Immigration Court Toolkit for
Advocates for Survivors of Domestic and Sexual Violence[1]
June 2015

Introduction

This toolkit is designed to help immigration attorneys and non-attorney advocates for survivors of domestic and sexual violence ("advocates") better serve immigrant survivors[2] of violence who have matters in Immigration Court.[3] Immigration Courts do not appoint lawyers for those who cannot afford it; instead, survivors often have to appear without legal support. It is extremely difficult for someone without counsel to win a case in immigration court; the result of losing is deportation. It is, therefore, vital that attorneys and advocates working with survivors learn about this complicated system and help survivors navigate it. Moreover, most immigration lawyers do not work with the special routes to status Congress designed for immigrant survivors and rarely have the kind of knowledge and experience required to work effectively with survivors of domestic and sexual assault.. For all these reasons, we encourage and thank you for helping us build more holistic legal resources for immigrant survivors who face deportation.[4]

In addition to the subjects we will cover, below, this toolkit identifies strategies to enhance collaboration between immigration attorneys and advocates. Experience teaches that collaborations are much more effective in serving immigrant survivors because they are much better at addressing survivor's overall needs. This more holistic approach produces better immigration cases and avoids conflicts with other systems, such as civil or criminal court.

Specifically, this toolkit is designed to help attorneys and advocates by:

- Providing an overview of the Immigration Court framework, including immigration detention.
- Strengthening interview and intake procedures to better spot strengths and weaknesses in the case
- Developing the "theory of the case" and "narratives" for presenting cases most effectively
- Identifying strategies for working with immigrant survivors who may have inadmissibility, deportability and good moral character problems.[5]
- Providing tips for preparing effective supporting witnesses and case documents.
- Developing approaches to properly preparing for hearings in Immigration Court.

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[1] This toolkit was adapted from the Immigration Court Institute Project, a webinar series and in-person training sponsored by the Department of Justice Office of Violence Against Women and conducted by ASISTA Immigration Assistance and the ABA Commission on Domestic and Sexual Violence in 2014. Special thanks to Anne Garcia LICSW for her contributions to this report. This project was supported by Grant No. 2012-TA-AX-K029, awarded by the Department of Justice, Office on Violence Against Women. The opinions, findings, conclusions, and recommendations expressed in this program are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

[2] "Noncitizen" is the most accurate legal description for survivors seeking immigration status because "immigrant" in immigration law does not include the undocumented. For ease and clarity, however, we use the phrase "immigrant survivor" for all noncitizen survivors of domestic and sexual violence, whether they have current legal status or not.

[3] The immigration court system is called the Executive Office for Immigration Review. See Chapter 1 below for details.

[4] For additional resources on ASISTA membership, including webinars and upcoming trainings, visit ASISTA's website www.asistahelp.org.

[5] These are all immigration law rules that may preclude survivors from winning a case in immigration court. Chapter 5 explains and discusses them in more detail.

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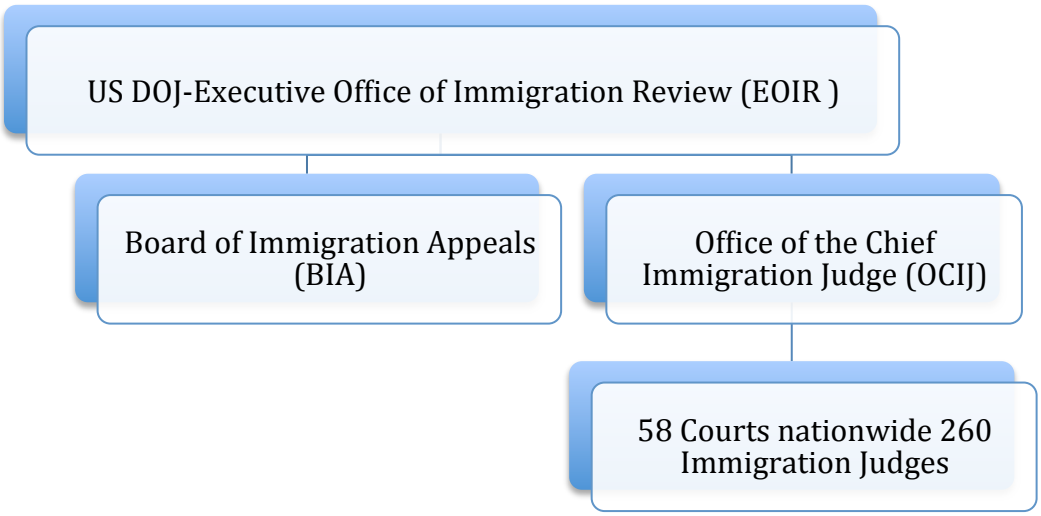
Chapter 1: Overview of Immigration Court System

A familiarity with the immigration framework is key to helping immigrant survivors navigate this complicated and ever changing system. In Appendix A, there is a basic Immigration 101 worksheet that outlines the different government agencies involved in making decisions about immigration cases. This chapter will focus on actors and agencies in the Immigration Court system.

All Immigration Courts nationwide, in addition to the Board of Immigration Appeals (BIA) are a part of Department of Justice's Executive Office of Immigration Review (EOIR). Currently there are over 260 Immigration Judges in 58 Immigration Courts nationwide.[6]

While there are a number of agencies within the Department of Justice that deal with immigration matters[7], the two agencies that matter most for immigrant survivors are the Office of the Chief Immigration Judge (which houses all the Immigration Courts and the judges) and the Board of Immigration Appeals, which is where a survivor may appeal her case if the Immigration Judge denies it.

Chart 1- US Department of Justice Immigration Court Framework



Immigration Court hearings are called **removal proceedings.** In removal proceedings, the Immigration Judge decides whether there is a legal basis for a noncitizen to stay in the United States; if not, that person may be "removed" (commonly known as "deported") from the United States. As

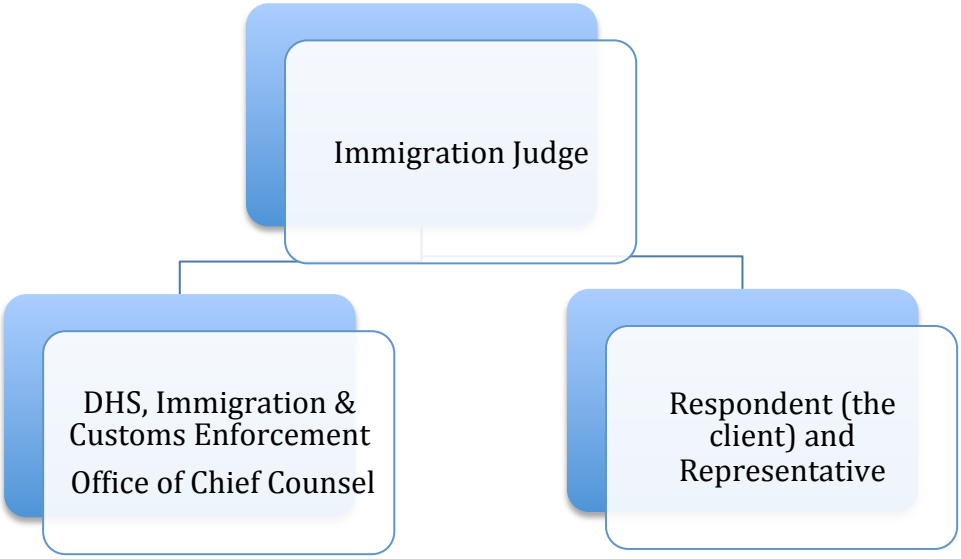
[6] Department of Justice. Executive Office for Immigration Review. Office of Chief Immigration Judge http://www.justice.gov/eoir/ocijinfo.htm

[7] For the full organizational chart of the Executive Office of Immigration Review, visit: http://www.justice.gov/eoir/sibpages/Organization.html

noted below, Immigration Judges also determine whether noncitizens may be released from detention, before, during and after the case in immigration court.

The immigration court framework is similar to other court settings, where there are two sides presenting a case to a judge. Unlike criminal courts and many civil courts, there is no right to appointed counsel.[8] The argument to remove the survivor is made by a government attorney from the Department of Homeland Security (DHS), specifically Immigration and Customs Enforcement's Office of Chief Counsel (ICE OCC). This ICE attorney is called the "government attorney" or "trial attorney", abbreviated among immigration advocates as the "**TA."** The attorney or BIA accredited representative makes the argument that the survivor is eligible for immigration status and should not be removed.[9] The survivor will be called the **respondent,** and will normally be expected to testify. If the respondent does not have an attorney, he or she must argue the case on his/her own.

Chart 2: Immigration Court Actors



As noted above, there is no such right to a court-appointed lawyer in Immigration Court. In fiscal year 2014, only 55% of immigrants in Immigration Court had legal representation.[10] Knowledgeable representation is essential for any noncitizen in immigration court but is especially important for

[8] 8 U.S.C. § 1229a(b)(4)(A); 8 C.F.R. §§ 238.1(b)(2).

[9] See page 59 of the EOIR Immigration Court Practice Manual (hereinafter "Practice Manual", available at http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm. Included as Appendix B. Non-attorneys associated with recognized organizations can become accredited representatives through the Board of Immigration Appeals (BIA) Recognition and Accreditation program in order to help noncitizens both in Immigration Court proceedings and also in their affirmative applications to U.S. Citizenship and Immigration Services. To learn more about how an organization can become recognized and to become an accredited representative, visit http://www.justice.gov/eoir/ra.htm. In addition, CLINIC has in-person training opportunities as well as a Toolkit on BIA Recognition & Accreditation, available here: https://cliniclegal.org/resources/toolkit-bia-recogition-accreditation.

[10] FY 2014 Statistics Yearbook, Executive Office for Immigration Review Available at: http://www.justice.gov/eoir/statspub/fy14syb.pdf

children[11] who, due to their age and experience, may not be able to adequately prepare to present their case in front of an Immigration Judge.

A. Immigration Court Process

1. Overview

There are several different ways a person could have a case in Immigration Court, including:

- The denial of an application for immigration status
- Involvement in criminal activity
- Entry into the US without proper documentation (both at airports and at a land border)

In addition, if a person is present in the United States without any legal documentation, then she runs the risk of being put into immigration proceedings and having to go before an Immigration Judge to determine whether she may stay in this country.

Undocumented immigrants often fear that if they have any interaction with the immigration system that they will immediately be placed on a plane back to their country of origin. Immigrant survivors of domestic and sexual violence may have a heightened fear of this due to misinformation or threats by their abusers or others have misinformed survivors about the special routes to status for victims of domestic or sexual violence. For this reason, it is important to inform clients that, rather than simply being removed from the United States, there is a ***process*** allowing them to pursue status based on being a victim of sexual violence. There are some situations, however, in which that process may be expedited, explained in Chapter 6.

2. Notices to Appear

Immigration Court proceedings normally begin with a document called a Notice to Appear, commonly called an "NTA." [12] DHS creates and sends these notices to those it wishes to place in immigration proceedings; there are rules about how they must ensure receipt. The NTA must be issued by DHS and then served on the individual.[13] Three different agencies within DHS may do this; U.S. Citizenship and Immigration Service (CIS), Immigration and Customs Enforcement (ICE) and Customs and Boarder Protection (CBP).[14]

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[11] The American Immigration Council has an extensive bibliography on resources for legal representation for noncitizen children, available here: http://www.legalactioncenter.org/litigation/appointed-counsel-children-immigration-proceedings

[12][12] The National Immigrant Justice Center has a sample Notice to Appear is available here: http://immigrantjustice.org/sites/immigrantjustice.org/files/Appendix I - NTA.pdf, See Appendix C.

[13] See 8 C.F.R. §§ 1003.13, 1003.14.

[14] 8 CFR 239.1; *see also* Penn State Law Center for Immigrants Rights Practice Advisory, June 2014. "Notices to Appear: Legal Challenges and Strategies" Available at: http://www.legalactioncenter.org/sites/default/files/notices_to_appear_fin_6-30-14.pdf See Appendix D.

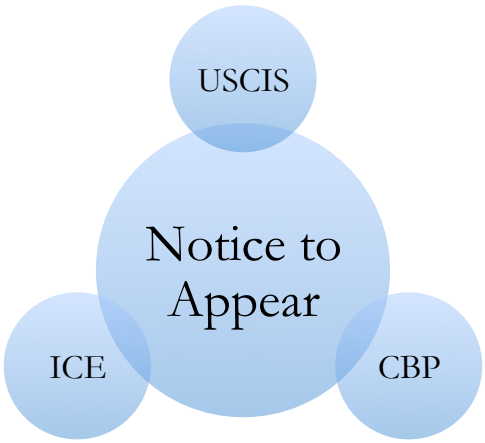
a. US Citizenship and Immigration Service (USCIS or CIS).

USCIS is under legal obligation to issue and file a NTA with Immigration Court if certain types of cases are denied, e.g. a denial of an application of asylum[15] or a denial of a Removal of Conditions on Legal Permanent Residence.[16] In other cases, USCIS ***may*** also refer to cases if there is a finding of fraud in the application or in cases where there is an egregious public safety issue.[17]

- **NOTE:** USCIS has repeatedly said that a denial of a VAWA self-petition (I-360), U visa (I-918) or T visa (I-914) case will not be referred to Immigration Court. Such a practice would deter victims of violence from coming forward with their applications and as such, referrals to Immigration Court rarely occur.

U visa and T visa adjustments are not usually referred to Immigration Court upon denial.[18] Some USCIS district offices ***will refer*** denied VAWA-based adjustment applications to Immigration Court while others do not. If you want the case to be referred to Immigration Court (to pursue another form of relief—discussed in Chapter 3 *infra*), an advocate may have to ask for USCIS to issue and file a NTA with the Immigration Court.

Chart 3: DHS Agencies who can issue a Notice to Appear



b. Immigration and Customs Enforcement (ICE):

ICE has the authority to issue NTAs as well. Normally this occurs in the context of ICE immigration enforcement actions or through cases that come to their attention via local law enforcement. ICE does have prosecutorial discretion when to issue Notices to Appear and recently

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[15] 8 CFR 240.70(d)
[16] 8 CFR 216.4(d)(2); 8 CFR 216.5(f)
[17] See USCIS Memoranda: "Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens." PM-602-0050. November 7, 2011. available at: http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf See Appendix E.
[18] 8 CFR 245.24(f)(2); 8 CFR 245.23(h)(i)

amended its guidelines to reflect their enforcement priorities. [19] Under this new guidance, ICE has three enforcement priorities:

- **Priority One: threats to national security, border security and public safety.** This includes individuals who are engaging in or suspected of terrorism, convicted of a gang-related offenses, felonies, and other serious crimes. It also includes individuals apprehended at the border or ports of entry who are attempting to enter the country without proper documentation, which may include individuals who are seeking asylee status because they are fleeing domestic and sexual violence back home.[20]

- **Priority Two: misdemeanor offenders and new immigration violators**. This category includes those who entered or re-entered the United States unlawfully on or before January 1, 2014, and those who were convicted of multiple misdemeanors or "significant misdemeanors" which can include crimes of domestic violence. This is particularly problematic for immigrant survivors whose abusers use the criminal system against them, or when lack of language or legal help results in a conviction for the victim. The November 2014 ICE Guidance does mention; however, that careful consideration should be given to whether the convicted alien was also the victim of domestic violence; if so, this should be a mitigating factor in determining whether someone falls within this category.[21]

- **Priority Three: other immigration violations.**[22] This category includes those who have been issued a final order of removal on or after January 1, 2014. This is the lowest priority area and the November 2014 ICE Guidance does mention that those in this category "should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the alien is not a threat to the integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority."

Practice Pointer: The November 2014 ICE Guidance should be read in conjunction with other specific guidance regarding immigrant victims of crimes. In particular, in June of 2011, then ICE Director John Morton issued guidance that special attention should be given for "victims and witnesses of crimes, including domestic violence and those involved in non-frivolous efforts

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[19] Jeh Charles Johnson, Secretary. "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants" November 20, 2014. Available at: http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf (Hereinafter "November 2014 ICE Guidance"

[20] Individuals entering the country without documentation and who express a fear of returning to their country may request an interview to determine whether they may proceed with the asylum process. For more information, visit the National Immigrant Justice Center: http://www.immigrantjustice.org/protecting-credible-fear-and-asylum-parole-processes#.VWUaa0LZWQw. In addition, in August 2014, the Board of Immigration Appeals issued a decision in the case, Matter of A-R-C-G, establishing that "married women in Guatemala who are unable to leave their relationship" can be a recognized social group for purposes of establishing asylum. This toolkit does not extensively cover gender-based asylum claims; however, the Center for Gender and Refugee Studies is an excellent resource on these issues. Visit their website at: http://cgrs.uchastings.edu

[21] November 2014 ICE Guidance at 3-4.

[22] *Id.*

related to the protection of their civil rights and liberties."[23] The memo instructs ICE to exercise all appropriate discretion, on a case-by-case basis, when making and enforcement decision (including the issuance of an NTA) when the individual may be a victim of domestic violence, human trafficking or other serious crimes, and others who may be witnesses in criminal matters or who may be pursing civil actions relating to protecting their rights (e.g. union organizing, housing or discrimination disputes.) [24] Advocates should use this memo in their interactions with ICE as a reminder that survivors of domestic and sexual assault should be afforded special consideration when determining whether an NTA should be issued.

c. Customs and Border Protection (CBP)

Customs and Border Patrol primarily works at the ports of entry (international airports, designated entries along the US northern and southern border and other areas in the US border regions. CBP manages customs, immigration, security and agricultural inspection and may issue NTA to an individual if he or she is not admissible to the United States, and is not otherwise subject to expedited removal.[25]

d. Contents of NTA

Once the DHS agency files the NTA with the Court and a copy has been given to the individual, it can be hard to figure out what information it contains and what to do with it. The NTA contains important information like the file number, also known as the Alien Registration number or A#. This information is a crucial identifier and both the individual and advocate should make note of it.

The Respondent, as mentioned earlier, is the person in immigration court proceedings, and the rest of the NTA will have information about how the individual is being charged (as an arriving alien, as a person present in the U.S who wasn't admitted legally or as someone who was admitted legally but is removable. (See check boxes on sample below[26]). In addition, the NTA will list the factual allegations against them, which usually includes a person's

- Nationality
- Date and Manner of Entry
- Facts that would make a person removable (e.g. allegations of fraud, over staying a visa, criminal activity)

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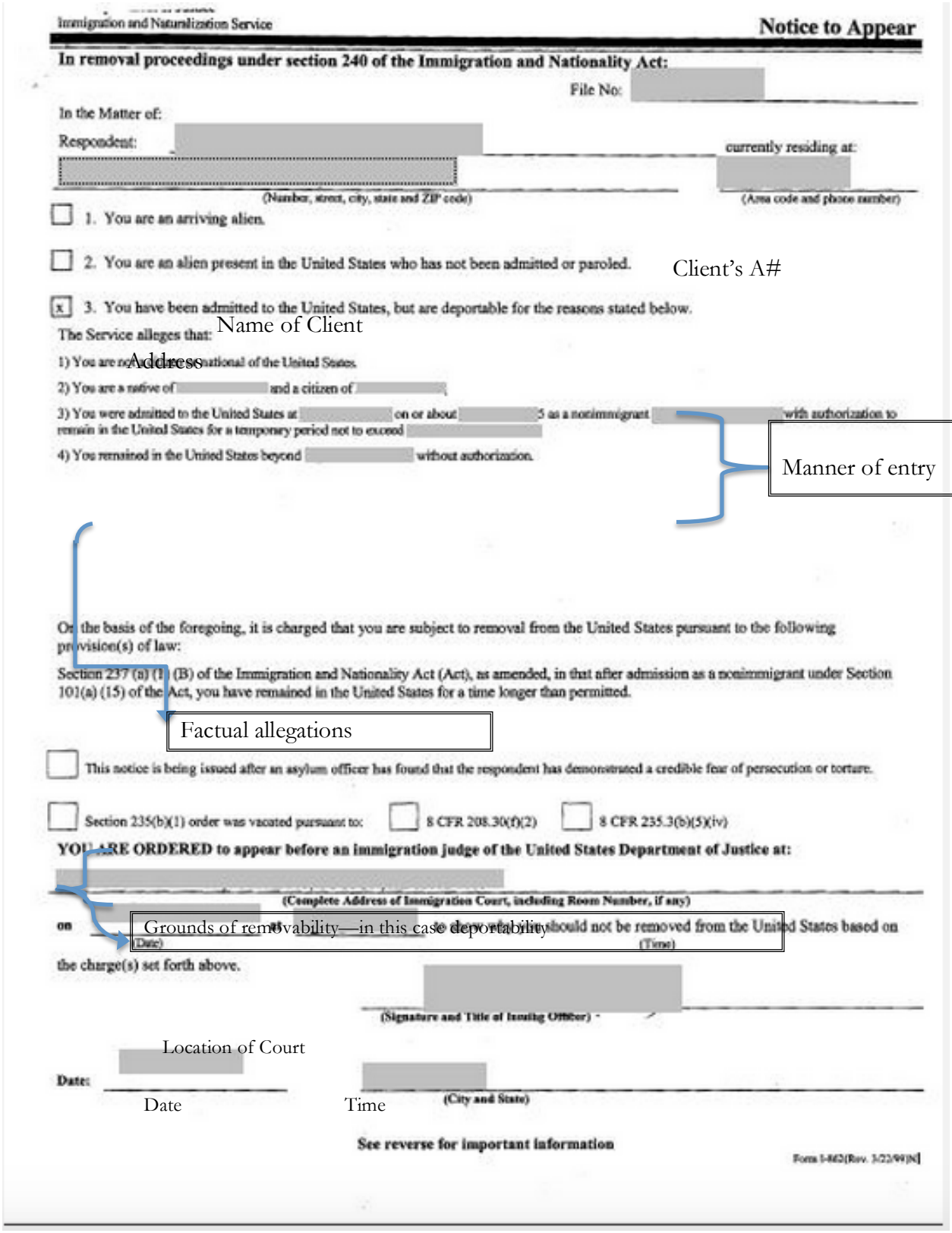
[23] John Morton, ICE Director. "Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs." June 17, 2011. Available at: http://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf Available as Appendix F.

[24] *Id.*

[25] See "About CBP." Customs And Border Protection website, available at: http://www.cbp.gov/about. For more information about when CBP issues Notices to Appear, see Center for Immigrants Rights, Pennsylvania State University Dickinson School of Law. "To File or Not to File (October 2013). Available at: https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/NTAReportFinal.pdf The Florence Immigrant and Refugee Rights Project (FIRRP) created an information booklet which could be useful for advocates to understand expedited removal and who is subject to removal without appearing before an Immigration Judge. It is available at http://www.justice.gov/eoir/probono/Expedited%20Removal%20-%20English%20%2817%29.pdf

[26] Sample from US Department of Justice. Available at: http://www.justice.gov/eoir/1-800-Docs-Notice_to_Appear_2010-07-29_sample.html For a more detailed sample, see Note 7 *supra.*

The NTA will also state the legal basis for removal from the country. The NTA will also have the time and date of the hearing in Immigration Court, and the date that the NTA was issued.



Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No:

In the Matter of:

Respondent: currently residing at:

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

Client's A#

☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that:

Name of Client

Address

1) You are not a national of the United States.

2) You are a native of and a citizen of .

3) You were admitted to the United States at on or about as a nonimmigrant with authorization to remain in the United States for a temporary period not to exceed

4) You remained in the United States beyond without authorization.

Manner of entry

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237 (a) (1) (B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a) (15) of the Act, you have remained in the United States for a time longer than permitted.

Factual allegations

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

(Complete Address of Immigration Court, including Room Number, if any)

on to show why you should not be removed from the United States based on

(Date) (Time)

Grounds of removability—in this case deportability

the charge(s) set forth above.

(Signature and Title of Issuing Officer)

Location of Court

Date: (City and State)

Date Time

See reverse for important information

Form I-862(Rev. 3/22/99)N

Date NTA issued

PRACTICE TIP: Print out a copy of a redacted Notice to Appear to use in your intakes with clients to see whether the client has ever received a piece of paper that looked similar. If so, then it is likely the client has (or had a matter in Immigration Court).

Often times the time and date of the hearing will be "TBD" or "To be determined." This next section will help you get all the information you need to help immigrant survivors walk through the process.

3. Getting the right information

If an immigrant survivor has a NTA then there are several steps that attorneys and advocate can take to find out specific details about the client's case including upcoming (or past) court dates as well as the location and outcome of the case.

a. Immigration Case Information System

The Executive Office for Immigration Review (EOIR) manages an automatic phone system for immigration court matters in both Spanish and English.[27] These information lines have information about:

- Hearing dates, time and location;
- Type of hearing dates (master calendar, merit hearing)[28]
- Immigration judge decision outcome and date (including whether a removal order was entered against your client);
- Board of Immigration Appeals (BIA) case appeal information, including appeal due date, brief due date, decision outcome and date.

The information line is accessible 7 days a week, 24 hours a day by dialing:

1-800-898-7180 or
240-314-1500

In order to access individual case information for a client, advocates will need the individual's A# (found on the NTA or on any documentation previously filed with USCIS). In cases where VAWA confidentiality provisions are invoked (e.g. when the Immigration Courts and/or USCIS has been made aware that there is or will be a VAWA, U or T visa case filed) then this information will not be available through the information system due to confidentiality concerns. If advocates are working with a client whose abuser may know his/her A#, then it is good to notify the local Immigration Court so that information about any upcoming hearing date may not be accessible through the informational system.

[27] For additional information visit "Immigration Case Status Information" Executive Office for Immigration Review, accessible at: http://www.justice.gov/eoir/npr.htm
[28] Described in more detail in Chapter 4, *infra.*

PRACTICE TIP: As part of your intake it is always a good idea to check the client's A# through the Immigration Court's 1800 number to check that he or she doesn't have (or had) a matter in Immigration Court. If a client does not have any immigration court related matters, the system will report that the A# is not in their system. If a client has been issued an NTA and the 1800 reports the A# is not in their system, then you should follow up with the local Immigration Court to see whether the NTA has been filed the court.

b. Contacting Local Immigration Court and DHS authorities.

i. Locating Local Immigration Court

Immigration Courts are located throughout the country, and their locations and contact information is easily accessible via the EOIR website, and are organized by state.

- http://www.justice.gov/eoir/sibpages/ICadr.htm

In addition to knowing the location and contact information about the Immigration Courts, it is important to know the contact information of the local USCIS District Office, the local ICE District Officials, and how to access information on ICE Detention Centers in case a client becomes detained. ASISTA has developed an Advocate Booklet to help keep track of the contact information of the several different agencies with whom immigrant survivors of violence may have to interact. This booklet is accessible here.

ii. Contacting Local ICE Officials

There are a few divisions within ICE that are important to know for immigrant survivors who are in Immigration Court, namely:

- **ICE, Office of Principal Legal Advisor (OPLA), Office of Chief Counsel (OCC)—**this office has the lawyers who will be acting on behalf of DHS in Immigration Court and will be the "opposing party" against an individual respondent. The contact information is available through http://www.ice.gov/contact/opla/

- **ICE, Enforcement and Removal Operations (ERO):** If your client is in detention, or has to report to ICE under an order of supervision or through electronic monitoring, or if the client is in the process of being removed from the country, then contact your local ICE District Office to find information out related to your client's case. The contact information for ICE District Offices can be found here: http://www.ice.gov/contact/ero

- **ICE, Office of Professional Responsibility (OPR):** Contact OPR if there is misconduct by an ICE or CBP official. Local contact information can be found here: http://www.ice.gov/contact/opr

4. Types of Hearings

This is a brief overview of the types of hearing a client may face in Immigration Court. The toolkit will go into greater detail of each of these hearings in subsequent chapters.

a. **Bond/custody determination hearings** decide whether person could be released from immigration detention by paying a bond, which is money paid to ensure that the person would go to Immigration Court. The minimum amount for a bond is $1500 while there is no maximum bond and the judge can deny bond altogether, or decide to release the person without a bond (on their own recognizance).

b. **Master calendar hearings** are the first hearings a survivor will attend. At master calendar hearings, the survivor will address the facts and charges in the NTA, advise the Court whether he or she is filing for any specific applications, and next steps will be determined. At the master calendar hearing, the judge will ask the survivor about the details contained in the NTA, whether the facts are true and whether the survivor agrees to the charge of removability, which is the section of the law that relates to why the government is alleging the person should be removed from the country, normally these are grounds of deportability or inadmissibility that will be discussed in Chapter 5. The survivor or his attorney will need to address theses charges often by making oral pleadings. [29] The oral pleadings include

- Whether the survivor admits or denies the factual allegations (that they are a citizen of another country, their date and place of entry, etc.). Often times, the NTA does not specify a known date or place of entry, and will say that the survivor entered the country at an unknown Place of Entry (POE) on an unknown date of entry (DOE). At the master calendar hearing, it is often the survivor's responsibility to provide that detail.
- Whether the survivor concedes the charge of removability (whether the government applied the correct portion of the law)
- What, if any, immigration benefits the survivor will be seeking, including the date in which the application will be filed.
- Identify or narrow down any issues.
- The time requested to present the case in chief (if seeking an individual/merits hearing)
- The language preference of the survivor
- Whether the survivor wishes to designate a country of removal. If the survivor is afraid to return to his or her country, then the representative may decline to designate a country of removal.

[29] A copy of the oral pleadings can be found here: http://www.justice.gov/sites/default/files/eoir/legacy/2008/06/23/appendix_M.pdf See Appendix G.

i. Challenging the NTA

It is important not to assume that ICE is applying the correct grounds of inadmissibility or deportability in this case, or that they have the correct facts. It is the responsibility of ICE to prove that the grounds of removability apply to a survivor's case. For example, if they are alleging that the survivor is removable related to crimes of moral turpitude, attorneys and accredited representatives may contest the charge of removability and make the government attorney prove why the criminal activity alleged meets the grounds.

IMPORTANT POINTS ABOUT MASTER CALENDAR HEARINGS

- An attorney will not be appointed to a survivor in Immigration Court. If a survivor does not have an attorney, at the time of the first master calendar hearing **then she or he could request more time to find a lawyer a**nd ask that another master calendar hearing be set in the future. How long the next hearing will be depends on the caseload of the Immigration Court.

Normally, survivors receive a list of providers, and if they do not, they may request one at the master calendar hearing. A list of these service providers can be found here:

http://www.justice.gov/eoir/free-legal-services-providers

- If a survivor does not go to a master calendar hearing, or any immigration hearing, then the **hearing will proceed without her or him and a removal order will be ordered against him or her in her absence.** This removal order is called an **in absentia order**.

- If you are a new or accredited representative new to practicing in Immigration Court, **ask questions to clarify unfamiliar jargon, procedures or filing requirements.** If you explain to the Immigration Judge you are an attorney or accredited representative new to the immigration field, they often will provide explanations, or proceed at a slower pace.

- Just as in affirmative immigration applications, individuals in Immigration Court are required to keep the Court updated of any address or telephone number changes. This is done through the form EOIR-33.

c. **Individual hearings,** also called merit hearings, is when the judge listens to the client's full case and is more like an individual trial, with each side making argument, presenting witness testimony and cross-examination of the witnesses. The date for this hearing can be set at a master calendar hearing.

4. Before the Hearing in Immigration Court

a. Registration

Before an attorney or fully accredited representative practices in Immigration Court, s/he will need to register with the Immigration Court via their E-Registry System. In December 2013, EOIR established a mandatory registry for attorneys and fully accredited representatives (not partially accredited) to practice in Immigration Court. Before practicing in Immigration Court, attorneys and fully accredited representatives must fill out an online form then present themselves in person to the Immigration Court for identification verification. This registration is done to ensure that only licensed or accredited individuals are representing individuals in Immigration Court and to prevent fraud. The E-registry is also connected to the EOIR online filing system and case status information; thus, it is an important first step before practicing in Immigration Court. For more information about E-registry, click here.

b. Connect with OCC attorney

It is useful to contact your local OCC office in advance of the survivor's hearing to see who will be the trial attorney in your case, whether ICE may agree to a proposed course of action (e.g. continuing the case, terminating the proceedings). These offices commonly have an "Attorney on Duty" who answers general inquiries about procedures or processes. The contact information is available through http://www.ice.gov/contact/opla/

c. Preparing the Survivor

Immigration Court can be a daunting place for an immigrant survivor, given that his or her ability to remain in the United States is in jeopardy. Accredited Representatives and attorneys should review the facts and grounds of removability with the client and determine what it is the survivor will be requesting from the court, e.g. a continuance, request for prosecutorial discretion, requesting an individual hearing. It is important to explain not only the process of immigration proceedings to the survivor, but also help them safety plan related to immigration court or the possibility of immigration detention. This next chapter will explore safety planning techniques as well as practical tips for helping an immigrant survivor face immigration court proceedings.

d. Freedom of Information Act Request

To prepare for a survivor's case in Immigration Court, attorneys may want to request a Freedom of Information Act (FOIA) request with EOIR to get a copy of the survivor's A file to get a sense of what information the Immigration Court may already have on your client. To request a FOIA from EOIR, visit http://www.justice.gov/eoir/foia-facts for information on the filing process and forms.

