

ALTERING THE LEGAL ADOPTION FRAMEWORK TO SERVE HISTORICALLY- UNDERSERVED TRANSRACIAL ADOPTEES

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I. INTRODUCTION

The needs and experiences of transracial adoptees have been largely ignored and overlooked since the first transracial adoption¹ occurred in

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1. “Transracial adoption” will be used in this Article to describe the legal process through which a child of one racial identity is adopted by a family of a different racial identity. Richard M. Lee, *The Transracial Adoption Paradox: History, Research, and Counseling Implications of Cultural Socialization*, 31 COUNSELING PSYCH. 711, 712 (Nov. 2003). At the time of this writing, transracial adoption was the

1948.² Since 1948, hundreds of thousands of children have been adopted by an adoptive parent or parents who belong to a different racial group.³ These children have been raised in a system hailing adoptive parents as “selfless,” emphasizing academic achievement and economic opportunity above all, ignoring or dehumanizing the birth parents for “giving up” their children, and overlooking the trauma and developmental issues associated with adoption and transracial adoption.⁴

This Article will first provide an overview of the prevailing adoption narrative and its failures impacting adoptees, specifically looking at the framework for transracial adoption. Through this discussion, this Article will highlight how adoptees, and specifically transracial adoptees, have been failed by the societal structure that supports and perpetuates certain damaging narratives surrounding adoption. It is the goal of this Article that the reader gains an understanding of the unique needs of transracial adoptees and the competing narratives that preclude society from serving those needs.

After discussing the history and concerns associated with the transracial adoption framework, this Article will delve into the legal process of adoption—identifying the four main areas where the law intersects with the adoption process in a way that harms the transracial adoptee experience.⁵

The first intersection is during the home study. There are two points in the home-study process during which requirements can be changed or altered to ensure that hopeful adoptive families are willing and prepared to serve the unique developmental requirements of a transracial adoptee.⁶ While home-study requirements are determined on a state-by-state basis, there are trends nationwide that work to ensure the placement of transracial adoptees

commonly accepted term to describe this legal process, although some adoptees have advocated for the stem *trans* to be changed because it implies the child, through being adopted, *changes* their racial identity. See JS Lee, *The Trauma of Transracial Adoption*, YES! MAG. (Nov. 13, 2019), <https://www.yesmagazine.org/opinion/2019/11/13/adoption-trauma-transracial>. Because, at the time of this writing and publication, there is no other widely accepted term, transracial adoption will be used, although the author recognizes the experiences of transracial adoptees is one very much so rooted in their identity as a member of a specific racial group. See discussion *infra* Section II.C (highlighting the unique struggles that transracial adoptees face). This Article also focuses on the experience of adoptees and requirements of adoptive families, which may be quite different from the experiences of foster parents, although many themes in adoption are also present in foster care. See *infra* Parts III–V (discussing the legal requirements of adoption and where they fall short in meeting the needs of adoptees).

2. Cynthia R. Mabry, “Love Alone is Not Enough!” in *Transracial Adoptions – Scrutinizing Recent Statutes, Agency Policies, and Prospective Adoptive Parents*, 42 WAYNE L. REV. 1347, 1351 (1996).

3. Sara Miller Llana, “We’re Not Projects”: *Transracial Adoptees Insist on Being Seen*, CHRISTIAN SCI. MONITOR (Dec. 1, 2020), <https://www.csmonitor.com/The-Culture/Family/2020/1201/We-re-not-projects-Transracial-adoptees-insist-on-being-seen>.

4. See Mindy Stern, *What the ‘Better Life’ Narrative Takes from Adoptees*, MEDIUM: HUM. PARTS (Aug. 14, 2020), <https://humanparts.medium.com/deconstructing-the-better-life-myth-of-adoption-555409ce9e25>.

5. See discussion *infra* Section II.C (highlighting the unique struggles that transracial adoptees face).

6. See *infra* Part IV (discussing the objective assessments and emotional evaluations in the home-study process and ways to improve them).

in homes that will meet their physical health and safety needs.⁷ However, there are noticeable shortcomings in home-study requirements that ensure the mental and emotional needs of adoptees and transracial adoptees are met.⁸ Home-study requirements must be enhanced to obligate all hopeful adoptive families to complete a cultural competency training geared towards teaching hopeful adoptive families about the specific needs of transracial adoptees.

During the home-study process, social workers should be required to not only evaluate the fitness of hopeful adoptive families based on the physical safety of the home but also the emotional fitness of the family members to serve the needs of a child who has a different racial and cultural identity. A social worker is tasked with spending time with the hopeful adoptive family, evaluating the home, and interviewing each household member to gain a sense of the family's fitness for raising a child.⁹ They then write a report approving or denying approval for the family to adopt a child of a different race or ethnic group.¹⁰

After an adoptive family receives placement of a child, the post-placement period begins.¹¹ This is one more opportunity for caseworkers to evaluate the ability and willingness of the adoptive family to serve the child and make or withhold a final post-placement recommendation based on their observations.¹² This is a unique period because, unlike the pre-approval period, all parties are aware of the cultural, racial, and ethnic identity of the child.¹³ Thus, the caseworker is better equipped at this stage in the process to evaluate whether the adoptive family can, and will, meet the needs of the child.

The last point of intersection between the legal framework and the adoption process, both for purposes of this Article and quite literally in the adoption process, is the finalization hearing. The finalization hearing is the last point of the adoption process before the adoption is final.¹⁴ The judge takes all of the provided evidence from the home study, the post-placement reports, and any reports from the adoption agency to determine whether permanent placement with the adoptive family is in the best interest of the

7. See discussion *infra* Section IV.A (describing the objective health and safety elements of home studies).

8. See discussion *infra* Section IV.B (arguing current methods for evaluating the ability of adoptive parents to meet transracial adoptees' emotional needs are inadequate).

9. See CHILD WELFARE INFO. GATEWAY ET AL., HOME STUDY REQUIREMENTS FOR PROSPECTIVE PARENTS IN DOMESTIC ADOPTION 1–6 (2020), https://www.childwelfare.gov/pubPDFs/Homestudyreqs_adoption.pdf.

10. *Id.* at 3–4.

11. *Id.* at 4.

12. *Id.*

13. See discussion *infra* Sections IV.A–C (discussing the stages of a home study and post-placement periods of adoption).

14. *Adoption Process Overview*, ADOPTION NETWORK, <https://adoptionnetwork.com/adoptive-parents/how-to-adopt/adoption-process/adoption-process-overview/> (last visited Mar. 1, 2022).

child.¹⁵ This Article evaluates trends and gaps in “best interest” factors statutorily established by state legislatures and how those trends and gaps currently place transracial adoptees in homes that may provide academic and economic opportunity but are lacking in diversity and connection to birth culture, ultimately threatening a full and healthy development of the transracial adoptee.¹⁶

Through analyzing these four points of intersection, this Article suggests reforms that uniformly address the mental and emotional health and development of transracial adoptees. This is a challenge to the prevailing adoption narrative touting the goodness of adoptive parents, the evilness of birth parents, and emphasizing that adoptees have been “saved” and should be grateful. However, challenging the narrative is necessary, certainly in a time when society at large is questioning its history of marginalizing and silencing individuals of color—here, largely, transracial adoptees of color who have been adopted into white households.

II. OVERVIEW OF TRANSRACIAL ADOPTION IN THE UNITED STATES

A. Adoption Generally

The legal process of adoption is hailed as a noble path to become a parent and save a child from a life of poverty, lack of opportunity, and abandonment.¹⁷ This narrative tells society that adoption upgrades the socioeconomic and sociocultural status of children, but underemphasizes the trauma experienced by the adoptee, exaggerates the selfless role of the adoptive parent, and entirely snubs the distress experienced by the birth parent. Objectively, the adoption process utilizes the legal system to join a child to a parent, a set of parents, or a set of parents and their children.¹⁸ Through the adoption process, a child is often given a new birth certificate, a new last name (and perhaps a new first name), and is legally bound to an adoptive parent or parents.¹⁹ When a child is adopted, their legal relationship with their birth parents is severed, and their adoptive parents now fill that role.²⁰

15. CHILD WELFARE INFO. GATEWAY ET AL., DETERMINING THE BEST INTERESTS OF THE CHILD 2–3 (2016), https://www.mncourts.gov/mncourtsgov/media/scao_library/CJI/Determining-the-Best-Interests.pdf.

16. See discussion *infra* Parts VI, VII (describing the shortcomings of the current best interests framework and suggesting reforms).

17. See Stern, *supra* note 4.

18. See CHILD WELFARE INFO. GATEWAY ET AL., WHO MAY ADOPT, BE ADOPTED, OR PLACE A CHILD FOR ADOPTION? 1–4 (2020), <https://www.childwelfare.gov/pubpdfs/parties.pdf>. Adoption is not limited to minor children. *Id.* The adoption process includes a parent adopting an adult child. *Id.*

19. *Adoption Laws*, ADOPT.ORG, <http://adopt.org/adoption-laws> (last visited Mar. 1, 2022).

20. *Id.*

Despite an overarching narrative in society touting the “goodness” of adoption, it is naïve to think that adoption is void of negative effects. Society places a gold star on the adoption process, heralding adoptive families as “saviors” and labeling adoptees as “blessed.”²¹

The dominant culture narrative of adoption presumes that adoption gives the adoptee a better life. Common assumptions are the birth parent did not want the child, the birth parent could not afford to provide for the child, the birth parent was negligent, abusive, or somehow incapable of parenting, that adoptive parents so wanted this child (and went to great expense) — their desire makes them better parents.

There are cases when adoption is in the best interest of the child and they live a better life. But most adoptions are a trade-off of pros and cons.

And most of what people think about adoption is wrong.²²

The reality of being raised by non-biological parents is nuanced and layered. Although a child’s legal relationship with their birth parents is severed at the time of adoption, emotional relationships and ties, however tenuous, with the child’s birth parents and biological family, birth culture, and identity as a member of their biological family continue to exist.²³ This can include the child’s sense of self—understanding who they are, where they came from, and their ancestry—and the child’s ability to self-actualize when those relationships are lacking or unsupported.²⁴ Through legally severing these ties and supporting rhetoric that the adoption was truly in the best interests of the child, adoptees are likely to experience mental and emotional trauma, identity issues, difficulty forming emotional attachments, and low self-esteem.²⁵ These struggles are exacerbated when racial and ethnic differences are also present in the relationship.

An accurate but incomplete view of adoption is that it is best for the child because of the opportunities then afforded to the child.²⁶ In a sense, adoption is a self-fulfilling prophecy. At many stages during the adoption process, hopeful adoptive parents are evaluated on objective measures of

21. See Benjamin Pflieger, *Are Adoptive Parents Saviors?*, GAYS WITH KIDS (Feb. 15, 2017), <https://www.gayswithkids.com/the-being-blog/are-adoptive-parents-saviors>.

22. Stern, *supra* note 4.

23. See JS Lee, *supra* note 1.

24. *Id.*

25. *The Possible Long-Term Effects of Adoption on Adoptees*, AM. ADOPTIONS, <https://www.americanadoptions.com/adoption/effects-of-being-adopted> (last visited Mar. 1, 2022).

26. *Id.* One 1998 study, following twins raised separately (one set by biological parents and one set by non-biological parents), found “there were few significant effects of adoption on the adult adjustment of adoptees. Instead, the study suggested that the adoption effects on a child are more related to the child’s socioeconomic status.” *Id.*

fitness to be a parent.²⁷ During the home-study process, adoptive parents must provide proof of financial security and income potential, the physical home is evaluated for safety and size, caseworkers ensure there is no history of crime by any of the family members, and question adoptive parents on their views on child-rearing.²⁸ Throughout this process, adoptive parents must meet measures and prove themselves worthy of being chosen as parents under traditional notions of what a good parent looks like.²⁹ In addition, in cases where the birth mother is included in choosing adoptive parents, she may pick out a family who has the potential to provide opportunities to the child that she believed herself unable to at the time of placement.³⁰ Lastly, the judge or magistrate granting the adoption finalization undertakes a best interests inquiry to determine whether placement with the hopeful adoptive family is in the best interests of the child.³¹ This inquiry mirrors the inquiry done by the home-study caseworker in many ways—it evaluates the family for physical safety, financial security, and opportunities to achieve.³² The socioeconomic status of the adoptive parent(s) and the accompanying opportunities afforded to the child paint a rosy picture of adoption, often embraced by caseworkers and members of the judiciary who are keen to place a child in a home that will provide certain levels of objective stability. And thus, the narrative that adoptees are more successful than they would have been had they not been adopted writes itself.³³ However, this narrative, and the inquiries undertaken by caseworkers and judicial decision-makers, ignore the nuance and emotion tied to losing one’s biological family and instead link happiness to socioeconomic status and a definition of success reserved for members of the middle and upper classes.

