

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON IMMIGRATION

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March 2, 2010
Start: 10:13 am
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HELD AT: Hearing Room
 250 Broadway, 14th Floor

B E F O R E: DANIEL DROMM
 Chairperson

COUNCIL MEMBERS:
Daniel Dromm
Charles Barron
Mathieu Eugene
Ydanis Rodriguez
Jumaane D. Williams

A P P E A R A N C E S

Mark Lewis
Director of Immigrant Services
Administration for Children's Services

Margaret Morgan
Chief of Staff to Deputy Commissioner
Division of Family Court Legal Services

Katherine A. Fleet
Staff Attorney
Immigration Law Unit
Legal Aid Society

Theresa B. Moser
Staff Attorney
Special Litigation and Law Reform Unit
Legal Aid Society

Myra Elgabry
Director of Immigration Rights Project
Lawyers for Children

Nancy Downing
Director of Advocacy
Covenant House

Elizabeth Wagoner
Staff Attorney
Make the Road New York

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2 CHAIRPERSON DROMM: Good morning,
3 everybody. I want to apologize a little bit for
4 being late. We got stuck on the BQE, but we
5 rushed to get here. This is my first hearing and
6 I'm very proud and fortune to be here. I am very
7 proud to be the chair of the Immigration
8 Committee. It's something that I really wanted.

9 The district that I live in is
10 between 64-68% made up of immigrants. Jackson
11 Heights, according to Comptroller DiNapoli's
12 report is 64% immigrants. Elmhurst and Corona is
13 68%. So I represent what is perhaps the largest
14 and I would say probably most diverse immigrant
15 rich community. I like to use those words,
16 "immigrant rich", because we're very fortunate to
17 have the population of immigrants that we do have
18 in my district and I'm very fortunate to represent
19 them.

20 So this morning we have with us
21 Council Member Ydanis Rodriguez who is a member of
22 the commission. Thank you and welcome. We also
23 have with us Council Member Jumaane Williams.
24 Thank you for being here as well.

25 Good morning. As I said before, my

1
2 name is Daniel Dromm and I'm the chair of the New
3 York City Council's Committee on Immigration. I
4 would like to introduce the other members, which I
5 did already.

6 I am pleased that today's hearing
7 is on a piece of legislation that will protect
8 undocumented immigrant children in the care of New
9 York City's Administration for Children's
10 Services, also known as ACS. Special Immigrant
11 Juvenile Status, commonly referred to as SIJS, is
12 a form of immigration relief that allows certain
13 qualified undocumented children to become
14 permanent residents of the United States.

15 ACS has a special duty to identify
16 SIJS eligible children and assist them in
17 obtaining immigration relief. It has come to the
18 Council's attention through hearings held over the
19 past several years that ACS is not meeting the
20 needs of this population of young people, often
21 left without a voice as a result of their
22 undocumented status. Fortunately, there are
23 advocates who have repeatedly testified at hearing
24 to ensure that this population does not continue
25 to go without a voice.

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2 The proposed piece of legislation
3 being discussed this morning would require ACS to
4 establish a plan on how to identify and serve this
5 community. The legislation calls for the plan to
6 include a description of ACS' current policies and
7 training programs as well as a plan to identify
8 these children and to coordinate services for
9 them, among other things.

10 Today, we look forward to hearing
11 testimony from ACS on how they currently serve
12 this community on a daily basis. We also look
13 forward to hearing from immigration and child
14 welfare advocates on what happens on a day-to-day
15 basis, what is working in ACS and what needs to be
16 improved.

17 I would like to thank all of you
18 for coming to this morning's hearing. Unless any
19 of my colleagues would like to make a statement, I
20 would like to call the first panel up to provide
21 their testimony. First up we have Mark Lewis and
22 Margaret Morgan. Good morning and thank you for
23 being here.

24 MARK LEWIS: Good morning, Chair
25 Dromm and members of the Immigration Committee.

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2 My name is Mark Lewis and I am the Director of
3 Immigrant Services at the Administration for
4 Children's Services. I appear before you today
5 with Margaret Morgan, Chief of Staff to the Deputy
6 Commissioner for the Division of Family Court
7 Legal Services. On behalf of Mayor Bloomberg, we
8 would like to take this opportunity to update you
9 on Children's Services' work with children in
10 foster care who may be eligible for Special
11 Immigrant Juvenile Status.

12 Children's Services provides child
13 welfare services, which includes child protective,
14 preventive and foster care services, to all
15 eligible families and children residing in New
16 York City regardless of their immigration status.
17 In the course of providing child welfare services,
18 some children placed into foster care by
19 Children's Services are undocumented immigrants.

20 Some of these youth may be eligible
21 for Special Immigrant Juvenile Status, a statutory
22 provision included in the Federal Immigration Act
23 of 1990, which enables undocumented young people
24 in foster care to become permanent residents and
25 to obtain green cards.

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2 The Trafficking Victims Protection
3 Reauthorization Act, TVPRA, of 2008 made
4 significant changes in SIJS and we're still
5 actually waiting for the federal regulations on
6 how those changes are implemented.

7 In order for a child to be eligible
8 for SIJS, a young person now must be: unmarried
9 and under 21-years-old at the time of application;
10 placed in foster care prior to his or her 18th
11 birthday due to abuse, neglect, or abandonment, as
12 determined by a family court judge; receive a
13 finding that the youth's reunification with one or
14 both of the parents is not viable due to abuse,
15 neglect, abandonment, or a similar basis found
16 under State Law; and receive a declaration from a
17 family court judge that it is not in the
18 applicant's best interests to return to his or her
19 country of origin.

20 Helping eligible children in foster
21 care to obtain SIJS is crucial to their ability to
22 work, attend school, and remain in the United
23 States once they leave the foster care system. As
24 such, Children's Services recognizes that we have
25 a special responsibility to aid foster care

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2 children in obtaining SIJS. When Children's
3 Services or foster care agencies confirm that a
4 young person in foster care is undocumented, we
5 promptly refer the youth to independent counsel to
6 assess the child's eligibility for SIJS, and if
7 appropriate, to begin their SIJS applications.

8 To do this, we rely on and work
9 closely with a network of public service and pro
10 bono counsel dedicated to representing foster
11 children and who have expertise in SIJS and can
12 provide the legal representation needed to obtain
13 SIJS status.

14 To support the SIJS application
15 process, Children's Services reimburses foster
16 care agencies for all fees associated with an SIJS
17 application, which can exceed \$1,000 per child, as
18 well as for the cost of legal services provided by
19 public service legal agencies.

20 In 2005, Children's Services
21 increased the legal services reimbursement rate to
22 advocates and lawyers who handle SIJS cases from
23 \$400 to \$700, a 75% increase, to ensure that legal
24 service providers can afford to do this critical
25 work.

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2 The Department of Youth and
3 Community Development also provides grants to
4 certain legal service providers to provide legal
5 assistance for youth eligible for SIJS and
6 Children's Services and foster care agencies will
7 refer foster care youth to these providers.

8 As far as the numbers of immigrant
9 youth receiving SIJS, in 2008, according to the
10 Department of Homeland Security Yearbook, 989
11 youth received SIJS nationwide. In New York City,
12 we estimate that approximately 50 to 60 foster
13 care youth receive SIJS on an annual basis, out of
14 a total foster care population of around 16,000.

15 Children's Services has undertaken
16 a number of actions to ensure the identification
17 of immigrant youth in care and to refer them for
18 legal assistance. In 2008, Children's Services
19 hired an Immigrant Advocate to work with the
20 Director of Immigrant Services on SIJS and other
21 immigration and language assistance issues.

22 In 2009, Children's Services
23 received a grant from New Yorkers for Children to
24 hire graduate students to review foster care
25 caseloads to identify immigrant youth in foster

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2 care. Through this grant, we have reviewed the
3 caseloads of nearly' 25 foster care agencies and
4 reviewed over 2,500 cases. Approximately 110
5 youth were identified as probable SIJS eligible
6 based on information in the case record that the
7 youth did not have United States Citizenship and
8 appeared to lack permanent legal status.

9 We are working with the foster care
10 agencies to review these cases and to refer these
11 youth to legal services providers. By the end of
12 June, all cases of foster care youth ages 12 and
13 above should have been reviewed to ensure that all
14 older immigrant youth in foster care are
15 identified and referred for legal services.

16 Children's Services also has
17 improved the process for reviewing immigration
18 status as part of the IV-E eligibility process.
19 IV-E is the federal funding stream for foster
20 care, and youth must be either citizens or be
21 "qualified" aliens to be eligible for IV-E. And
22 in addition to immigration status, there are other
23 eligibility criteria, such as income of parents.

24 For all youth entering foster care
25 since 2008, Children's Services has reviewed and

1
2 verified the immigration status of these youth.
3 For 2008 and 2009, approximately 15,000 youth
4 entered foster care, and through the IV-E
5 eligibility process, we have determined that 189
6 youth, or a little more than 1%; were either non-
7 citizens or non-qualified immigrants. These youth
8 will be referred to our network of legal service
9 providers.

10 Children's Services also worked
11 with the New York State Office of Children and
12 Family Services on an Administrative Directive
13 targeted to local social service districts and
14 foster care agencies on SIJS.

15 Children's Services issued the
16 attached policy, which I don't think we attached,
17 but I do have a copy for you. I apologize.
18 Children's Services issued a policy guidance on
19 SIJS in August 2009 for Children's Services and
20 foster care agency staff.

