

**Analysis and Comments on Proposed  
ICARE Legislation  
(S 1934)**

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Reaching Out thru International Adoption, Inc., an international adoption and humanitarian aid organization, has reviewed the bill proposed by Senators Nickles and Laudrieu entitled the Intercountry Adoption Reform Act (“ICARE”). Reaching Out agrees that reform is warranted and applauds the efforts of our elected officials for opening a dialogue on the important issues addressed in this proposed legislation. Reaching Out is supportive of several positive provisions embodied in ICARE, in addition to the well-intentioned goals behind its creation. Regretfully, Reaching Out has many concerns about ICARE in its current form and, therefore, cannot endorse the bill as written.

While the bill is an excellent starting point, we believe that the bill requires substantially more detail, as well as some modification, before passage into law. In the short-term, we are concerned that implementation under the current form of bill and short timetable will delay pending adoption cases during the period of transition of adoption responsibility from to a new staff members in a new federal office. In the long-term, ICARE’s proposed structure and consolidation of responsibility under the authority of the State Department will compromise international adoption policy and eliminate important protections for children that exist under the current system. Ultimately, international adoptions could stall or stop entirely as a result of these changes.

Modification of this nature demands thoughtful deliberation by and among legislators, together with direct discussion with, and input from, the international adoption community. Reaching Out requests our officials to invite international adoption professional representatives to the drafting room to discuss revisions of the ICARE bill with our direct input and exchange of ideas. Our collective experiences will be invaluable to our legislature in formulating appropriate law, considering all relevant issues and outcomes, and ensuring that the interests of children and families are protected.

### **Background**

ICARE was introduced in the Senate on November 10, 2003 by two senators with an exemplary record for assisting families and children involved in international adoption cases. We recognize that that their proposals are based on their sincere commitment to improve the current international adoption system, and we are grateful for their hard work in this area. Unfortunately, ICARE’s lack of detail and thorough consideration of specific issues and outcomes could render it very damaging to the very system the senators seek to improve. For these reasons, we believe that substantial change is warranted before the international adoption community supports ICARE’s implementation into law.

ICARE seeks to improve many aspects of the US laws and procedures that govern international adoption law. The changes the bill suggests are twofold: (i) to elevate the citizenship rights of internationally adopted children from immigrants to US citizens immediately upon completion of their adoption cases; and (ii) to overhaul the administrative/procedural systems governing international adoption processing within the federal government by moving all primary responsibilities from two (2) established federal agencies to a single new federal agency that is dedicated exclusively to adoption functions. Under ICARE, both of these changes must be accomplished within a six (6) month timeframe.

### **ICARE GOALS AND ACCOMPLISHMENTS**

Reaching Out fully supports the goals and policies behind ICARE. Specifically, we support ICARE’s stated policies -- (i) to ensure that foreign born children adopted by US citizens will be treated identically to a biological child born abroad to the same parent, (ii) to improve the current process and make it more citizen-friendly and child-oriented, and (iii) to foster best practices.

We also believe that ICARE contains several provisions that accomplish effectively its goals. ICARE’s primary goal is to avoid adoptive parents needing to navigate the “immigration” process on behalf of their children after they have legally adopted them overseas. ICARE accomplishes this goal by giving children

adopted overseas American citizenship legally and automatically upon fulfillment of the requirements for a full and final adoption order. See ICARE section 202(1). The child's birth certificate and passport are also then issued under a single, more cohesive process. See ICARE section 202(1). The drafters appropriately reasoned that children born abroad should not need to get an immigrant visa simply for one (1) plane ride. Rather, they deserve the same rights as a biological child born abroad (i.e. immediate American citizenship) at the moment of a final adoption.

ICARE further seeks to eliminate unnecessary duplication and cost in a number of ways. For instance, it eliminates the duplication between two departments of federal government, CIS and the State Department, by consolidating their functions and documentary requirements within one new agency that is charged exclusively with international adoption responsibility. See ICARE Section 111(a). ICARE further extends certain time periods that have proven to be too short in the real (i.e. slow moving) world of international adoption. For instance, it extends the time periods for adoptive parent approval from eighteen (18) months to two (2) years to avoid the requirement for refile and repayment of adoptive parent applications to the federal government. See ICARE Section 205(b). The bill seeks to streamline the approval process for repeat applicants, see ICARE Section 205(c), and to make adoption advocacy in foreign countries an affirmative responsibility and important priority for the United States government.

