

>> NEXT CASE, NEXT CASE, ON THE DOCKET IS O.I.C.L., A CHILD, VERSUS STATE.

WHENEVER YOU'RE READY.

>> GOOD MORNING, YOUR HONORS. MY NAME IS ANGELA VEHL I HAVE HONOR OF ARGUING ON BEHALF OF AMIKI.

SHE IS SEEKING TO ARGUE FIRST FOR EIGHT MINUTES TO BE FOLLOWED BY MISS LIAH PHRASER OF OFFICE OF JAN WISE FOR SEVEN MINUTES. A MIKI WITH PERMISSION OF THE COURT LIKE TO RESERVE FIVE MINTS FOR REBUTTAL.

THE REASON FOR AMIKI.

PARTICIPATING IN CASE AND PROCEEDING FIRST BECAUSE OF GREAT PUBLIC IMPORTANCE OF CASE BEFORE YOUR HONORS.

ERROR IN FACT COMMITTED BY THE FOURTH DISTRICT COURT OF APPEALS, NOT ONLY AFFECTS MANY, POTENTIALLY MANY IMMIGRANT CHILDREN BUT ANY CHILD SICK SUBJECT MISINTERPRETATIONS PUT TOGETHER BY THE FOURTH DISTRICT COURT OF APPEALS IN THIS CASE. BOTH AMIKI AND LEAD COUNSEL AGREE THIS COURT SHOULD INSTILL A REMEDY, WHICH IS REVERSAL AND REMAND FOR DEPENDENCY ORDER TO BE ISSUED IN THIS CASE AS SHOULD HAVE BEEN ISSUED BY THE TRIAL COURT.

>> BECAUSE I GUESS, JUST AS A BACKGROUND IS, THIS CASE CAME BECAUSE THE MOTHER WAS NOT ABLE TO TAKE CARE OF THE CHILD, OR THE CHILD WAS LIVING WITH THE UNCLE, RIGHT?

>> THAT'S CORRECT.

>> THERE WERE NO ALLEGATIONS THAT THE UNCLE WAS NOT-- ALLEGATIONS THAT THE UNCLE WAS NOT ABLE TO TAKE CARE OF THE CHILD.

SO HOW DID THIS CASE EVEN GET STARTED IN?

WHO BROUGHT WHAT AND CONSIDER.

>> PRIVATE PETITION BROUGHT TO THE TRIAL COURT ON BEHALF OF THE CHILD.

>> BY WHO.

>> OFFERS OF JAN WEISS.

HOW DID THEY GET THAT CASE?

I'M A LITTLE CONFUSED HERE.

UNCLE WAS TAKING CARE OF THE CHILD, THERE WAS NO COMPLAINT ABOUT THE CHILD, WHY WAS THERE EVER ANY CASE BROUGHT?

>> YOUR HONOR EXACTLY IDENTIFIED QUESTION IN THIS CASE.

IS THERE DIFFERENCE SEEKING PROTECT OF DEPENDENCY COURT UNDER SUBSECTION A OF 3901 OR E. THIS COMES INTO PLAY IN FRONT OF THE COURT NOT BECAUSE THIS CHILD WAS BEING ABUSED OR NEGLECTED AN ABANDONED OR ALONE AS ARGUED IN FRONT OF THE TRIAL COURT.

WHAT IS FRONT OF THE TRIAL COURT WHICH IS THE E SECTION, THE CHILD HAS NO CAPABLE PARENT OR LEGAL CUSTODIAN RESPONSIBLE FOR THEIR CARE.

SO THE UNCLE IS A VOLUNTEER.

>> SO ANY CHILD IN THIS STATE WHO IS LIVING WITH A RELATIVE WHO HAS NOT BEEN DECLARED THE LEGAL GUARDIAN OF THE CHILD CAN DO THIS?

IS THAT WHAT YOU'RE SAYING?

>> JUDGE SALTERS DISSENT IN BRCM, SUGGESTS THAT ANY CHILD SHOULD DESERVE A FULL REVIEW BY THE DEPENDENCY COURT TO MAKE EXACTLY THAT DETERMINATION AND THAT REVIEW WAS DENIED THIS CHILD BECAUSE THE TRIAL COURT FAILED TO SEE A DIFFERENCE BETWEEN GROUNDS TO COME IN UNDER E, OR UNDER A.

NOW TO BE CLEAR, BOTH WERE PLED HERE.

THERE WAS AN ARGUMENT THAT THE CHILD HAS BEEN ABANDONED AND NEGLECTED BY THEIR MOTHER UNDER A.

BUT THE LEAD COUNSEL IN THIS

CASE ONLY BROUGHT E TO THE ATTENTION OF THIS COURT BECAUSE E ALONE SHOULD BE ENOUGH TO FIND THIS CHILD DEPENDENT.

>> I DON'T THINK-- NOBODY'S SUGGESTING AT LEAST EVEN THE DISSENT, THAT OR THE CASES FROM THE FIRST DISTRICT THAT THIS IS IN CONFLICT WITH THIS IS JUST AN AUTOMATIC FINDING OF DEPENDENCY. YOU AGREE WITH THAT?

>> ABSOLUTELY.

BUT IT'S A HEARING.

>> THE HEARING, IF THE UNCLE THEN-- HOW DOES A FINDING OF LEGAL GUARDIANSHIP OCCUR?

>> THE UNCLE WOULD SEEK A GUARDIANSHIP.

THE UNCLE IT'S TELLING HERE DIDN'T.

THE UNCLE SIMPLY--

[INAUDIBLE]

UNCLE WOULD PROCEED UNDER FAMILY LAW TO SEPARATE COURT, NOT DEPENDENCY COURT TO SEEK GUARDIANSHIP.

[INAUDIBLE]

WOULD THE UNCLE COME IN AND TESTIFY TO SHOW THAT HE IS FIT, SO ON AND ON?

THAT IS WHAT WE'RE TRYING TO FIND OUT.

>> HE IN FACT PETITIONING THE COURT TO SAY I'M SEEKING RESPONSIBILITY OF THIS CHILD THROUGH A HEARING.

THE COURT COULD FIND A PRIMA FACIE CASE AND DO ADJUDICATION.

>> LEGAL CUSTODIAN DIFFERENT THAN LEGAL GUARDIAN?

>> ABSOLUTELY IS.

LEGAL CUSTODIAN REQUIRES-- GUARDIANSHIP IS TYPE OF LEGAL CUSTODIANSHIP BUT UNCLE HERE IS NEITHER.

THE UNCLE HERE IS VOLUNTARY, TEMPORARY CARETAKER WHO AGREED TO LET A BOY STAY WITH HIM DURING HIS IMMIGRATION CASE. DURING THE DOCUMENTS GIVE BY

OFFICE OF REFUGEE RESETTLEMENT  
WHEN HE FIRST TAKE THIS IS  
RESPONSIBILITY IT SAYS, IT  
ADVISES THE UNCLE AND ANYONE  
ELSE, ANY OTHER ADULT THAT WOULD  
DO THIS TO GO SEEK GUARDIANSHIP  
BUT HE DIDN'T BECAUSE HE IS  
TEMPORARY VOLUNTARY CARETAKER.  
FLORIDA CARES ABOUT HAVING AN  
ADULT LEGALLY RESPONSIBLE FOR  
ANYBODY UNDER THE AGE OF 18 AND  
HE'S NOT.

>> LET ME ASK BUT THE FEDERAL  
GOVERNMENT'S INTEREST IN THIS.  
NOW THE, THE PETITIONER HERE WAS  
TAKEN INTO CUSTODY BY  
IMMIGRATION.

>> ORIGINALLY.

>> ORIGINALLY UNDER PURSUANT TO  
FEDERAL LAW CUSTODY WAS  
TRANSFERRED TO OFFICE OF REFUGEE  
RESETTLEMENT, PART OF HHS,  
CORRECT?

>> RIGHT.

>> NOW AND THEN THEY, IF I  
UNDERSTAND CORRECTLY, THEY  
PLACED HIM WITH HIS UNCLE?

>> THEY ARRANGED FOR HIM TO STAY  
WITH HIS UNCLE.

>> WELL, I DON'T UNDERSTAND.  
IS THAT DIFFERENT THAN PLACED.

>> SEEMS TO BE TO BE DIFFERENT,  
YOUR HONORS, AND AMIKI, IT HAS  
PLACEMENT HAS DIFFERENT LEGAL  
VALUE UNDER CHAPTER 39.

PLACEMENT WHEN WE LOOK AT HOME  
STU DID IS AND LOOK AT HOUSE.

