

# THE NEW MEXICO CHILDREN, YOUTH & FAMILIES DEPARTMENT IMMIGRATION UNIT

A MODEL FOR CHILD WELFARE & JUVENILE JUSTICE  
SYSTEMS SERVING IMMIGRANT CHILDREN AND  
THEIR FAMILIES



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# THE NEW MEXICO CHILDREN, YOUTH & FAMILIES DEPARTMENT IMMIGRATION UNIT: A MODEL FOR CHILD WELFARE & JUVENILE JUSTICE SYSTEMS SERVING IMMIGRANT CHILDREN AND THEIR FAMILIES

## Key Terms:

- **New Mexico Children, Youth & Families Department (CYFD)** – is an umbrella organization that consists of several divisions, including Protective Services, Juvenile Justice Services, and children’s Behavioral Health Services.
- **Protective Services (PS)** – investigates and works with abused and neglected children from the ages of zero to eighteen.
- **Juvenile Justice Services (JJS)** – works with youth and children who have been arrested and/or charged with allegations of juvenile offenses.
- **Immigration Unit (Unit)** – is a stand-alone unit within CYFD’s Office of Children’s Rights that provides policy guidance and supports families and staff on cases referred cases from Protective Services and Juvenile Justice Services that involve a child or parent born outside of the United States. The Unit consists of an immigration attorney and two immigration specialists for Protective Services and Juvenile Justice cases.

## INTRODUCTION

The NM Children, Youth & Families Department (CYFD) Immigration Affairs Unit (Unit) serves immigrant and mixed-status children and families who touch the child welfare, juvenile justice, or children’s behavioral health systems in New Mexico. The Unit, housed in the Office of Children’s Rights, formed in 2019 and includes an immigration attorney and immigration specialists for PS and JJS. The Unit is built on the premise that immigration status should not be a barrier for children and families receiving needed resources and supports, nor should it influence decision-making around best interest, whether in building and maintaining relative connections, in child placement, or the reunification processes.

The Unit:

- provides specialized linguistically and culturally appropriate services and supports to children and youth and their families.
- ensures compliance with federal and state regulations surrounding consular notification and obtaining Special Immigrant Juvenile Status for children.
- reports and obtains federal supports for non-citizen minor survivors of trafficking.
- conducts legal screenings for immigration relief, complications, and suspected trafficking.



- provides legal representation for children and youth for certain forms of immigration relief on a case-by-case basis.
- refers children, youth, and families to community based legal services organizations to ensure that children and their families have immigration representation when appropriate.
- provides support to immigrant community initiatives in NM, through collaborations with border-crosser shelter networks, international humanitarian groups in NM, immigrant and refugee social service providers, legal immigration providers, and consulate outreach activities.

This resource serves to describe the key services and activities of the NM CYFD Immigration Unit (Unit) as a model and guide for child welfare and juvenile justice systems serving immigrant children and their families.

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## DETERMINATION OF CITIZENSHIP

The process for determination of citizenship starts during the initial information gathering phase of a protective services or juvenile justice case. Determination of citizenship provides crucial information for next steps in the case, including whether consular notification or legal screening may be necessary and to determine potential eligibility for public benefits.

The process for the determination of citizenship in protective services cases begins during the child abuse and neglect investigation. The process for the determination of citizenship in juvenile justice cases begins at the Preliminary Inquiry, which is the first major meeting with between a juvenile probation officer, a youth, and their guardian, and serves to obtain necessary personal information about the youth and to explain to the youth and their guardian the allegations faced. A caseworker or juvenile probation officer asks a series of questions to help determine the citizenship of the child(ren) and parent(s). At no time should a caseworker ask the child(ren) and/or parent(s) directly about their immigration status. The following are examples of questions that caseworkers may use with parents or children to determine citizenship:

### SAMPLE CITIZENSHIP DETERMINATION QUESTIONS

- ✓ Where are you from?
- ✓ Where were you born?
- ✓ Where was/were your child(ren) born?
- ✓ How long have you been at this address?
- ✓ How long have you lived in New Mexico?
- ✓ Where else have you lived besides New Mexico?

