REMAKING FAMILIES: CHILD WELFARE AT THE U.S. - MÉXICO BORDER

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Naomi G. Rodriguez

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This Dissertation of Naomi Glenn-Levin Rodriguez is approved:

Professor Donald Brenneis, Chair

Professor Melissa Caldwell

Professor Susan Harding

Professor Patricia Zavella

Tyrus Miller
Vice Provost and Dean of Graduate Studies
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Abstract

Remaking Families: Child Welfare at the United States-México Border

Naomi G. Rodriguez

This dissertation examines the logics operating behind practices of child removal and child placement in the context of the foster care system at the United States-México border. In the early 2000s, as deportation rates have continued to rise, the separation of families has been positioned as a problem central to debates around amnesty, contestations over birthright citizenship, and a more humanized approach to immigration policy in the context of the contemporary United States. For example, in April 2009, a New York Times article described legal battles over children who had entered the United States foster care systems due to the deportation of their parents, many of whom had been caught up in immigration raids and charged with such crimes as using false identification documents. Regardless of public outcry, the courts upheld the adoption of these children by U.S. families, discounting the desires of their biological parents because their deportation had given them criminal status, making them unfit parents in the eyes of U.S. law. This dissertation explores decisions about the removal and placement of children in the context of the “child protection,” asking how structures of race, citizenship, and nationality inform determinations about proper parents, ideal homes, and state responsibility for minor citizens.

In the context of ongoing anti-immigrant sentiment, state interventions into families constitute a mode of delineating normative family formations. Drawing on eighteen months of ethnographic research, this dissertation examines the interactions...
between immigration enforcement and the child welfare system at the U.S.-México border. Through engagement with social workers, legal actors, and families on both sides of the border I explore how individuals navigated this complex terrain. I ask how and when child welfare and immigration law come together in the lives of families, and I analyze the creative modes through which parents, social workers, lawmakers, and advocates navigate legal boundaries in an effort to maintain families across geographic and judicial borders. Ultimately, I argue that child welfare is a site that illuminates distinctions of race, class, and citizenship and where the vulnerability of particular populations of parents are produced. I suggest that understanding the everyday practices and processes through which determinations about child removal and child placement are made sheds light on the ways in which these complex institutions come together in the context of the border region.
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Funding for this project came from the Fulbright IIE, the Wenner-Gren Foundation, and the UC Mexus. Grant officers in all three foundations provided invaluable support and facilitated the complexities of cross-border research. The UC Mexus also generously funded a portion of the writing phase of this project, a support for which I cannot possibly express sufficient gratitude.

Thanks in the field go to the social workers, judges, lawyers, and orphanage staff who so generously let me into their incredibly busy lives. Special thanks go to Corinne and Alicia, without their openness and willingness to drag an anthropologist around this project simply would not have been possible. My deepest gratitude to the parents and children who shared their lives with me, who fed me, laughed with me, played with me, welcomed me into their homes, and spoke frankly with me about the pain and joys of parenting and fostering.

The friendship and encouragement of friends and family supported me through this dissertation process. To Kath Callard, Ayala Bassett, and Jes Anderson for asking with genuine curiosity about my project. To my brother Jacob, for understanding. To my parents for their support throughout my schooling, and to my early mentors Suzanne McCluskey and Maria Tymozcko for their guidance and inspiration. And to Jason Rodriguez, whose love, careful reading, and endless support, have sustained me throughout.
Introduction

In the summer of 2010, a flurry of articles in the international media addressed debates centered around national identity and the citizenship and deportation of children and their parents. In Israel the dispute emerged in response to the pending deportation of 1,200 Israeli-born children of guest workers whose parents had overstayed their work visas. Tensions arose around the children’s right to remain in Israel, which many considered to be their home, and Israel’s national identity both as a place of refuge and as a Jewish state. Anxiety about the dilution of the Jewish majority and concerns about encouraging future guest workers to overstay their visas ultimately resulted in the deportation of 400 of the 1,200 children in question. Israeli Prime Minister Benjamin Netanyahu articulated these tensions when he stated, “We all feel and understand the hearts of children…But on the other hand, there are Zionist considerations and ensuring the Jewish character of the state of Israel. The problem is that these two components clash” (Netanyahu as quoted in Kershner 2010).

At the same time, a similar debate was raging in Europe around concerns about the migration and deportation of Roma children and families. News stories criticizing France’s deportation of Roma families living in camps on state land were peppered with images of mothers holding babies, waiting at airports for their “voluntary” deportation. E.U. member states railed against France’s decision as counter to the legal and democratic commitments of the European Union. French authorities framed their actions as a crackdown on crime and prostitution, which they
argued was prevalent in Roma camps. Critics suggested it was a thinly veiled attack on a particular ethnic community, an attack that brought into question principles the critics understood to be held by E.U. member states.¹

In the United States, debates about citizenship took shape around a contestation of the 14th Amendment and the concept of “birthright citizenship.” The debate was instigated by Senator Lindsay Graham’s statement about “anchor babies” and his questioning whether being born in the United States to undocumented parents should qualify one for citizenship. His remarks fed into anxieties about immigration, an unremarkable political response in light of the economic downturn at that time. These anxieties were framed as reactions to considerations of amnesty and policies such as the DREAM Act. The DREAM Act was a proposal to provide access to higher education and a path to citizenship to undocumented young adults who had been in the country since they were young children, which, at the time of these debates, was foundering in the House of Representatives. In these debates, children are not positioned as children, bound up in ideas about innocence, love, and future possibility, but as a strategic route to the future chain migration of an “undeserving” family.² As Chavez (2008) argues in *The Latino Threat: Constructing Immigrants, Citizens, and the Nation*, the use of an “anchor babies” discourse equates acts of child

¹ See Erlanger 2010 and Castle 2010 for media coverage of this issue.
² Chavez (2008), along with Orellana and Johnson (2011), note with irony that the “anchor baby” discourse ignores the fact that children cannot apply to sponsor the migration of their family members until the age of twenty-one. Further, it does not consider the many obstacles to this sponsorship, such as required income levels, or the impractical wait times for processing applications for citizenship or residency.
bearing with concerns about national security, and dehumanizes mothers who are framed as both animalistic and strategic.

These international debates positioned children squarely at the center of concerns about national identity and belonging. They engaged questions about children’s and families’ rights as well as concerns around encouraging or enabling unauthorized entry as a path to future citizenship. They brought protectionist and often xenophobic views squarely up against the unpopular acts of separating mothers and children, evoking images of crying motherless children, confused youth deported back to countries whose languages they do not speak, and parents criminalized for their attempts to cross borders in efforts to reunite with their children. As Netanyahu’s above comment indicates, anxieties about intimate relations and the construction of families are central to policing the boundaries of the nation-state. As I argue throughout this dissertation, families are thus positioned as a key site for delineating boundaries of citizenship, class, and race.

The ongoing entanglement of children and families in constructing the boundaries of national belonging is at the core of my research, which is situated at the intersection of immigration policy and child welfare. I ask how children and families are positioned as central to contemporary debates and concerns around citizenship, national belonging, and racially motivated exclusion. Further, I examine how these concerns come to matter in children’s lives through the enactment of particular policies and through quotidian interactions among social workers, parents, and children. Throughout this dissertation I engage two central research questions: First,
what sorts of possibilities are enabled and foreclosed at the juncture between the two
complex institutions of child welfare and immigration law? Each of these institutions
is constituted through a high degree of discretionary action where social workers and
legal actors have a good deal of latitude to consider each case individually, albeit
within institutional constraints. In addressing this question I examine how these two
institutions come together and shape each other in unexpected ways. And second,
how, and why, are children and families positioned as central sites for the production
of citizenship, race, and national belonging? In raising this question, I explore why
and how state agencies are involved in both the maintenance and dissolution of
particular families. I pursued this set of issues beginning in the summer of 2008, and
throughout 2010-2011, in the context of the San Diego County child welfare system
with a focus on the foster care system that extended, informally, beyond the limits of
San Diego County and into the city of Tijuana.

The child welfare system is a convoluted, sprawling, decentralized apparatus,
one that I will describe in further detail throughout the chapters that follow. Here I
will aim to briefly sketch out the official system as a whole. The United States child

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3 Although my interlocutors in the San Diego-Tijuana area use the phrase “child
welfare system” to refer to the county office, the dependency courts, and the service
providers they contract with, I employ the phrase “child welfare apparatus” to refer to
a broader array of organizations, agencies, and actors, including families,
international agencies, pro bono lawyers and advocacy groups, among others.
Although I refer to the child welfare “apparatus,” I do not mean to convey a sense
that this is a smoothly functioning, well-defined system, although it may appear that
way to an external gaze. I use apparatus here to refer to the messy, disjointed set of
organizations and actors that are frequently working at cross-purposes with different
sets of knowledge and often pursuing disparate goals. See Appendix A for a visual
map of the agencies I include under the umbrella phrase “child welfare apparatus.”
welfare system is driven by federal policy, governed by state law, and implemented on a county-by-county basis. The stated mission of the system is to protect children from neglect, abuse, and abandonment by providing family support services, temporary out-of-home placement, and sometimes by placing children for adoption and terminating parental rights. Family support services range from providing therapy and parenting classes, to referrals for food and housing assistance programs, drug rehabilitation programs, and the like. Out-of-home placement could involve placing the child with a relative, a licensed, non-relative foster family, or in an institutional facility. Although social workers employed by the child welfare system make home visits, determine whether a child may safely remain in their home, and craft recommendations to judges about the custody and placement needs of the child, all legal decisions are enacted by a dependency court judge rather than the social workers themselves.

Dependency court judges and lawyers are charged with enacting dependency law, which aims to protect both the welfare of children and their parents’ rights to parent, and is regulated on a state-by-state basis. Many social workers, dependency lawyers, and judges describe their mandate as being suspended between the competing goals of child protection and family preservation. Although child protection is most often achieved through removing the child in question from the custody of their parents, family preservation is a complex aim. The preservation of a family formally entails ensuring that the family has received the support services that they need so that the child can be reasonably expected not to be subject to future
harm. In this sense, once the child has been removed from the home, the parent is positioned as the primary client of the social worker who delivers services and supports designed to produce a “safe” home to which the child can eventually return. Because of the orientation of this work towards future possibilities, reunification always happens under the specter of a child’s potential future abuse and return to the child welfare system.

The child welfare system’s initial goal is always the reunification of a child with their family, except in cases where the parent has communicated their wish to relinquish the child. A child’s reunification with their family can be achieved by a parent meeting particular standards set by the social worker, called the “case plan,” and approved by the court. It is only when this process fails that children are placed in an adoptive home or other permanent caretaking situation. Underlying this progression, from the goal of reunification to that of adoption, is the assumption that biological relatedness is preferable to an adoptive home, even in the case of a family that has been marked as “unfit.” Social workers, as I discuss in further detail in Chapter Two, feel a pull between wanting to place children in a “better” home environment (often meaning a wealthier home with more resources and a parenting style associated with the middle-class) and believing that most children will do better, in terms of educational achievement, economic success, and mental health if they remain in their family of origin, even a family that will continue to have some degree of abuse or neglect. The most common exceptions to this position were cases involving very young children who had been placed in the home of a family that the
social worker felt was a “good” one. In these cases, social workers often argued that the stability of the adoptive family and the child’s adoption at an early age would be preferable to the risk of an unstable family and the detrimental experience of a childhood within the child welfare system.

Federal law sets time limits on the reunification process, usually twelve to eighteen months, and although judges have some leeway to shorten or lengthen these timeframes they are driven by the idea that permanence and consistent bonding with a long-term caregiver is always in the best interest of the child. Critics argue that this approach means that children may be unnecessarily removed and then understood to have bonded with their temporary caregivers to the point where their best interests are no longer met by a return to their family of origin. Federal mandates, such as the Adoption and Safe Families Act signed into law by President Clinton in 1997, media outrage around the death of children, and the wax and wane of budgetary pressures shift the emphasis back and forth between family preservation and child protection.

Further, like many sprawling state bureaucracies, the child welfare system contracts with a substantial number of private entities. These include therapeutic services, school institutions, children’s hospitals, residential facilities (the modern manifestation of the orphanage), and foster family agencies, which provide specialized care to particular populations of foster children. And although dependency courts are charged with managing the cases of those children and families caught up in the child welfare system, cases may also involve immigration bureaucracies and court systems, criminal or civil courts, and prison systems for
incarcerated parents. Social workers must navigate the requirements and policies of each of these systems while in pursuit of the twin goals of child protection and family preservation.

I spent a significant portion of my research time at Esperanza, a small foster family agency focused on providing services to Latino/a children and families.4 Esperanza was the only foster family agency in the city of San Diego that was explicitly focused on what they saw as the particular needs of Latino/a children and families in the child welfare system. Although there were myriad social service agencies that focused on service provision to Latino/a communities, I could locate no other organizations, in California or elsewhere in the United States, which focused specifically on Latino/a children in foster care. As I will discuss throughout this dissertation, it would be a difficult task to locate a foster agency or child welfare system in the United States in which the issues of race, nationality, and citizenship that I address here did not arise. Esperanza, however, articulated an explicit stance toward addressing what they saw as the cultural and linguistic needs of this population. They also worked with monolingual Spanish-speaking foster families, a group that was typically excluded from eligibility as foster families due to language barriers between the families and agency employees.

Esperanza’s emphasis on the language needs of the children and families that they served was strategically deployed within a context that engaged in ongoing, intense debate around “race-matching” policies. The Multi-Ethnic Placement Act

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4 All organizations and individuals are referred to by pseudonym, with the exception of well-known public figures.
(MEPA), passed in 1994, and the Inter-Ethnic Placement Act, which modified MEPA in 1996, prohibited consideration of race, “color,” or national origin in child welfare placement decisions, arguing that these race-matching practices resulted in children of color languishing in institutional settings or temporary foster homes while white children were quickly adopted. This legislation also cautioned against using “culture” as a stand-in for race, but did not bar placement considerations based on religion, the individual needs of a particular child, or the ability to communicate between family and child. Esperanza social workers and administrators believed that Latino/a kids belonged in Latino/a homes. In supporting this position they cited various cultural practices, including ideas about valuing extended family and preparing types of foods that Latino/a foster children might find familiar and comforting. However, Esperanza social workers highlighted the bilingual language skills of their agency and the foster families they certified as the reason for their agency’s focus on Latino/a children and communities. This position skirted the Multi-Ethnic Placement Act restrictions by focusing on language, rather than race or culture, and was valuable to county social workers who wanted to place Spanish-speaking foster children in Spanish-speaking

5 Fascinatingly, while this legislation bars agencies from considering race, color, and national origin in placement decisions, effectively barring the promotion of either “race-matching” or transracial placements, it does not similarly bar prospective foster or adoptive parents from making these distinctions. Indeed, parents may specify their preferences for the race, color, or national origin of the children they are willing to take into their home, and social workers generally honor these preferences. However, parents whose children have been removed are barred by this legislation from requesting that their child be placed in the care of a particular family based on race, color, or national origin.
homes to facilitate the smoothness of a future reunification and to avoid irate parents enraged by receiving children back who no longer spoke their native language.

Because the child welfare system cannot be easily located in one office building or set of policies, I used Esperanza as a starting point, a site from which I could trace children’s and families’ movement through the child welfare system. This involved day care and school settings, doctors’ and therapists’ offices, courtrooms, county offices, consulates and ports of entry, legal nonprofit organizations, social workers’ cars, and families’ homes. It also involved local parks and fast food restaurants where parents would visit with their children, training sessions for potential foster parents, legal advocates, and biological family members, and Tijuana orphanages and offices. Esperanza was a productive starting point not only because of the way it articulated with so many other organizations and settings, but also because its being a small non-profit made it possible, as a researcher, to forge relationships with the entire staff and to establish a connection based on reciprocity and trust. From the time of my preliminary field research in 2008 through my extended field research during 2010-2011, Esperanza employed six different social workers and four different program managers. My relationship with the organization, and the points of access I connected to through Esperanza, shifted slightly with each change in staffing. The government-run child welfare system is notoriously difficult for researchers to access, and I, like others who have pursued research within the child welfare system, found a tangential, informal approach to be the most effective, accessing county social workers and office staff through non-profits, foster parents, or social workers with
whom I had already established a relationship (See for example Wozniak 2002, Swartz 2005).

The impenetrability of the government-run child welfare agency was not without good reason. Although some of the county office administrators’ hesitation about approving research projects might have been due to concerns about possible critiques of their system and its daily operation, much of it was also driven by confidentiality laws and their sense of responsibility to protect the children who were in their legal custody and about whom they maintained files that include details about such sensitive issues as medical history and sexual abuse. My own concerns about protecting the private lives of children in state custody shaped the trajectory of this project. The children whose experiences are recounted here ranged in age from infancy to eight years old. Although the entanglement of these children and their families in the child welfare system is at the crux of my project, it is the apparatus itself, and the enactment of this apparatus by social workers, legal actors, and parents, that is central to my analysis. A number of the children that I worked with, particularly those between the ages of five and eight, had much to say about their experiences of family, of home, of social workers, and of what it was like at a young age to change homes and to “visit” rather than to live with their parents. I have excluded these details not because I do not think they are crucial to the way the child welfare system is enacted on a daily basis, but because I did not believe that these

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6 Although I was able to observe a number of court cases involving teenagers in foster care, I did not spend a significant amount of time with these older youth, primarily because Esperanza focuses on the 0-5 age range.
children were in a position to consent to share their experiences. It is for this reason that this dissertation focuses on the institutional engagements, and the negotiations and interactions between social workers, legal actors, foster and biological parents that shape these children’s trajectories through the child welfare system. As such, this dissertation in a certain sense reflects the voicelessness that these children had over the decisions that shape their lives and the lives of their families.\(^7\)

_San Diego-Tijuana Region_

Research certainly does not need to be situated in a border region for immigration enforcement issues to come together with questions of child welfare. Cases of foster children who faced complexities of citizenship or immigration status were present throughout the United States. Lawyers everywhere were concerned with representing children’s rights in immigration courts, no matter the region. However, concerns about these issues were heightened in particular cities and regions. Judges and lawyers in places like San Diego, Los Angeles, and Chicago were actively concerned about issues at the nexus of child welfare and immigration enforcement.

The ways in which the systems of immigration and child welfare come together constitute a central focus of this dissertation. Yet despite the myriad ways that the workings of each system impact the other, the interaction among agents of both systems and the pathways available to a family entangled at the interstices of these two systems were far from clear. Wessler’s report for the Applied Research

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\(^7\) See Reich (2010) for a discussion of the ways that children engage in and challenge social worker’s efforts to protect them and the ways that children attempt to rework their role as passive victims in pursuit of their own goals.
Center, “Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System,” emphasizes the lack of clarity in the ways the immigration and child welfare systems come together throughout the United States, and the ways the process often turns on the discretionary decisions of lawyers, judges, and social workers. Wessler’s study took place during my research period, and his San Diego research assistant and I held joint meetings with immigration lawyers and commiserated over the county office’s denial of our requests for formal research access.  

My research, with its focus on interactions among social workers, lawyers, judges, and families, alongside an exploration of inter-institutional engagements, in some ways serves as a grounded, in-depth exploration of the shocking statistics and broad national picture that Wessler’s report popularized through its presence in numerous media outlets and news programs. Contrary to accounts which highlight the stark, over-determined nature of the border zone, the material that follows suggests that cross-border operations and interactions are deeply unclear, even to those most enmeshed, and most responsible for the progression of child welfare cases in the San Diego-Tijuana region. Further, although I track the movement of children, families, 

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8 The county office did eventually share some of their policy documents with me, and I was able to attend some of their social worker trainings, to interact with their social workers during home visits, and to speak “off the record” with a number of county social workers. However, I was never granted official research access through the county child welfare office and many social workers who chose to speak with me acknowledged that they were stepping outside official guidelines to do so.

9 See Falcon 2001, De Genova and Peutz 2010, and Fassin 2011 for discussions of militarization, deportation, violence, and state power at the United States-México
and cases across the United States-México border, this research engages the vantage point of the United States side of the border, rather than taking a comparative view of child welfare, family court, or immigration law in both San Diego and Tijuana. Although México-based organizations, such as the Mexican consulate and the Tijuana social service agency Desarollo Integral de la Familia, play key roles in the enactment of this system, I examine them from the perspective of the families, social workers, and legal actors that are entangled in the United States child welfare apparatus.

San Diego and Tijuana are border cities with a unique combination of distance and entanglement. Other large twin border cities, such as El Paso and Ciudad Juárez, maintain a flow of social, political, and economic exchange. For example, El Paso has maintained a city government committee on border relations, established in 1984 and revitalized in 2009, that aims to “ensure that the local governments in the region coordinate their actions so that they: at a minimum, not operate against the interests of the other and the region as a whole; and, at a maximum, aid each other to profit from the natural advantages of the region” (Payan 2010:17). Further, the 2012 approved city development plan for El Paso considered such concerns as border health issues, binational education, immigration reform and border transportation, among other issues impacting the binational region. It is understood that the health of one city, in relation to such issues as real estate, employment, health care, education, and law enforcement, has significant impacts for the other. Peña (2007:18)

border. These works emphasize processes of violence, differentiation, and dehumanization that are enabled at the unique space of the border zone.

argues for a similar sense of cross-border entanglement in the context of her research on women’s activism in the El Paso-Ciudad Juárez. She states that, “the border’s sociopolitical and economic context itself motivates women in El Paso and Ciudad Juárez to seek each other out and organize across class and ethnic boundaries.”

In contrast, San Diego and Tijuana are deeply economically entangled and socially estranged. These two cities share a history of exchange through the recruitment of laborers from Tijuana to compensate for San Diego labor shortages, the use of Tijuana by United States citizens as a site for entertainment and access to goods during the prohibition era, and particularly through the border industrialization program and the implementation of NAFTA in the mid 1990’s (Lorey 1999). The period from the establishment of NAFTA in 1994 to the present day has seen the tightening of business partnerships and the explosive growth of the Tijuana population. Despite the fact that the Tijuana/San Diego area is the “busiest migration corridor in the western hemisphere” (Katsulis 2008:4), and thus an obvious site for considering the possibilities of binational collaboration and engagement, the two cities remain sharply separated by United States border enforcement and immigration.

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11 The Border Industrialization Program, instituted in 1965, promoted the economic development of the Northern México border region through the implementation of special tax laws that enabled non-Mexican corporations to establish factory-based production in México as long as goods were shipped back into the United States for assembly. This led to the explosion of Maquiladoras in Northern México and contributed to the population boom in Tijuana over the last few decades of the 20th century. One aspect of its aim, largely unsuccessful, was to provide increased employment in México in an effort to reduce Mexican migration into the United States.
policies. As Durand and Massey (2003:234) state in their discussion of United States border policy over the last four decades:

the US pursued an escalating politics of contradiction, working its way toward integration while simultaneously insisting on separation...In the ensuing years, the US government would spend increasing financial and human resources to demonstrate that the border was ‘under control’ and not porous with respect to migrants, even as it was becoming more permeable with respect to other flows.

Durand and Massey chart United States federal policy towards the border in broad strokes. But because individual states have broad latitude to determine their own protocol in relation to cross-border engagement, these policies are enacted in a wide variety of forms across various U.S. and Mexican states along the border. Thus far, the city of San Diego has followed this federal trend, resisting other forms of integration while increasing economic interconnection. Because of this position, few successful collaborative projects exist between the two cities. Those collaborative efforts that are in operation focus largely on environmental issues and are, for the most part, extra-governmental coalitions.12 Interestingly, San Diego Mayor Bob Filner, elected in 2012, has made efforts, in collaboration with his fiancée, Bronwyn Ingram, to forge broader social connections between the two cities through activities including establishing a San Diego office in the city of Tijuana, a ceremonial opening of a rusted gate in the United States-México border, and the facilitation of a joint San Diego-Tijuana bid for the 2024 Olympic games. Notably, in a survey conducted in 2012, San Diego residents ranked forging both social and economic connections with

12 See Sparrow 2001 for a discussion of how environmental and economic collaborations occur without the accompanying governmental forms of collaboration.
Tijuana lowest on their list of priorities. Highest on the list of priorities included such aspects as protecting the local economy and preserving San Diego parks.\(^\text{13}\)

In light of the hostility produced by a highly militarized border zone, and despite recent mayoral efforts, there is little social integration or governmental collaboration. Social ties that do exist are largely constructed through individual family and social networks rather than facilitated through a broad network of more formalized connectivity between the two cities. This lack of social ties and collaboration between governmental entities gives shape to the absence of clear protocol for foster care situations that engage individuals living on both sides of the border, as official means of collaboration would rely on an acknowledgement of connectedness that United States government officials are reticent to accept. As such, although child welfare cases often draw in family members on both sides of the border there is little in place for formalized collaboration between the two social service or judicial systems. Laura, a veteran social worker and head of a regional office in San Diego County, lamented to me that many foster children perhaps only ten physical miles from their grandmother’s home in Tijuana would be placed in a foster home with strangers in San Diego. Laura understood this to result from the, in her eyes, unnecessary difficulty of cross-border collaboration, not because a San Diego foster home was understood to be best for that particular child. As I will discuss in later chapters, however, some social workers and legal actors did understand the best interest of the child to be equated with “not México,” even if

\(^{13}\) See Florido 2013a, Florido 2013b, Florido 2013c, and Repogle 2012 for a discussion of these events.
family members, regardless of their country of residence, were officially positioned by the child welfare system as always preferable to a non-relative foster home. In the chapters that follow, I examine how and why cross-border collaboration and foster placement are such difficult goals and examine how these obstacles are underscored by concerns that equate non-United States citizens with suspect parents.

*Theoretical Framework*

The focus of this dissertation is on a set of practices that can be productively framed as state interventions into the nominally private sphere of the family. As I explore in further detail in Chapter Three, the family has been positioned throughout United States history as a crucial site for the production of future citizens and gendered subjects. It is positioned as a marker of national well-being and as a site for the reinforcement and production of hierarchies of race, gender, and class (Collins 1998). In these ways, the individuals acting in the name of the state take on the project of validating particular families while delegitimating, and sometimes dismantling, others. In order to address broad questions of state-family relations I approach the “state” not as a force that exists abstractly but as a concept that comes into being through the interactions of those who act in the name of the state, most often social workers, child welfare administrators, lawyers, and judges, with those who understand themselves to be acted upon by “state” powers, including but not limited to foster children and their biological and foster parents. I here draw on Gupta and Ferguson’s suggestion that the state can be understood as a “bundle of social
practices,“ practices that produce an experience of the state as a unified, authoritative structure (2002:992).14 As Gupta (2006:28) argues:

States, like nations, are imagined through representations and through signifying practices; such representations are not incidental to institutions but are constitutive of them. Given this, the study of everyday practices and of the circulation of representations that constitute particular states might tell us not just what they mean, but how they mean, to whom, and under what circumstances.

Families’ engagement with the child welfare system is constituted through interactions with social workers who, while operating within the constraints of the institutions in which they are embedded, rarely have clear guidelines on how to proceed. And, as I will describe below, the sense in which social workers can be understood to be muddling through is often painfully apparent to the family in which they are intervening. Yet this exposure does not undermine the state authority that the social worker embodies or their ability to set the terms of that family’s engagement with the child welfare system. In this way, the everyday practices of social workers and legal actors construct the state as a meaningful force in the lives of families that come under the purview of the child welfare agency.

One approach that foregrounds the policies and practices that construct state interventions into families is Laura Briggs’ book, Somebody’s Children: The Politics of Transracial and Transnational Adoption (2012). Briggs traces the history of adoption practices in the United States with a focus on the removal of Native

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14 See also Mitchell 1991 for a discussion of the “state,” as an “effect,” produced through both grand gestures, such as the militarization of borders, as well as everyday interactions.
American and Black children, attending to the policies and practices that surrounded their removal and the larger political landscape in which “child protection” was situated. Briggs positions the state removal of children not as evidence of the treatment of children or the hardship of their lives but as an “index of vulnerability” about the community from which they were removed. For Briggs, an examination of how and when particular populations of parents lost their children helps to illuminate the political subordination of those populations and the ongoing reproduction of that subordination through the removal of children. Though Briggs attends to a long history of state intervention through child removal, she argues that policy changes that took place in the 1960s are crucial for understanding the child welfare system as a key producer of the “vulnerability” of particular populations of parents. At this time, Northern state legislators were angered by Southern state officials who were regularly refusing ADC payments to single black mothers by citing conditions of immorality.\footnote{Aid to Dependent Children (ADC), later renamed Aid to Families with Dependent Children (AFDC), was instituted as part of the Social Security Act of 1935 and ended under Bill Clinton’s presidency in 1997. The policy’s aim was to provide financial support to impoverished children, particularly targeting those living in single mother-headed households.}

Northern legislators attempted to solve this problem by instituting the Fleming Rule in 1961, which required that if mothers were deemed unsuitable for state support on grounds of morality their children should be removed by state authorities and placed in temporary care situations. The assumption was that southern states would resume approving ADC payments under pressure since these payments were only a
fraction of the cost of maintaining a child in out-of-home care. The opposite occurred – the first year this new policy was implemented state authorities removed over 150,000 children from their parents’ custody under the guidelines of the Fleming Rule. Briggs (2012:42) argues,

In a place and time where it was and is repeated as a truism that the one thing a person never recovers from is the loss of a child – and this means death, because it is almost outside the (white, middle class) social imaginary that one could lose a child to the state – these numbers reflect a willingness to inflict an incredible depth and breadth of pain. Justifying these actions required a dehumanization of those whose children were taken or an extensive sense that these children were in danger (when they had not been in danger before).

In this sense, “vulnerability” indicates a population that has been politically subordinated and positioned as less-than-human, whether it be single, unwed mothers prior to the 1960s, Native American families prior to the sovereignty rights movements, or Black mothers during the struggle for civil rights (Briggs 2012:282).

Following Briggs, I situate my analysis of the contemporary child welfare system and its intersection with immigration enforcement within a political moment where there is much to be gained, for particular individuals, from increasing the vulnerability and attacking the humanity of immigrant families. In this approach I draw not only on histories of United States intervention but on the history of child removal as a tool for the subordination of indigenous communities in the settler colonial states of Australia, New Zealand, and Canada (Haebich 2000, Fournier and Crey 1997, Armitage 1995, Jacobs 2009, Read 1981). I ask what might be illuminated by situating foster care practices and custody decisions within a history that approaches child removal, rather than child protection, as the central aim of the child
welfare system in the United States context. In this way I tack back and forth between the stories of individual children, the manner in which their removal and protection has shaped their lives, and the way that their stories are one thread in an entangled mess of forces shaped by categories of politics, race, class, and citizenship in the contemporary United States.\footnote{Here I draw on Stoler’s (2002) approach to the politics of categories, and the ways that institutional categories are productive of racial distinctions. I discuss her approach in more detail in Chapter Three.}

The stories told about children throughout this dissertation take shape through a variety of forms. Case files constitute the formal history of children’s stories within the child welfare system – files that are both highly regulated and also subject, with little oversight, to the whims of the social workers who assemble them and fill out their pages. Case files are notoriously incomplete and disjointed. They crystallize the narrative of a child’s journey through the child welfare system into a series of fragments that do not progress smoothly, but rather are structured by gaps, absences, and leaps in time. Filtered through the perspective of a rotating cast of social workers, formalized paperwork processes do little to tame the heterogeneity of the messy lives of children and families. These files often primarily contain seemingly innocuous information - dates of birth and entry into the foster system, vaccination records, and placement addresses. But they also contain notes that congeal complex histories into categories such as “adoptable” or “hard to place,” and translate complex relationships between children and parents into records that indicate “willful neglect,” or “physical abuse.” These files not only construct a particular history that follows a child as the
file moves among social workers and agencies but also shape placement options for
the child and undergird predictions about a family’s possible future.

Social workers and foster parents also tell stories, often to make sense of the
removal of a child or to position biological parents as lacking in a way that justifies
both removal and placement decisions. Sometimes these stories leak into the
formalized files through the inclusion of email exchanges or notes that social workers
record about parents during supervised visits. But often these narratives remain in
oral form only, running above and below the formal file, embellishing the story,
filling in the gaps, guiding what details may be included or omitted from the
formalized record. Colleagues, co-workers, and the friends and family of social
workers serve as the audience for these informal narratives. These stories leave
broader room for speculation, for intuition, for laying blame on some and absolving
others. Social workers must contend with individuals who are collapsed into
categories of “good” and “bad,” of “loving mother” or “violent abuser.” Judges,
lawyers, and social workers must take on the unhappy weight of making decisions
about the lives of parents and children while never having enough information to be
sure that the decision was the “right” one. No termination of parental rights that I
witnessed was enacted by any social worker or legal actor with a light heart and
without a great deal of conflict, even in cases where abuse or neglect had been
extreme. Stories that fill in the gaps of social workers’ and foster parents’ knowledge
of the details of a particular case help individuals to make these decisions with more
ease and less concern or regret.
Throughout this dissertation, I focus on translation as a central mode through which these stories are employed in a struggle to make sense of the entanglements of individuals and institutions. Because the child welfare system is charged with making decisions about child custody and child protection, social workers are necessarily caught up in making determinations about good and bad parents. I approach these determinations as acts of translation where social workers and legal actors must convert the actions and intentions of parents and families into institutional categories of fit and unfit parents. As such, the existence and implementation of these categories compels parents to contend with interpretations of their actions within these categories. It also enables institutional authorities to understand their own decisions as simply applying the appropriate label to a parent, based on an institutional definition. Thus categories of fit or unfit, good or bad, trump other designations such as “under-resourced,” “impoverished” or “mentally-ill,” that might seem to defy categorization as evidence of “good” or “bad” parenting. In this sense, I understand translation as a mode of production where “bad” parents come into existence through processes of institutional categorization.¹⁷

In this approach, I follow Bowker and Star whose work Sorting Things Out (1999) offers a comprehensive analysis of the politics of categorization and the ways that categories are experienced as natural even while they operate as potent sites of

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¹⁷ See De Vries (2002) and Nuijten (2004) for a discussion of the concept of a broker/translator, and the role that translation plays in allowing certain objects to be constructed in particular ways at particular moments, such that the translation process is implicated in the production of the objects themselves.
political and social struggle.\textsuperscript{18} For Bowker and Star, classification systems, while understood to be a necessary feature of social interaction, can never be merely descriptive. These classifications are productive of hierarchies of value, serving as key technologies for excluding certain subjects while positioning others as normative and natural. As such, I ask how the interactions between social workers and families might facilitate the equation of illegality with “bad” parenting or translate instances of involuntary deportation into the institutional category of “child abandonment.”

I employ the concept of translation not only to make sense of how categories operate but also to make sense of the inter-institutional engagement that occurs at the juncture of the multitude of organizations that constitute the child welfare system. As legal organizations, government institutions, and non-profit agencies come together, they do so through their own sets of agency protocols, employing the jargon, acronyms, and legalese that constitute their users as members of particular institutions. Terms such as “bio-mom,” or “TPR’d” (shorthand for saying that someone’s parental rights were terminated, as in “We TPR’d her”) serve to demarcate the expert from the non-expert, as I will discuss in further detail in Chapter Five.\textsuperscript{19} Yet while these terms may be employed across institutions, they have different meanings for different actors, and figure into their daily practices in varied ways.

\textsuperscript{18} See also Cohen’s (1998) ethnography of Alzheimer’s in India which works to denaturalize processes of categorization by asking not what categories themselves mean, but why and how particular categories come to matter in a given context. \textsuperscript{19} See Carr 2010b: 20, Agha 1999, and Agha 2005 for a discussion of register, “a recognizable, if specialized, linguistic repertoire that can include technical terms or acronyms, specific prosodic practices, and non-verbal signs such as facial expressions or gestures” (Carr 2010b:20).
Following Clifford (1997), I approach translation as an element that gives shape to all interactions, where an ongoing and strategic struggle for “imperfect equivalences” is, in a sense, a defining characteristic of all engagement among differently situated people. As such, the mode of translation, as I employ it, attends to how meaning is constituted through movement across contexts and to how the seemingly same referent takes on different meanings and facilitates different actions and interpretations in such contexts as a family’s home, a social worker’s file, or a courtroom exchange. Following Brenneis (2004), who considers translational processes in the institutional context of funding agencies, I explore the way “key terms and phrases move and circulate across various domains and of how their meanings and prescriptive implications are transformed and negotiated in new settings” (2004:582). I examine not only the processes through which the messy lives of individuals are translated into concrete legal categories but how modes of translation and analogy-making enable engagement among disparate agencies and actors. The language through which these institutions interact enables the child welfare system to come together, facilitating exchanges among individuals who use overlapping terms and referents, but with vastly different meanings. These exchanges necessarily engage asymmetrical power relations as the institutional authority among various agencies and actors plays out.

20 See also Briggs and Bauman (1990:75) for consideration of the movement of a text across contexts as a transformational process, where one must attend to “what the recontextualized text brings with it from its earlier context(s) and what emergent form, function, and meaning it is given as it is recentered.”
Rafael’s (1988) *Contracting Colonialism: Translation and Christian Conversion in Tagalog Society under Early Spanish Rule* considers the ways that translation presupposes a hierarchy of language, where one language is made to conform to the structures and meanings of another. In the context of his discussion of Tagalog speakers under colonial Spanish rule, Rafael considers specific moments of untranslatability as points of impenetrability. For Rafael, these impenetrable moments create the space for multiple interpretations, a multiplicity that destabilizes a clear language hierarchy in the context of colonial rule. Although the interactions I detail throughout this dissertation are not always across languages, they are always across hierarchies of power and authority. Legal actors, social workers, and parents enact their relationships through language, among other modes of exchange and communication, and their employment, or reworking, of each other’s terms and ways of speaking serve to construct, reproduce, and occasionally undermine the power relations that mark the terrain of child welfare. In this way, I do not limit my approach to translation to cross-border or cross-language exchanges. Rather, I engage translation as a framework for understanding complex interactions among myriad institutional authorities and the families entangled with the child welfare system.

*A note on foster parents*

Foster parents comprised one of the most complex categories in my research site. They ranged, in their own eyes and in the eyes of social workers, legal actors, and biological parents, from parents (no qualifying adjective necessary) to caregivers, employees of the state, or “just the babysitter,” as one six year old boy with
encouragement from his biological mother, called his foster mom. Foster parent duties ranged widely from transporting their foster children to school, medical appointments, and play dates, to feeding (and sometimes breastfeeding) their foster children, soothing them in response to nightmares and bedwetting, holding them as they cried after a visit with their parents, holding them as they cried because they did not want to visit their parents, helping them with homework, and teaching them to read, to dress themselves, to sleep through the night.

Towards the end of my research in 2011, the county of San Diego Office of Child Welfare was beginning a new campaign to refer to foster families as “resource families” along with the slogan “Nurture a child for a little while...or a lifetime.” The campaign was responding in part to a shift in social work policy that promoted what were referred to as “fost-adopt” families. These were families that fostered children and supported the goal of reunifying them with their biological families while at the same time committing to adopt the child if the social worker determined that the goal of reunification was no longer attainable for the child’s biological family. This policy was supported by a new program whereby all foster family applicants were also certified to adopt (a separate, more detailed, and lengthier process) so that should the opportunity and desire to adopt arise there would be fewer institutional obstacles and a smoother transition.

This was a significant departure from previous institutional policy which had frequently moved children from the care of foster families who would have loved to adopt them into the homes of couples who were not fostering but who were on a
county adoption waitlist. The distinction between families who fostered hoping to adopt and families who waited to adopt frequently fell along class lines, with lower-income families fostering while wealthier families waited for a child whose parental rights were already terminated. Social work beliefs about the qualities of an “ideal” parent, largely rooted in characteristics associated with a particular socio-economic status, were eventually undercut by popular notions that parent-child bonding was the most important element in choosing a permanent placement for a child, along with a child’s sense of permanence and stability. These ideals positioned foster families who were already caring for these children as optimal long-term placements. As such, foster families occupied a range of positions within the child welfare system – from temporary care-provider to permanent family.

Organization of the Chapters

This dissertation is situated within the ambiguous terrain of child welfare at the United States-México border. There are no clear pathways to navigate, as these agencies and the actors entangled in them come together in unpredictable ways, demarcating the boundaries of the field as they interact. Throughout the pages that follow, I engage the juncture of multiple legal systems, state and federal policy, public and private child welfare organizations, government agencies, and NGOs. I follow families, children, and agency authorities as they move through and among a constellation of agencies and institutions. As the dissertation tacks back and forth between different institutions, tracing children’s movement through multiple, overlapping, disjointed systems, I ask how processes of translation enable this
disparate system to come into being as a concrete force in the lives of children and families.

The following chapter takes up a detailed examination of the child welfare system in San Diego County, attending to the complexity of locating the boundaries of the child welfare apparatus itself. In this chapter I focus on Esperanza, the small foster family agency where I carried out much of my research. Through an exploration of the cases of children placed in Esperanza’s custody, I examine the way the foster system operates through the overlapping interactions of a multitude of agencies. I attend to the way that knowledge and decision-making power are unevenly distributed among agencies and individuals and ask how these imbalances impact each individual case and contribute to the shape of the child welfare apparatus as a whole. I argue that it is the disjointed nature of the apparatus itself that enables discretionary practices and translation processes to shape the workings of the agency in such profound ways.

Chapter Three situates the research in the context of a history of child removal in the United States with a focus on state interventions during the 19th and 20th centuries. I attend to the ways that families and children have been placed at the center of state concerns about political authority, citizenship, and population. Through an exploration of moments when individuals acting in the name of state authority remove children from their parents’ custody, I ask how the act of child removal has been wielded as a political force. I conclude the chapter by asking what
might be illuminated through viewing the workings of the contemporary foster care
system not only through the frame of “child protection” but of child removal as well.

Chapters Four and Five shift back to my 2010-2011 research to explore how
citizenship and cross-border issues present particular obstacles to reunification fro
families caught up in the child welfare system. Chapter Four focuses on the
intersection of the child welfare apparatus with immigration enforcement in the San
Diego-Tijuana area. Here I examine the uneven collaboration between social workers
and legal actors. I ask how agents of various institutions interact across registers and
how they use shared terms towards disparate ends. I ask how the lack of formal
collaboration between overlapping legal systems operates, and what constraints and
possibilities arise from their disjointed entanglement. Chapter Five focuses on the
categories produced by the overlapping of these two legal systems. In this chapter I
ask what sorts of translations position non-United States citizens as “bad parents” and
examine what happens to children entangled simultaneously in these two legal
systems. Here I explore the stories of a number of foster children in more detail,
asking how we might come to understand their trajectory as arising from these
uneven and uneasy collaborations.

In sum, my aim is to consider how the array of conflicting, complicated
institutions which constitute the child welfare apparatus function as a key site where
the limits of citizenship and legitimate family forms are produced. I explore these
processes through an analysis of the everyday practices of removing and protecting
children and through questioning what determinations about who has the right to
parent may reveal about the family as a site for the production of the boundaries of the state.
Chapter Two:

Mapping Fragments: The Child Welfare Apparatus in San Diego County

Corinne and I sit on a park bench, trying to observe as unobtrusively as possible, while Michael and Miriam explore the playground with their mother and grandmother. Miriam, a few months shy of two years old, dangles awkwardly beneath her mother’s arm as she balances her cell phone under her ear. The grandmother stands watching as Michael heads towards the swings, jumps off and walks, wobbling, along the wooden rail that surrounds the edge of the playground.

* * *

We stand in a dimly lit doorway at Abrams Children’s Home, watching three and four year old siblings play at a low table of toys. A male staff member, with a badge, stands back, watching them quietly. “These ones are getting picked up by a relative,” our tour guide explains, “they never really enter our facility.”

* * *

I am holding Maya on my hip, as Corinne carries her car seat into the building, since neither of us is strong enough to haul both, together, up the stairs and into the elevator. We are bringing Maya from her local daycare to a supervised visit with her father, Patrick. Maya opens her eyes wide and makes a whimpering noise as the elevator ascends. I don’t think she likes the feeling of the upward movement. As we exit the elevator, Patrick is there and Maya moves eagerly into his arms. He doesn’t glance at me, his focus all on Maya, but I feel strange that he doesn’t know me, an unfamiliar woman holding his child.

The fragments outlined above give glimpses of the dispersed nature of the child welfare apparatus, which occupies the spaces of public parks, office buildings, and archived files. Although residential homes for children do exist throughout San Diego County, large, centralized homes for children who have been taken into child welfare custody no longer operate as the site of the child welfare apparatus in the county. Children are distributed throughout a multitude of family homes based on family networks or the county in which the child was taken into state custody. Foster
children are present in almost every school, neighborhood, and region in the county. For this reason the foster care system appeared to me as both a localized and widely distributed blur. When I imagine the foster care apparatus in my mind, I do not first picture the county courthouse where custody and removal decisions were authorized, the child welfare offices where parents were buzzed in to meet with their social workers, or the temporary shelter where children went while awaiting placement, arriving in the cars of police officers or county social workers to be screened, photographed, and sorted into temporary cottages. Social work, one could argue, is rooted in paperwork, case files, and court documents. These objects mark out the formalized, official terrain of the child welfare system. But for me it is in the passenger seat of a too fast car driven by a young, frazzled social worker, cell phone clutched tightly between shoulder and ear. It is Taylor being told to eat his mac and cheese, four year old foster brothers, Lucas and Bailey, laughing while rolling down a grassy hill, Michael shyly coloring with a social work intern, plying him for thoughts on his “forever” family.

