WHO HAS INITIAL JURISDICTION OVER UC ASYLUM CLAIMS?

Matter of M-A-C-O- and JOP v. DHS

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I. Introduction

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 confers initial jurisdiction for asylum claims filed by unaccompanied children (UCs) to U.S. Citizenship & Immigration Services (USCIS) asylum offices, even when UCs are in removal proceedings.[1] This is critical for UCs because it means they have the opportunity to have their asylum claim heard in the non-adversarial setting of an interview at USCIS, rather than in immigration court. An unaccompanied child, referred to in the law as an "unaccompanied alien child[2]" or "UAC," is defined as a child who "(A) has no lawful immigration status in the United States; (B) has not attained eighteen 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."[3]

On October 16, 2018, the Board of Immigration Appeals (BIA) published *Matter of M-A-C-O-*, the first precedential decision concerning initial jurisdiction over asylum applications filed by UCs after their eighteenth birthday.[4] In *Matter of M-A-C-O-*, the BIA held that immigration judges have the power to determine initial jurisdiction over asylum applications filed by UCs. On May 31, 2019, USCIS updated its policies concerning initial jurisdiction over applications filed by UCs following *Matter of M-A-C-O-*.[5] The 2019 policy memorandum, known as the *Lafferty Memo*, directed asylum officers to independently determine whether an applicant met the UC definition at the time of filing an asylum application.[6] Advocates challenged the *Lafferty Memo* in federal district court in *JOP v. DHS*, and on November 25, 2024 the court granted final approval of a settlement agreement between the parties.[7] Under the settlement agreement, there are USCIS and Immigration and Customs Enforcement (ICE) benefits for current class members. These benefits will remain in effect until May 27, 2026.[8]

In addition, as part of the settlement agreement, USCIS issued a *Superseding Memorandum* explaining and implementing the settlement agreement.[9] The memorandum will be in effect

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[1] 8 U.S.C. § 1158(b)(3)(C).
[2] Note that advocates also use the term "unaccompanied child" or "UC" because the term "alien" has a pejorative meaning. For this reason, we use the shorthand "UC" throughout this practice advisory.
[3] 6 U.S.C. § 279(g)(2).
[4] *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018).
[5] John Lafferty, Chief, USCIS Asylum Division, *Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children*, (May 31, 2019), https://www.uscis.gov/sites/default/files/document/memos/Memo_-_Updated_Procedures_for_I-589s_Filed_by_UACs_5-31-2019.pdf [hereinafter "*Lafferty Memo*"].
[6] *See id*. at 2.
[7] *JOP v. DHS*, 8:19-cv-01944 (D. Md.) (The full approved settlement agreement can be read at: https://nipnlg.org/sites/default/files/2024-07/2024-JOP-settlement-agreement.pdf [hereinafter "*Approved Settlement Agreement*"].
[8] *Id*.
[9] Brett Lassen, Acting Chief, USCIS Asylum Division, *Revised Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children and Implementation of the J.O.P. Settlement Agreement* (Oct. 30, 2025), https://www.uscis.gov/sites/default/files/document/legal-docs/JOP_UAC_Procedures_Memo_10.30.2025.pdf [hereinafter "*2025 Superseding Memorandum*"]. Note that there was a previous memorandum that was signed on January 30, 2025 but issued on February 24, 2025 implementing the *JOP* settlement agreement. This memorandum was reissued because *JOP* class

from February 24, 2025, to at least February 24, 2028.[10] The memorandum will apply to class members as well as non-class members who were determined to be UCs and file for asylum while the memorandum is in effect.

This practice advisory provides an overview of the current state of UC asylum jurisdiction following the *Matter of M-A-C-O-* decision and the outcome of the *JOP v. DHS* litigation and gives some arguments and tips for practitioners to help them advocate for their UC clients to receive the statutory protections afforded by the TVPRA and the *JOP* settlement agreement.

II. Policies and Practices Prior to *Matter of M-A-C-O-*

A. Department of Homeland Security (DHS)

1. USCIS

Following the passage of the TVPRA in 2008, USCIS began implementation of the initial jurisdiction provision on March 23, 2009.[11] To determine whether it had jurisdiction over an application filed by a UC in removal proceedings, USCIS made an independent factual inquiry in each case to determine UC status, assessed at the time of filing.[12] The USCIS Ombudsman found in 2012 that this process created "delay and confusion."[13] On May 28, 2013, USCIS issued the memorandum *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children (Kim Memo)*.[14] Under the *Kim Memo*, if Customs & Border Protection (CBP) or ICE already determined that the applicant is a UC, USCIS adopted that determination without further factual inquiry, unless there was an affirmative act by the Department of Health & Human Services (HHS), ICE, or CBP to terminate the UC designation. This was true even if the child had since turned eighteen or reunified with a parent or legal guardian.[15] Consequently, since the *Kim Memo* was implemented in 2013, many UCs who had turned eighteen or reunified with a parent or legal guardian prior to filing their asylum applications retained the protections of the TVPRA and were able to have their cases heard initially before USCIS. As discussed below and in further

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counsel identified certain provisions of the January 2025 memorandum that needed revisions to bring them into alignment with the settlement agreement. The January 2025 memorandum can be found at https://www.uscis.gov/sites/default/files/document/memos/JOP_UAC_Procedures_Memo_1.30.25.pdf.

[10] *Approved Settlement Agreement*, at 6 § III.A.

[11] Joseph E. Langlois, Chief, USCIS Asylum Division, *Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*, (Mar. 25, 2009), https://www.uscis.gov/sites/default/files/document/memos/uac_filings_5f25mar09.pdf [hereinafter "*Langlois Memo*"].

[12] *Id.* at 4.

[13] USCIS Ombudsman, *Ensuring a Fair and Effective Asylum Process for Unaccompanied Children*, (Sept. 20, 2012), https://www.dhs.gov/sites/default/files/publications/cisomb-ensuring-fair-asylum-process-for-uac_from_web.pdf [hereinafter "*USCIS Ombudsman*"].

[14] Ted Kim, Acting Chief, Asylum Division, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*, (May 28, 2013), https://www.uscis.gov/sites/default/files/document/memos/determ-juris-asylum-app-file-unaccompanied-alien-children.pdf [hereinafter "*Kim Memo*"].

[15] *Id.* at 2.

detail in section IV, on May 31, 2019, following *Matter of M-A-C-O-*, USCIS issued a memorandum that changed this policy, known as the *Lafferty Memo*. As a result of the *JOP v. DHS* litigation, the *Lafferty Memo* is fully rescinded, and a new *Superseding Memorandum* was issued by USCIS, effective as of February 24, 2025, to explain and implement the *JOP* settlement agreement.

