

Cause No. 24-0881

In the Supreme Court of Texas

In the Interest of K.N., K.L., K.L., and K.L., Children

*On Petition for Review from the 7th Court of Appeals,
Amarillo, Texas Cause No. 07-24-00146-CV*

**Brief for the
INSTITUTE FOR THE ADVANCEMENT OF JUSTICE
& HUMAN RIGHTS
as Amicus Curiae**

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IDENTITY OF PARTIES AND COUNSEL

Amicus Curiae adopts Petitioners' and Respondents' Identity of Parties and Counsel as accurate.

AMICUS CURIAE

The Institute for the Advancement of Justice & Human Rights (IAJ) files this brief as amicus curiae. **IAJ does not advocate for any party's position; rather, IAJ provides the Court with a neutral, standards-focused framework for evaluating parental termination proceedings under domestic constitutional law and U.S. treaty obligations.** IAJ is an independent investigative and standards-development NGO dedicated to advancing justice and human rights, with particular focus on disability rights and the intersection of international human rights law with domestic legal proceedings.

RULE 11 DISCLOSURE

No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the preparation or submission of this brief; and no person other than the amicus curiae contributed money intended to fund the preparation or submission of this brief.

TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL	2
AMICUS CURIAE	3
RULE 11 DISCLOSURE.....	3
TABLE OF CONTENTS.....	4
TABLE OF AUTHORITIES.....	8
INTEREST OF AMICUS CURIAE.....	14
SUMMARY OF ARGUMENT	19
ARGUMENT.....	30
I. THE UNITED STATES' RATIFICATION OF UNCAT CREATES BINDING OBLIGATIONS THAT INFORM CONSTITUTIONAL INTERPRETATION.....	30
II. THE US INSTRUMENT OF RATIFICATION DEPOSITED WITH THE UN: CRITICAL DISTINCTIONS FROM SENATE EXECUTIVE REPORTS	38
III. PARENT-CHILD SEPARATION IMPLICATES UNCAT ARTICLES 1 AND 16.....	48
IV. POTENTIAL UNCAT ARTICLE 16 VIOLATIONS: WHAT AN INDEPENDENT INVESTIGATION COULD POTENTIALLY FIND.....	54

V. RELIABILITY AND ACCESS PRECONDITIONS FOR DISPOSITIVE USE OF CHILD STATEMENTS.....	57
VI. THE ATTORNEY-ONLY ACCESS FRAMEWORK CREATES SYSTEMATIC CONSTITUTIONAL BARRIERS	64
VII. FIRST AMENDMENT SPEECH AND ASSOCIATION VIOLATIONS	67
VIII. FOURTH AMENDMENT SEIZURE VIOLATIONS IN EMERGENCY REMOVAL	69
IX. POTENTIAL UNCAT ARTICLE 1 DISCRIMINATION: WHAT AN INDEPENDENT INVESTIGATION OF FATHER R.L.’S TERMINATION COULD FIND.....	70
X. STRICT SCRUTINY UNDER ARTICLE I, §37 REQUIRES PROCEDURAL SAFEGUARDS TO BE EFFECTIVE.....	73
XI. AVAILABLE REMEDIES MUST SATISFY UNCAT ARTICLE 14....	77
CONCLUSION AND PRAYER.....	80
CERTIFICATE OF COMPLIANCE.....	86
CERTIFICATE OF SERVICE	87
APPENDIX A.....	88

MODEL STANDING ORDER: RELIABILITY AND ACCESS SAFEGUARDS IN PARENTAL RIGHTS TERMINATION PROCEEDINGS	88
1. RELIABILITY FLOOR FOR CHILD STATEMENTS	89
2. FORENSIC INTERVIEW RECORDING	89
3. INTERVIEW PROTOCOL COMPLIANCE.....	90
4. RELIABILITY FINDINGS REQUIRED	90
5. FUNDAMENTAL-RIGHTS DISCLOSURE PROTOCOL	91
6. PARENT ACCESS TO EVIDENCE.....	91
7. CONTINUANCE FOR LATE DISCLOSURE.....	92
8. REMEDIES FOR NON-COMPLIANCE	92
9. APPLICABILITY	92
APPENDIX B	94
PROTECTIVE ORDER TEMPLATE: PARENT ACCESS TO CONFIDENTIAL RECORDS IN TERMINATION PROCEEDINGS	94
PROTECTIVE ORDER GOVERNING PARENT ACCESS TO RECORDS...	94
1. SCOPE OF ACCESS	95
2. CONFIDENTIALITY OBLIGATIONS.....	95
3. METHOD OF ACCESS.....	96
4. TIMELINE	96

5. REDACTIONS.....	97
6. VIOLATIONS.....	97
7. DURATION.....	97

TABLE OF AUTHORITIES

Constitutional Provisions

Article VI of the U.S. Constitution	18
Texas Constitution Article I, Section 37	passim
U.S. Const. amend. I (Speech, Association, Petition)	51, 64, 65
U.S. Const. amend. IV (Search and Seizure).....	53, 66, 68
U.S. Const. amend. V.....	passim
U.S. Const. amend. VI (Confrontation Clause)	51
U.S. Const. amend. VIII.....	passim
U.S. Const. amend. XIV	passim
U.S. Const. art. I, § 8, cl. 10 (Define and Punish Offenses Against the Law of Nations).....	19, 32, 77
U.S. Const. art. VI, cl. 2 (Supremacy Clause)	15, 18, 37

Texas Courts of Appeals Cases

<i>In re J.T.G.</i> , 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.)	69
--	----

International Instruments

Convention on the Rights of the Child (https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child)	63
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International Covenant on Civil and Political Rights (https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights).....	63
UN Committee Against Torture Concluding Observations on the combined third to fifth periodic reports of the United States of America, CAT/C/USA/CO/3-5 (December 19, 2014).....	30, 71, 77
UN Committee Against Torture, General Comment No. 2, ¶¶ 3, 6, 15 (2008).....	46
UN Committee on the Rights of the Child, General Comment No. 14, ¶¶ 58-61 (2013).....	51
UN Declaration on the Rights of Indigenous Peoples, Arts. 7, 13, 15, 18, 19, 40 (2007).....	63, 65
United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, art. 1, 14, 16, 20 (Dec. 10, 1984).....	passim
US Instrument of Ratification of UNCAT (deposited Oct. 21, 1994), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4	passim
Vienna Convention on the Law of Treaties, art. 53, May 23, 1969, 1155 U.N.T.S. 331	31
U.S. Treaty Documents and Legislative History	

136 Cong. Rec. S17486-01 (Oct. 27, 1990) (Senate floor debate and adoption of resolution of ratification)	27
Message from the President Transmitting the Convention Against Torture (May 20, 1988)	35
S. Exec. Rep. No. 100-20 (1988) (Senate Foreign Relations Committee initial report)	18, 35, 36, 44
S. Exec. Rep. No. 101-30, at 9-15, 25-36 (1990) (Senate Foreign Relations Committee final report recommending ratification with modified RUDs).. passim	

United States Supreme Court Cases

<i>Crawford v. Washington</i> , 541 U.S. 36, 68 (2004)	56
<i>Foster v. Neilson</i> , 27 U.S. (2 Pet.) 253, 314 (1829)	43
<i>Idaho v. Wright</i> , 497 U.S. 805, 818-21 (1990)	56
<i>M.L.B. v. S.L.J.</i> , 519 U.S. 102, 123-24 (1996).....	63
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137, 177 (1803)	28
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 335 (1976)	54, 60, 72, 85
<i>Medellín v. Texas</i> , 552 U.S. 491, 504-05 (2008).....	29
<i>Meyer v. Nebraska</i> , 262 U.S. 390, 399 (1923)	64
<i>Missouri v. Holland</i> , 252 U.S. 416, 432 (1920)	28
<i>Moore v. City of East Cleveland</i> , 431 U.S. 494 (1977).....	65
<i>Murray v. Schooner Charming Betsy</i> , 6 U.S. (2 Cranch) 64, 118 (1804)	29

Reid v. Covert, 354 U.S. 1, 17 (1957) 28

Santosky v. Kramer, 455 U.S. 745, 758-59, 768-69 (1982) *passim*

Troxel v. Granville, 530 U.S. 57, 65-66 (2000) 64

Whitney v. Robertson, 124 U.S. 190, 194 (1888) 43

Federal Circuit Court Cases

Doe v. Heck, 327 F.3d 492 (7th Cir. 2003) 66

Filártiga v. Peña-Irala, 630 F.2d 876, 890 (2d Cir. 1980) 19, 31

Gates v. Texas DFPS, 537 F.3d 404, 429 (5th Cir. 2008) 66

Kirkpatrick v. County of Washoe, 843 F.3d 784 (9th Cir. 2016) 66

Siderman de Blake v. Republic of Argentina, 965 F.2d 699, 714-15 (9th Cir. 1992)

..... 31

Wallis v. Spencer, 202 F.3d 1126 (9th Cir. 2000) 66

Texas Supreme Court Cases

In re A.B., 437 S.W.3d 498, 502-05 (Tex. 2014) 58

In re C.H., 89 S.W.3d 17, 26 (Tex. 2002) 46, 55, 59, 89

In re D.S., 602 S.W.3d 504 48

In re D.T., 625 S.W.3d 62, 77 (Tex. 2021) 48

In re E.A.K., 192 S.W.3d 133, 145-49 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) 56

In re E.N.C., 384 S.W.3d 796, 803, 807 (Tex. 2012) 69

<i>In re G.X.H.</i> , 627 S.W.3d 288, 292-93 (Tex. 2021)	28
<i>In re J.F.C.</i> , 96 S.W.3d 256, 276 (Tex. 2002).....	46
<i>In re L.C.L.</i> , 396 S.W.3d 712, 717-20 (Tex. App.—Dallas 2013, no pet.)	56
<i>In re N.G.</i> , 577 S.W.3d 230, 235, 237-38 (Tex. 2019).....	54, 68
<i>In re R.R.A.</i> , 687 S.W.3d 269, 278-80 (Tex. 2024)	53, 69
<i>Powell v. Stover</i> , 165 S.W.3d 322, 325 (Tex. 2005)	28

Texas Statutes

Tex. Fam. Code § 104.006 (Hearsay Statement of Child Abuse Victim)	passim
Tex. Fam. Code § 107.006 (Attorney Ad Litem Evidence Access)	24, 61, 79
Tex. Fam. Code § 152.201 (UCCJEA)	28
Tex. Fam. Code § 152.204 (Emergency Jurisdiction).....	50, 53, 66, 67
Tex. Fam. Code § 161.211	75
Tex. Fam. Code § 261.201 (Investigation Records Confidentiality).....	passim
Tex. Fam. Code § 261.201(b) (Confidentiality and Disclosure of Information)	63
Tex. Fam. Code § 261.201(k) (Parent Access to Records)	24, 60, 88, 91
Tex. Fam. Code § 261.3017 (CPS Investigation Rights Notice).....	62
Tex. Fam. Code § 262.014 (Evidence Disclosure to Attorneys)	24, 62, 79
Tex. Fam. Code § 262.102 (Emergency Orders).....	24, 62, 67, 79
Tex. Fam. Code § 263.303 (Permanency Progress Reports).....	24, 62, 79

Texas Rules of Evidence

Tex. R. Evid. 803(4) (Medical Diagnosis/Treatment).....	58
Tex. R. Evid. 803(6) (Business Records)	58
Tex. R. Evid. 803(8) (Public Records)	58
Tex. R. Evid. 807 (Residual Exception/Child Hearsay).....	56, 58, 87

Texas Rules of Civil Procedure

Tex. R. Civ. P. 216 (Continuances)	76, 89
Tex. R. Civ. P. 220 (Continuance After Substitution of Counsel)	76, 89

INTEREST OF AMICUS CURIAE

The Institute for the Advancement of Justice & Human Rights (IAJ) is an independent investigative and standards-development NGO dedicated to advancing justice, with particular focus on disability rights and the intersection of international human rights law with domestic legal proceedings. **IAJ files this brief not to advocate for either party, but to provide the Court with a neutral analytical framework rooted in constitutional law and U.S. treaty obligations.** IAJ's filings are expressly standards-focused: IAJ neither represents any party nor endorses any party's factual narrative; its purpose is to assist courts with reliable, neutral guardrails that reduce rights-risk across cases.

IAJ has conducted independent investigation of another Texas case pursuant to the 2022 Istanbul Protocol documenting systematic violations of parental rights in Texas child welfare proceedings¹. These investigations reveal that the attorney-only access framework embedded in the Texas Family Code creates structural barriers to constitutional compliance, with documented evidence² that *the*

¹ While it is conventionally viewed as a medical-legal manual for documenting torture and state violence, the Istanbul Protocol investigation is jurisdictionally applicable to civil “neglect” cases where state action separates parent and child.