This chapter engages the question of where the foster system is located. The boundaries of the system that foster children enter are unclear. Opinions differ as to who is primarily responsible for guiding and shaping children’s movement within, and eventually out of, that system. In a 2005 opinion piece for the San Francisco Chronicle, William Vickrey, Administrative Director of the California courts, stated:

We need to address the compartmentalization of the government entities responsible for foster children. At present, there is no one state agency with authority for children in foster care. The disjointed governmental "parenting" of foster youth creates a failure to share
information and a lack of coordinated decision-making. The results for too many former foster youth may be unattended health and emotional needs; poor educational attainment; and an adult life of homelessness, unemployment and despair.21

In this chapter, I take up Vickrey’s concern about the disjointed collaboration among the multitude of agencies and organizations responsible for shaping the lives of foster youth.

The child welfare system, although it may appear from an outside gaze to be a smoothly functioning system is defined by its fragmented structure. This disjointedness, though understood to be a problem, is also central to how the system itself operates. This resonates with theorists of the state who argue that it is the everyday practices of actors rather than an overarching structure that produces the experience of the state as a monolithic, anonymous force (Gupta and Ferguson 2002, Mitchell 1991). Parents and children who were caught up in the child welfare system experienced the force of a state powerful enough to intervene in family’s lives through the removal and placement of children. Yet these families were entangled amidst a multitude of agencies and actors, which produced an experience of state intervention that was not monolithic so much as it was schizophrenic and disjointed.

A prominent distinction within the child welfare apparatus was between the county agency and its county employed social workers on the one hand, and small non-profit foster family agencies, which where commonly referred to as FFAs, and the FFA social workers who staffed these, on the other. These distinctions are not just about the intersections and collaborations between different agencies, but the uneven

distribution of knowledge and decision-making power across an array of agencies and organizations. As I will discuss below, social workers, legal actors, and family members possess vastly different forms of knowledge about particular children and the cases in which they are enmeshed. Not only are different forms of knowledge differently valued within the child welfare system but these ways of seeing and understanding orient each individual towards the child welfare apparatus and configure their interpretation of events as they unfold. Throughout this chapter I consider the numerous agencies and individuals that shape the course of a child’s experience in the child welfare system. I examine how these agencies are positioned in relation to each other, and what gaps, collaborations, and hierarchies of authority shape their engagement. I consider, both here and in Chapter Five, the ways that narratives about children’s histories and futures are constructed through case files, social worker discussion, court negotiation, and family testimony. And finally, I explore how uneven collaborations among these disparate actors and agencies shape the trajectory of children as they move through this system.

*Searching in the dark*

During the bulk of my 2010-2011 research Corinne, a young, five-foot tall woman with a cascade of unruly blonde curls worked as both the sole social worker and program manager of Esperanza. Corinne, with her accented English, liked to point to herself with an impish grin, saying “This is what a Mexican looks like!” Although she had grown up in Baja California and considered it her home, she had attended a boarding school in the wealthy San Diego suburb of La Jolla and had gone
on to get a psychology degree and a license in Marriage and Family Therapy from the University of California at San Diego. She had fallen into her work at Esperanza quite by accident, beginning as an intern during her student years. She took over management of Esperanza when her friend, a former Esperanza social worker who had gotten Corinne the initial internship, married and moved away.

Corinne was perpetually late, so I often found myself alone in the Esperanza offices in the morning while Corinne frantically made her way to the office. I was settling into my office one morning, awaiting Corinne’s arrival, when the phone rang with a San Diego County Child Welfare Services phone number. I answered to a county social worker, asking if she could have the address for foster parents Anna and Josie, in order to update her file. I was astonished – as I had not heard from Corinne, the Esperanza social worker and program manager, that any new children had been placed with Esperanza – but kept the questions to myself as I got the social worker the required information from our database and assured her that we would fax back the placement paperwork as soon as Corinne arrived at the office. I hung up and scoured Corinne’s desk but could find no placement information, no initial phone screening paperwork, nothing. The only evidence of these new children’s existence was the placement form that arrived in the fax machine, shortly after I hung up the

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Anna and Josie were one of two same-sex couples who were foster parents at Esperanza during my research period. The degree to which same-sex couples were welcomed as foster parents varied among agencies and social workers. Esperanza was committed to supporting and recruiting same-sex foster parent couples although it occasionally strained their relationship with some of the church groups that supported the agency by participating in foster parent recruitment efforts. The San Diego dependency courts were perceived by same-sex couples to be quite supportive of same-sex couples interested in both fostering and adoption.
phone. The paperwork included the children’s names, Danaira and Isaiah, and the
date of transfer into Esperanza’s custody, but nothing more. I had a stack of work in
front of me but no information with which to complete it. The new children would
need to have files made and be entered into the Esperanza digital database. I made
two empty files, one with each of their names, laid them on Corinne’s desk, and
waited.

I spent the next half hour alternating between pacing the empty office hall and
trying to focus on the archival research I had been doing in Esperanza’s placement
files, counting the minutes until Corinne arrived and could fill me in. I was excited
about these placements partly because Anna and Josie had been hoping for a new
baby since their foster daughter, eight month-old Maya, had been moved to a county
foster home. Anna described mothering as part of who she was. She had been born in
Tijuana, the oldest of nine siblings, who she had a hand in raising. Josie, Anna’s
partner, with her stern demeanor, and the skull tattoos on each of her kneecaps, had
surprised Corinne with how attached she was to Maya. Although Anna had grown
kids, Josie did not, and they were hoping to foster a baby that they might be able to
adopt and raise together. I was also excited about these new children because
Esperanza had been on a drastic decline in placements over the last three years, from
having as many as twenty-seven children at any one time down to only four children
by early 2011. There had been ups and downs throughout that period but the descent
was slow and steady. This was due both to the difficulty of recruiting new foster
families as those initially certified adopted their children and stopped fostering, and to
tense relationships between Esperanza and the county, which had ultimately led to a complete staff turnover at Esperanza between 2009-2010. These tense relations, which I discuss in further detail below, were based largely on social workers and administrators in the county child welfare offices feeling that Esperanza staff had overstepped their role as contractors for the county by advocating outcomes for foster children that were contrary to county recommendations and making a general nuisance of themselves in court.

When Corinne finally arrived, I accosted her in the hallway, following her to her office where I pummeled her with questions as she put down her bag and took off her coat. She explained that the children were siblings and had been removed from their parents’ care due to the youngest child, two-month old Isaiah, testing positive for marijuana at birth. He and his eighteen month-old sister, along with three older siblings, had been at Abrams Children’s Home for just under thirty days, the maximum length of time that a child was expected to remain in the temporary shelter. After thirty days the older siblings had been placed – two in a county foster home and one in a residential treatment facility. The two youngest, Danaira and Isaiah, had been placed together in another county foster home. The county foster mother who took in Danaira and Isaiah also had two young children of her own. The care of the foster children, Danaira in particular, proved too much for the foster mother to handle. Corinne had been home sick Wednesday and Thursday and had arranged the
placement from there – hence the lack of paperwork in the office – and the children had been transferred directly from the county foster mother to Anna and Josie.\footnote{Most commonly, social workers facilitate the transfer of foster children from one home to another, picking up the child and any belongings at one home or school and transporting them to the next “placement.” Occasionally, families who are veteran foster parents or whom have strong relationships with their social workers will be trusted to complete this transfer process without any official oversight.}

**Abrams Children’s Home**

Corinne was able to arrange for us to have a tour of Abrams Children’s Home, the temporary receiving shelter for children where Danaira, Isaiah, and their siblings had begun their experiences within the foster care system. Abrams was made up of a complex of buildings – main offices, a school, a nursery, and six cottages where children were grouped by age and gender. The buildings, in pale shades of cream, green, and blue, surrounded a grassy inner courtyard where children could play and visit with the therapy dogs that came for weekly visits. The facility was gated and locked to the outside but the buildings were positioned so that the fencing was not pronounced. Although Abrams was believed to serve younger children well, many social workers felt that adolescents were unhappy in the confines of an institution where they were separated from previous friends and schoolmates. The number of adolescents who left Abrams of their own accord supported this assessment. For example, during 2008 over one hundred instances of teenagers going AWOL occurred at Abrams. Although staff discouraged children from leaving the center they did not physically restrain them from doing so, and many youth chose to sneak off from a field trip or to scale the Abrams fence.
The center felt as though it was somewhere between a pediatrician’s office – with waiting rooms, fish tanks, and friendly women behind sliding glass windows – and a children’s library – with cozy places to sit, children’s art, and cheerfully painted walls. Once children were admitted to the facility, a process that included a medical screening and developmental assessment, they moved quite freely between their home cottage and spaces for school and play. Abrams offered a wide range of services to its temporary residents including on-site counseling and medical services, visitation space for approved parents or relatives, on-site schooling for all ages, and round-the-clock staff and volunteers to work with the children. Children were also provided with some field trip opportunities to facilitate their interaction with community members outside of the Abrams staff and volunteers.

 Abrams was built in 1994 to replace the San Diego Children’s Center, which was notorious for having more children in residence than it had space to accommodate. The informational video we were shown at the beginning of our Abrams tour included photographs of the San Diego Center right before its closure, with children in roll-away beds lined up in the hallways. It had earned a negative reputation as overrun and underfunded and was purportedly utilized by social workers and law enforcement officers only as a very last resort. Contrary to this history, approximately 70 percent of children who were removed from their homes in San Diego County during 2010-2011 spent at least some time at Abrams. During their stay, which averaged ten to twelve days but could range from a few hours to up to thirty days, their county social workers scrambled to find the children a place either
with their own relatives or in a foster home. Due to current policy trends, which suggest that family settings are more conducive to the emotional and psychological well-being of a child than institutional settings, the goal was for a stay at Abrams to be as short as possible. Although Abram’s cottage-style housing model was meant to replicate some aspects of a family setting, children were cared for by a rotating group of staff and volunteers, not parents. Abrams was equipped to house 200 children, and while it had been stretched to house up to 300 in the early 2000s, its population during my 2010-2011 research fluctuated between 100-150 children. These children ranged in age from infancy to eighteen years old.

During the period of my research, the number of foster children in San Diego County hovered around 4,000. A 2011 report to congress estimated 415,000 children in foster care nationwide, with 250,000 entering care during 2010 and 248,000 exiting the system that same year.\textsuperscript{24} Roughly 55,000 of these children were in the state of California. With children entering and exiting foster care daily, many lingering in the system beyond twelve months, and numerous children re-entering the system repeatedly, it was difficult to get a concrete sense of how many children and families were caught up in this system at any one time.\textsuperscript{25} The general decline in numbers that Abrams staff noted was reflected statewide, with the number of children in care

\textsuperscript{25} Although an average length of stay in the system is an ever-changing figure, in 2010 the national average, according to the \textit{Child Welfare Outcomes 2007-2010 Report to Congress}, was 25.4 months (2011:383).
declining from 101,000 in 2000 to about 55,000 in 2010, and countywide, with the numbers falling from 6,800 in 2000 to just under 4,000 in 2010.\textsuperscript{26}

I asked our Abrams tour guide, Tanya, how staff accounted for the drop in numbers of children admitted to the shelter over the last decade. Tanya told me that they really didn’t know, but their hope was that it was due to social workers becoming more adept at finding relatives who would take children in before removing them from their parents’ custody. Another theory was that fewer children were being removed from their homes because they were being offered more effective in-home support services, such as counseling or access to subsidized housing or child care. County social workers I had spoken with previously suggested that drops in numbers were in fact due to a state-level mandate to remove fewer children, a mandate they understood to indicate a preference for tolerating higher levels of abuse as no additional resources for in-home support accompanied this policy change.

Categories of abuse and neglect are difficult to define and the understandings of and parameters for acceptable treatment of a child certainly shift over time and vary from context to context. Social workers made their determinations about what constituted abuse or neglect guided by their own experiences, perceptions, and office policy. San Diego social workers followed the California penal code in drafting court paperwork to justify the removal of a child based on a determination of abuse and neglect. The penal code laid out parameters according to the categories of physical abuse, emotional abuse, sexual abuse, neglect, and severe neglect. Parameters of

sexual abuse were outlined in detail – social workers often struggled to determine what had actually happened in cases of sexual abuse but had relatively clear guidelines to make an abuse determination based on the evidence they gathered. Emotional abuse, on the other hand, was defined as the “willful harming or injuring of a child or the endangering of the person or health of a child” (Penal Code 11165.3) which left a social worker open to interpreting the “willfulness” of the action as well as the degree of harm, injury, or endangerment.

Tanya walked us into the recently built infant home, constructed with the million-dollar donation of an anonymous donor. Each room was built to house two infants and was equipped with cribs, baby monitors, wooden dressers, and a padded rocking chair. Some rooms included a twin bed and accommodations so that teenage mothers in foster care could be housed with their own infants. The rooms surrounded a central play area and kitchen where the nursing staff prepared formula and changed diapers while a steady stream of volunteers played with the babies, who ranged from newborn to two years-old. Tanya reminded us that as cozy as it felt, it was a facility. And while the facility felt relatively warm and cozy, it was still a place where children ate in a cafeteria and had little control over the schedule of their day or opportunities to venture off the official grounds. Tanya noted that older children often complained about the fifteen-minute interval flashlight checks staff conducted overnight as reinforcing their experience of Abrams as an institution and not a home.

Further, because Abrams housed such a large number of children who frequently showed up with little notice and often in states of distress, there was a
general lack of knowledge about the details of the children’s lives. Children often arrived in their pajamas with few possessions of their own. This was due to the fact that numerous children entered Abrams via law enforcement intervention in relation to such issues as a domestic dispute or a drug-related issue, many of which took place in the evening or late at night when parents were more likely to be home. Further, since parents rarely reacted calmly to the removal of their children by social workers or law enforcement officers, the actual removal was often done in haste, with little time for children to select clothing or other items they might like to bring with them.

Rarely were children accompanied by detailed information concerning health conditions, sleeping habits, or general likes and dislikes. This was of particular concern for very young children who were preverbal and could not effectively communicate their needs. Once children were admitted to Abrams their social work file would be accessed or created, based on the specificities of their case. It was not uncommon for social workers to already be involved with a family, and to have a file of information on the child and the case, before the child was removed and placed temporarily at Abrams Children’s Home. However, children also arrived at Abrams via law enforcement officials as a result of domestic violence, unexpected abandonment, or a drug raid, in a situation where the family sometimes had no prior involvement with child welfare services. In these cases there would be no existing information on the child or family and a social worker would have to be assigned to the case upon the child’s arrival to Abrams. Lastly, children might return to Abrams while in the process of moving from one placement to another. Abrams was
sometimes the destination of choice for teen foster youth who left a placement voluntarily where they had been unhappy. Due to the lack of available information, Abrams nursing staff often had to guess what the children in their care needed, particularly in terms of eating habits or medical needs. This was part of the county agency’s rationale for recommending a maximum of thirty days at Abrams before social workers were required to have secured a relative or foster home placement. The assumption was that a family setting, even if they started out with minimal information, would soon build a knowledge base about the child that an institution handling a large volume of children would struggle to create.

On our way out, Tanya showed us the gated area where social workers or police officers could come to drop off children. Corinne asked if parents ever came looking for their children here, and Tanya explained that occasionally there were parents calling out for their children by the gate. Tanya told us that visits were not allowed until the court determined who was approved for contact with the child, and that this was especially difficult for parents whose children were brought to the shelter late at night or on the weekends. In these cases, parents would have to wait to contact their social worker during “normal business hours” to find out how and when they could see their child. Tanya explained there was little that Abrams staff could do besides trying to confirm that parents had the correct contact information for the county social worker assigned to the case.
Anna came in to Esperanza later that afternoon with Isaiah and Danaira in a stroller. Isaiah was sleeping in the stroller, only his fat cheeks, which later earned him the nick-name “Chiquis,” visible between the blanket tucked around him and the cap pulled down over his head. Danaira was shy but inquisitive, looking back and forth between Corinne, Anna, and I as we spoke, and eventually straining to get out of her stroller and run around. Anna told us that although the children were technically identified as Afro-Latino, they did not seem to speak or understand Spanish. Anna handed me a stack of paperwork – all that she had received from their previous foster mother. Although both county social workers and social workers at small foster family agencies like Esperanza keep formal files for each foster child on their caseload, foster parents are also given copies of things that they might need on a day to day basis such as medical information, social security numbers, or copies of the children’s birth certificates. This information had been handed from the previous foster mother to Anna and it was much easier for Corinne to simply copy this information from her than to request this information from the county social worker assigned to the case. Although county and FFA social workers were required to maintain case files and to share information with each other, the county social workers were notoriously reticent to send information to FFA social workers. This was understood not to be from a lack of desire to share information, although this was sometimes the case, but rather from a simple lack of time. Although foster family agencies might be penalized by Community Care Licensing, the organization who
provided them with their license, for lacking particular information in their file, county social workers would expect no penalty for failing to convey that information upon request.

I photocopied all the documents Anna had given me for Esperanza’s files while Corinne caught up with Anna on how the children were doing so far. Most of the paperwork was standard— their developmental evaluations, medical release paperwork, copies of the children’s birth certificates and Medi-Cal cards. Medi-Cal cards, the California state funded insurance available to foster children, elderly, and some qualifying low-income individuals, were among the most important elements of a foster child’s file, as without this card, foster parents could not take their children to the doctor without paying out of pocket for their care. Many foster parents did pay out of pocket, as I discuss in further detail in Chapter Five, due to either the severity of their child’s medical needs or frustration with the delay they experienced both in getting the Medi-Cal card and in finding a doctor who accepted Medi-Cal patients.27 Much of the official paperwork in foster children’s case files were similarly structured computer-produced forms with boxes to check and places to write in names, addresses, and dates. I stopped when I reached a single page, hand-written in thick marker. It was a note from the county foster mother to Anna outlining the children’s likes and dislikes, their sleeping and eating habits, and other details, mostly

27 Physicians typically received a lower reimbursement rate for services from the state of California than they did from private insurance companies. Due to this financial factor, many physicians did not take Medi-Cal patients at all. Those physicians who did accept Medi-Cal patients, often limited the number of them they would attend to, making it even more difficult than usual to get an appointment and increasing wait times significantly.
about two-month old Isaiah. Rarely, if ever, had I seen such a personal document in a child’s file. I wondered if such documents existed in county files, but imagined that county social workers rarely felt that this sort of paperwork was crucial enough to be transferred to Esperanza’s records along with the required forms for their file. The focus, for both Esperanza’s and the county’s files, was on legally necessary forms and documents. However, there was no limit on what a file could contain, and handwritten notes, printed email exchanges between foster parents and social workers, and other odds and ends would crop up in files from time to time. And because of the high turnover of social work staff, which I will discuss in further detail below, the stories that could be assembled based on each child’s file were most often fragmented and disjointed, as the information, beyond that which was institutionally required, varied according to the whims and styles of each individual social worker.

After Anna and the kids left, Corinne and I sat down to go through the forms and see what, if anything, was missing and would have to be requested from the county. Esperanza was required to have a certain set of forms in their files for all foster children placed in their care. Some of these, such as medical release forms or the Medi-Cal card, were necessary for foster parents to be able to care for their foster children on a daily basis. Others, such as the form that legally placed a child in Esperanza’s care, were legally required but only very rarely looked at by anyone other than the social worker who created, faxed, and filed the form. I pulled out a scrap of paper from the file on which was jotted a name, “Jennifer,” a phone number, and a note that read, “weekly therapy.” Corinne wanted to know what kind of therapy
this was since this information would have to be included in the treatment plan she was required to write within thirty days of the children’s placement in Anna’s home. She asked me to call to track down some further information. I wandered into the intern office where I dialed the number, receiving an automated recording stating that the number was no longer in service. I walked back to Corinne’s office and explained. She suggested that I call the general county number and see what I could find out. “You want me to call the county and ask for Jennifer?” I said, “We don’t even know her last name. Or what kind of therapist she is.” “Truuuuue,” said Corinne, drawing out the word and leaning back in her chair, “I guess we’ll just ask Anna next time we see her.”

*Unwieldy Collaborations*

The partnership between the county office of child welfare and the numerous foster family agencies, of which Esperanza was one, was a relationship that was both precarious and murky. There was a clear lack of consensus about how and when these organizations should work together. The engagement between these organizations was not only murky from the perspective of biological and foster families, new social workers, and inquisitive researchers, but was constantly misunderstood by veteran social workers in both private and public agencies. Competing ideas about when children should be placed with foster family agencies as opposed to county homes, about the pay and service differentials between these agencies, and about what private companies were doing as contractors to a public welfare system were ongoing. For example, a county social worker that I spoke with asserted that all foster family
agencies offered higher levels of care and thus were more costly placements for children. This had to be taken into account when making placement decisions. When I explained that Esperanza foster parents actually received a lower stipend than county foster parents she spluttered, “That doesn’t make any sense!” Ideas about what foster family agency placements meant and what the financial implications were, varied widely among social workers. There seemed to be no clear policy to clarify these relationships. In an effort to address this ambiguity, the county instituted a large-scale project to formalize the relationship between its offices and private foster family agencies during the last months of my research. This process included narrowing the scope of foster family agency services, formalizing the application procedure, and terminating aspects of agency services that the county felt to be redundant with their own practices.

Dependency law, which governs the child welfare system from a legal standpoint, is legislated at the state level. However, the day-to-day workings of the child welfare system and the implementation of child welfare policy are regulated on a county-by-county basis. Thus, the county-level child welfare office is the official provider of child welfare services in the region and has substantial latitude in the interpretation and implementation of the laws that guide child welfare policy. The “county” was the ubiquitous term for the Child Welfare Agency in San Diego, used by non-county social workers, lawyers, judges, and parents alike. The Child Welfare Agency was also referred to occasionally, though incorrectly, as “CPS,” although Child Protective Services was no longer a term officially used in this region. The use
of the term “county” could be employed to signal disdain, familiarity with the system, or, in the case of biological parents and foster parents, a portrayal of the faceless, monolithic, looming authority in their lives. These aspects were not adequately captured by the more specific title “Child Welfare Agency.” Importantly, employees of child welfare services, those lawyers, social workers, or administrators that worked within the “county,” did not commonly use this term but instead used the terms “the agency” or “child welfare.”

San Diego County was divided into six regions and each region contained its own child welfare office, with teams of social workers and foster parents organized by zip code. These social workers were organized within their region according to their specialized task within the foster system – there were “hotline” workers who answered and screened initial reports of potential child abuse or neglect, “emergency response” workers who investigated allegations and decided whether to remove a child or not from their parents home, and “court intervention” workers who filed the paperwork to justify the initial removal. “Placement” workers determined the initial placement for a child who had been taken into state custody and “continuing services” workers worked with the foster child, the biological family, and the foster family for the first three to six months of placement. “Concurrent planning” workers took over these cases after the first three to six months and were charged with balancing both continuing reunification efforts and the pursuit of alternative plans for custody arrangements if the parents failed to successfully meet the terms of the reunification plan. Finally, “adoptions” social workers took over cases after roughly...
eighteen months to recommend the termination of parental rights and worked to find the children on their caseload an adoptive home. Adoptions workers were theoretically only assigned to cases where parental rights were set to be terminated. Children who reunified with their parents usually did so under the guidance of a concurrent planning social worker. However, unexpected circumstances often arose where an adoptions social worker might end up overseeing the return of a child to their parents’ custody or the child’s placement into a long-term guardianship or residential program.

Although there was some interest among social workers in a system that would allow them to follow specific children throughout their time in the foster system, the administrative position was that it was most important that social workers specialized in the different sorts of services, institutional protocols, and court interactions necessary at each stage in the progression of a child’s case. This system was preferred because county administrators believed it to promote social worker efficiency since their required tasks were focused at a specific point in a child’s trajectory through the foster system. This position privileged knowledge of institutional protocol and procedure over an in-depth knowledge of a particular child, family, or case. In this way, a child’s experience within the foster system was broken up into discrete phases, each guided by a different social worker, rather than one path through the system with a single social worker regulating the process and making the decisions from start to finish.
Those who critiqued this format of sequential social workers argued that this fragmentation promoted the loss of information during the transfer of a case from one social worker to another, insufficient reading of the case files, and a lack of social worker responsibility for, and connection to, outcomes that their decisions might promote. As Ruby, a former county social worker, noted during a training for new social workers, she could make decisions to remove a child from their parents care with the belief that the social workers who inherited the case would successfully reunite parents and child. And without any effort at all, because of the structure of the system, she could keep herself ignorant of the fact that the child she had initially decided to remove from his parents’ custody in fact grew to adulthood within the foster care system and never found a stable, permanent home.

Social workers typically visited the children on their caseloads, which might include up to thirty-five cases, once a month. For that reason children were likely to experience a progression of social workers throughout their time in the foster system, many of whom they had met only a handful of times. It was typical for a child to be assigned to a new social worker every six months. The most extreme example of this in Esperanza’s history was a child, less than two years old when he entered the foster system, whose file recorded eleven different county social workers over the first six months of his time in state custody. Because many foster parents, biological families, and advocates felt that this system of oversight was insufficient, and that the child welfare bureaucracy did not always produce the most positive outcomes for the
children under its care, foster family agencies were created to address the children understood to be the most at risk within the system.

*Foster Family Agencies*

Foster family agencies (FFAs), like Esperanza, were private non-profit organizations that worked on a contractual basis with the county-run child welfare system. The county agency perceived FFAs as supplementary service providers that accommodated foster children with “special needs,” while FFAs often articulated a belief to donors, potential foster parents, media outlets, and partner agencies, that they were actively addressing the limitations of the public foster system and hoped to be seen as models for future large-scale reform efforts.

Foster family agencies were staffed by social workers whose objective was to train and certify their own foster families, monitor the well-being of foster children placed in those families’ homes, and work with county social workers to achieve the best outcomes for these children. Contrary to the county system where children frequently moved to the caseloads of different social workers, FFA social workers stayed with the children on their caseload throughout the child’s entire time in their agency’s custody. FFAs worked with some children throughout their entire time in foster care, other children they might work with only for a brief period, even as short as a few days. In these latter cases the FFA was often providing a child a temporary home while awaiting the investigation and approval of a relative of that child, who would provide them care under the county agency’s supervision until they could be reunited with their parents. Once the child was removed from the FFA foster home
the FFA would close their file on that child and no longer be given any information by the county about the child or their case.

The county and the foster family agency social workers employed different approaches that often led to conflicts and disagreements over who actually had the best interest of the children at the center of their efforts. Foster family agency social workers in San Diego County attended monthly meetings designed to build connections across agencies and share information. Although these meetings included discussions about how to meet ever-changing regulations and child welfare policies, they often became an opportunity for FFA social workers to vent their frustrations about their interactions with county social workers and administrators. I attended a monthly FFA meeting in early December, where Corinne, eight other social workers from various FFAs, and I pulled plastic chairs into a circle to discuss how things were going in their respective agencies. A young social worker, who looked to be about eight months pregnant, sighed and said she was struggling with the trend of “premature reunification,” noting that December was a month when the county sent many children “home for the holidays” even though the families were not “really ready for the kids.” A number of others chimed in, saying that they experienced this trend every December as well. A social worker named Geoff, who was running the meeting, worked for a large FFA that served a young teenage population. He interjected to share a story on the theme of county-driven reunification that captured the attention of everyone in the room. The story was a horrific scenario involving a young girl who was placed with their agency and then reunified with her mother’s
boyfriend, after the mother’s unexpected death. He concluded his tale by stating, “there were a bunch of red flags but the county didn’t listen. Turned out the girl was being molested by the boyfriend and is now back with us [the FFA].” We all exclaimed about how horrible the story was and he responded that he was glad she was back with his agency, but that now she was there as “a victim.” He went on to say, “When the county makes up their mind, it’s going to happen.” A social worker to my left who hadn’t spoken thus far exclaimed, “People should be held accountable for that, it’s almost criminal...when you have five professionals, all of whom spend more direct time with the child, saying ‘don’t do it’, it’s not just a mistake.” Her remarks emphasized what seemed to be the general feeling in the room - that the county social workers were damaging children with premature reunification, and that if the evidence was available that they were making the wrong decision, they should be held accountable for putting their budget or other agency interests above the best interest and ultimately, the protection of a child. As such, the county was often positioned as a penny-pinching, routinized, unfeeling and unstoppable machine, while the foster family agencies positioned themselves in contrast as those who cared and who really knew what was best for the children in their care.

Although the county agency did not seem to draw on the expertise of the FFA social workers in terms of making decisions about reunification, the county perceived foster family agencies as providing more training, oversight, and support services than county workers could provide to their own foster families. For this reason, the county agency aimed to place high needs children in FFA homes where they would
benefit both from the simple availability of an extra “bed” and from the perceived specialized training and support that these families received.\textsuperscript{28} Although county social workers appreciated these specialized services they still considered themselves to be the primary service providers and decision-making authorities on each case. Though FFA social workers and administrators often felt that more collaboration would benefit all parties involved in the case, county social workers felt this demanded more of their time with little pay-off, as they would still be ultimately responsible for submitting their recommendations about placement, custody, and parental rights to the court.

However, foster family agencies in general did not view themselves as merely supplementing the county system or providing additional beds for the most needy children. Rather, they saw themselves as providing the model for how all foster care should operate. This vision included social workers with smaller caseloads and therefore time for more frequent visits, more detailed observations and knowledge about the child and the case, and a more robust sense of the elements central to a child’s well being. But perhaps the most crucial aspect of a foster family agency vision was a commitment on the part of foster families to provide a home for any

\textsuperscript{28} The term “bed” was used by social workers to refer not only to a place for a child in an institutional setting but to a place in a foster home as well. Foster family agencies were required to report to the county agency on a monthly basis how many “beds” they had available, rather than how many “homes.” This served the practical purpose of clarifying how many children the agency could take custody of, since some foster families were licensed to receive more than one child based on available space in their home. However, it also served to emphasize social workers’ feelings of pressure to simply find a place to put the overwhelming numbers of children they were responsible for, emphasizing the necessity of a “bed” over the more vague and complex notions of “home” or “family.”
child placed with them until that child was returned to their parents’ care or adopted (preferably, from the FFA’s perspective, by that foster family). This commitment was in direct response to the critique that foster children placed in county homes bounced around from one home to another. The most extreme example of this movement was a child named Jacob, who was eventually adopted by his Esperanza foster mom, after experiencing six previous placements before the age of three. According to statistical reports for San Diego County, during July 2010-June 2011, 18.6 percent of children who were in foster care for less than twelve months experienced more than two placements during their time in care. For children who were in foster care between twelve and twenty-four months, that percentage rose to 38.9 percent, and for children in foster care longer than twenty-four months, 74.3 percent experienced more than two placements during their time in the foster system.29 Because these numbers were so significant, foster family agencies felt poised to make a substantial contribution to the welfare of children in foster care if they could promote the possibility for each child to remain in a single home during their time in the system. The underlying message was that families who fostered for the county were doing it for the money, whereas FFA parents were fostering out of love or commitment to a community of children in need.

Both the FFAs and the county agency agreed that FFAs were specifically designed to work with foster children who had special needs.\textsuperscript{30} The category of “special needs” was a vague one that could include anything from the need for specialized medical care to the diagnosis of developmental and physical disabilities. Children from infancy to the age of three were categorized as special needs placements because they required a higher level of parental care. Children of color were also categorized as special needs, due to their categorization by social workers as “hard-to-place” children. Although the former designation of special needs based on medical or developmental categories was relatively uncontested, the use of special needs categories for children of color and young children was contested and the implementation of this category varied widely from social worker to social worker, and between offices and counties. For example, although Esperanza targeted children between infancy and three years-old who were Latina/o, county social workers had different opinions about whether this was in fact a special needs population that should be placed in Esperanza’s care, as opposed to being placed in a standard county foster home. No official policy guided county social workers’ placement decisions on this matter and they were relatively free to make their own decisions on a case-by-case basis. However, numerous county social workers indicated to me that the least

\textsuperscript{30} Prior to 2011, FFAs in San Diego County could be either treatment agencies, which dealt with special needs children, or non-treatment, which dealt with the standard population of foster children. During the 2010-2011 period of my research the county was transitioning to a system where all FFAs would be treatment level only as the county saw no need to contract out the care of children their own county foster homes were perfectly equipped to address. Because this transition had been in progress for sometime, all FFAs I was familiar with in the county worked with some category of children that were designated special needs.
costly placement that would meet a child’s perceived needs was usually the best one from the perspective of the agency. For this reason, many of Esperanza’s foster children were placed there by bilingual or bicultural county social workers who perceived the needs of Latina/o foster children as specific enough to merit a more specialized foster placement.

Special needs categorization was important not only because it impacted where the child might be placed, but also because it came with a higher level of payment to the foster parents and additional support services such as various therapies, medical equipment, or counseling services. While FFAs were generally expected to take on children who required greater support and more involved training for foster parents, in reality the designation of young children and children of color as special needs could mean that the children placed in county or FFA homes were largely drawn from the same pool. Categorizing children of color as special needs could have meant the provision of bicultural services, including bilingual therapists and service providers, therapy addressing the complexities of transracial adoption, and other such services. However, the designation of special needs often served simply as a euphemism for hard-to-place children, which the accompanying additional stipend was meant to ease.

The category of hard-to-place children was not a category that was necessarily linked to the provision of services or a higher stipend amount, as was the category of special needs. Hard-to-place was an umbrella term that was used by social workers to mark children that would likely be slated for long-term foster care or, in a best case
scenario, placement with a relative, rather than adoption. The term included children who were diagnosed with severe medical or behavioral issues, and children who had a history of violence or had been the perpetrators of sexual abuse. Due to social workers’ perceptions that the vast majority of adoptive parents would prefer to adopt young children, children over the age of eight were also commonly categorized as “unadoptable.” As such, this category was a way for social workers to indicate to themselves, and to those who might inherit the case, that pursuit of an adoptive home would likely be difficult, and that institutional care might be the most realistic goal for that particular child. Importantly, these categories of “special needs” and “hard-to-place” children enabled a slippage between the need for specialized services or support and the perceived undesirability of particular children.

Foster family agencies never worked independently from the county foster system – meaning that any child placed under the custody of an FFA was also, always, assigned a county social worker. The county was the sole agency responsible for the investigation of child abuse claims and the removal of children from their parents’ custody. Instances in which a child was taken into state custody resulted in a county social worker being assigned to the case – that worker was responsible for the well-being of the child and for monitoring the parents’ progress towards whatever program the social worker had deemed necessary for them to regain custody of their child. In a sense, the “clients” of the county social worker were both the parent and the child, and there was ongoing, heated debate critiquing the perception that the
parent was in fact the more central client in this scenario.\footnote{Although the term “client” was used in social work discourse when describing the tension between children’s and parent’s needs, social workers most commonly referred to the parents or children “on my caseload”, or used phrases like “one of my moms” or “one of my kids” rather than referring to them in the language of “clients.”} This critique was bolstered by foster parents’ frequent complaints that the county social worker never spent more than a few minutes visiting the foster child in their foster home, leading foster parents to assume that social worker recommendations were not made based on the child’s well being but solely on whether the biological parents were meeting their reunification plan requirements. In some ways, the county worker’s attention to the needs of both the parent and child was central to the tension between the FFA social workers and the county social workers. County social workers felt that they were addressing the needs of the child by attending to the parent’s completion of their case plan, whether that included therapy, drug rehabilitation, anger management counseling, or other services. FFA social workers reminded foster parents during trainings and weekly visits that the initial goal of the child welfare system was always to return a child to their parents’ care. However, FFA social workers’ almost exclusive focus on the well-being of the foster child and their successful integration into the foster home sometimes facilitated their ability to lose sight of claims about the importance of what county social workers referred to as “family maintenance,” that is, working towards the reunification of parents with their children. Further, because FFA workers rarely interacted with biological parents of foster children it was easy for them to focus on the loving relationship they observed between foster
parent and child, and to allow the biological parent to be reduced to a category such as “abuser,” “drug user,” or simply “negligent, uninterested parent.”

If the county social worker felt that a county foster home could not meet a particular child’s needs, or if there was not an available “bed” in the right region of the county, that child could be placed in the custody of an FFA certified foster home. In that situation the county social worker would continue to work with the child, the child’s biological family, and the foster family with which the child was placed. The county worker was responsible for drafting the case plan which laid out the reunification requirements and for submitting the court documents which represented the county’s interests in the court hearings. The FFA social worker assigned to the case would visit the foster child and foster family but had no structured interaction with the biological family unless the FFA worker supervised parental visits with the approval of the county worker, and often at their request. The FFA worker would take notes on all interactions with the child and foster family and keep a detailed case file, which was offered as supplementary information to the county worker if they should so desire. The central “clients” for the FFA social worker were both the foster family and the child.

Because FFA social workers usually visited the child in their foster home weekly, as opposed to the monthly county social worker visits, they typically got to know the child and the foster parents in more depth than the county worker. This was central to the frustration FFA social worker Geoff expressed in his story about the girl who was abused by her deceased mother’s boyfriend. The FFA social workers were
not privy to the formal details of the case, including the reunification plan
requirements or court proceedings, unless the county social worker or foster parents
decided to share that information with their FFA social worker. Although this sort of
information often was shared with the FFA social worker, particularly by the foster
parents, it was not required. This was particularly troubling when a child moved to a
county foster home or relative placement before being reunified or adopted. When
this happened Esperanza social workers and foster parents were likely to never learn
the outcome of a particular case. This was stressful for both social workers and foster
parents who had come to care deeply about a particular foster child, but also for
Esperanza’s records and their ability to report agency statistics on foster care
outcomes.

Corinne’s weekly notes tracked the bonding of the foster child with their
foster parents, their reactions to their weekly visits or phone calls with biological
parents, and changes in behaviors such as eating habits, sleep patterns, school
performance, and reactions to various services and therapies. Corinne’s notes further
detailed foster parents’ concerns about the child or their biological parents as well as
her own observations during her visits, which usually lasted between 1-2 hours. For
example, one note documented Taylor, Anna and Josie’s five year-old foster son, who
was spinning wildly with his arms out, in the living room, chanting “I love my mom,
I hate my mom, I love my mom, I hate my mom.” Corinne documented his actions
and Anna’s discussion of how this was a new but frequent behavior. Corinne’s efforts
eventually got the county office to approve therapy services that Taylor and Anna
participated in weekly until he eventually returned to his biological mother’s custody. Corinne had a marked lack of knowledge about the technical details of a child’s case, as evidenced by instances such as my failed phone call to determine what kind of therapy the mysterious “Jennifer” was providing to Danaira or Isaiah, that was discussed above. Yet at the same time she possessed an in-depth knowledge of the child’s experiences within their foster home. This level of detail was unlikely to be replicated by the county social worker who usually checked in by phone or, as Anna described, “popped their head in the door” for a few minutes, checking that there had been no crisis with school, home visits, medical issues or injuries, or anything of that nature. Although Corinne’s notes were meticulously stored in Esperanza’s files and regularly offered to the county social workers, these notes were not typically read by anyone once they were written up and filed in Esperanza’s archives. In this way, her detailed note-taking was not a mode of communicating with the county social worker or other individuals involved in a particular case, but rather served as evidence of her own knowledge and the ground on which she could speak with authority about a particular child or case.³²

At Esperanza, Corinne saw herself as an advocate for the foster children placed in the agency’s care, working to document their well-being and their struggles, and to advocate for any services she thought might better support their development. At the same time, Corinne was an advocate for foster parents, providing a forum for them to vent their frustrations, sadness, and confusion as they learned to interact with

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³² I discuss the intricacies of case files in more detail in Chapter Five.
the child welfare system. She guided them towards parenting practices she deemed to be best for the children and shepherded many of them through the process of pursuing the adoption of a child through foster care. The county worker might visit the child less often if they felt that the FFA worker had the case under close scrutiny, particularly if they developed a relationship with the FFA social worker over time, as Corinne often strived to do. However, while the FFA provided a bed and a home for the foster child, this did not technically reduce the caseload of the county worker since they still had the same obligations in relation to the case. Corinne articulated a strong belief that Esperanza provided a more caring environment for children than the county agency did. And she felt that an increase in the number of children placed with Esperanza would ultimately be the product of her relationships with individual county social workers. Thus, Corinne took on full responsibility for the success of the agency as a whole and an increase in its ability to “make a difference” in the lives of foster children in their care.

Distinctions arose between county social workers and FFA social workers in relation to their respective positions within public and private agencies. County social workers used technical language including terms such as placement, removal, “bio” parents, and reunification that served to distance themselves from the intimate ways in which their actions were entangled in the lives of families. FFAs employed this language as well, but tended to also use a more business oriented language of “getting” babies or placements, of “competitors” in reference to other FFAs in the area, and of “marketing” to and “recruitment” of potential foster parents. Corinne felt
that the solvency of Esperanza as an agency depended largely on her personal relationships with county social workers in charge of placement decisions and that her relationship with a number of Spanish-speaking county workers often gave her placement opportunities she felt she might not otherwise have had. Corinne related to me a discussion she had with other FFA social workers at the monthly meeting held one month prior to the meeting described above about the fact that few FFAs were “getting babies.” They saw this present lack as a result of top-down mandates that child welfare services should remove fewer children, a mandate that FFA workers, and many county workers, interpreted to mean that greater degrees of abuse were tolerated before removal would be recommended. Corinne felt that the best way to acquire the maximum amount of placements in this climate was to grovel, to “act like a slave,” in short, to do anything possible to make the lives of county social workers easier. This might mean supervising visits, scheduling county-approved therapy or other support services, or simply providing “quality” foster parents who would comply with county social workers requests, work well with biological parents, and not make any additional demands on the county social worker.

Corinne’s position, that of deference to the county social workers, was in large part a response to previous staff at Esperanza who had aggressively contradicted county social worker recommendations that they disagreed with through letter writing and phone call campaigns to judges and upper-level county administrators. Tensions

33 See Scherz 2011 for a discussion of social workers’ attempts to reconcile themselves to this mandate and to broader questions of individual and community responsibility for children’s suffering and maltreatment.
often arose when FFA social workers, who felt they knew the child and the case better than the county social worker, differed in their recommendations about how a case should proceed. This sometimes occurred in relation to the provision of therapy or other costly services but was most often about disagreements over reunification or adoption decisions.

County administrators and social workers felt that since they were the agency that was legally responsible for the children in their care, they should be the unquestioned authority on case recommendations about service provision, removal, adoption, and reunification decisions. FFA social workers and administrators sometimes felt that their more in-depth knowledge of the foster children and their vision of their agency as a proposed solution to a “dysfunctional” system compelled them to speak out against decisions that they fundamentally disagreed with. Foster parents and their foster children were caught between the county and FFA social workers, not always having a clear sense of who to appeal to, or who had the power to influence the trajectory of their case. Further, these tense interactions and disagreements between social workers could brand an FFA with a negative reputation, one that might influence county social worker’s opinions about where they preferred to place the children on their caseload.

One might imagine that with county social workers’ struggles to find placements for all the children on their caseload, every foster home and agency would be used regardless of social worker preferences. However, this was not the case. Social workers described the way they would “use and abuse” foster homes they saw
as “good” homes, by giving them as many children as possible. Other homes, for a variety of reasons, remained empty. Esperanza would often get applications from couples that had been certified by the county agency and yet had not had a single placement in more than two years. Corinne believed that this was because many families might fit the technical criteria for certification and thus could not be denied certification, but due to prejudices of class, language, or race would not be preferred by social workers. In these ways, FFA and county social workers often worked at cross-purposes, with distinct and sometimes conflicting agendas, assessments of a case, and interpretations of what might be the best outcome for a particular child.

Each social worker, within the constraints of their respective agency, worked towards a particular vision of foster care and the needs of individual children. And each was equipped with a different set of resources, available knowledge, and authority within the child welfare apparatus.

*Esperanza, Foster Family Agency*

Esperanza was founded in 2003 by a social worker who felt that the small foster family agency she worked for insufficiently addressed the specific needs she understood to shape the experiences of foster children of color. After two years of planning and fundraising, Esperanza opened its doors with the mission of serving Latina/o foster children, aged zero to three, and their families. Esperanza focused on recruiting Latina foster families as well as non-Latina families deemed to be adequately “culturally sensitive.” According to their agency protocol, their ideal
family was bilingual and/or bicultural, college-educated, and middle-class, with a stay-at-home mother.

Families with limited English-language skills were routinely directed away from other small foster family agencies that did not have the bilingual staff necessary to train and certify these families. This was a concern throughout San Diego County because Spanish-speaking foster families were desperately sought as placements for children removed from Spanish-speaking homes. Although Esperanza was initially staffed entirely by native-English speakers with Spanish-speaking skills that ranged from almost fluent to non-existent they were committed to providing all training and application materials in both Spanish and English. Their mission, like that of the agency from which they had split off, argued that successful early intervention would ward off high rates of incarceration, violence, homelessness, and teen pregnancy among those youth who spent a significant portion of their childhood in the foster system. For this reason, Esperanza placed a strong emphasis on adoption, an emphasis appealing to those families who wished to adopt children but who were concerned about the costs associated with private adoption. The pro-adoption focus was later deemed unfit by the county office of child welfare services, an agency that officially emphasized reunification as the unquestioned first goal for all foster children in an effort to preserve parental rights.

Although the majority of children who exited the San Diego foster care were reunified with their family of origin, a significant portion of foster children did end up being legally adopted. Of the 1,269 children who exited the San Diego foster system
between July 2010 and June 2011, 37 percent were adopted, 55 percent were 
reunified with a family member, and 8 percent were placed in long-term guardianship 
- a placement that might involve a family member, friend, or former foster parent. It 
is important to note that a significant portion of the children who were initially 
reunified re-entered the system at a later date, sometimes exiting through a 
subsequent reunification, other times exiting through adoption or guardianship. 
Regardless of the significant percentage of children who leave foster care through a 
process of legal adoption, it was important to the county agency that their work was 
not framed as “acquiring” adoptable children for parents who wished to expand their 
family through adoption. Although many parents who did not have the resources to 
pursue private adoption did see foster care as a path to adopting a child, the county 
agency itself emphasized child protection and family preservation as the focus of its 
work. The county was always quick to correct any suggestion that one of their main 
functions was to serve as a public adoption agency.  