A birth certificate can also be used to determine citizenship of a child or children and is needed to apply for dual citizenship for children who enter into protective custody. Other ways to determine citizenship include asking for an ID. In this case, a non-U.S. driver's license, a consular ID, or an ID from another country can be an indicator of non-citizenship.

Important follow up questions for additional information gathering include:

- What is your full legal name? (Ensuring that all last names are provided.)
- Do you have relatives here in the U.S.?
- Are you comfortable speaking English or do you prefer another language?
- Is there a family member where the child(ren) could go for placement? →

Parents may not want to identify family members due to their immigration status. It is critical when asking this question to communicate confidentiality policies, specifically that CYFD does not share any personal information with immigration officials.

Cases in which it is suspected that a child, youth, or caregiver is a non-citizen shall be referred to the Unit for further assistance.



## CONSULAR NOTIFICATION PROCESS

Consular notification is a requirement of international law under the Vienna Convention on Consular Relations<sup>1</sup>, and, with respect to Mexican nationals, under the Bilateral Convention between the U.S. and the United Mexican States, Article VI<sup>2,3</sup>. Consulates have the right to know when their nationals are involved in custody proceedings and may contact and advise their nationals in these contexts. Under the Vienna Convention, a foreign country consulate must be notified when a minor is in the custody of the state without delay. Foreign country consulates can also serve as a helpful resource for identifying family members, locating parents, guiding families through the child welfare/juvenile justice system processes, and engaging with the family. In New Mexico, the need to notify a country's consulate is determined following the citizenship determination, which should occur during the investigations (PS) or Preliminary Inquiry (JJS) process. The CYFD Immigration Specialists serve as the liaisons between CYFD staff and consulates. The Immigration Attorney may also work directly with the consulate and CYFD staff.

A consulate is notified when one of the following occurs:

- The child or youth is born in another country;
- The child is a U.S. citizen and both parents were born in another country; and/or
- The child is a U.S. citizen, and one parent was born in another country.

Once the Unit receives all of the following information from CYFD staff, the notice is emailed to the consulate and recorded in an internal tracking system:

### REQUIRED INFO FOR CONSULAR NOTIFICATON

- ✓ Full surnames of parent(s)
- ✓ Where parent(s) was born (city/town, state, country)
- ✓ Where child(ren) was born
- ✓ Date of birth of child
- ✓ Date of birth of parent(s)
- ✓ Current address of parent(s) (if provided)
- ✓ Contact information for a relative to the child

<sup>1</sup> Vienna Convention on Consular Relations, April 24, 1963, [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf)

<sup>2</sup> Consular Convention between the United States of America and the United Mexican States, August 12, 1942, 57 Stat. 800; Treaty Series 985, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/intl-treaties/Bilateral-Consular-Conventions/mexican-treaty.html>

<sup>3</sup> There are two Mexican Consulates in the New Mexico area - one in Albuquerque, NM, and the other in El Paso, TX. The El Paso Consulate has jurisdiction over the nine NM border counties (i.e., Hidalgo, Grant, Luna, Sierra, Dona Ana, Otero, Chavez, Eddy, and Lea counties), and the Albuquerque Consulate has jurisdiction over the rest of the counties in the state.



### **Protective Services**

The Mexican Consulate is sent a notice of custody within 24-hours of obtaining custody and citizenship information. Other consulates are sent a notice of custody within five days of obtaining custody and citizenship information. In some cases, the parents' citizenship information is not obtained during the investigation process and is obtained after the case has been transferred to permanency. In this case, the notice of custody is sent when the information is obtained and a reason for the late notice is provided.

### **Juvenile Justice Services**

Unlike Protective Services, Juvenile Justice Services does not take or obtain custody of the youth in all cases. The youth comes into the system by an arrest or by a police report sent to the probation office. Their case is then either seen by a judge or handled informally by the Probation Officer. The Mexican Consulate is sent the notification within 24-hours of the youth coming into the system and citizenship information is obtained. Other consulates are sent the notification within five days of obtaining citizenship information. In some cases, citizenship information is not obtained until after the Preliminary Inquiry. In this case, the consular notification is sent when the information is obtained and a reason for the late notice is provided.





