

Comparison of Guidelines for Immigration Court Cases Involving Juveniles

Language below quoted directly from U.S. government memos. These terms are generally listed in the order in which they appear in the most recent Memorandum.

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| Terminology | This DM uses “child” and “juvenile” to refer to an individual who is under twenty-one years old. This DM further uses the term “unaccompanied child” to refer to an “unaccompanied alien child” as defined by statute. | This OPPM applies to all immigration proceedings involving unmarried children under the age of 18. Therefore, to avoid confusion, any references in this OPPM to the terms “child,” “unaccompanied alien child,” “juvenile,” or “minor” (or their plural forms) are meant to refer to an unmarried individual under the age of 18. | The definition of the term “child” may differ depending on the context in which it is used. These guidelines use the terms “child” and “children” in a way that is slightly different from the definitions provided in the Immigration and Nationality Act (INA or Act). The Act defines a “child” as an unmarried person under 21 years of age. Sections 101(b)(1) and 101(c)(1). The regulations follow this statutory definition. The regulations also define a “juvenile” as an alien under the age of 18. 8 C.F.R. § 1236.3. The regulations also use (but do not define) the word “minor” when describing aliens under 14 years of age. 8 C.F.R. § 1236.2. |
| Specialized Juvenile Dockets - Formation | EOIR has established a specialized juvenile docket at each immigration court with an established caseload of children’s cases. In immigration courts without enough children’s cases to warrant a specialized juvenile docket, EOIR will schedule children’s cases separate and apart from adult cases. | | |
| Specialized Juvenile Dockets - Makeup | Specialized juvenile dockets consist of cases in which the respondents are under twenty-one years old and are not part of a family unit. Some, but not all, of the respondents on these dockets have been designated by the Department of Homeland Security (DHS) as unaccompanied children. These dockets include both detained cases – that is, those involving child respondents who are in the care of the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR) – and non-detained cases. | | |

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| Specialized Juvenile Dockets - Schedule | Hearings for cases on these juvenile dockets are scheduled on specified days of the week at specified times, separate and apart from hearings for adults. | Wherever feasible, courts should conduct cases involving juvenile respondents, particularly unaccompanied alien children, on a separate docket or at a fixed time in the week or month. If the number of cases does not warrant a separate docket, courts should attempt to schedule children's cases at a specific time on the regular docket but separate and apart from adult cases. Courts should similarly keep detained dockets for adults and children completely separate and try to ensure that dockets do not have the effect of forcing unaccompanied alien children to be transported or held with detained adults. | Wherever possible, courts should conduct cases involving unaccompanied alien children on a separate docket or at a fixed time in the week or month. If the number of cases do not warrant a separate docket, courts should try to schedule children's cases at a specific time on the regular docket, but separate and apart from adult cases. Such a docket or schedule will improve the ability of custodians to transport the children and of legal service providers to assist them. Similarly, courts should keep detained dockets for adults and children completely separate. Courts should try to ensure our dockets do not have the effect of forcing unaccompanied alien children to be transported or held with detained adults. When docketing these cases, immigration judges should be mindful to weigh both the child's need for time to prepare his or her case and the impact of prolonged custody on the child's mental health and well-being. |
| Specialized Juvenile Dockets - Judges | EOIR has designated specific immigration judges to preside over the juvenile dockets. | All Immigration Judges shall be prepared to adjudicate cases involving juveniles. Accordingly, all Immigration Judges have the responsibility to be familiar with the applicable law and guidance related to juveniles and to maintain professional competence in adjudicating such cases. | All judges must be able to handle cases involving unaccompanied alien children. Circumstances in a particular court may require specialized dockets for children's cases, and responsibility for such dockets may be assigned to certain judges. However, all immigration judges are trained to handle these cases. It is the responsibility of every immigration judge to be familiar with these guidelines and related training materials. |
| Specialized Juvenile Dockets - DHS Role | DHS, Immigration and Customs Enforcement, Office of the Principal Legal Advisor (OPLA) will endeavor to assign points of contact to manage cases on the juvenile dockets, as staffing permits. | | |

