

NWX-DOJ EOIR (US)

Moderator: Nathan Berkeley
July 31, 2015
1:00 pm CT

Coordinator: Welcome and thank you for standing by.

At this time all participants are in a listen-only mode.

During the question and answer session please press Star 1 on your touchtone phone if you'd like to ask a question.

Today's conference is being recorded, if you have any objections please disconnect at this time.

I'd like to turn the meeting over to your host, you may begin.

Nathan Berkeley: Thank you and thank you everyone for joining us.

For those in person you made the trek out to Falls Church I know that's a big deal, and then to many more of you who called in, we definitely appreciate the interest and participation.

Before we get into the agenda I'll note a few items.

First, as far as the invitation it was broadcast to a very kind of broad range of stakeholders on the Hill, and in the media, and in the NGO community.

When LIRS and Human Rights First initially approached us on the meeting you know the issues that they were bringing up were things that we were hearing in other quarters from many other groups.

So when we thought about what we wanted to do with the meeting we wanted to open it up to all interested parties.

So the agenda items and many of the recommendations in question that we'll go through derive from what we heard from LIRS and Human Rights First and other groups that have been in dialogue with our agency on these issues for quite some time.

So that was what underlies the meeting.

As far as the flow we'll walk through the agenda items one by one, but as we go we'll open it up to questions about four times so that we can have a dialogue throughout the course of the meeting.

And then - right now let's just do some intros in the room so everyone on the phone knows especially who the EOIR folks and as well as the individuals who made it to Falls Church today.

So first, (Nathan Berkeley), EOIR, Outreach Director - let's go this way.

(Daniel Cicchini): (Daniel Cicchini), Associate General Counsel EOIR.

(Print Maggard): I'm acting Chief Immigration Judge, (Print Maggard) this is the end of my first week here.

I thank you all for coming out and taking part in the stakeholder meeting.

I'm here to listen and learn, thank you.

(Rena Cutlip-Mason): (Rena Cutlip-Mason) Counsel to the Director of EOIR.

(Royce Murray): (Royce Murray) National Immigrant Justice Center.

(Karen Powell): (Karen Powell) Catholic Charities of Arlington.

(Jean Larkai): (Jean Larkai) Catholic Charities of Arlington

(Caitlin Brazill): (Caitlin Brazill) from the Office of Legal Access Programs at EOIR.

(Giulia McPherson): (Giulia McPherson) with Jesuit Refugee Services.

(Jessica Jones): (Jessica Jones) with Lutheran Immigration and Refugee Service.

(Cori Hash): (Cori Hash) with Human Rights First.

(Aryah Somers): (Aryah Summers) Kids in Need of Defense.

(Nathan Berkeley): Great.

And then we have two EOIR folks who are on the phone.

EOIR folks on the phone, sorry.

(Steven Lang): This is (Steven Lang), Program Director of the Office of Legal Access programs.

(Jack Weil): This is (Jack Weil) Assistant Chief Immigration Judge.

(Nathan Berkeley): All right thank you both.

They both had extenuating circumstances and other commitments that took them away from our meeting location today, but we appreciate they still wanted to call in and join by phone.

So to get us started before we dig into the actual agenda I just want to give a brief sort of statistical overview that will help to set the stage for the discussion.

From July 18th, 2014 through June 30th of this year EOIR received nearly 32,000 new charging documents for respondents identified by DHS as recent border-crossers who are unaccompanied children.

Just over 27,000 of those children have already had their master calendar hearing and immigration judges have issued orders of removal in (unintelligible) nearly 6,000 of those - that's about 22% of those cases.

So I just wanted to kind of lay that out the general data—with these figures in mind we'll look first at legal representation.

The first recommendation that we've heard on this is that EOIR should appoint counsel for unaccompanied kids, and - get to the issue of children going through proceedings without representation and as a general matter while there's no right to counsel at government expense, EOIR recognizes that the presence of counsel can make removal proceedings more efficient for unaccompanied children.

For this reason EOIR has established a number of partnerships and programs aimed at increasing access to legal representation for (UC's).

So for more details on this I'll turn it over to (Rená) to tell us more.

(Rená Cutlip-Mason): Sure.

I think - I'm actually going to (unintelligible), but I will just reiterate that we do recognize that the presence of counsel does make a huge difference of removal into the efficiency from our part of removal proceedings so we're doing what we can.

I'm going to ask (Steve) and (Judge Weil) to talk a little bit about the work that we've been doing, but as the way of introduction to (Judge Weil) I will mention that he is the Assistant Chief of Immigration Judge for vulnerable populations now, and so he'll talk a little bit about the work that he's been doing in this arena as well.

(Jack Weil): Thank you.

And you know in my role as ACIJ for vulnerable populations we're certainly concerned about the issues that have been raised relating to children, and I'm pleased to - I'll let you know that another population that we're dealing with is individuals with competence issues, and I'm actually calling you from Elon University where I'm participating today in an immigration law program relating to another vulnerable population in children.

So thanks for your indulgence and your interest in this issue.

So EOIR has worked with outside organizations as I'm doing today here in Elon on the competency issue.

We've worked with outside organizations as well taking a number of steps to increase and facilitate the representation.

So some of the things we're doing is we're participating in pro-bono training programs.

You may have seen some of those on EOIR's website.

We also conduct mock hearings that request to allow pro bono counsel and people who are interested in assisting in the representation of children and to get some experience handling these cases.

We're also making our court resources available for orientation programs so that children feel more comfortable in the court environment.

You may be aware we've taken steps to modify and authorizing judges to modify proceedings for children stepping off the bench, removing the robe where necessary.

We've also consolidated our docket to maximize the efficiency of resources that are available to represent children and have designated juvenile dockets in all of our courts.

And many of the things I just mentioned above have actually been incorporated into the immigration court practice manual, and that can be found at Chapter 5.2. Specifically with regard to representation I'm going to turn it over to (Steve Lang) the director of our Office of Legal Access Programs, (Steve)?

(Steve Lang):

Looking at the list of attendees I know many of you are stakeholders in carrying out these programs from the Office of Legal Access Programs.

Well many of you know that since 2010 so well over 5 years we've been operating the legal orientation program for custodians of unaccompanied children.

We're currently operating in - we currently have 14 different program sites as well as a national call center, which assists custodians who reside in places both within and outside of these 14 sites.

We have expanded the call center quite a bit over the last year to keep up with the surge in kids cases and to help children and or custodians address matters such as change of venue, change of address, answering basic questions, mailing off basic information packets and of course helping them identify where there are legal resources, where there's available legal orientation program for custodians that they can attend as well as information attending court so that's LOPC.

Now starting last year EOIR in association with - in partnership with the Corporation for National Community Service through their program AmeriCorps started up the Justice AmeriCorps program.

We're very happy that well over - as of earlier this week well over 1,000 kids - 1,081 children to be precise have been represented so far through the Justice AmeriCorps program at the various sites where we're operating.

We're in 23 different immigration courts working with 39 different organizations.