Nonetheless, ICARE lacks critical detail, contains a number of gaps, and fails to consider the impact of some of its key provisions. Parents and professionals who are concerned about the future of international adoption should be careful to avoid focusing exclusively on ICARE's possible goals, and thereby, overlooking its flaws. A discussion of specific areas of concern follows.

## **Reaching Out Concerns**

### **1. Massive Change/Vague Law/Unnecessarily Short Timetable**

Our greatest concern is that ICARE calls for massive change, with sparse detail, in a short timetable with no contingency plan for delay. As a result, Reaching Out is concerned that thousands of pending adoption cases involving American families could be suspended during what is likely to be a difficult transition period.

#### **a. Changes are Enormous**

The changes proposed in ICARE to the federal system governing adoption are irrefutably enormous. Specifically, ICARE provides that all international adoption responsibilities that are currently divided between CIS (formerly INS) and the Department of State be moved to an entirely new federal office called the "Office of Intercountry Adoptions (OIA)" within the Department of State. See ICARE Section 101. The OIA will be housed within the US Department of State, under new leadership and policy.<sup>1</sup> ICARE requires a complete transfer of responsibilities to this new office<sup>2</sup> 6 months after ICARE's passage into law.

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<sup>1</sup> The OIA will be headed by a Special Advisor, appointed by the President, who reports to the Undersecretary of Global Affairs within the Department of State. The OIA has many general responsibilities, such a to (i) ensure that intercountry adoptions take place in the illusive "best interests of the adoptive child," (ii) advise the President and Secretary of State regarding matters that impact intercountry adoption, (iii) represent the United States in adoption matters, (iv) advise the Secretary of State on adoption policy, and (v) assume reporting functions to maintain statistics.

<sup>2</sup> Specific functions fall into six categories: (i) to approve American families to adopt overseas, (ii) adjudication of status of a child born abroad as an adoptable child under U.S. law, (iii) to assist U.S. citizens engaged in the intercountry adoption process, (iv) to develop sound policy regarding child protection and intercountry adoption, (v) to assist the Secretary of State with administrative duties relating to adoption law emanating from the Hague Treaty (i.e. the Intercountry Adoption Act of 2000), and to perform administrative functions. The OAI would be centralized in Washington, DC, with 6 regional offices throughout the U.S. to approve prospective parents to adopt. See ICARE section 101(d)(2).

See ICARE Section 121. OIA’s responsibilities will be divided among 6 US regions, which will then be divided into world regions, when practicable. See ICARE section 101(d)(3).

Appropriate staffing of the new OIA would be critical in ensuring a smooth transition. However, ICARE is ambiguous about who will hold these vital jobs. ICARE suggests that the OIA will hire “whenever possible, individuals with background and experience in intercountry adoptions” and provide them with “extensive and specialized training in the laws and processes of intercountry adoption as well as understanding the cultural, medical, emotional, and social issues surrounding intercountry adoption and adoptive families.” See ICARE 101(e). However, ICARE does not discuss from where these individuals will be drawn, how their expertise will be determined, who will do the training, whether the training will be specific to the nuances of each adoptive country to which they will be assigned, or what policies they will implement. As a result, ICARE could foist an enormous and immediate amount of responsibility on a potentially new staff of unqualified individuals, or individuals who are inexperienced in the direct functions embodied in the scope of their responsibility. International adoption cases are likely to languish while new staff come up to speed on international adoption policy and their specific roles and responsibilities within the new organization.

We recognize that current US procedures and systems are far from perfect, and we appreciate the calls for improvement. However, current CIS and Department of State staff members within the U.S. regional offices and foreign offices have amassed extensive expertise during over the 20 years they have held adoption duties. These procedures have filled in the systematic gaps in these countries, and, ultimately, contributed to keeping the doors to international adoption for American citizens for children from those countries.

