

Youth's Testimony in Immigration Court

The ABA Children's Immigration Law Academy (CILA) created this resource for advocates representing youth in immigration court or working on cases in which a youth might need to testify in immigration court.¹ Some of the guidance in this resource stems from the Executive Office for Immigration Review (EOIR)'s *Director's Memorandum (DM) 24-01, Children's Cases in Immigration Court* (Dec. 21, 2023) (DM 24-01).² For purposes of this resource, the terms "youth" and "child" are used interchangeably and refer to anyone under 21 years old.³ The focus of this resource is the tools that may be available to assist and protect youth who are testifying.

Deciding to Testify

Always consider first if a youth needs to testify in an immigration case. While they may have knowledge of essential facts for the case, testifying can be a difficult and potentially traumatizing experience for anyone, especially a youth who might need to discuss past traumas. In many cases, it may be best for a youth to submit a written declaration in lieu of testifying. Indeed, EOIR has instructed that "immigration judges should be aware that it is often appropriate to rely on a child's written statement in lieu of their oral testimony."⁴

Advocates should discuss the pros and cons of having a youth testify in advance of the hearing with the youth and respondent (if they are not the youth who would be testifying). Note that the [Immigration Court Practice Manual \(ICPM\)](#) also requires the filing of a witness list in advance of an individual merits hearing for any witnesses other than the respondent.⁵ Whether to have a youth testify is generally going to be a case-by-case assessment. Some factors to consider include:

- Preferences of the youth
- Preferences of the immigration judge
- Necessity of the youth's testimony
- Comfort, ability, and credibility of the potential youth witness
- Availability and strength of any other evidence and witness testimony

While talking with a youth about what to expect for testimony, it can be helpful to ask them how they are feeling about testifying in general and whether there are any aspects of their story that they really do not want to have to discuss in court. This may open up the conversation to discuss options for how to ensure that the necessary information is still in the record. For example, perhaps another witness can be present to testify regarding this aspect of the case, or there is

¹This is not legal advice, nor is it comprehensive. This resource is for informational purposes only and should not substitute your own research and analysis.

² The DM is available online at https://www.justice.gov/d9/2023-12/dm-24-01_1.pdf. Many aspects of the DM are relevant to youth's immigration court hearings in general, even if they will not testify. Depending on the case, advocates can seek accommodations as described in this practice advisory in situations where the youth will not testify as well.

³ See Executive Office for Immigration Review (EOIR), *Director's Memorandum (DM) 24-01, Children's Cases in Immigration Court*, at 2 (Dec. 21, 2023), available at https://www.justice.gov/d9/2023-12/dm-24-01_1.pdf.

⁴ *Id.* at 6.

⁵ EOIR, *Immigration Court Practice Manual (ICPM)*, § 4.16 (last visited Apr. 29, 2024), available at <https://www.justice.gov/eoir/reference-materials/ic/chapter-4/16>.

documentary evidence to support this issue that can be relied upon instead, or the information can be presented in a declaration instead of testimony. It may also be possible to advocate for limiting the youth’s testimony to certain issues with the government attorney and the immigration judge. Be sure to explain any strategies that you intend to pursue to try and limit their testimony to the client in advance. Ultimately, the judge will decide whether their testimony is needed or not.

Prepping Youth to Testify

Witness preparation is an essential step for any youth who decides to testify. Prepping can require multiple meetings with the youth, and it is important to take a trauma-informed or healing-centered approach. Learn more in CILA’s [Pro Bono Guide for Working with Children and Youth in Immigration Cases](#) (pages 21-36) and CILA’s [Tips for Working with Migrant Children and Trauma-Informed Lawyering](#) (updated Oct. 2023).

Building rapport and trust with the child is essential before you help them prepare to testify, and as you work with them it is important to center them in the process and empower them. Moreover, CILA’s resource, [“Trauma-Informed Representation in Asylum Cases: Asylum Interview & Asylum Merits Hearing Checklists,”](#) provides helpful tips for how to prepare your client in advance of a hearing and for attorney preparation. Preparation can make a significant difference in helping any witness, and particularly a youth, feel comfortable and ready to testify, and preparation can make a notable difference in how testimony goes on the day of court too.