In addition, survivors may request a FOIA request from DHS agencies (USCIS, CBP, and/or ICE). However, a survivor must make an FOIA request to each agency separately. For more information on filing FOIAs, see Appendix J: IRLC Guide on FOIA Requests.

Chapter 2: Safety Planning

An immigrant survivor of violence with a case in Immigration Court often faces emotional, physiological and logistical hardships. If the survivor had to return to her home country, what will happen with her children? How would a survivor maintain access to civil or criminal courts or his support systems? This Chapter provides some specific tools and tips for helping immigrant survivors create a safety plan and prepare themselves for Immigration Court.

A. Safety Planning Techniques

In addition to conducting a safety plan for survivors of domestic and sexual assault that takes into consideration their personal security, other factors may come into play for immigrant survivors that should be layered into existing safety planning procedures.[1] There are several resources regarding family safety planning in the event an individual is in immigration detention or Immigration Court. Most notably, the CLINIC Family Safety Manual outlines concrete steps attorneys and advocates can take to help clients plan if they are arrested and/or placed in Immigration detention, including gathering important paperwork for the immigration case, collect emergency contacts both in the U.S. and abroad, as well as plan for childcare and financial issues that may arise in the event of detention. For example, survivors may

- Create an emergency contact sheet that includes: financial account information; health information and conditions; doctor, school and employment contacts; family member contacts in country of origin or in the United States and provide a copy to their attorneys or advocates or a trusted person.
- Memorize their A# (or at least have it on their person at all times);
- Carry their attorneys or advocates' contact information as well as have their own identification on them at all times.
- Have a copy of and safeguard all important immigration paperwork including passports, birth certificates, marriage certificates, copies of prior immigration application filed including receipt and approval notices, copies of NTAs for survivor and any family members, and criminal records (if any). Survivors should keep this paperwork in a safe location where it may be accessible to family or friends in case of an emergency. If they have a protection order, they should make copies of the document and leave it with trusted and appropriate places such as with their attorney, children's school.
- List in a safe place what medications they take as well as medication that any of their dependents may need. Protect their insurance cards.
- Identify caretakers of minor children in the event there is a temporary separation, or longer. This includes designating an authorized person to pick up child from school or day care, access to insurance and social security numbers, as well medical information.
- Safeguard financial information including bank accounts, designate a person to pick up a paycheck, or potentially be able to pay an immigration bond.

- Become familiar with Know Your Rights materials in the event of arrest or immigration detention. [1]
- Carry a small amount of cash or give cash to a trusted person so you have it accessible in case of an emergency.
- Keep a copy of keys in safe place or with a trusted person.
- Keep an extra public transportation card.
- Teach children their address or any other information that will be important for them to remember in case of an emergency.

B. Preparing for Immigration Court

Strong partnerships between attorneys and domestic/sexual assault victim advocates is essential to adequately preparation of as survivor's case in Immigration Court. This toolkit will explore ways that this collaboration develops in the course of an Immigration Court proceeding, starting with helping the client get ready for his/her first hearing.

1. Preparation of Legal Case

Attorneys and accredited representatives must adequately explain the Immigration Court proceedings and the potential outcomes. To prepare the survivor for the first master calendar (and subsequent hearings), attorneys and accredited representatives should:

- Review the facts and charges of removability with the survivor as well as all the other details of the pleadings.
- Discuss with the client what you will be asking the Court to do;
- Advise the survivor what will happen should s/he not show up (i.e. that an *in absentia* order may be issued);
- Encourage the survivor to go to the Immigration Court building before date of the hearing to become familiar with the route. Immigration Courts are normally housed in federal buildings and everyone will need to pass through security before entering the Court facility. Encourage the client to arrive to the Court with ample time to pass through security and to bring photo identification;
- Explain to the client that master calendar hearings are generally very busy and crowded. The order in which cases appear before the Judge will depend largely on the courtroom—some will have a sign in sheet while others will go according to the order on the docket sheet (commonly posted outside the courtroom).
- Advise the client that if possible, young children should be left with another caretaker as there may be a long wait. If bringing children is unavoidable, encourage the client to bring quiet toys for them to play with while the client waits for her/his turn.
- Establish a meeting place at the Court and make sure survivor has a way to reach you the day of the hearing.

- Find resources to help explain the process and the court. The Women's Refugee Commission has videos (designed to help minors in Immigration Court) explaining the court process, what the court will look like, etc. in 5 different languages available here: https://womensrefugeecommission.org/peril-or-protection-making-work-safe/143-misc/2040-what-happens-when-i-go-to-immigration-court This is a good resource for young survivors (or a survivor's children) to watch in advance of the hearing.

2. Preparing the Client

Advocates often have the expertise in working with individuals affected by trauma and may have suggestions on how to help the survivor stay calm and focused while attending his/her Immigration Court proceeding. For examples, advocates may;

- Give clients a stress ball, they can take this with them to court and use it to help them relax in many other situations as well;

- Have the client carry with them a picture of someone or something that brings them happiness or peace;

- Discuss a prayer, phrase or positive affirmation they can tell themselves in stressful situations. One example is "I am safe."

- Use relaxation techniques and breathing exercises when clients begin to feel overwhelmed;

- Crafty ideas: make stress balls out of balloons and flour or dry lentils. Put positive messages on Popsicle sticks and have a client pick one out of a cup to take with him/her to Immigration Court.[1]

Another area in which it is essential that attorneys and advocates collaborate together is to work with survivors to build trusting relationships and to assist them to tell their story in the most effective way possible for their immigration case. Clients should sign a release of information outlining topics that the attorney and the advocate will discuss. There should also be a conversation and an informed form signed by the client outlining the limits of confidentiality that the advocate and attorney have. This next chapter will discuss interviewing and intake skills to get the right information from clients in the right way.

Chapter 3: Intakes and Interviewing

For survivors of domestic and sexual assault, telling their story of abuse for an immigration case can be an extremely traumatic task. Attorneys and advocates must invoked a trauma-informed approach to working with their clients in order to build trust, inform the clients of their options, and draw out the information necessary to effectively prepare their immigration case and assess their legal and social services needs.

Building a trusting relationship between social service providers and survivors of domestic and sexual assault begin at intake. From these first initial meetings, it is important for service providers to realize how trauma may affect survivors and to be to support and empathize with their client.

A. On trauma[30]

"Trauma refers to an emotional response to an experience that creates a sense of fear, helplessness, or horror, and overwhelms a person's resources for coping."[1] In regards to preparing a case for Immigration Court (or any legal proceedings) trauma can have an impact on memory, a person's sense of safety, as well as his/her relationships with others. Those who have experienced domestic or sexual violence often experience trauma, which can result in trauma-related illnesses like Post-Traumatic Stress Disorder or complex trauma. For this reason, attorney and advocate partnerships are extremely important to help the survivor connect with mental health services to help them while at the same time, utilizing a trauma-informed approach to the legal preparation of his/her case.

Trauma can manifest itself in a variety of ways including:

- Anger/Irritability
- Anxiety
- Poor concentration
- Withdrawing from others
- Hypervigilance, constantly checking their surroundings
- Sense of safety is compromised
- Feelings of hopelessness
- Difficulty sleeping
- Nightmares
- Flashbacks
- Depression

<u>Trauma Responses</u>

There are three different types of reactions individuals tend to respond in when they have been traumatized such as flight, fight and freeze. Individuals who have experienced trauma may experience all different reactions and during their healing process. A client may also experience a trauma response when re-telling their story and it is important for the advocate and the attorney to create a safe space for the client.

- The flight response can be seen in clients being avoidant, non-adherent and non-responsive to their cases or healing process. For example, a client may miss excessive appointments or be constantly late. The client also might not follow up on referrals or other appointments. This may be due to the trauma he/she has experienced.

[30] For additional information on dealing with trauma, please see Appendix L: Trauma Resources

- In the fight response, a client may appear to have a negative, aggressive, irritable, anger or be defensive. Clients may be irritable and difficult to work with due to moodiness or inability to focus on following on necessary documents for their cases.
- The last response is the freezing. When a client is a freeze mood, they may be overstricken with fear, paralyzed, powerless and have a delayed response. A client may be slow to speak or gather thoughts when having to re-tell their history or answer difficult questions.

B. **Trauma Informed Approaches to Working With Survivors**

To effectively utilize a trauma-informed practice, attorneys and advocates must start with themselves to see whether they are in a good position to work with someone who is affected by trauma. It is not uncommon for attorneys and advocates to be stressed out at work, thinking a bout a particular upcoming case or grant application that is due. For that reason, before meeting with a client, it is good practice to take stock for attorneys and advocates to take stock of their own emotional state. If an attorney needs to take a walk, eat a snack, or whatever it takes to be present for meeting with the survivor and encourage open communication. For example:

- Offer client some water before the meeting;
- Offer them a choice of places to sit (if that's an option);
- Try not to sit with your arms crossed, as this can make you seem not engaged or aggressive.
- Nod your head to show you are listening.
- Smile when introducing yourself and show soft facial expressions during the interview.
- Explain to clients the reasons why the attorney/advocate has to gather information and ask certain questions. If the survivor has any question about why the attorney/advocate is asking a particular question, encourage them to ask at any point in the intake.
- Make sure the questions you ask are relevant to the services they are receiving. For example, clients should not be asked by a domestic violence hotline if they are undocumented. In this instance, their immigration status should not matter in accessing a shelter.

1. Asking the right questions

In working on immigration cases for survivors of violence, it is crucial to ask questions regarding immediate family members, immigration history (entries and exits into the United States), and criminal history in order to get information to assess the options they may have. The following is excerpted from "Protecting the Rights of Immigrant Survivors: Insecure Communities" an ASISTA practice advisory drafted by Sonia Parras Konrad:[1]

Safety as defined by survivors is paramount to the work we do with women. In light of all the existing programs, safety is now being defined more broadly based on the conditions that enforcement programs have created in immigrant communities.

The first step in helping the survivor seek safety is to recognize those situations in which survivors may be at imminent risk of being removed from the country, thus leaving their children with the abuser. The following factors are potential red flags:

- Being arrested by Customs and Border Patrol (CBP) and given papers to see a judge (there is the potential for an *in absentia* order of removal)

- Being arrested by ICE and given papers to see the judge. This can mean removal proceedings have started, potential *in absentia* order of removal if she did not follow the judge's orders, or voluntary departure violation.
- Having been before an immigration judge and not following the judge's order.
- Having been arrested and not following the conditions of release, probation, etc., even in the traffic violation context.
- Having been charged prosecuted or convicted of certain crimes, including a crime of violence, drugs, theft or use of false identity. (May subject survivor to mandatory arrest with no bond).

Intakes must also include open-ended questions regarding immigration status to determine when to partner with advocates. Before asking these questions, crisis and safety issues should be addressed as standard protocol. If a client is going through a crisis, remember to return to these questions at a later time when the client is more focused. You might also want to consider working with the advocate to discuss mental health therapy if a client is having a difficult time talking about specific abusive experiences. Mental health therapy can be seen as a stigma and it is important to be caring and creative when bring this topic up. A breathing exercise might be helpful when this occurs.

Explain that certain immigration benefits have certain requirements. For that reason, you want to explore a survivor's interactions with immigration or law enforcement. Explain also that these questions will allow you to address the best assistance in her case. Give her a chance to not answer the questions at that moment, leaving the door open to making the assessment at a later time, especially if she is going through a crisis.

The intake should include the following or similar questions. That is because any contact with the criminal justice system will place your client at a higher risk of detention. Therefore, if your client answers "Yes" to any of the following questions you should refer her to an immigration advocate or lawyer.

a. Immigration detention questions
    i. Have you ever talked to anyone in uniform at the border?
    ii. Did these people fingerprint you, take your picture, give you papers?
    iii. Have you ever spent any time in jail or in a detention facility?
    iv. Do you know if you have a final removal/deportation order?
b. Criminal system questions:
    i. Have you ever been accused of any crimes?
    ii. Have you ever received a traffic ticket that you did not pay?
    iii. Do you know if you have an immigration detainer on you?
    iv. Have you signed any papers asking for your status or place of birth?
    v. Has anyone tried to speak to you about your immigration status? Have you told them anything?
    vi. Have you been granted bail and, if you have, are you going to pay it?
    vii. Do you have an order of deportation or did you ever not show up to court?

Family members

It may be the case that a parent's immigration status is dependent on his or her child. For this reason, attorneys and advocates should gather information (names, ages, date of birth, location, and immigration status) of all immediate family members: spouses, children, parents). It may feel invasive for the survivor to ask all this information about their family, which is why attorneys and advocates can explain that the reason they are asking these questions is to explore whether other family members may receive immigration benefits. It is also important to explore the immigration and criminal history of each immediate family member with the purpose of troubleshooting any problems that may arise later on.

Asking about victimization

If an undocumented immigrant is a survivor of domestic violence or sexual assault, there are certain immigration benefits that may be available to him or her. During the intake and screening, attorneys and advocates should screen for eligibility for VAWA self-petitions, I-751 domestic violence waivers, U visas, T visas, potential asylum claims, VAWA Cancellation, DACA, or other relief that may apply. Depending on the state of where the survivor lives, they may be eligible for refugee benefits if they are granted political asylum. Advocates should check their local resources to ensure that clients have access to their rights.

2. Using Empowering Language

When working with a client it is important to honor their story by listening to them and also using body language that demonstrates compassion and understanding. The tips below may seem like common sense but sometimes when advocates are dealing with a crisis or dealing with other stressors, these techniques can be quickly forgotten.

a. Listening skills: When listening to someone share his/her story, you can use body language to demonstrate you are listening. One technique is softly nodding your head when someone is speaking. This can show that you are listening to them. Also, if appropriate with space, you can also slightly lean in as they speak. Obviously if there is a small space between you and the other person, this might not work but it could show that you are engaged.

b. Eye contact: This can be a sensitive topic with some cultures and personalities. Normally in our American culture, we look at each other in the eye when speaking. When working with an immigrant who has been victimized, eye contact could be perceived as intrusive. Use your judgment when working with a survivor and you can gage if eye contact is helpful or not depending on how the conversation is going.

c. Empowering phrases:

    i. You are strong. In my experience working with survivors of domestic violence and sexual assault, reinforcing positive words around the client's strength and resilience can help them see that they are strong. I have worked with many immigrants who after years of being belittled by their partners, they believed they had no worth as a

person and it took them years to start seeing their own value and strength. Saying phrases that remind them or re-teach them about their own value can be priceless in their healing process.

ii. Stay away from saying you know how they feel. Even though you may be a survivor of some type of abuse, everyone processes their own traumatic experiences differently. Everyone on this earth is on their own journey, including our clients and us as advocates. It is important to not say statements, such as "I know how you feel or are going through" because we do not know everything they have experienced. We have not walked in their shoes. Empowering our clients is allowing them to find their own words and use their strengths to keep moving forward in life.

iii. Finding a balance with the good and bad. Yes, it is important to fill out those forms and get the details but it is also good to find a balance in information. If a client has children and you notice that she gets a light in her eyes or smiles when she speaks of them, then ask her about her children during the process and mix up the good and bad information. It is nice to also use humor if appropriate. Giving the client an opportunity to talk about their life and share happy memories can also help in building trust in the relationship with clients.

3. Explaining Privilege and Confidentiality

Informing the clients about your role is one of the first ways you build trust and create safe boundaries with clients. Each agency should have a form that explains the services, the limitations of confidentiality and any time limited services that the agency has for clients seeking support. This is important that the client is explained these issues verbally and in written form especially in their language so there is not any confusion on what the expectations are. If a client is illiterate, there should be a line where that can be checked to note the client was explained verbally when completing the form. The form should be signed and dated by the advocate and client and saved in the client's file. The client should also be explained in specific examples the limitations of confidentiality. Depending on the laws in your state, the mandated reporting requirements should be explained for advocates that covered by those policies. When working in a multidisciplinary setting, there may be others that are not mandatory reporters. If so, the client should be explained those limitations by the appropriate staff and notified when any information divulged will be reported due to abuse or neglect.[31]

4. Potential Forms of Relief

a. VAWA Self-Petitions

Violence Against Women Act (VAWA) self petitions permit abused spouses and children of Legal Permanent Residents (LPR) and US citizens (USC) to obtain their lawful permanent resident status

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31 For more information on privilege and confidentiality, social workers may visit National Association of Social Workers Practice Updates at http://www.socialworkers.org/practice/behavioral_health/mbh0201.asp . American Bar Association Summary of DV/SA Confidentiality Laws, Available at: http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/AdvocateConfidentialityChart.authcheckdam.pdf Attorneys and advocates may also contact the Victim Rights Law Center for technical assistance for OVW grantees. Brochure Available as Appendix I.

independently of their relationship with the abusive family member. In addition, abused parents of USC sons or daughters also may apply for immigration relief under VAWA. Just as in an I-130 family petition application, where an LPR or USC spouse may file a petition on behalf of the immigrant relative, VAWA permits abused family members to petition for themselves based upon the abuse they have suffered.[32] The VAWA applicant must:

1) Have valid qualifying relationship to an LPR or USC;
2) If the application is based on marriage, submit proof of a good faith marriage;
3) Suffered battery or extreme cruelty at the hands of their abuser;
4) Show that they resided with abuser; and,
5) Demonstrate good moral character

A self-petitioner may apply for a VAWA self-petition within 2 years of divorce from the USC or LPR abuser, and may also apply if the abusive spouse did not divorce before entering the marriage with the victim (i.e. the bigamy exception).

b. U visas

U visas are available for victims of qualified family who have suffered substantial physical or emotional harm and who have been, are, or will be helpful in the investigation or prosecution of the criminal activity which occurred in the United States or otherwise violated U.S. law. [33] U visa applicants must also be admissible to the United States or otherwise qualify for an INA 212(d)(14) waiver of inadmissibility.

The current list of U Qualifying Crimes is:

• Abduction • Abusive Sexual Contact • Blackmail • Domestic Violence • Extortion • False Imprisonment • Female Genital Mutilation • Felonious Assault • Fraud in Foreign Labor Contracting* • Hostage • Incest • Involuntary servitude	• Kidnapping • Manslaughter • Murder • Obstruction of Justice • Peonage • Perjury • Prostitution • Rape • Sexual Assault • Sexual Exploitation	• Slave Trade • Stalking* • Torture • Trafficking • Witness Tampering • Unlawful Criminal Restraint *This could also include any similar activity where the elements of the crime are substantially similar to one of the enumerated crimes above. **Attempt, conspiracy, or solicitation to commit any of the above and other related crimes might also be

[32] For definition of VAWA self petitioner see INA 101(a)(51)
[33] INA 214(p); INA 101(a)(15)(u)

		considered.

c. T visas

T visas are for victims of severe form of human trafficking who are present in the United States on account of the trafficking.[34] Like the U visa, there is a requirement that T visa applicants comply with reasonable requests from law enforcement for assistance in the investigation or prosecution of the trafficking (or if the victim is under 18, or if not able to comply with law enforcement requests due to trauma the victim has suffered) and T visa applicants must demonstrate that they would suffer extreme hardship if they were removed from the United States. Also like U visa holders, T visa holders must be admissible or otherwise qualify for a waiver.

e. VAWA cancellation

VAWA cancellation is a form of immigration relief that is available to some survivors of domestic or sexual violence who are in Immigration Court. The elements are similar to a VAWA self-petition. That is:

- That a person is/was married to LPR or USC spouse and suffered battery or extreme cruelty;
- That a person is/was the child of a LPR or USC parent and suffered battery or extreme cruelty;
- That a person is the non-abused parent of a child who has suffered battery or extreme cruelty at the hands of a LPR or USC child.

VAWA cancellation is available to those in the above categories who have been physically present in the United States for 3 years before filing and can show good moral character during that period. VAWA Cancellation also requires that the applicant not be inadmissible under 212(a)(2) or 212(a)(3) grounds or deportable under INA 237(a)(1)(G) or INA 237(a)(2) through (4) unless a domestic violence waiver is granted and has not otherwise been convicted of an aggravated felony under INA 101(a)(43). VAWA Cancellation also requires applicants to show that removal would result in extreme hardship to themselves or to the applicant's parent or a child.[35]

VAWA Cancellation cases are uncommon, but may be a good option for some survivors of violence. If for example, a survivor who is otherwise eligible for a VAWA self-petition has passed the 2-year anniversary of the divorce and has missed an opportunity to apply, he or she may apply for VAWA cancellation in Immigration Court. Similarly, if a survivor has a USC or LPR Spouse or parent who lost status more than 2 years ago, VAWA Cancellation may be an option. Sometimes VAWA Cancellation may be an option for those who are eligible for VAWA (or have an approved I-360) who are placed in removal proceedings and a priority date is a long way away. Lastly, VAWA

[34] INA 101(a)(15)(t); INA 214(o)
[35] INA 240A(b)(2)(A); 8 CFR 1240.20

Cancellation is available to non-abused parents of abused children of USC and LPRs who are not married to the abuser, regardless of child's immigration status

How is VAWA Cancellation different from VAWA self-petition?

- VAWA self-petition has no residency requirement
- VAWA Cancellation has no requirement to demonstrate good faith marriage
  - BUT important to include evidence of good faith marriage would be helpful as a finding of fraudulent marriage would effect good moral character.
- VAWA Cancellation has no derivative beneficiaries
  - BUT derivatives can receive parole until eligible to adjust

f. Gender-based asylum

Asylum is available to those who have suffered persecution or have a well-founded fear of persecution on account of one's race, religion, national origin, participation in a particular social group or political opinion. In screening for asylum, it is important to review

- Whether someone is afraid to return to his/her home country and why
- Did they ever seek help from authorities in their home country? Why or why not?
- What do they think will happen if they were to return to their home country?
- Would they feel safe anywhere in their country?

In August 2014, the Board of Immigration Appeals decided the case *Matter of A-R-C-G-,* which established that "married women in Guatemala who are unable to leave their relationship" could constitute a cognizable particular social group that forms the basis of a claim for asylum. [36] Thus, abuse suffered abroad can be explored as a potential remedy for survivors of domestic and sexual assault.

For a sample intake, please click here.

Introduction of Sample Case

Alejandra Colón is an 18 year old from Guatemala. Alejandra entered the United States when she was 10, on April 16, 2007. Alejandra's mother Ernesta came to the United States in 2005 on a visitor's visa, and left Alejandra behind in Guatemala in the care of her aunt. Ernesta met Jose Mendez in September 2005, who was also from Guatemala and was a legal permanent resident. They fell in love, and got married in Arlington, Virginia in January 2008. Jose filed an I-130 petition for

[36] *Matter of A-R-C-G,* 26 I&N Dec. 388 (BIA 2014)

Ernesta in March 2007. He said that he wanted to file for her first to make sure they established their lives together first, before filing any paperwork for Alejandra.

Alejandra's aunt passed away in November 2006, and her older cousins with whom she was staying became involved in gang activity. Alejandra's godmother feared for Alejandra's safety and she arranged for Alejandra to travel to the US to join her mother. Alejandra came to the US through the Arizona border and ICE apprehended her and her godmother. Alejandra's godmother was given paperwork including a Notice to Appear. Ernesta went to Arizona to pick her up and brought her to Virginia. Alejandra had a master calendar court hearing in January 2008 in Arizona, but her mother did not take her because she was afraid they were going to deport her.

When Alejandra first came to live with her mother and stepfather, she enrolled in school and was excited to be in the United States. She was wary around Jose since she had never met him before arriving in the U.S. She only knew what her mother told her about him over the phone for all these years. Her mother had told her that he was quiet, hard working, and helped set up a nice home for her.

At first school was difficult for Alejandra, she struggled with English and with her subjects. She eventually received help through her school's peer mentor program and her grades and English skills improved dramatically. Alejandra also enjoyed art and made many friends in the middle school art club. At home, she really did not interact much with Jose. He drank a lot, and Alejandra did not want to get in his way. When he drank, he sometimes would hit Alejandra's mother if he did not like the dinner she prepared or if she had to work late. Alejandra learnt to notice when he was increasingly getting upset or drunk and would hide in her closet or pretend she was tired and go to bed early. Sometimes, Alejandra was unsure of what to do. She begged her mom to leave him after every violent episode but Ernesta refused, saying that she loved him and he was just worried about a lot of things and that is why he acted this way. Sometimes she would make Alejandra feel responsible for the violence telling her that he hit her because she left her shoes or her books in the middle of the living room, or because she drank the last Coke and that Alejandra needed to be more careful with what she did. Alejandra felt helpless and worried for her mother. She knew that her mother loved Jose, but hated to see her hurt.

Alejandra immersed herself in school, in large part to avoid the problems at home. When she was in high school, she joined many after school clubs to avoid going home. Ernesta's priority date became current in April 2012 and she became a legal permanent resident in November 2012. She never got permission to start Alejandra's immigration case and oftentimes Jose accused them both of being a couple of illegals that wanted nothing but his help with their papers.

One evening in September 2013, Ernesta came home from work and Jose was drunk and demanded to know where she had been. When she told him she just came from work, he called her a liar. Ernesta said she had enough of him when he was like this and that she was going to leave. Jose stood in front of the door and Ernesta tried to push him away. Jose slapped Ernesta in the face and kicked her in the stomach saying that she was never, ever going to leave him, and the only way she would leave was over his dead body. Jose then realized that Alejandra was standing in the hallway and had witnessed his brutality, so he grabbed her shoulders and said that if she had the bright idea of calling the police, he would make sure that she was on the next flight back to Guatemala. He said, "The minute you step off the plane, I'll make sure my cousin finds you and makes your life a living

hell." After that night, Jose would often look at Alejandra and move his finger across the front of his throat silently. Alejandra knew what it meant and grew worried and concerned about her future in the United States.

Alejandra became furious with both her mother and Jose. She could not understand why her mother stayed with Jose and thought that he was going to kill them both. For a while Alejandra lived with a friend from school because she could no longer watch her mother go through this. After a few months, Ernesta asked her to come back, saying that Jose had spoken to his pastor and that he was getting help. Things were okay for a while at home, and Alejandra's art teacher encouraged her to pursue a career in the arts. Alejandra was happy to have the support of her teacher and thought about ways she could get the money for school.

In June 2014, Jose went to Guatemala because his father had died. When he returned, he started drinking and physically abusing Ernesta more often. His abuse of Ernesta was worse than ever. In August 2014, when Alejandra was 17, she saw Jose beat her mother so badly that Ernesta had trouble breathing. Alejandra called 911 and the police arrived. By the time they arrived, Jose had left the house and Ernesta said that she was fine, that she did not want any trouble, and that she had just tripped and fallen down. Ernesta coached Alejandra to say that she had made the whole thing up, she was mad at her step-father, and that should not have called 911 for a non-emergency. When Jose came back home, he was furious that Alejandra had called 911. He grabbed Alejandra hard by the arm and threatened that if she ever did anything like that again, she would never again see the light of day.

Alejandra hardly came home after school after that incident—staying with her friends after school or at some after-school activity. On weekends, she would stay at the library or out with friends, not wanting to be around Jose. In the spring of 2015, Alejandra was in the kitchen showing her mother the dress she had made for prom when Jose came in. It was obvious he had been drinking from the way he smelled. He looked at Alejandra's dress and said she looked like a whore. Alejandra went to her room to change and then find a way to leave, but Jose blocked her way—and asked how much she charged. Alejandra called him a bastard and told him to let her pass. He pushed her again and said he could do as he pleased. Alejandra told her mom to call the police and Ernesta did. Jose ran toward Ernesta to stop her and Alejandra jumped on his back to stop him and dug her fingers into his arm to stop him from hurting her mother. Jose continued towards Ernesta and Alejandra scratched him hard and drew blood. Ernesta and Alejandra then locked themselves in the bathroom until the police arrived.

When the police came, they arrested them both Jose and Alejandra, noticing the bleeding on Jose's arm. Alejandra was charged with assault and battery of a household member under VA Code 18.2-57.2. Alejandra, desperate for this case to go away, pled guilty to the charge of assault against a family member and was sentenced to 10-day sentence, all suspended, with 60-days probation. Her probation officer recommended that Alejandra see a counselor, which she has been doing. One day, an ICE officer was waiting outside her probation office and asked Alejandra for her ID. Since Alejandra did not have any form of identification, ICE began asking questions and learned she was undocumented. Ernesta, panicking, filed an I-130 for Alejandra, which she sent recently. Alejandra reached out to you for help.

Questions for Discussion:

- What questions might you ask to get this story from Alejandra?
- What are some potential immigration benefits for Alejandra?
- What are some potential problems/ red flags?
- What more do you need to know?
- How would you safety plan with Alejandra regarding her immigration case?

Next steps: Practice with a co-worker or advocate in interviewing Alejandra (having the other person play Alejandra), what details were you able to get out? What were left out? What do you think you could ask next time to draw out those details?

Chapter 4: Case theory & Timelines

A. Case Theory

After the initial screening and assessment for what type of immigration relief a survivor may be eligible for, one of the first things an attorney or advocate should do is develop a case theory, a one to two sentence statement that presents a concise and persuasive case. Case theory drives

- Preparation for immigration case
- Eligibility for relief and type of relief sought
- Elements of the case and facts that pertain to those elements
- Applicable law (statutes, regulations, case law, etc.)
- Witness and document preparation
- Argument development and discretionary factors

Developing a case theory is a two-part process: 1) analyzing the legal authority that applies in these cases and then applying the law to the facts in your case.

For Alejandra's case above, the attorney and advocate should first assess which form of immigration benefits Alejandra may be able to apply for. It may be helpful to draw out the facts that help establish eligibility for relief and the potential risks/red flags. Fill out the chart on the next page to outline some of the important facts that establish eligibility and that may be problematic for Alejandra. For a filled in chart see Appendix H.

Benefit	Requirements	Facts that Establish Eligibility	Red Flags	Action steps
DACA	*Entry before 16th birthday; *Resided in US before 6/15/2007' *EWI or visa expired before 6/15/2012 *Currently in school, graduated, obtained GED *Not convicted of felony, significant misdemeanor, 3 or more misdemeanors or not threat to national security or public interest *Be at least 15 years old (unless have been in removal proceedings)			
VAWA (for child)	*Spouse/Child of LPR or USC or Parent of USC *Resided with abuser *Suffered battery and extreme cruelty *Good moral character			
VAWA Cancellation	*In this case, a person is/was the child of a LPR or USC parent and suffered battery or extreme cruelty; *3 years continuous presence *3 years showing of good moral character *Not inadmissible under 212(a)(2) or 212(a)(3) grounds or deportable under INA 237(a)(1)(G) or INA 237(a)(2) through (4) unless a domestic violence waiver is granted and no convictions of aggravated felony. *Removal would result in extreme hardship to themselves, to a parent or a child.			

As part of this exercise, separate out positive and negative facts in your case. This is important to building a case for discretion. What are the most compelling facts in your case? What are the weakest?

Once you are able to look at all the facts and potential problems, attorneys and advocates can start connecting the facts to the law. What facts support the legal elements of the case you are trying to build? What facts will be problematic to areas of inadmissibility, good moral character, etc.?

These facts will now help to craft a one or two sentence case theory that will help drive the case and will be the theme to weave throughout the application and trial preparation (if necessary).

Some sample case theories may include:

- For over 8 years, Alejandra has endured severe emotional trauma from living with her abusive stepfather and deserves a chance to start rebuilding her life.
- Alejandra is a bright young woman who is the victim of years of abuse from her stepfather, whose emotional harm resulted in devastating events in her life.

List some potential case theories:

_____

_____

_____

If you are presenting a case in Immigration Court, it is often a useful exercise to think of what the government trial attorney's case theory would be in the case. If Alejandra were presenting a VAWA Cancellation Case in Court, what would the trial attorney's case theory be? It may be something like,

- Alejandra is an impulsive girl who holds a grudge against her stepfather and lashes out. Given her criminal history, she should not qualify for immigration relief.

A survivor's case theory should be demonstrated in his/her personal declaration, in the cover letter, the index of supporting documentation, in the preparation of supplemental affidavits and in the presentation of witness testimony at trial. In this way, an attorney or advocate can establish the theme of the case, with the legal elements and facts that support that theme clearly presented and organized.