For instance, foreign CIS officials stationed in Guatemala have carefully crafted, country-specific, detailed procedures that have evolved over the years to ensure that adoptive children born in that country truly belong in the international adoption system. They developed these procedures through trial and error, and a hands-on learned understanding of the culture, government and social climate in the environment in which they work. CIS officials in Guatemala tailored adoption procedures to the climate they learned had a potential for corruption, combined with a non-existent Guatemalan government infrastructure for resolving children’s orphan status. These CIS individuals are truly expert in their field in the country in which they work.

Unfortunately, this country and industry-specific expertise will be entirely lost under ICARE. New staff members will be forced to reinvent the wheel of knowledge that has evolved over many years and proven to be critically important. In the meantime, the gaps in foreign procedure that CIS filled with customized procedure will re-open and protections for children will be removed. Ultimately, this could close down international adoption programs to American citizens as opportunities for corruption re-emerge.

**b. Law is Vague**

The magnitude of the change is even more troubling because the ICARE lacks detail and leaves important gaps. In some ways, ICARE more closely resembles a preamble than an actual law, as it sets forth noble ideas and goals while leaving the reader eager for more detail. Even after a careful review, ICARE leaves us with more questions than answers, and it is impossible to consider fully the implications of the broad-sweeping changes.

**(i) Staffing**

One critical question still left unanswered is who will fill these critical staff positions at OIA and ensure that pending cases do not experience any delay or as a result of the transition? ICARE does not suggest that CIS and DOS staff will be reassigned to corresponding positions within OIA, and bring their background,

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knowledge and experience intact to the job to hit the ground running.<sup>3</sup> We are left to wonder who the Special Advisor will use to fill the staff positions, how and where they acquired their prior expertise, what is their level and area of education, who will train them, and whether the training and practice methods used will be country-specific based on years of collective experience by others within the federal government. Most importantly, we are left to wonder how these folks will transition to their positions and keep cases moving so as not to delay thousands of pending adoption cases.

We further wonder whether the OIA will be staffed in the fields in the countries to which they are assigned to ensure quality services to American families and adoptive children. ICARE suggests the opposite -- that all OIA responsibilities will be handled in Washington, DC.<sup>4</sup> We wonder how a federal field officer sitting in an office in Washington DC can possibly conduct an effective “child adjudication” (i.e. “orphan investigation”) when the child, birth mother, orphanage, foreign adoption professionals, native culture, social norms, etc. are all located on another continent? Who will be the watchdog on the ground in the foreign country? Will CIS ground support functions be eliminated entirely? If not, who will have prevailing authority, CIA or OIA?

### **(ii) Organization Size and Budget**

ICARE further gives no indication as to how large the OIA will be. While ICARE states that assets will be transferred from other places, is there a budget for running the OIA? How much money will be transferred to this office so that its staff can effectively perform its duties? Will there be enough staff members to perform the enormous responsibility that they will undertake? What happens if a country shuts down and demand for staff time in one country program increases? Will the OIA contain enough staff to weather the storm and keep other country cases moving?

ICARE also contemplates transferal to OIA of liabilities. Which liabilities and how much will be transferred, and how will this impact these budgeting questions?

### **(iii) Investigation, Adjudication and Enforcement**

ICARE suggests that the OIA, under the Department of State, will assume all international adoption responsibilities currently owned by CIS and Homeland Security. See ICARE Section 111. However, in the past the Department of State has not had any enforcement mechanisms for investigating and adjudicating wrongdoing. Indeed, when allegations of child trafficking that emerged in Cambodia and other countries in the past, the Department of State was left powerless, with no laws to enforce or investigatory or enforcement power. It was CIS who possessed enforcement mechanisms and tools for prosecution to address child trafficking issues.

Further, CIS was able to utilize immigration law to punish wrongdoers, specifically laws relating to falsification of visas. Under ICARE, these laws will not be available since no visas will be issued to adopted children. Accordingly, we wonder, if child trafficking occurs under ICARE and the jurisdiction of the OIA, what arm of DOS will investigate wrongdoing, and how will OIA address the situation? However, who will

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<sup>3</sup> While ICARE suggests that the Special Advisor of the OIA may transfer certain assets, such as personnel, from other places, see ICARE Section 113, this transfer of expertise and current staff is not required or even implied.

