U.S. Department of Justice
EQUAL EMPLOYMENT OPPORTUNITY POLICY

For over 150 years, the Department of Justice has had the important responsibility of enforcing our Nation's laws and defending the interests of the United States according to the law. As custodians of justice, working diligently to ensure impartial and equal justice for all who call America home, we must uphold the principles of fairness, respect, and equal employment opportunity (EEO) in our own work. To fulfill our duty to the American public, we embrace these principles as we develop a workforce that is representative of our Nation's diversity.

The Department remains steadfast in its commitment to EEO. To ensure a fair and equitable workplace, we must ensure that no applicant for employment or employee of our Department is denied equal opportunity because of race, color, religion, national origin, sex - including gender identity, sexual orientation, or pregnancy status - or because of age (over 40), physical or mental disability, protected genetic information, parental status, marital status, political affiliation, or any other non-merit based factor. We also must protect our workforce and applicants from retaliation for participating in EEO activity or opposing discriminatory acts.

These protections guide all DOJ management policies and practices, including personnel practices. We will take swift and appropriate corrective and/or disciplinary action when employees are found to have engaged in discrimination, retaliation, or harassment, including sexual harassment, which are prohibited by our policies regardless of whether the discrimination, retaliation, or harassment violates federal law.

In addition, the Department provides reasonable accommodations to employees and applicants with disabilities and for religious observances or practices in accordance with established law. It also supports the use of alternative dispute resolution (ADR) to resolve EEO complaints and requires management participation when ADR is approved for use.

Finally, all DOJ employees and applicants for employment are afforded legal protections against EEO violations and have the right to raise allegations of discrimination and harassment without fear of reprisal. Employees who believe they have been subjected to discrimination, or to retaliation for participating in EEO activity or for opposing discrimination, should contact their DOJ Component EEO office within 45 calendar days of when the alleged harm occurred. Applicants for employment should contact the EEO Office that services the employing DOJ Component where the alleged act of discrimination occurred.

Success in our mission is only possible through the efforts of a workforce that represents America through its diversity of backgrounds and perspectives, yet is united by our commitment to the rule of law and to seeking equal justice under law. The Department will uphold principles of EEO in its service to the United States. That is our commitment to the American people and to the talented employees of the Department who work tirelessly to ensure the safety of our Nation, and to protect and preserve individual rights in accordance with the law.

DOJ IS AN EQUAL OPPORTUNITY EMPLOYER

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

June 2, 2021

MEMORANDUM TO: All EOIR Employees

FROM: Jean King
Acting Director

JEAN KING Digitally signed by JEAN KING Date: 2021.06.02 16:59:27 -04'00'

SUBJECT: Equal Employment Opportunity (EEO) Policy

All employees of EOIR are protected by federal laws that prohibit discrimination. It is the policy of EOIR to prohibit employment discrimination based on race, color, religion, sex, gender identity, sexual orientation, age (over 40), national origin, disability (physical or mental), genetic information, reprisal, parental status, marital status, political affiliation, or any other non-merit factors.

EOIR does not tolerate any form of discrimination on the aforementioned basis and any harassment or offensive conduct on any protected EEO basis. We take each claim seriously and address all allegations of discrimination, harassment (sexual/non-sexual), and reprisal.

Any employee or applicant for employment who believes that he or she has been discriminated against in an employment matter has the right to pursue a complaint of discrimination. Employees or applicants who wish to file a complaint of discrimination and preserve their legal rights must contact the EEO Program within 45 calendar days of the most recent occurrence of the alleged discriminatory action. To obtain information or file an EEO complaint of alleged employment discrimination and/or harassment (sexual/non-sexual), employees and applicants may contact the EEO Program via telephone at (703) 756-8582 or via e-mail at EOIR.EEOMailbox@usdoj.gov or you may visit the EEO website at https://intranet.eoir.usdoj.gov/sites/eoir/Director/Pages/EEO.aspx.

EOIR continues to support the use of the Alternative Dispute Resolution (ADR) Program through the United States Department of Justice's (DOJ) Mediator Corps Program to attempt to resolve EEO complaints and requires management participation when ADR is approved for use. The ADR Program uses a neutral party to assist in reaching settlement agreements, thus preserving working relationships among EOIR employees and management officials.

Employees are encouraged to report acts of sexual harassment to their supervisors, the EEO Program, and/or the EOIR Prevention of Sexual Harassment Coordinator. To report any form of sexual harassment, individuals may contact EOIR's Prevention of Sexual Harassment Coordinators Ms. Brianna Evans via telephone at (703) 756-8426 or via e-mail at Brianna.Evans@usdoj.gov and/or Ms. Laura Robbins via telephone (703) 305-1087 or via e-mail at Laura.Robbins@usdoj.gov. Employees can also report allegations of sexual harassment to the DOJ's Office of the Inspector General (OIG) via the OIG hotline: https://org.justice/gove/hotline/index.htm.

Every EOIR manager and supervisor must ensure that discrimination has no place in employment decisions, personnel practices, administrative actions, and management decisions. Managers and supervisors are reminded of their responsibility to prevent, document, and promptly take action to address harassing (sexual/non-sexual) conduct in the workplace. In addition, EOIR is required to report allegations of sexual harassment or misconduct to the OIG and the components' security divisions when appropriate.

EOIR supports the recruitment and advancement of individuals with disabilities. EOIR will continue to provide reasonable accommodations to employees and applicants with disabilities and for religious observances or practices in accordance with the law. To request a Reasonable Accommodation based on your disability and/or religious beliefs/observances, you may contact EOIR's Reasonable Accommodation Program Managers Ms. Michelle Curry via telephone at (703) 305-0990 or via e-mail at Michelle.Curry@usdoj.gov and/or Ms. Laura Robbins via telephone (703) 305-1087 or via e-mail at Laura.Robbins@usdoj.gov. Please note that employees should request leave relating to religious beliefs/observances through their immediate supervisor.

Employees in a bargaining unit should review the provisions of their collective bargaining agreement to ascertain whether allegations of discrimination may be raised in a negotiated grievance procedure. If so, the employee may elect to file either a complaint with the EEO office or a grievance in accordance with the procedures outlined in the collective bargaining agreement, but not both.

EOIR is committed to the principle that each individual has the right to work in a fair, equitable, and professional atmosphere that values diversity, promotes equal employment opportunities, and prohibits discrimination and harassment (sexual/non-sexual). EOIR is also committed to ensuring that its recruitment, selection, and promotion processes are based on merit, ability, and potential.

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Director

May 2, 2019

MEMORANDUM TO: All EOIR Employees

FROM: James R. McHenry III
Director

SUBJECT: Prevention of Sexual Harassment and Other Forms of Discrimination in the Workplace

It is the responsibility of all employees of the Executive Office for Immigration Review (EOIR) to maintain high standards of conduct and ethical behavior under the Standards of Ethical Conduct for Employees of the Executive Branch. EOIR enforces policy that protects employees and applicants from unlawful discrimination based on race, color, age, religion, national origin, sex, disability (physical or mental), genetic information, and reprisal. In addition, discrimination based on gender identity, status as a parent, sexual orientation, marital status, or political affiliation is prohibited in the workplace.

EOIR is committed to the principle that every employee and applicant has the right to work in a professional atmosphere free from harassment and sexual harassment that values diversity, promotes equal employment opportunity (EEO), prohibits discriminatory employment practices and advances employees based on their merit, ability and potential. In accordance with these principles, any conduct constituting sexual harassment will not be tolerated. Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. 29 C.F.R. § 1604.11.

All supervisors and managers are responsible for enforcing standards of appropriate office behavior, and I expect them to take prompt and appropriate action to address any conduct identified as sexual harassment.

Employees who feel they have been victims of sexual harassment are encouraged to report any inappropriate behavior immediately. Employees have several avenues of redress: (1) employees have the right to file a complaint with EOIR's EEO Office. To reach the EEO Office, you may email EOIR.EEOMailbox@usdoj.gov or call 703-756-8582. Please remember that employees who want to file a formal complaint of discrimination and preserve their legal rights must contact the EEO Office within 45 calendar days of the occurrence of the alleged incident(s); (2) in addition to and separate from the EEO Office, employees can report allegations of sexual harassment to EOIR's Sexual Harassment Prevention Coordinators: Brianna Evans, (703) 756-8426 or at Brianna.Evans@usdoj.gov and Laura Robbins, (703) 305-1087 or at Laura.Robbins@usdoj.gov; and (3) in addition to these options, employees can report allegations of sexual harassment to the Department of Justice's (DOJ) Office of the Inspector General via the OIG hotline: https://oig.justice.gov/hotline/index.htm. Attached for your review is DOJ's EEO Policy statement.

Please note that threats or acts of retaliation or retribution against employees who raise concerns, make claims, or assist in providing information about discriminatory practices (including harassment) will not be tolerated and should be brought to the attention of the agency.

Attachment

U.S. Department of Justice Equal Employment Opportunity Policy

William P. Barr

As the Nation's largest law enforcement agency, the Department of Justice has an especially important duty to uphold the rule of law and to maintain a dedicated and diligent workforce that pursues justice, equality, and fundamental fairness on behalf of all Americans. We differ in many ways, but this diversity helps us better serve our Country. It brings to bear diverse perspectives that enable us to carry out our responsibilities more effectively, protect our vital national interests, keep our country safer, and preserve the rights of all Americans.

Accordingly, the Department embraces equal employment opportunity (EEO) and inclusiveness. We welcome employees from diverse backgrounds to apply their skills and talents toward advancing our mission to serve the country, achieve justice, and promote the rule of law.

We must ensure that no applicant for employment or employee of our Department will be denied equal opportunity because of race, color, religion, national origin, sex, age, sexual orientation, disability (physical or mental), gender identity, protected genetic information, pregnancy, status as a parent, marital status, political affiliation, or any other nonmerit-based factor. We will take swift and appropriate corrective and/or disciplinary action when employees are found to have engaged in discrimination, retaliation, or harassment, including sexual harassment, which are prohibited by our policies regardless of whether the discrimination, retaliation, or harassment violates federal law.

The Department provides reasonable accommodations to employees and applicants with disabilities and for religious observances or practices in accordance with established law, and supports the use of alternative dispute resolution to resolve EEO complaints and workplace disputes.

All DOJ employees and applicants for employment are afforded legal protections against EEO violations and have the right to raise allegations of discrimination and harassment without fear of reprisal. DOJ employees and applicants for employment who believe they have been subjected to discrimination, or to retaliation for participating in EEO activity, or for opposing discrimination, should contact their DOJ Component EEO office within 45 days of when the alleged harm occurred.

Since its founding in 1870, the Department of Justice has stood for equal justice under the law. The hard-working men and women who serve the Department and the Nation have my assurance that equal justice and equal opportunity will continue to flourish across the Department.

DOJ IS AN EQUAL OPPORTUNITY EMPLOYER

U.S. Department of Justice

Washington, D.C. 20530
April 30, 2018

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: Rod J. Rosenstein
Deputy Attorney General

SUBJECT: Sexual Harassment and Sexual Misconduct

The Office of Inspector General (OIG) issued a memorandum last year concerning how the Department of Justice handles sexual misconduct and harassment claims. After reviewing the memorandum, we established a Department working group to consider additional steps to eliminate harassment and respond effectively to alleged misconduct.

That effort resulted in the attached memorandum from the Assistant Attorney General for Administration. The memorandum sets forth important directives for the Department's components to follow in an effort to enforce the Department's zero-tolerance policy for sexual harassment. Please follow the directives in the memorandum and be vigilant in efforts to ensure a work environment free of discrimination and harassment.

The Department of Justice should be a leader in maintaining a model workplace. I appreciate your support in fulfilling this important responsibility.

Attachment

U.S. Department of Justice

Washington, D.C. 20530

April 30, 2018

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: Lee J. Lofthus
Assistant Attorney General
for Administration

SUBJECT: Sexual Harassment and Sexual Misconduct

I. Introduction

The Department of Justice, through this memorandum and the directives contained herein, seeks to communicate to its employees in the strongest terms its goal for a workplace free from sexual harassment and sexual misconduct.[1] Toward that end, this memorandum sets forth policies and procedures to ensure that: (1) substantiated allegations of sexual harassment or misconduct result in serious and consistent disciplinary action, (2) components report allegations of sexual harassment or misconduct to the Office of Inspector General and the components' security divisions when appropriate, (3) components appropriately consider allegations of or disciplinary actions for sexual harassment or misconduct in making decisions about awards, public recognition, or favorable personnel actions, and (4) components can be held accountable for their handling of allegations of sexual harassment and misconduct.

The Department has several policies and directives in effect relating to on- and off-duty conduct, including sexual misconduct:[2]

1. January 29, 2016, Memorandum from the Assistant Attorney General for Administration and Designated Agency Ethics Official: "Off-Duty Conduct"
2. October 9, 2015 Memorandum from the Attorney General: "Prevention of Harassment in the Workplace"

[1] The policy and directives set forth in this memorandum address concerns raised in a Management Advisory Memorandum issued by the Office of the Inspector General on May 31, 2017, concerning the handling of allegations of sexual harassment and misconduct within the Department of Justice. This policy will be implemented consistent with merit system principles and in accordance with labor-management responsibilities as outlined in Title V, Chapter 71 of the United States Code, and any applicable collective bargaining agreements. As a general matter, references to "misconduct" in this memorandum refer to sexual misconduct.

[2] The listed policies and directives along with this memorandum are collected and available at https://justice.gov/policies-and-directives-effect-relating-and-duty-conduct-including-sexual-misconduct, and many pertinent portions are referenced herein.

3. April 10, 2015 Memorandum from the Attorney General: "Prohibition on the Solicitation of Prostitution"
4. November 19, 2013 Policy Statement 1200.2: "Federal Workplace Responses To Domestic Violence, Sexual Assault, and Stalking"

"Sexual harassment" refers to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment, whether such activity is carried out by a supervisor or by a co-worker.[3] This could include such workplace conduct as displaying "pinup" calendars or sexually demeaning pictures, telling sexually oriented jokes, making sexually offensive remarks, engaging in unwanted sexual teasing, subjecting another employee to pressure for dates, sexual advances, or unwelcome touching.[4] Sexual harassment occurs when employment decisions affecting an employee, such as hiring, firing, promotions, awards, transfers or disciplinary actions, result from submission to or rejection of unwelcome sexual conduct.[5] Title VII of the Civil Rights Act of 1964 generally prohibits sexual harassment.[6]

It is the Department's policy to treat harassing conduct as misconduct, even if it does not rise to the level of harassment actionable under Title VII.[7] The Department will not wait for a pattern of offensive conduct to emerge before addressing claims of harassment.[8] Rather, the Department will act before the harassing conduct is so pervasive and offensive as to constitute a hostile environment.[9] Even where a single utterance of an ethnic, sexual, racial, or other offensive epithet may not be severe enough to constitute unlawful harassment in violation of Title VII, it is the Department's view that such conduct must be prevented whenever possible through awareness, robust policies and effective and appropriate follow-up, investigation, and enforcement of the zero-tolerance policy.[10]

"Sexual misconduct" is a broader term. Sexual misconduct can include actions that occur either in the workplace or outside the workplace when there is a nexus between the conduct and the employee's duties and responsibilities or the agency's mission. The Department expects employees will comport themselves appropriately on and off the job.[11] The Department may show a nexus between off-duty misconduct and the efficiency of the service by three means: (1)

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[3] *See* DOJ Order 1200.2 and https://www.justice.gov/jmd/eeos/sexual-harassment.

[4] https://www.justice.gov/jmd/eeos/sexual-harassment.

[5] *Id.*

[6] DOJ Order 1200.2.

[7] October 9, 2015 Memorandum from the Attorney General: "Prevention of Harassment in the Workplace"

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] January 29, 2016, Memorandum from the Assistant Attorney General for Administration and Designated Agency Ethics Official: "Off-Duty Conduct"

a rebuttable presumption in certain egregious circumstances, e.g., commission of a violent crime or sexual misconduct with minors; (2) preponderant evidence that the misconduct adversely affects the employee's or co-workers' job performance or the Department's trust and confidence in the employee's job performance; or (3) preponderant evidence that the misconduct interfered with or adversely affected the Department's mission. This most often applies where the employee engages in the very type of behavior that the Department is charged with preventing or addressing.[12] Off-duty misconduct that has resulted in discipline of federal employees, and in some cases removal from federal service, has included sexist remarks and threats to coworkers or supervisors.[13] Also, all Department personnel are prohibited from soliciting, procuring, or accepting commercial sex at all times during their employment, including while off duty or on personal leave regardless of whether the activity is legal or tolerated in a particular jurisdiction, foreign or domestic.[14]

II. Discipline

The Department seeks to ensure that penalties for sexual harassment or misconduct are sufficiently reviewed and consistently applied across all components. Substantiated allegations of sexual harassment or misconduct must be treated seriously and, absent extraordinary circumstances, should consistently result in formal discipline up to dismissal.

With a view toward achieving more consistency, I am directing each component to implement a system that provides for uniformity in the administration of disciplinary action for sexual harassment or misconduct within the component to the maximum extent feasible.

A. Guiding Principles

To facilitate more consistent discipline across the Department, there are some general guiding principles regarding discipline for sexual harassment or misconduct that should apply throughout all the Department's components.

First, substantiated incidents of sexual harassment or misconduct are of serious gravity and have a significant negative impact on the Department's ability to execute its mission.

Second, in assessing the nature and seriousness of an incident, the presence of certain aggravating factors in a substantiated incident of sexual misconduct should result in a proposal of disciplinary action with a penalty ranging from a 15-day suspension to removal.[15] Those factors

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[12] *Id.*
[13] *Id.*
[14] April 10, 2015 Memorandum from the Attorney General: "Prohibition on the Solicitation of Prostitution"
[15] In addition to a significant suspension, discipline for sexual harassment or misconduct may include a demotion.

include sexual assault,[16] stalking,[17] the subject's supervisory role vis-à-vis the victim, repetition, situations involving *quid pro quo* for official actions, any form of voyeurism (such as peeping), retaliation for reporting prior misconduct, and prior discipline for sexual harassment or misconduct. The Department considers the presence of any of these factors (hereinafter "the aggravating factors") in a substantiated incident of sexual harassment or misconduct to be especially serious. The absence of an aggravating factor does *not* mean that the discipline must be less than a 15-day suspension. Even in the absence of an aggravating factor, a single instance of sexual harassment or misconduct may warrant a suspension of 15 days or more or removal. Disciplinary officials should evaluate the appropriate discipline for a substantiated allegation of sexual harassment or misconduct keeping in mind that any substantiated allegation of sexual harassment or misconduct is serious.

Third, when proposing or deciding discipline for employee misconduct, officials should consider the totality of the circumstances presented. The *Douglas* factors[18] must be considered when determining an appropriate penalty. *Douglas* requires that disciplinary officials consider, among other things, the clarity with which the employee was on notice of any rules that were violated in committing the offense or had been warned about the conduct in question. The Department has communicated to its employees in the strongest terms its goal for a harassment-free workplace. Components must make this memorandum, the cited directives, and any future memoranda on the subject of sexual harassment and misconduct readily available to their employees, including new hires, to ensure that they have clear notice of the Department's policies.

B. Application of Guiding Principles

Department components are directed to apply the above principles in assessing the appropriate penalty for any substantiated incident of sexual harassment or misconduct. Penalties for sexual misconduct and harassment will necessarily vary due to the specific facts at issue, the individualized assessment required under the procedures for disciplinary actions in 5 U.S.C. Chapter 75 and 5 C.F.R. Part 752, and the *Douglas* factors. Nevertheless, application of the

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[16] Sexual assault refers to a range of behaviors, including but not limited to, a completed nonconsensual sex act (e.g., rape), an attempted nonconsensual sex act, and/or abusive sexual contact (i.e., unwanted touching). Sexual assault includes any sexual act or behavior that is perpetrated when someone does not or cannot consent. Lack of consent may be inferred when a perpetrator uses force, harassment, threat of force, threat of adverse personnel or disciplinary action, or other coercion, or when the victim is asleep, incapacitated, unconscious, or physically or legally incapable of consent. DOJ Order 1200.2.

[17] Stalking refers to harassing, unwanted or threatening conduct that causes a victim to reasonably fear for his or her safety or the safety of a family member. Stalking conduct can include, but is not limited to: following or spying on a person; appearing uninvited and unwanted at a person's home or work; waiting at places in order to make unwanted contact with a person or to monitor a person; leaving undesired items (e.g., presents or flowers) for a person; and posting information or spreading rumors about a person on the Internet, in a public place, or by word of mouth. It also includes "cyberstalking": following a person's Internet activity with malicious intent, hacking into someone's email, making anonymous contact with someone over the Internet or by email, or otherwise using technology to make unwanted contact. Stalking may occur through use of technology including, but not limited to, e-mail, voice-mail, text messaging, and use of GPS and social networking sites. DOJ Order 1200.2.

[18] *See Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981).

principles articulated above and close monitoring of the imposition of discipline for substantiated incidents of sexual harassment or misconduct will better ensure that the Department lives up to its goal of achieving a harassment-free workplace.

Toward that end, first, I direct all Department components to have procedures and policies that ensure consistency in the administration of discipline for substantiated allegations of sexual harassment or misconduct within the component.[19] Components should review any existing policies and procedures to ensure that they are consistent with the principles articulated herein. Individual components may want to consider adopting a table of penalties, if they have not already done so, consistent with applicable labor-management relations requirements. If a component chooses not to adopt a table of penalties, the disciplinary process should nonetheless be structured and documented.

Second, I direct all components to ensure that supervisors and others involved in the disciplinary process are aware of the requirements of this memorandum and review it each time they propose or impose a disciplinary action for sexual harassment or misconduct.

III. Management of Sexual Harassment Allegations

The Department encourages any employee who believes that he or she has been subjected to harassment to report such behavior immediately to a supervisor or higher-level manager, their Human Resources or personnel officer, or the individuals identified by their office to manage harassment allegations.[20] Components shall ensure that employees are informed of all avenues available to them for reporting harassment allegations and are kept reasonably informed of the progress of the components' reviews of their allegations. In addition, the Justice Management Division (JMD) will send a quarterly reminder to all employees advising them of avenues for reporting sexual harassment or misconduct. Those components that have identified individuals to manage harassment allegations must ensure that the names and contact information of those individuals are widely publicized to their employees.

Further, within 90 days from the date of this memorandum, each component must develop a process to track the handling of sexual misconduct and harassment allegations, compatible with its existing systems and resources and applicable law. The tracking process should be sufficient to enhance the component's ability to ensure consistency in the handling of these allegations. The system should record a brief description of the allegation, including the presence or absence of aggravating factors, whether and when the allegation was reported to OIG, whether and when the allegation was reported to the security division, and the disciplinary

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[19] The Office of Attorney Recruitment and Management will develop a similar process for disciplinary actions taken against those Department attorneys for whom it has disciplinary authority.

[20] The October 9, 2015 memorandum also provides guidance with respect to employees seeking assistance from their component's Equal Employment Opportunity Office, the Office of Professional Responsibility, or the Office of the Inspector General, and in the case of employees in a collective bargaining unit, in accordance with the appropriate provisions of their collective bargaining agreement. This guidance also applies to an employee who believes that he or she has been subjected to sexual misconduct.

action taken. Disciplinary officials must review the information maintained by their component whenever called upon to propose or impose discipline for sexual harassment or misconduct.

The Department's policy is to offer appropriate and timely support to victims of sexual misconduct and harassment.[21] The Department is committed to making supportive resources available to victims of sexual harassment or misconduct through supervisors, designated persons in human resources divisions, or other persons designated by the agency, and the Department's Employee Assistance Program (EAP).[22]

IV. Reporting Sexual Misconduct and Sexual Harassment Allegations to Management Officials, to the Office of Inspector General, and to Security Divisions

Department regulations require that "[e]vidence and nonfrivolous allegations of criminal wrongdoing or serious administrative misconduct by Department employees shall be reported to the OIG, or to a supervisor or a Department component's internal affairs office for referral to the OIG." 28 C.F.R. § 0.29c. Managers or other component-identified points of contact who receive an allegation of sexual harassment or misconduct must report the allegation to a designated management official. The designated management official should then ensure the report of any non-frivolous allegation to the OIG through established channels. *Any doubt should be resolved in favor of reporting the allegation to the OIG.* The component should then consult with the OIG about the investigative steps to follow and whether the component can or should impose discipline prior to the completion of an OIG investigation.

The component should take immediate preventive measures as may be necessary while an investigation into the incident or a disciplinary decision relating to the allegation is pending. Preventive measures may include physical separation of the workspaces of employees at issue, permanent or temporary change in supervision, or assignment of alternative work duties. Such preventive measures are never a substitute for appropriate disciplinary action and should have no impact on the discipline imposed.

As noted previously, the component's process for the handling of allegations of sexual harassment and misconduct, should also track whether and when the component reported the allegation to the OIG and the reasons why any allegation was not reported.

Any substantiated allegation of sexual harassment or misconduct must be reported to the component's security division for appropriate action. With respect to a non-frivolous allegation of sexual harassment or misconduct that includes one or more aggravating factor, a component should report the allegation itself to its security division upon learning of it. The component's process for the handling of allegations of sexual harassment and misconduct should also track referrals to component security divisions.