21 The Children's Services policy on
22 SIJS is intended to ensure that all immigrant
23 youth in care are identified and referred to legal
24 services providers. This guidance also reinforces
25 the importance of the SIJS process for eligible

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2 youth and identifying these youth as soon as
3 possible.

4 Children's Services is working with
5 foster care agencies to ensure that we are
6 identifying immigrant youth. The requirements and
7 expectations around youth in foster care having
8 necessary records and documents for transition
9 have been communicated to the agencies along with
10 the necessary follow up for legal services as
11 needed.

12 Our Family Team Conference
13 facilitators or permanency specialists have been
14 trained on the SIJS policy and requirements and it
15 is expected that they will direct agencies
16 appropriately as SIJS issues arise in the Family
17 Team Conferences.

18 Children's Services also regularly
19 meets with immigrant advocacy organizations and
20 legal service providers to ensure that we have a
21 mechanism to share information, respond to
22 concerns, and identify issues to be addressed.
23 Children's Services also responds to any case-
24 specific concerns raised by advocates.

25 Children's Services also offers

1
2 extensive training on SIJS. We train all of our
3 child protective staff on cultural competency,
4 including a component on the SIJS process. This
5 training is a part of the common core curriculum
6 that all child protective staff receives.

7 Children's Services also trains all new attorneys
8 in our Family Court Legal Services on the SIJS
9 process and requirements.

10 A special training focused solely
11 on immigrant and immigration issues is available
12 to all Children's Services and foster care agency
13 staff through our James Satterwhite Training
14 Academy. Finally, SIJS training has also been
15 provided at quarterly meetings with all foster
16 care directors.

17 I hope that it is clear from our
18 testimony today that Children's Services is
19 genuinely committed to working with our staff,
20 provider agencies and immigration advocates to
21 ensure that undocumented youth in our care receive
22 all the services for which they are eligible.

23 We believe that the steps we have
24 taken over the past several years, as I described
25 in my testimony today, are significant. We now

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2 have resources within ACS dedicated to this work.
3 The new process for reviewing and verifying
4 immigration status of all youth entering foster
5 care as part of the IV-E eligibility process
6 provides a mechanism for ensuring prospectively
7 that we are identifying potentially eligible SIJS
8 youth.

9 We also have strong relationships
10 with our advocates and systems in place to make
11 sure that we are regularly receiving feedback. We
12 also recognize that no systems are perfect and
13 improvement is possible in how the child welfare
14 system, including Children's Services, foster care
15 agencies, law guardians and immigration legal
16 service providers, address the needs of immigrant
17 youth in foster care. Consequently, we support
18 the intent of Intro 0003, which is to develop a
19 comprehensive plan for identifying and referring
20 immigrant youth for SIJS legal services.

21 We believe that working together
22 with our stakeholders on this important issue will
23 have positive results and we look forward to
24 working with the Council to come to an agreement
25 on the best way to legislate this bill. We

1
2 greatly appreciate the interest and dedication of
3 the City Council on this important issue and thank
4 you for giving us the opportunity to discuss this
5 topic. Thank you.

6 CHAIRPERSON DROMM: Thank you.
7 Council Member Mathieu Eugene has joined us.
8 Thank you. Mr. Lewis, on page 2 you said, "When
9 Children's Services or foster care agencies
10 confirm that a young person in foster care is
11 undocumented". How that is determined?

12 MARK LEWIS: There are multiple
13 ways. Right now we have a system in place using
14 our data systems to identify undocumented youth.
15 So now, as part of the IV-E eligibility process,
16 our staff carefully looks at immigration status.
17 So now, since 2008, we're identifying children who
18 are undocumented through that status.

19 Previously, there are no data
20 indicators in our system to indicate if a youth is
21 undocumented. So that was a challenge. That's
22 why we went to the extraordinary efforts of
23 actually having students review all the case
24 records of youth to make sure that we're not
25 missing any youth.

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2 The third way is actually through
3 the foster care system. Foster care agencies work
4 with the youth and their parents to develop a
5 service plan so that the children can either
6 return to their parents, or if their goal is to
7 live independently, to make sure that all their
8 needs are met in order for them to live
9 independently. So that would include asking about
10 immigration status and having a plan for dealing
11 with the immigration status.

12 CHAIRPERSON DROMM: Who are you
13 asking about the immigration status?

14 MARK LEWIS: We're both the birth
15 parents and depending on the age of the child, the
16 child as well.

17 CHAIRPERSON DROMM: Do you ever
18 have the birth certificates of the children?

19 MARK LEWIS: We should have the
20 birth certificates of all children. We actually
21 get birth certificates at the request of foster
22 care agencies for youth. The problem is I can't
23 take a list of youth and do a data check to see if
24 there are birth certificates on record for them.
25 There is no system for automatically verifying

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that.

CHAIRPERSON DROMM: So you're basically relying on the word of the parent as to their status?

MARK LEWIS: We request the birth certificates from the parents before a child goes into foster care. There are circumstances where the parents don't want to really be cooperative and then they don't provide those birth certificates. I think there may be also circumstances where the family may not have legal status and they don't really want to tell the government that they don't have legal status.

CHAIRPERSON DROMM: That was the point I was trying to make as well.

MARK LEWIS: So there is also a role for law guardians who are representing each of the youth. I think the youth may be more willing to disclose information to their law guardians than they are to government officials. So that's another mechanism, and that's an important role in the process.

CHAIRPERSON DROMM: Is part of the discussion that's had with the parents to ease

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2 some of their concerns about disclosing their own
3 immigration status? Is that included in the
4 discussion with the parents and in the training
5 with the providers?

6 MARK LEWIS: It should be. Under
7 Executive Order 41, there is confidentiality and
8 we're not supposed to ask immigration status
9 unless it's necessary for referral for services or
10 for federal reimbursement purposes. So for youth
11 in foster care, it's an allowable thing to ask
12 immigration status. But there is nothing in our
13 data systems where it says immigration status and
14 that's checked or not.

15 CHAIRPERSON DROMM: I know it's
16 true in my community that with many of our
17 immigrant population who have interaction with
18 government agencies there is a hesitation to
19 reveal the truth of their immigration status and
20 therefore just relying on the word of the parent I
21 think is one of the difficulties and one of the
22 obstacles that we need to overcome.

23 MARK LEWIS: But as the youth gets
24 older in care, it's critical that they have all of
25 their documents. They need their birth

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2 certificate. They need a Social Security card as
3 well. So all foster care agencies are supposed to
4 be getting all of those documents for their youth.
5 That's sometimes how we find out that a youth
6 doesn't have immigration status when they're not
7 able to get a Social Security card.

8 CHAIRPERSON DROMM: So once these
9 cases are contracted out to various agencies, is
10 there any follow up work done on the part of ACS
11 in terms of making sure that these contracted out
12 agencies then are doing what they're supposed to
13 be doing?

14 MARK LEWIS: We don't have a system
15 in place for tracking all those youth. That's
16 something that we're looking at. As part of the
17 legislation, that's something that we think is
18 important to determine what the appropriate
19 tracking system should be for the youth.
20 Basically, how we interact with the legal service
21 providers, we do get lists from them in terms of
22 who they are serving.

23 When there's a problem with, say a
24 foster care agency paying for the medical fee
25 that's needed for the kid to get screened, they'll

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2 come to us and we'll try to make sure that they
3 get those payments. So we sort of troubleshoot in
4 a way. We trust that the legal service providers
5 know what they're doing and that they're following
6 up with the cases. There is some confidentiality
7 issues involved with the lawyers and their clients
8 as well.

9 CHAIRPERSON DROMM: I'm glad to see
10 that you agree with the intent of the law that
11 we're talking about today. When did you begin to
12 implement some of these changes that you talked
13 about in your testimony?

14 MARK LEWIS: Well, we started doing
15 the case reviews last year when we got the grant
16 from New Yorkers for Children. I came to ACS in
17 2005 and we've been reaching out to foster care
18 agencies trying to highlight this issue. The
19 commissioner sent a letter to all the foster care
20 agencies in 2007. We increased the fees for legal
21 service providers. So it's been an ongoing
22 process basically.

23 CHAIRPERSON DROMM: So have any of
24 the contracted agencies been provided with any
25 additional training in terms of your new approach?

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2 MARK LEWIS: The foster care
3 agencies are invited to. We do immigration
4 training on a monthly basis and the foster care
5 agencies are invited to those trainings. I will
6 tell honestly that my general understanding is
7 that it's mostly Child Protective Services staff
8 that goes to the training. There are some foster
9 care agencies that come to it. Foster care
10 agencies are actually responsible for training
11 their own staff. It's something that we want to
12 look at in terms of how they are doing that and
13 how we can make sure that that's happening.

14 CHAIRPERSON DROMM: Has your agency
15 worked with MOIA to determine the best way to
16 address issues facing undocumented children in ACS
17 custody?

18 MARK LEWIS: We've had ongoing
19 discussions with the Mayor's Office. A couple of
20 years ago we had a series of meetings and I think
21 they're in general agreement in terms of what
22 we're doing. I mean, the TVPRA in 2008, I think
23 they also authorized, or that may have been
24 before, there is a U-Visa that's available for
25 youth as well as parents who have been victims of

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2 certain crimes. If they've cooperated with
3 government, including ACS, they can get legal
4 status that way. So I'm actually one of the
5 certifiers for U-Visas and that's another remedy
6 for youth. Sometimes a U-Visa may be the better
7 way of going than SIJS. We really need to look at
8 comprehensively.