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| Legal Representation | <p>Given the particular vulnerability of child respondents, legal representation is particularly important. Therefore, immigration judges should facilitate pro bono representation in cases involving unrepresented children. Many immigration courts identify child-specific advocates on their lists of pro bono legal service providers. Immigration Judges should provide such lists to the children, their guardians or custodians, or other appropriate adults who can assist in their pursuit of representation.</p> | <p>Neither the INA nor the regulations permit Immigration Judges to appoint a legal representative or a guardian ad litem. Nevertheless, all Immigration Judges are required to provide a list of pro bono legal service providers in accordance with 8 C.F.R. § 1240.10(a) (2) and should encourage the use of appropriate pro bono resources, consistent with applicable ethical principles.</p> | <p>Neither the INA nor the regulations permit immigration judges to appoint a legal representative or a guardian ad litem. Immigration judges should encourage the use of appropriate pro bono resources whenever a child respondent is not represented. Where a list of pro bono services is available, an immigration judge should provide it to a child if the child is not represented. Likewise, although there is no independent court role for a personal representative or guardian ad litem, if such services are made available to respondents they have the potential to increase a child's understanding of the proceedings and to improve the child's communication with his or her legal representative.</p> <p>Immigration judges can play an active part in training programs for pro bono attorneys. Mock trials, "Model Hearings," and other efforts are effective ways of increasing the available pool of representatives. When judges are invited to participate, these requests should be promptly forwarded to OCIJ for approval. Recognizing that docket demands must come first, this office is committed to assisting in such efforts.</p> |
| Judicial Impartiality | | <p>Although juvenile cases may present sympathetic allegations, Immigration Judges must be mindful that they are unbiased arbitrators of the law and not advocates for either party in the cases they hear. Accordingly, Immigration Judges must remain neutral and impartial when adjudicating juvenile cases and shall not display any appearance of impropriety when presiding over such cases.</p> | |

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| Child Advocates | <p>In addition, immigration judges should be aware that the HHS has the authority to appoint Child Advocates in some cases involving child respondents. Child Advocates are responsible for submitting Best Interest Determinations (BIDs) to the immigration judge. BIDs assess the best interests of the child and are based on a wholistic review of the child's circumstances. While a Child Advocate is not an attorney, a Child Advocate is permitted to speak during immigration court hearings, and the roles of a Child Advocate and an attorney are complementary and sometimes overlap. Detailed information on child advocates is available in DM 23-03, The Role of Child Advocates in Immigration Court.</p> | | |
| Friend of the Court | <p>EOIR welcomes and encourages the participation of Friends of the Court in all proceedings involving unrepresented respondents, especially those where the respondent is a child. A Friend of the Court is an individual or organization that participates in immigration court proceedings in order to facilitate the flow of information in the courtroom. Detailed information on Friends of the Court is available in DM 22-06, Friend of the Court.</p> | | |

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| Best Interests of the Child | <p>Legal issues in cases involving child respondents – including but not limited to whether the child is subject to removal or is eligible for immigration relief – are governed by the Act, other applicable statutes, immigration regulations, and caselaw. In addition, the concept of “best interests of the child,” which is a widely recognized term of art that encompasses principles of child development relating to a child’s safety and well-being, is relevant in children’s cases. The concept of “best interests of the child” does not provide a legal basis for findings regarding removability or eligibility for relief in immigration court, but this concept is relevant in that it underlies BIDs prepared by Child Advocates, and immigration judges have a duty to consider BIDs that are submitted to the court. More information is available in DM 23-03, The Role of Child Advocates in Immigration Court.</p> | <p>Issues of law—e.g. determinations of removability and eligibility for relief or protection from removal—are governed by statutes, regulations, and case law. Although 8 U.S.C. § 1232(c)(2) contains provisions for the Department of Health and Human Services (HHS) to consider “the best interest of the child” in certain circumstances, no similar provision exists in the INA directing Immigration Judges to consider the concept of “the best interest of the child” as a legal standard for determining removability or eligibility for relief or protection from removal. Therefore, this concept alone cannot provide a legal basis for granting relief or protection not otherwise sanctioned by law.</p> | <p>Issues of law—questions of admissibility, eligibility for relief, etc.—are governed by the Immigration and Nationality Act and the regulations. The concept of “best interest of the child” does not negate the statute or the regulatory delegation of the Attorney General’s authority, and cannot provide a basis for providing relief not sanctioned by law. Rather, this concept is a factor that relates to the immigration judge’s discretion in taking steps to ensure that a “child-appropriate” hearing environment is established, allowing a child to discuss freely the elements and details of his or her claim.</p> |
| Relief from Removal – Judicial Responsibility to Inform | <p>An immigration judge should always inform a child of any relief from removal for which they may be eligible.</p> <p>Where a respondent is an unaccompanied child and appears potentially eligible for asylum, the immigration judge should inform the respondent that their asylum application must be filed with USCIS and not with the immigration court. Where a child respondent appears potentially eligible for other relief, and that relief requires that an application or petition be filed with an agency or entity outside EOIR, the immigration judge should so inform the respondent.</p> | | |