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[21] *See* DOJ Order 1200.2.
[22] *Id.*

V. Awards, Public Recognition, and Favorable Personnel Actions

The Department confers awards, public recognition and other favorable personnel actions on employees. In order to ensure that such awards are made appropriately, each component must develop and implement a policy addressing the provision of awards and public recognition to employees who are the subject of an ongoing sexual harassment or misconduct investigation or employees who have been recently disciplined for this type of misconduct. Furthermore, there is no logical basis for limiting these policies to employees who are the subjects of investigations or disciplinary action stemming only from allegations of sexual harassment or misconduct. Attached to this memorandum is direction from the Department's Chief Human Capital Officer (CHCO) and Deputy Assistant Attorney General, Justice Management Division (JMD), which establishes the minimum requirements for components to follow when considering performance awards, public recognition, and other favorable personnel actions for employees subject to misconduct investigations or disciplinary actions.[23]

VI. Component Reporting Requirements

To monitor components' compliance with the principles and directives set out in this memorandum, components must submit an initial report on their implementation of the directives above to the CHCO through the Director, Human Resources in JMD by August 31, 2018. This report must include, at a minimum:

1. A description of the component's processes for tracking allegations of sexual harassment and misconduct, including the determination of whether or not to report an allegation to the OIG and the component's security division.
2. The outcome of the component's review of its policies and procedures for ensuring consistency in the administration of discipline for substantiated allegations of sexual misconduct and harassment, including any steps the component took to revise its existing policies and procedures as a result of this review.
3. The date(s) and manner in which the component informed its employees regarding how to report sexual harassment and misconduct allegations, including providing the names and contact information for those the component has designated to manage harassment allegations.
4. The date(s) and manner in which the component made its supervisors and others involved in the disciplinary process aware of the aggravating factors identified in this memorandum.
5. The component's policy and procedures for addressing performance awards, public recognition, and other favorable personnel actions for employees subject to misconduct investigations or disciplinary actions.

[23] A component's implementation of such policy is subject to their bargaining unit considerations and obligations, as appropriate.

6. The date(s) and manner in which the component communicated to its employees the Department policies and memoranda referenced in Section I of this memorandum.

JMD will send a data request specifying the format for this information.

Upon receiving the components' submissions and no later than October 31, 2018, the CHCO will review the components' submissions and prepare a summary report for the Office of the Deputy Attorney General. This report will summarize the components' submissions and demonstrated progress toward implementing the guiding principles in this report.

Beginning on January 31, 2019, each Department component must provide an annual summary report for the prior calendar year to the CHCO through the Director, Human Resources in JMD. This summary report must describe the component's ongoing implementation of these directives, including brief summaries of reported allegations and how the component addressed them. The Department will send a data request specifying the format for this information.

Upon receiving the components' submissions and no later than March 30 of each year, the CHCO will prepare a summary report for the Office of the Deputy Attorney General. This report will summarize the components' submissions, and identify any instances in which a component may not have complied with the directives in this memorandum or may have failed to take appropriate disciplinary action regarding a substantiated allegation of sexual harassment or misconduct. The Deputy Attorney General will determine any appropriate steps to take with respect to non-compliance with this memorandum.

If you have any questions about this memorandum or the memorandum regarding awards, public recognition and other favorable personnel actions, please contact Mary Lamary, Deputy CHCO and Director, JMD Human Resources, at (202) 514-4350.

Attachment

U.S. Department of Justice

Washington, D.C. 20530

April 30, 2018

MEMORANDUM FOR COMPONENT EXECUTIVE OFFICERS AND HUMAN RESOURCES OFFICERS

FROM: Mari Barr Santangelo
Deputy Assistant Attorney General for
Human Resources and Administration, and
Chief Human Capital Officer

SUBJECT: Consideration of Misconduct in Making Decisions Regarding Awards, Public Recognition, and Favorable Personnel Actions

The purpose of this memorandum is to inform components of the requirement to consider misconduct in making decisions regarding awards, public recognition, and other favorable personnel actions for employees. In order to continue to foster a culture in which misconduct is taken seriously, I am directing components[1] to develop guidelines for consideration of misconduct as discussed below.

Misconduct is an employee's failure to adhere to a workplace rule, code, or standard of behavior, whether written or unwritten. When employees engage in misconduct, it can lower employee productivity and morale, as well as disrupt their co-workers' performance and agency operations. Components must take into account any alleged misconduct that is the subject of a pending investigation by the Office of Inspector General (OIG), Office of Professional Responsibility (OPR), or a component's internal investigative authority or any misconduct that has resulted in disciplinary action when making decisions about awards and other favorable personnel actions, including promotions.

It is understood that each component has diverse missions, operational needs, and varying size and structure, and therefore, each component is in the best position to determine how to implement this directive. Guidance must be issued in writing and communicated to the component's workforce, and be consistent with labor-management responsibilities as outlined in Title V, Chapter 71 of the United States Code, and any applicable collective bargaining agreements. Components may establish new guidelines or revise existing policy and procedures to ensure compliance with this memorandum. Components must submit their guidance to the Director, Human Resources no later than August 31, 2018. Component guidance must address, at a minimum, the following elements:

[1] The term "Component" as used herein refers to an office, board, division or bureau.

1. The parameters for cash awards, quality step increases, time-off awards, honorary awards, promotions, and other forms of public recognition.
2. Procedures for considering allegations of misconduct for employees under investigation or who have been recently disciplined for misconduct in making these personnel decisions.
3. The period of time for which past misconduct will be considered.
4. Training for supervisors and managers on performance management and addressing misconduct.
5. A point of contact with whom supervisors and managers can consult when considering misconduct in making award nominations and decisions.
6. The component's method of tracking the number of employees who are subjects of pending investigations, or who have been disciplined for misconduct, and received an award, form of public recognition, or other favorable personnel action.

Components are to conduct annual reviews of guidelines, procedures, and practices to monitor and evaluate their consideration of misconduct when granting awards and taking favorable personnel actions.

1. The review period will encompass the calendar year (January 1 to December 31).
2. Components must certify their compliance with this memorandum to the Director JMD/HR by March 31 of the year following the previous calendar year.
3. Certifications are to be submitted under the signature of the component head of administration.

If you have any questions, please contact Mary Lamary, Director, JMD Human Resources, at (202) 514-4350.

United States Department of Justice
Executive Office for Immigration Review
Office of the Director
Equal Employment Opportunity Program

5107 Leesburg Pike, Suite 2100
Falls Church, VA 22041

EEO COMPLAINTS PROCESS

An EOIR employee, an applicant for Federal employment, or an individual benefiting from an EOIR administered employment program may institute an EEO complaint if that employee or applicant believes that he/she has been discriminated against (including harassment) based on one or more of these factors or any other non-merit based factor. Following 29 C.F.R. § 1614.103(a), if an employee does not allege a basis covered by the EEO laws, and the individual files a formal complaint of discrimination, it will be dismissed in accordance with 29 C.F.R. § 1614.107(a)(1):

- RACE
- COLOR
- RELIGION
- SEX (INCLUDING GENDER IDENTITY)
- SEXUAL ORIENTATION
- NATIONAL ORIGIN
- AGE (40 OR OLDER)
- DISABILITY (MENTAL OR PHYSICAL)
- GENETIC INFORMATION (GINA)
- PREGNANCY STATUS
- REPRISAL

There are also federal laws and regulations and Executive Orders which are not enforced by the United States Equal Employment Opportunity Commission (EEOC) that prohibit discrimination on marital status, parental status and political affiliation.

Filing an Informal Complaint:

If you believe you have been the victim of discrimination at your work place or through the employment process, you must initiate contact with an EEO Counselor within **45 calendar days** of the occurrence of the alleged discrimination. The Counselor will advise you of your rights and will conduct an informal inquiry regarding your allegation. During this time, the Counselor will attempt to resolve the complaint.

The Counselor will issue a Notice of Final Interview within **30 calendar days** of your initial contact. You will have **15 calendar days** from your receipt of that notice to decide whether you wish to file a formal complaint.

Filing a Formal Complaint:

After completing the informal process, you may decide to file a formal complaint. To file a formal complaint, you must send to the designated EEO Officer a completed DOJ Form 201A (Complaint of Discrimination) that was included in your notice of final interview. You must file your formal complaint within 15 calendar days of your receipt of the Notice of Final Interview.

Your complaint must be specific and limited only to those matters that you previously discussed with the EEO Counselor. You will receive written acknowledgment of the EEO Office's receipt of your complaint. It will inform you of the date that your complaint was filed. This date will be used for calculating the length of time for processing all of the steps in the formal process.

If your complaint is accepted for processing, an impartial investigation will be ordered. EOIR will ensure that it is a thorough and fair investigation and is completed within **180 calendar days** from the date you filed your formal complaint. Amended complaints will be investigated within the earlier of **180 calendar days** after the last amendment to the original complaint or **360 calendar days** after the filing of the original complaint.

During the investigative stage of the process, EOIR has the following responsibilities: to conduct and complete the investigation; to make attempts at settlement; and to provide you with a copy of the investigative file and your Notice of Rights and Responsibilities. Within **30 calendar days** of the receipt of the investigative file, you may request either an EEOC hearing or an immediate final agency decision from the Department of Justice.

If you fail to make an election or request an immediate final decision, the agency will issue a decision based on its review of the investigative report and complaint file. The agency will issue its decision within **60 calendar days** from receipt of your request.

If you request a hearing from EEOC, an Administrative Judge will oversee discovery, conduct a hearing and issue a decision on the complaint. You must also notify EOIR if you request a hearing. If a finding of discrimination is made, the Administrative Judge will order an appropriate remedy. The judge must complete this process within **180 calendar days** of receipt of the complaint file from EOIR.

The Department of Justice, within **40 calendar days** of its receipt of the Administrative Judge's decision, must take final action on the complaint by issuing a final order notifying you whether or not it will fully implement the Administrative Judge's decision. The final order will also explain your appeal rights. If the Department of Justice does not issue a final order within the above stated time limit, the Judge's decision will become the final action of the agency.

After you receive the Department's final order, you may appeal it to the EEOC within **30 calendar days** of receipt. You may file a civil action in the U.S. District Court within **90 calendar days** of your receipt of the final order.

WHERE TO GO FOR HELP

EOIR's EEO Program

Main Line: (703) 756-8582

E-mail: EOIR.EEOMailbox@usdoj.gov

Andrew H. Press, EEO Director, 703-605-1285

Alita J. Taylor, EEO Specialist, 703-305-0412

Tynette A. Daniels, EEO Specialist, 703-305-0824

EOIR's Sexual Harassment Prevention Coordinator

Laura Robbins: 703-305-1087

Brianna Evans: 703-756-8426

DOJ's Office of the Inspector General

1-800-869-4499

NOTE: *Employees in a collective bargaining unit may seek assistance through appropriate provisions of their collective bargaining agreement if the agreement allows.*

Sexual Orientation and Gender Identity Panel Discussion

June 9 - 11, 2021

2021 EOIR Legal Training Program

Speakers and Introductions

Moderator – Kim Wilkins, EOIR Diversity & Inclusion Manager (she/her)

Panelists:

(b) (6) personal capacity (she/her)

- **S. Kathleen Pepper**, Attorney-Advisor, BIA (she/her)
- **Derek Julius**, Assistant Director, Office of Immigration Litigation (he/him)
- **Mimi Tsankov**, Immigration Judge (she/her)

The Department is still evaluating the impact of expert views in the area of sexual orientation and gender identity, and no set standard in these areas has yet been established. The following information is provided to assist with recognizing these issues in the context of case adjudication in EOIR's immigration courts, and to work to ensure all individuals involved in our proceedings are treated with the dignity and respect to which all human beings are entitled.

Program Overview

This presentation will include:

- An overview of sexual orientation and gender identity, including concerns related to bias, stereotypes, psychological impacts, and sharing traumatic experiences.
- Identification of appropriate terminology to use in cases that include factors related to sexual orientation and gender identity.
- Relevant case discussions and hypotheticals to help recognize sexual orientation and gender identity issues.

The Body (Sex)

Relationship to the Body (Gender)

Relationship to Others (Sexual Orientation)

Language

- Ask.
- Cultures vary and evolve.
- A single, fixed language that has not been used to cause harm does not exist.
- Concepts vs. specific vocabulary.

Tip

A welcoming environment includes treating all parties with dignity and respect and creating an environment free from discrimination.

The Body (Sex)

The sex of a person can be determined from the presence of X and Y chromosomes via a blood test. This is chromosomal sex.

The sex of an infant may be determined at birth by anatomical features. This is biological sex.

Broadly speaking, in humans, there are three biological sexes.

Sex: The Body Cont'd

Intersex

Intersex is an uncommon variation. Medical professionals may inaccurately assign "male" or "female" to intersex infants. Surgeons may recommend surgical intervention to conform the intersex child's genitals to the medically-assigned sex.

Female

The sex with gonads that can theoretically produce eggs at some point during lifespan. Socially expected to have anatomical features that align with such production. Commonly conflated with the gender identity girl/woman.

Male

The sex with gonads that can theoretically produce sperm at some point during lifespan. Socially expected to have anatomical features that align with such production. Commonly conflated with the gender identity boy/man.

Relationship to The Body (Gender)

Gender Identity

The way a person feels about their own body.

An emotional, psychological, internal understanding of one's body.

Broadly speaking, in humans, there are three gender identities: non-binary, woman, and man.

Gender Presentation

The way a person uses visual cues to signal a gender identity to others.

While gender presentation is commonly indicative of gender identity, they are not always aligned.

Gender Identity

Non-binary	Woman	Man
• People of any sex • People who do not statically identify with “woman” or “man” • Commonly used, traditional English pronoun series: they/them	• People of any sex • Cisgender women were assigned female at birth • Transgender women were assigned male at birth • Commonly used, traditional English pronoun series: she/her	• People of any sex • Cisgender men were assigned male at birth • Transgender men were assigned female at birth • Commonly used, traditional English pronoun series: he/him

Pronouns

Socially, the default pronoun series in English has historically been:

They/Them

If a person almost hits you with their car but you do not see them, you cry out: “Stop them! They almost killed me” not “Stop him or her! He or she almost killed me!”

“They” in its singular form in English has been in use in writing since the late 1300s. “You” is the plural second-person, developing separately as a replacement for the single, second-person “thou” during the same period.

Classic English pronoun series are:

They/Them/Theirs/Themselves – a non-binary series

She/Her/Hers/Herself – a feminine series

He/Him/His/Himself – a masculine series

Tips

Identify and use preferred personal pronouns and maintain notes that help you to remember.

If you are not certain of the proper pronoun to use, a bench conference or sidebar could be used to briefly check in with the noncitizen or other party.

Gender Presentation

Presentation of gender is highly cultural- and time-specific as related to dress, style, and behavior. Remember there is not a universal standard.

Though gender presentation often aligns with gender identity, the two can be different.

Drag

Gender expression.

Drag can be performed by anyone of any gender or sex.

Gender Presentation

Passing

When discussing gender, this term refers to the privilege of transgender people to present their true gender identity and be mistaken for cis.

Masking

When discussing gender, it is the skill of all transgender people to hide their true gender identity and not be seen as trans.

Pronouns

There are extensive and ever-evolving pronoun series.

Socially, pronoun protocol is a lot like the protocol around people's names.

- The only way to know the correct pronoun is to ask or be told.
- Like nicknames, some people go by more than one series.

Accidentally misgendering someone by using the incorrect pronoun is akin to using the wrong name. It happens and is inaccurate. Best practice is to apologize and move on with the correct pronoun.

Intentionally misgendering someone erases the concept of gender to assert a replacement authority.

Tips

Do not make assumptions about anyone's sexual orientation or gender identity.

Substitute gender-neutral language – they/them or the relevant noun (e.g., "the respondent" or "the witness").

Gender Presentation - Transitioning

Social Transitioning	Publicly, socially incorporating as many aspects of gender identity as is possible (e.g. pronouns, new name) • May include legal elements, depending on the society in question (e.g. changing gender markers on government documents)
Medical Transitioning	Gender confirming, medical processes to shift the hormones and/or anatomy in a person's body • Hormonal therapies – before/after biological puberty • Facial surgeries – in both feminization and masculinization versions • Top surgeries – surgery to address the chest • Bottom surgeries – surgery to address the genitals and/or gonads

Relationship to Others (Sexual Orientation)

Asexual

Asexual people do not experience various aspects of attraction.

Commonly, asexual people have little to no interest in the act of sex but desire emotionally intimate relationships.

Asexual people are neither celibate nor abstinent. Celibacy and abstinence requires an affirmative denial of a desire that asexual people do not have.

e.g., Aces, Aromantic

Sexual Orientation: Relationship to Others

Monosexual

Monosexual people experience attraction to primarily a single gender.

e.g., Gay, Lesbian, Straight, Toric, Trixic.

Multisexual/Bi+

Multisexual people experience attraction to more than a single gender.

Multisexual individuals are the largest sexual orientation minority.

Commonly, multisexual individuals face discrimination from both gay and straight people. The narrative that multisexual people are "half gay, half straight" leads to biphobia from both gay and straight people, which leads to bi-erasure.

e.g., Bisexual, Pansexual, Omnisexual, Polysexual

Sexual Orientation vs. Gender Identity

- Sex and gender are not synonymous
- Sexual orientation and gender identity are not synonymous

Sexual Orientation vs. Gender Identity

- Sex is the gender defined at birth based upon physical biology
  - Male
  - Female
  - Intersex
- Gender is how an individual identifies

Sexual Orientation vs. Gender Identity

- Sexual orientation is the gender to whom a person is attracted:
  - Heterosexual – attraction to different gender
  - Homosexual – attraction to same gender
  - Bisexual – attraction to more than one gender
  - Pansexual – attraction to all genders
  - Asexual – attraction to no gender

Sexual Orientation and Gender Identity Terminology

- Terminology important to understand claims in the proper context
- Clear and consistent use of terminology helpful

Sexual Orientation and Gender Identity Terminology

- Frame issues using appropriate terminology
- Take care to avoid stereotypes, conjecture, or inappropriate language

Tip

Be proactive in setting practice ground rules with all persons, creating a gender-neutral environment.

Starting Point: Recent Note to IJ

Doe v. Att'y Gen., 956 F.3d 135, 155 n.10 (3d Cir. 2020) (citations omitted)

"In case the BIA decides to remand to the IJ for any reason, we caution the IJ to exercise greater sensitivity when processing Petitioner's application, as we are troubled by some of the IJ's comments and questions. In addition to suggesting that Petitioner would be better off hiding his identity as a gay man, the IJ questioned him in explicit detail about his sexual relations with his partner, going so far as to ask about sexual positions. It is unclear why that line of questioning would be relevant to Petitioner's claim, but to the extent those questions were intended to establish or test his self-identification as a gay man, they were off base and inappropriate. We urge IJs to heed sensible questioning techniques for all applicants, including LGBTI applicants."

Fact-Finding and Analysis

(b) (5)

Tip

- (b) (5) [redacted]
- Be mindful of privacy concerns related to medical records, (b) (5) [redacted].

Inappropriate Inquiries

(b) (5) [redacted] *See, e.g.*, *Doe*, 956 F.3d at 155, n.10, citing:

- USCIS, RAIO Directorate – Officer Training: Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims 34 (Dec. 28, 2011) ("The applicant's specific sexual practices are not relevant to the claim for asylum or refugee status. Therefore, asking questions about 'what he or she does in bed' is never appropriate. If the applicant begins to volunteer such information, you should politely tell him or her that you do not need to hear these intimate details in order to fairly evaluate the claim.")

Tips

(b) (5)

[redacted]

Tip

(b) (5)

[redacted]

Inappropriate Inquiries

- UNHCR Sexual Orientation Guidelines ¶ 63.vii ("Detailed questions about the applicant's sex life should be avoided."); and

- Kimberly Topel, "So, What Should I Ask Him to Prove that He's Gay?": How Sincerity, and Not Stereotype, Should Dictate the Outcome of an LGB Asylum Claim in the United States, 102 IOWA L. REV. 2357, 2374 (2017) ("IJs who use stereotypes as a basis for their decisions and subject respondents to demeaning and irrelevant questioning about their sexuality do more than just risk excluding those who truly are refugees—the negative psychological effects on respondents in these situations have been well-documented.")

Questions about ability to "cover" or "hide" sexual orientation or gender identity are problematic.

***Lancaster v. Att'y Gen.*, 694 F. App'x 76 (3d Cir. 2017)** ("Lancaster asserts that the IJ exhibited bias by asking whether he could avoid harm in Guyana by concealing his sexual orientation or not having sex with men. We do not condone these questions or suggest that they could never give rise to a due process violation…[T]he IJ did ask questions that suggested 'problematic generalized assertions of her own.' … But these questions did not rise to the level of a constitutional violation because 'in the context of the record as a whole there is insufficient evidence to conclude that the overall proceedings were biased in violation of [Lancaster]'s right to due process.'").

But see cases discussing problems with basing analysis/denial on ability to cover or abstain.

Inappropriate "Demeanor" Findings

***Shahinaj v. Gonzales*, 481 F.3d 1027 (8th Cir. 2007)** (Substantial evidence did not support IJ adverse credibility finding where IJ discredited Shahinaj's claim that he was persecuted in Albania due to his homosexual orientation based on IJ's personal and improper opinion that Shahinaj did not dress or speak like or exhibit mannerisms of a homosexual, Shahinaj's lack of membership in Albanian homosexual organizations, and IJ's personal experience that majority of homosexual Albanian asylum applicants claimed persecution for being election observers).

***Todorovic v. U.S. Att'y Gen.*, 621 F.3d 1318 (11th Cir. 2010)** ("After thorough review, we conclude that the IJ's decision was so colored by impermissible stereotyping of homosexuals, under the guise of a determination on 'demeanor,' that we cannot conduct meaningful appellate review of that decision, or of the BIA's opinion essentially adopting it.").

Fundamental Fairness

***Ali v. Mukasey*, 529 F.3d 478 (2d Cir. 2008)** ("We believe [the IJ] clearly abrogated his 'responsibility to function as a neutral, impartial arbiter,' … when, without reference to any support in the record, he voiced stereotypes about homosexual orientation and the way in which homosexuals are perceived, both in the United States and Guyana.").

Unable or Unwilling Analysis

***Doe v. Att'y Gen.*, 956 F.3d 135, 146 (3d Cir. 2020)** (adopting Ninth Circuit's analysis):

"The absence of a report to police does not reveal anything about a government's ability or willingness to control private attackers; instead, *it leaves a gap in proof* about how the government would respond if asked, which the petitioner may attempt to fill by other methods." *Bringas-Rodriguez*, 850 F.3d at 1066 (quoting *Rahimzadeh v. Holder*, 613 F.3d 916, 922 (9th Cir. 2010) (emphasis in original)).

Unable or Unwilling Analysis

An applicant may "fill the evidentiary gap" in various ways:

1) demonstrating that a country's laws or customs effectively deprive the petitioner of any meaningful recourse to governmental protection,

2) describing [p]rior interactions with the authorities,

3) showing that others have made reports of similar incidents to no avail,

4) establishing that private persecution of a particular sort is widespread and well-known but not controlled by the government, or

5) convincingly establish[ing] that [reporting] would have been futile or [would] have subjected [the applicant] to further abuse.

Bringas-Rodriguez at 1066-67 (alterations in original) (internal quotation marks and citations omitted).

Tips

If necessary, work with your AAs/JLCs in drafting decisions that involve complex cases with challenging gender-sensitive matters.

Circuit Court Review – Tips for Engaging *Pro Se* Applicants

The Ninth Circuit, in particular, places a fairly robust duty on the IJ to develop a pro se applicant's testimony/claim. How/where do you draw the line between eliciting the pro se applicant's claim and becoming their advocate – especially where applicants may have experienced past harm from authority figures (e.g., police) based on LGBTQ+ identity or may otherwise be reluctant to discuss their identity?

Tips

(b) (5)

[redacted]

Nexus

Just general crime? Or was Petitioner targeted for crime on account of LGBTQ+ status?

***See, e.g., Bringas–Rodriguez v. Sessions*, 850 F.3d 1051, 1073 (2017) (en banc)** (rejecting government's arguments about sexual abuse of child as motivated by "perverse desire" rather than on account of a protected ground, where attackers made explicit statements about why they targeted him – for being "different").

E.g.*, (b)(6) *v. Barr (remanded by OIL last year). Bisexual woman alleged, inter alia, a rape during which her attacker said "it was a shame that [she] liked women, because [she] was very pretty," and that "what [she] needed was to learn how to be a woman." Agency said that the statements merely showed that the attacker was aware of her sexual orientation, not that the rape was on account of it.

"one central reason" vs. "a reason" Circuits?

Tips

- In considering a history of violence and harassment - How might a climate of discrimination affect the case at hand?