2. Other DHS agencies

Under the prior Trump administration, on February 20, 2017, DHS issued a memorandum announcing (among other things) an upcoming change in the processing of UC cases.[16] It departed from previous DHS practice, which had maintained UC status after a child was reunified with their parent, and instead characterized UCs residing with parents and legal guardians as no longer meeting the statutory definition of a UC.[17] The memorandum also announced that USCIS, CBP, and ICE would issue uniform written guidance on UC classification including "standardized review procedures" to confirm UC status after the initial designation.[18] This guidance was never issued.[19]

B. Executive Office for Immigration Review (EOIR)

Individual immigration judge practices concerning UC asylum applicants over the age of eighteen have varied. However, following the *Kim Memo*, many judges administratively closed cases of UCs seeking asylum at the asylum office without any factual inquiry into their continued status as UCs.[20] A minority of immigration judges at the time attempted to take jurisdiction of UC asylum cases once the child turned eighteen or reunified with a parent, but this was not the general practice.[21] On December 20, 2017, the Executive Office for Immigration Review (EOIR) released a memorandum, *OPPM 17-03*, that included new guidance for UC cases.[22] The memorandum describes UC status as "not static" because a minor's age and accompaniment status may change.[23] It further instructs immigration judges to ensure that a UC remains a UC at the time their case is adjudicated.[24] This memorandum was rescinded on December 21, 2023.[25] However, on January 29, 2025, EOIR reinstated this

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[16] Sec. John Kelly, *Implementing the President's Border Security and Immigration Enforcement Improvements [sic] Policies* (Feb. 20, 2017), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.
[17] *Id.* at 10.
[18] *Id.* at 11.
[19] See ILRC, *Unaccompanied Minors & the New Executive Orders* (Mar. 21, 2017), http://www.ilrc.org/sites/default/files/resources/uacs_under_trump_administration_final_3.21.17.pdf.
[20] This statement is based on anecdotal evidence only.
[21] *Id.*
[22] Mary Beth Keller, Chief Immigration Judge, EOIR, OPPM 17-03, *Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children*, (Dec. 20, 2017), https://www.justice.gov/eoir/file/oppm17-03/download [hereinafter "*OPPM 17-03*"].
[23] *Id*. at 7.
[24] *Id*.
[25] *See* Sirce E. Owen, Acting Director, EOIR, OPPM 25-10, *Cancellation of Director's Memorandum 24-01 and Reinstatement of Operating Policies and Procedures Memorandum 17-03*, (January 29, 2025), https://www.justice.gov/eoir/media/1387496/dl?inline [hereinafter "*OPPM 25-10*"].

memorandum via *OPPM 25-10*, which represents a shift in agency practice away from generally accepting prior UC designations.[26]

III. Summary of *Matter of M-A-C-O-*

A. Factual background

The respondent in *M-A-C-O-* arrived in the United States when he was seventeen years old.[27] At the border, he was determined to be a UC and placed in removal proceedings.[28] He was unable to file his asylum application before his eighteenth birthday, but the government never rescinded his UC designation.[29] He filed an asylum application with USCIS after he turned eighteen.[30] At his next Master Calendar hearing, the immigration judge found that she had initial jurisdiction over his asylum claim because he had turned eighteen and had therefore ceased to be a UC before the asylum application was filed.[31] After the immigration judge denied the asylum application, the respondent appealed on the grounds that, because of his UC status, USCIS had initial jurisdiction over his application.[32]

B. Decision

The BIA held that the TVPRA does not: 1) prevent immigration judges from determining whether they have initial jurisdiction over an application filed by a UC after they turn eighteen, or 2) require that the DHS and HHS determinations of UC status be binding on immigration judges.[33] It also noted that *OPPM 17-03* states that UC status is not static and may change, and that judges should ensure that a UC is a UC when adjudicating a case.[34] The BIA went on to find that the respondent in *Matter of M-A-C-O-* was no longer a UC at the times he filed his asylum applications with USCIS and the immigration court because he was over eighteen years of age. Accordingly, the BIA found that the initial jurisdiction provision of the TVPRA did not apply to his case and affirmed the immigration judge's exercise of initial jurisdiction.

In considering the impact of the *Kim Memo*, the BIA stated that because the policy set forth in the memo is not embodied in a regulation, it does not have the force of law and therefore is not binding on the immigration judges or the BIA (though it may be relied upon to the extent it is persuasive). It also noted that the *Kim Memo* does not limit immigration judges' authority to determine UC status or initial jurisdiction.[35]

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[26] *Id.*
[27] *M-A-C-O-*, 27 I&N Dec. at 477.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.* at 477-78.
[32] *Id.* at 478.
[33] *Id.* at 479.
[34] *OPPM 17-03*, at 7-8.
[35] *M-A-C-O-*, 27 I&N Dec. at 479-80.

C. Initial UC asylum jurisdiction going forward

Do immigration judges *have* to take jurisdiction?

No. The ruling in *Matter of M-A-C-O-* does not expressly mandate that immigration judges take initial jurisdiction over asylum claims for UCs who are over the age of eighteen. The BIA held that immigration judges have the authority to determine *whether* they have jurisdiction. While finding that immigration judges are not bound by prior UC designations, the BIA did not hold that EOIR jurisdiction is automatic or mandatory in such cases.[36] In practice however, some immigration judges have read the decision as mandating them to take jurisdiction in any case where a UC files their asylum application after turning eighteen, so be prepared to make these arguments. In the case of a class member of the *JOP v. DHS* settlement, USCIS must accept jurisdiction even if an immigration judge concluded that they had initial jurisdiction.[37] In the case of a non-class member, the same is true under the *2025 Superseding Memorandum* issued by USCIS as part of the settlement.[38] However, note that immigration courts, which are under the Department of Justice, are not bound by the *JOP* settlement, and continue to only be bound by *Matter of M-A-C-O-*, which permits immigration judges to make their own jurisdictional determinations as discussed above.[39]

PRACTICE TIP: If the child applicant was under eighteen years old at the time their asylum application was filed, the immigration judge does not have jurisdiction over the asylum claim. Jurisdiction is determined based on whether the child qualified as a UC at the time of filing.

IV. *JOP v. DHS* Litigation and Settlement Agreement

As discussed, previously, on May 31, 2019, USCIS issued the *Lafferty Memo*.[40] The *Lafferty Memo* cited to *Matter of M-A-C-O-*, recognizing that the decision did not strip USCIS of its authority to determine whether an application was filed by a UC, but rather that both USCIS

[36] It is also not clear that an immigration judge has the statutory authority to make or change a UC status determination. EOIR is not one of the federal agencies assigned to make UC designations under the TVPRA. In *M-A-C-O-* the BIA relies on provisions of the TVPRA that outline rights of UCs in removal proceedings to support the view that the statute "appears to contemplate that an Immigration Judge can independently evaluate a respondent's [UC] status to determine his or her eligibility for relief from removal." *Id*. at 479 n. 2.

[37] *Approved Settlement Agreement*, at 8 (Note that there is an exception in the case where a class member was placed in immigration detention as an adult before they filed their asylum application. In this case, USCIS can reject initial jurisdiction over the class member's asylum application. "'Placed in adult immigration detention' does not include custody for the sole purposes of processing the class member 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.").