B. Timelines

The master calendar hearing is the initial hearing and appearance in Immigration Court. Before the master calendar hearing, if there is sufficient time, you should file your EOIR-28: Notice of Entry of Appearance and an EOIR-33: Change of Address form if the address listed on the NTA is not the survivor's current address.

If an attorney or accredited representative has not had an opportunity to meet with the client to prepare for the master calendar hearing, then the attorney may file a Motion to Continue to allow more time to prepare the oral pleadings and potential defenses. Ideally, this should be done well in advance of the first master calendar date. As mentioned previously, if the survivor has not secured representation before his or her master calendar hearing date, then s/he may request additional time to find an attorney. Similarly, if the attorney or accredited representative is recently retained, then

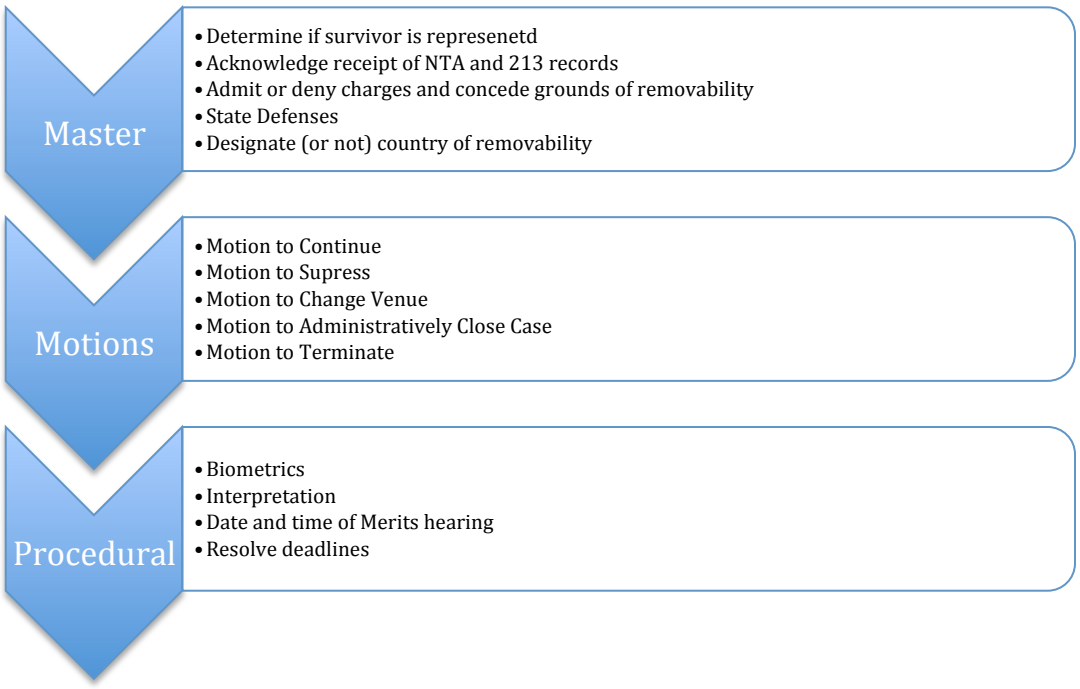
s/he may present themselves at the Immigration Court hearing and request additional time to review the case with the survivor.

At the master calendar hearing, if a survivor will be pursuing a case in Court, like VAWA Cancellation, then the attorney or accredited representative will be given a "call up date" or the deadline in which the submission of the application must be filed with the Court. As in any submission to the Immigration Court, a copy of any document filed with the Court must be served on the District Office of the ICE Office of Chief Counsel.

The master calendar hearing is also an opportunity to resolve any pending motions and procedural issues before the final master calendar hearing like biometrics, interpretation needed for the hearing, the date and time of the individual merits hearing and the deadline for any exhibits or witnesses lists.

Notes on Deadlines:

- Documents/Submissions are not deemed filed with the Court until date received by the Clerk. Mailbox rule is NOT observed for Immigration Court. (See Chapter 3.1 of Immigration Court Practice Manual)
- Deadlines depend on stage of proceedings and whether client is detained (Master calendar, Individual)
- Day is measured in calendar days. If deadline falls on weekend day or legal holiday, filing due next business day.



Some Immigration Courts, for example the Omaha Immigration Court, are testing a Pre-trial Program to screen cases and schedule pretrial conferences for those cases that might benefit. Currently this program only applied to represented Respondents. Conference would include

respondent, their representative, OCC attorney and mediated by court staff (not Immigration Judges). Ideally, this conference would occur 6 weeks before Individual hearing

Notes on Motions

Motions in Immigration Court may be filed before or after the Master Calendar hearing on a number of different subjects (see table above). All motions in Immigration Court must have a cover page, a proposed order, and a certificate of service. Chapter 5 of the Immigration Court Practice Manual (See Appendix B) has a dedicated section on motions practice including samples.

Sample Case Exercises: How would you prepare Alejandra for a master calendar hearing? What Motions would you consider filing in Alejandra's case at her master calendar hearing? Assuming she is eligible to apply for a VAWA self-petition, what might you ask the Court to do?

Chapter 5: Inadmissibility, Deportability and Good Moral Character Bars

Undocumented survivors of domestic violence or sexual assault may have problems in their immigration or criminal history that could potentially affect their eligibility for relief. For this reason, advocates must partner with an experienced immigration lawyers to explore all the potential problems that may arise due to a survivor's health, immigration, or criminal issues. This chapter will briefly describe some common problems that arise in survivors' cases and present further resources. It is not intended to be a comprehensive resource on these issues, rather a starting point when these problems may arise.

For many advocates and attorneys, dealing with inadmissibility issues can often feel overwhelming. This Chapter aims to provide a framework for assessing problems that may arise in a survivor's case:

- **Step one: What do I need handy?**
  - Gathering the necessary tools for assessing problems.
- **Step two: Is there a problem?**
  - Looking at convictions & sentences under the INA,
  - Assessing inadmissibility, deportability, aggravated felony and good moral character
- **Step three: There may be a problem…now what?**
  - Analyzing the immigration consequences that apply in your case
- **Step four: moving ahead**
  - Laying out arguments in applications for relief, including VAWA self-petitions and VAWA Cancellation cases

A. Gathering necessary tools and information

There are a few essential tools when looking at whether a survivor's criminal, health, or immigration issues will be problematic in his or her case:

1. Immigration & Nationality Act (INA)

The INA, also known as Title 8 United States Code (USC), is the law that applies directly to immigration cases. The immigration consequences of crimes and other activity can be found at:

- Inadmissibility at INA 212(a);
- Deportability at INA 237
- Good moral character bars at INA 101(f)
- Aggravated felonies is defined at INA 101(a)(43)

It is not always apparent whether to apply inadmissibility or deportability or good moral character to a particular case. Oftentimes, what applies in the section of the law that outlines the form of relief for which one should be applying. For example, good moral character applies to VAWA self-petitions, naturalization, VAWA cancellation of removal, cancellation of removal under INA 240A(b) (also known as 10-year cancellation.) For example, a quick guide to what grounds apply in what cases can be found in the IRLC Toolkit for Criminal Defenders.

In addition to the INA, attorneys and advocates should do **research into case law**, including in their own circuit to see how particular criminal issues may be treated by the Administrative Appeals Office (AAO); by the Board of Immigration Appeals, and by the Federal Circuit in which the survivor may be residing.

2. Criminal issues: Copy of the criminal statute at issue.

Attorneys and advocates should gather all information available related to the survivor's immigration or criminal record, including under what statute the survivor was charged and convicted. This is a critical piece of the puzzle. Given the differences in the state definitions of law, what may be a problem in one jurisdiction is not in another given the wording of the statute. **Keep in mind that not all convictions will automatically mean that an immigration benefit will be denied. On the other hand, one does not necessarily need a conviction to trigger immigration consequences.** For this reason, careful consideration of a survivor's criminal record is crucial to establishing eligibility.

3. Criminal issues: Copy of the criminal record of conviction.

In most cases, Immigration Judges will employ a "categorical approach" or a "modified categorical approach" to determine whether the criminal activity will trigger immigration consequences. These approaches employ a set of rules for the Immigration Judge to follow to examine the state statute and see whether and how it relates to the criminal consequences found in the INA. The record of conviction was established in the Supreme Court Case *Shepard v. U.S.*, 544 U.S. 13, 26 (2005) and includes:

- "The statutory definition of the crime (including case law defining elements of an offense);
- Charging documents related to the offense of conviction:
- Written plea agreements;
- Admissions at a colloquy between judge and defendant:
- Any explicit factual finding by the trial judge to which the defendant assents; or

- Some other "comparable judicial record" of information about the factual basis for the plea."[37]

Documents that are typically outside the record of conviction include:[38]

- "Prosecutor's remarks during the hearing,
- Police reports, probation or "pre-sentence" reports, *unless* there was a stipulation that provided the factual basis for the plea.
- Statements by the noncitizen outside of the plea (e.g., statements to police, immigration authorities, or the immigration judge).
- Information from a criminal charge absent adequate evidence that the defendant pled to the charge as written;
- Information from a dropped charge
- Information from a co-defendant's case."

It is good to collect information as much information as is available about a survivor's criminal history and then distill what would constitute the record of conviction in the case. Whether a crime has immigration consequences depends on how the statute under which the survivor is charged or convicted matches with the generic definition under immigration law.

When assessing whether criminal conduct has immigration consequences that could trigger removal, **it is essential that all immigration lawyers have an understanding of the categorical approach** including recent case law on the subject. The categorical approach has 5 main steps, as outlined in IRLC's important resource, "How to Use the Categorical Approach Now[39]:"

- Step 1: Identify the "generic" definition of the crime. Using general legal resources, identify the generic federal definition of the crime at issue like "crime of domestic violence."
- Step 2: Identify the minimum conduct that would violate the law. Using local, state or federal statutes (including resources like jury instructions) identify the minimum conduct necessary to break the law.
- Step 3: Determine whether the minimum conduct matches the "generic" definition. If it doesn't match, then proceed to Step 4. If it does match, then immigration consequences may apply.
- Step 4: Determine whether the statute is divisible. Does the statute cover multiple acts that would violate the law? To be divisible, the statute must:
    - Set out multiple forms of conduct with an "or"
    - At least one, but not all, must match the generic definition
    - A jury must decide unanimously between the forms of conduct to find someone guilty.

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[37] Excerpted from: Washington State Supreme Court Gender and Justice Commission and Minority and Justice Commission. "Immigration Resource Guide for Judges" July 2013. Available at: http://www.courts.wa.gov/content/manuals/Immigration See Chapter 5

[38] Excerpted from *IRLC, "N.3 Record of Conviction" Available at: http://www.ilrc.org/files/documents/n.3-record_of_conviction.pdf*

[39] Steps excerpted from IRLC "How to Use Categorical Approach Now" November 2014. Available at: http://www.ilrc.org/files/documents/how_to_use_the_categorical_approach_template_1.pdf

- Step 5: If the statute is divisible, do documents in the reviewable record of conviction establish which crime the defendant was convicted of, under the "modified categorical approach"?

Modified categorical approach, which has some important recent updates, is used when a statute of conviction has some elements that would have immigration consequences and others that would not. *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008) established a three part process when the to determine whether a person has been convicted of a crime of moral turpitude, a ground of inadmissibility under INA 212(a)(2). In that case, the Texas statute under which the Respondent was convicted contained conduct that did not have moral turpitude issues and some conduct that did. The case established a 3-part framework for looking at cases:

- First to apply the categorical approach to the applicable statute;
- If the statute does not clearly indicate a crime of moral turpitude, Immigration Judges were permitted to look at the record of conviction.
- Then, if the record of conviction does not establish whether the conduct amounts to a crime of moral turpitude, then the Immigration Judge should consider looking at evidence beyond the record of conviction. Specifically, *Silva-Trevino* allowed Immigration Judges to any evidence the adjudicator deems necessary or appropriate to resolve accurately the moral turpitude question when the record of conviction is unclear. [40]

In April 2015, former Attorney General Eric Holder vacated Matter of Silva-Trevino. Citing other recent Supreme Court case law, like *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013) and *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010) which that the language of the law did not permit the Courts to look at uncharged conduct or evidence outside the record of conviction when a person was "convicted of" an aggravated felony or crime of moral turpitude. Due to the recent changes, it is important to be on the look out for guidance and resources that reflect the latest analysis.

4. Convictions and Sentences

Some criminal issues require a conviction to trigger immigration consequences while others (like drug trafficking) do not require a conviction. For purposes of assessing whether criminal conduct will be problematic, it is important to look at both what constitutes a conviction for immigration purposes as well as sentencing issues.

A conviction is defined in INA 101(a)(48)(A) may have multiple forms including:

- Formal judgment of guilt;
- Deferred adjudication if finding of guilt admission of facts sufficient to warrant finding of guilt & Judge orders punishment or restraint, even if conditions completed & dismissed.

A sentence is defined in 8 USC 1101(a)(48)(B) and includes the period of incarceration or confinement ordered by a court **regardless** of any "suspension" of the imposition or execution of the sentence in whole or in part. For example,a 365 day sentence imposed with 364 days suspended = 365 for immigration purposes.

[40] *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008).

For more resources on convictions for immigration purposes, there is the IRLC Quick Reference Sheet to start this analysis.

5. Immigration & Crimes Resources

Resources by experts working at the intersections of criminal and immigration law are a must. Many other organizations have developed state-specific resources that outline the particular crimes in their jurisdiction. For example: this IRLC Chart is a Resource on Immigration Consequences of Certain California Crimes. The National Immigration Project developed this chart for New York offenses and this one for Massachusetts. It is worth exploring whether such resources exist in your state, and if so, pay particular note as to the date of publication as there may be additional case law or policies that supersede the printed version.

Where can I find help?

- Immigrant Legal Resource Center: http://www.ilrc.org
- National Immigration Project: http://www.nationalimmigrationproject.org/
- American Immigration Council-Legal Action Center: http://www.legalactioncenter.org/
- WDA Immigration Project: www.defensenet.org
- Immigration Advocates Network: http://www.immigrationadvocates.org/
- ASISTA: http://www.asistahelp.org

B. Analysis

1. Good Moral Character Issues

USCIS issued a memorandum on Good Moral Character in VAWA Cases in January 2005, attached as Appendix K. This memo provides an excellent framework to considering how criminal activity and other issues affect VAWA-based issues of good moral character. The memo outlines a 4-step analysis:

- Step 1: Determine whether the survivor is subject to the good moral character bars at INA 101(f).
- Step 2: Look to whether there is a waiver available, for a ground of inadmissibility or deportability. Attached to the memo is a chart, which establishes whether there is a waiver available. If the crime involves violent or dangerous offenses, the memo instructs practitioners to look at 8 CFR 212.7(d). Aggravated felony is per se bar to good moral character because no waiver available;
    - BUT for those convictions that are aggravated felonies AND CIMT (e.g. theft conviction w/365 day sentence) argue that as CIMT, offense is waivable per 212(h)
- Step 3: If so, Determine whether the act or conviction is "connected" to the battering or extreme cruelty.
    - Here, USCIS instructs practitioners to draw a nexus between the good moral character bar and the victimization that the survivor has endured. If, for example, a

survivor is convicted of shoplifting because the batterer may not give her money for food or necessities for her children, then advocates and attorneys should clearly connect the good moral character bar to the victimizaiton.

- Step 4: In addition to establishing statutory eligibility for GMC applicant must also establish that she warrants favorable exercise of discretion. What are the other favorable factors in the survivor's case?

2. Inadmissibility/Deportability

Advocates and attorneys should look at the law to determine what grounds might apply to in the survivor's case. Once that is established, then advocates can examine the following:

- Are there reasons why the ground wouldn't apply?
- Is there an exception?
- Is there a waiver available?
- Does the survivor qualify for a waiver?
- Assessment of discretionary factors/Balancing of the Equities

In balancing the equities, it important to weigh the positive facts against the negative ones and consider the hardship that the survivor or his or her family would face if the survivor were not permitted to remain in the United States, including:

- The nature and extent of the physical or psychological consequences of the crime
- The impact of loss of access to the United States courts and criminal justice system
- Juxtapose the need for services and support in U.S. v. home country
- What is the liklihood of ostracization, retribution, persecution if returned to home country?
- Evidence of Rehabilitation
- Reasons for Wishing to Remain in the US
- Mitigating factors in survivor's favor (family ties, financial impact of departure on others, contributions or ties to the community in the US)
- An explanation, in survivor's own words of the specific circumstances surrounding the Act or conviction that prompted the need for this waiver request);
- Any physical, medical, mental health or social services that survivor requires that is not readily available in his/her home country.

Case Sample Questions:

1. What inadmissibility or good moral character problems does Alejandra face?
2. How does her prior deportation order affect her admissibility?
3. How would you address these issues?

Chapter 6: Immigration Detention and Bond

A. Overview of Detention

ICE Field Offices the ICE offices on the local level, can make determinations based on whether to put someone in immigration detention and determine bond amounts. Not all people who have cases in Immigration Court will necessarily be in detention or need a bond. They may receive an NTA in the mail or after an immigration interview or after they are paroled into the United States.

Who can be placed in Immigration Detention?

- Undocumented individuals /Entered without inspection (EWI)
- Those who committed a crime/multiple crimes
- Individuals stopped at airports trying to re-enter the U.S.
- Aslyees before credible fear interview
- Those entering with fake documents
- Those with pending or old deportation orders.
- Those subject to mandatory detention

ICE Enforcement and Removal Operations is the division, which runs or manages immigration detention centers. Often times, these detention centers are operated by private companies operating under a contract with ICE. ICE therefore manages largest civil detention system in country. Some recent ICE statistics show:

- ICE houses detainees at 250 local and state facilities.
- 67% in local and state facilities-Intergovernmental Service Agreement Facilities (IGSAs)
- 17% in contract detention facilities (CDFs)
- 13% in ICE-owned facilities (SPCs-Service processing centers)
- 3% at Bureau of Prison facilities
- Congressional funding for 34,000 beds daily, 400K a year.[41]

ERO Resources

If a survivor is detained then there should be resources available within the detention centers. For example, the Community Detainee Helpline can be reached at **1-888-351-4024.** Through this hotline detainees may report that they are victim of crime, report if they are victim of sexual abuse, let ICE know if detention causing separation with minor child. Additional resources for detainees include:

[41] ICE. Detention Management Factsheet November 2011. Available at: http://www.ice.gov/factsheets/detention-management

- ERO Field Office Community Liaison available at: http://www.ice.gov/contact/ero/#fieldOffice
- Detention Facilities Listings: http://www.ice.gov/detention-facilities

Another important tool for survivors who are parents is the ICE Parental Interest Directive.[42] This memorandum instructs ICE to give special consideration in ICE enforcement activities to parents who are primary caretakers of children, or those involved in family law litigation, and those whose minor children are U.S citizens or legal permanent residents, and should exercise prosecutorial discretion with regard to the decision to detain. In addition, the memorandum instructs that should a detainee identify as a parent that efforts should me made to permit that person to remain close to family as well as allow those parents with pending family law matters to participate in those proceedings. This memorandum is a very useful tool for survivors who are in detention with minor children. Furthermore, special consideration should be afforded survivors of crime as indicated in the June 17, 2011 ICE Memo on Certain Victims, Witnesses and Plaintiffs, including the exercise of prosecutorial discretion to not detain victims of crimes, including domestic violence.[43]

ICE may also request that USCIS Vermont Service Center expedite certain forms of immigration benefits for survivors if they are in detention or removal proceedings.[44]

B. Challenging Detention

There are certain times when a person may be ineligible for bond or subject to "mandatory detention." Normally mandatory detention is given if the detainee has a criminal history[45], including:

- Aggravated Felonies
- Crimes Involving Moral Turpitude
- Controlled Substance Offenses
- Firearms Offenses and others

If ICE believes a person is subject to mandatory detention, then individual may request a **"Joseph hearing**" to challenge the assertion she should be subject to mandatory detention.[46] The Immigration Judge has no authority to release person subject to mandatory detention, BUT can determine whether person is properly included in mandatory detention categories.[47] Attorneys or accredited representatives may also request a Joseph hearing if Immigration Judge has terminated proceedings but the Government is appealing case and the survivor remains in detention.

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42 Immigration and Customs Enforcement. "Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities." August 23, 2013. Available at: http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf

43 See Chapter 1, supra

44 See ICE Memoranda "Adjudicating Stay Requests filed by for U Nonimmigrant Visa Applicants". Available at: http://www.ice.gov/doclib/foia/dro_policy_memos/11005_1-hd-stay_requests_filed_by_u_visa_applicants.pdf

45 See Chapter 5 *supra.*

46 A "Joseph's hearing" is called that because of a BIA case called *In re Samuel Joseph,* 22 I&N Dec. 799 (BIA 1999).

47 8 CFR §1003.19(h)(2)(ii)

C. Challenging Bond

Generally speaking, if the survivor is not subject to mandatory detention, then s/he is eligible for bond. If a bond has been set in a case, then the minimum amount for a bond is $1500 while there is no maximum bond and the judge can deny bond altogether. If a person is in immigration detention, then he or she is entitled to a hearing to determine whether they are eligible for bond or whether the bond should be lowered. If charged on NTA as an "Arriving alien"—survivors are not eligible for bond, but can ask for parole. If a survivor posts the bond given by ICE, then he or she will be released. However, if the survivor cannot pay the bond, then he or she can request a hearing for the Immigration Judge to review the amount of bond set.

1. Bond hearings

Bond hearings are hearing in front of an Immigration Judge, but it is separate and apart from, and shall form no part of the removal hearings. [48] Bond determination is not part of the court record. Bond hearings can be requested at any time after the survivor is in ICE custody and before a final order of removal is entered. Typically, attorneys or accredited representatives ask for a bond hearing before NTA is filed with the Court or before the survivor's first hearing. There is often little preparation time since the bond hearing may be set soon after it is requested. If a bond hearing is not granted to a client, then an attorney or representative may file a demand letter under 8 C.F.R. § 287.3(d). A request for a bond redetermination may be made orally, in writing, or in discretion of Immigration Judge over the telephone.

The factors that the Court considers in a bond redetermination hearing are whether the individual detained poses a flight risk and whether he or she is a danger to the community.[49] The goal of bond hearings is to assure a person's appearance in Immigration Court. The bond amount must be paid in full and will be recovered after the termination of the proceedings.

To file a Motion for a Bond Redetermination hearing, consult the EOIR Practice Manual for the proper form and service of process to the government trial attorney. Furthermore, as before a master calendar hearing, attorneys or advocates may want to reach out to the government trial attorney before the hearing to explain to them what they are planning on doing to see whether the government would object and to find out where they stand on a particular issue as there may be certain factors/issues to which they would stipulate (e.g. whether stipulate to bond amount).

In bond hearings, the Immigration Judge can consider a number of factors including criminal history, family ties, employment history[50] After the hearing, the Immigration Judge may lower or raise the bond amount. In bond hearings, it is essential to balance of the equities of the case, including a person's good moral character, family and community ties, a stable residence, his or her manner of entry and length of time in US, as well as his or her financial ability to post bond.

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[48] 8 C.F.R. § 1003.19(d)
[49] *Matter of D-J-,* 23 I&N Dec. 572 (AG 2003)
[50] *Matter of Patel*, I5 I&N Dec. 666 (BIA 1976).

When assessing **the harm to the community**, the Immigration Judge may consider both convictions AND charges in determining bond.[51] The Court also looks at evidence of rehabilitation, responsibility and remorse for any crimes committed or whether the crime was violent. If a survivor has criminal history, it may be possible to connect the criminal history to the abuse and victimization.

In examining whether an individual poses a **flight risk,** the Immigration Court will assess whether he or she has missed prior hearings, a person's family ties and responsibilities, her employment responsibilities, the availability of potential immigration benefits (and their likelihood of success), whether the individual needs to access criminal and family court systems, or access to medical treatment. The Immigration Court will also ensure that the individual understands the responsibilities of appearing in Court and the consequences if he does not.

During the hearing, the Immigration Judge may ask questions to the survivor to see how much he or she is able to pay and why that amount is reasonable. The survivor's attorney or representative will have an opportunity to summarize key points and the equities of the case, the government attorney will have an opportunity to counter and the Immigration Judge will make his or her ruling. The Immigration Judge may decide to release the survivor on his or her on own recognizance; order placement in an Alternative to Detention (ATD) program like electronic monitoring or an order of supervision. If bond is set by an Immigration Judge, an individual can request an additional bond hearing there are materially changed circumstances since prior bond hearing.[52] The bond decision, if unfavorable, may be appealed to the BIA within 30 days of the decision. If DHS appeals the Immigration Judge's custody determination to BIA, then BIA has authority to stay IJ's decision.[53]

D. Dealing with Prior Removal Orders

In some cases, undocumented survivors may have prior deportation orders. For these cases, it is important to prepare a stay of removal in the event that immigrant survivors come back into contact with immigration enforcement. The stay of removal is filed on Form I-246: Application for Stay of Deportation or Removal[54] at the local ERO District Office. Many attorneys prepare the stay of removal at the outset and keep it at the ready should it need to be filed. In the stay of removal packet, attorneys and representatives should file

- ICE Form I-246
- Cover letter explaining reasons for stay request and index of supporting documents
- $155 fee
- Evidence to support why the survivor needs to remain in the United States. This can include USCIS receipt notices, medical reasons, court papers.
- Evidence to support why survivor should not be removed from the United States.

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[51] *In re Guerra,* 24 I&N Dec. 37 (BIA 2006)
[52] 8 CFR 1003.19(e).
[53] 8 CFR §1003.19(i)
[54] Form available at: http://www.ice.gov/sites/default/files/documents/Document/2014/ice_form_i_246.pdf

The reason that filing the stay of removal is important for immigrant survivors with prior removal orders is that if those survivors come into contact with ICE a second time, they may be subject to reinstatement of their old removal order.[55]

If an immigrant survivor has an approved immigration benefit (U visa, VAWA self-petition), then you may present a motion to the Immigration Court to reopen and terminate proceedings. There are several types of Motions to Reopen and it is important to explore all the options that may be available to the immigrant survivor, including potentially a VAWA Motion to Reopen.[56]

Case example exercises: What steps would you take to resolve Alejandra's old removal order? What would you do at the outset to prepare her?

Chapter 7: Trial Preparation

If you are preparing a survivor for a case in court, including VAWA Cancellation, VAWA adjustment or another matter, proper preparation of the submission and of the survivor's testimony is crucial.

A. Prepare Direct & Cross Examination

Both attorneys and advocates may wish to work on this, preferably together to ensure that the survivor is comfortable and prepared to present his or her case in Immigration Court. The following questions relate to the above case example.

1. Develop the Plan for Direct Examination

First, it is often a useful exercise to build on your case theory by bullet pointing the story you want to tell about Alejandra.

- How do you cover who, what where, when, why?
- Pretend you are the government attorney. What holes and problems would you focus on in the story?
- How can your client explain these problems in response to questions you ask on direct?

Building on those bullet points, attorneys and advocates cant then draft questions to elicit anticipated problems and explanations for them.

- Draft open-ended questions to elicit your client's story
- Insert the "anticipations to cross" questions into your "story" questions

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[55] For more information on reinstatement of removal, see AIC practice advisory "Reinstatement of Removal" Available at: http://www.nationalimmigrationproject.org/legalresources/practice_advisories/2013-4-29 Reinstatement of Removal.pdf

[56] For more information, See AIC practice advisory "Rescinding an In Abesencia Order of Removal." Available at: http://www.legalactioncenter.org/sites/default/files/lac_pa_092104.pdf For more information on VAWA Motions to Reopen, visit ASISTA's website at www.asistahelp.org

- Examine your questions for adjectives and adverbs. These often are forms of "leading" your client. Instead of adverbs and adjectives, can you ask questions that elicit facts that establish the characterization you are seeking?
- Redo the questions using as few adjectives and adverbs as possible.
- You may wish to create a document with a "questions" column and an "answers" column, using marks to note where a question is adequately answered (check) or where you may need to come back to clarify (star).

Attorneys and advocates should practice the questions together before practicing with the survivor Role playing in advance can help target the questions or figure out how to prepare if the survivor does not answer as you anticipated. As you role-play you want to anticipate the client being shy or scared, despite preparation.

After you role-play or practice the question, examine where there are problems or gaps in the direct examination. When you had problems getting the answer you wanted, what did you do? Here are two strategies to address problems that may arise:

Strategy A: Consider breaking down the question more

- Are there facts the client can identify one by one, through separate questions, that t add up to the answer you want?
- Write out this alternative strategy (i.e., "if this doesn't work, go to page 3 questions")

Strategy B: Move to something else and come back
Go back to something easy for your client to discuss

- Is there a way to naturally move from that subject to the one she had trouble discussing?
- Write out that alternative strategy (i.e., "if a problem, go to Question X then come back")

Next, the attorney or representative should practice the questions with the survivor

- On the one hand, you don't want to do this so often, your client sounds like she memorized the answers. A good TA will ask her if your attorney already asked you these questions, implying the attorney made up the answers. On the other hand, you need to know where you are likely to run into problems

- It may be helpful for advocate to work with the client on answers to questions that were problematic, not in the form of an answer in court, but to make sure she has the facts clear in her head.

2. Preparing for Cross Examination

a. Turn your anticipated problem questions into leading questions

A leading question is one that elicits a "yes" or "no answer. For instance, "You crossed the street at Elm and Main Streets, true?" is a leading question. An open question would be, "Where did you cross the street?" Write down these questions and how you would like your client to respond to them. Avoid added words in your leading questions. For example, often attorneys use phrases like,

"Isn't it true that….?" Which are unnecessary at cross-examination. For example, in Alejandra's case a potential question that she may face on cross is..

> Government attorney: Jose is your stepfather?
> Alejandra: Yes
> GA: You've lived with him since you were ten years old?
> Alejandra: Yes

These forms of the question enable the attorney who is doing cross-examination to control the conversation without having the added language of typical leading questions.

b. Practice without the client

As with direct, practice asking the anticipated cross examination questions on each other first, role playing what happens if they intimidate or make your client cry.

- Identify possible objections you can make and practice them
- Practice asking for a break if your client becomes too upset
- Identify how your client could reply in a way that's helpful, or at least not harmful
- Remember that the general wisdom is that clients should answer as briefly as possible, i.e., "isn't it true you told the doctor nothing happened?" "no".
- When the answer has to be "yes" and it sounds damaging, you may want to prep your client to say, instead, "yes, but that's because (insert good reason related to the claim, i.e.," he threatened to harm my son," etc.)
- If the government attorney finds that asking questions is eliciting answers that help, not harm, your client, he or she is likely to stop asking questions.

c. Plan Redirect

Identify where problems are likely to arise

- Plan short questions that elicit the explanations for the problematic information. Preferably, you have already brought out these problems in direct, so you don't need a lengthy answer, just a reminder of what she said earlier.

If you discover in your practice sessions with either each other or the client that new information is coming up on cross, go back and incorporate that into your direct.

Case sample exercise: Practice drafting direct examination and cross examination questions of Alejandra's case. Practice with another attorney or advocate role-playing Alejandra.

3. Preparing Personal Declarations

When helping clients prepare statements, the client should be explained why the information is being requested. Some helpful techniques to help clients process emotions and discuss the facts of their case are:

- If a client is illiterate, drawing a timeline and having the client draw the events can help put experiences in order. Often times, people who have suffered trauma do not think in a linear way and can have disorganized thoughts. Creating a timeline on paper can help clients put experiences concretely on paper.
- Taking breaks. If the client is overwhelmed, taking small breaks can help the client refocus.
- Encouraging the client that this is helping them progress in their life.

The personal declaration, a required element of many forms of immigration relief, should reflect the case theory developed at the outset of the case. The personal statement should be in **the survivor's own words,** and touch upon each element of the application for which the survivor is applying.[57]

4. Preparing Supporting Documents

Attorneys and representatives can consider additional documentation to support any relevant requirement of immigrant application. For example, in the VAWA/ VAWA Cancellation case, supporting documents and witnesses could be use to prove the immigration status of the abuser, good faith marriage and/or joint residence, the battery or extreme cruelty and/or good moral character.

Supporting affidavits should be provided by those with first hand knowledge of events in the survivor's life:

- Personal contacts like friends and family members.
- Community members like neighbors, clergy members, co-workers or employers.
- Letters from staff from systems the survivor accessed, including shelter staff, advocates, therapist, counselor, medical professional, law enforcement.
- Depending on the case, you may need subject matter experts, country condition experts

Anyone providing a supporting letter or affidavit for a survivor's case should:

- Provide his/her Identity and Relationship of Writer to the Survivor, including the length of relationship and how they know the survivor and his/her basic contact information: address, phone, email if available.