34 The concerns the county had with being seen as an adoption agency were, I 
imagined, rooted in efforts to make sure that the children in need of protection and the 
families who wished to regain custody of their children were seen as the central 
recipients of the agency’s efforts, rather than those who wished to expand their 
families through adoption. Although the county agency was grateful to the adoptive 
parents who provided long-term homes for children who required them they were 
wary to avoid a situation where they might be seen as having any motive, other than 
protecting children, for terminating parental rights. As Zelizer (1985) has argued, it 
has long been the case that there are less truly orphaned children in need of adoptive 
homes than there are families wishing to adopt a child. It is out of this market-like 
context, Zelizer suggests, that concerns about a “baby market” and questions about 
what parents pay for children in a variety of contexts takes shape. Importantly, costs 
associated with adopting through various agencies vary wildly, as does government 
support for the adoption of children from various circumstances. As such, the means 
through which families pursued adoption, whether private or public, domestic or
Two Esperanza cases exemplify the aforementioned tension between county and FFA social workers around case recommendations. One case involved twins who had been removed from their parents’ care due to physical abuse. The county social worker proposed placing the children in the care of their older brother and his girlfriend. Visits were held weekly at Esperanza. Every time the brother entered the room, the twins would scream, cry, and attempt to hide. The Esperanza social worker at the time, Amanda, felt that this was evidence that the brother was abusive to them. The county social worker disagreed. Amanda, along with her supervisor, filed letters with the county social worker’s supervisor and with the judge assigned to the case, protesting the wisdom of this placement and advocating that the foster parents be allowed to adopt the children. The letter writing campaign was unsuccessful in changing the ultimate decision but it did succeed, as noted above, in souring relationships between Esperanza and the county social workers with whom they had worked on the case.

A second case involved a child, Jacob, who had been twice abandoned by his biological mother. His foster mother, who had been certified by Esperanza, wished to adopt him. The county social worker did not support terminating his mother’s parental rights since she had lamented her abandonment and was working through therapy and weekly visits to reunify with her son. The Esperanza social worker felt that the child was deeply bonded with his foster mother and that the biological mother international, were shaped by a range of factors that cannot be reduced to issues of cost.
did not communicate a commitment to her son during her weekly visits. The judge on the case eventually decided that the mother had not demonstrated a long-term capacity to care for her son, terminated her parental rights, and recommended adoption by the foster mother. The biological mother appealed the decision. The Esperanza administrator at that time provided the foster mother with confidential information from the Jacob’s file, information that enabled her to defeat the appeal and adopt her foster son. When Community Care Licensing, the county agency in charge of licensing foster agencies in the county, detected this breach of confidentiality Esperanza was fined and chastised for their actions.\textsuperscript{35} By the time the investigation was conducted the staff who had violated confidentiality were no longer employed by Esperanza. Corinne received the fine and was reminded that such actions could be grounds for the termination of Esperanza’s license. Corinne recounted this story to me as justification for why she “kept her mouth shut” even when she disagreed with decisions that were being made by county social workers.

\textit{On the Dependency Court}

Dependency court was a setting where the distinctions between county social workers and FFA social workers were clearly marked. In this setting, county social workers had a formal role in the courtroom while FFA social workers did not. County

\textsuperscript{35} This incident raised questions about the possible dissolution of a legal adoption that was established on questionable grounds. Although this was technically a possibility, the precedent was that judges were likely to rule that the bond formed between adoptive parent and child was more important to the child’s well being than whatever breach of protocol may have influenced the initial adoption decision, except in cases where there may have been egregious wrong-doing on the part of the adoptive parents.
social workers filed official reports with the judge and a county lawyer represented the county agency’s interests in court. FFA social workers had no right to contribute to court hearings but could make recommendations to the county worker, which could be incorporated or ignored based on the county worker’s preference. Social workers, foster parents, lawyers, and biological parents all believed that judges relied primarily on the county social workers’ recommendations in making their decisions. The county social workers’ recommendations were based on their interactions with the biological family, the foster family, and the child involved in the case. Their recommendations also drew on communication with therapists, drug counselors, and other service providers who assessed parents’ progress towards goals set by the social worker. The authority of their recommendations came not from a depth of time spent with each individual involved in the case, as this was understood by most parties involved to be minimal, but on their expertise in the realm of child welfare and their experience working through many cases. However, from a legal standpoint and from the perspective articulated by the judges I spoke with, it was the judge who officially made all legal decisions in child welfare cases. The judge’s authority was not based on their familiarity with any particular case or child but on their familiarity with dependency law and the tremendous number of cases they heard over their careers. As such, county social workers and dependency judges, both in a position to view themselves as the ultimate decision-makers, had access to vastly different sets of information and quite distinct notions of what knowledge constituted expertise in the realm of a child welfare case.
Further, decisions made by judges in dependency courts were of a different character than other judicial decisions. Rulings were not made in the context of applying prescribed consequences to an individual who had been found in violation of the law. Judges, rather, were involved in decision-making processes about the dispositions of family members involved in a particular case, assessing the complexity of their circumstances and making predictions about their ability to change particular behaviors in the future. Judges were also immersed in the intimacies of family life. For example, a judge I spoke with described giving a foster youth permission to attend a sleepover, and taking responsibility for that decision, which the county social worker was reticent to do. In this way, judicial decision-making operated at a level of involvement in the everyday lives of foster children and their families that was at odds with the typical role of a courtroom judge.

County social workers filed reports with the judge using a standard format depending on the stage each case was at. A typical social worker’s report for a child’s initial hearing would begin with a page detailing the hearing date, time, and location, and the name, age, birthdate, and sex of the child. This basic information would be followed by a bullet point summary of the social worker’s recommendations about where the child should be placed and what basic services and referrals might be needed for the parents. The second page would include contact information, if available, for parents, legal guardians, and attorneys. This page also included a list of all adults that had been notified about the court hearing (biological parents and sometimes foster parents) and noted the dates of any previous court hearings. This
technical information was followed by narrative responses under such headings as Reason for Hearing, Paternity/Legal Relationships, Prior Child Welfare History, Criminal History, Efforts to Locate Absent Parents, Reasonable Interventions and Services Offered, and so on. The form was officially submitted by the current head of the San Diego County Health and Human Services Agency, but was actually signed by the county social worker and her supervisor. Importantly, although the headings noted above were standardized, the format of the form was relatively loose. It was not organized by text boxes or other features that limited or suggested to the social worker how long their responses should be. The regularized format eased the judges’ reading process since they knew where to look for particular kinds of information. County social workers developed a standard voice in which they drafted these reports. They wrote them in the third person, such as, “This worker spoke with the mother…” and framed requests in terms of the agency, as in, “The agency respectfully recommends that the minor be detained in out of home care.” However, they were relatively free to determine the detail and extent of the content they submitted.

The San Diego County Juvenile Court consisted of two divisions – delinquency and dependency.\(^{36}\) After a quick pass through a metal detector staffed by security personnel, the dependency courthouse opened up into a large echoing main room. The main room was bordered by dark wooden walls that were sparsely adorned

\(^{36}\) Delinquency and dependency have not always been separated in the court system. At the advent of the juvenile court system in the United States, issues of delinquency and dependency came before the same judge. Indeed, it was common belief at that time that dependent children would likely become delinquent, and therefore similar strategies of probation and reformatories were used to deal with a broad array of circumstances (See Tiffin 1982:219-220).
by a few painted murals made by local school children. The room was filled with wooden benches populated by families and children, waiting to meet with their lawyers who poured in through the front entrance minutes before the first court session of the morning, balancing enormous stacks of papers and steaming mugs of coffee.

When I met with Judge Marshall, the presiding judge of dependency court, she greeted me in her back office behind an official courtroom, where surrounded by towering stacks of case files and outfitted in a button-up navy blue blouse, she presented a much less intimidating image than she did in her official robes. Judge Marshall began our discussion by presenting me with an overview of the organization of dependency court, a description that was later elaborated by the numerous lawyers that I spoke with. Dependency court had eight courtrooms. Each courtroom was presided over by an appointed judge, and staffed with a handful of dependency attorneys and a single investigator. Cases were assigned to a particular courtroom by county region and the number of attorneys available in any given courtroom was based on historical numbers of cases in each of the county’s regions. The typical range for minor’s attorneys was between one and three per room. The result of this structure was that clients would cycle in and out of the courtroom while the attorneys largely remained, chatting with each other and occasionally with the judge between hearings. Social workers, families, and other observers were not typically allowed in the courtroom between hearings, however, the lawyers not involved in the current
hearing would merely shuffle between the front table and the back benches as the court moved through that day’s hearings.

Due to the fact that a group of two to three core lawyers remained in the courtroom throughout the session, there was the possibility for pre-hearing negotiation between lawyers and judges. During one court session, I observed a case regarding a teenager currently at Abrams who was only a few weeks away from turning eighteen. The case was tense because the teenage daughter had been caught by her mother having sex with her step-father, a situation that had reportedly been going on for more than a year. Before the hearing began the judge initiated a brief negotiation with the attorneys in the courtroom. Neither the minor’s attorney nor the county’s attorney thought the daughter should be placed back at home with her mother. The judge felt that if they did not do so, the teenager would go AWOL or the mother might contest the ruling, which would delay the hearing past the daughter’s eighteenth birthday at which point the case would automatically close. With some concessions, including a restraining order against the step-father and a prohibition against the mother and daughter discussing the case, the judge was able to gain the acceptance of the attorneys involved before the hearing began. This sort of negotiation was facilitated by the structure of the hearing process and the consistent presence of the same attorneys in a particular judge’s courtroom. In this way, the judge was able to broker a solution that perhaps was not ideal, but which allowed her to take jurisdiction, provide ongoing services to the mother and daughter including counseling and medical care, and to monitor the situation with the step-father in a
way that might not otherwise have been possible. Notably, the judge’s position was not based primarily on knowledge about the particular individuals involved in the case but on the limits of the court to take jurisdiction. The judge took the stance that taking the teenager’s threat to run away from Abrams or a foster home seriously was more important than what any social worker or attorney believed was ideally the best placement for the daughter.

The court scheduling system was a source of frequent complaint and frustration for foster families, biological parents, and social workers. Each hearing was scheduled for a four-hour window, typically between eight and noon on a particular day. Cases were not assigned a specific time or order, and were called up as the attorneys were ready or as the necessary parties became present. This meant that a court hearing, which would typically take between five to ten minutes, often resulted in the loss of a half day or more of school or work time for children, parents, and social workers. San Diego County dependency courts expected children over the age of ten to be present at their hearings. Sometimes younger children were present, and many had information about family members or possible placements to share with the judge. However, children were not required to be present and it was understood that lawyers and social workers could gain a child’s input outside of the courtroom.

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37 See Maynard (1984) for a detailed analysis of the courtroom context in which judges and lawyers engage in the process of negotiating plea bargains. Although plea bargaining is a decidedly different context than the negotiations discussed above, Maynard’s discussion departs from studies of negotiation focused on analyzing the outcome to examine the kind of talk through which these legal negotiations occur, the practices of the legal and lay actors, and the way the courtroom context shapes these negotiation processes.
setting. Afternoons were commonly reserved for short trials and settlement conferences, the latter consisted of a mediation process whose effort was to bring all parties into agreement and thereby avoid a time-consuming trial. Fridays were set-aside in their entirety for the daylong trials necessary for more contentious cases.³⁸

Trials were quite rare in dependency court. The vast majority of parents did not dispute the allegations and those that did often disputed the details but not the overall allegation. Even in cases where trials were held, they were reduced to as limited a time frame as possible through a process called ‘stipulation.’ For example, if a parent’s attorney wanted to bring in ten character witnesses to vouch for the mother’s good character, then the judge could ask the county counsel, “Do you accept that the mother displayed excellent character when she was in the presence of those ten witnesses?” If county counsel agreed to that statement then the judge would not have to actually see the witnesses; all lawyers in effect agreed that what the witnesses had to say was true, without needing to hear it. This strategy was employed primarily

³⁸ Although it is beyond the scope of this chapter to engage in a detailed description of dependency court proceedings a few issues merit clarification. Dependency court did not ascribe to the standard of proof that criminal courts did. Judges required only a “preponderance of evidence” in order to take jurisdiction of a child, which was understood to mean “more than 50 percent sure” that the alleged abuse or neglect had occurred. Judge Marshall asserted that in practice judges often looked for much more evidence than was required, since taking jurisdiction over a child was a “very extreme intervention into a family” that should not be done lightly. She also explained that in a case of severe physical abuse a judge was likely to be more comfortable taking jurisdiction when only 51 percent sure, whereas in a more mild case of neglect or “mild” abuse such as “slapping” a judge was likely to require a greater degree of evidence in order to take jurisdiction. In addition to trials that aimed to settle jurisdiction and allegations of abuse, the most common reasons for trials were cases where a child had clearly been abused but the perpetrator was unknown (this was often in cases involving sexual abuse or shaken baby syndrome) or when a parent was disputing the termination of parental rights.
as a time saving tactic but also created the possibility that a parent might feel as though their case was not actually being heard. The court calendar, Judge Marshall specified, was not able to accommodate longer trials. Though the need for longer trials was rare, if they did occur they were handled by a downtown judge, not one officially part of dependency court but one who had dependency court experience in their past. Downtown judges also handled adoption proceedings, once a dependency court terminated parental rights and approved the adoption plan.

Dependency court was not a particularly desirable appointment for most judges and many were assigned to dependency court rather than requesting that particular post. Judges cited burn out as the main reason for wanting to leave dependency court, primarily related to the stressful decision of having to guess what might be best for a particular child or family and from daily exposure to detailed descriptions of abuse and violence. Like other professionals who were regularly exposed to the horrors of child abuse, judges were often emotionally exhausted by the abuse that they had to discuss and make rulings about. Judge Marshall described a case to me that involved a twelve year-old girl being present at a trial that involved showing pictures of her body in relation to a sexual abuse allegation. Judge Marshall told me that she would have “just died” to have seen that herself as a young girl. Judge Marshall struggled with the difficulty of witnessing the young girl’s experience of the court process, even though she believed that she was ultimately helping to improve the girl’s life.
Because judges in San Diego County hear cases based on region, they were often disheartened to see the same parents in their courtroom multiple times. Judge Marshall described the thrust of this work as future-oriented. She explained, “You know the child and mother are bonded and she [the mother] has been clean for eighteen months, but will she stay clean?” For Judge Marshall, the stress was primarily based on having to make what felt like the “best call” without knowing how things would develop overtime, while feeling ultimately responsible for the possibility that the child might suffer future abuse or neglect. Importantly, both county social workers and judges regularly claimed a feeling of ultimate responsibility for the outcome of a case. For social workers, this was because they made the initial decisions about removing and placing a child and because they set the standards for reunification, chose adoptive placements, and made recommendations about legal custody to the judge that were very likely to guide the trajectory of the case. For judges, this feeling was based on the fact that they made the ultimate ruling and because their judgments gave the social worker’s or attorney’s recommendations the force of law.

Judges were not compelled to make their decision based only on the information presented in the hearings, which were often as brief as ten or fifteen minutes. Each judge typically received the file for their cases the night before the hearings and would hear about ten cases between the hours of eight to noon, with the afternoon session, which lasted from one to four, reserved for trials, appeals, adoption hearings, and other lengthier processes. Judges handled enormous caseloads.
Unfortunately, I was unable to determine accurate caseload numbers for San Diego dependency court judges beyond getting a basic sense of their weekly number of hearings. A 2005 survey of California dependency judges stated that this number was very difficult to determine based on constant fluctuation. The 2005 survey asked judges to provide a range of the number of open cases that were assigned to them and found that, “of the 42 judicial officers with a full-time dependency caseload who responded to this question, 25 estimated a caseload of more than 800 cases, and 11 estimated a caseload between 300 and 800.”

The files that dependency judges received usually contained medical records, previous court reports, relevant evidence such as photographs of injuries or bruises, and reports submitted by the county social worker before each hearing. This last set of reports was often the reason that a file did not reach the judge until the night before the hearing. Children who had court appointed special advocates (CASAs) would often have advocate recommendations submitted to their file as well. In my experience, judges read these files closely and were prepared with questions for children’s and parent’s lawyers. They took care to indicate their knowledge of the case, to speak directly to both parents and children, and to refer to them by name in the courtroom.

Although foster parents were almost entirely absent from courtrooms unless they were in the process of adopting their foster child, they were deeply entangled in the trajectory of their foster child’s case throughout the system. Judges trusted social

workers and courtroom lawyers to be experts in recommending what decisions would be in the best interest of the child. The absence of children’s foster parents, their primary care providers, in the courtroom was a source of frustration both for the foster parents themselves and also for the FFA social workers who often hoped that the foster parents would ultimately be able to adopt the child.

Foster Families

Corinne and I arrived at Liliana’s house on a Tuesday, our first home visit after Liliana and her husband picked up Lucas from the temporary shelter four days prior. Liliana and her husband had moved to San Diego from México City on work visas and were excited to take in their first foster child. Four-year old Lucas had spent only a few days at Abrams Children’s Home for psychological and developmental assessments, after having witnessed his parents’ arrest in the context of a drug raid. Lucas and Bailey, Liliana’s five year-old son, played a Nintendo game with each other on the couch while we sat with their parents at the kitchen table, going over paperwork and asking how things had been going so far. Liliana chuckled at what a pair they made, Bailey was slender with thick black hair, and Lucas, although a year younger than Bailey, towered over him with his freckled skin and blonde buzz cut. Liliana, who was told only that she was picking up a four year-old Latino boy, thought she had been given the wrong child. She told us that the first weekend with Lucas had gone well. She described her experience of helping Lucas take a shower, rubbing shampoo into his hair, asking him to sponge off his body, helping him scrub the bottoms of his feet. She was surprised to see his fingernails, clean and cut into
smooth half moons. Tears rolled down Liliana’s cheeks and she shook her head, apologizing, and explaining, “I am just so sad for him, for what his life will be. My Bailey doesn’t even really know what jail is!”

Although our discussion with Liliana was not markedly different from other routine conversations with foster parents about the care and well-being of their foster children, the detail with which she described the intimacy of showering somebody else’s child emphasized, to me, the complexity of the foster parent’s role. A few months later I was talking with Anna, who had a number of grown biological children, and asked her about the difference between going to pick up a foster child and giving birth to your own. Anna emphasized that for her there really was no difference with young kids: you take them home, change their diapers, feed them, hug them, and they’re yours. The difference, Anna emphasized, comes with their parents, and also with the process of learning children’s behaviors and quirks – with your own kids you see them develop along the way. Anna’s experiences exemplified, in some ways, the frustration and lack of power that foster parents experience. They know the children more intimately than the social workers and act as their full-time parent, day and night, with little oversight or guidance. Yet they have little to no say over the path their foster child’s case might take unless they happen to get matched with a social worker or lawyer who, for whatever reason, takes up their opinions and positions and represents them as their own in court.

Anna had experienced this in the case of Isaiah and Danaira, who had initially been removed from their parents’ care due to Isaiah’s exposure to drugs in utero.
Because of this initial reason for removal, the case was focused primarily on the
mother’s drug use and reunification plans had been established by the county social
worker to reunite their children with both parents, who were married and living
together. However, their mother arrived at a visit with the children with a black eye.
When Anna questioned her, she said a friend had hit her at a party that got too rowdy.
Anna, having left a violent relationship of her own before meeting her partner Josie,
suspected that the black eye was the result of domestic violence and called the county
social worker. Isaiah and Danaira’s mother admitted to the social worker that her
husband had hit her and she was subsequently moved to a women’s shelter. At that
point the reunification plan shifted to focus solely on the mother. Her separation from
the children’s father was one of the plan’s requirements in order for her to regain
custody of her children. This did not preclude the father from also regaining custody
of his children, but he would have to successfully complete anger management and
domestic violence counseling services before he could be reintegrated into the
reunification plan.

County social workers almost always aimed to implement the reunification
plan that could be achieved in the shortest amount of time. Regardless of whether the
ultimate goal was to have the child reunited with both parents, if one parent could
meet the requirements faster on their own the social worker would often require that
they do so. This was the case in many domestic violence situations or cases where
one parent was abusing drugs and the other was not. For one parent to regain custody
without the other, however, required them to separate entirely from the other parent
and to demonstrate a willingness, in the eyes of the social worker, to place the child’s needs above their partner’s.

Anna believed that her intervention had been successful because her observations were backed up by the presence of a visible bruise and the biological mother’s confession to the county social worker about what had occurred. Anna’s more subtle observations about a parent’s interest or ability to parent their child, based on her presence during visits between her foster children and their biological parents, were regularly dismissed by the county social worker on the case. And although foster parents were expected to report any problematic interactions they observed between biological parents and their children during weekly visits, county social workers felt that foster parents were neither trained nor equipped to make determinations about a biological parent’s ability to care for their child.

Social workers and foster parents engaged with each other around different perceptions of what it meant to attend to the needs of the foster children in their care. County social workers cared for children in a broad sense through removing them from certain homes and placing them in others, in an effort to protect them from harm. Foster parents cared for foster children through the daily tasks of feeding, bathing, comforting, and spending time with them, and through the emotional bonds they generated through the intimacy of the practices involved in attending to their daily needs. These actions constitute what Milligan et al. refer to as “the affective stances and material practices which typically come together in performative expressions of care” (2007:137). Joao Biehl, in his article “Care and Disregard,”
distinguishes between care as a “relational practice” and care as a “decision.” Foster parents saw county social workers’ caring as embodied by a series of decisions based on brief observations of parent and child, rather than a deeply meaningful, sustained relationship. Social workers saw themselves as tireless advocates for children and families, working with limited time and resources to do all they could for children in their local community. Yet foster parents saw their own relationships with foster children and the knowledge they developed from these intimate interactions, as devalued by the assertion of the social worker as authority and as expert.40

Anna’s enthusiasm for advocating for her foster children was eventually drained out of her after being repeatedly ignored and chastised by county social workers for overstepping her role as “care provider.” When I asked her about the decline in her advocacy she said, “Look, I love them but they’re not my kids. They’re not my kids.” Other foster mothers, such as Tatianna, whose case is described below, were able to find success as advocates and partner with legal actors who could support their goals for their foster children. However, because foster parents did not have any legal or formal control over their child’s case, these moments of advocacy occurred in haphazard, unpredictable ways.

40 Foster parents also found their caring for children devalued based on the fact that they received a monthly stipend for each foster child in their home. Although this money was meant to support the child, providing them with clothes and other necessities, it was often pointed to as an element of foster care that positioned foster parents as comparable to child care workers rather than family (Wozniak 2002). See Hankivsky 2004 and Zelizer 2007 for a variety of approaches to the relationship between care and the “market.”
Navigating Illegality

Tatianna pulls out her file and shows me a snapshot of Alba as a baby in her father’s arms. He is seated in a loose striped t-shirt and dark pants, with brown stubble, holding Alba, chubby as can be, in one gaunt arm, looking straight at the camera. Alba’s face is also turned towards the camera, she is perhaps four to five months old, with a thick crop of short, straight, black hair, no indication of the huge mass of tangled curls she will have three years later when I meet her during an Esperanza home visit. Tatianna tells me Alba has not yet seen this photograph, one of the few she has of her as a baby.

(Field notes, February 16th, 2011)

When I met Alba in the summer of 2008, she came out into the living room, her head a tangled mess of curls, her father good-naturedly following her around the room with a spray bottle and a brush. Her mother reached over and ran her hand down Alba’s cheek saying, “Poor Alba, I feel bad for her to come into such a smothering family.” Alba performed her role perfectly, as if on cue, whining “Mom!” and sidling away from her mother’s touch.

It was two years later that I sat down with Tatianna, Alba’s adoptive mother and biological aunt, to hear the story of how Alba came to be first her foster and then her adopted daughter. Tatianna explained to me that Alba was born in Tijuana to a man that Tatianna calls her uncle but who is actually her cousin; this man was abandoned by his own mother and raised by Tatianna’s grandmother. Alba’s father and mother were both heavily addicted to meth and her mother abandoned them both soon after Alba’s birth. Alba’s father continued to raise her for about a year, frequently leaving her with family members and asking for diaper money that would then be used to support his drug addiction. Tatianna explained to me that her family
had wanted to intervene, in fact she had been interested herself in adopting Alba, but that they were concerned that if they involved the authorities in México Alba would be whisked off to an orphanage never to be seen again.

Alba was a little over a year old when her father, purportedly for drug money, agreed to sell her to Esther, a Guatemalan woman with United States citizenship, for $400. Esther then brought Alba into the United States using her own daughter’s birth certificate. After arriving in the United States Esther managed to register Alba under her legal guardianship and was able to receive some support services for food and housing through the social service system without raising any red flags about Alba’s origins. Tatianna explained that the family was aghast at these events and that one of her aunts managed to locate Esther, who was living in San Diego. Tatianna, who also lived in the city, went to check up on Alba, not with the intention of reclaiming her but simply to assure her family that Alba was in a good home. When I asked how the family had located Alba, Tatianna stood and pulled a file out of large metal safe, from which she drew a hand-written letter from Alba’s father to Esther, requesting more money for the “sale” of his daughter.

Tatianna explained that when she arrived at Esther’s house she was not comfortable with the circumstances. She felt that Esther had misrepresented her situation and that Alba was not as well cared for as she could be. When Tatianna explained who she was and refused to leave Esther’s home without Alba, Esther called the police. Police soon arrived, hands on their guns, to evict Tatianna from the property. When Tatianna explained to the police that Esther had illegally smuggled
Alba into the country, they told her that the situation was beyond their jurisdiction and would have to be settled in family court. They then escorted Tatianna off of Esther’s property.

Tatianna, astounded at the situation, began the long, arduous process of petitioning for Alba’s custody. This process was complicated by the fact that Alba had no legal birth certificate and thus Tatianna could not prove herself to be Alba’s kin, since Alba did not legally exist. Tatianna pushed for a DNA test that the county of San Diego did not wish to pursue. Tatianna never received an official reason why her request for a DNA test was rejected but she assumed it was due to the expense of the procedure. She would have further pushed the issue if the county agency had not eventually acknowledged her position as Alba’s kin, largely due to Esther’s acknowledgement of Tatianna as Alba’s relative. Tatianna remarked sarcastically that this was one favor Esther had done for the family.

Alba’s case was further complicated by her citizenship status and unsanctioned entry into the country, and the fact that because of her lack of a birth certificate she was not legally recognized as a citizen in either the United States or México. Tatianna described her experiences to me as a process of navigating a difficult and complex bureaucracy; one that she felt did not always pursue what was clearly in Alba’s best interest. While Alba’s story is a sensational and not particularly commonplace story, it is one that exemplifies the difficult position of non-United States citizens entangled in the child welfare bureaucracy, one in which families must doggedly pursue a legal solution to a series of illegal or unsanctioned circumstances.
Thus began Tatianna’s long engagement with child welfare services, law enforcement, and immigration authorities, in an effort to gain legal custody of her niece.\footnote{I will discuss the specificities of entanglement between the child welfare and immigration systems in more detail in Chapter Four.}

Tatianna was told that in order to be eligible for guardianship of Alba she would have to be certified as a foster parent. She contacted Esperanza, who she had learned about through a commercial campaign, and asked if they would certify her to provide foster placement for kin. In San Diego County, relatives who wished to care for children who have been removed from their parents’ custody must be certified and approved as what is termed a “kin placement.” Although the process is expedited for kin, it is not immediate, and many children languish in a temporary shelter or in a non-relative foster home while awaiting the certification of an aunt, grandparent, or cousin who has agreed to care for them. This policy was put in place to have a formal mechanism for providing financial stipends to kin, who have historically cared for children with no state funds. It also recognized the fact that kin are not necessarily more equipped to manage their own entanglement in the foster system just because they are related to the child that they are caring for. The largest impact of this policy, however, was the delay in the transfer of children from a non-relative foster home to a kin placement, and the subsequent increase in the number of moves a child might experience during their time in foster care, since they were likely to be placed in a non-relative foster home while their kin placement awaited county approval. Tatianna looked at me unbelievingly as she explained that she had to go through the process of
being certified to care for her own niece, who from her perspective was living, with state support, in the custody of someone who had both bought and smuggled a child.

Esperanza social workers were happy to certify Tatianna, although their preference was generally to certify families who were interested in fostering numerous children, rather than becoming certified only to care for a particular child. Nonetheless, they were able to expedite the process, after which Tatianna waited for the county to approve the transfer of Alba into her care. Once Alba was approved to move to Tatianna’s home, she was, from Esperanza’s perspective, an unremarkable foster placement. Although Esperanza specialized in providing services to Latina foster children and foster families they did not have any particular expertise in immigration law or support services to legalize status nor did they have a legal voice in the dependency court. Because of this, Tatianna felt she was largely on her own to deal with the considerable complexities of Alba’s case.

To resolve the situation with Alba, Tatianna needed to prove that Alba was a Mexican citizen, be approved by the San Diego dependency court to adopt her, and acquire United States citizenship for Alba through her status as an adoptee of United States citizen parents. Luckily, through an internet search Tatianna located a San Diego organization whose mission was to recruit volunteers to work as court appointed legal advocates (CASAs). CASA programs had a substantial presence nationwide. Sometimes referred to as “Guardian ad Litem” or “CASA,” these individuals were volunteer advocates for children in the dependency system. These volunteers were largely seen as an effort to ameliorate the impact of social workers,
lawyers, and judges, overburdened by enormous caseloads that left them unable to address a child’s needs in the way that a volunteer working with a single child or group of siblings might be able to more adequately do.

CASA volunteers focused on the needs of the child in foster care and were granted authority by a judge to have access to all files involved in the child’s case. The judge would also compel all members involved in the case – lawyers, social workers, teachers, and medical care providers – to provide information to the CASA. Not only did the CASAs have access to information from a variety of settings, they were volunteers, bound by no strict institutional protocol or supervisory authority. Further, CASAs were often retired business professionals, lawyers or other individuals with authority within the community, confidence in their abilities, and knowledge of both the court and child welfare system. Although the CASA’s recommendations were in no way legally binding, in the case of San Diego County and many other regions, judges took their recommendations very seriously. Notably, judges have been the most aggressive advocates for the spread of CASA programs.

Tatianna put in an application for Alba to receive a CASA and was matched with an advocate shortly after her application was submitted. Tatianna’s CASA worked with her relentlessly, guiding her through interactions with the Mexican Consulate, helping her to acquire pro bono legal counsel for Alba, and finally, shepherding her through the immigration and adoption process.
The Mexican consulate was located in a large office building in San Diego’s little Italy neighborhood, where it served Mexican citizens in pursuit of passport renewals, repatriation of deceased Mexican citizens, and other services of various kinds. During the period of my research, the child protection program (Protección de Menores) was run by a single employee, Luis, who had been at the post for a little more than a year. Luis appeared to be quite young, an appearance enhanced by the jaunty set of rectangular black frames that he wore. Luis explained to me that his job was to oversee any child welfare cases that involved Mexican citizens, children or parents, “verificando que toda vaya bien” (making sure that everything is going well). He couldn’t estimate the number of open cases but said that he expected about 120 new cases to open each year.

Luis emphasized that the consulate had no jurisdiction in the United States even over cases involving Mexican citizens. As such, his job mostly consisted of calming agitated parents whose children have been removed, to “help them see that CPS is only trying to help,” and to put them in touch with the appropriate member of the child welfare system. Parental anxiety most often took form in relation to three issues – the belief that “CPS” was “snatching their child,” their inability to read or understand their case plan, which outlined the necessary steps they needed to take in order to regain custody of their children, or concerns that their social worker wasn’t returning their frequent phone calls. Luis worked with these parents to help soothe their anxiety and occasionally contacted social workers directly to facilitate
communication. His main aim was to “apoyar y cooperar para que el sistema funciona” (to provide support and cooperation so that the system functions).

He rarely worked directly with county social workers because there was an official arm of the county agency called the International Liaison office that handled all requests from county social workers for things like Mexican birth certificates, background checks, and other services that might be necessary to determine the future custody of a particular child – these were the main reasons why a San Diego County social worker would wish to communicate with Mexican authorities. The International Liaison office could contact the consulate for support, or work directly with the Mexican child protection agency, Desarrollo Integral de la Familia (DIF).

Luis did not collaborate with social workers or work as an advocate on his cases both because he lacked jurisdiction within the United States and also because he generally understood child welfare services to be working as it should. In response to my questions about the potential impacts of United States social workers who harbor negative perceptions of Mexican parents based on citizenship, race, and class distinctions, he told me that he had heard about cases of prejudice or discrimination but had not seen this occur in his sixteen months on the job.

In Tatianna’s case, the consulate was contacted by Alba’s CASA in an effort to obtain Alba’s birth certificate. Luis joked with me that he was often contacted with absurd requests: “Can you do a background check on José? With no last name, no date of birth, nothing.” In Alba’s case, due to the family connections, they had more information than usual about Alba’s parents but the birth certificate still could not be
found. Eventually, it was determined that Alba had not been born in a hospital and thus there was no legal record of her existence. This made her case even more complicated as they had to prove that she had been born in México in order to prove that she had been illegally smuggled into the United States. Further, in order for her to apply to become a United States citizen she had to be a recognized citizen of another nation. Eventually, the Mexican government issued Alba a retrospective certificate of birth.

The consulate also worked on Alba’s case by verifying that there were no missing persons searches out for Alba within México. This was necessary in order to terminate parental rights, as neither of Alba’s parents could be located by Mexican authorities, despite the cooperation of Alba’s extended family in the search. It was determined that Alba’s existence in Esther’s custody, and the lack of missing person inquiries, was sufficient to establish that the parents had abandoned the child. Tatianna described this search period as a time of great anxiety for her, as she held the erroneous belief that the Mexican government would have an interest in its citizen children and want Alba to be returned to México. However, Tatianna came to understand that the Mexican state not only did not have that authority but that it was also not inclined to intervene in a situation where a child’s care was being addressed by her country of residence.

Some United States lawyers and social workers that I spoke with blamed the Tijuana social service system for being inadequately funded and organized so that it could not systematically remove and protect abused children in the way that the
United States system could. San Diego residents, including former Mexican nationals, harbored negative perceptions of Tijuana social services largely rooted, it seemed to me, in a lack of concrete familiarity with the system. However, Tijuanense lawyers, Desarrollo Integral de la Familia (DIF) staff, and orphanage workers also harbored ongoing frustration with their city’s social services. These frustrations were rooted in a typical shortage of budget and supplies, which resulted in a lack of access to equipment and medical personnel in Tijuana’s government-run orphanages, which were notoriously filled with more children than they had room to comfortably maintain. A limited budget also contributed to a lack of DIF oversight of the private, mostly religious orphanages, which fueled ongoing concerns about proper treatment and allegations of the abuse of children, particularly teenage girls, residing in private orphanages. Concerns with the social service system in Tijuana, and in fact, in México as a whole, were also due to the fact that the social services had historically been the project of the first lady at each level of government. This meant that funding, project goals, staff appointments, and enthusiasm for the work shifted every few years along with national and local elections.

Yet the dismissive attitudes of San Diego social workers and legal actors about Tijuana social services were not often based on these specific issues but on the unfounded presumption that the city did not offer parenting classes, therapy, drug treatment programs, or other services that might be required of parents attempting to regain custody of their children. This perspective posited that the Tijuana child welfare organization, DIF, was so underfunded and understaffed that the organization
would be more than happy for other nations to provide care for their children. However, numerous Tijuana orphanage directors introduced me to United States citizen children in their care and told stories of repeated calls to United States consulate workers who were supposed to collect their United States citizen children abandoned in México, yet never returned calls or appeared to claim these children. Perceptions on both sides of the border were that government agencies, regardless of available resources, would prefer not to take on extra dependents being cared for by other governments, unless they were forced to do so. This was not due to a lack of care for the well-being of minors, but to a lack of motivation about interceding for a child that was already in any government or agency’s care. The force of citizenship and state responsibility for minors, in terms of perceptions about who should be providing care for particular children in these circumstances, was less powerful than one might expect.

This sense of complacency existed within the United States foster system as well. I, along with Tatianna, was astounded that Esther had succeeded in getting legal guardianship over Alba through the child welfare system in San Diego County. How had she explained her custody of Alba? How had she explained where Alba’s parents were or why she did not have any legal documents? Tatianna concluded from her interactions with Alba’s first social worker, who was one of six county workers during Alba’s almost three year case, that the signs had been there but overlooked because Esther appeared to provide adequate care and the child was therefore “taken care of.” This perspective allowed the social worker to turn to other, more pressing,
cases. It was not until Tatianna submitted a petition for legal guardianship on the grounds of her kin relation that she believed the social worker had been forced to confront the irregularities of Alba’s case.

Conclusions

As I have tried to demonstrate in this chapter, the foster care apparatus was made up of a complex constellation of public and private agencies working in a conflicting, collaborative, overlapping, fragmented and disjointed fashion. No agency had access to all pertinent information or all decision-making moments. This sprawling, disjointed nature of the system created crucial gaps in the sharing of knowledge and collaborative efforts, yet it also structured the daily work of each individual actor and agency. Each agency had disparate goals and attitudes and a distinct sense of the centrality of their own role within the system. Parents, social workers, and legal actors each had different ways of engaging in a case, and in shaping the trajectory of a child through the child welfare system. Esperanza was a site that was at the periphery of the legal apparatus while also being centrally located in regard to the care and supervision of the child. As such, Esperanza operated as a site where fragmented aspects of the child removal apparatus were situated within a private setting and where the forces of state-sponsored intervention came to fruition through the individual actions of each social worker, each of who represented and put into practice the goals, beliefs, and attitudes of an entire agency.

Social workers were responsible for dictating to parents the requirements for regaining custody of their children. Biological and foster families knew full well that
while they had little power to influence any particular social worker’s decisions, they
could expect the recommendations and expectations to change as their case was
handed to the next social worker. In this way, families entangled in the child welfare
system were painfully aware of the ways in which their case might be shaped by the
coming together of various actors and agencies around their particular case and child.
And because of the way legal authority and service provision were distributed across
the system, it was quite likely that those who felt they knew parents and children best
were not those positioned to make legal determinations or recommendations. In this
way, state interventions were not enacted by an overdetermined, seamless
bureaucracy but rather by a disjointed array of agencies and actors with various and
overlapping agendas, practices, and understandings about children and families.

In the following chapter, I consider this unwieldy child welfare apparatus
alongside histories of child removal in the context of the United States. I ask when
and how government agents decide to intervene in the lives of families, and what
form that intervention has taken in different moments in United States history. In this
way, I situate the contemporary child welfare system within a history of state-family
intervention asking what broad motives, concerns, and anxieties have shaped these
interactions.
Chapter Three:
Child Removal and the Production of the “Unfit” Parent

Trevor and Josh were reflective about their experiences fostering four children over a period of three years and about the pending adoption of their current foster daughter, a petite Filipina girl named Emma. They spoke frankly about their concerns and reservations with the fostering system. I had spoken casually numerous times with both of them and more seriously with Trevor since he took charge during most home visits and functioned, in both of their opinions, as the primary parent. But it was when I sat down to formally interview Josh that he surprised me with his directness and willingness to openly reflect upon his experience as a foster father and adoptive father-to-be. Towards the end of our interview, once my notepad had been put away and we were speaking more casually, Josh looked down at his lap and said “I just don’t know if we are doing the right thing by taking Emma away.” Josh told me that he wondered about what they were doing, explaining that he was happy to adopt but he worried that sometimes adoptions happened in cases where it was not truly the only option. Citing the case of Kyle, one of his former foster children who had been reunified with his father only after the forceful intervention of Josh and Trevor, Josh asserted that he was speaking not from conjecture but from experience. Josh explained that he had raised these concerns with Emma’s adoption social worker. She had responded that Emma was going to be adopted, and if he and Trevor did not “open their arms” to her, another family would.
The vast majority of foster parents that I spoke with articulated a nuanced understanding of their foster child’s biological parents as not “bad” parents but as people caught up in bad circumstances. But none except Josh expressed to me such an explicit sense of discomfort with their own adoption of a foster child and with a concern about what they saw as unnecessary removals. Josh, based on his own experiences, expressed a belief that the foster care system made it difficult for parents to get their children back and that the system as a whole supported adoption over reunification. He told me that he felt that the county was not sensitive to transportation difficulties faced by parents attempting to get between work, therapy, and visitations with their children and that he had heard that parents had their “salaries cut” when their children were removed. Josh was correct, in a sense, because parents did often lose food stamps and housing benefits that were based on the number of people in their “family” when their children were removed from their care. They also often had difficulty qualifying for subsidized housing or childcare while they did not have legal custody of their children. This was a substantial obstacle for parents who had to demonstrate their ability to provide stable housing and a childcare plan before their children could be returned to them. Most other foster parents that I spoke with seemed to dance carefully around the possibility that they might have been raising a child that could have been safely and happily returned to their parents’ care. Josh, on the other hand, was willing to articulate this problem out loud and to

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42 I will discuss this position in further detail in Chapter Five.
mark the circumstantial differences between those who lose their children and those who adopt them.

Josh’s concern about the patterns of removal and of what he perceived to be the agency’s inclination towards adoption rather than reunification questioned the means through which child welfare pursued its goals of child protection. His concern raised questions about what the stakes were for community members who participated in the removal and subsequent adoption of children. This chapter takes up this discomfort with processes of child removal and child placement and attempts to historicize these practices. I consider practices of child removal, institutions and policies that have positioned some parents as unfit throughout United States history, and structural forces that mark out particular individuals as objects of intervention. I ask, how have unfit parents been produced historically? Who has been positioned as “unfit” and to what ends? What might be illuminated by considering the foster care apparatus alongside such institutions as boarding schools for Native American children, adoption patterns of placing tribal children into white families, and missionary efforts that targeted children as key sites for intervention and “civilizing” processes? I examine what these historical moments reveal about the ways in which children and families have been positioned as central sites for the production of citizenship, race, and national belonging and explore how philanthropic agencies and government actors have been involved in both the promotion and the dissolution of particular families. And finally, I ask what sorts of families have been positioned throughout various points in United States history, as ideal homes for children. In
addressing these questions, I trace a history of the removal and placement of particular children in the context of the United States from the 19th century to contemporary times. This history is necessarily embedded in broader discussions on the changing conceptions of children and childhood, rhetoric and policies in relation to shifting ideas about the “poor,” and notions surrounding motherhood as a site of moral obligation to the nation, among other important ideas that shape the context in which the interventions I describe below took place.43

*Family, Population, and the Nation*

In Stoler’s introduction to her book, *Carnal Knowledge and Imperial Power* (2002), she tries “to make sense of why connections between parenting and colonial power, between nursing mothers and cultural boundaries, between servants and sentiments, and between illicit sex, orphans, and race emerge as central concerns of state and at the heart of colonial politics” (2002:8). Stoler builds her argument through a “tracing of the discrepancies between prescription and practice” (2002:6) in Dutch colonial Indonesia during the late 19th and early 20th centuries. Drawing on a wide range of material, from government archives to ethnographic interviews, Stoler argues that anxieties about intimate relations are at the heart of colonial power. She disputes a view of the family as a pre-political site, or as a mere metaphor for political relations suggesting, rather, that, “domestic and familial intimacies were critical political sites in themselves where racial affiliations were worked out” (2002:210).

Drawing on Stoler’s insights, I suggest that the formation and dissolution of families enacted primarily through child removal, adoption, and residential schooling, have constituted a central ground for contestations about citizenship, racial hierarchy, and belonging throughout United States history. As Collins (1998) argues “family values” become a stand-in for a particular raced and gendered construction of the family that is equated with the health of the nation itself. And as Coontz (2000) suggests, although the ideal family form may shift over time, what remains constant is the way that the privileged form of family is linked up with economic, legal, and social privileges in relation to the nation-state. Drawing on this theoretical framework, I argue that the child and the family have been positioned at the frontlines of an effort to police the racial categories and citizenship limits that mark the boundaries of the ideal family within the contemporary United States. I trace a trajectory from the child saving movement of the nineteenth and early twentieth centuries that targeted primarily impoverished, urban, immigrant families, to the genocidal efforts waged against Native peoples, to contemporary patterns of social service interventions among low-income families, particularly but not exclusively those racialized as “not white.”

The interventions described below, I suggest, took form in relation to two entangled concepts: the nation-state and the population. The concerns of government authorities and wealthy elite over such things as the health or moral well-being of the

\(^{44}\) See also Briggs (2002) on foregrounding language around gender and reproduction in the colonial endeavor and the “importance of thinking of family as an axis of colonialism” (2002:4).
nation, and statistics such as birth and death rates, set the stage for both public and private interventions and attempts to manage the lives of citizens. Foucault suggests in his lectures on “Security, Territory, and Population” that as the focus of government shifted from the family to the population, the family unit was discarded as the model of government rule and became, instead, an instrument of intervention.\(^\text{45}\) That is, rather than the state being conceptualized as a patriarchal figure presiding over an assemblage of family units, the state is reimagined as a productive force, educating and guiding its citizens towards health and productivity. Foucault suggests that, “the art of government…is essentially concerned with answering the question of how to introduce economy – that is to say, the correct way of managing individuals, goods, and wealth” (2009:234). In this way, shifts in the population including birth, death, and marriage rates are understood to directly impact the health of the economy.\(^\text{46}\) As such, the problems of population encapsulated by the family interventions described below are entangled with the rise of the industrialization era and concerns about producing good, productive laborers. Similar shifts in policy and similar forms of state intervention were prevalent in other parts of the world, most notably Canada and Australia, from which I will draw some comparative examples. However, I focus here on the United States context, tracing the particular shape these

\(^{45}\) See McClintock (1997) for an analysis of the discursive power of positioning the family as a microcosmic form of the state.