## **INTERNATIONAL CASE ASSISTANCE**

Cases in which one or more parents, or other relatives, reside in another country require transnational casework. Foreign country consulates as well as [International Social Service – USA](#) can provide assistance with various aspects of transnational work, including serving court summons, obtaining birth certificates and other documents, facilitating home assessments, reunification and repatriation, and more. A memorandum of understanding and contracts with these entities have formalized this collaborative work.

### **Service of Process**

When a case is opened against a child’s parent(s) for neglect or abuse, the parent(s) may be adjudicated. If one or both parents are in a different country, Protective Services needs to serve a summons to the parent(s) in that country through the consulate if the consulate is willing and able to assist. If a consulate is not willing or able to assist, the Immigration Specialist assists staff in sending a summons via other means such as UPS or FedEx. Prior to serving the summons, the summons needs to be translated into the parent’s native language. The Immigration Unit receives assistance from the New Mexico Administrative Office of the Court in getting service documents translated to the parent’s native language.

### ***Service of Process to a Parent in Mexico***

Service of process to a parent in Mexico complies with the Hague Convention<sup>4,5</sup>. The summons and the petition including all exhibits are translated and sent to the Central Authority of Mexico, which is the General Direction of Legal Affairs, Ministry of Foreign Affairs (la Dirección General de Asuntos Jurídicos de la Secretaría de Relaciones Exteriores) by CYFD’s Legal Department (click [here](#) for more information). The Central Authority forwards the summons to the appropriate entity to serve the parent(s). When the summons has been received and signed by the parent(s) in Mexico, the summons is returned with a signed receipt through the same channels it was originally sent.

### ***Service of Process to a Parent in a Country other than Mexico***

The Unit completes service of process in accordance with Hague Convention regulations for Hague Convention countries. The Immigration Specialist contacts the corresponding consulate to see if they are able to assist with serving the summons or if they have a specific process that needs to be followed. Non-Hague country consulates such as Guatemala, may not be able to assist with service. Other countries, such as Honduras, may not have existing processes or resources to assist with service. In these countries, the translated summons may be sent directly to parents via FedEx or UPS. Contact is made with the parent(s) to advise them the summons has been sent. When the summons is received by the parent(s), they may be

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<sup>4</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 20, 1993, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

<sup>5</sup> The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption is an international treaty that sets standards of practice to safeguard intercountry adoptions. The U.S. has been party to the Hague Convention since 2008, and there are roughly 75 other countries who are signatories.





instructed to: 1) take a close-up picture of the parent holding the packet showing their name; and 2) take a clear picture of the parent's ID showing his/her/their face and name. The parent may send the pictures to the Immigration Specialist via WhatsApp as a receipt that the summons has been received. These photos may be presented to the courts as proof of receipt.

### **Other Forms of Assistance**

Mexico is the only country that has a formal Memorandum of Understanding (MOU) with CYFD. This MOU outlines the services and assistance that Mexico is willing to provide to CYFD. Any services or assistance that are needed in Mexico must be requested through the Consulate first.

#### **MEXICAN CONSULATE SERVICES**

- ✓ home assessments
- ✓ reunification/repatriation
- ✓ obtaining birth certificates
- ✓ serving court summons
- ✓ coordinating parent participation in court hearings
  - providing a location to participate via Zoom or phone.
  - assisting with technical equipment at that location, e.g., a laptop or computer.
- ✓ obtaining documents
- ✓ assisting with family referrals to therapy.

CYFD also has a contract with International Social Services – USA (ISS), which is designed to assist when the consulates are unable to assist with service requests. The Immigration Specialist from Protective Services is the liaison between CYFD staff and ISS and is responsible for requesting ISS's services. ISS provides a final report to the Unit once the request is completed in the receiving country.