A 2007 study of adoptees [conducted] by the U.S. Department of Health and Human Services found that:

- Adopted children were more likely to have health insurance and less likely to live in households below the poverty line.

27. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 2–4.

28. See CHILD WELFARE INFO. GATEWAY ET AL., THE ADOPTION HOME STUDY PROCESS 1–11 (Oct. 2020), https://www.childwelfare.gov/pubPDFs/f_homstu.pdf.

29. *Id.*

30. See AM. ADOPTIONS, *supra* note 25.

31. See CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 15.

32. *Id.*

33. See Drew Weisholtz, *Simone Biles Remembers Going Hungry as a Child before Going into Foster Care*, TODAY (June 30, 2021, 8:07 AM), <https://www.today.com/popculture/simone-biles-remembers-going-hungry-child-going-foster-care-t224169>. In a review of the documentary released prior to the 2021 Tokyo Olympics, *Simone vs. Herself*, Simone Biles recalled her time in foster care before being adopted by her biological grandparents. *Id.* She stated: “Being separated from my biological mom, being placed in foster care before I officially got adopted by my grandparents, it just set me up for a better route at life and I feel like I [would not] be where I am unless that turning point happened[.]” *Id.* Stories like Simone Biles’ are the exception, not the rule. Perpetuating the “better-life” narrative ignores the realities and emotional trauma of adoption. See *Adoption Narratives*, THE ADOPTION HIST. PROJECT (Feb. 24, 2012), <https://pages.uoregon.edu/adoption/topics/adoptionnarratives.htm>; Stern, *supra* note 4.

- 85% of adopted children were in “very good to excellent health.”
- 68% of adoptees were read to every day as a child (in comparison to 48% of non-adopted children).
- 73% of adopted children were sung to and told stories every day (compared to 59% of non-adopted children).
- Adopted children were more likely to participate in extracurricular activities.
- More than half of the studied adoptees were reported to have “very good or excellent” performance in reading, language arts and math.³⁴

While these are all excellent measures of a child’s health, opportunity, and development, this is not an exhaustive or complete list of ways to measure a child’s mental health, emotional health, development, and sense of identity. These factors neither accurately or exclusively indicate the child will not deal with identity or attachment issues later in life. These factors cannot be the sole factors relied upon by the government in determining the best interests of the child.³⁵

It is very likely that adoptees will grapple with adoption-related trauma at some point in their development.³⁶ At which point, and to what extent, may be related to the age at which the child was adopted and whether they were adopted through international adoption, foster care, or domestic infant adoption.³⁷ Many adoptees experience “disappointment, sadness, confusion, uncertainty, isolation, and feelings of rejection.”³⁸ Further, the ability of the adoptee to overcome self-esteem and attachment struggles may be related to the actions of the adoptive parents—whether the adoptive parents support their healing process or require the adoptee to show feelings of gratitude and gratefulness for their adoption.³⁹

B. Transracial Adoption: Legal History

Transracial adoption has been a part of the adoption system in America since 1948 when the first documented transracial adoption was finalized in Minnesota.⁴⁰ Transracial adoption is defined as “the joining of racially

34. AM. ADOPTIONS, *supra* note 25.

35. *See infra* Part VI (discussing the impact of developing an adoption framework that considers the interests of transracial adoptees).

36. *See* AM. ADOPTIONS, *supra* note 25.

37. *Id.*

38. Rachel Garlinghouse, *Complimenting Parents for Choosing Adoption is Deeply Problematic*, SCARY MOMMY (Aug. 25, 2020), <https://www.scarymommy.com/stop-complimenting-me-for-adopting-my-children/>.

39. *See* AM. ADOPTIONS, *supra* note 25.

40. Mabry, *supra* note 2, at 1350–51.

different parents and children together in adoptive families”⁴¹ and can occur through domestic or international adoption.⁴² The majority of transracial adoptions comprise white parents adopting non-white children.⁴³

Since the mid-1900s, both federal law and society have taken strong stances on transracial adoption. Prior to 1948, transracial adoption was expressly prohibited in many states.⁴⁴ However, World War II brought life to transracial adoption when large numbers of children globally were orphaned.⁴⁵ This movement continued during the Korean War when around 200,000 Korean children were adopted by Americans.⁴⁶ Simultaneously, courts eradicated laws prohibiting transracial adoption, citing constitutional concerns.⁴⁷

Domestically, as the number of domestic and international transracial adoptions increased, so did controversy surrounding transracial adoption. In the 1960s and 1970s, over 10,000 children were adopted into families of a different racial identity.⁴⁸ During this same time, societal backlash from minority racial groups increased.⁴⁹ From 1958 to 1967, Native American activists vehemently opposed the Indian Adoption Project, “characterizing transracial adoption as a form of cultural genocide.”⁵⁰ In 1972, the National Association of Black Social Workers (NABSW) called for an end to transracial adoption, arguing that “transracial adoption was, in essence, a form of race and cultural genocide.”⁵¹ Their resolution was fueled by fears that Black children who grow up in white homes will not be taught how to live and thrive in a racist society.⁵² After the NABSW took a public stance against transracial adoption and the Child Welfare League of America instituted a policy change, transracial adoptions fell 39% in 1973 and continued to decline through the 1980s.⁵³

Transracial adoption trends began to turn in the 1990s with the 1994 passing of the Multiethnic Placement Act (MEPA) and the Adoption and Safe

41. R.M. Lee, *supra* note 1, at 712.

42. *Id.*

43. *Id.*

44. Mabry, *supra* note 2, at 1350.

45. JS Lee, *supra* note 1.

46. *Id.* In short, intercountry transracial adoption began with “colonization, racist policies[,] and cultural genocide against Native and Black peoples.” *Id.*

47. Mabry, *supra* note 2, at 1350.

48. *Id.* at 1351.

49. See SunAh M. Laybourn & Carla Goar, *Abby Johnson’s Comments About Her Adopted Black Son Are Problematic. Here’s Why*, BROOKINGS (Aug. 26, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/08/26/abby-johnsons-comments-about-her-adopted-black-son-are-problematic-heres-why/>; R.M. Lee, *supra* note 1, at 713.

50. Laybourn & Goar, *supra* note 49.

51. R.M. Lee, *supra* note 1, at 713.

52. *Id.*

53. Mabry, *supra* note 2, at 1350; see R.M. Lee, *supra* note 1.

Families Act of 1995.⁵⁴ MEPA was intended to promote the best interests of the child and help combat the large number of children in foster care by expressly prohibiting any family from being denied the opportunity to have a child placed in their home through foster or adoption due to the child's or the prospective parents' race, color, or national origin.⁵⁵ However, MEPA allowed for race, color, or national origin of the prospective parents or the child to be considered to help determine the best interests of the child.⁵⁶ The Adoption and Safe Families Act emphasized pushing children through the foster-care system and into permanent care but did not leave room to consider the potential impact of racial differences between adoptees and the adoptive families.⁵⁷

Taking one more step against protecting the individual interests of transracial adoptees, Congress removed the provision for permissible consideration of race in the Adoption Promotion and Stability Act of 1996 and its later incorporation into the Small Business Job Protection Act (SBJPA) and the Social Security Act (SSA).⁵⁸

Critics of MEPA asserted that, by inserting race into the search for a suitable home, "it gave agencies an opportunity to delay adoptions of minority children who desperately needed a home."⁵⁹ The Social Security Act as it was written and exists today states:

[N]either the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may—(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of race, color, or national origin of the person, or of the child, involved; or (B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.⁶⁰

The updated legislation from the MEPA to the SSA and SBJPA⁶¹ removed terms that allowed for race to be a possible consideration in the best

54. Diane H. Schetky, *Commentary: Transracial Adoption—Changing Trends and Attitudes*, 34 J. AM. ACAD. PSYCHIATRY L. 321, 321 (2006).

55. Multiethnic Placement Act of 1994 (MEPA), Pub. L. No. 103-382, § 551, 108 Stat. 3518, 4056–57, amended by Small Business Job Protection Act of 1996 (SBJPA), Pub. L. No. 104-188, § 1808, 110 Stat. 1755, 1903–04. For a full explanation of the amendments made by the passing of the SBJPA, see EDUC. & PUB. WELFARE DIV., CONG. RSCH. SERV., 97-376 EPW, ADOPTION: INTERETHNIC PLACEMENT LEGISLATION IN THE 104TH CONGRESS (1996), https://www.everycrsreport.com/files/19961014_96-376_441d22909507a93300d602b2d59e4c8f8440899b.pdf.

56. MEPA, § 553(a)(2), 108 Stat. 3518 (1994), amended by 42 U.S.C. § 671 (incorporating both the SBJPA and the Adoption Promotion and Stability Act into the Social Security Act).

57. Schetky, *supra* note 54, at 321.

58. *Mabry*, *supra* note 2, at 1374–76.

59. *Id.* at 1372.

60. 42 U.S.C. § 671(a)(18).

61. SBJPA, Pub. L. 104-188, § 1808, 110 Stat. 1755 (1996).

interests of the child.⁶² Where the MEPA placed a prohibition on the categorical denial of a family based *solely* on their race, the SSA simply prohibits race, color, or national origin from being considered.⁶³ The SSA also removed the permissible consideration phrase that the MEPA contained.⁶⁴

Transracial adoption numbers increased following the new legislation. In 2001, “14 percent of all adoptions were transracial”⁶⁵ and “[t]oday, 44% of all children adopted in the U.S. are adopted across racial lines.”⁶⁶ In an Institute for Family Studies analysis, data revealed 77% of adoptive mothers are white, but only 39% of adopted children are white.⁶⁷ Societally, “[t]ransracial adoption is often understood in dichotomous terms—a fairy tale or nightmare, an act of grace or, in one of the most extreme takes, a form of genocide.”⁶⁸

Through the SBJPA and the SSA, the permissible consideration provision of the MEPA that would have helped thousands of children was repealed less than two years after its passing.⁶⁹ The SSA and the above provision on the potential role of race, color, and national origin remain the prevailing law in federal jurisprudence.⁷⁰ Within this framework, there is no place for race-based considerations of either the prospective family or the child when considering the best interests of the child.

C. Transracial Adoption: Failing to Protect Transracial Adoptees

Under the current system, the identities of transracial adoptees are not accounted for or considered. Rather, the adoption system seeks to place children in permanent homes that will provide for physical health and safety.⁷¹ The system is one that seeks to attain physical health and safety above all else for the adoptee but, with such a single-minded focus, this can come at the expense of the adoptee’s mental and emotional health.⁷²

There are four main concerns with transracial adoption which are not protected in the current adoption system: adoptees experience a lack of diversity, they struggle with developing a healthy racial and cultural identity, they are disconnected from their birth culture, and they experience a form of

62. Compare MEPA, § 551, 108 Stat. 3518 (1994), with 42 U.S.C. § 671(a)(18).

63. Mabry, *supra* note 2, at 1374–75.

64. *Id.*

65. Schetky, *supra* note 54, at 321.

66. Llana, *supra* note 3. This data includes children adopted to non-white adoptive parents. *Id.*

67. *Id.*

68. *Id.*

69. Mabry, *supra* note 2, at 1376.

70. See 42 U.S.C. § 671(a)(18).

71. See *id.* § 671(22).

72. See AM. ADOPTIONS, *supra* note 25.

racism, bigotry, or prejudice from their adoptive family, extended or nuclear.⁷³

Each of these issues can be tackled through increased legislation providing for consideration of race, increased cultural competency training of adoptive families, and stronger inquiries into a hopeful adoptive family's willingness to meet the unique cultural and racial needs of the child before the adoption is finalized.