Currently there are 73 Justice AmeriCorps members of which 63 are attorneys representing children.

So that's an update there about Justice AmeriCorps, we always have our eye on other types of innovative programs, innovative pilot programs that would assist in this population.

(Nathan Berkeley): So the next issue that we'll take a look at is motions to reopen for in absentia removal orders.

The recommendation that we've received on this is that DHS should move to reopen for every child who has received an in absentia removal order on or after May 24 of '14, and EOIR in turn should grant that request.

Of course DHS has sole jurisdiction over guidance that it gives to its trial attorneys, but when DHS attorneys do move to reopen you see cases immigration judges have authority to grant those motions when they meet statutory and regulatory requirements, but EOIR does not direct them to do so for a certain group of cases because immigration judges must be able to operate independently and impartially as they decide the matters before them.

With those remarks I'll turn it over to (Jack) to elaborate more.

(Jack Weil): Great.

So with regard to the recommendation as far as the DHS moving to reopen, again that's something that should be addressed with DHS, but if the immigration court - the second part of the recommendation is the Court should grant the request to reopen if DHS files it.

I think the important thing here is that when the court proceeds in absentia this is a factual issue.

There's a lot of factual issues that need to be addressed: is the address correct, was the notice properly sent, did the child receive it,

is there an explanation for the failure to appear, has the NTA been served, is the child removable?

All of these determinations that go into the motion to reopen that's received by the Court the judge determines based upon evidence.

And as (Nathan) said, we don't decide, and judges don't decide our cases based on directives.

So EOIR is not going to order judges to just across the board grant every single motion to reopen, but what we will do is if a motion to reopen is received by a party whether it's DHS or respondent's counsel, the court will - the judge will look at those factual issues - the examples that I identified - the Court will look at the evidence and look at whether there's no evidence it was not available and could not have been presented that reflects on the issues that were considered when the decision was made to proceed in absentia.

And if the Court finds that the evidence supports the fact that it is not correct to proceed in absentia then the courts will certainly reopen the case in those circumstances. (Nathan)?

(Nathan Berkeley): Great thank you.

So the next recommendation we'll look at, and it's somewhat related to the first, but EOIR should reopen the removal proceeding for those children who have had an in absentia removal order issued on or after May 24, '14.

And then related, EOIR should also administratively close these cases if EOIR is unable to provide adequate legal notice of the new hearing, and furthermore EOIR should also grant continuances in children's cases until the agency establishes the proper legal notice has been provided.

So this series of recommendations - it raises some similar issues as the one prior, I'll turn it to (Jack) and then perhaps (Rená) if you want to add some more on that.

(Jack Weil): So I think the important point here is to look at the statute in Section 240(b)(5)5 of the Immigration Nationality Act says that any alien who after written notice has been provided to the alien or the alien's counsel of record does not attend a proceeding shall be ordered removed in absentia if DHS establishes by clear unequivocal and

convincing evidence that the written notice was so provided and the alien is removable.

So this relates to the prior issues that the judges follow the law, and the law indicates when it is appropriate to proceed in absentia.

And again, the decision is based on the evidence so if the evidence at the time that the judge proceeded in absentia met the legal requirements and the judge did order somebody removed in absentia, and the judge then learns based upon a motion to reopen from a party or as this questions regarding sua sponte.

If the judge on their own learns that there are facts that were not available that could not have been presented previously and it explains that it was not proper to go in absentia that one of the conclusions that was made was erroneous and therefore the judge should not have proceeded in absentia, the judge certainly has the authority to sua sponte reopen.

And EOIR is taking some takings which I'm going to turn to (Rená) to bring to the judge's attention a circumstance where the judge may want to sua sponte reconsider his or her prior decision to proceed in absentia. (Rená)?

(Rená Cutlip-Mason): Thanks, (Jack).

So just to let you know when we started looking at this issue one of the first things we did was we pulled and audited the in absentia orders that have been issued at the time as of the time that we were pulling it, and in doing that as many of you know our current guidance is that notice shouldn't be - children should receive notice no less than 10 days no more than 21 days - that the first hearing should be scheduled from the time that the NTA is received at the court no less than 10 days no more than 21 days from the receipt of that NTA.

So what we looked at was what was the timing of the notice and so when we did flag that a first hearing was scheduled before the 10-day mark we pulled all of those cases and asked the office of the chief immigration judge to look at those - each of those cases and see if we needed to do something on those because they were improperly noticed.

The good news is that in each of those cases the immigration judges had already flagged the issue when the case was brought before them

in the original instance and had already on their own continued the case for a substantial actually amount of time.

In many cases the average was around 30 days or more continued the case and had issued a new notice to the child, so we did do that.

In addition, some of you know that we have been meeting in the interagency about the issues of in absentia for children - for children so we've been meeting with them.

We have identified various ways that we can improve the process and we're still improving our processes but I wanted to share with you some ways that EOIR has started to improve our processes as well.

First and probably most substantially is in looking at the in absentias that were - the orders of removal in absentia against unaccompanied children - we started to say okay what can we do to - since you know it's an individual case scenario for sua sponte reopening, what can we do for this large group of folks.

So what we're doing is we've begun to share A number data with our LOPC subcontractors of the children who have orders of removal in absentia per our established information sharing agreement with those providers.

So it's our LOPC subcontractors as well as the Baltimore representation initiative for unaccompanied children, which is another one of our subcontractors.

So each of those agencies are now getting those A numbers, and I will say to the credit of our LOPC providers they are going above and beyond.

They are - with no additional government funding and no prompting they're conducting extensive outreach to locate the children who have the in absentia orders and provide those custodians with educational materials on how to file motions to reopen.

So that initiative has started it launched about six weeks ago, and it's obviously in initial states so.

Woman:

You said three weeks ago?

(Rená Cutlip-Mason): Six weeks ago - about six maybe two months ago, no six weeks yeah.

(Nathan Berkeley): Great. (Steve) did you want to add anything to that before we move to our first round of questions?

(Steve Lang): No thanks, Nate I think we covered everything.

(Nathan Berkeley): Excellent.

So at this time operator I guess prepare the phones to be opened for questions, I'll open up the questions in the room first if there are anything based on what we've covered so far, if there's something that you know you want to pose to us otherwise we can go to the phone.

Coordinator: Thank you.

Participants on the phone, if you'd like to ask a question please press Star 1 to record your name.

Please make sure your phone is unmuted and record your first and last name clearly when prompted.

If you wish to withdraw your question please press Star 2.

Once again that was Star 1 and record your name.

(Nathan Berkeley): We'll give the phones one moment.

Anything in the room?

Okay.

Operator do we have anyone in the queue?

Coordinator: Excuse me speakers we have several questions in queue, our first question comes from (Andy).

(Andy) you may begin.

(Andy Shoenholtz): Thanks.

Hi it's (Andy Schoenholtz) thanks everybody for doing this.