## **COMMUNICATION WITH FAMILY MEMBERS**

In cases involving parents who reside in another country, transnational communication can be challenging. However, the following best practices can help caseworkers successfully engage in transnational communication in a family's preferred language.

The Unit has international cell phone service to help facilitate communication when a parent(s) is in another country. These services allow the Immigration Specialist to assist in providing the following services:

- Facilitating communication between caseworkers and parent(s) or parent(s) and child(ren)
- Facilitating court hearings with parent(s) in another country through video conference by coordinating with protective services in that country to help the parent(s) access a computer or through video call with the Immigration Specialist and parent(s).

Another way the Immigration Specialist can help facilitate communication with family members is through free smartphone applications. WhatsApp is very commonly used among families in other countries. This app can help facilitate:

- Video calls between parent(s)/family members and the child(ren)
- Receiving photos of documents, like birth certificates or ID's
- Parent(s) calls with their child(ren)
- Communication between an English-speaking caseworker and Spanish-speaking parent(s)/family members (e.g., the Immigration Specialist can create a group message and help translate the messages that are being sent between the caseworker and parent(s)/family member.)

The Immigration Specialist can help with interpretation between staff and parents/children/youth on an as-needed basis. If the Immigration Specialist is not available for immediate assistance, CYFD has a contract with an interpretation phone service that provides 24/7 interpretation services. The Immigration Specialist can also help with quick translations of messages, emails, or letters; however, when larger documents need translation services, they are sent through the contracted language services provider.



## LEGAL SCREENING

Legal screening is crucial to ensure that children/youth are able to pursue potential immigration relief options that they are eligible for, which will provide them permission to stay in the U.S. and the ability access to many crucial public benefits and other supportive services, both during and after their child welfare or juvenile justice system involvement. If a child/youth is eligible for Special Immigrant Juvenile Status, child welfare agencies are required by state law<sup>6</sup> to file a petition.

### Screening for Immigration Benefits

If a non-citizen child or parent is identified during the Investigations or Preliminary Inquiry process, the Immigration Attorney will screen for potential immigration benefits. The Immigration Attorney may only represent children/youth in CYFD's custody and cannot represent the parent(s). However, the Immigration Attorney has a list of provider attorneys the parent(s) can be referred to for representation.

### Protective Services

The Immigration Attorney typically waits to conduct the legal screening until the child is in their placement or with a resource parent. This waiting period allows the child(ren) to get settled and adjusted to their new surroundings. The only exception is if there is a suspicion of Commercial Sex Trafficking or Labor Trafficking, which needs to be screened for within 24 hours of the suspicion. Suspicion of Commercial Sex Trafficking or Labor Trafficking must be reported to the Office on Trafficking in Persons (OTIP) at the Administration of Children and Families at the Health and Human Services Department.

Children under the age of 14 are not required to sign immigration petitions. While they are invited to attend a legal screening, the Immigration Attorney communicates with the child's Guardian ad Litem (GAL). For children over the age of 14, the Immigration Attorney conducts the legal screening with the youth, their CYFD worker, and at times their youth attorney.

The immigration benefits screening process involves a series of questions that may lead to other questions based on the answers given. Initial questions include →

#### LEGAL SCREENING QUESTIONS

- ✓ What is the child's name?
- ✓ What is the child's date of birth?
- ✓ Where was the child born?
- ✓ When did the child come to the U.S.?
- ✓ How/with whom did the child enter the U.S.?
- ✓ Has the child ever called law enforcement? If so, why?
- ✓ Does the child have a juvenile record?
- ✓ Will the child reunite with one or both parents?
- ✓ Has the child been a victim of a crime?
- ✓ While in the U.S., has the child ever been forced to work against their will?

