

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

J.E.F.M. a minor, by and
through his Next Friend,
Bob Ekblad; et al.,

Plaintiffs-Petitioners,

v.

LORETTA E. LYNCH, et al.,

Defendants-Respondents.

Case No. 2:14-cv-01026-TSZ

DEPOSITION OF HONORABLE JACK H. WEIL

October 15, 2015

Washington, DC

Reported by:

Ann Medis

Job no: 15047

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Oral deposition of HONORABLE JACK H. WEIL,
called by the Plaintiffs for examination, taken by
and before Ann Medis, Registered Professional
Reporter and Notary Public, held at the American
Immigration Council, 1331 G Street, NW, Suite 200,
Washington, DC 20005, on Thursday, October 15,
2015, commencing at 12:39 p.m.

ORIGINAL

1 A P P E A R A N C E S

2 On behalf of Plaintiffs-Petitioners

3 AMERICAN CIVIL LIBERTIES UNION OF
4 SOUTHERN CALIFORNIA
5 BY: AHILAN ARULANANTHAM, ESQUIRE
6 1313 West 8th Street
7 Los Angeles, California 90017
8 213.977.5211
9 aarulanantham@aclusocal.org

10 AMERICAN IMMIGRATION COUNCIL
11 BY: KRISTIN MACLEOD-BALL, ESQUIRE
12 1331 G Street NW, Suite 200
13 Washington, DC 20005
14 202.507.7500
15 kmacleod-ball@immcouncil.org

16 PUBLIC COUNSEL
17 BY: KRISTEN JACKSON, ESQUIRE
18 610 South Ardmore Avenue
19 Los Angeles, California 90005
20 213.385.2977
21 kjackson@publiccounsel.org

22 On behalf of Defendants-Respondents

23 UNITED STATES DEPARTMENT OF JUSTICE
24 BY: WILLIAM C. SILVIS, ESQUIRE
25 Ben Franklin Station, P.O. Box 7611
601 D Street, NW
Washington, DC 20044-7611
202.307.4693
William.Silvis@usdog.gov

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BY: HELAINE PERLMAN, ESQUIRE
5107 Leesburg Pike
Falls Church, Virginia 22041
703.605.1293
Helaine.Perlman@usdoj.gov

1 * I N D E X *

2 HONORABLE JACK H. WEIL PAGE
3 EXAMINATION BY MR. ARULANANTHAM 5

4 * I N D E X O F E X H I B I T S *

5 NO. DESCRIPTION PAGE

6 Exhibit 11 Memorandum, 5/22/07, from D. Neal 17
7 to All Immigration Judges, et al.,
8 subject: Operating Policies and
9 Procedures Memorandum 07-01:
10 Guidelines for Immigration Court
11 Cases Involving Unaccompanied
12 Alien Children

13 Exhibit 12 Email, 4/22/15, from J. Weil to 58
14 J. Osuna, et al., subject: Final
15 Agenda for April 23-24 Juvenile
16 Docket Training (Corrected)
17 EOIR000254 - 000258

18 Exhibit 13 2015 EOIR Legal Training Program- 81
19 Course Descriptions
20 EOIR000259 - 000269

21 Exhibit 14 Email, 3/24/15, from S. Boone- 124
22 Fisher to All of Judges,
23 subject: Docketing Practices
24 Related to UC and AWC/ATD Cases
25 in Light of New Priorities (On
Behalf of CIJ O'Leary)
EOIR000229 - 000232

Exhibit 15 Memorandum, 5/28/13, from T. Kim 136
to All Asylum Office Staff,
subject: Updates Procedures for
Determination of Initial
Jurisdiction over Asylum
Applications Filed by Unaccompanied
Alien Children

1 HONORABLE JACK H. WEIL,
2 having been first duly sworn, was examined
3 and testified as follows:

4 EXAMINATION

5 BY MR. ARULANANTHAM:

6 Q. Will you state your full name for the
7 record.

8 A. Jack H. Weil, W-E-I-L.

9 Q. You've been deposed before; correct?

10 A. Yes.

11 Q. How many times?

12 A. One that I recall.

13 Q. What was that in?

14 A. I don't have an independent
15 recollection, but as mentioned by counsel, it may
16 have been the Rodriguez litigation, but I'm not
17 sure.

18 Q. Well, since it's been a while, I'll just
19 run through some rules with you which I'm sure
20 you're familiar with. Let's not talk at the same
21 time because the reporter is taking notes.

22 Do you understand that?

23 A. Yes.

24 Q. And could you give a verbal, audible
25 response for the same reason. I'm entitled to

1 your estimates. If I ask you for something you
2 don't know with complete certainty, you don't have
3 to guess. I'll give you a simple example just to
4 be clear. If I ask you how long did it take you
5 to get here today, even though you may not know
6 the exact minutes, you still should give me an
7 answer. If I ask you how long I took to get here
8 today, that's obviously just a guess.

9 Do you understand that?

10 A. Yes.

11 Q. Mr. Silvis may object to my questions
12 from time to time. If he does and it's on the
13 basis of privilege, he'll instruct you not to
14 answer and you shouldn't do that. If it's on
15 another basis, then you can respond
16 notwithstanding the objection. It's just made for
17 the record. Is that clear?

18 A. Yes.

19 Q. If you need to take a break for any
20 reason, let us know. I'll ask you not to take a
21 break while a question is pending. Otherwise,
22 feel free.

23 Are you taking any medications or drugs or is
24 there any other reason why you would not be able
25 to testify fully today?

1 A. No.

2 Q. Do you understand, of course, that
3 you're under oath today. Just like at trial, it
4 would be perjury if you give a false statement.

5 A. Yes.

6 Q. I previously marked as Exhibit 1 today's
7 30(b)(6) deposition notice. I'm going to hand you
8 that. Are you familiar with that document? Have
9 you seen it before? If you flip to page 6,
10 there's topics there. Are you familiar with that?

11 (Witness reviewed the exhibit.)

12 BY MR. ARULANANTHAM:

13 Q. Are you familiar with that document?
14 Have you seen it before?

15 A. I've seen portions of it. I'm not sure
16 if it's the entire document.

17 Q. As I understand, you're authorized to
18 speak for the Department of Justice on the some
19 topics, but not others. Can you tell me which
20 ones?

21 A. I don't recall, off the top of my head,
22 which specific numbers.

23 MR. ARULANANTHAM: Can we go off the
24 record for one moment?

25 MR. SILVIS: Sure.

1 (There was a discussion off the record.)

2 BY MR. ARULANANTHAM:

3 Q. So are you authorized to speak for the
4 Department of Justice on topics 1 through 6?

5 A. Yes.

6 Q. And topics 9 through 11?

7 A. Yes.

8 Q. And 13 through 16?

9 A. Yes.

10 Q. I think your attorney and I have some
11 dispute, which I hope is not material, about 7 and
12 8. I'm interested in the extent to which the EOIR
13 has information about topic 7 and 8. I may ask
14 you questions about that, too. We can cross that
15 bridge when we get there.

16 Do you understand that?

17 A. Yes.

18 Q. What did you do to prepare for this
19 deposition?

20 A. Four things. I read all of the
21 documents that were cited in the questions that
22 we've identified. I looked at some discovery
23 documents that were presented. I met with counsel
24 and the deputy chief immigration judge.

25 Q. Who is that?

1 A. Edward Kelly. And then I contacted
2 immigration judges in the cities where the named
3 plaintiffs are located. So it would be Houston,
4 Los Angeles and Seattle and had handled juvenile
5 dockets.

6 Q. And spoke with them?

7 A. Correct.

8 Q. Do you know the names of the judges that
9 you spoke with?

10 A. Yes. So in Houston it would be Judge
11 Brisack and Judge Yates. In Los Angeles it would
12 be Judge Travieso, Judge Tabador, and Judge Hong.
13 Then in Seattle it would be Judge DeFonzo.

14 Q. Are those the only judges that hear
15 cases involving children in those cities?

16 A. No. They're the ones that I believe
17 hear cases of -- the ones that are not adults with
18 children. I think they're doing more cases that
19 are not family cases.

20 Q. So if a child is in a proceeding, but
21 there's no adult consolidated with that proceeding
22 in one of these cities, then one of these judges
23 will hear that child's case?

24 A. No adult I mean apart from counsel or
25 apart from a custodian.

1 Q. But otherwise that's correct?

2 A. Um-hum. That's my understanding.

3 Q. What did you discuss with Ed Kelly,
4 Judge Ed Kelly?

5 A. Not much. Really what I wanted to do
6 was just to confirm the issuance of the policies,
7 just dates. Kind of it's an archival matter
8 regarding the policy and really just to confirm,
9 to make sure that it was issued when I thought it
10 was or how I thought it was. Nothing regarding
11 the contents of the policy or how it's
12 implemented.

13 Q. By the policy you're referring to the
14 policies that are in the topics of the deposition
15 notice?

16 A. Exactly, and not all of those, but there
17 were certain ones I had questions.

18 Q. Do you remember which ones you discussed
19 amongst these?

20 A. I do not.

21 Q. What did you discuss with the judges?

22 A. I understood what the policy was. I
23 wanted to make sure that they were aware of the
24 policies and to find out what they were doing
25 regarding implementation of the policies.

1 Q. Do you remember how long you spoke for?

2 A. It varied from judge to judge.

3 Q. These were individual conversations?

4 A. Individual, each judge individual,

5 um-hum.

6 Q. How long were the conversations roughly?

7 A. I would guess, I would estimate 45

8 minutes. Some were shorter because as you speak

9 to one -- there was consistency among judges. So

10 as you spoke to one and you started to hear

11 consistency in the policy, it wasn't necessary to

12 keep going.

13 Q. Were there some areas where the judges
14 reported different implementation of the policies
15 you discussed?

16 A. Various among themselves?

17 Q. Right, between judges.

18 A. Not significantly.

19 Q. Were there any that you can remember?

20 A. There may have been an instance where
21 one judge would continue and the other judge would
22 administratively close. When I say not
23 significantly, both stopped the proceeding for an
24 event to occur.

25 Q. That's in the context of?

1 A. Either waiting for a case to go to USCIS
2 for adjudication.

3 Q. Did you prepare any notes as part of the
4 preparation for this deposition?

5 A. I took notes of my conversations with
6 the judges.

7 Q. Are they here?

8 A. The notes?

9 Q. Yeah.

10 A. No.

11 Q. I read your Rodriguez testimony for
12 purposes of understanding a history of your
13 positions and employment history. Is there any
14 reason to believe that the testimony that you gave
15 there on that question is inaccurate for any
16 reason?

17 A. It's not up to date, and I don't recall
18 the testimony. I honestly can't even remember
19 when the Rodriguez deposition was.

20 Q. As to information beyond that, it would
21 be quite remarkable if you testified about that.
22 But as to your description of your history and job
23 responsibilities and things like that prior to
24 that time, is there any reason to believe the
25 testimony you gave would not be inaccurate?

1 A. I don't recall the testimony. What I
2 said under oath would be correct.

3 Q. What is your title now?

4 A. My title now is assistant chief
5 immigration judge.

6 Q. Is there a particular area that you're
7 responsible for as assistant chief immigration
8 judge?

9 A. There's three. One is training. One is
10 I supervise the daily operations of the
11 immigration courts in the State of Pennsylvania.
12 I'm currently in an acting capacity as the
13 assistant chief immigration judge for vulnerable
14 populations.

15 Q. What are vulnerable populations?

16 A. I think vulnerable populations are
17 individuals who due to capacity or condition pose
18 a risk -- that if safeguard or protection is not
19 taken, there's potential that the proceeding could
20 be less than fundamentally fair.

21 Q. What are the vulnerable populations for
22 whom in your view that may be true?

23 A. The main focus is on mental competence
24 and children, but I think without specific
25 examples coming to mind, I think anybody that has

1 a condition or capacity that creates a potential
2 that a hearing could be less than fair could fall
3 into that definition. That's not an official
4 definition. That's my interpretation of it.

5 Q. How long have you been in that role?
6 But as I say that, I wonder if it's different for
7 the different three. How long have you been in
8 the role as the assistant chief immigration judge
9 for vulnerable populations acting?

10 A. I had done it once before several years
11 ago for a short period of time. I don't recall
12 the year or how long that was. And the
13 circumstances, they were hiring somebody and asked
14 me to do it until a person was hired or multiple
15 people were hired. That person then left, and I
16 was approached in, I'm estimating, April of this
17 year to take that over again.

18 Q. Have you been responsible for the
19 training of judges as part of your role as
20 assistant chief immigration judge for a longer
21 period of time than that?

22 A. Yeah. That I started approximately
23 2009.

24 Q. How long have you held the title
25 assistant chief immigration judge?

1 A. Since 2009 I was acting assistant chief
2 for a short period. From 2013 to 2015 I was not
3 performing that role. So I was special counsel to
4 the director of the EOIR on detail. So I was not
5 an ACIJ for that period until I was approached
6 again in April and asked to handle the vulnerable
7 populations and also the training.

8 From 2013 to 2015 I was serving a different
9 role. I was not performing the functions. I
10 think officially my title was ACIJ. I was on
11 detail, but I was not performing in that position.
12 I was not in the Office of Assistant Chief
13 Immigration Judge.

14 Q. What was the scope of your work as
15 special counsel to EOIR from 2013 to 2015?

16 A. Largely implementing EOIR's nationwide
17 policy for respondents with mental disorders, and
18 probably the other thing that occupied a lot of
19 time was putting together EOIR's training
20 conference for immigration judges, the Board of
21 Immigration Appeals and agency attorneys.

22 Q. That training, the conference you just
23 described, that's on everything immigration judges
24 do; correct? It's not limited to any particular
25 subject matter. You're talking about training,

1 generally the training the judges undergo; is that
2 correct?

3 A. There's agendas for that training. It's
4 the topics covered in the agenda that's put
5 together.

6 Q. But it's not limited to vulnerable
7 populations?

8 A. Correct.

9 Q. For 2013 to '15, you weren't working on
10 children specifically at all; is that right?

11 A. Correct.

12 Q. Who do you report to now?

13 A. Right now my first line supervisor would
14 be the Deputy Chief Immigration Judge Michael
15 McGoings.

16 Q. Who's his supervisor?

17 A. His supervisor right now is the acting
18 chief immigration judge. His name is Robert
19 Maggard, but he commonly goes by the name Print.

20 Q. Is his supervisor Juan Osuna?

21 A. No. His supervisor would be the deputy
22 director of EOIR, Ana Kocur.

23 Q. How many people report to you, do you
24 directly supervise?

25 A. Right now I have one person who is on a

1 six-month detail who reports directly to me. I
2 have a contractor that I assign work to, and then
3 it would be employees in the Pennsylvania
4 immigration courts, the immigration judges in
5 Pennsylvania, the court administrator, the
6 judicial law clerks in Pennsylvania.

7 Q. The six-month detail on the contractor,
8 did they work also on vulnerable populations?

9 A. That person actually went on detail very
10 soon after they were assigned to me in the office
11 of chief immigration judge. So pretty much
12 they're working on the combined federal campaign.
13 Really they came to me and went on detail totally
14 unrelated. They're not doing anything related to
15 immigration and won't be back until February.

16 Q. And then contractor?

17 A. The contractor provides administrative
18 support.

19 (Exhibit 11 was marked.)

20 BY MR. ARULANANTHAM:

21 Q. I'm going to hand you what we will mark
22 as Exhibit 11. The document I've handed you is a
23 memorandum to all immigration judges from David L
24 Neal, the assistant chief immigration judge. It's
25 dated May 22, 2007. The subject line is

1 "Operating Policies and Procedures Memorandum

2 07-01." It goes on.

3 Do you see the document I'm talking about?

4 A. I do.

5 Q. Are you familiar with this document?

6 A. I am.

7 Q. What is it?

8 A. It's an operating policy and procedure
9 memorandum. It's issued by the chief judge to
10 provide guidance to the immigration courts. It's
11 a way that they announce policies to immigration
12 judges.

13 Q. Is it still in operation?

14 A. It is.

15 Q. If you look on the second page in the
16 second paragraph under Introduction, the last
17 sentence says, "Issues of age, development,
18 experience and self-determination impact how a
19 court deals with a child respondent."

20 Why is that true?

21 A. Different respondents in court need
22 different treatment in order for the proceeding to
23 be fair. So whether they're adult or children,
24 people's education, people's experience in the
25 court system affect the way a judge needs to

1 respond in a proceeding.

2 Q. In order to make sure it's fair?

3 A. Correct.

4 Q. Are there features of childhood
5 specifically that make that concern true of
6 children as opposed to adults?

7 A. I think if I understand your question --
8 can you ask it again?

9 Q. Sure. The sentence says things impact
10 how to deal with a child respondent. My question
11 was: Are there features or aspects or
12 characteristics of children in particular that
13 make the concern about them not getting fair
14 proceedings particularly true as to them as
15 children?

16 MR. SILVIS: Are we asking in the
17 context of this policy?

18 MR. ARULANANTHAM: Yeah. I'm asking him
19 to explain the sentence.

20 A. I think each respondent stands on their
21 own, but there are certain common characteristics
22 of children that would cause the judge to make
23 sure that the proceeding is fair.

24 BY MR. ARULANANTHAM:

25 Q. What are those?

1 A. Education which again applies in an
2 adult, but children based on age, just the fact
3 they haven't been on the planet for a certain
4 amount of time obviously are going to have less
5 education, less life experiences, those types of
6 things.

7 Q. What else? It says development and
8 experience and self-determination. Do you know
9 what those refer to?

10 A. Yeah. Development is child development,
11 physical development, psychological development of
12 a child. I think the thing that's important about
13 this is it was also written when EOIR had less
14 experience dealing with children. So I'm not sure
15 if it was written today that this is exactly how
16 it would be written. Just like other classes,
17 documents many times are issued, and then as you
18 get more experience. But I don't think that they
19 have gone through and there's been any need to at
20 this point rewrite that. But I don't know if it
21 was written today it would be written the same way
22 it was back then.

23 Q. What would be said today in place of the
24 sentence?

25 A. I wouldn't be -- I could be consulted,

1 but, I mean, we would actually have to sit with
2 people, the judges who have experience and talk
3 about it and I think redraft it. I'm not saying
4 the principles and the policies are not accurate.
5 But I think that with maturity of a process and
6 maturity of experience, that the guidance, the
7 things we say might be different.

8 Q. How would they be different?

9 MR. SILVIS: We're a little bit off
10 topic. If you're asking him to -- he can answer
11 for himself, but these aren't binding on the
12 government.

13 A. If I was going to write this now, I
14 would take judges who are doing these cases and
15 sit around the table, look at the sentences and
16 we'd probably consult with some experts.

17 This was not prepared, to the best of my
18 knowledge, with individuals who were experts in
19 child development, child psychiatry,
20 psychologists. These well written by lay people.
21 In response to, I think it would be a
22 collaborative drafting process to come up with a
23 new document.

24 BY MR. ARULANANTHAM:

25 Q. I guess I got the sense -- if this is

1 wrong, please correct -- I got the sense from what
2 you were saying earlier that you might take issue
3 with the substance of this sentence today.

4 MR. SILVIS: Same objection.

5 BY MR. ARULANANTHAM:

6 Q. Is that true?

7 A. I think the focus today would be more on
8 understanding the individual. Every child,
9 everybody is different and has different abilities
10 to function. And they need to look at each one
11 individually. I think that's something we really
12 learned from the Franco litigation, is to what
13 level is somebody able to perform, and it varies
14 from person to person and child to child.

15 We can identify categories of items that
16 would make us maybe look into that further, but I
17 think sweeping statements are not, based on our
18 experience, the way to go.

19 Q. Do you think childhood itself is such a
20 category?

21 MR. SILVIS: Same objection. You can
22 answer for yourself, but he's not answering for
23 EOIR or DOJ.

24 A. Different children are able to function
25 at different levels.

1 BY MR. ARULANANTHAM:

2 Q. But are children as a category less
3 capable of functioning than adults for purposes of
4 getting a fair hearing in immigration court?

5 MR. SILVIS: Same objection.

6 A. I don't think that's fair to say. You
7 have to look at the individual child. My child is
8 taking AP physics. I can't do AP physics. So I
9 don't think it's fair to categorize them. I think
10 you have to look at each individual.