1. Lack of Diversity

Stories from transracial adoptive parents, particularly white adoptive parents adopting non-white children, follow a similar pattern: White parents want to expand their family, so white parents adopt a non-white child and continue to reside in a predominantly white suburb⁷⁴ and then begin the process of learning about the importance of providing a diverse environment in which their child has the best hope for thriving and developing a strong sense of identity.⁷⁵ It is generally the norm, not the exception, for a transracial adoptee to be raised in a community without a neighbor who looks like them. The danger in this narrative is the initial, and often ongoing, lack of racial and ethnic diversity for the transracial adoptee.

Studies have repeatedly shown that socialization that includes racially and ethnically diverse community members, role models, and mentors is vital for transracial adoptees.⁷⁶ Increased diversity often requires adoptive parents to broaden their worldview and perhaps the physical communities they socialize and live in.⁷⁷ The healthy development of transracial adoptees requires white adoptive parents to seek out spaces predominantly made up of racial mirrors for their children to build healthy and affirming relationships.⁷⁸ These racial mirrors can be community members, professionals in the community, similar-aged friends and their parents, or mentors.⁷⁹ A transracial Black adoptee from Tacoma shared: "One of the things I think was hardest for me is I didn't have any independent relationships with [B]lack people, especially adult [B]lack people, till I was an adult. I was 25 before I saw

73. *4 Unique Challenges Faced by Transracial Adoptees*, AM. ADOPTIONS, <https://www.americanadoptions.com/adoption/transracial-adoptee-challenges> (last visited Mar. 1, 2022).

74. See Lydia Faye (@becominglydiafaye), INSTAGRAM (Mar. 24, 2021), https://www.instagram.com/p/CMz5XZ2iR-R/?utm_source=ig_web_copy_link.

75. See *id.*

76. AM. ADOPTIONS, *supra* note 73; Erica Stapert, *Transracial Adoption: Issues that May Arise and Tips to Overcome Them*, MANHATTAN PSYCH. GRP., PC, <https://manhattanpsychologygroup.com/transracial-adoption-issues-that-may-arise-and-tips-to-overcome-them/> (last visited Mar. 1, 2022).

77. AM. ADOPTIONS, *supra* note 73.

78. See JS Lee, *supra* note 1; Melissa Guida-Richards (@adoptee_thoughts), INSTAGRAM (July 5, 2021), https://www.instagram.com/p/CQ8nXg3B-15/?utm_source=ig_web_copy_link; AM. ADOPTIONS, *supra* note 73 ("[It is] imperative for a child to be raised around people who look like them — community members and role models they can look up to during their identity-building period.")

79. AM. ADOPTIONS, *supra* note 73.

a[B]lack doctor.”⁸⁰ Allowing Black children to see themselves in the shoes of successful adults helps develop confidence and self-efficacy.⁸¹

As another transracial Black adoptee stated:

If you . . . are not able [to] drive within 30-40 mins away from your home to go to a [B]lack barbershop, beauty salon, or be in a [B]lack community. . . You are not able to support your adoptee when it comes to exposing them to their cultural background if they don't have access to others who resemble them. Racial isolation and segregation will create confusion, insecurities[,] and the idea that being around their race is deprecated. All [B]lack neighborhoods are not bad, all white neighborhoods aren't good. Do you[r] research so you can provide your adoptee with opportunities and a healthy environment that is suitable for them too.⁸²

Providing diversity is more than just picture books and diverse television shows. Rather, parents must be prepared to move communities or drive across town to immerse their children in a community that provides them with racial mirrors.⁸³

2. *Struggles with Racial and Cultural Identity*

Due to the frequent lack of racial mirrors and representation, transracial adoptees often struggle with developing a strong racial identity and may ultimately wrestle with having a “fractured identity” or an identity in which they feel like they do not fully fit in with any one group of people.⁸⁴

Like many transracial adoptees with [w]hite parents, I was raised in racial isolation, which caused me to have a fractured identity, experiencing racial confusion and internal bias. When I looked in the mirror, the face I saw was not what I expected or wanted to see. I didn't look like my parents and siblings, or my friends, or the people who I read about in books and saw in magazines and on television.⁸⁵

Racial identity is both externally imposed and internally constructed.⁸⁶ It requires an individual to ask how others perceive them racially and how they

80. *Id.*

81. *See id.*

82. Amanda McKinstry (@blackgirlwhitefamily), INSTAGRAM (July 1, 2021), https://www.instagram.com/p/CQyWrdQBxGE/?utm_source=ig_web_copy_link.

83. AM. ADOPTIONS, *supra* note 73.

84. JS Lee, *supra* note 1.

85. *Id.*

86. *Race and Racial Identity*, NAT'L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/learn/talking-about-race/topics/race-and-racial-identity> (last visited Mar. 1, 2022).

identify themselves racially.⁸⁷ As one develops their racial identity, they are often influenced by “personal experiences, family, community, workplaces, . . . and political and social events.”⁸⁸ The task of positive identity formation in Black children is complex and nuanced.⁸⁹ “It involves the perception of racial differences, identification of the self as a member of an often stigmatized racial group, and a concomitant emergence of a positive sense of self-esteem.”⁹⁰

Through the process of removing a child from their birth culture and connections to their birth family, transracial adoptees struggle to figure out where they fit in. They don’t look like their adoptive parents, but because of their proximity to whiteness, they are considered not *enough* of their racial identity—not Asian enough, not Black enough, and of course, not white enough.⁹¹

As one transracial adoptee stated about not feeling “Asian enough”: “The lack of racial mirroring deepened my imposter syndrome. When I encountered other Asians, I would sometimes avoid them out of shame—of cultural ignorance and inferiority for not being a ‘real’ Asian.”⁹²

Struggles with identity can have lifelong ramifications, which result in transracial adoptees constantly navigating society and friendships, unsure of where they stand.⁹³ This type of racial impostor syndrome has widely-reported effects on the transracial adoptees’ mental health and self-development.⁹⁴

3. *Lack of Connection to Birth Culture*

The process of transplanting a child from one culture to another one inherently ends in loss.⁹⁵ At a minimum, children are removed from one community full of racial mirrors and placed in a community with a lack of

87. *Id.*

88. *Id.*

89. *See id.*; Michael R. Lyles et al., *Racial Identity and Self-Esteem: Problems Peculiar to Biracial Children*, 24 J. AM. ACAD. CHILD PSYCHIATRY (SPECIAL ISSUE 2) 150–53 (1985), [https://www.jaacap.org/article/S0002-7138\(09\)60440-4/pdf](https://www.jaacap.org/article/S0002-7138(09)60440-4/pdf).

90. Lyles et al., *supra* note 89, at 150.

91. JS Lee, *supra* note 1; AM. ADOPTIONS, *supra* note 73; Angela Tucker, *What Happens When White Parents Adopt Black Children and Move to Black Neighborhoods*, YES! MAG. (Feb. 14, 2018), <https://www.yesmagazine.org/social-justice/2018/02/14/what-happens-when-white-parents-adopt-black-children-and-move-to-black-neighborhoods>.

92. JS Lee, *supra* note 1.

93. *Id.*

94. Racial impostor syndrome is widely defined as occurring when one’s “internal sense of self [does not] match with others’ perception of your racial identity and gives rise to a feeling of self-doubt.” *Racial Impostor Syndrome: When You’re Made to Feel Like a Fake*, BBC NEWS (Feb. 3, 2021), <https://www.bbc.com/news/stories-55909105> (statement of Arden Yum to Megha Mohan, BBC gender and identity correspondent). This most often occurs in individuals who are living in a country in which they are part of a racial or ethnic minority group. *Id.*

95. AM. ADOPTIONS, *supra* note 73.

diversity, perhaps even at infancy before they have developed any sense of self within a culture.⁹⁶ In more extreme cases, children may be uprooted from an entire set of cultural values, language, and relationships.⁹⁷ Adoptive parents have a responsibility to understand the importance of providing a connection for their child to that child's birth culture. It is not enough to rely upon parents to fill their home with love if that love fails or is unwilling to recognize their children's unique experience belonging to a different racial group and connect them to other members of that group.⁹⁸ "When white parents intend to adopt a child of color, it is their responsibility to look at their communities, organizations, activities, and even their primary social relationships through the eyes of that child."⁹⁹ Parents have the responsibility to evaluate these circles for diversity and connection opportunities for their child to provide an environment that truly supports an adoptee's development of their fullest selves.¹⁰⁰

This may change as the child grows and develops, so adoptive parents must be ready to take cues from their child on how to provide connection opportunities.¹⁰¹

Failing to connect a child to their birth culture can have even deeper ramifications when white adoptive parents have a degrading view of the child's birth culture. The issue of "white saviorism" is prevalent in transracial adoptions, both domestic and international.¹⁰² This issue recently reached American media during the confirmation hearing of Supreme Court Justice Amy Coney Barrett.¹⁰³ During her hearing, she provided details of her Haitian-born children's early life, including "vulnerabilities . . . [that] served to reinforce the 'white saviorism' messaging."¹⁰⁴ Many adoptees are under pressure to feel "'lucky' to have escaped the poverty and crude treatment [they] would've endured in [their] homelands."¹⁰⁵ This dangerous view simultaneously pushes a perception that the adoptive parents have done a heroic act and that the child's original culture is "less than" Western and white culture.¹⁰⁶ Adoptive parents who support this messaging, even (and often) subconsciously, may ultimately cause the child to lose connection to

96. *Id.*

97. *Id.*

98. Nicole M. Callahan, RACE AND IDENTITY IN TRANSRACIAL ADOPTION: SUGGESTIONS FOR ADOPTIVE PARENTS I (Aug. 2011), <https://health.uconn.edu/adoptionassistance/wpcontent/uploads/sites/68/2016/07/AdoptionAdvocateNo38.pdf>.

99. *Id.* at 4.

100. *Id.* at 10.

101. *See* AM. ADOPTIONS, *supra* note 73.

102. *See* Llana, *supra* note 3.

103. *Id.*

104. *Id.*

105. JS Lee, *supra* note 1.

106. *Id.*

their roots, people, and sense of identity, causing struggles with mental health and development.¹⁰⁷

It is impossible to know whether the child's life in their original birth culture and location would have been worse¹⁰⁸ than their life growing up in their adoptive parents' household.¹⁰⁹ While stability and physical safety, two common objectives and outcomes of adoption, are important, they should not be perceived as worthy replacements for connection to culture, identity, and self-confidence. Many adoptive parents face the question of whether their decision to adopt was truly in the best interests of their whole child.¹¹⁰ A situation in which a child has academic opportunity, resources, and physical needs satisfied should not be a justifiable outcome when a child is "raised in racial isolation," resulting in a "fractured identity."¹¹¹ As one transracial adoptive mother stated, "Maybe their lives are 'saved' from physical danger, but does that mean their lives in this country are better as transracial adoptees? The second half of that sentence is always left out."¹¹²

4. *Prejudice, Bigotry, or Profiling from Family Members*

In the Summer of 2021, Abby Johnson, a white transracial adoptive mother, quickly went viral after posting a shocking video baring her racist views of her adopted Black son.¹¹³ In her video, she stated she considered it "smart" for a law enforcement officer to racially profile her Black son, surmising that he will grow up to be "tall, probably sort of large, [and] intimidating-looking," especially in comparison to her "nerdy white" biological sons.¹¹⁴ The video quickly exploded on the internet, but where one sector of the public was in shock and disbelief, another sector praised her views.¹¹⁵ This very public case highlights the fact that white adoptive parents and family members "are not immune to racist, stereotypical, and tokenizing beliefs about non-white racial and ethnic groups."¹¹⁶ As anti-racist expert Ibram X. Kendi tweeted, "It is a belief too many [w]hite people have: if they

107. *See id.* ("Adoption erased my Korean family, language, and culture, while granting my adopters a badge of honor for saving a poor child from a war-torn country.").