- Next, individuals providing supporting letters should indicate ***how*** they know what they know
    - Good faith relationship: When did the client meet his/her spouse? Did the writer attend their wedding? Did the writer go over the client's home at any point and see the client interact with his/her spouse?
    - Abuse: Did the writer ever see the client's spouse be abusive? Hear the spouse calling the client names? See bruises? Did the client relay incidents of abuse?
    - Good moral character: Good neighbor, good worker, involved in community and/or faith groups

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[57] For additional resources on personal statements visit ASISTA's website under the VAWA Clearinghouse at: http://www.asistahelp.org/index.cfm?nodeID=23519&audienceID=1 or See the IRLC "Document Gathering for Self-Petitions Under the Violence Against Women Act" for more information: Available at: http://www.asistahelp.org/index.cfm?nodeID=23519&audienceID=1

a. Tips for Advocates Writing Supporting Letters

Advocates should also indicate how they know what they know, but should go deeper into their experience working in the domestic violence or sexual assault field and show how, based upon their education and experience, how what the survivor is telling them is credible. Advocates should include:

- A paragraph with Credentials
  - Background Experience with domestic violence, sexual assault, or other U crime. How long you have worked with victims, how many victims you have served. Specific training or education
- A paragraph describing details of what client experience and how it affected the client.
- A paragraph explaining how the client's story is credible given your experience working with victims like the client and how you could tell the difference between truth and fiction.

Expert witnesses who are writing supporting affidavits should include a description of their experience and qualifications, be clear as to the topics they have been asked to address, explain the basis for their opinion, and define jargon and terms.

5. Preparing Supporting Witnesses

There are two types of witnesses in Immigration Court: lay witnesses, whose testimony is based upon their own first hand knowledge of events and individuals involved in the case. Typically, lay witnesses will not be able to provide their opinion during testimony, unless based upon their own personal knowledge or experience. Expert witnesses may give opinion evidence based upon their specialized education and experience. Here are some things to consider when considering using other witnesses at trial.

- Will witness testimony help client's case?
  - Do they have first hand knowledge of important facts?
  - Do they help explain or support a disputed element in your client's case?
  - Could any of what the witness say harm your client's case?
- Are they reliable?
- Will they be willing to properly prepare?
- Are they available?
- Are they personable?

Advocates and representatives may want to consider the following when deciding to use expert witnesses:

- Are they qualified to testify
  - Look at *Daubert* factors in Immigration Court[58]
- What would they add that's not already in the record?
- Can the expert focus on specifics of client's case and not just general testimony?
- What is the cost?

[58] See Gary Malphrus. "Expert Witnesses in Immigration Proceedings" Immigration Law Advisor (May 2010). Available at: http://www.justice.gov/sites/default/files/eoir/legacy/2010/06/07/vol4no5.pdf

- Medical or Psychological Experts: can they help explain affect of client (e.g. memory problems, minimizing violence) or otherwise corroborate incidents of abuse.

In Immigration Court, like other matters, attorneys and advocates may be required to voir dire the expert witness to establish his or her credentials and ability to speak in Immigration Court. When preparing a *voir dire,* the expert witness will need to testify to his/her:

- Name, Current Position & Employment
  - Duties in current position
  - Length of time
- Subject matter of specialization
- Special education & training
- Licensing & length of time in field
- Whether conducted any type of assessment of client
  - Frequency
- Number of times given testimony as expert before

General Tips for Witnesses

- Speak in his/her own words
  - Being mindful of Verbal/Nonverbal limitations
- Importance of Appearance
- **TELL THE TRUTH**
- Listen carefully to the questions
  - Do not answer if you do not understand or cannot hear the question.
  - Only answer the question you are being asked
- Stop speaking if lawyer objects to question or if judge interrupts
- Do Not Lose Temper. Always be courteous, even on cross
- Correct Mistakes: If answer not clear or needs explanation, then give it as soon as possible. It is okay to say, "I don't know" or "I don't remember"

Attorneys and advocates will need to submit a witness list to Immigration Court in advance of the trial and follow the specific format for the submission as per the Immigration Court Practice Manual.

6. Using Exhibits During Trial

There are several reasons to use exhibits during trial, to prove or illustrate facts, to highlight particular points of testimony at the hearing, to corroborate facts in the survivor's story, to refresh survivor's recollection in Court, or to use as impeachment evidence (typically not as common during Immigration Court.

Some important questions to ask about using exhibits during trial are:

- What exactly do I want to use this exhibit in this case? (Prove specific facts, illustrate testimony, etc.)
- How is each specific fact I want to use it to prove or illustrate relevant to a specific issue in the case?
- What underlying facts are needed to show the exhibit's relevance to what I want to use it to show?
- Who can provide facts necessary to show its relevance?

Once attorneys and representatives establish why they want to use particular exhibits, then the next step is to think about how you are going to get the document into the evidentiary record (if not already submitted with the underlying application). To this end, the attorney or representative must consider:

- What facts are needed to show exhibit's authenticity?
- Who can present facts needed to show authenticity?
- What facts are needed to surmount any hurdles to admissibility, e.g., to show exception to hearsay rule?
- Who can present facts needed to surmount hurdles? If there is more than one witness who can present information necessary for admissibility, who is the most persuasive person to present it by way of affidavit or testimony?
- What are possible objections to admissibility?
- What rule(s), case(s), additional facts, etc., are needed to rebut?

a. Using a Witness to Offer an Exhibit[59]

When asking a witness to authenticate a document, attorneys and advocates must follow certain procedures to properly introduce it into evidence, specifically:

- Mark exhibit or refer to it by premarked number.
- Show exhibit to opposing counsel.
- Ask for permission to approach witness.
- Hand exhibit to witness.
- Ask if witness recognizes exhibit.
- Ask what exhibit is and how witness knows?
- Ask if it is a clear and accurate depiction of what it represents.
- Ask the document to be introduced as Exhibit Number
- Use exhibit with witness as planned.
- Be sure to prepare any additional information necessary to establish evidentiary foundation for admissibility, e.g. regularly kept records exception to rule prohibiting admission of hearsay, chain of custody for tangible objects, foundation for evidence being offered to illustrate witness's testimony.

[59] Adapted from Sandra Johnson, trainer for NITA for presentation used in original ABA-ASISTA webinar materials. For more information, contact questions@asistahelp.org

Evidence, like witness list, need to be submitted in advance of the hearing (except evidence solely used for rebuttal evidence or impeachment evidence). Most immigration judges will try to resolve any evidentiary issues prior to the start of the merits hearing.

6. Rules of Evidence

The federal rules of evidence do not apply in Immigration Court, including the hearsay rule as Immigration Court cases are administrative in nature. Nonetheless, it is important to raise objections during the hearing to preserve the record for appeal and ensure that the survivor's due process rights are protected. Common objections include:

- Argumentative
- Asked and Answered
- Assumes Facts Not in Evidence
- Beyond Scope
- Compound
- Hearsay
- Leading
- More Prejudicial than Probative
- Releavance
- Speculation

It is especially important to preserve the record for appeal, and ensure that the Immigration Judge rules on all evidence and objections and that the Immigration Judge makes a credibility finding as part of his or her order. Attorneys and representatives should also memoralize off the record conversations with the IJ or trial attoreny and prepare a closing argument. It is also essential that the attorney (or advocate) take notes in order to prepare a potential appeal.

Conclusion and Acknowlegements

There are many more aspects of trial preparation for Immigration Court not addressed in this toolkit. If you have questions that are not addressed in this toolkit, ASISTA would be happy to provide OVW grantees with additional support and resources. Please contact us at questions@asistahelp.org Thank you for your continued work and advocacy for survivors of domestic and sexual violence and their families.

ASISTA would like to thank Anne Garcia, LICSW, Sandra Johnson, trainer for NITA, as well as the ABA Commission on Domestic and Sexual Violence for their support of this project.

Immigration Issues

Undocumented survivors of domestic and sexual violence often face a unique set of vulnerabilities because of their lack of legal immigration status. A familiarity with the immigration framework is key to helping survivors navigate this complicated and ever changing system. There are also immigration benefits that are based on being a survivor of violence, which will be explained below. There are some other forms of immigration benefits for which your clients may be eligible (like deferred action programs) which are not based upon one being a survivor, but still may be available to your client.

Immigration 101

What is immigration status?

- Immigration status means whether a person is lawfully present in the United States. ***Everyone*** has an immigration status. Some examples of immigration status include:
    - U.S. citizen
    - Legal Permanent Resident ("green card holder"), which can be gained by:
        - Family petitions
        - Employer petitions
        - Violence Against Women Act self-Petitions.
    - Conditional Permanent Resident
    - Asylee or Refugee
        - Based upon persecution or fear of persecution based on protected grounds
    - Non-immigrant visa holders: visas that are only good for a specific duration, like
        - U visas
        - T visas
        - Student visas
        - Visitor's visa
        - Temporary workers
    - Temporary Protected Status
        - For nationals of countries whose conditions prevent people from returning home safely (due to natural disasters, civil strife or other extraordinary conditions). Some examples of countries with Temporary Protected Programs are Honduras, El Salvador, Haiti, Guinea, and Liberia)
    - Undocumented (entered without papers or overstayed their visas)
    - Resource: http://sji.gov/PDF/Immigration_Status.pdf

What resources are available to survivors of violence, even if they are undocumented?

The following resources are available, regardless of a survivor's immigration status:

- Shelters and domestic violence programs;
- Civil protection orders;
- Custody and support for children;
- Police assistance;
- Emergency medical care;
- Abuser can be criminally prosecuted; and
- U.S citizen children can receive public benefits (and survivor can too in certain instances)

What are some common immigration terms?

Immigration lawyers and advocates often speak in code and have a habit of referring to immigration law applications by form numbers, taken from the government forms.

They also use abbreviations for laws or words found within immigration law. For example:

- VAWA-Violence Against Women Act
- USC- United States Citizen
- LPR-Legal Permanent Resident ("green card holder")

The United States Citizenship and Immigration Service, the government agency that is in charge of accepting applications for immigration benefits, created a glossary of common immigration terms which is available here and is also available in Spanish here. In addition, ASISTA has this guide to immigration jargon for beginners, and the National Immigration Law Center created a similar glossary which is available here.

What government agencies are involved in making decisions on immigration?

1. **Department of Homeland Security** houses several agencies that work with immigration policy. Some of the more familiar ones are:

- US Citizenship and Immigration Service (USCIS or CIS)—this is the agency that accepts affirmative applications for immigration benefits, including VAWA and U visas.

- Immigration and Customs Enforcement (ICE) is the agency that enforces federal laws about customs, trade and immigration. ICE oversees

immigration detention centers and are the government attorneys in Immigration Court.
- Customs and Border Patrol (CBP) is the agency responsible for border management and control, including customs and agricultural protections.

2. **Department of State** is responsible for consular processing individuals abroad to enter the United States with legal status.

3. **Department of Justice** houses the Executive Office for Immigration Review, which include all Immigration Courts and the Board of Immigration Appeals.

4. **Department of Health and Human Services** provides benefits to individuals who qualify for benefits under refugee resettlement.

What rights to undocumented survivors of violence have?

There are certain protections and rights that everyone in the United States has, regardless of their legal status. Immigrant survivors of violence can:

- ❑ Seek emergency medical care at publicly funded hospitals
- ❑ Seek Police Assistance
- ❑ Have Their Perpetrators Criminally Prosecuted
- ❑ Obtain Community Based Services Necessary to Protect Life and Safety
- ❑ Obtain Protection Orders
- ❑ Access Shelter and Domestic Violence Services
- ❑ Obtain Child Custody and Support and Public Benefits for Their Children

Undocumented individuals also have Constitutional rights, including

- 4th Amendment rights-protections against unlawful search and seizures. If ICE comes to an individuals door, they have the right to ask for a warrant.
- 5th Amendment rights, e.g. the right to remain silent.
- 14th Amendment Rights
    - Undocumented children have right to education (Plyler v. Doe, 457 U.S. 202 (1982)
    - Due Process Protections

- IRLC have developed red cards with these important protections, available here.

Other Federal protections:
- Federals Discrimination Protections
    - Equal Employment Opportunity Commission

Worker protections:

http://www.nelp.org/content/content_issues/category/immigrant_workers_rights_and_remedies

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

August 2009

The Immigration Court Practice Manual

In 2006, the Attorney General instructed the Director of the Executive Office for Immigration Review, in consultation with the Immigration Judges, to issue a practice manual for the parties who appear before the Immigration Courts. This directive arose out of the public's desire for greater uniformity in Immigration Court procedures and a call for the Immigration Courts to implement their "best practices" nationwide.

Accordingly, the Office of the Chief Immigration Judge published the Immigration Court Practice Manual in February 2008. The Practice Manual is a comprehensive guide that sets forth uniform procedures, recommendations, and requirements for practice before the Immigration Courts. The requirements set forth in this manual are binding on the parties who appear before the Immigration Courts, unless the Immigration Judge directs otherwise in a particular case. The Practice Manual does not limit the discretion of Immigration Judges to act in accordance with law and regulation.

The Practice Manual is intended to be a "living document," and the Office of the Chief Immigration Judge updates it in response to changes in law and policy, as well as in response to comments by the parties using it. We welcome suggestions and encourage the public to provide comments, to identify errors or ambiguities in the text, and to propose revisions. Information regarding where to send your correspondence is included in Chapter 13 of the Practice Manual.

The Office of the Chief Immigration Judge has made the Immigration Court Practice Manual available through the EOIR website at www.usdoj.gov/eoir. We encourage you to share the Practice Manual with any individuals or organizations that may benefit from it.

Brian M. O'Leary

Chief Immigration Judge

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Immigration Court Practice Manual

The Practice Manual has been assembled as a public service to parties appearing before the Immigration Courts. This manual is not intended, in any way, to substitute for a careful study of the pertinent laws and regulations. Readers are advised to review Chapter 1.1 before consulting any information contained herein.

The Practice Manual is updated periodically. The legend at the bottom of each page reflects the last revision date for that page. Updates to the Practice Manual are available through the EOIR website at www.justice.gov/eoir.

The Office of the Chief Immigration Judge

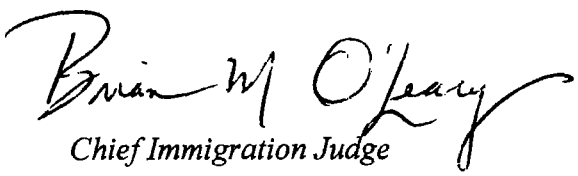
Brian M. O'Leary, Chief Immigration Judge
Michael C. McGoings, Deputy Chief Immigration Judge
Edward F. Kelly, Deputy Chief Immigration Judge

Rico J. Bartolomei
John W. Davis
Jill H. Dufresne
Thomas Y.K. Fong
MaryBeth Keller
Print Maggard
Deepali Nadkarni
Abigail Price
Christopher A. Santoro
Elisa M. Sukkar
Jack H. Weil
Robert D. Weisel

Assistant Chief Immigration Judges

The Office of the Chief Immigration Judge expresses its gratitude to the many Immigration Judges, Court Administrators, and other individuals who provided comments and suggestions during the preparation of the Immigration Court Practice Manual. The Office of the Chief Immigration Judge also expresses its appreciation to former Chief Immigration Judge David L. Neal for his leadership in creating the Practice Manual. In addition, the Office of the Chief Immigration Judge recognizes the original members of the Practice Manual Committee for their dedication in creating this publication:

Judge John F. Gossart, Jr.
Judge Stephen S. Griswold
Jean C. King, Senior Legal Advisor, BIA
Scott M. Rosen, Chief Counsel, OCIJ
Gary M. Somerville, Court Administrator
Emmett D. Soper, Attorney Advisor, OCIJ



Chief Immigration Judge

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Appendices

1 The Immigration Court

1.1 Scope of the Practice Manual

(a) Authority. — The Executive Office for Immigration Review (EOIR) is charged with administering the Immigration Courts nationwide. The Attorney General has directed the Director of EOIR, in consultation with the Immigration Judges, to issue an Immigration Court Practice Manual.

(b) Purpose. — This manual is provided for the information and convenience of the general public and for parties that appear before the Immigration Courts. The manual describes procedures, requirements, and recommendations for practice before the Immigration Courts. The requirements set forth in this manual are binding on the parties who appear before the Immigration Courts, unless the Immigration Judge directs otherwise in a particular case.

(c) Disclaimer. — This manual is not intended, nor should it be construed in any way, as legal advice. The manual does not extend or limit the jurisdiction of the Immigration Courts as established by law and regulation. Nothing in this manual shall limit the discretion of Immigration Judges to act in accordance with law and regulation.

(d) Revisions. — The Office of the Chief Immigration Judge reserves the right to amend, suspend, or revoke the text of this manual at any time at its discretion. For information on how to obtain the most current version of this manual, see Chapter 13.3 (Updates to the Practice Manual). For information on how to provide comments regarding this manual, see Chapter 13.4 (Public Input).

1.2 Function of the Office of the Chief Immigration Judge

(a) Role. — The Office of the Chief Immigration Judge oversees the administration of the Immigration Courts nationwide and exercises administrative supervision over Immigration Judges. Immigration Judges are responsible for conducting Immigration Court proceedings and act independently in deciding matters before them. Immigration Judges are tasked with resolving cases in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act, federal regulations, and precedent decisions of the Board of Immigration Appeals and federal appellate courts.

(b) Location within the federal government. — The Office of the Chief Immigration Judge (OCIJ) is a component of the Executive Office for Immigration Review (EOIR). Along with the Board of Immigration Appeals and the Office of the Chief Administrative Hearing Officer, OCIJ operates under the supervision of the Director of EOIR. See 8 C.F.R. § 1003.0(a). In turn, EOIR is a component of the Department of Justice and operates under the authority and supervision of the Attorney General. See Appendix C (Organizational Chart).

(c) Relationship to the Board of Immigration Appeals. — The Board of Immigration Appeals is the highest administrative tribunal adjudicating immigration and nationality matters. The Board is responsible for applying the immigration and nationality laws uniformly throughout the United States. Accordingly, the Board has been given nationwide jurisdiction to review decisions of Immigration Judges and certain decisions made by the Department of Homeland Security (DHS). The Board is tasked with resolving the questions before it in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act (INA) and federal regulations. The Board is also tasked with providing clear and uniform guidance to Immigration Judges, DHS, and the general public on the proper interpretation and administration of the INA and the federal regulations. See 8 C.F.R. § 1003.1(d)(1). See also Appendix C (Organizational Chart).

In addition, the Board is responsible for the recognition of organizations and the accreditation of representatives wishing to appear before the Immigration Courts, DHS, and the Board. Finally, the Board has authority over the disciplining and sanctioning of representatives appearing before the Immigration Courts, DHS, and the Board. See Chapter 10 (Discipline of Practitioners).

For detailed guidance on practice before the Board, parties should consult the Board of Immigration Appeals Practice Manual, which is available at www.justice.gov/eoir.

(d) Relationship to the Department of Homeland Security. **—** The Department of Homeland Security (DHS) was created in 2003 and assumed most of the functions of the now-abolished Immigration and Naturalization Service. DHS is responsible for enforcing immigration laws and administering immigration and naturalization benefits. By contrast, the Immigration Courts and the Board of Immigration Appeals are responsible for independently adjudicating cases under the immigration laws. Thus, DHS is entirely separate from the Department of Justice and the Executive Office for Immigration Review. In proceedings before the Immigration Court or the Board, DHS is deemed to be a party and is represented by its component, U.S. Immigration and Customs Enforcement (ICE). See Chapters 1.5(a) (Jurisdiction), 1.5(c) (Immigration Judge decisions), 1.5(e) (Department of Homeland Security).

(e) Relationship to the Immigration and Naturalization Service. — Prior to the creation of the Department of Homeland Security (DHS), the Immigration and Naturalization Service (INS) was responsible for enforcing immigration laws and administering immigration and naturalization benefits. INS was a component of the Department of Justice. INS has been abolished and its role has been assumed by DHS, which is entirely separate from the Department of Justice. See subsection (d), above.

(f) Relationship to the Office of the Chief Administrative Hearing Officer. — The Office of the Chief Administrative Hearing Officer (OCAHO) is an independent entity within the Executive Office for Immigration Review. OCAHO is responsible for hearings involving employer sanctions, anti-discrimination provisions, and document fraud under the Immigration and Nationality Act. OCAHO's Administrative Law Judges are not affiliated with the Office of the Chief Immigration Judge. The Board of Immigration Appeals does not review OCAHO decisions. See Appendix C (Organizational Chart).

(g) Relationship to the Administrative Appeals Office. — The Administrative Appeals Office (AAO), sometimes referred to as the Administrative Appeals Unit (AAU), was a component of the former Immigration and Naturalization Service and is now a component of the Department of Homeland Security (DHS). The AAO adjudicates appeals from DHS denials of certain kinds of applications and petitions, including employment-based immigrant petitions and most nonimmigrant visa petitions. See 8 C.F.R. §§ 103.2, 103.3. The AAO is not a component of the Department of Justice. The AAO should not be confused with the Executive Office for Immigration Review, the Office of the Chief Immigration Judge, or the Board of Immigration Appeals. See Appendix C (Organizational Chart).

(h) Relationship to the Office of Immigration Litigation (OIL). — The Office of Immigration Litigation (OIL) represents the United States government in immigration-related civil trial litigation and appellate litigation in the federal courts. OIL is a component of the Department of Justice, located in the Civil Division. OIL is separate and distinct from the Executive Office for Immigration Review (EOIR). OIL should not be confused with EOIR, the Office of the Chief Immigration Judge, or the Board of Immigration Appeals. See Appendix C (Organizational Chart).

1.3 Composition of the Office of the Chief Immigration Judge

(a) General. — The Office of the Chief Immigration Judge (OCIJ) supervises and directs the activities of the Immigration Courts. OCIJ operates under the supervision of the Director of the Executive Office for Immigration Review (EOIR). OCIJ develops operating policies for the Immigration Courts, oversees policy implementation, evaluates the

performance of the Immigration Courts, and provides overall supervision of the Immigration Judges.

(i) Chief Immigration Judge. — The Chief Immigration Judge oversees the administration of the Immigration Courts nationwide.

(ii) Deputy Chief Immigration Judges. — The Deputy Chief Immigration Judges assist the Chief Immigration Judge in carrying out his or her responsibilities.

(iii) Assistant Chief Immigration Judges. — The Assistant Chief Immigration Judges oversee the operations of specific Immigration Courts. A listing of the Immigration Courts overseen by each Assistant Chief Immigration Judge is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

(iv) Legal staff. — OCIJ's legal staff supports the Chief Immigration Judge, Deputy Chief Immigration Judges, and Assistant Chief Immigration Judges, as well as the Immigration Judges and Immigration Court law clerks nationwide.

(v) Language Services Unit. — The Language Services Unit oversees staff interpreters and contract interpreters at the Immigration Courts. The Language Services Unit conducts quality assurance programs for all interpreters.

(vi) Court Evaluation Team. — The Court Evaluation Team coordinates periodic comprehensive evaluations of the operations of each Immigration Court and makes recommendations for improvements.

(vii) Court Analysis Unit. — The Court Analysis Unit monitors Immigration Court operations and assists the courts by analyzing caseloads and developing systems to collect caseload data.

(b) Immigration Courts. — There are more than 200 Immigration Judges in more than 50 Immigration Courts nationwide. As a general matter, Immigration Judges determine removability and adjudicate applications for relief from removal. For the specific duties of Immigration Judges, see Chapter 1.5 (Jurisdiction and Authority). The decisions of Immigration Judges are final unless timely appealed or certified to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions).

Court Administrators are assigned to the local office of each Immigration Court. Under the supervision of an Assistant Chief Immigration Judge, the Court Administrator manages the daily activities of the Immigration Court and supervises staff interpreters, legal assistants, and clerical and technical employees.

In each Immigration Court, the Court Administrator serves as the liaison with the local office of the Department of Homeland Security, the private bar, and non-profit organizations that represent aliens. In some Immigration Courts, a Liaison Judge also participates as a liaison with these groups.

A listing of the Immigration Courts is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

(c) Immigration Judge conduct and professionalism. — Immigration Judges strive to act honorably, fairly, and in accordance with the highest ethical standards, thereby ensuring public confidence in the integrity and impartiality of Immigration Court proceedings. Alleged misconduct by Immigration Judges is taken seriously by the Department of Justice and the Executive Office for Immigration Review (EOIR), especially if it impugns the integrity of the hearing process.

Usually, when a disagreement arises with an Immigration Judge's ruling, the disagreement is properly raised in a motion to the Immigration Judge or an appeal to the Board of Immigration Appeals. When a party has an immediate concern regarding an Immigration Judge's conduct that is not appropriate for a motion or appeal, the concern may be raised with the Assistant Chief Immigration Judge (ACIJ) responsible for the court or the ACIJ for Conduct and Professionalism. Contact information for ACIJs is available on the EOIR website at www.justice.gov/eoir.

In the alternative, parties may raise concerns regarding an Immigration Judge's conduct directly with the Office of the Chief Immigration (OCIJ) by following the procedures outlined on the EOIR website at www.justice.gov/eoir or by sending an e-mail to OCIJ at: EOIR.IJConduct@usdoj.gov. Where appropriate, concerns may also be raised with the Department of Justice, Office of Professional Responsibility. All concerns, and any actions taken, may be considered confidential and not subject to disclosure.

1.4 Other EOIR Components

(a) Office of the General Counsel. — The Office of the General Counsel (OGC) provides legal advice to the Executive Office for Immigration Review. OGC also functions as a resource and point of contact for the public in certain instances. In particular, OGC responds to Freedom of Information Act requests related to immigration proceedings. See Chapter 12 (Freedom of Information Act). OGC receives complaints of misconduct involving immigration practitioners, and initiates disciplinary proceedings where appropriate. See Chapter 10 (Discipline of Practitioners).

(b) EOIR Fraud Program. — The Executive Office for Immigration Review (EOIR) Fraud Program was created to protect the integrity of immigration proceedings by reducing immigration fraud and abuse. The EOIR Fraud Program assists Immigration Judges and EOIR staff in identifying fraud. In addition, the program shares information with law enforcement and investigative authorities. The program is an initiative of the EOIR Office of the General Counsel, as directed by the Attorney General.

Immigration fraud and abuse can take many forms. Fraud is sometimes committed during Immigration Court proceedings by individuals in proceedings and by their attorneys. In addition, aliens are often victimized by fraud committed by individuals not authorized to practice law, who are frequently referred to as "immigration specialists," "visa consultants," "travel agents," and "notarios."

Where a person suspects that immigration fraud has been committed, he or she may report this to the EOIR Fraud Program. Where appropriate, the EOIR Fraud Program refers cases to other authorities for further investigation.

Individuals wishing to report immigration fraud or abuse, or other irregular activity, should contact the EOIR Fraud Program. For contact information, see Appendix B (EOIR Directory).

(c) Legal Orientation Program. — The Legal Orientation Program (LOP) was created to provide detained aliens with essential and easy-to-understand information regarding the Immigration Court process, including their rights, responsibilities, and options for relief from removal. The LOP is a program of the Office of Legal Access Programs within the Executive Office for Immigration Review.

The LOP is carried out locally through subcontracts with nonprofit legal agencies in cooperation with a number of local Immigration Courts and detention facilities.

The LOP providers conduct "group orientations," which are general rights presentations given to detained aliens prior to their first Immigration Court hearing. "Individual orientations" and "self-help workshops" are then provided to unrepresented detainees to assist them with understanding their cases and identifying potential claims for relief from removal. While the LOP does not pay for legal representation, all detained aliens at LOP sites are provided access to program services, which may also include assistance with either locating pro bono counsel or representing themselves before the court.

More information about the LOP is available on the EOIR website at www.justice.gov/eoir.

(d) Office of Legislative and Public Affairs. — The Office of Legislative and Public Affairs (OLPA) is responsible for the public relations of the Executive Office for Immigration Review (EOIR), including the Office of the Chief Immigration Judge. Because Department of Justice policy prohibits interviews with Immigration Judges, OLPA serves as EOIR's liaison with the press.

(e) Law Library and Immigration Research Center. **—** The Law Library and Immigration Research Center (LLIRC) is maintained by the Executive Office for Immigration Review (EOIR) for use by EOIR staff and the general public. The LLIRC maintains a "Virtual Law Library" accessible on the EOIR website at www.justice.gov/eoir. See Chapter 1.6(b) (Library and online resources).

1.5 Jurisdiction and Authority

(a) Jurisdiction. — Immigration Judges generally have the authority to:

- make determinations of removability, deportability, and excludability
- adjudicate applications for relief from removal or deportation, including, but not limited to, asylum, withholding of removal ("restriction on removal"), protection under the Convention Against Torture, cancellation of removal, adjustment of status, registry, and certain waivers
- review credible fear and reasonable fear determinations made by the Department of Homeland Security (DHS)
- conduct claimed status review proceedings
- conduct custody hearings and bond redetermination proceedings
- make determinations in rescission of adjustment of status and departure control cases
- take any other action consistent with applicable law and regulation as may be appropriate, including such actions as ruling on motions, issuing subpoenas, and ordering pre-hearing conferences and statements

See 8 C.F.R. §§ 1240.1(a), 1240.31, 1240.41.

Immigration Judges also have the authority to:

- conduct disciplinary proceedings pertaining to attorneys and accredited representatives, as discussed in Chapter 10 (Discipline of Practitioners)
- administer the oath of citizenship in administrative naturalization ceremonies conducted by DHS
- conduct removal proceedings initiated by the Office of Special Investigations

(b) No jurisdiction. — Although Immigration Judges exercise broad authority over matters brought before the Immigration Courts, there are certain immigration-related matters over which Immigration Judges do not have authority, such as:

- visa petitions
- employment authorization
- certain waivers
- naturalization applications
- revocation of naturalization
- parole into the United States under INA § 212(d)(5)
- applications for advance parole
- employer sanctions
- administrative fines and penalties under 8 C.F.R. parts 280 and 1280
- determinations by the Department of Homeland Security involving safe third country agreements

See 8 C.F.R. §§ 103.2, 1003.42(h), 28 C.F.R. § 68.26

(c) Immigration Judge decisions. — Immigration Judges render oral and written decisions at the end of Immigration Court proceedings. See Chapter 4.16(g) (Decision). A decision of an Immigration Judge is final unless a party timely appeals the decision to the

Board of Immigration Appeals or the case is certified to the Board. Parties should note that the certification of a case is separate from any appeal in the case. See Chapter 6 (Appeals of Immigration Judge Decisions).

(d) Board of Immigration Appeals. — The Board of Immigration Appeals has broad authority to review the decisions of Immigration Judges. See 8 C.F.R. § 1003.1(b). See also Chapter 6 (Appeals of Immigration Judge Decisions). Although the Immigration Courts and the Board are both components of the Executive Office for Immigration Review, the two are separate and distinct entities. Thus, administrative supervision of Board Members is vested in the Chairman of the Board, not the Office of the Chief Immigration Judge. See Chapter 1.2(c) (Relationship to the Board of Immigration Appeals). See Appendix C (Organizational Chart).

(e) Department of Homeland Security. — The Department of Homeland Security (DHS) enforces the immigration and nationality laws and represents the United States government's interests in immigration proceedings. DHS also adjudicates visa petitions and applications for immigration benefits. See, e.g., 8 C.F.R. § 1003.1(b)(4), (5). DHS is entirely separate from the Department of Justice and the Executive Office for Immigration Review. When appearing before an Immigration Court, DHS is deemed a party to the proceedings and is represented by its component, U.S. Immigration and Customs Enforcement (ICE). See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)).

(f) Attorney General. — Decisions of Immigration Judges are reviewable by the Board of Immigration Appeals. The Board's decisions may be referred to the Attorney General for review. Referral may occur at the Attorney General's request, or at the request of the Department of Homeland Security or the Board. The Attorney General may vacate any decision of the Board and issue his or her own decision in its place. See 8 C.F.R. § 1003.1(d)(1)(i), (h). Decisions of the Attorney General may be published as precedent decisions. The Attorney General's precedent decisions appear with the Board's precedent decisions in Administrative Decisions Under Immigration and Nationality Law of the United States ("I&N Decisions").

(g) Federal courts. — Decisions of Immigration Judges are reviewable by the Board of Immigration Appeals. In turn, decisions of the Board are reviewable in certain federal courts, depending on the nature of the appeal. When a decision of the Board is reviewed by a federal court, the Board provides that court with a certified copy of the record before the Board. This record includes the Record of Proceedings before the Immigration Judge.