9 CHAIRPERSON DROMM: Before I turn
10 it over to my colleagues, since you do support
11 this legislation, do you anticipate selecting a
12 person to be responsible for implementing this
13 plan? How do you view this actually happening?

14 MARK LEWIS: I had had a discussion
15 with Commissioner Mattingly about it. At this
16 point, he would like me to help develop the plan.
17 We looked at really creating sort of a workgroup
18 including advocates and immigration legal service
19 providers, foster care agencies and if the Council
20 has recommendations of people that we should
21 include in the process, we're open to that too.

22 CHAIRPERSON DROMM: I just want to
23 say thank you. I may have a few other questions
24 after I turn it over to my colleagues. I also
25 want to recognize that Commissioner Mattingly is a

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constituent of mine. I know that you were a constituent in the past.

MARK LEWIS: And my mother still is.

CHAIRPERSON DROMM: And yes, your mother still is. So you know the district well.

MARK LEWIS: Correct.

CHAIRPERSON DROMM: Council Member Williams.

COUNCIL MEMBER WILLIAMS: Thank you. Good afternoon. I want to say I'm pleased to be in the Immigration Committee and I'm happy to be working with the new chair, Daniel Dromm. My district actually has 80% to 90% immigrants in it. So this is very much personal with these kinds of issues. I want to thank you for coming out and testifying. Thank you for being onboard with the intent as well.

What is done with immigration information? So if someone does say they're undocumented, are you required to tell the government? Can the government ask you for that information or is it like Census where they can't?

MARK LEWIS: Well, my understanding

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2 is from the '96-'97 immigration laws that the
3 federal government does the right to ask us about
4 immigration information. My understanding is that
5 that hasn't happened. But there are concerns that
6 the federal government does have that authority.
7 I think that's part of the reason why we don't
8 have a list of all youth that are undocumented
9 because if for any purpose if that was requested
10 then we would I think likely have to share that.
11 That may be more of a legal answer than I should
12 be making. What I would say is that we've never
13 shared information with Immigration about any of
14 our youth in foster care unless it's been part of
15 the SIJS process.

16 COUNCIL MEMBER WILLIAMS: That's
17 something good to know. Maybe we could begin work
18 with federal counterparts particularly around this
19 issue.

20 MARK LEWIS: We do train all of our
21 staff that they are not to ever communicate with
22 Immigration about any other clients that they work
23 with. If there are any circumstances where they
24 think that's appropriate they need to bump that up
25 to higher up supervisors.

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2 COUNCIL MEMBER WILLIAMS: But right
3 now you can't say if you give us this information
4 that it won't go to the federal government if they
5 ask?

6 MARK LEWIS: I think I need to get
7 back to you on that. We haven't been asked that
8 information and we haven't, as far as I know,
9 provided that. If there was a request from the
10 Department of Homeland Security, I'm not sure what
11 the answer is. We would talk to our counsel and
12 MOIA in terms of whether we can share that
13 information.

14 COUNCIL MEMBER WILLIAMS: Can you
15 find out? I would be interested to know what the
16 answer is.

17 MARK LEWIS: Sure.

18 COUNCIL MEMBER WILLIAMS: Just so
19 I'm clear, what do you do with a young person who
20 can't provide a birth certificate and the parent
21 is not cooperative?

22 MARK LEWIS: That's a good
23 question. I think what we try to do is get as
24 much information as we can about the youth's
25 background to figure out where he or she came from

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and then try to get the birth certificate from that consulate.

COUNCIL MEMBER WILLIAMS: You said there were some changes made in 2008. What are some of the changes?

MARK LEWIS: The major change is that previously in order to be eligible for SIJS, the youth was not able to return to their parents. So their goal had to be independent living. The plan was for them to sort of age out of foster care. In 2008, the law was changed so it's no longer that the child has to not be able to return home. Now the rule is that they cannot return to one of their parents.

So in a situation, say, the father abused the child and the mother wasn't able to take care of the child at that point in time and the child was placed into foster care, if over time it became clear that the child couldn't return to the father but could be returned to the mother, that child may now be eligible for SIJS whereas previously he or she wouldn't have been. But we haven't seen the actual regulations on this so we're not exactly sure how it operates. But I

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2 think my colleagues would indicate that the law is
3 pretty clear that that's what should happen.

4 COUNCIL MEMBER WILLIAMS: I was
5 looking at some of these numbers such as 989 youth
6 received SIJS nationwide, which I think is
7 extremely low. There were 189 youth in 2008,
8 which is even lower as far as I'm concerned
9 because I know in New York City the immigration
10 population is much higher than nationwide although
11 it's probably high there also. So does that
12 number seem low to you? If so, why do you think
13 it is?

14 MARK LEWIS: One of the
15 frustrations I think for the City Council and for
16 ACS is we've never been able to answer the
17 question of how many youth in foster care are
18 immigrants. That's why I think we now have the
19 best information we've ever had based on looking
20 at 2008 and 2009 where we found a little more than
21 1% of youth were not citizens and who came into
22 care then. Then our review of all of these cases
23 that we're doing now, that preliminary information
24 showed it could be about 4% of youth don't have
25 immigration status. So I think the number is

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somewhere in between. When we get through with reviewing all the cases we should have a better handle on that.

COUNCIL MEMBER WILLIAMS: Then also for clarity, when a young person comes into the system, during their processing do we try to determine the immigration status?

MARK LEWIS: Yes. Actually it starts a little earlier. Most youth who come into care come through Child Protective Services, that there was a report of abuse of neglect. And as part of that process they should be asking about immigration status.

COUNCIL MEMBER WILLIAMS: And my last question for right now, so just run me through if you have a young person who you cannot get the documents and the consulate can't give you the information. What happens to that young person?

MARK LEWIS: I think the answer would be until we can figure out where that child was born and get the appropriate documents we can't move forward with an SIJS application. So we really need to do due diligence in terms of

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2 finding out where the youth was born. We'll
3 contact other relatives that the youth may have to
4 try to find out that information. If we know at
5 least the country of birth, then we'll work with
6 the consulates to try to find out where the kid is
7 from.

8 COUNCIL MEMBER WILLIAMS: Does that
9 occur?

10 MARK LEWIS: We have had issues
11 where we haven't been able to figure out exactly
12 where the child was born. In fact, there's a
13 youth that had been in foster care where the child
14 aged out and it wasn't clear where the kid was
15 from and we're still working with him now. We're
16 trying to get him legal status through a U-Visa.
17 We just found out that he was born in Italy. It
18 was totally unclear where the youth had been.
19 Those I think are the exceptions rather than the
20 rule.

21 COUNCIL MEMBER WILLIAMS: But what
22 can we do? If they have applied but we're unable
23 to determine and they age out, can we do it
24 retroactively?

25 MARK LEWIS: We can't do SIJS

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2 retroactively. So once the youth leaves foster
3 care, that remedy isn't available. That's where
4 we're trying to be creative and use U-Visas.

5 There are also situations where
6 youths are in foster care and they may have had
7 some criminal issues where it would not be
8 appropriate for us to go forward with the SIJS
9 process because that could end up having the child
10 deported or other negative things happen. That's
11 one of the reasons why we don't have our own SIJS
12 unit in ACS. We really want to use the expertise
13 of immigration legal services providers to make
14 those decisions.

15 COUNCIL MEMBER WILLIAMS: Thank
16 you.

17 CHAIRPERSON DROMM: Thank you,
18 Council Member Williams. I know that Council
19 Member Eugene has some questions as well.

20 COUNCIL MEMBER EUGENE: Thank you
21 very much, Mr. Chair. Thank you, to the members
22 of the panel. Thank you for your presentation. I
23 have several questions but unfortunately I won't
24 be able to ask all of them because I have to go.
25 Let me ask you only one. I remember at the

1
2 October 2009 hearing we also discussed the issue
3 of identifying foster care children who would be
4 eligible for SIJS. Many of these children are
5 only identified after they miss out on educational
6 opportunities or age out of foster care. Has ACS
7 developed or implemented any new strategy to reach
8 out to these eligible children?

9 MARK LEWIS: I think the strategy
10 basically is to try to identify the youth as early
11 as possible and get them through the process as
12 early as possible. So for example, for SIJS we
13 have to apply before they're 21, but if they want
14 to go to college, usually kids are graduating high
15 school at 18. So if they don't have legal status
16 when they graduate high school they're not going
17 to be able to get financial assistance to go to
18 college.

19 So that's why we want to get this
20 done as early on as possible so that they can
21 avail themselves to those other opportunities. So
22 that's why we're looking at case records to try to
23 identify youth as well as encouraging and
24 advocating with the foster care agencies to make
25 sure that they're identifying the youth as early

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as possible.

COUNCIL MEMBER EUGENE: Again, I have more questions but I have to go. Thank you very much.

MARK LEWIS: We're happy to answer questions. We're happy to meet or you can send us questions and we'll follow up.

COUNCIL MEMBER EUGENE: Thank you. Thank you, Mr. Chair.

CHAIRPERSON DROMM: Thank you. I'd like to welcome Council Member Charles Barron. I have a few more follow-up questions if you don't mind.

MARK LEWIS: Sure.

CHAIRPERSON DROMM: You said that you would be responsible for drawing up the plan. Do you have any idea now about who would be responsible for implementing it and who would be responsible for follow up once that plan is drawn up?