[38] *2025 Superseding Memorandum*, at 4.

[39] *See Matter of M-A-C-O-*, 27 I & N Dec. 477 (BIA 2018); *see also Lafferty Memo*; National Immigration Project of the National Lawyers Guild (NIPNLG), *Practice Advisory: Navigating the Removal Proceedings of J.O.P. Class Members and Other Asylum Seekers with Prior Unaccompanied Child Determinations*, (Apr. 10, 2025), https://nipnlg.org/work/resources/practice-advisory-navigating-removal-proceedings-jop-class-members-and-other-asylum.

[40] *See Lafferty Memo*.

and EOIR have authority to make their own jurisdictional determinations.[41] The *Lafferty Memo* instructed asylum officers to assess whether the applicant was under eighteen years old at the time of filing.[42] Going further than *Matter of M-A-C-O-*, the *Lafferty Memo* also instructed asylum officers to determine accompaniment status of UC applicants.[43] The memorandum suggested that in evaluating the evidence of unaccompanied status, officers may need to more closely scrutinize the applicant's testimony if there are unresolved questions about the applicant's identity, and reminded officers that they may request documentary evidence when testimony alone does not meet the burden of proof. This guidance was squarely at odds with the purpose of the TVPRA. It also contradicted the child-sensitive training guidance in the Asylum Officer's Training Lesson Plans, which points out that "children cannot be expected to present testimony with the same degree of precision as adults."[44]

Shortly after the *Lafferty Memo* was issued, immigrant youth advocates challenged the policy in federal district court in *JOP v. DHS*.[45] On August 2, 2019, the District Court for the District of Maryland issued an injunction against USCIS following the *Lafferty Memo*.[46] Under the injunction in *JOP v. DHS*, USCIS had to use the 2013 *Kim Memo* to determine whether it had jurisdiction.[47] Under the *Kim Memo*, the asylum office accepted jurisdiction over an I-589 filed by an individual who was previously designated as a UC even if they were in removal proceedings, whether or not they continued to meet the definition of a UC at the time of filing.[48] The only exception was if there was an affirmative act terminating the UC designation. USCIS re-interpreted "affirmative act" as allowing for the consideration of documents indicating the UC was reunited with a parent or was over the age of eighteen.

On December 21, 2020, the district court in *JOP* amended the preliminary injunction to prevent USCIS's deference to EOIR jurisdictional determinations and to prevent ICE from advocating against USCIS initial jurisdiction in court.[49] However, the district court did not enjoin USCIS's reinterpretation of the "affirmative act" language of the Kim Memo.

On February 19, 2021, DHS filed an appeal from the federal district court's December 21, 2020 Order with the Fourth Circuit Court of Appeals.[50] However, on March 4, 2021, USCIS agreed to not make jurisdictional determinations that solely relied on notes in ENFORCE Alien Removal Module ("EARM")[51] or other ICE or DHS systems as terminating a prior UC

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[41] *Lafferty Memo*, at 2. However, where EOIR asserts jurisdiction, it instructed USCIS to defer to that determination.
[42] *Lafferty Memo*, at 3.
[43] *Id.*
[44] USCIS Asylum Division, *Children's Claims*, (December 6, 2024), https://www.uscis.gov/sites/default/files/document/foia/Childrens_Claims_LP_RAIO.pdf.
[45] *JOP v. DHS*, 19-01944 (D. Md.).
[46] *Preliminary Injunction*, *JOP v. DHS*, 19-01944 (D. Md.).
[47] *Id.*
[48] *Kim Memo*, at 2.
[49] *Memorandum Opinion on Mot. to Amend Preliminary Injunction*, *54-55, *JOP v. DHS*, 19-01944 (D. Md.).
[50] *See Approved Settlement Agreement, supra* note 7. (The full approved settlement agreement can be read at: https://nipnlg.org/sites/default/files/2024-07/2024-JOP-settlement-agreement.pdf; *see also* Order granting final approval at: https://nipnlg.org/sites/default/files/2024-11/JOP-final-approval-order.pdf).
[51] Enforce Alien Removal Module ("EARM") is an application that is used primarily as a case management tool to track a noncitizen's removal proceedings status.

Determination, unless the applicant was placed in ICE custody as an adult prior to filing their asylum application.[52]

On July 29, 2024, the parties in *JOP* filed a proposed settlement agreement with the U.S. District Court for the District of Maryland.[53] There are significant provisions of the settlement that should be considered for class members and non-class members, which is discussed further below. The settlement agreement is only in effect until May 27, 2026.[54]

For more information about the *JOP v. DHS* litigation, review the National Immigration Project of the National Lawyers Guild's (NIPNLG) webpage dedicated to the litigation. The webpage includes a practice alert and advisory about the settlement agreement and information on how to report settlement agreement violations.[55]

A. The new 2025 superseding memorandum

Under the terms of the settlement agreement, USCIS fully rescinded the *Lafferty Memo* and issued a *Superseding Memorandum* explaining and implementing the agreement, which went into effect on February 24, 2025.[56] The memorandum will be effective for at least three years from its effective date; that is, until February 24, 2028.[57]

NOTE: The 2025 Superseding Memorandum is effective from February 24, 2025, to at least February 24, 2028. It applies to non-class members as well as class members.

The *2025 Superseding Memorandum* has key changes that apply to class members and non-class members going forward.

1. Deference to prior UC determinations

In cases where an applicant is in removal proceedings and CBP or ICE already made a UC determination and that determination was still valid when the asylum application was filed (with USCIS or EOIR), USCIS must take jurisdiction over the application—even if there is evidence that the applicant turned 18 or reunited with a parent or legal guardian.[58]

To determine if a prior UC determination was made, asylum officers may review evidence of a prior UC determination in A-file documents or review of DHS systems, which includes "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

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[52] *Approved Settlement Agreement*, at 3 ¶ H.
[53] *Proposed Settlement, JOP v. DHS*, 19-01944 (D. Md.) (On November 25, 2024, the court granted final approval of the settlement agreement).
[54] *Approved Settlement Agreement*, at 12 ¶ K.
[55] NIPNLG—class counsel in *JOP*—has a dedicated webpage for the *JOP v. DHS* litigation: https://nipnlg.org/work/litigation/jop-v-dhs; *Practice Advisory: Navigating the Removal Proceedings of J.O.P. Class Members and Other Asylum Seekers with Prior Unaccompanied Child Determinations*, (Apr. 10, 2025), https://nipnlg.org/work/resources/practice-advisory-navigating-removal-proceedings-jop-class-members-and-other-asylum.
[56] *See 2025 Superseding Memorandum, supra* note 9.
[57] *Approved Settlement Agreement*, at 6 § III.A.
[58] *2025 Superseding Memorandum*, at 3.