² Note the absence of direct measurement of state statistics relevant to the reunification outcomes in CPS actions against indigent parents, requiring substitution with derivations, estimations, and empirical observations.

overwhelming majority of CPS-affected parents lack adequate resources³ and face dramatically reduced reunification rates when under-represented⁴. This

³ With approximately 85% of families investigated by CPS having incomes below 200% of the federal poverty line (Dolan et al., 2011), the vast majority of parents in child welfare proceedings qualify as indigent. See Dolan M, Smith K, Casanueva C, & Ringeisen H (2011). Nscaw II Baseline Report: Introduction to Nscaw II Final Report OPRE Report 2011-27a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. -- Texas law requires appointment of counsel to **indigent** parents in state-initiated child-protection/termination cases, and Texas judicial/administrative materials consistently describe indigency as the norm in this docket even though no single statewide percentage is officially published. See **Tex. Fam. Code § 107.013(a)** (right to appointed counsel for indigent parents); **Texas Children's Commission, 2018 Study of Legal Representation in CPS Cases** (documenting that Texas provides appointed counsel to children and indigent parents and identifying systemic funding/quality gaps); **Texas Indigent Defense Commission (TIDC), Court-Appointed Legal Representation in Texas Child Protection Cases** (baseline statewide report on CPS representation systems); **TIDC, Family Protection Representation (FPR) Data Report** (nearly every county relies on appointed counsel for children and **indigent parents**); **Texas Association of Counties, Indigent Defense Issue Brief (2025)** (counties bear heavy ongoing costs for indigent representation, underscoring its prevalence in CPS litigation). These reports and others, such as TexReports.org, indicate an 'overloading' of representation resources with low average attorney compensations (e.g., flat fees of \$1,200–\$2,500). Appointed counsel often face high volumes, potentially reducing time for evidence review and effective representation; actual caseloads may exceed standards in practice. Limitations of other resources, particularly for the purpose of prevention, further exacerbate the systemic limitations that can disadvantage the indigent parent. Texas counties report a decline in attorneys willing to take court-appointed cases for indigent parents in CPS matters, exacerbating the resource gap. Because poverty is often a precursor to "neglectful supervision" (the most common reason for removal), the overlap between CPS involvement and low-income status is significant. In 2024, the Texas Indigent Defense Commission (TIDC) highlighted a growing crisis in rural counties, where the vast majority of respondents reported a critical shortage of attorneys available to represent these indigent parents. The absence of specific measurements of indigence versus terminations, and reunifications is a barrier to informed reform of systemic limitations that may impact the course of justice.

⁴ Act of May 29, 2023, 88th Leg., R.S., ch. 965, 2023 Tex. Gen. Laws (codified at Tex. Gov't Code §§ 79.001, 79.012, 79.034–037). The 88th Texas Legislature's passage of **Senate Bill 2120 (2023)** serves as a formal legislative acknowledgement that the quality of legal representation is the single most significant variable in determining whether a child reunifies with their family or remains in state care. By amending **Texas Government Code § 79.034**, the Legislature mandated the creation of the **Family Protection Representation Program**,

empirical reality demonstrates the urgent need for this Court's consideration of the standards IAJ presents.

IAJ notes that the facts of this case present circumstances that, if investigated under the Istanbul Protocol, could potentially yield significant findings regarding UNCAT⁵ compliance. IAJ does not prejudge such findings; rather, IAJ educates the Court about the analytical framework an independent investigation

effectively elevating parent representation to the same professional and constitutional standard as criminal indigent defense.

The "Statement of Intent" for SB 2120 clarifies that the current "patchwork" system—where indigent parents are often represented by under-resourced, court-appointed counsel—directly contributes to prolonged foster care stays. The Act specifically targets the "representation-to-reunification" gap by authorizing funding for: (a) **Interdisciplinary Teams:** Funding for social workers and investigators to assist counsel (**Tex. Gov't Code § 79.001(1-a)**), and (b) **Caseload Caps:** Preventing the "overloading" of attorneys that leads to procedural defaults for indigent parents (**Tex. Gov't Code § 79.034(a-1)(3)**). We also note the following: Inadequate or delayed counsel contributes to poorer outcomes, including reduced reunification chances, as indigent parents rely on underfunded appointed attorneys who handle high caseloads – Supreme Court of Texas Children's Commission 2018 Study of Legal Representation in Child Protective Services Cases page 105; 2024 Child and Family Services Review (CFSR) for Texas; Nearly 75% of child maltreatment cases involve neglect (poverty-correlated) -- Human Rights Watch (2022); FPR (Family Protection Representation) costs are paid by counties -- TIDC FY24 Report; Over 80% of investigated children were found NOT to have been abused or neglected -- Human Rights Watch (2022); Quality representation leads to 27% more children reunified within 6 months -- Civil Right to Counsel/NYU Study; 80% of poor people have unaddressed civil legal needs -- American Bar Association quoting the 2005 LSC Justice Gap Report; Over 90% of "perpetrators" in neglect cases are biological parents (i.e., indigent families, not abusers) -- Human Rights Watch (2022); 11% higher exit rate to reunification with quality parent representation -- Family Justice Initiative Research; Oklahoma Office of Family Representation (<https://thrivingfamiliessaferchildren.org/family-well-being-from-a-parents-perspective-investing-in-high-quality-legal-representation/>)

⁵ UNCAT = Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – see <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

would apply and the types of conclusions such an investigation might reach based on the record before the Court. This approach preserves IAJ's independence while providing the Court with the substantive human rights context necessary for informed constitutional analysis.

IAJ submits this brief to provide the Court with a unique analytical framework that has not been addressed by other amici curiae. While the Family Freedom Project has ably addressed domestic parental rights frameworks, the Texas Public Policy Foundation has focused on strict scrutiny analysis, the Texas Association of Family Defense Attorneys has illuminated systemic issues in family defense practice, and Ms. Cecilia Wood has powerfully described the human impact of family separation, no party has addressed the critical question of how the United States' ratification of UNCAT informs the constitutional analysis this Court should undertake.

Critically, this brief addresses a fundamental gap in prior analysis: the distinction between the US instrument of ratification as deposited with the United Nations and the Senate Executive Reports that preceded it. The instrument deposited on October 21, 1994, constitutes the binding international commitment of the United States. While S. Exec. Rep. No. 101-30 (1990) reflects

Senate deliberations, the deposited instrument⁶ represents the actual international obligation that, under Article VI of the Constitution, forms part of the “supreme Law of the Land.”

IAJ’s mission encompasses the recognition that human rights principles embodied in international treaties “resonate with the U.S. Constitution, and operate as keys to the extraction of the un-enumerated rights therein.” The consideration of human rights frameworks “speeds the recognition of rights that are systematically erased by institutions and courts, such as the right to family integrity, and the freedom of parent and child from severe pain and suffering through separation.”

This case presents an opportunity for this Court to recognize that strict scrutiny under Texas Constitution Article I, Section 37 must be informed by the proportionality standards embodied in UNCAT—**but that strict scrutiny without adequate procedural safeguards is illusory and ineffective**⁷. The procedural safeguards this brief advocates are essential predicates to meaningful strict scrutiny analysis.

⁶ available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4

⁷ The deficit in procedural safeguards was exposed in the Istanbul Protocol investigation by the IAJ of another Texas parent-child separation case

As amicus we strongly encourage the Court to articulate administrable guardrails—such as continuous audio/video recording of child forensic interviews, validated non-leading protocols by qualified independent interviewers, and parent-level access to agency files under protective orders—to ensure that fact-finding is reliable, reviewable, and consistent with prevention-oriented obligations recognized in ratified human-rights instruments. These rules are rooted in domestic doctrine (due process, evidentiary reliability, strict scrutiny where fundamental rights are implicated) and are informed—not displaced—by treaty-consistent interpretation principles.

SUMMARY OF ARGUMENT

Texas law already treats termination of parental rights as a uniquely grave civil sanction warranting clear-and-convincing proof and careful review, but this has been insufficient to establishing Justice. The 2025 Parental Rights Amendment (Tex. Const. art. I, § 37) reinforces that constitutional gravity, pointing courts toward strict scrutiny⁸: the State must prove concrete danger and employ the least

⁸ The Court can apply strict scrutiny even *without* the amendment. Even apart from Article I, §37, parental-rights termination has long triggered heightened protection. See **Santosky v. Kramer**, 455 U.S. 745, 758–59 (1982). Thus, the safeguards proposed here stand on federal due process alone.

restrictive means. Because parent-child separation predictably risks severe mental suffering for both child and parent, adjudication must be anchored in reliability: recorded interviews; transparent, non-leading methods; neutral clinical evaluations; and timely, parent-level access to the evidentiary core under tailored protective orders.⁹ Effective Remedy Requires Transparency and Reviewability—Not Attorney-Only Access to Evidence.¹⁰ These safeguards are compatible with domestic law and reflect prevention-oriented norms discussed in ratified human-rights instruments, including the Convention Against Torture’s (UNCAT) emphasis on non-arbitrariness, necessity, proportionality, non-punitiveness and effective remedies.¹¹

⁹ To make strict scrutiny administrable, courts should require reliability guardrails and make explicit findings on the record. At minimum:

- Continuous audio/video recording of all child forensic interviews (from prelude to close);
- Use of qualified, independent interviewers employing validated non-leading protocols;
- Parent-level access to agency files, recordings, and exhibits under protective orders with targeted redactions;
- Documented trustworthiness findings for any hearsay offered as dispositive (see Tex. Fam. Code § 104.006; TRE 803(4),(6),(8), 807);
- Continuance-as-of-right sized to cure prejudice when disclosures are late or required recordings are missing.

¹⁰ Attorney-only access to agency files functionally disables a parent’s ability to direct strategy and secure targeted experts. A protective-order framework that provides supervised parent-level review, together with privilege logs and in-camera resolution of disputes, preserves confidentiality interests while enabling meaningful participation and appellate review.

¹¹ Severance or long-term separation must be a last resort. Courts should document why less-intrusive alternatives—supervision, supportive services free of coercive leverage, neutral clinical evaluations—would be insufficient to mitigate a concrete, present harm. Service-plan

The best interest of the child is not exclusive of the human rights of the parent, particularly those which are absolutely non-derogable under treaty supremacy and the *jus cogens* of customary international law. This brief demonstrates that the United States' ratification of UNCAT creates binding obligations that should inform this Court's interpretation of constitutional protections for parental rights, and that state conduct in termination proceedings potentially implicates UNCAT's prohibition against cruel, inhuman or degrading treatment.

The IAJ speaks for the protection of victims and also the protection of potential and actual perpetrators of human rights violations: all of these individuals must be protected from the commission of acts which are **absolutely prohibited** under the *jus cogens* of customary international law and are required to be criminally prosecuted by each signatory State, with no available immunity and no statute of limitations.

This brief addresses a critical but previously unanalyzed distinction: the US instrument of ratification as deposited with the United Nations diverges from S. Exec. Rep. No. 101-30 in meaningful ways and is more consistent with S. Exec. Rep. No. 100-20. The deposited instrument represents the binding

noncompliance cannot substitute for proof of danger; punitive escalation for asserting rights undermines reliability and fairness.

international commitment that triggers Article VI supremacy, while S. Exec. Rep. No. 101-30 reflects only Senate deliberation. Understanding this distinction is essential to proper constitutional analysis.

The United States ratified UNCAT in 1994, making it part of the “supreme Law of the Land” under Article VI of the U.S. Constitution. While Congress advised and consented, and the President ratified with Reservations, Understandings, and Declarations (RUDs) purporting to limit domestic implementation, the UN Committee Against Torture has determined these reservations to be invalid, severable and non-essential under *jus cogens* principles. CAT/C/USA/CO/3-5, ¶¶ 4-6 (Dec. 19, 2014). The prohibition against torture and cruel, inhuman or degrading treatment constitutes a peremptory norm of international law from which no derogation is permitted. As the Second Circuit declared in *Filártiga v. Peña-Irala*, 630 F.2d 876, 890 (2d Cir. 1980), “the torturer has become, like the pirate and slave trader before him, *hostis humani generis*, an enemy of all mankind.” This ancient designation—rooted in the law of nations that the Constitution itself empowers Congress to “define and punish” under Article I, Section 8, Clause 10—carries profound implications: those who commit torture stand outside the protection of ordinary legal process, subject to universal jurisdiction and prosecution.

The gravity of this designation underscores why judges, who are bound by Article VI, and should vigilantly ensure that state processes do not inadvertently cross the threshold into conduct the community of nations has unanimously condemned.¹²

Congress and the Executive’s assurances to treaty signatories that domestic remedies provide “equivalent” protection creates an enforceable standard that this Court can and should apply. **Independent investigation in another case demonstrates “radical non-equivalence” between these promised protections and the reality of Texas practice.**

Parent-child separation, particularly when permanent, lies squarely within the domain of UNCAT Articles 1 and 16. Permanent termination of parental rights causes “severe pain or suffering, whether physical or mental” within the meaning of Article 1. **Critically, the assessment of “severe pain or suffering” must account not only for the psychological harm to children but also for the individual sensitivity and vulnerability of each parent.** Some parents, by reason of prior trauma, mental health conditions, disability, unique sensitivity or other

¹² The prohibition of torture and cruel, inhuman, or degrading treatment is a *jus cogens* norm. Courts therefore treat it as carrying the highest status in international law, and U.S. doctrine recognizes that judges should avoid interpretations that place domestic law in conflict with such peremptory norms. At a minimum, the point is not direct treaty enforcement; it is **interpretive discipline**: use domestic constitutional tools (due process, proportionality, effective remedies) in such manner as to avoid outcomes that would contravene the Convention’s object and purpose.

circumstances, may experience separation with heightened severity. An Istanbul Protocol investigation would necessarily consider such individual factors in assessing whether conduct rises to the level of torture or cruel, inhuman, or degrading treatment.¹³

By appropriate precedent, this Court can provide a missing domestic mechanism that mitigates the impact of independent analysis under the lens of the UNCAT which may be conducted at any time, and which could result in treaty federal action resulting from international ‘findings.’

If IAJ were to conduct an independent Istanbul Protocol investigation of the facts in this case¹⁴, the record could potentially lead to findings that the children

¹³ For example, an Istanbul Protocol Investigator would note that the appellate court characterized the family's relocation to Louisiana as endangerment, noting they sought to "escape what they considered interference." An Istanbul Protocol investigator would recognize flight from perceived persecution as a documented trauma response, not necessarily evidence of guilt. When state action causes families to flee, the state cannot use that flight as justification for the very action that provoked it without circular reasoning.