11 As I said, I think that's something we've
12 learned, as I said, out of the Franco litigation,
13 is that different people are capable of performing
14 at different functions, and what you have to do is
15 you have to look at the individual.

16 So while you may look at age and you may look
17 at education, you have to look at the totality of
18 the circumstances and the individual and make an
19 individual assessment as to what somebody is able
20 to perform or is not able to perform.

21 BY MR. ARULANANTHAM:

22 Q. Would you say then that it's
23 inappropriate for the agency even to be issuing
24 child specific guidance and protocols for judges
25 in light of what you're saying now?

1 MR. SILVIS: I'll object to outside the
2 topic. Answer for yourself.

3 A. No. I don't think it's inappropriate
4 for the court to give judges advice as to or
5 recommendations regarding how to best conduct a
6 proceeding so that it's fair.

7 BY MR. ARULANANTHAM:

8 Q. Involving a child though; right?

9 A. Involving any respondent.

10 Q. But there isn't comparable guidance like
11 this as to other groups of people other than I
12 assume other vulnerable populations; isn't that
13 true?

14 MR. SILVIS: Same objection.

15 A. When you say guidance like this, judges
16 are taught for every respondent that the
17 proceeding has to be fair. Judges are given
18 guidance as to how to conduct a fair proceeding.

19 BY MR. ARULANANTHAM:

20 Q. But this is called guidelines for
21 immigration court cases involving unaccompanied
22 alien children. So I would think from that title
23 that it's suggesting that there might be
24 guidelines that are specific to children or
25 unaccompanied alien children as a group. Do you

1 disagree with that?

2 A. Well, I think there are practices that
3 judges can take in cases of children to make sure
4 that the proceedings are fundamentally fair.

5 Q. That's true for adults, too; isn't it?

6 A. That is true.

7 Q. Is there anything different about
8 children that would justify guidance specific to
9 children?

10 MR. SILVIS: I'll object that we're
11 outside the topic. You can answer for yourself.

12 A. I'm going to go back to the fact that
13 for children you have to look at the child and you
14 have to determine what the child can perform. And
15 this document provides recommendations for
16 children that you can take in the case of a child
17 to make sure that the proceeding is fair.

18 For example, it says that -- one of the
19 examples they give is that the judge has the
20 authority to remove the robe. That doesn't mean
21 for an adult that you cannot remove the robe. A
22 that's why I disagree with the statement, because
23 that is something that we would -- did we write
24 guidance that says you can take off the robe for a
25 judge? Actually it says the judge is supposed to

1 wear the robe.

2 But in all of our policies the overlying
3 concern is due process. So in spite of the fact
4 they issue policy that says a judge should wear a
5 black robe in every proceeding, if I have an adult
6 respondent that I think for some reason that the
7 fact I'm wearing the robe is impacting, I can take
8 step. So yes, this was drafted with regard to
9 children, but that doesn't mean the steps cannot
10 be used or that we're not training with regard to
11 other individuals.

12 BY MR. ARULANANTHAM:

13 Q. When you say other individuals, you
14 really mean any other individual; correct?

15 A. Any respondent to immigration
16 proceedings.

17 Q. I still want to understand your view on
18 whether it's the department's view that there is
19 anything different about children as a category
20 that justifies particular attention to the need
21 for safeguards to them as a group.

22 MR. SILVIS: Objection. Asked and
23 answered. I'll also say it's off topic. You can
24 answer for yourself, but not for DOJ.

25 A. There are certain steps that we

1 recommend be taken specifically for children that
2 we do not take for other populations.

3 BY MR. ARULANANTHAM:

4 Q. Why is that?

5 MR. SILVIS: Same objection.

6 A. Because we determined that that allows
7 the proceeding to be fundamentally fair. There
8 are certain safeguards and protections that we can
9 apply based upon the individual respondent that we
10 can take, again, whether they're a child or adult.

11 BY MR. ARULANANTHAM:

12 Q. Whether an child or adult. Is there any
13 reason why a judge should be more concerned about
14 applying these safeguards and policies that we'll
15 be discussing for the next few hours in cases
16 involving children as a general matter than cases
17 involving adults?

18 MR. SILVIS: Same objection. Also asked
19 and answered.

20 A. Due process applies equally in all
21 cases. The judges have the same obligation
22 regardless of the age of the respondent to make
23 sure that the proceeding is fair.

24 BY MR. ARULANANTHAM:

25 Q. So there's no need then for a greater

1 concern to ensure that the safeguards are followed
2 for children than for adults, no need for any
3 particular special procedures in cases involving
4 children?

5 MR. SILVIS: Same objection.

6 BY MR. ARULANANTHAM:

7 Q. Is that your testimony?

8 A. No. That's your testimony. My
9 testimony is that in every single case, the judge
10 has to look at the respondents and the particular
11 abilities of the respondent and put in place
12 safeguards and protections to make sure that that
13 proceeding is fair. And just because somebody
14 doesn't fall into a specific category of child or
15 adult, detained or not detained, does not mean
16 that we don't need to assess that person and make
17 sure that their proceeding is fair.

18 There are certain categories of safeguards
19 and protections that we're going to take in some
20 cases and not others. But, again, they vary, and
21 you have to look at the individual.

22 Q. Besides this, there are a number of
23 policies that are specifically focused on children
24 that the department has issued; correct?

25 A. Correct.

1 Q. Why the focus on children not just in
2 this policy, but in several policies in the
3 guidance that's given to immigration judges?

4 MR. SILVIS: Objection. We're really
5 far off topic now. If you want to answer for
6 yourself, you can do so, but not for DOJ.

7 MR. ARULANANTHAM: You can say that
8 once. You don't need a speaking objection. You
9 say it's off topic. That's fine. It's preserved.
10 Don't waste our time.

11 MR. SILVIS: Why don't we get on topic.

12 MR. ARULANANTHAM: We are on topic.

13 MR. SILVIS: Which topic are we on?

14 MR. ARULANANTHAM: We're on one.

15 MR. SILVIS: Other policies other than
16 the one mentioned here?

17 A. I'm sorry. I lost the question.

18 BY MR. ARULANANTHAM:

19 Q. There are a number of policies which are
20 focused on providing guidance, particularly in
21 cases involving children. My question is why the
22 need for the department to issue policies specific
23 to children?

24 MR. SILVIS: Same objection. Asked and
25 answered.

1 A. Certain policies authorize judges to
2 take additional steps to ensure the fairness, to
3 make it clear that the judge and to specify steps,
4 specific steps. That doesn't mean that the judge
5 cannot take those steps without that guidance, but
6 there's specific information that's provided and
7 best practices that can be used to protect
8 different respondents.

9 BY MR. ARULANANTHAM:

10 Q. And the reason why there are ones that
11 focus on children?

12 MR. SILVIS: Asked and answered.

13 Objection.

14 A. To provide guidance in conducting a
15 fundamentally fair hearing for children.

16 BY MR. ARULANANTHAM:

17 Q. The next page of it, page 3, it says at
18 the end of the paragraph under "Definition of
19 Unaccompanied Alien Child," it says, "The
20 regulations define juveniles as an alien under the
21 age of 18." Do you see that?

22 A. Yes.

23 Q. Why do the regulations draw a line at
24 18?

25 A. I don't know. I didn't draft that. I

1 don't know the legislative history behind that.

2 Q. So speaking for the department, is it
3 the department's view that there's a justification
4 for drawing a line at the age of 18 for purposes
5 of the regulations?

6 MR. SILVIS: Objection. We're off topic
7 unless you can identify that in the 30(b)(6).

8 MR. ARULANANTHAM: It's in the memo.

9 MR. SILVIS: That's true.

10 MR. ARULANANTHAM: Just say objection.
11 Don't guide the witness. Say objection. Outside
12 the scope. Then he answers the question.

13 MR. SILVIS: You can answer on behalf of
14 yourself, if you can.

15 A. I keep losing the questions.

16 BY MR. ARULANANTHAM:

17 Q. The regulations also define juvenile as
18 an alien under the age of 18. Then it cites a
19 regulation.

20 My question is: Is it the position of the
21 department that there's a justification for
22 drawing a line at age 18?

23 MR. SILVIS: Same objection.

24 A. The immigration laws with regard to age
25 vary. Some points they use 14. Some points they

1 use 18. Sometimes they use 21. I don't know why
2 they picked the different numbers in different
3 sections of the act and regulations, the specific
4 numbers that they use.

5 BY MR. ARULANANTHAM:

6 Q. My question is whether in the view of
7 the department -- you're a 30(b)(6) witness.
8 You're speaking on behalf of the department. The
9 department cites a memo that draws the line at 18
10 for purposes of this regulation. I'm asking you
11 whether there is a rationale in the view of the
12 department for drawing that line in this context?

13 MR. SILVIS: Same objection.

14 A. At the number 18 I don't know the
15 answer.

16 BY MR. ARULANANTHAM:

17 Q. Two paragraphs down, both of the next
18 paragraphs really, the Department of Homeland
19 Security Act of 2002 talks about unaccompanied
20 alien child. That definition also is tied to the
21 age of 18 years. Is that your understanding?

22 A. Yes.

23 Q. Do you know what the rationale is for
24 that?

25 MR. SILVIS: Same objection.

1 A. Again, I did not draft the legislation.
2 I don't know the legislative history as to why
3 they selected 18.

4 BY MR. ARULANANTHAM:

5 Q. This memo, do you know what age cut-off
6 this memo uses?

7 A. Practices and procedures in this memo
8 can apply to any child. It's not age specific.

9 Q. Well, you're a child, aren't you? You
10 have parents?

11 A. (Nodding.)

12 Q. So what do you mean by that? There must
13 be some age that this is by reference to, isn't
14 there?

15 MR. SILVIS: Objection. That's
16 argumentative.

17 A. The memo provides recommendations that
18 judges are free to adopt in addition to regular
19 practices to make sure the hearing is fair for
20 respondents.

21 BY MR. ARULANANTHAM:

22 Q. So you don't read this memo as applying
23 to any age range. It could apply to people in
24 their '40s and 50s?

25 A. These are best practices. I don't see

1 any reason that you cannot adopt these practices
2 to make sure the hearings are fair for others.

3 Q. That wasn't my question. My question
4 was: Do you read the memo as being focused on any
5 particular age group?

6 A. Yes. Obviously the memo in its title is
7 guidelines for cases of unaccompanied alien
8 children.

9 Q. What age group do you think that refers
10 to when it uses the word children, what age group?

11 A. The statute sets it at 18.

12 Q. But the memo mentioned that statute, but
13 it also mentions other definitions. Like you
14 said, in some contexts it can be 21. In some
15 contexts the word minor is used for 14. But the
16 memo is not only about the statute. It's about
17 procedures that are applicable to children in
18 immigration cases; correct?

19 A. Correct.

20 Q. What age range is the memo speaking to
21 in that context?

22 MR. SILVIS: Objection. Asked and
23 answered.

24 A. The number is not what's important here.

25

1 BY MR. ARULANANTHAM:

2 Q. That's not my question. My question is
3 what age range does the memo speak to?

4 MR. SILVIS: Same objection.

5 A. Children.

6 BY MR. ARULANANTHAM:

7 Q. Without any age range?

8 A. The memo applies across the board to
9 children.

10 Q. When you say to children what are you
11 referring to? Are you referring to an age range,
12 or do you just mean people born of parents?

13 MR. SILVIS: Are you asking him
14 personally or the department?

15 MR. ARULANANTHAM: He said it applies to
16 children. I'm asking what did he mean by the word
17 children.

18 A. I mean generically people who are young
19 without regard to a specific numeric cut-off date.

20 BY MR. ARULANANTHAM:

21 Q. So you think this memo applies to people
22 who are young, but isn't meant to impose any
23 particular age range; is that right?

24 MR. SILVIS: Objection. Asked and
25 answered.

1 A. In my reading of it, that's not the
2 purpose nor the intent of it. It is to make sure
3 young people in immigration proceedings,
4 regardless of a specific numerical cut-off,
5 receive a fair hearing, and it makes
6 recommendations to make sure that those people get
7 a fair hearing.

8 BY MR. ARULANANTHAM:

9 Q. When you train immigration judges, you
10 train on procedures that should be applied to
11 cases involving children including on this memo
12 and some of the other topics that are here;
13 correct?

14 A. It was a compound question.

15 Q. I'll rephrase it. You train immigration
16 judges about how to proceed in cases involving
17 children; right?

18 A. I have participated in training
19 regarding handling cases of children.

20 Q. When you do that, do you talk about a
21 particular age range that immigration judges
22 should use when dealing with cases involving
23 children?

24 A. I try to avoid doing that for this
25 reason: there are so many labels that have been

1 put onto children. You have some people refer to
2 them as juveniles. Some refer to them as
3 unaccompanied alien children, and there have been
4 adults with children, that I think the general
5 category -- and when we did the training for the
6 judges on juveniles, we said this relates to
7 children because you don't want to cut them off
8 because a certain statute or regulation or memo or
9 practice calls them juveniles once and
10 unaccompanied alien children.

11 As I mentioned, they're all young people who
12 find themselves in immigration proceedings. The
13 fact that one memo says 18 or another one says
14 juvenile doesn't mean that the importance of this
15 memo, which is what can a judge do to make sure
16 that the proceeding is fair, should be barred or
17 not applied because of a specific number was put
18 in a regulation or somebody chose to call them
19 juveniles and didn't call them unaccompanied
20 children.

21 Q. So the memo here, does it apply only to
22 unaccompanied alien children?

23 A. No.

24 Q. You would say --

25 A. As far as the practice is. This

1 applies, I think, to represented the children as
2 well.

3 Q. So you would say the need for the
4 safeguards that are talked about in this memo
5 would be present whether or not the child has a
6 lawyer, whether or not the child has a custodian
7 or adult, other persons standing next to, them
8 regardless, the need for heightened safeguards
9 because they're children should be present; is
10 that correct?

11 MR. SILVIS: I'll object to the scope.
12 It's off topic.

13 A. On a case-by-case basis, you're going to
14 consider each child, each child's situation and
15 determine which one is here. What is important is
16 not the preamble or the specific definition, but
17 actually what judges can do to make sure that the
18 proceeding is fair.

19 BY MR. ARULANANTHAM:

20 Q. So the fact that the child may be there
21 with another adult would not obviate the need for
22 the judge to pay special care to this case because
23 it involved a child; is that correct?

24 MR. SILVIS: Same objection.

25 A. They would be able to consider the

1 recommendations here and determine whether the
2 recommendations here are a safeguard or
3 protection, and we would not deny their ability to
4 use that tool just because somebody didn't meet a
5 definition in the preamble.

6 BY MR. ARULANANTHAM:

7 Q. Under C. on page four -- actually before
8 we get there, at the very top of of page 4, the
9 very first full sentence, it says, "An immigration
10 judge should decide on a case-by-case basis
11 whether special attention is required."

12 Do you see that sentence?

13 A. Yes.

14 Q. So none of the practices outlined in
15 this memo are mandatory, is that correct, on
16 immigration judges I mean?

17 A. They would all be weighed against due
18 process needs.

19 Q. In your supervisory capacity, do you
20 track whether immigration judges use these
21 different procedures outlined in this memo in
22 cases involving children?

23 A. In my supervisory capacity of?

24 Q. Of immigration judges.

25 A. I only supervise judges in Pennsylvania.

1 Q. In your capacity as the assistant chief
2 immigration judge of vulnerable populations, do
3 you track the extent to which immigration judges
4 use the procedure described in this memo in cases
5 involving children?

6 A. We meet with a lot of stakeholders. So
7 when you say track, we do take efforts to make
8 sure that the judges are conducting fair hearings,
9 and if somebody thought a judge was not doing
10 something like this, they very well could bring it
11 to my attention. They can file a complaint. It
12 may come up in an appeal to the Board of
13 Immigration Appeals and to the Circuit.

14 As far as track, if we're meaning am I
15 reading the cases and sitting in the courtrooms
16 with them, no. But do I try to stay aware of
17 training needs of judges? Yes.

18 Q. If a judge didn't undertake one of the
19 practices described in this memo in cases
20 involving children, that would not be a violation
21 of any rule because the practices outlined in this
22 memo are discretionary guidelines, not mandatory
23 requirements for judges; is that correct?

24 A. The judges have found that some of the
25 recommendations -- in most of the memos we're

1 going to be discussing today, there's always a due
2 process category. This is the guidance. But due
3 process is important. What judges have found in
4 applying some of these is that some worked better
5 than others and some do not.

6 A specific example is the removal of the
7 robe. The idea I think when this memo was drafted
8 was that if a child is in court and a judge is
9 wearing a robe, it might be intimidating. And we
10 had a rule that said you had to wear a black robe.
11 So the idea was if you take off the robe, it may
12 be less intimidating for the child. This doesn't
13 say you must remove your robe. But it gives you
14 the authority to do that.

15 In speaking with immigration judges and from
16 our experience, the judges actually found removing
17 the robe doesn't help the fairness of the
18 proceeding, doesn't make the child more
19 comfortable and that actually having the robe does
20 two things, one, it shows it's a solemn important
21 proceeding which will then allow the child -- send
22 the message you need to show up for court. We're
23 doing important things.

24 But they also found wearing the black robe in
25 the cases of children sets them apart from other

1 actors in the courtroom and that it distinguishes
2 the judge from others and it's less confusing
3 because it identifies this is the person, this is
4 the person that's in charge. So the judges found
5 actually it makes the hearing fairer or it's a
6 better practice to leave the robe on.

7 So that's also an example of how when this
8 was drafted in 2007, it was the best intent that
9 that be something that would really -- judges
10 could do. And I think the idea, the notion was
11 that judges could step off the bench and this
12 would be much more child friendly when actually we
13 found that not to be the case. So if the judge
14 does not take off the robe and that's their
15 rationale for doing it, no, we're not going to
16 take action against the judge or say you're
17 violating because they're doing it with the intent
18 of making the proceeding fair.

19 Q. I take it there must be other practices
20 described in this memo you still believe are
21 useful to ensure proceedings for children remain
22 fair?

23 A. Definitely.

24 Q. Can you give me an example of one?

25 A. I think talking to the children in plain

1 language, giving breaks, letting somebody sit with
2 the child -- I don't know that this is really
3 being done, but the ability to bring in a toy.
4 There's a number of things.

5 So I think what this does it gives you a
6 cafeteria, it gives you a laundry list of things
7 that you can do that maybe you thought of or
8 didn't think of and puts it out there for your
9 consideration. I think the sentence that you
10 cited really supports you should on a case-by-case
11 basis assess that child and decide for this child
12 robe on/robe off.

13 Q. If a judge didn't allow or utilize some
14 of the procedures that you're talking about,
15 didn't allow a toy, didn't allow an adult to sit
16 with the child or one of these other procedures,
17 even in a case where you or another judge might
18 have done that because they might have thought it
19 appropriate to ensure the proceedings are fair, is
20 there any consequence that would flow to the judge
21 for declining to use one of those procedures?

22 MR. SILVIS: Objection. Asked and
23 answered.

24 A. You have to look at the specific case as
25 to what was used and what was not used. It's not

1 that all of these must be used or a certain set of
2 these or a certain number. It's not a pass/fail.
3 If I saw a judge was not using a particular one, I
4 would inquire as to why and what they thought the
5 impact -- like I said, for example, the robe that
6 I gave.

7 BY MR. ARULANANTHAM:

8 Q. Have you ever done that where it wasn't
9 like the robe, but where you thought it would make
10 a difference and have you ever inquired as to why
11 a judge is not using such a procedure?

12 A. Not that I recall right now, but I want
13 to put a caveat with regard to recollection.

14 Q. If you look at paragraph C.

15 A. Can I have a moment to think about that
16 last?

17 Q. You can flag it and come back to it or I
18 can ask you later.

19 A. The reason I want to say is because we
20 do provide recommendations on best practices.
21 What I don't recall right now is whether it's in
22 response to the fact of hearing that one of these
23 was not followed or just because we want to
24 promote best practices.

25 Q. Look at the paragraph C., the second

1 sentence.