Refugee Resettlement (ORR) Initial Placement Form; the ORR Verification of Release Form or Discharge Notification Form; and the encounters tab in the ENFORCE Alien Removal Module (EARM)."[59]

However, if the applicant was placed in adult immigration detention prior to filing their asylum application, USCIS may decline jurisdiction.[60] This is the only circumstance in which USCIS may reject jurisdiction over a UC asylum application.[61] In cases in which USCIS rejects jurisdiction because the applicant was placed in adult immigration detention prior to filing their asylum application, USCIS must issue a *Notice of Lack of Jurisdiction* with an opportunity for the applicant to rebut the finding within thirty or thirty-three days (if notice is served by mail).[62] Placement in adult immigration detention does not include brief custody just for processing the applicant before they are released, such as being released on their own recognizance, under supervision, on parole, through an alternative to detention program, or on an ICE bond.[63] If the applicant successfully rebuts the rejection of jurisdiction, then the asylum office has to retract the rejection within thirty days of receiving the rebuttal and reopen the case to continue processing the application.[64]

2. When no prior UC determination exists

If the applicant is in removal proceedings and no prior UC determination exists (by CBP or ICE), asylum officers will make a factual inquiry to determine if the applicant was a UC at the time of filing their asylum application.[65]

If the applicant is not in removal proceedings and no prior UC determination exists (by CBP or ICE), asylum officers will still evaluate the UC status for the one-year filing deadline exemption and to determine if they need to notify HHS that they discovered a UC, but not for determining jurisdiction.[66]

3. EOIR jurisdiction determination not controlling

USCIS will not follow EOIR determinations on jurisdiction (including determinations finding EOIR jurisdiction pursuant to *Matter of M-A-C-O-*[67]) for applicants with prior UC determinations, except where EOIR specifically determined the applicant *was* a UC at the time of filing.[68]

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[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.* at 4.
[65] *Id.* at 3-4.
[66] *Id.* at 4.
[67] 27 I&N Dec. 477 (BIA 2018).
[68] *Id.* at 4.

4. Department of Health & Human Services (HHS) notification duties

If USCIS is the first agency to determine that the applicant is a UC and the child remains a UC at the time of the asylum interview, USCIS must notify HHS that it has discovered a UC.[69]

5. Expedite requests

An asylum applicant (or their representative, if any) may submit an expedite request for their asylum application, but it must be submitted in writing to the appropriate asylum office.[70] USCIS retains the discretion to expedite the asylum application. USCIS may find that it is in its "best interest" to process the asylum application outside of the scheduling priorities.[71]

Some justifications for an expedite request particularly relevant to UCs include current detention, removal orders, or retracted jurisdiction denials.[72]

6. One-year filing deadline

USCIS will not apply the one-year filing deadline to applications filed by applicants who were UCs at the time of filing or to applications filed by applicants with prior UC determinations.[73]

7. Review and retraction of prior jurisdiction denials and release of *JOP* hold

USCIS is required to review and potentially reverse past denials of jurisdiction over asylum applications that were made on or after June 30, 2019, if those decisions conflict with the new procedures outlined in the *2025 Superseding Memorandum*.[74]

For cases that received an adverse determination, USCIS was obligated, by January 24, 2025, to mail notices of re-examination indicating it would make a jurisdictional determination pursuant to the *2025 Superseding Memorandum*.[75]

For cases where the applicant was taken into ICE custody before filing, these cases must be reviewed by September 26, 2025. If the denial of jurisdiction was improper under the *2025 Superseding Memorandum*, USCIS will issue a retraction. However, if USCIS determines the denial was correct, the applicant will be given a chance to rebut.[76] This entire rebuttal process must occur prior to the September 26, 2025 deadline, "such that an [applicant] will receive his or her final decision on the re-examination by the deadline."[77]

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[69] *Id.*
[70] *Id.* at 5.
[71] *Id.*
[72] *Id.*
[73] *Id. See* INA § 208(a)(2)(E); TVPRA, P.L. 110-457 § 235(d)(7)(A).
[74] *2025 Superseding Memorandum*, at 6.
[75] *Id.*
[76] *Id.*
[77] *Id.*

For all other cases that are inconsistent with the *2025 Superseding Memorandum* (e.g., USCIS deferred to EOIR jurisdictional determinations), USCIS must review these cases by July 29, 2025.[78]

All of these retractions and reviews will be handled by the Asylum Division, and notices will be mailed by the center as well.[79]

Additionally, by March 31, 2025, USCIS will lift the *JOP*-related hold on certain applications and can no longer apply this hold going forward.[80]

8. Case management code update

For new applications filed by UCs in removal proceeding on or after February 24, 2025, USCIS will use the "KID special group code" (replacing the PRL code for new cases).[81]

B. Class members

Pursuant to the settlement agreement, a class member is an individual who:

1. was determined to be a UC;
2. filed an asylum application that was pending with USCIS; and
3. on the date they filed their asylum application with USCIS, was eighteen years of age or older, or had a parent or legal guardian in the United States who was available to provide care and physical custody; and
4. for whom USCIS has not adjudicated the individual's asylum application on the merits.[82]

The settlement agreement modified the class definition by adding a class cut-off date of ninety days after the final approval of the settlement agreement, which was on February 24, 2025.

Class members are entitled to several benefits as further explained below. If an individual is not a class member, the ICE benefits will not apply to them but the USCIS *2025 Superseding Memorandum*, as explained above, offers various protections to non-class members.

Class Membership Benefits	
USCIS Benefits	**ICE Benefits**
USCIS WILL ACCEPT INITIAL JURISDICTION AND EXCUSE THE ONE-YEAR DEADLINE • USCIS will accept initial jurisdiction over class members' asylum applications, except if the class member was placed in adult immigration detention *after* a prior UC determination but *before* filing their asylum application.[83] Additionally, USCIS will not	**ICE WILL GENERALLY JOIN OR NON-OPPOSE CLASS MEMBERS' MOTIONS(S) FOR A CONTINUANCE, ADMINISTRATIVE CLOSURE, DISMISSAL OR TERMINATION**

[78] *Id.*
[79] *Id.*
[80] *Id.* at 6.
[81] *Id.* at 5-6.
[82] *Approved Settlement Agreement*, at 4 ¶ E.
[83] *Id.* at 6 ¶¶ B,C, (The settlement agreement clarifies that "placed in adult immigration detention" "does not include custody for the sole purposes of processing the Class Member prior to release on their own recognizance or release through another alternative to detention, such as an order of supervision, parole,