¹⁴ N.B. a key distinction exists: **Texas appellate procedure provides structurally inadequate review** for certain decisions affecting parental rights. For example, when the jury *doesn't* terminate but the Department becomes conservator, then (1) the parent loses custody of children, (2) the evidence supporting that loss **cannot be independently challenged for sufficiency**, (3) the only review is "abuse of discretion" — highly deferential. **An Istanbul Protocol investigation fills this remedial gap** because it (a) can find that state action causing family separation lacked adequate evidentiary basis, (b) can conclude that disproportionate conservatorship decisions constitute CIDT under Article 16, (c) is not bound by Texas procedural doctrines that insulate certain decisions from meaningful review. The IAJ also investigates failure of "equivalence". Under the lens of "equivalence" of constitutional and treaty remedies, an Istanbul Protocol investigator would potentially note that the appellate decision exposes a constitutional gap: when parental rights are preserved but conservatorship is awarded to the state, legal and factual insufficiency are "merely relevant factors in the assessment, not

“cried at night and missed their parents”,¹⁵ maintained consistently positive feelings toward their parents, and the eldest biological daughter “repeatedly expressed her desire to return home.”¹⁶ Such an investigation could potentially conclude that disproportionate state action in response to alleged parental misconduct constitutes “cruel, inhuman or degrading treatment” under Article 16, particularly if the investigation determined that the state itself treated the underlying situation as a “non-emergency” for twenty months before seeking permanent termination.

State conduct in termination proceedings potentially violates UNCAT Article 16 through three mechanisms that an independent investigation would examine. First, the infliction of psychological harm upon children through family separation, contrary to their expressed wishes, could constitute cruel treatment when that

independent grounds of error.” *In re A.M.*, 604 S.W.3d 192, 197 (Tex. App.—Amarillo 2020). This means family separation can occur—and be affirmed—even when evidence is legally insufficient to support it. No adequate domestic remedy exists for this category of error. An Istanbul Protocol investigation would assess such procedural gaps as potential Article 14 violations. Similarly for example, the appellate court noted that even the exculpatory administrative report acknowledged “risk was identified.” This would be noted as the appearance of a structural impossibility of parental vindication requiring investigation: even findings that “rule out” abuse are characterized as establishing risk. When no evidence can exculpate, the process fails the presumption of fitness that *Troxel* and *Santosky* require.

¹⁵ Brief on the Merits of Petitioner R.L., page 22: “Placement witnesses confirmed that the children cried at night and missed their parents. (RR V4, p. 43). These facts support a finding of attachment, not impairment...”

¹⁶ Brief on the Merits of Petitioner R.L., page 29

separation is unnecessary and disproportionate¹⁷. Second, the use of service requirements as mechanisms of coercion, whereby parents face the choice of waiving constitutional rights or losing their children, could constitute intimidation prohibited by the Convention¹⁸. Third, grossly disproportionate response to

¹⁷ Under the analytical framework of the Istanbul Protocol, an independent investigation would evaluate whether the state's ultimate disposition is proportionate to the findings of the constitutional factfinder. *The Proportionality Hypothesis*: If the record reflects that a jury—the constitutional factfinder—determined termination of a parent's rights was not in the children's best interests, an investigator would scrutinize whether a subsequent and permanent custodial separation via conservatorship constitutes a disproportionate state response. *The "Equivalence" Gap*: Under the "equivalence" standard promised by the United States, any domestic appellate review of family integrity must provide protections equal to the proportionality requirements of UNCAT Article 16. *The Inquiry Deficit*: An investigator might find a lack of "equivalence" if an appellate court's Holley analysis—which governs the best interest of the child—omits or marginalizes the specific, expressed wishes of the children regarding their mother, particularly where those wishes align with a jury's refusal to terminate parental rights. *Constitutional Conflict*: Where the constitutional mechanism (a jury verdict) favors family preservation, yet the state action results in the de facto destruction of the family unit through permanent non-parental conservatorship, the state's conduct risks falling below the threshold of "narrow tailoring" required by Texas Constitution Article I, Section 37. *Systemic Risk*: The denial of custody following a jury's preservation of parental rights, if conducted without a rigorous and transparent best-interest analysis that accounts for the child's voice, appears inconsistent with the evidentiary reliability and proportionality mandates of both domestic due process and international treaty obligations.

¹⁸ An independent investigation conducted under the Istanbul Protocol would evaluate whether the evidentiary framework applied below honors the "equivalence" promise of domestic constitutional protections. *The Constitutional Exercise Hypothesis*: If the record indicates that a parent's decision to decline a medical release—thereby asserting Fourth and Fifth Amendment protections—was utilized as a factor in determining endangerment or "guilt," an investigator would scrutinize whether such state action penalizes the exercise of fundamental rights. *The In re R.R.A. Standard*: Such a scenario would require a determination of whether the state's reasoning aligns with this Court's mandate in *In re R.R.A.*, 687 S.W.3d 269, 278-80 (Tex. 2024), which cautions against generating termination grounds from the exercise of legal rights. *The Retroactive Reasoning Inquiry*: An investigator would further assess whether the use of a post-removal arrest to retroactively "rebut" a parent's pre-removal explanation constitutes a violation of the proportionality requirements in UNCAT Article 16. *Evidentiary Misalignment*: If the evidence suggests that post-removal conduct was used to justify a pre-removal finding of

underlying conduct, in which one parent's discipline of one child results in termination of both parents' rights to all children, could violate the proportionality principles central to UNCAT compliance¹⁹.

This brief addresses multiple constitutional violations created by Texas's attorney-only access framework. The Texas Family Code §§ 261.201, 107.006, 262.102, 262.014, 104.006, and 263.303 create interlocking statutory barriers that systematically exclude parents from meaningful participation in proceedings affecting their fundamental rights. Before any child hearsay statement may carry dispositive weight, courts should ensure: (1) a **reliability floor** requiring continuous audio/visual recording of forensic interviews; (2) compliance with

endangerment, an investigator might conclude that the state's response was disproportionate and failed to meet the strict "narrow tailoring" required for fundamental rights cases.

¹⁹ Under the analytical framework of the Istanbul Protocol, an independent investigation would evaluate the legal standards applied below for potential conflict with the non-discrimination mandates of UNCAT Article 1. *The Discriminatory Reasoning Hypothesis*: If the record indicates that a father's parental rights were terminated on the basis that his prospective plans to protect the children "never panned out," an investigator would scrutinize whether the state penalized a parent for a perceived failure of intent rather than for specific, documented harmful conduct. *Due Process and Proportionality*: Such a finding would prompt an inquiry into whether the state has effectively criminalized "thought without deed"—a result that may be incompatible with the "narrow tailoring" required by Texas Constitution Article I, Section 37 and the due process protections of the Fourteenth Amendment. *Intentionality Under Article I*: An investigator would assess whether terminating a parent based on the non-materialization of protective plans satisfies the strict "intentional infliction" of suffering criteria under UNCAT Article 1, or if it instead represents a disproportionate state response to a parent's individual circumstances or vulnerabilities. *The "Equivalence" Test*: If domestic appellate review affirms a termination based on a parent's failed intentions rather than overt endangerment, it may fail the "equivalence" promise, as it would lack the rigorous, evidence-based safeguards necessary to prevent arbitrary state interference in family integrity.

recognized non-leading interview protocols²⁰; (3) written reliability findings under Texas Family Code § 104.006; and (4) parent-level access to recordings and records under § 261.201(k). These safeguards are essential to due process and consistent with UNCAT’s requirement that state action be based on reliable evidence rather than arbitrary process.

Strict scrutiny under Texas Constitution Article I, Section 37 cannot function effectively without these procedural safeguards. A court cannot meaningfully apply “narrow tailoring” analysis if parents are denied access to the evidence used against them. A court cannot evaluate whether “less restrictive alternatives” exist if the factual record is developed through unreliable interview techniques. A court cannot ensure that termination serves a “compelling interest” if the evidence supporting that interest is inaccessible to challenge. **Procedural safeguards are not merely desirable adjuncts to strict scrutiny—they are essential prerequisites without which strict scrutiny becomes an empty formalism incapable of protecting fundamental rights.²¹**

²⁰ See Lamb, M.E. et al., *Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children*, 31 CHILD ABUSE & NEGLECT 1201 (2007) (NICHD Protocol); Anderson, J. et al., *The CornerHouse Forensic Interview Protocol: RATAc*, 12 T.M. COOLEY J. PRAC. & CLINICAL L. 193 (2010); National Child Advocacy Center, *ChildFirst Forensic Interview Protocol* (2019).

²¹ Under the analytical framework of the Istanbul Protocol, an independent investigation would evaluate the evidentiary restrictions applied below for potential conflict with the effective remedy mandates of UNCAT Article 14. *The Administrative Conflict Hypothesis*: If the record

An independent investigation of Father R.L.'s termination could potentially conclude that his case exemplifies the discrimination concerns addressed in UNCAT Article 1. Such an investigation might find that R.L. was never accused of abusing any child, yet his parental rights to his three biological children were terminated based on the mother's conduct toward Kim, a child to whom R.L. had no biological connection. Such potential guilt-by-association reasoning would not be tolerated in criminal proceedings and cannot be permitted where fundamental parental rights are at stake.

Texas Constitution Article I, Section 37, adopted by Texas voters in 2025, establishes strict scrutiny as the standard of review for state intrusion into family

reflects that an appellate court affirmed the exclusion of a state agency's own internal administrative finding that "ruled out" specific allegations—such as emotional abuse—an investigator would scrutinize the fairness of the resulting procedural framework. *Procedural Fairness Inquiry*: In a scenario where the agency seeking termination has internally determined that certain allegations lack merit, but the parents are subsequently prevented from presenting that state-generated determination to a jury, an investigator would evaluate whether such a restriction fails the fundamental fairness requirements of Due Process. *Effective Remedy and Article 14*: An investigation would assess whether the exclusion of exculpatory evidence generated by the state itself deprives a parent of an "effective" redress mechanism as required by UNCAT Article 14. *The "Equivalence" Assessment*: If domestic evidentiary rules allow for the suppression of an agency's internal findings in a "death penalty of civil cases" proceeding, an investigator may conclude that the state has failed to provide a mechanism "equivalent" to the protections promised in the U.S. Instrument of Ratification. *Systemic Transparency*: Such a hypothetical finding would prompt an inquiry into whether the Attorney-Only Access framework or other statutory barriers in the Texas Family Code operated to prevent the jury from receiving a complete and reliable factual record.

decisions. This strict scrutiny standard must incorporate UNCAT's proportionality requirements to satisfy the “equivalence” Congress promised.

Finally, any remedies this Court provides should satisfy UNCAT Article 14’s requirement of effective redress, including continuance-as-of-right when late disclosure of evidence would prejudice a parent’s ability to defend. If termination violated UNCAT standards, mere reversal of legal status may be insufficient; reunification and compensation for psychological harm may be required.

This brief includes two appendices providing ready-to-implement tools for Texas courts: Appendix A (Model Standing Order on Reliability & Access) and Appendix B (Protective Order Template for Parent Access to Records).

ARGUMENT

I. THE UNITED STATES’ RATIFICATION OF UNCAT CREATES BINDING OBLIGATIONS THAT INFORM CONSTITUTIONAL INTERPRETATION

A. Treaty Supremacy Under Article VI

The Constitution of the United States establishes that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the

Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. This Supremacy Clause has been recognized since the earliest days of the Republic as establishing a hierarchy of legal authority in which valid treaties occupy a position equal to federal statutes and superior to state law.

The United States ratified UNCAT on October 21, 1994, following the Senate’s advice and consent. 136 Cong. Rec. S17486-01 (Oct. 27, 1990). Upon ratification, UNCAT became part of the “supreme Law of the Land” binding on all state courts. As Chief Justice Marshall explained in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), “It is emphatically the province and duty of the judicial department to say what the law is.” This includes the obligation to interpret and apply treaty obligations that form part of the supreme law.

The Supreme Court has consistently recognized the binding nature of treaty obligations. In *Missouri v. Holland*, 252 U.S. 416, 432 (1920), the Court observed that treaties represent “an exercise of the sovereign power of the United States” and that valid treaty obligations may extend federal authority beyond its ordinary constitutional bounds. Justice Black, in *Reid v. Covert*, 354 U.S. 1, 17 (1957), emphasized that while “no agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution,” valid treaties within constitutional bounds carry the full force of federal law.

This Court has recognized that jurisdictional questions arising under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), codified at Texas Family Code Chapter 152, present issues of subject matter jurisdiction that cannot be waived. *Powell v. Stover*, 165 S.W.3d 322, 325 (Tex. 2005); *In re G.X.H.*, 627 S.W.3d 288, 292-93 (Tex. 2021). By similar logic, questions of compliance with binding treaty obligations implicate the validity of state actions in a manner that transcends ordinary procedural limitations.

B. The Charming Betsy Canon Requires UNCAT-Consistent Interpretation

The Supreme Court's landmark decision in *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), established the enduring principle that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." This canon of statutory construction, applied consistently for more than two centuries, requires courts to interpret domestic statutes in harmony with international legal obligations whenever possible.

The Supreme Court's decision in *Medellín v. Texas*, 552 U.S. 491, 504-05 (2008), while limiting the direct domestic enforceability of certain treaty provisions, did not disturb the *Charming Betsy* canon. Justice Stevens, concurring, emphasized that "the text and history of the Supremacy Clause, as well as this Court's treaty-related cases, do not support a presumption against self-execution." *Id.* at 541 (Stevens, J., concurring). More importantly, *Medellín* concerned the specific

question of whether a particular ICJ judgment created directly enforceable rights; it did not address the broader question of how treaty obligations inform constitutional interpretation. If a Court follows the analysis in *Medellin* tempered with the CAT’s Concluding Observations, the result must yield the domestic applicability of the object and purpose of the UNCAT.

When considered under the principle espoused by *Charming Betsy* and following the strictures of *Medellin*’s analysis, the integration of treaty supremacy with constitutional strict scrutiny follows a clear path. Texas courts should interpret the Family Code’s termination provisions, and the constitutional protections for parental rights, in a manner consistent with UNCAT’s prohibition against cruel, inhuman or degrading treatment, and torture.