CILA also created a resource to provide suggestions for advocates representing a client at an individual hearing. The resource, [“How to Prepare for an Individual Hearing: Different Practitioners’ Perspectives”](#) shares lessons learned from practitioners and showcases their tips to prepare for a merits hearing, develop evidence, and prepare clients and witnesses for court.

Creating a Child-Friendly Environment




Advocates can play a key role in ensuring that the courtroom setting is as child friendly as possible. Review [DM 24-01](#) and be prepared to ask for any necessary modifications. This section highlights some key provisions that may apply whenever a youth is going to testify.

Physical Courtroom Settling

Consider the following language in DM 24-01 and the ICPM when determining if there are ways to modify the space to make it more welcoming for a youth.

Accommodation	Supporting Language
<p>Limit Access to Courtroom</p> 	<p>“As a general practice, it is best to have as few people in the courtroom as possible. Children may be reluctant to testify about painful or embarrassing incidents or may simply be intimidated when there are too many adults in the room. A child’s reluctance to speak may increase with the number of spectators or other respondents, and immigration judges should, to the extent possible, limit the number of individuals present in the courtroom to only those necessary to complete the hearing.” (DM 24-01, at 7)</p> <p>“Hearings in removal proceedings are generally open to the public. However, special rules apply in the following instances:</p>



	<ul style="list-style-type: none"> • Evidentiary hearings involving an application for asylum or withholding of removal ('restriction on removal'), or a claim brought under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, are open to the public unless the respondent expressly requests that the hearing be closed. In cases involving these applications or claims, the immigration judge inquires whether the respondent requests such closure. • Hearings involving an abused noncitizen child are closed to the public. Hearings involving an abused noncitizen spouse are closed to the public unless the abused spouse agrees that the hearing and the Record of Proceedings will be open to the public. • Proceedings are closed to the public if information may be considered which is subject to a protective order and was filed under seal." (ICPM § 4.9(a)(1)) <p>"For hearings not subject to the special rules in subsection (1), above, parties may make an oral or written motion asking that the immigration judge close the hearing." (ICPM § 4.9(a)(3))</p>
<p>Reasonable Courtroom Modifications</p> 	<p>"Immigration judges should permit reasonable modifications to the courtroom setting so as to accommodate the needs and sensitivities of children and to foster an atmosphere in which they can participate more fully in the proceedings. Examples of such modifications include allowing a young respondent or witness to bring a book, quiet toy, or other personal item to court, allowing them to testify sitting next to an adult companion, and allowing them to testify sitting anywhere reasonable in the courtroom, as opposed to requiring them to testify from the witness stand." (DM 24-01, at 6)</p> <p>"Immigration judges make reasonable modifications for juveniles. These may include allowing juveniles to bring pillows, or toys, permitting juveniles to sit with an adult companion, and permitting juveniles to testify outside the witness stand next to a trusted adult or friend." (ICPM § 4.22(d))</p>
<p>Courtroom Orientation</p> 	<p>"Where practicable, immigration judges should allow child respondents (along with a guardian or legal representative) to visit an empty courtroom prior to a hearing. Under the supervision of court personnel, a child should be permitted to explore the courtroom, to sit in all locations, including the witness stand and the immigration judge's bench, and to prepare for testimony by practicing answering simple questions." (DM 24-01, at 6)</p> <p>"Juveniles are encouraged, under the supervision of court personnel, to explore an empty courtroom, sit in all locations, and practice answering simple questions before the hearing. The Department of Health and Human Services, Office of Refugee Resettlement, provides orientation for most juveniles in their native languages, explaining immigration court proceedings." (ICPM § 4.22(c))</p>
<p>Remove the Robe</p> 	<p>"Immigration judges should remove the judicial robe if doing so would make the child feel more comfortable and enhance their ability to participate." (DM 24-01, at 6)</p>



Hearing Structure

It is possible to ask for variations in the hearing length, number of hearings, and need for breaks in cases involving a youth respondent or witness. Breaks may be needed more frequently in cases involving youth. Advocates can also request in advance for multiple hearings if there is going to be a need for extensive testimony. Under DM 24-01, immigration judges “should, as much as possible, limit the number of times a child must be brought to court, as well as the duration of hearings and the length of a child’s testimony.”⁶ DM 24-01 further recognizes that “children can be particularly impacted by stress and fatigue, which can limit a child’s ability to participate in their removal proceedings.”⁷ In addition, an immigration judge should “recognize that, for emotional and physical reasons, children may require more frequent breaks than adults.”⁸

Explain the Proceedings

Youth may have trouble understanding who everyone is in the courtroom and the purpose of removal proceedings. Advocates should explain what to expect in advance. CILA’s [Pro Bono Guide for Working with Children and Youth in Immigration Cases](#) (updated Oct. 2023) has some more information related to how to explain courtroom procedures to youth and examples of illustrations that may help with the explanation.