>> WHATEVER THEY DID THEN, IS  
FEDERAL GOVERNMENT DONE WITH  
HIM?

>> HE IS NOT.

IMMIGRATION COURT STILL HAS  
PROCEEDING THAT IS PENDING.

>> IS THE OFFICE OF REFUGEE  
SETTLEMENT DONE WITH HIM.

>> THE OFFICE OF REFUGEE  
SETTLEMENT ONCE THEY HAVE  
SPONSORSHIP AGREEMENT DOES NOT  
NEED TO TAKE DETENTION OF HIM  
AGAIN.

>> BUT HE HAVE THIS NO ONGOING RESPONSIBILITY AND LEGAL OBLIGATION WITH RESPECT TO HIS WELFARE AND WELL BEING?

>> IT'S A TOUCHY AREA BUT I BELIEVE THE ANSWER IS, THEY ARE, WHEN THEY DON'T HAVE THEIR DETENTION AND THEY HAVE A SPONSORSHIP AGREEMENT SIGNED BY AN ADULT, THAT THEY BELIEVE THAT THEIR TEMPORARY DETENTION IS COMPLETE AND THAT THAT ADULT IS RESPONSIBLE ONLY FOR GETTING THE CHILD TO IMMIGRATION COURT WHICH IS THE ONLY THING THAT IS IN THE PROPER AUTHORITY OF THE FEDERAL COURT TO CONSIDER.

THEY RECOGNIZE THAT IT IS STATE COURTS THAT SHOULD BE MAKING DECISIONS ABOUT WHERE CHILDREN LIVE AND WHO SHOULD TAKE CARE OF THEM.

WHY THE FEDERAL COURTS AND FEDERAL CFR SUGGEST THIS SHOULD BE A STATE COURT DETERMINATION AND THAT TRIAL COURTS SHOULD THEN SEE THE CHILD BEFORE THEM IF THEY FILED THAT PETITION AND MAKE A DECISION ABOUT WHETHER THEY'RE DEPENDENT.

>> THERE IS NO LAW THAT WOULD SUPPORT AN UNDERSTANDING THAT THIS, THAT THE PETITIONER WOULD IN SOME SENSE STILL BE IN THE CUSTODY OF THE OFFICE OF REFUGEE SETTLEMENT.

>> NOT AT THE TIME HE IS RELEASED BY THE SPONSORSHIP AGREEMENT BUT THE SPONSORSHIP AGREEMENT IS JUST THAT, AN AGREEMENT.

I DO RECOGNIZE IT'S A FUZZY AREA OF LAW.

>> DO YOU HAVE A COPY OF THAT?

>> IT IS NOT IN THE RECORD WHICH IS WHY THE AMI AMERICANS FOR IMMIGRANT JUSTICE AND LEGAL CLINICS MADE DECISION TO SHARE ABOUT IT.

IT IS PUBLICLY AVAILABLE.

>> WHAT IS THE AGREEMENT?  
WHAT DOES THE ADULT AGREE TO DO?  
>> THE ADULT MAKES SURE THAT  
CHILD ATTENDS IMMIGRATION COURT.  
>> THAT'S IT.  
>> THE CHILD WILL STAY WITH THE  
ADULT.  
>>> AND?  
>> ADULT GET GUARDIANSHIP OF  
CHILD.  
>> US DID THE PERSON WHO ENTERS  
THAT AGREEMENT, DO THEY IS  
BECOME RESPONSIBLE FOR HOUSING  
FOR THE PERSON?  
>> PERHAPS UNDER A TEMPORARY  
FEDERAL, FEDERAL DISPENSATION  
BUT NOT UNDER FLORIDA LAW.  
>> APPARENTLY THE AGREEMENT'S  
NOT UNDER FLORIDA LAW AT ALL.  
>> NO.  
THIS IS SOMETHING THAT OCCURS IN  
SEVERAL STATES AROUND THE  
COUNTRY.  
WE'RE TRYING TO DETERMINE--  
>> WE'RE HERE.  
AND DOES THE PERSON PROVIDE FOOD  
FOR THE INDIVIDUAL?  
>> IT IS SUPPOSED TO BE  
TEMPORARY CARE WHICH WOULD  
INCLUDE HOUSING AND--  
>> SO WE HAVE SOMEONE WHO SIGNED  
PAPERWORK FOR CARE OF THIS  
INDIVIDUAL?  
>> WE HAVE SOMEONE WHO SIGNED AN  
AGREEMENT WITH A FEDERAL AGENCY  
TO TEMPORARILY--  
>> YOU KEEP USING THESE WORDS,  
AN AGREEMENT TO MEAN IT'S A  
CONTRACT.  
ISN'T IT?  
IS IT BINDING AGREEMENT OR NOT.  
>> IT HAS NOT BEEN DETERMINED  
WHETHER IT WOULD BE BINDING IN  
FLORIDA COURT OF LAW BUT I THINK  
THE QUESTION FOR THIS COURT IS  
IT LEGAL CUSTODIANSHIP.  
>> I'M ASKING QUESTIONS.  
I'M GETTING BACKGROUND HERE.  
DON'T BE SO DEFENSIVE ABOUT  
THIS.

SO WE HAVE, THAT IS HOW THE  
INDIVIDUAL COMES TO THE LIVE  
WITH THE UNCLE?

IT IS NOT SOMETHING THAT HAS  
BEEN LITIGATED UNDER STATE LAW  
BUT THERE IS SOME KIND OF  
PAPERWORK THAT RECOGNIZES THAT  
THERE'S AN ADULT WHO IS, WHAT'S  
THE WORD, MAGIC WORD?

THAT'S A--

>> SPONSOR.

>> SPONSOR, OKAY.

EXCUSE ME FOR NOT USING THE  
PROPER WORD.

BUT SO WE HAVE A SPONSOR.  
OKAY.

ALL RIGHT.

>> IF THE OFFICE OF REFUGEE  
RESETTLEMENT COMES FOR WHATEVER  
REASON, BECOMES AWARE THAT THE  
UNCLE, FOR EXAMPLE, IN THIS  
CASE, IS NOT PROVIDING THE CARE  
TO THE CHILD, THAT THEY FEEL IS  
PROPER, CAN THEY TAKE THE CHILD  
BACK AND TRY TO FIND SOMEONE  
ELSE?

I'M TRYING TO FIGURE OUT WHAT  
THIS AGENCY'S JURISDICTION IS?

>> SADLY ALSO BEEN THE SUBJECT  
OF SOME PRESS RECENTLY AS WELL.

>> BUT WE DON'T MAKE DECISIONS  
BASED ON WHAT WE READ IN THE  
PAPERS.

>> I UNDERSTAND, YOUR HONOR.

>> WHAT IS THE LAW?

CAN THEY TAKE THE CHILD BACK AND  
REASSIGN THEM TO SOMEONE ELSE?

>> OFFICE OF REFUGEE  
RESETTLEMENT HAS THE AUTHORITY  
TO RESCIND THEIR SPONSORSHIP  
AGREEMENT WITH THE UNCLE.

I DON'T KNOW OF ANY TIMES WHERE  
THAT'S OCCURRED.

>> HERE'S THE THING.

WE'RE TRYING TO APPLY A FLORIDA  
STATUTE TO SOMETHING THAT I'M  
NOT SURE WAS INTENDED TO  
INTERACT WITH THE IMMIGRATION  
SITUATION.

SO MY CONCERN IS THAT WE DON'T

INADVERTENTLY INTERPRET IT BROADLY OR MORE NARROWLY BECAUSE THERE'S THIS POLITICAL OVERLAY. AS I UNDERSTAND, THE FEDERAL GOVERNMENT COULD STILL DECIDE NOT TO GRANT SPECIAL, SPECIAL IMMIGRATION STATUS.

>> THAT'S RIGHT.

>> IF THEY DECIDE THIS WAS A SHAM OR, WHATEVER THEY CONSIDERATION, CORRECT.

>> THAT'S CORRECT.

>> AND IN GOING BACK TO THE, TO DEPENDENCY COURT, IF THEY FIND, IF YOU HAVE A SITUATION WHERE A PARENT GIVES, SAYS, I'M GOING TO BE GOING ABROAD FOR SIX MONTHS AND I'M GOING TO HAVE MY MOTHER TAKE CARE OF THE CHILD, IS THAT THEN AUTOMATICALLY, IS THAT CHILD THEN, WOULD THEY BE DEPENDENT UNDER THIS SUBSECTION? I THINK THAT IS WHAT SOME OF US ARE CONCERNED WITH?