MARK LEWIS: I think we want to figure out the best way of getting it done. My person belief is that for this to work, we really need to integrate this into current practice. So

1
2 for every youth that's in care, there is a service
3 plan developed for that youth and for their
4 family. We need to identify the kids early and
5 have that part of their plan so that it is part of
6 their service plan as they go through the foster
7 care system. I'm not exactly sure of the best way
8 to monitor that.

9 CHAIRPERSON DROMM: Going back to
10 the foster care agencies, how does ACS ensure that
11 the training is actually done with those agencies?
12 I alluded to that a little bit earlier but I just
13 wanted to see if you can give a clearer answer on
14 that.

15 MARK LEWIS: There are program
16 standards for the foster care agencies. So there
17 are things that they are required to train their
18 staff on. We have a division of quality assurance
19 that goes out to foster care agencies and reviews
20 their practice to make sure that they are in
21 compliance and doing what they are supposed to do.

22 Specifically on how we monitor the
23 training component, I'll have to get back to you
24 on that because I'm not sure of the exact process
25 for that.

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2 CHAIRPERSON DROMM: That would be
3 very important. The Mayor has talked about the
4 merger of the Department of Juvenile Justice with
5 ACS. How do you envision the plan working with
6 the two agencies now that are going to become one?

7 MARK LEWIS: That's a good
8 question. I think some of the youth may be
9 eligible for SIJS. As I said before, the
10 eligibility criteria are that they have to have
11 been in care because of abuse, neglect or
12 abandonment. I'm not sure how many of the youth
13 in Juvenile Justice fall under that criterion.

14 What we would encourage to happen
15 would be that any youth that we find in ACS or in
16 the juvenile justice system, we would want to
17 refer to the immigration legal services providers
18 for them to review their cases and see what they
19 could do, to see if there may be other remedies
20 for those youth. I think that's how we would
21 probably go forward on that.

22 CHAIRPERSON DROMM: You mentioned
23 before if they have any type of a criminal record
24 that could be held against them. So I'm wondering
25 how we balance the criminal record if they're

1
2 already in the Department of Juvenile Justice
3 versus moving forward with Special Immigrant
4 Status.

5 MARK LEWIS: I think that's the
6 right question and you should ask that of the
7 legal service providers because they make those
8 decisions. They're important decisions in terms
9 of weighing those two issues. I think it's really
10 on a case by case basis. I think part of it is a
11 youth may have done something at 14 and since then
12 they've gone to school, they've graduated from
13 high school, they've been working and doing
14 everything right. The decision may be that
15 earlier offense may not be that important and they
16 could be successful in it. So I think those are
17 some of the things that they look at.

18 CHAIRPERSON DROMM: Do asylum ever
19 come into play here with Special Juvenile Status?

20 MARK LEWIS: It would be a separate
21 process. In fact, I was looking at a case record
22 where asylum may be an appropriate thing. So I
23 think part of the question is there may be some
24 advantages using asylum versus SIJS versus U-
25 Visas. For example, with a U-Visa, the parents

1
2 can also derive status through that. So, in
3 certain circumstances that may be the better way
4 of doing it. So I think that's part of it. We
5 need to look at the different immigration relief
6 options to figure out which is the best one for
7 each case.

8 CHAIRPERSON DROMM: Hypothetically
9 I'm thinking if there was ever a gay child or a
10 teenager or whatever and they would then have a
11 problem returning to their country even though
12 their parents are still around or available. How
13 would you see that happening? What would happen
14 in that case?

15 MARK LEWIS: I think we'd have to
16 look at the case circumstances. Asylum may be the
17 right approach. I'm not an immigration attorney
18 so I'm not sure exactly how that would play out.
19 That may be the right approach. I think the
20 asylum process is fairly complicated and I think
21 SIJS is sort of a more well known entity. I'm not
22 answering the question because I'm not sure of the
23 answer truthfully.

24 CHAIRPERSON DROMM: The reason I
25 mention is when we had Commissioner Mattingly at

1
2 the Department of Juvenile Justice hearing two or
3 three weeks ago, I mentioned having numbers of
4 LGBTs that are in the system as well and that's
5 something that I would urge you to do also is to
6 have a system of tracking them so that we know how
7 many there are.

8 MARK LEWIS: Part of my other
9 responsibility is I also oversee LGBT activities
10 at ACS too, so I appreciate that. There are a lot
11 of similarities in terms of the need for training
12 for foster care agencies on LGBT issues as there
13 is for immigration. So there are some
14 similarities.

15 CHAIRPERSON DROMM: That's why I
16 wanted this committee. Thank you.

17 COUNCIL MEMBER BARRON: I don't
18 know if this question was already asked, but how
19 many staff do you actually have working on the
20 issue of SIJS?

21 MARK LEWIS: Well, in my office
22 it's me and my assistant and then through a
23 contract with New Yorkers for Children, some
24 graduate students who are reviewing cases. But
25 there are many other people at ACS that work on

1
2 SIJS. So there are some attorneys in Family Court
3 Legal Services that work in SIJS.

4 COUNCIL MEMBER BARRON: It's hard
5 to tell?

6 MARK LEWIS: Yes. We work
7 cooperatively through the different divisions in
8 terms of SIJS.

9 COUNCIL MEMBER BARRON: The only
10 reason why I'm asking is because the prior bill we
11 were talking about a task force which would be
12 identifiable and accountable and we can always
13 call that task force into question. Now it's just
14 a plan and we don't know who or what.

15 I just want to make sure that we
16 put some real meat on this and it's not just some
17 loose talk about a plan and we go forth and do all
18 of these hearings and legislation and we'll be
19 working on a plan for the next ten years when in
20 fact these young people are going to be impacted
21 and are impacted immediately. I'm just trying to
22 find some kind of insurance, something with a
23 little more teeth coming from you.

24 MARK LEWIS: Our intention is in
25 developing a plan that we would lay out clear

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2 responsibilities for whichever offices in ACS need
3 to approach different parts of the SIJS process.
4 So in other words, making sure that once the child
5 is referred to legal services, making sure that
6 they receive those services may be a different
7 office than the office that's identifying the
8 youth and referring them to legal services. We
9 need to figure that out truthfully.

10 COUNCIL MEMBER BARRON: In this
11 plan there will be certainly goals. Will there be
12 tracking?

13 MARK LEWIS: I think that's what
14 we're going to figure out. I haven't written it.

15 COUNCIL MEMBER BARRON: I'm just so
16 uncomfortable when we have you sitting here and we
17 leave with just saying there will be a plan. I
18 just want to hear more I guess because of the
19 challenges with these young children and the
20 importance of them having their status adjusted
21 properly. The assistance that they can get and it
22 can even lead to permanent residency and
23 citizenship. So I just don't want loose talk on a
24 plan. I want meat and concrete and goals and
25 objective and numbers. It's not like Affirmative

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Action, you can give us some numbers.

MARK LEWIS: I would agree, but we haven't written the plan. Where we are further along is in terms of figuring out how to systematically identify youth and refer them to legal services.

COUNCIL MEMBER BARRON: That's critical.

MARK LEWIS: The back end is where we need to do more work in terms of making sure that there is follow-up with those youth and they're getting the help that they need and how we monitor that. I don't have those answers in terms of whether we create goals or objectives on how we measure that.

COUNCIL MEMBER BARRON: That would be the intention though.

MARK LEWIS: I think so. I can't write the plan as we discuss this.

COUNCIL MEMBER BARRON: I'm not telling you to write the plan, but in you planning you can talk about what you intend.

MARK LEWIS: Truthfully, our goal is to identify 100% of youth in care that do not

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2 have legal status and have 100% of those youth
3 referred for legal services. That I can tell you
4 right offhand. That's what success is for us. If
5 we lose one kid, one kid falls through the cracks
6 then that's not acceptable. So that's what the
7 plan that we want to have is.

8 COUNCIL MEMBER BARRON: I guess I
9 have to take that for now since this is that kind
10 of hearing. But in the future I'm hoping, Mr.
11 Chair, that we will go over some really concrete
12 things and really hold people accountable to make
13 sure that these kinds of things are occurring.
14 Thank you very much.

15 CHAIRPERSON DROMM: I agree with
16 you, Council Member Barron. Ms. Morgan is with us
17 today also. Can you just describe for me what
18 your role would be in this process?

19 MARGARET MORGAN: We work in
20 partnership, the Division of Family Court Legal
21 Services. We've identified an attorney within our
22 division who works very closely with not only Mr.
23 Lewis and the folks in his office but also with
24 the legal community in identifying these youth.
25 We're also responsible for training our attorneys

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to ensure that they are all very well versed on this very critical issue.

CHAIRPERSON DROMM: Mr. Lewis, do you have somebody who is working with you on this? It seems like a lot and it goes back to what Council Member Barron was saying. We will be having another hearing on this in the future and of course we would like to get some more facts and figures as we move forward with this.

MARK LEWIS: I can introduce my assistant Mohammed Essayoufi who is here and will sit through the rest of the hearing. I will say that it's an indication of the commitment of Commissioner Mattingly, because as you know, we've gone through a lot of layoffs and during this period we've actually been able to add additional staff because this is such an important issue.

CHAIRPERSON DROMM: Thank you. The next panel will be Theresa Moser and Katherine A. Fleet and also Myra Elgabry.