[redacted]

Identity vs. Acts

***Karouni v. Gonzales*, 399 F.3d 1163 (9th Cir. 2005)** ("[W]e see no appreciable difference between an individual, such as Karouni, being persecuted for being a homosexual and being persecuted for engaging in homosexual acts. The persecution Karouni fears, regardless of how it is characterized by the Attorney General, qualifies as persecution on account of ... Karouni's membership in the particular social group of homosexuals.").

Internal Relocation

***Doe v. Att'y Gen.*, 956 F.3d 135, 154 (2020)**

"The IJ found that there was no indication that Petitioner "would not be safe from his family if he relocated to another part of Ghana." JA25. That finding is based on unreasonable presumptions and a misunderstanding or mischaracterization of relevant evidence. Petitioner has reason to believe his father is still looking for him. Nothing in the record suggests that his father cannot travel freely around the country in search of Petitioner. Considering that Ghana's criminalization of same-sex male relationships is country-wide, and that 'widespread,' JA183, homophobia and anti-gay abuse is a 'human rights problem,' JA173, relocation is not an effective option for escaping persecution."

Internal Relocation Cont'd

***Doe v. Att'y Gen.*, 956 F.3d 135, 154 (2020)**

"Nor is it a reasonable solution. Relocation is not reasonable if it requires a person to 'liv[e] in hiding.' *Agbor v. Gonzales*, 487 F.3d 499, 505 (7th Cir. 2007); *accord Singh v. Sessions*, 898 F.3d 518, 522 (5th Cir. 2018)("The case law is clear that an alien cannot be forced to live in hiding in order to avoid persecution."). To avoid persecution now that he has been outed, Petitioner would have to return to hiding and suppressing his identity and sexuality as a gay man. Tellingly, the IJ's observation, no matter how ill-advised, that Petitioner could avoid persecution and live a 'full life' if he kept 'his homosexuality a secret,' JA25, was a tacit admission that suppressing his identity and sexuality as a gay man is the only option Petitioner has to stay safe in Ghana. The notion that one can live a 'full life' while being forced to hide or suppress a core component of one's identity is an oxymoron."

Tips

Family Ties – Be aware that family relations can become far more complicated when the family does not accept the applicant's or respondent's sexual orientation or gender identity.

Country Conditions Evidence

Did the agency overemphasize existence/passage of protective domestic laws rather than effective enforcement of those laws?

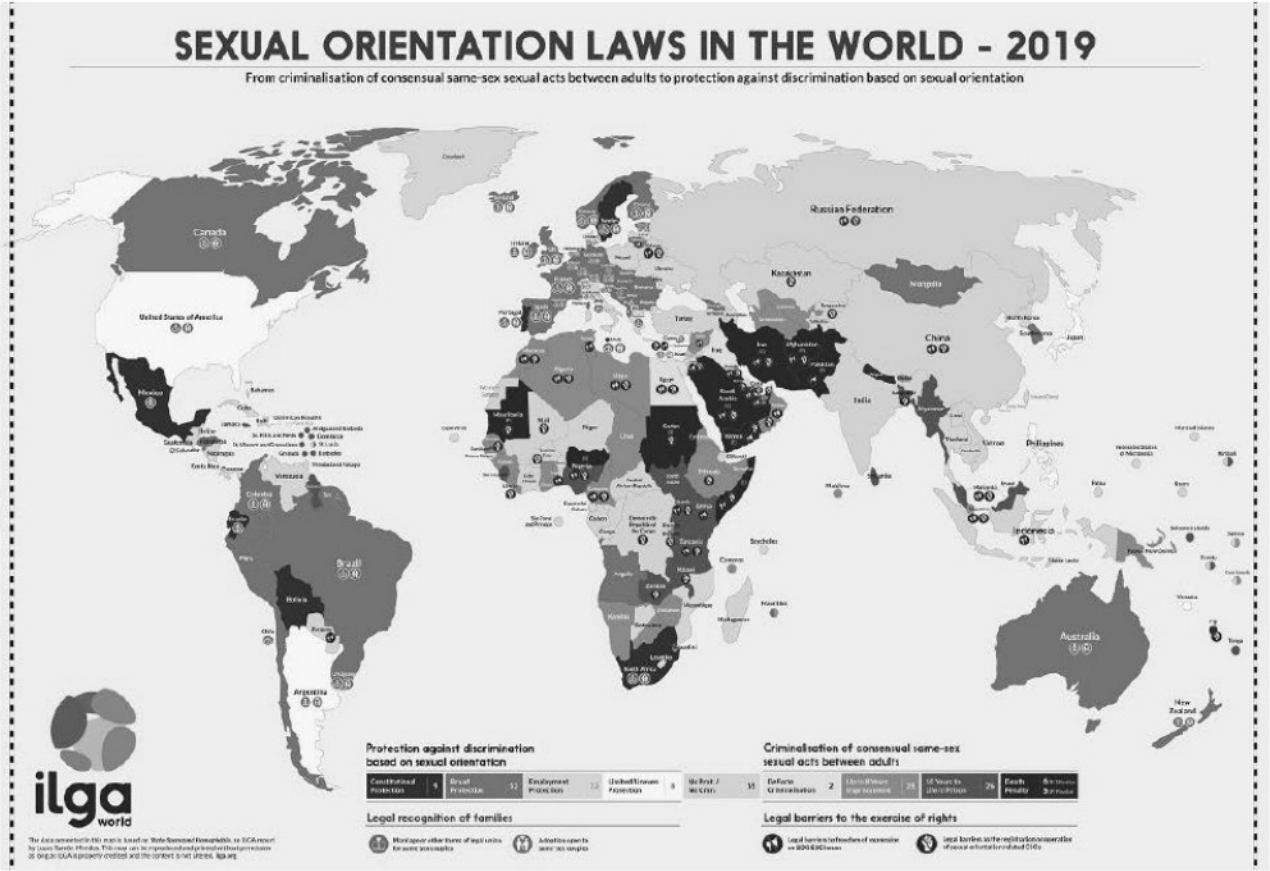
See, e.g., *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051 (9th Cir. 2017) (en banc), criticizing panel's overemphasis on laws as opposed to practices;

- Many anti-discrimination efforts were at national level and do not necessarily reflect state or municipal practices
- Newspaper article in record reported that "'review of more than 70 newspapers in 11 Mexican states' revealed an increase from 'an average of nearly 30 killings between 1995 and 2000' to nearly '60 a year between 2001 and 2009'"
- Panel "falsely equated legislative and executive enactments prohibiting persecution with on-the-ground progress."

Tips

(b) (5)

[redacted]


SEXUAL ORIENTATION LAWS IN THE WORLD - 2019
From criminalisation of consensual same-sex sexual acts between adults to protection against discrimination based on sexual orientation
Canada
United States of America
Russian Federation
China
Brazil
Australia
Indonesia
Protection against discrimination based on sexual orientation
Criminalisation of consensual same-sex sexual acts between adults
Legal recognition of families
Legal barriers to the exercise of rights
ilga world

Tips

Documents –

The rules for changing gender expression on identity documents are not uniform. Be mindful that sometimes, making changes requires legal or medical approvals. (b) (5)

(b) (5)

Tips

In hearings and in decisions, be mindful of making assumptions. For example, these are the types of statements that have resulted in remands:

- You cannot be homosexual if you were previously married (in a heterosexual marriage).
- You said that you were gay but now you are now saying that you are transgender.
- You do not look/dress/act homosexual so you should not have a problem returning to home country.
- You say you are close to your family but you did not tell them you were homosexual until recently/after you told other people (pastor, friends)/at all.
- You cannot be homosexual if you are the parent of a child from a heterosexual relationship.

Tips

Recognize that gender-sensitive issues can be an element of more than the "particular social group" ground and that there can be overlap between the protected grounds in such cases.

(b) (5)

[redacted]

The End

United States Department of Justice • Executive Office for Immigration Review
Office of Policy • Office of Legal Access Programs & Legal Education and Research Services Division

LOPC & Pro Bono List

Steven Lang, Chief, Office of Legal Access Programs

Caitlin Brazill,
Attorney Advisor & Program Manager,
Legal Orientation Program for Custodians of Unaccompanied Children,
Legal Education and Research Services Division

June 9 - 11, 2021
2021 EOIR Legal Training Program

Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC)

- Statutorily Authorized under TVPRA Section 235(c)(4), in cooperation with HHS Office of Refugee Resettlement
- Launched in October 2010 and carried out under contract with Vera and through subcontracts with NGOs
- Currently at 15 sites
  - Also operating LOPC National Call Center and Call Center-West

How LOPC Works

Educates adult caregivers (custodians) via presentations and other services on:

- Immigration court process
- Importance of a child attending hearing and consequences of failure to appear
- Forms of relief available to children
- Custodian's responsibility in protecting child

LOPC Primary Services

LOPC Presentations:

- Group Orientations
  - In-court (with local immigration court coordination)
  - In-office
- Individual Orientations
- Telephonic Orientations
- Self-Help Workshops

LOPC Secondary Services

Other LOPC services:

- Assist in finding counsel for child
- Ensure COA/COV properly filed with court
- Serve as Friend of Court in discretion of IJ
- Address non-legal social services needs
  - School enrollment
  - Mistreatment, exploitation, and trafficking

LOPC Call Center

- Sets up appointments for custodians near LOPC sites
- Mails informational packets to custodians not near LOPC sites
- Telephonic Orientations
  - Monday – Friday
  - 9 a.m. – 8 p.m. (EST)
  - (888) 996-3848

List of Pro Bono Legal Service Providers

- Provided to all individuals in immigration proceedings. 8 C.F.R. § 1003.61 et seq. (80 Fed. Reg. 59503).
- Central to EOIR's efforts to improve the amount and quality of representation before its adjudicators.
- Essential tool to inform individuals in proceedings before EOIR of available pro bono legal services.
- Juvenile Docket Pro Bono Lists can be created to attract more pro bono providers.
- Published quarterly (January, April, July, and October).

Pro Bono List (continued)

Who can get on the List?

- Non-profit organizations and attorneys who have committed to providing at least 50 hours per year of pro bono legal services before the immigration court location where they appear on the List.
- Pro bono referral services that refer individuals in immigration court proceedings to pro bono counsel.

Pro Bono legal services are "those uncompensated legal services performed for indigent aliens or the public good without any expectation of either direct or indirect remuneration, including referral fees (other than filing fees or photocopying and mailing expenses)." 8 C.F.R. § 1003.61(a)(2).

Pro Bono List (continued)

- Permits public comment on pending applicants
- Providers must reapply every 3 years
- Not to be used by organizations or attorneys for the purpose of solicitation for paid legal services.

Technical Assistance

- We here as a resource, to help your staff develop ideas, to engage with pro bono groups, and to offer our experience with similar past efforts.

THANK YOU!

Unaccompanied Alien Children and Juveniles: Relief and Reporting Requirements

Rebecca L. Holt
Immigration Judge

Laura Robbins
Associate General Counsel

June 9 – 11, 2021
2021 EOIR Legal Training Program

Learning Objectives

- Distinguish between Child, UAC, Minor, Juvenile, and SIJ.
- Identify legal requirements that apply to UAC under the TVPRA, TVPA, and VAWA, and explain the key provisions as they relate to relief and trafficking issues
- Identify the requirements for T- and U-visas, Special Immigrant Juvenile Status and other forms of relief for juveniles.
- Identify guidance on managing/conducting juvenile hearings.
- Explain the reporting obligations for suspected abuse and trafficking of juveniles

Definitions/Terminology

Immigration law utilizes different terms in different contexts to distinguish non-adult respondents.

- Child: an unmarried individual under the age of 21. INA §§ 101(b)(1), (c)(1). Most relevant to visa petitions, adjustment of status, and cancellation of removal for non-permanent residents.
- Juvenile: an individual less than 18 years of age. 8 C.F.R. § 1236.3(a).
- Unaccompanied Alien Child (UAC): has a special meaning under the TVPRA and Homeland Security Act. 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(g).
- Special Immigration Juvenile (SIJ): an immigration classification available to certain individuals under the age of 21 who have been abused abandoned or neglected and meet other requirements. INA § 101(a)(27)(J)(i).
- Minor: the regulations mention the term "minor" in the context of rules governing service of process and in absentia orders for individuals under the age of 14. 8 C.F.R. § 236.2(a).

Unaccompanied Alien Children: Role of CBP/ICE

- Upon apprehension, DHS determines whether or not a juvenile is subject to removal and is unaccompanied.
- UACs are not subjected to expedited removal, but must be placed in removal proceedings. 8 U.S.C. § 1232(a)(2)(D)(i).
  - Exception: UACs from contiguous countries (Mexico/Canada) may be voluntarily returned to their countries if they pass a credible and trafficking screening conducted by DHS.
- Within 72 hours, DHS must transfer a UAC to the Department of Health and Human Services Office of Refugee Resettlement (ORR).
- Regulations just implemented required bond jurisdiction to be solely with HHS and not immigration judges (pursuant to *Flores III*, recently upheld in the 9th Circuit)

Unaccompanied Alien Children: Role of ORR

- ORR has exclusive authority over the care, custody, and placement of UACs. 8 U.S.C. § 1232(b)(1).
- ORR places the UAC in the least restrictive setting that is in the best interest of the child. ORR administers the program through a nationwide network of care-providers. 8 U.S.C. § 1232(c)(2).
- ORR is responsible for care and custody of children while case managers locate a family member or trusted adult, called a sponsor, to whom the child will be released. 8 U.S.C. § 1232(b)(1), (c)(3).
- Once released to a sponsor, the sponsor agrees to bring the UAC to immigration court.

Unaccompanied Alien Children and the TVPRA

- In 2008, Congress enacted the Trafficking Victims Protection and Reauthorization Act (TVPRA) which is a comprehensive statute that governs the apprehension, custody, and processing of unaccompanied alien children for removal proceedings. 8 U.S.C. § 1232 et. seq.
  - An unaccompanied alien child means a child who:

    (1) has no lawful immigration status in the United States;

    (2) has not attained 18 years of age; and

    (3) with respect to whom:

    (i) there is no parent or legal guardian in the United States; or

    (ii) no parent or legal guardian in the United States available to provide care and physical custody

    6 U.S.C. § 279(g)(2), Homeland Security Act of 2002

TVPRA continued

-TVPRA allows trafficking victims to bring civil action against violators in Federal Court

-Raises the age of cooperation with law enforcement for T-visa from 15 to 18

-Provides unmarried siblings of a victim under 18 may obtain T status upon showing of extreme hardship

-Siblings and children under 21 do not age out if T application is filed before 21

-Permits use of statements from law enforcement for cooperation requirement for T-visa

-Exempts public charge ground of inadmissibility for T applicants and AOS for T-visas

-Added aggravated felony provision

-Allows T-visa even if person unable to cooperate given physical or psychological trauma

-Extension of U-visas beyond 4 years for exceptional circumstances with EAD authorization

-T status may adjust without continuing cooperation with law enforcement with extreme hardship or under 18

TVPRA continued

-May adjust without GMC if disqualification caused by or incident to trafficking

-Waiver for fees may be granted

-Special rules were created for return of contiguous country nationals but prohibits return for severe forms for trafficking or at risk of trafficking

-Juveniles in custody of individual or entity appointed by state or juvenile court may apply for SIJ status

Unaccompanied Alien Children: Asylum relief

- In Immigration Court, UACs are entitled to certain rights and benefits under the TVPRA:
  - Asylum Jurisdiction: UACs are entitled to a non-adversarial adjudication of their asylum claim before USCIS even if in removal proceedings. INA § 208(b)(3)(C). See also *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018); *Harmon v Holder*, 758 F.3d 728 (6th Cir. 2014). Litigation ongoing on the issue of continued UAC status.
  - Asylum One Year Bar: One year bar does not apply to asylum applications filed by UACs. INA § 208(a)(2)(E). But see exceptions for limitations on timeliness.
  - Asylum Safe-Third Country Limitation: Safe-third country limitation does not apply to asylum applications filed by UAC.
  - Voluntary Departure: TVPRA waives departure bond/financial means requirement for UACs. 8 USC § 1232(a)(2)(D)(ii).

Unaccompanied Alien Children: Role of the Immigration Judge

- Legal Opinion, EOIR Office of General Counsel (Sept. 19, 2017) ("Immigration Judges may exercise their independent role to determine whether a respondent qualifies as a UAC when that determination bears on issues arising during the course of removal proceedings.")
- OCIJ, OPPM 17-03 Guidelines for Immigration Court Cases Involving Juveniles ("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."). But ongoing litigation regarding the Kim memo and whether a classification of UAC status is forever a UAC status classification.
- *Harmon v. Holder*, 758 F.3d 728 (6th Cir. 2014) ("TVPRA does not transfer initial jurisdiction over asylum applications filed by former unaccompanied alien children . . . The IJ therefore had jurisdiction to review asylum claim.")
- *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018) ("An Immigration Judge has initial jurisdiction over an asylum application filed by a respondent who was previously determined to be an unaccompanied alien child but who turned 18 before filing the application.")

Relief: Special Immigrant Juvenile Status

(1) Under 21, unmarried, and present in the United States

(2) Must obtain a juvenile court order with findings on:

Family Reunification: reunification with one or both of the child's parents and not viable to abuse, abandonment, neglect, or similar basis under state law;

Dependency or Custody: The child is dependent on the court, under the custody of a state agency or entity, or an individual or entity appointed by the court;

Best Interest: It would not be in the child's best interest to be returned to the child's (or his or her parent's) country of nationality or last habitual residence. Inherent conflict in many cases with what is best interest of child, whether it is not being returned to home country, or is to be with a parent who might be in proceedings and removed. But see tension with circuit cases determining the IJ had the authority to revisit whether a marriage is bona fide though there was an I-130 approval. *Wen Yuan Chan v. Lynch*, 843 F.3d 539 (1st Cir. 2016); *Agyeman v. INS*, 296 F.3d 871, 879 n.2 (9th Cir. 2002); INA § 101(a)(27)(J)

Relief: Special Immigrant Juvenile Status

Three-Step Process:

(1) Applicant must obtain state court dependency order;

(2) Applicant may petition USCIS for SIJ status (I-360);

processing times vary but can take up to 30 months

priority dates are moving forward but significant delays given limited visas each year

(3) Applicant may seek adjustment of status with the Court or USCIS if an arriving alien.

Special Immigrant Juveniles: Role of the Immigration Judge

- SIJ status is pursued outside of immigration court in state court and before USCIS; however, issues relating to SIJ status may arise during the course of removal proceedings.
- Continuances: No precedent decision directly on point. Also note PD has moved substantially with priority date for May at 9/1/18 and Mexico 3/15/19
  - But see *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018); PM 19-13
- *C.J.L.G. v. Barr*, 923 F.3d 622 (9th Cir. 2019) (en banc) (an IJ has a duty to advise about eligibility for SIJ when the facts before the IJ raise a "reasonable possibility that the juvenile could establish eligibility" for SIJ status).
- Adjustment of Status: If juvenile has obtained SIJ status and has pending removal proceedings, he or she must seek adjustment of status in Immigration Court, unless an arriving alien. 8 C.F.R. § 1245.2(a)(1)-(2).

Trafficking Victims Protection Act of 2000 (TVPA) T-Visa; U-Visa; Continuing Presence

- Passed on October 28, 2000
- Prior to the TVPA, no comprehensive Federal law existed to prevent human trafficking, to protect victims of trafficking, or to prosecute their traffickers.
- Established immigration relief for victims, including: Continued Presence, the T-visa, and the U-visa.

TVPA Goals

- Prevent human trafficking domestically and overseas
- Protect victims and help them rebuild their lives in the U.S. with Federal and state support
- Prosecute human traffickers under stiff Federal penalties

T-Visa

- Jurisdiction for adjudication lies with DHS/USCIS
- Four-year visa that gives the holder the right to live and work in the United States.
- T-visa holders are eligible to apply for lawful permanent residence ("green-card") after three years with the visa, or sooner if the related investigation or prosecution is complete.
- Current processing times for T-visa are 17 to 29 months

T-Visa Requirements

T-visa applicant must demonstrate the following:

- Is or has been a victim of a severe form of trafficking in persons;
- Is physically present in the U.S. on account of such trafficking, including if the applicant was allowed entry into the U.S. for participation in an investigation or judicial process associated with trafficking;
- Has complied (with some expectations) with any reasonable request for assistance in Federal, State, or local investigation or prosecutions of acts of trafficking related crimes (or that the victim has not attained 18 years of age);
- Would suffer extreme hardship involving unusual and severe harm in the event of removal.

T-Visa Derivative Status

The statute also provides for derivative status for certain family members.

- If the primary T-visa applicant (trafficking victim) is an adult over 21, any spouse or children under 21 of that applicant can apply as derivatives.
- If the primary T-visa applicant (trafficking victim) is under 21, their spouse, children, unmarried siblings under age 18 (at the time of application) and parents can apply for a T-visa as derivatives.
- In 2013, TVPRA expanded the derivative status designations to include grandchildren, stepchildren, nieces and nephews who "face a present danger of retaliation as a result of the…principal's escape from…trafficking or cooperation with law enforcement."

U-Visa

- Jurisdiction for adjudication lies with DHS/USCIS
- U-visa allows the recipient to receive nonimmigrant status to live and work in the United States for no longer than 4 years.
- They may apply to adjust status to become a lawful permanent resident (green card) after three years of continuous presence in the U.S. while having a U-visa.
- In addition to the eligibility requirements for a green card, they must show they did not unreasonably refuse to assist with the investigation or prosecution of the qualifying crime.

U-Visa Requirements

- Victim of a qualifying crime
- Suffered substantial physical or mental abuse as a result of having been a victim of the qualifying crime
- Has information about the criminal activity.
- Has been, is, or will be helpful to law enforcement in the investigation or prosecution of the crime.
- Crime occurred in the U.S. or violated U.S. laws
- Admissible to the U.S.
  - Please note: T- and U-visa applicants are eligible for a very liberal waiver of inadmissibility.

“Qualifying” Criminal Activity for U-visa

Violation of Federal, State, or local criminal law:

- Rape; torture; [human]trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; stalking; fraud in foreign labor contracting; or attempt; conspiracy or solicitation to commit any of the above-mentioned crimes.

U-Visa Derivative Status

- Immediate family members of U-visa recipient may also be eligible to live and work in the United States as derivative U-visa recipients based on their relationship to the primary recipient.
- Unmarried children under the age of 21 of primary U-visa recipients;
- Spouses of primary U-visa recipients;
- Parents of primary U-visa recipients under age 21; and
- Unmarried siblings under 18 years old of primary U-visa recipients under the age of 21.

U-Visa Availability

- U-visas are capped at 10,000 annually for principal petitioners
  - There is no cap for derivative family members
  - According to USCIS website, the processing time for a U-visa is currently 59 months (time from initial filing to waiting list determination).
- USCIS has reached the 10,000 visa cap every year since 2010.

Continued Presence (CP)

- Continued Presence (CP) is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking.
- CP allows trafficking victims to remain in the United States temporarily during ongoing investigation into the human trafficking – crimes committed against them.
- CP is initially granted for one year and may be renewed in one-year increments.

Source: http://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf

How is Continued Presence Requested?

- ICE, Federal Bureau of Investigation (FBI) and federal prosecutors from United States Attorney's Office (USAO) within the Department of Justice are authorize to submit CP applications.
- CP applications should be initiated immediately upon identification of a victim of human trafficking.

Who approves Continued Presence?

- Immigration and Customs Enforcement (ICE) Law Enforcement Parole Branch has the sole authority to approve or deny CP applications.
- Federal Law Enforcement official or assigned agency victim assistance coordinator can provide the victim or their representative updates on the status of pending CP applications.

Violence Against Women Act (VAWA)

- Passed in 1994. It marked the first comprehensive approach to violence against women.
- Applies to all victims of abuse regardless of gender.
- Among other things, VAWA created special provisions in immigration law to protect immigrant victims of abuse.
  - VAWA Self-Petition (Form I-360)
  - VAWA Cancellation (INA § 240A(b)(2))

VAWA Confidentiality 8 U.S.C. § 1367

- All employees of the Department of Justice are generally prohibited from permitting use by or disclosure to anyone other than a sworn officer or employee of DHS, DOS, or DOJ of any information relating to a beneficiary of a pending or approved application for victim-based immigration benefits, including a battered spouse or child hardship waiver, VAWA self-petition, VAWA cancellation, or T- or U-visas, including the fact that they have applied such benefits.
  - There are certain exception to the general nondisclosure requirement.
- Adverse determinations of admissibility or deportability against an alien cannot be made using information solely by a prohibited source, regardless of whether the alien has applied for VAWA benefits, or a T- or U-visa.

VAWA Self-Petition (Form I-360)

- Jurisdiction for adjudication lies with DHS/USCIS
- Special evidentiary standard is “any credible evidence”
- Eligibility
  - **Spouse**: If (s)he is or was abused by a USC or LPR spouse. Abusive USC/LPR spouse abused his/her child.
  - **Parent**: Parent who has been or is abused by USC son or daughter.
  - **Child**: If child is under 21, unmarried and has been abused by USC or LPR parent.
    - Please note: you may file an application after the age of 21 but before the age of 25 if the abuse was the main reason for delaying filing.