So my question goes to the statistics regarding legal representation. (Nathan) or anybody, what can you tell us about the percent of the 6,000 in absentia orders where the children were represented, and then the 21,000 others who had master calendars but weren't ordered removed in absentia.

What's the percentage of those represented and any other relevant statistics about the representation rates themselves?

(Dan Ciccini): Thank you (Andy).

Can I just jump in here?

Unfortunately due to pending litigation we're not able to comment on issues related to legal representation for children in removal proceedings at this time.

So if there's any question directed to that again we're just not going to be able to comment.

Coordinator: Our next question comes from (Jessica Vaughan), you may begin.

(Jessica Vaughan): Thank you.

My question was also about representation for the unaccompanied kids so I guess it's not going to get answered.

Coordinator: Our next question in queue comes (Lara Kinne).

(Lara) you may begin.

(Lara Kinne): Hi.

I was just wondering if there could be clarification on that - who was invited to attend this and if you could state whether or not this is the first such meeting of its type.

(Nathan Berkeley): Well the invitation was posted on our public website, it was also put on our other social media platforms Facebook and Twitter and then we also transmitted it to various stakeholder groups that we've had contact with over the past few years.

As far as a meeting of exactly this type I guess you know - the agency has done engagements in the past I'm not sure how unique it would be.

(Lara Kinne): Thank you.

Coordinator: We have one additional question in queue it comes from (Maria Sierra), you may begin.

(Maria Sierra): Hello everybody.

I'm (Maria Sierra) with the Embassy of Guatemala, I just have a quick question, I'm wondering if you are in contact with the school systems.

We have been working with Montgomery County at least and the teachers seem to be very willing to provide information to the students and the parents and very concerned because many children that are already going to school do not have legal representation.

So as a suggestion or question, I don't know if you guys are in contact with the school systems yet?

(Nathan Berkeley): This is (Nathan) again.

I don't have any specific information on engaging schools or administrators, teachers, or anything like that.

(Rená Cutlip-Mason): (Steve) do you have a response?

(Steve Lang): We don't have any direct contact ourselves, but many of our LOPC subcontractors have regular contact with schools and often to children and the custodians regarding enrollment in school as a form of protection against mistreatment, exploitation, and trafficking.

(Maria Sierra): Thank you.

(Nathan Berkeley): Okay.

Operator one moment we have a question in the room.

Woman: I'd just like to ask a follow up question and this may also fall into the not able to answer, but on the 6,000 per in absentias, is there any way for us to get an idea of the geographic disbursal of those so that if pro bono resources were to be deployed to a certain location or there's an opportunity to increase pro bono resources.

Is there any way that we could either run those by you to check if we're on the right track or if vice versa you'd be able to share something about the geographical places in need because we think those two things might be related, the in absentia rates with the - maybe difficulty in accessing pro bono resources.

Rená Cutlip-Mason: So what I'll say is that the vast majority we're able to fall within the geographical sort of areas that our LOPC providers do cover, that vast majority.

There is a small minority that doesn't and we can take that back and see if that's something we could do I mean because you're not asking for the specific information you're asking for just the geographical location so we can see if that small -very small slice of the pie can be shared.

Woman: Great that's very helpful.

Thank you.

Rená Cutlip-Mason: Otherwise if you just look where our LOPC providers...

Woman: That's an easy way thank you.

Woman: And then just from the notice provision you know there was a - (Judge Weil) specifically referenced the section - the INA on the removal provision.

There are specific notice provisions for children, I know you all are very well aware of this and the (unintelligible) related to age and who has to be provided noticed.

I just wondered in the analysis that you did if you were able to go that deep into the age of the children that received in absentias.

Are we able - or at least the notice provisions and the cases that were reopened?

Does it tend to be a younger under 14 or are we seeing it - is there some age-based criteria that maybe we could figure out to target certain age groups as well or come up with strategies to address it?

Rená Cutlip-Mason: Right. Our system doesn't really - I don't think in our review we were able to go as deep as the exact age of folks.

I mean we're very clear on the notice issues and we factored that into our review as well and we'll talk later about sort of work that we're doing in the interagency to try to make sure that custodians that are put on - like to make sure that we're always covering the custodian is on the notices so that we don't have that issue of notice, but I don't think we can go that deep.

Woman: Okay thanks.

Can I ask one follow up question?

(Rená) when you talked about pulling the cases with notice conjunct - how many cases?

(Rená Cutlip-Mason): I'm happy to say that it was less than 30 - had first hearing notice issues yeah and all of them had been rescheduled for a second hearing.

(Nathan Berkeley): Operator we can take maybe two more questions before we move on.

Coordinator: We have a follow up question from (Jessica Vaughan).

Your line is now open.

(Jessica Vaughan): Thank you.

Do you have any figures on how many of the kids in proceedings with representation are funding that representation not using pro bono?

(Dan Cicchini): Yeah I think this is another area where we're kind of stay clear of getting into specifics just because of pending litigation.

(Jessica Vaughan): Okay thanks.

Coordinator: We have an additional question it comes from the Consulate of Guatemala; your line is now open.

(Jessica Mendoza): Hi, this is Jessica Mendoza from the Consulate of Guatemala in Phoenix.

Just two quick questions.

One of them is do you have perhaps a list of agencies or the subcontractors that you have who could possibly...I mean we have a

lot of children who you know who also come through the Consulate and we want to refer them to any of those organizations you know that we can do so.

Do you have a list of that?

And then number two is in terms of the children who turn 18 who have also missed their court, once they turn 18 are they still able to file a motion to reopen the case?

(Rená Cutlip-Mason): (Steve) do you want to take the first question?

(Steve Lang): Sure absolutely would be very happy to provide you with a list of all the legal orientation program for custodian providers as well as our Justice AmeriCorps organizations, and we would encourage you to refer children to these organizations.

So if you be sure to provide us with your contact information we'll do so.

(Nathan Berkeley): If you want to - this is (Nathan Berkeley) again, you can send an e-mail to the engagewith.eoir@usdoj.gov e-mail box that I used to send out some of the correspondence and the original invitation.

Please reach out to that and that will get to us and then we will work internally to make sure we run down what you're looking for.

(Jessica Mendoza): Great thank you.

Coordinator: There are no other questions in queue.

Jack Weil: I'm able to respond to the second half of the question regarding the motions to reopen, and the question was if you turn 18 are you still able to file a motion to reopen and the answer is yes.

There are by regulation at certain points for certain types of motions to reopen either time or number limits.

The rules are very different when it comes to in absentia where the court has maybe used an incorrect address, but there is no age limitation.

With the case of the children and people that represent themselves pro se I could encourage them to file the motion because even if one of the time number or the statutory regulatory bars to the motions

exists it brings it to the attention of the judge, and the judge can look into the case and decide su sponte on their own whether they want to reopen and there is no time or number limit on the judge opening the case on their own if they find out that the proceeding absentia is inaccurate.

Additionally the judge is required to add on to what (Steve) said about the list of people - in every proceeding whether they're adults or children every immigration court maintains a list of legal service programs that are available in the area and has put their name on the list agreeing to represent at little or no charge.