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| Relief from Removal – Timing | Immigration judges should be mindful of time constraints and deadlines faced by child respondents who may be eligible for relief before USCIS or other outside agencies and entities. | | |
| Initial Jurisdiction of Asylum Claims | Under the TVPRA, United States Citizenship and Immigration Services (USCIS) has initial jurisdiction over an asylum application filed by an unaccompanied child, even if the child is in removal proceedings. | | |
| Motions to Dismiss | Where an unaccompanied child is in removal proceedings and files an asylum application with USCIS, immigration judges should anticipate receiving a motion to dismiss the case. Assuming there is no dispute between the parties, efficiency and fairness are served by such a dismissal. | | |
| Credibility | Immigration judges should recognize that children, especially young children, will generally not be able to testify with the precision and clarity of an adult. Immigration judges should not assume that inconsistencies or poor articulation in a child’s testimony reflect dishonesty. Further, a child’s testimony as to an event may be limited not only by their ability to understand what happened, but also by their skill in describing the event in a way that is intelligible to adults. Finally, immigration judges should be mindful that children can be highly suggestible and that their testimony can sometimes be influenced by a desire to please the judge or another adult. | Testimony from a child, as with testimony from any witness, is neither inherently reliable nor inherently unreliable. As noted above, an Immigration Judge must always first ensure that a child is competent to testify before considering what weight, if any, to afford that testimony. Immigration Judges should also recognize that children, especially young children, will usually not be able to present testimony with the same degree of precision as adults. Vague, speculative, or generalized answers by a child, especially a particularly young child, are not necessarily indicators of dishonesty. Immigration Judges should recognize that a child’s testimony may be limited not only by his or her ability to understand what happened, but also by his or her skill in describing the event in a way that is intelligible to adults. Immigration Judges should be mindful that children are highly suggestible and their testimony could be influenced by their desire to please judges or other adults. | Judges should recognize that children, especially young children, usually will not be able to present testimony with the same degree of precision as adults. Do not assume that inconsistencies are proof of dishonesty, and recognize that a child’s testimony may be limited not only by his or her ability to understand what happened, but also by his or her skill in describing the event in a way that is intelligible to adults. Judges should be mindful that children are highly suggestible and their testimony could be influenced by their desire to please judges or other adults. |