2 A. I'm sorry. One other. Also, we do
3 train generally, which would include training
4 regardless of whether someone is doing the
5 practice or not, that would refresh as well
6 regardless of the specific...

7 Q. Paragraph C., second sentence,
8 "Immigration judges should encourage the use of
9 appropriate pro bono resources whenever a child
10 respondent is not represented."

11 Is that still the position of the department?

12 A. Judges should incur pro bono
13 representation for all respondents, and that's why
14 we have pro bono liaison judges in all of our
15 courts.

16 Q. There's nothing special about children's
17 cases that there should be greater attempts to
18 find pro bono resources for children than for
19 adults; is that right?

20 MR. SILVIS: Object to the scope.

21 A. Judges in all cases should encourage the
22 use of appropriate pro bono resources. It does
23 say whenever a child is represented. That's a
24 perfect example of the fact that the courts want
25 to encourage for all respondents pro bono.

1 BY MR. ARULANANTHAM:

2 Q. My question though was whether there is
3 anything specific, any particular guidance to
4 judges to encourage pro bono in cases involving
5 children. I can't tell from your answer if the
6 answer to that is no. You said there is guidance
7 as to all people, the judges should try to find
8 pro bono for all people, unrepresented people. So
9 there's no particular emphasis or directive on
10 judges attempting to find pro bono representation
11 for pro se children as opposed to any other pro se
12 person; is that right?

13 MR. SILVIS: Object to the form.

14 A. I'm not finding anything specifically
15 about the fact that the child -- that the
16 respondent is a child that would make it more
17 important that we look for a pro bono
18 representative or we should not encourage that any
19 more than we should for an adult. The goal for
20 both -- just like the sentence above it, where a
21 list of pro bono services is available, the judge
22 should provide it to the child, well, the judge
23 should provide it also to the adult.

24 BY MR. ARULANANTHAM:

25 Q. There's nothing about the fact you're a

1 child that makes you more than in need of pro bono
2 representation than an adult?

3 A. You're going to look at the individual
4 circumstance of the respondent.

5 Q. That's not what I asked. I asked,
6 there's nothing about the fact someone is a
7 child -- nothing else. You haven't yet looked at
8 anything else. All you know is this person is a
9 child and that person is an adult. There's
10 nothing about the fact they're a child that makes
11 them more in need of pro bono representation than
12 an adult; is that correct?

13 MR. SILVIS: Object on the topic.
14 Outside the scope.

15 MR. ARULANANTHAM: I'm asking if that's
16 the position of the department in response to this
17 sentence.

18 MR. SILVIS: Same objection.

19 A. I think the fact that the respondent is
20 a child is going to make you inquire regarding
21 what that child is able to do or not able to do,
22 and that is going to educate your decision
23 regarding pro bono representation.

24 BY MR. ARULANANTHAM:

25 Q. Is that not also true of adults?

1 A. It is true of adults.

2 Q. So what you said, the fact that the
3 person is a child, would make you want to inquire
4 further? Why? Whether or not they're a child,
5 you have to inquire; isn't that true?

6 A. Whether or not they're a child --
7 because what I'm saying and I've been saying is
8 that all respondents are capable of performing at
9 different levels and for all respondents, we're
10 going to take certain actions to make sure that
11 the hearing is fair. And my personal opinion --

12 Q. I'm asking you in your capacity as
13 30(b)(6) witness.

14 A. In my capacity as a 30(b)(6) witness,
15 you are attempting to get me to categorize or put
16 people into certain boxes on a continuum of
17 functions that I'm not comfortable with and that I
18 don't think is consistent with what we're training
19 judges on. And so to say it's more important for
20 this box than that box I don't think is correct.

21 Q. So as you would train judges, you would
22 not train judges to be more concerned about pro
23 bono representation for children than for adults.
24 They should be equally concerned about pro bono
25 representation in all the cases involving

1 unrepresented people?

2 A. We're going to consider it on a
3 case-by-case basis, and there are certain
4 characteristics that are going to make us look at
5 certain people detained, as an example, because
6 people who are detained may have not the community
7 support that others have.

8 So there are certain common characteristics
9 that children or detainees or adults may have that
10 may as a stereotypical matter make you look into
11 things, but what is the real focus is on the
12 individual ability to function. And so they're
13 all --

14 As you're aware from the Franco, there are
15 certain indicia or indicators that may turn out to
16 be accurate or not. So what you're going to look
17 at is indicators that somebody may not be able to
18 perform functions and investigate it.

19 MR. SILVIS: Are you finished with your
20 answer?

21 BY MR. ARULANANTHAM:

22 Q. You would train judges to look for those
23 indicators, and it's the department's position the
24 judges should be trained to look for those
25 indicators in all cases, not especially children

1 in every case; is that correct?

2 A. Correct.

3 Q. The next two sentences down, it says,
4 "Although there is no independent court role for a
5 personal representative or guardian ad litem,"
6 then it goes on.

7 What do you understand those two terms to
8 mean? What's a personal representative in this
9 context? Let's start there. What's a personal
10 representative in this context?

11 A. I have absolutely no idea. Again, I
12 think that's a suggestion of the immaturity or I
13 should say we had less experience when this was
14 drafted.

15 Q. You're talking about the immaturity of
16 the agency?

17 A. The lack of experience what a personal
18 representative, I think it's ambiguous. I'm not
19 sure what was meant. And I think that's why I say
20 we're trying to pick apart words that I don't know
21 today would be used the same because I think we
22 have a better understanding and a lot more
23 experience.

24 What the drafter meant when they said there's
25 no independent court role for a personal

1 representative, I'm not sure which who they were
2 envisioning as a personal representative in this.

3 Q. If you were writing this today to update
4 to reflect the department's current view, what's
5 the word you would use to refer to -- to
6 substitute for personal representative?

7 MR. SILVIS: Object to the question, not
8 within the topics that were designated.

9 A. I would actually leave out the sentence
10 because I don't think it adds anything there.
11 Immigration judges do not have the authority to
12 appoint guardians ad litem. We don't have the
13 legal authority to do it. So I don't even know
14 why that's even being discussed in the memo.

15 Again, I'd look at the intent or what they
16 intended, maybe draft it clearer, but I don't
17 think I would put it in here. And what they mean
18 by independent court role, I'm not sure what that
19 means. I can't appoint a guardian ad litem
20 saying -- it's not something I would probably put
21 in or figure out what I meant and then clarify it.

22 BY MR. ARULANANTHAM:

23 Q. At the bottom of that page, paragraph
24 E., it makes a reference to training. OCIJ has
25 provided training to immigration judges on some of

1 these issues. And what it's talking about above
2 is various issues involving children.

3 A. Um-hum.

4 Q. Is there child respondent specific
5 training at EOIR?

6 A. Yes.

7 Q. Which judges get that?

8 A. Most recently it was the judges that are
9 presiding -- that have a significant -- we've
10 established juvenile dockets at the courts, and
11 it's the judges that are spending a significant
12 portion of their time adjudicating or presiding
13 over those juvenile dockets.

14 MR. SILVIS: You have to let him finish.

15 THE WITNESS: This time it's my fault.
16 I took a long pause.

17 A. So that was mandatory for the judges in
18 April of 2015. What we did was we provided it
19 again at the legal training conference in 2015.

20 BY MR. ARULANANTHAM:

21 Q. Was there child specific training
22 produced for judges prior to 2015?

23 A. Yes, yes.

24 Q. Do you know when that started?

25 A. I took over in 2009. That's when I

1 first was involved in identifying and organizing
2 training. I know that I did have specific child
3 topics in those trainings.

4 Q. Are there what you called children's
5 dockets is the word you used?

6 A. Juvenile dockets.

7 Q. Are there juvenile dockets in every
8 location where there are cases involving children?

9 A. There have been arrangements for
10 juvenile dockets in every location. Some courts
11 just don't have juveniles on the docket. So as
12 ironic as it sounds, in an adult male detention
13 facility where we do not see children and there's
14 criminals, we still have made arrangements for a
15 juvenile docket, but they don't see children.

16 Q. Are judges trained to identify a child
17 respondent when a person appears in court?

18 A. The notices to appear are marked from
19 DHS, and then judges may ask about the age of the
20 child or there will be documents indicating age.

21 Q. They're marked as UC for unaccompanied
22 child?

23 A. Unaccompanied child is marked UC.

24 Q. Is there some other marking for other
25 children?

1 A. There are different codes for adults
2 with children.

3 Q. Do those codes cover the universe of
4 possibilities for children being in immigration
5 court?

6 A. No, no.

7 Q. So for a child where the NTA doesn't
8 have a specific marking, how would the judge know
9 that the respondent before them is a child?

10 A. As far as -- I mean, we're talking --
11 there's certain obvious common sense things that
12 you can recognize in a child. I think where we're
13 looking is -- are we talking about the issue
14 where -- well, you're asking the questions, not
15 I -- where it's not clear whether someone is a
16 child?

17 They're put on the juvenile dockets. They
18 may be brought in by the shelter. I think mostly
19 those determinations are made in advance. But
20 there's nothing that in the course of the
21 proceeding, that if an immigration judge has a
22 question regarding age, that they can't inquire.

23 Q. Similarly, I see there's no requirement
24 that the immigration judge on a nonjuvenile docket
25 take steps to determine whether the person in

1 front of them is a child or not; correct?

2 A. Well, the juvenile dockets are for
3 generally children by themselves, not a child with
4 an adult where the parent is a lead.

5 Q. Is it a child by themselves or only
6 unaccompanied child, a UC designated child?

7 A. I'm not sure. I believe it's any child.
8 I don't believe it has to be a UC designation.

9 Q. So if they were a child --

10 A. There's so many codes and categories.
11 So I'm not the strongest on the exact -- which
12 codes apply in which cases.

13 Q. But there should not be, if I understand
14 what you're saying correctly, any children unless
15 they're in a consolidated proceeding with their
16 parent in the same proceeding -- leave them
17 aside -- there shouldn't be any children on
18 dockets other than juvenile dockets; is that
19 right?

20 A. It could happen that a child could show
21 up on an adult docket. I mean, it would be very
22 rare. There could be circumstances and maybe have
23 to be rescheduled for the appropriate docket, if
24 it was necessary, to protect the child.

25 Q. So any child should be transferred,

1 essentially their case should be transferred to a
2 juvenile docket, is that what you mean?

3 I'm trying to figure out what you mean by
4 rescheduled. Do you mean transferred to a
5 juvenile docket or do you mean something else?

6 A. The juvenile dockets are set up to
7 address the juvenile cases. Obviously that's our
8 goal. It is possible that if a child ended up on
9 an adult docket, the judge would, in essence, do
10 the case by itself or take appropriate measures.
11 I can't say for sure. I think they would -- I
12 can't say for sure I suspect you could find a
13 child on an adult, but I think the judge would
14 take the steps to make sure the case is treated as
15 a juvenile docket case even if it shows up on the
16 adult docket.

17 Q. That judge might not have been trained
18 on juvenile docket practices because the juvenile
19 docket trainings are only for judges who handle
20 juvenile dockets; is that right?

21 A. No, no. The one we specifically brought
22 them in most recently were for judges that aren't
23 on those juvenile dockets. There's other
24 trainings. The 2015 conference was available and
25 some of the trainings that were mandatory were for

1 all judges, not just those who handle juvenile
2 dockets.

3 Q. So every judge in the August 2015
4 training, all the immigration judges in the entire
5 system were trained on child specific practices?

6 A. No. It was offered as a course. For
7 example, when I did my docket, I didn't see any
8 children. So I'm not going to going sit in that
9 particular training. I'm going to attend one that
10 fits the type of cases and dockets.

11 Q. Do you have any data or evidence as to
12 the prevalence of children's case that are not on
13 the juvenile dockets?

14 A. Only from when I spoke to the judges.
15 It's very, very rare. They said it's really an
16 exceptional circumstance that that would happen.

17 Q. The judges you spoke to are judges that
18 are handling the juvenile docket; correct?

19 A. Correct. It's not commonplace.

20 Q. I'm going to hand you what we will mark
21 as Exhibit 12. It's page EOIR254. It's an email
22 from you to a number of people starting with Juan
23 Osuna, Ana Kocur. It says, "Attached is final
24 copy of the agenda for the April 23-24
25 training..."

1 And then behind that there are a number of
2 pages which include in them an agenda for
3 training. Do you see that?

4 A. Yes.

5 (Exhibit 12 was marked.)

6 BY MR. ARULANANTHAM:

7 Q. You spoke at this training; correct?

8 A. Correct.

9 Q. Is this the training that was for judges
10 who are handling juvenile docket?

11 A. Correct.

12 Q. On Thursday -- this is on EOIR257 -- the
13 second session is Children Are Not Little Adults:
14 Child Development and Functionality. Do you see
15 that?

16 A. Yes.

17 Q. Did you attend that?

18 A. I did.

19 Q. What was said by Dr. Mack at that
20 training?

21 A. In a very general summary, what it did
22 is it tracked children from the time of birth up
23 through adulthood and tracked the development of
24 the child.

25 Q. When you say tracked, did it the discuss

1 the different capacities that children have at
2 different ages?

3 A. Yes.

4 Q. Do you remember what age was considered
5 adulthood in the context of the presentation?

6 A. I don't remember that being specified.

7 Q. What did it say about children's
8 capacity and functionality relative to adults?

9 A. What it did is it tracked that as a
10 child got older. It talked about verbal
11 communication. It talked about different
12 cognitive abilities, the way the children react,
13 their perceptions at different ages. It was
14 really a continuum of how people develop into
15 adulthood.

16 Q. Was the description broken down even by
17 blocks of ages, by infancy, early childhood,
18 adolescent, or no?

19 A. I think the continuum was there. I
20 don't recall exactly how it was -- what labels
21 were put on the different stages, whether it was a
22 continuous continuum or whether it broke into
23 segments. I'd have to look back at his slides.

24 Q. This was a PowerPoint?

25 A. This was a PowerPoint.

1 Q. There's another one at 2:30 where you
2 were on the panel called Decidedly Different:
3 Presiding Over Proceedings Involving Children.

4 A. Yes.

5 Q. What was the content of that
6 presentation?

7 A. I was afraid you were going to ask me
8 that because I don't recall specifically what was
9 covered at that presentation. I'd have to look
10 at. I don't even know if I have speaking notes at
11 this point.

12 Q. Do you recall what you presented?

13 A. I don't recall whether I was the
14 moderator or presenter. Some of the people listed
15 may have been moderators. I thought about that
16 because I expected you were going to ask that.
17 Unfortunately, I just can't recall.

18 Q. There's the second session of the same
19 one. It's on the next day at 11:00. Do you
20 remember that?

21 A. I remember the session and I remember
22 hearing them speak generally I think probably
23 because I was in charge of the administration of
24 the whole program. I honestly don't recall having
25 any notes of the presentation. I don't even

1 recall today whether I was the moderator.

2 Q. And no recollection as to the contents
3 of the presentations by anyone, either by you or
4 the other speakers?

5 A. I recall generally Maria Woltjen spoke
6 about child advocates, and Jennifer Nagda also
7 spoke about child advocates, which is why the
8 title is Decidedly Different, because child
9 advocates don't exist in the adult process. As a
10 total resource, it just doesn't exist there.

11 I remember Steve talked about -- Steven Lang
12 spoke about representation and what resources are
13 available for representation. He spoke about the
14 LOPC program. I'm sure Frank Travieso spoke about
15 handling the juvenile dockets. I have general
16 recollection of why they were on the panel. I
17 don't remember what Rene Cutlip-Mason spoke about.

18 Q. You don't remember what you spoke about?

19 A. I don't, which is unusual for me, but
20 honestly I don't.

21 Q. MaryBeth Keller on the first one, do you
22 remember what she spoke about?

23 A. In preparing and looking at the
24 documents, I don't even know why she was on the
25 agenda for that topic. She is the ACIJ for

1 conduct and professionalism, and that was not the
2 topic here. And I have no idea why -- the
3 embarrassing thing about that is because I was the
4 one who invited her, and I don't know what I asked
5 her to speak about or why I put her on the agenda.

6 Q. You are not listed on the speakers, but
7 did you attend that?

8 A. I'm sorry?

9 Q. Friday at 9:00.

10 A. I did attend that.

11 Q. Do you remember what was discussed on
12 that panel?

13 A. The availability of resources to assist
14 in the representation of children. And the reason
15 I actually came up with the title Representation
16 of Children and their Interests is because it was
17 designed not to just cover legal representation
18 and what pro bono -- legal representation or
19 representation resources were available. But it
20 was also covered to talk about representation of
21 interests, such as the best interest
22 determinations of children.

23 But also we get -- we were getting a lot of
24 concern over abused children, trafficked children.
25 So it was also to cover representation of those

1 interests as well. It was kind of protection
2 topics, trafficking topics.

3 Q. Recognizing that your memory of those
4 three is fuzzy, do you recall any discussion in
5 any of them about whether judges should handle
6 cases involving children differently and, if so,
7 how?

8 A. So in the representation of children and
9 their interests, this one was designed to identify
10 what pro bono resources were available and what
11 representation resources were available. It was
12 designed to cover what child advocate resources
13 were available to cover bests interests.

14 It was also designed to basically give an
15 idea, for lack of a better word, a cafeteria
16 approach of what is out there and who is out there
17 in the community that focuses their work on
18 children's cases.

19 Q. So what about what judges should do
20 differently, was there any discussion of that on
21 these panels that you can recall?

22 A. The reason I put this one together was I
23 wanted the judges to know what is in their
24 toolbox.

25 Q. I'm not just talking about that one.

1 I'm talking about decidedly different. It may be
2 confusing. Even if you include the two decidedly
3 different ones -- let's talk about those. Was
4 there any discussion in there, in those panels,
5 about what judges should do differently?

6 A. I mean, in the sense that I see child
7 advocates is in there, so obviously that's
8 something judges are going to do differently.

9 Q. What else?

10 A. I think Frank Travieso spoke largely
11 about best practices in handling the cases, many
12 of the recommendations that were in the OPPM
13 07-01, things that he was doing in his court to
14 ensure the fairness, probably kind of a practical
15 experience.

16 Q. Do you recall if the OPPM 07-01 was
17 discussed?

18 A. I believe it was, but I can't say with
19 absolute certainty.

20 Q. So they're still training on the
21 contents of 07-01 in April 2015; is that right?

22 A. Yeah. 07-01 is still in place, and I
23 think what's being trained on is the techniques.
24 And really the idea is to pull together all of the
25 tools and resources and information that a judge

1 can use to assess in an individual case what is
2 available to me.

3 So Steve would talk, for example, about
4 justice AmeriCorps so that judges knew do I have a
5 respondent that that does cover or would know if
6 they want to consider whether a child advocate is
7 appropriate, what is a child advocate, how do I
8 get a child advocate, what is a difference between
9 child advocate and a legal advocate.

10 That's really what the discussions were, what
11 is available that you can use. In addition to
12 07-01 is some things, and you can reach out to
13 them to make sure the hearing is fair.

14 Q. The one from the morning on Friday
15 Proceed or Not To Proceed: In Absentia,
16 Continuances and Administrative Closure. You were
17 listed as one of the presenters on that.

18 A. Um-hum.

19 Q. Do you remember what that panel was
20 about?

21 A. Yeah. It looked at whether to -- if a
22 child doesn't show up, whether to proceed in the
23 child's absence if DHS made a request to proceed
24 in absentia.

25 Q. Can you tell me what the content of the

1 training was in that regard?

2 A. Yes. That one I do remember. We
3 covered the requirements for proceeding in
4 absentia. We covered verifying the notice to
5 appear was served on the child, verifying that the
6 notice of the hearing was correct and accurate,
7 whether there were circumstances to explain why
8 the child did not show up. We looked at the
9 requirement of that even if the child did not show
10 up and the judge did proceed to go in the case,
11 the DHS had the burden of proving the allegations
12 and charges. It's not just don't show up and go
13 forward.

14 Q. You mean by that that the DHS has to
15 prove that before the absentia order is entered?

16 A. Right. There's no default judgment,
17 right. There's still a burden of proof that needs
18 to be established in the case.