Other Forms of Relief for Juveniles

Other forms of relief exist for juveniles as they do for adults including

- I-130
- 42B
- Voluntary departure, with the noted exceptions discussed above

  provisions imposed for safe return and return under safeguards allowed
- Asylum, with the exceptions as noted above
- Withholding of Removal and CAT relief
- Adjustment of Status

Bars to Relief for Juveniles

Criminal bars continue to be the biggest exclusion to relief, except:

- A juvenile is not inadmissible if the crime was committed under age 18 and more than 5 years prior to the application for entry and visa. INA § 212(a)(2)(A)(ii)(I).
- An act on the part of the juvenile results in delinquency determination, which is not a crime and therefore renders respondent not inadmissible. *Matter of Ramirez Rivero*, 18 I&N Dec. 135 (BIA 1981); 22 C.F.R. § 40.21(a)(2)

We look to the Federal Juvenile Delinquency Act at 18 U.S.C. section 5031-50 to determine whether the result is delinquency or conviction.

Bars to Relief, continued

Other bars include the usual bars to relief that we see in adult applications, including particularly serious crimes; aggravated felonies, presence bars and other bars to eligibility that generally exist

Child Abuse and Neglect Reporting Protocol Training

Protocol applies to all juveniles, unless otherwise required by law.

- A juvenile is an alien under the age of 18. *See* 8 CFR § 1236.3.
- Includes UACs and children apprehended with a parent.

Federal Definition of Child Abuse and Neglect

- Any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation; **or**
- An act or failure to act which presents an imminent risk of serious harm.

Federal Child Abuse Prevention and Treatment Act (CAPTA)

State Definition of Child Abuse and Neglect

- CAPTA's definition sets a minimum standard for child abuse and neglect, but many states' definitions are higher.

- Generally, states' definitions recognize four types of mistreatment:
  - Neglect
  - Physical abuse
  - Sexual abuse
  - Emotional abuse or neglect

Identifying Abuse and Neglect

Common Types of Physical Abuse:

• Hitting/Punching • Kicking • Beating • Biting • Shaking	• Throwing • Stabbing • Choking • Hitting • Burning

Common Types of Neglect:

- Physical neglect: Failure to provide basic necessities
- Child abandonment/runaways
- Inadequate supervision
- Educational neglect – failure to enroll in school or ensure that child attends school regularly
- Emotional neglect – ignoring, rejecting, isolating
- Medical neglect – failure to provide adequate health care although financially or otherwise able to do so
- Working against state minimum age requirements

Common Types of Sexual Abuse:

• Fondling • Lewd and lascivious behavior • Intercourse • Sodomy • Oral sex	• Penetration of genital or anal opening • Child pornography • Child prostitution • Other sexual conduct harmful to the child's wellbeing

Common Types of Emotional Abuse:

- Constant blaming
- Verbally assaulting/berating
- Belittling
- Extremely unpredictable responses of caregiver
- Ignoring child
- Rejecting child

- Emotional deprivation by withholding affection, attention or approval
- Caregiver's unreasonable demands
- Threats/terrorizing
- Corrupting or exploiting (encouraging destructive, illegal or antisocial behavior

Mandatory Reporters:

All EOIR personnel must report child abuse or neglect if required by state law.

Mandatory Reporters:

The following jurisdictions require everyone to report child abuse or neglect:

- Florida
- Idaho
- Indiana
- Kentucky
- Maryland
- Mississippi
- Nebraska
- New Hampshire
- New Jersey
- New Mexico
- North Carolina
- Oklahoma
- Puerto Rico
- Tennessee
- Texas
- Utah

Mandatory Reporters:

Other Categories:

- Attorneys
- Judges
- Public employees

Mandatory vs. Permissive Reporting

- All states allow anyone to report, even if they do not require it
- EOIR employees are strongly encouraged to report if they do not fall into a mandatory reporting category
- **Appendix B** contains a chart which outlines every state, territory, and Washington DC's requirements for mandatory reporting

Appendix B:

State	What is the standard for reporting? [4]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?
Florida	"knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected . . . or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care" or "who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender," Ann. Stat. §39.201(1)	Yes- "Any person . . . shall report," Ann. Stat §39.201(1)(a)	Judges must provide name when reporting, Ann. Stat. § 39.201(1)(d)	N/A

Hypothetical 1:

Immigration Judge Brad Burgundy is presiding over a juvenile master calendar docket at the Miami Immigration Court. A 12-yr-old UAC tells him that he has not attended school in 4 months and works two jobs to help his sponsor pay rent.

- Is Judge Burgundy required to report?

Attorney Ethical Obligations:

Failure to report may also be professional misconduct based on "conduct that is prejudicial to the administration of justice" if it hinders another judicial proceeding, such a child welfare proceeding. Model Rules 8.4(d).

Immigration judges and other EOIR attorneys are encouraged to consult with PRAO or their state bar for further guidance.

Appendix B:

State	What is the standard for reporting?[3]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?
Connecticut	"reasonable cause to suspect or believe that any child under the age of 18 is in danger of being abuse, or has been abused or neglected", Gen. Stat. §17a-103(a)	No- Gen. Stat. § 17a-101(b)	No	"any other person having reasonable cause to suspect or believe . . . may cause a written or oral report to be made" Gen. Stat. § 17a-103(a)

Hypothetical 2:

Immigration Judge Aiden Aisley is presiding over a juvenile master calendar docket at the Hartford Immigration Court. A 12-yr-old UAC tells him that he has not attended school in 4 months and works two jobs to help his sponsor pay rent.

- Is Judge Aisley required to report?

Mechanics of Reporting

First steps:

1. Individual identifying abuse or neglect fills out Form in Appendix A
2. Provide Form to Court Administrator

Appendix A

Child Abuse or Neglect Referral Form

Name of potential victim:

Address:

Phone Number: A-number:

Country of origin: Date of birth:

Language(s) spoken:

Attorney name:

Attorney address:

Attorney phone number:

Parent/sponsor/guardian name:

Parent/sponsor/guardian address:

Parent/sponsor/guardian phone number:

Why do you believe this person is a child abuse or neglect victim?

Are there any additional safety concerns? If so, please explain:

Additional Information:

Name of person making referral:

Phone: Date:

Referral email address:

During East Coast Business Hours: 8 am – 5 pm EST

- CA calls OGC Duty Attorney
  - 703-305-0470
- Duty Attorney will provide guidance on reporting

Outside of East Coast Business Hours: 8 a.m. – 5 p.m. EST

- First, determine if it is an emergency

  Emergency = An immediate threat to a child's safety

- If it is NOT an emergency, wait until the next business day and call the OGC Duty Attorney for assistance

Outside of East Coast Business Hours: 8 a.m. – 5 p.m. EST - UACs

- If it **IS** an emergency:
  - If the child **is a UAC**,
    - CA should call ICE Homeland Security Investigations (HSI Tip Line)
      - CA should use Form in Appx A to provide information
      - Tip Line Analyst will contact a Victim Assistant Specialist or ERO Juvenile Coordinator who will come to court to interview the UAC and coordinate with ERO or HHS to take the child back into custody.

Outside of East Coast Business Hours: 8 a.m. – 5 p.m. EST - NON UACs

- If the child is **NOT a UAC**
  - Report must be made to state child protective services (CPS) OR law enforcement.
  - Considerations:
    - Are there confidentiality issues?
    - Should I report to Law Enforcement or CPS?
    - Is there an institutional or individual reporting requirement?
    - Is there a time frame for reporting?

Outside of East Coast Business Hours: 8 a.m. – 5 p.m. EST - NON UACs

Confidentiality: VAWA (8 USC § 1367)

- Prohibits disclosure of information outside of EOIR that relates to a U-Visa, T-Visa, or VAWA application
  - Exception: May be disclosed to **law enforcement** for a legitimate law enforcement purpose if done "in a manner that protects the confidentiality of such information."

Outside of East Coast Business Hours: 8 a.m. – 5 p.m. EST - NON UACs

Confidentiality: Asylum (8 CFR § 1208.6)

- Prohibits disclosing information contained in or pertaining to an asylum application, or records pertaining to a credible/reasonable fear determination
  - Exception 1: Written consent of an adult applicant (but DO NOT ask if the adult is the suspected abuser) OR
  - Exception 2: Disclosure is made to **federal law enforcement** (e.g., ICE)

Outside of East Coast Business Hours: 8 a.m. – 5 p.m. EST - NON UACs

Institutional vs. Individual Reporting

- Some states require that the individual who encounters the abuse/neglect report
- If there is no requirement, CA reports
- If required, person encountering abuse reports

Outside of East Coast Business Hours: 8 a.m. – 5 p.m. EST - NON UACs

Time frame to report

- Some state laws have requirements
- E.g., “Immediate” or “within 24 hours”

Appendix B

State	What is the standard for reporting? [4]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or Child Protective Services?
Florida	"knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected . . . or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care" or "who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender," Ann. Stat. §39.201(1)	Yes- "Any person . . . shall report," Ann. Stat §39.201(1)(a)	Judges must provide name when reporting, Ann. Stat. § 39.201(1)(d)	N/A	Immediately, § 39.201(2)	Yes: "Nothing in this chapter...shall be construed to remove or reduce the duty and responsibility of any person . . . to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child," Ann. Stat. § 39.201	Statewide toll-free telephone number for the Department, Ann. Stat § 39.201(2)

Reminder:

For all cases of suspected child abuse or neglect:

- Email Appx A to OGC: Laura.Robbins@usdoj.gov
- Inform supervising ACIJ and IJ assigned to case (if not already involved)

Attorney Ethical Obligations:

Client confidences:

- Attorneys are prohibited from "revealing information relating to the representation of a client unless the client gives informed consent . . ."
- Appendix C: Authorization for Release of Confidential Information

Attorney Ethical Obligations:

Ex parte communication: EOIR's Ethics and Professionalism Guide for Immigration Judges allows for ex parte communication for "emergency purposes" if:

- The communication does not involve substantive matters
- The judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the communication

EOIR Trafficking Referral Protocol

According to the Trafficking Victims Protection Act (TVPA) of 2000, children are considered as being subject to "severe forms of trafficking in persons" when they are:

1. Induced into committing commercial sex acts; or
2. Forced to perform labor or services in conditions that constitute involuntary servitude, peonage, debt bondage, or slavery through force, fraud, or coercion.

TVPA § 103(8); 22 U.S.C. § 7102(9).

Reporting Requirements for a Suspected Trafficking Victim

- The TVPA requires DOJ personnel to be trained in identifying and providing protection to victims of trafficking. TVPA § 107(c).
- In 2000, the DOJ created a referral unit to assist victims of trafficking and to report potential traffickers.
- To report a suspected victim or perpetrator of trafficking, fill out Appendix C of the EOIR Trafficking Protocol.
  - The Court Administrator should email the form to DOJ's Trafficking Intake Coordinator:

    coordinator.trafficking@usdoj.gov and provide a copy to Laura Robbins, Associate General Counsel, laura.robbins@usdoj.gov

Questions?

Identification and Referral of Potential Child Abuse and/or Neglect Victims before the Executive Office for Immigration Review

May 23, 2017

Table of Contents

I. PURPOSE

Congress has recognized that "substantial reductions in the prevalence and incidence of child abuse and neglect and the alleviation of its consequences are matters of the highest national priority."[1] Child abuse and neglect have both immediate and life-long consequences for the child. Over 1,500 children die in the United States from child abuse and neglect each year, and most of those children are under the age of five. Immediate impacts include many types of physical harm, including death, while long term impacts can range from failure to thrive, delayed development, health issues and decreased life expectancy, learning disabilities, depression, and other psychological issues.[2]

All states, the District of Columbia (DC), and territories have laws for reporting child abuse and neglect to state or local officials. Further, some states require attorneys or other relevant categories of people, such as employees of public agencies, to report child abuse and neglect. There has been an exponential rise in the number of minor respondents in the immigration courts, including a significant increase in the number of unaccompanied children (UAC). This protocol is intended to provide immigration judges, Board of Immigration Appeals Members, and other Executive Office for Immigration Review (EOIR) personnel with tools to identify child abuse and neglect, and steps to take if they believe they have encountered such a victim.

The protocol contains resources to address both emergency and non-emergency situations for reporting child abuse and/or neglect. For purposes of this protocol, an emergency is defined as an immediate threat to a minor's safety. If EOIR personnel encounter someone they believe to be a victim of child abuse/or neglect, they may be required to report under the state's laws or ethical consideration for their license. If not required to report, EOIR personnel are strongly encouraged to report the instance consistent with this protocol.

II. BACKGROUND

A. Definition of child abuse and neglect

The Federal Child Abuse Prevention and Treatment Act (CAPTA) defines child abuse and neglect as follows:

- Any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or
- An act or failure to act which presents an imminent risk of serious harm.[3]

The CAPTA definition sets a minimum standard for child abuse and neglect, but many states have

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[1] Child Abuse Prevention and Treatment Act § 2, 42 U.S.C. § 5101, Note.
[2] Childhelp, Child Abuse Statistics and Facts, *available at* https://www.childhelp.org/child-abuse-statistics/; Center for Disease Control, *Adverse Childhood Experiences*, *available at* http://www.cdc.gov/violenceprevention/acestudy/.
[3] CAPTA § 3, Pub.L. 111-320.

adopted more stringent definitions. CAPTA defines a child as an individual who is under eighteen years of age.[4]

It is important to note that each state has its own definitions for abuse and neglect located in the state's criminal or civil statutes, and child abuse and neglect cases are most often prosecuted under a state's statutes, not the federal one. Generally, state statutes recognize four types of maltreatment: neglect, physical abuse, sexual abuse, and emotional abuse or neglect.

B. Definitions of child, juvenile, and unaccompanied alien child

A child is defined in the Immigration and Nationality Act (INA) as an "unmarried person under 21 years of age." INA § 101(b)(1). Further, a juvenile is defined in 8 CFR section 1236.3 as an alien who is under eighteen years old. An unaccompanied alien child is defined as a child who:

- Has no lawful immigration status in the United States;
- Has not attained 18 years of age; and
- For whom:
    - There is no parent or legal guardian in the United States, or
    - No parent or legal guardian in the United States is available to provide care and physical custody.[5]

Typically, DHS makes a determination of UAC status for a child who is in removal proceedings. For purposes of reporting child abuse and/or neglect, DHS' designation of a child as a UAC, or lack thereof, controls. This protocol outlines specific steps when a UAC is identified as a victim of abuse and/or neglect.

Unless otherwise noted or required by law, the protocol applies to all juveniles under the age of eighteen, including children who are apprehended with a parent (i.e., children who are accompanied).

C. Identifying abuse and neglect

There are many indicators of child abuse or neglect. The following are the most common types of abuse and symptoms to look for, divided by type of abuse.[6] Many may not be readily apparent to immigration court staff or judges, as their encounters with a child may be brief and it may be difficult to notice changes in behavior or appearance over time. Also, symptoms may vary for children of different ages.[7] The following is intended to give EOIR personnel a general

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[4] *Id.*

[5] Trafficking Victims Protection Reauthorization Act (TVPRA) § 235(g); 6 U.S.C. § 279(g)(2)., Pub. L. 110-457 (2008).

[6] *See* Department of Justice, Federal Bureau of Investigation, *When You Suspect Child Abuse or Neglect*, *available at* https://www fbi.gov/stats-services/victim_assistance/brochures-handouts/when-you-suspect-child-abuse-or-neglect.

[7] *See* Department of Justice, Office for Victims of Crime, Training and Technical Assistance Center, *Child Abuse and Neglect*, p. 7, *available at* https://www.ovcttac.gov/downloads/views/TrainingMaterials/NVAA/Documents_NVAA2011/ResourcePapers/Color_Child%20Abuse%20Resource%20paper%202012_final%20-%20508c_9_13_2012.pdf.

understanding of the different types of child abuse and neglect, as well as some of the common symptoms exhibited by children. For a more extensive explanation of the types of abuse and symptoms, please refer to the resources located at the end of the protocol.

1. Common types of physical abuse:

• Hitting/Punching • Kicking • Beating • Biting • Shaking	• Throwing • Stabbing • Choking • Hitting • Burning

Symptoms of physical abuse:

- Frequent injuries, such as bruises, cuts, black eyes, or burns, particularly when the child cannot adequately explain their cause
- Burns or bruises in an unusual pattern that may indicate use of an object or human bite, bondage marks on wrists or ankles, or gag marks around the mouth
- Cigarette burns on any part of the body, or unusual patterns of scalding
- Injuries that are unusual for a child's age (particularly fractures in children under 4)
- Defensive injuries on the backs of arms or hands
- Complaints about pain without signs of injury, which may indicate internal injuries or injuries covered by clothing
- Aggressive, disruptive, or destructive behavior
- Lack of reaction to pain
- Passive, withdrawn, or emotionless behavior
- Fear of going home or seeing parents, family members, or others who know the child
- Unseasonable clothing to hide injuries on arms or legs

2. Common types of neglect:

• Physical neglect: Failure to provide basic necessities • Child abandonment/runaways • Inadequate supervision • Educational neglect- failure to enroll in school or ensure that child attends school regularly	• Emotional neglect- ignoring, rejecting, isolating • Medical neglect- failure to provide adequate health care although financially or otherwise able to do so • Working against state minimum age requirements

Symptoms of neglect:

- Obvious malnourishment
- Consistently dirty, torn/dirty clothes, severe body odor
- Obvious fatigue and listlessness
- A child left unattended for long periods of time
- Unattended medical, dental, or vision needs
- Stealing or begging for food
- Frequent absences or tardiness at school (or failure to enroll or attend school for children who are legally required to attend)
- Lack of sufficient clothing for winter

3. Common types of sexual abuse:

• Fondling • Lewd and lascivious behavior • Intercourse • Sodomy • Oral sex	• Penetration of genital or anal opening • Child pornography • Child prostitution • Other sexual conduct harmful to the child's wellbeing

Symptoms of sexual abuse:

- Difficulty walking or sitting
- Sudden change in behavior or school performance
- Sudden change in appetite
- Refusal to participate in physical activities
- Extreme fear of being alone with adults, particularly of one gender
- Sexually suggestive, age inappropriate or promiscuous behavior
- Nightmares or bed-wetting
- Knowledge of sexual relations beyond what is appropriate for a child's age
- Sexual victimization of other children
- Complaints of painful urination
- Pregnancy or venereal disease, particularly in children under 14

4. Common types of emotional abuse:

• Constant blaming • Verbally assaulting/berating • Belittling • Extremely unpredictable responses of caregiver • Ignoring child • Rejecting child	• Emotional deprivation by withholding affection, attention or approval • Caregiver's unreasonable demands • Threats/terrorizing • Corrupting or exploiting (encouraging destructive, illegal or antisocial behavior)

Symptoms of emotional abuse:

- Emotional withdrawal
- Depression/apathy
- Attempted suicide
- Overly compliant behavior
- Fear regarding not following exact instructions
- Acting out in negative ways to get attention

D. Mandatory Reporters

All EOIR employees must report child abuse and neglect in accordance with state law. As noted above, all states, the District of Columbia (DC), and territories have laws for reporting child abuse and neglect to state or local officials. Each state, DC, and the territories require that certain categories of individuals report child abuse and neglect, such as teachers, social workers, or

emergency personnel (called mandated reporters). Many states also require that all individuals located in the state report, regardless of their professional status.

Further, some states require attorneys or other relevant categories of people, such as employees of public agencies, to report child abuse and neglect. For example, Nevada law states that an attorney "who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall . . . report the abuse or neglect" to child welfare services or law enforcement.[8] Ohio and Oregon also maintain statutory requirements that require attorneys to report.[9] There are civil and/or criminal penalties that attach if a mandatory reporter fails to report. If the mandatory reporting requirements do not apply, every state has a law that permits reporting.

Attached in Appendix B is a chart listing all of the mandatory or permissive reporting requirements by state. The chart includes the standard for reporting, who is a mandated reporter in each state, and whether there is an individual reporting duty or whether the EOIR employee may report the abuse and/or neglect concern to a supervisor or another individual within EOIR and have that person make a report on behalf of the institution (called "institutional reporting").

E. Special considerations: Confidentiality and Ethical Obligations

1. Confidentiality

EOIR personnel are permitted to release information about suspected child abuse or neglect victims to law enforcement or child protection services pursuant to state law, subject to the confidentiality requirements set out below. The Director of EOIR has provided a waiver to permit release of information that is contained in the records of proceedings, was disclosed at a hearing, or was otherwise learned through the course of an EOIR employee in their official capacity. *See* Appendix C. The following subparts outline the confidentiality provisions in the asylum regulations and Violence Against Women Act (VAWA) that all EOIR employees must follow when releasing such information.

a. VAWA Confidentiality: 8 U.S.C. § 1367

VAWA prohibits any federal employee from disclosing information outside of his or her agency that relates to an applicant for a U Visa, a T Visa, or VAWA relief under sections 204(a)(1) or 240A(b)(2) of the INA.[10] However, EOIR employees are permitted to disclose this information to a law enforcement official to be used solely for a legitimate law enforcement purpose if the disclosure is done in a "manner that protects the confidentiality of such information."[11] Therefore, if the information leading an EOIR employee to believe that a minor is the victim of child abuse and/or neglect is related to a petition for VAWA, U Visa, or T Visa,

[8] Nevada Rev. Stat. (NRS) § 432B.220.
[9] Ohio Rev. Code § 2151.421; Oregon Rev. Stat. §§ 419B.005, 419B.010.
[10] 8 U.S.C. § 1367(a)(2).
[11] 8 U.S.C. § 1367(b)(2). There is also an exception under 8 U.S.C. § 1367(b)(4) that allows for a waiver of confidentiality by the battered individual, but it only applies if all battered individuals in the case are adults, which would necessarily not be the case when reporting child abuse or neglect.

that information may not be disclosed to a state's child protective services. Instead, the EOIR employee will need to report the suspected abuse to law enforcement, such as the local police or ICE.

b. Asylum Confidentiality: 8 CFR § 1208.6

The regulations governing asylum adjudications have similar confidentiality provisions. EOIR employees are prohibited from disclosing any information contained in or pertaining to an asylum application, or records pertaining to a credible fear or reasonable fear determination. EOIR employees also may not disclose the fact that the individual has applied for asylum, or received a credible or reasonable fear interview. Such information may be disclosed with the written consent of the applicant or for any federal investigation concerning any criminal or civil matter. Therefore, to the extent that information about a child abuse situation is "contained in" or "pertaining to" an asylum application, or if disclosure of the child abuse situation cannot be made without disclosing the fact that an individual has applied for asylum, disclosure is only permitted if written permission is obtained from an adult asylum applicant or if the disclosure is made to federal law enforcement, such as Immigration and Customs Enforcement (ICE) or the Federal Bureau of Investigations (FBI). Disclosure would not be permitted to state child protective services, or state or local law enforcement, without the written consent of an adult asylum applicant. However, care should be made in determining whether to seek permission from an adult asylum applicant if the adult is suspected of causing the abuse or neglect to the child, or if their interests are otherwise not in line with the child's.

2. Attorney ethical obligations

There are many attorney ethical issues that arise when dealing with reporting child abuse and neglect, and this section is intended to highlight some of the main concerns. The information presented here is based on general advice from the Department of Justice's Professional Responsibility Advisory Office (PRAO), using the American Bar Association (ABA) Model Rules of Professional Responsibility (Model Rules). The Model Rules are not binding on Department attorneys, but are general guidelines that most state Rules of Professional Responsibility follow. Immigration Judges and other EOIR attorneys are encouraged to consult with PRAO for advice about the specific professional responsibility and ethical obligations for the state(s) in which they are licensed and practice. PRAO can be reached by sending an email to: DOJ.PRAO@usdoj.gov.

a. Mandated reporting laws

If an attorney is a mandated reporter, and the state's reporting statute carries criminal sanctions for failure to report, it may be professional misconduct for an attorney to fail to report child abuse or neglect if such failure would constitute a "criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."[12] Further, a failure to report could be considered professional misconduct based on "conduct that is prejudicial to the administration of justice," as it could hinder the administration of justice in another proceeding, such as one for child abuse or child custody.[13]

[12] Model Rule 8.4(b).
[13] *Id.* 8.4(d).

b. Client confidences

Under Model Rule 1.6(a), Department attorneys are prohibited from "reveal[ing] information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b)." For Department attorneys, the client is considered to be the United States. Therefore, Immigration Judges and other attorneys at EOIR provide representation to the "client" during the normal scope of their duties. A client confidence is defined broadly, and includes "not only matters communicated in confidence by the client but also to all information relating to the representation, whatever its source."[14] Therefore, information learned from a respondent or another during a hearing would be considered confidential information.

EOIR's Director or his designee has the authority to give informed consent to the disclosure of confidential information on behalf of the United States. Appendix C contains a memorandum authorizing disclosure of confidential information by EOIR employees for purposes of reporting child abuse and neglect, or human trafficking concerns.

c. Ex parte communication and represented individuals

There may be circumstances when it may be appropriate or safer to question a victim of child abuse and neglect ex parte outside the presence of counsel. For example, cases have arisen where an immigration judge was concerned that the attorney representing a child was employed by a human trafficking cartel and was in court without the consent of the respondent. In such cases, the respondent may be too afraid to speak about their concerns in front of their attorney.