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| Credibility (cont.) | | <p>Immigration Judges should bear in mind, however, that legal requirements, including credibility standards and burdens of proof, are not relaxed or obviated for juvenile respondents. Thus, although vague, speculative, or generalized testimony by a child witness is not necessarily an indicator of dishonesty, it may nevertheless also be insufficient by itself to be found credible or to meet an applicable burden of proof</p> <p>See Matter of Y-B-, 21 I&N Dec. 1136 (BIA 1998) (finding that general testimony may be insufficient to meet the burden of proof); Matter of E-P-, 21 I&N Dec. 860, 862 (BIA 1997) (finding that credible testimony alone is not necessarily dispositive to meet the burden of proof).</p> | |
| Trafficking, Abuse, and Neglect | <p>In cases where a child is the lead or sole respondent, there may be concerns about whether the child is being trafficked, abused, or neglected. At the start of a child’s hearing, the immigration judge should inquire who accompanied the child to court in order to determine if additional questioning is necessary to confirm the child is not being trafficked. An immigration judge may also ask questions pertaining to potential abuse or neglect. Immigration judges must comply with Department of Justice (DOJ) and EOIR policy on reporting suspicions of child abuse, neglect, and trafficking, as well as with any applicable federal, state, or local reporting requirements. DHS and ORR may, where those agencies deem it warranted, initiate investigations into potential trafficking, abuse, or neglect.</p> | <p>Issues regarding child abuse/neglect and human trafficking may arise when adjudicating cases involving juveniles. EOIR personnel, including Immigration Judges, are required to report instances of child abuse and/or neglect and suspected human trafficking in accordance with the guidance outlined in Identification and Referral of Potential Trafficking Victims or Traffickers before the Executive Office for Immigration Review (April 27, 2015) and Identification and Referral of Potential Child Abuse and/or Neglect Victims before the Executive Office for Immigration Review (May 23, 2017). Each protocol offers tools for identifying abuse/neglect and/or human trafficking and guidance for when and how to report it.</p> | |

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| In absentia - Notice | <p>After a Notice to Appear (NTA) is issued, it is generally incumbent on a respondent to notify EOIR of any change of address, but where a child is the sole or lead respondent, immigration judges should anticipate that special considerations may be at play when the child fails to appear for a hearing. Immigration judges should also be aware that there are special notice requirements that apply to some child respondents.</p> | | |
| In absentia – Continuance | <p>In cases where a child is the sole or lead respondent and fails to appear, the immigration judge should, as with any case, carefully review the Record of Proceedings to verify whether a request to change the respondent’s address was filed with the court but overlooked. Immigration judges should anticipate that, for cases on the juvenile docket, the first time a child fails to appear in their proceedings, whether at an initial master calendar hearing or a subsequent hearing, the OPLA attorney will request a thirty-day continuance to reverify the child’s address information.</p> <p>Whenever a child respondent fails to appear at a hearing and the OPLA attorney requests to proceed in absentia, the immigration judge should consider the totality of the circumstances in determining whether to grant the request, including the respondent’s young age and any impediments to the child’s attending their hearing of which the judge is aware.</p> | | |

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| Proceeding in absentia | Should the child fail to appear at the next hearing, the OPLA attorney will, absent extenuating circumstances, generally request that the immigration judge proceed in absentia. | | |
| Child-Friendly Courtroom Procedures | <p>All cases where a child is the lead or sole respondent, including but not limited to cases on the juvenile docket, should be conducted using child-friendly courtroom procedures. Elements of these procedures are also appropriate in which a child testifies as a witness.</p> <p>Appropriate procedures will vary depending on the age of the child and other factors, and immigration judges should tailor these procedures to the specifics of the case.</p> | <p>Immigration Judges should also be cognizant of special circumstances occasionally raised by juveniles participating in immigration proceedings. Although claims in immigration court are raised in an adversarial setting, cases involving juveniles may make special demands on all parties. Therefore, consideration should be given, in appropriate circumstances, to some modifications to the ordinary courtroom operations. Nevertheless, Immigration Judges should be mindful that an alien's status as a juvenile does not, by itself, excuse compliance with statutory and regulatory requirements.</p> <p>Every Immigration Judge should employ age-appropriate procedures whenever a juvenile respondent or witness is present in the courtroom. However, not all cases involving juveniles are alike, and Immigration Judges should apply appropriate procedures in juvenile cases as the specific circumstances of the case warrant and always in accordance with applicable law.</p> | <p>Every immigration judge is expected to employ child sensitive procedures whenever a child respondent or witness is present in the courtroom. However, it is equally true that all such cases are not alike, and the procedures appropriate for a very young child may differ significantly from those appropriate for a teenager. These guidelines are suggestions that should be applied as circumstances warrant. All immigration judges understand that special attention is required for cases involving child witnesses or unaccompanied alien child respondents. An immigration judge should decide, on a case by case basis, whether special attention is required.</p> <p>Claims in Immigration Court are raised in an adversarial setting. Recognizing that cases involving unaccompanied alien children may make special demands on all parties, consideration should be given in appropriate circumstances to some modifications to the ordinary courtroom operations and configuration.</p> |
| Explain the proceedings | At the start of an individual calendar hearing where a child is the sole or lead respondent, or a master calendar session on the juvenile docket, the immigration judge should give an opening statement in child-appropriate language. The purpose of such a statement is to explain the nature of the proceedings, to introduce the participants and describe each person's role, and to explain operational matters such as interpretation and note-taking. The goal is to help child respondents understand the process and to alleviate their anxiety about the hearing. | In cases involving juveniles, Immigration Judges should consider making a brief opening statement at the beginning of each proceeding or at the commencement of a specialized docket for juvenile cases to explain the purpose and nature of the proceeding, to introduce the parties and discuss each person's role, and to explain operational matters such as recording, interpreting, and note taking. | Judges should consider making a brief opening statement at the beginning of each proceeding, or at the commencement of a specialized docket for children's cases, to explain the purpose and nature of the proceeding, to introduce the parties and discuss each person's role, and to explain operational matters such as tape recording, note taking, telephonic or video conference appearances, etc. Where approved instructive materials are available, such as a video prepared for unaccompanied alien children in proceedings, the courts should make a reasonable effort to make those materials available to unaccompanied alien children. |