<sup>4</sup> , The OIA will divide duties to cover 6 US regions and an undisclosed number of world regions. See ICARE 101 (d)(2). While international field offices are “not prohibited,” see ICARE 101(d)(4), they are not required or even suggested by the ICARE law.

investigate cases that involve child trafficking, who will adjudicate wrongdoing, and under what law? Who will be the enforcers to protect children from child trafficking and how?<sup>5</sup>

#### **(iv) Incomplete Proxy Adoptions**

ICARE provides for a system of adoption in the United States of children whose adoptions are not completed under the laws of the foreign country within the foreign country (i.e. proxy adoptions). In these cases, the children are each given a nonimmigrant visa, which lasts until the earlier of the date on which the adoption is completed by the United States Courts, or two years. What happens if the parents fail to re-adopt within the 2 years and wish to disrupt the case? See ICARE Section 203 (b). Will the child be forced to go back to his country of origin?

#### **(v) Too Late to Answer Questions in Regulations**

There are many unanswered questions, which the drafters may advise will be addressed in the Regulations. However, detail of this nature is too important to be addressed after the passage of the law. At that point, the horse will be out of the barn and too late for our voices to be heard. The passage of ICARE triggers a strict timetable – the Regulations must be finalized 90 days after passage, (see ICARE Section 202(d)), and ICARE must be implemented 6 months after passage. See ICARE Section 111. With inflexible and arbitrary deadlines to meet, there will be no time for a meaningful review, comment, and revision period to assure us that that law, together with the Regulations, is appropriate.

#### **(vi) Change Should Only Occur After Satisfaction of No Delay in Federal Case Processing**

Currently, we have two (2) government agencies processing adoptive cases – CIS and the Department of State. The system is imperfect, but it works in the short-term, processing 20,000 cases per year. This volume is substantial, and if the new system is not ready to handle it on the first day of operation, the system will be overwhelmed and potentially immobilized. Change of the magnitude contemplated by ICARE should occur only after adoptive families are guaranteed that their individual cases will not be jeopardized by the transition, and that their adoptions be reviewed in a timely and effective manner.

#### **c. The 6 Month Timeframe is Unrealistically Short and Contains no Contingency Plan for Failure to Meet Deadline**

This massive shift of responsibility will happen automatically by operation of law 6 months after passage of the ICARE law. This time frame is unrealistic and unnecessarily short.

First, implementation of law is conditioned upon enactment of supporting regulations 90 days after passage. We respectfully denounce scheduling of strict deadlines to prepare and approve Regulations. Our experience with respect to the Hague Regulations has demonstrated that regulatory language can be even more difficult and controversial than drafting of the underlying law such regulations purport to implement. Despite the fact that the US signed the Hague Treaty in 1993, now eleven (11) years later, we still do not have appropriate regulations or a chance of implementation in the near future. The regulations that have been circulated with respect to Hague have been raised new issues not addressed in the underlying law, and were inappropriate and arguably unconstitutional in certain provisions. Given this recent experience, it seems unlikely that 90 days will be enough time for legislators to draft, garner approval and implement appropriate regulations to support the ICARE law.

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<sup>5</sup> We believe that legislation needs to be added to the federal criminal code to punish child traffickers. Use of criminal penalties for violations of visa fraud when the true crime is child trafficking is akin to convicting Al Capone of tax fraud when his true crimes were far more serious. Unfortunately, this was the only tool available with respect to Cambodia.

Second, ICARE advances no reason why this massive shift must occur 6 months after passage of the law. Transition should occur during a timetable that ensures pending cases are not jeopardized or unreasonably delayed. We would suggest that a thoughtful tiered approach be considered in place of this all-in-one approach, based upon the input of various government officials and adoption professionals. Perhaps the transition should occur on a country-by-country, or functional area basis rather than all at one time. In any case, the six-month timeframe should be replaced with a thoughtfully analyzed, phased approach that will ensure the continued movement of all pending cases without delay or compromise to their cases.