IT HAS UNINTENDED CONSEQUENCES AS TO WHO WOULD THEN BE A DEPENDENT CHILD.

SO, WHAT IS THE ROLE OF WHETHER A PARENT IS CAPABLE OF PROVIDING WITHOUT WANTING TO GO THROUGH THE COURT SYSTEM TO MY MOTHER OR TO MY OR SISTER.

HOW DOES IT-- WOULD THAT COME INTO EFFECT THEN?

>> THIS IS THE HEART OF THE ISSUE, AND THE ANSWER IS EACH CASE SHOULD BE ANALYZED DIFFERENTLY, BECAUSE IT WOULD BE AN EXPECTATION THAT THE CHILD HAS BEEN CARED FOR, THAT ARRANGEMENTS HAVE BEEN MADE, AND THAT THE PARENT IS SHOWING THEIR CAPACITY, THEY ARE CAPABLE OF PROVIDING CUSTODY AND CARE BY MAKING ARRANGEMENTS FOR THE CHILD.

DIFFERENT HERE.

>> BUT WOULDN'T IT BE THE SAME THING IF THE PARENT CAN'T?



IF I SAY I AM OUT OF A JOB, I DON'T HAVE A JOB RIGHT NOW, I JUST CAN'T DO THIS, AND I ASKED MY SISTER TO TAKE CARE OF MY CHILD, THAT'S THE SAME THING, ISN'T IT?

>> IT IS THE SAME AS THE EXAMPLE FROM JUSTICE PARIENTE BUT NOT THE SAME AS O.I.C.L..

>> WOULDN'T THE STATUTE PROVIDE THE SAME THING UNDER BOTH OF THESE SITUATIONS?

>> NO, BECAUSE THE STATUTE REQUIRES A HEARING, AND THE COURT WOULD LISTEN TO THOSE FACTORS AND HEAR THEM AND DETERMINE WHETHER OR NOT THAT WAS A PARENT WHO WAS SHOWING THEY WERE CAPABLE OF MAKING AN ARRANGEMENT FOR A CHILD OR NOT. THE MOTHER HERE DIDN'T DO THAT.

>> BUT THE FACTS HERE IS THE MOTHER DIDN'T MAKE THIS ARRANGEMENT, THE FEDERAL GOVERNMENT MADE THIS ARRANGEMENT.

IS THAT CORRECT OR IS THAT NOT CORRECT?

>> IT IS CORRECT THAT THE MOTHER DID NOT MAKE THE ARRANGEMENT. IT IS CORRECT THAT THE FEDERAL GOVERNMENT MADE THE ARRANGEMENT; HOWEVER, IT'S JUST A TEMPORARY, VOLUNTARY ARRANGEMENT. IT'S NOT A PERMANENT ONE.

>> WELL, THERE'S BEEN NO FINDING THAT THE MOTHER DID NOT HAVE, WAS CAPABLE OR NOT CAPABLE OF PROVIDING CARE, RIGHT?

>> THE FOURTH-- THE TRIAL COURT DIDN'T LIST E. IN ITS DECISION MAKING, SO IT'S NOT CLEAR WHETHER OR NOT THE TRIAL COURT--

>> RIGHT.

SO THAT'S WHY JUDGE FOREST TALKS ABOUT A REMAND TO MAKE THOSE DETERMINATIONS.

>> YOU'RE OUT OF TIME, INCLUDING YOUR REBUTTAL.

I'LL GIVE YOU A COUPLE OF MINUTES BECAUSE WE HELPED YOU WITH IT, BUT WE IMMEDIATE TO GET GOING.

>>-- WE NEED TO GET GOING WITH IT.

>> THANK YOU.

>> GOOD MORNING.

THANK YOU, LIAH FRAZIER, ASSOCIATE ATTORNEY ON BEHALF OF O.I.C.L..

BEFORE I GET STARTED INTO MY ARGUMENT, I WOULD LIKE TO ANSWER JUSTICE LEWIS' QUESTION REGARDING THERE THE SPONSORSHIP AGREEMENT IS A BINDING CONTRACT. IT'S OUR POSITION THAT IT IS NOT A BINDING CONTRACT BECAUSE IT LACKS CONSIDERATION.

A PRIMARY FOCUS OF CONTRACTS IS THAT THERE MUST BE CONSIDERATION WHICH CONFERS BOTH A DUTY AND A BENEFIT ON EACH PARTY, AND WITH THE SPONSORSHIP AGREEMENT, THAT IS NOT, THE CONSIDERATION IS NOT THERE.

>> WOULD YOU AGREE WE DON'T HAVE ONE IN OUR RECORD?

>> YES, I DO AGREE WITH THAT.

>> OKAY.

>> SO YOU'RE SAYING THAT THE GOVERNMENT IS ENTERING INTO ILLUSORY AGREEMENTS WITH PEOPLE WHO HAVE AGREED TO SPONSOR CHILDREN.

>> IT'S MY POSITION THAT IT'S ANALOGOUS TO A PERSON WHO SIGNS MAYBE A BOND RELEASE.

THE PERSON AGREES TO CERTAIN CONDITIONS OR CERTAIN DUTIES OR TERMS BUT DOES NOT ACTUALLY RECEIVE ANY BENEFIT.

THE RESPONSIBILITY OF TEMPORARILY CARING FOR A CHILD IS NOT NECESSARILY A BENEFIT BE TO A PERP-- BENEFIT TO A PERSON.

>> [INAUDIBLE]

>> WELL, IT MAY BE THE CHILD ISN'T SHIPPED BACK TO WHEREVER

COUNTRY IT IS.

THAT MIGHT BE THE QUID PRO QUO  
IN THAT SITUATION.

I, IT JUST SEEMS TO ME THAT  
THAT'S A KIND OF ARGUMENT,  
YOU'RE SAYING THE GOVERNMENT IS  
DOING SOMETHING THAT MAKES NO  
SENSE, IN ESSENCE.

AT LEAST FINDING SOME TEMPORARY  
SHELTER FOR THESE CHILDREN,  
RIGHT?

>> YES, THAT IS CORRECT.  
THEY ARE FINDING TEMPORARY  
SHELTER, AND THAT'S BECAUSE BOTH  
THE FEDERAL GOVERNMENT AND THE  
STATE LEGISLATURE BELIEVES THAT  
THESE CHILDREN, REGARDLESS OF  
WHERE THEY COME FROM, THEY ARE  
VULNERABLE CHILDREN THAT DESERVE  
PROTECTION.

AND THAT IS--

>> ISN'T IT, BUT, YOU SEE, NOW  
WE'RE GETTING INTO STATUTORY  
CONSTRUCTION.

CLEARLY, THE DEPARTMENT DOESN'T  
THINK THAT THIS-- I MEAN, LET'S  
JUST, I THINK THEIR POSITION IS  
THEY EVER HEARD THAT THE CHILD  
WAS BEING ABUSED OR NEGLECTED,  
THEY WOULD THEN COME IN AND  
INVESTIGATE THE SITUATION.

WE'RE TALKING ABOUT A PRIVATE  
PETITION WHICH IN THE MOST CASES  
WHERE IF SOMEBODY'S GOING TO BE  
LEFT WITH THEIR GRANDMOTHER OR  
AUNT, THERE'S NOT GOING TO BE AN  
INTEREST IN FILING WITH THE  
COURT SYSTEM.

BUT IT SEEMS TO ME THAT THE  
PROBLEM IS THAT THE LEGISLATURE  
IN E. MAY HAVE MEANT SOMETHING  
DIFFERENT THAN WHAT THIS IS  
ACTUALLY WORKING OUT, WHICH IS A  
CHILD THAT'S ORPHANED X THERE'S  
NO LEGAL-- AND THERE'S NO LEGAL  
CUSTODIAN PROVIDING SUPERVISION  
AND CARE.

NOT A SITUATION WHERE THE  
FEDERAL GOVERNMENT HAS COME IN  
AND PLACED A CHILD WHO IS A

TEENAGER WITH A RESPONSIBLE  
ADULT.

OR ARE YOU SAYING THAT E. WAS  
DEVELOP CANNED AS A-- DEVELOPED  
AS A RESPONSE TO THE IMMIGRATION  
SITUATION?

>> NO.

OUR POSITION IS THAT--  
O.I.C.L.'S SITUATION IS  
ANALOGOUS TO AN ORPHANED CHILD  
BECAUSE HE HAS NO PARENT OR  
LEGAL CUSTODIAN PROVIDING HIM  
CARE.