19 Q. The audience of this would have been
20 judges?

21 A. With juvenile dockets.

22 Q. Did you also discuss service issues?

23 A. Yes.

24 Q. What was discussed about that?

25 A. We talked about the requirements, the

1 recent case regarding -- it's not so recent
2 anymore -- regarding proper service on a child.

3 Q. What case was that?

4 A. I don't remember the name. It's a Board
5 of Immigration Appeals. Let me go back. That's
6 not correct. I'm confusing with the case on
7 service of mental competence.

8 Q. Is it Cougar Cruz?

9 A. I'm really bad. As long as I've been
10 doing immigration cases, I'm not good at
11 remembering the names. I can get the law right
12 which is important.

13 We talked about making sure the child was
14 served with the notice to appear because it's
15 important the child be aware of the allegations
16 and the charges.

17 Q. Do you also train on a requirement that
18 the EOIR custodian receive service?

19 A. A requirement? Am I training that ORR
20 must receive service of the notice?

21 Q. In any cases, yes.

22 A. No. I don't train that ORR must receive
23 service.

24 Q. I take it the ORR custodian is required
25 to receive service?

1 MR. SILVIS: Is this a training issue?

2 I want clarification on the question. Are we
3 still talking about training or just talking about
4 DOJ broader?

5 BY MR. ARULANANTHAM:

6 Q. You can answer the question if you
7 understand it.

8 MR. SILVIS: We'll just object, outside
9 of the topic. So answer for yourself.

10 A. I am aware that DHS does serve in some
11 cases the notice to appear on ORR.

12 BY MR. ARULANANTHAM:

13 Q. But you don't train that that's ever a
14 requirement; is that right?

15 A. No. I don't train that you must serve a
16 child's notice to appear on ORR.

17 Q. That's because it is your understanding
18 that there is no such requirement; is that
19 correct?

20 MR. SILVIS: Same objection.

21 A. My training is that you have to have
22 real service notice, that a person must be aware
23 of the allegations and charges against them. And
24 so if ORR, for example, was served with a notice
25 to appear and the child does not recall receiving

1 it or the child did not recall getting it, that's
2 what our training would be concerned.

3 So I would not teach that you must serve ORR.
4 What I'm concerned is that the child is getting
5 proper service, do they really know what is going
6 on, what the proceeding is about.

7 BY MR. ARULANANTHAM:

8 Q. Do you train that's the rule regardless
9 of the age of the child?

10 A. All respondents, yes. I think all
11 respondents for a fundamentally fair hearing need
12 to be advised of the allegations and the charges
13 that are pending against them. The way we do that
14 is by serving a notice to appear, but then there's
15 also the legal requirement in the regulations that
16 the judge must explain the allegations in plain
17 language that the respondent can understand.

18 Q. It must be true that there's some
19 children that are so young that even if they
20 receive the notice and even if they're given an
21 explanation by the judge, they're still not going
22 to understand what's going on; right?

23 A. I have to do a case-by-case basis
24 determination. I've taught immigration law
25 literally to three year olds and four year olds.

1 It takes a lot of time. It takes a lot of
2 patience. They get it. It's not the most
3 efficient, but it can be done.

4 Q. I understand that you think it can be
5 done. Are you aware of any experts in child
6 psychology or comparable experts who agree with
7 the assessment that three and four year olds can
8 be taught immigration law?

9 A. I haven't read any studies one way or
10 another.

11 Q. What about like a one year old?

12 A. I mean, I think there's a point that
13 there has to be communication. There has to be
14 communication at some point.

15 Q. So what do you train judges as to cases
16 in which communication is impossible because the
17 child is too young?

18 A. What we train is if a respondent, child
19 or adult, cannot perform functions necessary for
20 the hearing to be fair, the judge should not
21 proceed.

22 Q. That's true regardless of whether
23 there's some other individual who may be able to
24 understand the proceeding?

25 A. What is required at that point is

1 safeguards and protections. So if the respondent
2 is not able to perform a function required in the
3 proceeding, if the judge cannot find a safeguard
4 or protection that's available to make sure the
5 hearing is fair, then the judge -- we tell them
6 not to proceed.

7 We don't tell them how not to proceed. In
8 other words, I don't say continue the case or
9 admin close the case or terminate the case. What
10 we teach them to do is basically state that due to
11 these issues, I do not believe that the respondent
12 can perform functions needed for the hearing to be
13 fair. I've evaluated safeguards and protections.
14 And either state that the safeguard and protection
15 is adequate, or if the judge feels it's not
16 adequate, just state so and explain what
17 safeguards and protections were considered and why
18 they believe that even with that safeguard or
19 protection, the proceeding is not fair.

20 The reason partly we did it this way is
21 because when the judges were administratively
22 closing or terminating the cases for these reasons
23 and the case went back went up to the Board of
24 Immigration Appeals, it came back on a remand
25 saying the judge failed to explain what safeguards

1 and protections were considered and why the judge
2 concluded they were inadequate. It's kind of a
3 multiple step analysis.

4 Q. Do you know what case you're talking
5 about, the name or date, that went up to the Board
6 and came back on a remand? You're talking about a
7 case involving a child; right?

8 A. No. I'm talking about the mental
9 competency context that when the judges failed to
10 articulate the safeguards and protections, it came
11 back. In the case of a child, I'm sure the same
12 thing is going to happen. You can't just make a
13 statement I'm terminating because I don't think it
14 can be fair. The Board is going to require you to
15 go through that extra step of considering
16 safeguards and protections.

17 Q. I want to come back to this issue of
18 proceeding with safeguards. I was originally
19 asking in the context of service. I wanted to tie
20 the issue up on that. Imagine a case where a
21 child, even though they received service, they
22 still are not capable of understanding or
23 recalling sufficiently for the service to be
24 effective.

25 In a case like that, can service on the ORR

1 or ORR custodian satisfy the service rules?

2 MR. SILVIS: I'll object to the scope.

3 It's outside the topics.

4 BY MR. ARULANANTHAM:

5 Q. I'm asking that question in the context
6 of how you train.

7 A. Will service on ORR --

8 Q. They're the custodian.

9 A. Can you repeat it again.

10 (The record was read back.)

11 MR. SILVIS: Same objection.

12 A. There's two parts of the question,
13 service on ORR or the ORR custodian. So I think
14 there's custodians and there's custodians. I'm
15 not sure that service on all custodians in my mind
16 or for training purposes as an immigration
17 judge -- I think it would depend on the custodian
18 and who the custodian is, whether that was an
19 effective safeguard, protection or proper service
20 deemed legally sufficient for the hearing to be
21 fair. With regard to ORR --

22 BY MR. ARULANANTHAM:

23 Q. I was talking about while the child was
24 in ORR custody obviously.

25 A. You said custodian. You mean ORR is the

1 custodian?

2 Q. Right, if ORR is the custodian, which is
3 often the case, where the child is in ORR custody
4 or if the child is released to a custodian that is
5 somebody who ORR has designated.

6 A. I think there's custodians and there's
7 custodians. There's custodians that are going
8 to -- that you're going to speak to the custodian
9 and find out whether that's an effective safeguard
10 and protection. Is it a parent? What is the
11 capabilities of that person? Is that sufficient?

12 With regard to ORR, just serving the notice
13 on ORR without any indication as to whether the
14 child has received it or is aware of it, that
15 would not be my training that would be sufficient
16 service.

17 Q. Earlier when we were talking about a
18 case --

19 A. Let me say one thing, and I specifically
20 recall having trained on that --

21 Q. On that being?

22 A. Service on ORR. If the notice to appear
23 is served on ORR and then the child is in
24 proceedings, then I think you need actual service,
25 meaningful service, and I know that that --

1 because I specifically recall training on that and
2 making that statement.

3 Q. Earlier when we were talking, you had
4 referred to a case about mental health cases in
5 the context of describing the Board reversing an
6 immigration judge's decision that failed to
7 describe certain safeguards. Do you recall that
8 testimony?

9 A. Yes.

10 Q. Do you think that analogy between
11 children's cases and mental health cases is
12 relevant when assessing what safeguards should be
13 required to ensure that there's a fairing hearing?

14 MR. SILVIS: Object to the topic.
15 Outside the scope.

16 A. No. I think what is relevant is
17 functionalities and factors that impairs one's
18 ability to function in a manner that is required
19 for the hearing to be fair. But I don't think
20 there's an analogy between a person with a mental
21 disorder and a child as far as a correlation
22 between the functionalities. We're talking about
23 about two different types of impairments.

24 I don't think that's accurate to say
25 impairments. I think it's two different -- what

1 we're talking about really is different factors
2 that may affect the person's ability to function.

3 Q. When you do training, because I know you
4 do training on both sets of topics --

5 A. Right, right.

6 Q. -- do you use mental health procedures
7 and practices that you have implemented in that
8 context to describe what immigration judges should
9 do in cases involving children?

10 A. No. We use that same functionality
11 analysis that I talked about. Really the
12 trainings are separate. So you will see we don't
13 do training on children and mental health because
14 I think they're very different. There are
15 different reasons. And the mental health requires
16 a predicate mental disorder. There's no evidence
17 these children have a mental disorder.

18 That's why I say I think we matured in our
19 assessment of these cases and why I think 07-01
20 would be written differently because I think what
21 we learned is we take the respondent and you look
22 at the respondent and you look at the respondent's
23 ability to function and see what they can perform
24 and what they cannot perform and the impact of
25 their inability to perform on fairness.

1 And we look at the impairment. And some
2 impairments -- some people can proceed with
3 impairment if the impairment doesn't affect the
4 fundamental fairness of the proceeding. So I
5 think that general analysis in that if you find
6 that the impairment does not affect the fairness,
7 then you proceed.

8 If the impairment does affect the fairness,
9 then you look for safeguards and protections.
10 That's really the overarching analysis that I
11 encourage with vulnerable populations. That's why
12 I say I think we have a better framework now to be
13 able to assess how an impairment, regardless of
14 the cause. Even language ability or the fact that
15 we can't find the exact interpreter, it's the same
16 thing. If we don't have a good interpreter and
17 that impairs the respondent's ability to function,
18 if we can't get that exact dialect -- sometimes
19 having a different dialect may not impair, other
20 times it does. That's why I say that we'd kind of
21 redo the way we do things sometimes based upon the
22 knowledge and experience.

23 Q. So in some cases within that framework,
24 the safeguard needed to ensure that the proceeding
25 is fair is counsel; correct?

1 MR. SILVIS: Objection.

2 A. It's one that can be considered. That's
3 why 07-01 and all these other things, the child
4 advocate, I think together -- in the training we
5 try to give a tool kit so that you can find the
6 resource that you believe is necessary and that is
7 the appropriate safeguard and protection in that
8 case.

9 BY MR. ARULANANTHAM:

10 Q. So you would train that then sometimes
11 judges should take steps to ensure representation
12 for a child because that safeguard is needed to
13 ensure the child has a fair hearing?

14 MR. SILVIS: Objection. Outside the
15 topics.

16 A. So we start with the supposition that
17 judges should always encourage where possible pro
18 bono representatives. We always want -- in all
19 cases to the extent possible, we would like the
20 respondents to be represented.

21 BY MR. ARULANANTHAM:

22 Q. Why is that?

23 A. It's much more effective. It makes a
24 much more efficient, effective proceeding. Using
25 the example that I mentioned, could I explain

1 immigration concepts to a preschool class of three
2 year olds and four year olds? Yes, but it took me
3 a long, long time to do it. And so having a
4 representative that can do a lot of work -- it's
5 my obligation to make sure the hearing is fair,
6 but if there's somebody that can do part of that
7 work for me, it makes my life a whole lot easier.
8 That doesn't mean --

9 Q. You were saying that you encourage pro
10 bono representation as a general matter.

11 A. Um-hum.

12 Q. But do you also then train that in the
13 context of children's cases that sometimes the
14 safeguard needed to ensure that the hearing is
15 fair is counsel?

16 A. In all cases we say that a safeguard and
17 protection should be considered is representation,
18 and we work hard to try to make as many pro bono
19 resources available. We will ask the judge if
20 they believe that in a particular child's case, if
21 there is no pro bono representative available, to
22 reach out to the Office of Legal Access Programs
23 to see if we can get help for the child in that
24 circumstance.

25 Q. Would you train that there may be some

1 cases where the only appropriate safeguards in
2 order to ensure there's a fair hearing is either
3 representation or stopping the hearing?

4 A. We've never trained on that one way or
5 another. My goal is to really get a match. What
6 is the ability to function and then you pick. I
7 would never dictate to judges in a particular case
8 you must use this safeguard or protection in every
9 case.

10 I have to be mindful. I want them to be
11 trained. I want them to understand. I want them
12 to have that analysis and to do that analysis and
13 articulate it so the case doesn't come back. I
14 want them to know what resources are available.
15 But I can't cross the line into telling them how
16 to handle particular cases or order particular
17 safeguards and protections in every case.

18 Q. And I take it that's true of EOIR as a
19 general matter, you can't dictate how the judges
20 actually implement safeguards in any particular
21 case; is that right?

22 MR. SILVIS: Same objection.

23 A. Correct, I believe.

24 BY MR. ARULANANTHAM:

25 Q. Let me put one more set of exhibits into

1 the record and ask you quickly about them. This
2 is 13, I believe. It's a document that at the top
3 it says "2015 EOIR Legal Training Program Course
4 Descriptions." Do you see that?

5 A. Yes.

6 (Exhibit 13 was marked.)

7 BY MR. ARULANANTHAM:

8 Q. Do you recognize this course
9 description?

10 A. I do.

11 Q. What is it?

12 A. It is a list of course descriptions of
13 courses that were done in the 2015 EOIR legal
14 training program for judges. And just so you're
15 not misled, I should explain the purpose of this
16 document because it's probably not what you're
17 thinking the purpose was.

18 This was prepared as part of the an
19 application to get continuing legal education for
20 these courses. It is meant to provide enough
21 information so that the Office of Legal Education
22 when they went to the various state bars could
23 assess whether CLE credit was justified, whether
24 there was enough legal content. It's not meant to
25 be an actual description beyond CLE purposes of

1 what was covered or what was needed.

2 There could be variance because this was
3 prepared in advance of the conference because we
4 have CLE deadlines. So as far as its accuracy as
5 actually saying this is what's described so that's
6 exactly what was covered, I can't say that. It
7 was a supporting documentation for CLE
8 documentation.

9 Q. This conference that this was submitted
10 in advance for happened in August; is that right?

11 A. Correct.

12 Q. On the second page, which is EOIR260,
13 down at the bottom there's "Child Development and
14 Eliciting Accurate Information from Child
15 Witnesses." Do you see that?

16 A. Yes.

17 Q. You presented on the panel on that
18 subject with Dr. Mack; is that correct?

19 A. No. I was the moderator.

20 Q. Do you remember the content of that?

21 A. I was a moderator. To get CLE you have
22 to have an attorney on the panel to ask legal
23 questions. He presented. And it was basically
24 identical to his presentation. The presentation
25 at the other one we looked at from Dr. Mack was so

1 effective that we invited him back again.

2 Q. How did you measure its effectiveness?

3 A. By comments of the attendees and people
4 ask for copies of his slides, which
5 unfortunately -- I shouldn't say unfortunately.
6 Actually, it was included as part of the training
7 CD from this program.

8 (Recess from 2:28 p.m. to 2:37 p.m.)

9 MR. SILVIS: Before we go on with
10 questioning, I'd like to see if you agree with
11 this stipulation. To the extent I object and just
12 say objection topic, that the objection is that
13 it's outside the topic of the 30(b)(6) and our
14 objection is that this witness is only answering
15 on behalf of himself.

16 MR. ARULANANTHAM: Much appreciated.

17 MR. SILVIS: Agreed?

18 MR. ARULANANTHAM: Yeah, agreed.

19 MR. SILVIS: It will go faster.

20 BY MR. ARULANANTHAM:

21 Q. Let's go back to the 07-01 memo for just
22 a minute. As to the use of all of these
23 procedures, is there any data or evidence that
24 their use improves the outcomes in immigration
25 cases?

1 A. I'm not aware of any study on that
2 topic.

3 Q. Is it something you have tried to assess
4 anyway?

5 A. Every case is different and different
6 ones would be used in different cases. So I'm not
7 sure how you could really compare apples and
8 apples because every respondent is different.
9 Safeguards are different.

10 I'm not sure -- I haven't requested it. I'm
11 trying to do -- in analyzing the docket, you have
12 to make sure you're comparing similar things.
13 Tough to figure out because there's so many
14 variables.

15 Q. If you look on page 6 of that under V,
16 there's a sentence at the top that says, "There's
17 a consistency in the published recommendations for
18 improvements in handling children's cases."

19 Do you know what that refers to, the
20 published recommendations?

21 A. Yeah. I think that goes to things that
22 are adopted here, the notion of making the child
23 feel comfortable in the proceeding.

24 Q. I'm sorry. It says published
25 recommendations. Do you know if there's a set of

1 publications somewhere, like a list of them? I
2 don't mean like what's their context, but what are
3 the published recommendations, do you know? You
4 mean, it's talking about these, like this thing
5 being published.

6 A. No, no. I think what it's talking
7 about, in the literature that makes
8 recommendations of steps you can take to handle
9 the cases of children, that the suggestions that
10 are here, like taking off the robe, like allowing
11 the children to bring toys and who they sit with,
12 that these are consistent with those other
13 recommendations.

14 Q. Do you know specifically what the other
15 recommendations is referring to? Is it a set of
16 articles? Is it a set of books, guidelines? Do
17 you know what it's referring to?

18 A. I didn't draft it. I don't know what
19 specific documents they looked at. I think what
20 we're recommending is kind of the norm in the
21 field based on other courts and other literature
22 generally, but I don't know what specifically they
23 looked at.

24 Q. I want to ask you about topic 11 which
25 is about the role of nonattorney adults who

1 accompany unrepresented children into immigration
2 court. Do you train on that subject?

3 A. I would say broadly. I can't remember
4 how specific the training -- how specific the
5 training is. I would say yes, but I don't recall
6 content.

7 Q. So you're authorized to speak not only
8 on training, but also on the substance of what the
9 agencies rules are about such individuals?

10 A. Yes.

11 Q. I want to ask you some questions about
12 that.

13 A. Okay.

14 Q. Can they, meaning nonattorney adults who
15 accompany unrepresented children in immigration
16 court, can they perform any of the tasks that
17 would normally be performed by a lawyer?

18 A. I'm not aware of any law that really
19 speaks directly to that issue. There are things
20 that say what you cannot do without the person
21 there. But there's not a lot of guidance out
22 there as to what the role -- what that person can
23 do.

24 Q. Would you say the department then does
25 not have specific rules about what such people can

1 do?

2 A. No. I'm not aware of specific
3 definitions or terms that take and categorize
4 people that may appear with a respondent and say
5 this category of person can do this and this one
6 cannot do that.

7 Q. Does that mean it would be up to the
8 immigration judge in any given case whether to
9 allow a nonattorney adult who accompanies an
10 unrepresented child to do certain tasks?

11 A. If I'm correct on this, the answer would
12 be yes. The judge would have to determine what
13 functions the child is able to perform, look at
14 the adult, who the adult is, what the relationship
15 is, how well that adult would serve in the role
16 needed and assess whether it's sufficient or
17 whether additional safeguards are needed. I'm
18 hoping I'm correct on that, but that would be -- I
19 think that's the best answer I can give.

20 Q. So somebody like an aunt or an uncle or
21 older sibling or something like that, a person
22 like that might be able to, say, admit allegations
23 in the Notice to Appear, concede removability or
24 waive claims for relief, take steps like that and
25 whether or not that person had the legal authority

1 to do that would be up to the immigration judge in
2 a particular case; is that right?

3 A. The key word is might because what the
4 judges indicated during their conversations is
5 that they would communicate with the person and
6 establish the relationship and figure out who that
7 person is and make a determination on a
8 case-by-case basis.

9 Q. What are the criteria that go into that
10 determination, say, in my hypothetical example
11 where you have a nonparent relative who is waiving
12 claims for relief, conceding removability,
13 defending allegations?

14 A. I've never thought about it, and I don't
15 know that the agency has taken a position on that.
16 I think there's just a huge range of totality of
17 the circumstances that a judge would consider
18 based upon the person and whether the judge is of
19 the opinion that that person can perform the
20 functions needed for the hearing to be fair and
21 that whether that person would be an effective
22 safeguard and protection.

