



**U.S. Department of Justice**  
Executive Office for Immigration Review

*Office of the Chief Immigration Judge*

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March 24, 2015

**MEMORANDUM**

**To:** All Immigration Judges

**From:** Brian M. O'Leary *Brian M. O'Leary*  
Chief Immigration Judge

**Subject:** Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of the New Priorities

This memorandum supersedes the September 10, 2014 memorandum entitled "Docketing Practices Relating to Unaccompanied Children Cases in Light of the New Priorities."

In 2014, we added new priorities to our pre-existing priority for detained cases. These new priorities include cases involving unaccompanied children (UC), adults with children who are detained (AWC/D), and adults with children who are released as an alternative to detention (AWC/ATD). The shift in docketing practices to address these priorities has affected individuals and entities that interact with the Immigration Court, including attorneys offering their services *pro bono* and non-governmental organizations who work with individuals in immigration court proceedings. This memorandum addresses certain issues that may have arisen as a result of some of the docketing changes relating to UC and AWC/ATD cases.

**I. Background**

On August 6, 2014, the Vice President of the United States met with interested groups to discuss the southwest border situation and, specifically, the influx of UC. At the meeting, the Vice President urged lawyers to assist with the backlog of court cases for tens of thousands of children from Honduras, El Salvador, and Guatemala. On August 18, 2014, EOIR met with interested groups to discuss the new priority docketing practices and to hear their concerns. These concerns related to the following issues: continuances to obtain representation; adjournments for other reasons; and appearances by custodians. Each issue is addressed below.<sup>1</sup>

<sup>1</sup> Two issues – continuances for representation and adjournments for other reasons – also relate to AWC/ATD cases, as discussed in this memorandum.

## **II. Continuances to Obtain Representation**

*For UC and AWC/ATD cases, the priority scheduling of the first master calendar hearing does not inhibit a judge's discretion to grant appropriate continuances to obtain representation.*

UC cases are being scheduled for a first master calendar hearing within 21 days of the Immigration Court's receipt of the charging document. AWC/ATD cases are being scheduled for a first master calendar hearing within 28 days of the Immigration Court's receipt of the charging document. Thereafter, any postponement, including a continuance to obtain representation, is at the discretion of the judge. *See* OPPM 13-01. Dockets are being adjusted so that judges can give appropriate continuances, irrespective of whether docket time is available on a given date. For example, if an immigration judge determines that a continuance to obtain representation is appropriate in a UC or AWC/ATD case, but there is no docket time available for that judge on the appropriate date, then the case should still be adjourned for that date and a non-priority case should be rescheduled to make docket time available for the priority case. The length and number of continuances granted to obtain representation will depend on many factors, including the availability of local counsel (paid and *pro bono*). Consistent with OPPM 13-01, nothing in the priority scheduling of UC and AWC/ATD cases for the first master calendar hearing should inhibit a judge's discretion to reset the case to obtain representation.

## **III. Other Continuances**

*As with continuances to obtain representation, nothing in the priority scheduling of UC and AWC/ATD cases for the first master calendar should inhibit a judge's discretion to appropriately reset the case for other reasons supported by good cause.*

For example, if an unaccompanied child is applying for Special Immigrant Juvenile (SIJ) status, the case must be administratively closed or reset for that process to occur in the appropriate state or juvenile court. The length of that process varies by jurisdiction, but several months may be necessary in many locales. In such locales, a two-week continuance is likely insufficient. State or juvenile court dockets are busy, and judges in those jurisdictions may not be able to prioritize UC cases. In addition, appropriate time must be given for U.S. Citizenship and Immigration Services to adjudicate the Form I-360 after the requisite state or juvenile court findings have been made. Given these realities, several such continuances or administrative closure might be warranted in a given case.

Similarly, several continuances might be warranted in an AWC/ATD case. Consistent with OPPM 13-01, nothing in the priority scheduling of UC and AWC/ATD cases for the first master calendar hearing should inhibit a judge's discretion to reset the case for reasons supported by good cause.

#### **IV. Appearances by Custodians**

*It is never appropriate to order that the parent or custodian appear in court while indicating that they need not fear apprehension if they do so.*

Immigration judges take careful and appropriate steps to ensure that the best interests of an unaccompanied child are met and that the child is safe while in this country. This often means inquiring as to with whom the child is staying, how the child got to court that day, and why no one is with the child in the courtroom. A judge may also ask why a parent or custodian is not in the courtroom. The child might respond that the parent or guardian is illegally in this country and is afraid of apprehension. It would then be inappropriate for the immigration judge to reply that the parent or guardian should not fear apprehension if that person accompanies the child to court. The Department of Homeland Security's Immigration and Customs Enforcement (ICE) agency is responsible for the apprehension and detention of persons believed to be illegally in the United States. While immigration judges should create a setting in which children are not afraid to return to court for their next hearing (*see* OPPM 07-01 for additional guidance on ensuring an appropriate courtroom setting and procedures), judges should not make assurances as to whether ICE will or will not apprehend parents or guardians before or after an immigration court appearance.

#### **V. Further Guidance**

As additional issues arise relating to our new priorities, further guidance may be forthcoming. Please contact your Assistant Chief Immigration Judge about any issues that you believe need to be addressed and with any questions you may have concerning this memorandum. I am confident that we can meet our new priorities while ensuring fairness and due process for all parties.

cc: All Court Administrators