IN A SITUATION IN WHICH-- THE  
FACTUAL SITUATION THAT YOUR  
HONOR--

>> I MEAN, AN ORPHAN, THERE'S NO  
QUESTION THAT HIS MOTHER IS  
STILL ALIVE.

CORRECT?

>> THAT'S CORRECT.

>> OKAY.

THAT'S NOT DISPUTED.

SO IT'S NOT, CERTAINLY NOT  
TECHNICALLY AN ORPHAN.

>> TECHNICALLY NOT AN ORPHAN.

SO THEN THE QUESTION WOULD TURN  
TO WHETHER THE MOTHER IS CAPABLE  
OF PROVIDING SUPERVISION AND  
CARE.

IN THE INSTANCE, THE FACTUAL  
DIFFERENCE BETWEEN THE  
HYPOTHETICAL JUSTICE PARIENTE  
POINTED OUT IS THAT THE PARENT  
ENTRUSTED THAT CHILD INTO THE  
CARE OF A RELATIVE.

IN THIS SITUATION, IN O.I.C.L.'S  
SITUATION, HIS MOTHER NEVER  
ENTRUSTED HIM INTO THE CARE OF  
HIS UNCLE.

SHE KICKED HIM OUT OF HER HOUSE.

HE WAS ALONE, WITHOUT ANYONE  
ELSE, NOWHERE TO GO, COMES TO  
THE UNITED STATES AND NOW IS  
STAYING WITH HIS UNCLE.

>>-- UNCLE.

>> NOW, IN FAIRNESS TO THE  
MOTHER, IF I UNDERSTAND THE  
RECORD, THE, WHAT IT SHOWS IS  
THAT SHE KICKED HIM OUT BECAUSE

SHE HAD NO ABILITY TO PROVIDE FOR HIM.

>> THAT'S CORRECT.

OUR POSITION IS THAT IT'S NOT JUST FINANCIAL ABILITY, AND IT'S NOT JUST THE PHYSICAL DISTANCE THAT SEPARATES THEM, IT'S THE EMOTIONAL DISTANCE AS WELL.

THERE'S NO BE EVIDENCE THAT WAS PRESENTED THAT SHE WAS TRYING TO CONTACT HIM, THAT THEY WERE MAINTAINING COMMUNICATION, THAT SHE EVER ASSISTED HIM IN ANY WAY SINCE SHE KICKED HIM OUT OF HER HOUSE.

AND THAT'S BECAUSE THERE WASN'T ANY.

SHE HAD MADE NO EFFORT TO PROVIDE FOR HIM HERSELF OR TO HAVE ANYONE ELSE PROVIDE FOR HIM OR MAKE THOSE ARRANGEMENTS.

>> DO YOU--

[INAUDIBLE]

OPINION IN O.I.V.?

>> I'M SORRY, YOUR HONOR?

>> DO YOU AGREE WITH THE ANALYSIS BY JUDGE RAY IN Y.V.? IT'S ONE OF THE CONFLICT CASES.

>> YES, I DO AGREE WITH THE ANALYSIS.

AND IT'S OUR POSITION THAT THIS COURT SHOULD FOLLOW THE ANALYSIS SET FORTH IN THE FIRST DCA HOLDING OF Y.V. BECAUSE JUSTICE RAY SPECIFICALLY LOOKED AT CHAPTER 39 IN ITS ENTIRETY.

>> SEE, MY PROBLEM IS THOUGH THAT THE STATUTORY REQUIREMENTS WERE THAT THE LEGISLATURE THEN ENACTED IN RESPONSE TO THIS ISSUE WAS THAT THERE HAD TO BE A FINDING OF DEPENDENCY BASED ON ALLEGATIONS OF ABUSE, NEGLECT OR ABANDONMENT WHICH MAKES ME THINK THAT THE LEGISLATURE INTENDED ONLY IF THERE WAS A 15A FINDING THAT THEY WOULD THEN PROCEED TO PROVIDE CARE.

HOW DOES THAT STATUTE WHICH IS THE LATER-ADOPTED STATUTE

INTERACT WITH 15E?

>> THE 15-- I'M SORRY--

>> THAT'S 39.50751B.

>> 39.5075 SPECIFICALLY  
RECOGNIZES THESE TYPES OF  
CHILDREN WHO ARE COMING FROM  
OTHER COUNTRIES, AND AFTER BEING  
FOUND DEPENDENT, THEN DIRECTS--

>> IT'S DEPENDENCY BASED ON  
ABUSE, NEGLECT OR ABANDONMENT.

>> YES, THAT IS CORRECT.

AND MY POSITION IS THAT THAT IS  
BASED OFF OF THE LANGUAGE FROM  
THE FEDERAL STATUTE BECAUSE  
REUNIFICATION MUST NOT BE VIABLE  
WITH ONE OR BOTH PARENTS DUE TO  
ABUSE, ABANDONMENT OR NEGLECT.  
WHAT THAT LEAVES OUT THOUGH IS  
THAT THERE IS ALSO ANOTHER  
ELEMENT IN WHICH A CHILD MAY BE  
ADJUDICATES-- OR WHICH MAY SEEK  
SIJ STATUS, AND THAT IS A  
SIMILAR BASIS FOUND UNDER STATE  
STATUTE.

AND THAT IS BECAUSE EVERY STATE  
HAS DIFFERENT LAWS, EVERY STATE  
IS DIFFERENT, AND SO THE FEDERAL  
LEGISLATION RECOGNIZING THE  
EXPERTISE OF STATE COURT JUDGES  
DECIDED TO BROADEN AND EXPAND  
THE TYPES OF CHILDREN THAT CAN  
SEEK THE SIJ STATUS BECAUSE THEY  
WERE WELL INFORMED THAT THERE  
ARE DIFFERENT SITUATIONS OTHER  
THAN ABUSE, ABANDONMENT OR  
NEGLECT THAT CHILDREN NEED  
PROTECTION FROM.

I SEE MY TIME IS ABOUT TO RUN  
OUT--

>> YOU'RE PAST.

>> ANY OTHER QUESTIONS?

WE RESPECTFULLY ASK THIS COURT  
TO REVERSE THE HOLDING FROM THE  
FOURTH DCA IN THE PRESENT CASE  
TO CONFORM TO THE FIRST DCA HOLD  
ANYTHING RAY Y.V..

WE WOULD ALSO ASK CAN THIS COURT  
TO GIVE GUIDANCE USING JUSTICE  
SALTER'S ANALYSIS AS PROVIDED IN  
HIS OPINION IN RAY R.B.C.M..

WE ALSO ASK THIS COURT TO  
REVERSE AND REMAND FOR AN ORDER  
OR IN THE THEY WERE, REVERSE AND  
REMAND FOR A HEARING.

THANK YOU.

>> THANK YOU.

>> CHIEF JUSTICE AND MAY IT  
PLEASE THE COURT, MY NAME IS  
STEPHANIE ZIMMERMAN, AND I'M  
REPRESENTING THE DEPARTMENT OF  
CHILDREN AND FAMILIES,  
CHILDREN'S LEGAL SERVICES.  
AS THIS COURT HAS RECOGNIZED,  
THIS CASE REALLY RISES AND FALLS  
ON THE DEFINITION OF WHAT IT  
MEANS TO BE CAPABLE OF  
PROVIDING--

>> WAS THE DEPARTMENT A PARTY  
BELOW?

>> THE DEPARTMENT, WHILE IT IS A  
PARTY PURSUANT TO CHAPTER  
39.01'S DEFINITION OF PARTY TO  
ALL DEPENDENCY PROCEEDINGS, THE  
DEPARTMENT DID NOT APPEAR IN  
THIS CASE, DID NOT ARGUE IN THIS  
CASE IN THE TRIAL COURT OR IN  
THE FOURTH DCA BELOW.

>> WHAT DOES THAT SAY ABOUT THE  
DEPARTMENT'S-- I MEAN, THIS IS  
WHAT IS SORT OF A BIZARRE THING.  
BECAUSE IF A CHILD IS DECLARED  
DEPENDENT UNDER E, THERE ARE  
OTHER BENEFITS UNDER OUR STATE  
LAW THAT A CHILD GETS SUCH AS  
THE ABILITY TO ATTEND COLLEGE  
WITHOUT COST AND OTHER-- NOW  
THAT WE HAVE INDEPENDENT LIVING,  
OTHER BENEFITS.

WHEN YOU SAY CHILDREN AND LEGAL  
SERVICES, IT'S THE DEPARTMENT OF  
CHILDREN AND FAMILIES.