EOIR's Ethics and Professionalism Guide for Immigration Judges addresses these types of situations. Although generally disfavored, judges are permitted to engage in ex parte communication for "emergency purposes," when such communication "does not address substantive matters" if the judge "reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication."[15] As long as such factors are taken into consideration, the Immigration Judge may therefore be able to speak to the respondent outside of the presence of counsel or the opposing party. A best practice would be for the Immigration Judge to request permission of the attorney on the record to speak to the child outside of their presence to make a record before requesting that the child's attorney leaves the courtroom.

III. PROCESS TO REPORT- IMMIGRATION COURTS

A. Overview

EOIR personnel should familiarize themselves with the child abuse reporting laws for the state in which they reside or from which they are hearing cases, paying particular attention to whether they fall into a category of mandated reporters in their state, as discussed above in the

[14] *Id.* 1.6, Comment 3.
[15] Article XXXII.

"Background." For more information, please refer to the child abuse reporting laws chart located in Appendix B.

All EOIR employees are strongly encouraged to report child abuse or neglect whether they fall into a mandatory reporting category or not. Immigration Judges and other attorneys should keep in mind the professional responsibility rules discussed above, as their license may be affected by a failure to report even if they are not a mandated reporter under the state's law.

If EOIR personnel encounter a minor respondent whom they believe is a victim of child abuse or neglect, the following process must be followed when reporting the abuse or neglect. First, the individual who identifies the child abuse or neglect should fill out the Child Abuse/Neglect Referral Form as soon as practicable, located in Appendix A, and provide it to the Court Administrator. The Court Administrator and/or individual who encountered the child abuse or neglect should then take the steps outlined in the sections below.

These procedures also apply in the unlikely event that a child is abandoned at an immigration court. In such an occurrence, the Court Administrator should be contacted immediately, and the Court Administrator should assign two EOIR employees to remain with the child until local or federal authorities respond to take custody of the child.

B. Reporting During East Coast (EST) Business Hours

If the concern regarding the child abuse or neglect occurs during East Coast business hours: 8:00 am – 5:00 pm EST, the Court Administrator should immediately contact the Duty Attorney at the Office of the General Counsel and report the information located in the Child Abuse/Neglect Referral Form to them. The Duty Attorney will then provide assistance in determining whether and where a report should be made, what information can be disclosed in the report, who should make the report, and the timeframe for reporting.

The General Counsel's Office Duty Attorney can be reached at:

703-305-0470.

This procedure should be followed for emergency and non-emergency cases if they occur during 8 am – 5 pm EST, and should be followed for all types of cases.

C. Emergency Reporting Outside of EST Business Hours

1. Emergency Reporting for UACs Outside of EST Business Hours

For purposes of reporting under this protocol, an emergency is defined as an immediate threat to a minor's safety. If an emergency situation is identified regarding a minor who has previously been designated as a UAC outside of normal business hours and an OGC Duty Attorney is not available to provide assistance, the Court Administrator should contact the ICE Homeland Security Investigations (HSI) Tip Line at:

844-421-3857

ICE has created this dedicated line for use by EOIR personnel in case of an emergency situation. The Court Administrator will relay the information in the Child Abuse/Neglect Referral Form to the HSI Tip Line analyst. Calls from EOIR to this number will be routed to the top of the queue for the analysts answering calls. The HSI Tip Line analyst will use the information provided by EOIR to contact an ICE HSI Victim Assistant Specialist (VAS) and the HSI Special Agent on duty who has jurisdiction over the area where the immigration court is located.

The VAS will personally respond to all cases involving a UAC, and will physically come to the court to interview the potential victim. The VAS will coordinate with the Department of Health and Human Services (HHS) and the Enforcement and Removal Operations (ERO) Juvenile Coordinator to determine the best course of action, and to take the UAC back into governmental custody if necessary.

Once the report has been made to the HSI TIP line, the Court Administrator should then scan and email the Child Abuse/Neglect Referral Form to the OGC dedicated email address for reporting child abuse or trafficking concerns: EOIR.OGCDutyAttorney@usdoj.gov. The OGC Duty Attorney will determine whether any further steps to report the abuse or neglect need to be taken, and will contact the Court Administrator and the individual who identified the concern with further information and instructions.

EOIR personnel are reminded to keep the VAWA and asylum confidentiality provisions in mind when making a report. If these confidentiality provisions apply, EOIR personnel must make the referral in a way that does not violate the confidentiality provisions. For example, if the VAWA confidentiality provision applies, the EOIR employee may only disclose the information to ICE in a manner that protects the confidentiality of the information. The asylum confidentiality provisions have an exception for reporting to federal law enforcement, such as ICE.

2. Emergency Reporting for Other than UAC Cases Outside EST Business Hours

If an emergency child abuse situation is identified for a juvenile who has not been designated as a UAC, the Court Administrator should make a report to the local law enforcement entity or child protective services in their jurisdiction using the Child Abuse/Neglect Referral Form. To help facilitate the report, Appendix D contains the HHS State Child Abuse and Neglect Reporting Numbers for each state, which is current as of the date of the publication of this protocol.[16] Additionally, the Court Administrator should refer to the mandatory reporting chart to determine whether their state requires a report to be made to their state's child protective services department or whether a report can be made to law enforcement. If the state's law allows a report to be made to either, the Court Administrator may determine which is more appropriate.

If an institutional report is not allowed, the individual who discovered the child abuse or

[16] The HHS State Child Abuse and Neglect Reporting Numbers list can be found here: https://www.childwelfare.gov/organizations/?CWIGFunctionsaction=rols:main.dspROL&rolType=Custom&RS_ID=5.

neglect must make the report directly. The individual, with the Court Administrator's assistance, must determine whether to make the report to the state's child protective services or law enforcement.

As with emergency reporting on behalf of a UAC, EOIR personnel are reminded to keep the VAWA and asylum confidentiality provisions in mind when making a report. If these confidentiality provisions apply, EOIR personnel must make the referral in a way that does not violate the confidentiality provisions. For example, if the VAWA confidentiality provision applies, the EOIR employee may only disclose the information to law enforcement in a manner that protects the confidentiality of the VAWA-related information. If the asylum confidentiality provision applies, the EOIR employee may only disclose the information to federal law enforcement or with the written permission of an adult asylum applicant. Please refer to the "Special Considerations" section above for more details on what the asylum and VAWA confidentiality provisions cover and how to apply the exceptions.

D. Report to EOIR

In addition to the steps outlined above, the Court Administrator must immediately report the concerns and steps taken to:

- The Assistant Chief Immigration Judge overseeing their court,
- The Assistant Chief Immigration Judge for Vulnerable Populations, and
- The Immigration Judge assigned to the case, if they are not already aware of the situation.

IV. PROCESS TO REPORT- BOARD OF IMMIGRATION APPEALS

Board of Immigration Appeals (Board) Members, attorneys, and other staff should also familiarize themselves with whether they fall into a mandatory reporting category.[17] Board Members and Board attorneys should keep in mind the professional responsibility rules discussed above, as their license may be affected by a failure to report.

If Board personnel encounter a minor respondent whom they believe is a victim of child abuse or neglect, and that abuse and neglect was not already reported by the immigration court staff, the following process must be followed when reporting. First, the individual who identifies the child abuse or neglect should fill out the Child Abuse/Neglect Referral Form, located in Appendix A, and provide it to a Senior Legal Advisor. The Senior Legal Advisor will then call the main OGC number at (703) 305-0470 and ask for the duty attorney, or email the Child Abuse/Neglect Referral Form to the OGC dedicated email address for reporting child abuse: EOIR.OGCDutyAttorney@usdoj.gov. The OGC Duty Attorney will determine whether any further steps to report the abuse or neglect need to be taken, and will provide advice to the Senior Legal Advisor and the individual who identified the concern further information and instructions.

[17] *See* Appendix B.

V. RESOURCES

A. Further education

HHS maintains extensive information about child abuse and neglect. For more information, please visit: https://childwelfare.gov/topics/can/?hasBeenRedirected=1.

The Department's Office for Victims of Crime Training and Technical Assistance Center has a comprehensive resource paper on child abuse and neglect: https://www.ovcttac.gov/downloads/views/TrainingMaterials/NVAA/Documents_NVAA2011/ResourcePapers/Color_Child%20Abuse%20Resource%20paper%202012_final%20-%20508c_9_13_2012.pdf.

Childhelp, which maintains the National Child Abuse Hotline, also has many resources regarding child abuse and neglect on their website: https://www.childhelp.org/childhelp-approach/.

Quick reference guide for types of child abuse or neglect, with physical and behavioral indicators of abuse: http://www.preventchildabusenj.org/documents/parents_informational_brochures/Physical%20and%20Behavioral%20Indicators%20of%20Child%20Abuse%20and%20Neglect.pdf

B. Resources for victims

EOIR personnel can provide the National Child Abuse Hotline number to victims and those seeking assistance for victims of child abuse and/or neglect:

1-888-4-A-Child (1-800-422-4453)

More information regarding the hotline is available here: https://www.childhelp.org/hotline/.

Appendix A

Child Abuse or Neglect Referral Form

Name of potential victim:

Address:

Phone Number: A-number:

Country of origin: Date of birth:

Language(s) spoken:

Attorney name:

Attorney address:

Attorney phone number:

Parent/sponsor/guardian name:

Parent/sponsor/guardian address:

Parent/sponsor/guardian phone number:

Why do you believe this person is a child abuse or neglect victim?

Are there any additional safety concerns? If so, please explain:

Additional Information:

Name of person making referral:

Phone: Date:

Referral email address:

Appendix B

State	What is the standard for reporting? [1]	Are all individuals in the state mandated reporters?	Are lawyers or judges mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or Child Protective Services?
Alabama	"reasonable cause to suspect that a child is being abused or neglected" Ala. Code § 26-14-4	No- Ala. Code § 26-14-3; 26-13-4	No	Yes- "any person may make such a report" Ala. Code § 26-13-4	No	No	Either law enforcement or child protective services, Ala. Code § 26-14-3
Alaska	"reasonable cause to suspect [a child's harm] is a result of child abuse or neglect," Alaska Stat. § 47.17.020(b)	No- Alaska Stat. § 47.17.020(b)	No	Yes-"This section . . . does not prohibit any other person from reporting a child's harm" Alaska Stat. § 47.17.020(b)	No	No	"shall be made to the nearest office of the department," Alaska Stat. § 47.17.020(c)
American Samoa	"known or suspected child abuse or neglect," Ann. Code § 45.2002(c)	No- Ann. Code §45.2002(c)	No	Yes-"any other persons are urged and authorized to report known or suspected child abuse or neglect" Ann. Code §45.2002(c)	No	No	Report must be made "to the Department of Public Safety or the Child Protection Agency of the Department of Human Resources" Ann. Code § 45.2002(c)
Arizona	"reasonable belief that a minor is or has been a victim of abuse, child abuse, physical injury, a reportable offense, or neglect", Rev. Stat. § 13-3620(F)	No- Rev. Stat. § 13-3620(F)	No	Yes- "Any person other than one required to report . . . may report the information" Rev. Stat. § 13-3620(F)	No	No	Report must be made to a peace officer, Rev. Stat. § 13-3620(F)

[1] All cited U.S. State laws are available in the following document: State Laws Regarding Mandated Reporting of Child Abuse, *National Center for the Prosecution of Child Abuse: National District Attorney Association*, available at http://www.ndaa.org/pdf/Mandatory%20Reporting%20of%20Child%20Abuse%20and%20Neglect-2016.pdf (last updated September 2016). Citations to U.S. territories and possessions are hyperlinked in the citation.

State	What is the standard for reporting? [2]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or Child Protective Services?
Arkansas	"reasonable cause to suspect child maltreatment has occurred or a child has died as a result of maltreatment" or "observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment," Ann. Code § 12-18-401	No- Ann. Code §12-18-402	Yes- judges, Ann. Code § 12-18-402(b)(12)	Yes- "A person may immediately notify the Child Abuse Hotline" if he or she [suspects or observes child abuse] Ann. Code § 12-18-401	Mandated reporters must "immediately report," Ann. Code § 12-18-402(a)	No	Report made to the Child Abuse Hotline- Ann. Code § 12-18-401
California	"has knowledge of, or observes a child whom he or she knows or reasonably suspects has been the victim of child abuse or neglect", Penal Code §11166(g)	No- Penal Code § 11165.7; §11166	No	Yes- "Any other person . . . may report the known or suspected instance of child abuse or neglect" §11166(g)	No	No	Police, sheriff, or county welfare department, Penal Code § 11165.9
Colorado	"known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect," Rev. Stat. § 19-3-304(3)	No- Rev. Stat. § 19-3-304(1)(a), (2)	No	Yes- "In addition to those persons specifically required by the section to report . . . any other person may report" Rev. Stat. § 19-3-304(3)	No	No	Local law enforcement agency or the county department, Rev. Stat. §19-3-304(3)

[2] All cited U.S. State laws are available in the following document: State Laws Regarding Mandated Reporting of Child Abuse, *National Center for the Prosecution of Child Abuse: National District Attorney Association*, available at http://www.ndaa.org/pdf/Mandatory%20Reporting%20of%20Child%20Abuse%20and%20Neglect-2016.pdf (last updated September 2016). Citations to U.S. territories and possessions are hyperlinked in the citation.

State	What is the standard for reporting? [3]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or Child Protective Services?
Connecticut	"reasonable cause to suspect or believe that any child under the age of 18 is in danger of being abuse, or has been abused or neglected", Gen. Stat. §17a-103(a)	No- Gen. Stat. § 17a-101(b)	No	"any other person having reasonable cause to suspect or believe . . . may cause a written or oral report to be made" Gen. Stat. § 17a-103(a)	No	No	Commissioner of Children and Families or law enforcement, Gen. Stat. § 17a-103(a)
Delaware	"knows or in good faith suspects child abuse or neglect," Ann. Code Tit. 16 § 903	Yes- "Any person, agency, organization, or entity who knows or in good faith suspects child abuse or neglect shall make a report," Ann. Code Tit. 16 § 903	No	N/A	"An immediate report shall be made by telephone or otherwise." Ann. Code Tit. 16 § 904	Yes- "No individual . . . shall rely on another individual who has less direct knowledge to call," Ann. Code Tit. 16 § 904	Child Abuse and Neglect Report Line for the Department of Services for Children, Youth and Their Families, Ann. Code Tit. 16 § 904
District of Columbia	"knows or reasonable cause," Ann. Code §4-1321.02	No- Ann. Code §4-1321.02(a)	No	Yes- "any other person may make a report"	No	No	DC Metropolitan Police Department or Child and Family Services Agency, Ann. Code § 4-1321.02(c)

[3] All cited U.S. State laws are available in the following document: State Laws Regarding Mandated Reporting of Child Abuse, *National Center for the Prosecution of Child Abuse: National District Attorney Association*, available at http://www.ndaa.org/pdf/Mandatory%20Reporting%20of%20Child%20Abuse%20and%20Neglect-2016.pdf (last updated September 2016). Citations to U.S. territories and possessions are hyperlinked in the citation.

State	What is the standard for reporting? [4]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or Child Protective Services?
Florida	"knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected . . . or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care" or "who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender," Ann. Stat. §39.201(1)	Yes- "Any person . . . shall report," Ann. Stat §39.201(1)(a)	Judges must provide name when reporting, Ann. Stat. § 39.201(1)(d)	N/A	Immediately, § 39.201(2)	Yes: "Nothing in this chapter…shall be construed to remove or reduce the duty and responsibility of any person . . . to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child," Ann. Stat. § 39.201	Statewide toll-free telephone number for the Department, Ann. Stat § 39.201(2)
Georgia	"reasonable cause to believe that a child is abused", Ann. Code §19-7-5(d); §16-12-100	No- Ann. Code § 19-7-5(c)(1)	No	Yes- "Any other person . . . may report or cause reports to be made," Ann. Code § 19-7-5(d)	"An oral report shall be made immediately, but in no case later than 24 hours," Ann. Code § 19-7-5(e)	No	Department of Human Services, or if not possible, to an appropriate police authority or district attorney, Ann. Code §19-7-5(e)

[4] All cited U.S. State laws are available in the following document: State Laws Regarding Mandated Reporting of Child Abuse, *National Center for the Prosecution of Child Abuse: National District Attorney Association*, available at http://www.ndaa.org/pdf/Mandatory%20Reporting%20of%20Child%20Abuse%20and%20Neglect-2016.pdf (last updated September 2016). Citations to U.S. territories and possessions are hyperlinked in the citation.

State	What is the standard for reporting? [5]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or Child Protective Services?
Guam	"reasonable cause to suspect that a child is an abused or neglected child," Ann. Code Tit. 19 § 13201(a), (b)	No	Possibly- "Any person who, in the course of his or her employment, occupation or practice of his or her profession, comes into contact with children, shall report when he or she has reason to suspect on the basis of his or her medical, professional or other training and experience that a child is an abused or neglected child," Ann. Code Tit. 19 § 13201(a)	Yes- "any person may make such report," Ann. Code Tit. 19 § 13202(b)	For mandated reporters- "shall be made immediately by phone and followed up in writing within 48 hours after the oral report," Ann. Code Tit. 19 § 13203	No	Child Protective Services or the Guam Police Department, Ann. Code Tit. 19 § 13203

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State	What is the standard for reporting? [6]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or Child Protective Services?
Hawaii	"reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future," Rev. Stat. § 350-1.1(a)	Yes- employees of any public agency; employees of a court, Rev. Stat. § 350-1.1(a)(3), (4)	Yes, employees of a court, Rev. Stat. § 350-1.1(a)(4)	N/A	Immediate oral report, follow up with written report Rev. Stat. § 350-1.1(b), (c)	Yes, "that staff member shall immediately report," Rev. Stat. § 350-1.1(b)	Police department or the Department § 350-1.1(a)
Idaho	"reason to believe that a child under the age of 18 years has been abused, abandoned or neglected or who observes the child being subjected to conditions or circumstances which would reasonably result in abuse abandonment or neglect," Idaho Code § 16-1605(a)	Yes- " or other person . . . shall report," Idaho Code § 16-605(a)	No	N/A	24 hours, Idaho Code § 16-605(a)	No, Idaho Code § 16-605(a)	Law enforcement or the department, Idaho Code §16-1605(a)
Illinois	"reasonable cause", Comp. Stat. Ch. 325, §5/4; Ch. 720, §5/11-20.2	No- Comp. Stat Ch. 325, §5/4	No	Yes- "may report," Comp. Stat Ch. 325, §5/4	For mandated reporters- immediately Comp. Stat Ch. 325, §5/4	No, Comp. Stat Ch. 325, §5/4	The Department, Comp. Stat. Ch. 325, §5/4

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State	What is the standard for reporting? [7]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or Child Protective Services?
Indiana	"reason to believe that a child is a victim of child abuse or neglect," Ann. Code § 31-33-5-1	Yes- "an individual . . . shall make a report," Ann. Code § 31-33-5-1	Staff members of public agencies, Ann. Code § 31-33-5-2	N/A	Immediate oral report, Ann. Code § 31-33-5-4	Must report to "designated agent" within public agency, who then must report. Individual must report if agency designee does not, Ann. Code § 31-33-5-2(a), § 31-33-5-3	Local law enforcement or the department, Ann. Code §31-33-5-2(b)
Iowa	"believes that a child has been abused", Ann. Stat. §232.69(1)(c)	No- Ann. Stat. § 232-69(1)(b), (c)	No	Yes- "Any other person . . . may report," Ann. Stat. § 232-69(1)(c)	For mandated reporters- within 24 hours Ann. Stat. § 232-69(1)(a)	Not addressed. Permissive reporters can make report orally or in writing: Ann. Stat. §232.70	Department of Human Services, unless "immediate protection for the child is advisable," then to law enforcement, Ann. Stat. §232.70
Kansas	"reason to suspect that a child may be in need of care," Ann. Stat. §38-2223(a)(2)	No- Ann. Stat. §38-2223(a)(1)	No	"Any person . . . may report," Ann. Stat. § 38-2223(a)(2)	For mandated reporters- promptly, Ann. Stat. § 38-2223(a)(1)	Not addressed	Department of Social and Rehabilitative Services, Ann. Stat. §38-2223(c)

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State	What is the standard for reporting? [8]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or Child Protective Services?
Kentucky	"knows or has reasonable cause to believe that a child is a dependent, neglected, or abused," Rev. Stat. Ann. § 620.030(1)	Yes- "any person . . . shall immediately report," Rev. Stat. Ann. § 620.030(1)	No	N/A	Immediate, Rev. Stat. Ann. § 620.030(1)	Yes- "Nothing in this section shall relieve individuals of their obligations to report." Rev. Stat. §620.030(1)	Local law enforcement or Department of Kentucky Police, the cabinet or its designated representative, the Commonwealth's attorney or the county attorney, Rev. Stat. §620.030(1)
Louisiana	"cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect," Children's Code Ann. Art. 609(B)	No- Children's Code Ann. Art. 603(15)	No	Yes- "any other person . . . may report," Children's Code Ann. Art. 609(B)	Immediate, Children's Code Ann. Art. 610(A)	Not addressed	For parent, caretaker, person dating parent or caretaker, person living with child- reporting to hotline. For others, report to local or state law enforcement, Children's Code Ann. Art. 610(A)
Maine	"knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that there has been a suspicious child death", Rev. Stat. Ann. Tit. 22, § 4011-A(3)	No- Rev. Stat. Tit. 22, §4011-A(1)	No	Yes- "Any other person may make a report" Rev. Stat. Tit. 22, §4011-A(3)	Immediate, Rev. Stat. Tit. 22, §4012(1)	For mandated reporters, must report to designee in agency, who then reports, Rev. Stat. Tit. 22, §4011-A(1)	The Department, Rev. Stat. Tit. 22, §4012(1)

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State	What is the standard for reporting? [9]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or child welfare agency?
Maryland	"reason to believe that a child has been subjected to abuse or neglect," Fam. Law § 5-705	Yes- "a person in this state . . . shall notify," Fam. Law § 5-705	No	N/A	Not addressed	Not addressed	Local Department or appropriate law enforcement agency, Fam. Law §5-705
Massachusetts	"reasonable cause to believe that a child is suffering from or has died as a result of abuse or neglect," Gen. Laws Ch. 119, §51A(f)	No- Gen. Laws Ch. 119, § 51A(a)	"a person who is . . . in charge of a . . . public or private institution," Gen. Laws Ch. 119, § 21	Yes- "Any person may file a report," Gen. Laws Ch. 119, § 51A(f)	Mandated reporters must report immediately, Gen. Laws Ch. 119, § 51A(a)	No, Gen. Laws Ch. 119, § 51A(a)	Department dealing with suspected abuse or neglect, Gen. Laws Ch. 119, § 51A(a)
Michigan	"reasonable cause to suspect child abuse or neglect," Comp. Laws Ann. §722.624	No- Comp. Laws Ann. §722.623(1)(a)	No	Yes- "In addition to those persons required to report . . . any person . . . may report" Comp. Laws Ann. §722.624	Mandated reporters must report immediately, Comp. Laws Ann. § 722.623(1)(a)	Mandated reporters have individual reporting requirement, Comp. Laws Ann. § 722.623(1)(a)	The Department, Comp. Laws Ann. § 722.623(1)(a)
Minnesota	"knows or has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse," Ann. Stat. §626.556, Subd 3(b)	No- Minn. Ann Stat § 626.556, Subd 3(a)	No	"Any person may voluntarily report," Stat. Ann. § 626.556, Subd 3(b)	Mandated reporters must immediately report, Ann. Stat § 626.556, Subd 3(a)	Not addressed	Police department, county sheriff, or local welfare agency Ann. Stat. §626.556, Subd 3(b)

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State	What is the standard for reporting? [10]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or child welfare agency?
Mississippi	"reasonable cause to suspect that a child is a neglected child or an abused child," Ann. Code § 43-21-353(1)	Yes- "any other person," Ann. Code § 43-21-353(1)	Yes, attorneys: Ann. Code § 43-21-353(1)	N/A	Immediate, Ann. Code § 43-21-353(1)	Not addressed	Department of Human Services, Ann. Code § 43-21-353(1)
Missouri	"reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect," Rev. Stat. § 210.115(4)	No- Rev. Stat. §210.115(1)	No	Yes, "any other person may report," Rev. Stat. §210.115(4)	Mandated reporters must immediately report, Rev. Stat. §210.115(1)	No, Rev. Stat. §210.115(2)	The Division, Rev. Stat. §210.115
Montana	"knows or has reasonable cause to suspect that a child is abused or neglected," Ann. Code § 41-3-201(4)	No- Ann. Code § 41-3-201(2)	No	Yes, "Any person may make a report," Ann. Code§ 41-3-201(4)	Mandated reporters must report promptly, Ann. Code § 41-3-201(1)	Not addressed	Department of Public Health and Human Services, Ann. Code 41-3-201(1)
Nebraska	"reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect," Rev. Stat. §28-711	Yes- "any other person . . . shall make a report," Rev. Stat. § 28-711(1)	No	N/A	None included, Rev. Stat. § 28-711(1)	No, Rev. Stat. § 28-711(1)	Law enforcement or the Department using the toll free number, Rev. Stat. § 28-711(1)