KATHERINE A. FLEET: Good morning and thank you. My name is Katherine Fleet and I'm a staff attorney with the Legal Aid Society's Immigration Law Unit. I work on the Immigrant

1
2 Youth Representation Project. We work toward
3 assisting New York City immigrant youth in
4 obtaining legal status.

5 CHAIRPERSON DROMM: Good morning.

6 THERESA B. MOSER: Good morning, my
7 name is Theresa Moser and I work in the Special
8 Litigation and Law Reform Unit of the Juvenile
9 Rights Practice at Legal Aid. We represent the
10 vast majority of children in foster care in New
11 York City. So our staff works closely with Ms.
12 Fleet when we've identified clients who need
13 immigration assistance.

14 CHAIRPERSON DROMM: Thank you, good
15 morning.

16 MYRA ELGABRY: Good morning, I'm
17 Myra Elgabry. I'm the Director of Immigration
18 Rights Project at Lawyers for Children.

19 KATHERINE A. FLEET: Ms. Moser and
20 I are submitting our testimony on behalf of The
21 Legal Aid Society and we did want to thank the
22 City Council for its ongoing attention to what we
23 consider a really critical issue for New York City
24 immigrant youth. We'd like to thank the members
25 here and also Mr. Dromm as the Chairman for his

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leadership on this issue now.

We echo the concerns that have been voiced in the questioning and that were just raised with Mr. Lewis about the need for this to be a new plan and not just to be a report on the status quo. We've been here before several times actually in the last few years and we've given testimony and we've listened to Mr. Lewis report on activities that ACS has been involved in and to their credit, increased activities and more activities. But we would really like to see a new plan that would come up with requirements, with goals, with monitoring mechanisms, with teeth that would really mean something different.

We work closely with Mr. Lewis. We have regular meetings in which he participates. In addition, a member of Ms. Morgan's staff, the individual to whom she was referring, is a very active participant in our community. We're there already and we need to get further because we're still not doing enough to help this population.

Working in the Immigrant Youth Representation Project, I mean we've really seen firsthand some of the great successes of this

1
2 system and some of the procedures that Mr. Lewis
3 outlined and also, unfortunately, some of the
4 failures.

5 So we've worked with clients we've
6 gotten from ACS. We've been able to help them
7 through the process. Social workers have helped
8 us from foster care agencies and from ACS to get
9 birth certificates to assist in the application
10 process. We've filed applications with
11 Immigration. We've gotten kids green cards.
12 We've gotten New York State IDs. They've gotten
13 Social Security numbers. They've participated in
14 internship programs. They've gone to college.
15 They've gotten jobs. They have families. They're
16 extremely productive members of society. It's
17 amazingly gratifying. It's a wonderful job to
18 have in many ways and be a part of that process.

19 Unfortunately, we've also seen
20 cases where there have just been numerous failures
21 in the system and breakdowns that have really led
22 to just tremendous devastation and disappointment
23 and to really lasting problems for young people.

24 Most of us have been talking about
25 Special Immigrant Juvenile Status's deadline and

1
2 the deadline has always for New York City youth
3 been 21. You either file by now under the new law
4 or in the past had the application adjudicated by
5 21 or that's it. Forget it. Some of these kids
6 will also qualify for a U-Visa. Some of them may
7 also qualify for asylum.

8 But it really is use it or lose it.
9 It's one of those things where there is not a safe
10 harbor. Now it's sort of this file by deadline
11 that we have. But there is no, oh you were in
12 foster care and you only figured it out five years
13 later, no problem. That is not the way
14 Immigration handles these applications. So if you
15 miss out, you miss it and that's it, no more SIJS
16 for you.

17 We've gotten a lot of these cases
18 extremely late. We've gotten cases when kids are
19 20, about to turn 21. We've found out about kids
20 who spent lifetimes in foster care. I have a
21 client who has been in foster care since 1995 and
22 had to get put in deportation proceedings before
23 somebody figured out that we have to get his birth
24 certificate.

25 I have another client that's been

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2 in foster care since 2003 and no birth
3 certificate, from Jamaica. And we got a birth
4 certificate in two weeks because I introduced the
5 agency worker to some fabulous invention called
6 the internet where you can go and get the
7 information on a consulate and get someone's birth
8 certificate. So we have seen those problems and
9 their impact is really devastating for young
10 people.

11 We've had cases where we've waited
12 years to get a simple appointment for a medical
13 examination that costs \$100. We need time to get
14 the check and we can't set up the appointment. I
15 mean, we've heard every excuse in the book.

16 I guess I just wanted to clarify a
17 couple of things about the law. Special Immigrant
18 Juvenile Status has been around since 1990. Not
19 last year, not the last decade, 1990. This is not
20 new. Half the time when you're talking to social
21 workers from foster care agencies it's like it
22 happened last week and this is news to them. They
23 had no idea and "oh, thank you for sharing" and
24 "isn't this great, could you please send me some
25 information".

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2 So while trainings are available to
3 them, it doesn't seem that they're availing
4 themselves to those trainings. I don't think they
5 have to and I think it's critical that part of
6 this process be that they have to go and that if
7 they don't go there are consequences. And not
8 just consequences for the young people they work
9 with, not just that the young people they work
10 with have to spend a lifetime with no immigration
11 status or deported to a country where they have
12 never really lived and where they don't speak the
13 language.

14 I wanted to clarify that under the
15 old law, SIJS is available to young people in
16 foster care. It's also available to young people
17 in guardianships and it always has been for
18 adoptions, delinquency proceedings, like a whole
19 host of sort of Family Court processes. So it's
20 not just foster care. I know that ACS has been
21 focusing its efforts on foster care and we need to
22 get ACS' efforts right in terms of dealing with
23 kids in ACS custody, but there are also a lot more
24 kids that are affected and that are potentially
25 eligible for SIJS that ACS touches. We really

1
2 think it's a great opportunity to have contact
3 with ACS that ACS should really be using to get
4 information out to these youth and to put them in
5 touch with service providers and get them on their
6 path whether it's SIJS, or U-Visa, something.

7 So just to clarify, even before DJJ
8 and ACS merge, we were pursuing SIJS for youth in
9 OCFS custody, youth in DJJ custody. As long as
10 they met the other requirements it would still be
11 possible to apply. So the requirements are under
12 21, unmarried, not reunifying now with one or both
13 parents due to abuse, abandonment, neglect or
14 something similar and the best interest
15 determination.

16 Then youth also have to be
17 admissible under the immigration laws. That's
18 part of where their arrests come in and part of
19 where sort of a number of other immigration
20 related issues come in that I don't think we
21 really have time to talk about today.

22 I did just want to say in terms of
23 the concerns about confidentiality that were
24 raised, I mean our testimony reflects our
25 commitment to having ACS really track country of

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2 origin and to develop systems to track country of
3 origin. That's data that can be collected without
4 the same sort of risks and repercussions as other
5 types of data because you can actually be a U.S.
6 citizen but have been born in Haiti. So the fact
7 that you were born in Haiti or your country of
8 origin being Haiti, that data being collected
9 isn't as risky, but it does give ACS the trigger
10 or the opportunity to look more closely at those
11 specific cases.

12 We really have not been able to
13 understand for years why it's such a hard thing
14 just to track country of origin in these
15 processes. So we think it's really critical for
16 ACS to work on obtaining birth certificates and
17 making referrals to legal services providers.

18 We think legal services providers
19 are really best suited to figure out exactly what
20 relief to pursue. We've seen some cases,
21 unfortunately, where ACS employees or foster care
22 agency employees have taken matters into their own
23 hands and made applications for immigration
24 benefits for young people for which they weren't
25 qualified at all in the first place or for which

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2 they were ineligible due to criminal issues. So
3 sort of getting too involved in that procedure is
4 not something we'd advocate. But certainly
5 identifying the issue and referring and support
6 the process, really those three things are really
7 sort of our goal.

8 In terms of training, I mean we
9 don't think the training has to be that involved.
10 It's not like you're teaching people to be
11 immigration lawyers. Some of us have been doing
12 this for a long time and we're still learning.
13 It's complicated. You're just teaching people to
14 flag these issues and to refer young people to
15 service providers and to help with whatever the
16 services providers identify.

17 I want to pass it along to Ms.
18 Moser to make some other remarks and then I'll
19 guess we'll conclude for Legal Aid.

20 THERESA B. MOSER: I think Ms.
21 Fleet has covered a lot of ground. I would just
22 make a couple of additional points. First, with
23 respect to collecting birth certificates, there
24 has been a lot of discussion of that. I just want
25 to point out that the regulations of the Office of

1
2 Children and Family Services of the State of New
3 York require that local social services districts,
4 in this case the Administration for Children's
5 Services, include a copy of a child's birth
6 certificate for every child in foster care in
7 their uniform case record, which is sort of like
8 the body of documents that goes with every family
9 with children in foster care.

10 That's supposed to be done from the
11 time a child enters foster care. So it's just
12 really not acceptable that we're not finding out
13 that a child is undocumented until they go to
14 apply for a Social Security card or working papers
15 at the age of 16. That's just not acceptable.

16 There was some discussion earlier
17 about cases where parents won't tell or they're
18 fearful of telling the government that they're
19 undocumented. I feel like my response to that has
20 to be, look, from day one you're supposed to be
21 getting the birth certificate. So if the parent
22 isn't willing to have that conversation on day
23 one, then it's your responsibility to keep having
24 that conversation and to keep revisiting it.