23 Q. There's certainly no blanket bar to
24 having the person make those kinds of decisions
25 for the child then?

1 A. Not that I'm aware of. And I also -- we
2 have families where there's a parent as a lead for
3 the child, and I'm not aware of anything -- again,
4 I may be wrong because there's a lot of these --
5 I'm not aware of anything that expressly
6 authorizes the parent in the proceedings to make a
7 pleading for a child. So I don't know that
8 there's an express authorization or something that
9 speaks really definitively one way or another.

10 Q. Just as you're not aware of an express
11 authorization, I take it you're also not aware of
12 of an express prohibition either?

13 A. Correct.

14 Q. I assume you're aware this happens in
15 cases sometimes; correct?

16 A. I believe so.

17 Q. Do immigration judges take steps to
18 screen nonattorney adults in these kinds of
19 situations?

20 A. That's what they've told me.

21 Q. What's the criteria for the screening
22 then?

23 A. I think they speak to the person. They
24 talk to them about the case. They interact with
25 the person. For example, in Los Angeles the

1 judges told me they will not proceed without a
2 person, a custodian showing up.

3 In Houston they were telling me that 95 to
4 99, if I have the number correct, somebody is
5 there with the child. I forgot the information
6 out of Seattle.

7 In a very, very high majority, up into the
8 mid to upper 90 percent of the cases someone is
9 showing up with the child. They would communicate
10 and interact with the person.

11 Q. Do you know in what percentage of cases
12 that person who is showing up with the child is
13 also making substantive legal decisions in the
14 case, like conceding removability and waiving
15 applications for relief and things like that?

16 A. In our case management system, there's
17 nowhere that would be captured or reflected that
18 I'm aware of that I could pull up that information
19 or the agency could.

20 Q. What if a child wants to apply for some
21 form of relief or take a certain step and their
22 nonattorney adult who is accompanying them doesn't
23 want to do that, what's the department's position
24 about what the judge should do in that situation?

25 A. You're saying the child wants to apply

1 and the adult does not?

2 Q. It could be the reverse, too. Just
3 there's conflict.

4 A. Our training is they should consult with
5 the child advocate. That would be a case where
6 the judge has the option of referring the case to
7 a child advocate.

8 I have a case where there is a reason to
9 believe that the mother's boyfriend was sexually
10 molesting the child and that the mother was
11 seeking voluntary departure to whisk the child
12 away before the investigation could complete or
13 something could happen.

14 In that case I received a request from the
15 judge for a child advocate to make the voluntary
16 departure really was in the best interest of the
17 child. It results in strange U visa issue
18 questions. They would have that option. They
19 would also have the option to seek pro bono
20 representation for Friend of the Court.

21 All three courts have very active Friend of
22 the Court programs. There's a very, very high
23 percentage of Friend of the Court actually showing
24 up in proceedings in those locations. So that
25 would be another option to investigate and have

1 that.

2 I know in Seattle KIND is more often than
3 not -- I'm hesitant to say in every single
4 juvenile case. I don't know the numbers, but very
5 often KIND, Kids in Need of Defense, is sitting in
6 the back of the court as a Friend of the Court.

7 I know in Los Angeles we have Public Counsel,
8 CARECEN, KIND, Esperanza specifically there.
9 There's some smaller groups that will cover Orange
10 County if needed.

11 I know in Houston there's quite a few law
12 clinics as well. And in some of these locations
13 the court actually sends out the calendar in
14 advance and then those groups coordinate and
15 decide who will cover.

16 So another option is in many of these cases,
17 there is a Friend of the Court present, and the
18 general practice would be the judge would hear the
19 cases of kids who were represented, step out of
20 the courtroom. The Friend of the Court would make
21 a Know Your Rights presentation in the case and
22 then sometimes do intake or meet with the
23 respondents or come as a Friend of the Court.

24 So the judge could either refer them to them,
25 or they could come into contact there, or the

1 judge would have the option to seek out pro bono
2 counsel as well to make sure the child's interests
3 and the parents' are consistent.

4 Q. Several things I want to ask you about
5 that answer. How often do you get referrals for
6 child advocate requests from immigration judges?

7 A. I would say -- and this is based on your
8 instructions to estimate if I don't know an
9 answer.

10 Q. That's appreciated.

11 A. I would say maybe three a month.

12 Q. Do you know how many child advocates
13 there are?

14 A. I don't.

15 Q. Do you know what percentage of the cases
16 they appear in?

17 A. I don't and there's nothing in our case
18 management system also where there's a field you
19 can enter or where that would be able to be
20 tracked.

21 Q. There isn't?

22 A. There isn't. It's ORR that assigns the
23 child advocate. So that would be...

24 Q. Do you know if there's a geographic
25 limitation on child advocates or they can appear

1 anywhere around the country?

2 A. There's not a geographic limitation.
3 The process is the immigration judges would refer
4 the case to me. And generally what I do is I
5 reach out to the Young Center as our first point.
6 They will let me know if they have capacity or
7 not. If not, we would go to someone else.

8 Right now the organizations are somewhat in
9 flux due to changes in funding and who is getting
10 the grants. So things will change. But largely
11 what we do is go to the Young Center. Then we
12 would go to USCCB and I think USCRI.

13 Q. How would a child advocate help an
14 immigration judge resolve a conflict in the way
15 you described? I understand an advocate can make
16 a recommendation about what's in the best interest
17 of the child.

18 A. Um-hum.

19 Q. What is the judge's obligation with
20 respect to that recommendation?

21 A. So obligation -- because the child
22 advocate is established by the TVPRA, they're
23 required to consider it in the court. The reason
24 why we trained on that in one of those earlier
25 training programs is because I was concerned that

1 the judge would not understand the role of the
2 child advocate.

3 So we had the Young Center come in and
4 actually explain the parameters because I was
5 afraid -- immigration judges know -- information
6 traditionally before the TVPRA came in certain
7 formats. It came from one party or the other. I
8 was concerned that the judges would say to the
9 child advocate you can't speak to me, you're not a
10 party, if you have information. They wouldn't
11 understand what the role was.

12 So we've had both in the most recent
13 training, but also mandatory DVD training, video
14 training for all judges where the Young Center
15 presented and expressly presented the difference
16 between representing the best interest and the
17 legal representation so that there was no turning
18 to the child advocate and saying, hey, you need to
19 file an I-589 on the person.

20 Q. Because the child advocate does not have
21 authority, for example, to file application for
22 asylum, is that what you're saying?

23 A. Correct. The child advocate is not a
24 legal representative. They are there to indicate
25 the best interests of the child. You asked for

1 kind of how a judge or what a judge would do.

2 If a child is asking for repatriation, the
3 child advocate may do safe return studies. I've
4 seen reports where there's actually pictures of
5 the house and location the child going to go to.
6 But also the legal representative is bound by the
7 express interest of the child.

8 If the child says I don't want to apply for
9 asylum, I want to go back to my palace and play
10 with my Nintendo and I'm not afraid and I'm not
11 going and the judge has reason to believe based on
12 country conditions that that is not the case, the
13 judge can request a best interest determination to
14 see is the express interest consistent with the
15 best interest.

16 Q. Let's take that example. Let's say the
17 child persists in the determination that he or she
18 doesn't want to apply for asylum and the child
19 advocate's determination is that it would be
20 dangerous to send the home.

21 Can the immigration judge grant asylum under
22 those circumstances?

23 A. Force the respondent to seek relief?

24 Q. What would the immigration judge do in
25 that situation?

1 A. It's a good hypothetical question. I'm
2 not aware of it having come up. I think what they
3 would need to do is really speak to counsel and
4 try to get counsel to convince the child to apply.
5 But I think if ultimately the family or the
6 child -- if somebody doesn't want to apply for
7 relief, I'm not sure that we can force them to
8 apply.

9 We have ways as judges -- I have that in the
10 detention facility where I thought respondents did
11 not want to seek relief and I had ways of kind of
12 making them, taking away the incentive not to
13 apply.

14 Q. I was imagining in your hypothetical
15 there was no counsel. And in that situation is
16 there anything the child advocate can do beyond
17 having stated what their opinion is about the best
18 interest of the child?

19 A. No. The child advocate really -- I
20 think the child advocate could present information
21 on the country conditions. I don't think -- I
22 have not seen this and it would be unique, but I
23 don't think there's anything that would prohibit a
24 judge from taking an I-599 and questioning the
25 respondent and taking evidence from the child

1 advocate. But this fact pattern hasn't really
2 come up.

3 The judge has an obligation to develop the
4 record. If I really, really believed that a child
5 was going to be persecuted and everybody on the
6 respondent's side is saying no, I'd have to get
7 creative and look for safeguard and protection.

8 Q. You also said Friend of the Court could
9 be consulted in this situation. This is my
10 situation where we're imagining a conflict between
11 what the child wants and what the nonattorney
12 adult with the child wants.

13 Let me step back and imagine a more typical
14 situation where, say, the child wants to apply for
15 relief and the adult custodian does not. The
16 adult custodian wants to send the child back home
17 to, say, their parents. How would a Friend of the
18 Court be able to resolve that conflict?

19 A. They can speak to both of them and
20 explain what the relief is and the benefits of the
21 relief and the pros and cons of the relief. They
22 can assist them in preparing the application.
23 They can do a lot, short of -- at the point they
24 enter an E-28, they're no longer a Friend of the
25 Court. But they can do a lot without actually

1 entering on as a representative.

2 Q. Can they resolve the dispute with
3 respect to the judge? Can they tell the judge the
4 child does want to pursue the relief or the child
5 doesn't want to pursue the relief if the custodian
6 is saying one thing and the child is saying
7 something else?

8 A. So if the custodian is saying don't
9 apply?

10 Q. Yes, and the child actually wants to.

11 A. Can the Friend of the Court -- so the
12 child wants to and the custodian does not want to?

13 Q. Let me step back. I asked you earlier
14 is there any guidance about what authority the
15 nonattorney adult has in cases like this. Can the
16 nonattorney adult, say, waive request for relief
17 and requests other than voluntary departure and
18 requests voluntary departure, for example. Like
19 you say there's no particular guidance on the
20 subject.

21 So then I was asking about situations where
22 the nonattorney adult wants to, for example, waive
23 any relief other than voluntary departure, but the
24 child may actually want to stay in the United
25 States. How do you resolve that conflict?

1 You said one option is you go to the Friend
2 of the Court. I'm asking what can the Friend of
3 the Court do to resolve that situation?

4 A. Well, I think what you can do is the
5 question. In that instance where the adult wants
6 to waive and the child does not and I wanted the
7 child to apply, I would say the waiver is not
8 knowing, voluntary and intelligent. Whether or
9 not it was or not, I'm not going to let the adult
10 waive on behalf of the child.

11 Q. You're saying that as an immigration
12 judge?

13 A. Correct.

14 Q. Wearing your immigration judge hat?

15 A. As how I would exercising my independent
16 authority as an immigration judge handle that
17 particular situation.

18 Q. But it wouldn't be contrary to any
19 binding rule for a judge not to take that approach
20 if they thought it was appropriate in that
21 situation and instead to allow the nonattorney
22 adult's decision to govern. That's also
23 consistent with whatever their obligations are?

24 A. Right. I think the law is silent on the
25 topic.

1 Q. Do nonattorney adults -- can an
2 immigration judge require the participation of a
3 nonattorney adult?

4 A. They are requiring the presence of an
5 adult in some of the courts. Whether they can
6 require the participation of the adult, again, I
7 think the problem is there is a regulation
8 relating to pleading that says you cannot take a
9 pleading from a child -- actually I don't think it
10 uses the word child. I think it specifies the
11 age, and the ages vary -- without the presence of
12 certain people including a relative which implies,
13 implies that the presence of that person makes a
14 difference, but it doesn't say and fundamental
15 fairness doesn't really speak to what that person
16 can do or not do.

17 We know they can't do things if they're not
18 present which seems to imply that their presence
19 is some form of protection, but it doesn't really
20 tell -- there's nothing in that regulation as
21 drafted that says what the role is or it doesn't
22 even define the categories listed.

23 So I think it's up to the interpretation the
24 way the regs are right now to figure out whether
25 the presence of that person really does allow you

1 to do a fundamentally fair hearing. And I don't
2 think there's anything that says it does, and I
3 don't think there's anything that really says it
4 doesn't.

5 Q. The immigration judges that are
6 requiring their presence, as I understand it, in
7 some cases judges are saying that if the
8 nonattorney adults does not come to court, they'll
9 order the child removed in absentia. Is that your
10 understanding?

11 A. Ms. Jackson and I have been
12 communicating about this because there was a judge
13 in Los Angeles, and it came in the context of a
14 stakeholder meeting, it came up where it appeared
15 that a judge -- I'm not aware that she actually
16 did it, but seemed to kind of threaten or imply in
17 a number of hearings -- I asked for specific case
18 numbers and they were provided -- that judges were
19 saying I will waive the -- a judge would waive the
20 presence of the child and that the adult's
21 presence would not be waived.

22 I don't know whether it was that they ordered
23 the adult to show up or just said the adult can
24 show up, but if the adult doesn't show up, the
25 judge in that case threatened to proceed in

1 absentia. And in the stakeholder meeting the
2 question from counsel was is that acceptable, and
3 my answer was absolutely not. I don't think
4 there's anything in law or statute that regulation
5 that allows that to occur. I told her I would
6 follow up on it, and I have.

7 I don't know if this is the venue. I called
8 the assistant chief judge for that judge, said
9 here's the update, and had him listen to the
10 tapes, listen to the DAR recording of the case to
11 see what was going on.

12 And it looked like the practice wasn't
13 occurring, but there was enough discussion and
14 there was enough indication that it was being
15 considered or that at least the blanket threat was
16 made -- it was ambiguous enough that this was an
17 intent or that the judge might believe you could
18 do something like this, that we decided to go
19 forward, and he and I are communicating, basically
20 speak with the judge and stop the practice.

21 Q. When you say stop the practice, what
22 authority do you have to stop a judge from
23 engaging in a practice like that?

24 A. The authority we have as judges are
25 under performance work plans where knowledge of

1 the law is an element and that's not the law. I
2 mean, judges have certain authorities by statute
3 and regulation. They are delegates of the
4 attorney general, and there are certain powers
5 they have and certain rules and regulations that
6 they must follow. And there's no basis in law for
7 that practice. It's got to stop, and it will
8 stop.

9 Q. The reason why it's unlawful is because
10 the immigration judge is also waiving the presence
11 of the child; correct? Because an immigration
12 judge could proceed in absentia in a case where
13 neither the child nor the adult nonattorney had
14 shown up to court obviously; is that right?

15 A. It's illegal because you can't tell the
16 respondent you don't have to show up and then when
17 the respondent doesn't show up tell him, you know,
18 because there's -- you get notice of hearing and
19 to say here's your notice of the time and place to
20 show up, you don't have to be there, and then put
21 a consequence.

22 Q. If a judge doesn't waive the appearance
23 of the child but the adult that that child is
24 living with fails to bring the child to court,
25 even if the child wants to come to court, the

1 judge can certainly order to remove the child in
2 absentia then?

3 A. If the legal requirements for in
4 absentia are met, the judge would have the
5 ability. It ties to that last answer. Not only
6 is the failure of a child to show, if waived,
7 which I don't think is proper notice, hand a paper
8 notice and say you can ignore it, but also I think
9 it falls under the exceptional circumstances for
10 failure to appear, which would be an exceptional
11 circumstance for your failure to appear is I say
12 you don't have to show up.

13 So I think in that particular case the judge
14 would have to consider the evidence, the child is
15 not there if the adult is not there, and determine
16 whether the notice was proper and whether the
17 judge is aware of exceptional circumstances for
18 explaining the child failure to appear and would
19 not have to go -- there's nothing that requires
20 them to proceed in absentia if they think the due
21 process didn't require it. The judge would have
22 the option to continue it.

23 Q. Are you aware of whether children
24 sometimes fail to appear in court because there's
25 no transport available that allows them to appear

1 in the court? Is that a widespread phenomenon?

2 Are you aware of that?

3 MR. SILVIS: Objection. Topic.

4 A. I'm not aware of it, but I am aware that
5 small children, a two year old, is not going to be
6 able to get to court. That would be an example of
7 a case where you would have to look at it and
8 decide how appropriately to proceed, and we did
9 cover that in the training on absentia.

10 BY MR. ARULANANTHAM:

11 Q. You're not aware of whether that's sort
12 of a widespread problem right now generally?

13 MR. SILVIS: Same objection.

14 A. We don't know when somebody doesn't show
15 up unless somebody has contacted the court or
16 there's some evidence -- we don't know whether
17 it's a tactical decision or transportation.
18 There's the ability to move to reopen the case if
19 an explanation comes up that the court is aware
20 of. Very often we don't know why the person did
21 not show up.

22 BY MR. ARULANANTHAM:

23 Q. You're I know familiar with the Franco
24 court rulings on the role of nonattorney adults
25 who accompany people with mental defects in

1 immigration court; right?

2 MR. SILVIS: Objection. Scope.

3 A. Yes, I am.

4 BY MR. ARULANANTHAM:

5 Q. If those rules applied in this context,
6 would the activities that we've been discussing --
7 would some of the activities we've been discussing
8 be prohibited?

9 MR. SILVIS: Objection. Topic.

10 A. They're apples and oranges because the
11 Franco ruling in that regard is the presence of
12 the person does not alter the determination as to
13 whether the person is able to function. So you're
14 using that to determine what the guidance is
15 following the definition. Either you have a
16 mental disorder that significantly impairs your
17 cognitive, emotional or behavioral ability to
18 perform the adjudicative and decisional
19 competencies or you don't. And the fact somebody
20 is sitting with you does not change the fact as to
21 whether you can perform them or not.

22 Same for the child. Whether the parent is
23 sitting there doesn't impact whether the child can
24 perform or not perform the function. Really the
25 question there is what is the impact as a

1 safeguard and protection to make sure the hearing
2 is fair.

3 BY MR. ARULANANTHAM:

4 Q. When an immigration judge is trying to
5 determine whether it's fair to proceed in a case
6 involving an unrepresented child, the department's
7 position is as in the Franco context, right, that
8 the presence of the nonattorney adult in the
9 courtroom should not bear on the judge's
10 determination as to whether or not the child has
11 the capacity to proceed in the case; is that
12 right?

13 A. The child is able to do or not do what
14 the child is able to do or not do, regardless of
15 the fact that I'm there or a parent is there or
16 not there. So when I'm sitting with my son with
17 his homework and he's trying to do it, the fact
18 I'm sitting next to him doesn't change whether
19 he's able to do it or not.

20 My role doesn't come until he's not able to
21 do it and then the question is, is there some role
22 I can play to achieve the objective.

23 Q. I'm still trying to understand whether
24 there's a proper analogy here or not. I
25 understand you're saying the judge has to first

1 make a determination about what the child's
2 capacity is and that judgment has to be made
3 irrespective of whether the adult is next to the
4 child or not; is that correct?

5 A. Right.

6 Q. Once you're beyond that and there's a
7 determination the child is not able to proceed in
8 representing themselves, if we work by analogy in
9 the Franco context, the fact that there's a
10 competent relative also in the room is irrelevant
11 to the question of whether the person who is not
12 able to represent themselves is entitled to an
13 attorney. If they are not, they don't meet the
14 definition of pro se competency, then they're
15 entitled to an attorney.

16 Is it the department view the same would be
17 true with respect to children then, that if the
18 child doesn't have the capacity to represent
19 themselves, then it doesn't matter for purposes of
20 determining whether the judge should proceed, that
21 there's an adult relative sitting next to them?

22 MR. SILVIS: Object to the form.

23 A. The question is really unique, I mean,
24 in the sense it would be kind of hard to follow
25 because it assumed Franco and it was pretty

1 knotted, but I think I can answer it.

2 What I am able to do I'm able to do
3 regardless of whether you're sitting next to me or
4 not. So if the child cannot perform, just like
5 under Franco, the fact a parent is sitting with
6 them does not change what they can do or not.