Third, the ICARE bill includes no back-up plan if the six-month time frame proves unachievable. Any number of problems could arise during the six month period. For instance, the Regulations may not be drafted, finalized, approved, and ready for implementation; the OAI may not be ready to start working; the OIA Special Advisor could be a controversial selection which gets delayed in confirmation hearings and takes longer than expected; the physical space for the OIA could become unavailable on the expected dates due problems negotiating with the landlord... These types of events could cause the 6 month date to slip by days, weeks or months. However, under ICARE, all legal responsibility for adoption will have shifted out of the other federal agencies automatically by operation of law sixth months after passage. If the OIA is not ready and legally able to assume its responsibilities, there may be no one in charge of these cases, and all pending cases could be stalled while contingency plans are developed at that time.

## **2. Special Advisor Becomes a Politicized Leadership Role**

Reaching Out is further concerned that the leadership of the OIA will become a political position, vulnerable to the social welfare views and changing tides of the current administration. Specifically, the office will be lead by a Special Advisor, a person appointed directly by the President of the United States and responsible for development and implementation of federal international adoption policy.<sup>6</sup> Accordingly, the U.S. President and his/her administration will be centrally involved in development and promulgation of adoption policy. On the surface, this sounds like a good thing since, but the ICARE drafting committee should consider and discuss the long-term implications of this proposal. Do we want the U.S. President to have the power to dictate policy in this uniquely and deeply personal, family-values based arena? This result would be inevitable under the proposed leadership. Currently, there is no comprehensive federal policy on international adoption. The ICARE structure requires that the Special Advisor, a Presidential appointee, develop and implement such a policy. This is troubling for a number of reasons.

### **(a) Adoption Policy Should Not be Determined at the Federal Level**

First, laws governing family value matters are typically determined on a state and local level according to the local values of the community being governed. For this reason, each state has its own set of laws and rules governing issues such as marriage, divorce, and adoption. ICARE elevates adoption policy to the federal level, which could allow U.S. Presidential policy to determine the requirements for U.S. citizens to become adoptive parents.

Under current law, state-licensed social workers apply the laws and regulations of their state to determine if a family is eligible to adopt. Under ICARE, these state adoption requirements may be trumped by OIA policy since it would now be able to impose policy views on adoption cases and parent eligibility. A conservative administration would likely select a conservative Special Advisor, who would, in turn, impose conservative requirements in the adoption process.

The issue of adoptions by single applicants illustrates our concern. State law generally determines adoptions requirements, and states generally permit qualified single applicants to adopt. However, a conservative

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<sup>6</sup> This person must (i) “ensure that intercountry adoptions take place in the illusive “best interests of the adoptive child,” and (ii) to develop sound policy regarding child protection and intercountry adoption. See ICARE Sections 101(b)(4)(A)(i), 101(b)(4)(B) and 101(b)(4)(D).

administration with the express power to promulgate adoption policy may determine that, in its opinion, single parent adoption is not appropriate. In that situation, a single applicant who has been approved by a state-licensed social worker under his or her state could be prohibited from adopting by the OIA if its policy standards prohibit single adoption cases. While this may sound far-fetched, examples from today's headlines demonstrate that anything is possible. Our current administration is trying to force its conservative values on a matter that is typically left to the states to decide. Specifically, President Bush has made same sex marriage a federal issue, going so far as to suggest amending the United States Constitution to achieve this goal. The federal government entering the arena of who should marry is not a far cry from determining who should parent.

***(b) OIA Vulnerable to Lobbying Efforts***

Second, the OIA would be vulnerable to lobbying efforts, which can also have a negative impact on development of adoption policy. We have seen with respect to the Draft Hague Regulations released on September 15, 2003 that one-sided lobbying efforts of a vocal minority can have a negative effect on adoption policy and governance. Centralizing all of this responsibility within the State Department headed by a Presidential appointee makes adoption policy vulnerable to disproportionate and inappropriate lobbying efforts. The result can simply be bad policy, codified into bad law or regulation (i.e. Draft Hague Regulations).

