



HQRAIO 120/12a

## Memorandum

TO: All Asylum Office Staff

FROM: John Lafferty  
Chief, Asylum Division

SUBJECT: Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children and Implementation of the J.O.P. Settlement Agreement

### I. Purpose

This memorandum provides updated procedures to U.S. Citizenship and Immigration Services (USCIS) Asylum Division personnel on determining jurisdiction over asylum applications filed by unaccompanied alien children<sup>1</sup> (UACs) under the initial jurisdiction provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457. This memorandum implements [the settlement agreement in \*J.O.P. v. U.S. Dept. of Homeland Security et al.\*, Civil Action 8:19-cv-01944 \(D. Md.\) \(J.O.P. settlement agreement\)](#), effective on November 25, 2024.

The procedures contained in this memorandum supersede in part<sup>2</sup> procedural guidance on determining jurisdiction over asylum applications filed by UACs under the initial jurisdiction provision of the TVPRA

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<sup>1</sup> Section 462(g)(2) of the Homeland Security Act of 2002, codified at 6 U.S.C. § 279(g)(2), provides the UAC definition:

the term “unaccompanied alien child” means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

<sup>2</sup> The guidance on determining age and unaccompanied status in Parts III.C.1 and 2 of the 2009 USCIS memorandum remains in effect for those cases in which asylum officers must make their own UAC determinations.

issued in 2009 and 2013 (hereinafter 2009 USCIS memorandum and 2013 USCIS memorandum, respectively). These procedures are effective on February 24, 2025, and apply to any USCIS decision issued on or after that date. Headquarters will soon release a recorded training on these procedures. Asylum officers and supervisory asylum officers assigned to the affirmative caseload must watch the training before adjudicating any UAC asylum application on or after February 24, 2025.

## II. Background

USCIS typically does not have jurisdiction to adjudicate a Form I-589, *Application for Asylum and for Withholding of Removal*, filed by an applicant in removal proceedings. See 8 C.F.R. § 208.2(b). Section 235(d)(7)(C) of the TVPRA, however, places initial jurisdiction over asylum applications filed by UACs with USCIS, even for those UACs in removal proceedings. See also INA § 208(b)(3)(C). Therefore, USCIS must determine whether an applicant in removal proceedings is a UAC.

Under the 2009 USCIS memorandum, when USCIS first implemented the TVPRA, asylum officers made independent factual inquiries to determine whether an applicant in removal proceedings was a UAC such that USCIS had initial jurisdiction over their asylum application. The determinations were based on an assessment of whether the applicant was a UAC on the filing date of their initial asylum application with either the Department of Justice's Executive Office for Immigration Review (EOIR) or USCIS. The 2013 USCIS memorandum changed the procedures for determining jurisdiction over these applications, allowing asylum officers to adopt prior UAC determinations made by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE) without further factual inquiry, so long as those determinations were still in place on the filing date of the initial asylum application. In cases in which a UAC determination had not already been made, asylum officers continued to make UAC determinations by making independent factual inquiries under the UAC definition, following the procedures established in the 2009 USCIS memorandum.

In May 2019, USCIS returned to making independent factual inquiries in *all* cases to determine whether the applicant met the UAC definition on the filing date of their initial asylum application (hereinafter 2019 USCIS memorandum). Similar to the 2009 USCIS memorandum, this 2019 USCIS memorandum set forth instructions for asylum officers to make independent factual inquiries to determine whether an applicant in removal proceedings was a UAC such that USCIS had initial jurisdiction over their asylum application. This policy has been enjoined since August 2019.

Pursuant to the J.O.P. settlement agreement, USCIS now returns to requiring asylum officers to adopt prior UAC determinations made by CBP or ICE (and, in certain circumstances, EOIR) without further factual inquiry, so long as those determinations were still in place on the filing date of the initial asylum application with either USCIS or EOIR. Again, in cases in which a UAC determination has not already been made, asylum officers will make UAC determinations by making independent factual inquiries under the UAC definition.

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*See Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children, March 25, 2009.* In addition, the guidance on possible UACs in the credible and reasonable fear screening processes in Part III of the 2013 USCIS memorandum remains in effect. See [Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children](#), May 28, 2013. USCIS issued an additional memorandum relating to UACs in 2019 but subsequently rescinded that memorandum. The 2019 USCIS memorandum remains rescinded in full and should not be relied upon for any purpose.