\(^{46}\) In fact, Foucault argues that it was precisely the shift from the family to the population, which he dates to the 18th century, as the object of government through which the art of government becomes quite distinct from the concerns of “sovereignty” and through which the “economic” was established as a distinct “plane of reality” (2009:234).
policies and interventions took as these lay the groundwork for the form that contemporary state interventions take within the United States. In considering practices and policies surrounding the history of family intervention and forms of child removal in the United States context I address two overlapping periods – the moral reform era, constituting the majority of the 19th century, and the progressive era, lasting roughly from 1890-1920. Although historians differ on the timeframe of the moral reform and progressive eras, these dates are roughly agreed upon, with the caveat that particular discourse and practices do not everywhere stop and start at discrete moments in time. I focus on the treatment of dependent children throughout these periods and the accompanying anxieties about morality and the general “health” of the nation in which these efforts were enmeshed.

*Family Interventions and the Construction of the Dependent Child*

During the early 1800s, in the United States, children who were destitute or orphaned were often taken into almshouses and housed alongside adults who were categorized as indigent or mentally ill (Platt 2009[1969]:108). Due to poor sanitary conditions, children faced enormously high death rates in almshouses and concern with this problem eventually contributed to the development of orphanages and boarding schools initially run by philanthropic, primarily religious organizations (Tiffin 1982). The 1830s saw a proliferation of these institutions and by 1910 over 110,000 children were housed in 1,151 institutions across the United States (Tiffin, 1982:64). These practices were developed out of a sense of community responsibility for indigent and impoverished individuals, rooted in the British Poor Laws that
influenced practices for approaching the “problem” of the poor during the colonial era. Although United States policy and practices developed out of this foundation, conceptions of and approaches to the poor, and particularly impoverished children, gradually adapted and responded to the specific circumstances which arose in relation to westward expansion, substantial waves of immigration, and later, industrialization and urbanization processes in large United States cities.

Although some parents and relatives sought care for their children in an institutional setting themselves, other children were placed in such institutions through the intervention of charity workers and sometimes by the authority of a local court. Although the interventions prevalent during this period were not sanctioned or enacted by state or federal governments in any structured way, the right of a governing body to intervene in the lives of children and their families is most commonly traced back to an English doctrine entitled Parens Patriae. Schlossman describes parens patriae as, “a medieval English doctrine of nebulous origin and meaning” and states that it “sanctioned the right of the crown to intervene into natural family relations whenever a child’s welfare was threatened” (2005:8-9). Parens Patriae is interpreted as encompassing both a state’s responsibility to enforce a parent’s duty to their children and the state’s vested interest in the raising of its citizens (Tiffin 1982:143-4). Schlossman credits an 1838 ruling, referred to as Ex Parte Crouse, for solidifying this doctrine’s premise in United States juvenile law. In this ruling, the judge asserted,

May not the natural parents, when unequal to the task of education or unworthy or fit, be superseded by the parens patriae, or common
guardian of the community? It is to be remembered that the public has
a paramount interest in the virtue and knowledge of its members, and
that, of strict right, the business of education belongs to it.

(Schlossman 2005:9)

While Schlossman turns to court doctrine to ask how the right of the state to
intervene in the lives of families was established, the majority of family interventions
were initially enacted not by the state or federal government but rather by religious,
philanthropic efforts spearheaded largely by upper class white women. Jacobs, whose
work I will discuss in further detail below, argues in the context of both the United
States and Australia, that white women took up such projects as a way to stake their
own terrain in the civilizing process and to claim a legitimate space in the public
sphere, based on their expertise as “mothers.” As such, these women were invested in
the production of particular values, values that were enmeshed with their own class
positions and the patriarchal authority of their religious institutions. As Mink
(1990:93) states:

Women’s policies were the achievement of middle-class women’s
politics. Middle-class women’s politics linked the problem of racial
order to the material and cultural quality of motherhood. Motherhood,
in this view, held the key to the vigor of the citizenry. But the only
way mothers from new races could produce ideal American democrats
would be through reform and reward of maternal practice.

Linda Gordon (1989), in Heroes of their own lives: The politics and history of
family violence, Boston 1880-1960, argues that awareness of child abuse as a social

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47 Ward (2009) notes that while many large scale child saving efforts were carried out
by wealthy white women, there were also significant child saving efforts spearheaded
by Black women, primarily within Black communities. This aspect of the child saving
movement has been largely unattended to by historians.
problem arose in the 1870s, marked by the founding of Societies for the Prevention of Cruelty to Children (SPCCs).\textsuperscript{48} Expansion was rapid, with thirty-four separate SPCCs established by 1880 (Gordon 1989:27). While earlier interventions had focused on homelessness, abandonment, or starvation, these later efforts placed an increased emphasis on neglect and cruelty towards children. With a shift towards concern over the treatment of children rather than merely their poverty, the question of the category of maternal “neglect” became a salient issue as it was necessarily constructed against a norm of proper care (Gordon 1989:7). As such, concerns about mothers’ knowledge and conduct in relation to norms of hygiene, nutrition, and care of infants, among other topics, were positioned as key to the production of a healthy and proper citizenry. In this way, concern about the “neglected” child was a site for concern about the health of the nation itself.

The question of who constituted a child in need of saving and what characteristics defined a dependent or neglected child, is an issue that continues to plague those agents and agencies that are charged with the goal of child protection. For example, an 1899 definition included homelessness, neglect, cruelty and depravity on the part of the parents, but also included any child “found living in any house of ill-fame” and “any child under the age of eight who is found peddling or selling any article or singing or playing any musical instrument upon the street or giving any public entertainment,” highlighting anxieties about child labor and the

\textsuperscript{48} Many of these organizations in fact grew out of already established Prevention of Cruelty to Animals organizations, illuminating the relative newness of understanding children as in particular need of protection and intervention.
presence of children on urban streets acting as wage earners for their families (Tiffin 1982:38). The vagueness of the definition, which left open interpretation of such terms as “proper care,” “ill-fame,” and “disreputable,” positioned a wide range of families as potentially vulnerable to intervention.

In employing the term “dependent child,” widely used in the literature of the time, I draw on Fraser and Gordon’s (1994) genealogy of dependency. They argue that in the context of the pre-industrial English language the term “dependency” was synonymous with subordination. It encapsulated not the trait of an individual, as with the specter of the welfare dependent mother in the contemporary United States context, but a social relation. Fraser and Gordon argue that it was only with the rise of industrial labor that wage labor became understood as symbolic of independence rather than being understood as a social relationship of dependence between employer and employee. In this way, dependency took on what Gordon and Fraser refer to as a “psychological/moral register,” where it became a problematic characteristic rather than a productive social relation. They argue that with this shift dependency was no longer suitable for white working men and became the terrain of women, encapsulated by the figure of the “housewife,” as well as both men and women of color. However, children constitute a category that in Gordon and Fraser’s terms, perpetuates the concept of dependency as a productive social relationship. Dependency, in this sense, is naturalized as a characteristic embedded in the term “child.” Yet the notion of a dependent child, a term which Fraser and Gordon do not grapple with in detail, departs from this normative, positive sense of dependency.
That is, children marked as dependent are not dependent on their parents as is deemed natural but rather are dependent on the intervention of the state or the kindness of strangers.

*From Child Savers to Professional Social Work*

It seems clear that the child saving movement went beyond mere instrumental reforms in the social control of youth. It was also a symbolic movement which seemed to be defending the sanctity of fundamental institutions – the nuclear family, the agricultural community, Protestant nativism, women’s domesticity, parental discipline, and the assimilation of immigrants.

Platt 2009[1969]:73-4

Child saving efforts were driven by concern about the morality of, and care for, children. These efforts were not merely focused on addressing the welfare or the criminality of individual children. Rather, they were deeply enmeshed in efforts to preserve white, Protestant values against rising concerns about immigration and the “moral depravity” of the urban poor.\(^{49}\) Child saving efforts were primarily promoted by relatively wealthy philanthropists concerned about the influence of new immigrant communities and by anxieties about the sanitation, immorality, criminality, and disease associated with urban communities during the industrialization era in the United States. The majority of these efforts were focused on large urban cities such as Boston, New York, and Chicago. As Platt argues, “The child saving movement was not a humanistic enterprise on behalf of the working class against the established

\(^{49}\) See Katz 1989 for a discussion of the discourse surrounding poverty in the United States as primarily a moral discourse about deservedness, rather than “styles of dominance, the way power is exercised, and the politics of distribution” (1989:7).
order. On the contrary, its impetus came primarily from the middle and upper classes who were instrumental in devising new forms of social control to protect their power and privilege” (2009:xlvi). As such, child savers were not only, and perhaps not primarily, concerned with the upbringing and the treatment of individual children. They were invested in both promoting and producing particular social norms and reinforcing gender and class divisions.

As the rapid expansion of large United States cities accompanied the rise of industrialization during the late 19th and early 20th century, “anxieties over immigration, urban social problems, and child labor” grew (Swartz 2005:23). These concerns, coupled with a rising sentiment that families were preferable to institutions as a site for ameliorating the risks facing impoverished children, led to increasing intervention into poor, urban families during the progressive era (Schlossman 2005:72-3).50 Rather than simply removing children and deeming parents unfit, child savers increased efforts to reform parenting practices within the home. As Read (1981:22) argues in the context of 1950s New South Wales, the preference for keeping children in the home as opposed to removing them to institutional settings was at least partly motivated by financial constraints. The placement of children with foster or adoptive families, as opposed to large-scale institutions, continues to be a more cost effective strategy for child placement in the contemporary United States.

50 It is important to note that while institutional care was largely abandoned in an effort to maintain the majority of children in their homes after the 19th century, institutions were not abandoned as the primary mode of intervention into Native American families in the United States (as well as Australia and Canada). This issue will be addressed in detail below.
Because child saving efforts were primarily undertaken by private organizations and lacked government organization or oversight, they took on a wide variety of forms. They ranged in practice from organizing campaigns or lobbying for legislation, running orphanages and homes for pregnant, unmarried women, visiting families in their homes, scouring streets for child vendors, and taking families to court in relation to accusations of negligence or child delinquency. Although child saving efforts were initially instigated by private organizations, the early 20th century saw an increase in federal involvement marked by the establishment of the Federal Children’s Bureau in 1912, increasingly restrictive child labor laws, and the establishment of compulsory education laws in 1918. As favor shifted to government regulation of dependent children, the support for private, religious organizations declined and the rise of professional social workers began. Although state and federal governments took more responsibility for regulating the placement and care of dependent children throughout the late 19th century, it was not until the 1935 Social Security Act that child protection was officially established as the responsibility of the federal government.  

Kunzel (1993), in her work on interventions into the lives of unmarried mothers from 1890-1945, argues that there was a shift during this period from “benevolent reform work” carried out by evangelical women to “professional casework” by social workers. This shift was motivated by a variety of factors.

51 Although the 1935 Social Security Act is most widely known for the benefits it provided for retirees, the act was in fact broadly concerned with social welfare, including provision for child protection, maternal welfare, aid to the blind, and unemployment, among other provisions.
including concerns about the irregularity of charity work, the desire of women to professionalize their involvement in the community, and the increasing support for perceiving the welfare of citizens, particularly children, as the terrain of the federal and state governments. Kunzel suggests that this shift encompassed a transition of unmarried mothers as victims to unmarried mothers as “social problems,” and argues that these women were seen “not as endangered but as dangerous” (1993:51). This shift meant that mothers were predisposed to be understood as “unfit” and social workers were likely to recommend adoption as in the best interest of the child. Previously, evangelical women running maternity homes had seen the child as a means to the salvation of the mother because through caring for her child she would be led towards moral rightness.

Kunzel’s analysis points to broader shifts in the care of dependent children and intervention into families that saw an increased medicalization and bureaucratization of these processes. Such trends were not limited to the field of social work, but were part of a broader shift in the bureaucratization and medicalization of fields of health care, psychology, and nutrition, among others. The struggle of social workers to establish their field as a legitimate profession against a history of philanthropy, “do-gooding,” and negative perceptions of “women’s work,” was addressed by an increasing reliance on scientific and medicalized interpretations and categorizations of family problems (Kunzel 1993, Jacobs 2009, Gordon 1989). This position was accompanied by an approach to casework that stressed continuity over time and allowed for establishing patterns and generating data on instances and
indicators of abuse and neglect. Kunzel argues that the construction of social workers as experts entailed “a process of restriction and exclusion” (1993:141), limiting who was authorized to facilitate interventions into families and whose narratives would be positioned as providing the rationale for particular families to become subject to government oversight.

On the Production of Racial Categories: Linda Gordon’s Great Arizona Orphan Abduction

Throughout the latter half of the 19th century, many child saving organizations employed orphan trains as a solution to urban poverty and the overcrowding of orphanages. Believing that rural communities offered a healthy solution to the perceived moral lack of the dense, urban communities that developed alongside industrialization, child savers took advantage of rural Western families’ need for labor in the home. Although child savers were concerned with the impact of labor, such as factory work or street vending, on children, they were not opposed to children taking active part in household labor. Domestic labor and work associated with farming in the Western states did not incite concerns about morality in the ways that child labor in an urban setting did. Although these child saving organizations often viewed the homes from which these children came as immoral and ill-suited for children, they were not primarily concerned with reforming the families from which these children came, but in placing them in “suitable” homes.

The majority of children who were sent west on orphan trains were children of recent immigrants, and few were actually orphans. Most were the children of single
or unwed mothers or had impoverished parents, many of whom turned their children over to a charitable organization so that they would receive adequate food, clothing, or medical care. The urban immigrant communities often saw child savers as “child snatchers,” and stories of charity workers scouring urban neighborhoods for children they deemed neglected by their mere presence on the street were commonplace (Gordon, 1999:10-11). Concern about whether orphan train children had in fact been voluntarily relinquished or were legitimate victims of abuse or neglect eventually contributed to a rising concern over the irregularity of private child saving efforts and an increase in federal government oversight of child removal, child placement, and custody determinations.

Because the majority of children were removed from immigrant families, most were Irish or Italian and most were Catholic. However, the majority of rural families who were available to accept children from the orphan trains were Protestant, and this led to Catholic charitable organizations’ concerns that Protestant child savers were taking advantage of child removal and orphan trains as a tool of conversion by placing primarily Catholic children with Protestant families (Tiffin 1982:91). As a result, Catholic charities increased their own child saving efforts, where placement of children with practicing Catholic families was of paramount concern.

Linda Gordon’s *The Great Arizona Orphan Abduction* (1999) describes a series of 1904 events that took place at the core of Protestant/Catholic conflict and
anxieties about shifting racial categories during the early 20th century. Her analysis tracks the transportation of forty orphans from the New York Foundling Hospital, a Catholic charity organization, to foster families in the mining towns of Clifton and Morenci in Arizona. The sisters of the New York Foundling Hospital sent requests for foster families to parish priests throughout the United States, requesting good homes with practicing Catholic parents for New York orphans. Father Mandin, of the Clifton-Morenci parish, was a French priest who had been assigned to the parish only eight months prior to the arrival of the orphans. He had seen the New York Foundling Hospital’s request for families as a way to begin to establish his work in the community and had chosen some thirty Mexican Catholic families for the placement of the orphans. According to the Foundling’s regulations, Father Mandin had checked the homes for cleanliness, confirmed that the parents had sufficient income, and insured that all couples were married in the church. The Anglo community was not included, not because there were not Anglo Catholics in the area, although they were a small minority, but because no Anglo townspeople regularly attended the Catholic church, which they referred to as the “Mexican church.”

Gordon argues that the children, as they traveled from New York to Arizona, underwent a racial transformation from “Irish” to “white.” The transition and the ordeal that followed placed the family at the center of struggles to construct racial

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52 Throughout this section I use the terms Mexican, white, and Anglo as those were the terms employed by Gordon and in use during the time of the events described.  
53 Gordon notes that the presence of a French priest was not at all unusual in the region. In fact from the mid to late 19th century 100 percent of the priests in the area were European, and the majority of these were French.  
54 As I will discuss below, these categories were far from clearly defined.
boundaries and enables an examination here of how cultural conceptions of “proper care” and “neglect” are constructed.

Gordon’s analysis tracks the orphans’ arrival in Arizona, the delivery of a number of the children to their pre-assigned families, and the subsequent outrage by white, Protestant families upon witnessing the delivery of what to them were beautiful, white children into the care of “Mexican” families. A group of irate Anglo women interested in claiming children for themselves convinced their husbands to round up the children the very next evening, at gunpoint, from their foster homes. Some of the Anglo women were childless. Others reported that they became interested when they saw the children or were simply caught up in the general fervor that ensued. The nuns, the male placement agent who escorted them from New York, and Father Mandin were threatened with violence, including tar and feathering, and rumbles of possible lynching. The local sheriff, lacking confidence that both the male agent accompanying the nuns and Father Mandin could be protected from the angry mobs, facilitated their escape by train the day after the vigilante capture of the children even before the situation had been resolved. The sheriff felt it likely that the nuns, as women, would not be confronted with the same threat of violence.

The Catholic nuns were baffled by the conflict, Gordon argues, because they were unfamiliar with the Anglo/Mexican racial relations in the southwest context and were focused on the stewardship of the “souls” of their children – placement with a churchgoing Catholic family was their primary concern. The nuns eventually understood the gravity of the opposition and when they proved unable to recover the
children from the Anglos who had taken them they brokered a deal with the help of the superintendent of the local copper mining company, who functioned as a town boss. With his aid, the nuns were able to remove themselves to New York with the twenty-one children who had not yet been claimed by the local Anglo community. The Catholic nuns were horrified, having been forced to leave nineteen children in the care of Protestant parents whom they did not know and whose homes they had never seen, who had taken many of the children by force at gun point. The nuns vowed to reclaim the remaining children via the pending court trial and felt confident that they were within their legal rights as custodians of the children to determine their proper placement and secure their removal back to New York.

Although the lawyer who represented the New York Foundling Hospital knew that New York law supported the organization’s custody of the children and their right to take the children back to the Catholic home, he was familiar enough with the court system in Arizona to be skeptical of the possibility of success (1999:285). While the representatives and supporters of the Catholic charity attempted to frame the case through the use of media coverage as primarily about custody law and anti-Catholic sentiment, proponents of the Anglo families who had taken the orphans framed the case around racial superiority and the “best interest of the children.” In a courtroom where none of the Mexican parents were present, white residents of Clifton and Morenci described the squalid conditions of Mexican homes to which the children had been relinquished, while admitting that they had, in fact, never been inside the home of a Mexican family. Anglo men who owned saloons denounced the
Mexican foster fathers as drunkards and the mothers as prostitutes. The supreme court of Arizona ruled that the children in the custody of the Anglos should remain with them and validated their adoption.

The court custody battle, it should be noted, was waged between the New York nuns and the Clifton-Morenci Anglos, not between the Clifton-Morenci Anglos and the Mexican, Catholic foster families. The court stated that although the vigilantes’ initial removal of the children had not been lawful, they had been acting in the best interest of the children, while the Catholic nuns, content to place white children with Mexican families, had not. The Supreme Court of the United States, eighteen months after the initial removal of the children from their foster families, effectively upheld the Arizona ruling by denying the Foundling Hospital’s appeal on technical grounds, and stated in their decision “the child in question is a white, Caucasian child…abandoned…to the keeping of a Mexican Indian, whose name is unknown to the respondent, but one…by reason of his race, mode of living, habits and education, unfit to have the custody, care and education of the child” (as quoted in Gordon, 1999:296). Notably, Almaguer, whose work will be discussed in detail below, argues in the context of late-19th century California that categorizing lower-class Mexican individuals as “Indians” was a tactic frequently used by courts to deny

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55 The quote refers to a single child because the case was filed by John Gatti, one of the white men who had taken an orphan. Gordon notes that Gatti, an Italian immigrant, was not particularly wealthy and not a clear member of the local Anglo elite. Gordon argues that his role in the orphan abduction, and subsequent lawsuit, was part of what solidified his membership in the “white” majority.
Mexican citizens their right to a voice and representation in United States courts (1994:57).\textsuperscript{56}

Gordon acknowledges that these events were in some ways insignificant, impacting the fates of only a handful of children and parents among many thousands. However, she argues that this case reveals the family as a site central to the production and policing of racial categories. The anxiety produced around marriage, children, and parenting across racial lines has been a phenomenon throughout United States history and continues to be a pressing issue in the contemporary moment. Yet, for Gordon, this case is unique in that it reveals the shifting state of racial categories in motion and the fragmentation that occurs when overlapping but contradictory systems collide.

Almaguer, in his book \textit{Racial Fault Lines: The Historical Origins of White Supremacy in California} (1994), provides an analysis of shifting racial relations in California throughout the 19th century. Although the California context is unique in its relation to the gold rush and the large population of Chinese immigrants, it shares much with the broader southwest context in which Gordon’s analysis is situated. Almaguer argues that Mexican individuals were positioned differently than other “non-white” groups such as Chinese and Japanese immigrants, African-Americans, and Native Americans. The Treaty of Guadalupe Hidalgo granted legal United States

\textsuperscript{56} As I will discuss in further detail below, the Treaty of Guadalupe Hidalgo granted certain rights to Mexican nationals who chose to remain in the territory that became part of the United States, including the right to be heard in a court of law. These rights were not afforded to Native Americans or to other racialized groups in the region.
citizenship to all Mexican citizens who chose to remain in California, which ensured the ruling Mexican elite who wielded political power and maintained significant landholdings could not legally be denied access to the privileges claimed by Anglo United States citizens. These privileges of citizenship were denied to other “non-white” groups who could not vote, own land, or testify in a court of law.

Almaguer suggests that Mexican Californians’ status as legally “white” as well as the fact that they spoke a romance language and practiced Catholicism, positioned them as more closely aligned with Anglo Californians than with Native Americans or Chinese immigrants. These latter groups were positioned as “heathen,” a position buoyed by their “pagan” religious practices and the perception of their physical features as non-European (1994:4-6). Almaguer argues that Chinese immigrants received the brunt of racist sentiment and subordination because they posed the biggest threat to Anglo male dominance of labor in California. Mexican populations, with the exception of the highly-skilled Sonoran gold miners, initially posed little threat to Anglo labor aspirations. The Mexican population in California at the beginning of the 19th century was relatively small, the gender balance was evenly distributed, and most non-elite Mexicans were employed within the ranchero system, existing parallel to, rather than in direct competition with, most Anglo workers.

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57 Importantly, these events took place after the Chinese Exclusion Act of 1882 but preceded the official establishment of United States immigration quotas in 1921. These quotas arose from concerns raised by substantial immigration during the early 20th century, particularly around the idea that an influx of immigrants depressed wages. This legislation, and the anti-immigrant anxieties that supported its passing, enforced the racialization of the very groups vying for inclusion in the Anglo category in the case Gordon here describes.
Almaguer suggests that it was only as the ranchero system eventually collapsed through intermarriage, Anglo land grabs, and large-scale efforts to assert the dominance of the Anglo community, that Mexican Californians as a population became a threat to Anglo laborers and thus became positioned as racially “non-white.”

Gordon’s story takes place in 1904, when she argues that racial categories were just undergoing this shift from ambiguous categories based on such things as class status and “European features” to a stark Anglo/Mexican divide. In the context of 1890s Arizona, Gordon argues, marriages between Anglos and Mexicans were not uncommon, schools were not segregated, and the population was roughly stratified into three main groups: “Americans,” lower-income “Mexicans,” and “prosperous and usually light-skinned Mexicans, Spaniards, and other dark or Latin European immigrants,” a group that was “not (yet) clearly white or nonwhite” (1999:101). By the time the events of 1904 took place, Gordon asserts that marriage between Mexicans and Anglos were generally disparaged in Arizona, schools were segregated, and labor practices at the Clifton-Morenci mines instituted a stark Mexican/Anglo divide that left little room for a stratified middle-ground. Gordon argues that by the 1920s the system had moved solidly into a binary Anglo/Mexican divide.¹⁵

Although it is beyond the scope of this analysis to address the issue in further detail, it is important to note that Clifton-Morenci was an important copper mining town during this period. Gordon places the orphan incident, and the solidifying of Anglo/Mexican race relations, in the context of a 1903 strike by Mexican miners protesting unfair labor practices. Many believe that the strikers only narrowly avoided a great deal of bloodshed by the advent of a terrible flood that destroyed many homes and killed 39 residents. The strike ended by necessity to turn to these more pressing
In New York City, by contrast, the system of racial classification was no less prevalent but was more varied than a stark Non-White/White divide. Gordon (1999:12) lists Black, Irish, Hebrew, and Polish as comparable categories, saying,

This did not mean that African Americans and the Irish seemed equally nonwhite but rather that the prominent, operative identifications used in New York required more specificity to do the work of the concept of ‘race’ – that is, to classify status. These were not physical or cultural descriptions of innocuous difference but social and economic markings of rank.59

In this way, Gordon argues, it was possible for different sorts of affiliations to become salient in a given context. Thus the orphans and the Mexican foster parents were arguably well-matched from the perspective of the New York nuns – they were both Catholic, which positioned them as a religious minority, they were both categorized as immigrants (although this is a questionable designation for Mexican individuals living in this region of the United States at the time of these events), and

concerns. Mining practices contributed to racial categories in many ways, but the establishing of distinct “Mexican” and “Anglo” pay scales contributed to the eventual erasure of a middle ground. See also the 1953 film Salt of the Earth (Dir. Biberman) for a thoughtful portrayal of race and gender relations of a New Mexico mining town in the mid 20th century.

59 Sacks (1994) argues that the prevalence of the racialized position of European immigrants in the context of New York, and other large East coast cities, was largely in response to the substantial post 1880s immigration of Irish, Italian, and Jewish immigrants, which positioned them as a threat to the labor market and the availability of jobs and wages for those already living in the United States. Sacks suggests that it was only post WWII that Jews and other European immigrants were subsumed into the general category of “white”, instituting the stark white/non-white divide that had developed in the South Western United States in the earliest moments of the 20th century.
they were both positioned as “not-white” in relation to the white, Protestant, comparatively well-off population in their respective regions (1999:44).\(^6\)

The French parish priest, Father Mandin, operated with his own sense of racial boundaries, distinct from both the New York nuns’ and the Clifton-Morenci Anglos’ understandings of racial categories. Although he certainly perceived distinctions between the Anglo and Mexican communities, his European background led him to position “Spanish people,” as he saw the local Mexican population, differently than the prevalent notion of “Mexican” operative in Clifton-Morenci in 1904. Although all the Mexican families chosen for placement of the New York orphans had relatively high-paying jobs, were literate, and primarily light-skinned, both Father Mandin and the New York nuns later claimed that they had turned away certain families for being too “Black” for the orphans. Father Mandin was quoted as saying of the Mexican foster families, “I did not see the husbands but the women were white” (1999:96). While Gordon argues that this was partly evidence of a retrospective attempt to justify their actions and position themselves in the most positive light possible before the court, she also suggests that it reveals the vast gaps between the racial classification systems in operation within this context.

\(^6\) How to conceptualize the relationship of particular individuals to the United States, to México, and to ideas of transnationalism and transborder lives (Stephens 2007) continues to be a fraught and complex issue. See Vélez-Ibáñez (2010) for an argument against a narrow conceptualization of transnational lives that focuses only on physical cross-border movement and Zavella (2011) for a discussion of the concept of “peripheral vision” which entails a sense of displacement and invokes an imaginary that is deeply enmeshed in an ongoing sense of being in-between and an awareness of both sides of the border.
In concluding her analysis, Gordon (1999:309) argues that child saving practices, and perhaps all forms of intervention into families, are fraught because intervention relies upon a normative sense of proper parenting:

> The century-old movement against child abuse and neglect has protected many children but also made many poor mothers vulnerable to professional and government decisions – typically without the right of appeal – that their mothering was not adequate. Child saving agencies removed children from parents on the basis of culturally biased standards of child raising. Even when the agencies committed themselves to not removing children ‘for poverty alone,’ they could not keep this promise because poverty is never alone; rather, it often comes packaged with depression and anger, poor nutrition and housekeeping, lack of education and medical care, leaving children alone, exposing children to improper influences.

Gordon notes that this approach to child saving does not always turn on the notion of “matching;” that is, that white children should be with white parents, as the Clifton-Morenci case might be read. Gordon points to numerous historic examples where the discourse of best interest has been successfully mobilized to place children from marginalized social groups, whether along race, class, or religious lines, with parents who represent the social majority. Such examples include the placement of Romany children into white, Swiss families, the placement of Yemeni babies into the care of Israeli parents, and the placement of Native children in the homes of White settlers in the United States, Canada, and Australia (1999:310). Custody in such cases is determined by the belief that all children should be placed with families who are members of the dominant social group, usually white and Christian families, namely, those best positioned to satisfy the “best interest” of the children, at least under circumstances where poverty or an inferior position in an established racial hierarchy
constitutes neglect and abuse. This form of intervention is not so much about reforming “bad” families as it is a form of “rescue,” where children are placed in communities, and with families, that are positioned as superior homes for all children, regardless of the racial or cultural position of a particular child. Just as interventions into immigrant families began to turn away from the removal and “salvation” of children, and more towards reform efforts focused on such issues as child mistreatment, alcoholism, and sanitation, a movement began to remove Native American children from their homes and communities, and to place them into boarding schools. In this way, the removal of Native children in particular was not simply caught up in a colonial discourse about what sorts of parents could provide for the “best interests” of Native children but was further enmeshed in a state driven project of land displacement and genocide. It is to this topic that I turn in the following section.

**Child Removal as Cultural Genocide**

“There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children…”


At the end of the 19th century, child saving institutions and agents of family intervention began to move towards a preference for maintaining children in homes as opposed to the institutional settings of orphanages, asylums, and boarding schools. This was reflected in the shutting down of large scale institutions and increasing

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61 I discuss the complex notion of “best interest” in further detail below and in the following chapter.
financial aid such as support for single or widowed mothers, along with increased government regulation of systems of fostering and adoption. During the same period, as armed conflict with Native American communities began to decline, the systematic removal of Native American children to boarding schools and reformatories became prevalent. Although I have not heard tales of closed down reformatories, emptied of their population of poor, immigrant children, actually being physically repurposed as boarding schools for Native children, that is the sense I got as I read historical accounts of this time period. I pictured lines of urban, immigrant children heading back home, their empty beds filled with Native American children, with shorn hair and stiff, uncomfortable clothes.

From a particular perspective, the removal of Native American children was not unlike the removal of the children of impoverished, urban, immigrants.

62 In this section I employ a variety of terms, each of which is immersed in a politically fraught history. I use “Native American” to refer to communities understood to have preceded the European settler society in the United States context, I use “indigenous” when referring to communities in Australia, New Zealand, and New South Wales, and I use “Indian” as the term most commonly employed in both current United States legislation and in contemporary political action groups to refer to Native American communities.

63 It is important to note that the systematic removal of children from their parents during the period of slavery in the United States occurred prior to the history I recount here. The removal of slave children was in some ways similar to the removal of Native American children in that the effort was intended to demoralize adult slaves through a process of domination and control by ensuring that they had no enduring claim to their own children. However, the removal of slave children was deeply embedded in a cultural context in which these children were objects of monetary value and property of their owners, in a way that Native American children were not. Although removal of Native American children was arguably enmeshed in eroding land claims that had significant economic impacts, the explicit sale of the children of slaves necessarily gave shape to different processes and motives for the removal and treatment of children during the slave era. See King (1995:91-114) for a discussion of
Although the removal of the children of urban immigrants was not enmeshed in a history of United States colonialism and genocide, both efforts were framed largely as child-saving; articulated in terms of concerns about moral degeneracy, proper parenting, and an effort to both produce and police the limits of a white, Protestant citizenry. Although the removal of Native American children in the United States was shaped by a specific socio-political context at a particular moment in history, there are striking similarities to the policies and discursive practices surrounding the removal of indigenous children in other regions during a similar time period. Theorists and historians of the colonization and genocide of indigenous peoples in New Zealand, Canada, and Australia have positioned both the child and the family as sites that are central to processes of cultural destruction and domination (Haebich 2000, Fournier and Crey 1997, Armitage 1995). Accounts of assimilation through removing children from their natal homes have emphasized the equating of poverty with child abuse and the linking of racialized subjects with unfit parenting practices (Briggs 2006, Armitage 1995). Studies of these colonial interventions emphasize child removal both as a form of cultural genocide (Fournier and Crey 1997) and as an assimilation strategy for the production of modern, Christian citizens (Armitage 1995, Jacobs 2005, Haebich 2000). Child removal is approached as a process through which comparatively “salvageable” children are educated, civilized, and subsumed into the modern nation, while their unsalvageable parents are left simply to die (Haebich 2000, Read 1981, Rose 2004).

the impact of the imminent threat of separation through sale of children and parents away from each other and parents’ strategies to mitigate or avoid such a horror.
As Jacobs argues, following Stoler, in the contexts of both the United States and Australia the discourses of “compassion” and “child saving” that encompassed the removal of indigenous children were an extension of, rather than a departure from, the more physically brutal and explicit forms of colonial domination and genocide that accompanied earlier practices towards Indigenous communities. Jacobs (2009:xxx) argues:

It was not simply ethnocentrism, racial prejudice, or a sense of religious superiority that led reformers, missionaries, and government officials to promote the removal of indigenous children; it was also that the persistence of indigenous people as distinctive groups within each society threatened nation-building efforts in both the post-Civil War United States and Australia after its federation in 1901.  

The purported goal of the removal of Native American children was not intervention into a uniquely troubled family but rather to enact broad goals of civilizing and assimilation, to remake these children into adults who could be absorbed into the white majority, not as equals, but as members (See Merriam 1977, Johnson 1999). Thus while Native American children were sometimes removed from their parents due to reports of abandonment, alcoholism, or single parenthood; in many cases all the children of a particular community were simply rounded up and taken away to boarding school as a group. The goal was that children would not return to their homes, but would instead transition into paid employment once they

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64 Jacobs’ (2009) book White Mother to a Dark Race: Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880-1940, presents striking parallels between both policies and discursive apparatus surrounding child removal in these two contexts, despite the surprising lack of communication and exchange between child savers and policy makers on the two continents.
completed their schooling. Female students were commonly trained for domestic labor. Male students were trained for manual labor on farms or in factories and later for employment in the United States military. Jacobs argues that boarding schools for Native American children enacted their intended transformation through a sensory regime of tasks like scrubbing bodies, cutting hair, silence during meal times, marching and military drills, sleeping in dormitory beds, and other such regulatory practices.65

Although there was widespread resistance by Native American parents and communities to the removal of their children, these efforts were largely unsuccessful at keeping children home and out of boarding schools. While some communities were able to resist for periods of time, and individual parents were often able to hide their children from authorities, few communities remained untouched by the systematic removal of their children. Child (1998) notes that although most parents loathed the separation from their children some Native American parents placed their children “voluntarily” in boarding schools. This occurred particularly during the Great Depression when Native American parents were struggling due to land displacement and lack of job opportunities on reservation land and were hard-pressed to adequately feed and clothe their children. However, it is crucial to situate the notion of “voluntary” relinquishment in the context of the land displacement, severe poverty, and the general lack of legal rights and political power that these communities experienced during this time.

65 See Jacobs (2009), particularly Chapter 6: “Groomed to be Useful.”
Accounts of children’s experiences in boarding schools describe harsh punishments, lack of food and medical care, and the humiliating and dehumanizing practices of having their hair shorn, being given a new, English name, and being forbidden from, and punished for, speaking their native languages (Douglas 2009, Smith 2005). Other analyses credit the boarding schools for creating a “pan-Indian” community where none had previously existed (Child 1998). Although the prevalence of removing Native American children to boarding schools declined after 1930 as the economic concerns of the great depression turned policy makers to other issues, boarding schools continued to operate into the 1960s and 1970s. As Indian rights activists began an eventually successful campaign against the boarding school institutions, some closed down and others adapted to resources for the preservation, rather than the destruction, of cultural practices and language. These repurposed boarding schools incorporated native language instruction and bicultural curriculum into the educational apparatus and were increasingly staffed by Native American teachers. However, as boarding schools and institutions of assimilation gradually fell out of widespread use, practices of fostering and adoption of Native American children by white families continued unabated.

As removal of Native American children to boarding schools declined, these children continued to be targets for an assimilationist project. Westermeyer (1977) refers to this position as “de facto ethnocide,” suggesting that although individual agents of child removal would not frame their practices as instances of cultural genocide, that was, nevertheless, the impact of these systematic practices of removing
Native American children from their families and communities and placing them in white homes. I take Westermeyer’s term “ethnocide” and the term “cultural genocide” to be synonymous, emphasizing the destruction of particular practices and beliefs as part of an assimilationist project. These terms are here juxtaposed with “genocide,” which I take to refer to the systematic and intentional killing of members of a particular cultural group. In the case of the treatment of Native American families during this period, the efforts of ethnocide and genocide came together through the removal of Native American children.

Many of these efforts were reframed in the standard rhetoric of “best interest” employed by child welfare agencies. As Abourezk states, “public and private welfare agencies seem to have operated on the premise that most Indian children would really be better off to grow up non-Indian” (1977:12). The purported purpose of boarding schools for Native American children was a destruction of a particular way of life and set of cultural values. This position was encapsulated by General Pratt, founder of the Thomas Indian Residential School, who famously stated that his aim was to “Kill the Indian, save the man.” However, colossal numbers of children actually died in the boarding schools due to unsanitary conditions, close living quarters, poor nutrition, and inadequate medical care. In this way, assimilationist goals and ethnocide came together with genocide and the destruction of Native American communities through the high death rates of their children.

Long after the 1930s when the use of boarding schools first began to decline, removal of children from their parents and tribal communities was still widespread.
Surveys taken in 1969 and 1974 concluded that 25-35 percent of all Native American children had been removed from their families (Byler 1977). These removals included children who were in boarding schools, foster care, or adoptive homes. Further, the vast majority of the removals were based on determinations of neglect, often stemming from the impoverished conditions Native American parents found themselves caught up in via life on a reservation, rather than allegations of abuse. In this way, the poverty experienced by Native American parents vis-à-vis their social, economic, and political position in the United States was translated into the child welfare category “neglect” and constituted legal grounds for the removal of their children. In fact, critics of government policies towards tribal communities note that contemporary standards for income and quality of residence often disqualify native community members who reside in government housing on reservation land from being able to foster members of their own community (Fournier and Crey 1997, Strong 2001).

The Indian Child Welfare Act (ICWA), established in 1978, was developed in response to growing concerns about the systematic removal of Native American children and the placement of those children with white foster or adoptive families. An analysis of the “best interest” framing of child removal in the context of Native American communities highlights the entrenchment of this ideal in white, Protestant, 

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66 The removal of children from undocumented parents in the contemporary United States is also largely based on allegations of neglect as opposed to abuse. Similar sorts of translations are at play in this context where poverty is produced in part through obstacles to food, housing, child care, and medical care and then categorized as neglect by child welfare authorities. These issues are discussed in further detail below and in Chapter Five.
middle-class values. The ICWA established that the standard notion of best interest, which turns primarily on the importance of a bond with a biological parent, is not sufficient grounds to determine the placement of a Native American child, and that “what is best for an Indian child is to maintain ties with the Indian Tribe, culture, and family” (Yavapai-ApacheTribe, 906 S.W.2d at 169 cited in Metteer 1997:664). Strong (2001) argues that the ICWA emphasizes a reframing of the politics of kinship away from the individualistic view commonly employed by the best interest framework and towards a more relational view that takes into account the autonomy of Native American communities. She suggests that the ICWA shifts best interest in three ways:

the right of Native American children to have their best interests understood relationally, or in terms of culturally-constructed personhood…the right of Native American parents and families to have the dispersed nature of their modes of social and cultural reproduction taken into account…and the right of Indian tribes as quasi-sovereign nations to control their social and cultural reproduction. (2001:483)

The manner in which the ICWA shifts the best interest principle highlights the privileging of the nuclear family and the individual emphasized by the standard interpretation of the best interest principle, rather than a relational view of belonging and bonding that privileges the rights of the child as embedded within their community. Further, although ICWA is based on the premise that children have an interest in remaining in a community and family setting that will facilitate the preservation of their specific cultural practices it also emphasizes the interests of the tribe as a community that is motivated to maintain rights in its members. In this way, best interest is shifted from a focus on the specific child, to an emphasis on the
relation between child and community, and the interest both parties may have in maintaining that connection.

As Strong notes, contemporary child welfare policy does not allow placement decisions to be explicitly impacted by racial factors. Most social workers, at the time of this writing, continue to place children with parents of similar racial, ethnic, or language backgrounds when possible, with the notable exception of Native American children. However, the law currently prohibits delaying any child’s placement based on these factors. These laws were put in place primarily to address the problem of children of color languishing in temporary care while available homes waited for a white child. However, many social workers lament the fact that these regulations make it difficult to place the child in the most suitable home, and result in children being placed in settings where the language skills or cultural values of their biological home are not reflected or supported by their placement. Although the ICWA has been challenged in courts as mandating an inappropriate consideration of racial categories in child placement, it has been upheld by emphasizing Native American communities’ unique position of autonomy and sovereignty within the United States. That is, the ICWA upholds first and foremost not the unique cultural needs of Native American children but the autonomy and authority of the tribal community’s jurisdiction over their child members.\(^67\)

\(^67\) It is important to note that the implementation and enforcement of the ICWA varies widely from state to state. Research suggests that the provisions of the ICWA are frequently disregarded in South Dakota, Oregon, and Washington, states where the disproportionate removal of Native American children and their placement in almost exclusively white homes, despite the presence of available Native American certified...
Contemporary Forms of Child Removal

There's also a question; the reservation is sovereign. How does the state of South Dakota drive a car onto the reservation and take away an Indian child? Indian agencies couldn't drive into Pierre, South Dakota... And drive away with white children.

Neal Conan, *Talk of the Nation*, NPR, 2011

As Conan states in the above quote, not all children and parents are equally subject to the threat of child removal. The removal of children from the custody of white parents, particularly, but not exclusively, those who are low-income or otherwise marginalized, does happen. However, the vast majority of children targeted for removal from their parents’ custody throughout United States history have been positioned as outside the white, Protestant, middle-class majority. I argue that this is largely a result of the structural aspects of racism, poverty, and class categories - those that position particular individuals as vulnerable to being framed as neglectful or morally lacking - being situated outside the realm of political debate. From accounts of the children of single mothers being removed during the industrial era because the economic and social conditions did not allow for them to feed, house, and clothe their children, to narratives that frame 21st century welfare recipients as lazy foster families, continues. However, in the context of my research in San Diego County in 2010-2011, the ICWA provision was commonly adhered to and diligent research was conducted to ensure that all Native American children in foster care were identified as early as possible in their case history. In fact, the implementation of the ICWA was so effective in San Diego that some social workers told me that parents sometimes erroneously stated that their child had a claim to tribal affiliation as a tactic for slowing down the progress of their child welfare case. See Sullivan and Walter’s 2011 broadcast on NPR’s *All Things Considered* and Conan’s 2011 discussion on *Talk of the Nation*, for a discussion of the disregarding of ICWA provisions involving the Lakota community in South Dakota.
and morally suspect, these stories illuminate the depoliticization of the processes through which poverty is translated into neglect. These discourses position the impoverished individual as responsible for the neglect of their child rather than calling into question the social, political, and economic circumstances that both position certain individuals to live impoverished lives and that equate that condition of poverty with the willful neglect of a child. Further, while few would oppose the removal of children who have been subjected to severe abuse by their parents, few would support legislatively “poverty” as an official category of neglect. Yet while poverty is not an institutionally valid reason for removal within the child welfare system, social workers’ concerns about empty refrigerators or about leaving children unattended while their parents are at work cannot be delinked from economic circumstances. In effect, policies that advocate removal rather than providing financial support or other social services to keep children in the custody of their parents, position neglect as a result of “parental pathology, rather than as in good measure a structural aspect of women’s powerlessness and poverty” (Gordon 1989:113). It is in this way that Briggs (2012) approaches child removal as an “index of vulnerability,” marking out those individuals who occupy a position of subordination whether based on race, class, or gendered positionalities.

Swartz (2005), in her analysis of contemporary social workers in the Los Angeles County child welfare system, laments social workers’ disdain for the biological parents whose children they have removed. She states, “Their severe lack of material resources, social support, and other serious problems were too often
flippantly dismissed as moral failings, immaturity, or a lack of love for their children” (2005:17). It was this concern, that the child welfare system somehow converted the economic hardship and structural position faced by parents into a moral failing that positioned some parents as more worthy to parent than others, that Josh, the foster father introduced at the beginning of this chapter, seemed to lament. Josh wanted to step in as parent only when there was no other option. Yet his experience in the foster care system had led him to believe that the system did a better job at removing children than it did in providing social supports that would allow children to remain in their homes. As such, the neglect of children was positioned as the failure of individual parents, rather than the failure of the social policy that inevitably positioned some parents as impoverished, and then held them accountable for willfully mistreating their children.

The highly publicized case of Encarnación Bail Romero provides an account of such a translation from structural poverty to willful neglect and, in this particular case, from immigration detention to child abandonment. Bail Romero, a Guatemalan mother of a seven month-old baby, Carlitos, was detained during an ICE raid of the Missouri poultry plant where she worked. She was charged with aggravated identity theft for working under a false social security number and was sentenced to two years in jail, after which she was scheduled to be deported back to Guatemala. Although ICE officials do have the discretion to release single parents, particularly those who are breastfeeding or who are the sole provider for a disabled family member, they chose not to do so for Bail Romero, despite her having no prior criminal history. Her
son was initially cared for by Bail Romero’s sister and brother-in-law but a couple who babysat for Carlitos on the weekends began facilitating his adoption by a local couple. Due to the fact that the court case was still in process at the time of this writing, only limited details of the case were available. Thus it is unclear what role the brother and sister-in-law may have had in this process, how child welfare services was involved at that point in the case, and what motivated the couple who babysat Carlitos to initiate the adoption process. Importantly, it is not lawful for adoption proceedings to be initiated by anyone other than the biological parents of a child unless the court has terminated parental rights.