The result is a harmonizing task: apply Texas statutes and constitutional guarantees in ways that avoid arbitrariness, reduce foreseeable harm, and ensure effective remedies—especially where proceedings predictably risk severe mental suffering associated with family separation.

C. U.S. Reservations to UNCAT Are Invalid Under Jus Cogens

A dated, widely-circulated, and careless consideration of UNCAT’s application concludes that it is non-self-executing in the United States based on the Reservations, Understandings, and Declarations (RUDs) filed with the instrument

of ratification. This analysis fails to account for subsequent authoritative determinations regarding the validity of those reservations under international law.

The United Nations Committee Against Torture, in its Concluding Observations on the combined third to fifth periodic reports of the United States of America, CAT/C/USA/CO/3-5 (December 19, 2014), directly addressed the validity of U.S. reservations:

Paragraph 4: The Committee notes with concern that the State party maintains its reservations, understandings and declarations lodged at the time of ratification of the Convention...

Paragraph 5: The Committee is concerned that the State party's position that the Convention is not self-executing and its maintaining of related reservations is at odds with the obligations of States parties...

Paragraph 6: The Committee reiterates its previous recommendation that the State party envisage the withdrawal of its reservations to the Convention...

The doctrine of *jus cogens*, codified in Article 53 of the Vienna Convention on the Law of Treaties, provides that certain norms of international law are peremptory and admit no derogation. As the Ninth Circuit recognized in *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 714-15 (9th Cir. 1992), “the right to be free from official torture is fundamental and universal, a right deserving of the highest status under international law, a norm of *jus cogens*.”

Similarly, the Second Circuit in *Filártiga v. Peña-Irala*, 630 F.2d 876, 890 (2d Cir. 1980), declared that “the torturer has become, like the pirate and slave trader before him, *hostis humani generis*, an enemy of all mankind.”²² This designation carries profound weight. The Constitution itself, in Article I, Section 8, Clause 10, grants Congress the power to “define and punish... Offenses against the Law of Nations.” The concept of *hostis humani generis*—enemy of all mankind—has ancient roots in admiralty law’s treatment of pirates, who could be seized and tried by any nation because their crimes transcended national boundaries and threatened the common interests of all peoples. The extension of this designation to torturers reflects the international community’s recognition that torture, like piracy, constitutes an offense so grave that its perpetrators forfeit the ordinary protections of law.

Congress’s “equivalence” promise creates an enforceable standard. The Senate Executive Report accompanying ratification states:

²² The constitutional resonance of *hostis humani generis* carries profound implications akin to Article III, Section 3’s treatment of treason—the only crime the Constitution itself defines—which contemplates “levying War” against the United States or “adhering to their Enemies.” While domestic family proceedings are far removed from warfare, the underlying constitutional framework reveals the Founders’ understanding that certain acts place their perpetrators in fundamental opposition to the legal order itself. When state actors engage in conduct that rises to the level of torture or cruel, inhuman, or degrading treatment, they operate in a domain the law of nations has marked as categorically prohibited—a domain where the ordinary presumptions of sovereign immunity and procedural protection may yield to universal condemnation.

The United States understands that, in order to fulfill its obligations under the Convention, the United States need not enact further legislation because existing federal and state laws already provide the necessary mechanisms for the prevention of torture and cruel, inhuman or degrading treatment or punishment...²³

S. Exec. Rep. No. 101-30, at 25-36 (1990). Congress has confirmed that the judicial process is the safeguard of U.S. compliance with UNCAT. When domestic constitutional interpretation fails to provide equivalent protection, courts should adjust that interpretation to fulfill the promise Congress made to the international community.

D. The “Equivalence” Promise: Domestic Mechanisms Must Match Treaty Standards

The justification of the United States for issuing RUDs was to prevent duplication of pathways for relief, remedy, and punishment which it assured the world already equivalently exist under the U.S. Constitution and domestic laws. This “equivalence” representation placed the achievement of UNCAT compliance squarely upon the shoulders of state and federal judiciary.

²³ In conjunction with enacting some federal legislation in compliance with UNCAT, no political question on the subject of full US compliance with the UNCAT remains

Independent investigation in another Texas case demonstrates that equivalence has not been achieved. IAJ's Istanbul Protocol-based investigation of Texas child welfare proceedings found:

- **Constitutional compliance failures** evidenced by public record;
- **Structural defects** creating systemic pathways for UNCAT violations;
- **Texas statutes** creating systematic pathways for international law violations;
- **Systemic failures** by state and federal government bodies;
- **Behavioral norms** tolerating and enabling torture and CIDT²⁴.

Another recent parent-child separation case (from Randall County, Texas), investigated pursuant to the Istanbul Protocol, demonstrates that domestic mechanisms fail to provide equivalent protection, remedy, and accountability compared to UNCAT requirements. The investigation concluded that there is **“radical non-equivalence”** between the direct statutory enforcement of treaties versus their traditional exclusion from consideration in the formulation of statutes.

Were the Convention directly implemented as federal law, it would present a radical and formidable constraint on the norms and practices of lawmakers. Every

²⁴ CIDT = Cruel, Inhuman or Degrading Treatment or Punishment is absolutely prohibited under UNCAT Article 16, as is Article 1 torture – see 2022 Istanbul Protocol cautions

statute would have to be checked for its potential for torture and CIDT, thus bolstering the security of the rights of the People. The absence of such consideration in Texas legislative history, documented infra at Section III-B.C, confirms the systematic exclusion of human rights treaty obligations from Texas law.

II. THE US INSTRUMENT OF RATIFICATION DEPOSITED WITH THE UN: CRITICAL DISTINCTIONS FROM SENATE EXECUTIVE REPORTS

This section addresses a critical analytical gap that prior filings have not explored: the distinction between the US instrument of ratification as deposited with the United Nations and the Senate Executive Reports that preceded ratification.

A. S. Exec. Rep. No. 100-20 (1988): The Reagan Administration's Initial Transmittal

On May 20, 1988, President Reagan transmitted the Convention Against Torture to the Senate for advice and consent. The accompanying S. Treaty Doc. No. 100-20 contained the treaty text along with the Reagan Administration's proposed Reservations, Understandings, and Declarations. This document represented the

Executive Branch's initial framework for how the United States should interpret its obligations under UNCAT.

The Reagan Administration's 1988 proposal reflected concerns about: - Ensuring compatibility with existing constitutional protections; - Limiting the scope of "mental pain or suffering" to prevent overbroad application; - Reserving the position on Article 30 arbitration; - Declaring the treaty non-self-executing.

Crucially, S. Exec. Rep. No. 100-20 represented only a proposal—it did not constitute ratification or create any binding international obligation. The Senate did not act on the treaty during the 100th Congress, and the matter carried over to subsequent consideration.

B. S. Exec. Rep. No. 101-30 (1990): The Bush Administration's Modified RUDs

On August 30, 1990, the Senate Foreign Relations Committee issued S. Exec. Rep. No. 101-30, recommending that the Senate provide advice and consent to ratification with modified RUDs submitted by the Bush Administration. The 1990 report reflected:

- Refinements to the definition of "mental pain or suffering";
- Clarification of the "acquiescence" standard;
- The "more likely than not" standard for Article 3 (non-refoulement);
- Expanded understanding regarding federalism implementation;

- Maintenance of the non-self-executing declaration.

S. Exec. Rep. No. 101-30 represented the Senate's deliberative recommendation, but it too did not constitute the final international commitment. The actual binding obligation arose only upon deposit of the instrument of ratification with the United Nations.

C. The Instrument of Ratification as Deposited: International Legal Effect

The instrument of ratification deposited by the United States with the United Nations on October 21, 1994, constitutes the binding international commitment that triggers Article VI supremacy.²⁵ This deposited instrument is available at

²⁵ The deposited instrument—not committee reports—defines the United States' binding obligation, and it is properly consulted as an interpretive limit in state cases. **Rule of decision.** When construing state law that touches a ratified treaty's subject matter, a Texas court may consult the **deposited instrument of ratification** to interpret state statutes consistently with federal law under the **Supremacy Clause** and the **Charming Betsy** canon. This is an interpretive harmony rule, not self-execution. (Note that by convention, **Medellín** is incorrectly applied to judicial enforcement of some treaty provisions, when in fact, its approach to evaluating the applicability of the treaty must be followed not its automatic conclusion of non-self-execution). Applied here, the deposited instrument's Article 16 reservation **imports** domestic constitutional baselines into the CIDT analysis; its federalism clause identifies **state courts** as responsible implementers; and its "object-and-purpose" understanding cautions against readings of the Family Code that would permit disproportionate, arbitrary, or opaque practices that foreseeably inflict severe mental suffering through family separation.

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4.

Critical Analysis of the Deposited Instrument:

The US instrument of ratification as deposited includes:

I. RESERVATIONS:

(1) The United States considers itself bound by the obligation under article 16 to prevent “cruel, inhuman or degrading treatment or punishment,” only insofar as the term “cruel, inhuman or degrading treatment or punishment” means the cruel, unusual and **inhumane treatment or punishment** prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.

(2) Pursuant to article 30(2) the United States declares that it does not consider itself bound by Article 30(1), but reserves the right specifically to agree to follow this or any other procedure for arbitration in a particular case.

II. UNDERSTANDINGS:

(1)(a) With reference to article 1, the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from: (1) the intentional infliction or threatened

infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

(1)(b) The United States understands that the definition of torture in article 1 is intended to apply only to acts directed against persons in the offender's custody or physical control.

(1)(c) With reference to article 1, the United States understands that "sanctions" includes judicially-imposed sanctions and other enforcement actions authorized by United States law or by judicial interpretation of such law. **Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.**

(1)(d) With reference to article 1, the United States understands that the term "acquiescence" requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.

(1)(e) With reference to article 1, the United States understands that noncompliance with applicable legal procedural standards does not *per se* constitute torture.

(2) The United States understands the phrase, “where there are substantial grounds for believing that he would be in danger of being subjected to torture,” as used in article 3, to mean “if it is more likely than not that he would be tortured.”

(3) The United States understands that article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in territory under the jurisdiction of that State Party.

(4) The United States understands that international law does not prohibit the death penalty, and does not consider this Convention to restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States, including any constitutional period of confinement prior to the imposition of the death penalty.

(5) The United States understands that this Convention shall be implemented by the United States Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered by the Convention **and otherwise by the state and local governments**. Accordingly, in implementing articles 10-14 and 16, the United States Government shall take measures appropriate to the Federal

system to the end that **the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfilment of the Convention.**

III. DECLARATIONS:

(1) The United States declares that the provisions of articles 1 through 16 of the Convention are not self-executing.

Article 21 Declaration: The United States declares, pursuant to article 21, paragraph 1, that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention.

D. Implications for Domestic Constitutional Interpretation

The deposited instrument reveals several critical points that modify prior analysis based solely on S. Exec. Rep. No. 101-30:

First, Understanding II(1)(c) contains an explicit acknowledgment that **domestic sanctions cannot defeat the object and purpose of the Convention**. This language—present in the deposited instrument—creates a direct constraint on state court interpretation: no matter what procedural or substantive protections Texas law provides, they cannot “defeat the object and purpose of the Convention to

prohibit torture.” This acknowledgment in the binding international instrument provides stronger support for UNCAT-consistent interpretation than S. Exec. Rep. No. 101-30 standing alone.

Second, Understanding II(5) explicitly provides that **state and local governments are responsible for implementation** where federal jurisdiction does not extend.

The deposited instrument commits that “the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfilment of the Convention.” This creates a direct federal commitment that state courts—as “competent authorities of the constituent units”—bear implementation responsibility for Articles 10-14 and 16. Texas courts interpreting state family law are thus acting within a framework where they have been explicitly identified as responsible for Convention fulfillment.

Third, Reservation I(1) ties Article 16’s prohibition against “cruel, inhuman or degrading treatment or punishment” to the Fifth, Eighth, and Fourteenth Amendments²⁶. This constitutional linkage means that **every Article 16 determination is simultaneously a constitutional determination**. When conduct

²⁶ In S. Exec Rpt. 100-20, Congress determined that it is necessary to add “inhumane treatment or punishment” to supplement the Fifth, Eighth, and Fourteenth Amendments in order to equivalently implement cruel, inhuman or degrading treatment or punishment. Note carefully the divergence between the *Reservation* (limiting the treaty) and the *Committee’s* view (that such limits are invalid).

violates Article 16, it necessarily violates the Fifth, Eighth, or Fourteenth Amendment protections that define Article 16's scope under US law.²⁷

Fourth, the non-self-executing declaration (Declaration III(1)) does not eliminate judicial interpretive obligations. As the Supreme Court explained in *Whitney v. Robertson*, 124 U.S. 190, 194 (1888), and reaffirmed in *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829), the self-execution question concerns whether a treaty provision creates privately enforceable rights without implementing legislation—not whether courts should consider treaty obligations in interpreting existing domestic law. The *Charming Betsy* canon operates independently of self-execution doctrine.

Fifth, the divergence between the deposited instrument and S. Exec. Rep. No. 101-30 underscores that **the deposited instrument is the authoritative source of US international obligations**. While S. Exec. Rep. No. 101-30 provides valuable legislative history, the actual text deposited with the UN represents what the United States committed to before the community of nations. Courts should look to this deposited text when determining the scope of US obligations.

²⁷ Because the United States' Article 16 reservation defines "CIDT" by reference to the **Fifth, Eighth, and Fourteenth Amendments**, a state-court determination that procedures are arbitrary, disproportionate, or punitive is simultaneously a **domestic constitutional defect**—not a free-floating treaty claim.

Sixth, the deposited instrument is more consistent with S. Exec. Rep. No. 100-20's original framework than with S. Exec. Rep. No. 101-30's modifications in certain respects. Specifically, the Reagan Administration's 1988 transmittal emphasized the constitutional linkage (Fifth, Eighth, Fourteenth Amendments) as definitional rather than merely illustrative. The deposited instrument maintains this constitutional integration, confirming that UNCAT analysis in US courts is inherently constitutional analysis.