### **III. Jurisdictional Determinations**

#### **A. Cases in which a UAC determination has already been made and the applicant is in removal proceedings**

In cases in which the applicant is in removal proceedings and CBP or ICE already determined that the applicant is a UAC, asylum officers will adopt that determination and USCIS will take initial jurisdiction over the asylum application. Asylum officers may see evidence of a prior UAC determination in A-file documents or in DHS systems, including the Form I-213, *Record of Deportable Alien*; the CBP Form 93, *Unaccompanied Alien Child Screening Addendum*; the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) Initial Placement Form;<sup>3</sup> the ORR Verification of Release Form or Discharge Notification Form; and the encounters tab in the ENFORCE Alien Removal Module (EARM). If CBP or ICE determined that the applicant was a UAC, and, as of the filing date of the initial asylum application, that UAC determination was still in place, USCIS will take initial jurisdiction over the asylum application, even if there appears to be evidence that the applicant may have turned 18 years of age or may have reunited with a parent or legal guardian since the CBP or ICE determination.

Pursuant to the J.O.P. settlement agreement, USCIS may determine that it lacks initial jurisdiction over the asylum application of an applicant who has been placed in adult immigration detention after a prior UAC determination but before filing their asylum application. “Placement in adult immigration detention” does not include custody for the sole purposes of processing the applicant prior to release on their own recognizance or release through another alternative to detention, such as an order of supervision, parole, enrollment in an alternative to detention program, or ICE bond.

#### **B. Cases in which a UAC determination has not already been made**

##### **1. Applicants not in removal proceedings**

For applicants not in removal proceedings whom CBP or ICE have not determined previously to be a UAC, asylum officers will continue to determine whether they are UACs not for the purpose of determining jurisdiction but for the purposes of determining whether the applicant is subject to the one-year filing deadline<sup>4</sup> and whether the asylum office must notify HHS that it has discovered a UAC.<sup>5</sup> Asylum officers will examine whether the applicant was a UAC on the filing date of their initial asylum application.

##### **2. Applicants in removal proceedings**

For applicants in removal proceedings whom CBP or ICE has not already determined to be a UAC,<sup>6</sup> asylum officers will determine whether they are UACs for the purpose of determining whether USCIS has initial jurisdiction over their asylum application. Asylum officers will examine whether the applicant was a UAC on the filing date of their initial asylum application.

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<sup>3</sup> After apprehending a noncitizen and determining that they are a UAC, CBP or ICE transfers the UAC to a facility run by ORR, which is part of HHS.

<sup>4</sup> See section 235(d)(7)(A) of the TVPRA; INA § 208(a)(2)(E).

<sup>5</sup> See section 235(b)(2) of the TVPRA.

<sup>6</sup> This situation would most likely occur when a child was accompanied at the time of service of the charging document but later became unaccompanied.

### **C. Opportunity to rebut USCIS's lack of jurisdiction determination**

When the asylum officer determines that USCIS lacks jurisdiction over an asylum application filed by an applicant previously determined to be a UAC because the applicant was placed in adult immigration detention prior to filing their initial asylum application, the asylum office will provide the applicant with a notice of lack of jurisdiction that includes a detailed description of the information leading the asylum officer to believe that the applicant was placed in adult immigration detention (Notice of Lack of UAC Jurisdiction Determination Due to Adult Immigration Detention and Opportunity to Rebut, attachment 1). The notice of lack of jurisdiction will provide the applicant with an opportunity to rebut the information within 30 days (or 33 days if the notice is served by mail). If the applicant successfully rebuts the information the asylum officer relied on to reject jurisdiction, then the asylum office must retract the jurisdictional rejection within 30 days of receiving the rebuttal using the Notice of Final UAC Jurisdiction Determination Due to Adult Immigration Detention (attachment 2). Once the asylum office retracts the jurisdictional rejection, the asylum office will reopen the case and resume processing the asylum application.

### **D. Determinations made by EOIR**

Pursuant to the J.O.P. settlement agreement, in assessing jurisdiction over asylum applications filed by UACs, USCIS cannot defer to jurisdiction determinations made by EOIR, including but not limited to determinations that the immigration judge has initial jurisdiction over the applicant's asylum application made pursuant to [Matter of M-A-C-O-, 27 I&N Dec. 477 \(BIA 2018\)](#), unless EOIR determined that the applicant was a UAC at the time of filing their asylum application such that USCIS has jurisdiction over their asylum application, in which case USCIS may adopt the UAC determination.

## **IV. HHS notifications**

If the asylum office is the first federal government entity to determine that the applicant is a UAC and the applicant remains a UAC at the time of the asylum interview, then the asylum office will notify HHS that it discovered a UAC<sup>7</sup>. This obligation to notify HHS upon "discovery" of a UAC is separate from the issue of jurisdiction over the asylum application. Where another federal government entity has already made a UAC determination, that entity is the one that "discovered" the UAC, and it is not therefore USCIS's obligation to notify HHS in those cases.

## **V. Expedite Requests**

An asylum applicant or their representative may request that an asylum office expedite the processing of their application. The Asylum Division considers expedite requests in alignment with the [USCIS Policy Manual](#) and other messaging on [uscis.gov](#). The decision to expedite is within the sole discretion of USCIS. All expedite requests must be submitted in writing to the director of the asylum office with geographical jurisdiction over the asylum application. The director considers each request on a case-by-case basis, considering the totality of the circumstances and any evidence submitted in support of the expedite request. The director may, in the exercise of discretion, determine that it is in the best interest of USCIS to process an asylum application outside of the scheduling priorities currently in effect.