7 The next step of the analysis -- first you
8 identify what functions the child or the mental
9 incompetent respondent cannot perform. Some of
10 those are decisional competencies that they're
11 required to do and some are adjudicative
12 competencies. And each one has a different
13 standard of what defines how severe the impairment
14 is.

15 When you figure out what the child is not
16 able to do, which is generally they have to know
17 these things and they have to be able to do
18 certain things, you have to look at how impaired
19 the ability to do those things is. The fact a
20 parent is there doesn't change how impaired the
21 ability to do those things is.

22 The next step of the analysis is to figure
23 out given that impairment, can you conduct a
24 fundamentally fair proceeding. The next step then
25 is -- the answer of whether you can conduct a

1 fundamentally fair hearing is based upon is there
2 a safeguard or protection available that can
3 compensate for the function the respondent is not
4 able to perform.

5 So what I'm saying is where the parent falls
6 in, just like it doesn't fall in the analysis up
7 to that stage, where that person really comes in
8 is -- and it comes in in Franco, too -- is in
9 considering what safeguard or protection. So if
10 you have a respondent who has a mental disorder,
11 the presence of the parent may somehow impact the
12 person's ability to function as a safeguard or
13 protection. Having mom sit by or mom collect
14 evidence or mom do something might help a
15 respondent who could not do that on their own get
16 a fair hearing.

17 I'm not saying the parent will or will not in
18 every case, but I mean, I think it's something
19 that goes into the mix of -- and you may need
20 multiple safeguards and protections. You may have
21 to cut the hearing short. You may have to lower
22 the level and the tone. You may have to chunk
23 tasks. You may have the presence, the family
24 helping the respondent. There's a lot of things.

25 That's why I say my role as an ACIJ for

1 vulnerable populations is to try to help create a
2 cafeteria approach of resources that are available
3 to immigration judges.

4 Your position is that a representative should
5 be available for all cases in all those. We don't
6 have that yet. But my role now is to have the
7 widest range of tools and resources available to
8 try to fill in for the gap in functioning. And a
9 parent could play a role whether the inability to
10 function is due to a mental disorder or due to
11 youth.

12 BY MR. ARULANANTHAM:

13 Q. Let me switch gears quickly and ask you
14 about topic nine, which is the pleading rule that
15 you were talking about earlier, CFR 1240.10(c).

16 A. Do we have a copy of it just so I can
17 look at it?

18 Q. I don't.

19 A. I do. I actually have it here. Can I
20 open it?

21 Q. You're welcome to open it. I'm sure the
22 questions I ask you you'll be able to answer
23 without reference to the text.

24 What is the purpose of the rule?

25 A. I have personal ideas, but I don't know

1 the drafting history of the rule or the regulatory
2 intent that might show up, may show up in the
3 preamble if I was to read it, but I haven't read
4 the preamble.

5 Q. But when you train, obviously you have
6 to discuss the purpose of the rule in the context
7 of training, how judges can comply with it; right?
8 So in that context, what would you say was the
9 purpose?

10 A. I think the purpose of the rule is to
11 prohibit an immigration judge from taking --
12 accepting an admission of removability from an
13 unaccompanied respondent -- at this point I'm kind
14 of reading the rule -- who is incompetent -- from
15 an unrepresented respondent who is incompetent or
16 under the age of 18 and is not accompanied by one
17 of those list of individuals.

18 Q. Why is that rule there only for those
19 two classes of individuals, that is individuals
20 under the age of 18 and incompetent individuals?
21 What's the concern? Why wouldn't that just be the
22 rule for everyone?

23 A. Well, I think it is the rule for
24 everyone, though not specified because you have
25 other respondents who you choose not to take a

1 pleading from. But I think in this case -- in
2 those you have the discretion as a judge to not
3 take the pleading if you think there's an issue
4 regarding the respondent. But I think here it
5 specifies.

6 Q. It's a prohibition?

7 A. It's a prohibition.

8 Q. What's the rationale for the stricter
9 rule in this context than in others?

10 A. I don't know the rationale. I didn't
11 write it. But apparently the drafters believe
12 that the presence of the listed people somehow
13 allow you to go forward with the practice.

14 Q. Let's leave the list of people aside for
15 a minute. Assume there's no list of people. Is
16 it the department's view there's something
17 categorically different about those two classes of
18 people, incompetent people and people under 18 if
19 unrepresented --

20 MR. SILVIS: Objection. Topics.

21 Q. -- that requires a stricter rule in this
22 context?

23 MR. SILVIS: Objection. Topic.

24 A. I don't think the department takes a
25 position. I think the rule is the rule, and it's

1 the law. So really our position -- we can't take
2 a position. We got to apply the law, and that's
3 the way it's written now.

4 Q. Can the immigration judge ask questions
5 of a child, since we're primarily talking about
6 children, of an unrepresented child who fits under
7 the regulatory definition there to establish the
8 factual predicates that would be sufficient to
9 sustain the allegations even without actually just
10 taking the admission as a legal matter?

11 A. On that issue, there's Circuit case law.
12 So the Circuit case law kind of expands on that
13 because the exact words here are that you cannot
14 accept an admission of removability, but the
15 Circuits have provided further guidance regarding
16 the issue you're asking. And I don't know all of
17 the Circuit law.

18 I don't feel real comfortable because I
19 didn't read it. But I know that there's further
20 guidance in each Circuit -- I shouldn't say each
21 Circuit, but at least in multiple. I know there's
22 guidance in the 9th regarding what are the
23 parameters of what you can do and cannot do.

24 Q. Is it the position of the department
25 that an immigration judge can question the child

1 about the predicate like I was talking about and
2 obtain the facts needed to sustain the allegation
3 then?

4 MR. SILVIS: Objection. Asked and
5 answered.

6 A. If the law of the Circuit authorizes it.

7 BY MR. ARULANANTHAM:

8 Q. If the law of the Circuit doesn't
9 prohibit it, it hasn't read the regulation more
10 broadly to encompass not just the admission, but
11 also the factual statements, then there's no
12 prohibition in your view?

13 A. I'm sorry. I lost the --

14 Q. Many of the things we've been
15 discussing, there's no Circuit law on the subject,
16 but, nonetheless, you give guidance to immigration
17 judges. You were just telling us a few minutes
18 ago you were going to stop a practice in one
19 instance.

20 I'm asking you about this practice, the
21 practice of the immigration judge questioning the
22 child when there is no such qualifying
23 individuals, that they'd be prohibited from taking
24 an admission of allegation, but questioning the
25 child about the facts needed to establish the

1 allegations and then going ahead and making the
2 finding on that basis.

3 My question to you is: Absent Circuit law
4 prohibiting it, is it the position of the
5 department that that's inappropriate conduct by an
6 immigration judge?

7 A. We don't have a position on it
8 because -- the example -- you made analogy that's
9 not accurate. The practice we're stopping is
10 because it's an illegal practice. So here the
11 judge has to follow what the Circuit says. And
12 the Circuit -- I think -- I believe the Circuit
13 gave specific guidance as to what you can do or
14 not do.

15 So for me to try to make pretend that Circuit
16 precedent that exists doesn't exist and speculate
17 on what would happen in that world -- I can't go
18 there. I don't know the answer. We got to follow
19 the law. The Circuits have spoken.

20 Q. Do you know if the practice I'm talking
21 about is common or not?

22 A. I think there are judges who do believe
23 that you can ask questions to establish a factual
24 basis. You cannot take a pleading. You cannot
25 ask the respondent to admit or deny. You cannot

1 ask a respondent to concede or contest
2 removability. Yet judges -- I know there are
3 judges who believe you can ask questions regarding
4 the factual basis.

5 Q. Absent Circuit authority saying
6 contrary, you and the department would not be
7 telling judges to stop that practice?

8 A. I don't think we've taken a position one
9 way or the other. I think that's an area of
10 judicial interpretation as to what the law
11 authorizes the judge to do in that specific -- I
12 can't say in that one, unlike the other example,
13 it's clearly illegal and it must stop.

14 I think that one, the regulation and the
15 Circuit -- again, I don't know the Circuit law,
16 but I think the regulation on its face on
17 ambiguous enough that that's why the Circuits had
18 to step in and clarify what you could do and not
19 do. You have to follow the Circuit law.

20 Q. There's a variant on this practice where
21 the DHS trial attorney would do the questioning
22 rather than the judge. Am I right that your
23 position about that would be the same as well,
24 that is unless there's Circuit authority barring
25 it, you would not instruct the judges to stop is

1 that practice?

2 MR. SILVIS: Objection. Topic.

3 A. I was not aware of that practice. I'd
4 have to think about what my instruction would be
5 and whether that is again legally permissible.
6 I'd have to do research to see if it's legally
7 permissible. And then second, even if legally
8 permissible, as a best practice without saying if
9 it is legally permissible. That's part of the
10 training, is this a best practice, is something we
11 should be doing.

12 BY MR. ARULANANTHAM:

13 Q. If you don't prohibit the immigration
14 judges from doing it themselves as a best practice
15 or you don't say the best practice is not to do
16 that, why would it be different for the DHS
17 attorney to do it?

18 MR. SILVIS: Same objection.

19 A. Because, I mean, that's the legal issue.
20 The legal issue is whether a government attorney
21 who takes factual statements from a respondent
22 renders the proceeding fundamentally unfair. I'd
23 have to research. I don't know if there would be
24 a difference. It makes me more uncomfortable
25 admittedly, but I don't have a legal basis or

1 something right now I could pin without
2 researching the law.

3 BY MR. ARULANANTHAM:

4 Q. As it stands now, you don't instruct or
5 provide guidance on that subject?

6 MR. SILVIS: Objection.

7 A. It hasn't come to my attention. I would
8 have to think about it, but I don't love the
9 practice. And if in a state court or meeting we
10 got a statement about that was occurring, I would
11 look into it. If illegal, we would shut it down.
12 If it falls within the realm of judicial
13 independence, we would probably have to leave it
14 to work its way through.

15 BY MR. ARULANANTHAM:

16 Q. Does the immigration judge have the
17 authority to take a concession if there is an
18 adult nonlawyer who is accompanying the child to
19 court?

20 A. Concession of removability?

21 Q. Yeah.

22 A. It has to be that the factual
23 allegations support the charge. Are we assuming
24 that the adult admitted all the allegations and
25 conceded?

1 Q. Yes.

2 A. That poses a similar question as far as
3 I'm not aware of anything -- the regulation seems
4 to say the presence of that person somehow impacts
5 everything. In spite of the fact that it appears
6 ambiguously to somehow impact something, I'm not
7 sure that my training for the judges -- I think
8 you have to assess whether that presence of that
9 person really makes a difference in the fairness
10 and whether it is an appropriate safeguard or
11 protection.

12 So just because the regulation says you can
13 do it with these people present, I don't know that
14 my training to a judge or that I've ever trained a
15 judge to say go ahead and do it anyway. With that
16 being said, I think the difference is factual
17 allegations and conclusions of law are two
18 different levels of competency.

19 So I could see a fact pattern where I might
20 be more inclined possibly, without having had the
21 issue and researched the law and don't know what
22 the Circuit has spoken on it, but where somebody
23 may be competent to admit did the child ever get a
24 paper to be here, where was the child born, did
25 the child cross in a car, where did the child come

1 in, those types of things, were either of the
2 child's parents citizens or nationals, rather than
3 just make a statement regarding whether the child
4 had been admitted or whether the waving of the
5 child through in the back seat of a car
6 substitutes a legal inspection.

7 So I think you'd have to do a separate
8 analysis on the safeguard and protection for one
9 versus the other because its different
10 functionality is required.

11 Q. I take that answer to be how you would
12 approach it if you were adjudicating such a case,
13 but you haven't trained on this question and the
14 department does not have a position on this
15 question generally, the question of what adult
16 nonlawyers --

17 A. The department's official position on
18 this question would be to follow the law. And
19 then if there's room for judicial interpretation,
20 interpret it consistently with due process and
21 fundamental fairness.

22 Q. Is there any separate constraint --
23 still on the subject of 1240.10 -- is there any
24 separate constraint on the judge's authority to
25 take factual statements from a child based on the

1 child's capacity?

2 MR. SILVIS: Objection. Topic.

3 A. I'm not aware of any statutory or
4 regulatory prohibitions. Going back to what we
5 said, that doesn't mean that a judge is not able
6 to if they believe fundamental fairness is not...

7 BY MR. ARULANANTHAM:

8 Q. Do you know if there's case law on that
9 subject?

10 A. Not that I'm aware of.

11 Q. So you wouldn't train on that as a
12 distinct issue, the issue of the ability to make
13 the factual statement rather than the legal
14 admission; you wouldn't train separately on that?

15 A. I wouldn't say we wouldn't train it.
16 What I would do is we would present the range of
17 options.

18 So, for example, I'm one of the editors of
19 the Immigration Law Adviser. What we will do is
20 we will present this is the issue and this is what
21 the Circuit is and this is what this Circuit is
22 and present all the positions. We don't give
23 legal advice. They're free to make their
24 decision.

25 What I wouldn't do is say, you must do XYZ.

1 We might present the various options, suggested
2 best practices, raise the issue. But I think
3 where there's ambiguity or at least room for
4 judicial interpretation, I would be reticent to
5 step in and order somebody to do it one way or the
6 other.

7 (Exhibit 14 was marked.)

8 BY MR. ARULANANTHAM:

9 Q. Let me introduce Exhibit 14, EOIR229.
10 This is an email from Sabina Boone-Fisher to all
11 judges on March 24, 2015, and the attachment is
12 Docketing Practices Memorandum. Do you see that
13 document?

14 A. I do.

15 Q. Underneath it there's a memo from Brian
16 O'Leary. That's the next page. Are you familiar
17 with this document?

18 A. I am.

19 Q. What was the occasion that led to the
20 sending out of this memo?

21 A. There was an increase in families and
22 children entering the United States, and the
23 Administration determined that our resources in
24 the courts should be reallocated to address these
25 cases over our nondetained dockets.

1 Q. This memo also speaks to continuance
2 practices.

3 A. Right.

4 Q. Was there a reason why that in
5 particular was addressed in this memo? It's II on
6 page 2. Sorry. It's page 1 of the memo.

7 A. The idea is to get the case on the
8 docket for first hearing quickly. It did not
9 speak to what happened really after that. So the
10 purpose of this was to let the judges know that we
11 want you to hold an initial hearing quickly, but
12 that beyond that, it's your discretion applying
13 appropriate legal standards of good cause as to
14 how to proceed thereafter.

15 Q. Prior to the memo being issued, was
16 there any information that you were receiving that
17 immigration judges were not complying with the
18 good cause standard with respect to granting
19 continuances?

20 MR. SILVIS: Objection. Topic.

21 A. Did you say were there any?

22 BY MR. ARULANANTHAM:

23 Q. Did you get information that judges were
24 not complying with the good cause standard in
25 granting continuances prior to the issuance of

1 this memo?

2 A. I think there was concern expressed that
3 people felt that the length of continuances may
4 have shortened, not the number of continuances,
5 but the lengths of continuances. And so we wanted
6 to make it really clear.

7 And it went one step beyond that in that I
8 remember specifically in an assistant chief judge
9 meeting the chief judge said -- and that ties kind
10 of to that illegal -- that use of any type of case
11 completion goal as a rationale for denial of a
12 continuance would fall below the performance
13 expected in the judge's rating and may be used as
14 a basis of finding the judge is not performing.

15 That's one of those areas of law. So this
16 was made to say nothing in this desire to get --
17 to reallocate resources and nothing in the desire
18 to get you a fast first hearing should in any way
19 impact how you proceed after that, and the side
20 corollary that doesn't show is if we find out that
21 you're using it as a basis and you articulate as a
22 basis, you're in trouble, big trouble, big
23 trouble. So it's in a way training.

24 Q. Were there judges that had been using
25 case completion goals as a justification for

1 providing very short continuances or denying
2 continuances on unaccompanied children cases
3 before this memo went out?

4 A. I'm not aware of that. The one that
5 brought it to light was actually an adult
6 respondent in Buffalo, New York. It wasn't
7 anywhere near here. But at that point -- and I
8 think a Circuit -- yeah, not I think -- I'm sure a
9 Circuit court judge in a decision relating to
10 continuances, and I don't recall the name, pointed
11 it out. And we're like, no, no.

12 Case completion goals are goals. And most
13 case completion goals are not a hundred percent.
14 There's a margin of error understanding that the
15 fundamental fairness -- there's no expectation --
16 no judge has ever been told that you must meet
17 this objectives in every single case. It's a way
18 to reinforce and again communicate, stop and
19 provide guidance.

20 Whether it's on rumor as in the example we
21 discussed where somebody brings it your attention
22 or whether you know it's happening, even the rumor
23 is enough that we're going to step in and take an
24 action to stop it.

25 (There was a discussion off the record.)

1 BY MR. ARULANANTHAM:

2 Q. We were speaking off the record, and I
3 wanted to clarify that the conversation we were
4 having was primarily focused on the memo as it was
5 first issued in September 10, 2014. It was
6 reissued in March of 2015, but the timeframe we
7 were discussing was really the time period before
8 September 2014. Is that fair, Judge Weil?

9 MR. SILVIS: His answer was geared
10 towards that first date.

11 A. I think the language that we've been
12 discussing, I don't think that part has been
13 changed. So I think my answer would be the same
14 with regard to either one of those documents with
15 respect to the language.

16 BY MR. ARULANANTHAM:

17 Q. It says you should address concerns
18 about this document to the assist chief
19 immigration judge. I wanted to understand is
20 there a geographical division about that, or would
21 that be you regardless of where the case was?

22 A. There is a geographical and it moves.
23 For example, we just changed them all.

24 Q. Can you tell me then, if I give you four
25 cities, Seattle, LA, Houston and Miami, can you

1 tell me who the judges are?

2 A. The assistant chief judge?

3 Q. Yeah.

4 A. For Seattle, the permanent one, because
5 we have an acting, is Print Maggard because he is
6 the acting chief judge, but when that is over, he
7 will go back. So as of right now, the acting
8 assistant judge covering Seattle is Stephen
9 Griswold.

10 Q. LA?

11 A. Is Thomas Fong.

12 Q. Houston?

13 A. Houston is D.E. Nadkarni.

14 Q. And Miami?

15 A. Miami is a Lisa Sukkar.

16 Q. Give me Bloomington, Minnesota.

17 A. I think -- that one I'm not sure -- it
18 is with Jill Dufresne. And they're going to
19 realign again. We're going to do that soon.

20 Q. This memo also says in Section IV that
21 judges have no authority to assure custodians who
22 want to come to court with children that they will
23 not get arrested by ICE when they come to court.

24 A. Um-hum.

25 Q. That's still the EOIR policy I take it?

1 A. That is EOIR policy.

2 Q. Can the immigration judge require the
3 custodian's presence in immigration court?

4 A. They are and nobody is stopping them
5 from doing it. So whether they have the authority
6 or not, I don't know anything again that says
7 expressly they can. I don't know that it says
8 they can't. There is a general catch-all
9 provision in the regulations that allows actions
10 consistent with the conduct of proceeding.

11 But basically what you have is the judge's
12 TVPAR obligations to identify victims of
13 trafficking. The judge is worried about child
14 abuse. The kids that were showing up with
15 suitcases with no adults, the kids that were
16 showing up with signs of abuse, the judges to
17 ensure the safety of the children were ordering
18 people to show up. And, of course, many people
19 did not want to show up, parents, custodians,
20 aunts or uncles, because they were undocumented.

21 So the judges were making representations,
22 and we don't have the authority to tell DHS who
23 they can or cannot put into proceedings.

24 I'm not aware -- we do have policies on where
25 and when DHS can arrest people in our space, but I

1 think it was a promise that we didn't really have
2 the ability to take action on. And while it was a
3 noble attempt to protect the children and see who
4 they were really living with, we had to put a stop
5 to it because it's an authority we don't have.

6 Q. Let's switch to topic ten, which is what
7 I'll call the asylum initial jurisdiction rule.
8 Can you explain the rule?

