

	Interstate Commission for Juveniles	Opinion Number 05-2010	Page Number: 1
ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters			
Description: Clarification for Juveniles who are undocumented immigrants.		Dated: Sept. 13, 2010	

Background:

Pursuant to Commission Rule 8-101.3, a request has been made by the state of Colorado to address the following issues:

Whether the Interstate Compact for Juveniles, and its duly authorized rules, apply to juveniles who are undocumented immigrants.

Issues:

Colorado asks the following:

- 1) Is it appropriate to ascertain if the proposed placement juvenile is a citizen or in the country legally?
- 2) If the juvenile is not a citizen or here legally, can a placement be denied on those grounds and does this status make the juvenile ineligible for transfer?
- 3) Does or can the citizenship status of the transferring juvenile factor into the decision making process?
- 4) What status would a "common-law" step-parent carry, if any, if the (biological parent) was incarcerated or deported?

Analysis and Conclusions:

The first three questions all pertain to the eligibility of a juvenile who is an undocumented immigrant to be transferred under the compact and, if otherwise eligible, whether or not the juvenile's immigration status may be ascertained and considered as a factor in denying a transfer.

An undocumented immigrant who meets the definition of "*Juvenile*" under Article II, H. of the Compact and ICJ Rule 1-101, and seeks to transfer under the Compact and ICJ rules, is subject to the jurisdiction of the Compact. While such person's status as an "undocumented" immigrant would not necessarily disqualify an immigrant from transferring under the Compact, the applicable rules may result in the denial of a transfer

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due to the inability of the immigrant to meet the criteria of the Compact in a given case. For example, under ICJ Rule 5-101, Sub-Section 4, supervision may be denied in the receiving state if the juvenile is not in “substantial compliance with the terms and conditions of supervision required by the sending or receiving state.” Presumably, both the sending and receiving state require that ‘substantial compliance’ with such terms and conditions include the requirement to obey all laws. Accordingly, it is certainly reasonable to conclude that it is appropriate to ascertain the immigration status in order to determine whether a juvenile is eligible for transfer under the Compact and to consider undocumented immigration status as a legitimate basis for denial of transfer of supervision.

If the sentencing court determines that the immigrant’s status is that of being undocumented, and therefore presumably in violation of federal law, it is difficult to understand why such a court would release the juvenile to supervision in the community. However, if the sentencing court in the sending state is aware of this status and notwithstanding the same releases the juvenile to supervision, under the authority of ICJ Rule 5-101, Sub-Section 5 the receiving state could still raise the juvenile’s status as an undocumented immigrant as a basis to deny the proposed transfer.

With respect to question # 4, there is an implicit assumption of a legal recognition of the status of ‘common law step-parent,’ into whose custody a juvenile may be placed in the event of incarceration or deportation of the biological parent. There is no recognition of or definition for such a status under the Compact or ICJ Rules, both of which contemplate a ‘legal custodian’ or ‘legal guardian’ as determined or ordered by a Court to serve in the place of the parent. As such, a juvenile who is otherwise eligible for transfer and whose biological parent is incarcerated or deported could lawfully be placed with a ‘legal custodian’ or ‘legal guardian.’