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State	What is the standard for reporting? [11]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or child welfare agency?
Nevada	"knows or has reason to believe that a child has been abused or neglected," Rev. Stat. § 432B.220(1)	No- Rev. Stat. § 432B.220(4)	Yes, attorneys , Rev. Stat. § 432B.220(4)(i)	Yes, "A report may be made by any other person." Rev. Stat. § 432B.220(5)	For mandated reporters, "as soon as reasonably practicable but no later than 24 hours," Rev. Stat. § 432B.220(1)	Not addressed	Law enforcement or child welfare services, Rev. Stat. §432B.220(1)
New Hampshire	"reason to suspect that a child has been abused or neglected," Rev. Stat. § 169-C:29	Yes- "any other person . . . shall report," Rev. Stat. § 169-C:29	No	N/A	Immediate oral report, Rev. Stat. § 169-C:30	Not addressed	The Department, Rev. Stat. §169-C:29
New Jersey	"reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse," Ann. Stat. §9:6-8.10	Yes- "any person . . . shall report," Ann. Stat §9:6-8.10	No	N/A	Immediate, Ann. Stat § 9:6-8.10	Not Addressed	Division of Child Protection and Permanency, Ann. Stat § 9:6-8.10
New Mexico	"knows or has reasonable suspicion that a child is an abused or a neglected child," Ann. Stat. §32A-4-3	Yes- "Every person . . . shall report," Ann. Stat. § 32A-4-3(A)	Yes, "a judges presiding during a proceeding," Ann. Stat. §32A-4-3(A)	N/A	Immediate, Ann. Stat. §32A-4-3(A)	Not addressed	Local law enforcement, the department, or tribal law enforcement or social services for any Indian child residing in Indian country, Ann. Stat. §32A-4-3(A)

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State	What is the standard for reporting?[12]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or child welfare agency?
New York	"reasonable cause to suspect that a child is an abused or maltreated child," Soc. Serv. Law § 414	No, Soc. Serv. Law § 413(a)	No	Yes, "any person may make such a report," Soc. Serv. Law § 414	For mandated reporters, immediately, Soc. Serv. Law §415	Yes for mandated reporters, Soc. Serv. Law §413(a)	Office of Children and Family Services, Soc. Serv. Law § 415
North Carolina	"cause to suspect that a juvenile is abused, neglected, or dependent, . . . or has died as a result of maltreatment", Gen. Stat. § 7B-301	Yes- "Any person or institution . . . shall report," Gen. Stat. § 7B-301	No	N/A	Not addressed	No, Gen. Stat. § 7B-301	"Department of Social Services in the county where the juvenile resides," Gen. Stat. § 7B-301
North Dakota	"reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect," Cent. Code § 50-25.1-03	No- Cent. Code § 50-25.1-03(1)	No	Yes, "Any person . . . may report," Cent. Code § 50-25.1-03(2)	Mandated reporters, immediately Cent. Code § 50-25.1-04	No, Cent. Code §50-25.1-04	Department, Cent. Code §50-25.1-04
Ohio	"knows, or has reasonable cause to suspect . . . that a child under 18 or a mentally retarded, developmentally disabled, or physically impaired person under 21 has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect," Rev. Code § 2151.421(B)	No- Rev. Code § 2151.421(a)(1)(B)	Yes, Attorneys, Rev. Code § 2151.421(a)(1)(B)	Yes, "Anyone . . . may report or cause reports to be made" Rev. Code § 2151.421(B)	Mandated reporters must report immediately, Rev. Code § 2151.421(a)(1)(B)	No, Rev. Code § 2151.421(B)	Public service agency or peace officer, Rev. Code §2151.421(B)

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State	What is the standard for reporting?[13]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or child welfare agency?
Oklahoma	"reason to believe that a child under the age of 18 years is a victim of abuse or neglect" Ann. Stat. Tit. 10A, §1-2-101(B)(1)	Yes, "Every person . . . shall report," Ann. Stat. Tit. 10A, § 1-2-101(B)(1)	No	N/A	Promptly, Ann. Stat. Tit. 10A, § 1-2-101(B)(1)	Yes, "the reporting obligations under this section are individual," Ann. Stat. Tit. 10A, §1-2-101	Department of Human Services hotline, Ann. Stat. Tit. 10A, § 1-2-101(B)(1)
Oregon	"reasonable cause to believe that any child with whom the official comes into contact has suffered abuse or that a person with whom the official comes in contact has abused a child," Rev. Stat. §419B.010	No, Rev. Stat. §419B.010(1)	Yes, Attorneys (in definition of "public official"), Rev. Stat. § 419B.005; § 419B.010	Yes, "A person making a report of child abuse, whether the report is made voluntarily or is required . . ." Rev. Stat. §419B.015	Mandated reporters, immediately, Rev. Stat. §419B.010(1)	Yes, "The duty to report . . . is personal to the public . . . official," Rev. Stat. §419B.010	Local office of the Department of Human Services, Rev. Stat. §419B.015(1)(a)
Pennsylvania	"reasonable cause to suspect that a child is the victim of child abuse," 23 Cons. Stat. Ann. § 6312	No, 23 Cons. Stat. Ann. § 6311(a)	No	"Any person may make an oral or written report," 23 Cons. Stat. Ann. § 6312	Mandated reporters, immediately, 23 Cons. Stat. Ann. § 6313	No	Department, county agency or law enforcement, 23 Cons. Stat. Ann. § 6312
Puerto Rico	"learn or come to suspect that a minor is, has been, or is at risk of becoming a victim of abuse, institutional abuse, neglect, and/or institutional neglect," Ann. Laws Tit. 8, §446	Yes, "Any person . . . shall report," Ann. Laws Tit. 8, § 446	Yes, public officials and professionals in the justice system "shall report," Ann. Laws Tit. 8, § 446	N/A	Immediately, Ann. Laws Tit. 8, § 446	Not addressed	Hotline, Puerto Rican police, or local office of the Department. Ann. Laws Tit. 8, § 446

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State	What is the standard for reporting?[14]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or child welfare agency?
Rhode Island	"reasonable cause to know or suspect that any child has been abused or neglected," Gen. Laws §40-11-3(a)	Yes, "Any person . . . must report," Gen. Laws § 40-11-3(a)	No	N/A	Within 24 hours, Gen. Laws §40-11-3(a)	Not addressed	Department of Children, Youth and Families, Laws §40-11-3(a)
South Carolina	"reason to believe that a child has been or may be abused or neglected," Ann. Code §63-7-310(a)	No- "may report," Ann. Code §63-7-310	Yes, judge, Ann. Code § 63-7-310(A)	"a person . . . is encouraged to report," Ann. Code § 63-7-310(C)	Not addressed	Not addressed	County department of social services or law enforcement; If not the parent, guardian, or caretaker, report to law enforcement, Ann. Code §63-7-310(B), (C)
South Dakota	"reasonable cause to suspect that a child has been abused or neglected," Codified Laws §26-8A-3 "reasonable cause to suspect that a child has died as a result of child abuse or neglect," Codified Laws § 26-8A-4	No for child abuse or neglect not resulting in death, Codified Laws § 26-8A-3; Yes for death from child abuse, Codified Laws § 26-8A-4	No	Yes, "Any person . . . may report," Codified Laws § 26-8A-3	"Orally and immediately" Codified Laws § 26-8A-8	Mandated reporters must be available for questions when a report is made, Codified Laws §26-8A-8	State's attorney in the county where the child resides, Department of Social Services, or law enforcement, Codified Laws §26-8A-8

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State	What is the standard for reporting?[15]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or child welfare agency?
Tennessee	"knowledge of or is called upon to render aid to any child who is suffering from or has sustained any wound, injury, disability, or physical or mental condition . . . if the harm is of such a nature as to reasonably indicate that it has been caused by brutality, abuse or neglect, or that , on the basis of available information, reasonably appears to have been caused by brutality, abuse or neglect," Ann. Code § 37-1-403	Yes, "Any person . . . must report," Ann. Code §§ 37-1-403	No	N/A	Immediate, Ann. Code § 37-1-403	Not addressed	Department or law enforcement, Ann. Code §37-1-403
Texas	"having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect," Fam. Code § 261.101	Yes- "A person . . . shall immediately make a report," Fam. Code § 261.101	No	N/A	Immediately, Fam. Code § 261.101	Yes, "A professional may not delegate to or rely on another person to make the report.": Fam. Code §261.101	Local or state law enforcement, the Department, the agency designated by the court to be responsible for the protection of children, Fam. Code § 261.103

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State	What is the standard for reporting?[16]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or child welfare agency?
Utah	"has reason to believe that a child has been subjected to abuse or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect," Ann. Code § 62A-4a-403(1)(a)	Yes, "any person . . . shall immediately notify," Ann. Code § 62A-4a-403(1)(a)	No	N/A	Immediate, Ann. Code §62A-4a-403(1)(a)	Not addressed	Peace officer, law enforcement agency, or office of the Division, Ann. Code §62A-4a-403(1)(a)
Vermont	"reasonable cause to believe that any child has been abused or neglected" Ann. Stat. Tit. 33, § 4913(e)	No, Ann. Stat. Tit. 33, § 4913(a)(1)	No	Yes, "Any other concerned person [not mandated to report] . . . may report," Ann. Stat. Tit. 33, § 4913(e)	Mandated reporters must report within 24 hrs, Ann. Stat. Tit. 33, § 4913(c)	No, Ann. Stat. Tit. 33, § 4913(e)	Commissioner or designee, Ann. Stat. Tit. 33, § 4914
Virgin Islands	"reasonable cause to suspect that a child has been abused or neglected or observes the child has been abused or neglected, or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, Ann. Code Tit. 5, § 2533(c)	No, Ann. Code Tit 5, §2533(a)	No	Yes, "any other person may make a report," Ann. Code Tit 5, §2533(c)	For mandated reporters, must immediately report to person in charge, who reports, Ann. Code Tit. 5, § 2533(b)	No, Ann. Code Tit 5, §2533(c)	US Virgin Islands Police Department or the Department of Social Welfare, Ann. Code Tit. 5, §2534

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State	What is the standard for reporting?[17]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or child welfare agency?
Virginia	"reason to suspect that a child is an abused or neglected child," Ann. Code. §63.2-1510	No, Ann. Code § 63.2-1509(A)	No	Yes, "Any person . . . may make a complaint," Ann. Code. §63.2-1510	Mandated reporters, within 24 hours, Ann. Code. §63.2-1509(D)	Not addressed	Local department of the county or city where the child resides or where the abuse or neglect occurred, or to the Department's toll-free hotline Ann. Code. §63.2-1510
Washington	"reasonable cause to believe that a child has suffered abuse or neglect," Rev. Code § 26.44.030	No, Rev. Code § 26.44.030(1)	No	Yes, "Any other person . . . may report," Rev. Code § 26.44.030(3)	Mandated reporters, immediate, Rev. Code § 26.44.040	Not addressed	Law enforcement or the Department of Social and Health Services, Rev. Code § 26.44.030(3)
West Virginia	Sexual abuse: "receives a disclosure from a credible source or observes any sexual abuse or sexual assault, Ann. Code §49-6A-2(b) Abuse or neglect: "reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes a child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, Ann. Code § 49-2-803(c)	Yes for sexual abuse- "Any person over the age of 18 . . . shall . . . report," Ann. Code § 49-6A-2(b) No for abuse or neglect, Ann. Code § 49-6A-2(a)	No	Yes, "any other person may make a report," Ann. Code § 49-6A-2(c)	Mandated reporters, immediate Ann. Code § 49-6A-2(b), (c)	No, Ann. Code, § 49-6A-2(a), (b)	Local state department child protective services agency, Ann. Code § 49-6A-5(a)

[17] All cited U.S. State laws are available in the following document: State Laws Regarding Mandated Reporting of Child Abuse, *National Center for the Prosecution of Child Abuse: National District Attorney Association*, available at http://www.ndaa.org/pdf/Mandatory%20Reporting%20of%20Child%20Abuse%20and%20Neglect-2016.pdf (last updated September 2016). Citations to U.S. territories and possessions are hyperlinked in the citation.

State	What is the standard for reporting?[18]	Are all individuals in the state mandated reporters?	Are other applicable categories mandated reporters?	If not mandated, may EOIR employees report?	Timeframe to report?	Is there a duty for the individual employee to report?	Should the report be made to law enforcement or child welfare agency?
Wisconsin	"reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect of the child and that abuse or neglect of the child will occur," Ann. Stat. § 48.981(2)(c) "reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse," Ann. Stat. § 48.981(2)(c)	No, Ann. Stat. §48.981(2)	No	Yes, "Any person not otherwise specified . . ., including an attorney . . . may report," Ann. Stat. § 48.981(2)(c)	Mandated reporters, immediate, Ann. Stat. § 48.981(3)	Not addressed	The county department, or in a county with more than 500,000 people, the department or a licensed child welfare agency under contract with the department or the sheriff, city, village, or town police department, Ann. Stat. § 48.981(3)
Wyoming	"knows or has reasonable cause to believe or suspect that a child has been abused or neglected or who observes any child being subjected to conditions or circumstances that would reasonably result in abuse or neglect," Ann. Stat. §14-3-205	Yes, "Any person . . . shall immediately report," Ann. Stat. §14-3-205(a)	No	N/A	Immediate, Ann. Stat. §14-3-205(a)	May report to agency, but must report individually if no institutional report made, Ann. Stat. §14-3-205(c)	Child protective agency or local law enforcement, Ann. Stat. §14-3-205(a)

[18] All cited U.S. State laws are available in the following document: State Laws Regarding Mandated Reporting of Child Abuse, *National Center for the Prosecution of Child Abuse: National District Attorney Association*, available at http://www.ndaa.org/pdf/Mandatory%20Reporting%20of%20Child%20Abuse%20and%20Neglect-2016.pdf (last updated September 2016). Citations to U.S. territories and possessions are hyperlinked in the citation.

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

May 23, 2017

MEMORANDUM TO: ALL EOIR EMPLOYEES

FROM: Juan P. Osuna
Director

SUBJECT: Authorization for Release of Confidential Information

Pursuant to the authority vested in me by 8 C.F.R. § 1003.0(b), I hereby authorize the release of confidential information by employees of the Executive Office for Immigration Review for the limited purpose of reporting child abuse, child neglect, or human trafficking to law enforcement or child protective service authorities. Reporting of such information should be made in accordance with the Executive Office for Immigration Review's (EOIR) protocols entitled Identification and Referral of Potential Child Abuse and/or Neglect Victims before the Executive Office for Immigration Review, and Identification and Referral of Potential Human Trafficking Victims before the Executive Office of Immigration Review, Version 3.

Appendix D

HHS State Child Abuse and Neglect Reporting Numbers

State toll-free numbers for specific agencies designated to receive and investigate reports of suspected child abuse and neglect.

These results are current as of Friday, May 20, 2016 unless otherwise noted.

Alabama
http://dhr.alabama.gov/services/Child_Protective_Services/Abuse_Neglect_Reporting.aspx
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Alaska
Toll-Free: (800) 478-4444
http://www.hss.state.ak.us/ocs/default.htm

Arizona
Toll-Free: (888) SOS-CHILD (888-767-2445)
https://dcs.az.gov/report-child-abuse-or-neglect

Arkansas
Toll-Free: (800) 482-5964
http://humanservices.arkansas.gov/dcfs/Pages/ChildProtectiveServices.aspx#Child

California
http://www.dss.cahwnet.gov/cdssweb/PG20.htm
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Colorado
Local (toll): (303) 866-5932
https://sites.google.com/a/state.co.us/cdhs-dcw/reportchildabuse

Connecticut
Toll-Free: (800) 842-2288
TDD: (800) 624-5518
http://www.ct.gov/dcf/cwp/view.asp?a=2556&Q=314388

Delaware
Toll-Free: (800) 292-9582
http://kids.delaware.gov/services/crisis.shtml

District of Columbia
Local (toll): (202) 671-SAFE (202-671-7233)
http://cfsa.dc.gov/service/report-child-abuse-and-neglect

Florida
Toll-Free: (800) 96-ABUSE (800-962-2873)
http://www.dcf.state.fl.us/abuse/

Georgia
http://dfcs.dhs.georgia.gov/child-abuse-neglect
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Hawaii
Local (toll): (808) 832-5300
http://humanservices.hawaii.gov/ssd/home/child-welfare-services/

Idaho
Toll-Free: (800) 926-2588
TDD: (208) 332-7205
http://healthandwelfare.idaho.gov/Children/AbuseNeglect/ChildProtectionContactPhoneNumbers/tabid/475/Default.aspx

Illinois
Toll-Free: (800) 252-2873
Local (toll): (217) 524-2606
http://www.state.il.us/dcfs/child/index.shtml

Indiana
Toll-Free: (800) 800-5556
http://www.in.gov/dcs/2398.htm

Iowa
Toll-Free: (800) 362-2178
http://dhs.iowa.gov/report-abuse-and-fraud

Kansas
Toll-Free: (800) 922-5330
http://www.dcf.ks.gov/Pages/Report-Abuse-or-Neglect.aspx

Kentucky
Toll-Free: (877) 597-2331
http://chfs.ky.gov/dcbs/dpp/childsafety.htm

Louisiana
Toll-Free: (855) 452-5437
http://dss.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=109

Maine
Toll-Free: (800) 452-1999
TTY: (800) 963-9490
http://www.maine.gov/dhhs/ocfs/hotlines.htm

Maryland
http://www.dhr.state.md.us/blog/?page_id=3973
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Massachusetts
Toll-Free: (800) 792-5200
http://www.mass.gov/eohhs/gov/departments/dcf/child-abuse-neglect/

Michigan
Toll-Free: (855) 444-3911
Fax: (616) 977-1154
http://www.michigan.gov/dhs/0,1607,7-124-5452_7119---,00.html

Minnesota
http://mn.gov/dhs/people-we-serve/children-and-families/services/child-protection/contact-us/index.jsp
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Mississippi
Toll-Free: (800) 222-8000
Local (toll): (601) 359-4991
http://www.mdhs.state.ms.us/report-child-abuseneglect/

Missouri
Toll-Free: (800) 392-3738
http://dss.mo.gov/cd/can.htm
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Montana
Toll-Free: (866) 820-5437
http://www.dphhs.mt.gov/cfsd/index.shtml

Nebraska
Toll-Free: (800) 652-1999
http://dhhs.ne.gov/children_family_services/Pages/children_family_services.aspx

Nevada
http://dcfs.nv.gov/Programs/CWS/CPS/CPS/
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

New Hampshire
Toll-Free: (800) 894-5533
Local (toll): (603) 271-6556
http://www.dhhs.state.nh.us/dcyf/cps/contact.htm

New Jersey
Toll-Free: (877) 652-2873
TDD: (800) 835-5510
TTY: (800) 835-5510
http://www.nj.gov/dcf/reporting/how/index.html

New Mexico
Toll-Free: (855) 333-7233
http://cyfd.org/child-abuse-neglect

New York
Toll-Free: (800) 342-3720
TDD: (800) 369-2437
Local (toll): (518) 474-8740
http://www.ocfs.state.ny.us/main/cps/

North Carolina
http://www2.ncdhhs.gov/dss/local/index.htm
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

North Dakota
http://www.nd.gov/dhs/services/childfamily/cps/#reporting
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Ohio
Toll-Free: (855) 642-4453
http://jfs.ohio.gov/ocf/reportchildabuseandneglect.stm

Oklahoma
Toll-Free: (800) 522-3511
http://www.okdhs.org/services/cps/Pages/default.aspx

Oregon
Toll-Free: (855) 503-SAFE (7233)
http://www.oregon.gov/dhs/children/child-abuse/Pages/Reporting-Numbers.aspx
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Pennsylvania
Toll-Free: (800) 932-0313
TDD: (866) 872-1677
http://www.dhs.pa.gov/citizens/reportabuse/index.htm#.Vr4FO032aM8

Puerto Rico
Toll-Free: (800) 981-8333
Local (toll): (787) 749-1333

Rhode Island
Toll-Free: (800) RI-CHILD (800-742-4453)
http://www.dcyf.ri.gov/child_welfare/index.php

South Carolina
Local (toll): (803) 898-7318
http://dss.sc.gov/content/customers/protection/cps/index.aspx
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

South Dakota
https://dss.sd.gov/childprotection/reporting.aspx
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Tennessee
Toll-Free: (877) 237-0004
https://reportabuse.state.tn.us/

Texas
Toll-Free: (800) 252-5400
https://www.dfps.state.tx.us/Contact_Us/report_abuse.asp

Utah
Toll-Free: (855) 323-3237
http://www.hsdcfs.utah.gov

Vermont
After hours: (800) 649-5285
http://www.dcf.state.vt.us/fsd/reporting_child_abuse

Virginia
Toll-Free: (800) 552-7096
Local (toll): (804) 786-8536
http://www.dss.virginia.gov/family/cps/index.html

Washington
Toll-Free: (866) END-HARM (866-363-4276)
Toll-Free: (800) 562-5624
TTY: (800) 624-6186
http://www1.dshs.wa.gov/ca/safety/abuseReport.asp?2

West Virginia
Toll-Free: (800) 352-6513
http://www.wvdhhr.org/bcf/children_adult/cps/report.asp

Wisconsin
http://dcf.wisconsin.gov/children/CPS/cpswimap.HTM
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Wyoming
https://sites.google.com/a/wyo.gov/dfsweb/social-services/child-protective-services
Click on the website above for information on reporting or call Childhelp® (800-422-4453) for assistance.

Identification and Referral of Potential Trafficking Victims or Traffickers before the Executive Office for Immigration Review

Version 2

April 27, 2015

Table of Contents

I. Background

The William Wilberforce Trafficking Victims Protection Act of 2000 (TVPA),[1] recognized and addressed the serious harm committed against victims of trafficking. With each reauthorization of the legislation,[2] Congress has expanded protections for trafficking victims, as well as enhanced law enforcement tools to prosecute those who engage in trafficking in persons. Severe forms of trafficking in persons are defined as "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery," or "sex trafficking in which a commercial sex act is induced by fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age." TVPA § 103(8); 22 U.S.C. § 7102(9). When the TVPA was passed in 2000, Congress recognized that "[a]t least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year." The number of individuals who have fallen victim to trafficking worldwide now stands at more than 20 million. U.S. Dep't of State, *Trafficking in Persons Report* (2014). Congress passed the TVPA, as well as its subsequent reauthorizations, to further the humanitarian interests of the United States by protecting and assisting victims and strengthening the ability of government officials to investigate and prosecute crimes involving human trafficking.

Under the TVPA, personnel from the Executive Office for Immigration Review (EOIR) have an affirmative duty to identify victims of trafficking. TVPA § 107(c). EOIR has taken significant steps to train its personnel who work with unaccompanied alien children or potential trafficking victims. On April 23, 2009, following the passage of the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, EOIR issued a mandatory, comprehensive training CD on human trafficking. EOIR has also offered training for immigration judges and the Board of Immigration Appeals (Board or BIA) on trafficking since that time, and intends to continue to do so in the future.

Following the enactment of the TVPA, the Department of Justice (DOJ) created a referral unit to assist victims of trafficking and report potential traffickers. EOIR originally issued this protocol in 2012 to assist its personnel in the identification and reporting of suspected victims of trafficking or suspected traffickers to the DOJ Trafficking Intake Coordinator. This second version updates and clarifies certain provisions, including providing updated contact information for reporting potential trafficking victims or traffickers.

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[1] Pub.L. 106-386 (codified at 28 U.S.C. § 1100 (2001)).

[2] *See* Trafficking Victims Reauthorization Act of 2003 (Pub.L. 108-193); Trafficking Victims Reauthorization Act of 2005 (Pub.L. 109-164); William Wilberforce Trafficking Victims Reauthorization Act of 2008 (Pub.L. 110-457); and Trafficking Victims Protection Reauthorization Act of 2013 (Pub.L. 113-4).

II. Identifying and Reporting a Potential Trafficking Victim

A. Identifying Characteristics of a Potential Trafficking Victim

A potential trafficking victim may appear much like any other respondent or individual who comes to the immigration court. He or she could be a young or older child, a teen, a woman or a man, although women and children are disproportionately victims of trafficking. Victims are commonly found in the sex industry (e.g., massage parlors, escort services or strip clubs), domestic situations (e.g., nannies or servants), sweatshop factories, construction, farm work, fisheries, hotels or tourist industries, restaurant services, janitorial services, or panhandling.

Based on the TVPA definition of "severe forms of trafficking in persons," trafficking victims fall into three categories:

1) Minors under the age of 18 who are induced into committing commercial sex acts;

2) Adults who are induced to commit commercial sex acts by force, fraud, or coercion;

3) Children or adults who are forced to perform labor or services in conditions that constitute involuntary servitude, peonage, debt bondage, or slavery through force, fraud, or coercion.