1.6 Public Access

(a) Court locations. —

(i) Office of the Chief Immigration Judge. — The Office of the Chief Immigration Judge, which oversees the administration of the Immigration Courts nationwide, is located at the Executive Office for Immigration Review headquarters in Falls Church, Virginia. See Appendix B (EOIR Directory).

(ii) Hearing locations. — There are more than 200 Immigration Judges in more than 50 Immigration Courts in the United States. A list of Immigration Courts is available in Appendix A (Immigration Court Addresses), as well as on the Executive Office for Immigration Review website at www.justice.gov/eoir.

Immigration Judges sometimes hold hearings in alternate locations, such as designated detail cities where the caseload is significant but inadequate to warrant the establishment of a permanent Immigration Court. Immigration Judges also conduct hearings in Department of Homeland Security detention centers nationwide, as well as many federal, state, and local correctional facilities. Documents pertaining to hearings held in these locations are filed at the appropriate Administrative Control Court. See Chapter 3.1(a)(i) (Administrative Control Court).

In addition, hearings before Immigration Judges are sometimes conducted by video conference or, under certain conditions, by telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

With certain exceptions, hearings before Immigration Judges are open to the public. See Chapter 4.9 (Public Access). The public's access to immigration hearings is discussed in Chapter 4.14 (Access to Court). For additional information on the conduct of hearings, see Chapters 4.12 (Courtroom Decorum), 4.13 (Electronic Devices).

(b) Library and online resources. —

(i) Law Library and Immigration Research Center. — The Board of Immigration Appeals maintains a Law Library and Immigration Research Center (LLIRC) at 5201 Leesburg Pike, Suite 1200, Falls Church, Virginia. The LLIRC maintains select sources of immigration law, including Board decisions, federal statutes and regulations, federal case reporters, immigration law treatises, and various secondary sources. The LLIRC serves the Executive Office for Immigration Review (EOIR), including the Office of the Chief Immigration Judge and the Immigration Courts, as well as the general public. For hours of operation,

directions, and collection information, contact the LLIRC at (703) 506-1103 or visit the EOIR website at www.justice.gov/eoir. See Appendix B (EOIR Directory).

The LLIRC is not a lending library, and all printed materials must be reviewed on the premises. LLIRC staff may assist patrons in locating materials, but are not available for research assistance. LLIRC staff do not provide legal advice or guidance regarding filing or procedures for matters before the Immigration Courts. LLRC staff may, however, provide guidance in locating published decisions of the Board.

Limited self-service copying is available in the LLIRC. Smoking is prohibited.

(ii) Virtual Law Library. — The LLIRC maintains a "Virtual Law Library," accessible on the Executive Office for Immigration Review website at www.justice.gov/eoir. The Virtual Law Library serves as a comprehensive repository of immigration-related law and information for use by the general public.

(c) Records. —

(i) Inspection by parties. — Parties to a proceeding, and their representatives, may inspect the official record, except for classified information, by prior arrangement with the Immigration Court having control over the record. See Chapters 3.1(a)(i) (Administrative Control Court), 4.10(c) (Record of Proceedings). Removal of records by parties or other unauthorized persons is prohibited.

(ii) Inspection by non-parties. — Persons or entities who are not a party to a proceeding must file a request for information pursuant to the Freedom of Information Act (FOIA) to inspect the Record of Proceedings. See Chapter 12 (Freedom of Information Act).

(iii) Copies for parties. — The Immigration Court has the discretion to provide parties or their legal representatives with a copy of the hearing recordings and up to 25 pages of the record without charge, subject to the availability of court resources. Self-service copying is not available. However, parties may be required to file a request under FOIA to obtain these items. See Chapter 12 (Freedom of Information Act).

(A) Digital audio recordings. — Immigration Court hearings are recorded digitally. If a party is requesting a copy of a hearing that was recorded digitally, the court will provide the compact disc.

(B) Cassette recordings. — Previously, Immigration Court hearings were recorded on cassette tapes. If a party is requesting a copy of a hearing that was recorded on cassette tapes, the party must provide a sufficient number of 90-minute cassette tapes.

(iv) Copies for non-parties. — The Immigration Court does not provide non-parties with copies of any official record, whether in whole or in part. To obtain an official record, non-parties must file a request for information under FOIA. See Chapter 12 (Freedom of Information Act).

(v) Confidentiality. — The Immigration Courts take special precautions to ensure the confidentiality of cases involving aliens in exclusion proceedings, asylum applicants, battered alien spouses and children, classified information, and information subject to a protective order. See Chapter 4.9 (Public Access).

1.7 Inquiries

(a) Generally. — All inquiries to an Immigration Court must contain or provide the following information for each alien:

- complete name (as it appears on the charging document)
- alien registration number ("A number")
- type of proceeding (removal, deportation, exclusion, bond, etc.)
- date of the upcoming master calendar or individual calendar hearing
- the completion date, if the court proceedings have been completed

See also Chapter 3.3(c)(vi) (Cover page and caption), Appendix F (Sample Cover Page).

(b) Press inquiries. — All inquiries from the press should be directed to the Executive Office for Immigration Review, Office of Legislative and Public Affairs. For contact information, see Appendix B (EOIR Directory).

(c) ASQ. — The Automated Status Query system or "ASQ" (pronounced "ask") provides information about the status of cases before an Immigration Court or the Board of Immigration Appeals. See Appendices B (EOIR Directory), I (Telephonic Information). ASQ contains a telephone menu (in English and Spanish) covering most kinds of cases. The caller must enter the alien registration number ("A number") of the alien involved.

A numbers have nine digits (e.g., A 234 567 890). Formerly, A numbers had eight digits (e.g., A 12 34 678). In the case of an eight-digit A number, the caller should enter a "0" before the A number (e.g., A 012 345 678).

For cases before the Immigration Court, ASQ contains information regarding:

- the next hearing date, time, and location
- in asylum cases, the elapsed time and status of the asylum clock
- Immigration Judge decisions

ASQ does not contain information regarding:

- bond proceedings
- motions

Inquiries that cannot be answered by ASQ may be directed to the Immigration Court in which the proceedings are pending or to the appropriate Administrative Control Court. See Chapter 3.1(a)(i) (Administrative Control Courts). Callers must be aware that Court Administrators and other staff members are prohibited from providing any legal advice and that no information provided by Court Administrators or other staff members may be construed as legal advice.

(d) Inquiries to Immigration Court staff. — Most questions regarding Immigration Court proceedings can be answered through the automated telephone number, known as the Automated Status Query System, or "ASQ." See subsection (c), above. For other questions, telephone inquiries may be made to Immigration Court staff. Collect calls are not accepted.

If a telephone inquiry cannot be answered by Immigration Court staff, the caller may be advised to submit an inquiry in writing, with a copy served on the opposing party. See Appendix A (Immigration Court Addresses).

In addition, Court Administrators and other staff members cannot provide legal advice to parties.

(e) Inquiries to specific Immigration Judges. — Callers must bear in mind that Immigration Judges cannot engage in ex parte communications. A party cannot speak

about a case with the Immigration Judge when the other party is not present, and all written communications about a case must be served on the opposing party.

(f) Faxes. — Immigration Courts generally do not accept inquiries by fax. See Chapter 3.1(a)(vii) (Faxes and e-mail).

(g) Electronic communications. —

(i) Internet. — The Executive Office for Immigration Review (EOIR) maintains a website at www.justice.gov/eoir. See Appendix A (Directory). The website contains information about the Immigration Courts, the Office of the Chief Immigration Judge, the Board of Immigration Appeals, and the other components of EOIR. It also contains newly published regulations, the Board's precedent decisions, and a copy of this manual. See Chapters 1.4(e) (Law Library and Immigration Research Center), 1.6(b) (Library and online resources).

(ii) E-mail. — Immigration Courts generally do not accept inquiries by e-mail.

(iii) E-filing. – Immigration Courts accept electronic submission of the Notice of Entry of Appearance as an Attorney or Representative Before the Immigration Court (Form EOIR-28) except in certain situations. See Chapter 2.1(b) (Entering an appearance).

(h) Emergencies and requests to advance hearing dates. — If circumstances require urgent action by an Immigration Judge, parties should follow the procedures set forth in Chapters 5.10(b) (Motion to advance) or 8 (Stays), as appropriate.

2 Appearances before the Immigration Court

2.1 Representation Generally

***(a) Types of representatives*. —** The regulations specify who may represent parties in immigration proceedings. See 8 C.F.R. § 1292.1. As a practical matter, there are four categories of people who may present cases in Immigration Court: unrepresented aliens (Chapter 2.2), attorneys (Chapter 2.3), accredited representatives (Chapter 2.4), and certain categories of persons who are expressly recognized by the Immigration Court (Chapters 2.5, 2.8, and 2.9).

Attorneys and accredited representatives must register with EOIR in order to practice before the Immigration Court. See 8 C.F.R. § 1292.1(a)(1), (a)(4), (f); Chapters 2.3(b)(i) (eRegistry), 2.4 (Accredited Representatives).

No one else is recognized to practice before the Immigration Court. Non-lawyer immigration specialists, visa consultants, and "notarios," are *not* authorized to represent parties before an Immigration Court.

***(b) Entering an appearance*. —** All representatives must file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See 8 C.F.R. §§ 1003.17(a), 1003.23(b)(1)(ii). A Form EOIR-28 may be filed in one of two ways: either as an electronic Form EOIR-28, or as a paper Form EOIR-28.

Persons appearing without an attorney or representative ("pro se") should not file a Form EOIR-28.

Note that different forms are used to enter an appearance before an Immigration Court, the Board of Immigration Appeals, and the Department of Homeland Security (DHS). The forms used to enter an appearance before the Board and DHS are as follows:

- the Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) is used to enter an appearance before the Board
- the Notice of Entry of Appearance of Attorney or Representative (Form G-28) is used to enter an appearance before DHS

The Immigration Court will not recognize a representative using a Form EOIR-27 or a Form G-28.

(i) Electronic entry of appearance. — After registering with the EOIR eRegistry, attorneys and accredited representatives may file either an electronic or paper Form EOIR-28 in the following situations:

- the first appearance of the representative, either at a hearing or by filing a pleading, motion, application, or other document
- whenever a case is remanded to the Immigration Court
- any change of business address or telephone number for the attorney or representative
- upon reinstatement following an attorney's suspension or expulsion from practice

In order to file an electronic Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), an attorney or accredited representative should refer to the instructions for the EOIR eRegistry, which can be found on the Executive Office for Immigration Review website at www.justice.gov/eoir.

Attorneys and accredited representatives who electronically file a Form EOIR-28 close to a hearing may be required to complete a paper Form EOIR-28 at the hearing.

(ii) Paper entry of appearance. — A paper, not an electronic, Form EOIR-28 must be filed in the following situations:

- A bond redetermination request made before the filing of a Notice to Appear with an Immigration Court
- A motion to reopen
- A motion to reconsider
- A motion to recalendar proceedings that are administratively closed

- A motion to substitute counsel
- A case in which there is more than one open proceeding
- Disciplinary proceedings

When filing a paper Form EOIR-28, representatives should be sure to use the most current version of the form, which can be found on the EOIR website at www.justice.gov/eoir. See also Chapter 11 (Forms), Appendix E (Forms).

(c) Notice to opposing party. — In all instances of representation, the Department of Homeland Security must be served with a copy of the Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 3.2 (Service on the Opposing Party). Even when an attorney or accredited representative files a Form EOIR-28 electronically with the Immigration Court, a printed copy of the electronically filed Form EOIR-28 must be served on the Department of Homeland Security for each case. See Chapter 3.2(c) (Method of service).

(d) Who may file. — Whenever a party is represented, the party should submit all filings and communications to the Immigration Court through the representative. See 8 C.F.R. § 1292.5(a). An individual who is not a party to a proceeding may not file documents with the court. See Chapters 5.1(c) (Persons not party to the proceedings), 3.2 (Service on the Opposing Party).

2.2 Unrepresented Aliens ("Pro se" Appearances)

(a) Generally. — An individual in proceedings may represent himself or herself before the Immigration Court.

Many individuals choose to be represented by an attorney or accredited representative. Due to the complexity of the immigration and nationality laws, the Office of the Chief Immigration Judge recommends that those who can obtain qualified professional representation do so. See Chapters 2.3(b) (Qualifications), 2.4 (Accredited Representatives), 2.5 (Law Students and Law Graduates).

(b) Legal service providers. — The Immigration Courts cannot give advice regarding the selection of a representative. However, aliens in proceedings before an Immigration Court are provided with a list of free or low cost legal service providers within the region in which the Immigration Court is located. See 8 C.F.R. §§ 1003.61(a), 1292.2(a). The list is maintained by the Office of the Chief Immigration Judge and contains

information on attorneys, bar associations, and certain non-profit organizations willing to provide legal services to indigent individuals in Immigration Court proceedings at little or no cost. The free or low cost legal service providers may not be able to represent every individual who requests assistance.

In addition, all of the lists of free legal service providers nationwide are available on the EOIR website at www.justice.gov/eoir.

***(c) Address obligations*. —** Whether represented or not, aliens in proceedings before the Immigration Court must notify the Immigration Court within 5 days of any change in address or telephone number, using the Alien's Change of Address Form (Form EOIR-33/IC). See 8 C.F.R. § 1003.15(d)(2). In many instances, the Immigration Court will send notification as to the time, date, and place of hearing or other official correspondence to the alien's address. If an alien fails to keep address information up to date, a hearing may be held in the alien's absence, and the alien may be ordered removed even though the alien is not present. This is known as an "in absentia" order of removal.

Parties should note that notification to the Department of Homeland Security of a change in address does not constitute notification to the Immigration Court.

> ***(i) Change of address or telephone number*. —** Changes of address or telephone number must be in writing and *only* on the Alien's Change of Address Form (Form EOIR-33/IC). Unless the alien is detained, *no other means of notification are acceptable*. Changes in address or telephone numbers communicated through pleadings, motion papers, correspondence, telephone calls, applications for relief, or other means will *not* be recognized, and the address information on record will not be changed.
>
> ***(ii) Form EOIR-33/IC*. —** The alien should use only the most current version of the Aliens's Change of Address Form (Form EOIR-33/IC). The Form EOIR-33/IC is available at the Immigration Court and on the Executive Office for Immigration Review website at www.justice.gov/eoir. See also Chapter 11 (Forms) and Appendix E (Forms). Individuals in proceedings should observe the distinction between the Immigration Court's Change of Address Form (Form EOIR-33/IC) and the Board of Immigration Appeal's Change of Address Form (Form EOIR-33/BIA). The Immigration Courts will not recognize changes in address or telephone numbers communicated on the Board of Immigration Appeal's Change of Address Form (Form EOIR-33/BIA), and the address information on record will not be changed.
>
> ***(iii) Motions*. —** An alien should file an Alien's Change of Address Form (Form EOIR-33/IC) when filing a motion to reopen, a motion to reconsider, or a

motion to recalendar. This ensures that the Immigration Court has the alien's most current address when it adjudicates the motion.

(d) Address obligations of detained aliens. — When an alien is detained, the Department of Homeland Security (DHS) is obligated to report the location of the alien's detention to the Immigration Court. DHS is also obligated to report when an alien is moved between detention locations and when he or she is released. See 8 C.F.R. § 1003.19(g).

(i) While detained. — As noted in (d), above, DHS is obligated to notify the Immigration Court when an alien is moved between detention locations. See 8 C.F.R. § 1003.19(g).

(ii) When released. — The Department of Homeland Security is responsible for notifying the Immigration Court when an alien is released from custody. 8 C.F.R. § 1003.19(g). Nonetheless, the alien should file an Alien's Change of Address Form (Form EOIR-33/IC) with the Immigration Court within 5 days of release from detention to ensure that Immigration Court records are current. See Chapter 2.2(c) (Address obligations).

2.3 Attorneys

(a) Right to counsel. — An alien in immigration proceedings may be represented by an attorney of his or her choosing, at no cost to the government. Unlike in criminal proceedings, the government is *not* obligated to provide legal counsel. The Immigration Court provides aliens with a list of attorneys who may be willing to represent aliens for little or no cost, and many of these attorneys handle cases on appeal as well. See Chapter 2.2(b) (Legal service providers). Bar associations and nonprofit agencies can also refer aliens to practicing attorneys.

(b) Qualifications. — An attorney may practice before the Immigration Court only if he or she is a member in good standing of the bar of the highest court of any state, possession, territory, or Commonwealth of the United States, or the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law. See 8 C.F.R. §§ 1001.1(f), 1292.1(a)(1). Any attorney practicing before the Immigration Court who is the subject of such discipline in any jurisdiction must promptly notify the Executive Office for Immigration Review, Office of the General Counsel. See Chapter 10.6 (Duty to Report). In addition, an attorney must be registered with EOIR in order to practice before the Immigration Court. See 8 C.F.R. § 1292.1(f), and Chapter 2.3(b)(i) (eRegistry), below.

(i) eRegistry. **—** An attorney must register with the EOIR eRegistry in order to practice before the Immigration Court. See 8 C.F.R. § 1292.1(f). Registration must be completed online on the EOIR website at www.justice.gov/eoir.

(**A)** ***Administrative suspension.*** **—** If an attorney fails to register, he or she may be administratively suspended from practice before the Immigration Court. See 8 C.F.R. § 1292.1(f). Multiple attempts by an unregistered attorney to appear before EOIR may result in disciplinary sanctions. See 8 C.F.R. § 1003.101(b).

(B) ***Appearance by unregistered attorney.*** **—** An Immigration Judge may, under extraordinary and rare circumstances, permit an unregistered attorney to appear at one hearing if the attorney files a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), and provides, on the record, the following registration information: name; date of birth; business address(es); business telephone number(s); e-mail address; and bar admission information (including bar number if applicable) for all the jurisdictions in which the attorney is licensed to practice, including those in which he or she is inactive. See 8 C.F.R. § 1292.1(f). An unregistered attorney who is permitted to appear at one hearing in such circumstances must complete the electronic registration process without delay after that hearing.

(c) Appearances. **—** Attorneys must enter an appearance before the Immigration Court by filing a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See 8 C.F.R. §§ 1003.17(a), 1003.23(b)(1)(ii). A Form EOIR-28 may be filed in one of two ways: either as an electronic Form EOIR-28, or as a paper Form EOIR-28. See Chapter 2.1(b) (Entering an appearance). A Form EOIR-28 should always be filed in the situations described in Chapter 2.1(b) (Entering an appearance). If a paper Form EOIR-28 is submitted with other documents, the Form EOIR-28 should be at the front of the package. See Chapter 3.3(c) (Format). It should *not* be included as an exhibit, as part of an exhibit, or with other supporting materials. In addition, whether filed electronically or on paper, the Form EOIR-28 must be served on the opposing party. See Chapter 3.2 (Service on the Opposing Party). If information is omitted from the Form EOIR-28 or it is not properly completed, the attorney's appearance may not be recognized, and the accompanying filing may be rejected.

(i) Form EOIR-28. **—** When filing Form EOIR-28 on paper rather than electronically, attorneys should use the most current version of the Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), which can be found on the Executive Office for Immigration Review (EOIR) website at www.justice.gov/eoir. See also Chapter 11 (Forms), Appendix E

(Forms). The use of green paper when filing a paper Form EOIR-28 is strongly encouraged. See Chapter 11.2(f) (Form colors).

Attorneys should observe the distinction between the Immigration Courts' Notice of Appearance (Form EOIR-28) and the Board of Immigration Appeal's Notice of Appearance (Form EOIR-27). The Immigration Courts will not recognize an attorney based on a Form EOIR-27, whether filed with the Board or the Immigration Court. Accordingly, when a case is remanded from the Board to the Immigration Court, the attorney must file a new Form EOIR-28.

***(ii) Attorney information*. —** The Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) must bear an individual attorney's current address and the attorney's signature in compliance with the requirements of Chapter 3.3(b) (Signatures). When filing a paper Form EOIR-28, all information required on the form, including the date, should be typed or printed clearly. Note that the EOIR ID number issued by EOIR through the eRegistry process must be provided on the Form EOIR-28.

***(iii) Bar information*. —** When an attorney is a member of a state bar which has a state bar number or corresponding court number, the attorney must provide that number on the Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). If the attorney has been admitted to more than one state bar, *each and every* state bar to which the attorney has ever been admitted–including states in which the attorney is no longer an active member or has been suspended, expelled, or disbarred–must be listed and the state bar number, if any, provided.

***(iv) Disciplinary information*. —** The box regarding attorney bar membership and disciplinary action on the Form EOIR-28 must only be checked if the attorney is not subject to any order disbarring, suspending, or otherwise restricting him or her in the practice of law. If the attorney is subject to discipline, then the attorney must provide information on the back of the form. (Attorneys may attach an explanatory supplement or other documentation to the form.) An attorney who fails to provide discipline information will not be recognized by the Immigration Court and may be subject to disciplinary action.

***(d) Scope of representation*. —** The filing of a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) constitutes entrance of appearance for all proceedings, including removal and bond. Once an attorney has made an appearance, that attorney has an obligation to continue representation until such time as a motion to withdraw or substitute counsel has been granted by the Immigration Court. See Chapter 2.3(i) (Change in representation).

***(e) Multiple representatives*. —** Sometimes, an alien may retain more than one attorney at a time. In such cases, *all* of the attorneys are representatives of record, and will all be held responsible as attorneys for the respondent. One of the attorneys is recognized as the primary attorney (notice attorney). All of the attorneys must file Notices of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), checking the appropriate box to reflect whether the attorney is the primary attorney or a non-primary attorney. All submissions to the Immigration Court must bear the name of one of the representatives of record and be signed by that attorney. See subsection (c), above. See also Chapter 3.3(b) (Signatures).

***(f) Law firms*. —** Only individuals, not firms or offices, may represent parties before the Immigration Court. In every instance of representation, a named attorney must enter an appearance to act as an attorney of record. In addition, all filings must be signed by an attorney of record. See Chapter 3.3(b) (Signatures). Accordingly, the Immigration Court does not recognize appearances or accept pleadings, motions, briefs, or other filings submitted by a law firm, law office, or other entity if the name and signature of an attorney of record is not included. See subsection (e), above. See also Chapter 3.3(b)(ii) (Law firms). If, at any time, more than one attorney represents an alien, one of the attorneys must be designated as the primary attorney (notice attorney). See subsection (e), above.

> ***(i) Change in firm*. —** In the event that an attorney departs a law firm but wishes to continue representing the alien, the attorney must promptly file a new Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28). The new Notice of Appearance must reflect any change of address and apprize the Immigration Court of his or her change in affiliation. The attorney should check the "new address" box in the address block of the new Form EOIR-28, which must be served on the opposing party. See Chapter 3.2 (Service on the Opposing Party).
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> ***(ii) Change in attorney*. —** If the attorney of record leaves a law firm but the law firm wishes to retain the case, another attorney in the firm must file a motion for substitution of counsel. Similarly, if a law firm wishes to reassign responsibility for a case from one attorney to another attorney in the firm, the new attorney must file a motion for substitution of counsel. Until such time as a motion for substitution of counsel is granted, the original attorney remains the alien's attorney and is responsible for the case. See subsection (i)(i), below.

***(g) Service upon counsel*. —** Service of papers upon counsel of a represented party constitutes service on the represented party. See 8 C.F.R. § 1292.5(a), Chapter 3.2(f) (Representatives and service).

***(h) Address obligations of counsel*. —** Attorneys who enter an appearance before the Immigration Court have an affirmative duty to keep the Immigration Court apprised of their current address and telephone number. See 8 C.F.R. § 1003.15(d)(2). Changes in counsel's address or telephone number should be made by updating the attorney's registration information in the EOIR eRegistry to include the new address and telephone number. See Chapter 2.3(b)(i) (eRegistry). In addition, once the new address is added to the attorney's registration information, the attorney must submit a new electronic or paper Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) for each alien for which the attorney address is being changed. If an attorney has multiple addresses, the attorney should make sure that the appropriate attorney address is designated for each alien. See Chapter 2.3(c) (Appearances). The attorney also should check the "New Address" box in the address block on the Form EOIR-28. The attorney should *not* submit an Alien's Change of Address Form (Form EOIR–33/IC) to notify the Immigration Court of a change in the attorney's address.

> ***(i) No compound changes of address*. —** An attorney may not simply submit a list of clients for whom his or her change of address should be entered. Attorneys must submit a new electronic or paper Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) for each alien he or she represents.
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> ***(ii) Address obligations of represented aliens*. —** Even when an alien is represented, the alien is still responsible for keeping the Immigration Court apprised of his or her address and telephone number. Changes of address or telephone number for the alien may not be made on the Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) but must be made on the Alien's Change of Address Form (Form EOIR-33/IC). See Chapter 2.2(c) (Address obligations).

***(i) Change in representation*. —** Changes in representation may be made as described in subsections (i) through (iii), below.

> ***(i) Substitution of counsel*. —** When an alien wishes to substitute a new attorney for a previous attorney, the new attorney must submit a written or oral motion for substitution of counsel, accompanied by a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28). The new attorney must file a paper Form EOIR-28, not an electronic Form EOIR-28. See 8 C.F.R. § 1003.17(b), Chapter 2.1(b) (Entering an appearance). If in writing, the motion should be filed with a cover page labeled "MOTION FOR SUBSTITUTION OF COUNSEL" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). The motion should contain the following information:

- the reason(s) for the substitution of counsel, in conformance with applicable state bar and other ethical rules

- evidence that prior counsel has been notified about the motion for substitution of counsel

- evidence of the alien's consent to the substitution of counsel

If the motion is in writing, the new counsel should serve a copy of the motion and executed Form EOIR-28 on prior counsel as well as the Department of Homeland Security. A Proof of Service of the motion and Form EOIR-28 on prior counsel is sufficient to show that prior counsel has been notified about the motion to substitute counsel.

In adjudicating a motion for substitution of counsel, the time remaining before the next hearing and the reason(s) given for the substitution are taken into consideration. Extension requests based on substitution of counsel are not favored.

If a motion for substitution of counsel is granted, prior counsel need not file a motion to withdraw. However, until a motion for substitution of counsel is granted, the original counsel remains the alien's attorney of record and must appear at all scheduled hearings.

The granting of a motion for substitution of counsel does *not* constitute a continuance of a scheduled hearing. Accordingly, parties must be prepared to proceed at the next scheduled hearing.

***(ii) Withdrawal of counsel*. —** When an attorney wishes to withdraw from representing an alien, and the alien has not obtained a new attorney, the attorney must submit a written or oral motion to withdraw. See 8 C.F.R. § 1003.17(b). If in writing, the motion should be filed with a cover page labeled "MOTION TO WITHDRAW AS COUNSEL" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). The motion should contain the following information:

- the reason(s) for the withdrawal of counsel, in conformance with applicable state bar or other ethical rules

- the last known address of the alien

- a statement that the attorney has notified the alien of the request to withdraw as counsel or, if the alien could not be notified, an explanation of the efforts made to notify the alien of the request

- evidence of the alien's consent to withdraw or a statement of why evidence of such consent is unobtainable

- evidence that the attorney notified or attempted to notify the alien, with a recitation of specific efforts made, of (a) pending deadlines; (b) the date, time, and place of the next scheduled hearing; (c) the necessity of meeting deadlines and appearing at scheduled hearings; and (d) the consequences of failing to meet deadlines or appear at scheduled hearings

In adjudicating a motion to withdraw, the time remaining before the next hearing and the reason(s) given for the withdrawal are taken into consideration.

Until a motion to withdraw is granted, the attorney who filed the motion remains the alien's attorney of record and must attend all scheduled hearings.

(iii) Release of counsel. **—** When an alien elects to terminate representation by counsel, the counsel remains the attorney of record until the Immigration Judge has granted either a motion for substitution of counsel or a motion to withdraw, as appropriate. See subsections (i) and (ii), above.

(j) Appearances "on behalf of." **—** Appearances "on behalf of" occur when a second attorney appears on behalf of the attorney of record at a specific hearing before the Immigration Court. The attorney making the appearance need not work at the same firm as the attorney of record. Appearances "on behalf of" are permitted as described below.

First, the attorney making the appearance must notify the Immigration Judge on the record that he or she is appearing on behalf of the attorney of record.

Second, the attorney making the appearance must file a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) with the Immigration Court and serve it on the opposing party. The attorney must file a paper Form EOIR-28, not an electronic Form EOIR-28. See Chapter 2.1(b) (Entering an appearance). The attorney must check the box on the Form EOIR-28 indicating that he or she is making an appearance on behalf of the attorney of record and fill in the name of the attorney of record.

Third, the appearance on behalf of the attorney of record must be authorized by the Immigration Judge.

At the hearing, the attorney making the appearance may file documents on behalf of the alien. The attorney making the appearance cannot file documents on behalf of the alien at any other time. See Chapters 3.3(b) (Signatures), 3.2 (Service on the Opposing Party). The attorney of record need not file a new Form EOIR-28 after the hearing.

(k) Attorney misconduct. — The Executive Office for Immigration Review has the authority to impose disciplinary sanctions upon attorneys and representatives who violate rules of professional conduct before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security. See Chapter 10 (Discipline of Practitioners). Where an attorney in a case has been suspended from practice before the Immigration Court and the alien has not retained new counsel, the Immigration Court treats the alien as unrepresented. In such a case, all mailings from the Immigration Court, including notices of hearing and orders, are mailed directly to the alien. Any filing from an attorney who has been suspended from practice before the Immigration Court is rejected. See Chapter 3.1(d) (Defective filings).

2.4 Accredited Representatives

An accredited representative is a person who is approved by the Board of Immigration Appeals to represent aliens before the Board, the Immigration Courts, and the Department of Homeland Security. He or she must be a person of good moral character who works for a specific nonprofit religious, charitable, social service, or similar organization which has been recognized by the Board to represent aliens. Accreditation is valid for a period of up to three years and can be renewed. See 8 C.F.R. §§ 1292.1(a)(4), 1292.2(d). Before representing an individual before the Immigration Court, an accredited representative must:

- register with the EOIR eRegistry, and,
- file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28)).

See Chapters 2.1(b) (Entering an appearance), 2.3(b) (Qualifications), 2.3(c) (Appearances), 2.4(e) (Applicability of attorney rules).

(a) Qualifying organizations. — The Board of Immigration Appeals officially recognizes certain nonprofit religious, charitable, social service, and similar organizations as legal service providers. See 8 C.F.R. § 1292.2(a), Chapter 2.2(b) (Legal Service

Providers). To be recognized by the Board, an organization must affirmatively apply for that recognition. Such an organization must establish to the satisfaction of the Board that its fees are only nominal, that it does not assess excessive membership dues for persons given assistance, and that it has at its disposal adequate knowledge, information, and experience in immigration law and procedure. The qualifications and procedures for organizations seeking Board recognition are set forth in the regulations. 8 C.F.R. § 1292.2(a), (b). Questions regarding recognition may be directed to the Executive Office for Immigration Review, Board of Immigration Appeals. See Appendix B (EOIR Directory).

***(b) Qualifying representatives*. —** The Board of Immigration Appeals accredits persons of good moral character as representatives of qualifying organizations. See 8 C.F.R. § 1292.2(d). Representatives of the recognized organizations are not automatically accredited by the Board. Rather, the recognized organization must affirmatively apply for accreditation on each representative's behalf. See 8 C.F.R. § 1292.2(d). No individual may apply on his or her own behalf. In addition, an accredited representative must register with EOIR's eRegistry in order to practice before the Immigration Courts. See Chapters 2.3(b)(i) (Qualifications), 2.4(e) (Applicability of attorney rules).

Accreditation is not transferrable from one representative to another, and no individual retains accreditation upon his or her separation from the recognized organization.

***(c) Immigration specialists*. —** Accredited representatives should not be confused with non-lawyer immigration specialists, visa consultants, and "notarios." See Chapter 2.7 (Immigration Specialists). Accredited representatives must be expressly accredited by the Board of Immigration Appeals and must be employed by a nonprofit institution specifically recognized by the Board.

***(d) Verification*. —** To verify that an individual has been accredited by the Board of Immigration Appeals, the public can either:

- consult the listing at www.justice.gov/eoir, or
- contact the Executive Office for Immigration Review, Board of Immigration Appeals (see Appendix B (EOIR Directory))

***(e) Applicability of attorney rules*. —** Except in those instances set forth in the regulations and this manual, accredited representatives are to observe the same rules and procedures as attorneys. See Chapter 2.3 (Attorneys).

***(f) Signatures*. —** Only the accredited representative who is the representative of record may sign submissions to the Immigration Court. An accredited representative, even

in the same organization, may not sign or file documents on behalf of another accredited representative. See Chapter 3.3(b) (Signatures).