USCIS Benefits	ICE Benefits
apply the one-year deadline to class members' asylum applications.[84] ○ Even if USCIS declined initial jurisdiction on or after June 30, 2019 because the class member was placed in adult immigration detention as described above, USCIS must provide the class member and their attorney, if any, with a rejection notice describing the information that led USCIS to believe the class member was placed in adult immigration detention and an opportunity to rebut within thirty days (or thirty-three days if rejection was served by mail). If successfully rebutted, USCIS must retract the rejection within thirty days of having received the rebuttal.[85] • USCIS will accept initial jurisdiction even if the class member is in removal proceedings and must not defer to any determinations made by EOIR. However, for purposes of accepting initial jurisdiction, USCIS may adopt a previous EOIR determination that the class member was a UC at the time of filing their asylum application. [86]	• ICE will not take the position that USCIS does not have initial jurisdiction over a class member's asylum application.[87] • DHS will join or non-oppose a class members' motion for either a continuance or administrative closure to await USCIS exercise of initial jurisdiction over the asylum application. These motions can either be filed or made orally on the record in immigration proceedings. [88] • ICE may file a motion to dismiss or terminate removal proceedings of a class member to await USCIS's adjudication of the asylum application on their own or as a matter of prosecutorial discretion. DHS will generally join or non-oppose a class members' motion(s) for dismissal or termination that was either filed or made orally during their proceedings.[89] • If ICE does not file a response to a class member's motion for a continuance, administrative closure, or dismissal/termination, the settlement agreement serves as evidence of DHS's non-opposition.[90] • ICE retains discretion to oppose class members' motion(s) if its opposition is not based "in whole or in part" on USCIS not having initial jurisdiction.[91]
USCIS WILL REVIEW AND RETRACT ADVERSE JURISDICTION DETERMINATIONS • Before or on January 24, 2025, USCIS was required to mail class members who received an adverse determination a notice of re-examination indicating USCIS would make a jurisdictional	**CLASS MEMBERS WITH FINAL REMOVAL ORDERS: ICE WILL NOT EXECUTE THE ORDER** • Until USCIS issues a final determination on a properly filed asylum application under the settlement agreement, ICE cannot execute the final removal order of a class member. Until USCIS

enrollment in an alternative to detention program or ICE bond." If a class member believes that they were not placed in adult immigration detention, a class member must submit evidence of a prior UAC determination to USCIS for consideration. Also, if the class member had prior contact with ICE as an adult, they must also submit evidence of any custodial determination made by ICE after they turned 18 years old.).

[84] *Id.* at 6 ¶ B. Note this requirement does not only apply to class members. Generally, USCIS cannot apply the one-year deadline to UCs under the TVPRA. *See* INA § 208(a)(2)(E); TVPRA, P.L. 110-457 § 235(d)(7)(A).

[85] *Id.* at 6 ¶ C(1-3). Note that in cases in which USCIS rejects jurisdiction due to the class member being placed in adult immigration detention, if the class member's asylum application could be deemed untimely , DHS will generally agree to stipulate in the removal proceedings that the class member qualifies for an extraordinary circumstance exception to the one year filing deadline under 8 U.S.C. § 1158(a)(2)(D), 8 CFR § 208.4(a)(5).

[86] *Id.* at 7 ¶ D.

[87] *Id.* at 8 ¶ H.

[88] *Id.* Note that the option of administrative closure will only be available under the current controlling law in a particular jurisdiction and if there is availability within EOIR's status docket.

[89] *Id.*

[90] *Id.*

[91] *Id.* at 8 ¶ H.

USCIS Benefits	ICE Benefits
determination pursuant to the settlement agreement.[92] • By July 29, 2025 (within 180 days of issuing the *Superseding Memorandum*), USCIS must retract an adverse jurisdictional determination (meaning a determination that it lacked jurisdiction) that was rendered on or after June 30, 3019, of class members' asylum applications if it is not in accordance with the settlement agreement. This includes prior EOIR determinations made pursuant to *Matter of M-A-C-O-*.[93] • By September 26, 2025, (within 240 days of issuing the *Superseding Memorandum*) USCIS must retract an adverse jurisdictional determination if it merits retraction after evaluating if an applicant was placed into ICE custody before filing their application as discussed above.[94]	adjudicates the asylum application, ICE Enforcement and Removal Operations (ERO) will make an entry indicating a stay in its system. The entry cannot be removed until USCIS indicates it should be removed.[95] **NOTE:** On April 23, the *JOP* court granted class counsel's motion to enforce the Settlement Agreement after a class member was removed without receiving a USCIS adjudication of his asylum application. *JOP v. DHS*, No. 19-01944 (D. Md. Apr. 23, 2025) (order granting motion to enforce). The court ordered Defendants not to remove any *JOP* class member. *Id.* Class counsel created a sample letter a class member can provide to ICE if ICE is trying to remove them in violation of the Settlement Agreement. Practitioners should also inform class counsel if ICE appears to be taking steps to remove a class member by emailing DG-JOPClassCounsel@goodwinlaw.com.
USCIS WILL RELEASE ANY ADJUDICATION HOLDS • By March 31, 2025 (within 60 days of issuing the *Superseding Memorandum*), USCIS must release any holds placed on class members' asylum applications.[96] • USCIS must send a mailed notice to class members alerting them that their asylum application has been released from the hold.[97]	**CLASS MEMBERS WITH FINAL REMOVAL ORDERS WHO HAVE A SUBSEQUENT ASYLUM GRANT BY USCIS: ICE WILL GENERALLY JOIN OR NON-OPPOSE A MOTION TO REOPEN** • Following a grant by USCIS, class members can file a motion to reopen. ICE will generally join or non-oppose the motion. The motion may be styled as "joint motion to reopen" and include language from the settlement.[98] • If ICE chooses to not file a response, the settlement agreement serves as evidence of DHS's joinder or non-opposition to the motion. However, ICE may file a response opposing the motion within thirty days of the filing of the motion.[99] • ICE may oppose the motion to reopen, but it may not be based on a position that USCIS did not have initial jurisdiction did not have initial jurisdiction over the asylum application.[100]

[92] *Id.* at 7 ¶ E(3).
[93] *Id.* at 7 ¶ E(2).
[94] *Id.* at 7 ¶ E(1).
[95] *Id.* at 8-9 ¶ I.
[96] *Id.* at 7 ¶ F. (Certain class members' asylum applications were put on hold by USCIS beginning in March 2021, meaning they were shelved and not adjudicated. These applications were put on hold because USCIS believed that under the *Kim Memo*, the asylum application involved an affirmative act of de-signation before the filing of the application.).
[97] *Id.*
[98] *Id.* at 9 ¶ J(1).
[99] *Id.*
[100] *Id.*