TVPA § 103(8); 22 U.S.C. § 7102(9).

There may be many signs that a respondent appearing before the immigration court (or someone else with whom court personnel come into contact) is a trafficking victim. Appendix A provides EOIR personnel with considerations to help determine whether a person is a victim of trafficking. These considerations are not intended for the questioning of the potential trafficking victim directly.

B. Special Considerations

EOIR personnel should approach a potential trafficking victim with sensitivity, understanding that he or she may be fearful of anyone in the government, and may not recognize that government officials can assist him or her in finding protection. The potential trafficking victim may believe that if he or she discloses the abuse he or she has experienced, he or she will be deported. Moreover, the potential trafficking victim may not see him- or herself as a victim and may not realize that what is being done to him or her is illegal and abusive. The potential trafficking victim may feel loyalty to the trafficker and thus may not offer information readily.

There are additional considerations due to the court's role as a neutral decision-making body in the immigration setting. Immigration judges and other court personnel should be sensitive of this role when interacting with suspected trafficking victims, and avoid any actions that might be perceived as prosecutorial or assuming an advocacy role.

Additionally, immigration judges and other court personnel should be mindful of ethical considerations. For example, it may not be appropriate to question a represented individual outside the presence of his or her attorney or to act in a way which would be perceived as interfering with the attorney/client relationship. Moreover, court personnel should be aware that their actions can, at times, be attributed to the Immigration Judge.

Before speaking to a respondent who may be a trafficking victim, remember several considerations specific to the human trafficking context. Many human trafficking victims may not speak English. They may not know what city or state they are in because they have been moved frequently. They also may have been told that they would be deported or their family members would face retaliation if they say anything.

C. Questions to Ask a Potential Trafficking Victim

Before speaking to the potential trafficking victim, it is important to gauge whether asking questions will place him or her in danger. If it appears safe and appropriate to do so, EOIR personnel can use the questions listed in Appendix B. If an EOIR employee encounters someone who he or she believes is a potential trafficking victim, that employee should complete the referral form in Appendix C.

When completing the form, the EOIR employee is encouraged to use whatever information he or she already knows about the potential victim, as well as the questions in Appendix B. However, the EOIR employee should not interrogate the potential victim or question the individual if it appears unsafe or inappropriate to do so. Keep in mind that the purpose of the questions is to elicit information to submit to the DOJ Trafficking Intake Coordinator. The EOIR employee does not need to gather and document every detail of the suspected trafficking. He or she only needs to pass on any information given.

D. Referral of a Potential Trafficking Victim to the DOJ Trafficking Intake Coordinator

After the referral form at Appendix C is completed, or includes as much information as the court personnel have, it should be emailed to the Court Administrator. After reviewing the information on the form, the Court Administrator should then email it to the DOJ Trafficking Intake Coordinator within 24 hours of the identification of the potential trafficking victim. Heather Brown is currently DOJ's Trafficking Intake Coordinator and her contact information is:

- E-mail: coordinator.trafficking@usdoj.gov (for submission of the referral form)
- Direct line: 202-353-7628 (for questions only)

Please note that this contact information is *only for the use of government officials*. The Court Administrator should also notify his or her Assistant Chief Immigration Judge (ACIJ) of the situation.

If it appears safe to do so, court personnel can also provide the potential trafficking victim with resources and information. The HHS and the Polaris Project, a non-profit anti-trafficking organization, have many free resources on their websites that can be downloaded or ordered. Courts should keep these materials on hand to provide to potential trafficking victims as necessary. The Polaris Project also maintains a resource hotline for victims. The number for this hotline is 888-373-7888, and can be found on all of their resource materials. This number may be given to potential trafficking victims, but should not be used by court personnel to report suspected trafficking situations.

HHS materials can be found at:
http://www.acf.hhs.gov/programs/orr/resource/download-campaign-posters-and-brochures

Polaris Project materials can be found at:
http://www.polarisproject.org/resources/outreach-and-awareness-materials

Finally, if it is possible at the court's location, court personnel should prominently display outreach materials in public places where potential trafficking victims will be likely to see them.

III. Identifying and Referring a Potential Trafficker

A. Identifying Characteristics of a Potential Trafficker

EOIR court personnel may encounter individuals who they believe are currently engaging in or have previously engaged in human trafficking. It is important to keep in mind the definition of severe human trafficking, as defined by the TVPA:

> a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
>
> b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
>
> TVPA § 103(8); 22 U.S.C. § 7102(9).

Court personnel may notice individuals who attend court with a respondent, and appear to be controlling the respondent's behavior or intimidating the respondent. They may also encounter information regarding a respondent who appears to have engaged or

be engaging in human trafficking. The following statements correct common misconceptions about traffickers:

- Traffickers need not smuggle or force their victims to move from place to place.
- Traffickers need not move their victims across borders and victims need not be from a foreign country.
- Traffickers need not employ physical force, physical abuse, or physical restraint.

Because a human trafficker is involved in criminal activity, court personnel should not question a potential trafficker. Instead, personnel should complete the trafficker referral form located in Appendix D to the best of their ability.

B. Referral of a Potential Trafficker to the DOJ Trafficking Intake Coordinator

If EOIR personnel believe they have encountered a trafficker, they should complete the referral form in Appendix D. This form will assist EOIR personnel in capturing the necessary information for making a referral. EOIR personnel should complete the form to the best of their ability, and should answer only those questions for which they have the information.

After the referral form at Appendix D is completed, or includes as much information as the court personnel have, it should be emailed to the Court Administrator. After reviewing the information on the form, the Court Administrator should email it to the DOJ Trafficking Intake Coordinator. As noted above, Heather Brown is currently DOJ's Trafficking Intake Coordinator and her contact information is:

- E-mail: coordinator.trafficking@usdoj.gov (for submission of the referral form)
- Direct line: 202-353-7628 (for questions only)

Again, this contact information is *only for the use of government officials*. The Court Administrator should also notify his or her ACIJ of the situation.

Appendix A

Considerations to help identify victims of human trafficking:

- Is the respondent accompanied by another person who seems controlling or is trying to speak for him or her?
- Are there signs of physical or psychological abuse?
- Does the respondent seem submissive or fearful?
- Does the respondent know the attorney or legal representative who appeared with him or her in court?
- Does the respondent know the person who hired his or her attorney or legal representative?
- Does the respondent know the person with whom he or she is staying?
- Did the respondent tell the court that the person with whom he or she is staying is a relative, but was unable to identify the familial relationship?
- Did the respondent meet the person with whom he or she is staying prior to arriving in the United States?
- Is the respondent familiar with the address that he or she gave the court for notice purposes? Does the respondent know what city he or she is in?
- Did the respondent arrive at the court with luggage?
- Did the respondent travel a long distance to arrive at the court?
- Does the respondent have possession of his or her identity documents?
- Can you explain the basis for your suspicion that the respondent might be a trafficking victim?

Appendix B

If appropriate, questions to ask a potential human trafficking victim may include:

- Can you leave your job or situation if you want?
- Can you come and go as you please?
- Have you been threatened if you try to leave?
- Have you been physically harmed in any way?
- What are your working or living conditions like?
- Are you attending school and if so, what is the name of that school?
- Where do you sleep and eat?
- Do you sleep in a bed, on a cot or on the floor?
- Have you ever been deprived of food, water, sleep or medical care?
- Do you have to ask permission to eat, sleep or go to the bathroom?
- Are there locks on your doors and windows in your place of residence or employment so you cannot get out?
- Has anyone threatened your family?
- Has your identification or documentation been taken from you?
- Is anyone forcing you to do anything that you do not want to do?

UCs and Juveniles: Rights and Protections in Removal Proceedings

Daniel Cicchini
Associate General Counsel

Renae Hansell
ACIJ for Vulnerable Populations, Memphis

Randa Zagzoug
Immigration Judge, New York

June 9-11, 2021
2021 EOIR Legal Training Program

Learning Objectives

- Identify rights and protections arising prior to proceedings
- Identify rights and protections arising during proceedings, specifically relating to:
  - Counsel
  - Custody and Bond
  - Service
  - Specific Relief Applications
  - Policy Protections
- Identify rights and protections arising after proceedings

Definitions/Terminology

Immigration law utilizes different terms in different contexts to distinguish non-adult respondents.

- Child: an unmarried individual under the age of 21. INA § 101(b)(1), (c)(1). Most relevant to visa petitions, adjustment of status, and cancellation of removal for non-permanent residents.
- Juvenile: an individual less than 18 years of age. 8 C.F.R. § 1236.3(a).
- Unaccompanied Alien Child (UAC): has a special meaning under the TVPRA and Homeland Security Act. 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(g).
- Special Immigration Juvenile (SIJ): an immigration classification available to certain individuals under the age of 21 who have been abused, abandoned, or neglected and meet other requirements. INA § 101(a)(27)(J)(i).
- Minor: the regulations mention the term "minor" in the context of rules governing service of process and in absentia orders for individuals under the age of 14. 8 C.F.R. § 236.2(a).

Unaccompanied Alien Children and the TVPRA

- In 2008, Congress enacted the Trafficking Victims Protection and Reauthorization Act (TVPRA) which is a comprehensive statute that governs the apprehension, custody, and processing of unaccompanied alien children for removal proceedings. 8 U.S.C. § 1232 et seq.
  - An unaccompanied alien child means a child who:

    (1) has no lawful immigration status in the United States;

    (2) has not attained 18 years of age; and

    (3) with respect to whom:

    (i) there is no parent or legal guardian in the United States; or

    (ii) no parent or legal guardian in the United States available to provide care and physical custody

    6 U.S.C. § 279(g)(2), Homeland Security Act of 2002

Prior to Proceedings

- Screening within 48 hours to determine if:
  - trafficking victim
  - have a fear of return
  - can make an independent determination to withdraw application for admission
- UACs from non-contiguous countries (or those from contiguous countries that meet certain exceptions) are entitled to:
  - proceedings under Section 240
  - seek relief from removal at no cost
  - have access to counsel, if in custody

Prior to Proceedings (Cont)

- Care and custody within jurisdiction of HHS
- HHS must be notified within 48 hours of apprehension or within 48 hours of claim/suspicion of an alien in custody under the age of 18
- Any UAC must be transferred to HHS custody within 72 hours after it is determined that the alien is an unaccompanied minor
- HHS required to place UAC in “least restrictive setting”

Custody and Bond: *Flores* Settlement Agreement

- The *Flores* Settlement Agreement grew out of a class action lawsuit filed on behalf of unaccompanied alien children who had been detained by former INS challenging procedures regarding the detention, treatment, and release of unaccompanied children.
- Agreement was signed in 1997, and it continues to have some nationwide effect and is binding on DOJ, DHS, and HHS.

Custody and Bond: *Flores I*

- Plaintiffs filed a Motion to Enforce the FSA in the Northern District of California
- Judge Gee ruled, in part, that the FSA applied to "accompanied" children (encountered as part of a family unit), as well as UACs, and she created a rule that all minors should generally be released by DHS within 20 days
- On July 6, 2016, the Ninth Circuit issued an opinion finding, in part, that the FSA applied to both accompanied and unaccompanied children

Custody and Bond: *Flores II*

- The government motioned to terminate the FSA, arguing that the FSA was terminated by the passage of the HSA of 2002 and TVPRA of 2008; the plaintiffs motioned to enforce Paragraph 24A of the FSA
- On April 18, 2017, the 9th Circuit upheld Judge Gee's order, declining to terminate the FSA and holding that nothing in the HSA or TVPRA excused DHS from providing UACs with bond hearings

Custody and Bond: DHS/HHS regulations

- DHS and HHS issued joint final rule in 2019
  - Designed to implement the Flores Agreement "in a manner that is workable in light of subsequent statutory, factual, and operational changes"
  - HHS component of the regulations - which generally tracks the Flores Agreement - addresses the care and custody of UACs
  - DHS component - which diverges more substantially from the Agreement - addresses the apprehension and processing of all minors, including the care and custody of accompanied minors not covered by HHS regulations

Custody and Bond: *Flores III*

- Judge Gee enjoined the regulations in their entirety, and the government appealed
- In *Flores III*, the 9th Circuit reversed most of Judge Gee's injunction with two exceptions (the following could NOT take effect):
  - a catch-all provision in the HHS regulations, allowing placement in a secure facility upon determination the minor is "otherwise a danger to self or others"
  - the HHS regulation allowing minors to "opt-in" to receive a bond hearing rather than "opting-out"
  - the Court also found that a bond hearing before an HHS adjudicator as opposed to an IJ was not a material departure from the FSA because it remained an independent adjudicatory review of the custody decision

Custody and Bond: *Saravia*

- *Saravia v. Sessions*, 2017 WL 5569838 (N.D. Cal. 2017) (class-action: certain UACs released from ORR custody and re-arrested by ICE have a right to a hearing before an IJ on the basis for re-arrest).
- In March 2021, the Government entered into a Settlement Agreement requiring EOIR to continue to provide Saravia hearings in accordance with the Agreement's terms to any new class members for the next five years.
- The following individuals may request a *Saravia* bond hearing:
    - Minor aliens apprehended by DHS,
    - Who are placed with ORR and then released to a sponsor or parent,
    - Who are subsequently re-arrested by DHS and taken into custody based partly on allegations of gang affiliation.

Custody and Bond: *Saravia*

Components of *Saravia* Hearing:

- Meets class membership definition - a noncitizen minor previously placed with a sponsor arrested on allegations of gang activity
- Government has the Burden: DHS bears the burden to demonstrate that changed circumstances exist such that the class member has become a danger to the community or a flight-risk, to justify the class-members' re-arrest.
- If no changed circumstances then the court will order return to the status quo which means ordering Respondent released
- If changed circumstances warranted the arrest then Respondent will have the opportunity to rebut
- If Respondent successfully rebuts then the court will order release
- If DHS shows materially changed circumstances warranted arrest and no rebuttal then change in custody status will be denied

Custody and Bond

- J.M.B. is a UAC in HHS custody. J.M.B.'s mother lives in the United States. She requested J.M.B. be released to her care, but HHS denied the request. At his master calendar hearing, J.M.B. files a motion for a bond hearing.
  - Does an immigration judge have authority to conduct a bond hearing for a child in ORR custody?

Custody and Bond

W.W.T. is a UAC who was 14 and in HHS custody. He was released to his uncle in Baltimore. Then he was rearrested by DHS and taken into custody partly based on allegations of gang affiliation. DHS is arguing that there were materially changed circumstances in that he was encountered unsupervised residing in the home of a known gang member in New York. When DHS encountered Respondent, DHS was assisting in the execution of a state search warrant. W.W.T. files a motion for a bond hearing.

Does an immigration judge have authority to conduct a bond hearing in this context?

During Removal Proceedings: (service)

Minors under Fourteen Years of Age

- Service of NTA on minors under fourteen years of age "shall be made upon the person with whom the . . . minor resides; whenever possible, service shall also be made on the near relative, guardian, committee . . ." 8 C.F.R. § 103.8(c)(2)(ii).
- If the minor is residing with parents in U.S., regulations generally require service on minor's parents. *Matter of Mejia-Andino*, 23 I&N Dec. 533 (BIA 2003); *see also Matter of Gomez-Gomez*, 23 I&N Dec. 522 (BIA 2002) (notice of hearing mailed to the address provided by the minor's father was sufficient as the minor lived with him).

During Removal Proceedings: (service)

Juveniles Fourteen Years of Age or Older

- Personal service of the NTA on juveniles age fourteen or older at the time of service is effective. *Matter of Cubor-Cruz*, 25 I&N Dec. 470 (BIA 2011)(reaffirming that service on an adult is only required when the minor is under 14 years of age); *but see Flores-Chavez v. Ashcroft*, 362 F.3d 1150 (9th Cir. 2004) (extending release and notification regulations to all juveniles under 18) *distinguished by Crutz Pleitiz v. Barr*, 938 F.3d 1141 (9th Cir. 2019)(notice to a responsible adult living with a never-detained juvenile over the age of 14 who has filed an affirmative request for relief is not required).

During Removal Proceedings (service)

Today is the juvenile docket day. You encounter a case where a UAC is not present. As you review the papers you notice the following:

- Respondent was under fourteen at the time of service of the NTA.
- Respondent was in ORR custody when the NTA was served and it is stamped with a notation "Served on Conservator."
- There is ORR paperwork in the file that states that ORR released respondent to his mother.
- When reviewing the Form I-213, it states that respondent is being charged with unlawful entry based on information respondent provided to an ICE officer.

- Do you enter an in absentia order?

During Removal Proceedings (counsel)

- *C.J.L.G. v. Sessions*, 880 F.3d 1122 (9th Cir. 2018), and on reh'g en banc sub nom. *C.J.L.G. v. Barr*, 923 F.3d 622 (9th Cir. 2019).
- Panel held that there is no categorical statutory or Due Process right to counsel at government expense for alien minors and that the IJ provided C.J.L.G. with a "full and fair hearing" that "accounted for [his] age and pro se status."
- En Banc Court declined to address C.J.L.G's contention that Due Process requires appointment of counsel at government expense and vacated removal order on the basis that the IJ failed to advise C.J.L.G. that he might be eligible to obtain SIJ status.
- Although no longer good law, panel opinion still provides guidance for ensuring that an IJ provides a pro se juvenile with a "full and fair hearing" consistent with law.

During Removal Proceedings (counsel)

The *C.J.L.G.* panel highlighted the following factors in its due process analysis:

- IJ granted continuances to afford C.J. opportunities to retain counsel. OPPM 17-01.
- IJ asked C.J. and his mother questions to determine potential avenues of relief, including AOS, asylum, withholding, derivative citizenship.
- IJ ascertained that C.J. desired to apply for asylum, provided application, explained standard for asylum relief, and provided parties with country conditions report.
- IJ fulfilled her duty to develop a factual record sufficient to determine if C.J. satisfies the legal requirements for asylum.
  - IJ allowed C.J. and his mother to testify in narrative form about C.J.'s asylum claim.
  - IJ asked plain language questions designed to elicit answers relevant to the legal requirements for asylum.
- IJ explained appeal rights and provided copy of appeal form.

During Removal Proceedings (admissions and concessions)

- An IJ "shall not accept an admission of removability from an unrepresented respondent who is . . . under the age of 18 and is not accompanied by an attorney or legal representative, a near relative, legal guardian, or friend." 8 C.F.R. § 1240.10(c).
- An immigration judge may base a finding of removability on an unaccompanied and unrepresented minor's factual admissions. See *Matter of Amaya-Castro*, 21 I&N Dec. 583 (BIA 1996).
- But the judge must ensure that the minor's testimony is reliable and the minor understands facts admitted and consequences of those admissions. See *id*. at 588.
- The Form I-213 is presumptively reliable to meet DHS's burden to establish alienage, but care should be taken in cases involving pro se minors. *Matter of Amaya-Castro, supra*.

During Removal Proceedings (specific applications)

- In immigration court, UACs are entitled to certain rights and benefits under the TVPRA:
  - Asylum Jurisdiction: UACs are entitled to a non-adversarial adjudication of their asylum claim before USCIS even if in removal proceedings. INA § 208(b)(3)(C).
  - Asylum One Year Bar: One year bar does not apply to asylum applications filed by UACs. INA § 208(a)(2)(E).
  - Asylum Safe-Third Country Limitation: Safe-third country limitation does not apply to asylum applications filed by UAC.

During Removal Proceedings (specific applications)

- In immigration court, UACs are entitled to certain rights and benefits under the TVPRA (cont):
  - Special Immigrant Juvenile Status: allows adjustment of status if a UAC is abused, abandoned, and/or neglected by one or both parents.
  - Voluntary Departure: TVPRA waives departure bond/financial means requirement for UACs. 8 USC § 1232(a)(2)(D)(ii).

During Removal Proceedings (EOIR Policy on Conduct of Hearings)

- Legal Opinion, EOIR Office of General Counsel (Sept. 19, 2017) ("Immigration Judges may exercise their independent role to determine whether a respondent qualifies as a UAC when that determination bears on issues arising during the course of removal proceedings.")
- OCIJ, OPPM 17-03 Guidelines for Immigration Court Cases Involving Juveniles ("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.")

During Removal Proceedings

- OPPM 17-03: Guidelines for Cases Involving Juveniles
  - Applies to all unmarried respondents under the age of 18.
  - Requires every IJ to employ age-appropriate procedures whenever a juvenile respondent or witness is present in the courtroom while still maintaining impartiality and adjudicating cases in accordance with law.
  - Provides guidance on a variety of matters including:
  - Familiarizing juveniles with the courtroom setting and explaining procedures.
  - Scheduling juvenile dockets to facilitate pro bono representation and keep juvenile cases separate from adult cases.
  - Using child appropriate language, tone, and questioning techniques and making proper credibility assessments.
  - Being vigilant in cases involving UACs about misrepresentation or fraud to obtain benefits under the TVPRA.
  - Reminds IJs to be impartial and respect due process for both parties.

During Removal Proceedings (select case law)

- *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018) ("An Immigration Judge has initial jurisdiction over an asylum application filed by a respondent who was previously determined to be an unaccompanied alien child but who turned 18 before filing the application.")
- *Harmon v. Holder*, 758 F.3d 728, 734 (6th Cir. 2014) ("[T]he TVPRA does not transfer initial jurisdiction over asylum applications filed by former unaccompanied alien children to the USCIS. The IJ, therefore, had the authority to review Harmon's asylum claim.")
- *D.B. v. Cardall*, 826 F.3d 721, 732-34 n.10 (4th Cir. 2016) (stating that the determination of whether a child is a UAC is done by evaluating whether the child satisfies unambiguous language comprising the three-prong definition of a UAC at 6 U.S.C. § 279(g)(2); this evaluation and determination is made **at the time of the application's filing, and as such, a judge is not bound by, for example, CBP's prior initial determination of the child's UAC status**)

During Removal Proceedings (select case law)

- *Mazariegos-Diaz v. Lynch*, 605 F. App'x 675, 675-76 (9th Cir. 2015) ("A person's status as an unaccompanied alien child for purposes of the TVPRA's initial-jurisdiction provision is determined as of the date the person applies for asylum, not as of the date the person enters the United States or the date the person was abandoned by his or her parents."); *Cortez-Vasquez v. Holder*, 440 F. App'x 295, 298 (5th Cir. 2011) (per curiam) (upholding IJ's adjudication of asylum application of a former UAC); *see also M-A-C-O-*, 27 I&N Dec. 477, 480 (BIA 2018) (stating that an IJ has jurisdiction over an asylum application for a respondent who is no longer a UAC at the time of filing). *See* 8 C.F.R. § 236.3(d) (Oct. 22, 2019) (defining an alien to no longer be a UAC when the alien has reached age 18 or is in the care of a parent or guardian, consistent with the TVPRA and the Homeland Security Act of 2002); 45 C.F.R. § 410.101 (Oct. 22, 2019) (same).

During Removal Proceedings (select case law)

- *J.O.P. v. U.S. Dep't of Homeland Sec.*, 409 F. Supp. 3d 367, 375-80 (D. Md. 2019) (TRO against USCIS's 2019 revision of 2013 Kim Memo)
- In the Kim Memo, USCIS declared that an alien once determined by DHS to be an unaccompanied alien child (UAC) would be considered a UAC indefinitely for the purpose of adjudication of asylum applications by USCIS. *Id*. at 374. The 2019 revision permitted USCIS to redetermine an asylum applicant's UAC status at the time the application is filed, and consequently, to redetermine its jurisdiction to adjudicate the application under the TVPRA. *Id*. In issuing its TRO, however, the court found it likely "that the redetermination policy violates the [Administrative Procedure Act (APA)] because the agency failed to go through required notice-and-comment procedures and failed to consider reliance interests created by the 2013 Kim Memo." *Id*. at 376. The court later converted the TRO into a preliminary injunction against USCIS on October 15, 2019. *J.O.P. v. U.S. Dep't of Homeland Sec.*, No. GJH-19-1944, 2020 WL 2932922, at *1 (D. Md. June 3, 2020).

During Removal Proceedings

- M.R.M., a 17 year old from Guatemala, is apprehended at the border, designated as a "UAC" by DHS, and placed into removal proceedings. He turns 18 by his second master calendar hearing, but requests a continuance to file an asylum app with USCIS.
  - Do you grant the continuance?

Other Rights and Protections

- Limitations on Information Sharing - ORR
- Delinquency Records protections
- Confidentiality Issues 8 CFR §§ 208.6, 1208.6 (the regulations require a written waiver)

Confidentiality

- In avoiding a breach of confidentiality with relief and protection law claims, the key question is whether the information disclosed or in contemplation of disclosure by the US government gives rise to a reasonable inference that the applicant applied for asylum or other protection.
- According to the Second Circuit, the government's violation of an asylum applicant's confidentiality by disclosing to officials in the applicant's country of origin information "sufficient to give rise to a reasonable inference that [the applicant] had applied for asylum," may create a "new risk of persecution." *Lin v. U.S. Dep't of Justice*, 459 F.3d 255, 266-68 (2d Cir. 2006).