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| Remove the Robe | Immigration judges should remove the judicial robe if doing so would make the child feel more comfortable and enhance their ability to participate. | Like the courtroom, the robe is a symbol of the Immigration Judge's independence and authority. While most children will be far more interested in the judge's behavior than the judge's attire, the robe may be disconcerting for younger respondents. If an Immigration Judge determines in a particular case that dispensing with the robe would add to the child's ability to participate, OPPM 94-10, Wearing of the Robe During Immigration Judge Hearings, is modified to permit the judge to remove the robe in that instance. | Like the courtroom, the robe is a symbol of the judge's independence and authority. For this reason, OPPM 94-10, "Wearing of the Robe During Immigration Judge Hearings," provides that a robe shall be worn in every proceeding when any of the parties is present with the immigration judge. While most unaccompanied alien children will be far more interested in the judge's behavior than the judge's attire, the robe may be disconcerting for younger respondents. If a judge determines in a particular case that dispensing with the robe would add to the child's ability to participate, OPPM 94-10 is modified to permit the judge to remove the robe for that case. |
| Courtroom Orientation | Where practicable, immigration judges should allow child respondents (along with a guardian or legal representative) to visit an empty courtroom prior to a hearing. Under the supervision of court personnel, a child should be permitted to explore the courtroom, to sit in all locations, including the witness stand and the immigration judge's bench, and to prepare for testimony by practicing answering simple questions. | The courtroom is usually an unfamiliar place for children. To the extent that resources and time permit and under the supervision of court personnel, children may be permitted to explore the courtroom-- other than the Immigration Judge's bench, records of proceedings, and courtroom technological equipment such as computers and video teleconferencing units and to practice answering simple questions in preparation for testimony. Additionally, to the extent that resources permit, court administrators should be receptive to requests by legal representatives or custodians of children to visit immigration courts prior to the initial hearing. Court administrators should also be open to other ways to familiarize children with court operations. | The courtroom is usually an unfamiliar place for children. Many family and juvenile court experts recommend allowing children to visit an empty courtroom prior to their scheduled hearing. Under the supervision of court personnel, the children should be permitted to explore the courtroom, sit in all the locations (including, especially, the judge's bench and the witness stand), and to practice answering simple questions in preparation for testimony. To the extent that resources permit, court administrators should be receptive to requests by legal representatives or custodians for unaccompanied alien children to visit our courts prior to the initial hearing. Additionally, they should be open to other ways to familiarize unaccompanied alien children with court operations. |