IS IT THAT WHEN IT'S, THAT  
THERE'S NO INTEREST BECAUSE THIS  
IS REALLY BEING DONE TO SEE IF  
THEY CAN OBTAIN SPECIAL  
IMMIGRANT STATUS, OR DO THEY  
INVESTIGATE AND MAKE SURE THEY  
HAVEN'T BEEN ABUSED AND  
NEGLECTED?

I'M NOT UNDERSTANDING HOW THEY

JUST TUNE OUT OF THESE  
PETITIONS.

>> AS IT STANDS TODAY, THE  
DEPARTMENT IS NOT TUNING OUT OF  
THESE PETITIONS.

WE A YEAR AGO, WHEN THIS CASE  
CAME IN FRONT OF THE TRIAL COURT  
FOR THE FIRST TIME IN OCTOBER  
2014, WERE NOT IN THE USUAL  
POSITION OF BEING THE  
PETITIONER.

INSTEAD, WE WERE SERVED WITH  
THIS PARTICULAR PETITION AS THE  
RECORD REFLECTS.

WHAT HAPPENED THEN I  
HONESTLY CAN'T EXPLAIN.

BUT NOW WHEN WE ARE SERVED THE  
PETITIONS IN THESE CASES, WE DO  
APPEAR.

BECAUSE THE TRIAL COURTS AS WELL  
AS THE APPELLANT COURTS DO  
DESERVE OUR GUIDANCE AS THE  
EXPERTS IN THE DEPENDENCE CITY  
PROCESS.

>> SO, BUT DIDN'T A TRIAL JUDGE  
DESERVE SOME GUIDANCE FROM THE  
DEPARTMENT AT THE TIME THIS ALL  
CAME ABOUT?

AND SO WHAT, WHY IS THE  
DEPARTMENT'S INTEREST DIFFERENT  
NOW THAT YOU'RE APPEARING  
HERE--

>> RIGHT.

>> BUT YOU DIDN'T APPEAR EITHER  
IN THE APPELLATE COURT OR IN THE  
TRIAL COURT?

SO WHAT'S THE DEPARTMENT'S  
DIFFERENT INTEREST NOW?

>> I DO WISH I COULD TURN BACK  
TIME AND PROVIDE GUIDANCE TO  
THIS PARTICULAR TRIAL COURT, BUT  
WE COME HERE TODAY BECAUSE AS  
THE AMICUS COUNSEL HAS POINTED  
OUT, THIS CASE DOES NOT ONLY  
IMPACT PETITIONER, BUT IT  
IMPACTS ALL OF FLORIDA'S  
CHILDREN.

ALL OF FLORIDA'S CHILDREN ARE  
SUSCEPTIBLE TO THE DEFINITION OF  
DEPENDENCY THAT IS IN 39.01.



>> SO DO YOU AGREE WITH THEIR DEFINITION?

>> WE AGREE WITH THAT PORTION WHERE AMICUS SAID WHETHER THE PARENT IS CAPABLE BY MAKING PROVISIONS FOR THE CARE OF THE CHILD.

THIS CANNOT BE LOOKED AT SOLELY--

>> BUT LET ME-- OKAY.

THAT KIND OF CUTS TO THE HEART OF THIS.

BECAUSE WHAT DO YOU SAY TO THE SUGGESTION THAT IN THIS CASE THE MOTHER DID NOT MAKE PROVISION? IT WAS THE OFFICE OF REFUGEE RESETTLEMENT THAT MADE PROVISION.

THE MOTHER HAD NOTHING TO DO WITH THAT.

SHE'S ENTERED THE PICTURE AFTER THE FACT, GIVEN AN AFFIDAVIT TO HELP THIS PROCEEDING GO FORWARD. SHE ACTUALLY PLAYED NO ROLE IN MAKING PROVISION FOR THE CARE AND SUPERVISION OF THE CHILD.

>> WE WHOLEHEARTEDLY ADMIT THAT SHE DID NOT MAKE THIS PROVISION, BUT I THINK WHAT WE NEED TO DO IS WE AGREE IT NEEDS TO BE REMANDED, BUT IT NEEDS TO BE REMANDED FOR A FURTHER HEARING ON WHAT THE MOTHER WAS CAPABLE OF.

WHY WASN'T THE UNCLE SOMEONE WHOM SHE COULD HAVE REACHED OUT TO AT THAT TIME?

WE NEED TO EXPLORE THAT.

WHAT WE HAVE IN THIS RECORD IS THAT THE CHILD TESTIFIED THAT THE MOTHER HAD NO FOOD, NO CLOTHING TO PROVIDE THIS CHILD. THERE'S A DISTINCTION THOUGH OF NOT PROVIDING AND WHETHER A PARENT IS CAPABLE OF PROVIDING. UNDER THE DEPENDENCY STATUTES, NEGLECT IS THAT KIND OF SITUATION WHERE A PARENT DOES NOT PROVIDE.

HERE WE KIND OF LOOK AT WHETHER

SHE WAS CAPABLE.

>> SO LET ME ASK YOU A QUESTION.  
ARE YOU AGREEING WITH JUDGE  
FOREST SAID IT SHOULD BE  
REMANDED FOR AN EVIDENTIARY  
HEARING?

>> WE DO AGREE WITH JUDGE  
FOREST, YES, BECAUSE NEITHER THE  
TRIAL COURT, NOR THE FOURTH DCA  
RECOGNIZED THIS AS THE  
INDEPENDENT BASIS FOR  
DEPENDENCY.

IT DOES NEED TO BE EXAMINED AS  
ITS OWN BASIS.

WE HAVE TO LOOK-- YES.

>> I GUESS WHAT IS OF CONCERN TO  
ME IS THIS BROAD DEFINITION  
THAT'S BEING USE HERE.

IT SEEMS TO ME, AS WE ASKED THE  
OTHER COUNSEL, THAT ANY CHILD  
LIVING WITH ANY AMERICAN THAT IS  
NOT THE-- ANY PERSON THAT IS  
NOT THE CHILD'S PARENT CAN THEN  
WHETHER THE PERSON WHO THEY'RE  
LIVING WITH IS TAKING CARE OF  
THEM OR NOT, CAN COME INTO THE  
COURT AND SEEK THIS DEPENDENCY  
STATUS.

IS THAT HOW BROAD THE STATUTE  
IS?

>> NO, IT IS NOT, YOUR HONOR.  
THE REASON IT IS NOT IS BECAUSE  
CHAPTER 39 MAKES IT CLEAR THAT  
IT HAS TO BE LIBERALLY  
INTERPRETED IN THE CONTEXT OF  
THE INTENT AND PURPOSE OF  
CHAPTER 39.

CHAPTER 39 IS TO MAKE THE HEALTH  
AND SAFETY OF CHILDREN THE  
PARAMOUNT CONCERN.

WHERE CHILDREN ARE OTHERWISE  
HEALTHY AND SAFE, THERE IS NO  
REASON FOR THAT CHILD TO BE  
PULLED INTO THE DEPENDENCY  
SYSTEM WITH THE OVERSIGHT THAT  
BOTH THE COURT AND THE  
DEPARTMENT PROVIDE THAT FAMILY.

>> SO WHY WOULD IT IN THIS  
SITUATION WHERE AS FAR AS I CAN  
TELL FROM THIS RECORD THE CHILD

WAS LIVING WITH AN UNCLE, THE UNCLE WAS TAKING CARE OF THE CHILD, SO WHY WOULD YOU PULL THIS CHILD INTO THE DEPENDENCY SITUATION EXCEPT FOR THOSE OTHER THINGS THAT YOU CAN GET DOWN THE LINE ONCE YOU DECLARE DEPENDENT?

>> BECAUSE WITH THIS PARTICULAR CASE WE HAVE TO LOOK AT WHAT THE MOTHER WAS CAPABLE OF DOING. AND MAYBE THERE WAS SOMETHING THAT WE DON'T KNOW ABOUT BECAUSE IT WASN'T FLESHED OUT BELOW OF WHY THIS MOTHER COULD NOT TURN TO THIS UNCLE.

OR MAYBE THIS UNCLE WAS UNKNOWN. BUT NOW THIS CHILD IS BEING CARED FOR.

WHERE A PARENT IS ABLE TO PLACE THEIR CHILD IN ANOTHER RELATIVE'S OR ANOTHER RESPONSIBLE ADULT'S HOME THAT CAN PROVIDE FOR CARE, THAT CHILD SHOULD NOT BE PART OF THE DEPENDENCY PROCESS.