108. As with most of this Article, defining "worse" is subjective and multi-faceted. Here, the term is used to describe an environment that does not allow the child to thrive.

109. *See Stern, supra* note 4 ("I was born in 1968 to an unwed woman who did not know she was pregnant. Conventional wisdom assumed my life would be better if a married couple . . . parented me. Perhaps. But do we know that for sure? No. We [cannot]. All we know for sure is my life was different.").

110. *See Llana, supra* note 3; Schetky, *supra* note 54, at 321. ("The common thread that runs throughout these debates and dialogues is the concept of adhering to the child's best interests.").

111. JS Lee, *supra* note 1.

112. Llana, *supra* note 3 (quoting Karen Moline, an adoptive mother whose son was born in Vietnam).

113. John Haltiwanger, *An RNC Speaker Said It Would Be 'Smart' for the Police to Racially Profile Her Biracial Son Because of 'Statistics'*, INSIDER (Aug. 25, 2020, 2:27 PM), <https://www.businessinsider.com/rnc-speaker-condones-police-racially-profiling-her-biracial-son-2020-8>.

114. Laybourn & Goar, *supra* note 49.

115. *See* Haltiwanger, *supra* note 113.

116. Laybourn & Goar, *supra* note 49.

have or adopt a child of color, then they can't be racist."¹¹⁷ Rather, according to Kendi, a person (including white adoptive parents) is either racist or anti-racist; there is no in-between.¹¹⁸ "Either a person is actively pursuing anti-racist education, becoming a white ally, and participating in activism to create systemic change where they can, or they are not. You can't be lukewarm about tackling white supremacy."¹¹⁹ Similarly, adopting a child of color does not absolve an adoptive parent of their responsibility to learn to be anti-racist, nor does it automatically render them anti-racist.¹²⁰ One's proximity to a person of color does not "magically undo white privilege," eliminate racial bias, or undo decades of indoctrination of racist ideologies.¹²¹

Studies and stories reflect that adoptive parents land somewhere on the spectrum from carrying racist ideologies into their parenting, taking a "colorblind" approach,¹²² or working to become anti-racist and engage in race-conscious discourse in the household.¹²³

Being raised by parents or close family members who hold racist ideologies has a deep and profound impact on adoptees.¹²⁴ But of course, most adoptive parents hold views about race that are not manifested in outward-facing, hateful rhetoric.¹²⁵ In fact, for a period of time, transracial adoption was heralded as evidence of a race-neutral and colorblind American society.¹²⁶ But a colorblind approach to parenting is arguably equally as harmful as explicitly-hateful rhetoric¹²⁷ and can have grave impacts on the child's sense of self—microaggressions, discrimination, and their own sense of self is critical to a healthy racial identity.¹²⁸ An environment that does not see the child's true self but rather is clouded by microaggressions or hateful views is overwhelmingly damaging to the adoptee's sense of self, sense of belonging, and ability to build self-confidence and self-love.¹²⁹ This environment also fails to teach children how to manage racially-fueled interactions outside of the home: "As a parent, you love your child and may

117. Rachel Garlinghouse, *Amy Coney Barrett Having Black Children Doesn't Make Her a Good Person – WTF, SCARY MOMMY* (Oct. 13, 2020), <https://www.scarymommy.com/white-people-adopt-black-children-can-be-racist/>.

118. *Id.*

119. *Id.*

120. *Id.*

121. *See id.*

122. It does not suffice for a child to hear competing messages such as "race [doesn't] matter" while simultaneously overhearing or being victim to racial slurs and denigrating racial "jokes." JS Lee, *supra* note 1.

123. Laybourn & Goar, *supra* note 49.

124. *Id.*

125. AM. ADOPTIONS, *supra* note 73.

126. Laybourn & Goar, *supra* note 49.

127. *See id.*

128. *See id.*

129. *See id.*

not think so much about race, but the truth is that the rest of the world is always going to see race first.”¹³⁰

In a similar vein, a colorblind approach to parenting affects the current justification mindset towards adoption. Where society’s predominant view of adoption is that it is “good” because, even though children lose their first family, they gain stability and opportunity, that justification scheme must be reworked when considering the importance of one’s identity, the sense of loss that accompanies being removed from one’s biological family, and the psychological damage inflicted by adoptive parents who do not meet the child’s needs as a member of a minority racial group.

Adoptive parents are called to understand their limits as members of a different racial identity than their children. To ensure that they fully recognize their child’s identity, parents must fill their home and their child’s life with racial mirrors and resources that represent that child’s identity.¹³¹ It is common for transracial adoptees to feel white, or at least feel their proximity to whiteness acutely at some point in their life.¹³² However, they are not white and this is made clear through repeated contact with microaggressions and discrimination.¹³³ It is unacceptable for white adoptive parents to avoid or ignore the unique developmental needs of Black children as they learn to prepare for continued assaults on their racial identity. It is also unacceptable for white adoptive parents to assume that having a child who is a person of color is enough to make them “not racist.”¹³⁴

In our society, the developmental needs of Black children are significantly different from those of white children. Black children are taught, from an early age, highly sophisticated coping techniques to deal with racist practices perpetuated by individuals and institutions. These coping techniques become successfully integrated into ego functions and can be incorporated only through the process of developing positive identification with significant Black others.¹³⁵

It is vital that white adoptive parents make it clear to their adopted children that they are their advocate and ally. “I really feel that, now, if you are a white parent adopting a Black or brown child, you actually have to be doing clear and very obvious anti-racist work,” author Sara Miller Llana stated.¹³⁶

130. Llana, *supra* note 3 (quoting Dr. Chaitra Wirta-Leiker, an adoptee from India who was adopted by a white family and later adopted a son from Ethiopia).

131. *Id.* (“Well aware of her own limitations as a white parent, [Shelly Vermilya] filled their home with African American books and music; she drove her children an hour away to get their hair done by a Black hairdresser.”).

132. *See* Laybourn & Goar, *supra* note 49.

133. *Id.*

134. *See* John Eligon, *The ‘Some of My Friends are Black’ Defense*, N.Y. TIMES (Feb. 16, 2019), <https://www.nytimes.com/2019/02/16/sunday-review/ralph-northam-blackface-friends.html>.

135. *See* Laybourn & Goar, *supra* note 49.

136. Llana, *supra* note 3.

You have to welcome Black people into your home as your friends, as your neighbors. You've got to have Black art on the wall. You have to be in the schools demanding for changes to curriculum and looking at data around suspensions, and looking at over-policing of Black and brown children. You can't just simply transactionally parent your kid. You've got to be doing that through a very clearly defined and purposeful anti-racist, anti-bias lens.¹³⁷

As this section of the Article ends, it must be said that adoption is not all bad. Adoptees certainly simultaneously experience love and affection for their adoptive families and also feelings of loss and trauma.¹³⁸ This Article is not intended as an attempt to ban or remove transracial adoption from society, but rather to shed light on the devastation it can cause when adoptive parents are ill-equipped and under-prepared to raise a child of a different race than them. By doing so, this author hopes to minimize the “high rates of abuse, suicide,¹³⁹ and murder”¹⁴⁰ that currently accompanies transracial adoption and produce healthier and happier adoptions for everyone involved in the adoption triad.¹⁴¹

III. THE LEGAL PROCESS OF ADOPTION GENERALLY

The process of adopting a child usually occurs in the following manner:

1. A parent or set of parents determine they want to adopt and conduct research to decide if they want to pursue international adoption, domestic adoption using an adoption agency, private adoption, or adoption through foster care.¹⁴²
2. The adoptive family completes paperwork, completes a home study, and begins working with the adoption agency or state.¹⁴³

137. *Id.*

138. See JS Lee, *supra* note 1.

139. Terry Hong, 'The Leavers,' *Inspired by a Real Story, Confronts Transracial Adoption*, CHRISTIAN SCI. MONITOR (May 2, 2017), <https://www.csmonitor.com/Books/Book-Reviews/2017/0502/The-Leavers-inspired-by-a-real-story-confronts-transracial-adoption> (highlighting how Lisa Ko, author of *Leavers*, touches on and exposes multiple issues associated with adoption, including “the high rate of suicide among transracial adoptees”).

140. JS Lee, *supra* note 1.

141. The adoption triad is composed of three groups of people: the birth parents, the child placed for adoption, and the adoptive parents. Lita Jordan, *What is the Adoption Triad?*, GLADNEY CTR. FOR ADOPTION (Dec. 6, 2017), <https://adoption.org/what-is-the-adoption-triad>.

142. David Dodge, *What to Know before Adopting a Child*, N.Y. TIMES (Apr. 18, 2020), <https://www.nytimes.com/2020/04/18/parenting/guides/adopting-a-child.html>. There are certainly notable differences between each of these roads to adoption that adoptive families need to consider when determining which path they want to take. See JR Thorpe, *How does the Adoption Process Work?*, BUSTLE (June 3, 2016), <https://www.bustle.com/articles/163933-how-does-the-adoption-process-work>.

143. *How to Adopt a Child in 7 Steps*, PARENTS (Nov. 5, 2018), <https://www.parents.com/parenting/adoption/101/how-to-adopt-a-child/> (“Step #2 Decide Who You Want to Work With”).

3. A child becomes available for adoption and is placed with the adoptive family.¹⁴⁴
4. Termination of parental rights of the child's birth parents is granted by the courts.¹⁴⁵
5. Finalization of the adoption occurs.¹⁴⁶

While there may be some changes in the process depending on whether the child has been made available for adoption at infancy or through the foster system at a later point in their life and depending on which agency the birth parents and adoptive parents use, the legal process is generally the same.¹⁴⁷

First, adoptive parents must be licensed to adopt.¹⁴⁸ To be cleared for adoption, the parents must complete a home study with a licensed agency.¹⁴⁹ Once they have received a home study, they may sign up with an adoption agency or pursue private adoption.¹⁵⁰ There is a separate licensing process for parents who start in the foster system and adopt through the foster system.¹⁵¹

A child may become available for adoption either at birth or later in life. When a child is placed for adoption at birth, often, the birth parents will have begun working with an adoption agency pre-birth and possibly already matched with an adoptive family.¹⁵² Once the child is born, the birth parents will terminate their parental rights, and the adoption agency will gain legal custody of the child.¹⁵³ The adoption agency will not grant guardianship to the adoptive family until the adoption is finalized.¹⁵⁴ The adoption agency will then begin the process of petitioning for the adoption to be finalized with

144. *See generally* Thorpe, *supra* note 142 (highlighting some of the differences between international adoption, domestic infant adoption, private adoption, and adoption through the foster system but showing that in each process there is a home-study requirement, matching process, and finalization process that includes post-placement supervision).

145. ADOPT.ORG, *supra* note 19.

146. *See generally* Thorpe, *supra* note 142 (highlighting some of the differences between international adoption, domestic infant adoption, private adoption, and adoption through the foster system but showing that in each process there is a home-study requirement, matching process, and finalization process that includes post-placement supervision).

147. *See generally id.*

148. An adoptive family may start communicating with an adoption agency or other adoption entity before being licensed, but they will not be allowed to be selected for placement or receive placement until the home study is finalized. ADOPTION NETWORK, *supra* note 14.

149. *Id.*

150. *See id.* An adoptive family may work with an adoption agency, law center, or facilitator. *See id.* Each of these entities plays a similar, though not identical, role in the adoption process. *See id.*

151. *See* CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 5–6.

152. *See The Domestic Adoption Process [Complete Guide to How Adoption Works]*, AM. ADOPTIONS, https://www.americanadoptions.com/adopt/the_domestic_adoption_process_step_by_step (last visited Mar. 1, 2022).

153. *See Adoption Finalization – How to Legally Complete Your Adoption*, CONSIDERING ADOPTION, <https://consideringadoption.com/adopting/legal-process-of-adoption/adoption-finalization-how-to-legally-complete-your-adoption/> (last visited Mar. 1, 2022).