Moreover, DM 24-01 instructs immigration judges to “give an opening statement in child-appropriate language” at the start of the hearing to explain the proceedings and who everyone is to help alleviate a youth’s anxiety about the hearing.⁹ Before a youth testifies, immigration judges should also “take care to explain the oath to the child at a level appropriate to the age of the child.”¹⁰

Special Considerations for Youth

Competency to Testify

Under DM 24-01, “[b]efore a child testifies, the immigration judge should ensure that the child is sufficiently competent to do so, including whether the child is capable of understanding the oath and giving sworn testimony.”¹¹ Attorneys may also raise concerns if they believe a youth being asked to testify is not competent to do so. For more information on how to address competency issues, review CILA’s blog post on “[Protecting Unaccompanied Children who are Not Competent to Participate in Removal Proceedings](#)” (Apr. 17, 2024).

Practice Tip: Interpretation

If a youth requires an interpreter at the hearing, they should be given the opportunity to “establish a rapport by talking about matters unrelated to the proceeding” before testifying. *See* DM 24-01 at 6.

It is also important to raise an objection if there are any concerns about the ability of the youth and interpreter to communicate. In fact, DM 24-01 instructs immigration judges to watch out for these issues before and during a youth’s testimony.

⁶ DM 24-01, at 7.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

¹¹ DM 24-01 at 6.



Witness Credibility

Witness credibility can impact how an immigration judge assesses testimony.¹² Children and youth, however, should not be held to the same standards as adults. The following table provides potentially helpful language related to common issues that can arise when youth testify. Federal caselaw also supports that age can be an important factor when assessing credibility.¹³

Common Issue	How to Address under DM 24-01
Imprecise and Unclear Testimony	<p>“Immigration judges should recognize that children, especially young children, will generally not be able to testify with the precision and clarity of an adult.” (DM 24-01, at 4)</p> <p>“[A] child’s testimony as to an event may be limited not only by their ability to understand what happened, but also by their skill in describing the event in a way that is intelligible to adults.” (DM 24-01, at 4)</p>
Inconsistent Testimony	<p>“Immigration judges should not assume that inconsistencies or poor articulation in a child’s testimony reflect dishonesty.” (DM 24-01, at 4)</p>
Answering “I don’t know”	<p>“A child should also be reassured that they may say ‘I don’t know’ if they are unsure how to answer a question and that they may request a question be asked a different way if they do not understand it.” (DM 24-01, at. 6)</p>
Susceptible to Outside Influences	<p>“Immigration judges should be mindful that children can be highly suggestible and that their testimony can sometimes be influenced by a desire to please the judge or another adult.” (DM 24-01, at 4)</p>

Direct Examination

While the immigration judge and government attorney will have the opportunity to question the witness, the focus of the youth’s testimony is likely their direct examination. Practicing questions during witness preparation can be helpful. Advocates should also educate themselves about child development, and some related additional resources are included at the end of this resource. Some tips for advocates preparing to question youth:

- Use simple, child-friendly language
- Avoid legalese or advanced terminology
- Use age-appropriate questions
- Keep questions short and avoid compound questions
- Ask questions in an order that makes sense and is easy for the witness to follow

Practice Tip: Child-Sensitive Language

[DM 24-01](#) instructs immigration judges and anyone questioning a youth on the stand to use “child-sensitive questioning” and “appropriate language and tone” (pg. 7). The “Attachment” at the end of [DM 24-01](#) contains suggestions for language to use.

¹² See Immigration & Nationality Act § 240(c)(4)(B).

¹³ See CILA’s [Pro Bono Guide for Working with Children and Youth in Immigration Cases](#), at 54 (updated Oct. 2023) (citing cases from the federal courts of appeals).