So we would also be able to - and your local court in Phoenix would also have a list of legal service programs that are available in your area that people can consult as well.

Thanks.

(Nathan Berkeley): Great thank you.

So at this point, Operator we'll end this Q&A session and then we'll move on with the agenda.

The next item, notices of hearings.

The recommendation we've received on this relates to implementing procedures to provide children with a fair and accurate notice of their hearings while not unduly burdening the sponsor or child by having to file to changes of venue or changes of address.

On this one I'll turn it over to (Rená) first and then (Jack).

(Rená Cutlip-Mason): Sure.

I like giving this answer.

So the guidance to our court is that pro se motions are to be accepted unless they are practically illegible.

So when we hear - and this is my gratuitous addition here, if you hear of that not happening let us know.

I will say that when I have heard of it and I talked to our ACIJ's about it they are right on top of it.

They call those courts, they talk to them, and they remind them of this.

So in addition as many of you probably know all of our courts will accept a change of address for a child and input into our system.

So any court that refuses a change of address (unintelligible) regardless of whether an NTA files or not.

It sort of goes into - I don't know tech language but into a world where it sits and waits for an NTA to be filed with whatever court it gets filed in, and then our system yanks it out of the Internet world and matches it up with that case.

So unfortunately, and we've looked into this a lot, our courts are unable to accept motions to change venue prior to the filing of an NTA, and that's because proceedings do not commence and a judge does not have jurisdiction over that case by regulation until the NTA is filed with the court.

And I'll just add if you're seeing instances where changes of venue and changes of addresses are being filed together because I noticed there's been an issue as well and both are being rejected where there hasn't been an NTA input it into the system.

Let us know that as well we can talk to those courts because they should - our hope is that they'll accept those changes of address and just reject the change of venue until they have the jurisdiction to accept that change of venue.

(Nathan Berkeley): Great, thank you.

(Judge Weil) did you want anything to that?

(Jack Weil): Just to emphasize what (Rená) said and that is really a motion to change venue is a motion to change the venue of the proceeding that has been commenced by the filing of the NTA, and so it really causes confusion and difficulty when somebody is filing a motion to change the venue of a proceeding that the court has no notice about locally, and you're asking us to change venue of a case over which we know nothing about and over which we have no jurisdiction.

Keep in mind that the motion to change venue is to change the proceeding and move the proceeding from one city to the other, and those may get rejected or will be rejected by the court, and we don't

have a suspense system for those particular motions the way we do for a change of address.

So kind of as a practice point for the people participating in the call, the change of address form is a much better way to notify us if a child has changed their address, and we do have the ability to as (Rená) said suspend that case and that way no matter where the NTA is filed the court when they go to enter the NTA will - that change of address will pop up and we'll be able to make sure that we properly notice the alien.

So that's all I had on that point.

(Nathan Berkeley): Great thank you.

So the next recommendation in this area is that ensuring children are adequately advised of the right to request a hearing prior to the 60-day filing delay and in particular this needs to be explained to children who do not have family reunification resources as well as the children who are in secure facilities.

Basically this recommendation should be directed to HHS since they provide Know Your Rights presentations at the facilities and to ICE who's responsible for filing the NTAs.

A related question on that that we've received, if a child asks for an earlier hearing before the 60-day filing deadline what does DHS do to ensure that happens and does EOIR have a role in that scenario.

I'll turn that over to (Jack) to respond.

(Jack Weil): And I think that it's important here to understand the reason for the 60-day delay and the notice to appear.

And it ties to the representation issue that we discussed earlier and that is at the beginning of the surge all of the NTAs were to be filed on the border, and we were receiving a lot of complaints from stakeholders that - and it was also court resources that - you know it was very difficult that the resources were being tapped by coming into the court and beginning representation or starting on a case.

And so we've determined that the best thing to do would be to hold the notice to appear and we consulted with EOIR and said to them how long would it take you to reunify a child's case so that we wouldn't have in southern Texas pro bono representatives, and

friends of the court, and shelters, and family members and everybody showing up in Texas only to just request continuances or to hear status update on the reunification of the child.

And so the intent in the 60-days was to allow EOIR to make their effort to reunify the child, and that way once the child was reunified with a family member all of the proceedings would be there and it would save a lot of resources from both government and non-government and especially the representatives.

So with that understanding that's why the 60-day was there - it was done with a very positive intent to help everybody in the system and the case would start fresh and new in the location once a child was with their custodian and we wouldn't - that's where the pro bono resources could start to be applied.

With that, with every good deed there can be other consequences and that is well what happens now with the child who doesn't want to contest the charges or the removal, does not want to seek relief, and how can they get an earlier hearing and not wait the 60 days to come into court for the first time once it's apparent the reunification efforts will not be successful.

And as (Nathan) mentioned, this really - it's an issue that the child before they show up for court because we don't have a notice to appear, the proceeding has not commenced so we don't really know about the child.

But as (Nathan) mentioned communication from - HHS to DHS has to occur and the notice to appear has been filed, but once the notice to appear has been received and it becomes that the child does not want the 60 days, the child wants (unintelligible) as soon as possible once the court is aware of it and we have jurisdiction by virtue of the failure of a notice to appear the answer to the question is yes, certainly.

The EOIR does have a role and we can take action to give the child an expeditious hearing in the case, but again we have to know about it, we have to know the child wants an earlier hearing and we do have to have jurisdiction we do need an NTA filed and then we can take action.

(Nathan Berkeley): Thank you.

So at this point we'll pause again for questions to kind of go back over some of the ground we just covered.

Are there questions in the room, and operator if you could also prepare the phones for questions as well.

Coordinator: As a reminder if you'd like to ask a question please press Star 1 and record your name.

(Nathan Berkeley): Do we have any questions at this time in the room?

Operator when we have somebody in the queue go ahead and put them through please.

Coordinator: Certainly.

Please stand by for incoming questions.

We have a question from (Hannah Sullivan); your line is now open.

(Hanna Sullivan): Hi guys thanks again for doing this call.

I just wanted to ask a question regarding maybe kind of a judicial expediency question.

We've been seeing a lot of notices to appear that were never properly served either on the child or if the child is too young not on the custodian or (ORR).

I was just wondering if any of you guys have ideas on maybe judge's training so that we don't get to the point of an in absentia or motion to change venue if there was never even proper service in the case.

Thank you.

(Rená Cutlip-Mason): (Jack) can you take that one?

(Jack): Yes.

I think that we talked earlier about the law that's necessary in order for a judge to proceed in absentia, and one step that's extremely important is exactly what you said and that is that the NTA has to be properly served, not only does the - to go in absentia not only do we need proof that the alien was properly noticed of the time and the

date of the hearing, but the alien has to be noticed and it has to be proper notice of the allegations and charges.

And you know clearly DHS has the obligation to serve the NTA on the respondent, the obligation of the judge to then whether the respondent is present or not to make sure that the NTA has been properly served.