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<sup>7</sup> See section 235(b)(2) of the TVPRA.

Some examples of circumstances that may justify an expedite request that are particularly relevant to UACs include, but are not limited to, circumstances in which the applicant:

- is currently in immigration detention;
- has an order of removal; or
- received a Notice of Lack of Jurisdiction that was later retracted by USCIS.

Section III.B.7, Expeditious Processing Required, of the Affirmative Asylum Procedures Manual contains the Asylum Division's procedures on expedite requests.

## **VI. Other Obligations Pursuant to the J.O.P. Settlement Agreement**

In addition to the issuance of this memorandum, USCIS has several other obligations pursuant to the J.O.P. settlement agreement, as described in this section.

### **A. One-year filing deadline**

USCIS will not apply the one-year filing deadline to applications filed by applicants who were UACs at the time of filing their applications. This is also a pre-existing requirement under section 235(d)(7)(A) of the TVPRA and INA § 208(a)(2)(E).

### **B. Review and retraction of prior adverse jurisdiction determinations**

Within 60 days of the effective date of the J.O.P. settlement agreement (i.e., by January 24, 2025), USCIS will mail to individuals whose cases will be reviewed a Notice of Re-Examination of Previous Lack of Jurisdiction Determination (attachment 3) indicating that USCIS will make a jurisdictional determination over their asylum application pursuant to this memorandum. These notices will be issued by the Asylum Vetting Center.

Within 240 days of the issuance of this memorandum (i.e., by September 26, 2025), USCIS will retract any adverse jurisdictional determinations made on or after June 30, 2019, that merit retraction, where the applicant was taken into ICE custody prior to the initial filing of their asylum application. If USCIS finds that the prior adverse jurisdictional determination should be upheld, USCIS will give the applicant an opportunity to rebut the finding using the process described in this memorandum.

Within 180 days of the issuance of this memorandum (i.e., by July 29, 2025), USCIS will retract all other adverse jurisdictional determinations made on or after June 30, 2019, that are inconsistent with the procedures outlined in this memorandum and/or in which the asylum office deferred to a determination made by EOIR. The Asylum Division will use the Notice of Retraction of Previous Lack of Jurisdiction Determination (attachment 4) to make these retractions. The review and retraction of these prior adverse jurisdictional determinations will be centralized at the Asylum Vetting Center.

### **C. Release from JOP ICE/EARM Affirmative Acts hold**

Within 60 days of the issuance of this memorandum (i.e., by March 31, 2025), USCIS will release the JOP ICE/EARM Affirmative Acts hold placed beginning in March 2021 on pending asylum applications and will mail to the affected applicants a notice indicating that their asylum application has been released from the hold (Notice of Release from JOP Hold (attachment 5)). Offices should no longer apply the JOP

ICE/EARM Affirmative Acts hold to any asylum applications as of the effective date of these procedures, February 24, 2025.

#### **D. Compliance reporting**

USCIS must complete one-time and ongoing reporting to the Court and Class Counsel throughout the period of the settlement agreement.<sup>8</sup> Asylum IDEA will complete the reporting.

#### **VII. Changes to the Global Case Management System**

For asylum applications filed with USCIS on or after February 24, 2025, the effective date of these procedures, by UACs in removal proceedings, USCIS will not apply the PRL special group code in the Global case management system. However, the PRL special group code will remain applied to existing PRL cases. For asylum applications filed on February 24, 2025, or later, USCIS will apply the KID special group code in Global to cases of UACs in removal proceedings.

#### **VIII. Update to the Affirmative Asylum Procedures Manual**

Section III.B.1, Minor Principal Applicants and Unaccompanied Alien Children (formerly titled Children Filing as Principal Asylum Applicants) of the Affirmative Asylum Procedures Manual has been updated to reflect the guidance in this memorandum. If you have any questions concerning this guidance, please contact the Headquarters Operations Branch.

Attachments (5):

1. Notice of Lack of UAC Jurisdiction Determination Due to Adult Immigration Detention and Opportunity to Rebut
2. Notice of Final UAC Jurisdiction Determination Due to Adult Immigration Detention
3. Notice of Re-Examination of Previous Lack of Jurisdiction Determination
4. Notice of Retraction of Previous Lack of Jurisdiction Determination
5. Notice of Release from JOP Hold

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<sup>8</sup> See [the settlement agreement in \*J.O.P. v. U.S. Dept. of Homeland Security et al.\*, Civil Action 8:19-cv-01944 \(D. Md.\)](#), paragraph V.B, Compliance Reports, and Exhibit F, Defendants' Compliance Report.