Objections to Testimony

While the objection process is generally the same regardless of the age of the witness, youth may need more help understanding the purpose of objections. In fact, DM 24-01 states that “[a] child should be told they should not feel at fault if an attorney raises an objection to a question.”¹⁴ Advocates should also prepare youth in advance for what to do if there is an objection and explain how they do or do not impact their testimony. Attorneys may even want to do a practice session.

Exhibits & Testimony

As with any witness, an attorney might seek to use an exhibit or document during their testimony. For instance, testimony may be necessary to help authenticate or explain an exhibit. Best practice is generally for an attorney to discuss any documents they may want to use with their witness during preparation.

During witness preparation, it may also be necessary to go over any other documents that the immigration judge or government attorney are likely to ask about at the hearing. Keep in mind that documents can be used to impeach a witness and call their credibility into question. Immigration judges will often address any objections to documentary evidence and hear testimony from witnesses at the same hearing.¹⁵

Practice Tip: Refreshing Recollection

It is sometimes possible to show a witness a document during their testimony to help refresh their memory. CLINIC’s [Practice Pointer: Refreshing Recollection in Immigration Court Proceedings](#) (Mar. 13, 2020) provides a comprehensive overview of this process along with factors to consider before using it and practical courtroom tips. In addition, whether or not to attempt this process with a child witness may depend on their age and reading capabilities. Consider as well that inconsistencies in a youth’s testimony should not necessarily be treated the same as in an adult’s testimony, as explained above.

Conclusion & Additional Resources

CILA hopes this resource helps advocates with preparing youth to testify in immigration court and encourages advocates to seek accommodations as appropriate for youth witnesses. Sign up for a [free CILA account](#) to gain access to more resources to assist advocates representing children in immigration court. Advocates can also check out:

- Section IV.C. of CILA’s [Pro Bono Guide for Working with Children and Youth in Immigration Cases](#) (updated Oct. 2023)
- CILA’s blog post, [“EOIR Updates Guidance on Children’s Cases in Immigration Court & Creates Specialized Juvenile Dockets”](#) (Jan. 2024)
- CILA’s recorded webinar, [“Pro Bono Representation of Youth in Immigration Court: An Overview of Agency Policy & Practical Guidance”](#) (available after May 14, 2024)
- ABA, [“Child witnesses: Must-dos to best ensure reliable testimony”](#) (Apr. 2019)
- ABA, [“To Be a Competent Children’s Attorney, Learn to Apply Principles of Child Development”](#) (Oct. 2021)
- ABA Center of Children & the Law, [“How Adolescent Brain Science Supports Youth Engagement in Court Hearings and Case Planning”](#) (2019)
- American Academy of Pediatrics, [The Child Witness in the Courtroom](#) (Mar. 2017)

¹⁴ *Id.* at 6.

¹⁵ See ICPM § 4.16(d) (Conduct of Hearing).



Cheat Sheet: Advocacy Tips in Children’s Immigration Court Hearings

	Raise competency, if at issue, and seek safeguards
	If possible, develop a declaration and documentary evidence, and determine witness(es) to have alternatives to rely upon other than the youth as a witness
	Develop rapport with your client, and as an advocate, be prepared to ask your client age-appropriate, child-friendly questions during testimony
	Prepare the youth for what to expect at court, who will be present, and practice going over questions to prepare them for testimony
	Request a closed hearing to limit attendees/spectators
	Advocate for a court orientation—for the youth (along with a guardian or legal representative) to visit and explore an empty courtroom prior to a hearing
	Advocate for the youth to bring a book, pillow, quiet toy, or other personal item
	Advocate for the youth to testify next to an adult companion or friend
	Advocate for the youth to testify elsewhere in the courtroom other than the witness stand
	Advocate for the immigration judge to remove the judicial robe to make the youth feel more comfortable
	Advocate for the youth to be able to build rapport with the interpreter
	If needed, raise any objections including any communication challenges between the youth and interpreter
	If needed, during testimony, be prepared to refresh your client’s recollection
	Advocate that the immigration judge should recognize that youth, especially young children, cannot testify with the same precision and clarity as an adult
	Advocate that the immigration judge should not assume that inconsistencies or poor articulation during testimony reflects dishonesty
	Advocate that the immigration judge uses child-sensitive language
	Reassure a youth that they may say “I don’t know” during testimony or request for the question to be repeated or rephrased
	As needed, advocate for more breaks, limiting the number of times the youth should have to come to court, the duration of court hearings, or length of testimony