AND WE TALK ABOUT WHAT ARE THE MECHANISMS THAT COULD PROVIDE SOME KIND OF PROTECTION FOR THESE KIDS.

FLORIDA LAW PROVIDES THOSE MECHANISMS, BY EXAMPLE, CHAPTER 751 PROVIDES FOR THE TEMPORARY CARE OF CHILDREN.

>> SO YOU, SO YOUR ARGUMENT WOULD THEN BE THAT THIS CHILD COULD GO THROUGH DEPENDENCY BECAUSE IT WASN'T THE MOTHER WHO PUT THE CHILD IN THE UNCLE'S CARE, BUT THE GOVERNMENT?

>> MY POSITION IS THAT WE DON'T KNOW IF THIS CHILD IS DEPENDENT OR NOT BECAUSE WE HAVE NOT FLUSHED OUT WHETHER THE MOTHER WAS CAPABLE.

WE HAVE TO LOOK AT THE RESOURCES THAT ARE AVAILABLE TO THAT MOTHER.

RESOURCES CAN BE PEOPLE, THEY CAN BE SERVICES, THEY CAN BE A WHOLE HOST OF THINGS.

WE JUST DON'T KNOW WHAT THEY ARE FOR THIS PARTICULAR PARENT, BUT WE NEED THIS COURT IN ITS ANALYSIS TO--

>> WELL, IT APPEARS THAT THE BROTHER WAS A RESOURCE AVAILABLE.

>> THE BROTHER, I'M SORRY, YOUR HONOR?

>> WELL, YES.

>> THE UNCLE--

>> I MEAN, THAT'S HER BROTHER. MAYBE THAT'S NOT HER BROTHER.

>> I'M SORRY.

>> THE UNCLE WAS A RESOURCE AVAILABLE.

>> AND WE VERY MUCH--

>> SHE DIDN'T AVAIL HERSELF OF IT--

>> UH-HUH, RIGHT.

>> BUT YOUR POINT IS IF THAT WERE AVAILABLE, THEN SHE WERE, THEN SHE WOULD BE CAPABLE OF THROUGH THAT MEANS PROVIDING THE CARE AND SUPERVISION.

>> YES, YOUR HONOR.

>> HOW DOES BEING DECLARED DEPENDENT AS TO ONE PARENT BUT NOT BOTH, BECAUSE THERE ARE CASES OUT THERE AND THEY'RE COMING UP THIS WAY THAT WOULD HAVE ONE PARENT ABANDONS THE FAMILY, EVERYBODY, BUT THEN THERE'S ANOTHER PARENT STILL ON THE SCENE.

AND THE ARGUMENT IS MADE, WELL, IT'S ABANDONMENT AS TO A SINGLE PARENT.

HOW DOES THAT FIT INTO THE DISCUSSION HERE AND WHAT'S IN THE STATUTE AND WHAT IT ALLOWS?

>> THE DISCUSSION THAT WE'VE BEEN ENGAGING IN SO FAR TODAY IS, CONCERNS 15E WHICH TALKS ABOUT NO PARENT AVAILABLE. WHETHER ONE PARENT IS THE BASIS FOR DEPENDENCY REALLY LOOKS AT SUBSECTIONS A AND F OF 39.015.

>> ALL RIGHT.

>> THAT PLAIN LANGUAGE DOES

STATE THAT A CHILD CAN BE  
ADJUDICATED DEPENDENT BASED UPON  
ONE PARENT.

>> RIGHT.

>> HOWEVER, WE ALSO ASK THAT  
THIS COURT INTERPRET T THOSE  
SAME SUBSECTIONS WITH THE INTENT  
AND PURPOSE OF CHAPTER 39.

I'D LIKE TO GIVE THIS COURT AN  
EXAMPLE.

A SINGLE MOTHER CAN BE RAISING  
HER CHILD FOR 17 YEARS AND HAVE  
PROVIDED A VERY SAFE AND STABLE  
HOME.

BUT THE FATHER COULD HAVE  
ABANDONED THAT CHILD AT INFANCY.  
IF WE READ IT SO STRICTLY THAT  
ONLY ONE PARENT CAN BE THE BASIS  
FOR DEPENDENCY, THEN THAT SINGLE  
MOTHER AND HER CHILD WOULD BE  
PULLED INTO THE SYSTEM, AND THAT  
IS NOT WHAT THE LEGISLATURE  
INTENDED.

>> I MEAN, EVERY SINGLE PARENT,  
FAMILY OR CHILD WOULD THEN BE  
SUBJECT TO BEING DECLARED  
DEPENDENT FOR PURPOSES OF THE  
STATE.

>> EXACTLY, YOUR HONOR.

AND THAT IS NOT THE  
INTERPRETATION THAT ANYBODY  
INTENDED.

WE LOOK AT THE PRINCIPLES OF  
STATUTORY CONSTRUCTION, AND  
THOSE PRINCIPLES SAY THAT WE  
SHOULD NEVER STRICTLY READ A  
STATUTE IN A WAY THAT WILL LEAD  
TO UNREASONABLE OR ABSURD  
RESULTS.

AND TO READ IT THAT NARROWLY  
WILL DO SO.

>> WELL, I DON'T WANT-- BUT  
HERE, GOING BACK TO E AND  
SOMETIMES THE LEGISLATURE SAYS  
WE SHOULDN'T BE INTERPRETING  
STATUTES, IT'S UP TO THEM TO  
CLARIFY.

AND IT SEEMS TO ME THAT BECAUSE  
OF THIS UNIQUE SITUATION WHICH  
IS REALLY-- DEPENDENCY STATUS

IS BEING SOUGHT FOR A VERY SPECIAL REASON, SO THEY CAN GET THIS SPECIAL IMMIGRANT STATUS. SHOULDN'T THE LEGISLATURE CLARIFY OR NARROW SUBSECTION E SO THAT IT DOES NOT HAVE THE UNINTENDED CONSEQUENCE OF WHERE, YOU KNOW, A CHILD COMES HERE, THE PARENT SAYS GO TO AMERICA, YOU KNOW?

I CAN'T SUPPORT YOU ANYMORE. I'M NOT CAPABLE OF PROVIDING SUPPORT.

BUT THE FEDERAL GOVERNMENT, AS JUSTICE KANDI SAYS, THEN COMES IN AND SAYS, WELL, WE'RE EITHER REPORTING YOU, OR WE'RE FIGURING SOMETHING OUT, BUT IN THE MEANTIME, WE'RE PUTTING YOU WITH SOMEBODY.

IT SEEMS TO ME THAT'S A, THAT'S THE FEDERAL GOVERNMENT AND THE STATE TRYING TO FIGURE THIS OUT, AND IT DOESN'T LOOK LIKE E WAS AMENDED SINCE THIS ALL STARTED. IS THAT TRUE, THAT E PRECEDED WHATEVER ELSE THE FLORIDA LEGISLATURE'S DONE?

>> YES.

E AS A STATUTORY BASIS PRECEDED THE 2005 ADOPTION OF 39--

>> SO DO WE MAKE ANYTHING OF THE FACT THAT, AND I DON'T KNOW IF THERE'S A WAY TO INTERPRET IT. YOU'RE SAYING WE STILL HAVE TO DECIDE IF THE MOTHER WAS CAPABLE OF PROVIDING CARE.

DOES THAT-- OR CAPABLE OF ENTRUSTING THE CARE TO A RESPONSIBLE ADULT.

I MEAN, ANOTHER WAY TO DO IT WOULD BE TO SAY, UNCLE, YOU'VE GOT TO BECOME A LEGAL CUSTODIAN. IF YOU DON'T WANT TO, WE, DCF, HAVE TO, YOU KNOW, THIS CHILD WAS 18, BUT IF THE CHILD'S 12, YOU KNOW, DCF HAS A REASON TO MAKE SURE THAT THERE IS A LEGAL CUSTODIAN, RIGHT?

>> YES.

IT WOULD MAKE OUR JOBS A LOT EASIER IF THE LEGISLATURE WOULD TAKE THE OPPORTUNITY TO DEFINE WHAT IT MEANT BY "CAPABLE OF PROVIDING SUPERVISION AND CARE."

WE DO HAVE A HINT OF WHAT THEY MEANT WITH RESPECT TO THE INTENTS AND PURPOSES THAT ARE LAID OUT IN SUBSECTION SEVEN. THAT PARTICULAR SUBSECTION SPEAKS TO THE PARENT'S RESPONSIBILITY TO PROVIDE FOR THE SUPERVISION AND CARE. AND IT SAYS WE RECOGNIZE THAT THERE ARE SOMETIMES SOCIAL, ECONOMIC, BEHAVIORAL, PHYSICAL ISSUES AND PROBLEMS THAT CAN IMPEDE THAT.