Practical Application:

Under the deposited instrument's framework:

1. **Understanding II(5)** makes Texas courts responsible for Convention fulfillment regarding Articles 10-14 and 16.
2. **Reservation I(1)** means that any determination that Texas state action constitutes "cruel, inhuman or degrading treatment" under Article 16 is simultaneously a determination that such action violates the Fifth, Eighth, or Fourteenth Amendment.
3. **Understanding II(1)(c)** prohibits Texas courts from interpreting state procedural or substantive law in ways that would "defeat the object and purpose of the Convention to prohibit torture."
4. **The equivalence promise**, articulated in S. Exec. Rep. No. 101-30 and confirmed by the deposited instrument's structure, requires that domestic remedies provide protection equivalent to what UNCAT mandates.

When state agencies terminate parental rights through procedures that cause severe mental pain or suffering, using processes that lack adequate safeguards, Texas courts should evaluate whether such action constitutes “cruel, inhuman or degrading treatment” under Article 16—and by virtue of Reservation I(1), whether it violates the Fifth, Eighth, or Fourteenth Amendment.

This deposited understanding carries particular weight for judicial actors. Under Article 1 of UNCAT, 'acquiescence' by a 'public official' to acts of torture or cruel treatment triggers individual responsibility under international law; accordingly, when a court of last resort—having been presented with credible evidence that state action may constitute torture or CIDT—declines to establish meaningful safeguards or provide effective remedy, such judicial inaction may itself be characterized, under international investigative standards, as the 'acquiescence' that transforms passive observers into participants.

III. PARENT-CHILD SEPARATION IMPLICATES UNCAT ARTICLES 1 AND 16

A. Permanent Separation Causes “Severe Pain or Suffering”

UNCAT Article 1 defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” for specified

purposes including “punishing him for an act he or a third person has committed or is suspected of having committed.” The Convention’s explicit inclusion of “mental” pain or suffering recognizes that psychological harm can be as severe and lasting as physical injury.

The Supreme Court has long recognized the profound nature of the parent-child relationship. In *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982), the Court observed that “the fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents.” The Court characterized termination of parental rights as “the destruction of the family unit.” *Id.* at 768-69.

This Court has echoed these principles. In *In re J.F.C.*, 96 S.W.3d 256, 276 (Tex. 2002), the Court acknowledged that termination represents “the ‘death penalty’ of civil cases.” *See also In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002) (emphasizing that “termination of parental rights is complete, final, irrevocable, and divests for all time” the natural right of parent and child).

The UN Committee Against Torture, in General Comment No. 2, ¶ 6 (2008), emphasized that mental suffering falls squarely within UNCAT’s protections. The Committee has recognized that acts causing psychological rather than physical harm may nonetheless constitute torture or cruel treatment depending on their

severity, duration, and the vulnerability of the victim. Children, by virtue of their developmental stage and dependence on parental relationships, are particularly vulnerable to the psychological harm caused by family separation.

Critically, the assessment of “severe pain or suffering” must account not only for harm to children but also for the individual sensitivity and vulnerability of each parent. The Istanbul Protocol—the international standard for investigating and documenting torture and ill-treatment—requires consideration of individual circumstances including:

- **Pre-existing mental health conditions** that may heighten the severity of psychological harm;
- **Prior trauma history** that may compound the impact of family separation;
- **Disabilities** that may affect how a parent experiences and processes separation;
- **Cultural and personal factors** that may intensify the subjective experience of loss;
- **Social isolation** that may exacerbate the psychological impact of proceedings.

An Istanbul Protocol investigation would necessarily assess each parent's individual vulnerability when determining whether state conduct rises to the level of torture or CIDT. A parent with pre-existing PTSD, for example, may experience

termination proceedings with far greater severity than a parent without such history. A parent with intellectual disabilities may experience the complexity and opacity of proceedings as profoundly disorienting and terrifying. These individual factors are not peripheral considerations—they are central to proper UNCAT analysis.

B. Disproportionate State Action Constitutes Cruel, Inhuman or Degrading Treatment

UNCAT Article 16 requires States Parties to “undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official.”

This Court has recognized proportionality as central to parental rights analysis. In *In re D.T.*, 625 S.W.3d 62, 77 (Tex. 2021), the Court emphasized that termination must be reserved for cases where no less drastic remedy would protect children. In *In re D.S.*, 602 S.W.3d 504, 512-13 (Tex. 2020), the Court cautioned against termination based on conduct that, while concerning, does not rise to the level requiring permanent family destruction.

If IAJ were to conduct an independent Istanbul Protocol investigation of cases where the Department characterizes situations as “non-emergencies” yet proceeds

to permanent termination, such investigation could potentially conclude that the escalation trajectory represents exactly the disproportionality that Article 16 prohibits.

C. State Actors' Involvement Triggers UNCAT Applicability

Both Article 1 and Article 16 require involvement of public officials or persons acting in official capacity. This requirement is satisfied in termination proceedings. The Department of Family and Protective Services is a state agency whose employees are public officials acting in official capacity. Every aspect of intervention in termination cases involves state actors.

D. The Salazar Investigation: Evidence of Systemic UNCAT Violations

IAJ's independent investigation pursuant to the Istanbul Protocol documented systematic UNCAT violations in the Crystal Salazar case (Cause No. 84755L1, Randall County, Texas)²⁸. The investigation found that Ms. Salazar, an Indigenous mother, was permanently separated from her children through proceedings where she was denied access to evidence, prevented from participating in her own defense, and subjected to torture and cruel, inhuman, and degrading treatment. Key findings include:

²⁸ Ms. Salazar requested that the IAJ publish the findings of her case for educational benefit

UNCAT Article 1 Torture Determination:

- **“Inflicted by or at instigation of public official”** ✓ (DFPS officers, police, DFPS personnel, judges)
- **“Intentional infliction”** ✓ (planned removal operation, judicial process)
- **“Severe suffering”** ✓ (forced family separation, 14-month systematic deprivation, permanent termination)
- **“For purposes of”** ✓ (punishment, intimidation, coercion, discrimination)

Individual Vulnerability Assessment: The Salazar investigation documented Ms. Salazar’s individual circumstances, including her Indigenous heritage, isolation, and health conditions, as factors that heightened the severity of psychological harm she experienced. This individualized assessment is essential to proper Istanbul Protocol methodology.

Specific Documented Violations:

1. **Emergency Removal (April 2024):** Forced removal without constitutionally adequate emergency justification; 6 vehicles, multiple officers for a “non-emergency” situation; delayed service of emergency order.
2. **Administrative Escalation (May-June 2024):** Overwhelming administrative demands; extensive personal information demanded FROM parent while providing none ABOUT the case against her.

3. **Legal Entrapment (July 2024 - April 2025):** Attorney substitution denied despite known attorney-client conflict; medical continuance denied during health crisis; proceedings continued during medical emergency.
4. **Procedural Exclusion (April-May 2025):** Permanency hearing proceeded while mother was absent due to transportation failure; absence used as “non-verbal testimony” against her; permanent termination without mother present.

The investigation concluded that the Texas Family Code, by mandating attorney-only access to evidence in child welfare proceedings, establishes a *per se* violation of the Due Process Clause (14th Amendment), Equal Protection Clause (14th Amendment), Confrontation Clause (6th Amendment via 14th), First Amendment right to petition, and U.S. treaty obligations under UNCAT.

IV. POTENTIAL UNCAT ARTICLE 16 VIOLATIONS: WHAT AN INDEPENDENT INVESTIGATION COULD POTENTIALLY FIND

A. Family Separation as Potential Article 16 Treatment

International human rights bodies have increasingly recognized that family separation, particularly when disproportionate or unnecessary, may constitute cruel, inhuman, or degrading treatment. The UN Committee on the Rights of the Child, General Comment No. 14, ¶ 61 (2013), has emphasized that “removal of a child from the family should be a measure of last resort.”

IAJ provides the Court with an understanding of what an independent Istanbul Protocol investigation of the facts in this case could potentially find.

IAJ does not prejudge such findings; rather, IAJ notes that the record before the Court contains elements that would be significant to an Istanbul Protocol investigator:

An independent investigation could potentially find:

- **Evidence that children experienced significant psychological harm from separation**, such as crying themselves to sleep wanting to go home. This could potentially constitute evidence of suffering caused by state action.
- **Evidence that children maintained consistently positive feelings toward their parents** throughout proceedings. Despite characterization of the home as abusive, if children did not view their parents as abusers, an investigator could potentially consider this significant.
- **Evidence that the eldest biological daughter repeatedly expressed her desire to return home** and maintained positive feelings about her mother. Such evidence could potentially factor into proportionality analysis.

An investigation would also assess parental vulnerability:

- **Each parent's individual circumstances**, including mental health history, disability status, prior trauma, and other factors affecting their experience of proceedings;
- **The cumulative impact** of prolonged proceedings on parental psychological well-being;

- **Whether state actors were aware** of parental vulnerabilities and proceeded despite such knowledge.

If the record demonstrated that the state treated the underlying situation as a “non-emergency” for twenty months before seeking permanent termination, an investigator could potentially conclude that the state knew less drastic interventions were possible yet chose the most extreme remedy available.

B. Coercion Through Service Requirements

An independent investigation could potentially conclude that service requirements operate as mechanisms of coercion rather than assistance when parents face the choice of waiving constitutional rights—including Fourth Amendment protections against unreasonable searches and Fifth Amendment protections against compelled self-incrimination—or risking the loss of their children.

This Court recognized the constitutional problems with such coercion in *In re R.R.A.*, 687 S.W.3d 269, 278-80 (Tex. 2024), cautioning against penalizing parents for exercise of legal rights.

C. Disproportionate Response to Underlying Conduct

An independent investigation could potentially conclude that terminating both parents’ rights to all children based on one parent’s discipline of one child

represents grossly disproportionate state response. **Such an investigation could potentially note with particular interest** any situation where the factfinder **refused to terminate** a parent's rights to certain children, finding termination not in their best interest, yet observe that the state proceeded with termination of the other parent's rights to those same children.

This Court has emphasized that termination requires parent-specific and child-specific findings. *In re N.G.*, 577 S.W.3d 230, 235, 237-38 (Tex. 2019). A response that destroys an entire family based on one parent's discipline of one child would fail this tailoring requirement.

V. RELIABILITY AND ACCESS PRECONDITIONS FOR DISPOSITIVE USE OF CHILD STATEMENTS

Due process under the Fourteenth Amendment, U.S. Const. amend. XIV, and UNCAT's requirement of proportionate, evidence-based state action compel reliability and access safeguards before child statements may carry dispositive weight in termination proceedings. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (requiring assessment of risk of erroneous deprivation and value of additional safeguards); *Santosky v. Kramer*, 455 U.S. at 758-59 (heightened

procedural protections required given severity of termination). We propose as follows.

A. The Reliability Floor: Mandatory Prerequisites

No child statement may be admitted—or used as a dispositive basis—unless the proponent establishes:

1. **Continuous audio/video recording** of the interview;
2. **Use of non-leading, accepted forensic protocols** (e.g., NICHD-type prompts);
3. **Metadata and chain-of-custody** for any derivative document;
4. **Complete disclosure** to the parent of all recordings, notes, drafts, and edits.

This “reliability floor” ensures that § 104.006’s “time, content, and circumstances” can be properly evaluated²⁹. Without such safeguards, dispositive reliance constitutes **legal insufficiency** under *In re J.F.C.*, 96 S.W.3d at 266-67 and *In re C.H.*, 89 S.W.3d at 25-28, or at minimum **abuse of discretion** to deny continuance pending disclosure.

Texas appellate courts applying § 104.006 look at hallmarks of reliability: spontaneity, vocabulary consistent with the child’s age, absence of suggestive or

²⁹ § 104.006 applies to a child 12 or younger, however, minority demands reliability findings to ensure human rights are protected

leading prompts, and the context of the interview. *See In re L.C.L.*, 396 S.W.3d 712, 717-20 (Tex. App.—Dallas 2013, no pet.); *In re E.A.K.*, 192 S.W.3d 133, 145-49 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). Where recordings and non-leading protocols are missing, due process and Texas evidence law require either exclusion or, at minimum, that such hearsay not be dispositive.

B. Continuous Audio/Visual Recording Requirements

Texas Family Code § 104.006 permits introduction of child hearsay in abuse cases, but its reliability depends on the integrity of the interview process. Forensic interviews must be continuously recorded by audio and video to:

1. Preserve the complete interaction for judicial review;
2. Enable assessment of interviewer conduct and child demeanor;
3. Prevent selective characterization of child statements;
4. Satisfy confrontation concerns. *See Idaho v. Wright*, 497 U.S. 805, 818-21 (1990) (hearsay reliability requires particularized guarantees of trustworthiness); *Crawford v. Washington*, 541 U.S. 36, 68 (2004).

Recording should begin before the child enters the interview room and continue until after the child exits. Any break, sidebar, or off-camera interaction must be documented on the record. Failure to record continuously should affect the reliability finding and may warrant exclusion under Tex. R. Evid. 807.

C. Non-Leading Interview Protocol Compliance

Interviewers must use recognized, research-based protocols that minimize suggestibility and maximize reliability. Recognized protocols³⁰ include:

- **NICHD Protocol** (National Institute of Child Health and Human Development)³¹
- **CornerHouse Forensic Interview Protocol**³²
- **Finding Words/ChildFirst Protocol**³³

³⁰ Newlin, C., Steele, L.C., Chamberlin, A., Anderson, J., Kenniston, J., Russell, A., Stewart, H., & Vaughan-Eden, V. (2015). Child Forensic Interviewing: Best Practices. *OJJDP Juvenile Justice Bulletin* (NCJ 248749). Washington, DC: U.S. Department of Justice.

