This is a scenario designed to try and capture as many aspects as possible for an attorney to zealously advocate for their client's interests at the earliest possible stages of removal proceedings. Not all of these scenarios will always be options but our hope is that they highlight points in the proceedings of an MCH where one may be able to put forth arguments and hold EOIR and ICE to their proper responsibilities and burdens.

Sample MCH Script

Intro:

IJ: we are back on the record and I have already stated the name and A-number of the child along with today's date and location. Parties, state your appearance for the record.

R: Helen Lawrence, appearing for the respondent, Juana Mendoza Mendoza, who is present in court.

G: Brandon Roché, appearing for the government.

IJ: Due to limited time today, I'll skip my usual questions to the child and go straight to service of the NTA.

Service:

IJ: Counsel, do you acknowledge proper service of the Notice to Appear dated January 12, 2015 and waive formal reading.

R: No, Your Honor, we do not concede proper service; the Notice to Appear in this case was not properly served. I ask that the government prove proper service.

IJ: Oh come on you have got to be kidding me! Are you really going to pursue this ridiculously hyper-technical argument, which I have never granted before?

R: Yes, we respectfully stick to our objection.

IJ: Government, help me out please!

G: Respondent clearly received notice of the removal proceedings initiated against her, Your Honor, because the Respondent is here in court. Under BIA case precedent, actual notice will always suffice.

R: Your Honor, proper service is required by statute, regulation and case law. DHS must comply with the NTA service requirements applicable to children, particularly those under 14 years of age.

There are three independent reasons NTA service was not properly done. First, the certificate of service on the NTA lacks the child's signature even though service was supposedly done in person and the child was in ORR custody. Second, DHS knew that her mother was in the United States and never served the NTA on the child's mother, as

required by [Note: the case is Mejia-Andino 23 I&N Dec. at 536]. Third, she was ultimately released to an adult sponsor so DHS had an obligation to serve the NTA on that known adult, but DHS never did so.

Today, the government argues that service was proper because the Respondent is here in court. That argument should be rejected. Respondent's presence here does not demonstrate that the NTA was properly served -- it merely demonstrates that she received a Notice of Hearing as to the time and place of her removal proceedings. The proper remedy is termination under 8 CFR Section 103.8(c)(2)(ii) and Matter of Mejia-Andino.

G: Well, I have extra copies of the NTA here and so let the record reflect that I am serving the child and her attorney in open court.

R: Your Honor, service of the NTA in open court does not perfect service for two independent reasons. First, 8 CFR § 1003.14(a) requires that DHS serve the NTA properly before filing the NTA with court. It is too late to do it today. Second, it would violate fundamental fairness and make it futile to object to improper NTA service by allowing the government to serve the NTA at the hearing where the child challenges improper service. If service is flawed, the court should terminate the proceedings.

G: Not true your honor, under the newly issued Matter of W-A-F-C, where the Department seeks to re-serve a respondent to effect proper service of a notice to appear that was defective under the regulatory requirements for serving minors under the age of 14, a continuance should be granted for that purpose.

R: Your honor, I'd like to note for the record that that the case is pending reconsideration.

G: It's a BIA precedent decision, your honor.

IJ: I will grant a short continuance for the Government to effectuate proper service. Let's set a date one month from now for the parties to meet again and I expect Respondent to be ready to take pleadings at that time.

R: Your Honor, I also think it would be helpful if the government produced the form I-770 for the Court and Respondent since one of our bases for termination is failure to comply with the regulations mandating the I-770.

IJ: I have never heard of this Form I-770 that you keep talking about. Can't you just file your FOIAs and obtain it that way?

R: Your Honor, we have already filed our FOIAs, but in practice they often take 3-6 months to receive the results and the results are often redacted and incomplete. In the spirit of judicial economy, it would be fastest if the government could provide the court and respondent with a copy.

IJ: Fine. Government, please also produce a copy of this strange form I-770 by the next

hearing.

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[Continuance granted] This may be a good point to discuss Matter of W-A-F-C with the audience and address the service issues brought up in the first act.

3. Pleadings- Allegations

IJ: We are back on the record here in the downtown Houston immigration court and I have already stated the name and A-number of the child along with today's date. Parties, have stated their appearance for the record. Counsel, has the service issue been remedied since the last appearance?