THAT'S WHY WE THINK THAT THIS PARTICULAR SUBSECTION WAS NOT DESIGNED FOR THOSE INSTANCES WHERE THERE'S SOME KIND OF INABILITY.

FOR INSTANCE, IF A PARENT HAS A MEDICAL CRISIS AND NEEDS TO BE HOSPITALIZED AND CAN'T MAKE THOSE ARRANGEMENTS AHEAD OF TIME, THIS PARTICULAR GROUND WOULD BE AVAILABLE TO PROTECT THAT CHILD, TO MAKE THAT CHILD SAFE.

ANOTHER SCENARIO WOULD BE WHERE A PARENT IS INCARCERATED UNEXPECTEDLY AND HAS NOT MADE THOSE ARRANGEMENTS.

THIS GROUND WOULD ENABLE US TO PROTECT THAT CHILD.

>> SO LET ME ASK YOU THIS THOUGH.

ARE YOU FAMILIAR WITH WHATEVER THIS AGREEMENT IS THAT THE UNCLE SIGNED WITH THE GOVERNMENT?

>> BECAUSE THE UNCLE'S AGREEMENT WAS NOT ON THE RECORD, I'M NOT FAMILIAR WITH THAT.

>> OKAY.

>> WHAT I'M FAMILIAR WITH IS THE STANDARD FORM THAT IS ONLINE ON THE OFFICE OF REFUGEE RESETTLEMENT--

>> OKAY.

>> AND I CAN SPEAK TO THE STANDARD FORM THAT'S AVAILABLE.

>> UNDER THE STANDARD FORM THEN, THE PERSON AGREES TO TAKE CARE OF THE CHILD--

>> YES.

THE VERY FIRST AGREEMENT IS THAT THEY WILL PROVIDE FOR THE CARE OF THE CHILD.

>> OKAY.

AND THEN DO THEY AGREE TO BECOME THE CUSTODIAN OR AGREE TO THINK ABOUT BECOMING THE CUSTODIAN B?

>> ACTUALLY, THE REFERENCE TO CUSTODIAN IS NEVER FLUSHED OUT IN THE FORM.

WHAT THEY AGREE TO DO IS IF THEY IN ANY WAY WILL NO LONGER BE ABLE TO TAKE CARE OF THE CHILD, THEY MUST PROVIDE FIVE DAYS' NOTICE TO THE OFFICE OF REFUGEE RESETTLEMENT, LETTING THEM KNOW THEY CAN NO LONGER PROVIDE CARE FOR THE CHILD.

>> SO, IN ESSENCE, THE CHILD IS PLACED WITH SOMEONE WHO AGREES TO TAKE CARE OF HIM, AND IF FOR SOME REASON THEY BECOME UNABLE TO TAKE CARE OF THE CHILD, THEY WILL NOTIFY THE DEPARTMENT, WHATEVER THAT DEPARTMENT--

>> THE OFFICE OF REFUGEE RESETTLEMENT.

>> YEAH, OKAY.

>> SO COULDN'T THE LEGISLATURE, ALL THEY HAVE TO DO IS-- THEY COULD SAY PARENT CAPABLE, A LEGAL CUSTODIAN OR A PERSON DESIGNATED BY THE, THIS OFFICE OF REFUGEE RESETTLEMENT WHO HAS AGREED TO TAKE RESPONSIBILITY, RIGHT?

THE LEGISLATURE COULD DO THAT.

>> THE LEGISLATURE VERY WELL CAN CARVE OUT A NEW GROUND FOR DEPENDENCY.

>> BUT, I MEAN, OR AMEND THIS. AND THEY HAVEN'T DONE IT.

SO, AGAIN, IN TERMS OF TRYING TO



FIGURE RIGHT NOW, YOU'RE STILL AGREEING THAT JUST BECAUSE THIS AGREEMENT IS IN EFFECT DOESN'T MEAN THEY CAN'T GO UNDER E, IS THAT CORRECT?

>> THAT'S CORRECT.

BECAUSE THE ONE DEFINITION THAT THE LEGISLATURE HAS PROVIDED US IS THE DEFINITION OF THE TERM "PARENT" OR "LEGAL CUSTODIAN." THEY'VE EXPLAINED THAT WHEN THAT DEFINITION IS USED, IT REFERS TO THE RIGHTS AND RESPONSIBILITIES OF THE PARENT--

>> I THOUGHT THERE WAS SOMETHING ALWAYS IN THERE ABOUT CARE GIVE, NO?

>> NO, 39.0115G REFERS TO-- WHICH IS WHERE A CHILD HAS BEEN SEXUALLY ABUSED-- THAT PROVIDES FOR WHETHER THERE'S NO PARENT, LEGAL CUSTODIAN OR CAREGIVER AVAILABLE FOR THE CHILD.

IN 15E WE DON'T HAVE THAT EXTRA WORD, "CAREGIVER."

WE HAVE THE WORDS "PARENT" OR "LEGAL CUSTODIAN."

>> AND LEGAL CUSTODIAN DOESN'T INCLUDE CAREGIVER.

>> CORRECT.

LEGAL CUSTODIAN IS DEFINED IN 39 AS BEING A STATUS CONFERRED BY A COURT.

>> OKAY.

>> CAREGIVER HAS A DIFFERENT DEFINITION.

THAT CAREGIVER CAN BE A PARENT, IT CAN BE A LEGAL GUARDIAN, IT CAN BE A PERMANENT GUARDIAN, IT CAN BE OTHER PERSON RESPONSIBLE FOR THE CARE OF THE CHILD.

THEN THEY PROVIDE US WITH A DEFINITION OF OTHER PERSON RESPONSIBLE FOR THE CARE OF THE CHILD, AND THAT INCLUDES SOMEONE WHO IS EITHER A SITTER OR A RELATIVE THAT IS ENTRUSTED WITH THE CARE OF THE CHILD.

AND FROM THAT LANGUAGE WE CAN GLEAN THEIR INTENT, THAT THEY

WEREN'T-- THEY WEREN'T  
CONTEMPLATING THAT THIS GROUND  
WOULD BE USED FOR THOSE  
SCENARIOS WHERE A PARENT CAN  
PROVIDE FOR THE CARE THROUGH  
RELATIVES.

>> I HAVE A QUESTION TO ASK YOU  
ABOUT 39.5075.

>> YES.

>> I'M LOOKING THROUGH THAT NOW.  
ONE THING JUMPS OUT AT ME.  
THE PREDICATE FOR FALLING WITHIN  
THE CATEGORY OF MAY BE ELIGIBLE  
FOR SPECIAL IMMIGRANT JUVENILE  
STATUS UNDER FEDERAL LAW WHICH  
IS A DEFINED TERM IN THE  
STATUTE, KIND OF THE OPERATIVE  
DEFINED TERM THERE, IS THAT THE  
CHILD HAS BEEN FOUND DEPENDENT  
BASED ON ALLEGATIONS OF ABUSE,  
NEGLECT OR ABANDONMENT.

OKAY?

WELL, WE'RE NOT EVEN, WE'RE NOT  
REALLY TALKING ABOUT HERE.

THE ONLY GROUND THAT'S BEING  
URGED BEFORE US IS NOT THAT  
GROUND.

IT'S THE 15E WHICH SEEMS TO TAKE  
IT OUTSIDE THE FRAMEWORK OF THIS  
STATUTE.

THE OTHER THING THAT SEEMS TO  
TAKE IT OUTSIDE THE FRAMEWORK OF  
THIS STATUTE IS THIS SEEMS TO BE  
A STATUTE THAT IS DIRECTED TO  
THE DEPARTMENT AND

COMMUNITY-BASED CARE PROVIDERS.  
BECAUSE IT'S, IT PROVIDES THAT  
IF A CHILD MAY BE ELIGIBLE,  
FALLS IN THAT CATEGORY, THE  
DEPARTMENT OR COMMUNITY-BASED  
CARE PROVIDER SHALL PETITION THE  
COURT FOR AN ORDER THAT THE  
CHILD MEETS THE CRITERIA FOR  
SPECIAL IMMIGRATION STATUS.

I DON'T SEE ANYTHING IN THIS  
STATUTE THAT DEALS WITH THIS  
SORT OF, THIS SORT OF PRIVATE  
EFFORT TO OBTAIN A DEPENDENCY  
DETERMINATION.