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| Courtroom Modifications | Immigration judges should permit reasonable modifications to the courtroom setting so as to accommodate the needs and sensitivities of children and to foster an atmosphere in which they can participate more fully in the proceedings. Examples of such modifications include allowing a young respondent or witness to bring a book, quiet toy, or other personal item to court, allowing them to testify sitting next to an adult companion, and allowing them to testify sitting anywhere reasonable in the courtroom, as opposed to requiring them to testify from the witness stand. | Courtrooms are not equipped with special furniture designed for children. However, Immigration Judges can and should permit reasonable modifications to the courtroom to accommodate children, such as: permitting counsel to bring pillows or booster seats for young respondents; permitting young respondents to sit in one of the pews with an adult companion or permitting the companion to sit at counsel's table; allowing a young child to bring a quiet toy, book, or other personal item into the courtroom; permitting the child to testify while seated next to an adult or friend, rather than in the witness stand; etc. These simple and common sense adjustments would not alter the serious nature of the proceedings. They would, however, help foster an atmosphere in which a child is better able to participate more fully in the proceedings. | Immigration judges do not have the luxury of equipping their courtrooms with special furniture designed on a child's scale. However, judges can and should permit reasonable modifications: allowing counsel to bring pillows or booster seats for young respondents; permitting young respondents to sit in one of the pews with an adult companion or permitting the companion to sit at counsel's table; allowing a young child to bring a toy, book or other personal item into the courtroom; permitting the child to testify while seated next to an adult or friend, rather than in the witness stand; etc. Simple, common sense adjustments need not alter the serious nature of the proceedings. They can, however, help foster an atmosphere in which a child is better able to present a claim and to participate more fully in the proceedings. |
| Interpretation | Before a child testifies through an interpreter, the immigration judge should allow the child and interpreter to establish a rapport by talking about matters unrelated to the proceeding. The immigration judge should, before and during testimony, watch for any indication that the child and interpreter are having trouble communicating. | Immigration Judges should permit time for the interpreter and a younger child to establish some rapport by talking about unrelated matters before testimony is taken. Immigration Judges should also watch for any indication that the child and the interpreter are having difficulty communicating. Any statement to be translated should be made at an age-appropriate level and translated at that level for the child respondent. | Judges should allow time for the interpreter and the unaccompanied alien child to establish some rapport by talking about unrelated matters before testimony is taken. Judges should also watch for any indication that the child and the interpreter are having difficulty communicating. Any statement to be translated should be made in English at an age-appropriate level and translated at that level for the child respondent. |

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| Competency to testify | Before a child testifies, the immigration judge should ensure that the child is sufficiently competent to do so, including whether the child is capable of understanding the oath and giving sworn testimony. The immigration judge should take care to explain the oath to the child at a level appropriate to the age of the child. For example, a child may be told they should promise to “tell the truth” or to “tell what really happened.” A child should also be reassured that they may say “I don’t know” if they are unsure how to answer a question and that they may request a question be asked a different way if they do not understand it. A child should be told they should not feel at fault if an attorney raises an objection to a question. | As with any witness, an Immigration Judge should be confident that the child is competent to testify in the proceedings, including whether the child is of sufficient mental capacity to understand the oath and to give sworn testimony. The explanation of the oath should vary with the age of the witness: promise “to tell the truth” or promise “to tell what really happened,” etc. Children should be told that it is all right for them to say, “I don’t know” if that is the correct answer and to request that a question be asked another way if the child does not understand it. Immigration Judges should also explain to the child witness that he or she should not feel at fault if an objection is raised to a question. | As with any witness, a judge should be confident that the child is competent to testify in the proceedings, including whether the child is of sufficient mental capacity to understand the oath and give sworn testimony. The explanation of the oath should vary with the age of the witness: promise “to tell the truth” or promise “to tell what really happened” etc. Children should be told that it is all right for them to say, “I don’t know” if that is the correct answer, and to request that a question be asked another way if the child does not understand it. Explain also that the child witness should not feel at fault if an objection is raised to a question. |
| Waiver of Appearance | | Unless a juvenile’s appearance has been waived by the Immigration Judge, he or she is obligated to attend his or her immigration proceeding. Immigration judges should adhere to the requirements of 8 C.F.R. § 1003.25 in determining whether to waive a juvenile’s appearance at a hearing. In all cases where an Immigration Judge waives the presence of a juvenile at a hearing, the Immigration Judge must state on the record that the waiver has been granted or must issue a written order to that effect. | |
| Written Testimony | Immigration judges should be aware that it is often appropriate to rely on a child’s written statement in lieu of their oral testimony. | | |