And the answer to your question, yes we did do training with the immigration judges where the specific topic of how NTAs are served and service of children is addressed, and hopefully the IJs will be looking into that and make sure that that legal check box is met before they do go in absentia and if not kick the case back.

And in that circumstance I think if you cannot proceed in absentia. The remedy would be to either terminate or administrative close until such time as proper service has met.

(Nathan Berkeley): Thank you.

Do we have another question?

Coordinator: There are four questions left in queue.

Our next one comes from (Ashley Huebner); your line is now open.

(Ashley Huebner): (Rená) this is just to quickly clarify your comment about the courts accepting COAs for kids before the NTA is filed; is that actually across the board for all respondents or is it specifically just for children?

(Rená): It's for all respondents.

(Ashley Huebner): Okay thank you.

Coordinator: Our next question comes from (Jody).

(Jody) you may begin.

(Jody): Yes thank you.

Actually this is a follow up question.

I have seen some instances recently of changes of address being rejected, and so I'm wondering who I should address that with?

(Rená): If you send it to the public engagement box they'll make sure the right person gets it.

(Nathan Berkeley): And this is (Nathan) again I just want to clarify, I misspoke earlier – its engagewitheir@usdoj.gov.

I added a period in the first part but there is not, so it's just engagewitheir@usdoj.gov.

Coordinator: Our next question comes from (Caroline Soto); you may begin.

(Caroline Soto): Hi I'm (Caroline Soto) and I just had a question about (unintelligible) NTA's filed on the conservator, so I had a question about who is the conservator, how are they appointed and if the officer knows that the child has a parent here in the country if they should also be served on the parent, and if it's not is that improper service?

(Rená): That's a great question.

That's something that we noticed when we reviewed the NTAs as well.

The conservator is actually ORR that would be a child that was transferred to ORR's custody and the NTA was filed on ORR because the child was in ORR's custody.

The NTAs you can - again it's a question to bring up with ICE and talk to them more about their process and what process changes they are putting into place, but at this point the NTA is only filed at that one point when the child is in ORR's custody and that's why it says filed on the conservator.

Coordinator: Our next question comes (KristenJackson).

(Kristen) your line is now open.

(Kristen Jackson): Great thank you.

I just want to underscore the concern that (Hanna) shared about the in absentia orders being issued despite proper NTA service, and I definitely appreciate that there has been an IJ training on this issue, and I'm wondering when that training happened?

(Rená): So that training was on April 24th and 25th - or 23rd and 24th of this year so just a couple of months ago.

And I'll just add again if you're seeing areas of concern that you would like to bring to our attention you can send it to the public engagement e-mail box and we'll make sure to look into it and see if there's anything we need to do.

(Kristen Jackson): Thanks.

Coordinator: Speaker we have one additional question it comes from (Jessica Vaughan) your line is now open.

(Jessica Vaughan): Thank you.

I was wondering there's been some figures released on the number of cases of either unaccompanied minors or families in this surge, I'm wondering if there are any complete figures available for UACs or families or both on the total number of NTAs filed in the last couple of years rather than just over certain snapshots of times.

(Nathan Berkeley): This is (Nathan) we don't have any of those figures in front of us right now.

I mean it's something that we can look into whether or how it might be compiled.

(Jessica Vaughan): Would that be DHS agencies or would EOIR track that or?

I'm not even sure whose responsibility it would be.

I mean I suppose DHS agencies would know how many they've filed, but do they track these cases separately in any way?

(Nathan Berkeley): And that we just wouldn't be able to answer.

We'll refer you to DHS on that.

(Jessica Vaughan): Okay. So does EOIR track these cases separately?

(Rená): So if you have a specific request for data you can send it to the public engagement e-mail box and they'll take a look to see if it needs to be filed through (unintelligible).

(Jessica Vaughan): All right.

We usually have to know if it's available before bothering (unintelligible) because if you - are you saying that you know that you don't have it or you think you might have it.

(Rená): I think the best thing - that's why we're saying send it to the public engagement box so they can inquire and see if we have it before you go through (FOIA).

Coordinator: There are no other questions at this time speakers.

(Nathan Berkeley): Okay.

We'll end that round of Q&A and we'll move on to the next agenda item.

The next recommendation that we received is that EOIR should direct immigration judges to grant continuances to non-appearing pro se children and continue to permit legal service providers to attempt to contact them rather than entering in absentia removal orders against them.

This recommendation again brings up the issue of immigration judges having the ability to make independent and impartial decisions on matters before them.

Regarding continuances the law states that they may be granted for good cause shown, and immigration judges have been trained in this general standard and its particular application, which we just talked about it, was back in April.

It's particular application in cases of unaccompanied children.

I'll turn it to (Jack) and then perhaps (Rená) for more on that.

(Judge Weil): I think this also goes to the independence of the judiciary.

We don't direct judges to grant all of a specific type of case or all of a specific type of motion or deny it.

It really again focuses on the fact that properly the role of the judge is to weigh the evidence, and as (Nathan) said the standard here is good cause shown.

So a judge is going to continue a case of a child in absentia or in any issue relating to a child's case if the evidence demonstrates that there's good cause for the continuance, and I'm just going to have to be emphatic about that I'm going to tell a judge to grant a motion to change venue if the evidence doesn't support that that's just a bad practice and is not proper.

We want the judges to weigh the evidence that's in front of them. Now with that being said, in the training that was referenced by (Rená) on April 23rd and 24th the issue of continuances for children is important, and I think the fact of what we did is provide training on what does good cause shown mean and specifically what does good cause mean in the case of a child.

And so what I'm doing is saying yes we do have to follow the law but also at the same time we have to be cognizant of the totality of the circumstances and the facts in the case.

And I think we can all agree that there are certain circumstances where an adult may fail to appear and that would not be good cause for the adult failing to appear but for the child that would be different.

So I think we have to provide thoughtful determinations of what good cause shown means considering the context of the child and considering the evidence that's presented, and that is the training and the guidance that we are providing to the judges.

And I don't know if it was mentioned - the judges that were at the training are the judges that have designated juvenile dockets that are hearing these cases on a daily basis.

That's the audience that we flew into Falls Church for this specialized training.

So it is the people that are doing these cases and are making the decisions that are raised in the question.

(Rená)?

(Nathan Berkeley):

All right, the next recommendation we received is that EOIR should accept the change of address form at a central location since children - do not have a court address prior to filing.

As a practical matter all filings of this form are integrated into a single electronic system for processing so it sort of negates the need of the central filing location.

And then I'll turn it back I guess to (Judge Weil) to elaborate on that if there's any other details you want to share.

(Judge Weil): Yes I think we've pretty much covered it above, but I do think that is very important just to emphasize that the proper method to notify the court if the child changed address is the COA form (unintelligible) for the reasons that (Nathan) mentioned.

There doesn't need to be a central physical filing location because there is a computer ability to track and suspense these.

(Nathan Berkeley): Good.

And then the next recommendation relates to the EOIR hotline.