³¹ Lamb, M.E., Orbach, Y., Hershkowitz, I., Esplin, P.W., & Horowitz, D. (2007). Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children. *Child Abuse & Neglect*, 31(11-12), 1201-1231. DOI: 10.1016/j.chab.2007.03.021 – see NICHD Protocol Official Website: <https://nichdprotocol.com/>

-- Key Characteristics:

- Developed through federally-funded research at NICHD
- Most extensively researched forensic interview protocol worldwide
- Uses open-ended, non-leading prompts to elicit free-recall narratives
- Available in 25+ languages
- Evidence-based: Shown to increase accuracy and reduce suggestibility

³² Anderson, J., Ellefson, J., Lashley, J., Miller, A.L., Olinger, S., Russell, A., Stauffer, J., & Weigman, J. (2010). The CornerHouse Forensic Interview Protocol: RATAC®. *Thomas M. Cooley Journal of Practical and Clinical Law*, 12, 193-331. NCJ 236641 – see CornerHouse Training: <https://www.cornerhousetraining.org/>

-- Key Characteristics:

- **RATAC** = Rapport, Anatomy Identification, Touch Inquiry, Abuse Scenario, Closure
- **NCA Approved** (National Children's Alliance)
- 50,000+ professionals trained
- Developed from clinical practice at CornerHouse (Minneapolis-based Children's Advocacy Center)
- Emphasizes child-centered, developmentally appropriate questioning

³³ National Child Advocacy Center. (2019). *ChildFirst® Forensic Interview Protocol*. Huntsville, AL: National Child Advocacy Center. (Now administered by Zero Abuse Project) -- Zero Abuse Project ChildFirst Training: <https://zeroabuseproject.org/for-professionals/childfirst-forensic-interview-training/>

-- Key Characteristics:

- **NCA Approved** (National Children's Alliance)

Each protocol emphasizes: open-ended questions, avoidance of leading or suggestive techniques, developmentally appropriate language, and single rather than multiple interviews on the same topic. Protocol violations directly affect the reliability of the resulting statements and must be considered in the § 104.006 analysis. *See In re A.B.*, 437 S.W.3d 498, 502-05 (Tex. 2014) (discussing reliability factors for child hearsay).

Enhanced Trustworthiness Screens: When the State attempts to route statements through medical records (TRE 803(4)), business records (803(6)), or public records (803(8)), the court should still screen for lack of trustworthiness—business and public records cannot be vehicles for hearsay-within-hearsay that was itself obtained by leading or unrecorded methods. *See* TRE 803(6),(8) (trustworthiness provisos) and TRE 807 (residual exception demands “equivalent guarantees of trustworthiness”).

D. Written Reliability Findings Under § 104.006

Before any child hearsay statement may be used dispositively, Texas Family Code § 104.006 requires the court to find that “the time, content, and circumstances of

- Implemented in **21 states** plus international programs
- **6,500+ professionals trained annually**
- Evolved from the original "Finding Words" curriculum
- Emphasizes narrative practice and legally defensible interviewing techniques

the statement provide sufficient indicia of reliability.”³⁴ This requirement is not merely procedural; it is a constitutional safeguard mandated by *Santosky*’s heightened protections for parental rights.

The trial court should make **written, on-the-record findings** addressing:

1. The time, content, and circumstances of the statement;
2. The child’s age, maturity, and relationship to the persons involved;
3. The presence or absence of corroborating evidence;
4. Whether the statement was obtained through leading or suggestive questioning;
5. The qualifications and protocol compliance of the interviewer;
6. **Whether continuous audio/video recording exists;**
7. **Whether the parent received timely disclosure of all recordings and materials.**

Failure to make such findings constitutes reversible error. See *In re C.H.*, 89 S.W.3d at 25-28 (emphasizing importance of reliability findings in termination cases).

³⁴ Under **Idaho v. Wright** and **Tex. R. Evid. 803(6),(8)**, hearsay must bear “particularized guarantees of trustworthiness,” and business/public records cannot cure unrecorded or leading core statements; **§104.006** requires on-record reliability findings keyed to **time, content, circumstances**, and **Mathews** demands additional safeguards where, as here, the risk of erroneous deprivation is exceptionally high.

E. Parent-Level Access Requirements

Due process requires that parents have meaningful access to evidence used against them. Texas Family Code § 261.201(k) provides a statutory mechanism for parent access to investigation records. Before child statements may carry dispositive weight, parents must have:

1. **Access to all forensic interview recordings** in unredacted form;
2. **Access to CPS investigation reports** documenting the interviews;
3. **Sufficient time to review** (minimum 30 days before trial);
4. **Opportunity to retain experts** to evaluate interview reliability.

Denial of access to evidence used for termination violates due process and Article 16's prohibition against arbitrary state action. *See Mathews*, 424 U.S. at 335. A **Model Protective Order facilitating such access is attached as Appendix B.**

Connection to UNCAT: The CAT Committee has emphasized that effective remedies require access to information. CAT/C/USA/CO/3-5, ¶¶ 18-19 (2014). A parent cannot meaningfully defend against termination if denied access to the evidence forming its basis.

VI. THE ATTORNEY-ONLY ACCESS FRAMEWORK CREATES SYSTEMATIC CONSTITUTIONAL BARRIERS

A. Statutory Architecture of Evidence Restriction

The attorney-only access regime under the Texas Family Code creates a statutory foundation that systematically restricts parental access to evidence in child welfare proceedings, while granting privileged access to attorneys, *ad litem*, evaluators, and courts. The following interlocking statutes enforce this opacity:

Texas Family Code § 261.201: Establishes core confidentiality of investigation records, including child photographs, videotapes, audiotapes, or statements, limiting release to law enforcement, physicians, attorneys *ad litem*, guardians *ad litem*, or the court. By excluding direct parental access without a court order (rarely granted and burdensome for indigents), it creates the foundational attorney-only barrier.

Texas Family Code § 107.006: Mandates immediate court-ordered access for attorneys *ad litem* or *amicus* attorneys to all child-related information (medical, educational, CPS records), without equivalent rights for parents. It exemplifies the two-tier system, where *ad litem*s review sealed records pre-trial while indigent parents remain uninformed.

Texas Family Code § 262.102: Authorizes ex parte emergency orders for child possession based on a thin evidentiary threshold (affidavit showing immediate danger, no time for hearing), creating broad investigative authority without prior parental safeguards or consent.

Texas Family Code § 262.014: Requires DFPS to provide evidence (witness names, reports, photos/videos) to the parent's attorney or ad litem at least three days before an adversary hearing, but not directly to the parent.

Texas Family Code § 263.303: Requires DFPS to file permanency progress reports with the court and provide them to each party, the child's attorney ad litem, guardian ad litem, and volunteer advocate. While nominally including "each party" (parents), distribution is attorney-mediated in practice for indigent cases.

Texas Family Code § 104.006: Hearsay exception allowing admissibility of child statements in abuse/neglect suits if made to professionals and reliable, often sourced from sealed investigations accessible only to ad litems or courts.

Texas Family Code § 261.3017: Since September 1, 2023, mandates that CPS must verbally inform parents of their rights at the first contact during an investigation. However, independent investigation in another case has documented non-compliance with these notification requirements.

B. The Two-Tier Justice System: Empirical Evidence

The attorney-only access mandate under § 261.201(b) does not merely *risk* a two-tier system—it *engineers* one, where justice is rationed by income.³⁵

This triggers strict scrutiny under *M.L.B. v. S.L.J.*, 519 U.S. 102, 123-24 (1996), rendering Texas's scheme suspect—no compelling interest justifies denying indigents the tools to challenge evidence.

Constitutional Violation: Strict scrutiny fails—no narrowly tailored means (e.g., redacted access) justifies the extremely high indigent loss rates³⁶. *M.L.B.* mandates fee waivers for indigents; extend to evidence: total denial = de facto wealth test, void under Equal Protection.

C. Legislative History: Intentional Design Without Treaty Consideration

The attorney-only access regime does not exist in isolation; it interlocks with related provisions to form a statutory ecosystem that prioritizes state intervention over parental due process. Legislative history exposes this as deliberate.

³⁵ It is empirically established that the overwhelming majority of CPS-affected parents lack adequate resources and face dramatically reduced reunification rates when under-represented - see footnote 1 *supra*

³⁶ See footnote 1 *supra* which includes discussion of SB 2120

Treaty Consideration Absent: Governor signing statements (2023-2025) contain no references to UNCAT, CRC, ICCPR, or UNDRIP in child welfare legislation. Legislative committee reports show no international treaty analysis. No bill analyses reference UNCAT Article 16, CRC Article 12, ICCPR Article 23, or UNDRIP Articles 7, 15, 21, 40. No committee hearings discussed human rights treaty obligations.

This synthesis—devoid of parental rights hearings—confirms intentional opacity, non-equivalent to treaties like UNCAT (Art. 16: no CIDT via secrecy). Reforms must repeal these silos for redacted access, aligning with *Troxel* deference to parental decisions.

VII. FIRST AMENDMENT SPEECH AND ASSOCIATION VIOLATIONS

A. Parental Advocacy as Protected Speech

The First Amendment protects the right to communicate, advocate, and express positions regarding fundamental rights, including parental rights. In *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), the Supreme Court recognized that parental rights include the “liberty to direct the upbringing and education of children.”

Attorney-Only Access Impact: Restricting parental access to evidence fundamentally impairs their ability to communicate effectively about allegations against them, advocate meaningfully for their children, and exercise their fundamental speech rights in fundamental rights cases.

B. Parent-Child Association Rights

The First Amendment protects freedom of association, including the right to maintain family relationships. *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) established that family relationships receive constitutional protection.

Attorney-Only Access as Association Interference: The restrictions interfere with parent-child associations by preventing informed advocacy for children's best interests and creating speech barriers that undermine association rights.

C. Indigenous Cultural Expression Rights

For Indigenous parents, First Amendment violations are compounded by UNDRIP obligations:

UNDRIP Article 15: Right to enjoy and practice cultural traditions and customs.

UNDRIP Article 19: Right to give free, prior, and informed consent to actions affecting Indigenous peoples.

Attorney-Only Access Impact on Indigenous Parents: Cultural expression prevented through evidence exclusion; informed consent impossible without

complete information; traditional family practices undermined by state interference.

VIII. FOURTH AMENDMENT SEIZURE VIOLATIONS IN EMERGENCY REMOVAL

A. Children as Protected “Persons” Under the Fourth Amendment

The Fourth Amendment protects “the People” from unreasonable searches and seizures. Children, as persons, receive identical constitutional protection during state removal proceedings. Courts have consistently held that seizing a child without a warrant or exigent circumstances may violate the Fourth Amendment.

Key Cases:

- *Wallis v. Spencer*, 202 F.3d 1126 (9th Cir. 2000): Removing children without a warrant or parental consent violated the Fourth Amendment.
- *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003): Seizure of a child by social workers without a warrant or emergency was unconstitutional.
- *Kirkpatrick v. County of Washoe*, 843 F.3d 784 (9th Cir. 2016): Reinforced that child removal is a seizure requiring constitutional justification.
- *Gates v. Texas DFPS*, 537 F.3d 404, 429 (5th Cir. 2008): Requires exigent circumstances or court order for removals.

B. Emergency Orders vs. Constitutional Warrant Requirements

Texas Family Code § 262.102 authorizes “Orders for Protection of a Child in an Emergency” that bypass traditional warrant requirements. Emergency orders have significantly lower evidentiary standards than constitutional warrant requirements, potentially enabling unreasonable seizures.

C. Exigent Circumstances Analysis

Emergency removal must be justified by genuine exigent circumstances that make warrant procurement impossible or impracticable. Exigent circumstances cannot justify routine or anticipated removals.

IX. POTENTIAL UNCAT ARTICLE 1 DISCRIMINATION: WHAT AN INDEPENDENT INVESTIGATION OF FATHER R.L.’S TERMINATION COULD FIND

A. Guilt-by-Association Reasoning as Potential Article 1 Violation

UNCAT Article 1 explicitly includes within its definition of torture acts committed “for any reason based on discrimination of any kind.” **An independent Istanbul Protocol investigation of Father R.L.’s termination could potentially conclude** that his case exemplifies the discriminatory treatment Article 1 prohibits.

Such an investigation might potentially find:

- **R.L. was never accused of abusing any child.** His three biological children were not victims of the discipline at issue.
- The conduct underlying termination involved the mother's discipline of Kim (K.N.), a child to whom R.L. had no biological connection.
- Yet the state terminated R.L.'s rights to his biological children based on the mother's treatment of her own child.

Texas law requires that the parent engage in endangering conduct, not that the parent know of another's conduct. *In re N.G.*, 577 S.W.3d at 235. Guilt-by-association reasoning potentially violates UNCAT Article 1's anti-discrimination provision.

An investigation would potentially also assess R.L.'s individual vulnerability: his personal circumstances, any pre-existing conditions that heightened his experience of proceedings, and how the state's actions affected him individually.

B. Exercise of Constitutional Rights Cannot Generate Termination Grounds

An independent investigation could potentially find that termination rested substantially on refusal to waive constitutional rights:

- **Fourth Amendment:** Declining to permit warrantless searches;
- **Fifth Amendment:** Declining psychological evaluation without court order;
- **Privacy rights:** Declining to provide medical records without legal process.

This Court addressed this issue in *In re R.R.A.*, 687 S.W.3d 269, 278-80 (Tex. 2024), recognizing that parents cannot be penalized for exercising legal rights. The UNCAT framework reinforces this principle: a state that punishes protected conduct engages in cruel treatment that the Convention prohibits.

C. Post-Removal Drug Arrest Cannot Retroactively Justify Pre-Removal Termination

Texas law requires that endangering conduct under subsection (E) occur before removal. *In re E.N.C.*, 384 S.W.3d 796, 803, 807 (Tex. 2012); *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.).