***(c) Changing Tides of Administrations***

Third, international adoptions would be subject to the changing tides of new administrations as they come and go. Do we really want to put a new office wholly in charge of international adoptions when its policies and staff could turn over every 4 years? Do we want to subject adoption cases to the same disruptions that other areas of government inevitably experience with changing administrations?

***(d) Adoption Should Not be a Tool in the Broader Political Agenda***

Fourth, we are concerned that international adoption cases could be "misused" in favor of the "larger" issues in the President's political agenda. For example, if the United States President learned that China was developing a nuclear weapons program, he could potentially use the threat of withholding international adoptions as a sanction to enforce his goal of halting this nuclear activity. This is a real possibility since the President would now have a strong and direct control over international adoption policy and practice.

***(e) Explore Alternate Forms of Leadership and Division of Responsibility***

We believe that international adoption should not be impacted by politics. OIA staff should continue to process cases at a steady pace without the temptation to stop or alter their work due to political influence. The current system, while admittedly imperfect, has operated at a steady pace with effective results partially because of the division of responsibilities between two government agencies. This division has its problems (waste, duplication, lack of ownership of responsibility), but also offers the protection of checks and balances. This division has warded off some political influence, a fact that should be recognized when discussing a change in leadership. This checks and balances protection will be removed with consolidation into one office, and the impact must be fully considered before the new leadership under ICARE is put in place.

In order to accomplish this goal of keeping politics removed from the OAI, Reaching Out would suggest that the ICARE drafting committee explore whether leadership can be selected by another means. For instance, we would suggest discussion about leadership by a professional advisory board. The board could consist of bi-partisan members with diverse experience from government and the private sector who would be responsible for selecting and appointing leadership. The Board would be able to evaluate candidates for the

top leadership position from among their professional peers and be able to effectively screen out candidates known for poor reputations, unethical practice or potential conflict of interest. The Board could also fire this individual if he is not getting the job done to their satisfaction. The Board could draw on the collective experiences of its diverse members, which may include Department of State and/or Presidential authority, as well as other expertise to determine effective leadership that will always be certain to put the interests of the adoptive families ahead of their own.

In the alternative, Reaching Out would suggest discussion of privatization of the OIA to remove concern about political influence in the adoption process. Other important areas of the federal government have been privatized with success, and this issue should be fully explored before leadership and responsibility is housed within in a single federal agency (the Department of State) office with a broad agenda.

### **3. America Should Not Impose Requirements on Foreign Governments**

ICARE seeks to standardize all foreign procedure to ensure that a child is “adoptable” under U.S. law. Specifically, the bill requires that, before the OIA will adjudicate a child as being “adoptable” (i.e. conduct an orphan investigation), the foreign government must provide a “certification, together with documentary support, that the child sought to be adopted meets the [ICARE] description of an adoptable child.” See ICARE Section 206(a)(1). Accordingly, the foreign government must conclude that the child meets that American standard of “adoptable child” and must provide documentary evidence of this conclusion after the adoption order is issued and becomes final in a court in that country.

Requiring every country to comply with this American documentary demand is arrogant and naïve. Many of these countries do not have the infrastructure to take on this new documentary responsibility. Others will just refuse. In the meantime, families will be stuck waiting in foreign countries to receive their “ICARE certification,” without which they cannot bring their adoptive child home. The U.S. has historically been unsuccessful in dictating its policy and procedure upon foreign governments in foreign countries. The likely result in the adoption arena would be a shut-down of adoption cases to American families in individual foreign countries.

Each foreign adoption system has its own nuances. Some of the standards and procedures satisfy American immigration requirements, while others do not. In order to ensure that adoptions can continue, each and every field office of CIS has developed a unique system tailored to the structures in place in that particular country. The staff in these U.S. offices has used its expertise to fill in the gaps present in that country’s adoption system to assure itself that the orphan investigation is conducted in a manner that satisfies American law. ICARE’s attempts to standardize procedures for all foreign governments to follow to assist Americans in conducting their child status adjudication will be ineffective. ICARE should be modified to permit current standards of practice in conducting orphan investigations in each field office to continue.