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<sup>6</sup> NMSA § 32A-4-23.1 (1978)



### ***Juvenile Justice Services***

Screening for immigration benefits for children and youth involved with Juvenile Justice Services is voluntary. If the youth or one of their parents is a non-citizen, the consulate is notified, and the youth is informed of the consular notification. The Immigration Specialist remains in contact with the Juvenile Probation Officer and typically waits five days from the date of the consular notification to provide information on the services available through the Unit. These services include legal screening of the youth for immigration relief. If there are charges filed or a plea for the non-citizen youth, a public defender is assigned. Some youth may be represented by a private attorney. The public defender's office contracts with an immigration attorney to analyze any criminal charges or pleas and to inform the youth of any potential adverse effects. The Unit can connect the public defender and the immigration attorney to ensure this analysis occurs. If the youth chooses to utilize the services of the Unit, the screening process and questions would be the same as with Protective Services.



## TRAFFICKING

Screening for human trafficking is a requirement of federal law under the Trafficking Victims Protection Reauthorization Act<sup>7</sup>. Federal, state, and local officials with information about noncitizen minors who may have experienced human trafficking must refer cases to the Office on Trafficking in Persons (OTIP).

The initial trafficking screening is conducted by the investigation caseworker or juvenile probation officer. When staff suspects a noncitizen child(ren) may be a victim of trafficking, they refer the non-citizen child(ren) to the Unit. The Unit conducts a screening for commercial sex trafficking and labor trafficking using the following 10 pre-screen questions:

### HUMAN TRAFFICKING SCREENING QUESTIONS

1. Who arranged the travel?
2. Do you have a debt for your journey, and who do you owe it to?
3. Have you been pressured to do something you did not want to do for food, money, or shelter?
4. Has anyone ever tricked you into doing work that you thought was not part of your job?
5. Has anyone ever withheld your pay or kept your pay from you?
6. Has anyone ever harmed you in any way at work?
7. Were you allowed to eat and use the phone or the bathroom whenever you wanted at work or where you stayed?
8. Has anyone ever taken photos of you that made you feel uncomfortable?
9. Has anyone ever pressured you for a kiss, sex, or any kind of unwanted physical contact?
10. Has anyone ever withheld your passport, birth certificate, or other identity documents from you?

### Reporting suspected trafficking to the Office of Trafficking in Persons (OTIP)

After interviewing the child(ren) or youth regarding suspected trafficking, a report and request for assistance is made to the Office of Trafficking in Persons (OTIP), which falls under the U.S. Department of Health and Human Services' (HHS) Administration for Children and Families (ACF). This is done by the Immigration Specialist through an online portal (<https://www.acf.hhs.gov/otip/victim-assistance/shepherd>) no later than 24 hours after knowing a minor may be a victim of a trafficking in persons. All communication between the Immigration Specialist and OTIP is conducted through the online portal.

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<sup>7</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 112 Stat. 5044. (2008, December 23). <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>



OTIP then makes a determination as to whether it is likely a minor has been a victim of trafficking in persons. The determination types are as follows:

1. Initial Determination via an Interim Assistance Letter, which provides 90 to 120 days of benefits before a Denial or Eligibility Letter is issued.
2. Final Determinations, including Denial of Assistance, Denial of Eligibility Letter, and Eligibility Letter.

If OTIP grants the request for assistance, the child/youth may be connected to case management services and benefits, including: a Social Security Number, Medicaid, medical services, food assistance, educational services, housing assistance/cash assistance, and mental health services. The letter from OTIP outlines how long services are granted for, which can be either three months, six months, or indefinitely. The Immigration Specialist assists the case worker in applying for a non-work social security number and Medicaid services.



## **UNACCOMPANIED MINORS**

Noncitizen unaccompanied minors may come to the attention of a state child welfare agency. An unaccompanied minor is a child or youth under the age of 18 and not in the custody of their parent or legal guardian. If there are allegations of abuse or neglect, the case will go through the same investigation process as all other cases.

If the unaccompanied minor is a noncitizen, the Immigration Unit must be notified immediately. The Immigration Unit will contact the foreign country consulate to verify the unaccompanied minor's identity, their parents/guardian's identity, and the identity of any other family members/sponsor. The Immigration Unit may screen the minor if there is any suspicion of human trafficking, labor trafficking, or commercial sex trafficking. The Immigration Specialist may help facilitate communication with the foreign country consulate and help arrange travel for the minor to their sponsor. The Immigration Unit will also provide legal service resources to the unaccompanied minor.