USCIS Benefits	ICE Benefits
	• The joinder or non-opposition of ICE is only for the motion to reopen. If a motion to reopen is concurrently filed with a motion to dismiss or terminate, ICE will generally join or non-oppose the motion but has discretion to oppose termination or dismissal if it is based on another reason besides its position that USCIS did not have initial jurisdiction.[101] • ICE can file on their own an unopposed or joint motion to reopen a class member's removal proceedings following a grant of asylum by USCIS or an unopposed or joint motion to dismiss or terminate a class members' proceedings following a grant.[102]
USCIS WILL EXPEDITE ADJUDICATIONS • USCIS will adopt procedures to permit class members to request expedited adjudication of their pending asylum applications with USCIS in limited circumstances, such as when the class member is in detention, received a notice of lack of jurisdiction that was retracted, or has a removal order.[103] • Class members also can request expedited adjudication of their asylum application through the existing procedures available at their local asylum office.[104] However, due to the backlog of cases at the asylum offices, applicants may nonetheless experience adjudication delays.	**ANY PROVISION OF THE SETTLEMENT AGREEMENT WHEREIN ICE WILL JOIN OR NON-OPPOSE MOTIONS FILED OR MADE BY CLASS MEMBERS, ICE WILL DO SO IF THE MOTION HAS SUFFICIENT EVIDENCE OF CLASS MEMBERSHIP** • ICE will join or non-oppose a class member's motion per the terms of the settlement agreement, but the motion must have sufficient evidence of class membership. ICE will consider the following as sufficient evidence and has discretion to deem sufficient other evidence that is not listed below.[105] ○ A copy of a receipt for an asylum application filed pursuant to the initial jurisdiction provision of the INA; ○ A copy of an asylum application cover letter sent to USCIS with a screenprint of the USCIS case status online tool; or ○ A declaration stating that the class member was determined to be a UC, filed an asylum application with USCIS which has not been adjudicated, and that on the day of filing the class member was either 18 years of age or older, or had a parent or legal guardian in the U.S. available to provide care and physical custody.

C. Non-class members

Non-class members do not receive any of the ICE benefits as listed above. Non-class members who missed the opportunity to apply on or before February 24, 2025 will nonetheless be protected under the new *2025 Superseding Memorandum*. As discussed above, the

[101] *Id.* at 9 ¶ J(2).
[102] *Id.* at 9 ¶ J(3).
[103] *Id.* at 8 ¶ G.
[104] *Id.*
[105] *Id.* at 9-10 ¶ K.

Superseding Memorandum will be in effect from February 24, 2025, until at least February 24, 2028.

V. What to do now and common scenarios

Now that the 2019 *Lafferty Memo* has been fully rescinded and the *JOP* settlement is in effect, there are a few considerations advocates should keep in mind. Advocates should be aware that the *2025 Superseding Memorandum* covers both class members and non-class members alike. Be aware that as part of the settlement agreement, USCIS may still determine it lacks jurisdiction because of an "affirmative act" of de-designation. Nonetheless, under the settlement agreement, USCIS cannot adhere to its previous expansive interpretation of an affirmative act. It can only determine it lacks jurisdiction over an asylum application filed by a UC if the individual was placed in adult immigration detention *before* filing their asylum application as discussed above.

Advocates should continue to be especially mindful of 1) whether their clients who were designated UCs continue to meet the UC definition at the time of filing their asylum application; and 2) the one-year filing deadline, even for clients who were designated as UCs, as they could become subject to it if they are found to no longer be UCs because they are placed in adult immigration detention before filing their asylum application. Whenever possible, advocates should file their UC clients' asylum applications while they continue to meet the statutory definition of a UC: being under eighteen years of age and not having a parent or legal guardian in the United States available to provide care and physical custody. However, advocates should be prepared to make arguments that under the *2025 Superseding Memorandum* pursuant to the *JOP* settlement agreement, USCIS must take initial jurisdiction of an individual's asylum application if they were designated a UC regardless of if they were over eighteen or had a parent or legal guardian in the U.S. available to provide care and physical custody at the time of filing.

If USCIS rejects jurisdiction or EOIR takes jurisdiction of a UC asylum claim, preserve any arguments that the asylum office has initial jurisdiction under the TVPRA or the *JOP* settlement agreement to ensure that they can be raised on appeal.

A. UCs under eighteen years of age

Matter of M-A-C-O- does not apply to UCs under eighteen years of age. Keep in mind that the time of *filing* of the asylum application determines initial jurisdiction, so clients are advised to file their applications before turning eighteen.

> **Example:** Marcus crossed the border at the age of twelve without a parent or guardian in March 2024. As such, Marcus was designated a UC. Marcus is now living with his uncle and has been placed in removal proceedings. It is March 2025, and Marcus wants to apply for asylum. Will USCIS or EOIR take jurisdiction of Marcus's asylum application?

If Marcus files his asylum application before turning 18, EOIR does not have jurisdiction over Marcus's asylum application even under *Matter of M-A-C-O-*, since *Matter of M-A-C-O* only applies to UCs over eighteen years of age at time of filing. In addition, he has no parent or

legal guardian available to take care of him. Note also that as a UC the one-year filing deadline does not apply. Thus, under the *2025 Superseding Memorandum*, USCIS must take initial jurisdiction of his asylum application and not apply the one-year filing deadline. Note also that Marcus or his attorney or representative, if any, can also file a unilateral discretionary motion to terminate his removal proceedings once he has filed his UC asylum application with USCIS under the new Department of Justice regulations, which are discussed in section VI.C.

B. UCs over eighteen years of age

Whenever possible, file your client's asylum claim before their eighteenth birthday. If your UC client is over eighteen at the time of filing and has not been placed in adult detention, they will still be able to have their asylum case heard by USCIS as a *JOP* class member or pursuant to the *2025 Superseding Memorandum*.

However, even though the *2025 Superseding Memorandum* is in effect, it is possible that the immigration judge could assert jurisdiction pursuant to *Matter of M-A-C-O-*. Before the immigration judge, advocates should be prepared to argue that the immigration court should not take jurisdiction under the TVPRA and that *Matter of M-A-C-O-* does not require the court to take jurisdiction over UC cases. Additionally, keep in mind that a class member under the *JOP* settlement agreement may benefit from the ICE protections outlined above in section IV.B.

> **Example 1:** Heather was designated a UC when she came to the U.S. in March 2025. She was seventeen years old at the time of her entry. Heather was placed in removal proceedings and applied for asylum when she was 18. Will USCIS or EOIR take jurisdiction of Heather's asylum application?
>
> Under *Matter of M-A-C-O-*, the immigration judge *may* take jurisdiction over UC cases filed after the young person turns eighteen. However, Heather's attorney or accredited representative, if any, should make the argument that under the *2025 Superseding Memorandum*, USCIS must take initial jurisdiction over Heather's asylum application so long as she was not placed in adult immigration detention prior to filing her asylum application. Also, if Heather applied after the one-year filing deadline, Heather or her attorney/accredited representative, should argue that as a UC, the one-year filing deadline does not apply to her.
>
> **Example 2:** Byron was designated as a UC when he came to the U.S. in June 2020. He was placed in removal proceedings and applied for asylum after he turned 18. The immigration judge determined that EOIR had jurisdiction over his asylum application under *Matter of M-A-C-O-*. Byron's asylum application is still pending before EOIR. Byron applied for asylum with USCIS in December 2020. USCIS never adjudicated Byron's asylum application. Does USCIS or EOIR have initial jurisdiction over Byron's asylum application?
>
> Because Byron applied for asylum before February 24, 2025, and meets all the requirements for class membership under the *JOP* settlement, Byron is a class member. As a class member, USCIS must take initial jurisdiction, even though EOIR also exercised jurisdiction over his asylum claim. As a class member, USCIS will take jurisdiction over his asylum application and cannot rely on an EOIR determination.