25 The Administration for Children's

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2 Services and its contract agencies are supposed to
3 be developing relationships with these families.
4 If they can't develop a relationship enough so
5 that they can have parents trust them enough to
6 give them that information, then what are they
7 doing? You know, it sort of calls into question
8 all of the work they're doing in every area.

9 That brings me to another point
10 which is just that Mr. Lewis referred earlier to
11 the child service plan and that the question of
12 immigration should be part of the service plan for
13 each child in foster care and I agree with him.

14 I just think that it's really
15 important and critical to think of the question of
16 immigration status as part of the entire body of
17 work that ACS does for a child or for a family.

18 So what's often talked about in the
19 child welfare world is the permanency plan for a
20 child. What that means is the agency has to be
21 thinking about where this child is going to end
22 up. The child shouldn't be staying in foster care
23 forever. Is the child going back to their family,
24 are they going to be adopted, or is there going to
25 be some other plan for this child?

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2 Part of that planning has to be
3 that that child is going to be educated and have
4 the ability to survive on their own in the future.
5 Regardless of what permanency goal they have, that
6 person should be a contributing member of society.

7 If ACS is failing in its duty to
8 make sure that every child in its care who is
9 eligible for an immigration benefit gets it, then
10 really it undermines all of the work that they're
11 doing for the child.

12 I just think that's really
13 important to make that point that it's not
14 something just on the side that we're talking
15 about. It's part of the overall picture of what
16 ACS' responsibilities are to children.

17 Also, just with respect to
18 training, as Ms. Fleet alluded to, we're not
19 asking that every foster care agency worker become
20 an expert in immigration, what we're just asking
21 is that they be trained to identify that there
22 might be an issue so that they can make that
23 really critically important referral to an
24 immigration provider.

25 The other sort of fact to take into

1
2 context is that whether we like it or not, the
3 staff in foster care agencies has a very high rate
4 of turnover. So it's not adequate to say we offer
5 training but foster care agencies don't usually
6 send their staff to them. There has to be
7 mandatory training for foster care agencies and it
8 has to be regular and consistent so that the
9 information is not lost when the staff leaves the
10 agency.

11 Otherwise we end up with a
12 situation where the foster care agency workers who
13 are the people who have the longest term
14 relationship with family don't know what they
15 should be asking. I think I will leave it at
16 that. Thank you.

17 CHAIRPERSON DROMM: Thank you. Do
18 you have anything you'd like to add?

19 MYRA ELGABRY: We did have
20 testimony that I prepared.

21 CHAIRPERSON DROMM: You were going
22 to present as well?

23 MYRA ELGABRY: Unless you want to
24 ask questions before that.

25 CHAIRPERSON DROMM: We'll go with

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your testimony and then we'll ask questions.

MYRA ELGABRY: Thank you. Thank you, Chairperson Dromm and the members of the Immigration Committee and co-sponsors of the proposed legislation for the opportunity to testify.

As you may know, Lawyers for Children is a not-for-profit organization dedicated to protecting the rights of individual children in foster care and compelling system-wide reform of foster care in the City of New York.

Today we want to express our strong support for the proposed legislation requiring ACS to review strategies and create a plan of action to protect children who qualify for SIJS. As we have testified over the last several years, there is a continued need for ACS to improve identification for children eligible for SIJS and improve immigration services for those children.

Right it's an especially crucial time for ACS to revise their strategies because of the recent changes in the federal law that could make even more children eligible for SIJS. As we've testified in the past, ACS Director of

1
2 Immigrant Services, Mark Lewis and Harry Gelp from
3 Family Court Legal Services have been very helpful
4 in helping with individual SIJS cases and have
5 made efforts to improve staff training and
6 identification of SIJS eligible children.

7 Despite these efforts, the current
8 methods are not able to protect the rights of all
9 SIJS eligible children in ACS's care. There is
10 still no systematic data collection to identify
11 SIJS eligible children and we continue to
12 experienced significant delays in obtaining the
13 documents and the fees necessary from the agency
14 case workers to file the applications. More
15 improvements are needed.

16 For these reasons, it is important
17 that the proposed legislation require ACS to
18 create a plan with new strategies to present to
19 the City Council. Therefore, in order to achieve
20 the intended results of the proposed legislation,
21 they should be asked to identify new strategies
22 that differ from the current methods and services
23 that are in place.

24 So while we wholeheartedly support
25 the need for the proposed legislation, we'd like

1
2 to identify several areas that should be
3 strengthened to create a new and effective plan
4 for SIJS. We support that ACS report on a new
5 systematic method of identification of children
6 who may qualify for SIJS as early as possible.

7 Over the last several years we have
8 repeatedly asked for ACS to include a country of
9 birth field in every child's case file, but that
10 has not been implemented. We urge you to include
11 a legislative mandate that ACS either implement a
12 country of birth field, or develop another equally
13 systematic method to screen and identify all youth
14 for SIJS eligibility as soon as possible after
15 they enter foster care.

16 We also support the mandate that
17 ACS report on SIJS training requirements. In
18 addition, we ask that ACS be directed to submit a
19 plan for mandatory training of contract agency
20 caseworkers. As mentioned, agency caseworkers
21 have the most access to the documents that are
22 necessary for identification. Due to the rapid
23 turnover, it is essential that ACS outline the
24 frequency of mandatory trainings how soon after a
25 person is hired they will be trained.

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2 We support the requirement that ACS
3 develop a plan to assist children in obtaining the
4 services they need. In order to facilitate those
5 services, we urge that the Council add a
6 requirement that ACS report on ACS' and the
7 contract agencies' procedures to respond to
8 individual case concerns.

9 As we have testified, Mark Lewis
10 and Harry Gelb have been responsive to those
11 concerns, but unfortunately, there isn't
12 identified staff at the contract agencies that are
13 knowledgeable on SIJS and to respond to our
14 concerns when things are not getting done the way
15 they need to be. So we would ask that ACS report
16 on the possibility of implementing a SIJS liaison
17 at each agency who can work with us and also with
18 ACS when problems arise.

19 We also ask that a requirement be
20 added to the proposed legislation that ACS report
21 on mechanisms for evaluating outcomes for
22 immigrant youth under the new plan, and to
23 evaluate its own and contract agencies'
24 performance on delivery of SIJS services.

25 One of the biggest frustrations

1
2 with the current system is that it's impossible to
3 know how many immigrant children in foster care
4 are eligible for SIJS and how many of those
5 children are receiving the services that they
6 need. Without the proper data collection and
7 tracking, it's impossible to know where children
8 are falling through the cracks at various stages.

9 We also want to ensure that SIJS
10 services continue to remain effective in the
11 future, so we'd ask that there be regular review
12 of performance.

13 We support the requirement that ACS
14 report on the structure of their offices. We also
15 ask that they specifically the ACS staff positions
16 that will oversee the plan and SIJS services. In
17 order to clearly make SIJS a priority within the
18 structure of ACS, it is crucial that certain staff
19 be devoted to SIJS as part of their specific job
20 requirements. That will also assist in achieving
21 accountability and coordination between ACS and
22 advocates.

23 Finally, we urge the Council to
24 include a mandate in the proposed legislation that
25 the new plan be developed in consultation with

1
2 immigration advocates. We're happy to hear in Mr.
3 Lewis' testimony that he is open to that and we
4 look forward to the opportunity to collaborate
5 with ACS to improve identification and to develop
6 a model program.

7 The proposed legislation could lead
8 to changes that greatly benefit immigrant youth in
9 foster care. We urge that it be implemented as
10 soon as possible because the stakes for children
11 who are SIJS eligible are enormous. We share an
12 obligation to ensure that no child in our city's
13 care is overlooked or ages out of these crucial
14 benefits. We are available to assist in any way
15 possible. Thank you very much.

16 CHAIRPERSON DROMM: Thank you very
17 much. I just wanted to ask Ms. Fleet, what do you
18 believe is the problem in the training? Is it a
19 lack of emphasis? Is it a lack of having the
20 country of origin question on the paperwork? What
21 would help to place emphasis in the training that
22 would bring this issue forward a little bit more?

23 KATHERINE A. FLEET: For training
24 on immigration the problem is that no one goes. I
25 think people at foster care agencies, and these

1
2 are the people most involved in the long-term
3 foster care, like kids who are out without SIJS.
4 They just don't go. They've never had immigration
5 training. They've never gone to any immigration
6 training. It just seems like most of the people
7 we talk to have no idea.

8 In terms of other types of
9 training, we do have this foster care population
10 and there is now an opportunity to address people
11 who have come into ACS contact and who are later
12 either in a guardianship or a custody case.
13 Before it was still possible for youth who were in
14 OCFS but now there is this whole other range. And
15 really to sort of create a way for those issues to
16 get identified in sort of the intake process and
17 for a referral mechanism to occur and to be
18 tracked is really critical.

19 One of the biggest issues on
20 training is the people for whom it really, really
21 matters aren't going. Many of these great
22 programs Mr. Lewis is talking about are attended
23 by lawyers who appear in the Family Courts and who
24 appear on behalf of ACS. For them to be aware of
25 SIJS is great. They're counterparts from Legal

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2 Aid and other organizations also know and in many
3 cases they're sort of not the ones who need it the
4 most in much of our experience. I'll think I'll
5 defer it to you guys if you want to say more.

6 THERESA B. MOSER: I don't think
7 there's really anything to add to that. As I
8 mentioned earlier, I think we have to be cognizant
9 of the fact that there is a high staff turnover
10 rate at foster care agencies. If those
11 individuals are not being trained, then the
12 information isn't being given to the people who
13 need it most.