Though Bail Romero claims that she never gave permission for Carlitos to be adopted and was never presented with court documents in her native Spanish, a judge terminated Bail Romero’s parental rights and approved the adoption of her son by his adoptive parents. The court judge who enacted these decisions stated that Bail Romero’s “lifestyle, that of smuggling herself into a country illegally and committing crimes in this country, is not a lifestyle that can provide stability for a child…A child cannot be educated in this way, always in hiding or on the run” (As quoted in Gilger et al. 2012). The determination that Bail Romero had abandoned her child was based on the fact that she never visited Carlitos because she was unable to during her detention. She was never provided with legally mandated reunification services because it was determined that due to her detention she would be unable to comply (Katrandjian and Hill 2012). Upon her release from detention, Bail Romero was able to retain a lawyer who appealed her case and won a stay on her deportation pending a
custody decision. The Missouri Supreme Court reviewed the appeal and determined that the termination of parental rights and Carlitos’ subsequent adoption had been unlawful. However, the court did not reward custody to Bail Romero, but instead sent the case back to the lower court for a retrial. Proponents on both sides of the case were upset by this decision. Supporters of Bail Romero were disappointed that custody of her son was not immediately restored and supporters of the adoptive family were aghast that the adoption might in fact be undone. Both sides expressed sadness at the state of Carlitos, a child for whom there was no good solution. At the time of this writing, he had lived with his adoptive parents for five years, spoke no Spanish, and had not interacted with his biological mother since he was seven months old. In July of 2013, Bail Romero’s case was retried and a judge again determined that Bail Romero has abandoned her child and reauthorized the adoption of Carlitos. Bail Romero’s lawyers publicly stated plans to appeal the ruling, but at the time of this writing no further information was available about the case.

A *New York Times* article entitled “The Criminalization of Bad Mothers” (Calhoun 2012) charts another kind of removal that is enmeshed in the production of unfit parents. The article describes an Alabama law that turns pregnant mothers’ drug use (of both illegal and prescription drugs) from a child welfare issue necessitating drug rehabilitation and family therapy into a criminal issue where child endangerment through drug use during pregnancy carries a felony charge. Proponents of these

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68 Although it is beyond the scope of this chapter to discuss the politics of the criminalization of particular substances, it is important to note that this law is enmeshed in larger debates about substance abuse and mandatory minimum
convictions, made under a law that was intended to curtail children’s exposure to methamphetamine labs rather than in utero drug exposure, argue that such actions provide a much needed deterrent to a mother’s willingness to harm their babies in utero to satisfy a drug addiction. Opponents of the law argue that addiction is a disease that requires treatment and does not respond to punitive law enforcement actions. The reporter, Calhoun, noted a case where a newborn tested positive for marijuana, which the mother had used to ameliorate her nausea during pregnancy. The doctor proclaimed that the infant was healthy, with no side effects from the drug exposure, a determination not unusual for maternal marijuana use during pregnancy. The mother was nevertheless convicted of child endangerment. The mother’s lawyer, Carmen Howell, asks what, then, is the purpose of this law if a child who was not harmed is still grounds for the conviction of the mother? I suggest that this case can be viewed not under the rubric of child protection, but rather as an instance of the production of “unfit” parents. As such, the law takes on the role of regulating proper motherhood, not through protecting children from actual harm, but through drawing boundaries around acceptable and unacceptable parenting practices.

Conclusions

The types of families who have been subjected to the removal of their children have varied throughout United States history. Similarly, the discursive positioning of particular parents as “unfit” has varied in both its form and function, caught up in the sentencing practices. The article points out that while alcohol abuse is not relevant to this legislation it can in fact cause more enduring damage to a fetus than most drug abuse, including methamphetamines, cocaine, and heroin.
political and social anxieties of particular historical moments. Although the focus of these interventions has shifted over time, the targeting of families living in poverty and those who are categorized as immigrants or racially “other” have remained constant throughout the period I have here considered. Constant throughout these various interventions has been a framing of individual parents as immoral or deviant. Absent in these same interventions is any consideration of how social inequalities, such as systematic income disparities, get translated into individual instances of willful neglect. Throughout the history I have recounted here, the ideal family in which a child should be placed has been almost unwaveringly white, Christian, and not impoverished. This shift in focus from child protection to the twin actions of intervention and removal highlights the positions of the child and the family as key sites for the production and reinforcement of racial, cultural, class, and religious hierarchies.

Instances of child removal considered in this chapter sometimes had explicit goals of assimilation or cultural genocide, such as the removal of immigrant children during the progressive era, and the removal of Native American children throughout the 20th century and into the present day. In the following chapter I consider the way that contemporary concerns about “child protection” may echo concerns about “rescue” and “salvation” outlined in the history recounted above. I ask how decisions about child removal and reunification are produced through quotidian interactions among social workers, legal actors, and families. I attend to the removal of children of undocumented immigrant parents who are entangled at the nexus of child welfare
policy and immigration law. Although these instances of child removal do not include explicit efforts towards an assimilationist project, I contend that a position that holds that children are better off in the care of United States citizen parents, the majority of whom are both white and middle class, can be productively understood in the context of the history here described. In this way, the systematic removal of children whose parents are caught up in immigration enforcement actions is rooted in a politics of citizenship that positions undocumented parents as irredeemably “unfit.”
Chapter Four:

Jurisdictional Limits

Four-year-old Lucas, Liliana’s foster son, entered the child welfare system when his parents were caught up in a drug raid where Lucas was present. Lucas’s parents were arrested; his mother was jailed and released the following week, and his father, who was determined to be a Mexican citizen, was briefly detained by ICE before being released across the border into Mexicali. Lucas spoke with his father a few days after his removal. They spoke on speakerphone so that Liliana could monitor the call. Lucas struggled to speak, gulping and crying through the static buzz of the pay phone his father was calling from and begging Liliana to tell his father where he was so that he could come pick him up. During our first home visit to check on Lucas’ progress Liliana told Corinne and me that she was relieved to have been able to console him with a hug and to distract him with his foster brother and the lure of the Nintendo soon after the brief call ended. Lucas had weekly visits with his mother and with a cousin who was pending approval to take over Lucas’s foster care until he could be reunified with his mother. His father was no longer considered part of the reunification plan, due to his deportation. Lucas’s only contact with his father was when his mother asked Liliana’s permission to call him during her visits, a few tearful moments on a crackly cell phone call across the border.

In Lucas’s case, obstacles to his reunification with his family arose through his father’s deportation and the subsequent geographic separation of his parents.
Unless Lucas’s mother was willing to argue in court for her right to move with Lucas to México, his father’s fight for reunification services would have been a struggle to take custody from the mother and to prove himself, in México, to be a better placement option for his son. He could not fight to share custody along with Lucas’s mother, since immigration policy barred his legal return to the United States after a forced deportation. In this case the impacts of immigration law had foreclosed the social worker’s ability to work towards a complete family reunification and so her job became the search for the best possible placement, which in this case was Lucas’s newly single mother, acting suitably repentant and recently released from jail.

Like Alba, introduced in Chapter Two, Lucas’ case was emblematic of the circumstances that involved simultaneous entanglement in both the child welfare and immigration systems. This chapter examines the trajectory of families who must contend with these two legal systems, systems that are both deeply enmeshed and starkly estranged. I argue that the informal nature of the overlap between these two systems both produces unintended consequences and constraints while also opening up possibilities for creative navigation of these legal apparatus. I ask, how do policies, decisions, and actions in the immigration system and the dependency system impact

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69 The prohibition against legal reentry after a deportation can range anywhere from three years to a lifetime ban, depending on the initial cause of deportation. Although I was unaware of the length of Lucas’ father’s ban, even three years would be long enough to remove him from consideration as a reunification option for Lucas.

70 See Zavella 2012 for a discussion of how United States immigration policy since the 1986 Immigration Reform and Control Act (IRCA) has fallen short of attending to the needs of contemporary family formations and the ways in which current immigration legislation, particularly post 9/11 has engendered the increased separation of families through detention and deportation actions.
families that are simultaneously entangled amidst these two systems? In what ways does the coming together of these systems produce particular families as vulnerable to state intervention? What constitutes useful knowledge in these domains and how are different actors positioned as authorized to make decisions in these contexts? I examine the ways in which the engagement between these institutions is shaped by ongoing processes of translation across institutional categories, shared terms, and varied contexts. Throughout this chapter I explore the way that these institutional engagements play a key role in demarcating between citizens and non-citizens, and between the United States and other international contexts. And finally, I suggest that because these systems both had the potential to profoundly impact people’s lives and were both sites where an extreme manifestation of state power took place, the ways in which they came together, and spoke past each other, could produce unexpected results.

Citizenship, violence, and human rights

I first met Luz, the executive director of Refugee Legal Aid (RLA), a pro bono immigration law firm, in March of 2011. I had contacted Luz in the hope of learning from her agency’s expertise on children’s rights and obstacles to immigration. Luz, in turn, had convened a group meeting along with Katya, the director of the children’s program at Refugee Legal Aid, and Sister Margaret, one of the organization’s original founders, with the hope of learning from me about some of the obstacles faced by foster children attempting to qualify for immigration relief. Immigration lawyers use the term “relief” to refer to any legal avenue through which
an individual might obtain authorization to reside in the United States. The term is broad enough to encompass asylum claims, those seeking green cards under specific visas, or those seeking a stay on a deportation order. Employing the term “relief” emphasizes a stay, or release, from the looming specter of detention or deportation and is substantially distinct from the process an individual might go through to apply for a visa or for United States citizenship before entering the country.

It is important to note that the child welfare system does not formally treat non-United States citizen children differently from foster children who are United States citizens. They receive the same access to medical care and therapeutic services, they are placed in the same county or FFA foster homes, and they are not differentiated from other children within the dependency court system. Though these children are not formally treated differently, there are of course, informal inequalities, which I will discuss in further detail below. These include a lack of available bilingual social workers, foster families, and service providers, a reduced chance that these children’s non-citizen parents will have the available resources to meet the reunification requirements, and less of a likelihood that these children will be placed in the care of a relative rather than in a non-relative foster home, due to the social worker’s perceptions of barriers to placing children in the care of undocumented adults. Although these children were technically subject to deportation even while in custody of the child welfare system, this was a rare occurrence. Refugee Legal Aid was primarily interested in foster children who were not United States citizens because they were often eligible for citizenship due to their status as foster children.
However, these children were unlikely to be able to take advantage of that option without the intervention of an immigration lawyer, since this was not an issue that social workers were likely to pursue on their own. RLA lawyers often worked with children who were refugees or victims of domestic violence, living in homeless shelters or detention centers. They hoped to further extend their practice to the children in San Diego’s foster care system.

Refugee Legal Aid was founded in 1997 by two Catholic nuns who were sent by their order to address humanitarian issues in the Southwestern region of the United States. The agency began its work as a division of an existing organization of pro bono lawyers in San Diego but over time developed its own independent status as a non-profit law firm. Since its founding, the organization has steadily expanded to meet the growing need for the legal representation of non-United States citizens in the region. Although San Diego is commonly considered a crossing point primarily for Mexican and Central American immigrants, it is in fact a significant entry point for asylum seekers from a wide range of countries in Asia and Africa, including India, China, and Somalia, among others. This is largely due to the fact that México City is a frequently used hub for individuals traveling from those regions by plane. Many asylum seekers traveled from México City by train or foot and turned themselves over to United States immigration authorities to make an asylum claim when they arrived at the San Ysidro port of entry between the cities of Tijuana and San Diego.

Although Refugee Legal Aid was not established as an independent non-profit firm until 1997, the project itself began in 1992.
Refugee Legal Aid developed three programs to meet the most pressing needs of their clients, which focused respectively on asylum seekers, victims of domestic violence, and children. The children’s program provided legal representation for all detained children in San Diego County who required and accepted legal counsel. Detained minors most frequently included children who had traveled to the United States without a parent or guardian and were apprehended during or soon after crossing the border. However, some detained minors were also children who had been living in the United States for some time, most often teenagers picked up by police for some other infraction and then transferred to the detention center when it was determined that they were not United States citizens. The program received a list of detainees directly from the county’s detention centers and conducted interviews with all minors to determine who might qualify for immigration relief. Children who had traveled to the United States for reasons characterized as primarily “economic” or because they wished to be reunited with family members residing in the United States would be counseled about departure options but would not typically receive immigration counsel in the courtroom. Children who had some claim to derivative citizenship status, who were victims of abuse in their home country, or victims of violent crimes during their immigration journey, would be interviewed further to

72 Luz explained that this close collaboration was facilitated by the fact that judges “hate to see clients ‘pro se’,” meaning without legal representation. She explained that hearings are much easier and faster if the judge communicates directly with the lawyer who can be expected to understand the procedure as well as the legal jargon. Luz held up her hand next to her face to demonstrate a judge blocking out the client, whose life trajectory was at stake, so that she could communicate directly with the lawyer.
investigate their potential to qualify for relief. Refugee Legal Aid partnered with pro bono lawyers from private law firms in San Diego to provide immigration lawyers for these cases. Although some senior lawyers were committed participants in RLA’s volunteer lawyer recruitment efforts, most lawyers who did pro bono work for RLA were junior associates who had no experience with immigration law. Many of them were drawn to this work by the opportunity to argue a case before a judge, an opportunity frequently unavailable to the newest members of a private law firm. As such, individuals applying to legalize their status benefited from the volunteer efforts of a pro bono lawyer but were subject to the skills of an attorney who was young, inexperienced, and less than an expert in immigration law. So as to sidestep knee-jerk anti-immigrant responses to their work, RLA advocates described their aim as humanitarian rather than pro-immigrants’ rights. Their broad mission was to provide equal access to the law. In addition to providing legal counsel, Refugee Legal Aid actively researched country conditions to ascertain which applicants they would most likely be able to win relief for and also advocated for changes to policy which they believed would increase equal access to legal avenues for immigration relief.

Luz and Katya were generous in providing a detailed explanation of their engagement with immigration law and apologized for their frequent use of “legalese.” They explained that in addition to the regulations guiding asylum claims, RLA

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73 Derivative citizenship refers to citizenship acquired through a parent or other qualifying relative. Although it was a rare occurrence, some detained children were discovered to have a United States citizen parent that they were unaware of, and through this relationship, the child could become a citizen (or assert their already existing status as a citizen) by procuring the necessary documents with the help of an immigration lawyer.
lawyers utilized three main avenues for immigration relief. Special Immigrant Juvenile Status (SIJS) was created in 1990 and expanded to its present form in 2008. Referred to as the “J-visa”, it provided the most readily available path to citizenship for children who were dependents of the state or victims of abuse. This was the pathway most frequently used by foster children who were not United States citizens.\(^{74}\) The Violence Against Women Act (VAWA) was created in 1990 and reauthorized most recently in 2013. VAWA’s aim was to protect victims of domestic violence. It provided a path to legal permanent residency, called the “U-Visa,” for women and children who were victims of violent crimes, provided they aided in the prosecution of their assailant. The Trafficking Victims Protection Reauthorization Act was signed into law in 2006 and provided victims of human trafficking with a path to legal residency via the “T-visa.” This provision, Luz noted, was significant for its availability to Mexican citizens who have historically been ineligible for broader claims of refugee or asylum status.

Although all three of the legal avenues described above were potentially available to children caught up in the child welfare system, I focus primarily on Special Immigrant Juvenile Status (SIJS), the most readily obtainable status for foster children.\(^{75}\) Luz referred to SIJS as a “beautiful law,” specifying that winning SIJS

\(^{74}\) The other commonly used pathway for foster children to regularize their status was through adoption by United States citizen parents. This was the path that Alba took, as discussed in Chapter Two. The advantage of SIJS was that it was available to children before exiting the foster system through reunification or adoption, and was not contingent upon adoption by a family with United States citizenship.\(^{75}\) The vast majority of SIJS applications filed in San Diego County were successful. Applications that lawyers expected to be denied were those for children who could be
status led to a green card much faster than other avenues, such as asylum, and that the adjustment of status to United States citizen was relatively easy. Luz was not the only lawyer who was enthusiastic about the structure of SIJS. In fact, legal scholar Dalrymple (2006) argues that all immigration relief for detained children should be decided not on current principles for asylum or refugee status but on the same guidelines as SIJS, the only form of immigration relief that explicitly considers the “best interest” of the child. Luz exclaimed that if they could just identify all the children who qualified they would have a “room full of children, waving their green cards around!”

Although SIJS was the only existing immigration provision at the time of this writing that centered on the concept of “best interest,” this principle was central to the work of the child welfare system and to decisions made in dependency courts. The ideals encompassed under the umbrella of “best interest” varied widely from state to state and courtroom to courtroom. These might include honoring family ties or sibling relationships, access to schooling and medical care, emotional bonding and stability, and a variety of other factors. I consider the complex and often controversial array of considerations under the “best interest” framework and the details of how this principle was mobilized in dependency courtrooms in further detail below.

deemed guilty of a particular set of violations, such as smuggling or trafficking, or being a member of a communist organization. However, because a denied SIJS application could potentially set a deportation order into motion, the lawyers I spoke with engaged in detailed background checks on their clients and did not file applications they could reasonably expect would be denied.
Jurisdiction in the Border Region

A few months prior to my first meeting at Refugee Legal Aid, I attended a number of hearings at the San Diego dependency court. I attended the hearings with Stacy, the president of the local CASA organization, a woman with an enormous presence in the dependency courthouse and more than a decade of experience in child welfare. Stacy gave a quick tour of the courthouse before we settled into the benches at the back of Judge Carmichael’s courtroom. As lawyers shuffled papers and the court secretary filled in the hearing schedule on a large whiteboard, Stacy explained the arrangement of the courtroom. She noted where parents, lawyers, and social workers would be seated and commented that the court stenographer was surely the “hardest working person in the room.” Judge Carmichael, when she entered the courtroom in her black judge’s robes, sat high up on a raised platform flanked on one side by a large United States flag and on the other by a large, carved seal of the state of California.

There were nine hearings scheduled that morning, each lasting roughly between five and ten minutes. The fourth hearing of the morning concerned a four year-old foster child whose parents whereabouts were unknown. The child’s maternal aunt and cousin had come to the hearing, traveling from Tijuana to express an interest in having the child placed with them. Judge Carmichael spoke briefly with them to determine if they could help locate either parent, thanked them for attending, and scheduled an upcoming hearing to determine the child’s placement. As the courtroom lawyers shuffled to prepare for the next hearing, I asked Stacy how the case would
change if the child were placed with her aunt and cousin in Tijuana. She explained that the case would not substantially change and that the San Diego County Child Welfare agency and dependency court would maintain jurisdiction until the case was closed, even if the child resided in México. On my drive from the courthouse back to Esperanza, I mulled over this information, confused about how the child would be transported to court in San Diego for regular hearings and how a United States social worker could regularly travel to Tijuana to visit the child, given the time constraints of social work. It was not the border crossing itself that seemed prohibitive, but the idea that this could happen in an official capacity across the border. It did not make sense. Back at Esperanza I asked Corinne about this and she agreed it seemed unlikely, since a San Diego social worker could have no legal jurisdiction across the border. The presiding judge of dependency court later confirmed the lack of social workers’ jurisdiction across borders. She described jurisdiction as one of the major roadblocks to a cross-border child welfare system as it effectively prevented continuity in the care provided to a child. It also produced a situation where judges, lawyers, and social workers were hesitant to consider placements and visits across the border since they could not monitor the safety of their recommendation. In this way, geopolitical boundaries determined which kinship ties were most likely to be preserved. I continued to question social workers and Tijuana orphanage staff about jurisdictional issues, posing scenarios of mothers arrested at the border, of United States citizens in Tijuana orphanages, of Mexican citizens in San Diego foster care, and received a wide range of responses as to the likely trajectory of these cases. This
lack of consensus left me with a sense that jurisdiction in the border region was murky at best.

*On Jurisdiction and Detection*

Because of my conversations with social workers and foster families about cross-border jurisdiction, my initial meeting with immigration lawyers at Refugee Legal Aid was surprising, as from their perspective the jurisdictional limits and legal avenues for navigating cross border cases were crystal clear. For these lawyers, children caught up in the child welfare system faced not the problem of unclear jurisdiction but one of detection. Luz, noting that the San Diego County child welfare system typically had between five to seven thousand foster children, told me that there were consistently less than forty children referred to an immigration lawyer for citizenship issues at any given time. She asked what I thought about the fact that of the five to seven thousand foster children in San Diego only forty or less were not United States citizens. When I responded that I could not possibly believe this to be the case, Luz smiled, saying that is how everyone responded when asked. However, because the county was unable to produce any figures, since they did not collect data

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76 Luz mentioned the figure of “less than forty” because RLA had a sister organization, Pro Bono Lawyer’s Guild (PBLG), that contracted with the county child welfare agency to handle up to forty citizenship cases for foster children. All referrals went directly to PBLG, however, RLA would have liked to take on any cases over that limit. To date, however, PBLG had never been over that limit and typically had less than thirty cases at any one time. PBLG lawyers confirmed to me that they could handle many more cases than they were receiving from the county.
relevant to citizenship status, a hunch that this number was grossly inadequate was all she had to go on. 77

Sister Margaret, a lawyer at Refugee Legal Aid and the co-founder of the organization, interrupted Luz to ask why I thought this issue of detection was such a problem. She explained that they regularly held trainings for county social workers and dependency lawyers demonstrating how to recognize a child in need of an immigration lawyer and the procedure for referring them to Pro Bono Lawyer’s Guild (PBLG), the agency that contracted with the county to handle these cases. I told Sister Margaret that there were numerous possible reasons that children in need of immigration relief were not being detected. Social workers were trained to provide the same services regardless of citizenship status to all foster children, so they might have been hesitant to reverse this behavior and mark these children out as separate and in need of specific interventions. Further, social workers regularly had caseloads of over forty children and anything that was not absolutely necessary (adjusting a child’s citizenship status was not technically the responsibility of the child welfare agency) would be eliminated. From a social worker’s perspective, immigration issues were simply not part of their regular responsibilities, so it was left to activist lawyers and legal advocates, such as Court Appointed Special Advocates, to address that gap in the system. And finally, some young children, though a miniscule minority, arrived

77 When I spoke with Lucinda, the head of minor’s counsel at San Diego Children’s Lawyers, the law office that represented minors and parents in the San Diego dependency court, she estimated that roughly 10 percent of the cases their office saw involved some sort of citizenship or immigration issues.
in foster care with no documents or even a last name to identify their parents or their country of origin.

Luz asked - was it possible that social workers legitimately did not know if children on their caseload were not United States citizens? I did not believe that this was the case. All foster children received Medi-Cal cards and the application for this included the need for a birth certificate or social security card. Children who did not have either of these items could be issued a California State identification card and then access their medical benefits. Due to this mandatory application process, all social workers should have been exposed to a very simple process for identifying non-United States citizens, likely those children without a United States birth certificate or social security number. However, because the social workers did not have any particular need to identify non-United States citizens in order to do their work, they were not always attentive to these issues.

Ironically, these children were embedded within an institution that relied on an extensive documentation system. The requirements for social workers to maintain all sorts of records for each child on their caseload – developmental assessments, payment records, documentation of every trip to see a physician – were onerous. Yet these paperwork requirements were specific to the everyday workings of the child welfare system and to the documents necessary to demonstrate the quality of care the children received while in state custody. From the perspective of child welfare administrators, the documentation of citizenship was irrelevant to both these aims. Although the absence of citizenship documentation, or the mismatch between a
person’s documentation and their lived experience, can raise all sorts of difficulties in the context of immigration, border crossing, and the quest for legal authorization, foster children were temporarily protected from the consequences of these circumstances by their embeddedness within the child welfare system.\textsuperscript{78} The child welfare agency social workers knew exactly who these children were in the context of their system and the implications of citizenship status for these children’s lives did not arise until each child exited the system through adoption, reunification with family, or through aging out of the system at age eighteen.

When I spoke a few weeks later with Stephanie, the lawyer who worked with county referrals at Pro Bono Lawyer’s Guild, she provided an additional reason why these children might have been slipping through the cracks: foster children usually spoke English whether they were citizens or not, she said, and because of this social workers didn’t think to question their citizenship status. In this way, social workers seemed to be operating with a particular attentiveness to Spanish-speaking or accented English as a necessary marker of the non-United States citizen. Ironically, young children’s ability to adapt quickly to new language environments positioned them as less likely to receive the legal interventions needed to pursue a pathway to regularize their immigration status. From the perspective of Refugee Legal Aid, although the demand for legal services would probably always be greater than the number of pro bono immigration lawyers, legal aid was sitting idle. According to

\textsuperscript{78} For further discussion of the consequences of the absence of documents or misalignments between individuals and their legal documents see Shuman and Bohmer 2008, Yngvesson and Coutin 2006, and Kelly 2006.
RLA lawyers, this tragedy was primarily caused by social workers who were failing to do the job that young foster children could not do for themselves—identify their status as non-United States citizens and refer them to an expert to determine if they might be eligible for immigration relief. To RLA lawyers, county social workers were denying access to legal aid to children who were in their custody, and this seemed to them to be nothing less than a gross act of negligence and irresponsibility.

While the problem of detection was the primary one that RLA lawyers felt they faced, an additional problem was one of jurisdiction—not between nation-states, but between federal and state courts. The problem of jurisdiction stemmed from the fact that although immigration court was responsible for determining if an individual qualified for relief, many of these decisions were based on establishing that the applicant was a victim of abuse. Congressional legislation, based on determinations that immigration judges were not qualified to make rulings about child welfare, specified that in order for a child to qualify for a law like SIJS, the state court must take jurisdiction. However, the state court would only take jurisdiction of a minor if they determined that a child’s circumstances required protective custody. The problem, Katya pointed out, was that state courts saw children that were in a federal system, such as those housed in detention centers for unaccompanied minors provided by the Office of Refugee Resettlement, as taken care of. They were seen as safe from harm and there was no reason, from a fiscal perspective, that the state should take on
the case of a child already provided for by the federal system. But a child who remained within the federal system would not qualify for SIJS and would languish in a sort of legal limbo until they were eighteen and found themselves potentially homeless, subject to deportation, and ineligible, due to citizenship status, for legal employment or financial aid to attend a university.

One such obstacle to state jurisdiction was the child abuse hotline, a 24-hour staffed phone line, that put into motion investigations into children’s welfare and could open up the possibility that child welfare authorities might take custody of endangered children in an effort to protect them from further mistreatment. Katya, the lead lawyer of the children’s program at Refugee Legal Aid, explained that abused, migrant children held in a San Diego detention center awaiting deportation, potentially back into the custody of their abusers, did not qualify for services via a call to the child abuse hotline. This was because, from the hotline worker’s perspective, detained children were ineligible since they were considered to be “safe from abuse” in the detention center. Thus, although these children might qualify for citizenship through the SIJS provision, they could not apply for this status without first being taken into state custody. When I remarked how frustrating it was that the hotline could not be called to aid these children, Katya interjected to correct me. “No,

79 This was similarly a problem for older youth who were living on their own in homeless shelters. State courts were likely to see these youth as currently “safe from abuse,” however precarious and temporary their situation might be, and to refuse to take jurisdiction because of the lack of a threat of imminent danger. State courts also resisted taking jurisdiction over older teenagers assuming they would not be able to successfully intervene before the age of eighteen.
no,” Katya clarified, “you can call the hotline. It’s just that nothing will happen. They won’t do anything about it.”

When Katya asserted that a completely ineffective hotline call could be made, I was baffled. She made similar comments throughout our discussions, describing forms that could be filed but would not be approved, and legal avenues that could be pursued with no hope of a positive resolution. Over a series of meetings with RLA staff I came to realize that my emphasis on the potential outcomes for children caught up in the immigration agency’s detention system caused me to overlook the distinctions Katya was making between available avenues and effective ones, distinctions that were crucial from the perspective of an immigration lawyer. These moments of failure— the rejected hotline call, the form filed though its denial was certain— mattered very little in terms of the trajectory of the child on whose behalf they were processed. But they did matter a great deal, I came to understand, in terms of marking out which legal avenues were technically available and which legal battles remained to be waged.

It is important to note that even for a child who was in state custody and was referred to immigration court for relief, the two systems worked separately, but in tandem. The dependency court, by recommendation of the social worker, lawyer, or advocate, could request that the child be referred to the immigration court. The dependency judge had to make this official order and could do so by recommendation or on his or her own initiative. At this point the dependency case was effectively put on hold while the child, represented by an immigration lawyer, appealed to an
immigration court for relief. Once the immigration judge made a ruling, the dependency court case could resume. Much of the training that Refugee Legal Aid and Pro Bono Lawyer’s Guild did in dependency courts consisted of an appeal to dependency lawyers and judges not to terminate jurisdiction of a case until the immigration ruling had been made. This was because eligibility for relief often depended on the child’s status as a dependent of the court, a position lost when a dependency case was legally closed. In this way, immigration lawyers appealed to dependency judges to incorporate considerations that were technically outside their purview.

Beyond the question of state/federal jurisdiction, the child welfare system and the immigration system came together in numerous ways, producing all sorts of unexpected obstacles and circumstances. The immigration and child welfare systems, although they sometimes worked in tandem, were not designed to communicate directly with one another or to collaborate. Immigration officers had discretion but were not required to consider child welfare issues such as releasing nursing mothers or single parents, or allowing parents to arrange alternative child care before being detained. One advocate told me of a mother who, upon being detained, informed the immigration officer that she had three young children left at home unattended. The officer did not release her, nor did he inform child welfare authorities that the children were left alone and might need alternate care. The children eventually came to the attention of a neighbor who notified child welfare services that they were home unattended. They entered the foster care system as children who had been abandoned.
Lucas’s case, discussed at the beginning of this chapter, was a prime example of Wessler’s (2011:53) claim that, “Many child welfare departments and dependency courts treat deportation as the end of all prospects for family reunification.” A social worker’s recommendation to terminate reunification services for a deported parent, as in Lucas’s case, is not final, nor is a judge’s court order to do so, since a biological parent has the right to appeal this decision. However, the majority of parents did not pursue an appeal from across the border, although they were provided with legal representation in the San Diego dependency court. Parents who were not able to be physically present could also request permission to appear at hearings by telephone. Participation was inhibited by distance, by social workers’ and judges’ skepticism about the viability of Mexican social services, such as drug treatment programs or home study reports, and by a deported parent’s inability to obtain authorization to cross the border or to have the financial resources to do so. For the social worker, this distance, along with a lack of United States jurisdiction across the border, foreclosed the motivation to pursue a placement with the deported parent – this option was almost always considered only if there were no kin to place the child with in the United States. Even in such a scenario the social worker would be more likely to support adoption by the foster parents with whom the child has been temporarily placed, citing the affective bonds they developed as the case dragged on, as well as the educational, health, and life opportunity “benefits” for a citizen child who remains in the United States.
While immigration authorities had discretion to consider or to ignore child welfare issues, dependency court judges in San Diego County were prohibited from considering an individual’s immigration status in the courtroom and from positioning this as a factor in custody determinations. The lack of formal communication between child welfare authorities and immigration enforcement was crucial; although it limited judges’ engagement with the full circumstances of the children and families in their courtroom, it allowed parents to appear in dependency court without fear of being turned over to immigration officials. A situation where a parent had to decide between appearing in court in an effort to regain custody of their child and avoiding exposing themselves and their families to deportation would have been untenable. However, it was quite difficult for judges to actually separate these issues from court proceedings. As one dependency judge explained, “Reunification is very tough across the border...just for obtaining services and the practicality of visits...there is no question that these issues have a huge impact on the possibility of reunification and the outcome of a case.” And although judges and lawyers were well versed in the

80 Case law at the state level has repeatedly found that immigration status should not constitute the grounds for custody determinations or the termination of parental rights in family courts (See Thronson and Sullivan 2012 for a discussion of these rulings at the Appellate and State Supreme Court level). However, this does not bar dependency judges from making such rulings. Practice differs widely across the nation in terms of how immigration issues are considered in dependency courts, as judges hold vastly different interpretations of the broad concepts, such as “best interest of the child,” that drive their custody rulings. In San Diego County, where I conducted my research, judges were expected to ignore immigration status in the courtroom in an effort to avoid possible discrimination. See Thronson 2005 for an in-depth discussion of the different ways that immigration status interacts with dependency court procedures and rulings.
requirement to ignore the immigration status of parents, foster parents, or guardians, social workers generally seemed less clear on this regulation.

Numerous social workers informed me that there were no technical barriers to placing children in the care or custody of undocumented adults, while others asserted that undocumented adults could not be certified as foster parents or that undocumented kin could not receive the financial stipend to help them provide care to a relative child in foster care. Approval requirements such as home studies, fingerprinting, and background checks could in fact be carried out for undocumented individuals with the collaboration of the Mexican consulate and Desarrollo Integral de la Familia, the Mexican social service agency. However, many San Diego social workers erroneously believed that undocumented adults living in the United States could not be screened or approved at all.

Indeed, although Esperanza was a foster agency devoted to working with Latina/o children and families, it had a stated policy that undocumented individuals were ineligible to be foster parents, primarily because of the perception that they could not be fingerprinted and background checked. This issue arose when an Esperanza foster family was discovered to have an adult cousin living part-time in a shed on their property. Although child welfare policy required that any adult living on the premises where a foster child was housed must be fingerprinted, the foster family had neglected to disclose the cousin’s presence lest he be subject to deportation due to his undocumented status. Upon his discovery the family’s foster care license was revoked. However, the cousin could have been background checked with
collaboration from the Mexican consulate, and without threat of deportation, had the
social workers and family members involved been aware of this option.

During her time as program manager, Corinne explained to me that licensing
an undocumented parent was unlawful and would put the foster agency at risk. Alicia,
who became program manager after Corinne left the agency, told me that licensing an
undocumented individual as a foster parent would expose them to the possibility of
being deported and that it would be irresponsible and thoughtless of the agency to
take that risk. Many undocumented relatives of foster children agreed with this
assessment, and hesitated to present themselves as a placement option for their
relative because of concerns about interacting with a government agency. When I
noted separately to both Corinne and Alicia that an undocumented family had
successfully fostered and adopted two children through Esperanza, this information
was met with the response that they were incredibly lucky and that the decision to
take that risk had been a big mistake on the part of the agency.

Although undocumented parents were viable foster placements in accordance
with dependency law, many social workers erroneously believed that they were
ineligible. These misconceptions came to have the force of law through dependency
courtroom interactions. No social worker that I spoke with intentionally violated
dependency law. Social workers simply did their best to follow agency protocol and
their own intuition about what seemed best for any particular child and assumed that
it aligned with legal requirements. Because dependency court judges typically
followed social workers’ recommendations unless they met with opposition by the
attorneys for the minor or the parents, these misunderstandings could be easily translated into standard protocol. Briggs (2012:83) highlights this discrepancy between social workers’ actions and dependency law in her discussion of the history of flagrant violations of the Indian Child Welfare Act, based on court testimony by Native American social worker Evelyn Blanchard,

That there really was no necessary connection between a court order and losing your child – the caseworker just comes and puts the child in his or her car and drives away, with more or less fighting and crying, either way – seems almost incomprehensible to the judge. But the fact that this was frequently the case is also evidenced by the fact that the AAIA won every child custody case in which it intervened – no one on the other side had even tried to act within the law. It was just Indian kids.  

As Briggs describes, judges tended to assume that social worker actions were occurring in accordance with legal regulations and were shocked when presented with evidence to the contrary. Although the San Diego dependency judges I spoke with prided themselves on thoroughly reading the files for each of their cases, they approached social workers’ as acting in good faith, although constrained by time and agency budgets, rather than approaching them with suspicion. Judges assumed that social workers were basing their recommendations on the same sets of standards and

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81 AAIA is the acronym for the American Association of Indian Affairs a group founded by Anglos in the 1920s as an effort to protect “Indian culture” through advocacy, lobbying, and activism.

82 Instances of judicial outrage at social workers’ flagrant disregard for dependency law are certainly not limited to the context of interventions into Native American families. See Kleinfield (2013) for a case in the Bronx involving a judge’s outrage at a social worker who misrepresented details of a case, stating, for example, that the mother had missed over half of the visits with her children in a period where she had not missed a single one, in an effort to promote the adoption of her two youngest daughters. This case has been ongoing, and unresolved, since 2005.
understandings of dependency law that judges themselves possessed. And social 
workers assumed that judges would trust social workers’ expertise and intuition in 
guiding their recommendations to the court. Judges might disagree with a social 
worker’s recommendation or ask for further information from some of the individuals 
involved in a particular case. However, they were unlikely to question the process 
through which social workers constructed the position articulated in their reports to 
the court. For example, if a social worker ruled that a particular relative should not be 
considered as a placement option and included what seemed to be a reasonable 
explanation for that exclusion, a judge would be unlikely to question how the social 
worker came to that determination unless there was strong protest from a parent, 
child, or attorney involved in the case. The translation of social worker 
recommendations into judicial rulings was a process through which decisions based 
on vastly different sets of experiences, observations, and interactions came together to 
produce the authority of the child welfare apparatus. In this way, individual decisions 
made by social workers, immigration officers, and dependency court judges became 
moments where state authority was constituted and where the limits of citizenship and 
family rights were constructed relative to the state.

Dependency Law

Until 2009, legal counsel for both minors and parents had been provided by 
the public defender’s office, unless a parent hired their own private attorney.⁸³

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⁸³ This was a relatively infrequent occurrence. Of the foster cases I tracked 
throughout my year of research, none employed private lawyers, with the exception 
of one set of foster parents fighting to become the adoptive parents of a child, who
However, in 2009, San Diego County put out a call for law firms to make a bid for providing counsel to minors and parents in dependency court. The bid was won by San Diego Children’s Lawyers, a non-profit law firm, and was surrounded by a degree of mystery and speculation as the details of the bids went undisclosed. Much of the legal community was shocked by the selection of a private law firm and by the layoffs of government-employed public defenders that resulted from this decision. Although San Diego Children’s Lawyers hired additional attorneys in an effort to reduce each attorney’s overall caseload, they were criticized by other lawyers for their staffing model, which employed only four head attorneys and hired the majority of their staff attorneys at very low pay. Their critics worried that this practice would encourage high turnover and an abundance of inexperienced, young lawyers eager to move on to better paying and less demanding fields of law. As one former public defender suggested to me, the concern was that a move to a private firm signaled an effort on the part of the Administrative Office of the Courts to cut government spending rather than to provide a better quality of legal services to parents and children in dependency court.84

San Diego Children’s Lawyers was broken into four divisions, technically part of the same parent organization but operating separately in order to ensure confidentiality for clients. The first two divisions were the Minor’s Office, hired their own attorney to help them navigate the process. In this case, however, the minor and the biological parents were represented by public defenders. Of the nine court hearings I was able to observe, only one parent had hired a private attorney. 84 The Administrative Office of the Courts (AOC) is the state level organizational body that oversees California courts and governs policy decisions and implementation on a broad level.
representing children, and the Primary Parent Office, representing the parent accused of causing the alleged abuse. The third division was the Conflict Parent Office, which represented the other parent, often the one who “failed to protect,” the non-custodial parent, or the parent accused of a lesser offense. The final division was the Conflict Counsel Office, which represented any individual who couldn’t be represented by the other offices. This was often a third parent, such as a step-parent, or an older sibling who abused a younger sibling, as due to conflict of interest the Minor’s Office could not represent both siblings in this case.

Dependency lawyers typically had little direct contact with their clients but did have a significant role in court proceedings and in the outcome of each case. They commonly met with their clients only in the minutes before a court hearing and focused mostly on the implementation of dependency law. Dependency lawyers who worked with parents whose children had been removed typically advocated for parents’ visitation rights and made sure they were being offered the services they required. They also represented to the judge any obstacles the parents might be facing to completing the requirements laid out for them by the social worker and conveyed any desires their clients had for where their children might be placed. While most attorneys act based on what their client “wants,” dependency lawyers who represent minors were required by law to act in that child’s “best interest.” Regardless of a minor’s stated wish, a lawyer could not, for example, advocate for them to return to a parent whom the lawyer believed would continue to abuse or neglect them. Thus, children’s desires were not given voice in the courtroom, although the minor’s
attorney could convey a child’s preferences to the judge, and judges might occasionally speak to the children in the courtroom. However, children’s desires were routinely discounted if they were in contradiction to what the attorney had determined was in their best interest.\textsuperscript{85} This created a peculiar situation where a minor’s attorney, trained primarily in law rather than child welfare, was charged with the task of making a decision about what they saw as in the “best interest” of their young clients.

Dependency lawyers for both minors and parents described their work as focused almost exclusively on filing legal papers and making sure dependency law was being followed, rather than getting to know their clients and discussing the case with them, a realm which was often viewed as the terrain of the county social worker and the judge. When I asked Lucinda, the head minor’s attorney for San Diego Children’s Lawyers, how common it was for her office and the county office of child welfare to agree on their recommendations to the court she responded,

\begin{quote}
In San Diego we pride ourselves on being a collaborative county, we really try to negotiate and resolve an issue in court. The reality is that these are people’s lives and we want to take some of that [tension, fighting] out of it because the more we fight everybody loses. I think I know what you’re getting at though. Minor’s counsel does not rubber stamp the agency.
\end{quote}

Lucinda went on to explain that while parent’s attorneys had strong reputations for advocating for their clients, minor’s attorneys had “historically been a bump on the log. We want minor’s counsel to be advocating something for your client and not just

\footnote{\textsuperscript{85} The exception to this was for youth over the age of fourteen. In San Diego county youth beyond this age could decide whether they wanted to be adopted or whether they’d prefer to remain in a long-term foster care or guardianship situation. Although the choices presented to them were limited, their preferences were taken seriously in the dependency courtroom.}
sitting there.” Lucinda, as head attorney, explained that she reviews transcripts from
court for the attorneys working under her and that she “doesn’t want to see the
transcript for court and see that you [minor’s attorney] didn’t say anything, that you
just agreed [with the county].” Lucinda explained that her office was determined to
combat this history and to ensure that their attorneys were doing all they could to
protect the best interest of their young clients, even if it meant going against county
recommendations. Yet attorneys’ comfort level with making determinations about
what might be best for any particular child on their caseload was constrained by their
limited time spent with their clients and by the enormous number of clients that they
served.

Early on in the case of Taylor, the five year-old foster child who was placed
in Anna and Josie’s care, I spoke with Taylor’s lawyer at Corinne’s request, to get
some information about how his case might proceed at the upcoming court hearing.
Upon explaining the reason for my call, Taylor’s lawyer sounded vaguely confused,
asking, “Taylor was placed in a foster home, right?” “Yes,” I responded, “I’m calling
from that agency to see how you think his court case will proceed. To see what you
expect to recommend at his upcoming court hearing.” “Oh, I’m ummm, I’m behind
on the files so I don’t really know. But is everything okay in the foster placement?”
“Yes, it is fine. We just want to know what will happen next.” “Uh, okay,” He
responded, “Can I call you next week?”

The size of dependency lawyers’ caseloads was an ongoing concern within the
child welfare system and the dependency courts. Dependency lawyers were limited to
188 open cases at any given time and during my research San Diego Children’s Lawyers was meeting that standard. However, this number, although relatively accurate for parent’s attorneys, was grossly distorted for minor’s attorneys. This was due to the fact that each set of siblings, as long as they had the same biological mother, was counted as a single case even though they might be in separate placements and have vastly different needs. This meant that if a parent’s attorney had 188 cases then they had 188 clients. However, because most children entered foster care as part of a sibling group, minor’s attorneys could easily have upwards of 400 separate clients although they technically had only 188 “cases.” The unfortunate result of the overwhelming caseload for minor’s attorneys was that it was practically impossible for them to keep up with the details of each case, as evidenced by my above discussion with Taylor’s attorney.

Because lawyers often struggled to manage their large caseloads, investigators were hired to spend time visiting and speaking with as many individuals related to each case as possible – children, relatives, teachers, foster parents, therapists, medical professionals, and other service providers. The investigators’ primary goal, on behalf of the attorney they were working for, was to examine a variety of perspectives and to ensure that the county social worker’s recommendations were in line with the perspectives of others familiar with the child and the family involved in the case. Many foster parents, frustrated with county social workers whom they felt did not listen to them or were too busy to take their concerns seriously, enjoyed speaking with investigators who they often felt legitimately valued their perspective and cared
about the wellbeing of the child. Although the responsibility for providing services to children and families technically rested on the shoulders of the social worker and the county agency, dependency lawyers were responsible, as Lucinda, the head minor’s attorney for San Diego Children’s Lawyers explained to me, for “making sure that every stone is turned over” and pushing the social worker to ensure that the client’s rights were being fully met.86

During the course of my research I was able to speak with two of the eight dependency judges in San Diego County. When asked to describe the biggest barriers to their work as dependency judges, it was not an overwhelming caseload or a lack of time, but the difficulty of balancing what the judge saw as best for the child with “fiscal realities.” A judge’s ruling is legally binding and a court order is not negotiable – it must be carried out. Because of this, the county counsel’s efforts in the courtroom involved attending to the judge’s orders and pointing out when judges had stepped beyond their authority, in accordance with child welfare code. Problems arose when the judge ordered requests that were within their authority but were beyond the resources county counsel felt were available to the agency.