## **INTERNATIONAL REUNIFICATION/REPATRIATION**

In some cases, it may be in the best interest of a child/youth to reunite with a parent or relative in another country. In New Mexico, reunification or repatriation from the U.S. to another country is coordinated through the Unit and the country's consulate. Prior to making the arrangements for transporting the child, a home assessment is conducted, and citizenship paperwork is completed if dual citizenship is necessary for the child.

The Unit schedules regular staffings with the team working on the case to assure a smooth reunification/repatriation process. The Immigration Specialist may request assistance to foreign consulates to assist with producing passports or other type of documentation for the purpose of reunification as well as requests to accompany a minor in foreign land.

Transportation, depending on the country, may be by vehicle to the border or by plane. The Immigration Specialist coordinates transportation arrangements with the consulate and the worker who will be transporting the child to a border crossing or airport. CYFD may cover the cost for a consular official to travel with the child.

The Immigration Specialist ensures that the child travels with all pertinent documentation regarding custody, birth records, passport, court case files, and any other information necessary to transport the child safely from the U.S. to the destination country and ensure a smooth transition.

### **Role of Department of State & International Social Services (ISS)**

Repatriation of a child from another country to the U.S. requires working with the Department of State. The country with the child contacts the U.S. Embassy in the country requesting repatriation to the U.S. and the U.S. Embassy contacts the Department of State. The Department of State contracts with International Social Services (ISS) to be the liaison between the protective services entity in the originating country and the Protective Services in the U.S. ISS coordinates the details of transporting the child(ren) to their final destination in the U.S.



## PARENTS IN ICE DETENTION

If a parent(s) involved in a child welfare or juvenile justice case is detained by U.S. Immigration and Customs Enforcement (ICE)<sup>8</sup>, the Unit may assist with locating where the parent(s) has been detained and work to facilitate their participation in the case, including parent-child visitation and court proceedings.

When working with parents in U.S. Immigration and Customs Enforcement (ICE) detention, it is necessary to have their Alien Number. This identification number is assigned by the Department of Homeland Security and is used to locate detained parents at <https://locator.ice.gov/odls#/index>.

To involve parents in detention in case meetings, visitation, and court hearings, it is necessary to arrange meetings through the detention center. The Unit contacts the ICE Parental Interest Coordinator ([parental.interests@ice.dhs.gov](mailto:parental.interests@ice.dhs.gov)) to facilitate communication between parents in detention and their children. Depending on the office and availability, visits may be coordinated in-person, by video conference, or by phone. A foreign consulate can also facilitate communication and/or visitations between parents in detention and children or CYFD. Communication can also be facilitated between parents in detention and their immigration attorneys.

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<sup>8</sup> The ICE Parental Interests Directive (PID) "[Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults](#)" serves to ensure that parents or legal guardians who are arrested or detained by ICE can maintain visitation with their child(ren), make decisions about their care, and participate in any related court or child welfare proceedings. This [factsheet](#) from ICE summarizes the PID and provides key links and points of contact. More info about how child welfare agencies can utilize the PID to advocate for their detained/deported immigrant clients can be found [here](#).



## **TRANSLATION/INTERPRETATION SERVICES**

Child welfare and juvenile justice systems must ensure that all services are available to clients in their preferred language. CYFD makes translation and interpretation services available to local field offices. For document translation, a staff member may contact the Unit, which serves as the coordinator for all CYFD document translation. The Immigration Specialist arranges the translation of documents to a client's preferred language. If a document is needed urgently and is not readily available in Spanish, the CYFD staff member may have the document read to the client in their preferred language by a member of the Unit.

CYFD has a 24/7 phone interpretation service. The Unit can also serve as phone interpreters in Spanish, when necessary. This may be needed when phone interpretation is unavailable or inadequate during critical meetings or when child welfare workers need to communicate with Spanish-speaking parents in New Mexico or in another country. The Unit interpretation services are used strictly for internal matters. For assistance with interpretation in languages other than Spanish, the Unit refers staff to CYFD's phone interpretation service.

