



**To:** Texas Judges Who Hear CPS Cases

**From:** The Honorable Robin Sage and The Honorable Dean Rucker,  
Jurists in Residence, Supreme Court Children's Commission

**Date:** July 21, 2014

**RE:** Unaccompanied Alien Children

By now many of you are aware of the issue of Unaccompanied Alien Children (UAC) crossing the border of South Texas, and many judges are wondering what impact this anticipated surge will have on our courts. The Children's Commission, in collaboration with the Supreme Court of Texas, Office of Court Administration, Texas Department of Family and Protective Services, Casey Family Programs, and seasoned State District Court judges, developed this JIR letter with the intent of providing a brief overview of important legal issues relating to UAC and what a judge in your position might encounter. This area of the law is complex and there are presently few established procedures and practices.

**Q: What is a UAC and is the term synonymous with a refugee?**

A: UAC are persons under the age of 18 who have no lawful immigration status in the United States, and for whom there is no parent or legal guardian in the United States available to provide care and physical custody.<sup>1</sup> UAC are not refugees despite the fact that the UAC crossing the border are often referred to as such. "Refugee" is an official, legal immigration status<sup>2</sup> that is granted by U.S. Citizenship and Immigration Services. Only Citizenship and Immigration Services can declare a UAC as a refugee or a victim of human trafficking. State courts do not have this authority.

**Q: How does the federal government process UAC?**

A: By law, the U.S. Administration of Children and Families, a division of the Department of Health and Human Services, must provide for the custody and care of UAC.<sup>3</sup> UAC detained by the Department of Homeland Security Border Patrol are transferred to the Administration of Children and Families Office of Refugee Resettlement. While deportation proceedings are pending, the Office of Refugee Resettlement must place UAC in the least restrictive setting possible.<sup>4</sup>

<sup>1</sup> 6 U.S.C. § 279(g)(2).

<sup>2</sup> 8 U.S.C. § 1101(a)(42)(A).

<sup>3</sup> 6 U.S.C. § 279(a).

<sup>4</sup> 8 U.S.C. § 1232(c)(2)(A).

The Office of Refugee Resettlement currently places UAC in one of two ways:

1) with an individual (parent, relative, or friend) who applies to the Office of Refugee Resettlement to sponsor the UAC. However, this sponsorship does not confer on the individual the right to make decisions such as enrolling in school or obtaining medical care for the UAC; or

2) in a federally operated facility that is located on federally owned or leased property or a facility that is licensed by the state. For example, UAC can be placed with state licensed General Residential Operations such as Baptist Child and Home Ministries or in a facility owned or leased by the federal government and operated by persons employed by the federal government. An example of the latter is Lackland Air Force Base in San Antonio.

**Q: How might these cases appear in my courtroom?**

A: Circumstances involving UAC that may affect Texas courts include:

1) Child Protective Services (CPS) investigates an allegation of abuse or neglect by a person who has been given sponsorship of a UAC by the Office of Refugee Resettlement. If the allegations are confirmed, CPS might file a Suit Affecting the Parent Child Relationship (SAPCR) seeking custody of the UAC and place that child in a state-regulated placement, similar to other CPS legal proceedings. The UAC would then be in state foster care and provided placement and services in the same manner as other children in state foster care;

2) Some state courts have been asked on behalf of UAC under the sponsorship of an individual or placed in a facility funded or under contract with the federal government to make findings that the UAC has been abused, neglected, or abandoned by one or both parents and that reunification is not in the UAC's best interest. These are predicate findings to establish Special Immigrant Juvenile Status (SIJS), which allows for certain UAC who have been abused, neglected or abandoned to obtain lawful permanent residency.<sup>5</sup>

**Q: What relief might be sought in my court on behalf of UAC?**

A: State courts are most likely to see individuals or organizations filing for legal relief to begin the process of establishing Special Immigrant Juvenile Status for the UAC or perhaps even conservatorship.

Generally speaking, to be eligible to apply for Special Immigrant Juvenile Status through Citizenship and Immigration Services, a UAC must first obtain an order from a state court with juvenile jurisdiction, signed by the judge that finds:

1) the juvenile is declared dependent on the court or placed in the custody of an agency or department of a state or an individual or entity appointed by the state or a juvenile court located in the United States;

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<sup>5</sup> 8 U.S.C. § 1101(a)(27)(J).

2) reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis found under state law; and

3) it would not be in the best interest of the juvenile to be returned to the juvenile or parents' previous country of nationality or country of last habitual residence.<sup>6</sup>

**Q: What is the effect of my court making these predicate findings?**

A: Conducting a hearing and making the predicate findings necessary to allow a UAC to file for Special Immigrant Juvenile Status establishes your court as the court of continuing jurisdiction with regard to the UAC,<sup>7</sup> but it does not necessarily create a duty to oversee or conduct dependency hearings similar to those required in child welfare cases filed pursuant to Texas Family Code Title 5, Subtitle E. State court jurisdiction will remain in effect until Immigration and Citizenship Services decides the SIJS application or until the UAC turns 18.

According to federal law, Citizenship and Immigration Services must consent to the grant of SIJS classification, which involves a determination that the state court's order was sought primarily for protection from abuse, neglect or abandonment, rather than primarily to obtain an immigration benefit.<sup>8</sup> Court orders should include the factual basis for the findings on parental reunification, dependency/custody, and best interests.<sup>9</sup>

**Q: How can I help?**

A: The Office of Court Administration (OCA) has created a form to collect information on the number of cases appearing on Texas court dockets and in which jurisdictions. Please inform OCA when cases involving UAC appear on your docket outside of your CPS cases; it would be extremely helpful as it helps our state allocate judicial resources. Please link to the form here: <http://www.txcourts.gov/oqa/pdf/Report-Form.pdf>. Instructions for completing and submitting the form are included on the form. You can also access additional resources on the Children's Commission website by linking here: <http://texaschildrenscommission.gov/unaccompanied-minor-information-and-resources.aspx>

<sup>6</sup> 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11.

<sup>7</sup> Tex. Family Code § 155.001(a).

<sup>8</sup> See H.R. Rep. No. 105-405, at 130 (1997), available at <http://www.gpo.gov/fdsys/pkg/CRPT-105hrpt405/pdf/CRPT-105hrpt405.pdf> (requiring the Attorney General to determine that neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect) (last visited July 21, 2014); See also, Proposed Rules 76 Federal Register 54978, 54981, <http://www.gpo.gov/fdsys/pkg/FR-2011-09-06/pdf/FR-2011-09-06.pdf> (last visited July 21, 2014); U.S. Citizenship and Immigration Services, *Special Immigrant Juvenile Status: Information for Juvenile Courts*, available at [http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information\\_for\\_Juvenile\\_Courts\\_-FINAL.pdf](http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information_for_Juvenile_Courts_-FINAL.pdf) ("for a child to be eligible for SIJ status, USCIS must determine that the juvenile court order was sought primarily to obtain relief from abuse, neglect or abandonment, rather than primarily to obtain an immigration benefit") (last visited July 21, 2014).

<sup>9</sup> *Id.*