There has been concerns expressed in the past about you know it being updated in a timely fashion and that sort of thing.

We have looked at it; obviously basically the hotline automatically updates upon the entry of NTA information into our case system.

I guess (Rená) is there anything else you want to add before we go to questions?

So at this time we'll pause again for question, any questions in the room, and operator if you could prepare to open the line for questions again.

Coordinator: As a reminder if you'd like to ask a question please press Star 1 and record your name.

Woman: Can you share the guidance for the good cause criteria?

(Jack Weil): It was just a guidance given during a training, and we didn't have any written (unintelligible).

There's no formal guidance (unintelligible) open for discussion during training.

Woman: Are there plans for formal guidance?

(Rená): I don't believe so.

(Jack Weil): We are talking about developing a best practices manual for best practices for handling the cases of children, and I think it's important for (unintelligible) when the surge of cases occurred it came on quickly and the agencies have responded and we've responded and provided information to the judges and now that as I'm sure all of you are aware and breathing a sigh of relief somewhat.

We're able to sit back and look retrospectively and what is working exactly just as in this telephone call we're able to get together from all of the stakeholders and participants and look at what is working well, what's not working well, and our hopes is to draft a best practices guide.

I don't have a deadline or a date on that, but I'm certainly willing to input ideas on that as we proceed in that process.

Thank you.

(Nathan Berkeley): Any other questions in the room?

Operator if there's someone in the queue if you could put them through.

Coordinator: Our next question comes from (Rachel Ray) your line is now open.

(Rachel Ray): Hi.

With regard to the EOIR 800 number, I have a couple of clients – I'm an attorney at UC Davis School of Law - and I have a couple of clients who have notices to appear but their A numbers are not in the system.

So I'm curious to know if there's a remedy for that and also some of these individuals are not being scheduled for hearings for - and have received their NTA a number of months ago, I'm wondering if you could just respond to that.

(Rená): Sure so I just want to clarify so the ones when you mentioned someone hasn't received a hearing is the NTA is the system?

(Rachel Ray): I don't know how to receive that information so I don't believe it is in the system because when I call the 800 they don't - the system doesn't recognize the A number and so it hasn't been entered.

(Rená): Okay and these are unaccompanied children?

(Rachel Ray): That's correct.

(Rená): So I would start with your local - if you want the NTA to be filed with the court I would start with your local ICE office and make sure that they've received the A file and that they filed the NTA with the court.

If that's happened and for some reason the NTA hasn't been inputted with the court you can e-mail the public engagement office and we'll take a look into it and see what we can do.

(Rachel Ray): Okay thank you very much.

(Print Maggard): (Unintelligible) from the San Francisco court the ECs are inputted once a week, that court is caught up on notices to appear.

(Rená): And just to be clear we have audited our courts for NTA inputting and the courts are pretty backlog free of NTAs so that's why I mentioned starting first with the ICE office assure that they filed the NTA with the court.

(Jack Weil): And one thing that I wanted to add is when we receive the NTA and it is entered into the system every case has to receive a hearing date or completion or otherwise it will show up as off calendar.

So as soon as an NTA is received and entered they must at the time the NTA is put into that system they must at that time assign a hearing date to the case and that would immediately - or I shouldn't say immediately but very quickly when the system is run upload and would show up in the 800 number.

So generally it's not showing up - if it's not recognizing the NTA absent backlogs which you've just heard people talk about entering it's not a two-step process it's enter, pick the hearing date, and if there is no future date and the case has not been completed out with the resolution the court administrators would be aware of that and take action to get the case docketed.

So I say with pretty strong confidence that if you're calling the 800 number and it's not recognizing it and it's not giving a hearing date that's because we just don't have an NTA yet filed with the court.

(Rachel Ray): I've had instances where I'm representing unaccompanied children that I call in, it recognizes the A number but it says that the information cannot be provided.

(Jack Weil): It's possible that there is an option when the court enters the notice to appear, there's an option where we can enter a code that prevents the information from going to the 800 number.

Those you might see those for example in the battered spouse cases so it is possible that with the idea of protecting a child in a particular case that the court person who entered it indicated specifically in the system do not release the information to the 800 number.

We were aware of that happening somewhat as a practice in certain courts, and they were just so that if you were going to protect all these children and we received stakeholder comments saying hey it makes it very difficult when I'm taking a pro bono because I don't know what's going on.

So we've instructed the courts that absent the TVPRA issue don't just automatically block the information from the 800 but my guess is that's what might have been happening in your case, and if you see it consistently I'd use the information that (Nathan) provided to report it to the court or communicate it to the court administrator.

(Rachel Ray): Thank you.

(Nathan Berkeley): Operator do we have any other questions in the queue?

We can take one more.

Coordinator: We have an additional question it comes from (Lisa Lauck).

(Lisa) your line is now open.

(Lisa(Lauck): Hi.

I wanted to address the issue of continuances.

I've noticed that the continuances are very brief and very short at the beginning of the surge, and now it's been varied by judges, I wanted to know if at that training judges were given any discretion or guidance on how the length of the continuances issued should be offered to the children that are appearing in court.

(Jack Weil): Yes we did provide guidance in that regard.

Specifically we had received complaints that especially in cases with affirmative asylum applications where (unintelligible) jurisdiction lied with USCIS and also in cases where practitioners were trying to go into state court on an SIJ petition that the continuances for the children were too short.

The training actually included a number of practitioners (Jennifer Benzman) from Catholic charities was present, (Christine Porche) a practitioner from Roanoke as well as the state court judge to educate the judges about the processes.

We also had USCIS so the judges better understood both of those processes and could determine not only their good cause to continuance but how much time is appropriate for continuance and make sure they're not dragging pro bono counsel or the private bar unnecessarily just to give updates on the SIJ is still pending we're waiting to hear from USCIS.

So they have been given training to look exactly for the reason of the continuance to consider the situation and determine the appropriate amount of time with I think encouragement I think it's fair to say to maybe extend somewhat the time to allow people to take the actions that are necessary.

(Nathan Berkeley): Operator we'll close this round of questions.

We'll move on to the next agenda item, current in absentia procedures.

One of the questions that we've received on this is what guidance has EOIR provided to immigration judges regarding circumstances in which unaccompanied children failed to appear.

On this I'll refer it to (Judge Weil).

(Judge Weil): As someone who's sat as an immigration judge for many years over these cases, all of these cases present disputes, disputes of (unintelligible), disputes of fact and in all of these cases the law finds the burden to one side or the other, and we also know that due process in the statute gives the right to be heard.

So certainly it's the interest in the desire for the judges that both parties be present for the hearing and that allows us to hear from both sides and to make the most informed decisions.

You know at the same time we - the law does say that when certain circumstances are met while it's not something that we relish the opportunity to proceed in absentia, but if it looks like the person was noticed and we don't have an explanation for the failure to appear, and the NTA has been served, and the burdens of proof are met, the judges are going to follow the law and move forward.