***(g) Representative misconduct*. —** Accredited representatives must comply with certain standards of professional conduct. See 8 C.F.R. § 1003.101 et seq.

***(h) Request to be removed from list of accredited representatives*. —** An accredited representative who no longer wishes to represent aliens should write to the Chairman of the Board of Immigration Appeals and request to be removed from the list. See Appendix B (EOIR Directory).

2.5 Law Students and Law Graduates

***(a) Generally*. —** Law students and law graduates (law school graduates who are not yet admitted to practice law) may appear before the Immigration Court if certain conditions are met and the appearance is approved by the Immigration Judge. Recognition by the Immigration Court is not automatic and must be requested in writing. See 8 C.F.R. § 1292.1(a)(2).

***(b) Law students*. —**

***(i) Notice of Appearance*. —** A law student does not register with the Executive Office for Immigration Review eRegistry and cannot electronically file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.3(b) (Qualifications). A law student must file a paper Form EOIR-28. The law student should be careful to use the most current version of the Form EOIR-28, which is available on the EOIR website at www.justice.gov/eoir. He or she should check the box on the Form EOIR 28 indicating that he or she is a law student as defined in 8 C.F.R. § 1292.1(a)(2), and provide on the reverse side of the form both the name of the supervising attorney or accredited representative and that person's business address, if different from that of the law student. The supervising attorney or accredited representative must be registered to practice before EOIR and the Form EOIR-28 should also include the EOIR ID number of the supervising attorney or fully accredited representative.

***(ii) Representation statement*. —** A law student wishing to appear before the Immigration Court must file a statement that he or she is participating in a legal aid program or clinic conducted by a law school or nonprofit organization and is under the direct supervision of a faculty member, licensed attorney, or accredited representative. The statement should also state that the law student is appearing without direct or indirect remuneration from the alien being represented. Such

statement should be filed with the Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28). The law student's supervisor may be required to accompany the law student at any hearing. 8 C.F.R. § 1292.1(a)(2).

(c) Law graduates. —

(i) Notice of Appearance. — A law graduate does not register with the Executive Office for Immigration Review eRegistry and cannot electronically file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.3(b) (Qualifications). A law graduate must file a paper Form EOIR-28. The law graduate should be careful to use the most current version of the Form EOIR-28, which is available on the EOIR website at www.justice.gov/eoir. He or she should check the box on the Form EOIR 28 indicating that he or she is a law graduate as defined in 8 C.F.R. § 1292.1(a)(2), and provide on the reverse side of the form both the name of the supervising attorney or accredited representative and that person's business address, if different from that of the law graduate. The supervising attorney or accredited representative must be registered to practice before EOIR and the Form EOIR-28 should also include the EOIR ID number of the supervising attorney or fully accredited representative.

(ii) Representation statement. — A law graduate wishing to appear before the Immigration Court must file a statement that he or she is under the direct supervision of a licensed attorney, or accredited representative. The statement should also state that the law graduate is appearing without direct or indirect remuneration from the alien being represented. Such statement should be filed with the Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28). The law graduate's supervisor may be required to accompany the law graduate at any hearing. 8 C.F.R. § 1292.1(a)(2).

(d) Representative misconduct. — Law students and law graduates must comply with standards of professional conduct. See 8 C.F.R. § 1003.101 et seq.

2.6 Paralegals

Paralegals are professionals who assist attorneys in the practice of law. They are not themselves licensed to practice law and therefore may not represent parties before the Immigration Court.

2.7 Immigration Specialists

Immigration specialists–who include visa consultants and "notarios"–are not authorized to practice law or appear before the Immigration Court. These individuals may be violating the law by practicing law without a license. As such, they do not qualify either as accredited representatives or "reputable individuals" under the regulations. See Chapters 2.4 (Accredited Representatives), 2.9(a) (Reputable individuals).

Anyone, including members of the public, may report instances of suspected misconduct by immigration specialists to the Executive Office for Immigration Review, Fraud Program. See Chapter 1.4(b) (EOIR Fraud Program).

2.8 Family Members

If a party is a child, then a parent or legal guardian may represent the child before the Immigration Court, provided the parent or legal guardian clearly informs the Immigration Court of their relationship. If a party is an adult, a family member may represent the party *only* when the family member has been authorized by the Immigration Court to do so. See Chapter 2.9(a) (Reputable individuals).

2.9 Others

***(a) Reputable individuals*. —** Upon request, an Immigration Judge has the discretion to allow a reputable individual to appear on behalf of an alien, if the Immigration Judge is satisfied that the individual is capable of providing competent representation to the alien. See 8 C.F.R. § 1292.1(a)(3). To qualify as a reputable individual, an individual must meet all of the following criteria:

- be a person of good moral character
- appear on an individual basis, at the request of the alien
- receive no direct or indirect remuneration for his or her assistance
- file a declaration that he or she is not being remunerated for his or her assistance

- have a preexisting relationship with the alien (e.g., relative, neighbor, clergy), except in those situations where representation would otherwise not be available, and

- be officially recognized by the Immigration Court

Any individual who receives any sort of compensation or makes immigration appearances on a regular basis (such as a non-lawyer "immigration specialist," "visa consultant," or "notario") does not qualify as a "reputable individual" as defined in the regulations.

A reputable individual does not register with the Executive Office for Immigration Review eRegistry and cannot electronically file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.3(b) (Qualifications). To appear before the Immigration Court, a reputable individual must file a paper Form EOIR-28. The reputable individual should be careful to use the most current version of the Form EOIR-28, which is available on the EOIR website at www.justice.gov/eoir. The reputable individual should check the box on the Form EOIR-28 indicating that he or she is a reputable individual as defined in 8 C.F.R. § 1292.1(a)(3). Identification Numbers ("EOIR ID numbers") are not issued to reputable individuals, and therefore need not be provided on the Form EOIR-28. A person asking to be recognized as a reputable individual should file a statement attesting to each of the criteria set forth above. This statement should accompany the Form EOIR-28.

(b) Fellow inmates. — The regulations do not provide for representation by fellow inmates or other detained persons. Fellow inmates do not qualify under any of the categories of representatives enumerated in the regulations.

(c) Accredited officials of foreign governments. — An accredited official who is in the United States may appear before the Immigration Court in his or her official capacity with the alien's consent. See 8 C.F.R. § 1292.1(a)(5). An accredited official does not register with the Executive Office for Immigration Review eRegistry and cannot electronically file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.3(b) (Qualifications). To appear before the Immigration Court, an accredited official must file a paper Form EOIR-28. The accredited official should be careful to use the most current version of the Form EOIR-28, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir. An accredited official should check the box on the Form EOIR-28 indicating that he or she is an accredited foreign government official as defined in 8 C.F.R. § 1292.1(a)(5). Identification Numbers ("EOIR ID numbers") are not issued to accredited officials, and therefore need not be provided on the Form EOIR-28. The individual must

also submit evidence verifying his or her status as an accredited official of a foreign government.

(d) Former employees of the Department of Justice.— Former employees of the Department of Justice may be restricted in their ability to appear before the Immigration Court. See 8 C.F.R. § 1292.1(c).

(e) Foreign student advisors.— Foreign student advisors, including "Designated School Officials," are not authorized to appear before the Immigration Court, unless the advisor is an accredited representative. See Chapter 2.4 (Accredited Representatives).

3 Filing with the Immigration Court

3.1 Delivery and Receipt

***(a) Filing*. —** Documents are filed either with the Immigration Judge during a hearing or with the Immigration Court outside of a hearing. For documents filed outside of a hearing, the filing location is usually the same as the hearing location. However, for some hearing locations, documents are filed at a separate "Administrative Control Court." See subsection (i), below, 8 C.F.R. §§ 1003.31, 1003.13.

***(i) Administrative Control Courts*. —** "Administrative Control Courts" maintain the Records of Proceeding for hearings that take place at certain remote hearing locations. A list of these locations, and of the Administrative Control Courts responsible for these locations, is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

***(ii) Shared administrative control*. —** In some instances, two or more Immigration Courts share administrative control of cases. Typically, these courts are located close to one another, and one of the courts is in a prison or other detention facility. Where courts share administrative control of cases, documents are filed at the hearing location. Cases are sometimes transferred between the courts without a motion to change venue. However, if a party wishes for a case to be transferred between the courts, a motion to change venue is required. See Chapter 5.10(c) (Motion to change venue). A list of courts with shared administrative control is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

***(iii) Receipt rule*. —** An application or document is not deemed "filed" until it is received by the Immigration Court. All submissions received by the Immigration Court are date-stamped on the date of receipt. Chapter 3.1(c) (Must be "timely"). The Immigration Court does not observe the "mailbox rule." Accordingly, a document is not considered filed merely because it has been received by the U.S. Postal Service, commercial courier, detention facility, or other outside entity.

***(iv) Postage problems*. —** All required postage or shipping fees must be paid by the sender before an item will be accepted by the Immigration Court. When using a courier or similar service, the sender must properly complete the packing slip, including the label and billing information. The Immigration Court does not pay postage due or accept mailings without sufficient postage. Further, the Immigration

Court does not accept items shipped by courier without correct label and billing information.

(v) Filings. — Filings sent through the U.S. Postal Service or by courier should be sent to the Immigration Court's street address. Hand-delivered filings should be brought to the Immigration Court's public window during that court's filing hours. Street addresses and hours of operation for the Immigration Courts are available in on the Executive Office for Immigration Review website at www.justice.gov/eoir. Addresses are also available in Appendix A (Immigration Court Addresses).

Given the importance of timely filing, parties are encouraged to use courier or overnight delivery services, whenever appropriate, to ensure timely filing. However, the failure of any service to deliver a filing in a timely manner does not excuse an untimely filing. See Chapter 3.1(c)(iii) (Delays in delivery).

(vi) Separate envelopes. — Filings pertaining to unrelated matters should not be enclosed in the same envelope. Rather, filings pertaining to unrelated matters should be sent separately or in separate envelopes within a package.

(vii) Faxes and e-mail. — The Immigration Court does not accept faxes or other electronic submissions unless the transmission has been specifically requested by the Immigration Court staff or the Immigration Judge. Unauthorized transmissions are not made part of the record and are discarded without consideration of the document or notice to the sender.

(viii) E-filing. — The Immigration Court accepts electronic submission of the Notice of Entry of Appearance as an Attorney or Representative Before the Immigration Court (Form EOIR-28) except in certain situations. See Chapter 2.1(b) (Entering an Appearance). All other filings must be submitted as paper submissions to the Immigration Court.

(b) Timing of submissions. — Filing deadlines depend on the stage of proceedings and whether the alien is detained. Deadlines for filings submitted while proceedings are pending before the Immigration Court (for example, applications, motions, responses to motions, briefs, pre-trial statements, exhibits, and witness lists) are as specified in subsections (i), (ii), and (iii), below, unless otherwise specified by the Immigration Judge. Deadlines for filings submitted after proceedings before the Immigration Court have been completed are as specified in subsections (iv) and (v), below.

Deadlines for filings submitted while proceedings are pending before the Immigration Court depend on whether the next hearing is a master calendar or an individual calendar hearing.

Untimely filings are treated as described in subsection (d)(ii), below. Failure to timely respond to a motion may result in the motion being deemed unopposed. See Chapter 5.12 (Response to Motion). "Day" is constructed as described in subsection (c), below.

(i) Master calendar hearings. —

(A) Non-detained aliens. — For master calendar hearings involving non-detained aliens, filings must be submitted at least fifteen (15) days in advance of the hearing if requesting a ruling at or prior to the hearing. Otherwise, filings may be made either in advance of the hearing or in open court during the hearing.

When a filing is submitted at least fifteen days prior to a master calendar hearing, the response must be submitted within ten (10) days after the original filing with the Immigration Court. If a filing is submitted less than fifteen days prior to a master calendar hearing, the response may be presented at the master calendar hearing, either orally or in writing.

(B) Detained aliens. — For master calendar hearings involving detained aliens, filing deadlines are as specified by the Immigration Court.

(ii) Individual calendar hearings. —

(A) Non-detained aliens. — For individual calendar hearings involving non-detained aliens, filings must be submitted at least fifteen (15) days in advance of the hearing. This provision does not apply to exhibits or witnesses offered solely to rebut and/or impeach. Responses to filings that were submitted in advance of an individual calendar hearing must be filed within ten (10) days after the original filing with the Immigration Court. Objections to evidence may be made at any time, including at the hearing.

(B) Detained aliens. — For individual calendar hearings involving detained aliens, filing deadlines are as specified by the Immigration Court.

(iii) Asylum applications. — Asylum applications are categorized as either "defensive" or "affirmative." A defensive asylum application is filed with the Immigration Court by an alien already in proceedings. An affirmative asylum

application is filed with the Department of Homeland Security (DHS) Asylum Office by an alien not in removal proceedings. If the DHS Asylum Office declines to grant an affirmative asylum application, removal proceedings may be initiated. In that case, the asylum application is referred to an Immigration Judge, who may grant or deny the application. See 8 C.F.R. § 1208.4.

An alien filing an application for asylum should be mindful that the application must be filed within one year after the date of the alien's arrival in the United States, unless certain exceptions apply. INA § 208(a)(2)(B), 8 C.F.R. § 1208.4(a)(2).

***(A) Defensive applications*. —** Defensive asylum applications are filed in open court at a master calendar hearing. For information regarding lodging an application for purposes of employment authorization, see Chapter 4.15(l) (Asylum Clock).

***(B) Affirmative applications*. —** Affirmative asylum applications referred to an Immigration Court by the DHS Asylum Office are contained in the Record of Proceedings. Therefore, there is no need for the alien to re-file the application with the Immigration Court. After being placed in Immigration Court proceedings, the alien may amend his or her asylum application. For example, the alien may submit amended pages of the application, as long as all changes are clearly reflected. Such amendments must be filed by the usual filing deadlines, provided in subsections (b)(i) and (b)(ii), above. The amendment should be accompanied by a cover page with an appropriate caption, such as "AMENDMENT TO PREVIOUSLY FILED ASYLUM APPLICATION." See Appendix F (Sample Cover Page).

***(iv) Reopening and reconsideration*. —** Deadlines for filing motions to reopen and motions to reconsider with the Immigration Court are governed by statute and regulation. See Chapter 5 (Motions). Responses to such motions are due within fifteen (15) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

***(v) Appeals*. —** Appeals must be received by the Board of Immigration Appeals no later than 30 calendar days after the Immigration Judge renders an oral decision or mails a written decision. See 8 C.F.R. § 1003.38, Chapter 6 (Appeals of Immigration Judge Decisions).

***(vi) Specific deadlines*. —** The deadlines for specific types of filings are listed in Appendix D (Deadlines).

(c) Must be "timely." — The Immigration Court places a date stamp on all documents it receives. Absent persuasive evidence to the contrary, the Immigration Court's date stamp is controlling in determining whether a filing is "timely." Because filings are date-stamped upon arrival at the Immigration Court, parties should file documents as far in advance of deadlines as possible.

(i) Construction of "day." — All filing deadlines are calculated in calendar days. Thus, unless otherwise indicated, all references to "days" in this manual refer to calendar days rather than business days.

(ii) Computation of time. — Parties should use the following guidelines to calculate deadlines.

(A) Deadlines on specific dates. — A filing may be due by a specific date. For example, an Immigration Judge may require a party to file a brief by June 21, 2008. If such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(B) Deadlines prior to hearings. — A filing may be due a specific period of time *prior to* a hearing. For example, if a filing is due 15 days prior to a hearing, the day of the hearing counts as "day 0" and the day before the hearing counts as "day 1." Because deadlines are calculated using calendar days, Saturdays, Sundays, and legal holidays are counted. If, however, such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(C) Deadlines following hearings. — A filing may be due within a specific period of time *following* a hearing. For example, if a filing is due 15 days after a master calendar hearing, the day of the hearing counts as "day 0" and the day following the hearing counts as "day 1." In such cases, the day of the hearing counts as "day 0" and the day following the hearing counts as "day 1." Because deadlines are calculated using calendar days, Saturdays, Sundays, and legal holidays are counted. If, however, such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(D) Deadlines following Immigration Judges' decisions. — Pursuant to statute or regulation, a filing may be due within a specific period of time following an Immigration Judge's decision. For example, appeals, motions to reopen, and motions to reconsider must be filed within such deadlines. See 8 C.F.R. §§ 1003.38(b), 1003.23. In such cases, the day the Immigration Judge renders an oral decision or mails a written decision counts

as "day 0." The following day counts as "day 1." Statutory and regulatory deadlines are calculated using calendar days. Therefore, Saturdays, Sundays, and legal holidays are counted. If, however, a statutory or regulatory deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

***(E) Deadlines for responses*. —** A response to a filing may be due within a specific period of time following the original filing. For example, if a response to a motion is due within 10 days after the motion was filed with the Immigration Court, the day the original filing is received by the Immigration Court counts as "day 0." The following day counts as "day 1." Because deadlines are calculated using calendar days, Saturdays, Sundays, and legal holidays are counted. If, however, such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

***(iii) Delays in delivery*. —** Postal or delivery delays do not affect existing deadlines. Parties should anticipate all postal or delivery delays, whether a filing is made by first class mail, priority mail, or overnight or guaranteed delivery service. The Immigration Court does not excuse untimeliness due to postal or delivery delays, except in rare circumstances. See Chapter 3.1(a)(iii) (Receipt rule).

***(iv) Motions for extensions of filing deadlines*. —** Immigration Judges have the authority to grant motions for extensions of filing deadlines that are not set by regulation. A deadline is only extended upon the *granting* of a motion for an extension. Therefore, the mere filing of a motion for an extension does not excuse a party's failure to meet a deadline. Unopposed motions for extensions are not automatically granted.

***(A) Policy*. —** Motions for extensions are not favored. In general, conscientious parties should be able to meet filing deadlines. In addition, every party has an ethical obligation to avoid delay.

***(B) Deadline*. —** A motion for an extension should be filed as early as possible, and must be received by the original filing deadline.

***(C) Contents*. —** A motion for an extension should be filed with a cover page labeled "MOTION FOR EXTENSION" and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). A motion for an extension should clearly state:

- when the filing is due
- the reason(s) for requesting an extension
- that the party has exercised due diligence to meet the current filing deadline
- that the party will meet a revised deadline
- if the parties have communicated, whether the other party consents to the extension

***(d) Defective filings*. —** Filings may be deemed defective due to improper filing, untimely filing, or both.

***(i) Improper filings*. —** If an application, motion, brief, exhibit, or other submission is not properly filed, it is rejected by the Immigration Court with an explanation for the rejection. Parties are expected to exercise due diligence. Parties wishing to correct the defect and refile after a rejection must do so promptly. See Chapters 3.1(b) (Timing of submissions), 3.1(c) (Must be "timely"). See also subsection (ii), below. The term "rejected" means that the filing is returned to the filing party because it is defective and therefore will not be considered by the Immigration Judge. It is not an adjudication of the filing or a decision regarding its content. Examples of improper submissions include:

- if a fee is required, failure to submit a fee receipt or fee waiver request
- failure to include a proof of service upon the opposing party
- failure to comply with the language, signature, and format requirements
- illegibility of the filing

If a document is improperly filed but not rejected, the Immigration Judge retains the authority to take appropriate action.

***(ii) Untimely filings*. —** The untimely submission of a filing may have serious consequences. The Immigration Judge retains the authority to determine how to treat an untimely filing. Accordingly, parties should be mindful of the requirements

regarding timely filings. See Chapters 3.1(b) (Timing of submissions), 3.1(c) (Must be "timely").

Untimely filings, if otherwise properly filed, are not rejected by Immigration Court staff. However, parties should note that the consequences of untimely filing are sometimes as follows:

- if an application for relief is untimely, the alien's interest in that relief is deemed waived or abandoned
- if a motion is untimely, it is denied
- if a brief or pre-trial statement is untimely, the issues in question are deemed waived or conceded
- if an exhibit is untimely, it is not entered into evidence or it is given less weight
- if a witness list is untimely, the witnesses on the list are barred from testifying
- if a response to a motion is untimely, the motion is deemed unopposed

(iii) Motions to accept untimely filings.— If a party wishes the Immigration Judge to consider a filing despite its untimeliness, the party must make an oral or written motion to accept the untimely filing. A motion to accept an untimely filing must explain the reasons for the late filing and show good cause for acceptance of the filing. In addition, parties are strongly encouraged to support the motion with documentary evidence, such as affidavits and declarations under the penalty of perjury. The Immigration Judge retains the authority to determine how to treat an untimely filing.

(iv) Natural or manmade disasters.— Natural or manmade disasters may occur that create unavoidable filing delays. Parties wishing to file untimely documents after a disaster must comply with the requirements of subsection (iii), above.

(e) Filing receipts.— The Immigration Court does not issue receipts for filings. Parties are encouraged, however, to obtain and retain corroborative documentation of delivery, such as mail delivery receipts or courier tracking information. As a precaution, parties should keep copies of all items sent to the Immigration Court.

(f) Conformed copies. — A time-and-date stamp is placed on each filing received by the Immigration Court. If the filing party desires a "conformed copy" (i.e., a copy of the filing bearing the Immigration Court's time-and-date stamp), the original must be accompanied by an accurate copy of the filing, prominently marked "CONFORMED COPY; RETURN TO SENDER." If the filing is voluminous, only a copy of the cover page and table of contents needs to be submitted for confirmation. The filing must also contain a self-addressed stamped envelope or comparable return delivery packaging. The Immigration Court does not return conformed copies without a prepaid return envelope or packaging.

3.2 Service on the Opposing Party

(a) Service requirements. — For all filings before the Immigration Court, a party must:

- provide, or "serve," an identical copy on the opposing party (or, if the party is represented, the party's representative), and
- except for filings served during a hearing or jointly-filed motions agreed upon by all parties, declare in writing that a copy has been served

The written declaration is called a "Proof of Service," also referred to as a "Certificate of Service." See subsection (e), below, Appendix G (Sample Proof of Service). See also 8 C.F.R. §§ 1003.17(a), 1003.23(b)(1)(ii), 1003.32(a).

(b) Whom to serve. — For all filings before the Immigration Court, the opposing party must be served. For an alien in proceedings, the opposing party is the Department of Homeland Security (DHS). In most instances, a DHS Chief Counsel or a specific DHS Assistant Chief Counsel is the designated officer to receive service. Parties may contact the Immigration Court for the DHS address. The opposing party is never the Immigration Judge or Immigration Court.

(c) Method of service. — Service on the opposing party may be accomplished by hand-delivery, by U.S. Postal Service, or by commercial courier. Where service on the opposing party is accomplished by hand-delivery, service is complete when the filing is hand-delivered to a responsible person at the address of the individual being served.

Where service on the opposing party is accomplished by U.S. Postal Service or commercial courier, service is complete when the filing is deposited with the U.S. Postal Service or the commercial courier. Note that this rule differs from the rule for filings–filings

with the Immigration Court are deemed complete when documents are received by the court, not when documents are mailed. See Chapter 3.1(a)(iii) (Receipt Rule).

(i) Service of an electronically filed Form EOIR-28. – The electronic filing of a Form EOIR-28 with the Immigration Court does not constitute service on the Department of Homeland Security. Attorneys and accredited representatives must serve the Department of Homeland Security with a printed copy of the Form EOIR-28 for each case. See Chapter 2.1(c) (Notice to Opposing Party).

(d) Timing of service. — The Proof of Service must bear the actual date of transmission and accurately reflect the means of transmission (e.g., hand delivery, regular mail, overnight mail, commercial courier, etc.). Service must be calculated to allow the other party sufficient opportunity to act upon or respond to served material.

(e) Proof of Service. — A Proof of Service is required for all filings, except filings served on the opposing party during a hearing or jointly-filed motions agreed upon by all parties. See 8 C.F.R. § 1003.17(a), 1003.23(b)(1)(ii), 1003.32(a). See also Appendix G (Sample Proof of Service). When documents are submitted as a package, the Proof of Service should be placed at the bottom of the package.

(i) Contents of Proof of Service. — A Proof of Service must state:

- the name or title of the party served
- the precise and complete address of the party served
- the date of service
- the means of service (e.g., hand delivery, regular mail, overnight mail, commercial courier, etc.)
- the document or documents being served

A Proof of Service must contain the name and signature of the person serving the document. A Proof of Service may be signed by an individual designated by the filing party, unlike the document(s) being served, which must be signed by the filing party.

(ii) Certificates of Service on applications. — Certain forms, such as the Application for Cancellation of Removal for Certain Permanent Residents (Form EOIR-42A), contain a Certificate of Service, which functions as a Proof of Service. Such a Certificate of Service only functions as a Proof of Service for the

form on which it appears, not for any supporting documents filed with the form. If supporting documents are filed with an application containing a Certificate of Service, a separate Proof of Service for the entire submission must be included.

(f) Representatives and service. —

(i) Service on a representative. — Service on a representative constitutes service on the person or entity represented. If an alien is represented by an attorney, the Department of Homeland Security must serve the alien's attorney but need not serve the alien. See 8 C.F.R. § 1292.5(a), Chapter 2 (Appearances before the Immigration Court).

(ii) Service by a represented alien. — Whenever a party is represented, the party should submit all filings and communications to the Immigration Court through the representative. See 8 C.F.R. § 1292.5(a), Chapter 2.1 (Representation Generally).

(g) Proof of Service and Notice of Appearance. — All filings with the Immigration Court must include a Proof of Service that identifies the item being filed, unless served during a hearing. Thus, a completed Proof of Service on a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) does not constitute Proof of Service of documents accompanying the Form EOIR-28. See Chapters 3.2(c)(i) (Service of an electronically filed Form EOIR-28), 3.2(e)(ii) (Service by a represented alien).

3.3 Documents

(a) Language and certified translations. — All documents filed with the Immigration Court must be in the English language or accompanied by a certified English translation. See 8 C.F.R. §§ 1003.33, 1003.23(b)(1)(i). An affidavit or declaration in English by a person who does not understand English must include a certificate of interpretation stating that the affidavit or declaration has been read to the person in a language that the person understands and that he or she understood it before signing.

A certification of translation of a foreign-language document or declaration must be typed, signed by the translator, and attached to the foreign-language document. A certification must include a statement that the translator is competent to translate the language of the document and that the translation is true and accurate to the best of the translator's abilities. If the certification is used for multiple documents, the certification must specify the documents. The translator's address and telephone number must be included. See Appendix H (Sample Certificate of Translation).

(b) Signatures. **—** No forms, motions, briefs, or other submissions are properly filed without an original signature from either the alien, the alien's representative, or a representative of the Department of Homeland Security. For purposes of filing a Form EOIR-28, the electronic acknowledgement and submission of an electronically filed Form EOIR-28 constitutes the signature of the alien's representative. A Proof of Service also requires a signature but may be filed by someone designated by the filing party. See Chapter 3.2(e) (Proof of Service).

A signature represents a certification by the signer that: he or she has read the document; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is grounded in fact; the document is submitted in good faith; and the document has not been filed for any improper purpose. See 8 C.F.R. § 1003.102(j)(1). A signature represents the signer's authorization, attestation, and accountability. Every signature must be accompanied by the typed or printed name.

(i) Simulated signatures. **—** Signature stamps and computer-generated signatures are not acceptable on documents filed with the Immigration Court. These signatures do not convey the signer's personal authorization, attestation, and accountability for the filing. See also Chapters 3.1(a) (Filing), 3.3(d) (Originals and reproductions).

(ii) Law firms. **—** Except as provided in Chapter 2.3(j) (Appearances "on behalf of"), only an attorney of record–not a law firm, law office, or other attorney–may sign a submission to the Immigration Court. See Chapters 2.3(c) (Appearances), 2.3(e) (Multiple representatives), 2.3(f) (Law firms).

(iii) Accredited representatives. **—** Accredited representatives must sign their own submissions. See Chapter 2.4(f) (Signatures).

(iv) Paralegals and other staff. **—** Paralegals and other staff are not authorized to practice before the Immigration Court and may not sign a submission to the Immigration Court. See Chapter 2.6 (Paralegals). However, a paralegal may sign a Proof of Service when authorized by the filing party. See Chapter 3.2(e) (Proof of Service).

(v) Other representatives. **—** Only those individuals who have been authorized by the Immigration Court to represent a party and have submitted a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) may sign submissions to the Immigration Court. See Chapters 2.5 (Law students and Law Graduates), 2.9 (Others).

(vi) Family members. **—** A family member may sign submissions on behalf of a party only under certain circumstances. See Chapter 2.8 (Family Members).

(c) Format. **—** The Immigration Court prefers all filings and supporting documents to be typed, but will accept handwritten filings that are legible. Illegible filings will be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings). All filings must be signed by the filing party. See Chapter 3.3(b) (Signatures).

(i) Order of documents. **—** Filings should be assembled as follows. All forms should be filled out completely. If a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) is required, it should be submitted at the front of the package. If a Form EOIR-28 has been filed electronically, a printed copy of the Form EOIR-28 is generally not required. See Chapter 2.1(b) (Entering an Appearance).

(A) Applications for relief. **—** An application package should comply with the instructions on the application. The application package should contain (in order):

(1) Form EOIR-28 (if required)
(2) cover page
(3) if applicable, fee receipt (stapled to the application) or motion for a fee waiver
(4) application
(5) proposed exhibits (if any) with table of contents
(6) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees).

(B) Proposed exhibits. **—** If proposed exhibits are not included as part of an application package, the proposed exhibit package should contain (in order):

(1) Form EOIR-28 (if required)
(2) cover page
(3) table of contents
(4) proposed exhibits
(5) Proof of Service

See Chapters 2.1(b) (Entering an appearance), Chapters 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees).

***(C) Witness list*. —** A witness list package should contain (in order):

(1) Form EOIR-28 (if required)
(2) cover page
(3) witness list (in compliance with the requirements of Chapter 3.3(g) (Witness lists))
(4) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption).

***(D) Motions to reopen*. —** A motion package for a motion to reopen should contain (in order):

(1) Form EOIR-28
(2) cover page
(3) if applicable, fee receipt (stapled to the motion or application) or motion for a fee waiver
(4) motion to reopen
(5) a copy of the Immigration Judge's decision
(6) if applicable, a motion brief
(7) if applicable, a copy of the application for relief
(8) supporting documentation (if any) with table of contents
(9) Alien's Change of Address Form (Form EOIR-33/IC) (recommended even if the alien's address has not changed)
(10) a proposed order for the Immigration Judge's signature
(11) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 2.2(c)(iii) (Motions), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees), 5 (Motions before the Immigration Court).

***(E) Motions to reconsider*. —** A motion package for a motion to reconsider should contain (in order):

(1) Form EOIR-28
(2) cover page

(3) if applicable, fee receipt (stapled to the motion or application) or motion for a fee waiver
(4) motion to reconsider
(5) a copy of the Immigration Judge's decision
(6) if applicable, a motion brief
(7) if applicable, a copy of the application for relief
(8) supporting documentation (if any) with table of contents
(9) Alien's Change of Address Form (Form EOIR-33/IC) (recommended even if the alien's address has not changed)
(10) a proposed order for the Immigration Judge's signature
(11) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 2.2(c)(iii) (Motions), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees), 5 (Motions before the Immigration Court).

***(F) Other filings*. —** Other filing packages, including pre-decision motions and briefs, should contain (in order):

(1) Form EOIR-28 (if required)
(2) cover page
(3) if applicable, fee receipt (stapled to the filing) or motion for a fee waiver
(4) the filing
(5) supporting documentation (if any) with table of contents
(6) if a motion, a proposed order for the Immigration Judge's signature
(7) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees).

***(ii) Number of copies*. —** Except as provided in subsection (A) and (B), below, only the original of each application or other submission must be filed with the Immigration Court. For all filings, a copy must be served on the opposing party. See Chapter 3.2 (Service on the Opposing Party). Multiple copies of a filing (e.g., a brief, motion, proposed exhibit, or other supporting documentation) should not be filed unless otherwise instructed by the Immigration Judge.

***(A) Defensive asylum applications*. —** For defensive asylum applications, parties must submit to the Immigration Court the original

application. See Chapter 3.1(b)(iii)(A) (Defensive applications). In addition, a copy must be served on the opposing party. See Chapter 3.2 (Service on the Opposing Party).

(B) Consolidated cases. — In consolidated cases, parties should submit a separate copy of each submission for placement in each individual Record of Proceedings. However, a "master exhibit" may be filed in the lead individual's file for exhibits and supporting documentation applicable to more than one individual, with the approval of the Immigration Judge.