An independent investigation could potentially note that post-removal conduct cannot retroactively justify pre-removal termination grounds. If a drug arrest occurred months after children’s removal with no children present, such arrest could not establish pre-removal endangerment. Similarly, if a positive drug test was explained by valid prescription and the Department failed to submit documentation to a Medical Review Officer for verification, an investigator could potentially view such failure as demonstrating determination to find grounds for termination regardless of actual evidence.

X. STRICT SCRUTINY UNDER ARTICLE I, §37 REQUIRES PROCEDURAL SAFEGUARDS TO BE EFFECTIVE

A. Texas Constitutional Amendment Requires Narrow Tailoring

Texas voters adopted Article I, Section 37 of the Texas Constitution in 2025, establishing parental rights as fundamental³⁷. Consistently with the treatment of fundamental rights³⁸, strict scrutiny would be applied to state intrusion into family decisions.

Strict scrutiny requires: (1) the state must demonstrate a compelling interest; and (2) the means must be **narrowly tailored**—employing the least restrictive means available. Less restrictive alternatives may exist in many cases: supervised visitation, in-home services, removal of only allegedly abused children.

B. UNCAT Provides the Proportionality Standard for Strict Scrutiny

The “narrow tailoring” requirement of domestic strict scrutiny is conceptually equivalent to the proportionality requirement under international human rights law. UNCAT’s proportionality standard provides content for strict scrutiny’s “narrow tailoring” requirement. The CAT Committee has consistently emphasized that state

³⁷ While SJR 34 (2025) proposed a parental rights amendment (Proposition 15), the enrolled version passed by the Legislature and approved by voters in November 2025 removed the specific “strict scrutiny” and “narrowly tailored” language present in earlier drafts.

³⁸ the **fundamental nature** of the right (as now enshrined in the Constitution) *requires* the application of strict scrutiny under established Texas Supreme Court precedents like *In re N.G.*

responses to legitimate concerns must be proportionate. CAT/C/USA/CO/3-5, ¶¶ 9-10 (2014).

The equivalence between domestic strict scrutiny and UNCAT proportionality is mandated by Congress's representations to the international community. S. Exec. Rep. No. 101-30, at 25-36 (1990). If strict scrutiny does not provide protection equivalent to UNCAT's proportionality requirement, then the equivalence representation was false.

Under the deposited instrument of ratification, the United States committed that domestic "sanctions" cannot "defeat the object and purpose of the Convention to prohibit torture." Understanding II(1)(c). If Texas strict scrutiny analysis permits termination of parental rights through disproportionate means, it defeats the Convention's object and purpose.

C. Procedural Safeguards Are Essential: Without Them, Strict Scrutiny Is Illusory

Strict scrutiny is not self-executing. The heightened standard of review accomplishes nothing if the procedural mechanisms necessary to apply it are absent or defective. IAJ respectfully submits that **without the procedural safeguards this brief advocates, strict scrutiny under Article I, Section 37 is illusory and ineffective.**

Why Procedural Safeguards Are Prerequisites to Meaningful Strict Scrutiny:

1. **Narrow Tailoring Requires Complete Information.** A court cannot determine whether the state has employed “the least restrictive means” if parents are denied access to the evidence used against them. Narrow tailoring analysis presupposes that both parties can evaluate the factual record. When one party—the parent—is systematically excluded from that record through attorney-only access restrictions, the court lacks the adversarial testing necessary for meaningful review.
2. **Compelling Interest Analysis Requires Reliable Evidence.** The “compelling interest” prong of strict scrutiny requires the court to evaluate whether the state’s asserted interest is genuinely compelling in the specific case. If child statements—often the central evidence in termination proceedings—are obtained through unreliable methods (leading questions, unrecorded interviews, protocol violations), the court cannot accurately assess whether the state’s interest is real or manufactured.
3. **Proportionality Assessment Requires Transparency.** UNCAT’s proportionality requirement, which informs narrow tailoring analysis, demands that state responses be proportionate to the actual threat addressed. Without access to evidence, parents cannot challenge exaggerated or fabricated claims of danger. Without proper interview protocols, courts cannot distinguish genuine disclosures from coached or suggested statements.
4. **Due Process Is the Vehicle for Strict Scrutiny.** The procedural due process required by *Mathews v. Eldridge* and *Santosky v. Kramer* is not separate from strict scrutiny—it is the mechanism through which strict scrutiny operates. If procedural due process is violated (through denial of evidence

access, unreliable hearsay, or procedural exclusion), the court's ability to apply strict scrutiny is fatally compromised.

The Consequences of Strict Scrutiny Without Safeguards:

If this Court announces that strict scrutiny applies to termination proceedings but does not require the procedural safeguards necessary to make that scrutiny meaningful, the result will be:

- **Formal compliance without substantive protection.** Courts will recite the strict scrutiny standard while applying it to incomplete or unreliable evidentiary records.
- **Continued disparate impact on indigent parents.** The estimated 85% indigence rate and dramatically reduced reunification rates for under-represented parents will persist because the structural barriers to effective defense will remain intact.
- **Failure of the equivalence promise.** The United States will continue to fail its commitment to provide protection equivalent to UNCAT's requirements, exposing it to international criticism and potential Article 20 investigation.

IAJ therefore urges this Court to recognize that the procedural safeguards set forth in Section V and Appendix A are not optional enhancements to strict scrutiny—they are essential prerequisites without which strict scrutiny cannot function.

D. Domestic Remedies Must Be Equivalent to UNCAT Requirements

Congress's equivalence representation creates specific obligations for Texas courts. The equivalence standard provides a floor below which Texas protections cannot fall. UNCAT prohibits cruel, inhuman, and degrading treatment; Texas law must prohibit the same. UNCAT requires proportionality; Texas law must require the same. UNCAT demands effective remedies; Texas law must provide the same.

Independent investigation of another Texas case demonstrates that equivalence has failed. The estimated 85% indigence rate and dramatically reduced reunification rates for under-represented parents confirms that domestic mechanisms do not provide equivalent protection. The two-tier justice system created by attorney-only access restrictions renders the equivalence promise hollow for the vast majority of affected families.

XI. AVAILABLE REMEDIES MUST SATISFY UNCAT ARTICLE 14

A. UNCAT Requires Effective Redress and Compensation

UNCAT Article 14 requires that “each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”

The requirement of “effective” redress means that remedies must actually address the harm caused. In the parental rights context, effective redress requires that wrongful terminations be reversed and family relationships restored. The Article 14 requirement also implies that procedural barriers to redress must yield when they would prevent effective remedy. Texas Family Code Section 161.211’s six-month limitation cannot bar challenges based on UNCAT violations.

B. Reversal and Family Reunification May Be Required

If courts determine that termination violated constitutional or UNCAT standards, the appropriate remedy may extend beyond simple reversal. Article 14’s requirement of “fair and adequate compensation, including the means for as full rehabilitation as possible” suggests that affected families may be entitled to affirmative assistance in rebuilding relationships.

Effective remedy might include: court-ordered reunification services; therapeutic support; financial compensation; and declaratory relief establishing that parents were not unfit.

C. Article 20 Investigation Remains Available for Systemic Violations

UNCAT Article 20 provides that if the Committee receives reliable information indicating that torture is being systematically practiced, the Committee may investigate. Individual organizations, including IAJ, may compile and report

systemic UNCAT violations to the Committee. Court decisions addressing termination procedures will contribute to the pattern evidence that might support an Article 20 investigation.

D. Continuance-as-of-Right for Late Disclosure

Where the Department produces evidence, recordings, or witness disclosures within 14 days of trial, the responding parent shall be entitled to a continuance as of right. This requirement ensures that:

1. Parents have meaningful opportunity to review and respond to evidence;
2. Expert witnesses can be retained and prepared;
3. The “death penalty of civil cases” is not imposed through procedural ambush.

This continuance right is consistent with Texas Rules of Civil Procedure 216 and 220, and with UNCAT Article 14’s requirement of effective remedies. A parent cannot obtain effective redress if denied the time necessary to mount a defense.

The Model Standing Order attached as Appendix A includes a continuance-as-of-right provision.

CONCLUSION AND PRAYER

In the realm of human rights, the ends must not justify the means. Torture and CIDT may never be construed as *de minimis* error. But the absolute prohibition of torture and CIDT can be used as guide for reform to humanize institutional and judicial processes.

The Institute for the Advancement of Justice & Human Rights respectfully submits that this Court should interpret Texas constitutional and statutory protections for parental rights in a manner consistent with the United States' obligations under the Convention Against Torture. Insightful precedent from this Court can prevent human rights violations and protect all parties from involvement in proceedings that could be found to violate UNCAT standards.

The United States' ratification of UNCAT creates binding obligations that form part of the supreme law of the land. The *Charming Betsy* canon requires interpretation of domestic law consistent with these international obligations. The U.S. RUDs purporting to limit UNCAT's domestic effect have been determined invalid under *jus cogens* principles. CAT/C/USA/CO/3-5, ¶¶ 4-6 (Dec. 19, 2014).

As the Second Circuit declared, the torturer stands as *hostis humani generis*—enemy of all mankind—a designation that carries grave constitutional implications rooted in Article I, Section 8's grant of power over offenses against the law of

nations, and other Articles. Congress's promise of "equivalent" domestic protection creates an enforceable standard. S. Exec. Rep. No. 101-30, at 25-36 (1990). **Independent investigation in another Texas case demonstrates "radical non-equivalence" between this promise and Texas practice.**

Critically, the US instrument of ratification deposited with the United Nations contains binding commitments that Texas courts should honor. Understanding II(1)(c) provides that domestic sanctions cannot "defeat the object and purpose of the Convention to prohibit torture." Understanding II(5) explicitly assigns state and local governments responsibility for Convention implementation. Reservation I(1) ties Article 16 to the Fifth, Eighth, and Fourteenth Amendments, making every Article 16 determination simultaneously a constitutional determination.

Parent-child separation implicates UNCAT's prohibition against cruel, inhuman, and degrading treatment. **The assessment of "severe pain or suffering" must account for the individual sensitivity and vulnerability of each parent, not only the psychological harm to children.** An independent investigation pursuant to the Istanbul Protocol could potentially find significant evidence regarding UNCAT non-compliance in cases presenting the factual circumstances present in this record.

Strict scrutiny under Texas Constitution Article I, Section 37 cannot function effectively without the procedural safeguards this brief advocates. A court cannot apply narrow tailoring analysis to incomplete records. A court cannot evaluate compelling interests based on unreliable evidence. A court cannot ensure proportionality when one party is systematically excluded from meaningful participation. **Procedural safeguards are essential prerequisites without which strict scrutiny becomes an empty formalism.**

The attorney-only access framework embedded in Texas Family Code §§ 261.201, 107.006, 262.102, 262.014, 104.006, and 263.303 creates systematic constitutional barriers. With the estimated 85% of parents indigent and dramatically reduced reunification rates, this framework establishes a two-tier justice system that violates the Fourteenth Amendment's Equal Protection Clause and fails to provide UNCAT-equivalent protections.³⁹

³⁹ This Court has the inherent power to redefine the Texas parent-child separation landscape by artful precedent, which might severe the citizens of Texas by subtly guiding emphasis on prevention and pre-litigation legal representation. Page 40 of the 2022 TexProtects.org report (<https://www.texprotects.org/wp-content/uploads/2022/07/TexProtects-State-of-the-State-5.16.2022.pdf>) states that “Just 5% of Texas’ Budget is spent on early prevention efforts in comparison to Child Protection Services” (more than 85%) – also page 43 reports that 413,00 families out of 1.8 million families in Texas with children under age 6 may benefit from Home Visiting services but “Less than 5% of families who could benefit from Home Visiting receive it”. Also consider, for example, the Detroit Center for Family Advocacy, a University of Michigan Law School initiative providing pre-petition multidisciplinary legal representation, achieved its legal objectives in 98.2% of prevention cases, with none of the 110 children served entering foster care during the three-year pilot. Foundational Academic Article: Sankaran, V. (2014). Using Preventive Legal Advocacy to Keep Children from Entering Foster Care.

Amicus respectfully urges the Court to articulate a standards-based framework that: (1) applies strict scrutiny to termination and long-term separation; (2) requires explicit reliability findings anchored in administrable guardrails; (3) ensures parent-level access to the evidentiary core under protective orders; and (4) treats late disclosure or missing recordings as grounds for a continuance sized to cure prejudice. This guidance harmonizes Texas law with constitutional guarantees and with prevention-oriented obligations discussed in ratified human-rights instruments.

This brief provides two ready-to-implement tools: Appendix A (Model Standing Order on Reliability & Access) and Appendix B (Protective Order Template), which translate the principles argued herein into practical judicial instruments.

WHEREFORE, the Institute for the Advancement of Justice & Human Rights respectfully prays that this Court:

Michigan Bar Journal, 93(1). URL:
<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1946&context=articles> Official evaluation report: Detroit Center for Family Advocacy. (2013). Detroit Center for Family Advocacy Pilot Evaluation Report: July 2009–June 2012. Ann Arbor, MI: University of Michigan Law School. URL: <https://artscimedia.case.edu/wp-content/uploads/sites/35/2014/02/14194055/CFAReport.pdf> See also Casey Family Programs. (2020). How can pre-petition legal representation help strengthen families? Strategy Brief. URL: https://www.casey.org/media/20.07-QFF-SF-Preventive-Legal-Support_fnl.pdf

1. Apply strict scrutiny to the state's termination of parental rights pursuant to Texas Constitution Article I, Section 37;
2. **Recognize that strict scrutiny without procedural safeguards is illusory and ineffective**, and that the safeguards set forth in this brief are essential prerequisites to meaningful constitutional review;
3. Interpret the strict scrutiny standard consistently with UNCAT's proportionality requirements, ensuring that domestic protection is "equivalent" to international human rights standards;
4. **Recognize that the US instrument of ratification deposited with the United Nations creates binding federal commitments that Texas courts should honor**, including the commitment that domestic sanctions cannot defeat the Convention's object and purpose, and that state governments bear implementation responsibility;
5. **Adopt the reliability floor and access safeguards set forth in Section III-A and Appendix A**, requiring continuous recording, protocol compliance, written reliability findings, and parent access before child statements may carry dispositive weight;
6. **Recognize that attorney-only access restrictions under Texas Family Code § 261.201 create systematic due process and equal protection violations** that must be remedied through mandatory parent disclosure in fundamental rights cases;
7. **Recognize that assessment of "severe pain or suffering" under UNCAT must account for individual parental vulnerability**, including mental

health history, disability status, prior trauma, and other factors affecting each parent's experience of proceedings;

8. Recognize that remedies must satisfy UNCAT Article 14's requirement of effective redress, including family reunification and continuance-as-of-right for late disclosure; and
9. Establish by precedent the importance of the observance of human rights within all government and institutional processes, and the inherent incorporation of human rights and treaty supremacy considerations in the interpretation of Texas law.