Rights and Protections: After Removal Proceedings

- 8 USC § 1232 requires the Secretary of State to enter into agreements with contiguous countries that:
  - to appropriate officials of the contiguous country
  - return during reasonable business hours
  - require appropriate training for border personnel
- Motions to Reopen
  - no special protections, but…

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

September 19, 2017

MEMORANDUM TO: James R. McHenry III,
Acting Director
Executive Office for Immigration Review

FROM: Jean King, General Counsel

SUBJECT: Legal Opinion re: EOIR's Authority to Interpret the term Unaccompanied Alien Child for Purposes of Applying Certain Provisions of TVPRA

I.

You have asked the Office of General Counsel ("OGC") for a legal opinion addressing two issues: (1) whether the Department of Homeland Security's ("DHS") determination regarding an alien's status as an unaccompanied alien child ("UAC") is legally binding on the Executive Office for Immigration Review ("EOIR"); and (2) if an alien had UAC status previously but no longer meets the definition of UAC, does the alien lose the protections of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"). OGC's opinion is that Immigration Judges are not bound by DHS's determination regarding whether a respondent is or is not a UAC. Instead, Immigration Judges may resolve any dispute about UAC status during the course of removal proceedings when such a determination bears on a respondent's eligibility for relief, or as part of a determination regarding the applicability of the initial jurisdiction provision set forth in section 208(b)(3)(C) of the Immigration and Nationality Act ("INA" or "Act"), 8 U.S.C. § 1158(b)(3)(C). It follows that a respondent who was previously designated as a UAC upon apprehension for purposes of placement in removal proceeding and/or an appropriate custodial setting may no longer be eligible for relief under the TVPRA if an Immigration Judge determines that the respondent no longer meets the definition of UAC.

II.

In 2008, Congress enacted the TVPRA as a "comprehensive scheme" designed to provide certain protections for UAC with respect to their apprehension, custody, placement in removal

proceedings, and eligibility for certain forms of immigration relief. *See* 8 U.S.C. § 1232 et seq.; *see also* H.R. Rep. 110-941 at 215-16 (summarizing section 235 of the TVPRA).

Critically, an alien's eligibility for these protections rests on his or her classification as a UAC. The Homeland Security Act (HSA) provides that:

> The term unaccompanied alien child means a child who – (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom – (i) there is not parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

6 U.S.C. § 279(g) (2002). The TVPRA incorporates the definition of UAC contained in the HSA by cross-reference. *See* 8 U.S.C. § 1232(g) ("for purposes of this section the term unaccompanied alien child has the meaning given such term in . . . 6 U.S.C. § 279(g).").

Several federal departments and agencies share responsibility for implementation of the TVPRA. Components within DHS are responsible for the apprehension and processing of UAC. Upon apprehension, an ICE or CBP officer makes a determination as to whether an alien is younger than eighteen and unaccompanied. *See* 8 U.S.C. § 1232(b)(2). With the exception of children from Mexico and Canada who meet certain criteria, DHS must generally transfer all UAC to the Department of Health and Human Services ("HHS"). 8 U.S.C. § 1232(b)(3). HHS is responsible for the care, custody, and placement of UAC. 8 U.S.C. § 1232(c), 6 U.S.C. § 279(g). The statute also directs that "[t]he Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, shall develop procedures to make a prompt determination of the age of the alien which shall be used by [DHS and HHS] for children in its custody." 8 U.S.C. § 1232(b)(4).

The TVPRA contains a number of provisions that directly implicate EOIR's authority. First, any UAC sought to be removed by ICE (except for certain children from Mexico and Canada) are not subject to expedited removal but instead must be placed in removal proceedings before EOIR. *See* 8 U.S.C. § 1232(a)(5)(D). Second, the TVPRA amends the procedures for UAC seeking asylum by transferring initial jurisdiction over such cases from EOIR to the United States Citizenship and Immigration Services ("USCIS"). INA § 208(b)(3)(C), 8 U.S.C. § 1158(b)(3)(C). Third, the TVPRA waives the requirement that a UAC must apply for asylum within one year of arrival to the United States, as well as the bar to applying for asylum if an alien could be removed to a "safe third country." *See* 8 U.S.C. § 1158(a)(2)(E). Finally, the TVPRA provides that UAC do not have to post bond or prove that they have the financial means to depart the United States in order to qualify for voluntary departure in removal proceedings. *See* 8 U.S.C. § 1232(a)(5)(D).

III.

The Attorney General has not promulgated regulations implementing the TVPRA, nor is there case law explicitly discussing EOIR's authority with respect to administering the statute. Accordingly, the starting point is the language of the statute itself and the context of the governing statute as a whole. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000). When interpreting a comprehensive statute such as the TVPRA and the INA, the "goal is to fit, if possible, all parts into a harmonious whole." *Id.* at 133. As a whole, the TVPRA reflects Congress's intent that while DHS is required to make a determination of UAC status for custodial purposes and as a prerequisite to initiating removal proceedings, EOIR's Immigration Judges may exercise their independent adjudicatory role to determine a respondent's status as a UAC when such a determination bears on issues arising during the course of removal proceedings.

Section 1232(g) states that "for *purposes of this section* the term unaccompanied alien child has the meaning given such term in . . . 6 U.S.C. § 279(g) (emphasis added)."[1] For DHS's purposes, the TVPRA requires certain DHS officers to determine whether an alien meets the definition of UAC upon apprehension to ensure both prompt transfer to HHS and placement in removal proceedings. *See* 8 U.S.C. §§ 1232(a)(3), (b)(3). The TVPRA also requires HHS to develop procedures to determine whether a child in its custody remains a UAC. *See* 8 U.S.C. § 1232(b)(1); 6 U.S.C. § 279(b); *see also D.B. v. Cardall*, 826 F.3d 721 (4th Cir. 2016) (discussing HHS authority).[2] However, those statutes nowhere state that a DHS or HHS determination regarding UAC status made for these limited purposes is binding on EOIR when such a determination bears on EOIR's adjudicatory authority under section 240 of the Act. To the contrary, the TVPRA contains a number of provisions that explicitly implicate EOIR's authority. Together, these provisions convince us that Immigration

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[1] The fact that Congress placed the definition of UAC in 6 U.S.C. § 279, which is DHS's organic statute, does not undermine an Immigration Judge's authority to make a UAC determination when it bears on issues within an Immigration Judge's jurisdiction. Indeed, 6 U.S.C. § 279(c) explicitly states that "nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act . . . from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State."

[2] EOIR does not have any responsibility over the apprehension, physical custody, or decision to place any alien in removal proceedings. *See* 6 U.S.C. § 251 et. seq.; *see also* 8 U.S.C. §§ 1103(a), 1103(g); *see generally Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011). Nor does EOIR have any authority over HHS's safety and suitability assessments for UAC. *See* 8 U.S.C. §§ 1232(b)(1); 1232(c)(2),(3); 6 U.S.C. § 279(b).

Judges have independent authority to decide whether a respondent meets the definition of UAC as a prerequisite to resolving certain issues in removal proceedings.

Through section 8 U.S.C. § 1232(a)(5)(D), enacted as a part of the TVPRA, Congress plainly provided that certain UAC are entitled to a determination of their rights and eligibility for relief during a removal proceeding conducted by an Immigration Judge. That section provides that:

> Any unaccompanied alien child sought to be removed by the Department of Homeland Security, except for an unaccompanied alien child from a contiguous country ... shall be ... placed in removal proceedings under *section 240 of the Immigration and Nationality Act* (8 U.S.C. 1229a)[.]

During proceedings under section 240 of the Act, an Immigration Judge has jurisdiction to determine whether a respondent is removable and to adjudicate applications for relief from removal, if any. Specifically, section 240 of the Act and its implementing regulations require Immigration Judges to: "conduct proceedings for deciding the inadmissibility or deportability of an alien," INA § 240(a)(1), 8 U.S.C. § 1229a(a)(1); determine whether a respondent "satisfies the applicable eligibility requirements" for relief from removal; INA § 240(c)(4), 8 U.S.C. § 1229a(c)(4); and "at the conclusion of the proceeding decide whether an alien is removable from the United States." INA § 240(c)(1), 8 U.S.C. § 1229(a)(c)(1). In exercising this authority, an Immigration Judge "must exercise his or her independent judgment and discretion and take any action consistent with the Act and regulations that is appropriate and necessary for the disposition of such cases." 8 C.F.R. § 1003.10(b).

Given Congress's explicit reference in 8 U.S.C. § 1232(a)(5)(D) to removal proceedings under section 240 of the Act, and an Immigration Judge's broad statutory and regulatory jurisdiction to conduct such proceedings, we conclude that an Immigration Judge has independent authority to decide whether or not a respondent qualifies as a UAC for purposes of disposing of any case coming before the immigration courts. This conclusion is also consistent with the general rule that Immigration Judges have jurisdiction over all matters related to the proper adjudication of a removal case unless such jurisdiction is expressly withheld by an Act of Congress or through a regulation issued by the Attorney General. *See e.g. Matter of Herrera Del Orden*, 25 I&N Dec. 589 (BIA 2011) ("Given the Immigration Judge's broad overall authority to conduct removal proceedings we conclude that he or she is presumed to have jurisdiction to gather and receive evidence pertinent to an application for relief from removal unless the Attorney General expressly withholds it.").

Indeed, certain provisions of the TVPRA "necessarily" require a determination regarding UAC status as incidental to determining whether a respondent "satisfies the applicable eligibility

requirements" for relief from removal. Section 208(a)(2)(E) of the INA, 8 U.S.C. § 1158(a)(2), which was added by the TVPRA is one such provision. That statute provides that UAC shall not be subject to the one-year time bar and/or the "safe third country" limitation for asylum applications. In all cases, involving asylum, an Immigration Judge must determine whether the respondent "satisfies the applicable eligibility requirements" for asylum. *See* INA § 240(c)(4)(A); *see also* 8 C.F.R. § 1240.1(a)(1)(ii) (stating in any removal proceeding pursuant to section 240 of the Act the Immigration Judge shall have authority to determine applications under section 208). To the extent that an Immigration Judge has jurisdiction over the adjudication of an asylum application filed by a potential UAC, this statute must be read as requiring the Immigration Judge to make a determination regarding UAC status as a prerequisite to granting asylum where the one year bar or safe-third country limitation would otherwise be implicated. A contrary interpretation could result in EOIR issuing asylum benefits and rights to respondents who are otherwise statutorily ineligible for them.

Moreover, section 1232(a)(5)(D)(ii) also requires an Immigration Judge to determine UAC status as a prerequisite to granting voluntary departure at the conclusion of removal proceedings. That statute provides that a UAC does not need to post bond or prove that he or she has the financial means to depart the United States in order to qualify for voluntary departure after the completion of removal proceedings. All other respondents are required to post bond or prove financial means to depart as a prerequisite to being granted voluntary departure. *See* INA § 240B(b); 8 U.S.C. § 1229c(b). Because only an Immigration Judge has authority to grant voluntary departure under INA § 240B(b), this suggests that Immigration Judges have independent authority to determine whether a respondent qualifies as a UAC for purposes of waiving the "financial means" requirement imposed by statute.

The TVPRA does explicitly limit an Immigration Judge's jurisdiction during removal proceedings in one instance: Section 208(b)(3)(C) of the Act, provides that:

> An asylum officer (as defined in section 235(b)(1)(E)) shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act) . . . .

8 U.S.C. § 1158(b)(3)(C).

Congress enacted this provision as an exception to the rule that once removal proceedings commence an Immigration Judge has exclusive jurisdiction over a respondent's asylum application, if any. *See* 8 C.F.R. §§ 1003.14(b), 1208.2(b). Nothing in the language of this statute limits an Immigration Judge's authority to make a determination of UAC status as a prerequisite to determining the threshold jurisdictional question: whether he or she has jurisdiction over a respondent's asylum application. Rather, it is a familiar rule that a federal court always has jurisdiction to determine its

own jurisdiction. *United States v. Ruiz*, 536 U.S. 622, 628 (2002). The Immigration Courts are no different. An Immigration Judge "has the authority to consider and decide whether he has jurisdiction over a matter presented to him. In other words, an Immigration Judge has jurisdiction to determine his jurisdiction." *Matter of Bulnes-Nolasco*, 25 I&N Dec. 57, 59 (BIA 2009). Accordingly, we believe that an Immigration Judge has authority to make an independent determination as to whether a respondent is or is not a UAC for purposes of determining whether he or she has initial jurisdiction over the respondent's asylum application.[3]

For the forgoing reasons, we conclude that Immigration Judges may resolve any dispute about UAC status during the course of removal proceedings when such a determination is required to decide a respondent's eligibility for relief, or as part of a determination regarding whether the Immigration Judge has jurisdiction over a respondent's asylum application, *see* INA § 208(b)(3)(C).

IV.

You also asked whether an alien who had UAC status at either the time of apprehension or placement in removal proceedings loses the protections of the TVPRA if the alien's status changes.

Again, the starting point is the language of the statute itself, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), and the specific context in which that language is used. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). As discussed above, the TVPRA's protections apply starting from the initial moment of the child's encounter with the DHS, which requires prompt transfer to ORR custody and placement in removal proceedings under section 240 of the Act. However, there is nothing in the TVPRA like the statutory provisions under the Child Status Protection Act to lock in an individual's UAC status for all time. *Compare* INA §§ 201(f), 203(h)(1)(A), 8 U.S.C. §§ 1151(f), 1153(h)(1)(A) with 8 U.S.C. § 1232(g). Rather, the plain language of the statute suggests that a UAC's status could change either (1) because the individual is no longer under 18 and has aged out of the definition of a UAC; (2) because the individual is no longer unaccompanied, after a parent has been

[3] As a legal matter, DHS's determination of UAC status is not binding on an Immigration Judge. Rather, an Immigration Judge has independent legal authority to decide whether he or she has jurisdiction over an asylum application and may decide the corresponding question of UAC status. Nevertheless, we note that the agency has advised Immigration Judges that, as a matter of policy, they need not *sua sponte* re-determine a respondent's UAC status in cases where ICE does not object to a continuance or administrative closure to allow a respondent to pursue an asylum application with USCIS. This advice was in line with a guidance document issued by the Office of the Chief Immigration Judge advising Immigration Judges "to exercise discretion . . . to ensure coordination among government agencies responsible for the implementation of the asylum jurisdictional provision of the TVPRA." See EOIR, Office of the Chief Immigration Judge, Implementation of the Trafficking Victim's Protection Reauthorization Act of 2008 Asylum Jurisdictional Provision (Interim Guidance) (March 20, 2009).

located to provide care and custody; or (3) because the individual has been granted legal status during the pendency of the removal proceedings. *See* 8 U.S.C. § 1232(g). This indicates that Congress did not intend for all of the TVPRA's protections to apply permanently to any alien who was designated as a UAC at the time of apprehension or placement in removal proceedings. As discussed above, there are three provisions in the TVPRA that implicate EOIR's jurisdiction and an Immigration Judge's authority to waive certain statutory requirements governing applications for relief from removal.

First, INA § 208(b)(3)(C), 8 U.S.C. § 1158(b)(3)(C), provides that "an asylum officer shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child." Although the statute appears in a section of the TVPRA entitled "Permanent Protections for Certain At–Risk Children," the language of the statute strongly suggests that it creates two requirements: the filing of an asylum application and UAC status on the date of filing. Two circuit courts have issued decisions (one unpublished) adopting this interpretation through petitions for review filed from Board decisions affirming an Immigration Judge's authority to exercise initial jurisdiction over an asylum application filed by a former unaccompanied child.[4] *See Harmon v. Holder*, 758 F.3d 728 (6th Cir. 2014) (finding that although the alien was a UAC when the alien entered the United States, the alien was older than 18 at the time of filing the asylum application and was not entitled to USCIS initial jurisdiction); *Mazariegos-Diaz v. Lynch*, 605 F. App'x 675, 676 (9th Cir. 2015). Therefore, the most natural reading of the statute is only a respondent who was a UAC *at the time of filing* the asylum application (either in Immigration Court or before USCIS) is eligible to apply for asylum with USCIS in the first instance.

Second, under 8 U.S.C. § 1232(a)(5)(D)(ii), a UAC, if otherwise eligible for voluntary departure, is not required to post a voluntary departure bond or to bear other costs attributable to the granting of such relief. Specifically, the statute provides that "[a]ny unaccompanied alien child sought to be removed by the Department of Homeland Security . . . shall be placed in removal proceedings [and] . . . eligible for relief under section 240B of the Act (8 U.S.C. § 1229a) at no cost to the child." We acknowledge that there is some ambiguity in the statute. The statute could be read to apply to any respondent designated as a UAC when DHS "seeks to remove" the child (that is, at the time the child is placed in removal proceedings) or only to a respondent who continues to be a UAC at the time he or she applies for voluntary departure. OGC's view is that the language "sought to be removed" merely imposes a duty on DHS to place such individuals in removal proceedings but does not permanently waive the departure bond/financial means requirement for any individual initially designated as a UAC by DHS. Rather, the language "at no cost to the child" is better read as alleviating a UAC of the burden

[4] We note that these cases demonstrate that EOIR has exercised authority to determine UAC status for the purposes of applying INA § 208(b)(3)(C), which further supports our determination that Immigration Judges have independent authority to make UAC determinations.

to prove that he or she has the means to depart while he or she *remains an unaccompanied alien child*. Accordingly, we think that the most natural reading of the statute permits Immigration Judges to determine UAC status at the time that a respondent applies for voluntary departure and as a prerequisite to waiving the financial means/departure bond requirement that applies to all other respondents.

Third, INA § 208(a)(2)(E), 8 U.S.C. § 1158(a)(2)(E),[5] waives the requirement that UAC must apply for asylum within one year of arrival to the United States. Specifically, INA § 208(a)(1), 8 U.S.C. § 1158(a)(1), provides that any alien who is physically present in the United States may file for asylum. Subparagraph (B), however, specifies that the right to asylum "shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States." INA § 208(a)(2)(B), 8 U.S.C. § 1158(a)(2)(B). The TVPRA modified this exception, adding that subparagraph "(B) shall not apply to an unaccompanied alien child." INA § 208(a)(2)(E), 8 U.S.C. § 1158(a)(2)(E). As discussed above, the plain language of the statute does not support a permanent UAC designation based on an alien's status at the time of entry or apprehension. Rather, INA § 208(a)(2)(E) only applies to respondents who meet the definition of UAC, which is not a permanent status. There is, however, some ambiguity over when the one-year deadline begins to run. Specifically, the statute can be interpreted as relieving a respondent from complying with the one-year time limit while he or she is a UAC, but the clock continues running. Alternatively it can be read as tolling the one-year filing deadline during the time a respondent is a UAC such that the one year clock begins when the respondent loses UAC status. OGC believes that the best interpretation is that the one-year deadline is tolled while a respondent is in UAC status and begins running when a respondent loses such status.[6]

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[5] As discussed above, this provision also waives the "safe third country limitation" on applying for asylum for UAC. For practical purposes, however, the safe third country limitation has very limited applicability because the only safe third country agreement currently in effect is an agreement between the United States and Canada and it only applies in certain limited circumstances. *See* EOIR, Office of the Chief Immigration Judge, OPPM 04-09, *U.S. - Canada Agreement Regarding Cooperation in the Examination of Refugee Status Claims - "Safe Third Country"* (Dec. 28, 2004). This makes an in-depth discussion of this provision unnecessary at this time.

[6] We also note that that an asylum application may be considered after the 1-year filing deadline if the applicant can establish "extraordinary circumstances." INA § 208(a)(2)(D). One such extraordinary circumstance is if the alien is under a legal disability during the 1-year period after arrival (e.g., the alien was an unaccompanied minor) as long as the alien filed the application within a reasonable period given those circumstances. 8 C.F.R. § 1208.4(a)(5)(ii). The Act and regulations do not define "minor" and the Board has not issued a precedential decision addressing this issue. Accordingly, an Immigration Judge or the Board may construe the term minor more broadly than the definition of UAC for purposes of excusing the one-year filing deadline.

Finally, we are aware that the TVPRA was enacted as an important step to "protecting unaccompanied alien children [who had] been forced to struggle through an immigration system designed for adults." Cong. Rec. S10886-01 (daily ed. Dec. 10, 2008) (statement of Sen. Feinstein, cosponsor of original Senate version). For the reasons discussed above, however, and in light of the language of the statute, we do not believe that Congress intended to provide permanent protections to all respondents based on their status at entry. Rather, our interpretation is consistent with the purpose of the TVPRA, which is to provide protections and rights to individuals who remain unaccompanied, under the age of eighteen, and without legal status during removal proceedings.

V.

For the above stated reasons, we conclude that Immigration Judges are not bound by DHS's determination regarding whether a respondent is or is not a UAC. Instead, Immigration Judges may resolve any dispute about UAC status during the course of removal proceedings when such a determination bears on a respondent's eligibility for relief, or as part of a determination regarding the applicability of the initial jurisdiction provision set forth in section 208(b)(3)(C) of the Act. We also conclude that under the plain language of the statute, an alien may lose certain protections of the TVPRA if the alien's status changes. The implications that result from a UAC's status change will depend on the specific statute at issue being applied by the Immigration Judge.

U.S. Department of Justice

Executive Office for Immigration Review

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Chief Immigration Judge

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December 20, 2017

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: MaryBeth Keller MBK
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 17-03:
Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children

This Operating Policies and Procedures Memorandum (OPPM) rescinds and replaces OPPM 07-01, *Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children*, dated May 22, 2007.

Table of Contents

I. Introduction

Immigration cases involving children are complicated and implicate sensitive issues beyond those encountered in adult cases. For instance, an infant brought into the United States illegally by his family, an older child smuggled into the United States by relatives, an adolescent gang member, and a teenager convicted as an adult for serious criminal activity are all examples of immigration cases involving children, but they may not warrant identical treatment under the law.

This OPPM provides guidance for adjudicating cases involving any unmarried individual under the age of 18, including as both respondents and third-party witnesses. It is not intended to limit the discretion of an Immigration Judge, and nothing herein should be construed as mandating a particular outcome in any specific case.

II. Definitions

Immigration law utilizes multiple terms in different legal contexts to refer to unmarried individuals who have not attained a certain age. The Immigration and Nationality Act (INA or Act) defines a "child" as an unmarried person under 21 years of age. INA §§ 101(b)(1) and (c)(1). The regulations define a "juvenile" as an alien under the age of 18, 8 C.F.R. § 1236.3, and refer to a "minor" when describing aliens under 14 years of age. 8 C.F.R. §§ 103.8(c)(2)(ii); 1236.2. The Homeland Security Act of 2002 introduced the concept of an "unaccompanied alien child (UAC)," which it defined as a child who has no lawful immigration status in the United States, has not attained 18 years of age, and who has no parent or legal guardian in the United States, or no parent

or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(g).

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. Further, although this OPPM applies primarily to respondents, its principles may also be applicable to child witnesses in immigration proceedings, regardless of whether the witness is an alien, a U.S. citizen, or a U.S. national.

III. Basic principles

Immigration Judges should be mindful of several overarching principles when presiding over cases involving juveniles:

A. Individual circumstances. 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.

B. Best interest of the child. 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.

C. Legal and personal representation. 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.

D. Judicial impartiality. 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. *Ethics*

and Professionalism Guide for Immigration Judges, §§ V, VI, and VIII; 5 C.F.R. §§ 2635.101(b)(8) and (14).

E. Applicability to all Immigration Judges. 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. *Ethics and Professionalism Guide for Immigration Judges*, § IV. In particular, Immigration Judges must not only be familiar with the different statutory and regulatory definitions of "child," "juvenile," "minor," and "unaccompanied alien child" but also must apply them correctly in the appropriate context.

F. Child Abuse and Human Trafficking Protocols. 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. For assistance with reporting a child abuse/neglect or human trafficking case, please contact the Office of the General Counsel.

IV. Courtroom setting and procedures

With these basic principles in mind, 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. The following guidance is offered to balance appropriate consideration of a juvenile's circumstances with legal requirements applicable to all immigration proceedings:

A. Courtroom orientation. 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.

B. Scheduling juvenile cases. 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. To help ensure that juvenile and adult dockets are kept separate, court personnel will ensure that the date of birth for all juvenile respondents in immigration proceedings is entered in CASE.

C. Courtrooms. 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.

D. Waiver of a juvenile's 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.

E. Removing the robe. 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.

F. Control access to the courtroom. 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.

G. Explain the proceedings at the outset. 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.

H. Pay attention to the interpreter. 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.

I. Be aware of time. 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.

J. Preparation for a juvenile's testimony. 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.

K. Employ child-sensitive questioning. 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.

L. Credibility and burden of proof assessments. 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. 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. *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).

M. Unaccompanied Alien Child (UAC). 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.

Consequently, 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. 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)(11). 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.

V. Conclusion

Immigration cases involving juveniles are challenging; there is no blanket approach applicable to all such cases. Although juvenile cases warrant special consideration in appropriate circumstances, Immigration Judges should also be mindful that legal requirements applicable to all immigration cases are not necessarily diminished solely because the respondent is a juvenile.

If you have any questions regarding this OPPM, please contact your Assistant Chief Immigration Judge.