Similarly, ICARE requires foreign governments to collect census information on the number of children in orphanages, foster homes, and other types of nonpermanent residential care. See ICARE Section 101(b)(4)(E)(ii)(I)(dd). In many countries, census information of this nature is not available. This language should be modified to provide such data “as reported or available” to capture available statistics from foreign countries only to the extent that they exist and will be shared with the US.

### **4. 30+ Days for Child Adjudication**

ICARE provides that, within 30 days of receipt of the certification referenced in section (3) above, the OIA “shall make a final determination on whether the certification and the documentary support are sufficient to meet the requirements” for the U.S. to issue a full and final adoption decree, and, in turn, recognize the child as a U.S. citizen. See ICARE Section 206(a)(2). This language will extend adoptive families’ in-country stays by 30 days, or require that they leave and return after the child adjudication (ie. Orphan investigation) is complete. Under federal standards, 30 days may not sound like a tremendous amount of time. However,

in countries such as Kazakhstan, Brazil, Ukraine and Russia, families may already need to make multiple trips, or spend 3-6 weeks in country in order to complete the case under the foreign adoption law. Adding another 30 days to this “extended vacation” will likely be cost-prohibitive for many families, and/or use up all of their leave under the FMLA. In turn, families are likely to avoid countries where the travel requirements become too difficult, and this could, in turn, eliminate adoption programs in these countries entirely. Reaching Out suggests that any time limits to conduct child adjudication be limited to 10 non-business days, with exceptions only in extreme circumstances where a more thorough orphan investigation is necessary.

Second, ICARE does not address what would occur if the foreign country finalizes the adoption but the OIA denies child adjudication. ICARE contains no appeal mechanism for this denial, so the family will be left in a foreign country without recourse. Their adoptive child is left in limbo with an adoptive family unable to take him home. While this same problem is arguably present in the current orphan investigation/visa system, we submit that ICARE should attempt to correct this gap while it is promulgating new governing law.

#### **5. Parent Approvals Extended; Should Include Fingerprints**

The drafters of ICARE extended I-171H adoptive parent approvals to last for twenty-four (24) months from the date of approval, rather than the 18 month duration of the counterpart approval I-171-H under current law. While this change addresses the problem of parent approvals ending before the conclusion of their cases, fingerprints for such approvals will still currently expire after only 15 months. Accordingly, adoptive parents will still be required to get take additional steps and make additional payments due to slow case processing. Reaching Out submits that these corresponding provisions should be addressed together to ensure that parents do not waste unnecessary time and money correcting federal forms that expired due to no fault of their own.

#### **6. ICARE Needs Appeal Period for Denial of Adjudication of Child’s Adoptable Status**

ICARE appropriately includes a mechanism for adoptive parents to appeal a denial of their adoptive parent application, similar to the I-600A application. See ICARE Section 205(d). There is, however, no corresponding mechanism to appeal a denial of the OAI denial of Adjudication of Child Status. See ICARE Section 206, and such a mechanism should be added. Otherwise, adoptive parents will be stuck in foreign countries with adopted children and no recourse to bring them home.

#### **7. Medical Examination Should be Reinstated**

ICARE excludes the need for a medical examination of a child adopted overseas. See ICARE Section 202(a)(4). While Reaching Out fully supports the concept of treating internationally adoptive children as though they had been born biologically to their adoptive parents overseas, we believe that exclusion of the medical exam is inappropriate and that the requirement should be reinstated. Exclusion of the medical exam overlooks the reality of the environment from which the children came. Most adoptive children are coming to their adoptive families and traveling to the United States after months or years in orphanage care. The possibility of exposure to various illnesses was heightened in these orphanages, and the medical care was unlikely performed under western standards. Accordingly, if a medical exam is not performed before he leaves the foreign country, the child could expose his family and innocent third parties on the airplane and elsewhere to conditions that were undiagnosed and untreated. While we support family rights to consider their adoptive child the same as their biological child, public health should not be compromised to achieve this goal. Evidence of a complete medical evaluation by a competent medical professional within a reasonably recent time prior to departure from the country should be a requirement.

