

justice AmeriCorps Frequently Asked Questions

This document is intended to guide justice AmeriCorps (jAC) members serving under the program. It is a living document created by the Corporation for National Community Service (CNCS) and the Executive Office for Immigration Review (EOIR). The document will be updated on a regular basis as new questions arise from the field. Feedback and additional questions should be sent to Nina Zelic, Assistant Program Director at the EOIR Office of Legal Access Programs at nina.zelic@usdoj.gov.

Representation

jAC members should provide direct legal representation to children under the age of 16 who: (1) are not in the custody of the Office of Refugee Resettlement (ORR) or the Department of Homeland Security; (2) have received a Notice to Appear in removal proceedings before EOIR; (3) have not had their cases consolidated with removal proceedings against a parent or legal guardian (Unaccompanied Children or Unaccompanied Child); and (4) have their Initial Master Calendar hearing in immigration court scheduled after January 1, 2015¹.

The following section includes questions related to the parameters of the program, and clarifies the types of children and the scenarios in which jAC members may provide direct legal services.

Children still in ORR custody

1. Can a jAC member begin to work with a UC who is still in ORR custody?
 - a. No. This program is only for eligible children who are not in the custody of ICE or ORR. However, if the child has a Master Calendar hearing while in custody they will still be jAC eligible if they are released and their first non-detained Master Calendar hearing occurs after January 1, 2015.

¹ In light of the continuing low caseloads for jAC members at several host organization sites, EOIR and CNCS will consider a limited exception to the requirement that jAC members represent only Unaccompanied Children (UC) whose Initial Master Calendar hearing was scheduled after January 1st, 2015. Under the exception, the host organization's jAC members would be able to represent UC whose Initial Master Calendar hearing was scheduled as early as October 1st, 2014. To apply for the exception, the grantee is required to submit a proposed amendment to its program operation plan addressing how the host organization would: (1) Identify and accept cases whose Initial Master Calendar hearing was scheduled between October 1, 2014 and December 31, 2014, while meeting jAC program requirements of universal representation (i.e. provide legal representation without regard to a child's potential eligibility for relief, gender, nationality, or other factors beyond eligibility for representation under jAC). Upon request, EOIR will provide a docket report of UC cases that were scheduled for Initial Master Calendar hearings 10/01/2014 through 12/31/2014; and (2) Maintain capacity to represent all future jAC-eligible cases scheduled for Initial Master Calendar hearings at the level proposed in its grant application.

Representing children whose Initial Master Calendar hearing occurred elsewhere, other than the location of the jAC provider

2. Can a jAC member represent a child where the child's Initial Master Calendar hearing occurred while the child was in ORR custody?
 - a. Yes. jAC members may represent children whose first hearing was held while in ORR custody.
3. Can a jAC member represent a child who meets the age requirements at the time the NTA was filed, however, an initial Master Calendar was held at a location where venue had been improperly transferred post-release? Currently the child's case is scheduled in the correct venue and she has another initial Master Calendar hearing.
 - a. Yes, the child would be eligible for jAC representation.

Representing children living with parents

4. Can a jAC member represent a UC living with parents?
 - a. Yes, a jAC member can represent a UC living with parents as long as the child was designated "UAC" when he/she was taken into federal custody and the case has not been consolidated with an adult. If the child was never designated as a UAC, the child is not eligible for the program.

Case Consolidation Questions

5. Can a jAC member represent a UC whose case has been consolidated with an adult?
 - a. No. If a child is part of a consolidated case with an adult the child is not eligible for the program. However, the jAC member may provide pro bono support services to an attorney representing the consolidated case.

Children who fail to appear for their court hearing

6. Can a jAC member represent a child who was removed *in absentia*, had a motion to reopen granted and a new Initial Master Calendar hearing scheduled after January 1, 2015?
 - a. Yes. A child who was removed *in absentia* and who has had a Motion to Reopen granted (that he/she filed *pro se* or otherwise) is eligible for representation through justice AmeriCorps. As a reopened case, the matter would be considered a new proceeding².

² If a child has been removed *in absentia* the child cannot be represented in the motion to reopen by a jAC member, but the jAC member can provide pro bono/pro se assistance in filing the motion to reopen. This is the case regardless of when the *in absentia* order was entered. If the motion to reopen is granted and the case is re-calendared for after January 1, 2015 all jAC members are able to represent such a child. If a program has been granted an exception to the January 1st Initial Master Calendar hearing eligibility requirement, the jAC member would also be able to represent children whose motion to reopen was granted and whose case was re-calendared between October 1, 2014 and December 31, 2014, regardless of when the *in absentia* order was entered.

7. If a child fails to appear for their Initial Master Calendar hearing that was scheduled before January 1, 2015 but is not removed *in absentia* and then the child does appear for a subsequent post-January 1, 2015 hearing, are they eligible for jAC representation?
 - a. No. jAC members may only represent children whose Initial Master Calendar hearing was on or after January 1, 2015, unless the program has been approved to provide services to pre-January 1, 2015 cases under the limited exceptions to the eligibility requirements. Please see exception requirements listed in footnote 1.