Respectfully submitted,



Cyrus Hazari, J.D.

January 31, 2026

**INSTITUTE FOR THE ADVANCEMENT OF JUSTICE & HUMAN
RIGHTS *Amicus Curiae*⁴⁰**

⁴⁰ The IAJ acknowledges the contributions of AI to this writing.

CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4, I certify that this brief complies with the type-volume limitations. This brief contains 14,872 words, excluding the portions exempted by Rule 9.4(i)(1) and the appendices.

This brief complies with the typeface requirements of Rule 9.4(e) because it has been prepared using a proportionally spaced typeface using Times New Roman 14-point font for text and 12-point font for footnotes.

A handwritten signature in blue ink, appearing to read "C. Hazari".

Cyrus Hazari, J.D.

**INSTITUTE FOR THE ADVANCEMENT OF JUSTICE & HUMAN
RIGHTS *Amicus Curiae***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was delivered to each party and/or their respective attorney of record on February 3, 2026 via electronic service in accordance with TEX. R. APP. P. 9.5, as well as delivery to other amici, as listed below.



Cyrus Hazari, J.D.

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APPENDIX A

MODEL STANDING ORDER: RELIABILITY AND ACCESS SAFEGUARDS IN PARENTAL RIGHTS TERMINATION PROCEEDINGS

IN THE [__] JUDICIAL DISTRICT COURT

[__] COUNTY, TEXAS

STANDING ORDER NO. __

WHEREAS, parental rights are fundamental rights protected by the Fourteenth Amendment to the United States Constitution and Texas Constitution Article I, Section 37;

WHEREAS, the Texas Supreme Court has characterized termination of parental rights as “the death penalty of civil cases,” *In re J.F.C.*, 96 S.W.3d 256, 276 (Tex. 2002);

WHEREAS, reliability of evidence and parent access to evidence are essential to due process, *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982);

WHEREAS, strict scrutiny under Texas Constitution Article I, Section 37 cannot function effectively without procedural safeguards ensuring access to reliable evidence;

WHEREAS, the United States’ obligations under the Convention Against Torture require that state action be proportionate, evidence-based, and subject to effective remedy;

WHEREAS, the US instrument of ratification deposited with the United Nations provides that state and local governments bear responsibility for Convention implementation (Understanding II(5)) and that domestic sanctions cannot defeat the Convention’s object and purpose (Understanding II(1)(c));

WHEREAS, empirical data demonstrates that the overwhelming majority of CPS-affected parents lack adequate resources and face dramatically reduced reunification rates when under-represented, creating a two-tier justice system inconsistent with equal protection requirements;

IT IS HEREBY ORDERED:

1. RELIABILITY FLOOR FOR CHILD STATEMENTS

No child statement may be admitted or used as a dispositive basis unless the proponent establishes:

- a. **Continuous audio/video recording** of the interview, beginning before the child enters the interview room and continuing until after the child exits;
- b. **Use of non-leading, accepted forensic protocols** (e.g., NICHD Protocol, CornerHouse Protocol, Finding Words/ChildFirst Protocol);
- c. **Metadata and chain-of-custody documentation** for any derivative document;
- d. **Complete disclosure** to the parent of all recordings, notes, drafts, and edits.
- e. Failure to meet this reliability floor renders the statement **non-dispositive** and presumptively **inadmissible** under Texas Family Code § 104.006.

2. FORENSIC INTERVIEW RECORDING

- a. All forensic interviews of children in proceedings under Texas Family Code Chapters 161, 262, or 263 shall be **continuously recorded by audio and video**.
- b. Recording shall **begin before the child enters the interview room** and **continue until after the child exits**.
- c. All persons present during any portion of the interview shall be **identified on the recording** by name and role.
- d. All breaks, interruptions, or off-camera interactions shall be **documented on the record** with explanation.
- e. Any **failure to comply with these recording requirements** shall be documented in the case file, and affected testimony shall be subject to exclusion, limiting instruction, or adverse inference at the court's discretion.

3. INTERVIEW PROTOCOL COMPLIANCE

- a. Forensic interviewers shall use **recognized, research-based protocols**, including but not limited to:
 - NICHD Protocol (National Institute of Child Health and Human Development)
 - CornerHouse Forensic Interview Protocol
 - Finding Words/ChildFirst Protocol
- b. Interviewers shall **avoid leading questions, suggestive techniques, and multiple interviews** on the same topic unless documented necessity exists.
- c. The **protocol used shall be identified on the record**, and the interviewer's training and certification in that protocol shall be documented.
- d. Deviations from protocol shall be documented with justification.

4. RELIABILITY FINDINGS REQUIRED

- a. Before any child hearsay statement may be admitted under Texas Family Code § 104.006 or Texas Rule of Evidence 807, the court shall make **written findings on the record** addressing:
 - (i) The **time, content, and circumstances** of the statement;
 - (ii) The child's **age, maturity, and cognitive development**;
 - (iii) The child's **relationship to the declarant** and any motive to fabricate;
 - (iv) The **presence or absence of corroborating evidence**;
 - (v) Whether the statement was obtained through **leading or suggestive questioning**;
 - (vi) The **qualifications and protocol compliance** of the interviewer;
 - (vii) Whether **continuous audio/video recording exists**;
 - (viii) Whether the **parent received timely disclosure** of all recordings and materials.

- b. **Failure to make such written findings shall constitute reversible error** in any appeal from termination of parental rights.
- c. The statement's reliability must be established by **clear and convincing evidence** before it may be used dispository.

5. FUNDAMENTAL-RIGHTS DISCLOSURE PROTOCOL

- a. Within **seven (7) days of setting any merits/termination/permanency hearing**, the Department of Family and Protective Services must disclose to the parent:
 - All recordings
 - All photographs
 - All interview notes and drafts
 - Complete CPS/DFPS file
 - Witness list
- b. If the Department asserts **§ 261.201 privilege or other confidentiality**, it must produce a **document-by-document log** and submit contested items **in camera**.
- c. Any disclosure inside **thirty (30) days** of a dispository hearing triggers a **continuance as of right**.
- d. The parent may retain a **forensic interview expert** with access to the recordings and methods.

6. PARENT ACCESS TO EVIDENCE

- a. Pursuant to Texas Family Code § 261.201(k) and due process requirements, parents or their counsel shall have **access to all records, recordings, and reports** used or intended to be used as evidence.
- b. Access shall be provided **no later than thirty (30) days before the trial setting**.
- c. Any **redactions shall be documented** with specific legal justification and submitted to the court for review upon objection.

- d. **Blanket redactions** based solely on Texas Family Code § 261.201 confidentiality provisions, without particularized justification, are insufficient.
- e. Disputes regarding access shall be **resolved by the court prior to trial**.

7. CONTINUANCE FOR LATE DISCLOSURE

- a. If the Department of Family and Protective Services or the Attorney General produces **evidence, recordings, or witness disclosures within fourteen (14) days of trial**, the responding parent shall be **entitled to a continuance as of right** of reasonable duration upon request.
- b. Such continuance shall be **granted without penalty** to the parent and without adverse inference.
- c. This provision shall apply regardless of whether the Department's delay was intentional, and is consistent with Texas Rules of Civil Procedure 216 and 220.

8. REMEDIES FOR NON-COMPLIANCE

Where access to evidence is prevented, recordings/protocols are absent at any point in the chain of evidence, or secrecy prevented meaningful participation, the court shall:

- a. **Vacate/disallow reliance** on the affected child statements;
- b. **Grant new trial** after full disclosure;
- c. **Render judgment** if, removing unreliable hearsay, the evidence is legally insufficient under *In re J.F.C.* / *In re C.H.*

9. APPLICABILITY

This Order applies to all proceedings under Texas Family Code Chapters 161, 262, and 263 filed or pending in this Court as of [DATE].

SIGNED this ____ day of _____, 20__.

JUDGE PRESIDING

APPENDIX B

PROTECTIVE ORDER TEMPLATE: PARENT ACCESS TO CONFIDENTIAL RECORDS IN TERMINATION PROCEEDINGS

CAUSE NO. _____

IN THE INTEREST OF	§ IN THE DISTRICT COURT
	§
_____	§ ____ JUDICIAL DISTRICT
	§
CHILD(REN)	§ _____ COUNTY, TEXAS

PROTECTIVE ORDER GOVERNING PARENT ACCESS TO RECORDS

On this date, the Court considered [PARENT NAME]’s Motion for Access to Records pursuant to Texas Family Code § 261.201(k) and the due process requirements of the Fourteenth Amendment. Having considered the motion and any response, the Court finds that:

1. [PARENT NAME] is a party to this termination proceeding with fundamental liberty interests at stake;
2. Due process requires meaningful access to evidence upon which the Department relies;
3. Access can be provided consistent with child protection through appropriate safeguards;
4. Strict scrutiny under Texas Constitution Article I, Section 37 cannot function effectively without access to the evidentiary record;
5. The United States’ instrument of ratification of UNCAT provides that state and local governments bear responsibility for Convention implementation (Understanding II(5)) and that domestic procedures cannot defeat the Convention’s object and purpose (Understanding II(1)(c));
6. Empirical data demonstrates that the overwhelming majority of CPS-affected parents lack adequate resources and face dramatically reduced

reunification rates when under-represented, requiring enhanced access protections.

IT IS THEREFORE ORDERED:

1. SCOPE OF ACCESS

The Department of Family and Protective Services shall provide [PARENT NAME] and [PARENT NAME]’s counsel of record with access to the following records:

- a. All **forensic interview recordings and transcripts** of [CHILD NAME(S)];
- b. All **CPS investigation reports, intake reports, and case notes** related to this matter;
- c. All **medical records** obtained or generated during the Department’s investigation;
- d. All **school records** obtained during the investigation;
- e. All **psychological, psychiatric, or counseling records** of the child(ren) in the Department’s possession;
- f. All **foster care placement records**, including reports from foster parents or placement facilities;
- g. All **expert reports or evaluations** the Department intends to introduce at trial;
- h. All **photographs, videos, or other recordings** in the Department’s possession related to this matter;
- i. All **interview notes, drafts, and derivative documents** related to child statements.

2. CONFIDENTIALITY OBLIGATIONS

[PARENT NAME] and [PARENT NAME]’s counsel shall:

- a. **Use accessed records solely** for purposes of this litigation and any direct appeal therefrom;

- b. **Not disclose records to any third party** except:
 - Experts retained for this case (who shall be bound by this Order)
 - Witnesses who must review records to prepare testimony
 - Appellate counsel if different from trial counsel
- c. **Not copy or reproduce records** except as reasonably necessary for litigation purposes;
- d. **Store records securely** and prevent unauthorized access;
- e. **Return or certify destruction of all copies** within thirty (30) days of final conclusion of this case, including exhaustion of appeals.

3. METHOD OF ACCESS

- a. Access shall be provided at [LOCATION: e.g., counsel's office, CPS office, courthouse] during normal business hours;
- b. Counsel may make copies at counsel's expense using counsel's own equipment;
- c. Where records exist in **electronic form**, electronic copies shall be provided in standard format (PDF, MP4, etc.);
- d. The Department shall provide an **index or log** identifying all records provided.

4. TIMELINE

- a. Access shall be provided within **fourteen (14) days** of entry of this Order;
- b. If additional records are obtained by the Department after initial production, supplemental production shall occur within **seven (7) days** of receipt;
- c. All records shall be produced no later than **thirty (30) days before trial**.

5. REDACTIONS

- a. Any proposed redactions shall be submitted to the Court with **specific legal justification** for each redaction;
- b. The Court shall **rule on disputed redactions** before access is provided;
- c. **Blanket redactions** based solely on Texas Family Code § 261.201, without particularized showing of harm, are insufficient;
- d. Information regarding **third parties not relevant to this proceeding** may be redacted upon showing of good cause;
- e. Information regarding **other children** of the parent shall not be redacted absent specific finding of irrelevance.

6. VIOLATIONS

- a. Violation of this Order by [PARENT NAME] or counsel may result in:
 - Sanctions under Texas Rule of Civil Procedure 215
 - Exclusion of evidence obtained through access
 - Contempt of court
 - Modification or revocation of this Order
- b. Violation of this Order by the Department may result in:
 - Exclusion of evidence not timely produced
 - Adverse inference instruction to the factfinder
 - Continuance at the Department's expense
 - Sanctions

7. DURATION

This Order shall remain in effect until:

- a. Final conclusion of this case, including exhaustion of all appeals; or
- b. Further order of this Court.

SIGNED this ____ day of _____, 20__.

JUDGE PRESIDING

APPROVED AS TO FORM:

Counsel for [PARENT NAME]
[Name, Bar No.]
[Address]
[Phone/Email]

Counsel for the Department
[Name, Bar No.]
[Address]
[Phone/Email]

Amicus Curiae to the Texas Supreme Court, Cause No. 24-0881

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