14 Mr. Lewis indicated that the Child
15 Protective Staff of ACS gets trained. But the
16 problem is those staff usually I think have the
17 cases for 60 to 90 days at most. Very early on in
18 a case, once a case is filed in Family Court, the
19 case is transitioned from ACS' Child Protective
20 Staff to the foster care agency staff. So, again,
21 if those individuals aren't getting this critical
22 information then there's a huge breakdown in the
23 system before we even get going.

24 MYRA ELGABRY: I'd just add that a
25 country of birth field is somewhat separate from

1
2 the training in that we hope that there would be
3 an area on a form or somewhere in the case file
4 where it's required to be filled out so that it
5 can't be missed. But also, some agency case
6 workers do identify children that need immigration
7 services but they just don't know that SIJS exists
8 and that there is any way to help them. So we do
9 encounter that as well.

10 CHAIRPERSON DROMM: My question was
11 about the country of birth because I thought that
12 if a case worker were to see that question on the
13 paperwork then they would be forced to say what's
14 that about and then the training might be an
15 essential part of knowing why they need to fill
16 that in.

17 MYRA ELGABRY: And I think the two
18 work together.

19 CHAIRPERSON DROMM: Right.

20 KATHERINE A. FLEET: I guess I just
21 want to say too, I mean, in terms of the content,
22 like we don't think the training has to be that
23 complicated as long as it's clear that there is a
24 very expansive universe of who qualifies.

25 I think that although we've bee

1
2 having these regular meetings and although there
3 is communication with Mr. Lewis' office, there are
4 still memos and there are still notions of what
5 SIJS is about and who's eligible that are actually
6 wrong and out of date and really need to be
7 updated and clarified.

8 There was a memo circulated last
9 year. We're in constant contact with Mr. Lewis'
10 office. We didn't see this memo and we didn't
11 read this memo. The memo has a lot of errors and
12 it indicates that basically only kids who are in
13 foster care are eligible for SIJS. That's just
14 not right.

15 That isn't the kind of information
16 that we want to be sharing with people because
17 sometimes a little information is worse than no
18 information because some of these people will take
19 this information and say you're not eligible and
20 you're not eligible and you're not eligible.

21 I think what we'd like to promote
22 is a sort of responsibility to identify these
23 issues, a notion that it is very expansive and
24 there are lots of options out there in terms of
25 immigration relief and just sending someone off to

1
2 a provider to get more information is a huge
3 contribution.

4 CHAIRPERSON DROMM: Council Member
5 Barron?

6 COUNCIL MEMBER BARRON: I want to
7 thank all of you for your testimony. First, I
8 think we definitely should incorporate your
9 recommendations to strengthen this legislation. I
10 think that is critical and that's what these
11 hearings are about. So I'm going to recommend to
12 the chair that we definitely do incorporate what
13 you've recommended in the legislation to
14 strengthen it.

15 The other thing, from your
16 testimony, you know, we hear both sides. Yes, ACS
17 has done some great things and had some successes
18 and had some failures and some fundamental things
19 didn't happen such as birth certificates.
20 Something that seems to be simple to happen and it
21 didn't happen. If the three of you can give ACS a
22 letter grade on this issue, what would it be?

23 KATHERINE A. FLEET: Do we really
24 have to go there?

25 COUNCIL MEMBER BARRON: Yes. I

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2 want to understand what you're saying. Because
3 sometimes we get at hearings if they're doing A
4 work, so be it. If they're doing C work, D work,
5 we really need to focus. You can choose not to
6 answer but the thing I'm saying is that when we
7 get to the bottom line and the recommendations
8 we'll take on. There are successes and there are
9 failures. That doesn't give us the sense of
10 what's going on and what impact it's having. We
11 got some of it, but what's the overall impact.

12 If the agency is doing some decent
13 work and just needs little push ups here and there
14 or are we having some major, major issues here and
15 it needs some serious revamping.

16 THERESA B. MOSER: First, I want to
17 say giving them a letter grade is a really
18 difficult question because for every child who
19 falls through the cracks there is no question that
20 the grade would be an F. For the children who
21 they do identify and who do get their applications
22 filed in a timely manner and who get lawful
23 permanent residence in the U.S. and are able to
24 get benefits and financial aid to go to school,
25 it's an A. It's hard to say as an overall letter

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grade.

COUNCIL MEMBER BARRON: Are more falling through the crack or are more getting what they need?

THERESA B. MOSER: I think our feeling is they've been looking at this issue for a really long time and we are frustrated that they haven't made more progress. It's not to say they've made none but it's a bit frustrating that they haven't gotten further than they have.

COUNCIL MEMBER BARRON: Would you say there are more successes or more failures? We need to do our work. We want to address the situation. Some people ask me and I'll get in trouble with this but I'll say it anyway, some people ask me about President Obama. What letter grade would you give him? Well if I was a Wall Street banker, an A. If I was an unemployed black man in Harlem, that might be a different grade, or if I was a community college student, an A. So you can get bits and pieces of it. Overall we can give a grade.

I'm just saying the grade thing is not just to be cute, it really gives us an overall

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2 assessment of what's going on in an agency and
3 whether it needs a massive overhaul and radical
4 changes on this particular issue, or is it
5 something that they're doing alright on and we
6 just need some little pull up. So that's the only
7 purpose of that.

8 THERESA B. MOSER: Again, it's
9 difficult because there are no measures in place
10 to know how many children are failed or
11 overlooked.

12 COUNCIL MEMBER BARRON: Why not?

13 THERESA B. MOSER: Why there
14 aren't? There isn't a systematic way to identify
15 those kids and to track whether they are receiving
16 these services. So that's part of the problem.
17 Where we see failures are where those concrete
18 measures are not in place for identifying kids to
19 make sure that every child receives the services
20 that they deserve.

21 For the children that are
22 identified, where they happen to be able to
23 advocate for themselves and explain that this is
24 what they need to their lawyers or their case
25 workers, ACS has been very helpful in that regard.

1
2 But without those concrete mechanisms in place, we
3 believe that there are many children that may be
4 overlooked.

5 COUNCIL MEMBER BARRON: All right.
6 I'll leave it alone. I'll let it rest.

7 CHAIRPERSON DROMM: Thank you. I
8 just have one more question before we go to the
9 next panel. Ms. Fleet, I think it was you who had
10 said there was a connection when a Social Security
11 card or Social Security number is denied, it's
12 denied on the basis of not having a birth
13 certificate? How is that done? I'm just
14 wondering, if the federal government is able to
15 cross check, why aren't other government agencies
16 able to do the same thing?

17 KATHERINE A. FLEET: There are a
18 number of youth in foster care who just don't have
19 a Social Security number period. Then there are
20 some who would have had some immigration
21 application made for them in the past that could
22 have been denied or they could have lost their
23 status. So they could have a number that is no
24 longer valid. So there are sort of a number of
25 options. I mean most of the kids that we're

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dealing would never have a social security number, there just isn't one to even deal with.

But for the most part you're not going to be eligible to get a social security card unless you have some valid lawful immigration status. It is a helpful indicator of whether there is some immigration status or history. It's not foolproof and it's not necessarily accurate, but it can help. Having a social security card should suggest that at some point there was some immigration something. But again, it's not foolproof and it's not the only thing that you should rely on or can rely on.

CHAIRPERSON DROMM: If a child is denied a social security number, they denied it on the basis of not having a birth certificate or not able to prove birth?

KATHERINE A. FLEET: Right. A lot of the kids that we see end up going to a Social Security to get a social security number so they can work. They ask for documentation and proof of legal status in the United States and that's the sort of rude awakening that leads to a case worker or a law guardian referring them to us.

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2 Oftentimes that's when they're 18, 19, wanting to
3 leave foster care.

4 CHAIRPERSON DROMM: It's too late.
5 All right thank you. Our next panel will be Nancy
6 Downing from Covenant House and Elizabeth Wagoner
7 from Make the Road New York. Thank you very much
8 for being patient with us and waiting. Mr. Lewis,
9 thank you for being here. I hope somebody from
10 your staff will stay? Good, thank you. Ms.
11 Downing, thank you.

12 NANCY DOWNING: Good morning. My
13 name is Nancy Downing and I'm the Director of
14 Advocacy for Covenant House New York. I'd like to
15 thank you for the opportunity to testify here
16 today. Thank you for introducing the proposed
17 legislation that you have. I think it's greatly
18 needed and we strongly support it.

19 For more than 35 years, Covenant
20 House New York has been serving homeless, runaway
21 and at-risk youth. We are the nation's largest
22 privately funded nonprofit adolescent care agency
23 serving this population.

24 I'm not going to read my testimony,
25 but what I would like to say a couple of things.

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2 I really support my colleagues and their comments
3 that there is a strong need for early
4 identification and a systematic way of early
5 identification for these youth.

6 The second thing is I think there
7 needs to be mandatory training. What we see is
8 that the folks particularly in the foster care
9 agencies do not have any clue in terms of
10 immigration and that these kids are falling
11 through the cracks.

12 A study was done by the Columbia
13 Center for Homeless Prevention Studies in
14 collaboration with Covenant House Institute in
15 March of 2009 and identified through that study
16 that 35% of the kids that come to Covenant House
17 have been in foster care or other institutional
18 settings for an average of four years. In
19 addition to which they also identified that 17% of
20 the youth who come to Covenant House are
21 undocumented.