154. *See* AM. ADOPTIONS, *supra* note 152.

the granting state.¹⁵⁵ The post-placement period also includes supervision and evaluation from an agency to determine the suitability of the placement to meet the long-term needs of the child.¹⁵⁶ This post-placement, pre-finalization period often lasts between one and eighteen months.¹⁵⁷

If a child becomes available for adoption later in life, it is either because the child entered the foster care system and all attempts at reunification failed¹⁵⁸ or because the birth parents voluntarily relinquished the child to an adoption agency or family member for adoption.¹⁵⁹ As with domestic infant adoption, if the child is placed with an adoption agency, the adoption agency will transfer guardianship to the adoptive family until the adoption is finalized.¹⁶⁰

Furthermore, adoption law is largely regulated at the state level—there are only a handful of federal adoption laws.¹⁶¹ State laws regulate who can adopt and who can be adopted.¹⁶² More specifically, state laws regulate:

- Licensing procedures and requirements for caseworkers;
- Licensing procedures and requirements for adoptive families, including home study requirements;
- The rights of birth parents, including the rights of unmarried biological fathers and putative fathers; and
- Interjurisdictional placement requirements.¹⁶³

Even when an adoption occurs across state lines, each state may have a hand in the laws that are applied to the process. For example, if a baby is born in State A and the family resides in State B, the adoptive family's home study will need to satisfy both State A and State B.¹⁶⁴ The home study will initially need to originally satisfy State B's requirements for authorization and then the home study will need to satisfy State A's requirements to authorize placement of the child.¹⁶⁵ Finalization of the adoption may occur under either

155. ADOPTION NETWORK, *supra* note 14.

156. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9.

157. ADOPTION NETWORK, *supra* note 14.

158. *See* Dodge, *supra* note 142 (“[T]he government’s primary goal in these instances is to reunite the children with their biological families.”).

159. *See* CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 18.

160. *See supra* notes 152–55 and accompanying text (detailing the domestic adoption process).

161. *Adoption by State*, AM. ADOPTIONS, <https://www.americanadoptions.com/adoption/adoption-by-state> (last visited Mar. 1, 2022). Federal adoption laws include: The Indian Child Welfare Act, Interstate Compact on Placement of Children, Multiethnic Placement Act, the Adoption and Safe Families Act of 1997, the Intercountry Adoption Act of 2000, and the Universal Accreditation Act. *Important Adoption Laws*, NAT’L COUNCIL FOR ADOPTION, <https://adoptioncouncil.org/resources-and-training/important-adoption-laws/> (last visited Mar. 1, 2022).

162. AM. ADOPTIONS, *supra* note 161.

163. NAT’L COUNCIL FOR ADOPTION, *supra* note 161.

164. *ICPC in Adoption: What It Is & How It Works*, AM. ADOPTIONS, <https://www.Americanadoption.com/adoption/icpc-adoption> (last visited Mar. 1, 2022).

165. *See id.*; *see also* CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 5.

states' laws, but not both, depending on how each state handles finalization.¹⁶⁶

A state-by-state system is certainly supported by federalism policies but creates opportunities in ensuring every child is guaranteed a home in which their whole person is recognized, supported, and cared for.

IV. THE HOME-STUDY PROCESS

The home study is one of the first intersections between the law and adoption during which the capacity of a hopeful adoptive family to meet the unique needs of a transracial adoptee should be evaluated.¹⁶⁷ It is also the first step in the adoption process in which the government can protect the interests of a transracial adoptee by refusing to authorize a home study for hopeful adoptive parents who are unwilling to serve and advocate for the needs of a transracially-adopted child.

In order to receive placement of a child and adopt, a family must prove to a social worker they are ready and willing to care for a child and receive a valid home study, focusing on the family's ability to meet the child's needs.¹⁶⁸ The purpose of the home-study process is to "educat[e] and prepar[e] the prospective parents . . . gather[] information about the family in order to better match the parent and child, and evaluat[e] the fitness of the adoptive family."¹⁶⁹ It is also to "assess whether the prospective adoptive parents have the ability to make a lifelong commitment to providing a nurturing home to the adopted child."¹⁷⁰

The home-study process requires each prospective parent to be evaluated as well as members of the household.¹⁷¹ Each state identifies whether the home study is to be conducted by a government department, a licensed child-placing agency, a licensed social worker, a licensed psychologist or therapist, or a different licensed or court-appointed individual.¹⁷²

A home study generally takes three to six months to complete and includes several in-home visits, health exams, proof of financial ability to adopt¹⁷³ and care for the child, background checks, and references.¹⁷⁴ The

166. See AM. ADOPTIONS, *supra* note 164; see also CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 5.

167. See CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 28, at 4.

168. See CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 2–3.

169. *Id.* at 1.

170. *Id.* at 3.

171. See *id.* These evaluations may require an evaluation of both parents together as well as both parents separately. See 016-15-13 ARK. CODE R. § 011 (LexisNexis 2021) (stating that Policy VIII-G pertains to adoptions but explains that the policies and procedures found in Policy VII, for foster care homes, also apply to adoptive homes).

172. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 2.

173. Adoption costs range from \$15,000 to \$50,000. Dodge, *supra* note 142.

174. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 5.

home-study process is also a way for the caseworker, and by extension the state, to get to know the family and determine that the family has the resources, acumen, and desire to care for a child.¹⁷⁵

Families seeking a home-study approval will likely be asked about their family background, education and employment history, current relationships including any prior marriages, daily lifestyle, religion or other belief system, support system, neighborhood, and readiness for adoption.¹⁷⁶ The home study concludes with a statement of approval or recommendation that may include the age range and number of children for which the family is approved.¹⁷⁷ Approval may be withheld if:

- “[A] member of the applicant’s household has been convicted of any crime that would put a child at risk of harm.”¹⁷⁸
- “The applicant’s income and/or financial skills are inadequate to provide for the family.”¹⁷⁹
- The home is determined “unsafe or inadequate to provide for the needs of” an additional child.¹⁸⁰
- “The applicant suffers from a physical or behavioral health condition” that would impede their ability to care for the child.¹⁸¹
- “The applicant falsifies or omits information on his or her adoption application.”¹⁸²

This section will evaluate how the needs of the child, and the capability of the prospective parents to meet those needs, are addressed at each stage of the home-study process.

A. The Home-Study Process: Objective Assessments

As noted above, the home-study process is intended to ensure the adoptive family can meet all needs of the child. Each state sets its own requirements for approval.¹⁸³ There are few limits on adoption. Those limits that are in place generally have a clear and obvious link to the ongoing physical safety of the child or the parent’s ability to meet the needs of the

175. Dodge, *supra* note 142 (“A good home study will have two parts: evaluation and education . . . Your case worker should be assessing your fitness to serve as an adoptive parent . . .”).

176. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 28, at 7.

177. *Id.* at 8.

178. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 3. This includes “criminal child abuse and neglect; domestic violence; crimes against a child, including child pornography; and crimes of violence, including rape, sexual assault, and homicide.” *Id.*

179. *Id.* at 4.

180. *Id.*

181. *Id.*

182. *Id.*

183. *See generally id.*

child. These include requirements that no “member of the applicant’s household has been convicted of any crime that would put a child at the risk of harm[.]”¹⁸⁴ or that the adoptive parents are “reputable persons.”¹⁸⁵ A family may be considered not reputable if there is evidence of a “criminal history, the person’s continuing pattern of deception, and employment instability.”¹⁸⁶

In most states, family members are evaluated on their financial capacity to care for the child, any mental or physical health concerns that could impact their ability to care for a child, if the applicant falsifies or omits information on their application, or if the home is otherwise found to be unsafe or inadequate.¹⁸⁷ Prospective adoptive parents are required to prove they have a stable income that is at a level sufficient to care for an additional child.¹⁸⁸

A minority of states additionally require that a prospective family complete training or orientation before their home study is approved or placement is granted.¹⁸⁹ In these states, the additional training required covers topics ranging from trauma-informed parenting, how to adjust to a new family member, and in a very limited number of states, culture-based training.¹⁹⁰

Several states require all home-study families, regardless of whether they will be going through adoption or becoming foster parents, to undergo general training. Louisiana requires twenty-one hours and Maryland requires twenty-seven hours of general training on issues related to growing your family through foster or adoption.¹⁹¹ Oregon’s rules require “evidence of

184. *Id.* at 3. This includes crimes such as “criminal child abuse and neglect; domestic violence . . . child pornography”; or human trafficking. *Id.*

185. 2 AM. JUR. *Adoption* § 17 (2014).

186. *Id.*

187. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 4. For example, Arkansas requires the bedrooms in a prospective home to have at least fifty square feet of space per occupant. *See* 016-15-13 ARK. CODE R. § 011 (LexisNexis 2021). Louisiana prohibits a home housing more than four children in a bedroom, requires each child to have their own bed, and requires that bedrooms are same sex unless the children are under six or part of the same biological sibling group. LA. ADMIN. CODE tit. 67, § 7315 (2022). Maine requires a home to have a working telephone. 10-148-019 ME. CODE R. add. § 7 (LexisNexis 2021), <https://www.maine.gov/sos/cec/rules/10/chaps10.htm#148>.

188. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 2.

189. *Id.* at 3. Those states are Alabama, Kansas, Louisiana, Maryland, Oregon, Utah, Virginia, West Virginia, and Wisconsin. *Id.* at 3, n.12.

190. N.H. CODE ADMIN. R. He-C § 6448.17 (LexisNexis 2022); OHIO ADMIN. CODE 5101:2-48-09 (2021), <https://codes.ohio.gov/ohio-administrative-code/rule-5101:2-48-09>; OR. ADMIN. R. 413-120-0246 (2022), https://oregon.public.law/rules/oar_413-120-0246; 22 VA. ADMIN. CODE § 40-211-60 (2019), <https://law.lis.virginia.gov/admincode/title22/agency40/chapter211/section60/>; WIS. STAT. § 48.84 (2021), <https://docs.legis.wisconsin.gov/statutes/statutes/48/xix/84/2g>.

191. DEP’T OF SOC. SERVS. OFF. OF CMTY. SERVS., FOSTER/ADOPTIVE PARENT INFORMATIONAL BOOKLET (2009), http://www.dss.state.la.us/assets/docs/searchable/ocs/fosterparenting/foster_adoptive_pare1.pdf; DEP’T OF HUM. RES. SOC. SERVS. ADMIN., POLICY DIRECTIVE SSA #13-16 10 (Mar. 29, 2013), <https://dhs.maryland.gov/documents/SSA%20Policy%20Directives/Child%20Welfare/SSA%2013-16%20Resource%20Parent%20Home%20Study%20Process.pdf>.

successful completion of a training program approved by the Department.”¹⁹² Wisconsin requires six of the twenty-five required training hours be “appropriate to the specific needs of the child to be adopted.”¹⁹³ Generally, the remaining hours should “cover the topics of attachment, trauma, neglect, and abuse.”¹⁹⁴

Only a few states require training that expressly discusses transracial or transcultural topics in parenting. Alabama and Kansas require adoptive parents attend TIPS-MAPP training: “Trauma-Informed Partnering for Safety and Permanence—Model Approach for Partnerships in Parenting.”¹⁹⁵ TIPS-MAPP is a program offered nationwide that educates prospective adoptive and foster parents on the “initial and long-term impacts of a new child in their family system.”¹⁹⁶ TIPS-MAPP covers the potential impact of adoption, “behavior management techniques, separation and loss issues and more.”¹⁹⁷ It is unclear in the description of Alabama’s TIPS-MAPP training whether transcultural or transracial topics are covered.¹⁹⁸ However, the Kansas training overview includes mention of “[t]he importance of supporting the child’s connections to his or her past and how vital it is to be sensitive to a child’s kin, culture, and community.”¹⁹⁹

New Hampshire requires eight hours of pre-adoptive training that covers the adoption process, the impact of prenatal trauma, grief and loss, and race and culture.²⁰⁰

Ohio requires training that covers a wide variety of topics related to adoption such as: the adoption approval process, effects of separation and related attachment issues, the dynamics of abuse on human growth and development, behavior management techniques, and training on “[c]ultural issues including cultural diversity training and an overview of the Multiethnic Placement Act.”²⁰¹ Ohio authorizes the licensing agency to waive

192. OR. ADMIN. R. 413-120-0246 (2022), https://oregon.public.law/rules/oar_413-120-0246. While it is unclear exactly what would be approved or not approved by the Department of Social Services in Oregon, there is an extensive list of ongoing education training programs available for foster parents after they complete a twenty-four-hour “Foundations Training.” *Resource Parent and Relative Resource Parent Training*, OREGON.GOV, <https://www.oregon.gov/dhs/children/fosterparent/Pages/training.aspx> (last visited Mar. 1, 2022).