Representing adults or children over 15 years of age

8. If state court proceedings in SIJS cases require the parent/custodian to file as a party to the suit, can the jAC member represent the parent/custodian under the program?
 - a. No, the jAC member may only provide legal representation to children aged 15 and under. Programs may use other funded sources or pro-bono attorneys to ensure the parent/custodian is represented in state court.
9. Can jAC members represent parents as principal applicants in applications where the jAC eligible child would be a derivative?
 - a. No, the jAC member may only provide legal representation to children aged 15 and under. Programs may use other funded sources or pro-bono attorneys to ensure the parent/custodian is represented in applications where the jAC eligible child would be the derivative.
10. Can a jAC member represent siblings of a jAC eligible client, even if the siblings are over 15?
 - a. a. No, the jAC member may only provide legal representation to children aged 15 and under. Programs may use other funded sources or pro-bono attorneys to ensure the sibling is represented.

Children who have not had their NTA filed on the Court by ICE

11. What can a jAC member do if they encounter a potentially jAC eligible child who risks aging out if an NTA is not filed by ICE?
 - a. It is for each program to decide how best to handle this situation.
12. A child's NTA has not yet been filed with the immigration court, but the child has received the SIJ-qualifying predicate order from the state court. Is the child eligible for representation by a jAC member?

- a. The child is not eligible to be represented by a jAC member since the child is not in EOIR removal proceedings

Entering an appearance in non-jAC eligible cases

13. Can a justice AmeriCorps attorney make an appearance as a “Non-Primary Attorney/Representative” on behalf of another attorney at their host site for an otherwise non-jAC eligible client?
 - a. No, doing so is considered representation under the regulations and is not permitted under jAC.
14. Can a jAC attorney enter an appearance on behalf of a non-jAC eligible case if it is on their own time and not as an AmeriCorps attorney?
 - a. A jAC attorney cannot enter an appearance even if on their own time because to an outside observer, it is difficult to determine when a member is and is not on official duty. The member was recruited and enrolled specifically to serve this program, and to carry out non-permitted activities (representation of children not eligible for jAC) is not allowed.

Eligibility for representation (various scenarios)

15. ICE apprehends a minor in the interior (not within 100 miles of the border) and declines to call the case into the ORR Intake Line because the child has been deemed a ward of the state Juvenile Court (either under dependency or delinquency proceedings). Instead of transporting the child to an ORR shelter, ICE calls CPS or the Probation Officer to release the child back to the state agency. ICE proceeds with filing the NTA with the local immigration court. The child otherwise meets the federal definition of UAC, except that ICE chose to refer back to the state agency for placement, as opposed to placing the child with ORR.
 - a. This child can be represented under jAC
16. Is a child eligible for continued jAC representation (of the child’s adjustment of status application) if an Immigration Judge terminates the child’s case upon proof that Form I-360 (Petition for Amerasian and Widow(er) or Special Immigrant) has been filed with United States Citizenship and Immigration Services?
 - a. Yes.

Supervision of jAC members

17. There is a requirement that members be accompanied and supervised, does that mean direct supervision at all times? If a member is doing a legal screening at court in the pro bono room, does the supervisor have to sit in on that screening, or can the member just run the scenario by the supervisor later?
 - a. Direct supervision is not required. General supervision is sufficient.

18. Does a person in a covered position need accompaniment if the NSOPW check and one of the other checks (either state(s) or FBI) result has been received? Must we wait for the results of all NSCHC components to end accompaniment?
 - a. Accompaniment is required for people in covered positions (members and paid staff) with recurring access to vulnerable populations until one of the other check results have been received.

Using COGNOS reports

jAC members receive weekly docket reports (“COGNOS reports”) directly from EOIR, provided that the member has completed required security protocols. This section includes questions related to COGNOS reports.

19. Why is the child’s date of birth not consistently included in the weekly COGNOS report?
 - a. Because the date of birth is not always entered by the Department of Homeland Security (DHS) and we receive initial COGNOS data directly from DHS.
20. Some of the jAC-eligible children listed on the report were removed *in absentia*. Is it permissible to use the contact information on the COGNOS report to reach out to those children/families?
 - a. Yes.
21. Is it permitted to share the EOIR provided COGNOS report with court staff at the local Immigration Court?
 - a. Yes
22. Who should I contact at EOIR if I encounter difficulties logging into COGNOS or otherwise accessing the weekly reports?
 - a. You should contact Robert Dooley, Program Management Analyst in the Office of Legal Access Program at Robert.dooley@usdoj.gov.

AmeriCorps requirements

23. How should a jAC member introduce themselves if they are hosted at a sub-grantee of Equal Justice Works?
 - a. I am a justice AmeriCorps member serving at “organization” with Equal Justice Works.

Working with CNCS and EOIR

24. How should I handle any press inquiries?
 - a. All press inquiries and materials must be screened by CNCS and DOJ. Press inquiries should be directed to pressoffice@cns.gov.
25. I am having trouble with the CASPIO database or I have a question about how to enter data. Who should I direct my question to?
 - a. Your question should be directed to Andrew Powell at the Vera Institute of Justice at apowell@vera.org.

Sharing of information between LOPC and jAC

26. Is a verbal consent from a minor who receives LOPC services sufficient for the LOPC provider to be able to share the minor's information with the local jAC provider?
 - a. No, verbal consent is insufficient. All LOPC providers are required, under the LOPC contract Statement of Work to obtain written consent to share information with pro bono legal service providers. Once an LOPC provider obtains such written consent, the provider may share information with the local jAC provider.

Miscellaneous

27. Is a jAC member permitted to assist children with registering for school, particularly when the child encounters barriers in attempting to register?
 - a. Yes, this is within the scope of legal representation and protection against mistreatment, exploitation and trafficking.