For example, many parents were initially given only one hour per week for visitation with their children – once they moved to unsupervised visits, which did not

86 The county social workers often attended court hearings but were not required to do so. The county agency itself was represented by a county-employed lawyer whose main goal was to make sure the court did not order something beyond the scope of the agency’s authority or resources and to make sure legal concerns, such as confidentiality, were addressed. The social worker submitted an official report to the court prior to each hearing and the recommendations contained within were usually the starting point for the hearing, unless there was strong dissent from either parent’s or minor’s counsel.
require a time commitment from either the county agency or the foster parents, they could see their children for more hours, sometimes for an entire day, and eventually overnight. In one hearing I witnessed, a two-year-old child had been removed from the custody of her mother who was allowed only a one-hour visit per week. Her lawyer protested in court, stating that she had been the child’s sole caregiver since birth and that one hour was not enough for the child’s well being or for the family to maintain its bond – yet the foster mother was unwilling to provide additional visitation time. In this particular case, the judge ruled that the mother should be provided an additional two hours per week but county counsel objected, saying that the agency understood the concern but did not have enough resources to provide staffing for the visits. The judge ordered the county to place the child on a waitlist for a spot in a supervision facility (typically a county-run or third party location where there are on-site staff to supervise visits) and asked the mother and her attorney to be patient since the waitlists could be long.

The negotiation between the judge, the county counsel, and the mother’s attorney in this case, highlighted the tension around the role of the foster parent in the child welfare case. Foster parents were expected to care for children full-time and to transport them, at a minimum, to school, to medical and therapy appointments, and to one visitation with each parent or approved relative per week. Many foster parents willingly arranged for additional visits should this be requested of them but many, for a variety of reasons, chose not to accommodate this additional request. Foster parents did not play a role in the court process surrounding the case of their foster child and
although they were notified of the hearings, they were not typically invited unless
they were in the process of adopting their foster child. However, their willingness to
accommodate court or social worker requests often had a huge impact on the
trajectory of the case and the success or failure of reunification between biological
parents and their children. As I discuss further in Chapter Five, many foster parents
felt that their foster child’s case would not have proceeded the way that it did without
their active intervention which was often enacted around, or in direct opposition to,
the county social worker’s recommendations.

Judge Marshall, the presiding judge of dependency court, explained that while
individual judges navigate challenges between county agency restrictions and their
own sense of what was in the best interest of each case in their own manner on a daily
basis, her job as presiding judge was to meet with child welfare and other agencies to
try to address recurring problems systematically and make the system run more
smoothly for all involved. These meetings would address such issues as streamlining
social worker reports to judges, addressing problems of timeliness in the filing of
paperwork, or discussing patterns of judicial requests, such as increased visitation
between parents and children, that might be causing problems for the county agency,
often due to financial or staffing constraints. Overall, the judges that I spoke with
characterized relations between social workers and judges as amiable but one where
judges were often critical of social worker’s practices and where social workers were
frequently frustrated with judges for ordering things “they shouldn’t.”
Although dependency judges were not responsible for considering immigration issues in their courtroom, they nevertheless played a significant role in these matters. A judge’s act of taking and maintaining jurisdiction made a non-United States citizen child potentially eligible for immigration relief and eventual status as a United States citizen. Further, it was only by the dependency judge’s court order that a ward of the state could be referred to an immigration court to have their citizenship status considered. Although dependency judges did not technically take a parent’s citizenship status into consideration in the courtroom, many judges felt that this status was impossible to ignore. As one judge described, a reunification with a parent who was “deportable” was a “very fragile reunification.” Some judges expressed the feeling that it was their legal duty to ignore this, while others felt that regardless of the law they were required to consider any information that they understood to be relevant to that child’s future well-being. Some judges also expressed discomfort with ordering services, such as drug rehabilitation programs, for parents they knew to be undocumented, feeling that this was not appropriate based on their state of “illegality” even as they acknowledged that this was necessary for the reunification process to proceed. In this way, judges’ nationalist sentiments that United States social services should not be provided to undocumented immigrants came into conflict with the course of action that they believed would lead to the best situation for the child.

In my discussion with Judge Marshall, the biggest barrier she felt existed in cross-border dependency cases was jurisdiction. The fact that neither the court nor the social worker had any authority mere miles across the border from San Diego barred
a multitude of reunifications that she imagined might have otherwise been possible. Although a United States dependency court judge had no difficulty in taking jurisdiction over a Mexican citizen child in the United States, United States authorities had no jurisdiction over a child who was legally in their custody if that child was physically across the border. In this way, geographic location was a more pronounced obstacle and a more defining feature in these circumstances than either citizenship or legal custody. While numerous individuals I spoke with – social workers, foster parents, legal advocates – asserted that reunification was legally and technically possible across the border, no one that I spoke with was more direct about the challenges and obstacles faced in these circumstances than the presiding judge of dependency court. It is this myriad of obstacles that I turn to next.

Deportation as abandonment: losing parents (and children) across the border

Lawyers, judges, and social workers that I spoke with all asserted the legal right of parents to reunify with their children or for relatives to adopt their kin, regardless of their country of residence or citizenship status. Yet there was widespread agreement that there were numerous obstacles to be navigated for international or mixed status citizenship cases. And cases certainly occurred where children were adopted by United States families without due consideration being given to the child’s parents or extended family. Magdalena, a lawyer with more than a decade’s experience representing minors for the San Diego public defender’s office, met with me over lunch to discuss the obstacles she had faced in representing non-United States citizen clients as a public defender in dependency court. Magdalena
was frank about the challenges faced by non-United States citizens in dependency court. She felt that most lawyers did not have the time or the expertise to successfully advocate for clients in these circumstances. For Magdalena, there were two tragedies that occurred with some regularity within child welfare. The first occurred when a parent was deported and did not know who to contact in order to locate their child or to participate in the reunification process. The second occurred when a relative wanted to adopt but the social worker would not return their calls or the relative was unable to obtain the necessary visa to cross the border for the court hearing and was therefore deemed uninterested. In both cases, Magdalena explained, the child ends up adopted by a foster family, the court having determined either that there were no viable relative placement options, or that the parents had abandoned the child. Carlos, a former county social worker born and raised in México, echoed a position reiterated by both lawyers and judges, explaining that there was often a certain resistance to placing children across the border or even approving cross-border visits due to the lack of United States jurisdiction. Although the child may be in state custody, Carlos explained, if they are not returned across the border after a visit, or if they are adopted by their grandmother in México who then returns them to the care of the abusive parents from whom they were initially removed, the United States dependency court has no legal right to intervene.

Many of the lawyers and families I spoke with cited the impenetrability of the Immigration and Customs Enforcement (ICE) detention center database as the reason that parents who were detained were at risk of being understood to have abandoned
their children by the courts. This was because the database could not reliably
determine if a parent had been detained and, if so, where they might be located.87
Court protocol required that, at a minimum, multiple letters must be sent to the “last
known address” of any parent on record. As long as that requirement was met, a court
case could proceed, even with such decisions as the termination of parental rights and
the legal adoption of a child. Social workers were required to make a “good faith”
effort to ask any known relatives for contact information or knowledge of the parents’
whereabouts. If this effort proved unsuccessful, courts would determine that parents
had abandoned their children. The case would proceed in this manner even though the
parents could very likely have been detained or deported and unable to locate their
child or to gain any knowledge of court proceedings. For example, an adoptive
mother, Angélica, whose case will be discussed in detail in Chapter Five, explained to
me that the court had been unable to locate the biological father of her adopted son
during his dependency court proceedings. The father had appeared a few years later
asking if it was too late to fight for custody of his child. The social worker explained
to him that it was, since his son had been legally adopted, but that his child could find
him if he chose to when he turned eighteen.88

87 See Wessler 2011 for a discussion of this issue.
88 In this case, Angélica, the adoptive mother, had negotiated an open adoption with
her son’s birth mother – they exchanged photographs and had a visit about once a
year. Because the father had not been present during the adoption proceedings, he had
not similarly negotiated these terms. However, Angélica explained that due to his
unreliability and the fact that she believed him to be involved in criminal activity, she
would have been unlikely to agree to an ongoing relationship, other than the exchange
of photographs.
Notably, it was common that lawyers, judges, and social workers were unclear about whether a child had actually been willfully abandoned. Missing parents were a common part of the dependency court process, and cross-border cases made parents particularly difficult to locate. Social workers went through the motions of sending out letters to out of date addresses because they were required to do so, not because they expected these letters to produce results. The gaps and fissures in this system were not moments of breakdown but part of the routine dependency court process. And although a determination of willful abandonment was a weighty accusation to level at an absent parent, it was a necessary element of a system focused on moving children into permanent situations as quickly as possible.

It is important to note that dependency law does not allow for much of a middle ground; at the end of a dependency case parents typically either regain full custody of their children or have their parental rights terminated. Adoptive parents can elect to maintain some visitation or communication with biological parents or extended family but are under no legal obligation to do so. In fact, at the time of this research, county social workers generally encouraged adoptive parents to commit to as little communication with biological families as possible, arguing that it was far easier to choose to allow more contact later than to attempt to limit it in the future. This position on “closed” adoption is counter to current private adoption philosophy, which has moved away from an erasure of history and has taken the position that open communication, the retention of cultural and historical particularities of a child’s origin, and transparency are in the best interest of the adopted child’s healthy
development. This was distinct from an earlier position that argued for treating an adopted child “as if” they were a “natural” child.\(^8^9\) Although the United States lags behind other countries in privileging a child’s right to access their birth records in cases of adoption, donor insemination, and other similar circumstances, current trends in adoption discourse advocate for continued movement in that direction.

County social workers, however, see biological parents whose parental rights are terminated quite differently than parents who are understood to have voluntarily relinquished custody of their child. These biological parents are seen as dysfunctional and unfit, as well as potentially volatile. And because the termination of parental rights often involves a series of court appeals, many cases end tensely, even if foster parents and biological parents had maintained amicable relationships prior to the end of the case. As Margo, a county social worker whose work I discuss in detail in Chapter Five articulated, a closed adoption, with no further contact between biological parents and the adopted child, was often seen by the social worker as the surest route to end a child’s exposure to experiences of trauma and instability, and to facilitate their feeling of permanent integration into their adoptive home. Foster parents such as Angélica, or Josh whose story was told at the beginning of Chapter Three, maintained contact with the biological mothers of their adopted children against agency recommendations.

There were two exceptions to the complete severance of family ties: guardianship and long-term foster care. If the judge ordered either of these options

\(^8^9\) See Yngvesson 1997 and Modell 1994 for a discussion of this shift.
then parents were not awarded custody of their child but maintained their legal rights, albeit with little ability to exercise them. Long-term foster care, either with a foster family or in an institutional setting, was most commonly chosen for children who were considered “unadoptable,” those who had reached their teenage years in foster care or those with severe mental health problems, medical needs, or behavioral issues. Guardianship was most commonly used when the child was placed with a member of their extended family or an older sibling, someone willing to care for them in the long-term, but unwilling, often because of their relationship with the biological parents, to legally assume parental rights. Courts and current legislation positioned these liminal states of long-term foster care or guardianship as the least desirable of outcomes for a child welfare case as they potentially positioned children in a drawn out state of instability and temporary care.

These policies existed largely in response to an overburdened child welfare system eager to move children to stable homes and close their cases as quickly as possible. Further, prevailing notions of child development bolstered these positions by advancing the belief that the most damaging aspect of the life of a foster child was not the abuse they may have experienced but the period of time they remain in limbo. In this liminal state, research suggested, foster children were subject to frequent changes of location and lacked a sense of stability and permanent caregivers (see for example Newton et al. 2000, Doyle 2007). In this way, the child welfare system was more focused on a child’s stable future than on the potentially problematic circumstances of their removal and their entry into the foster care system.
These policies, coupled with a system that was not equipped to reliably locate detainees or deportees, alongside immigration officials who were not required to consider child welfare issues, created the possibility of situations where parents could lose custody of their children without an opportunity to participate in the process or appeal a judge’s ruling. In these cases, I argue that the lack of communication between international social service agencies and the opacity of the detention and deportation system in the United States effected a translation where a physical absence could become understood as a willful abandonment and in many cases led to the legal termination of parental rights. In this way, the entanglement of these two legal systems produced the vulnerability of particular families before the law, a vulnerability that could not be mitigated by an effective lawyer or by the worthiness of a particular parent’s claim to custody of their child.

*Jurisdictional limits and the “problem” of poverty*

Although many individuals I spoke with did acknowledge, in vague terms, that there was racism and prejudice towards Latinos and Mexican nationals within the foster care system, nobody admitted to experiencing a specific example of such prejudice. No social worker, lawyer, advocate, or foster parent ever articulated a feeling that they had witnessed instances where an individual was trying to terminate parental rights because of racist views about Tijuana residents or Spanish-speakers. However, many felt that this did happen systematically, largely due to jurisdictional issues in the border region. Jaime was a court appointed special advocate (CASA) with years of experience working with bilingual families caught up in the child
welfare system. He explained that if a family lived in San Diego, a judge could order the child to be reunified with their parent along with stipulating a myriad of support services such as food and housing support, therapy, or subsidized child care. However, because a San Diego court’s authority did not extend across the border, in order to reunify a child with a parent residing in Tijuana the judge had to be confident that the parent could provide for the child “on their own.” In Jaime’s view, this led to the de facto termination of parental rights for impoverished parents residing in México who would have qualified to reunify if they had been eligible for the services potentially available to them if they resided in the United States.

This view was articulated by numerous foster parents who, with the exception of those biological parents accused of physically or sexually abusing their children, saw the biological parents of their foster or adopted children not as bad parents, but as parents confronted with a “legitimate lack of resources.” Many foster parents asserted that biological parents did love their children but that they were beleaguered by obstacles to transportation and to balancing their work schedules with court-ordered therapy, parenting classes, rehabilitation programs, and weekly visitations. Biological parents also articulated frustration with these requirements, which they sometimes saw as secondary to more pressing requirements of negotiating food, employment, and housing concerns. Parenting classes and the parenting advice biological parents received from county social workers and sometimes foster parents, were frequently a source of frustration. This was because these classes typically advocated a particular view of parenting, such as the use of time-outs as a primary disciplinary method,
which didn’t always align with the approach the biological parents were most comfortable with. As such, parents were required not only to defer to a set of weighty time commitments but to a particular style of interacting with their children that was sanctioned by those in a position to recommend and approve the return of their child. Social workers, like foster parents, frequently expressed sensitivity to the obstacles confronted by biological parents. However, often in the same breath, they asserted that biological parents needed to do whatever it took to get their children back and that if they failed to do so it was because they did not truly want to reunite their family. Many foster parents and social workers who had never experienced the removal of their own children asserted that if they found themselves in these circumstances they would certainly do whatever it took to keep from missing a visitation entirely or from arriving late to class. In this way, social workers and foster parents, although aware of the substantial obstacles biological parents faced in their daily efforts to regain custody of their children, managed to disregard this knowledge and to assess parents’ actions in relation to their desire, not their capability, to meet agency requirements.

However, many acknowledged that biological parents were in an almost impossible position where they had to maintain secure employment and housing to prove that they could provide a stable home for their children to return to, while also consistently participating in court-ordered programs as well as visitation schedules.

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90 See Tough (2008) for a discussion of the way parenting classes can be seen by parents as a sort of cultural imperialism where white, middle-class parenting strategies are presented as ideal. Tough’s Chapter 3, entitled “Baby College,” describes the way instructors negotiate these tensions with young parents in Harlem.
negotiated with foster parents. Although foster parents were encouraged to accommodate biological parents’ schedules, many foster parents preferred to limit weekend and evening visitations in order to preserve what they saw as their own “family” time. These limits sometimes caused biological parents to struggle to fit visitations into their busy schedules of work, therapy, and other required services. Biological parents who did not appear for visitation or who showed up late or left early were seen as lacking care and commitment to reunifying with their child. Yet these parents, many of whom lacked their own vehicles, often had to navigate multiple bus transfers, upwards of two hours of wait time at the border if they were traveling from Tijuana, and concern about losing their job if they canceled or modified their schedule too often. Further, undocumented parents were particularly susceptible to the risk of losing their employment if they were seen as unreliable or unavailable and had little recourse if they believed that they had been unfairly terminated (See Gleeson 2010).

Social workers, particularly those who were bilingual, frequently articulated a sense that they had to go above and beyond their daily requirements in order to enact a successful cross-border reunification. With upwards of thirty cases per worker, translating into far less than one day per month per case, most workers did not blame themselves when they were unable to put in this extra effort nor did they expect other workers to do so. This inaction often resulted in a foster child being adopted by a United States foster family or remaining in a residential facility rather than being reunified with their parents or placed with relatives internationally. The extra effort
necessary to facilitate a cross-border reunification often involved tracking down
parents’ whereabouts using international liaison and consulate services, navigating
the maze of immigration bureaucracy in an effort to facilitate cross-border visitations
and court hearings, and requesting help from foreign social service agencies, such as
the Desarrollo Integral de la Familia (DIF) in México. Foreign social service agencies
provided home studies, background checks, parenting classes or supervised visits.
This last set of requirements - collaboration from foreign social service agencies-
was particularly difficult in a city like Tijuana, which had a population of over one million
residents and, in 2010-2011, employed only eight social workers for the entire city.
San Diego, by contrast, had a population of roughly 1.3 million residents during this
same time period and employed over 1,500 social workers.

Carlos, the former county social worker mentioned above, described a case
where he was advocating for the adoption of a sibling group of children by their aunt
in Guatemala. After the court supported his recommendation over the
recommendation of the attorney who represented the sibling group, who preferred for
the two youngest siblings to be adopted by their foster family and afforded the
“luxuries” of United States citizenship, he then had to face the difficult task of
acquiring the visa necessary for the aunt to come visit the children. This visit was
mandatory in order to allow the child welfare agency in San Diego to assess her
relationship with her nieces and nephews in order to approve the adoption. Carlos
explained that although he had contacted the visa office to explain the aunt’s
situation, her application was denied because she did not possess the necessary funds
to demonstrate to immigration authorities that she would not overstay her visa in the United States. After numerous phone calls where he was told that nothing could be done, Carlos managed to contact an official who was able to issue a humanitarian visa and the children were eventually sent to Guatemala to live together with their aunt. Although the reunification was ultimately successful, this story was told to me as a demonstration of the failure of the system to accommodate cross-border reunifications. Carlos asked, shaking his head, “what worker is going to take the time to make all the necessary phone calls and not give up in such a situation?”

I have aimed here to emphasize the fragile position of parents attempting to reunify with their children while entangled in the cross-border politics of citizenship and illegality. In foregrounding this fragility, I suggest that immigration enforcement’s inattention to child welfare issues, coupled with child welfare’s inability or unwillingness to attend to cross-border issues, leads in many cases to the termination of parental rights. However, because dependency judges were legally barred from considering a parent’s citizenship in the courtroom, this inattention, which frequently had devastating results, could also create a space of possibility for parents and children to be reunified. It is these moments of possibility that I turn to in the following section.

*Creative navigations, legal loopholes, advocacy*

Jaime, the court appointed special advocate (CASA) introduced above, worked with children who were caught up in the foster care system, advocating for their wishes in court and attempting to guide their case towards whatever he
understood to be the best outcome possible. CASAs were appointed by the court to the cases of foster children who were determined by the CASA organization to be the most in need. This included children who had experienced more placements than usual, children who were separated from siblings, children who were experiencing severe educational or emotional difficulties, and cases in which various parties were in disagreement about how the case should proceed. CASAs were unique in that they had court-ordered access to all information pertaining to the child’s case. Further, county social workers were compelled by formal policy to respond to their inquiries within 48 hours. Additionally, they were volunteers, not limited by time, institutional resources, or government regulations. At the time that I met Jaime in 2010, he had been working as a CASA for several years, focusing on cases involving Spanish-speaking families because of his skills as a bilingual speaker and his position as a former Mexican national which enabled him to forge relationships with Spanish-speaking parents and to more effectively navigate institutions on both sides of the border.

Jaime was a well-established businessman in the local community, with silvering hair and a well-trimmed mustache. He greeted me with a firm handshake and an enthusiasm for my interest in cross-border child welfare issues. After giving Jaime a brief overview of my research goals and outlining my hopes for our conversation, I asked him how feasible it was in his experience for reunifications to happen across the border. Jaime was dismissive of the formal system for facilitating communication across the border, explaining that you needed someone like him who
was willing to cross the border to find a relative and able to navigate Tijuana streets to track someone down at a vague address. Without that, he claimed, parents would routinely be lost and extended family would remain unfound.\textsuperscript{91}

Tijuana was notorious for its lack of street signs. It was common practice, even for local residents, to use a series of landmarks rather than street names to arrive at a given destination. It took an intrepid driver to navigate Tijuana’s streets, which ranged from pothole filled, narrow dirt roads to broad boulevards in the center of the city, with roundabouts of six lanes circling the city’s monuments. Like any city that experiences a condensed period of explosive population growth, Tijuana’s roadways were sprawling and dense, the antithesis of a predictable grid. This encouraged a driving style that was both aggressive and friendly, where cars might pause within an inch of each other’s bumpers, but where drivers would block traffic to wave you through a left turn from the far right lane, or push your broken down car through the border line without complaint. The geographic distance from San Diego child welfare offices to Tijuana neighborhoods was minimal, particularly since the majority of child welfare activity was located in the central or southern parts of San Diego County. However, the lengthy ordeal of border crossing and the complexity of navigating Tijuana’s streets, particularly for San Diego social workers who were not

\textsuperscript{91} All formal communications between United States and Mexican social service agencies were supposed to go through the International Liaison Office in San Diego. This office was also the official channel for San Diego County social workers who required information from the Mexican Consulate. Many advocates and social workers, including Jaime, bemoaned the lengthy time process this formal mode of communication often took and frequently pursued unofficial, alternative methods for cross-border communication.
Spanish speakers, was a strong deterrent to social work involvement across the border, regardless of jurisdictional obstacles.92

Jaime described an ongoing case he was currently involved in where he was advocating on behalf of five siblings in the foster care system. Two of these children were Mexican citizens, and the three younger siblings were United States citizens by birth. Their parents had both been deported to Tijuana, but the father had recently managed to return. Since the children had been removed from the parents’ custody because they were left alone, and not because of an abuse allegation, the children were promptly returned to their father’s custody once he demonstrated that he had both a vehicle and a job as evidence of his ability to support the children. Jaime noted that although all of the members of the courtroom knew that the father was in the United States without authorization, they were able to place the children in his care because his citizenship status was deemed irrelevant to the court proceedings. Jaime explained that the case was further complicated because the mother desperately wanted to cross the border to reunite with her family as well. However, Jaime felt it was in the best interest of the children to make sure that all five were United States citizens so that if the father were again deported, the siblings would not risk the

92 During 2010-2011 when I conducted the majority of my research, the wait time at the border was prohibitive to conducting daily business in a timely manner. Providing that you were not pulled over for further inspection, crossing from San Diego to Tijuana could range from anywhere from five to forty-five minutes, while a return from Tijuana to San Diego regularly ranged for 1 ½ to 4 hours. The acquisition of a Sentri pass, attainable for both United States and Mexican citizens based on an extensive background check and a number of fees, could reduce the border crossing time from Tijuana to San Diego to as little as fifteen minutes. However, the Sentri pass required that all passengers in a vehicle were pass holders, and this frequently reduced the feasibility of this time-saving option.
possibility of being separated from each other along citizenship lines, the United States citizens remaining in foster care and the others repatriated to México.

In order to gain United States citizenship for the two older siblings through Special Immigrant Juvenile Status (SIJS) Jaime had to argue three points. The first was that the children were dependents of the court, which was easily satisfied by their status as foster children due to their initial “abandonment.” The second requirement was to determine that it was not in the children’s best interest to return to their home country, which was established by the fact that their father was a wage earner in the United States and there was no relative deemed financially stable enough to accept the children in México.93 The third requirement was to prove that they were unable to reunify with at least one of their parents.94 This last stipulation, Jaime said, was the most difficult, because he had to convince the mother not to try to cross the border, as her successful crossing would immediately nullify the children’s eligibility for United States citizenship.

93 Of the three qualifications necessary for SIJS, determining that it was not in the “best interest” of a child to return to their home country was the most nebulous of the determinations made by the court. While this determination could include consideration of such things as violence in the home country or lack of a stable caregiver, advocates often seemed to feel that poverty or a dearth of educational opportunities made it clear that it would not be in the best interest of a child to return to a home country outside of the United States.

94 These three requirements were necessary for a child to qualify for Special Immigrant Juvenile Status (SIJS), an option that led to legal permanent residency and eventually United States citizenship. It was typical, at the time of this writing, that any child who was in foster care or who had been placed with a legal guardian would be potentially eligible for SIJS without having the burden of proving a specific instance of abuse. However, this was relatively recent legislation and many interpretations of the guidelines had not yet been tested by case law established through an appeals process.
Jaime was not alone in advocating such tactics. Dependency lawyers described numerous scenarios where they would encourage a deported parent to give up custody of a teenage child who had been in the United States for most of their schooling in order to make them eligible for long-term foster care, to finish their United States schooling, and ultimately, to obtain United States citizenship. The attorneys argued that these children could gain their United States citizenship and high school diplomas, after which they could return to their parents in México with expanded options for the future. Although such strategies may extend family separation in the short term, advocates expressed a belief that they created stability for families in the long-term and opened up possibilities for children’s education and employability for the future. Lawyers who advocated for these kinds of practices were certainly in the minority. As many legal advocates, including RLA lawyers, pointed out, the majority of San Diego foster children who were not United States citizens aged out of the foster care system at eighteen, their immigration status having remained unaddressed by their court-appointed lawyers. Advocates saw this as evidence of a failed system. These kids, raised and educated in the United States, would immediately find themselves potentially subject to deportation, ineligible for work visas or financial aid. They were also likely to be without a support system in

95 Numerous media reports have also noted undocumented parents’ expressed desires to bring younger children with them should they be deported, but to leave older children, already immersed in the United States school system in the care of relatives or guardians, in order to increase the perceived opportunities for their future (Associated Press 2011).
the United States, financial resources upon aging out of the foster system, or a social network to return to in their country of citizenship.

Although some might argue that this kind of maneuvering could be understood as a distortion or manipulation of the intended purpose of the law, Coutin suggests, in her work on Salvadorans’ struggles for legal residency in Los Angeles that, “negotiating the meaning of legal categories to argue that their clients fit and attempting to make clients’ life narratives conform to predefined prototypes of the deserving” (2000:79) are part and parcel to the work that advocates must do to work within the confines of immigration law. Coutin argues that, “in liberal democracies, law is supposed to reflect generally accepted social norms and ideas of justice,” yet it is common for legal advocates to equate “U.S. immigration law to racism, xenophobia, discrimination, exploitation, injustice, and inequality” (2000:100). In this way, lawyers’ put what they saw as in the best interest of their client as their first concern, and then considered how they might achieve that goal within the bounds of immigration law. For these lawyers the necessity to navigate limits of immigration laws, where the aim was often to admit as few applicants as possible, often led to creative maneuvering and efforts to push the boundaries of the accepted interpretation of the law.

Interpreting Best Interest

The “best interest” of the child was an ambiguous notion that judges, lawyers, and social workers were all charged to address. As legal scholar Dalrymple recounts, the “best interest” principle contends that, “to determine the best interests of the child
in domestic family law cases, courts consider the parents’ interest for family integrity, the state’s interest to protect the minor, and the child’s interest for safety and for a stable family environment” (In Re Juvenile Appeal, 455 A.2d 1313, 1319 Conn. 1983, cited in Dalrymple 2006:144). The notion of “best interest” was commonly understood by child welfare and the dependency courts to incorporate stability and “permanency.” This latter issue was solidified by congressional legislation, signed into law by then president Bill Clinton, which shortened the reunification clock for biological parents and aimed to increase adoptions in an effort to decrease the number of children understood to be languishing in the foster care system, moved from home to home, and destined to “age out” with no stable support system or long-term relationships to rely upon. Even with these commonly agreed-upon aspects of “best interest,” and although this was the purported goal of a child welfare intervention, opinion differed in each given case and with each individual involved as to what outcome might be in a child’s “best interest.” It is important to note that there is no

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96 Importantly, Dalrymple notes that these three principles are considered unequally, with the parents’ interests typically being given the most weight. Further, Dalrymple notes that the application of the “best interest” principle is “highly discretionary” (2006:144).

97 During the time of this research the current trend in child welfare policy incorporated what was termed “permanency planning.” This term referred to the social worker’s responsibility to construct a contingency plan for where the child should reside should reunification with one or both of their biological parents fail. The emphasis on permanency privileged placement of children with kin who were potentially interested in adoption or with foster parents who were hoping to become adoptive parents, even though the initial aim of the placement was to last only until parents could regain custody.

98 Signed into law in 1997, the “Adoption and Safe Families Act” (ASFA, Public Law 105-89), was controversial for providing cash incentives meant to encourage states to increase their adoption rates.
clear, legal definition of “best interest.” Although particular elements are commonly understood to fall under this umbrella term, lawyers, judges, and social workers mobilize “best interest” for starkly different goals founded on vastly different assumptions. It is a rare child welfare case in which all parties involved would agree about what factors should be considered in determining what was in the best interest of the child. Importantly, children were understood, from a legal standpoint, to be able to express their desires but not to assess what decisions might be in their own best interest.

Further, social workers and legal actors often saw the procurement of United States citizenship or continued United States residency for a United States citizen child, as in the de facto “best interest” of the child, although child welfare policy officially privileged placement with relatives regardless of citizenship or country of residence. Such things as better access to schooling, support services, more “sanitary” housing conditions, superior medical services, and a vague sense of future opportunities, were all cited as aspects of the privileges and luxuries afforded by United States citizenship. As Thronson (2008) notes, the conflation of United States residence with “best interest” is of particular concern for United States citizen children with non-United States citizen parents. He argues that, “when family members, social workers, and courts assume that United States citizen children must remain in the United States, they have essentially decided that a parent forced by immigration law to leave the country can no longer care for that child” (2008:413). Interestingly, in Thronson’s portrayal of child welfare and immigration actions
leading to the de facto removal of children from their non-United States citizen parents, he emphasizes that the equation of United States residency with “best interest” is not limited to social workers or legal actors but can also be attributed to family members. In this way, the coming together of immigration and child welfare policy created a situation where parents had to choose between caring for their children or allowing their children to remain in the United States in order to take advantage of the “privileges” and “luxuries” of United States citizenship.

The best interest principle, as noted above, is typically understood to incorporate a tense and precarious balance between children’s, parent’s, and state’s rights. In the case of deported and deportable parents, legal scholar Yablon-Zug provocatively argues that a United States citizen child’s interest in remaining in the United States aligns with the state’s interest in preserving meaningful relations with its citizens and outweighs the importance of the non-citizen parent’s right to their child. In these cases, she argues,

The state’s interest in citizen children far exceeds the state’s interest in their non-citizen parents. Consequently, although it is well established in other contexts that fit parents have the right to the care and custody of their children, this presumption is not appropriate when considering the rights of undocumented parents. Once the parent of an American citizen child is facing deportation, the rights of the child should be viewed as superior to those of their non-citizen parent. At this point, the overriding concern must be ensuring that the child’s best interests are served and, in some instances, this will require terminating the rights of fit immigrant parents.

(2011:2-3)
Thus, for Yablon-Zug, the best interests of the child may well include the termination of parental rights for no other reason than their lack of authorization to reside in the United States.

Based on a critical evaluation of Yablon-Zug’s provocative position, I contend that there are two vastly divergent readings of the “best interest” principle. First, best interest proposes a humanitarian view of the citizenship process, which begins with the premise that immigrants should not be judged by whether they meet certain entry requirements but by whether it is in their “best interest” to immigrate or, perhaps, not to be forcibly removed to the country from which they came. This is the reading of the law that Luz felt was such an exciting opening up of immigration rights for minors. Yet this humanitarian perspective is extended only to minor migrants whose “unprotected” status as wards of the state provides the impetus for judging their right to enter under different terms. As such, Dalrymple argues that all cases involving the immigration of minors should, in an ideal world, be founded on the principle of “best interest.” This would mean, for example, that a child could qualify for citizenship in the United States as long as the judge deemed that path to be best for the child, rather than the child being held to narrowly-defined immigration standards, such as the necessity to demonstrate a well-founded fear of persecution to qualify for asylum status.

Secondly, the best interest principle, while containing the potential to align with international law privileging the unity of children with their parents regardless of their country of origin or residence, can be mobilized to support a view which posits
United States citizenship and residence as inherently in the “best interest” of all children, regardless of the implications of this determination for their family circumstances. This interpretation was one faced by social workers, lawyers, and advocates who attempted to argue in court that the best placement for a child was with their parents or extended family residing outside of United States borders. This was arguably the key element in Miguelito’s case, which I discuss in Chapter Five, where concerns about Tijuana social services and neighborhood environments profoundly impacted the trajectory of his case and the ultimate custody determination that was made.

Ultimately, the principle of “best interest” invokes the position that in the case of a minor the safety and well-being of that child supersedes regulations about “illegal entry.” This position sidesteps immigration debates and ascribes to universal notions of child protection that nullify questions of the worthiness of individual claims. In this sense, minors are seen as both inherently blameless, and inherently worthy of citizenship status, as long as they are understood to be in need of “protection.” Yet judicial interpretations and decisions made by both social workers and legal actors that equate “best interest” with United States citizenship and residency risk delegitimating commitments to the preservation of the family. These commitments posit that family integrity, in the absence of severe neglect or abuse, is the surest indicator that the best interests of the child will be addressed. As such, this second reading of best interest suggests that a child’s residence in the United States will lead to a better life than a child remaining with their family outside of these
borders. In this way, equating United States citizenship with “best interest” risks positing a dubious interpretation of the “best interest” principle, decentering the rights of the parents and the family, and positioning the immigrant parent as not only unworthy of legal status, but of the care and custody of their own child. Further, this view implicitly places elements assumed to be superior within the United States, such as schooling, medical care, and employment above emotional and psychological aspects of well-being, which are largely believed to be best supported for children who remain with their biological families. In this sense, common interpretations of “best interest” appear to be driven by primarily economic readings of a child’s life trajectory. I suggest that although best interest opens up the possibility of taking a child’s circumstances into account in important ways, it also risks creating a space for judges, lawyers, and social workers to assert their own perceptions of United States superiority, arguing that even a child’s residence in a long-term foster care placement in the United States is superior to residence with their own family in another nation.

Conclusions

Lawyers, judges, social workers, and parents harbored widely varied opinions as to what extent, and in what ways, non-United States citizen parents and children were differentially positioned within the child welfare apparatus. Formal avenues and protocols existed, as did international agreements, like the Hague convention, that guaranteed protections for children and families regardless of their country of citizenship. The existence of these policies did not reliably translate into equitable or predictable outcomes for children and families largely because child welfare services
was not an agency where strict protocol led to standard outcomes. Rather, it was an agency where discretionary decisions made by a variety of actors gave shape to placement and removal decisions, and to ultimate custody rulings.  

I approach these moments of discretion not as abnormal departures from institutional protocol but as part and parcel to the manifestation of state authority in the lives of mixed status families, in this case via the child welfare apparatus. As noted in my earlier discussion of Gupta and Ferguson’s (2002) approach to state-making, it is through these uneven, discretionary decisions, rather than through the routine or systematic workings of an institutional apparatus that the authority of the state takes shape. Determinations social workers, lawyers, and judges made could permanently sever the legal relationship between parent and child, asserting the state’s authority to define the limits of the family. As social workers made decisions about who might be considered a viable placement option, as immigration officers used their discretion to release single parents or to detain them, as judges ruled Tijuana social support services to be inadequate for a child’s care, these actions delineated boundaries between the rights of citizens and non-citizens, produced and reinforced political borders and international hierarchies of nation-states, and enacted and determined the authority of particular individuals to dissolve and constitute families in the name of the state. These actions constituted both the reach and the

99 See Scherz 2011 for an insightful discussion of the discretionary nature of child welfare agencies and of the ambiguity produced through attempts at utilizing standard rubrics for guiding decisions about child removal.
limit of the state – fiscally and spatially marking the terrain in which state authorities were willing to intervene.

It was the dependency court’s directive to turn a blind eye to citizenship status and to the potential fragility of reunifying a child with a “deportable” parent that in some cases enabled the reunification of families. The same gap between systems that led to the translation of a parent’s deportation into a form of “abandonment,” as in the case described by Jaime, led both to the ability of the children to qualify for United States citizenship as dependents of the court (i.e., as foster children, due to their “abandonment” through the detention and deportation of their parents) and to the creation of a space where a dependency judge could reunify that family with no compulsion to report the father’s immigration status to immigration enforcement. I consider these moments in an effort to capture what Coutin calls the “‘shimmering’ quality of incompatible realities,” (2007:6) where parents were simultaneously deportable, unauthorized “aliens,” as well as legitimate members of a court of law with rights to representation, court-ordered services, and the ability to reclaim their children. It is this “incompatible reality” that both created the precarious situation of vulnerability to the removal of one’s children and also opened up a space for maneuver, a possibility to reclaim your children and reunify your family on legal grounds.

Although these various actors – social workers, advocates, judges, and lawyers- understood themselves as a team all working towards the goals of maintaining families and protecting children, each had vastly different access to
information, institutional restrictions, understandings of the process, and authority in the courtroom and in the lives of children and their families. Child welfare interventions were moments where individuals were marked out as deviating from parenting and family norms, giving the state both the right and the responsibility to intervene. Yet immigration policy marked out individuals in different ways, and made delineations about rights that often conflicted with commonly held notions of the “best interest” of the child. As I have discussed above, custody outcomes for cross-border cases too often depended on whether or not a social worker was willing to put in the extra time and effort to locate parents or extended family, arrange visits and necessary visas, and work with international agencies to obtain the necessary permissions, approvals, and paperwork. Ever increasing budget shortages led to untenable case loads and reduced resources and time for social workers to confront these challenges. Ultimately, it was faster and easier to assume that a detained or deported parent had abandoned their child than it was to make the effort to locate them.

Inadvertently, immigration policies and child welfare law came together in ways that positioned particular families as vulnerable to the removal and, ultimately, the adoption of their children. Yet child welfare was also a space that denied the delineation between citizen and non-citizen, and deemed these distinctions irrelevant to the welfare of a child and to whether or not a judge could rule to dissolve legal bonds between family members. The intersections and gaps between these two systems raise the question of how and why, and in what context, particular
individuals are positioned as objects of state intervention. It is to these questions that I turn in the following chapter.
Corinne and I were driving to pick up baby Maya from daycare, late as usual. Corinne was weaving through the traffic lanes at well over twice the speed limit. I was trying to surreptitiously cling to the car door while taking advantage of our driving time to ask longer questions than the office work pace usually allowed. I asked Corinne on what basis she understood county social workers to make their recommendations to the court about whether a family should be reunified or whether parental rights should be terminated. I was curious because after I had read through the detailed notes taken at each home visit in Esperanza’s files, Corinne had mentioned to me in an off-handed way that no one except me or perhaps a newly hired Esperanza social worker reads the notes in the case files. Corinne put hours of effort into drafting her notes after weekly home visits, typing up handwritten observations and adding any details she remembered but had not written down. Foster parents also spent time meticulously writing observations during visits with children’s biological family members, and keeping a written log of all phone calls with the biological family, recording any notable discussions and the children’s reactions for their case file. I had assumed that these notes were involved in county social worker’s recommendations and court decisions, partly because foster family agencies,  

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100 See Richard Harper’s (1997) *Inside the IMF: An Ethnography of Documents, Technology, and Organisational Action*, for an analysis of meticulously written reports in the context of the IMF that their writers’ understand are unlikely to ever be read or referenced once filed.
Esperanza included, billed themselves as providing detailed case information to the county social workers, thereby saving them time and allowing all the decision makers involved – lawyers, judges, social workers, supervisors - to be better informed about a particular child and their case. Once it became clear that these notes in the file were not read by the county social workers who made the official recommendations about custody and placement decisions to the court, I began to wonder what it was that formed the basis of those decisions.

Corinne explained that from her perspective, county social workers based their decisions on their few visits with the children (often less than one per month), their interactions with the biological parents, and their gut feeling about a case. County social workers were, on the one hand, constrained by institutional protocol and policies, and on the other hand, rather free to interpret their observations as they saw fit. In large part this was because the oversight of county social workers happened via written reports and regular meetings with their supervisors. Because county supervisors never visited or spoke with the individuals involved in the case, unless a serious problem arose, all reported material was already filtered through the perspective of the county social worker assigned to the case. Corinne felt that this kind of subjective decision-making enabled social workers to make their decisions based on whether or not they “liked” the biological and foster parents. For Corinne, this was a problematic process, since it allowed “bad” choices to go unchecked. These decisions then became the basis for the county social worker’s court report, which typically formed the starting place for lawyer’s negotiations and judge’s
rulings. Of course, county social workers could not legally fabricate or overlook whether or not biological parents were doing what they were court ordered to do, but they could grant extensions, overlook small missteps or emphasize them, and make recommendations that might or might not have been well-founded but which the judge would be likely to listen to regardless.

Corinne’s opinion, and one that was shared by the many FFA workers and foster parents I spoke with, was that those individuals who spent the most time with a particular child were best positioned to know what was in that child’s best interest. The foster parents and the FFA workers who visited the children weekly spent significantly more time with the children than the other adults involved in a child welfare case. However, their opinions carried less weight than those of the county social workers primarily because foster parents and FFA social workers did not have a legal voice in court. Importantly, the biological parents who, except in the case of very young children, arguably knew the children best and had spent the most time with them did have a legal voice in court. However, as I discuss below, they were most often positioned as less than ideal parents and this position undermined their ability to speak authoritatively about their children within the bounds of the child welfare system. County social workers, both constrained by institutional protocol and empowered to make discretionary determinations based on the limited time they spent with the child and their family, were understood by foster parents and FFA workers to
discount the opinions of those who mattered most and knew the child best – the biological and foster families and the FFA worker who visited the child each week.\footnote{101}

This chapter considers how the effects of government interventions into families are constituted through daily interactions among biological parents, foster parents, children, and social workers. What are the everyday practices, discourses, interactions, and conflicts that constitute the operations of foster care and foster family agencies? How are the impacts of child removal manifested through the individual decisions and actions of social workers, biological parents, and foster parents? Whose knowledge is institutionally supported and who is authorized to determine what may be the best outcome for a particular child? In this chapter, I contend that the coming together of immigration, citizenship, and child welfare position some families as outside social workers’ and legal actors’ commitments to family preservation. In pursuing these questions I explore how translational processes remake immigration actions such as detention, deportation, and illegality into instances of “bad” parenting.

\footnote{101}{It is important to note that FFA social workers often saw themselves as having superior knowledge of the case based on their weekly visits and their expertise as social workers. However, it was the foster parents themselves who were arguably the most knowledgeable individuals involved in the case. This was because in addition to spending every day parenting the child in question, they also often served as the “supervisor” for weekly visits with the child’s biological parents. This meant that they were not only likely to be in tune with how the child was doing in terms of their physical health, schooling, and other factors, they were also likely to be the adult who most often observed interactions between the child and their biological parents or extended family. Although the county social workers likely had more detailed knowledge about the parent’s progress in relation to their reunification plan, treatment program, or other ongoing programs, the foster parent often forged a relationship with the biological parents that might reveal information the county social worker was not privy to. These dynamics will be discussed in further detail below.}
**Intuition and Expertise**

The authority Corinne drew on to take a critical position toward county social workers’ decisions was based on her role as a foster family agency social worker. FFA social workers took the position that because they were members of small agencies focused on foster children and on intervention into what they saw as a troubled system they could claim a position of compassion and understanding, and an expertise in knowing what outcome would be best for a given child. Corinne was frustrated by what she saw as foot-dragging by the county agency in providing expensive services, such as therapy for the foster children on her caseload, and with the way she felt that they made decisions on a whim, due to their lack of time, and without, in Corinne’s view, always having the children in mind. Importantly, of the three FFA social workers I worked with most closely, only one, Alicia, was actually a licensed social worker. And none of them had children. Their lack of official social work license undermined their position in the eyes of the county social workers and administrators, and their lack of children and life experience, due to their relative youth, sometimes undermined their authority in the eyes of the biological and foster parents with whom they interacted.

I suggest that individuals enmeshed in the foster care system attributed a level of expertise to county social workers that was not granted to biological or foster parents, or to FFA social workers. Carr (2010:18) suggests that expertise is, “always ideological because it is implicated in semi-stable hierarchies of value that authorize particular ways of seeing and speaking as expert.” County social workers’
assessments, and the official court reports where these assessments became formal recommendations, were backed by the force of their authority as social workers and as agents acting in the name of the county agency. The formalized protocol of the child welfare agency and the social workers’ position as experts in child protection and child welfare policy authorized their assessment of a case and their determination about what might be best for any particular child. In contrast, the expertise developed by biological and foster parents due to the numerous hours they spent with their children and the degree of emotional intimacy they often developed was not usually recognized as an authoritative perspective in the eyes of the child welfare system or the dependency court. Here I follow Mitchell (2002) and Latour and Woolgar (1986[1979]) who note the processes through which terrain is marked out as in the realm of the “expert.”