9 A. Yeah. Initial jurisdiction over asylum
10 applications for unaccompanied children lies with
11 USCIS.

12 Q. What does an immigration judge have to
13 do to comply with that rule?

14 A. The immigration judge -- if the
15 immigration judge -- if initial jurisdiction lies
16 with USCIS, they have to give USCIS an opportunity
17 to adjudicate the application. It is one of the
18 topics I specifically addressed with the judges.
19 And their practices vary. For example, in Los
20 Angeles, they're continuing the case to allow that
21 to occur.

22 In Texas they are administratively closing
23 the case to allow that to occur. And the reason,
24 to the extent you're interested in that, is
25 because the timeframe that USCIS is adjudicating

1 these in Los Angeles is sufficiently short and
2 regular that the judge knows if I continue the
3 case to this date, they're getting a response
4 back. And so continuance is appropriate. And
5 then nobody has to file a motion to recalendar,
6 and it saves resources, and the judge can track
7 what's going on.

8 In Texas the state courts will not accept
9 jurisdiction. Well, that's an SIJ case. But it
10 relates because the amount of time may not be as
11 regular.

12 Q. I understand.

13 A. So the judges are administratively
14 closing. Then the parties come back, and an
15 answer is provided.

16 Q. And the particular mechanism of how the
17 judge should give the give USCIS the opportunity
18 to exercise its jurisdiction is left to individual
19 judges?

20 A. Right. How they choose to stop while
21 USCIS exercises their jurisdiction changes as does
22 the level of oversight to make sure that it's been
23 filed and that it's pending. Some judges may want
24 to pull in a status conference. Others will just
25 set it out.

1 Q. Does the immigration judge have to tell
2 the child about the option of filing an asylum
3 application with the asylum office?

4 A. An immigration judge has an obligation
5 under Circuit law to make a reasonable relief
6 inquiry. So if an immigration judge inquires and
7 determines that the respondent does have a fear
8 and it's an unaccompanied alien child, then the
9 immigration judge, and our training is, should
10 stop the proceeding to have the I-589 completed
11 and to allow USCIS to adjudicate the application.

12 Q. If a judge didn't do that, would that be
13 an appropriate occasion for a warning or
14 discipline like you described earlier today?

15 A. The problem in it is that there's some
16 Circuit law regarding who is unaccompanied and who
17 is not, for example in the Fifth Circuit. So our
18 guidance and our instructions is USCIS stamps it
19 UC on the notice to appear, and that is binding on
20 you as the judge and that the child then is the UC
21 forever and the practice applies.

22 In the training agenda that you identified in
23 April, we had USCIS come in and ICE on one of the
24 panels and a state court judge who is SIJ -- I
25 forgot who the third person was -- to express,

1 hey, this is our interpretation of our
2 jurisdiction and what we're going to accept and
3 our reading and ICE saying, and this is what we're
4 not going to oppose because this is our reading.

5 The problem was complicated. You have some
6 Circuits, the Fifth Circuit in I think at least
7 two at least unpublished decisions has drawn an
8 interpretation of who is unaccompanied that is not
9 necessarily consistent with our guidance or what
10 USCIS is willing to take, and that's created a
11 problem as to whether USCIS has jurisdiction or
12 not.

13 Q. I take it the problem you're referring
14 to is whether a child has been reunited with one
15 or both parents can still be properly classified
16 as unaccompanied?

17 A. Yes. That's one of the factors. There
18 can be age out factors. Our guidance is this is
19 not a dispute -- if the parties are not in dispute
20 and the NTA is marked, then please let the child
21 have their opportunity. If it's granted, the case
22 goes away and we were effective because we're not
23 using docket times to adjudicate matters not in
24 dispute. And if it comes back, it comes back.
25 But you have Circuit law that seems to narrow...

1 Q. In a jurisdiction where there is
2 conflicting Circuit law as you describe, then you
3 would not then be disciplining or otherwise
4 instructing judges to ignore that law and instead
5 utilize a definition that would otherwise be
6 employed; is that right?

7 A. What I'm telling them is our policy is
8 adjudicate matters in dispute. I'm not telling
9 them violate the law of the Circuit. If you
10 believe that's your Circuit's law -- I can't tell
11 a judge to violate the Circuit law, and I'm not
12 going to tell them as a matter of law.

13 But our general policy, and I think it's in
14 some of the documents that I reviewed today, is if
15 it's a matter that you don't have jurisdiction
16 over, initial jurisdiction, which I guess that's
17 part of the legal question, and if it's not in
18 dispute, we don't really need to be spending our
19 docket time on it. So I kind of stated a view in
20 a training, but I haven't said -- I'm not going to
21 tell a judge and then have a Circuit Court judge,
22 you know, no, they're not published, so there's
23 some leeway. I'm not going to go out there and
24 look like I issued a rule that violates Circuit
25 law.

1 Q. And you are aware that there are
2 immigration judges who are proceeding in cases
3 even where under the department's view of the
4 statute jurisdiction should lie in the asylum?

5 A. I'm aware there were some. I'm aware
6 some have changed their practices after the April
7 training. I looked specifically into the three
8 locations, but I do think there are people that
9 believe that USCIS does not have jurisdiction in
10 some of these cases. I don't know how many.

11 We seemed to shift away from it, but I can't
12 specifically state that there's not somebody out
13 there that's still doing it. I think on that one,
14 I'm pushing the envelope, but I've stopped short.

15 Q. You're a good man.

16 A. Is that a finding of fact?

17 (Exhibit 15 was marked.)

18 BY MR. ARULANANTHAM:

19 Q. Let me hand you what we'll mark as 15.
20 This does not have a Bates number even though it
21 came in discovery. It is a Memorandum to the
22 Asylum Office Staff from Ted Kim, acting chief of
23 the asylum division. It's stamped May 28, 2013.

24 Are you familiar with this document?

25 A. I'm not. I have heard of a USCIS memo

1 that interprets their jurisdiction. I don't know
2 that this is the one or there may be subsequent
3 ones that overrule or change this one.

4 Q. I'll represent to you that this memo
5 refers to a change in the classification
6 determination process for unaccompanied children.

7 Are you aware of there having been a change
8 in the classification determination process that
9 led to the rule you described earlier where the
10 immigration court is to treat the prior agency's
11 designation as dispositive?

12 MR. SILVIS: I'll object to topic.

13 A. I'm aware there's a dispute. I don't
14 remember whether it was with USCIS internally, and
15 I don't know that this is the latest version, the
16 earlier version. But that's exactly why we had
17 USCIS come in person to our training to give their
18 current version. And I don't think since April 23
19 when the training occurred that it changed.

20 So I think they've heard it from the horse's
21 mouth as to what we will accept jurisdiction over.
22 I know there was conflict, but I'm not aware of
23 the particular memos and the intricacies.

24 BY MR. ARULANANTHAM:

25 Q. You may not know the answer to this, but

1 I'll ask you anyway. Do you know what led to the
2 change in the classification determination process
3 that kind of gave rise to the dispute that you
4 were talking about in the first place?

5 MR. SILVIS: Objection. Topic.

6 A. I don't. I assume you mean why USCIS...

7 BY MR. ARULANANTHAM:

8 Q. Right.

9 A. I don't know. I don't. My
10 understanding is that the interpretation was a
11 broader interpretation, and that's what we
12 encouraged the judges to go with. They said if
13 USCIS is willing to take it, let them take it.

14 Q. Are there safeguards other than the ones
15 that we have discussed today which are available
16 for -- strike that.

17 I have another set of questions I want to ask
18 you actually. We talked about Friend of the Court
19 and you had referred to that earlier.

20 A. Yes.

21 Q. Does that exist in all of the dockets
22 where there are juvenile dockets?

23 A. I don't know. Friend of the Court is
24 another one that's not -- there is a memo, I know
25 it was produced, with guidance regarding Friend of

1 the Court. But in a way, you have Friend of the
2 Court and you have Friend of the Court.

3 What I mean by that is there are some formal
4 programs where we're sending notices and there's
5 organizations, and that's really their -- they
6 make their living acting as Friend of the Court.
7 But there also could be a law student that steps
8 in.

9 So there's really a range of people, and I
10 think it's open for interpretation, as we talked
11 about earlier, as to whether a family member could
12 somehow serve as a Friend of the Court. I mean,
13 it's a very broad line of functions that that
14 person can perform, and it's not really defined
15 who can do it and who cannot.

16 I think in every single court the judge has
17 the ability, if there's an aunt or guardian ad
18 litem. We see an aunt or somebody that comes up
19 that says, may I speak to you as a Friend of the
20 Court.

21 We saw that very, very frequently with regard
22 to updates on reunification efforts of ORR and
23 where the child and ultimately the immigration
24 case was going to end. So there probably is --
25 there's the ability in every court to allow

1 somebody to speak as Friend of the Court, and then
2 there's some much more formal programs as well.

3 Q. The formal programs, I take it then by
4 your answer, do not exist in every location where
5 there's a juvenile docket; is that correct?

6 A. I don't know the answer. I don't know
7 where there are and where there's not. I didn't
8 prepare on that. But I do know there are in the
9 three cities that I did ask. And they all have
10 pretty formal Friend of the Court programs. But
11 beyond that, I don't know for other locations.

12 Q. Do you know if even in those cities they
13 are present in all the cases involving
14 unrepresented children?

15 A. The number is very, very high in those
16 locations. There's coordination among them, but I
17 can't say for sure that every single case does.
18 They take certain days. So it's possible they may
19 not be there for one hearing where you're
20 continued for an attorney, but they might be there
21 the next time.

22 What's happening is these cases and with the
23 number of continuances, people are showing up
24 multiple, multiple times. I'm sure that
25 information you've seen. The cases are not

1 proceeding quickly through the system. So it's
2 very possible that one time there is, one time
3 there is not.

4 Q. How do you know the number is very high?

5 A. The judges told me that KIND is
6 virtually there on almost every juvenile -- and I
7 say almost because I don't want to represent every
8 one. Maybe it is every one. But KIND is there on
9 the juvenile docket day in Seattle almost all the
10 time.

11 They explained to me, again, the same for --
12 California is actually the one that's sending the
13 dockets, and they have, I think, five clinical
14 programs as well as the regular Friends of the
15 Courts. I think it's Catholic Charities. I can't
16 remember the specific names in Texas.

17 Q. But your understanding that it's a high
18 number of the cases, that comes from the judges
19 having told you that it's a high number of cases?

20 A. The judges presiding over the UAC cases
21 are saying to me they're appearing. This is our
22 practice, this is who it is, and this is how often
23 they're showing up. But they did fall short of
24 saying in every single case.

25 Q. You said there were a variety of people

1 who can serve in this function. So the
2 department's position is that any adult who is
3 accompanying a child can be asked by the judge to
4 serve in a Friend of the Court role?

5 A. Right. It's very similar to what we did
6 in the mental competency cases where we said
7 pretty much anybody can be indicia that there
8 might be an issue. So we laxed the rules.

9 So you may have somebody come and speak up,
10 and I'm not sure in every case the judge is going
11 to dub them and say I now appoint you Friend of
12 the Court. There's no entry of appearance for
13 them that's in there.

14 But I think the option to have one is there,
15 but the function is going to vary greatly in what
16 role they perform. And the role may be just to go
17 out and look for an attorney. It may not actually
18 be to speak up or do really anything in court.

19 For example, KIND is one of the Friends of
20 the Court. That's really what they're doing.
21 They're trying to screen the cases and refer the
22 cases to pro bono representation if it's
23 available.

24 It can be very, very informal to the point
25 it's not even formally stated on the record to a

1 very formal process.

2 MR. ARULANANTHAM: Let's go off again.

3 Actually can we take a break.

4 (Recess from 4:06 p.m. to 4:17 p.m.)

5 BY MR. ARULANANTHAM:

6 Q. I want to go back briefly to what you
7 were telling me earlier about the asylum initial
8 jurisdiction issue. I asked you what is the
9 immigration judge's obligation, and I thought I
10 understood you to say they have an obligation to
11 inform the child of this sort of option for
12 relief; is that right.

13 A. In all cases, the Circuit courts have
14 held that an immigration judge must do a
15 reasonable relief inquiry and then advise the
16 respondent of the right to apply for relief. If
17 they fail to do so, the Circuits have found it
18 reversible error.

19 In the asylum context, it's pretty simple.
20 You ask, are you afraid to go home? Do you have a
21 fear? If the answer is yes, and it can be
22 interpreted very broadly whether it's an adult or
23 child, at that point, that's when the judge would
24 look and say, is this UAC? Who has jurisdiction?

25 My understanding from speaking to the judges

1 the way it generally works -- they vary -- they'll
2 give the I-589 application and then provide the
3 child -- as I say, in a very high percentage of
4 these cases in the cities I spoke to, there is an
5 adult present -- if not, then everyone isn't
6 requiring it -- whether legally or illegally. And
7 then DHS provides the instructions for filing the
8 I-589.

9 The judges, some of them, what they're doing
10 is tracking to make sure that it's been received.
11 They'll have them come back in. As I say, in the
12 beginning they were admin closing. We're starting
13 to see less admin closures, and the judges are
14 asking for receipt or some proof that the
15 application has actually been filed. I think one
16 asked for the green return receipt, but that's not
17 everybody.

18 If they're not admin closing and they're
19 continuing -- there's going to be a certain point
20 when they're continuing, because they know how
21 long USCIS locally is taking to adjudicate it,
22 that they're going to say, hey, wait a minute, why
23 is there no answer in this case. There are
24 different degrees to what extent they're
25 babysitting that filing.

1 BY MR. ARULANANTHAM:

2 Q. Let's say it has gone on for a while and
3 there isn't any proof of filing with the asylum
4 office. What can an immigration judge do then?

5 A. I talked to the judge about that, and
6 there's basically kind of three options. One,
7 they come in and they have a receipt that it's
8 been filed. Two, they have the application, but
9 they don't have the receipt and they indicated
10 they would set it for another master calendar.
11 And, three, they have nothing.

12 At that point I think you have to give the
13 application and talk to them and find out why they
14 haven't done it. It varies.

15 Q. Eventually does the judge have authority
16 to go ahead and proceed and decide the asylum case
17 in the removal hearing?

18 A. Yes. The person -- there were some
19 cases where even with representation -- I have
20 trouble figuring out what the rationale was -- but
21 where they actually waived the initial
22 jurisdiction with USCIS. I can't imagine why
23 you'd not want to take a second bite of the apple.

24 Q. What about unrepresented cases where the
25 judge has given some amount of time and there has

1 still been no adjudication by USCIS and perhaps no
2 filing with USCIS.

3 Does the judge also have the authority to
4 decide the case, the asylum issue in the removal
5 hearing at that point?

6 A. I think they have authority to make a
7 decision. Whether they proceed and begin to say,
8 okay, it's not with USCIS and begin to proceed in
9 an asylum claim, whether they deem it waived or
10 abandoned, I think that's going to vary from fact
11 to fact, and that's going to be up to the
12 particular judge and who is present.

13 Again, the idea is that you have -- at that
14 point you're hoping they've had LOP, LOPC, Know
15 Your Rights, Friend of the Court. You can talk to
16 to the person who shows up. And that's why I
17 think it's important to know what is in your
18 toolbox and what you're going to do based on the
19 particular case and figure it out.

20 Q. There are some parts of the country and
21 some individuals, some children in all parts of
22 the country where none of those options
23 functionally are available; right?

24 A. You mean where there's no --

25 Q. There's no Friend of the Court, there's

1 no LOPC, there's no pro bono representation. In
2 this particular case that exists; correct?

3 A. I mean, I can't say for sure because I
4 didn't check. And in that case, I think -- in
5 other words, I don't know who has -- well, I know
6 there's a limited number of sites for LOPC. I
7 think the number is around 13, 14, but I could be
8 wrong. And I also know there's a hotline.

9 Where there's Friend of the Court, formal,
10 informal, I can't tell you every single tool
11 that's in every toolbox in every particular
12 region. But they would have the ability to reach
13 out to the Office of Legal Access Programs for
14 some assistance.

15 Q. Who would?

16 A. The immigration judge. Because they do
17 have a legal service list, and if that reaches a
18 dead end -- we talked about the fact the child
19 advocate is not performing that role. I don't
20 know that that's something you would pull out of
21 the toolbox at that point.

22 But where they feel there's a really
23 compelling case, either the judge would have the
24 ability to call the Office of Legal Access
25 Programs and say, hey, look, I have this case, we

1 need some help and see if --

2 Q. What do you mean when you say "we need
3 some help"? What does help refer to there?

4 A. Some assistance for the respondent. I
5 have an asylum claim. Is there somebody that can
6 help fill out the application or represent the
7 respondent? What they would do is generally reach
8 out to the LOPC contractors to see if they can do
9 anything, reach out to some of the Friends of the
10 Court to see if they can, or their independent
11 network and resources to see if there's somebody
12 that can step in.

13 Q. Do you know if OLAP -- I'm asking
14 because you raised the issue -- do you know if
15 OLAP gets calls like that on a regular basis?

16 A. I don't know about a regular basis, but
17 I know I have told judges to reach out to them or
18 referred and said this is an appropriate case for
19 referral.

20 Q. But you're not saying for every child
21 who is unrepresented in immigration proceedings
22 that one of the representation options or
23 nonrepresentational options that you've described
24 is available; you're not saying that it's
25 universal and that's true for every child, are

1 you?

2 A. That every single case is going to get a
3 legal representative or Friend of the Court?

4 Q. Or LOPC representation even.

5 A. I don't know which -- I think the best
6 way I can say it is I don't know what's in each
7 court's toolbox. I can't say today that every
8 toolbox is full, and I can't say that there's
9 somebody who has a toolbox empty. I just don't
10 know the answer.

11 Part of what we're doing is we're trying to
12 encourage and work to make the toolbox as full as
13 possible, to give the judges the most resources
14 available when assessing what safeguard and
15 protection is necessary.

16 Q. So assume then that you do have a
17 situation of a child who, say, is given a I-589,
18 but doesn't have access to any kind of either
19 representational or nonrepresentational assistance
20 and is told by the immigration judge to go to the
21 asylum office. What if a child doesn't speak
22 English, what should the child do in that
23 instance? What is the obligation of the
24 immigration judge in that instance?

25 MR. SILVIS: Objection. Topic.

1 A. You're saying unaccompanied,
2 unrepresented.

3 BY MR. ARULANANTHAM:

4 Q. Doesn't speak English.

5 A. Doesn't speak English.

6 Q. No LOPC.

7 A. No LOPC. The judge is going to have to
8 dig deep in their toolbox. There are sometimes we
9 have a couple of tools at headquarters as an ACIJ
10 for vulnerable populations or the Office of legal
11 Access Programs. Sometimes we have networks and
12 know people and may be able to find a tool that
13 they don't have. But, no, I'm not saying -- I
14 can't promise.

15 We can do the best -- and I think that would
16 be an appropriate case where the judge would say,
17 I can't find an appropriate safeguard or
18 protection. Stop the case. I'm going to
19 articulate everything, either the lack of tools or
20 why the tools I have are insufficient and all my
21 efforts and I cannot conduct a fundamentally fair
22 hearing and they should stop.

23 Q. Are you aware of cases where judges have
24 done that?

25 A. I'm not aware one way or the other. I

1 know what the training is, but I haven't asked the
2 judges, have you done that. That's what we've
3 told them to do. But also I'm not getting from
4 the judges that I spoke to really empty toolboxes.
5 Everybody seems to have some tools available.

6 Ultimately, I think it also falls -- there's
7 a lot of -- it falls a lot on the judge. It
8 makes -- we talked about the fact that these tools
9 help me be more effective and more efficient.

10 But it could happen. You could admin close.
11 The instruction we give is if you cannot conduct a
12 fundamentally fair hearing, you may not proceed.
13 You have to decide are you going to continue? Are
14 you going to admin close? Are you going to
15 terminate? That's their remedy available.

16 And it works both ways, because on the one
17 hand, you don't get to the stage that you can
18 order somebody removed, but also you don't get to
19 the stage where you can grant relief necessarily.
20 You can't proceed.

21 If there's no safeguard or protection and the
22 person cannot perform the functions required for a
23 fundamentally fair hearing, you have to stop
24 proceedings and instructions.

25 Q. Are you aware of whether EOIR is

1 tracking whether judges have closed cases on the
2 basis that you're talking about?

