opportunities or when they are close to aging out of foster care. Obtaining birth certificates and passports for SIJS applications remains challenging in many cases, and there is often little foster care agency cooperation throughout the application process.

Early identification of SIJS-eligible youth is essential, as is providing access to critical documents, such as birth certificates and passports, and collaboration from foster care agencies in obtaining other required documents (including medical examinations and fee waiver letters). These challenges are even more acute now, as recent federal legislation has expanded SIJS eligibility, thereby increasing the population that can benefit from our efforts.¹

¹ Under the 2008 Trafficking Victims Protection Reauthorization Act, SIJS is now a possibility for youth who are not reunifying with “one or both” parents (previously, the law required both) and youth can obtain SIJS if they file applications by age 21 (previously, the law required *adjudication* of applications by age 21, and the process was often lengthy). The recent legislation also provides reimbursement to states for expenses related to youth who

Requiring ACS to report on its strategies and plans relating to SIJS-eligible youth is essential. The Legal Aid Society has a number of specific suggestions to offer today and welcomes the opportunity for further discussion of these important issues.

- ACS data collection systems should systematically track each child’s country of origin from the time ACS first has contact with the child, while protecting the confidentiality of this information.
- As already required under applicable regulations (18 NYCRR § 428.3(b)(2)), ACS should also ensure that each child in foster care has a birth certificate. This data should be tracked systematically and updated consistently so that immigration issues are resolved well in advance of youth aging out of foster care.
- ACS, in conjunction with other City agencies, should provide assistance for youth who do not have birth certificates. Many young people are unable to obtain birth certificates from their home countries and need to seek assistance from local consulates, whose policies vary widely, may be costly and time-consuming, and may require consent of parents or custodians, who are frequently unwilling or unable to consent or whose involvement may pose a danger to the youth. City involvement in this process is essential.
- All non-citizen youth without proper documentation – not just those whom agency staff deem SIJS-eligible – should be referred to immigration

obtain SIJS. Although that provision is subject to federal appropriations, it should become a source of additional funding for social service agencies working with immigrant youth.

In addition, the recently-announced merger of ACS and the NYC Department of Juvenile Justice expands the number of children for whom ACS should consider immigration needs in the context of achieving permanency.

practitioners.² Congress recently expanded eligibility for SIJS, but the precise contours of eligibility may be changed through regulations. Accordingly, immigration practitioners are best suited to assess eligibility. In addition, there is often overlap between SIJS and other forms of immigration relief, which may be more appropriate in certain situations. For example, many youth who are domestic violence victims would qualify for lawful status under the Violence Against Women's Act as well as qualify for U visas as crime victims. Referring all of these cases to legal service providers ensures proper assessment of eligibility and also guarantees that youth will not age out without proper documentation. All youth should have the necessary documents (including unexpired green cards) before leaving foster care.

- All children should be identified and referred for immigration assistance as early as possible. Children of all ages are vulnerable to deportation and many young people without status miss out on critical opportunities for jobs, internships, special programs, etc. Gathering the necessary documents for immigration applications can also be a very lengthy process. Identifying cases early on puts youth in the best position to make successful applications.
- Training of both ACS and foster care agency personnel is critical, and existing training programs are helpful but not sufficient. Immigration trainings should be mandatory and frequent for all employees working directly with youth in care, especially given the high rates of staff turnover at foster care agencies.

² This is consistent with the August 19, 2008, NYS Office of Children and Family Services Administrative Directive (ADM) regarding SIJS, which mandates all local departments of social service and voluntary agencies to assess SIJS eligibility, suggesting that “[a]ll youth in foster care who are not U.S. citizens and do not have documentation of lawful residence . . . need to be identified by agency staff and referred to immigration legal service providers for screening for SIJS and other possible immigration relief.”

- In addition to helping provide initial referrals, ACS should also take on a bigger role in coordinating with contract foster care agencies, whose help is critical when immigration practitioners are working with youth in preparing SIJS applications.
- ACS's reporting under this law should reflect new strategies and ideas, not just a report on the status quo. ACS's new plans should be made in consultation with stake-holders and those with experience in all aspects of this process, including youth immigration advocates and foster care agency workers.
- Any new plan should contain provisions for ACS's monitoring of its own compliance and that of contract agencies. The new plan should also contain data collection measures and specific methods for evaluating outcomes for immigrant youth in foster care.

The Legal Aid Society is hopeful that the New York City Council will pass the proposed law with these suggested changes, which we hope will lead to significant improvements in ACS's efforts to assist this vulnerable population.

We are happy to answer any questions that the Chair and committee members have at this time. Thank you.