USCIS will also exempt him from the one-year filing deadline. Additionally, as part of the settlement agreement, ICE counsel will either join or non-oppose a motion to continue or administratively close the proceedings and will generally join or non-oppose a motion to dismiss or terminate.

Example 3: Zorayda was designated a UC at the time she entered the United States in November 2021. She was placed in removal proceedings and an immigration judge determined EOIR had initial jurisdiction over her asylum application because she applied when she was nineteen. Zorayda now has an unexecuted final order of removal. Zorayda filed her asylum application with USCIS in January 2025. Can Zorayda take advantage of the benefits under the *JOP* settlement agreement?

Because Zorayda filed her asylum application with USCIS before February 24, 2025, the *JOP* membership benefits apply to her. Under the settlement agreement, ICE cannot execute Zorayda's final removal order and ICE ERO will make a stay entry in its systems until USCIS indicates otherwise. USCIS will take initial jurisdiction over Zorayda's asylum application, and if it is granted by USCIS, ICE counsel will generally join or non-oppose her motion to reopen and dismiss or terminate her removal proceedings.

Example 4: Edison was designated a UC at the time he entered the U.S. in January 2022 when he was close to turning eighteen years old. When he turned eighteen, he was transferred to ICE custody but was released shortly thereafter on his own recognizance. Edison was placed in removal proceedings and then in July 2022 applied for asylum with USCIS and EOIR when he was nineteen years old. EOIR made a determination that it had initial jurisdiction, and his case is still pending before EOIR. His asylum application is also still pending with USCIS and was placed on hold. Can Edison take advantage of the benefits under the *JOP* settlement agreement?

Yes! Edison is a *JOP* class member because he was determined to be a UC, filed an asylum application after he turned eighteen and before February 24, 2025, and his asylum application has not been adjudicated by USCIS. Since Edison is a class member, USCIS will notify Edison that his application will be released from a hold. In addition, Edison's counsel, if any, could file a motion to continue or administratively close his removal proceedings to allow USCIS time to exercise jurisdiction over his asylum application. ICE counsel will either join in the motion or not oppose it because of the *JOP* settlement agreement.

If USCIS then declines jurisdiction because of Edison's transfer to ICE custody when he turned eighteen, USCIS must send Edison and counsel, if any, a notice of the jurisdictional rejection with a detailed description of the reasons that led USCIS to believe that Edison was placed in adult immigration detention and allow him thirty days (or thirty-three days if served via mail to Edison) to rebut the information. Note in this instance, Edison's counsel, if any, could argue that he was not placed in adult immigration detention because as defined in the settlement agreement a custody for the sole purposes of processing him prior to release on his own recognizance does not count as being placed in adult immigration detention. If successful, USCIS will retract the jurisdictional rejection within thirty days of having received the rebuttal.

C. UCs in the care and custody of a parent or legal guardian

While *Matter of M-A-C-O-* did not address the parental accompaniment prong of the UC statute, the decision continues a pattern of troubling language in certain UC rulings and policy memoranda over the years concerning reunification and UC status.[106] In *Matter of M-A-C-O-*, the BIA declined to review the immigration judge's conclusion that respondent's reunification with his aunt constituted a release into the custody of a legal guardian.[107] Similarly, in *Matter of Castro-Tum*, the Attorney General suggested that the child's reunification with his brother-in-law may have ended his UC status if his brother-in-law was his "legal guardian."[108] However, *Matter of Castro-Tum* was overruled by *Matter of Cruz-Valdez* in 2021[109]. As discussed above, the now-rescinded *Lafferty Memo* instructed USCIS to reject jurisdiction where there is a parent or legal guardian in the United States available to provide care and physical custody.[110] Even though the *Lafferty Memo* is rescinded and only applied to USCIS, there is a risk that an immigration judge could assert jurisdiction over a claim in which the UC is in the care and custody of a parent or has been appointed a legal guardian.

Currently, there is no statutory or regulatory definition of what constitutes a "parent or legal guardian in the United States…available to provide care and physical custody." It is important to note that sponsorship for release from Office of Refugee Resettlement (ORR) custody does *not* constitute legal guardianship. Rather, ORR sponsors are instructed to seek legal guardianship from the appropriate local court, but this is not required, and sponsors may or may not proceed to do so. [111]

Although not addressed in *Matter of M-A-C-O-*, practitioners should be prepared for immigration judges to question a UC's accompaniment status as part of their determination of initial jurisdiction. Where the UC has been released from ORR to a sponsor, it is especially important to emphasize that ORR sponsorship does not constitute legal guardianship and should not be used as grounds for finding that a child does not meet the definition of "unaccompanied." Additionally, and importantly, practitioners should be prepared to argue that under the *2025 Superseding Memorandum*, USCIS has initial jurisdiction over an individual's asylum application who was designated a UC even if they have an available parent or legal guardian in the United States that can provide care and physical custody.[112]

If your client is concurrently seeking special immigrant juvenile status (SIJS), this *should not* affect their UC status. However, if part of the pursuit of SIJS includes a petition appointing a legal guardian, advocates may wish to file the UC asylum application prior to the appointment of a legal guardian, in an abundance of caution.

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[106] *M-A-C-O-*, 27 I&N Dec. at 480 n. 4.
[107] *Id*.
[108] *Matter of Castro-Tum*, 27 I&N Dec. 271, 279 n. 4 (A.G. 2018).
[109] *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021).
[110] *Lafferty Memo*, at 3-4.
[111] *See* Office of Refugee Resettlement, Sponsor Care Agreement; *see also* 8 U.S.C. § 1232(c)(3); *Lafferty Memo*, at 3 ("legal guardianship refers to a formal (legal/judicial) arrangement"); *Langlois Memo* at 5 ("if a [UC] is released from ORR custody to a sponsor who is not a parent or legal guardian, the child continues to be unaccompanied").
[112] *2025 Superseding Memorandum*, at 3.

Example: Laila was designated a UC when she entered the U.S. in March 2025, when she was twelve years old. Laila is put into removal proceedings. Laila files her asylum application with USCIS in July 2025. At the time of filing her asylum application with USCIS, Laila reunified with her mother in the United States and applies for SIJS. Does USCIS have initial jurisdiction over her asylum application?