(iii) Pagination and table of contents. — All documents, including briefs, motions, and exhibits, should always be paginated by consecutive numbers placed at the bottom center or bottom right hand corner of each page.

Whenever proposed exhibits or supporting documents are submitted, the filing party should include a table of contents with page numbers identified. See Appendix P (Sample Table of Contents).

Where a party is filing more than one application, the party is encouraged to submit a separate evidence package, with a separate table of contents, for each application.

(iv) Tabs. — Parties should use alphabetic tabs, commencing with the letter "A." The tabs should be affixed to the right side of the pages. In addition, parties should carefully follow the pagination and table of contents guidelines in subsection (iii), above.

(v) Paper size and document quality. — All documents should be submitted on standard 8½" x 11" paper, in order to fit into the Record of Proceedings. See 8 C.F.R. § 1003.32(b). The use of paper of other sizes, including legal-size paper (8½" x 14"), is discouraged. If a document is smaller than 8½" x 11", the document should be affixed to an 8½" x 11" sheet of paper or enlarged to 8½" x 11". If a document is larger than 8½" x 11", the document should be reduced in size by photocopying or other appropriate means, as authorized by the Immigration Judge. This provision does not apply to documents whose size cannot be altered without altering their authenticity. All documents must be legible. Copies that are so poor in quality as to be illegible may be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings).

Paper should be of standard stock — white, opaque, and unglazed. Given its fragility and tendency to fade, photo-sensitive facsimile paper should never be used.

Ink should be dark, preferably black.

Briefs, motions, and supporting documentation should be single-sided.

***(vi) Cover page and caption*. —** All filings should include a cover page. The cover page should include a caption and contain the following information:

- the name of the filing party
- the address of the filing party
- the title of the filing (such as "RESPONDENT'S APPLICATION FOR CANCELLATION OF REMOVAL," "DHS WITNESS LIST," "RESPONDENT'S MOTION TO REOPEN")
- the full name for each alien covered by the filing (as it appears on the charging document)
- the alien registration number ("A number") for each alien covered by the filing (if an alien has more than one A number, all the A numbers should appear on the cover page with a clear notation that the alien has multiple A numbers)
- the type of proceeding involved (such as removal, deportation, exclusion, or bond)
- the date and time of the hearing

See Appendix F (Sample Cover Page). If the filing involves special circumstances, that information should appear prominently on the cover page, preferably in the top right corner and highlighted (e.g., "DETAINED," "JOINT MOTION," "EMERGENCY MOTION").

***(vii) Fonts and spacing*. —** Font and type size must be easily readable. "Times Roman 12 point" font is preferred. Double-spaced text and single-spaced footnotes are also preferred. Both proportionally spaced and monospaced fonts are acceptable.

***(viii) Binding*. —** The Immigration Court and the Board of Immigration Appeals use a two-hole punch system to maintain files. All forms, motions, briefs, and other submissions should always be pre-punched with holes along the top (centered and 2 ¾" apart). Submissions may be stapled in the top left corner. If

stapling is impracticable, the use of removable binder clips is encouraged. Submissions should neither be bound on the side nor commercially bound, as such items must be disassembled to fit into the record of proceedings and might be damaged in the process. The use of ACCO-type fasteners and paper clips is discouraged.

(ix) Forms. — Forms should be completed in full and must comply with certain requirements. See Chapter 11 (Forms). See also Appendix E (Forms).

(d) Originals and reproductions. —

(i) Briefs and motions. — The original of a brief or motion must always bear an original signature. See Chapter 3.3(b) (Signatures).

(ii) Forms. — The original of a form must always bear an original signature. See Chapters 3.3(b) (Signatures), 11.3 (Submitting completed forms). In certain instances, forms must be signed in the presence of the Immigration Judge.

(iii) Supporting documents. — Photocopies of supporting documents, rather than the originals, should be filed with the Immigration Court and served on the Department of Homeland Security (DHS). Examples of supporting documents include identity documents, photographs, and newspaper articles.

If supporting documents are filed at a master calendar hearing, the alien must make the originals available to DHS at the master calendar hearing for possible forensics examination at the Forensics Documents Laboratory. In addition, the alien must bring the originals to all individual calendar hearings.

If supporting documents are filed after the master calendar hearing(s), the filing should note that originals are available for review. In addition, the alien must bring the originals to all individual calendar hearings.

The Immigration Judge has discretion to retain original documents in the Record of Proceedings. The Immigration Judge notes on the record when original documents are turned over to DHS or the Immigration Court.

(iv) Photographs. — If a party wishes to submit a photograph, the party should follow the guidelines in subsection (iii), above. In addition, prior to bringing the photograph to the Immigration Court, the party should print identifying information, including the party's name and alien registration number (A number), on the back of the original photograph.

***(e) Source materials*. —** Source materials should be provided to the Immigration Court and highlighted as follows.

***(i) Source of law*. —** When a party relies on a source of law in any filing (e.g., a brief, motion, or pre-trial statement) that is not readily available, that source of law should be reproduced and provided to the Immigration Court and the other party, along with the filing. Similarly, if a party relies on governmental memoranda, legal opinions, advisory opinions, communiques, or other ancillary legal authority or sources in any filing, copies of such items should be provided to the Immigration Court and the other party, along with the filing.

***(ii) Publications as evidence*. —** When a party submits published material as evidence, that material must be clearly marked with identifying information, including the precise title, date, and page numbers. If the publication is difficult to locate, the submitting party should identify where the publication can be found and authenticated.

In all cases, the party should submit title pages containing identifying information for published material (e.g., author, year of publication). Where a title page is not available, identifying information should appear on the first page of the document. For example, when a newspaper article is submitted, the front page of the newspaper, including the name of the newspaper and date of publication, should be submitted where available, and the page on which the article appears should be identified. If the front page is not available, the name of the newspaper and the publication date should be identified on the first page of the submission.

Copies of State Department Country Reports on Human Rights Practices, as well as the State Department Annual Report on International Religious Freedom, must indicate the year of the particular report.

***(iii) Internet publications*. —** When a party submits an internet publication as evidence, the party should follow the guidelines in subsection (ii), above, as well as provide the complete internet address for the material.

***(iv) Highlighting*. —** When a party submits secondary source material ("background documents"), that party should highlight or otherwise indicate the pertinent portions of that secondary source material. Any specific reference to a party should always be highlighted.

***(f) Criminal conviction documents*. —** Documents regarding criminal convictions must comport with the requirements of 8 C.F.R. § 1003.41. When submitting documents relating to a respondent's criminal arrests, prosecutions, or convictions, parties are

encouraged to use a criminal history chart and attach all pertinent documentation, such as arrest and conviction records. The criminal history chart should contain the following information for each arrest:

- arrest date
- court docket number
- charges
- disposition
- immigration consequences, if any

The documentation should be paginated, with the corresponding pages indicated on the criminal history chart. For a sample, see Appendix O (Sample Criminal History Chart). Under "Immigration Consequences," parties should simply state their "bottom-line" position (for example: "not an aggravated felony"). Parties may supplement the criminal history chart with a pre-hearing brief. See Chapter 4.19 (Pre-Hearing Briefs).

***(g) Witness lists*. —** A witness list should include the following information for each witness, except the respondent:

- the name of the witness
- if applicable, the alien registration number ("A number")
- a written summary of the testimony
- the estimated length of the testimony
- the language in which the witness will testify
- a curriculum vitae or resume, if called as an expert

3.4 Filing Fees

***(a) Where paid*. —** Fees for the filing of motions and applications for relief with the Immigration Court, when required, are paid to the Department of Homeland Security as set forth in 8 C.F.R. § 1103.7. The Immigration Court does not collect fees. See 8 C.F.R. §§ 1003.24, 1103.7.

(b) Filing fees for motions. —

(i) When required. — The following motions require a filing fee:

- a motion to reopen (except a motion that is based exclusively on a claim for asylum)
- a motion to reconsider (except a motion that is based on an underlying claim for asylum)

8 C.F.R. §§ 1003.23(b)(1), 1003.24, 1103.7. For purposes of determining filing fee requirements, the term "asylum" here includes withholding of removal ("restriction on removal"), withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Where a filing fee is required, the filing fee must be paid in advance to the Department of Homeland Security and the fee receipt must be submitted with the motion. If a filing party is unable to pay the fee, he or she should request that the fee be waived. See subsection (d), below.

(ii) When not required. — The following motions do not require a filing fee:

- a motion to reopen that is based exclusively on a claim for asylum
- a motion to reconsider that is based on an underlying a claim for asylum
- a motion filed while proceedings are pending before the Immigration Court
- a motion requesting only a stay of removal, deportation, or exclusion
- a motion to recalendar
- any motion filed by the Department of Homeland Security
- a motion that is agreed upon by all parties and is jointly filed ("joint motion")

- a motion to reopen a removal order entered in absentia if the motion is filed under INA § 240(b)(5)(C)(ii)
- a motion to reopen a deportation order entered in absentia if the motion is filed under INA § 242B(c)(3)(B), as it existed prior to April 1, 1997
- a motion filed under law, regulation, or directive that specifically does not require a filing fee

8 C.F.R. §§ 1003.23(b)(1), 1003.24, 1103.7. For purposes of determining filing fee requirements, the term "asylum" here includes withholding of removal ("restriction on removal"), withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

(c) Application fees. —

(i) When required. — When an application for relief that requires a fee is filed during the course of proceedings, the fee for that application must be paid in advance to the Department of Homeland Security (DHS). Instructions for paying application fees can be found in the DHS biometrics instructions, which are available on the Executive Office for Immigration Review website at www.justice.gov/eoir. A fee receipt must be submitted when the application is filed with the Immigration Court.

If a filing party is unable to pay the fee, the party should file a motion for a fee waiver. See subsection (d), below.

(ii) When not required. — When an application for relief that requires a fee is the underlying basis of a motion to reopen, the fee for the application need not be paid to the Department of Homeland Security (DHS) in advance of the motion to reopen. Rather, only the fee for the motion to reopen must be paid in advance. The fee receipt for the motion to reopen must be attached to that motion. See subsection (b)(i), above. If the motion to reopen is granted, the fee for the underlying application must then be paid to DHS and that fee receipt must be submitted to the Immigration Court. See Chapter 3.1(c) (Must be "timely").

(d) When waived. — When a fee to file an application or motion is required, the Immigration Judge has the discretion to waive the fee upon a showing that the filing party is unable to pay the fee. However, the Immigration Judge will not grant a fee waiver where

the application for relief is a Department of Homeland Security (DHS) form and DHS regulations prohibit the waiving of such fee. See 8 C.F.R. §§ 103.7, 1103.7.

Fee waivers are not automatic. The request for a fee waiver must be accompanied by a properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. § 1746, substantiating the filing party's inability to pay the fee. If a filing is submitted without a required fee and the request for a fee waiver is denied, the filing will be deemed defectively filed and may be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings).

Fees are not reimbursed merely because the application or motion is granted.

(e) Amount of payment. —

(i) Motions to reopen or reconsider. — When a filing fee is required, the fee for motions to reopen or reconsider is $110. 8 C.F.R. § 1103.7(b)(2). The fee is paid to the Department of Homeland Security in advance. The fee receipt and motion are then filed with the Immigration Court.

(ii) Applications for relief. — Application fees are found in the application instructions and in the federal regulations. See 8 C.F.R. §§ 103.7, 1103.7(b)(1). See also Chapter 11 (Forms), Appendix E (Forms).

(iii) Background and security checks. — The Department of Homeland Security (DHS) biometrics fee is found in the DHS biometrics instructions provided to the aliens in the Immigration Court. 8 C.F.R. § 1003.47(d). The Immigration Judge cannot waive the DHS biometrics fee.

(f) Payments in consolidated proceedings. —

(i) Motions to reopen and reconsider. — Only one motion fee should be paid in a consolidated proceeding. For example, if several aliens in a consolidated proceeding file simultaneous motions to reopen, only one motion fee should be paid

(ii) Applications for relief. — To determine the amount of the fee to be paid for applications filed in consolidated proceedings, the parties should follow the instructions on the application. In some cases, a fee is required for each application. For example, if each alien in a consolidated proceeding wishes to apply for cancellation of removal, a fee is required for each application.

(g) Form of payment. — When a fee is required to file an application for relief or a motion to reopen or reconsider, the fee is paid to the Department of Homeland Security and the form of the payment is governed by federal regulations. See 8 C.F.R. § 103.7.

(h) Defective or missing payment. — If a fee is required to file an application for relief or motion but a fee receipt is not submitted to the Immigration Court (for example, because the fee was not paid in advance to the Department of Homeland Security), the filing is defective and may be rejected or excluded from evidence. If a fee is not paid in the correct amount or is uncollectible, the filing is defective and may be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings).

4 Hearings before Immigration Judges

4.1 Types of Proceedings

Immigration Judges preside over courtroom proceedings in removal, deportation, exclusion, and other kinds of proceedings. See Chapter 1.5(a) (Jurisdiction). This chapter describes the procedures in removal proceedings.

Other kinds of proceedings conducted by Immigration Judges are discussed in the following chapters:

Chapter 7	Other Proceedings before Immigration Judges
Chapter 9	Detention and Bond
Chapter 10	Discipline of Practitioners

Note: Prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the two major types of courtroom proceedings conducted by Immigration Judges were deportation and exclusion proceedings. In 1996, the IIRIRA replaced deportation proceedings and exclusion proceedings with removal proceedings. The new removal provisions went into effect on April 1, 1997. See INA § 240, as amended by IIRIRA § 309(a). The regulations governing removal proceedings are found at 8 C.F.R. §§ 1003.12-1003.41, 1240.1-1240.26. For more information on deportation and exclusion proceedings, see Chapter 7 (Other Proceedings before Immigration Judges).

4.2 Commencement of Removal Proceedings

(a) Notice to Appear. — Removal proceedings begin when the Department of Homeland Security files a Notice to Appear (Form I-862) with the Immigration Court after it is served on the alien. See 8 C.F.R. §§ 1003.13, 1003.14. The Notice to Appear, or "NTA," is a written notice to the alien which includes the following information:

- the nature of the proceedings
- the legal authority under which the proceedings are conducted
- the acts or conduct alleged to be in violation of the law

- the charge(s) against the alien and the statutory provision(s) alleged to have been violated
- the opportunity to be represented by counsel at no expense to the government
- the consequences of failing to appear at scheduled hearings
- the requirement that the alien immediately provide the Attorney General with a written record of an address and telephone number

The Notice to Appear replaces the Order to Show Cause (Form I-221), which was the charging document used to commence deportation proceedings, and the Notice to Applicant for Admission Detained for Hearing before an Immigration Judge (Form I-122), which was the charging document used to commence exclusion proceedings. See 8 C.F.R. § 1003.13.

(b) Failure to prosecute.— On occasion, an initial hearing is scheduled before the Department of Homeland Security (DHS) has been able to file a Notice to Appear with the Immigration Court. For example, DHS may serve a Notice to Appear, which contains a hearing date, on an alien, but not file the Notice to Appear with the court until some time later. Where DHS has not filed the Notice to Appear with the court by the time of the first hearing, this is known as a "failure to prosecute." If there is a failure to prosecute, the respondent and counsel may be excused until DHS files the Notice to Appear with the court, at which time a hearing is scheduled. Alternatively, at the discretion of the Immigration Judge, the hearing may go forward if both parties are present in court and DHS files the Notice to Appear in court at the hearing.

4.3 References to Parties and the Immigration Judge

The parties in removal proceedings are the alien and the Department of Homeland Security (DHS). See Chapter 1.2(d) (Relationship to the Department of Homeland Security). To avoid confusion, the parties and the Immigration Judge should be referred to as follows:

- the alien should be referred to as "the respondent"
- the Department of Homeland Security should be referred to as "the Department of Homeland Security or "DHS"

- the attorney for the Department of Homeland Security should be referred to as "the Assistant Chief Counsel," "the DHS attorney," or "the government attorney"

- the respondent's attorney should be referred to as "the respondent's counsel" or "the respondent's representative"

- the respondent's representative, if not an attorney, should be referred to as "the respondent's representative"

- the Immigration Judge should be referred to as "the Immigration Judge" and addressed as "Your Honor" or "Judge __"

Care should be taken not to confuse the Department of Homeland Security with the Immigration Court or the Immigration Judge. See Chapter 1.5(e) (Department of Homeland Security).

4.4 Representation

***(a) Appearances*. —** A respondent in removal proceedings may appear without representation ("pro se") or with representation. See Chapter 2 (Appearances before the Immigration Court). If a party wishes to be represented, he or she may be represented by an individual authorized to provide representation under federal regulations. See 8 C.F.R. § 1292.1. See also Chapter 2 (Appearances before the Immigration Court). Whenever a respondent is represented, the respondent should submit all filings, documents, and communications to the Immigration Court through his or her representative. See Chapter 2.1(d) (Who may file).

***(b) Notice of Appearance*. —** Representatives before the Immigration Court must file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). If at any time after the commencement of proceedings there is a change in representation, the new representative must file a new Form EOIR-28, as well as complying with the other requirements for substitution of counsel, if applicable. See Chapters 2.1(b) (Entering an appearance), 2.3(c) (Appearances), 2.3(i)(i) (Substitution of counsel).

***(c) Multiple representation*. —** Parties are limited to one primary attorney (notice attorney) or accredited representative. For guidance on the limited circumstances in which parties may be represented by more than one representative, see Chapter 2 (Appearances before the Immigration Court).

***(d) Motions to withdraw*. —** Withdrawal of counsel can be requested by oral or written motion. See Chapter 2.3(i)(ii) (Withdrawal of counsel). Substitution of counsel also can be requested by oral or written motion. See Chapter 2.3(i)(i)(Substitution of counsel).

4.5 Hearing and Filing Location

There are more than 200 Immigration Judges in over 50 Immigration Courts nationwide. The hearing location is identified on the Notice to Appear (Form I-862) or hearing notice. See Chapter 4.15(c) (Notification). Parties should note that documents are not necessarily filed at the location where the hearing is held. For information on hearing and filing locations, see Chapter 3.1(a) (Filing). If in doubt as to where to file documents, parties should contact the Immigration Court.

4.6 Form of the Proceedings

An Immigration Judge may conduct removal hearings:

- in person
- by video conference
- by telephone conference, except that evidentiary hearings on the merits may only be held by telephone if the respondent consents after being notified of the right to proceed in person or by video conference

See INA § 240(b)(2), 8 C.F.R. § 1003.25(c). See also Chapter 4.7 (Hearings by Video or Telephone Conference).

Upon the request of the respondent or the respondent's representative, the Immigration Judge has the authority to waive the appearance of the respondent and/or the respondent's representative at specific hearings in removal proceedings. See 8 C.F.R. § 1003.25(a). See also Chapter 4.15(m) (Waivers of appearances).

4.7 Hearings by Video or Telephone Conference

***(a) In general*. —** Immigration Judges are authorized by statute to hold hearings by video conference and telephone conference, except that evidentiary hearings on the merits may only be conducted by telephone conference if the respondent consents after being

notified of the right to proceed in person or through video conference. See INA § 240(b)(2), 8 C.F.R. § 1003.25(c). See also Chapter 4.6 (Form of the Proceedings).

***(b) Location of parties*. —** Where hearings are conducted by video or telephone conference, the Immigration Judge, the respondent, the DHS attorney, and the witnesses need not necessarily be present together in the same location.

***(c) Procedure*. —** Hearings held by video or telephone conference are conducted under the same rules as hearings held in person.

***(d) Filing*. —** For hearings conducted by video or telephone conference, documents are filed at the Immigration Court having administrative control over the Record of Proceedings. See Chapter 3.1(a) (Filing). The locations from which the parties participate may be different from the location of the Immigration Court where the documents are filed. If in doubt as to where to file documents, parties should contact the Immigration Court.

In hearings held by video or telephone conference, Immigration Judges often allow documents to be faxed between the parties and the Immigration Judge. Accordingly, all documents should be single-sided. Parties should not attach staples to documents that may need to be faxed during the hearing.

***(e) More information*. —** Parties should contact the Immigration Court with any questions concerning an upcoming hearing by video or telephone conference.

4.8 Attendance

Immigration Court hearings proceed promptly on the date and time that the hearing is scheduled. Any delay in the respondent's appearance at a master calendar or individual calendar hearing may result in the hearing being held "in absentia" (in the respondent's absence). See 8 C.F.R. § 1003.26. See also Chapters 4.15 (Master Calendar Hearing), 4.16 (Individual Calendar Hearing), 4.17 (In Absentia Hearing).

Any delay in the appearance of either party's representative without satisfactory notice and explanation to the Immigration Court may, in the discretion of the Immigration Judge, result in the hearing being held in the representative's absence.

Respondents, representatives, and witnesses should be mindful that they may encounter delays in going through the mandatory security screening at the Immigration Court, and should plan accordingly. See 4.14 (Access to Court). Regardless of such delays, all individuals must pass through the security screening and be present *in the courtroom* at the time the hearing is scheduled.

For hearings at detention facilities, parties should be mindful of any additional security restrictions at the facility. See 4.14 (Access to Court). Individuals attending such a hearing must always be present at the time the hearing is scheduled, regardless of any such additional security restrictions.

4.9 Public Access

***(a) General public*. —**

***(i) Hearings*. —** Hearings in removal proceedings are generally open to the public. However, special rules apply in the following instances:

- 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 alien child are closed to the public. Hearings involving an abused alien 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.

See 8 C.F.R. §§ 1003.27, 1003.31(d), 1003.46, 1208.6, 1240.10(b), 1240.11(c)(3)(i). Only parties, their representatives, employees of the Department of Justice, and persons authorized by the Immigration Judge may attend a closed hearing.

***(ii) Immigration Judges authorized to close hearings*. —** The Immigration Judge may limit attendance or close a hearing to protect parties, witnesses, or the public interest, even if the hearing would normally be open to the public. See 8 C.F.R. § 1003.27(b).

(iii) Motions to close hearing. **—** For hearings not subject to the special rules in subsection (i), above, parties may make an oral or written motion asking that the Immigration Judge close the hearing. See 8 C.F.R. § 1003.27(b). The motion should set forth in detail the reason(s) for requesting that the hearing be closed. If in writing, the motion should include a cover page labeled "MOTION FOR CLOSED HEARING" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

(b) News media. **—** Representatives of the news media may attend hearings that are open to the public. The news media are subject to the general prohibition on electronic devices in the courtroom. See Chapter 4.13 (Electronic Devices). The news media are strongly encouraged to notify the Office of Legislative and Public Affairs and the Court Administrator before attending a hearing. See Appendix B (EOIR Directory).

4.10 Record

(a) Hearings recorded. **—** Immigration hearings are recorded electronically by the Immigration Judge. See 8 C.F.R. § 1240.9. Parties may listen to recordings of hearings by prior arrangement with Immigration Court staff. See Chapters 1.6(c) (Records), 12.2 (Requests).

The entire hearing is recorded except for those occasions when the Immigration Judge authorizes an off-the-record discussion. On those occasions, the results of the off-the-record discussion are summarized by the Immigration Judge on the record. The Immigration Judge asks the parties if the summary is true and complete, and the parties are given the opportunity to add to or amend the summary, as appropriate. Parties should request such a summary from the Immigration Judge, if the Immigration Judge does not offer one.

(b) Transcriptions. **—** If an Immigration Judge's decision is appealed to the Board of Immigration Appeals, the hearing is transcribed in appropriate cases and a transcript is sent to both parties. For information on transcriptions, parties should consult the Board Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

(c) Record of Proceedings. **—** The official file containing the documents relating to an alien's case is the Record of Proceedings, which is created by the Immigration Court. The contents of the Record of Proceedings vary from case to case. However, at the conclusion of Immigration Court proceedings, the Record of Proceedings generally contains the Notice to Appear (Form I-862), hearing notice(s), the attorney's Notice of

Appearance (Form EOIR-28), Alien's Change of Address Form(s) (Form EOIR-33/IC), application(s) for relief, exhibits, motion(s), brief(s), hearing tapes (if any), and all written orders and decisions of the Immigration Judge.

4.11 Interpreters

Interpreters are provided at government expense to individuals whose command of the English language is inadequate to fully understand and participate in removal proceedings. In general, the Immigration Court endeavors to accommodate the language needs of all respondents and witnesses. The Immigration Court will arrange for an interpreter both during the individual calendar hearing and, if necessary, the master calendar hearing. See 8 C.F.R. § 1003.22, Chapter 4.15(o) (Other requests).

The Immigration Court uses staff interpreters employed by the Immigration Court, contract interpreters, and telephonic interpretation services. Staff interpreters take an oath to interpret and translate accurately at the time they are employed by the Department of Justice. Contract interpreters take an oath to interpret and translate accurately in court. See 8 C.F.R. § 1003.22.

4.12 Courtroom Decorum

(a) Addressing the Immigration Judge. **—** The Immigration Judge should be addressed as either "Your Honor" or "Judge __." See Chapter 4.3 (References to Parties and the Immigration Judge). The parties should stand when the Immigration Judge enters and exits the courtroom.

(b) Attire. **—** All persons appearing in the Immigration Court should respect the decorum of the court. Representatives should appear in business attire. All others should appear in proper attire.

(c) Conduct. **—** All persons appearing in the Immigration Court should respect the dignity of the proceedings. No food or drink may be brought into the courtroom, except as specifically permitted by the Immigration Judge. Disruptive behavior in the courtroom or waiting area is not tolerated.

> ***(i) Communication between the parties.*** **—** Except for questions directed at witnesses, parties should not converse, discuss, or debate with each other or another person during a hearing. All oral argument and statements made during a hearing must be directed to the Immigration Judge. Discussions that are not relevant to the proceedings should be conducted outside the courtroom.

(ii) Representatives. **—** Attorneys and other representatives should observe the professional conduct rules and regulations of their licensing authorities. Attorneys and representatives should present a professional demeanor at all times.

(iii) Minors. **—** Children in removal proceedings must attend all scheduled hearings unless their appearance has been waived by the Immigration Judge. Unless participating in a hearing, children should not be brought to the Immigration Court. If a child disrupts a hearing, the hearing may be postponed with the delay attributed to the party who brought the child. Children are not allowed to stay in the waiting area without supervision.

For Immigration Courts in Department of Homeland Security detention facilities or federal, state, or local correctional facilities, the facility's rules regarding the admission of children, representatives, witnesses, and family members will apply in addition to this subsection. See 4.14 (Access to Court).

4.13 Electronic Devices

(a) Recording devices. **—** Removal proceedings may only be recorded with the equipment used by the Immigration Judge. No device of any kind, including cameras, video recorders, and cassette recorders, may be used by any person other than the Immigration Judge to record any part of a hearing. See 8 C.F.R. § 1003.28.

(b) Possession of electronic devices during hearings. **—** Subject to subsection (c), below, all persons, including parties and members of the press, may keep in their possession laptop computers, cellular telephones, electronic calendars, and other electronic devices commonly used to conduct business activities, including electronic devices which have collateral recording capability. Cellular telephones must be turned off during hearings. All other such devices must be turned off or made silent during hearings. No device may be used by any person other than the Immigration Judge to record any part of a hearing. See subsection (a), above.

(c) Use of electronic devices during hearings. **—** In any hearing before an Immigration Judge, all persons, including parties and members of the press, may use laptop computers, electronic calendars, and other electronic devices commonly used to conduct business activities. Such devices may only be used in silent mode. The use of such devices must not disrupt the hearing. Cellular telephones must be turned off during hearings. No device may be used by any person other than the Immigration Judge to record any part of a hearing. See subsection (a), above.

(d) Courtrooms administered under agreement. **—** In any Immigration Court or detention facility administered under agreement between the Executive Office for Immigration Review and federal, state, or local authorities, the facility's rules regarding the possession and use of electronic devices shall apply in addition to subsections (a) through (c), above. In some facilities, individuals, including attorneys, are not allowed to bring cellular telephones, laptop computers, and other electronic devices into the facility.

4.14 Access to Court

(a) Security screening. **—**

(i) All Immigration Courts. **—** All Immigration Courts require individuals attending a hearing to pass through security screening prior to entering the court. All individuals attending a hearing should be mindful that they may encounter delays in passing through the security screening.

(ii) Detention facilities. **—** For hearings held in Department of Homeland Security detention facilities or federal, state, or local correctional facilities, compliance with additional security restrictions may be required. For example, individuals may be required to obtain advance clearance to enter the facility. In addition, cellular telephones, laptop computers, and other electronic devices are not allowed at some of these facilities. All persons attending a hearing at such a facility should be aware of the security restrictions in advance. Such individuals should contact the Immigration Court or the detention facility in advance if they have specific questions related to these restrictions.

(iii) Timeliness required. **—** Respondents, representatives, and witnesses must always be present in the courtroom at the time the hearing is scheduled. This applies regardless of any delays encountered in complying with the mandatory security screening and, if the hearing is held at a detention facility, with any additional security restrictions. See Chapter 4.8 (Attendance).

(b) No access to administrative offices. **—** Access to each Immigration Court's administrative offices is limited to Immigration Court staff and other authorized personnel. Parties appearing in Immigration Court or conducting business with the Immigration Court are not allowed access to telephones, photocopying machines, or other equipment within the Immigration Court's administrative offices.

4.15 Master Calendar Hearing

***(a) Generally*. —** A respondent's first appearance before an Immigration Judge in removal proceedings is at a master calendar hearing. Master calendar hearings are held for pleadings, scheduling, and other similar matters. See subsection (e), below.

***(b) Request for a prompt hearing*. —** To allow the respondent an opportunity to obtain counsel and to prepare to respond, at least ten days must elapse between service of the Notice to Appear (Form I-862) on the respondent and the initial master calendar hearing. The respondent may waive this ten-day requirement by signing the "Request for Prompt Hearing" contained in the Notice to Appear. The respondent may then be scheduled for a master calendar hearing within the ten-day period. See INA § 239(b)(1).

***(c) Notification*. —** The Notice to Appear (Form I-862) served on the respondent may contain notice of the date, time, and location of the initial master calendar hearing. If so, the respondent must appear at that date, time, and location. If the Notice to Appear does not contain notice of the date, time, and location of the initial master calendar hearing, the respondent will be mailed a notice of hearing containing this information. If there are any changes to the date, time, or location of a master calendar hearing, the respondent will be notified by mail at the address on record with the Immigration Court. See Chapter 2.2(c) (Address obligations).

***(d) Arrival*. —** Parties should arrive at the Immigration Court prior to the time set for the master calendar hearing. Attorneys and representatives should check in with the Immigration Court staff and sign in, if a sign-in sheet is available. Parties should be mindful that they may encounter delays in passing through mandatory security screening prior to entering the court. See Chapters 4.8 (Attendance), 4.14 (Access to Court).

***(e) Scope of the master calendar hearing*. —** As a general matter, the purpose of the master calendar hearing is to:

- advise the respondent of the right to an attorney or other representative at no expense to the government
- advise the respondent of the availability of free and low-cost legal service providers and provide the respondent with a list of such providers in the area where the hearing is being conducted
- advise the respondent of the right to present evidence

- advise the respondent of the right to examine and object to evidence and to cross-examine any witnesses presented by the Department of Homeland Security
- explain the charges and factual allegations contained in the Notice to Appear (Form I-862) to the respondent in non-technical language
- take pleadings
- identify and narrow the factual and legal issues
- set deadlines for filing applications for relief, briefs, motions, pre-hearing statements, exhibits, witness lists, and other documents
- provide certain warnings related to background and security investigations
- schedule hearings to adjudicate contested matters and applications for relief
- advise the respondent of the consequences of failing to appear at subsequent hearings
- advise the respondent of the right to appeal to the Board of Immigration Appeals

See INA §§ 240(b)(4), 240(b)(5), 8 C.F.R. §§ 1240.10, 1240.15.

(f) Opening of a master calendar hearing.— The Immigration Judge turns on the recording equipment at the beginning of the master calendar hearing. The hearing is recorded except for off-the-record discussions. See Chapter 4.10 (Record). On the record, the Immigration Judge identifies the type of proceeding being conducted (e.g., a removal proceeding); the respondent's name and alien registration number ("A number"); the date, time, and place of the proceeding; and the presence of the parties. The Immigration Judge also verifies the respondent's name, address, and telephone number. If the respondent's address or telephone number have changed, the respondent must submit an Alien's Change of Address Form (Form EOIR-33/IC).

If necessary, an interpreter is provided to an alien whose command of the English language is inadequate to fully understand and participate in the hearing. See Chapter 4.11 (Interpreters), subsection (o), below. If necessary, the respondent is placed under oath.