193. WIS. STAT. § 48.84(2g) (2021), <https://docs.legis.wisconsin.gov/statutes/statutes/48/xix/84>.

194. *Id.* § 48.84(2).

195. *Adoption Checklist, A Guide for You & Your Family on the Adoption Process*, ALA. DEP’T OF HUM. RES., <https://dhr.alabama.gov/adoption/adoption-checklist/> (last visited Mar. 1, 2022); *Adoption Training and Support*, KVC KAN., <https://kansas.kvc.org/services/adoption/adoption-training-and-support/> (last visited Mar. 1, 2022).

196. *Trauma Informed Partnering for Safety and Permanence – Model Approach to Partnerships in Parenting (TIPS-MAPP)*, CHILD’S ALL., <https://www.anniec.org/wp-content/uploads/2015/02/TIPS-MAPP.pdf> (last visited Mar. 1, 2022).

197. ALA. DEP’T OF HUM. RES., *supra* note 195.

198. *Id.*

199. KVC KAN., *supra* note 195.

200. N.H. CODE ADMIN. R. He-C 6448.17 (LexisNexis 2022).

201. OHIO ADMIN. CODE 5101:2-48-09(O) (2021), <https://codes.ohio.gov/ohio-administrative-code/rule-5101:2-48-09>.

components of the training if it is determined “that the family has received training previously or the family has the skills to care for the needs of the child” without the training.²⁰² However, the cultural training may not be waived.²⁰³

Virginia requires preservice training that addresses core competencies, including “[c]ultural, spiritual, social, and economic similarities and differences between a child’s primary family and foster or adoptive family[,]” and “[p]romoting a child’s sense of identity, history, culture, and values.”²⁰⁴

It is clear at this point that cultural competency training or training on transracial issues is not a prominent or consistent component to the home-study process.²⁰⁵ This leaves white adoptive parents underequipped to raise a child of color and unable to provide a home that will fully satisfy the child’s unique needs as a person of color.

B. The Home-Study Process: Emotional Evaluations

Despite the high probability that an adoptee will face mental health obstacles related to attachment, trauma, identity, and self-worth—along with possibly healing from experiencing pre or postnatal trauma, abuse, neglect, and abandonment—adoptive families have not historically been tasked with supporting adoptees through the healing process. Today’s adoption laws address the role of the placement family in supporting children during the home-study evaluation.²⁰⁶ However, state laws evaluating the ability and dedication of the adoptive family to support the child vary from omitting the mental health of the child altogether, and focusing solely on physical health, to requiring the family to complete training on supporting an adoptee.²⁰⁷

Most home-study processes require evaluation of parents to meet the unique emotional needs of the child.²⁰⁸ This includes the adoptive family’s ability to identify and manage trauma-informed behaviors.²⁰⁹ However, this is not a universal requirement, and the ways in which the emotional

202. *Id.* 5101:2-48-09(P).

203. *Id.*

204. 22 VA. ADMIN. CODE § 40-211-60 (2019), <https://law.lis.virginia.gov/admincode/title22/agency40/chapter211/section60/>.

205. It should be noted that some agencies “require training for prospective adoptive parents prior to or during the home study process.” CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 28, at 3. These trainings focus on parenting adoptees and the unique characteristics associated with being an adoptee. *Id.* However, that does not mean that racial and ethnic trainings are required by agencies. *See generally id.*

206. *See id.*

207. *See supra* notes 189–204 and accompanying text (contrasting the training requirements of various states’ adoption laws).

208. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 28, at 3.

209. *Id.* at 4.

preparedness of a family is evaluated is not always sufficiently comprehensive.²¹⁰

C. Post-Placement

The legal system once again has an opportunity to observe the ability and willingness of the adoptive parents to support the transracial adoptee during the post-placement visits and reports once a child has been placed with an adoptive family.

The post-placement, or “supervisory,” period begins after the child has been placed with the adoptive family and lasts until the adoption is finalized.²¹¹ During this time, the adoption caseworker will visit the family “in an effort to determine the level of integration and adjustment of the adoptive child to his or her new family.”²¹² The adoption agency will also be actively petitioning for the adoption to be finalized, ensuring that all biological parental rights have been formally terminated and that the adoptive family is a suitable family for the child.²¹³ States are able to pass their own laws regarding supervisory requirements during the post-placement period.²¹⁴ During the post-placement period, a caseworker assigned to the case will visit the adoptive family and produce supervisory reports that are used by the adoption agency and the courts to determine whether granting the adoption of the child is suitable for both the adoptive family and the child.²¹⁵

Post-placement visits generally occur weekly or monthly for a specified period of time after the placement.²¹⁶ The period of time during which a social worker is visiting the home is called the supervisory period and can vary from a few weeks, to several months, to whenever the adoption is finalized.²¹⁷ The general purposes of the post-placement visits are to ensure that children are healthy and have their needs met and to update any part of the original home study, such as changes in medical conditions, income, or residential location.²¹⁸ The role of caseworker during the supervisory period “is to provide support, including assistance with parenting skills, to the adoptive

210. *Id.* at 1, 4, 7.

211. *See* CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 4.

212. *Id.*

213. *See* ADOPTION NETWORK, *supra* note 14.

214. *See id.*; CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 4.

215. *See* ADOPTION NETWORK, *supra* note 14; CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 4.

216. *See* ADOPTION NETWORK, *supra* note 14.

217. *Id.*; e.g., CAL. CODE REGS. tit. 22, § 35303 (1998) (“The duration of the supervisory period shall not be less than six months . . .”).

218. E.g., 14 DEL. ADMIN. CODE § 936-53.2 (2014), <https://regulations.delaware.gov/AdminCode/title14/900/936.pdf> (“A licensee shall create an update or addendum to a home study during an approval period if there is a change in family circumstance such as a marital separation, divorce, change of household composition, loss of job, serious illness, or death.”).

family.”²¹⁹ Caseworkers may also be charged with providing resources and assistance to aid with “integrating a child into a new family.”²²⁰ Regardless of the express tasks assigned to the caseworker, in most states post-placement visits end after a predetermined number of visits, a set period of time, or the adoption has been finalized.²²¹ The caseworker’s report is part of the record submitted to the court for the final petition for adoption.²²² In their report, the caseworker either recommends or opposes adoption.²²³

Taking it a step further, rather than simply providing information to the court on a basic update of the family, some states require the caseworker to provide the adoptive family with resources such as counseling services, school resources, and community liaisons.²²⁴

A majority of states require additional supervision and reporting on the status and adjustment of the child post-placement in addition to evaluating for changes in the status of the home—such as changed address or changed medical conditions.²²⁵ Montana requires caseworkers to assess the “adaptation by the prospective adoptive parent,” “the health and well-being of the child,” and “the level of incorporation by the child into the . . . home.”²²⁶ New Jersey requires a caseworker to submit a report that evaluates “[h]ow the presence of the child changed the lifestyle” and family relationships and, for children under five, how the parents are coping with the “demands of a crying infant and/or a child who ‘tests’ the placement.”²²⁷ If the family has adopted a child over the age of five, the caseworker must

219. 18-006 MISS. CODE R. § 107.1.1 (LexisNexis 2016), <https://www.sos.ms.gov/adminsearch/ACCode/00000323C.pdf>.

220. 14 DEL. ADMIN. CODE § 936-56.1.2 (2014), <https://regulations.delaware.gov/AdminCode/title14/900/936.pdf>.

221. ALA. CODE § 26-10A-19(e) (1990), <http://alisondb.legislature.state.al.us/alison/CodeOfAlabama/a/1975/Coatoc.htm> (“In every adoption proceeding . . . in the post-placement investigation[,] an investigator must observe the adoptee and interview the petitioner in their home as soon as possible after notice of the placement but in any event within 45 days after the placement.”); CAL. CODE REGS. tit. 22, § 35301 (2015), <https://cdss.ca.gov/ord/entres/getinfo/pdf/8Adman.pdf> (noting that the supervisory period shall “continue until a final decree of adoption is granted,” and it shall be no less than six months); FLA. STAT. § 63.122 (2008) (noting the supervisory period shall continue until finalization and must last at least ninety days); GA. COMP. R. & REGS. 290-9-2-.06(7) (2022) (requiring a minimum of two home visits after placement before the petition for adoption can be filed and quarterly visits until finalization is granted); 26 GUAM ADMIN. R. & REGS. § 1311 (2021) (requiring a supervisory period of at least one year).

222. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 4.

223. *Id.*

224. *See* CAL. CODE REGS. tit. 22, § 35305 (1995).

225. *E.g.*, MONT. CODE ANN. § 42-4-113 (1997), https://leg.mt.gov/bills/mca/title_0420/chapter_0040/part_0010/section_0130/0420-0040-0010-0130.html; N.J. ADMIN. CODE § 3A:50-5.8 (2019), https://www.nj.gov/dcf/policy_manuals/Regulations.PDF; N.M. STAT. ANN. § 32A-5-31 (1993); N.M. CODE R. § 8.26.3.32 (2001).

226. MONT. CODE ANN. § 42-4-113 (1997), https://leg.mt.gov/bills/mca/title_0420/chapter_0040/part_0010/section_0130/0420-0040-0010-0130.html.

227. N.J. ADMIN. CODE § 3A:50-5.8 (2019), https://www.nj.gov/dcf/policy_manuals/Regulations.PDF.

assess “[h]ow the family perceives the child’s sense of identity and the need to fill in gaps in the child’s history.”²²⁸

Other state laws are very vague, calling for caseworkers to supervise or observe the child and subsequently make “any necessary report[] that the court should have concerning the welfare of the child.”²²⁹ Others call for the caseworker to conduct interviews of the child (if the child is old enough) and for the adoptive parents to determine how each family member is adjusting.²³⁰ Statutorily, there is no guidance on how a caseworker should successfully evaluate the adjustment of each family member and the child’s place for adoption.²³¹

Finally, states have created guidelines for caseworkers to determine whether approval should be withheld. Overwhelmingly, these grounds are based on objective metrics such as a member of the household having a felony conviction on their record, significant financial issues, significant medical issues that could impact the adoptive parent’s ability to care for the child, or other situations that would put the child’s physical safety in danger.²³² There is a notable lack of statutory language to guide caseworkers on determining when there are significant adjustment concerns or integration issues that should preclude a positive recommendation for adoption.²³³ Although caseworkers are tasked with analyzing the adjustment of the child and, in some states, the family’s ability to identify and care for the specific needs of the child based on their racial identity, there is no language directing caseworkers to refrain from recommending adoption if they perceive the adoptive family will not be able to meet the specific needs of the child based on their racial identity.²³⁴ Ambiguous and vague language continues to put the power in the hands of caseworkers.

To add a layer to the analysis, nationwide caseworkers tasked with serving adoptees are predominantly white and are members of the middle class.²³⁵ This matters because transracial adoptees are uniquely posited to

228. *Id.*

229. TENN. CODE ANN. § 36-1-116 (2019).

230. *E.g.*, 40 TEX. ADMIN. CODE §§ 735.403, .411 (2018) (Dep’t. of Fam. & Protective Servs., Whom must I interview during the post-placement portion of an adoption evaluation?; What information must be included in the post-placement portion of an adoption evaluation report?).

231. See CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 15, at 2.

232. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 3–4.