In the context of the child welfare system, the position of social workers as agents of the government imbued with the authority to enter any home and take a child into custody, was central to producing child welfare as a realm inhabited only by those with a particular expertise.102 Through quotidian processes of writing and filing reports, transporting children, and authorizing their removal and placement, social workers inhabited an enforceable authority not based on their individual

102 Although a dependency court judge must authorize the removal of a child and determine that there were sufficient grounds for removal, this determination is often made after the child has already been removed. In this way, the county social worker has broad authority to enter a home and take a child into custody, with law enforcement support if necessary. However, county social workers who flagrantly abused this authority or removed children without grounds would certainly face consequences within the child welfare agency.
actions or knowledge but on their position as “social worker.” This is not to say that biological and foster parents were not engaged in the production of meaning-making in the context of child welfare. As I will argue below, the manifestation of the child welfare apparatus was not only a coercive, unidirectional system, but also a collaborative process that came into being through complex, ongoing interactions among differently positioned actors. Rather, the authority of the social worker as an expert enabled them to set the terms of the terrain, defining the contours of “fit” and “unfit” parenting and determining to whom, and how, those categories apply.

As Mitchell argues, largely in relation to the concept of “economy”, and Latour and Woolgar in relation to laboratory science, this notion of expertise, authority, and empirical truth was produced through processes of demarcating specific terrain as distinct from the “social.” Swartz (2005) notes in her discussion of contemporary child welfare social workers that workers often judged biological parents on the moral grounds of good and bad parenting, somehow managing to ignore the knowledge they had of the financial and social constraints that limited parents’ ability to meet the agency’s standards and requirements. As such, the maintenance of social work “expertise” was predicated on a gaze that was narrowly focused on the requirements and expectations of the agency, a gaze that seemingly ignored the messy particularities of everyday life.

As Corinne spoke to me about her concerns with social workers’ power to make decisions about a child’s future seemingly on a whim, I recalled a conversation

103 See Swartz (2005) for an extended discussion of social worker expertise as constructed through appeal to scientific objectivity.
I had with a county social worker about an infant, Rosie, who had recently been placed at Esperanza. Rosie had been with her Esperanza foster parents, whom the county social worker liked very much, from the second day of her life. I had visited this foster family a number of times. Although they had not had a foster child placed with them in a number of years, they participated in annual home inspections to keep their license current in the hopes that they would soon receive a foster child. The parents, Hernán and Estela, were quite different from each other. Hernán was boisterous and energetic, gesticulating with his hands to emphasize whatever he was saying. Estela was a soft-spoken woman, shy but quick to smile, and though she was bilingual, she was much more comfortable in her native Spanish. They had three biological children – a twelve-year-old son, a seven-year-old daughter, and a twenty-two month-old toddler with a headful of curls and a glowing, chubby-cheeked smile. Although their small three-bedroom house seemed packed to the brim with a living room full of toys and walls lined with photos of their children, they were absolutely committed to being foster parents. They regularly expressed their disbelief at their friends and family who didn’t support their decision to foster or understand why they might choose to open their home to someone else’s child. When Alicia, the Esperanza social worker who replaced Corinne, placed the newborn Rosie with them they were ecstatic.

I accompanied Alicia to her first home visit with Rosie, and her foster mother, Estela. Estela led us through her narrow kitchen and into her living room. Rosie was tiny, about six pounds, and covered with a thin layer of tiny dark hair. She had been
born a few weeks early and tested positive for crystal meth, which was what prompted her entry into child welfare custody. I sat next to Rosie who was bundled and sleeping on the couch, while Estela’s toddler daughter ran back and forth from her mother to me, alternating between enthusiastically shouting “bebé!” and “surprise!” while offering me a pretend cup of tea. While I sipped my pretend tea and watched Rosie sleep, Estela spoke to Alicia and me about the case. Estela said that Rosie was sleeping well, contrary to what the doctor had expected. Since her nails were too tiny for Estela to comfortably cut, she had slipped socks over her tiny fists to keep her from scratching her skin. Estela’s own children had all been between eight and nine pounds at birth, so they hadn’t had any suitable baby clothes when they took Rosie home from the hospital, which she had left wearing only a tiny T-shirt and a diaper. Estela told us that the mother had left the hospital without leaving any contact information. According to the county social worker assigned to the case, the father was a Mexican citizen, undocumented and in federal prison for domestic violence against Rosie’s mother. Estela said her whole family loved Rosie and were surprised by how well she was doing, given her drug exposure. Estela was considering breastfeeding her, since she was still breastfeeding her youngest daughter and the doctor had said it would be good for Rosie and help her to gain some weight. Yvette, the county social worker on the case, had encouraged Estela to take her time before making such a commitment to Rosie, as parting with an infant while breastfeeding would be a difficult task. Alicia seconded Yvette’s recommendation to be cautious at this early stage about getting too attached.
When I spoke with Yvette later that week, she explained to me that although the mother had abandoned Rosie at the hospital, they had now located her and the “alleged” father, who was currently serving out a prison sentence. Yvette bemoaned the fact that even though both parents expressed no interest in gaining custody of their infant daughter, the case would proceed more slowly since parents had to be offered services and given a chance to refuse them before parental rights could be terminated. Yvette explained that even if the mother abandoned Rosie for six months, if she then showed up and wanted reunification services, she could have them. If that occurred then the case would be that much more delayed. She lamented this situation saying that cases went much faster and easier “when we cannot find the parents; unfortunately, in this case, we did find them.” Yvette wrapped up our conversation saying that she felt that the foster family treated the

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104 The term “alleged” is applied to a man who names himself as a child’s father, or is named as such by that child’s mother or other relative. The father remains “alleged” until a hospital birth certificate naming him is produced, or until a paternity test is conducted. And although incarcerated parents have the legal right to be given reunification services, particularly if their prison release date is within twelve months of the child’s entrance into the foster care system; this is not common practice for incarcerated fathers, although it does occur on occasion. More often, incarcerated fathers are contacted primarily for the purpose of determining if they have any relatives with whom the child might be placed.

105 Parents are typically given six months of services to demonstrate their willingness and ability to make progress towards reunification. Almost all parents are given a six-month extension after this period, as parents very rarely reunify with their children in six months or less. Most parents are given a third extension, constituting a total of eighteen months before parents are commonly deemed ready to reunify or the judge is ready to move to terminate parental rights. This is, however, an optimistic time frame, as the average time in care for a foster child was 28.6 months, as of 2005 (Adoption and Foster Care Analysis and Reporting System (AFCARS) http://www.acf.dhhs.gov/programs/cb/stats_research/afcars/tar/report13.htm).
baby “as their own” and that she hoped it “goes that way” (meaning an adoption by the foster family) “but it is only my hope at this point.”

I hung up the phone upset and confused. I too felt that Rosie was well-loved by her foster family and was hesitant that a mother who, as reported by the social worker, expressed no interest in caring for her child would have the potential to be a loving mother in the near future. Yet I was struck by how much the trajectory of any given case was based on the intuition of a social worker, by their gut-feeling about who might or might not be a good parent. Yvette clearly hoped that the foster parents would be able to adopt this child. And it was hard to imagine that this would not shape her assessment of the biological parents, should they have opted to pursue regaining custody of their daughter.

The former Esperanza social worker, Corinne, had not even wanted to place a foster child with Estela and Hernán, feeling that their home, which was a trailer, did not have enough room for a foster child in addition to their three biological children. Alicia, the social worker who replaced Corinne at Esperanza, disagreed and happily placed Rosie with them. For one social worker this foster family’s home had not been up to standard, whereas for another social worker they were an ideal adoptive home. The discrepancy in these opinions was based not on particular child welfare regulations but on the emphasis of different social workers in terms of what they were looking for in a good placement, or what aspects mattered most to them.106

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106 There were strict regulations governing the space necessary for a foster child, including the number of children that can be in a given bedroom, and the number of dresser drawers that must be made available for a child’s clothing and belongings.
When I spoke with Alicia, the Esperanza social worker on the case, she also stated that the mother “didn’t want the child.” When I asked if the mother had actually said she “didn’t want her child,” Alicia acknowledged that she hadn’t, but asserted that the mother had demonstrated this by not showing up or calling to ask for reunification services. The slippage between not showing up and not wanting your child was particularly problematic in light of obstacles posed by such circumstances as drug addiction, detention and deportation, lack of transportation, or homelessness. These circumstances could impede a parent from adequately expressing interest in a manner that was intelligible to a social worker or simply having the necessary resources to be able to make a phone call. Beyond the question of this particular mother’s commitment to her child, I was disturbed by the fact that locating the biological parents had been framed as “unfortunate” and giving the parents the right to reunify with their child as a hassle and a waste of time. I wondered what sorts of structures were in place that might facilitate social workers’ feeling that providing services to reunify families was merely a troublesome detour to the project of placing the child in an adoptive home.

A social worker’s intuition, or gut-feeling, was an important element of what constituted a social worker’s decision-making process. Alicia and I once had a disagreement about this issue after she spoke with a divorced father who was interested in being a foster parent. Alicia had a hunch that this father may have...

The foster family’s home described above met that standard. For this reason Corinne could not deny the family their foster care license, although she could, and did, resist placing a child with them by calling all other available foster families first when trying to find a foster home for a child.
cheated on his former wife, leading to their separation. She did not think that she should place foster children with him, “because of his values.” I pointed out that others might make the same judgment about same-sex couples and say that children should not be placed with them “because of their values.” Alicia conceded the point, asserting that no one should be disqualified from being a foster parent unless the social worker had a “justifiable gut feeling.” Alicia and I dissolved into giggles at this nonsensical idea, since a gut-feeling must by definition be based on intuition, not concrete, justifiable evidence.

Although the dispute Alicia and I had ended in laughter, the gut-feeling of a social worker was a substantial factor in making determinations about biological and foster parents. Though institutional policies dictated what could and couldn’t be grounds for disqualifying a foster parent from fostering, or for making decisions about whether parents would regain custody of their children, both county and FFA social workers often felt that there was enough discretion in their enactment of agency protocol to enable their gut-feelings to play a significant role in their day to day assessments of each case. These gut-feelings also shaped interactions between social workers and parents, which had material consequences for how each case might proceed. A social worker who just “felt” that a mother was a good mother might be more inclined to overlook a missed appointment or a single failed drug test if there were other signs of progress that the social worker could emphasize. On the other hand, these same missteps could be emphasized to build a case for the
termination of the parental rights of a parent about whom the social worker just didn’t have a “good” feeling.

“What are we doing this for anyway?”

Taylor was sitting at the kitchen table in a white tank top, enthusiastically scooping macaroni and cheese from the local Weinerschnitzel into his grinning mouth. Waving his spoon in the air, he exclaimed to Corinne and me that he was having a “Rainbow day!” We looked at his foster mother Anna for translation and she explained that Taylor was having a rainbow day, as opposed to a stormy, cloudy, rainy, or a sunny day, which meant that his behavior had been excellent. He was eating his mac and cheese reward because he had been pushed by another child at school and had told a teacher instead of pushing back.

Taylor had come to Anna as an animated five year old, brought into the foster system because of domestic violence between his two young parents. He was prone to fighting when angry, bed-wetting, and the more benign mischief making of any spirited five year-old. He had been moved from a previous foster home due to some physical altercations with a younger foster sibling, although throughout his time at Anna’s he had been reliably patient and sweet to the other children in the home. Anna was a no-nonsense mother, full of laughter and playfulness but also not shy about setting firm guidelines and high expectations. She had been working with Taylor, his teachers, and a therapist to address his more problematic behaviors. She set clear guidelines in her home and in Taylor’s school, where Anna worked in the cafeteria. She provided rewards when he reached small goals and employed a time out strategy,
to which he had not been regularly exposed before, when his behavior was deemed to be out of control. Anna and her partner Josie felt that they had been making significant progress though there were frequent setbacks after each of Taylor’s weekend visits with his biological parents, who did not employ the same strategies or house rules. A significant blow to this progress occurred when Taylor came home and told Anna that his mother had explained that she was “just the babysitter.” After this incident, Anna continued to work with Taylor but became more frustrated as she reported various issues with Taylor’s behavior and his visits with his biological parents to the county social worker and felt that they went continually unaddressed.

The situation came to a head when Taylor came home from a visit and reported that he had again spent the day with both of his parents. This was a violation of their reunification plan because parents who have a case involving domestic violence are not allowed to visit with their child together.\textsuperscript{107} They are often forbidden from speaking or having any relationship at all. The requirement for partners who experience domestic violence to separate in order for one of them, usually the mother, to regain custody of their children posed a substantial obstacle to many parents caught up in the foster care system. Once they were forbidden from relying on or communicating with their former partner, parents often found themselves in need of

\textsuperscript{107} The reunification plan was a document drafted by the county social worker that laid out the requirements that parents must meet to regain custody of their children. This might include attending parenting or anger management classes, securing stable housing or employment, or other similar requirements. Although the reunification plan was supposed to be constructed through a collaborative discussion with the biological parents of the child, this was not always the case. Parents did have to sign the plan, however, and failure to do so was interpreted by the agency as a lack of interest in regaining custody of the child in question.
procuring new housing, employment, childcare options, and a network of social support. Further, regardless of a history of abuse or domestic violence, many couples may be unprepared to sever their relationship in the timeline, usually eighteen months, required by child welfare policy. As one foster mother told me, after having fostered four different children from families where the father had abused the mother but not the children, many mothers, if forced to choose, chose their husbands over their kids. In the foster mother’s eyes this was not because these mothers didn’t love their kids. Rather, she felt that this was because that is what victims of abuse do until they become strong enough to break away from their abuser.  

The directive to sever relationships involving domestic violence, while oftentimes rigorously enforced throughout the duration of the case, commonly resulted in couples coming back together once one of them had regained custody of their child. However, interaction between two parents in front of their child in a domestic violence case could be, and often was, grounds for termination of parental rights. In court this was categorized as a “failure to protect” since domestic violence between parents, even though a child may not be physically harmed, was understood to constitute emotional and psychological abuse.

Taylor came home from this visit happy but exhausted and spent the next hour vomiting up the candy he had eaten during the visit. Anna reported this situation and the fact that his parents had seen him together to the county social worker, Krissy, but was dismayed when Krissy did not respond and visits with his parents continued in  

the same manner.109 When Taylor’s lawyer called Anna to get her perspective on Taylor’s wellbeing before his first six month hearing, Anna told him all of her frustrations with the case, with Taylor’s parents, and with what she saw as the social worker’s lack of action. The lawyer relayed this information to the judge in court, who scolded the social worker, Krissy, for not doing her job. Krissy called Corinne, irate, demanding that these sorts of issues were supposed to be handled separately, not raised in court. She told Corinne that this would never have happened had the lawyer not been young and inexperienced. Corinne suggested she mediate a meeting between Krissy and the foster parents to resolve this issue but privately felt that Krissy had little grounds for complaint and was merely upset about being publicly scolded by the judge for not doing her job.

The meeting between Corinne, Krissy, and foster parents Anna and Josie went well in terms of repairing working relationships but left Corinne and the foster parents feeling dejected. Krissy explained to them that the county does not look for good parenting, but rather works towards the bare minimum – no threat of imminent danger. Regardless of whether Anna was working diligently to improve Taylor’s behaviors, Krissy felt confident that Taylor would return to his parents who would not have resolved their lack of parenting skills or their domestic violence issue. Krissy

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109 As noted in Chapter Two, Corinne was the Esperanza social worker who managed this case and worked closely with Taylor and his foster parents, Anna and Josie. The county social worker, Krissy, was in charge of working with Taylor’s biological parents and determining the case plan and his parents’ progress, as well as making recommendations to the court about Taylor’s placement and pending reunification with his parents. Anna and Josie, as Esperanza foster parents, were expected to report any incidents or issues both to Corrine and to Krissy, although they were understood by both social workers to be under Corrine’s direct supervision.
also stated that she believed Taylor would likely re-enter the foster care system at some point. Both Corinne and Anna felt that this prompted the question of why they were doing anything at all and whether removing him in the first place would ultimately be more damaging than his exposure to domestic violence, given that it would disrupt his family without resolving any problems. After this meeting Taylor’s behavior escalated as his visits with his parents increased. Anna almost asked for him to be removed when he spit in her face during a disagreement. However, Taylor’s therapist intervened, arguing for how much good his placement with her was doing Taylor, and she temporarily relented. Ultimately, Anna did ask for his removal from her home a few months later when Taylor’s mother filed an abuse allegation against Anna after finding a bruise near the base of his neck.  

Although Krissy’s portrayal of the minimum county standards for reunification was accurate, the implementation of this policy varied widely from one social worker to another. As social workers routinely handed off cases as each case progressed, as often as every six months, a new worker would often change visitation guidelines or the terms of the reunification plan.  

10 Although this abuse allegation case was still pending at the time of this writing, no one involved believed that the investigator would find that Anna had indeed harmed Taylor. Confidence in this was mostly based on the fact that Anna had two younger foster children in her care, and that if the investigator had had any serious concerns, the first logical step would have been the removal of the other foster children from Anna’s care. This is, in fact, common investigation procedure. Emma, whose case was discussed in Chapter Three, was placed with her adoptive parents because her initial foster family was undergoing an investigation for the suspicious injury of another foster child, of which they were later absolved.  

11 I discuss the move from one social worker to the next, and why this happens, in detail in Chapter Two.
worker, Tom, who took over Taylor’s case after Krissy, required the biological parents to have supervised visits with Taylor, rather than the unsupervised visits that Krissy had approved. This was a step away from the parents’ progress towards regaining custody of Taylor and was evidence of Tom’s assessment of how the case ought to proceed. These changes were not based on a difference in parental behavior but on the individual style and preference of the social worker and their interpretation of child welfare policy. These decisions were also informed by budgetary constraints, dominant trends or styles in the social worker’s regional office, the preferences and expectations of their direct supervisor, and the realities of compassion fatigue and social worker burnout.\textsuperscript{112} As such, the particular tendencies of the social worker assigned to a case at any given moment determined the frequency of visitation, the specific requirements for reunification, and the likelihood that a parent would regain custody of their child.

This case raised questions about the whole enterprise of fostering, the purported goal of which was temporary removal of the child for their protection while the parents resolved the issues that had put the child in harm’s way in the first place. But Taylor’s case seemed to Corinne and to his foster parents to be an exercise in futility, an empty gesture towards intervention, which in fact strove to do nothing to

\textsuperscript{112}“Compassion fatigue” is a term used to describe a reaction to the secondary trauma experienced by workers such as social workers, nurses, psychologists, and others who work on a regular basis with traumatized clients. Compassion fatigue theory suggests that workers become less empathetic over time as a reaction to the ongoing feelings of hopelessness and despair they face in their work. See Bride and Figley (2007) for an introduction to a special issue of the \textit{Clinical Social Work Journal} focusing on the issues of compassion fatigue and strategies for understanding and ameliorating this issue.
alter the situation or protect the child for the future. What, then, was the purpose of
removal? Was it punishment for the parents? A temporary band-aid? The social
workers protecting themselves and the child welfare agency from the liability of
knowingly leaving a child in a potentially harmful situation while responding to the
strictures of funding limitations by returning them as soon as possible regardless of
whether their home and family circumstances had changed?

As Scherz (2011) discusses, social workers must navigate the tension between
risking the destructive act of removing a child from a family in an effort to protect
them from future harm and risking the injury or death of a child who should, in
retrospect, have been removed but was not. Scherz argues that the potential for
lawsuit and media backlash over the death of a child who has been brought to the
attention of child welfare services is a far more problematic outcome for the child
welfare agency and the individual social workers involved in a case than the outrage
of an individual family who experiences the removal of their child without good
cause. The imbalance of these potential outcomes tips the scales towards removal,
rather than family maintenance, as the safer option for the social worker and the
agency as a whole.\textsuperscript{113} Although protecting children from harm is certainly central to
these decision making processes, the tension between a family’s rights and the
agency’s liability leave little room for consideration of children’s rights or children’s
own desires to remain in or to leave their family’s home.

\textsuperscript{113} Family maintenance, as discussed in the introductory chapter, is the term used to
describe the act of providing support services to a family, such as therapy or financial
subsidies, rather than removing a child from the home.
Although the agency’s policies seemed to position the removal of a child as the safest option for a county social worker, not all social workers felt that this was the best approach. I met Ruby, a veteran county social worker, at a training she held for social workers and community partners, such as therapists and counselors. Ruby dedicated the latter half of her career to educating social workers about how to make “good” decisions. As Ruby discussed social worker’s decision-making processes and institutional barriers to making thoughtful decisions, she was frank about the mistakes she felt that she had made in the past. She felt haunted by the damage she had done to children by removing them. She explained that she had set them on a course where they were raised by an institution rather than a family and ultimately caused them more harm than their biological family had, even in cases involving physical abuse. Ruby explained that it was not that her intuitive concerns about particular families had been wrong but that they had not been adequately weighed against the perils of life within the foster system. The main argument of Ruby’s workshop was that heavy caseloads and limited time were serious obstacles for all social workers and care providers, but that these were not sufficient justifications for sloppy or rushed decisions. Her trademark motto was “move slow to move fast,” emphasizing the importance of careful investigation rather than the safety and ease of a quick removal in the name of child protection.

_Institutional Roadblocks_

Regardless of Corinne and Anna’s disappointment in Krissy, social workers did face real obstacles to providing parents with support services to improve their
family situation. In a dependency court hearing I attended, three children were reunited with their mother who was homeless, jobless, and unable to regularly transport her children to school or to obtain the medication prescribed to her two older children because it was not covered by Medi-Cal. The children’s advocate was horrified that the children would be returned to the mother under these circumstances and that many of the mother’s support services would be terminated when her case closed. The judge explained that as there was no “threat of imminent danger” they could not keep her case open, even though they all wished to provide her with what they deemed to be necessary support to ensure that the children would be adequately provided for. The judge urged the mother to “hang on” to the social worker’s phone number and to call if she felt herself slipping back into trouble. The social worker shrugged and cheerfully told the judge he was about to retire so she’d have to call someone else.

A substantial portion of these obstacles to support services were due to the financing structures of child welfare services, which provided far more funding for children once they were removed from their families than for services to families to prevent the initial need to remove a child, or their likely return to foster care. As Murray (2004:5) states,

A common complaint about the current financing system is that the vast majority of dedicated federal funding—Title IV-E Foster Care and Adoption Assistance—can only be accessed once children have already been removed from their biological families. That is, they support children on the “back end” of abuse and neglect. The more

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114 Medi-Cal is the state of California’s version of Medicaid, which provides free or subsidized health care to low-income adults and children.
flexible funding that is available for prevention, reunification, and permanency services—that is, the “front-end” services, funded primarily through Title IV-B—is relatively limited and, as discussed above, is subject to the annual appropriations process.

Thus, because of budgetary constraints, social workers were limited in the supports and resources they could provide to families attempting to avoid the removal of their children. In this way, state support did not really kick in until the child was a dependent of the state.115 These financial constraints contradicted, and seriously limited, social workers ability to effectively pursue family maintenance in a way that did not first involve the removal of a child into foster care. This financial imbalance positioned the agency in a responsive stance towards child protection rather than a preventative stance focused on proactive support and family maintenance prior to instances of abuse or neglect. Similarly, social workers often felt that they were returning children to an untenable situation, due to the lack of continued services they were able to provide, and that it was only a matter of time until those children would reenter the system.

In many of the cases I was involved with throughout the course of my research, county social workers seemed to be acting in a way that appeared to Corinne, to foster families, and often to myself, as completely counter to common sense and to the “best interest” of the child. At the same time, these decisions were in line with, and often spurred by, agency protocol. Jayden’s story was a case in point.

115 See Briggs (2012: 263-266) for a discussion of the way the United States maintains a reduced social safety net through its reliance on families to shoulder the burden of the care of dependents such as children, elderly, and others who would otherwise be the responsibility of the state.
Jayden was a short, stocky two year-old with a husky voice and a thick head of black hair. She had been placed as an infant with a county certified foster family, having been removed due to domestic violence between her parents, for which her father was temporarily incarcerated. The county initially pursued reunification with her father, having ruled out her mother due to mental health issues. However, Jayden’s social worker later decided to recommend terminating the father’s parental rights because he continued to interact with Jayden’s mother in violation of his probation. Jayden’s county foster family wished to adopt her and the county decided to move in that direction. However, shortly after this decision was made, Jayden’s foster father was transferred out of state for work and Esperanza was contacted to see if they had a foster family that could provide a temporary home in San Diego for Jayden, since out-of-state adoptions were notoriously lengthy. Esperanza foster parents Edith and Arturo agreed to the placement. They were an older couple with grown children of their own, committed to fostering not in the hopes of adopting but with an interest in helping “Hispanic” children. Days before Jayden’s transfer to Edith and Arturo’s home, her county foster mother decided to stay behind when her family moved, hoping to avoid a prolonged separation from her soon to be adopted daughter and expecting that things would move more quickly in court if she remained in-state. As the court case dragged on month after month, the county foster mother decided that

116 As discussed in Chapter Four, geographic obstacles, whether they be county, state, or international borders, pose significant problems for child welfare cases. This is due to differing policy and legal guidelines since child welfare is primarily legislated at county and state levels but also due to many jurisdictions being hesitant to take on the financial and legal responsibility that comes with taking on the custody of a child from another region.
she finally had no choice but to move out of state to be with her husband and other children. Jayden, then two years old, was placed with Edith and Arturo and had weekly phone calls with her former foster mother, holding the phone to her ear while kissing a picture of her, clutched tightly in her hand.

Even as the court date continued to be pushed back, everyone expected the case to eventually proceed as planned - Jayden had a loving adoptive family, ready to take her in permanently. Alicia and I were walking to lunch when she filled me in on the latest developments of Jayden’s case. Alicia explained that she received a phone call from the county social worker, “would Edith and Arturo be interested in adopting Jayden?” Alicia was astounded, asking what had happened to her former foster family. The social worker explained that Jayden would have a lapse in medical coverage during the process of the out-of-state transfer and for that reason the adoption out of state would not be approved. I stopped on the sidewalk, too horrified to move: “Whaat?!?” “Yep,” Alicia said with a shrug, “and now they are reconsidering the father, because they don’t have any other good options at this point.”

The concern about a lapse in Jayden’s medical insurance was based upon the child welfare agency’s responsibility to ensure that each foster child had consistent access to medical care. It was also an instance of the difficulties that arose from a child welfare system that was organized differently from state to state. Yet it seemed impossible that the system would privilege a technical concern like the complexity of medical insurance across state lines over the possibility of Jayden being permanently
adopted by a family that wanted to adopt her, and that had cared for her from the age of four months.117 Further, child welfare policy asserted that the termination of parental rights was a serious decision, made only as a last resort. A reconsideration of the father as a custody option because of a technical difficulty with medical insurance suggested that a viable placement was a relative decision where the aim was not a good placement, but merely the best placement option available. This brought into question whether the recommendation to terminate the father’s parental rights should have happened in the first place. Institutional policies that demarcated the child welfare system’s responsibilities and obligations could not adequately predict the complex nuances of each child’s and family’s case and particular needs. It was in these ways that social workers sometimes appeared to foster families and FFA social workers as unfeeling bureaucrats, or uncaring individuals, while they struggled to navigate the limits of the institution.

117 The transfer of medical insurance for a foster child moving across state lines can be complex, but is certainly not an insurmountable obstacle. An Interstate Compact on Adoption and Medical Assistance exists to facilitate this process, and though all states are not members, all states are responsible for issuing a Medicaid card to an eligible child who moves into their state. However, this process is often delayed by miscommunications between state agencies and by variance in paperwork and processing protocol between various states. Some states report a lapse in coverage up to as many as six months. There is also nothing precluding a family from covering a foster or adoptive child under their own private insurance, although there are, of course, financial constraints to doing so. It is possible that the county social worker involved in this case was ignorant of these policies, or that she was using a concern about medical coverage as an excuse for changing her recommendation about how she thought the case could proceed.
A problem with the paperwork

Clara and Antonio had been fed up with their foster placement – not because of the kids, whom they adored, but because of the children’s grandmother, who was verbally abusive towards both the foster parents and their older foster child, Mikey, during visits. Clara and Antonio had grown up in Tecate, just east of San Diego on the México side of the border and had been childhood sweethearts. They enjoyed having a house full of children and had fostered six children prior to Mikey and Miriam. Their own children, except for one teenager, were grown and living elsewhere. They had worked with families that involved serious physical abuse and ongoing drug use and they did not see themselves as a couple that would shy away from a challenge. The county social worker, Margo, had decided to recommend termination of parental rights because Mikey and Miriam’s mother had repeatedly failed to quit her drug habit. The extended family, including the grandmother, had been ruled out as viable options for the children because of histories of abusive behavior, both physical and sexual. But Margo said she refused to make “legal orphans” and therefore would not recommend terminating parental rights until she found an adoptive home.118

After seven months, Clara and Antonio finally decided they had had enough of dealing with the grandmother. They told Margo that if she would not remove the

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118 The term “legal orphan” refers to a child who has no legal guardian. This situation occurred when parental rights were terminated, or parents were deceased, before a new guardian had been appointed. In these cases, the state government via child welfare services acted as a child’s legal guardian. Social workers and dependency court judges acting in this capacity were routinely asked for permission for such things as participation in school field trips or getting a haircut.
grandmother from the weekly visits then the children, Mikey who was eight, and his younger sister Miriam, almost two years old, would have to be moved. Margo said that she understood their concerns but felt that since the grandmother had practically raised the children in the mother’s absence she had a right to continue to visit them until parental rights were officially terminated. Margo also agreed to accelerate her search for an adoptive home for the children. After several delays, Margo called to say that she had found an adoptive placement and would pick the children up the next day to transfer them there. Margo’s plan was to settle them into this new home before recommending that the court terminate parental rights and approve the adoption.

Corinne, Deanna, an Esperanza social work intern, and I arrived on the day of the transfer, bringing the children some gifts that they missed receiving because they had not attended the Esperanza holiday party. When we arrived Mikey was visibly nervous, pacing and pulling at the front of his shirt. He greeted Corinne when we arrived and asked, “Where am I going?” She told him that Margo would tell him when she arrived. A few moments later Mikey turned to me and asked, “Am I going with you?” I smiled and shook my head no; trying to distract him from his anxiety by checking out the new stickers and matchbox cars he had unwrapped.

Margo arrived, and stood in the doorway with her sunglasses on. With Mikey out of earshot she explained that the children were going to Abrams Children’s Home, rather than to their new adoptive family.\footnote{As discussed in Chapter Two, Abrams Children’s Home is the main receiving center that provides temporary shelter to children who have been removed from their homes. Children at Abrams are housed in small dorms, separated by both gender and...} Margo responded to our
expressions of horror and sadness by saying only, “it’s a long story” and “the placement worker was being a pain in the butt!” Clara quickly packed a diaper bag for Miriam and helped Mikey to put his backpack on. Margo told Clara that she would pick up the rest of their things when they moved to their new home, hopefully within the week. Mikey stood in the kitchen, his hands tucked under his backpack straps. He looked over at his sister, obliviously sitting in a chair while I wiggled new hello kitty socks over her chubby feet, and asked “Is she staying?” Margo said “No, guy.” When Mikey asked her where they were going she said only that she’d tell him in the car. We all walked them out to Margo’s waiting vehicle where Mikey got in the back and Clara strapped Miriam into her car seat. The car backed up slowly – Corinne, Deanna, and I waved and smiled until we couldn’t see Mikey’s hand anymore, while Clara turned her face into Antonio’s chest and cried silently, wiping tears off of her cheeks. Once the car was gone Antonio walked briskly down the driveway, a bottle of windshield wiper fluid in hand. Perhaps, I thought, work was the easiest way for him to deal with the sadness of the day. Clara smiled through her tears, told Corinne that she would be okay, and hurried inside.

Corinne, Deanna and I conjectured that perhaps the new family was not ready to receive the children or that the county had found an issue that they needed to investigate before the children could be moved to their new home. In fact, Corinne
learned later that week from Margo that there had simply been a problem with the paperwork – the family had been ready to receive the children that day. The children spent two weeks at Abrams. It was there that Miriam celebrated her second birthday, and it was there that she experienced what was perhaps the first trauma of her life that she would remember – she was not old enough to understand what was happening except for the fact that she was no longer with Clara, whom she thought of as her mother. Further, although Mikey and Miriam had spent their days together in Clara’s home, they would almost certainly be separated at Abrams. Abrams made exceptions to keep siblings housed together, but this was usually possible only for siblings who were of the same gender or relatively close in age.

Although Corinne understood that Margo had a large caseload and many children to be concerned with, she felt that this trauma could have been avoided – that it was Margo’s fault. Corinne believed that Margo had not been concerned with finding the children an adoptive home until pushed to do so. This was primarily because the foster home with Clara and Antonio seemed to be a good, stable placement for them, which allowed Margo to deal with other, more pressing cases. But because Margo did not rush to find an adoptive home she also did not rush to terminate parental rights, since she did not want to create “legal orphans.” Although Margo felt very strongly about this issue, her position was not determined by child welfare policy. Other social workers recommended termination of parental rights at whatever point they felt the parents should no longer be considered a placement option. This decision might occur sometimes as many as six months before a
permanency plan such as an adoptive home or guardianship arrangement was established. The hesitation to delay this decision led Margo to prolong the children’s visits and exposure to their biological mother and grandmother, as visits officially continue until a dependency judge terminates parental rights. Corinne saw this as needless once Margo had determined that parental rights should be terminated, particularly since Margo planned, for the children’s wellbeing, to encourage their eventual adoptive home to maintain no contact with Mikey and Miriam’s biological family. In this way, the crisis Mikey and Miriam experienced seemed to be the result of an arbitrary position Margo took.

Had the foster parents voiced their concerns about the grandmother earlier or more strongly perhaps their frustration would not have reached an insurmountable level. Had Margo responded more forcefully to their concerns with the grandmother’s behavior, the foster parents might have chosen to extend their care of the children until an adoptive home was authorized to accept them. Yet Margo did not acknowledge the situation as a choice, or series of choices, but rather referred to an ambiguous institutional glitch as the sole cause of this momentary crisis. As Herzfeld (1992:5) argues, “While disgruntled clients blame bureaucrats, the latter blame ‘the system,’ excessively complicated laws, their immediate or more distant superiors, ‘the government.’ ” And as Lea (2008:60) states in the context of bureaucratic offices providing social services to aboriginal communities, “In each case, the ‘they’, the imagined final location of the decision-making apparatus, is always in another place.” Ultimately, a series of individual decisions had contributed to the children’s
instability and had affected a second experience of removal, not as a result of protection from abuse, but merely a problem with the paperwork.

Deferring to the Authorities

Jennifer Reich, in her book *Fixing Families: Parents, Power, and the Child Welfare System* (2005), argues that deference to the authority of the state, as represented by child welfare authorities, is one of the key variables that determines whether or not a parent is likely to reunify with their child.\(^{120}\) This deference takes multiple forms from accepting guilt, complying with court-ordered services, and demonstrating a willingness to change. As Reich argues, many parents confront difficulties and ultimately lose custody of their children when they are not willing to defer to the county agency’s terms and categories. Carr (2010:103) describes a similar set of circumstances in the context of drug treatment programs, where a client’s disagreement with a therapist’s version of their story constitutes “denial,” a position that service providers view as both a barrier to treatment and a symptom of addiction itself. Carr outlines a strategy she refers to as “flipping the script,” where “Script flippers learned to inhabit the identity of a recovering addict and strategically replicated clinically and culturally prescribed ways of speaking from that position” (2010:182). Yet while the script flippers Carr described must take on the language and disposition that therapists require of an addict, Reich’s research suggests that it is

\(^{120}\) Collins and Mayer (2010:115) make a similar argument about mothers receiving welfare services as having to give up their personal freedoms, such as the right to choose their preferred employment goals and accept the “tutelage of the state” as a condition for receiving aid.
decidedly more difficult for a parent to assume the position of a “child abuser,” if they do not think this analysis describes their relationship to their child.

Parents who do not agree with the accusations of abuse asserted by the county may successfully complete all services but continue to appear to be in “denial” and thus deemed to be at risk to be repeat offenders. Esmeralda, a veteran teacher of parenting classes, both to biological parents who had their children removed and to foster parents pursuing a county fostering license, told a heartbreaking story of an overweight man who took his infant daughter to a hospital where he reported that he had tripped and fallen on top of her while she was playing in a soft-walled playpen. Esmeralda felt strongly that the harm had been accidental but the child had been flagged by the hospital for possessing potentially non-accidental injuries. The child was placed in foster care. The case, Esmeralda reported, was moving towards adoption because the parents, while complying with all court-ordered services, were never able to accept the county’s version of events. Although many of these circumstances were extremely difficult to prove, child welfare cases only rarely involved a full-blown trial. Parents were often willing to agree to the accusations (or a modified version) enough to allow the court to take jurisdiction.121 What many parents might not have realized is that once they agreed to the county’s version of

121 A judge I spoke with about the infrequency of trials in child welfare told me that parents will often say “I didn’t kick him, I hit him!” - protesting about the details but ultimately willing to accept the accusations of the agency. She went on to assert that those cases that do go to trial are the ones that “really need to,” the “whodunit” cases where no one involved feels sure of who may have harmed the child.
events, this became the basis by which parents must prove themselves worthy to reclaim custody of their child.

I had initially expected that parents with a higher socio-economic status would be better positioned to argue back against the county’s version of events. A dependency court hearing I attended contradicted this assumption. The case concerned a five year-old girl who had been brought to the hospital with bleeding in her brain, purportedly from falling down some bleachers at a basketball game. Before the court hearing began, the county social worker on the case mentioned to me that this was a particularly “bizarre” case. She explained that these parents were educated and well-off, and that the mother, father, and step-father involved in the case had hired their own lawyers and were contesting the allegation of abuse. The social worker, relying on the assessment of the medical staff that had examined the child, didn’t question the allegation of abuse but was surprised that one of these three seemingly “great parents” had harmed this little girl. It is important to note that hospitals look for evidence, such as bruises at various stages of healing, to indicate abuse over time rather than a single accidental incident. However, determinations of non-accidental injury are far from certain, except in cases where a perpetrator admits guilt or where a child is old enough to communicate experiences that can be corroborated by physical evidence.

In this case, the county held an investigation that was inconclusive in determining who had perpetrated the abuse. After the investigation, the county social worker had ordered parenting classes for both the father and step-father, assuming
one of them to be the perpetrator. Rather than taking the parenting classes in order to satisfy the child welfare agency’s assessment of their case, the parents’ had asked their attorneys to demand a trial so that they could contest the truth of the allegations leveled against them. This was, on the one hand, a practical matter, as the family wished to avoid weekly parenting classes and monthly home visits. On the other hand, this was largely symbolic, as the daughter still resided with her mother and step-father and her daily life had not been significantly altered by the agency’s involvement. I was surprised to note that regardless of the inconclusive county investigation the social worker did not doubt the accuracy of the abuse allegation and did not consider that she had perhaps misinterpreted the circumstances of the case. Instead she assumed that the investigation had simply not managed to find evidence of the story she already knew to be true. It was this sense of the county’s ultimate authority, I think, that led so many parents to simply do what the county required of them, rather than fight for recognition of their own narrative of the events that had led to their involvement in the child welfare system.\footnote{See Mehan (1983) for a discussion of how professional versions of a story are authorized over lay versions in the context of determinations about special education services for elementary school students.}

In addition to deferring to the county’s authority and version of events, as determined by the preliminary social worker assigned to the case, parents must comply with a sometimes seemingly impossible set of requirements. Parents must often attend hours of parenting classes, anger management or drug treatment programs, counseling services and weekly visits with their children. However, most
parents must comply with these requirements while maintaining or obtaining a full time job to demonstrate their ability to provide their children with food and shelter, often while using public transportation to travel between their job and their appointments.\textsuperscript{123} For parents, this often created a situation where they felt that they were being asked to do more than time would allow, and when they failed to arrive on time for an appointment they were seen as not being committed to reunifying with their child. Cora, a foster mother and fierce advocate for young mothers trying to reunify with their children explained:

So the social worker asks [the biological mother] ‘If you’re working and the baby has a fever, what are you going to do?’ And she says, ‘Call the babysitter to give her Tylenol.’ What she [the social worker] wanted to hear was that she would leave her job, drop it, and go get her baby. What I felt that she was doing was making her choose between her job and her baby. Sometimes the questions are not fair.

The process Reich describes, where biological parents must allow agents of the child welfare system to “parent” them, is similarly articulated by foster parents, who feel that they are shaped or “trained” by county social workers to behave in particular ways. Anna, for instance, after her experiences with Taylor, told me that she was “doing things differently…not pushing so much.” Angélica, a foster mother whose case will be described in detail below, felt similarly that the county system required foster parents to defer to the county’s authority without question and did not reward parents who tried to advocate for their foster children beyond limited boundaries.

\textsuperscript{123} It was so common for parents whose children have been removed to lack their own vehicle that county social workers routinely brought bus passes with them to their first meeting with the family.
Angélica and her husband had a self-described success story. Raised in San Ysidro in poverty, pregnant at a young age, they managed to put her husband through Harvard and raise their two sons while he developed a very successful shipping company and she became a teacher. When I visited them, they had just moved into a beautiful new home with lofted ceilings, granite counter tops, and couches piled with decorative throw pillows. Their sons, both in their early twenties, attended prestigious universities. Angélica, referring to their comfortable financial circumstances, expressed amusement that because her foster son received Medi-Cal health coverage she had been “put in the system” and thus would get a phone call every month from a caseworker, asking her to confirm that she had adequate food and shelter and that her “basic needs were being met.” Angélica told me that the first time she felt taken aback and a bit baffled by this phone call, but had come to see it as a somewhat amusing monthly ritual. Laughter aside, Angélica felt that the Medi-Cal system makes its recipients feel like “second class citizens.” She described the Medi-Cal offices she had attended with her foster son, Miguel, as “depressing and ugly,” and often staffed with overworked and rude personnel. She noted that she frequently had to go to an office quite far from her home in order to find doctors who would accept Medi-Cal and that while this was merely a hassle for her with a part-time job and a private vehicle, she could imagine it to be a substantial obstacle to obtaining care for families where parents are employed full-time and have access only to public transportation. Frustrated with the quality of care, Angélica eventually asked her older sons’ former pediatrician to see Miguel. He did so, after requesting special
approval, but Angélica admitted that she was not sure he actually gets paid for providing Miguel’s care. Cora, the Esperanza foster mother introduced above, had been similarly incensed by the treatment of her foster child when she tried to get him medical services through his Medi-Cal card:

Our little Henry, he is just my angel. He was ten days old…Taken at birth and born in withdrawal. He had hip dysplasia. Seven days in the hospital, three in intensive care, four looking for placement…I noticed that he hung his neck kind of strange. A few days later he had an appointment for his hip dysplasia, and received a harness. At that appointment he was diagnosed with torticollis. Then we had physical therapy. My frustration, if you want to know what frustration was, they said three to four weeks for assessment, then we put in the referral to Medi-Cal for six weeks. That’s just ‘cause the system is overwhelmed, well these kids are really treated at the bottom. I took him to my pediatrician; we have insurance, and they saw him right away. Then I ended up taking him to a clinic for a vaccine. I got there at 11:30; I was the first one. I didn’t get in until 2:30. The care that these kids receive! If I would have walked in with my flashy insurance card they would have treated him. I think that’s across the board, I don’t think it’s Hispanic; it’s white, black, everybody.

For these mothers, the foster care system was not providing their children with the care they needed. But at the same time, they often were chastised by the social worker for deviating from standard protocol or they ended up feeling taken advantage of if they extended themselves beyond the expectations. They received little recognition of their efforts or acknowledgement of their role as the full-time caregiver in their foster child’s life. When I asked Angélica if she and her family would foster again, she said they would adopt, but not foster, that it was just too hard. I asked her to pinpoint

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124 Torticollis is a condition where a child’s head is in a twisted position on their neck. An infant born with this condition typically develops it due to their position while growing in the womb, in-utero muscle damage, or a loss of blood to the fetus’s neck.
exactly what it was that made it feel so difficult and she said, “As foster parents we were never part of the decision making process, although we were providing full-time care to [Miguel].” Angélica felt that they had been Miguel’s parents on a day-to-day basis and had been seen as such by Miguel and by their own community of friends and family. Yet from a legal perspective they had no authority to make choices for Miguel’s life or even to make recommendations about what they thought would be best for him. It was this position, suspended between parent and non-parent, that Angélica felt was too much for her to go through again. And as many of the foster parents I spoke with also articulated, she did not feel that the county child welfare system did an adequate job of acting as legal parent for foster children. She felt that the county used a “cookie-cutter approach” for each case, one that was ultimately unable to respond to an individual child’s needs or to utilize the insights, resources, and expertise of their full-time care-givers.125

Producng “Bad” Parents: Deportation, Illegality, and Parental Rights

Foster parents were shocked, bewildered, and dismayed at social workers’ decisions to prolong contact with “unhealthy” family relationships or return children to the custody of parents who did not appear to have changed the original circumstances that led to the removal of their child. Many of the advocates that I spoke with were incensed about an almost entirely opposite situation - social workers’ decisions to recommend the termination of parental rights for undocumented parents.

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125 Another Esperanza foster parent made a similar metaphor, emphatically explaining, “each case is so individual and they just try to shove everything into one bucket – it just doesn’t work!”
– not because they had abused or neglected their children, but because their undocumented status kept them from meeting the guidelines necessary for reunification. As discussed in Chapter Four, the coming together of immigration enforcement and dependency law created a situation where children were routinely removed from parents who had not necessarily abused, neglected, or abandoned their children but were simply pulled into the system based on their undocumented status and then barred by the limitations of that status from taking the necessary steps to regain the custody of their children. How did social workers, who felt strongly that their job was to look out for the best interests of the children on their caseload align the decision to terminate the parental rights of undocumented parents with their sense of what was best for these children? How did undocumented parents who did not abuse or willfully neglect their children become “bad” parents in the eyes of the child welfare system and the dependency courts?