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| Video Conference | | | It is important to note that Congress made no distinction between hearings conducted in person and hearings conducted by video conference. Video conference generally will be appropriate unless circumstances dictate otherwise. Therefore, when handling cases involving unaccompanied alien child respondents, if under ordinary circumstances the hearing would be conducted by video conference, immigration judges should determine if particular facts are present in the case to warrant an exception from the usual practice. |
| Telephone Conference | | | Where practicable, alien children, whether unaccompanied or not, should be allowed to appear through telephone conference for master calendar hearings and status conferences when they do not reside within close proximity to the immigration court. Either party may request that an alien child appear telephonically. Judges may query the parties as to whether a telephonic appearance by an alien child would be more appropriate than an in-person appearance. |
| Child-Sensitive Questioning | <p>When a child is testifying, the immigration judge should speak to the child using the appropriate language and tone, and the judge should ensure that others questioning the child do so as well. The immigration judge and others should always listen carefully to the child's responses. These points apply even though immigration court proceedings are adversarial. When appropriate language and tone are used when questioning children, this enhances a child's ability to participate in the proceedings and results in a more complete and accurate record.</p> <p>[Includes attachment on child sensitive questioning.]</p> | <p>Language and tone are especially important when juveniles are witnesses. Proper questioning and listening techniques will produce a more complete and accurate record. The immigration court process is adversarial. Due process and fundamental fairness require that testimony by a juvenile witness, like that of any other witness, be subject to cross-examination, particularly if the testimony is speculative, vague, or contains indicia of inappropriate coaching. Nevertheless, Immigration Judges should ask and encourage the parties to phrase questions to a juvenile witness in age-appropriate language and tone. Abusive questioning should not be tolerated under any circumstances.</p> | <p>Language and tone are especially important when children are witnesses. Proper questioning and listening techniques will produce a more complete and accurate record. Although the Immigration Court process is adversarial, judges should ask and encourage the parties to phrase questions in age-appropriate language and tone. Attachment A contains a detailed set of instructions from the DHS guidelines. Immigration judges should consult these suggestions and adapt them to the courtroom setting to the extent possible.</p> <p>[Includes attachment on child sensitive questioning.]</p> |

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| Length and Number of Hearings | Immigration judges should, as much as possible, limit the number of times a child must be brought to court, as well as the duration of hearings and the length of a child's testimony. Immigration judges should also recognize that, for emotional and physical reasons, children may require more frequent breaks than adults. As much as possible, immigration judges should prompt parties to resolve issues through pre-hearing conferences and stipulations. | As in any case, the Immigration Judge should give the parties a full opportunity to present or challenge evidence. However, stress and fatigue can adversely impact the ability of a younger child to participate in his or her removal proceedings. Therefore, where appropriate, Immigration Judges should seek not only to limit the number of times that children must be brought to court but also to resolve issues of removability and relief without undue delay. Additionally, if a child is called to testify, Immigration Judges should consider limiting the amount of time the child is on the stand without compromising due process for the opposing party. Similarly, Immigration Judges should recognize that, for emotional and physical reasons, children may require more frequent breaks than adults. | As in any case, the judge should give the parties a full opportunity to present or challenge evidence. However, stress and fatigue can adversely impact the ability of an unaccompanied alien child to participate in his or her removal proceedings. Where appropriate, immigration judges should seek not only to limit the number of times that children must be brought to court, but also to resolve issues of removability and relief without undue delay. As appropriate, judges should require the parties to narrow issues through pre-trial conference and stipulations. Additionally, if a child is called to testify, judges should seek to limit the amount of time the child is on the stand. Similarly, judges should recognize that, for emotional and physical reasons, children may require more frequent breaks than adults. |
| Control Access to the Courtroom | As a general practice, it is best to have as few people in the courtroom as possible. Children may be reluctant to testify about painful or embarrassing incidents or may simply be intimidated when there are too many adults in the room. A child's reluctance to speak may increase with the number of spectators or other respondents, and immigration judges should, to the extent possible, limit the number of individuals present in the courtroom to only those necessary to complete the hearing. | Young children may be reluctant to testify about painful or embarrassing incidents, and the reluctance may increase with the number of spectators or other respondents present. Although hearings are generally open to the public, judges should be sensitive to the concerns of juveniles if there is a motion to close the hearing pursuant to 8 C.F.R. § 1003.27. | As a general matter, it is best to have as few people in court as possible. Children may be reluctant to testify about painful or embarrassing incidents, and the reluctance may increase with the number of spectators or other respondents. |