233. See *id.* Maine’s regulations do note that whether a caseworker recommends adoption shall be based on “[t]he physical and emotional adjustment and development of the child” and “[t]he capacity of the adoptive parent(s) to assume the role of parent with respect to the needs of the child.” 10-148-019A ME. CODE R. § 1 (LexisNexis 2021), <https://www.maine.gov/sos/cec/rules/10/chaps10.htm#148>.

234. See CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 9, at 3–4.

235. “58.4% of [s]ocial workers are [w]hite (Non-Hispanic).” *Social Workers*, DATA USA, <https://datausa.io/profile/soc/social-workers> (last visited Mar. 1, 2022). Black social workers only make up 20% of the profession nationwide. *Id.* In July 2021, the middle class was defined as “earning between two-thirds and twice the median American household income, which in 2019 was \$68,703 That puts the base salary to be in the middle class just shy of \$46,000.” Nicolas Vega, *Use This Calculator to Find Out if You Qualify as Middle Class*, CNBC: MAKE IT (July 21, 2021, 3:49 PM), <https://www.cnbc.com>

discuss issues surrounding transracial adoption.²³⁶ Their lived experience cannot be matched, even through the lengthiest trainings available to caseworkers and adoptive parents.²³⁷ Some social workers have noted and discussed an “empathy gap” in their field between white social workers and people of color.²³⁸ Social workers managing cases involving children of color may view the scenario, and specifically the white adoptive parents, through lenses colored by perspectives of members of both racial classes.²³⁹ Despite a code of conduct requiring cultural competence, a lack of diversity and other barriers within social work may continue to hinder the ability for adoptive parents to be fully equipped to raise children of a different racial identity.²⁴⁰

V. JUDICIAL DETERMINATION OF ADOPTION

At the end of the post-placement hearing, the judge will consider all the evidence from the home-study reports, the post-placement reports, and the adoptive agency to conclude whether the placement with the adoptive family is in the best interest of the child.²⁴¹ During this process, the judge can use their discretion to emphasize or deemphasize any information in the report to come to their final determination.

A. “Best Interests of the Child” Analysis

1. Overview

The best interest analysis tasks the courts with determining whether the hopeful adoptive family has met a requisite level of preparedness and willingness to serve the needs of the child and they are truly in the best interest of the child.²⁴² The term best interest was first coined by Judge Cardozo in 1925 and still holds up today in the courts in child custody

/2021/07/21/middle-class-calculator.html. The average social worker salary was \$45,953 for female social workers and \$47,721 for male social workers in 2017. DATA USA, *supra*.

236. Rachel Hatzipanagos, *What a Black Adoptee Wishes Her White Parents Had Told Her*, WASH. POST (Apr. 16, 2021, 1:58 PM), <https://www.washingtonpost.com/nation/2021/04/16/what-black-adoptee-wishes-her-white-parents-had-told-her/>.

237. See Terence Fitzgerald, *The Empathy Gap Between White Social Workers and Clients of Color*, USC (Feb. 13, 2018), <https://dworakpeck.usc.edu/news/the-empathy-gap-between-white-social-workers-and-clients-of-color>.

238. *Id.*

239. See *id.*; Eric Deggans, ‘Not Racist’ is Not Enough: Putting in the Work to be Anti-Racist, NPR (Aug. 25, 2020), <https://www.npr.org/2020/08/24/905515398/not-racist-is-not-enough-putting-in-the-work-to-be-anti-racist> (quoting Anneliese A. Singh) (“Everyone who lives in the United States kind of learns some form of anti-Black racism.”).

240. Stephanie Bosco-Ruggiero, *Barriers to Cultural Competence in Social Work*, SOC. WORK DEGREE CTR., <https://www.socialworkdegreecenter.com/study/cultural-competence-barriers/> (last visited Mar. 1, 2022).

241. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 15, at 2–3.

242. *Id.*

determinations.²⁴³ Briefly put, determining the best interest of the child generally refers to “the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child.”²⁴⁴ In an adoption finalization hearing, the judge will determine, in part, whether finalizing the placement in the adoptive home is in the best interests of the child.²⁴⁵ This decision is based on the home study, post-placement reports, and final recommendation of the adoption agency, along with any other information the judge wants to consider.²⁴⁶

A review of the law shows there is no widely agreed upon method or definition for determining the best interests of the child. While all fifty states, the District of Columbia, American Samoa, Guam, and Puerto Rico have statutes in place requiring the courts to conduct an analysis to determine the living situation that is in the best interest of the child, the definition of best interests noticeably varies in how the decision should be made, leaving ample room for key considerations based upon racial and ethnic differences within a family to be disregarded or ignored.²⁴⁷ Regardless, one thing is true: Every state agrees that the determination of what situation is in the best interest of the child is the one that must prevail.²⁴⁸

Laws vary state by state on what conditions must be weighed to determine whether the adoptive home is in the best interest of the child. While all state statutes highlight the need for safety, physical security, and health, some states look further at serving the whole child, including their mental and emotional health.²⁴⁹ Unfortunately, the mental and emotional health, and more specifically mental and emotional health as it relates to the racial or ethnic identity of the child, are not a required consideration in the analysis in every state.²⁵⁰ This leaves a gap in the ability of the judicial system to ensure that every child is placed in a home ready and willing to care for their whole selves—their physical, mental, and emotional selves—while recognizing the distinct experiences of people of color.

2. *Safety of the Child*

A majority of states seek above all a situation in which the child is physically safe. Alaska’s first requirement for the resolution is that “[t]he

243. Schetky, *supra* note 54, at 321.

244. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 15, at 2.

245. *Id.* at 2–3.

246. *See id.*

247. *See* discussion *infra* Sections V.A.2–3 (explaining inquiries undertaken in the best interests of the child analysis).

248. *See* CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 15, at 4–28.

249. *See id.*

250. *See* discussion *infra* Section V.A.3 (highlighting the various states’ statutory requirements regarding adoptees’ mental and emotional health).

child should be placed in a safe, secure, and stable environment.”²⁵¹ Georgia more clearly defines this requirement by stating the analysis should consider “[t]he physical safety and welfare of the child, including food, shelter, health, and clothing.”²⁵² Illinois includes the same wording.²⁵³ Georgia goes on to highlight the physical safety of the child, “rather than superficial or material factors,” driving home the analysis’s emphasis on physical safety.²⁵⁴ In discussing how the statute can be construed by the decisionmaker, Kansas, Louisiana, Maine, Massachusetts, Montana, Nebraska, New York, North Carolina, Washington, and Wyoming include similarly pointed language by calling safety the “paramount” concern.²⁵⁵ Interestingly, where the aforementioned states cite safety as the paramount concern in determining the best interests of the child, New Jersey separates the two.²⁵⁶ New Jersey instead directs “the safety of children shall be of paramount concern and the best interests of children shall be a primary consideration.”²⁵⁷ Likewise, Texas’s statutes suggest safety and the best interest analysis could diverge by stating a “safe environment is presumed to be in the child’s best interest.”²⁵⁸

Of course, this emphasis on safety and security is logical. It is widely understood that physical safety and security are top needs for human development.²⁵⁹ And while the choice of whether to remove the child from their familial home and where to place them is driven by concerns of the caregiver’s ability to provide basic human needs such as clothing, food, shelter, and water—as well as safety and security—this emphasis limits the factors that are vital to a child’s healthy development. In the next section, this Article will examine how this analysis supports the needs of belongingness and love, esteem, and self-actualization.²⁶⁰

251. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 15, at 4 (citing ALASKA STAT. §§ 47.05.065(4)–(5) (2010)).

252. *Id.* at 8–9 (citing GA. CODE ANN. §§ 15-11-26(1)–(9) (2014)).

253. *Id.* at 10–11 (citing 705 ILL. COMP. STAT. § 405/1-3(4.05)).

254. *Id.* at 8–9 (citing GA. CODE ANN. §§ 15-11-26(1)–(9) (2014)).

255. *Id.* at 11–12 (citing KAN. STAT. ANN. § 38-2201(b)); *id.* at 12 (first citing LA. CHILD. CODE art. 601 (2019); and then citing LA. CHILD. CODE art. 675(A) (2019)); *id.* at 13 (citing ME. STAT. tit. 22, § 4003 (LexisNexis 2021)); *id.* at 13–14 (citing MASS. GEN. LAWS ch. 119, § 1 (2006)); *id.* at 15–16 (citing MONT. CODE ANN. § 41-3-101 (1997)); *id.* at 16 (citing NEB. REV. STAT. § 43-533 (2018)); *id.* at 18–19 (citing N.Y. SOC. SERV. LAW § 384-b(1) (McKinney 2021)); *id.* at 19 (citing N.C. GEN. STAT. § 7B-507 (2021)); *id.* at 27 (citing WASH. REV. CODE § 13.34.020 (2021)); *id.* at 28 (citing WYO. STAT. ANN. § 14-3-201 (2017)).

256. CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 15, at 18 (citing N.J. STAT. ANN. §§ 30:4C-1(a)–(b), (f) (2021)).

257. *Id.* (citing N.J. STAT. ANN. §§ 30:4C-1(a)–(b), (f) (2021)).

258. *Id.* at 25 (citing TEX. FAM. CODE ANN. §§ 263.307(a), (c)).

259. *See, e.g.*, Dr. Saul McLeod, *Maslow’s Hierarchy of Needs*, SIMPLY PSYCH., <https://www.simplypsychology.org/maslow.html> (last updated Dec. 29, 2020).

260. *See, e.g., id.*

3. Emotional Health and Welfare—Serving the Whole Child

Following the emphasis on the child's physical safety, many state statutes note the importance of developing a placement plan that supports the child's "physical, mental, and emotional health."²⁶¹ The intent to protect the child's mental and emotional health is phrased in a number of different ways, ranging from acknowledging the child's "individual needs,"²⁶² raising the child to be a productive member of society,²⁶³ or calling for a situation that supports the child's psychological health.²⁶⁴

How states define and describe caring for the child's emotional health varies. This language simultaneously positively highlights the importance of recognizing more than physical safety and security, while also indicating that there are coexisting and competing perspectives on serving children's mental and emotional health.²⁶⁵ There are several states that use simple language, calling for a best interest analysis that simply examines the "mental and physical health" or "physical, mental[,] and emotional needs" of the child and others involved.²⁶⁶

Other states define or add conditions for consideration to help emphasize and shape how a family should serve the emotional health of the child. For example, Alaska emphasizes the need for "psychological attachment between the adult caregiver and the child."²⁶⁷ Similarly, California strives to provide an environment that promotes "normal childhood experiences," is nurturing, and meets the child's individual needs.²⁶⁸

261. See, e.g., CHILD WELFARE INFO. GATEWAY ET AL., *supra* note 15, at 7 (citing D.C. CODE ANN. § 16-2353).

262. *Id.* at 5 (citing CAL. WELF. & INST. CODE § 16000(a) (West 2011)).

263. *Id.* (citing AM. SAMOA CODE ANN. § 45.0102 (2004)).

264. *Id.* at 4 (citing ALASKA STAT. §§ 47.05.065(4)–(5) (2010)).

265. See, e.g., *id.*

266. CONN. GEN. STAT. ANN. § 45a-719 (West 2011) ("Best interests of the child shall include, but not be limited to, . . . the psychological and medical needs of the child."); DEL. CODE ANN. Tit. 13, § 722 (2009) ("The mental and physical health of all individuals involved."); FLA. STAT. § 39.810 (2012) ("The present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child."); KAN. STAT. ANN. § 38-2201(b), https://www.ksrevisor.org/statutes/chapters/ch38/038_022_0001.html ("[M]ake the ongoing physical, mental, and emotional needs of the child decisive considerations in proceedings under this code."); N.M. STAT. ANN. § 32A-1-3 (1978) ("[F]irst[,] to provide for the care, protection and wholesome mental and physical development of children . . ."); W. VA. CODE § 49-1-105 ("Assure each child care, safety[,] and guidance."; "Serve the mental and physical welfare of the child[.]").

267. ALASKA STAT. § 47.05.065(4)(D) (2010) ("[E]very effort should be made to encourage psychological attachment between the adult caregiver and the child[.]").