22 So there are some crossovers here
23 between the youth who were are undocumented and
24 the youth in foster care who we see landing at our
25 doorsteps who are homeless.

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2 We have about 4,000 youth per year
3 who are in our residential services program. So I
4 could without hesitation say that we see no fewer
5 than 10 to 20 youth per year who have fallen
6 through the cracks, who would have had an
7 opportunity to at least look at the SIJS
8 possibility. I'm not saying that necessarily they
9 would have gotten through that process, but it
10 should have at least been considered.

11 When they come to our doorstep,
12 we're then trying to figure out another way for
13 them to get status here, what's another way for
14 them to come out of homelessness. Because when
15 they get to our doorstep and they have no
16 opportunity to work, little opportunity for
17 education, they're already homeless, they've got
18 no place to go. And they can't go back home, many
19 of these kids they don't know another home. This
20 is their home and we need to help them with that.

21 One of the things that we also see
22 is that youth who are 16 to 17-years-old and who
23 ought to be placed in foster care because of abuse
24 or neglect have a very difficult time getting into
25 foster care. Their cases are almost summarily

1
2 dismissed. So we find that to be very difficult.
3 So some of these youth could be eligible for SIJS
4 through foster care where they should be, but
5 because of their age, they're not being taken into
6 foster care.

7 One of the other problems that we
8 see is that often youth AWOL or sign themselves
9 out of foster care at the age of 18. Many of them
10 are anxious to get out of foster care. They don't
11 know that if they leave foster care before the
12 SIJS process is completed that they lose the
13 opportunity to adjust their status.

14 So they're not being properly
15 educated and repeatedly educated. We know that
16 our youth have to be told not just once but maybe
17 ten times what the story is. So they need to be
18 educate throughout the process and continually
19 this brought to their attention.

20 So we really strongly support this
21 proposed legislation but agree with my colleagues
22 in saying that there needs to be mandatory
23 education and there really needs to be a
24 systematic way of tracking these youth.

25 The other thing I'd like to say is

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2 that we often see these youth come out of foster
3 care and they don't have their identification
4 documents. We end up having to look for them and
5 when we call the foster care agency we get no
6 assistance. They either don't have the documents,
7 they won't help provide them, so the youth is
8 stuck starting over in that process as well. So
9 that is another situation that needs to be
10 corrected. Thank you.

11 CHAIRPERSON DROMM: Thank you.

12 ELIZABETH WAGONER: Good morning.

13 My name is Elizabeth Wagoner. I'm a Staff
14 Attorney with Make the Road New York. We're a
15 nonprofit organization based in the communities of
16 Bushwick, Brooklyn; Jackson Heights, Queens; and
17 Port Richmond, Staten Island. We work to promote
18 economic justice, equity, and opportunity for all
19 New Yorkers. Our organization consists of over
20 6,000 members, most of whom are immigrants, many
21 of whom are youth, and some of whom are currently
22 applying for Special Immigrant Juvenile Status. I
23 thank the Committee for the opportunity to
24 participate in this hearing today.

25 Make the Road New York strongly

1
2 supports the proposed law, which directs ACS to
3 create a plan for identifying and assisting youth
4 who may be eligible for SIJS. As a membership-
5 based organization rooted in three largely
6 immigrant communities, we can say firsthand that
7 eligible youth are utterly unaware of this
8 immigration benefit.

9 We work with many individuals who
10 do not have legal status in this country simply
11 because there is no way for them to obtain legal
12 status. This problem is particularly acute when
13 it comes to youth who came to this country at a
14 young age. Without status, these young people
15 often are unable to obtain financial aid for
16 college or work to support themselves and their
17 families. So it's critical that agencies like ACS
18 screen, identify, and link eligible youth with
19 service-providers so that they access this unique
20 immigration benefit.

21 We have direct experience screening
22 youth for SIJS through our close collaboration
23 with the Pan American International High School in
24 Elmhurst, Queens, which is a high school that's
25 attended by recently-arrived immigrant youth. We

1
2 have worked closely with PAIHS, which is this high
3 school, to train front-line educators to help
4 identify youth who might be eligible for SIJS, to
5 help them understand the application process, and
6 help youth gather necessary documents.

7 We have found that the intense
8 training and work that we've done just on this
9 small scale bears immediate rewards. After a
10 single training at PAIHS, staff referred four
11 students, out of a student body of only 200, to us
12 for screening and help initiating the SIJS
13 process. So ACS is clearly well positioned here
14 to replicate a process like that on an incredibly
15 broad scale, positively impacting the lives of
16 countless youth each year.

17 So our experience just working with
18 these students offers a number of simple lessons
19 that underline the importance of the proposed law
20 that we're supporting today and highlight how the
21 law can support young people, their families, and
22 citywide service providers:

23 One is that it really is so
24 important to have systematic procedures to prevent
25 students from falling through the cracks. I mean

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2 we see daily that immigrant youth are not aware of
3 SIJS and are not going to come forward themselves
4 to access these benefit. Their families aren't
5 aware. Their caregivers aren't aware. There are
6 so many young people in this city who are eligible
7 for SIJS, which makes that systematized procedure
8 so important.

9 Another is that procedures that are
10 implemented must protect children and families and
11 caregivers from the risks of working with U.S.
12 CIS. As we all know, the experience of being an
13 undocumented immigrant youth can be terrifying and
14 really traumatic.

15 Many undocumented youths live in
16 fear of state government institutions, believing
17 sometimes correctly that these institutions work
18 in coordination with Immigration and Customs
19 Enforcement. And because our immigration laws do
20 not include basic safeguards for child welfare and
21 family unity, undocumented children in this
22 country know that and know that they risk
23 suffering separation from loved ones and family
24 members.

25 So we would hope that ACS's

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2 procedures for identifying youth and providing
3 these legal services ensure the individual
4 attention and care necessary to adequately weigh
5 the risks and benefits of applying for SIJS. That
6 plan should also be sensitive to the
7 understandable and rational fears that children
8 and their families experience in interacting with
9 government institutions in the city.

10 And finally, ACS's plan should
11 ensure that family members involved in a child's
12 life are not put at risk of deportation through
13 their involvement in the process or with that
14 child.

15 So, for all of these reasons we do
16 urge the Committee to approve the proposed bill,
17 and to support the bill for passage in the City
18 Council. We are hopeful that the Council will
19 share our commitment to supporting new efforts to
20 identify and support young people who are eligible
21 for SIJS in New York City. Thank you.

22 CHAIRPERSON DROMM: Thank you. I
23 just wanted to ask Ms. Downing, both of you
24 actually seem to have programs that do catch these
25 children. What is it about your training of your

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staff that enables them to do that?

NANCY DOWNING: We ask a lot of questions. Working with youth, they don't trust you initially and so they're not going to give you answers. Honestly, the youth that I've worked with, they often don't know what their status is. They don't know what that means. They know that maybe they were born in another country. But if I ask them if they're a permanent resident, they'll say, "Well, I'm a resident."

So we ask them some very simple questions like, do you remember when you came here. Who did you come with? You know, just some really basic questions that kind of get them talking about their situation. When we work with the parents, we're not a government agency, so they're a little bit more open in terms of identifying what their situation is. I tell them that the information will remain confidential and I can do that.

But also, I tell them that we're trying to help their child. Even when there is an abusive situation, often when you're trying to help their child, they're willing to provide some

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2 information. And if the immediate family members
3 aren't, we ask about other family members, we ask
4 about friends of the family, we ask about the
5 school situation and where they went to school.
6 You begin to check all of those things very
7 systematically.

8 We only have these youth oftentimes
9 for about 30 days. And within a 30-day time we
10 often can get the information that we need to
11 identify what their situation is. So I mean I
12 think it should be able to be done at ACS as well
13 and in the foster care agencies.

14 CHAIRPERSON DROMM: So you're a
15 supervisor I would assume for the other staff
16 members. The staff members that you have are
17 trained to ask these questions and do the work
18 that you were describing as yourself also having
19 been doing?

20 NANCY DOWNING: Yes.

21 CHAIRPERSON DROMM: Thank you.

22 ELIZABETH WAGONER: I would just
23 add to that that at Pan American International
24 High School we have our youth organizers who are
25 working out of that high school who are just

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completely invested in the project of making sure that these recently arrived youth are getting an education and getting all the opportunities that are available to them.

They're really invested in the lives of each student. I feel like that's what has made the difference in that partnership. These organizers are saying is there anything we can do for these kids. They're begging for this training and information.

So it was really those individuals who have a vested interest in the specific kids that they're working that sort of made it easy for us to go in and sort of bring people in to do these trainings and help them identify kids who might be eligible and then connect them to legal clinics that we do with Legal Aid at our offices to start the process.

CHAIRPERSON DROMM: That's interest, because having been a teacher for 25 years I don't ever recall having come across this in the public school system. But Ms. Fleet, I think when she gave testimony before was talking about the schools and maybe I'm wrong. It really

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2 raises another idea of perhaps extending this into
3 the public school system to catch children who are
4 not involved in the criminal justice center or the
5 foster care system as well. I'd just be curious
6 to know more about that model that you have with
7 Make the Road and the Pan American International
8 School. Thank you. Thank you everybody, it's
9 been a pleasure. We'll see you very soon. Thank
10 you.

C E R T I F I C A T E

I, Donna Hintze certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature *Donna Hintze*

Date April 1, 2010