An immigration judge could extend the holding of *Matter of M-A-C-O-* to find that EOIR has initial jurisdiction over Laila's asylum application because she reunified with her mother prior to filing her application for asylum. However, Laila's counsel should argue that under the *2025 Superseding Memorandum*, USCIS must take initial jurisdiction over Laila's application. Note also that Laila's counsel, if any, could also file a unilateral discretionary motion to terminate Laila's removal proceedings under the new DOJ regulations as discussed in VI.C. Alternatively, if the immigration judge is reluctant to grant the unilateral discretionary motion to terminate, Laila's counsel could ask ICE counsel if they would join or non-oppose a motion to terminate.

D. Children not in removal proceedings who meet the UC definition

In cases in which a child asylum applicant is not in removal proceedings, under the *2025 Superseding Memorandum*, asylum officers must determine UC status at the time of filing for the purpose of deciding whether the one-year filing deadline applies.[113] Although USCIS has initial jurisdiction over all affirmative cases, there are strategic reasons why you may want your clients to be afforded UC protections in their affirmative cases, such as the exemption from the one-year filing deadline.[114] If so, you should file your client's asylum application while they meet the definition of a UC.

VI. Additional pointers to keep in mind

A. UC redeterminations undermine the intent of the TVPRA

The TVPRA vested initial jurisdiction over UC asylum applications with USCIS in order to provide crucial legal protections to a vulnerable category of immigrant youth.[115] According to a 2012 report by the USCIS ombudsman, the TVPRA's protections were intended to be available

[113] *2025 Superseding Memorandum*, at 4. Note asylum officers also have to determine UC status to determine if other asylum bars apply, such as the Circumvention of Lawful Pathways Rule and the Secure the Border rule, For more information on how the Circumvention of Lawful Pathways impacts children and youth see ILRC *How the Lawful Pathways Asylum Ban Impacts Children & Youth*,(October 16, 2023), https://www.ilrc.org/resources/community/how-%E2%80%9Clawful-pathways%E2%80%9D-asylum-ban-impacts-children-youth; *see also* National Immigration Project (NIP), *Changes to Asylum Eligibility under the Biden Administration*, (September 2024), https://nipnlg.org/sites/default/files/2024-09/Biden_asylum-changes-chart.pdf.
[114] 8 U.S.C. § 1158(a)(2)(E).
[115] *See USCIS Ombudsman*, at 2.

to UCs throughout their cases, and subjecting a UC to multiple determinations is at odds with the statute's express purpose of providing "timely, appropriate relief for vulnerable children."[116]

Be prepared to argue that UC protections are enshrined in the TVPRA, and that the statutory language clearly envisions these protections being permanent once a UC has been identified and properly designated.[117] The section of the TVPRA mandating regulations for UC asylum applications that take into account their specialized needs is under a statutory subpart titled "Permanent Protection for Certain At-Risk Children."[118]

B. Due process concerns for UC de-designation

According to an article published by the American Immigration Lawyers Association discussing pre-Kim Memo UC status redeterminations, "a child's living circumstances or relationship with his or her family may be dynamic, so the child may fall both within and outside the [UC] definition while present in the United States."[119] This susceptibility to change, coupled with the vulnerability of UCs, underscores the need for permanent protections once a child receives UC designation, as continuous reevaluation and de-designation could deprive vulnerable children of the protections Congress has afforded them.[120]

Instead, *Matter of M-A-C-O-*'s reliance on the OPPM's characterization of UC status as "fluid" reflects the view that a number of different adjudicators can strip UC status from a child at any time.[121] While additional guidance may be forthcoming, there is currently no comprehensive instruction as to when UC status can be redetermined, which agencies can do so, how such a re-determination is to be conducted, and what procedural protections, if any, are afforded to UCs when their status is being redetermined. In the interim, many adjudicators who are redetermining a UC's status do not have the expertise to determine whether a child has a parent or legal guardian and what it means for such parent or legal guardian to be "available to provide care and physical custody."[122]

The termination of UC status without a hearing or any procedural rules for adjudicators carries troubling due process implications.[123] If an immigration judge or other officer seeks to strip your client of the UC designation, you should argue that due process requires an evidentiary hearing regarding UC status.

C. Department of Justice regulations

Another tool or strategy that practitioners should keep in mind in UC asylum cases is the new Department of Justice (DOJ) regulations. On May 29, 2024, the Department of Justice issued

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[116] *Id.* at 4.
[117] *Id.*
[118] *8 U.S.C. § 1232(d)(8).* It is also important to note that these regulations have never been issued.
[119] A. Michelle Abarca et. al., *The ABCs of Representing Unaccompanied Children, American Immigration Lawyers Association*, at 588 (2011).
[120] *See USCIS Ombudsman*, at 4-5.
[121] *See OPPM 17-03*, at 7-8.
[122] *6 U.S.C. § 279(g)(2)(C)(ii); see also USCIS Ombudsman*, at 8.
[123] *See Reno v. Flores*, 507 U.S. 292, 306 (1993) (Fifth Amendment extends due process to deportation proceedings).

final regulations that became effective on July 29, 2024.[124] Under the final regulations, immigration judges now have the authority to administratively close or terminate proceedings when certain standards are met.[125] The regulations specifically allow for discretionary termination for unaccompanied children as defined in 8 CFR § 1001.1(hh) who have filed an asylum application with USCIS.[126] For individuals who meet the legal definition of an unaccompanied child, practitioners should consider filing a unilateral discretionary motion for termination under the new DOJ regulations. These new regulations make it easier for practitioners to argue for termination and to argue that USCIS has initial jurisdiction over the individual's asylum application. However, note that under the Trump administration, it is possible that EOIR could issue guidance to limit the adjudicator's ability to terminate proceedings if OPLA opposes the motion.

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[124] 89 FR 46742 (May 29, 2024).
[125] For more information, see NIPNLG, *Practice Advisory: Navigating the Removal Proceedings of J.O.P. Class Members and Other Asylum Seekers with Prior Unaccompanied Child Determinations*, (Nov. 17, 2025), https://nipnlg.org/work/resources/practice-advisory-navigating-removal-proceedings-jop-class-members-and-other-asylum; ILRC, *Seeking Administrative Closure and Termination: Using New EOIR Regulations in a Hostile Enforcement Environment*, (Feb. 5, 2025), https://www.ilrc.org/resources/seeking-administrative-closure-and-termination-using-new-eoir-regulations-hostile; *see also* Catholic Legal Immigration Network, Inc. (CLINIC), *Frequently Asked Questions: New DOJ Regulations on Efficient Case and Docket Management in Immigration Proceedings*, (June 2024), https://www.cliniclegal.org/resources/removal-proceedings/frequently-asked-questions-new-doj-regulations-efficient-case-and; National Immigration Project (NIP), Practice Alert: *EOIR Final Rule on Administrative Closure and Termination*, (June 11, 2024), https://nipnlg.org/sites/default/files/2024-06/2024_NIPNLG-EOIR-rule-alert.pdf.
[126] 8 CFR §§ 1003.1(m)(1)(ii)(A), 1003.18(d)(1)(ii)(A).