268. CAL. WELF. & INST. CODE § 16000(a) (West 2011) ("It is further the intent of the Legislature to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive [] family setting promoting normal childhood experiences that is suited to meet the child's or youth's individual needs . . ."); *id.* § 16000(b) ("It is further the intent of the Legislature that all children live with a committed, permanent, and nurturing family.").

Only a handful of states recognize a cultural or ethnic component to mental and emotional health. Hawaii considers the “religious, cultural, and ethnic values of the child’s legal custodian” to help determine whether those values align with the best interests of the child.²⁶⁹ Georgia and Illinois take a strong position towards considering the child’s race, religion, and cultural values along with the child’s sense of attachment to the caregiving parents.²⁷⁰ Illinois strives to remove societal pressures on adoptees to feel grateful in precarious homes by also asking whether, in the adoptive home, the child “actually feels love, attachment, and a sense of being valued,” noting the opposite scenario would be where only the adults expect the child to “feel[] love, attachment, and a sense of being valued.”²⁷¹

VI. MEETING THE BEST INTERESTS OF THE WHOLE CHILD

By varying how statutes frame and define the best interests of the child, states have failed to ensure that adoptees are guaranteed to be placed in a home equipped to serve their whole selves. The inconsistent use of terms leads to unclear requirements and definitions and results in inconsistent notions of what it means for a child to be raised in a healthy environment, in a nurturing environment, and in an environment that allows them to feel safe and secure. Specifically, the application of these terms to transracial or transethnic placements is uncertain. In most general terms, the notions of what it means for an individual to be emotionally healthy, mentally healthy,

269. HAW. REV. STAT. § 587A-2 (2013), https://www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0587A/HRS_0587A-0002.htm (“Full and careful consideration shall be given to the religious, cultural, and ethnic values of the child’s legal custodian when service plans are being discussed and formulated.”).

270. GA. CODE ANN. § 15-11-26(2) (2014) (“The love, affection, bonding, and emotional ties existing between [the] child and each parent or person available to care for [the] child[.]”); *id.* § 15-11-26(7) (“The home environment of each parent or person available to care for [the] child considering the promotion of [the] child’s nurturance and safety rather than superficial or material factors[.]”); *id.* § 15-11-26(8) (“The stability of the family unit and the presence or absence of support systems within the community to benefit [the] child.”); *id.* § 15-11-26(9) (“The mental and physical health of all individuals involved[.]”); *id.* § 15-11-26(11) (“[The] child’s community ties, including church, school, and friends[.]”); *id.* § 15-11-26(12) (“[The] child’s background and ties, including familial, cultural, and religious[.]”); 705 ILL. COMP. STAT. § 405/1-3(4.05)(b) (“[T]he development of the child’s identity[.]”); *id.* § 405/1-3(4.05)(c) (“[T]he child’s background and ties, including familiar, cultural, and religious[.]”); *id.* § 405/1-3(4.05)(d).

[T]he child’s sense of attachments, including:

- (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel love, attachment, and a sense of being valued);
- (ii) the child’s sense of security;
- (iii) the child’s sense of familiarity;
- (iv) continuity of affection for the child;
- (v) the least disruptive placement alternative for the child.

Id.; § 405/1-3(4.05)(f) (“The child’s community ties, including church, school, and friends[.]”).

271. 705 ILL. COMP. STAT. ANN. § 405/1-3(4.05)(d)(i) (West 2007).

nurtured, have strong emotional ties to their family, and feel secure does not also connote the nuances of interracial relationships. Indeed, even the definitions of these terms do not begin to address the potential impact of interracial relationships.

Mental health may be seen as a more encompassing term than emotional or psychological health.²⁷² According to the Department of Health and Human Services, “[m]ental health includes our emotional, psychological, and social well-being. It affects how we think, feel, and act.”²⁷³ As individuals grow and develop, positive mental health may help them “[r]ealize their full potential,” cope with stress, and “[m]ake meaningful contributions to their communities.”²⁷⁴ Emotional health is defined by the National Institutes of Health as “the ability to successfully handle life’s stresses and adapt to change and difficult times.”²⁷⁵ Mental health may be affected by biological factors, “[l]ife experiences, such as trauma and abuse,” a family history of mental health problems, discrimination, rapid change, and social exclusion.²⁷⁶ Furthermore, “[a]n environment that respects and protects basic civil, political, socio-economic and cultural rights is fundamental to mental health.”²⁷⁷ When considering and creating national mental health policies, the World Health Organization calls on nation-states to consider issues specific to vulnerable populations, which include members of minority communities.²⁷⁸

Other terms commonly used in state legislation include meeting the child’s individual needs, identifying a nurturing home, and providing guidance for the development of the child.²⁷⁹ Each of these terms and phrases arguably include concern for developing a child’s sense of racial identity. For a family to truly tend to a child’s individual needs, this would include attending to the needs of a child of color as they pertain to developing a healthy racial identity.²⁸⁰ Statutes using terms like nurture, guidance, and development similarly require the need for a placement situation to help a

272. See *What is Mental Health?*, MENTALHEALTH.GOV, <https://www.mentalhealth.gov/basics/What-is-mental-health> (last updated Feb. 28, 2022).

273. *Id.*

274. *Id.*

275. *Emotional Wellness Toolkit*, NAT’L INSTS. OF HEALTH (Aug. 26, 2021), <https://www.nih.gov/health-information/emotional-wellness-toolkit>.

276. MENTALHEALTH.GOV, *supra* note 272; *Mental Health: Strengthening Our Response*, WORLD HEALTH ORG. (Mar. 30, 2018), <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>.

277. WORLD HEALTH ORG., *supra* note 276.

278. *Id.*

279. See *supra* Section V.A.3 (revising the Best Interest of the Child analysis to meet the specific needs of transracial adoptees).

280. See *supra* Section V.A.3 (revising the Best Interest of the Child analysis to meet the specific needs of transracial adoptees).

child grow and develop with a positive sense of self, including a positive racial identity.²⁸¹

As is shown above, a small number of states go one step further and call on the courts to consider the child's ability to maintain or build strong community ties if placed in a certain home.²⁸² A community of people from the same racial group is vital for children of color being raised in a white home.²⁸³ Courts and state legislatures should expect white families to not just expose their children to diversity and other cultures, but rather, white adoptive and foster families should be required to have a community of people of color into which the child can plug to develop a healthy racial identity through relationships with people who look like them.²⁸⁴ This can come from a church, school, or other extracurricular group, but it cannot just be one group or one activity that is diverse for the child.²⁸⁵ It is not enough to develop a positive racial identity if the only exposure a child of color has to members of their same racial group happens in only one setting.²⁸⁶ Rather, continual integration with diverse communities is required to best serve the positive racial identity development of a child of color.²⁸⁷

Illinois's statute makes some of the strongest arguments in favor of promoting positive racial identity development.²⁸⁸ Not only does Illinois call on the courts to consider community ties and integration in an adoptive or foster home, but also it narrows its language from sweeping terms like nurturing and guidance to calling on an evaluation of whether the child actually feels safe, secure, and loved.²⁸⁹ Illinois additionally calls on the courts to find a suitable placement that will ensure a healthy development of the child and a home in which the child feels affection.²⁹⁰ These are all incredibly important elements to a safe and loving home that will promote emotional health and a positive sense of identity. When coupled with required ongoing training on race issues for foster and adoptive parents, this statute has the potential to transform into a statute that will protect children of color from being discriminated against within their own home.

281. *See supra* Section V.A.3 (revising the Best Interest of the Child analysis to meet the specific needs of transracial adoptees).

282. *See supra* Section V.A.3 (revising the Best Interest of the Child analysis to meet the specific needs of transracial adoptees).

283. *See discussion supra* Section II.B (discussing the legal history and realized implications of transracial adoption on adoptees).

284. *See discussion supra* Section II.B (discussing the legal history and realized implications of transracial adoption on adoptees).

285. *See discussion supra* Section II.B (discussing the legal history and realized implications of transracial adoption on adoptees).

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287. *See discussion supra* Section II.B (discussing the legal history and realized implications of transracial adoption on adoptees).

288. 705 ILL. COMP. STAT. § 405/1-3(4.05) (West 2007).

289. *See id.*

290. *See id.*

Developing a positive racial identity is undoubtedly within the best interests of the child.²⁹¹ What is clear through a review of state statutes is that no state explicitly acknowledges the role of race as one that can affect a child's mental and emotional welfare throughout their development (although Illinois' statute certainly comes the closest).

VII. REFORM IN THE LEGAL ADOPTION FRAMEWORK

The legal system must consistently address the unique needs of transracial adoptees throughout the adoption process. As has been noted, the adoption framework as it exists largely ignores the experiences of transracial adoptees, yet these narratives are anything but silent.²⁹² Hopeful adoptive parents should be required to undergo cultural competency training, evaluated on their willingness to understand the racially and culturally-informed experiences of the adoptees placed in their care, and show that through training, knowledge, and willingness to learn, they can provide a permanent household that will serve the best interests of the whole child.

A key intersection between the law and adoption is for all states to enact cultural competency training requirements of potential adoptive parents *before* their home study is approved. There is pervasive and noteworthy concern surrounding whether transracial adoption is truly in the best interests of a child whose racial identity aligns with a minority racial group.²⁹³ Simultaneously, there is a significant societal interest in placing children in permanent homes in which they will gain a loving family.²⁹⁴ These seemingly competing policy interests can both be addressed through increased training of white adoptive parents before their home study is approved.

Further, consistent language requiring cultural competency training nationwide will help to normalize the mental health journeys of transracial adoptees. Numerous transracial adoptees who were adopted as children in the late 20th century are now sharing their stories, even when they had well-meaning and loving parents, of when they lacked support and had to navigate racism, growing into their racial identity, and learning to love themselves on their own.²⁹⁵ Through uniform language addressing the unique experience of transracial adoptees, our society can normalize supporting

291. See discussion *supra* Section II.B (discussing the legal history and realized implications of transracial adoption on adoptees).

292. See discussions Parts IV and V (discussing the requirements for adoptive parents and shortcomings in those analyses).

293. Callahan, *supra* note 98 (“[A] number of people question whether it is in the best interests of children of color to allow them to be adopted by white parents.”).

294. *Id.*

295. *E.g.*, JS Lee, *supra* note 1; Hatzipanagos, *supra* note 236; Stern, *supra* note 4.

adoptees, both transracial and non-transracial, through their mental health journeys and more fully realize the intricacies of adoption.

Next, social workers should be equipped to conduct home study reports that address not just physical safety factors in the home such as whether a family member has been convicted of a violent crime or whether there are a sufficient number of fire extinguishers, but also evaluate the willingness and preparedness of the hopeful adoptive family to serve the race-based needs of a transracial adoptee. By hinging the home study authorization for placement on both required training and willingness to address race and culture-based needs, hopeful adoptive families will have a heightened standard they must meet to prepare their house for a transracial adoptee. This, in turn, will create a system that is equipped to serve the historically underserved transracial adoptee community.

Last, the court should uniformly consider the mental and emotional health and development opportunities of a child being considered for placement as an integral part of the best interest analysis. While physical health and safety is important, it should not come at the total expense of mental health and wellness. Transracial adoptees should not be placed in homes that are affluent and full of economic opportunity but also void of diversity, cultural connection, and possibly full of prejudice.

VIII. CONCLUSION

In all, the legal system has historically overemphasized physical health and safety of adoptees, causing mental and emotional health and development to be largely ignored. By doing so, transracial adoptees have been placed in homes in which their full selves were not supported and developed. Reforms within the adoption framework are necessary to serve the transracial adoptee community and ensure all adoptees are placed in homes with adoptive families willing and ready to meet the unique needs associated with the adoptees' identity as a member of a specific racial group. These reforms should occur during the home-study process and during the finalization hearing, allowing caseworkers and judges alike to evaluate the fitness of hopeful adoptive families to provide diversity, cultural connection, and attack any personal biases they may have in order to create a home that is safe, loving, and truly best suited to allow the child to grow up and develop into the fullest version of themselves.