And really with regard to the guidance to the judges it's to be very careful at every step of the process to make sure that the legal requirements in the statute to proceed in absentia are met and again to consider the fact that this is the case of a child.

We left it up to the judges, and I didn't specially answer but you know what does reasonable - what does proper notice mean in a case of a child?

What circumstance justifies a child failing to appear?

What does service mean in the case of a child, and the board has issued a precedent decision on that so really the guidance is to consider the law but also use common sense and consider the circumstance and the individual in front of you.

But again, if the requirements are met and based on the evidence if it - if the evidence at the time the judge makes a decision looks like proceeding in absentia is the correct thing that is under the law then do it but keep your mind open and consider reopening it if there's new evidence we look at the decision and make a different determination at that point.

(Nathan Berkeley): Great thank you.

So the next question still in this general area, what does agency guidance recommend that immigration judges ask of ICE?

And on this I'll refer again back to you (Jack).

(Judge Weil): Okay.

So what we're advising the judges to do with regard to in absentia and to ask of ICE is where did you get the address, questions

necessary to ensure the accuracy of the address and specifically to inquire from ICE, do you have any explanation for the respondent's failure to appear and ask ICE, are you requesting to proceed in absentia.

Many times the judges are asking ICE now - does ICE object to a continuance, and we are finding in many cases that ICE does not object to at least an initial continuance where an unaccompanied child fails to appear but that's certainly something you can raise with ICE and that's a matter of their policy, but these are the types of questions that we're instructing the judges to ask before they make a decision to proceed in absentia in the case of a child.

(Nathan Berkeley): So the next question we've got in the series, does agency guidance instruct immigration judges to verify that the address corresponds to the discharge notification, and Judge Weil back to you on this one as well.

(Judge Weil): As far as the discharge notice, what we instruct the judges is to look at the address, try to determine is this an accurate address. I mean, certainly checking to see if the address corresponds to the discharge notice is one way to verify the accuracy of the address, but really what we're telling them is look at this - look at this address, see where it came from, and also look carefully at the address and make sure the court's address matches that that we didn't make any errors in entry or those types of things, that it's a complete address.

I think there's certain steps that judges can take by looking at the address on its face, but they can also make inquiries and ask questions to verify that this is the best and the most accurate address.

(Rená) has also covered the change of address, so if there was a change of address we would know about that as well.

(Nathan Berkeley): Anything else on that (Rená)? Okay.

So the next item on the agenda relates to discharge notifications.

One of the questions that we've gotten on this is upon the Office of Refugee Resettlement mailing up the discharge notification to the NTA TBD mail address, what are the procedures for calendaring the hearing and then providing notice to unaccompanied children in that instance, and I'll refer to (Rená).

(Rená): Sure.

So this is another area we've been working a lot in the interagency and I'm going to take a couple of steps back, first is to say generally the way that our courts get information around addresses and information when they input an NTA is actually through an electronic pool that we have from DHS.

Because of the changes that were put into place with the 60-day hold that isn't - we have come to find out that that is not by in large how we're pulling the information on the NTAs for unaccompanied - or on the - for the information when we input NTAs for unaccompanied children.

So what we've been doing and talking a lot with DHS about is reinstituting that so that we can find a way to again, electronically pull that information when we put the information in about an NTA into our system it requires an IT fix so that means there's a lot to work - there's some few IT departments to work through to make that happen, but we are working on it and hoping that in the near future we can have that fixed.

Right now in most cases when that NTA is inputted into our case system the address is taken off of the DNF that is attached to the NTA when we receive it so that's the process.

ICE files the NTA, the DNF is attached to it, we input the information from the NTA into our system along with the address where the child was released that is shown on the DNF.

Yes that was it, that's all I got.

(Nathan Berkeley): Okay great.

(Rená Cutlip-Mason): I thought I was missing something there so I just wanted to make sure there was no other.

(Nathan Berkeley): So the last agenda item that we'll cover before we open it back up for questions relates to change of venue and change of address requests related to limited English proficiency - limited English proficient individuals.

The question we've got on this is what guidance is provided to immigration courts on when families are asked to complete change of venue or change of address forms and they're asked to do so in English.

You know as a general matter EOIR continues to - considers the feasibility of translating forms in a different languages.

Some courts have in fact already developed information packets in Spanish, French, and Mandarin that can provide guidance on completing forms, these forms, and other ones as well.

And then we also have some relevant legal access resources that (Steve) will be able to lay out further so (Steve) over to you.

(Steve):

Thanks Nathan. Well EOIR's office of the legal programs works with courts across the country to establish self-help legal centers.

These legal centers located within the immigration courts provide free general legal information as well as specific information about the immigration court to primarily pro se respondents and other interested parties.

These centers provide blank forms and instructions on how to complete and submit forms, this includes change of address and change of venue forms.

Some of the self-help legal center - some of the courts with self-help legal centers include New York City, Las Vegas, and Denver and we expect more centers to come online this next year including Miami, San Juan, Puerto Rico, San Francisco, Baltimore, and Los Angeles.

In addition, we're also developing new self-help legal materials specifically geared towards unaccompanied children including unaccompanied children who are asylum seekers as well as their custodians.

Now the information that we provide is available in Spanish at the self-help legal centers and also in French and in Mandarin at those courts with large amounts of French and Mandarin speakers.

So in addition, aside from the self-help legal centers as many of you know and I know a number of you on the phone are affiliated with LOPC program, the LOPC program also provides a lot of information to individuals on how to complete change of venue, change of address, as well as provide other types of forms to help folks understand the process how to go forward as well as information on some other non-immigration related procedures such as school enrollment which I alluded to earlier which all goes to

protecting the child against mistreatment, exploitation, and trafficking.

In addition and just to close, the LOPC also many LOPC providers go the extra step and serve as friend of the court to assist the court - to assist the child in understanding what's happening during the hearing process itself as well as referring children to available pro bono resources.

Thanks Nathan.

(Nathan Berkeley): Great.

Thank you, Steve.

So at this point again operator if you could prepare the line to receive questions and I'll open it up for the room first, and then we can go to the line for any remaining questions.

We have a few a minutes so I'm happy to take those.

Operator when you have someone on the line please put them through.

Coordinator: Our next question comes from (Cynthia Tyler); your line is now open.

(Cynthia Tyler): Hi.

I think I had a question a while back when we were talking about the judge's responses to motions to continue.

I've been getting a lot of push back on pleadings; the judges and DHS of course would like the kids to go ahead and plead and they almost all have cases outside of court and to my reading when that happens then there's no need to plead.

So what is - I guess EOIR's stance on pleadings in terms of these kids because I guess a lot of the cases are going very quickly.

The hearings are scheduled every 60 to 90 days I believe, so if you could comment on that I'd appreciate it.

Thank you.

(Nathan Berkeley) Judge Weil do you have any comments on that?

(Judge Weil): Yes so we haven't provided any specific guidance with regard to when the judge should take the pleading.

So I'm not sure from the question and maybe you can clarify, are you saying you're under the impression that if somebody is seeking a release like SIJ status or an affirmative asylum application that the judge should withhold taking a pleading in the case, is that what I'm understanding?