I, AS I'M LOOKING AT THIS, IT

SEEMS TO ME THAT WHAT WE'VE GOT  
HERE IS SOMETHING THAT'S NOT  
REALLY WITHIN THE SCOPE OF WHAT  
WAS CONTEMPLATED IN THIS  
STATUTE.

WHAT AM I MISSING THERE?

>> WHAT YOU'RE MISSING IS THAT  
YOU'RE LOOKING AT A STATUTE THAT  
WAS ENACTED IN 2005, AND IT WAS  
ENACTED BASED UPON THE FEDERAL  
LAW THAT EXISTED IN 2005.

IN 2008 THE FEDERAL GOVERNMENT  
REVISED WHAT IS NECESSARY TO BE  
DEEMED ELIGIBLE OF SPECIAL  
IMMIGRANT, JUVENILE.

THEY HAVE NOW CHANGED IT FROM  
BEING STRICTLY ABUSE,  
ABANDONMENT OR NEGLECT TO ALSO  
INCLUDE OR OTHER SIMILAR  
PROVISIONS.

AND THERE IS A NATIONWIDE  
ARGUMENT THAT WHERE A PARENT IS  
NOT CAPABLE OF PROVIDING CARE,  
THAT A CHILD IS ONE OF THOSE  
OTHER SIMILAR PROVISIONS THAT  
CAN APPLY UNDER THE FEDERAL LAW.  
SO THE STRUGGLE WITH THAT  
PARTICULAR STATUTE IS THAT  
STATUTE IS IMPOSING, AS JUSTICE  
CANADY POINTED OUT, REQUIREMENTS  
ON THE DEPARTMENT.

WHEN WE BECOME AWARE WE NEED TO  
PETITION FOR THESE CHILDREN.  
BUT WHETHER FEDERAL LAW SPEAKS  
ACCURATELY ON WHAT A CHILD CAN  
DO ONCE ADJUDICATED DEPENDENT T,  
THAT'S NOT, IT'S NOT EXACTLY  
PRECISE RIGHT NOW.

BUT IT ALSO DOESN'T PROHIBIT A  
CHILD FROM SEEKING THIS SPECIAL  
STATUS.

>> I MEAN, THAT'S, I GUESS, WHAT  
I'M STILL LOOKING AT WITH THAT,  
AND NOW THAT YOU TOLD ME THE  
FEDERAL LAW'S CHANGED, I  
UNDERSTAND THE CONCESSION TO BE  
ON ALL SIDES THAT EVEN IF THERE  
IS A FINDING OF DEPENDENCY IN  
THIS CASE, THIS DOES NOT MEAN  
THAT THE FEDERAL GOVERNMENT IS

OBLIGATED TO PROVIDE THE SPECIAL IMMIGRATION STATUS TO THIS CHILD, IS THAT CORRECT?

>> ABSOLUTELY.

>> SO THEY LOOK AT WHAT THE BASIS WAS FOR THE DEPENDENCY, AND IF IT'S SOMETHING TECHNICAL OR, YOU KNOW, WHERE WE SEE EXACTLY WHAT IS HAPPENING HERE, THEY CAN DECIDE, NO, WE'RE NOT CREATING-- WE'RE NOT CREATING THE STATUS FOR SOMEBODY THAT JUST SENDS THEIR CHILD TO AMERICA FOR A BETTER LIFE. WE MIGHT THINK THAT'S A HUMANE THING TO DO, BUT THIS ISN'T A PERSON WHO'S A VICTIM OF SPECIAL TRAFFICKING WHICH IS UNDER G. SO THAT'S THE FEDERAL GOVERNMENT'S DECISION, NOT OUR COURT'S SENTIMENT.

>> CORRECT.

THE ONLY THING BEFORE THIS--

>> LET ME JUST ASK THIS.

BUT ONE CANNOT PURSUE THIS SPECIAL IMMIGRATION STATUS UNLESS THERE'S A DEPENDENCY ADJUDICATION.

>> THAT ALSO HAS SLIGHTLY EXPANDED UNDER FEDERAL LAW. IN 2008 THE FEDERAL GOVERNMENT CHANGED IT FROM BEING ADJUDICATED GET BY A COURT OR PLACED BY A COURT WITH AN AGENCY OR INDIVIDUAL.

SO NOW THERE'S MANY OPTIONS AVAILABLE TO GET TO THE SPECIAL IMMIGRANT STATUS.

WE ASK THAT THIS COURT PROVIDE GUIDANCE WITH RESPECT TO 15E THAT IS CONSISTENT WITH THE INTENT AND PURPOSE OF THE STATUTE, TO NOT BE SO OVERBROAD BUT, INSTEAD, TO FOCUS ON THOSE AREAS WHERE A CHILD'S HEALTH AND SAFETY ARE ENDANGERED.

THANK YOU.

>> THANK YOU.

TWO MINUTES, PLEASE.

>> YOUR HONOR, FLORIDA FINDS

INHERENT HARM IN HAVING A CHILD UNDER THE AGE OF 18 WITHOUT A LEGALLY-RESPONSIBLE ADULT. WHICH IS WHY THE JUSTICES' CONCERNS THAT THIS STATUTE WASN'T WRITTEN PERHAPS WITH THE IMMIGRANT CHILD IN FRONT OF IT, IT IS CORRECTLY APPLIED TO THE CHILD WHO IS HERE ALONE, HAS BEEN GIVEN A VOLUNTARY, TEMPORARY CAREGIVER AND MAY APPROACH THE DEPENDENCY COURT FOR THE BENEFIT OF THE DEPENDENCY LAW AS THEY WOULD AS ANY OTHER CHILD IN FLORIDA WOULD.

>> THIS CHILD HAS ALREADY TURNED 18, CORRECT?

>> THAT'S RIGHT.

>> SO HOW WOULD THIS, ANY DECISION AFFECT THIS CHILD?

>> THIS CHILD'S PROVISION OF A SPECIAL IMMIGRANT STATUS SORT OF HOLDS THE DOOR OPEN IF IT WAS FILED BEFORE THEIR 18TH BIRTHDAY SO THAT THE-- IF A DEPENDENCY ORDER'S ISSUED, THIS YOUTH NOW MAY GO BACK TO THE USCIS, THE AGENCY, AND STILL SEEK AN ORDER BACK DATED BECAUSE HE FILED BEFORE HIS 18TH BIRTHDAY.

AND BECAUSE THIS SITUATION IS CAPABLE OF REPETITION AND REVIEW AS YOUR HONORS HAVE SEEN WHEN YOU'VE HELD OTHER CASES PERHAPS PENDING THE OUTCOME OF THIS DISCUSSION IN THE O.I.C.L. CASE, IT WILL BE REPEATING BECAUSE THERE ARE A NUMBER OF YOUTH WHO ARE IN THE SITUATION THAT COME TO THE DEPENDENCY COURT SEEKING ITS PROTECTIONS AS ANY CHILD IN THE STATE OF FLORIDA HAS THE OPPORTUNITY TO DO UNDER THE AGE OF 18.

IT IS TRUE THAT 5075 DISCUSSES A DIFFERENT STAGE IN THE PROCESS, AND CERTAINLY THAT AFTER DCF PERHAPS HAS TAKEN CUSTODY FOR AN ABANDONED, ABUSED AND NEGLECTED

CHILD.

WHAT IT DOES SHOW IS OUR  
LEGISLATURE UNDERSTANDS THERE'S  
A RELATIONSHIP BETWEEN THE  
IMMIGRATION LAWS AND OUR STATE  
CHILD PROTECTION LAWS.

AND JUST AS THE SUPREME COURT IN  
NEW JERSEY LAID OUT GUIDANCE  
PERHAPS FOR THIS SUPREME COURT  
TO CONSIDER HOW THOSE SHOULD  
RELATE.

AND JUSTICE, JUDGE SALTER'S  
DISSSENT IN B.R.C.M. SHOWED THAT  
GUIDANCE IS NEEDED, THAT THE  
DISTRICTS ARE COMING DOWN WITH  
DIFFERENT DECISIONS AND VERY  
DIRECTLY CONFLICTING DISSSENTS  
BECAUSE THIS IS UNCLEAR, BECAUSE  
IT LOOKS LIKE A CATEGORY CAN BE  
CREATED FOR THESE YOUTH THAT IT  
SIMPLY CAN'T.

THAT THEY HAVE THE RIGHT TO  
ACCESS THE CHAPTER 39 JUST AS  
ANY OTHER FLORIDIAN CHILD WOULD.

>> THANK YOU FOR YOUR ARGUMENTS.