_The Archives_

*** Isabel’s 12-month review hearing was held this morning, Monday April 30th, 2007 at 8:30am in the Juvenile Court located at 2851 Meadow Lark Drive, San Diego 92123, The mother has been granted 6 more months of services. Rights for father will be terminated since he is currently in immigration custody, most likely he will be deported or sent to Florida (he is Cuban).***********

*** There will be a contestant 12-month review hearing on June 1st, @ 8:30am.*************************

(Social Worker’s notes from a case file, April 30th, 2007)\textsuperscript{126}

\textsuperscript{126} It is important to note that this case note from Isabel’s file did not seem to make much sense. Because there are special provisions for Cubans to be able to regularize their immigration status, it would be unusual for Isabel’s father to be deported. It is
I stumbled across the above case note while reading through the archives at Esperanza. Corinne had asked me to update the agency’s database, a digital spreadsheet that consisted of categories she felt it was necessary for her, or any social worker, to have immediate access to. These categories included the child’s name, dates of birth, placement, and exit from the agency’s custody, a few sentences summarizing the main issues of the case, the “protective issues” which were the initial reason for removal, notes about any medical conditions, pending court dates, and the contact information for the foster parents, social workers, and the children’s lawyers. The database was supposed to be updated as new information was entered into the children’s paper files so that crucial information would always be current and readily available to the Esperanza social worker. However, it had fallen into disuse during the tenure of the social worker preceding Corinne and updating it was a task she wished to accomplish but did not have the time to take on. I spent the first few weeks of my time at Esperanza reading through files, updating the database, and searching for missing information.

Isabel’s file, in which I found the above-mentioned case note, was one of the thickest files in the archives. It was rivaled only by Jacob’s, a five year-old child who was moved through four foster homes and two reunifications and subsequent removals, which filled two three-inch binders to the point of bursting. Isabel’s file quite possible that Isabel’s father had permanent residence status but was being detained or removed for some criminal activity. Unfortunately, Corinne had come onto the case well after the father had been eliminated from court proceedings. Her best guess was that he had been involved in some serious crime, but she did not have any additional information to confirm or contradict the little information I could find in the file.
was large, in part, because her case had dragged on for three full years. This was
despite the fact that she had been removed at less than one year of age and, according
to child welfare policy, should have been in a permanent placement after eighteen
months in the foster care system. Her file was also large because the treatment of a
host of medical issues she faced had produced a substantial paperwork trail.

The file itself was meant to be a record of the child’s experience within the
foster care system, charting their well being, medical treatment, and the social
workers’ observations about the foster family, visits with the biological parents, and
any other issues related to the case. The file could, theoretically, be subpoenaed by
the dependency judge or requested by the county social worker, although this rarely
occurred. Esperanza social workers lamented county social workers’ routine lack of
interest in these carefully recorded notes and expressed frustration that although they
offered to share their notes and observations, no county social worker ever took them
up on their offer. This was likely because county social workers did not think they
would have time to read any additional material or did not feel that it was necessary
to do so. An agent from Community Care Licensing, the agency that licensed foster
family agencies and oversaw child welfare regulations, was the only consistent reader
of the files, which were evaluated thoroughly during their yearly audit of each foster
family agency. Thus, the file could be understood to tell a somewhat private story of
the child’s time in foster care, albeit a very narrow fragment from the perspective of a
progression of Esperanza social workers.
The files themselves were structured in a standard fashion following licensing regulations that determined what specific forms needed to be included and what type of information should be provided in each file. These guidelines had been elaborated upon by a succession of Esperanza social workers. Each file was organized into eight sections: client information, needs and services, case notes, reports, medical, court, clothing, and correspondence. The client information section, which included, among other things, financial statements of reimbursement rates from the county, and the clothing section, which contained a record of the receipts for any clothing the foster parents purchased for the child, were the two sections that were most consistently filled. This was largely due to the compulsion to document financial issues meticulously. Foster parents were required to spend a certain amount of the financial stipend per month to purchase clothing for their foster children, and these receipts were often discussed by social workers as evidence of the level of caring the parent had for the child. Foster parents often showed their newest clothing purchases to social workers during their home visits. Social workers were required to take a quarterly inventory of children’s clothing and other possessions, to insure that these things would go with the child should they move to a different home.

The forms detailing financial reimbursement rates for foster children were important documents as well. The county issued the reimbursement check, which

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Copies of these documents were often requested by current or former foster parents, along with letters from Esperanza certifying that particular children had been with them during a specific time period. This proof was necessary for foster parents as the foster care stipend is non-taxable income, but the IRS often requested documentation proving that an individual had actually fostered a child.
was sent to the foster family agency, in the name of the foster child. The foster family agency then had to reissue the check in the name of the foster parent. The county’s procedure of writing the check to the child was interpreted by Esperanza social workers as a way of emphasizing that the money was for the child, rather than for the foster parent in compensation for the child’s care. The procedure of writing the check to the child also avoided the necessity for the county financial office to keep up with foster children’s frequent movement from one home to another. Other sections of the file varied widely in their thoroughness – from pages of carefully recorded notes to no information at all. So although Isabel’s file was full to brimming with weekly case notes, emails between social workers, and court reports documenting series of rulings and appeals, other children’s files sometimes held no more than their name and birth date, followed by a series of clothing receipts and reimbursement checks.

Although social workers frequently discussed the file as a crucial cache of historical information that follows the child from worker to worker, Bowker (2005:12), in his discussion of what he calls “memory practices,” provocatively considers the archive as a tool not for remembering, but for forgetting:

The jussive nature of the archive comes down to the question of what can and cannot be remembered. The archive, by remembering all and only a certain set of facts/discoveries/observations, consistently and actively engages in the forgetting of other sets. This exclusionary principle is, I argue, the source of the archive’s jussive power.

In this way, the structure of the archive, in this case the child welfare file, determines what kinds of information can be preserved and what kinds of information do not fit within the format of the file. Interactions, anecdotes, and observations that are not
recorded are rendered invisible as social workers resign from their positions or pass the case file off to a subsequent worker. The social worker’s impressions, gut-feelings, and intuition about a case and the members involved are critical to the development of a case over time. Yet these are not the kinds of details that can be explicitly recorded in the file, although they do, of course, inflect social workers’ notes about their interactions with children and families and guide what gets recorded and what gets omitted. The file also serves as a method of action for social workers who feel that their hands are tied by institutional regulations or hierarchies. Esperanza social workers often felt powerless, due to their lack of official voice in the courtroom, to contradict the recommendations that county social workers made to the judge. Former Esperanza social workers, as well as the organization’s founder, had been chastised by the county for a number of cases in which Esperanza had instigated letter-writing campaigns to the judge involved in cases where Esperanza staff disagreed with the county social worker’s recommendation. As noted in Chapter Two, this had led to a souring of the relationship between Esperanza and the county social workers that Corinne worked carefully to rebuild. Although Corinne, and later Alicia, often disagreed with county workers’ assessments of what might be best for a particular child, they held back from openly disagreeing with the county social worker’s assessment of a case. They argued that while the particular outcome might not be best for the child, maintaining good relationships with the county social workers would enable them to benefit more children overall than fighting for one case.

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128 As noted in Chapter Two, this feeling of powerless was one felt by most foster family agencies in San Diego County and was not particular to Esperanza.
and alienating the agency as a whole. Corinne and Alicia focused primarily on supporting Esperanza foster parents in whatever ways they could and encouraging county workers towards decisions they thought would be best for the foster child, without pushing too forcefully. The file was a place where they could record what they saw as bad decisions or incorrect assumptions hoping that the records might somehow, eventually, come to light.

As social workers inherited cases, the file seemed to stand mostly as a record of past work completed and as a site for practical details, such as contact information for lawyers or therapists. Missing information was rarely detected, and if it was, social worker turnover made it almost impossible to recover. Workers did not routinely scour the files in an effort to discover and reinterpret a history. They did not often reassess decisions about what parent or relative it was best to pursue reunification with or revisit placement options that had been ruled out by a previous social worker. Rather, they turned to the task at hand – finalizing the adoption, terminating parental rights, or finding a long-term placement. The uncertainty of previous decisions and the possibility of other interpretations seemed to have been forgotten.

Hull, in his discussion of the role of the file in an Islamabad planning agency, argues that, “The physical perdurance of files beyond the circumstances of their creation situates them within a horizon of uncertainty” (2003:290). For Hull, these files have lives that extend beyond their initial construction, as they can be reinterpreted as policies change over time and as the files move through the hands of
different bureaucrats. In this way, files are constructed in response to the agency’s needs at a particular moment in time, but the future volatility of the information contained therein cannot be predicted at the time of their construction. Yet child welfare agency files are rarely contested sites where new meanings are constructed. The files do record contestations, but the story the file tells is not often given new life through reinterpretation or a new reading. The file is built as time goes on, but rarely reconsidered or reworked through investigation, except, perhaps, by a researcher like myself.

However, Esperanza social workers viewed the construction of the file in two distinct ways – both as a hedge against future problems and as a potential source of danger for the agency. Corinne filled the Esperanza files carefully and as thoroughly as possible, explaining that during a Community Care Licensing audit a file had the power to demonstrate that all regulations had been met – foster parents were adequately trained and licensed, children were routinely visited, and any significant concerns or medical issues had been properly recorded and reported. Corinne described herself as more meticulous than former Esperanza social workers, carefully recording the date and content of every phone call or interaction with foster parents, lawyers, county social workers, or other individuals involved in a case. Corinne was also infamous among Esperanza foster parents for harassing them until they completed their CPR certification or took the necessary continuing education credits to maintain their foster care license. Because the auditing of the files happened only once a year, the assessments were too infrequent to effectively protect the interests of
the child by catching violations of safety regulations or visitation schedules. For this reason Esperanza social workers approached the files primarily as protection for the foster family agency. Community Care Licensing could sanction or fine the agency, or, in extreme circumstances, revoke their FFA license. In this way, a carefully constructed file insured that the agency would receive the approval to continue to operate.

On the other hand, files could potentially provide evidence of the wrongdoing of social workers or foster parents. Any accusation of abuse or misconduct against foster parents would lead to an investigator from Community Care Licensing conducting a thorough reading of the files for both foster children and foster parents. Social workers did, from time to time, purposefully leave out some information about their visits or interactions with foster children and parents, particularly things that foster parents said in impassioned moments that social workers feared might reflect negatively on the foster parents and the agency itself, or become fodder for a future investigation. For example, one foster mother,

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129 Agency files for foster parents included documentation of the initial screening and application process and evidence that they continued to meet home inspection requirements and to maintain such certifications as CPR training.

130 Accusations of abuse and neglect were frequently filed against foster parents by biological parents. Although instances of abuse and neglect certainly do occur within the foster care system, social workers interpreted many of these claims as the result of a frustrated biological parent, unable to express their anger at the social worker who held power over the custody of their children, and lashing out at the foster parent instead. Esperanza’s parent training discussed the likelihood of these accusations and encouraged foster parents to remain calm in these circumstances and to give biological parents a sense of respect and control by asking them to give recommendations about what their children liked to eat, how they liked to dress them, and other small aspects of their children’s lives.

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frustrated by threatening phone calls she had received from the biological parent of her foster child, threatened to retaliate with physical violence. The social worker, believing the foster parent was just blowing off steam, said “I didn’t hear that!” and changed the subject, neglecting to note the conversation in her home visit notes.

Concerns about a future investigation could not but have informed social workers’ self-censorship as they wrote documents for the file.131

The holes and omissions were glaring for a reader who did a complete reading of a file in one sitting, with frequent gaps in the dates of case notes or cryptic notes about the outcome of a decision whose precipitating details were never discussed.

The files that seemed to tell the richest and most complex stories were those concerning cases that involved contentious disagreement between the foster and biological parents or between the Esperanza social worker and any of the other players involved: foster parent, biological parent, or county social worker. In these cases all communications, including emails and phone conversations, were printed and documented carefully. Corinne lamented the fact that there was not time to make the case notes and the files as detailed as she would like. She felt that most of the crucial information, the details that really gave a sense of the families and the

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131 It was rare that claims of abuse in foster homes were found to be true – perhaps because abuse in foster homes was infrequent, or perhaps because abuse in general, particularly abuse involving very young children, was quite difficult to prove. Investigators often were faced with ambiguous or nonexistent physical evidence, and few uninterested witnesses. In this way, social workers approached abuse investigations in foster parents homes as procedural protection for the agency, showing that they had taken the necessary precautions. Ironically, the very sort of investigation that had led to the removal of a child, in this case was reframed as “going through the motions” to satisfy an irate biological parent.
children involved in a particular case, were in her head, or the heads of former social workers, and never made it onto a page or into a file at all. For Corinne this failure was most acute in the instances of social worker turnover, a frequent occurrence at Esperanza but also a broad trend in child welfare and social work. In these moments, the institutional memory of the agency was shattered, and Corinne encouraged my development of the agency’s database as a hedge against her future departure. In some ways my project to update the database was a scavenger hunt, sorting through partial information and scribbled notes like clues to the larger picture and sequence of events that made up a particular case.

So when I saw the case note in Isabel’s file indicating that her father’s parental rights would be terminated, purportedly because of his impending deportation, I dug through the file in search of further discussion of his role in the case and his interest in reunifying with his daughter. As I read, I learned about the mother’s role in the case, the foster parents’ desire to adopt Isabel, and the mother’s appeals as the case moved towards a termination of parental rights and Isabel’s adoption. However, there was no further mention of the father, no discussion of his role in his daughter’s life prior to her removal, no mention of whether criminal activity or his citizenship status alone had landed him in immigration custody. Although dependency law specifies that parents and children have a right to attempt to reunify regardless of citizenship status or country of residence, it appeared as though the father’s rights were expected to be terminated merely because of his pending deportation (or relocation to Florida). Although it did not note this in the file,
Corinne told me that the parents’ rights were both eventually terminated. Isabel was adopted by her foster parents, along with her baby half-sister who was born while Isabel’s case was still ongoing.

A large percentage of Esperanza case files did not include the final outcome of the case. There were a number of reasons for this. If Esperanza children were reunified with their parents, the file would note that outcome, but would not include information about whether the reunification was successful or if the child reentered the system shortly thereafter, unless that child was again placed with an Esperanza family after a county social worker determined that the reunification had failed. Many children were placed with a relative, such as an aunt, grandparents, or cousin, as a middle step to reunifying with their parent. Once the child moved to the relative’s home, the Esperanza case was closed because the county agency, rather than Esperanza, certified the kin placement. For this reason, Esperanza files would rarely show whether the child eventually returned to their parents’ custody. Further, even if Esperanza foster parents adopted their foster child, the county was the agency that approved the Esperanza parents as an adoptive home. Once approved, they became a county adoptive placement and were no longer Esperanza foster parents. In effect, the Esperanza case would close at that point. Some foster parents did send Esperanza social workers copies of their final adoption papers, which could then be added to the closed file. Most often Esperanza social workers heard the ultimate conclusion of a case by word of mouth from foster parents who had adopted or from those who kept in touch with the biological families of their former foster children.
Viable placements and cross-border presumptions

Though parents, even those who have been detained or deported like Isabel’s father, have the legal right to participate in a reunification process, there are substantial obstacles to doing so. Parents’ ability to reunify typically hinges on their successful participation in a court-ordered reunification plan, commonly consisting of weekly visits with their children, parenting classes, and a variety of therapeutic services based on the initial reasons for the child’s removal, ranging from drug rehabilitation programs, anger management counseling, or therapy, among others. However, because a dependency judge’s order cannot supersede that of another court (whether a criminal or an immigration court), if the reunification plan conflicts with the terms of the parent’s incarceration or probation, then the parent cannot comply. Thus jails or detention centers may fail to transport inmates or detainees to their child’s court hearings or allow them to participate by phone. Solitary confinement punishments may override visitation schedules with children. And although federal and state prisons typically are able to provide access to parenting classes, drug treatment programs, and other forms of counseling, detention centers almost always lack access to these services because law makers feel that such resources should not be wasted on a population scheduled to permanently leave the country (Wessler 2011:40). Thus, a parent’s detention, or in some cases, incarceration, creates a situation of non-compliance with the reunification plan. Although these circumstances may not be the result of the parent’s lack of desire to reunify, they may be interpreted as such. The greatest obstacle detained or deported parents face in
reunifying with their child is often the social worker’s feeling that, for the host of reasons discussed above, they are not a viable placement option. Further, social workers are required to make a “reasonable effort” to provide services to parents who wish to reunify. In the case of detained or deported parents, this reasonable effort may consist of sending them notifications that they never receive, or requiring services that are not physically or financially available to them.

Isabel’s case, like Lucas’s case discussed in Chapter Four, was a story of deportation being translated into a sort of willful absence, one where the termination of parental rights was justified by a parent’s non-participation in a reunification process, even if they had not been provided with feasible means for doing so. These were cases where citizenship and country of residence intervened and superseded parental rights. In these cases, placement with fathers who were facing deportation, or who had been deported, was deemed contrary to the “best interest” of the children, seemingly without conducting any inquiry into that father’s suitability as a parent. Miguel’s case, which I discuss below, was somewhat distinct, as his mother, while a Tijuana resident, was also a United States citizen by birth.

When I first met Angélica, her foster son Miguel had been with her only one month and was just taking his first tentative steps. Angélica explained that he had been moved from another foster home to hers since she lived closer to the United

132 These are not the only barriers faced in these circumstances. As discussed in Chapter Four, the lack of resources for facilitating cross-border reunifications, negative perceptions of Tijuana social services, the impracticality of border crossing for Tijuana based family members, and a whole host of other issues constitute serious obstacles to reunification.
States-México border than Miguel’s previous foster home and the hope was that an
easier commute would make visits more consistent for his mother, Elena, who was
traveling weekly from her home in Tijuana. Angélica told me how much they loved
Miguel right away and how hard it would be when he returned home, a decision the
county social worker planned to recommend at his upcoming court hearing.

Two years later, Miguelito was running up and down the stairs, shaking my
hand and saying “nice to meet you!” I sat down with Angélica while Miguel played
upstairs with their housekeeper, Rosi, to be filled in on what had happened with his
case and how she had come to adopt Miguel. Miguel had entered the foster care
system because his mother, a United States citizen and Tijuana resident, had given
birth to him in a San Diego hospital where he and his mother, Elena, tested positive
for methamphetamines. Because of his San Diego birth Miguel entered the San Diego
foster care system, regardless of his mother’s residency in México. Angélica told
me, as she did when we initially met, that Elena complied for the most part with her
court ordered reunification plan, attending a drug rehabilitation program and weekly
visitation visits, often the last step before reunification, when concerns were raised
about the safety of her home and neighborhood, and Elena’s ability to meet Miguel’s

133 The San Diego Child Welfare Agency did collaborate with the Tijuana social
service agency, DIF, to provide services for this family as the case progressed.
However, the initial court report submitted by the county social worker on Miguel’s
case stated that she was unable to provide intervention services, which might have
allowed her to support the family without removing Miguel from his parent’s custody
saying, “The Agency was not able to provide the family with any services to prevent
the need for intervention since the family does not reside in San Diego.”
developmental needs, which included both speech and physical therapy, purportedly related to his exposure to methamphetamines in utero. Angélica explained to me that the social worker recommended to Elena that her best chance of reunifying with Miguel was to move to San Diego where she could qualify for more support services. Elena’s social worker offered her a spot in a homeless shelter for women and children, which she refused. A few weeks later she was arrested at the San Ysidro border crossing when a large amount of marijuana was found in the trunk of her car. Elena spent a brief period of time in jail, and her parental rights were terminated soon after this event. Although her arrest was cited by the judge as indicative of her willingness to put Miguel at risk, Angélica told me that she felt the parental rights were largely terminated because Elena’s lawyer was inept and because Elena did not read or speak English and thus did not always follow court protocol, which frustrated the judge. Angélica believed that Elena was not a regular participant in drug smuggling, but instead interpreted the event as a last ditch effort to get together the money necessary to rent a San Diego apartment in order to reclaim her child.

The initial circumstances of Miguel’s removal had been clear – he had been removed due to in utero exposure to methamphetamines. In response to these circumstances, Elena had largely done what the child welfare system required her to do – kicked her drug habit, attended parenting classes, and demonstrated her

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134 The decision to remove an infant at birth due to drug exposure is one of the most straightforward and least contested instances of removal enacted by child welfare services. It is only contested in circumstances where the mother believes that the tests results were in error or where she was unknowingly given a banned substance. Drug exposure is also one of the few reasons that infants are removed at birth, most other allegations of neglect or abuse do not occur at this young age.
commitment to reunifying with her son through attending weekly visits with him. Yet Elena’s social worker had felt that her home in Tijuana was not up to acceptable standards and that social services in Tijuana would not be sufficient to provide the necessary support for her and her son. In Angélica’s interpretation, this had been the direct cause of Elena’s smuggling attempt and subsequent arrest. Angélica expressed sorrow that Elena had seen this as the only option to earn the money necessary to rent an apartment in San Diego, and believed that had this incident not occurred, Miguel would have been reunified with his biological mother. Thus Elena’s arrest for drug smuggling – while interpreted by the judge as evidence of her continued involvement in the “drug world” and disregard for her son’s well-being – could alternatively be read as an attempt to satisfy requirements to which Elena should never have been subjected, namely the procurement of a San Diego home and access to United States social services for Miguel.

Here the social worker’s assessment of what was in Miguel’s best interest included San Diego residency and access to San Diego social services. This assessment was not only rooted in what she thought was technically best for Miguel, but in her assumption that comparable supports could not be accessed in Tijuana. Although a social worker would never argue in a dependency courtroom that living in Tijuana alone should be grounds for terminating parental rights, one might suggest that this was, in fact, the indirect consequence of the social worker’s assessment of the case and her requirement of San Diego residency as necessary for Elena to regain custody of her son.
Conclusions

The cases discussed above, while varying widely in their circumstances, had one common thread. In each of these cases, whether the child was reunified or adopted, the parents and Esperanza social workers that I spoke with felt that the case outcome had been largely produced by a series of decisions made by a county social worker who was understood to possess limited knowledge about the case and the child, and largely discounted the perspective of the foster parents as uninformed. At varying moments throughout a case, social workers were making decisions based on their intuitive sense about the parents they interacted with and the limitations of their authority, their time, and their available resources. Biological parents, particularly those who were legally vulnerable through their undocumented status, had limited ability to impact the trajectory of a case where their own understanding of what was in their child’s best interest differed from that of the county social worker. Foster parents and FFA social workers, without a legal voice in court, were similarly limited in their ability to impact the trajectory of a case in which they were involved.

Social workers’ positions as social workers and as agents of state authority legitimized decisions that were often based on their own gut-feeling or individual proclivities. Institutional processes such as the filing of court reports and case notes transformed individual, seemingly arbitrary decisions into regularized and reasoned positions authorized by child welfare policy. Just as the immigration lawyers introduced in Chapter Four felt that it was not immigration law itself but its implementation that was their main concern, critics of child welfare policy were not
only concerned with the rules and regulations, but with their quotidian interpretations and the ways in which these policies were enacted. The latitude social workers had to make determinations about parental “fit-ness” enabled social workers to make decisions that another worker on the same case might not have made. However, the positioning of these decisions within the boundaries and institutional categories of the child welfare system led social workers to feel that their decisions were not personal ones but were determined by the limits of institutional policies. Further, social worker’s positions as “expert” in the realm of child welfare enabled them to rely on their gut-feelings as an important tool of their trade. As such, although social workers were key critics of the problems and limitations of the child welfare system itself, their daily decision-making practices produced the seemingly arbitrary enactment of these policies.

As Ruby, a veteran social worker and the facilitator of a training session I attended for social workers and other service providers articulated, child welfare was in many ways a schizophrenic organization, unsure how to navigate the tension between family preservation and child protection. Was child welfare supposed to be a preventative agency or a responsive one? The possible answers to this question would produce vastly different decisions and responses in the everyday practices of social workers. The same agency that would not recommend a placement with an undocumented relative because that relative might be deported in the future would recommend leaving an infant in the care of a mother who had her parental rights terminated for her three older children due to physical abuse and persistent drug use
because she had not yet abused that particular child. In the former instance, the agency was acting in a preventative capacity, emphasizing the protection of the child from the future emotional harm of having their primary caregiver deported. In the latter, the focus was on family preservation, keeping the mother-child relationship intact until a report of actual abuse necessitated the agency’s response. Without a clear directive about how to resolve these innumerable tensions – between preventative and responsive modes, and between the goals of child protection and family preservation – individual social workers were making decisions that produced decisive, permanent outcomes for the lives of children and their families caught up in the foster care system.
Conclusions

This dissertation began with a discussion of anti-immigrant sentiment and anxiety in the context of contemporary immigration debates in the European Union, Israel, and the United States. As I write these concluding remarks, immigration legislation and reform again occupy a prominent place in United States media and political discussion. These discussions begin with the premise that the presence of a substantial population of individuals living in the United States without authorization is a social problem. This approach presumes that the “problem” of immigrants can be solved through providing pathways to regularize immigration status for individuals already living within United States borders, rather than suggesting that unauthorized immigrants should return to their home countries and “get in line” for a visa. In this way, current proposals allow unauthorized immigrants the potential to transition from “shadowy criminal aliens” to “upstanding, taxpaying citizens.”

Although public support for these reforms has been bolstered by recent news coverage of the separation of families and the deportation of the mothers of young children, the reform efforts currently being considered move away from privileging family

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135 Data that supports the notion that a significant portion of unauthorized immigrants already pay taxes does not seem to dislodge the distinction between the category of “criminal” and “taxpayer,” nor does it soften protest about immigrant access to public schooling or emergency medical care.
connections and toward prioritizing visas for immigrants with specialized labor force skills.\textsuperscript{136}

Present proposals position potential citizens in a liminal space, allowing them to work while explicitly denying them access to social service supports such as food stamps or Temporary Aid for Needy Families while they await the approval of their application for legal status. Ironically, these are the very programs that help cushion the most impoverished families from winding up in the conditions of poverty that social service providers are most likely to interpret as indicative of neglect. These conditions produce the vulnerability of these populations – to political subordination, to workplace discrimination, to risk of homelessness and hunger, and, as I have argued, to the removal of their children. As I argue throughout this dissertation, the delineation of who is worthy of social support and who is not becomes entangled in the production of “good” and “bad” parents in the eyes of the child welfare apparatus. It is in this way that immigration enforcement and child welfare policy come together in unexpected and unintended ways.

Although current debates push back against the antiquated idea that migrant labor is not central to the working of day-to-day business in the United States, the rhetoric continues to draw on metaphors of “closing the gates” and “stemming the tide,” images that evoke a simplistic image of a geopolitical border than can be neatly drawn between an “us” and a “them.” Throughout my examination of the plight of

families entangled simultaneously in the immigration and child welfare systems in the San Diego-Tijuana area, I have aimed to demonstrate the murkiness of citizenship and the haziness of the lines that demarcate those who are worthy of protection and whose rights to parent are recognized, from those who are not.

Much of this rhetoric relies on an implicit politics of worthiness through which determinations are made about what sorts of migrants have rights to citizenship in the United States. As I describe in Chapter Four, pathways to immigration relief, such as Special Immigrant Juvenile Status, demarcate particular children as worthy not only of state protection but also of a pathway to United States citizenship. These children are positioned against the specter of the able-bodied, adult, economic migrant who crosses the border to steal jobs away from “real” citizens, a figure that enlivens the debates outlined above. As I argue in Chapter Three, children are positioned as symbols of hope and change. They are seen as “salvageable” and worthy of rescue from unsuitable communities and families. In this way, race, class, and citizenship distinctions position particular families as objects of state interventions, as actions such as the removal of children reinforce the salience of these categories in the context of the family. The Special Immigrant Juvenile Status provision is one way in which the law marks out children as worthy of protection and citizenship in a way that adults are not.

At the center of the Special Immigrant Juvenile Status (SIJS) provision is the principle of “best interest,” a framework motivated by a humanitarian view of children’s rights to care and protection. “Best interest” is, at the same time,
representative of a political discourse that naturalizes a particular perspective about what sets of circumstances are best for all children. This perspective might equate best interest with access to United States medical care or schooling, to life with an affluent family, or to sharing the same citizenship as your siblings, as in Jaime’s case, detailed in Chapter Four. As I discuss throughout this dissertation, this framework is shot through with ethnocentric and xenophobic views about the unquestioned superiority of life and social service provisions in the United States. As I have laid out in the pages above, provisions like SIJS are discretionary frameworks through which ideas about belonging and deservedness take shape via social workers’ and legal actors’ ongoing interpretations of the law.

“Best interest” is at the core of the child welfare cases I have described throughout this dissertation. It is a term that is at once seemingly intelligible to a broad range of individuals and, at the same time, inherently devoid of any clear grounding in either policy or law. Judges, lawyers, child advocates, social workers, parents, and others all make claims to acting in the best interest of children who are caught up in the child welfare system. The term “best interest” is mobilized to justify a seemingly unending array of actions, which include removing and placing children, determining what nation children should be citizens of, and constructing and dismantling families and legal relationships between parents and children. “Best interest” engages concerns about health, emotional bonds with parents, siblings, and/or caretakers, educational opportunities, environmental concerns, or the safety of particular home-settings. Yet the grounds upon which a “best interest” determination
is made are constantly contested, and different actors negotiate the terms of this category from the vantage points of their various institutional frameworks.

As I discussed in Chapter Three, legal advocates often begged dependency judges not to terminate their jurisdiction over a case until immigration paperwork was processed. As legal actors made these requests, they were invoking a powerful notion of best interest as a means to securing regularized immigration status for a child. This concern was entirely outside the scope of a dependency judge’s vision of what “best interest” entailed. This was not because a dependency judge did not think immigration status might be relevant to the life of a particular child, but because those decisions were outside the realm of issues that dependency judges typically considered. And yet, a dependency judge’s standard procedure entailed terminating state custody when the child was no longer in imminent danger of abuse or neglect. In this way, immigration lawyers were asking judges to base decisions that fell within their jurisdiction on issues entirely outside their purview.

Because there is no clear legal procedure for determining “best interest,” this principle is enacted through the discretion of the judge, the lawyers, and the social workers. Judges are required to make rulings they understand to be in a child’s best interest, though the parameters of the concept remain undefined. Lawyers are compelled to communicate a minor’s wishes to the courtroom judge, but must base their own actions not on their client’s desires, as is the case for adults’ attorneys, but on their own perception of the child’s “best interest.” And social workers are expected to advocate for the best interest of the child in the name of “protection,” all
the while balancing their recommendations against their compulsion to work toward family integrity, to preserve parents’ rights to parent, and to maintain legal custody of their children. As Lucinda, the head minor’s attorney for San Diego Children’s Lawyers noted to me, dependency law is fascinating for lawyers because it cannot be prescribed. The complex, unique lives of the families in each case defy a clear, routinized process – there can be no standard protocol and no clear way forward. This is unusual terrain for lawyers, judges, and the social workers and administrators who might be described as government bureaucrats. As these actors are regularly confronted with forms, procedures, and guidelines that do not adequately contain or reflect the cases that they must negotiate – these actors rely on their own intuition, their sense of what is best and of what actions fall within prescribed agency guidelines or legal code. When intuition is engaged as a primary mode of decision-making, ways of being that reflect white, middle-class, heterosexual positionalities become reinscribed as the norm in the name of “best interest.”

Throughout this dissertation I approach terms such as “best interest” as multi-acentual nodes that enable disparate actors to engage with each other despite their necessity to work within the particular categories and constraints of the institutions in which they are embedded. I approach such terms as spaces of translation that allow different actors to communicate across registers and ways of knowing. However, translational processes do not only happen around seemingly shared terms such as best interest. The translation of the messy lives of families into social work categories such as “good” or “bad” parent is at the core of how the child welfare system is
constituted in the lives of children and their families. As I discuss in Chapter Five, the translation of poverty into neglect and of deportation into abandonment serve as moments when the intersection of child welfare and immigration enforcement come together in unintended ways. As social workers struggle to make sense of the families who become objects of their interventions, they struggle with the ambivalence at the core of these discretionary processes. These processes necessitate the reduction of the complex lives of individuals into institutional categories of fit and unfit parents. Categories of neglect or bad parenting, or terms such as best interest, appear at first glance to be concepts that are utilized by experts who know without question what they mean. These categories and terms are, in fact, vague and poorly delineated. As these terms and categories are taken up by different actors and move across the complex junctures of distinct institutions, they are given shape by the assumptions, the intuition, and the meaning that is assigned to them by individuals acting in the name of institutional authority. As such, I have argued that the broad latitude of these terms and categories become sites where the proclivities of individual actors are solidified into abstract government action.

In this sense, each individual operates within his or her own institutional constraints, which are sometimes distinct, but often overlapping. Yet each of these settings – the county child welfare offices, the FFA social work offices, the courtroom - are shaped and constrained by their own policy and protocol. However, for social workers and legal actors, rarely are their pathways guided by clear institutional practice. Rather, they rely on their discretion, their intuition, their gut-
feelings, and their interpretation of legal code. This is not because their institutions’
protocols call for clarification, but because the nature of their work defies easy
routinization. These actors operate within limits but they are limits that are loose,
unclear, ever-shifting. Institutional constraints do much more to delineate what cannot
be done than what actions should be taken. And within this uneasy framework they
meet at uneven junctures, sometimes operating in collaboration, sometimes speaking
past each other, sometimes constraining the others’ choices. They rarely work within
the same frames or employ similar sets of material experiences on which to base their
assumptions and assertions. It is for these reasons that these institutions come
together to create such a complex, entangled apparatus, one where different actors
and agencies intersect and overlap in unexpected ways.

As such, I have approached the institutions that make up the child welfare
system in the San Diego-Tijuana region as engaged in a process of ongoing
construction. The force of government authority does not exist in a coherent, stable
form ready to be called into action. Rather, the child welfare system is daily
constructed through ongoing engagement among social workers, legal actors, foster
parents, and families. Tess Lea, in her ethnographic account of health service
providers to indigenous communities in Australia, states that, “the inhabited world of
the social service bureaucracy is a complex socio-cultural domain with its own
passions and inanities, pains and pleasures, complicities and truths, mysticism and
magic. Yet in giving life to bureaucrats, this work turns out to be both harsher and
more empathetic than standard one-sided accounts” (2008:10). Lea suggests that
moving away from top-down, total state analyses of social service institutions entails approaching social service providers and administrators as fallible individuals, enmeshed in complex cultural systems. As such, Lea’s approach provides an empathic view of social services providers’ struggles to “do good” in the midst of institutional constraints, while also holding them accountable for their actions, practices, and decisions, rather than engaging appeals to the higher authority of the anonymous State. In this way, I have approached child welfare institutions as facets of a complex system enacted through the actions, discretion, understandings, and presumptions of a range of individuals with varying skills, knowledge, and claims to authority.

As families move through a sequence of county social workers, as social workers agonize and strategize about how best to proceed, as FFA social workers file their careful notes that no one will likely read, the position of child welfare authorities is exposed as contingent, tentative, and discretionary. At the same time their authority is reinscribed as the ultimate arbiter of the future of children and families under their purview. The juncture of child welfare policy and immigration enforcement is a space where even those most in the know, those centrally positioned to enact these systems and enforce laws and policies, are unclear about how and when these systems should engage each other. Yet even as social workers reveal their own confusion about the relationships between FFAs and the county agency, about cross-border jurisdiction, and about the right of undocumented relatives to care for their kin in foster care, they actively construct the precarious relationships among these agencies. And as I have
suggested throughout the above pages, social workers’ ability to produce the very system they so ambivalently navigate is largely based on their authoritative position as experts, produced through their position as “social worker” and as institutionally authorized agents of the state.

As I argue in Chapter Two, individuals entangled at the intersections of child welfare and immigration law possess vastly different sorts of knowledge, knowledge that is unevenly distributed, authorized, and valued. Judges “know” about the children on their caseload through such things as case files, social worker court reports, and testimony. County social workers “know” about the children on their caseload through visits, interactions with parents, reports from service providers, and their training in the fields of child development and child welfare. They “know” through their home visit notes, through their experiences with other children and other parents, and through social worker conversations about notorious cases and descriptions of the best and worst parents. These ways of knowing, I have argued, are produced through, and productive of, power asymmetries embedded in taken for granted ideas about what positionalities such as race, class, and citizenship indicate about parenting norms and ideals. Foster parents, adoptive parents, and biological parents “know” too, but their knowing is not validated in the space of the courtroom, nor does it often figure into social worker’s determinations about how a case should proceed. There are many ways of knowing that are not valorized in this context, and children’s knowledge of their own desires, as well as parents’ knowledge about parenting and about their own specific children, are two forms of knowledge that are
relegated to the realm of illegitimacy within this apparatus. Those who might be understood to know the child best, I have argued, rarely factor into the official actions that shape the trajectory of a child and family through the child welfare system.

These ways of knowing are constructed through stories, through case files and court reports, through political discourse around categories of race, class, gender, and citizenship status, and through “enactments of expertise” (Carr 2010b). As institutional actors navigate the ambivalence and tensions of uneasy decision making, they rely on stories, material documents, and narratives through which they make sense of their own decisions and work to position them as inevitable outcomes of institutional constraints. As Alicia described Rosie’s mother’s lack of interest in parenting her, or Margo predicted a life of future abuse and drug use if she did not terminate the parental rights of Miriam and Mikey’s mother, these social workers told stories about the past, present, and future that filled in the gaps in their knowledge so as to retrospectively validate decisions about which they were unsure. Documents, such as case notes, ground intuitive decisions in formalized paperwork. In this way, agency files filled with partial glimpses of social workers’ observations became reliable evidence of a seemingly measured decision-making process that shaped each child’s pathway through the child welfare system. Social worker’s and legal actor’s appeals to the limits of the system and the law, such as the ability of the court to provide support services to a child who was not in imminent danger, highlighted very real constraints that they faced in the limits of their authority and the available resources for family support. Yet these appeals also obscured and qualified the broad
latitude that these actors had in their enactment of agency policy and dependency law. As I have argued above, institutional arrangements and daily practices facilitate the translation of social workers’ and legal actors’ discretionary judgments and intuition into the abstract and authoritative realm of “expertise.”

Throughout this dissertation, I have aimed to address two questions: What sorts of possibilities are enabled and foreclosed at the juncture between the two complex institutions of child welfare and immigration law? And second, how, and why, have children and families been positioned as central sites for the production of citizenship, race, and national belonging? In addressing the first question, I have focused on the ways in which particular families, namely those whose members include non-United States citizens, and those who span the U.S.-México border, are made particularly vulnerable to the removal of their children and the termination of their parental rights. The way that child welfare and immigration come together, through discretionary case-by-case decisions enacted by individuals who engage each other across vastly different institutional contexts, produce these consequences for cross-border families. I suggest, however, that the ways the child welfare system engages families and resolves its cases raise broader concerns not just for those caught at the juncture between child welfare and immigration, but for all families enmeshed in the child welfare system. The best interest of the child, sometimes conflated with the best interest of the nation-state, has served as the primary framework through which these actions are sanctioned.
The agencies and actors that constitute the child welfare apparatus come together in a disjointed fashion, one that certainly could be improved through protocol for cross-agency collaboration in relation to child welfare cases. What is of particular interest here is that the disjointedness of these inter-institutional engagements is not only, and not primarily, due to lack of collaborative protocol. Rather, it is due to the fact that different sorts of knowledges – knowledge of legal code, knowledge of child welfare policy and theories of child development, knowledge about specific children and families – are valorized as the crucial way of knowing at various points in the system. No one set of knowledge or way of knowing trumps the others at all junctures, and so different actors are valorized as decision-making authorities at different key moments throughout a particular case. Categories like “best interest” and “unfit parent” enable a seemingly smooth child welfare narrative, although they are inflected with different meanings as they move across contexts and between actors. I contend that this character of the child welfare apparatus, the way it valorizes multiple forms of expertise, is part of what opens up the space that produces the sense of unpredictability within the system, and the way that cases seem to be resolved on the whim of a social worker or due to accidents of circumstance, rather than some sort of clear, reasoned procedure.

The second question that frames this dissertation is about how, and why, children and families have been positioned as central sites for the production of citizenship, race, and national belonging. As I argue in Chapter Three, intervention into United States families, instigated by philanthropic do-gooders or individuals
acting in the name of government authority, advanced a variety of political agendas including the subordination of women, the erosion of Native American sovereignty claims, or efforts to protect a white, Christian majority against the influence of immigrant communities. I position contemporary child welfare practices within this framework, asking how quotidian interactions under the name of “child protection” produce and police the boundaries of the normative family form. As social workers and legal actors made determinations about “fit” and “unfit” parents, they made determinations about who had full rights and recognition within United States borders. These determinations were based on ideas about the possibility and responsibility to “save” children. Yet these decisions, with such wide-ranging and long-lasting consequences for children and their families, arose from the uneven and unintended junctures among institutions. These determinations about child removal and child placement brought together individuals with vastly different ways of knowing who were working within distinct frameworks and constraints and engaged policies and practices that translated discretionary decisions into actions imbued with government authority and necessitated by institutional constraints. These decisions enforced a particular view of what was best for children, and who was best positioned to make such determinations. They validated certain perspectives and interpretations while removing others from the conversation entirely. And finally, as I have argued throughout this dissertation, negotiations around broad categories, such as “neglect” or “best interest,” illuminate the practices through which institutional actors seek to make sense of the messy lives of children and their families, translating them into
institutional categories as they transverse the complex terrain of sets of institutions, agencies, and individuals that constitute child welfare in the contemporary United States.
Afterword

During the summer of 2011, the San Diego county office of child welfare completed a contract process for all foster family agencies. This process, which enlisted these agencies as formal contractors with the county, was the culmination of an effort to regularize the relationship between the county agency and private, non-profit foster family agencies. In July, Alicia, as program manager for Esperanza, received word that Esperanza had not been approved as a contractor for the county. Alicia and I were at the dollar store when the call came in, buying sand toys for the Esperanza beach picnic we were hosting the following afternoon. Alicia joked, cynically, that we were shopping for the “Goodbye Esperanza Picnic,” and the mood was strained for the rest of the afternoon. Alicia had been unemployed for over a year before her hire at Esperanza, and this news did not bode well for her job future.

The denial of Esperanza’s bid to contract with the county was due not to a weakness in their application or the agency’s past performance as an FFA, but to the fact that Esperanza had failed to obtain the proper license prior to submitting the application. Esperanza effectively went into a suspension mode. The agency was given a grace period in which the children still on the caseload – Emma, Jayden, Rosie, Isaiah and Danaira – had to be moved into other situations. Alicia also had the unhappy task of contacting prospective foster parents and letting them know that Esperanza’s activities were currently suspended and that they could wait it out or go to another agency.
At the Esperanza picnic, part of a new effort to bring foster families together, the foster families sat together eating pasta salad and potato chips while their children played with the sand toys we had bought the day before. I dug in the sand with Emma and Danaira and then sat holding baby Rosie, swaddled and sleeping in the sunshine, so that her foster mother, Estela, could eat. As I rocked Rosie and watched the other children play, I thought about the phone calls and visits each of them would be paid by Alicia over the next few weeks as she struggled to move forward with the temporary shut down of Esperanza.

Alicia worked with Esperanza’s current foster families to figure out how best to handle the situation. Emma’s foster parents, Josh and Trevor, were moving towards the end of the adoption process with her, so they worked with their county social worker to expedite the process and circumvent the problems Esperanza was facing. Isaiah and Danaira’s foster parents, Anna and Josie, hadn’t clicked as well with Alicia as they had with Corinne, and decided to become foster parents for the county instead, after being reassured by the county social worker on their case that their two foster children could remain in their care. Rosie’s foster parents transferred to the county as well, not because they were disgruntled with Esperanza, but because it was the fastest way to expedite the process of adopting Rosie. Jayden’s county social worker, given limited options, decided to approve her adoption out-of-state by her former foster family and Jayden’s Esperanza foster parents Edith and Arturo helped to facilitate that process. Alicia pursued the reapplication process, hoping to reopen the agency. Before she could complete the process, however, the umbrella
organization that funded Esperanza fell into financial difficulties, laid off a number of employees, and eliminated their less financially solvent programs. Esperanza, with only four foster children prior to suspension and showing no growth in the foreseeable future, was eliminated.

With the loss of Esperanza, San Diego County was without an agency focused specifically on the need for bilingual foster families, social workers, and service providers. The other foster family agency in the county that specialized in providing foster and adoptive homes to young children had informed me prior to this crisis at Esperanza that they were not equipped to certify any parents who were not fluent and literate in English, since they did not have bilingual staff to work with them. The shutdown of the only agency dedicated to working with Spanish-speaking families caught up in the child welfare system in San Diego County seemed to me unconscionable given the high percentage of these families in the county. Yet this absence was another example of the ways in which Latina/o families, and particularly those who were without documentation, were differently positioned within the child welfare system, not through the intent of any particular individual or agency, but through the extraordinary legal, social, and institutional obstacles they faced.
Appendix A

The Child Welfare Apparatus

- Consulate
- Refugee Legal Group
- San Diego Children’s Lawyers
- Dependency Courts
- Pro Bono Lawyer’s Guild
- Investigators
- Biological Families
- Foster Homes
- Adoptive Homes
- Group Homes
- Community Care Licensing
- ICE
- DIF
- Immigration Court
- Law Enforcement
- International Liaison Office
- Court Appointed Special Advocates
- San Diego County Child Welfare Agency
- Abrams Children’s Home
- Therapists, counselors, service providers
The Child Welfare Apparatus from Alba’s Case

The Child Welfare Apparatus from Lucas’s Case
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Erlanger, Steve 

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Fassin, Didier 

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Foucault, Michel

Fournier, Suzanne and Ernie Crey

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Gleeson, Shannon

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Gupta, Akhil

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Stern, Alexandra  
Stoler, Ann

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