(Cynthia Tyler): I think the way that I see it yes because as - I'm representing the client and their best interest, and I think pleadings are sort of a step forward in the case, and so I think that should happen after their case has come back not approved.

So I just wanted to sort of get some feedback about that.

(Judge Weil): We don't provide specific guidance, and I don't think there's anything to prevent the judge from taking the pleading because if the allegations and charges are not true then the proceedings should be terminated up front and not continued and not stay on the court's docket just because the child wants to seek affirmative asylum or SIJ status.

So there's really no need to dive into the relief issue if there's no grounds of removability.

So I have not advised the IJs to withhold pleading - I mean I think they need to give you enough time to prepare, but I don't know that I'm going to or would recommend in my training to a judge.

Some counties for example that we've been to - you have to wait 6 months before the state court is willing to take jurisdiction over the SIJ, and I don't know that I'm going to train or recommend the judge not to take a pleading for 6 months and then find out that the allegations or charges aren't true and we've been holding the case on the docket for no reason.

So I'd be happy to discuss that but that certainly - at least on this point has not been something that we've decided, and I don't think - I'm not in total agreement that it's really a step forward.

Yes it is a dispute of fact and law that we have to resolve in the case, but the judges are going to have to stop and adjudicate relief, and

there's a duty to investigate and develop the record for you know forms of relief.

If it's one that the judge has no jurisdiction over, like an affirmative asylum or an SIJ, they're just going to have to stop the case.

So is it a step forward?

It's moving closer to completion, but you're not going to be able to do anything until you get the answer from the venues that do have jurisdiction over those applications for release.

So again I'm willing to discuss it and consider it further, but as of this point we haven't provided any guidance to withhold a pleading.

(Cynthia Tyler): Okay thank you.

Coordinator: Our next question comes from (Homero Lopez) your line is now open.

(Homero Lopez): My question was over something earlier and it's already been answered so I think I'm good.

(Nathan Berkeley): Okay thank you.

Operator one moment we have a question in the room and then we'll go back to the line.

Go ahead.

Woman: I just wanted to ask a follow up question on the LOPC and the in absentias.

Do the LOPC providers make referrals to pro bono attorneys in those areas or do the LOPC providers themselves take on the cases pro bono.

(Steve Lang): Yes this is - we don't instruct the - well first of all LOPC's funding cannot be used for any direct representation.

LOPC funding can be used to refer cases to pro bono attorneys and to assist individuals to assist themselves pro se.

So when LOPC providers receive information from us at their request on kids with in absentia orders and then LOPC providers

proactively reach out to the kids and make them aware of options that are available to them, such as motion to reopen, that would be provided on a pro se basis.

If the kids cannot complete those on a pro se basis then the LOPC provider should refer them to other pro bono resources either funded within their organization or outside pro bono services.

Woman: Great thank you very much.

(Nathan Berkeley): Operator do we have other callers to pose a question?

Coordinator: We have three incoming questions.

The next one is from (Ashley Huebner); your line is now open.

(Ashley Huebner): Thanks.

I just wanted to comment on the earlier discussion about the formal practice manual or best practice guidance for judges regarding UACs and really strongly encourage the production of that, particularly on notice issues and in absentia orders.

The current OPPMs regarding kids are fairly (unintelligible) and sparse and although I understand the concern about infringing on judge's independence, the reality is that most of these kids don't have attorneys or even have a support system to help them navigate the court system and so the judges who are adjudicating these cases are in an incredibly unique position compared to other judges.

So it's really crucial, particularly right now, to provide as much substance of guidance as possible.

(Nathan Berkeley): Thank you for that and we'll discussions in that regard.

Do we have another question in the queue?

Coordinator: Our next question comes from (Kristen Jackson); you may begin.

(Kristen Jackson): Great thank you.

My question is whether it's consistent with EOIR policy for an immigration judge to waive a child's presence at an upcoming hearing but then threaten to issue an in absentia order against the child if the child's sponsor does not appear in court at the upcoming

hearing, that would be either a parent sponsor, a legal guardian, or a completely unrelated person.

(Nathan Berkeley): (Judge Weil), do you have any comments on that?

(Jack Weil): As far as waiving the child's presence, it is allowed.

You can waive any respondents presence whether child or adult so that is permitted if the parties request it.

I know many judges do that and their views about not taking children out of school or subjecting them unnecessarily to court hearings where it's really not necessary, it's an administrative manner.

So with regard to waiving presence, no specific guidance, but it is permitted in appropriate cases.

With regard to the second half of the question, my understanding is you're saying is do they - is there guidance or a policy with regard to threatening if the custodian doesn't appear.

We're assuming - I guess in this circumstance the child is appearing but the custodian is not, is that your question?

(Kristen Jackson): No.

I'm sorry (Judge Weil).

The judge is waiving the child's presence so the child is the only respondent in the case - is having her presence waived but the judge is threatening to issue an in absentia order if the child sponsor does not appear in court at the upcoming hearing.

So a child's presence is waived but sponsors being told to come to court or an in absentia order will issue against the child.

(Judge Weil): As the SIJ for training and the SIJ for vulnerable populations you need to communicate with me that case because we talked about the fact that the judge must follow the law on in absentia and the presence of a custodian is not one of the elements that the law requires to be there and so again, we're on a phone call, and I don't have all the facts but I'm not aware of anything that says that - or alters the law on in absentia based upon the custodian.

It's really all focused on the respondent and the notice of the respondent, and so if a judge is threatening to proceed in absentia if a custodian doesn't show I need to know that and provide some remedial training.

(Kristen Jackson): Thank you very much.

(Rená Cutlip-Mason): (Kristen) if you could send that to the public engagement e-mail box and we can make sure Judge Weil gets it.

(Judge Weil): And the more specifics you can give I certainly will not attribute it to you.

I know sometimes when - and when people raise issues in regard to you know specific immigration judges there is concern, but the more detail you can give me into the case I will not reveal your identity or the child's name.

If I communicate to the judge and advise them that I don't think that this is an optimal practice or quite frankly tell them don't do it again, but again I won't use your name but to the extent I have more to go on and understand what's going on that's really helpful.

So if you could do a detailed e-mail that's even better.

(Nathan Berkeley): Operator we'll take one more question.

Coordinator: As a reminder if you'd like to ask a question please press Star then 1.

At this time there are no questions.

(Nathan Berkeley): Okay great.

Well thank you again everyone on the line, everyone who came out to Falls Church for joining us today.

As you know all these issues are multidimensional they have many facets to them, you have questions that you know you didn't get to address today please send them again to engawitheoir@usdoj.gov.

This is (Nathan Berkeley) the Outreach Director, I'm in the office of Legislative and Public Affairs and I'll route it accordingly working with my counterparts you know within the agency so please reach out to get those things to us and again thank you.

Woman: Thank you.

Coordinator: Thank you for your participation you may disconnect at this time.

END