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| Status as an Unaccompanied Child | | <p>Immigration Judges should exercise special care in cases where the respondent is alleged to be a UAC. First, a UAC is eligible for voluntary departure at no cost to the child. 8 U.S.C. § 1232(a)(5)(D)(ii). To the extent practicable, an Immigration Judge should expedite consideration of a request for voluntary departure by a UAC, especially one that is in the custody of HHS. Second, UAC status is not static, as both a UAC’s age and his or her accompaniment status may change. Thus, judges should ensure that an alien claiming to be a UAC is, in fact, a UAC at the time his or her case is adjudicated. Moreover, because a UAC generally receives more favorable treatment under the law than other categories of illegal aliens, there is an incentive to misrepresent accompaniment status or age in order to attempt to qualify for the benefits associated with UAC status.</p> | <p>These guidelines use the term “unaccompanied alien child” as defined in the Homeland Security Act of 2002 – that is, a person under 18, without a parent or legal guardian in the United States or without a parent or legal guardian in the United States who is available to provide care and physical custody. Once a person attains the age of 18, or has a parent or legal guardian in the United States who is available to provide care and physical custody, he or she would not fall within the definition. All references to “child” or “children” in these guidelines should be construed to mean an “unaccompanied alien child” as defined in the Homeland Security Act of 2002.</p> |
| Fraud | | <p>Immigration Judges, while remaining sensitive to the concerns of juveniles, should be vigilant in adjudicating cases of a purported UAC. In June 2017, all Immigration Court employees were reminded of their responsibilities regarding suspected fraud and abuse, particularly regarding applications for benefits, relief, or protection in removal proceedings, and were directed to take action where warranted.</p> <p>All EOIR employees have an ethical duty to the United States government and its citizens to disclose “waste, fraud, abuse, and corruption to appropriate authorities.” 5 C.F.R. § 2635.101(b)(1).</p> | |

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| Fraud (cont.) | | This duty applies to immigration judges and is further codified in Section VII of the Ethics and Professionalism Guide for Immigration Judges. Because reporting fraud and abuse in the immigration system is an ethical duty of all EOIR employees, including Immigration Judges, any suspicion of fraud or misrepresentation by someone in a UAC case should be reported to the EOIR Office of the General Counsel Fraud and Abuse Prevention Program. | |
| Motions to Change Venue | | | In cases involving alien children, whether unaccompanied or not, unopposed motions for change of venue may be granted without requiring a pleading or the filing of an application for relief. Accordingly, the pleading and issue resolution mandates set forth in OPPM 01-02, section V. B., may be waived in cases involving unaccompanied alien children. |
| Continuances | | | When considering requests for continuances, immigration judges should be mindful that cases involving alien children are exempt from case completion goals and aged case completion deadline. Such cases, however, must be noted with case identifier “J” or “UJ” in ANSIR or CASE to be exempted from completion goals and aged case completion deadlines. |
| Coding | | | It is important that the Immigration Courts code these cases so that they can readily be identified. |

Endnotes

- 1 Executive Office for Immigration Review, Director's Memorandum 24-01: Children's Cases in Immigration Court, Dec. 21, 2023, <https://www.justice.gov/d9/2023-12/dm-24-01.pdf>.
- 2 Executive Office for Immigration Review, Operating Policies and Procedures Memorandum 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children, Dec. 20, 2017, <https://www.justice.gov/eoir/file/oppm17-03/download>.
- 3 Executive Office for Immigration Review, Operating Policies and Procedures Memorandum 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children, May 22, 2007.