## **8. ICARE Should Add Civil Protections for Child Trafficking and Corresponding Criminal Provisions should be added to the US Criminal Code**

Currently, there is no child trafficking law in the United States Code regarding adoption. As a result, the only party who is punished for child trafficking violations is the adoptive child, who is then deemed to be unadoptable and returned to orphanage care for the rest of his life. In essence, the only punishment meted out is against the victim of child trafficking, but not the criminal.

We believe that while Congress is preparing a comprehensive law that alters adoption law and practice, it should include detailed language defining child trafficking, creating civil prohibitions and penalties, and bolstering the effectiveness of these civil laws with appropriate and complimentary provisions within the US criminal code. We further believe that the a branch of the United States Attorney General's Office should be dedicated to investigating and prosecuting adoption-related crime and child trafficking.

## **9. Definition of Adoptable Child Can Be Further Expanded**

We support the broadening of the definition of "adoptable child" to include children who have one or more parents. We suggest that the current definition of "adoptable child" be modified to more closely resemble the current INA definition of "orphan," and retain the definitions of death, disappearance and abandonment. We believe that these three (3) common situations should not be omitted from the current category of children who are eligible for adoption, and that it would not impose an undue burden on US officials if these standards were in fact met by the child's own government.

The proposed changes could make many more children eligible for adoption than if "adoptable child" is only one who is 1) already relinquished or 2) without "proper care" by parents or those with legal custody or 3) already in the legal custody of an institution or "person". This proposal would also account for the common situation where a child might be in formal or informal foster care, or living with a neighbor or a relative who has taken the child into her family's care without formal authorization. It might avoid the all-too-common situation of disrupting such family care by taking the child to the police or an institution as a matter of course simply because 1) the person caring for the child, in a parental role, does not have legal custody or sufficient financial resources and 2) because the US, in definition (A), is appearing to require such legal custody before a child can be considered "an adoptable child". To avoid the loss of a loving caregiver, such an individual might be authorized by a local authority to keep physical custody of the child as a formal or informal foster parent, ideally even with financial help if needed, while the child was placed in the legal custody of the appropriate authority until adoptive parents were found. (Each Child Study could clarify particulars.)

The Proposed wording of new Sec 204(a)(3)(B), to precede the current subsection with that designation, which would add to the adoptable child definition in (3)(A) and would also relate to the preceding words in (3) is as follows:

The term "adoptable child" means an unmarried person up to the age of 18 ...

(B) who, as determined by a governmental or judicial authority (or other competent authority) of the child's country, state or local residence,

- (i) has no known legal or biological parent or parents; or
- (ii) has biological or legal parent(s) who have died or disappeared, or who have failed to maintain appropriate contact with the child, whether or not the child was left with an institution, or with a family or individual caregiver; or
- (iii) has been left by parent(s) or relatives with an institution, or with a family or individual caregiver, with no continuing appropriate contact by the parent(s), whether or not a formal relinquishment was

executed by the parent(s); or

(iv) is considered an abandoned child, within the meaning of applicable law of the child's country.

We believe that these provisions may overlap but are not redundant, as the law should provide for varying circumstances and interpretations in different countries, and for various ways in which a child who has lost parents may be cared for and described.

### **Conclusion**

We graciously thank Senators Nickles and Landrieu for starting a dialogue on important steps that must be taken to fix the international adoption system in its current form. Unfortunately, legislation of this nature cannot be enacted and implemented in a vacuum during an artificially-compressed, “urgent” timeframe. Indeed, it will have an immediate impact that will alter the landscape of international adoption as we know it. Broad-sweeping reform of this nature requires thoughtful analysis and heated debate by seasoned professionals with diverse, real-world experience in all countries that have permitted international adoption now or previously. This “committee” needs to test drive the law through historical examples and future hypotheticals to ensure that the noble goals of its drafters are realized, rather than contradicted, by its implementation. We would be pleased to serve together with our colleagues on a committee of adoption professionals to assist in the discussion and drafting of appropriate, comprehensive legislation to correct the flaws in the current international adoption system in a manner consistent with the goals of ICARE. We ask only to be invited to the drafting room to participate in this important process.