G: Your Honor, we have evidence that the child's parent was properly served and the child is here in court, again, today.

IJ: OK, so we are moving this case forward today. Are you prepared to plead, counsel?

R: Yes, your honor.

IJ: We are moving ahead. Counsel, I have a Notice to Appear dated January 12, 2015, with five allegations and one charge, do you waive a formal reading?

R: Yes, your honor. Respondent denies allegations 1, 2, and 5 and denies the charge against her.

IJ: You are denying the allegation that the child is not a citizen? Are you claiming that your client is a US citizen?

G: Your Honor, I move that the court issue sanctions against the Respondent's attorney for unethically claiming that the child is a US citizen.

R: Hold on, I am denying the allegations and the government should be put to its proof on each of the allegations. We are allowed to deny the allegations without asserting that we have proof that the child is a US citizen. The child is not required to concede anything at this stage of the game.

IJ: Ok, I am not going to enter sanctions against the Respondent's attorney. Government?

G: Your Honor, I have the I-213 in front of me, and it states the child turned over her Honduran birth certificate upon encounter with CBP.

IJ: Respondent, on what grounds are you denying alienage?

R: Judge, we have never received a copy of the I-213 and my client was not able to provide me a copy of their birth certificate, he says he hasn't seen it since he was in ORR custody.

IJ: Government, do you have a copy of the I-213 you could share with respondent, or a copy of the birth certificate?

G: Yes, your honor, I have an extra I-213 here. (presents to respondent)

R: Your honor, may I have a moment to review this with my client?

IJ: Please take a brief moment to review counsel…

IJ: Based on the I-213, the court finds the government meets its burden of proving alienage. Counsel, you also denied allegation #5 as to public charge. What's the grounds?

R: The government also has the burden to prove that an individual is likely to become a public charge and that is not the case here.

G: Your honor, this child is an unaccompanied minor, residing with his undocumented mother. Neither of them speak English. How could they support themselves?

R: That's irrelevant your honor. The gov't must take into account the totality of circumstances when deeming someone likely to be a public charge. Matter of A- [19 I&N Dec. 867 (1988) found that an unemployed woman who is young and has no physical or mental impediments that would affect her ability to earn a living is not a public charge.

G: Fine, your honor the gov't will agree to strike the public charge.

IJ: Striking allegation of public charge. Counsel, what forms of relief is the Respondent eligible for?

R: Your Honor, the relief is termination. Any other forms of relief
are not legally relevant at this point because the initial finding of removability has not been made.

IJ: You're right, we didn't get to that yet. I find the respondent is removeable. Do you wish to designate a country?

R: Respectfully decline.

IJ: I will designate Honduras. Counsel, what forms of relief is the respondent eligible for?

R: We will be seeking Asylum, Withholding, and relief under CAT as well as Special Immigrant Juvenile Status and request a continuance so that we can file the necessary petition with the state court.

G: Your Honor, Respondent is beyond the one-year deadline for filing for asylum.

R: My client, is designated as a UAC and the one year bar does not apply under the TVPRA.

IJ: I don't have them marked in my computer as a UAC. Do the Department have that designation?

G: No, your Honor, we do not have anything that indicates this. The Respondent was reunified with his mom in 2015, so he can't be unaccompanied.

R: I have a Verification of Release Form from ORR custody, which proves he was designated a UAC and held as such. USCIS has determined they will accept affirmative asylum applications from UAC, beyond the one-year deadline absent an affirmative removal of that status by ICE. It's from the May 28, 2013 USCIS memo.

G: That's fine your honor, it looks like that affirmative removal of UAC status hasn't happened… yet.

IJ: I'll grant a continuance until November 29, 2017. Please have all forms of relief filed by then and be prepared to file evidence of such. Is there anything further?

G and R: Thank you.

Optional:

R: [Go over a verbal motion for termination. Could be that we seek termination due to failing to allow the child the ability to control the frigid temperatures in the holding cell. Then we can show the components for arguing that the rule is intended to benefit the child and that we prevail if we can show any of these three alternatives: (a) it protects a fundamental right, (b) it's part of a framework to ensure the fair processing of the case, or (c) actual prejudice.]