3 A. There's no way in the case management
4 system to track the basis. The other problem
5 you're going to have with it is you also don't
6 know with prosecutorial discretion that -- some of
7 those cases where it's not available may be closed
8 for that reason. So there's no way to know why
9 the case particularly stopped.

10 Q. You don't track whether a closure is for
11 prosecutorial discretion as opposed to other
12 reasons?

13 A. I'm not sure if there's a field for
14 that. I'm just using that as an example of the
15 fact that -- the computer says the case was
16 terminated, would show a completion, a termination
17 on this date, but it wouldn't establish a basis.
18 There's no articulation as to the legal analysis
19 that resulted.

20 Q. Are there safeguards other than the ones
21 that we have discussed today -- this is actually
22 the 16th topic -- that are geared toward
23 protecting the interests of children in
24 immigration court?

25 A. There definitely are.

1 Q. What are they?

2 A. Really I think, and this is what we
3 teach the judges, there's an infinite set of
4 safeguards and protections, and you have to be --
5 you really have to consider the individual person
6 and their functions. Sometimes it requires you to
7 be creative because, as I said, sometimes the
8 inability to perform -- I'm sorry -- the inability
9 to proceed in many cases can help the respondent
10 if the charges are true and there's no relief.
11 But they can hurt the respondent if there is a
12 relief available.

13 So you really, I think, need to look -- there
14 are many things. For example, if a child has ADD,
15 you're going to alter the proceeding. You're
16 going to do small chunks. You're going to give
17 specific tasks. The way you speak to a child,
18 whether -- it's very common. We talked about the
19 placement.

20 I've seen the judges many times will start
21 off the proceedings by chatting about is the child
22 still in school, are they playing soccer, how did
23 they do in their last game. As one of the judges
24 says, I'm a grandma. So I talk to them like a
25 grandma. They're careful to be friendly, to try

1 to not use really legal terms.

2 Q. Is there any evidence that the set of
3 behaviors you're talking about has an effect on
4 the outcome?

5 A. I mean, there's nobody that's done a
6 study. As I said, every case is different. So
7 there's no one set of behaviors. It's not rubber
8 stamping that goes in every case. I may repeat
9 things over and over, my explanations.

10 Having done a docket for over 15 years with a
11 different population, you're constantly changing
12 and tailoring and monitoring and watching and
13 asking questions and asking to explain back. So
14 there's really --

15 Q. Did you do a children's docket?

16 A. I did not, no. I did a detained adult
17 male docket. The point being is that we really
18 have kind of endless ways that we tweak things, we
19 change things. I've had respondents where I give
20 them the I-589 and ask them to fill out as much as
21 they can knowing that there's no one to help them;
22 again detained.

23 I guess arguably a child could have another
24 child help them in the shelter, but give me
25 something on the application so I can move

1 forward, just something so I can mark it as an
2 exhibit, and then I'll ask the questions.

3 You have to be creative. You have to look
4 for safeguards and protections. Some are very
5 formal. Some are available.

6 Q. Are there any other safeguards or
7 protections that are programmatic that have a
8 name?

9 A. Yeah. We work with the ABA to do a kind
10 of Know Your Rights for children.

11 Q. Does that still exist?

12 A. Yeah.

13 Q. And where?

14 A. I'm sorry. It's not the -- the ABA was,
15 I believe, for adults. There's a Know Your Rights
16 Introduction to Immigration court video. There's
17 self-help materials.

18 Q. Know Your Rights for children, that
19 still exists?

20 A. Yeah, it does. EOIR did not develop it.
21 I think we had input into it.

22 Q. Who developed it?

23 A. I can picture the face of it. I don't
24 know.

25 Q. Is it ORR?

1 A. I don't know.

2 Q. Do you know where it exists?

3 A. I don't know if I have copy. I don't
4 think I have a copy. I think I lent it to
5 somebody.

6 Q. Do you know if it exists -- like what
7 cities it exists in, like where it operates?

8 A. No, I don't. And I'm just using it as
9 an example of something that -- you could do a
10 resource, self-help materials, like different
11 programs. We're working to try to develop some
12 self-help materials. I'm not personally working
13 on that.

14 You have to be creative. And where things
15 don't exist, you have to try to create or work
16 with state courts, work with others.

17 Q. The self-help materials you're talking
18 about, those are in development or they're already
19 implemented or operational?

20 A. I don't have that information myself. I
21 think that would probably be closer to Steve Lang.

22 Q. Are you aware of any other programmatic
23 safeguards or initiatives?

24 A. Yeah. I think this is not one that is
25 necessarily EOIR, but when you say programmatic, I

1 have sat in the shelters and listened to the
2 children's Know Your Rights presentations,
3 watching children dial on a Playskool phone the
4 immigration court asking to speak to someone in
5 English and explain that they changed their
6 address.

7 I've watched them work with children in
8 shelters to fill out change of addresses and
9 change of venues.

10 Q. You're talking about shelter specific to
11 Know Your Rights?

12 A. Yeah, in the shelter, so that before
13 they get to the court, they know what to expect in
14 court. I think it's a continuum. We have to
15 provide as much information available so that we
16 know it's not lack of knowledge. And then the
17 question is, what are they able to do with the
18 knowledge and are there things, steps.

19 I can't come up with every single one. But
20 every single proceeding I'm going to adapt based
21 upon my interaction and what I'm working with and
22 looking for what are the shortfalls and what tools
23 I have. I'm sure I'm going to leave off something
24 that's available, but I'm trying to be as
25 inclusive as possible.

1 Q. The shelter specific programs, do you
2 know if those exist in all the shelters?

3 A. I've observed some of them in south
4 Texas. But I don't know. That's not -- it's not
5 our contract. I know many of them call them
6 Charla.

7 Q. Is this an EOIR program you're talking
8 about?

9 A. I assume it is. I forgot who
10 specifically was doing that. But I was really
11 impressed.

12 Q. Do you know about outcome data as to
13 this, the shelter programs?

14 A. I don't know the location. I don't know
15 who is doing it. I just know I've observed it and
16 it helps to educate the respondents so when they
17 come to court, they have some knowledge. And then
18 if they do get explanations from a judge, it
19 builds on itself. It all helps.

20 Q. I realize you may forget things, human
21 nature. Is there anything else you can think of
22 at the moment, another program that's a safeguard
23 geared toward protecting the interests of children
24 in immigration court?

25 A. Other than what's in the documents we've

1 already talked about, nothing is coming right now
2 to me. Well, did we talk about the hotline?
3 There's a hotline. There's an LOPC hotline that
4 people can call into. So if your location doesn't
5 have an LOP presentation, you can call in and they
6 can do that by telephone.

7 Q. How do people learn about that?

8 A. The immigration judges will -- some
9 places they have it. Some people miss it. It's
10 based on location.

11 Q. So the immigration judges --

12 A. Would advise of the availability.

13 Q. Are you aware of immigration judges
14 advising people about that LOPC hotline in parts
15 of the country where there is no LOPC in that
16 court?

17 A. I've heard from Steve it happens. I'm
18 not personally aware. There was something else.
19 There's something else I just lost that one of the
20 judges told me they had available.

21 Q. I'll ask you another question. Are
22 there any cases involving children where the only
23 way to ensure that the child gets a fair hearing
24 is either to stop the proceeding or provide
25 counsel?

1 MR. SILVIS: Objection. Topic.

2 A. As I said, you have to look at each
3 individual case and assess each individual case to
4 make a determination.

5 BY MR. ARULANANTHAM:

6 Q. Can you imagine cases where that would
7 be true?

8 A. I can imagine a lot of things. I'm
9 going back to what I said. You have to look at
10 each individual case, and you have to assess the
11 ability of the child to function, and you have to
12 look and make the determination in the case.

13 Q. Can you imagine a case where there isn't
14 an attorney and the case is very complex, the
15 child is very young and capacity is very limited
16 where there's no safeguard, short of
17 representation, that would allow the child to get
18 a fair hearing beside obviously stopping the case?

19 A. I don't know.

20 Q. You don't know?

21 A. You're asking me to speculate about a
22 fact pattern that -- I've already told you that a
23 large majority, almost -- a large majority have an
24 adult present. I've told you about all the
25 resources we have. I don't know whether -- in

1 those cases, in every case, an immigration judge
2 can slow down and spend a lot of time and continue
3 the case.

4 I've told you I have trained three year olds
5 and four year olds in immigration law. You can do
6 a fair hearing. It's going to take you a lot of
7 time. But I really think that a great alternative
8 to terminating a case for a child who may be
9 eligible for relief where there's no counsel is
10 proceed very slowly, very carefully, and I'm going
11 to tap every single resource I can to see if I can
12 get the some help.

13 Q. By help you mean counsel?

14 A. All of the tools that I mentioned,
15 anybody to show up that can assist, whether it be
16 a Friend of the Court, whether it be a family
17 member, whether it be somebody from a church,
18 anybody that was willing to step in, I'm going to
19 do that if I can.

20 I told you I think counsel allows me to be
21 effective. They allow me to be efficient, but I
22 can trudge on. It's going to take me a lot of
23 hearing time, but you can do it. You can do it.

24 Q. Do you think you can have a fair hearing
25 with an unrepresented four year old in an

1 application for asylum?

2 MR. SILVIS: Objection. Topic.

3 A. It will take me a long, long, long, long
4 time because I'm going to have to use every skill
5 and every technique and every bit of training.
6 Again, we're assuming my toolbox is empty. But it
7 will be hours and hours and days and days and
8 continuances, but I can get to make a finding of
9 fact that is not clearly erroneous. I can make a
10 conclusions of law in the case and then make a
11 determination as to the case.

12 That's the role of the immigration judge, is
13 to identify reasonable forms of relief, and my
14 obligation is to develop the record. And we're
15 used to and part of the training is working with
16 very difficult respondents, whether it's due to a
17 mental disorder, an uncooperative person, a child.
18 Good attorneys and good judges are used to working
19 with difficult respondents.

20 BY MR. ARULANANTHAM:

21 Q. So what if a child's only relief is
22 special immigrant juvenile status and they're four
23 years old and there's nobody to litigate the case
24 in state court. How can the immigration judge
25 give that child a fair hearing?

1 MR. SILVIS: Objection.

2 A. That is not a problem. As a matter of
3 fact, I had a meeting in Atlanta with stakeholders
4 where the problem is there's such an abundance of
5 resources and so many large firms -- this has
6 become a cause celeb, as one of the judges called
7 it, with kids. So many big firms -- this is a big
8 issue.

9 A lot of people have taken a lot of time and
10 effort. I have worked personally and been on the
11 stage at the ABA because the ABA has taken the
12 situation of children on as a humanitarian cause.
13 That reminds me. Make a note. I remembered the
14 thing I forgot earlier.

15 BY MR. ARULANANTHAM:

16 Q. When you say cause, you mean the cause
17 of trying to find legal representation for
18 children to pursue SIJ applications? Is that what
19 you're talking about?

20 A. We talked about pro bono and immigration
21 court, but there are also pro bono resources in
22 the state court. As you're aware, just because
23 you're competent in one doesn't mean you're
24 competent in the other. So sometimes you have
25 both working together.

1 What we found is that many times, there's so
2 many people trying to assist on the state court
3 side that one of the biggest problems was
4 coordinating all the resources and making sure
5 that all of these attorneys and firms are -- who's
6 going to train and who's going to manage the cases
7 and all those things.

8 Q. If there is no legal representation --

9 MR. SILVIS: Are you finished? I think
10 you were still answering.

11 BY MR. ARULANANTHAM:

12 Q. If there is no legal representation on
13 the state court side, how would the child obtain
14 the predicate order?

15 A. There will be legal representation.
16 That's not an issue for us. We can --

17 Q. You're saying --

18 MR. SILVIS: You got to the let him
19 finish.

20 BY MR. ARULANANTHAM:

21 Q. I'm sorry.

22 A. All I would need to do in that case, for
23 the most part -- and I haven't done it because it
24 hasn't been relevant -- is if we reached out to
25 Kids in Need of Defense and their extensive

1 network and firms and large firms who have offered
2 to help, I don't think that it's going to be an
3 issue to get the state predicate order.

4 Q. So your testimony is there are no
5 children who are unable get special immigrant
6 juvenile status due to the absence of
7 representation to take their cases in state court?

8 MR. SILVIS: Objection. Topic.

9 A. That was not my testimony. As you said,
10 there are not. What I'm telling you is if it
11 comes to the attention of the judge that the
12 respondent may be eligible for SIJ and there needs
13 to be some assistance, that we have really ample
14 resources in our toolbox to be available to get
15 somebody to go into the state court.

16 Keep in mind when you're talking about going
17 into state court, the state courts are not
18 adjudicating this for the purpose of making
19 findings of fact and conclusions of law for
20 immigration purposes. They're adjudicating this
21 because somebody is saying that the child is
22 abandoned, neglected or abused.

23 So usually on the social side, there is
24 somebody that is involved in the case of that
25 child. I'm confident if it comes to the attention

1 of the judge, that we have ample tools and
2 resources to get that through the state court
3 process.

4 BY MR. ARULANANTHAM:

5 Q. By leveraging pro bono resources?

6 A. By leveraging if that's needed. I mean,
7 the question is what is needed. What do you need
8 to do to get the case through the state, resources
9 in general to get the petition in front of the
10 state court.

11 Q. You had forgotten something. Then you
12 remembered it.

13 A. This is somewhat minor, but there was a
14 point, and that was that one thing we do also
15 is -- you were asking about other safeguards and
16 protections.

17 One thing we do, we're pretty active in
18 conducting mock hearings to train parties, to
19 train Friends of the Court, to train pro bono
20 representatives, and also allowing our court space
21 to be used for that.

22 Another thing is that if individuals have
23 particular handouts or things they want or things
24 to be posted or to use our pro bono room, many
25 times, for example, they will want to screen

1 people at the end of the hearings and do intake.
2 And we will allow our space and our courts to be
3 used to do that, and the judges will step off the
4 bench. That's something else to provide -- to
5 enhance, not only just to identify the resource,
6 but what can we do to encourage or enhance or do
7 that.

8 The other thing is by scheduling the juvenile
9 dockets, because the whole purpose of that is to
10 conserve resources, to not be pulling the child
11 out of school, to allow the Friends of the Court
12 to show up on a specific day and not have all off
13 the resources we do have spending their time on
14 the road rather than in court or preparing cases.

15 So those are both things that we have that I
16 can recall, but also ways that we take to try to
17 enhance the effectiveness of our resources.

18 (There was a discussion off the record.)

19 MR. ARULANANTHAM: We will pass the
20 witness.

21 MR. SILVIS: We don't have any
22 questions.

23 MR. ARULANANTHAM: I think we're done
24 then.

25 Same stipulation that you'll have 30 days to

1 read and sign?

2 MR. SILVIS: Yes.

3 (Whereupon, at 4:51 p.m., the taking of
4 the instant deposition ceased.)

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1 C E R T I F I C A T E

2 DISTRICT OF COLUMBIA:

3

4 I, Ann Medis, Registered Professional
5 Reporter and Notary Public, hereby certify the
6 witness, HONORABLE JACK H. WEIL, was by me first
7 duly sworn to testify to the truth, that the
8 foregoing deposition was taken at the time and
9 place stated herein, and that the said deposition
10 was recorded stenographically by me and then
11 reduced to printing under my direction, and
12 constitutes a true record of the testimony given
13 by said witness.

14 I certify the inspection, reading and signing
15 of said deposition were NOT waived by counsel for
16 the respective parties and by the witness.

17 I certify I am not a relative or employee of
18 any of the parties, or a relative or employee of
19 either counsel, and I am in no way interested
20 directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my
22 hand and affixed my seal of office this 29th day
23 of October, 2015.

24
25



1 TRANSPERFECT DEPOSITION SERVICES

2 216 East 45th Street

3 Suite 903
4 New York, New York 10017

5 212.400.8845

6 ERRATA SHEET

7 CASE: J.E.F.M., et al., v LYNCH, et al.

8 DATE: October 15, 2015

9 WITNESS: HONORABLE JACK H. WEIL

10 Page Line Change and reason for change:

11 _____

12 _____

13 _____

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Subscribed and sworn to me this

_____ day of _____, 2015.

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ACKNOWLEDGMENT OF DEPONENT

I, HONORABLE JACK H. WEIL, do here certify that I have read the foregoing pages 1 to 167 and that the same is a correct transcription of the answers given by me to the questions herein propounded, except for the corrections or changes in form or substance, if any, noted in the attached errata sheet.

DATE

HONORABLE JACK H. WEIL

Subscribed and sworn to me this _____ day of _____, 2015.

Notary Public

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ACKNOWLEDGMENT OF DEPONENT

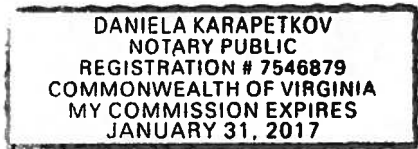
I, HONORABLE JACK H. WEIL, do here certify that I have read the foregoing pages 1 to 167 and that the same is a correct transcription of the answers given by me to the questions herein propounded, except for the corrections or changes in form or substance, if any, noted in the attached errata sheet.

11-30-15
DATE

Jack H. Weil
HONORABLE JACK H. WEIL

Subscribed and sworn to me this 30 day of November, 2015.

Daniela Karapetkov
Notary Public



TRANSPERFECT DEPOSITION SERVICES

216 East 45th Street

Suite 903

New York, New York 10017

212.400.8845

ERRATA SHEET

CASE: J.E.F.M., et al., v LYNCH, et al. DATE: October 15, 2015

WITNESS: JACK H. WEIL, ASSISTANT CHIEF IMMIGRATION JUDGE

Page Line Change and reason for change:

7 18 delete "the"

11 16 "various" should be "variations"

13 18 "that if" should be "that if a"

14 22 "started approximately" should be "started in approximately"

15 12 "Assistant" should be "the"

17 10 "office of" should be "office of the"

17 24 delete "assistant"

20 4 "obviously are" should be "obviously they are"

20 17 delete "as"

21 20 "well" should be "were"

19 23 14 delete "at"

20 25 21 delete "A"

21 25 22 capitalize "T"

22 26 4 "issue policy" should be "issue a policy"

23 26 15 "respondent to" should be "respondent in"

24 27 9-10 delete "that we can take"

25 28 10 "respondents" should be "respondent"

26 30 3 "that" should be "to"

27 38 1 delete "the"

28 41 2 "category" should be "concern"

29 43 5 "does it" should be "does is it"

30 45 12 "incur" should be "encourage"

31 45 23 "a child is represented" should be "a child
respondent is not represented"

32 50 17-18 "experience what a personal representative,"
should be "experience. What is a personal
representative?"

33 51 1 delete "which"

- 34 69 2 "be concerned" should be "concern"
- 35 81 18 delete "the"
- 36 82 22 "ask" should be "answer"
- 37 82 24 "his presentation" should be "his prior
presentation"
- 38 83 4 "ask" should be "asked"
-
- 39 90 3-4 "95 to 99" should be "95 to 99 percent of the
time"
- 40 91 15 "make the" should be "make sure the"
- 41 91 20 "for" should be "or a"
- 42 91 23 "Friend" should be "Friends"
- 43 96 14 "interest consistent" should be "interest is
consistent"
- 44 97 10 "though" should be "thought"
- 45 97 24 "I-599" should be "I-589"
- 46 98 7 "for safeguard" should be "for a safeguard"
- 47 105 17-18 "for explaining the child failure" should be
"explaining the child's failure"

- 48 109 16 "department" should be "Department's"
- 49 115 2 "We got" should be "We have got"
- 50 118 16 "on" should be "is"
- 51 119 10 "is something" should be "is this something"
- 52 122 6 "substitutes" should be "constitutes"
- 53 122 9 "its" should be "a"
- 54 127 17 "this" should be "these"
- 55 129 13 "D.E." should be "Dee"
- 56 129 15 "Lisa" should be "Elisa"
- 57 133 15 "problem in it is that" should be "problem is
that"
- 58 134 23 "times" should be "time"
- 59 167 12 "off" should be "of"

Subscribed and sworn to me this
30th day of November, 2015.

Jack H. Weil

Jack H. Weil