***(g) Pro se respondent*. —** If the respondent is unrepresented ("pro se") at a master calendar hearing, the Immigration Judge advises the respondent of his or her hearing rights and obligations, including the right to be represented at no expense to the government. In addition, the Immigration Judge ensures that the respondent has received a list of providers of free and low-cost legal services in the area where the hearing is being held. The respondent may waive the right to be represented and choose to proceed pro se. Alternatively, the respondent may request that the Immigration Judge continue the proceedings to another master calendar hearing to give the respondent an opportunity to obtain representation.

If the proceedings are continued but the respondent is not represented at the next master calendar hearing, the respondent will be expected to explain his or her efforts to obtain representation. The Immigration Judge may decide to proceed with pleadings at that hearing or to continue the matter again to allow the respondent to obtain representation. If the Immigration Judge decides to proceed with pleadings, he or she advises the respondent of any relief for which the respondent appears to be eligible. Even if the respondent is required to enter pleadings without representation, the respondent still has the right to obtain representation before the next hearing. See Chapter 4.4 (Representation).

***(h) Entry of appearance*. —** If a respondent is represented, the representative should file any routinely submitted documents at the beginning of the master calendar hearing. The representative must also serve such documents on the opposing party. See Chapter 3.2 (Service on the Opposing Party). Routinely-submitted documents include the Notice of Appearance (Form EOIR-28) and the Alien's Change of Address Form (Form EOIR-33/IC). See Chapters 2.1(b) (Entering an appearance), 2.2(c) (Address obligations), 2.3(h)(ii) (Address obligations of represented aliens).

***(i) Pleadings*. —** At the master calendar hearing, the parties should be prepared to plead as follows.

***(i) Respondent*. —** The respondent should be prepared:

- to concede or deny service of the Notice to Appear (Form I-862)
- to request or waive a formal reading of the Notice to Appear (Form I-862)
- to request or waive an explanation of the respondent's rights and obligations in removal proceedings

- to admit or deny the charges and factual allegations in the Notice to Appear (Form I-862)
- to designate or decline to designate a country of removal
- to state what applications(s) for relief from removal, if any, the respondent intends to file
- to identify and narrow the legal and factual issues
- to estimate (in hours) the amount of time needed to present the case at the individual calendar hearing
- to request a date on which to file the application(s) for relief, if any, with the Immigration Court
- to request an interpreter for the respondent and witnesses, if needed

A sample oral pleading is included in Appendix M (Sample Oral Pleading). To make the master calendar hearing process more expeditious and efficient, representatives are strongly encouraged to use this oral pleading format.

***(ii) Department of Homeland Security*. —** The DHS attorney should be prepared:

- to state DHS's position on all legal and factual issues, including eligibility for relief
- to designate a country of removal
- to file with the Immigration Court and serve on the opposing party all documents that support the charges and factual allegations in the Notice to Appear (Form I-862)
- to serve on the respondent the DHS biometrics instructions, if appropriate

***(j) Written pleadings*. —** In lieu of oral pleadings, the Immigration Judge may permit represented parties to file written pleadings, if the party concedes proper service of the

Notice to Appear (Form I-862). See Appendix L (Sample Written Pleading). The written pleadings must be signed by the respondent and the respondent's representative.

The written pleading should contain the following:

- a concession that the Notice to Appear (Form I-862) was properly served on the respondent
- a representation that the hearing rights set forth in 8 C.F.R. § 1240.10 have been explained to the respondent
- a representation that the consequences of failing to appear in Immigration Court have been explained to the respondent
- an admission or denial of the factual allegations in the Notice to Appear (Form I-862)
- a concession or denial of the charge(s) in the Notice to Appear (Form I-862)
- a designation of, or refusal to designate, a country of removal
- an identification of the application(s) for relief from removal, if any, the respondent intends to file
- a representation that any application(s) for relief (other than asylum) will be filed no later than fifteen (15) days before the individual calendar hearing, unless otherwise directed by the Immigration Judge
- an estimate of the number of hours required for the individual calendar hearing
- a request for an interpreter, if needed, that follows the guidelines in subsection (n), below
- if background and security investigations are required, a representation that:
    - the respondent has been provided Department of Homeland Security (DHS) biometrics instructions

- the DHS biometrics instructions have been explained to the respondent
- the respondent will timely comply with the DHS biometrics instructions prior to the individual calendar hearing
- the consequences of failing to comply with the DHS biometrics instructions have been explained to the respondent

○ a representation by the respondent that he or she:

- understands the rights set forth in 8 C.F.R. § 1240.10 and waives a further explanation of those rights by the Immigration Judge
- if applying for asylum, understands the consequences under INA § 208(d)(6) of knowingly filing or making a frivolous asylum application
- understands the consequences of failing to appear in Immigration Court or for a scheduled departure
- understands the consequences of failing to comply with the DHS biometrics instructions
- knowingly and voluntarily waives the oral notice required by INA § 240(b)(7) regarding limitations on discretionary relief following an in absentia removal order, or authorizes his or her representative to waive such notice
- understands the requirement in 8 C.F.R. § 1003.15(d) to file an Alien's Change of Address Form (Form EOIR-33/IC) with the Immigration Court within five (5) days of moving or changing a telephone number.

Additional matters may be included in the written pleading when appropriate. For example, the party may need to provide more specific information in connection with a request for an interpreter. See subsection (p), below.

(k) Background checks and security investigations. — For certain applications for relief from removal, the Department of Homeland Security (DHS) is required to

complete background and security investigations. See 8 C.F.R. § 1003.47. Questions regarding background checks and security investigations should be addressed to DHS.

(i) Non-detained cases. **—** If a non-detained respondent seeks relief requiring background and security investigations, the DHS attorney provides the respondent with the DHS biometrics instructions. The respondent is expected to promptly comply with the DHS biometrics instructions by the deadlines set by the Immigration Judge. Failure to timely comply with these instructions will result in the application for relief not being considered unless the applicant demonstrates that such failure was the result of good cause. 8 C.F.R. § 1003.47(d).

In all cases in which the respondent is represented, the representative should ensure that the respondent understands the DHS biometrics instructions and the consequences of failing to timely comply with the instructions.

(ii) Detained cases. **—** If background and security investigations are required for detained respondents, DHS is responsible for timely fingerprinting the respondent and obtaining all necessary information. See 8 C.F.R. § 1003.47(d).

(l) Asylum Clock. **—** The Immigration Court operates an asylum adjudications clock which measures the length of time an asylum application has been pending for each asylum applicant in removal proceedings. The asylum clock is an administrative function that tracks the number of days elapsed since the application was filed, not including any delays requested or caused by the applicant and ending with the final administrative adjudication of the application. This period also does not include administrative appeal or remand.

Where a respondent has applied for asylum, the Immigration Judge determines during the master calendar hearing whether the case is an expedited asylum case. If so, the Immigration Judge asks on the record whether the applicant wants an "expedited asylum hearing date," meaning an asylum hearing scheduled for completion within 180 days of the filing. If the case is being adjourned for an alien-related reason, the asylum clock will stop until the next hearing.

Certain asylum applicants are eligible to receive employment authorization from the Department of Homeland Security (DHS) 180 days after the application is filed, not including delays in the proceedings caused by the applicant. To facilitate DHS's adjudication of employment authorization applications, the Executive Office for Immigration Review (EOIR) provides DHS with access to its asylum adjudications clock for cases pending before EOIR. See INA §§ 208(d)(2), 208(d)(5)(A)(iii); 8 C.F.R. § 1208.7.

(i) Lodged Asylum Applications. — For the purpose of employment authorization, DHS considers a defensive asylum application "filed" as of the date the application is filed with the Immigration Court, unless the application is first lodged with the court. If the application is first lodged with the court, DHS considers the date on which the application is lodged for the purpose of determining eligibility for employment authorization. An alien may lodge an asylum application at the Immigration Court's public window during that court's filing hours, or by sending it to the Immigration Court by mail or courier.

The lodged date is not the filing date and a lodged asylum application is not considered filed. A respondent who lodges a defensive asylum application must still file the application before an Immigration Judge at a master calendar hearing. See Chapter 3.1(b)(III)(A) (Defensive applications).

The Immigration Court places a date stamp and a "lodged not filed" stamp on the application, and returns the application to the alien. The court does not retain a copy of the lodged application, and it is not placed in the record of proceedings; however, the date that the application was lodged with the court is electronically transmitted to DHS.

(A) Requirements for lodging. — Only a respondent who plans to file a defensive asylum application, but has not yet done so, may lodge an asylum application. An asylum applicant may only lodge an asylum application once. If an asylum application is lodged, it must be lodged before that application is filed before an Immigration Judge at a master calendar hearing. An applicant who already has an asylum application pending with the court may not lodge an asylum application. Accordingly, if a respondent files an application with DHS and DHS refers that application to the court, the respondent may not lodge an asylum application.

If an alien lodges an asylum application by mail or courier, the application must be accompanied by a self-addressed stamped envelope or comparable return delivery packaging. It must also be accompanied by a cover page or include a prominent annotation on the top of the front page of the form stating that it is being submitted for the purpose of lodging .

Note that a Proof of Service is not required to lodge an application.

(B) Defective lodging. — Under certain circumstances, an asylum application which is submitted for the purpose of lodging the application is rejected. Examples of defective submissions include:

- the Form I-589 does not have the applicant's name
- the Form I-589 does not have the A-number
- the Form I-589 is not signed by the applicant
- the Form I-589 has already been lodged with the court
- the Form I-589 has already been filed with the court
- the Form I-589 was referred to the court from USCIS
- the Form I-589 is being submitted for lodging at the incorrect court location
- the case is pending before the Board of Immigration Appeals
- the case is not pending before EOIR

An application that is submitted by mail or courier for the purpose of lodging is subject to rejection for the following additional defects:

- the application is not accompanied by a self-addressed stamped envelope or comparable return delivery packaging; or
- The application is not accompanied by a cover page or does not include a prominent annotation on the top of the front page of the form stating that it is being submitted for the purpose of lodging.

***(m) Waivers of appearances*. —** Respondents and representatives must appear at all master calendar hearings unless the Immigration Judge has granted a waiver of appearance for that hearing. Waivers of appearances for master calendar hearings are described in subsections (i) and (ii), below. Respondents and representatives requesting waivers of appearances should note the limitations on waivers of appearances described in subsection (iii), below.

Representatives should note that a motion for a waiver of a representative's appearance is distinct from a representative's motion for a *telephonic appearance*. Motions for telephonic appearances are described in subsection (n), below.

(i) Waiver of representative's appearance. **—** A representative's appearance at a master calendar hearing may be waived only by written motion filed in conjunction with written pleadings. See subsection (j), above. The written motion should be filed with a cover page labeled "MOTION TO WAIVE REPRESENTATIVE'S APPEARANCE" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). The motion should state the date and time of the master calendar hearing and explain the reason(s) for requesting a waiver of the representative's appearance.

(ii) Waiver of respondent's appearance. **—** A respondent's appearance at a master calendar hearing may be waived by oral or written motion. See 8 C.F.R. § 1003.25(a). If in writing, the motion should be filed with a cover page labeled "MOTION TO WAIVE RESPONDENT'S APPEARANCE" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). The motion should state the date and time of the master calendar hearing and explain the reason(s) for requesting a waiver of the respondent's appearance.

(iii) Limitations on waivers of appearances. **—**

(A) Waivers granted separately. **—** A waiver of a representative's appearance at a master calendar hearing does not constitute a waiver of the respondent's appearance. A waiver of a respondent's appearance at a master calendar hearing does not constitute a waiver of the representative's appearance.

(B) Pending motion. **—** The mere filing of a motion to waive the appearance of a representative or respondent at a master calendar hearing does not excuse the appearance of the representative or respondent at that hearing. Therefore, the representative or respondent must appear in person unless the motion has been granted.

(C) Future hearings. **—** A waiver of the appearance of a representative or respondent at a master calendar hearing does not constitute a waiver of the appearance of the representative or respondent at any future hearing.

(n) Telephonic appearances. **—** In certain instances, respondents and representatives may appear by telephone at some master calendar hearings at the Immigration Judge's discretion. For more information, parties should contact the Immigration Court.

An appearance by telephone may be requested by written or oral motion. If in writing, the motion should be filed with a cover page labeled "MOTION TO PERMIT TELEPHONIC APPEARANCE" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). The motion should state the date and time of the master calendar hearing and explain the reason(s) for requesting a telephonic appearance. In addition, the motion should state the telephone number of the representative or respondent.

Parties requesting an appearance by telephone should note the guidelines in subsections (i) through (v), below.

(i) Representative's telephonic appearance is not a waiver of respondent's appearance. — Permission for a *representative* to appear by telephone at a master calendar hearing does not constitute a waiver of the *respondent's* appearance at that hearing. A request for a waiver of a respondent's appearance at a master calendar hearing must comply with the guidelines in subsection (m), above.

(ii) Availability. — A representative or respondent appearing by telephone must be available during the entire master calendar hearing.

(iii) Cellular telephones. — Unless expressly permitted by the Immigration Judge, cellular telephones should not be used for telephonic appearances.

(iv) Pending motion. — The mere filing of a motion to permit a representative or respondent to appear by telephone at a master calendar hearing does not excuse the appearance in person at that hearing by the representative or respondent. Therefore, the representative or respondent must appear in person unless the motion has been granted.

(v) Future hearings. — Permission for a representative or respondent to appear by telephone at a master calendar hearing does not constitute permission for the representative or respondent to appear by telephone at any future hearing.

(o) Other requests. — In preparation for an upcoming individual calendar hearing, the following requests may be made at the master calendar hearing or afterwards, as described below.

(i) Interpreters. — If a party anticipates that an interpreter will be needed at the individual calendar hearing, the party should request an interpreter, either by oral motion at a master calendar hearing, by written motion, or in a written pleading.

Parties are strongly encouraged to submit requests for interpreters at the master calendar hearing rather than following the hearing. A written motion to request an interpreter should be filed with a cover page labeled "MOTION TO REQUEST AN INTERPRETER," and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

A request for an interpreter, whether made by oral motion, by written motion, or in a written pleading, should contain the following information:

- the name of the language requested, including any variations in spelling
- the specific dialect of the language, if applicable
- the geographical locations where such dialect is spoken, if applicable
- the identification of any other languages in which the respondent or witness is fluent
- any other appropriate information necessary for the selection of an interpreter

(ii) Video testimony.— In certain instances, witnesses may testify by video at the individual calendar hearing, at the Immigration Judge's discretion. Video testimony may be requested only by written motion. For more information, parties should contact the Immigration Court.

A written motion to request video testimony should be filed with a cover page labeled "MOTION TO PRESENT VIDEO TESTIMONY," and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). A motion to present video testimony must include an explanation of why the witness cannot appear in person. In addition, parties wishing to present video testimony must comply with the requirements for witness lists. See Chapter 3.3(g) (Witness lists).

If video testimony is permitted, the Immigration Judge specifies the time and manner under which the testimony is taken.

(iii) Telephonic testimony.— In certain instances, witnesses may testify by telephone, at the Immigration Judge's discretion. If a party wishes to have witnesses testify by telephone at the individual calendar hearing, this may be

requested by oral motion at the master calendar hearing or by written motion. If telephonic testimony is permitted, the court specifies the time and manner under which the testimony is taken. For more information, parties should contact the Immigration Court.

A written motion to request telephonic testimony should be filed with a cover page labeled "MOTION TO PRESENT TELEPHONIC TESTIMONY," and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). In addition, parties wishing to present telephonic testimony must comply with the requirements for witness lists. See Chapter 3.3(g) (Witness lists).

***(A) Contents*. —** An oral or written motion to permit telephonic testimony must include:

- an explanation of why the witness cannot appear in person
- the witness's telephone number and the location from which the witness will testify

***(B) Availability*. —** A witness appearing by telephone must be available to testify at any time during the course of the individual calendar hearing.

***(C) Cellular telephones*. —** Unless permitted by the Immigration Judge, cellular telephones should not be used by witnesses testifying telephonically.

***(D) International calls*. —** If international telephonic testimony is permitted, the requesting party should bring a pre-paid telephone card to the Immigration Court to pay for the call.

4.16 Individual Calendar Hearing

***(a) Generally*. —** Evidentiary hearings on contested matters are referred to as individual calendar hearings or merits hearings. Contested matters include challenges to removability and applications for relief.

***(b) Filings*. —** The following documents should be filed in preparation for the individual calendar hearing, as necessary. Parties should note that, since Records of

Proceedings in removal proceedings are kept separate from Records of Proceeding in bond redetermination proceedings, documents already filed in bond redetermination proceedings must be re-filed for removal proceedings. See Chapter 9.3 (Bond Proceedings).

***(i) Applications, exhibits, motions*. —** Parties should file all applications for relief, proposed exhibits, and motions, as appropriate. All submissions must comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court).

***(ii) Witness list*. —** If presenting witnesses other than the respondent, parties must file a witness list that complies with the requirements of Chapter 3.3(g) (Witness lists). In addition, the witness list must comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court).

***(iii) Criminal history chart*. —** When submitting documents relating to a respondent's criminal arrests, prosecutions, or convictions, parties are encouraged to use a criminal history chart and attach all pertinent documentation, such as arrest and conviction records. For guidance on submitting a criminal history chart, see Chapter 3.3(f) (Criminal conviction documents). For a sample, see Appendix O (Sample Criminal History Chart). Parties submitting a criminal history chart should comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court).

***(c) Opening the individual calendar hearing*. —** The Immigration Judge turns on the recording equipment at the beginning of the individual calendar hearing. The hearing is recorded, except for off-the-record discussions. See Chapter 4.10 (Record).

On the record, the Immigration Judge identifies the type of proceeding being conducted (e.g., a removal proceeding); the respondent's name and alien registration number ("A number"); the date, time and place of the proceeding; and the presence of the parties. The Immigration Judge also verifies the respondent's name, address, and telephone number. If the respondent's address or telephone number have changed, the respondent must submit an Alien's Change of Address Form (Form EOIR-33/IC).

***(d) Conduct of hearing*. —** While the Immigration Judge decides how each hearing is conducted, parties should be prepared to:

- make an opening statement
- raise any objections to the other party's evidence

- present witnesses and evidence on all issues
- cross-examine opposing witnesses and object to testimony
- make a closing statement

(e) Witnesses. — All witnesses, including the respondent if he or she testifies, are placed under oath by the Immigration Judge before testifying. If necessary, an interpreter is provided. See Chapters 4.11 (Interpreters), 4.15(o) (Other requests). The Immigration Judge may ask questions of the respondent and all witnesses at any time during the hearing. See INA § 240(b)(1).

(f) Pro se respondents. — Unrepresented ("pro se") respondents have the same hearing rights and obligations as represented respondents. For example, pro se respondents may testify, present witnesses, cross-examine any witnesses presented by the Department of Homeland Security (DHS), and object to evidence presented by DHS. When a respondent appears pro se, the Immigration Judge generally participates in questioning the respondent and the respondent's witnesses. As in all removal proceedings, DHS may object to evidence presented by a pro se respondent and may cross-examine the respondent and the respondent's witnesses.

(g) Decision. — After the parties have presented their cases, the Immigration Judge renders a decision. The Immigration Judge may render an oral decision at the hearing's conclusion, or he or she may render an oral or written decision on a later date. See Chapter 1.5(c) (Immigration Judge decisions). If the decision is rendered orally, the parties are given a signed summary order from the court.

(h) Appeal. — The respondent and the Department of Homeland Security have the right to appeal the Immigration Judge's decision to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions). A party may waive the right to appeal. At the conclusion of Immigration Court proceedings, the Immigration Judge informs the parties of the deadline for filing an appeal with the Board, unless the right to appeal is waived. See Chapter 6.4 (Waiver of Appeal).

Parties should note that the Immigration Judge may ask the Board to review his or her decision. This is known as "certifying" a case to the Board. The certification of a case is separate from any appeal in the case. Therefore, a party wishing to appeal must file an appeal *even if* the Immigration Judge has certified the case to the Board. See Chapter 6.5 (Certification).

If an appeal is not filed, the Immigration Judge's decision becomes the final administrative decision in the matter, unless the case has been certified to the Board.

(i) Relief granted. **—** If a respondent's application for relief from removal is granted, the respondent is provided the Department of Homeland Security (DHS) post-order instructions. These instructions describe the steps the respondent should follow to obtain documentation of his or her immigration status from U.S. Citizenship and Immigration Services, a component of DHS.

More information about these post-order instructions is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

For respondents who are granted asylum, information on asylees' benefits and responsibilities is available at the Immigration Court.

4.17 In Absentia Hearing

(a) In general. **—** Any delay in the respondent's appearance at a master calendar or individual calendar hearing may result in the respondent being ordered removed "in absentia" (in the respondent's absence). See 8 C.F.R. § 1003.26(c). See also Chapter 4.8 (Attendance). There is no appeal from a removal order issued in absentia. However, parties may file a motion to reopen to rescind an in absentia removal order. See Chapter 5.9 (Motions to Reopen In Absentia Orders).

(b) Deportation and exclusion proceedings. **—** Parties should note that in absentia orders in deportation and exclusion proceedings are governed by different standards than in absentia orders in removal proceedings. For the provisions governing in absentia orders in deportation and exclusion proceedings, see 8 C.F.R. § 1003.26. See also Chapter 7 (Other Hearings before Immigration Judges).

4.18 Pre-Hearing Conferences and Statements

(a) Pre-hearing conferences. **—** Pre-hearing conferences are held between the parties and the Immigration Judge to narrow issues, obtain stipulations between the parties, exchange information voluntarily, and otherwise simplify and organize the proceeding. See 8 C.F.R. § 1003.21(a).

Pre-hearing conferences may be requested by a party or initiated by the Immigration Judge. A party's request for a pre-hearing conference may be made orally or by written motion. If in writing, the motion should be filed with a cover page labeled "MOTION FOR A PRE-HEARING CONFERENCE," and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

Even if a pre-hearing conference is not held, the parties are strongly encouraged to confer prior to a hearing in order to narrow issues for litigation. Parties are further encouraged to file pre-hearing statements following such discussions. See subsection (b), below.

(b) Pre-hearing statements. **—** An Immigration Judge may order the parties to file a pre-hearing statement See 8 C.F.R. § 1003.21(b). Parties are encouraged to file a pre-hearing statement even if not ordered to do so by the Immigration Judge. Parties also are encouraged to file pre-hearing briefs addressing questions of law. See Chapter 4.19 (Pre-Hearing Briefs).

(i) Filing. **—** A pre-hearing statement should be filed with a cover page with an appropriate label (e.g., "PARTIES' PRE-HEARING STATEMENT"), and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

(ii) Contents of a pre-hearing statement. **—** In general, the purpose of a pre-hearing statement is to narrow and reduce the factual and legal issues in advance of an individual calendar hearing. For example, a pre-hearing statement may include the following items:

- a statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible
- a list of proposed witnesses and what they will establish
- a list of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction
- the estimated time required to present the case
- a statement of unresolved issues in the proceeding

See 8 C.F.R. § 1003.21(b).

4.19 Pre-Hearing Briefs

(a) Generally. **—** An Immigration Judge may order the parties to file pre-hearing briefs. Parties are encouraged to file pre-hearing briefs even if not ordered to do so by the

Immigration Judge. Parties are also encouraged to file pre-hearing statements to narrow and reduce the legal and factual issues in dispute. See Chapter 4.18(b) (Pre-hearing statements).

***(b) Guidelines*. —** Pre-hearing briefs advise the Immigration Judge of a party's positions and arguments on questions of law. A well-written pre-hearing brief is in the party's best interest and is of great importance to the Immigration Judge. Pre-hearing briefs should be clear, concise, and well-organized. They should cite the record, as appropriate. Pre-hearing briefs should cite legal authorities fully, fairly, and accurately.

Pre-hearing briefs should always recite those facts that are appropriate and germane to the adjudication of the issue(s) at the individual calendar hearing. They should cite proper legal authority, where such authority is available. See subsection (f), below. Pre-hearing briefs should not belabor facts or law that are not in dispute. Parties are encouraged to expressly identify in their pre-hearing briefs those facts or law that are not in dispute.

There are no limits to the length of pre-hearing briefs. Parties are encouraged, however, to limit the body of their briefs to 25 pages, provided that the issues in question can be adequately addressed. Pre-hearing briefs should always be paginated.

***(c) Format*. —**

***(i) Filing*. —** Pre-hearing briefs should be filed with a cover page with an appropriate label (e.g., "RESPONDENT'S PRE-HEARING BRIEF"), and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). Pre-hearing briefs must be signed by the respondent, the respondent's primary attorney (notice attorney) or representative, or the representative of the Department of Homeland Security. See Chapter 3.3(b) (Signatures). See also Chapter 2 (Appearances before the Immigration Court).

***(ii) Contents*. —** Unless otherwise directed by the Immigration Judge, the following items should be included in a pre-hearing brief:

- a concise statement of facts
- a statement of issues
- a statement of the burden of proof
- a summary of the argument

- the argument
- a short conclusion stating the precise relief or remedy sought

(iii) Statement of facts. **—** Statements of facts in pre-hearing briefs should be concise. Facts should be set out clearly. Points of contention and points of agreement should be expressly identified.

Facts, like case law, require citation. Parties should support factual assertions by citing to any supporting documentation or exhibits, whether in the record or accompanying the brief. See subsection (f), below.

Do not misstate or misrepresent the facts, or omit unfavorable facts that are relevant to the legal issue. A brief's accuracy and integrity are paramount to the persuasiveness of the argument and the decision regarding the legal issue(s) addressed in the brief.

(iv) Footnotes. **—** Substantive arguments should be restricted to the text of pre-hearing briefs. The excessive use of footnotes is discouraged.

(v) Headings and other markers. **—** Pre-hearing briefs should employ headings, sub-headings, and spacing to make the brief more readable. Short paragraphs with topic sentences and proper headings facilitate the coherence and cohesiveness of arguments.

(vi) Chronologies. **—** Pre-hearing briefs should contain a chronology of the facts, especially where the facts are complicated or involve several events. Charts or similar graphic representations that chronicle events are welcome. See Appendix O (Sample Criminal History Chart).

(d) Consolidated pre-hearing briefs. **—** Where cases have been consolidated, one pre-hearing brief may be submitted on behalf of all respondents in the consolidated proceeding, provided that each respondent's full name and alien registration number ("A number") appear on the consolidated pre-hearing brief. See Chapter 4.21 (Combining and Separating Cases).

(e) Responses to pre-hearing briefs. **—** When a party files a pre-hearing brief, the other party may file a response brief. A response brief should be filed with a cover page with an appropriate label (e.g., "DHS RESPONSE TO PRE-HEARING BRIEF"), and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the

Immigration Court), Appendix F (Sample Cover Page). Response briefs should comply with the guidelines for pre-hearing briefs set forth above.

***(f) Citation*. —** Parties are expected to provide complete and clear citations to all factual and legal authorities. Parties should comply with the citation guidelines in Appendix J (Citation Guidelines).

4.20 Subpoenas

***(a) Applying for a subpoena*. —** A party may request that a subpoena be issued requiring that witnesses attend a hearing or that documents be produced. See 8 C.F.R. §§ 1003.35, 1287.4(a)(2)(ii). A request for a subpoena may be made by written motion or by oral motion. If made in writing, the request should be filed with a cover page labeled "MOTION FOR SUBPOENA," and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). Whether made orally or in writing, a motion for a subpoena must:

- provide the court with a proposed subpoena
- state what the party expects to prove by such witnesses or documentary evidence
- show affirmatively that the party has made diligent effort, without success, to produce the witnesses or documentary evidence

If requesting a subpoena for telephonic testimony, the party should also comply with Chapter 4.15(o)(iii) (Telephonic testimony).

***(b) Contents*. —** A proposed subpoena should contain:

- the respondent's name and alien registration number ("A number")
- the type of proceeding
- the name and address of the person to whom the subpoena is directed
- a command that the recipient of the subpoena:
  - testify in court at a specified time,

- testify by telephone at a specified time, or
- produce specified books, papers, or other items

○ a return on service of subpoena

See 8 C.F.R. § 1003.35(b)(3), Appendix N (Sample Subpoena).

***(c) Appearance of witness*. —** If the witness whose testimony is required is more than 100 miles from the Immigration Court where the hearing is being conducted, the subpoena must provide for the witness's appearance at the Immigration Court nearest to the witness to respond to oral or written interrogatories, unless the party calling the witness has no objection to bringing the witness to the hearing. See 8 C.F.R. § 1003.35(b)(4).

***(d) Service*. —** A subpoena issued under the above provisions may be served by any person over 18 years of age not a party to the case. See 8 C.F.R. § 1003.35(b)(5).

4.21 Combining and Separating Cases

***(a) Consolidated cases*. —** Consolidation of cases is the administrative joining of separate cases into a single adjudication for all of the parties involved. Consolidation is generally limited to cases involving immediate family members. The Immigration Court may consolidate cases at its discretion or upon motion of one or both of the parties, where appropriate. For example, the Immigration Court may grant consolidation when spouses or siblings have separate but overlapping circumstances or claims for relief. Consolidation must be sought through the filing of a written motion that states the reasons for requesting consolidation. Such motion should include a cover page labeled "MOTION FOR CONSOLIDATION" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). A copy of the motion should be filed for each case included in the request for consolidation. The motion should be filed as far in advance of any filing deadline as possible. See Chapter 3.1(b) (Timing of submissions).

***(b) Severance of cases*. —** Severance of cases is the division of a consolidated case into separate cases, relative to each individual. The Immigration Court may sever cases in its discretion or upon request of one or both of the parties. Severance must be sought through the filing of a written motion that states the reasons for requesting severance. Such motion should include a cover page labeled "MOTION FOR SEVERANCE" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing before the Immigration Court), Appendix F (Sample Cover Page). A copy of the motion should be filed for each case included in the request for severance. Parties are

advised, however, that such motion should be filed as far in advance of any filing deadline as possible. See Chapter 3.1(b) (Timing of submissions).

4.22 Juveniles

***(a) Scheduling*. —** Immigration Courts do their best to schedule cases involving unaccompanied juveniles on a separate docket or at a fixed time in the week or month, separate and apart from adult cases.

***(b) Representation*. —** An Immigration Judge cannot appoint a legal representative or a guardian ad litem for unaccompanied juveniles. However, the Executive Office for Immigration Review encourages the use of pro bono legal resources for unaccompanied juveniles. For further information, see Chapter 2.2(b) (Legal service providers).

***(c) Courtroom orientation*. —** 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.

***(d) Courtroom modifications*. —** 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.

***(e) Detained juveniles*. —** For additional provisions regarding detained juveniles, see Chapter 9.2 (Detained Juveniles).

5 Motions before the Immigration Court

5.1 Who May File

(a) Parties. **—** Only an alien who is in proceedings before the Immigration Court (or the alien's representative), or the Department of Homeland Security may file a motion. A motion must identify all parties covered by the motion and state clearly their full names and alien registration numbers ("A numbers"), including all family members in proceedings. See Chapter 5.2(b) (Form), Appendix F (Sample Cover Page). The Immigration Judge will *not* assume that the motion includes all family members (or group members in consolidated proceedings). See Chapter 4.21 (Combining and Separating Cases).

(b) Representatives. **—** Whenever a party is represented, the party should submit all motions to the Court through the representative. See Chapter 2.1(d) (Who may file).

> ***(i) Pre-decision motions.*** **—** If a representative has already filed a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), and the Immigration Judge has not rendered a final order in the case, a motion need not be accompanied by a Form EOIR-28. However, if a representative is appearing for the first time, the representative must file a Form EOIR-28 along with the motion. See Chapter 2 (Appearances before the Immigration Court).
>
> ***(ii) Post-decision motions.*** **—** All motions to reopen, motions to reconsider, and motions to reopen to rescind an in absentia order filed by a representative must be accompanied by a Form EOIR-28, even if the representative is already the representative of record. See Chapter 2 (Appearances before the Immigration Court).

(c) Persons not party to the proceedings. **—** Only a party to a proceeding, or a party's representative, may file a motion pertaining to that proceeding. Family members, employers, and other third parties may not file a motion. If a third party seeks Immigration Court action in a particular case, the request should be made through a party to the proceeding.

5.2 Filing a Motion

***(a) Where to file*. —** The Immigration Court may entertain motions only in those cases in which it has jurisdiction. See subsections (i), (ii), (iii), below, Appendix K (Where to File). If the Immigration Court has jurisdiction, motions are filed with the Immigration Court having administrative control over the Record of Proceedings. See Chapter 3.1(a) (Filing).

***(i) Cases not yet filed with the Immigration Court*. —** Except for requests for bond redetermination proceedings, the Immigration Court cannot entertain motions if a charging document (i.e., a Notice to Appear) has not been filed with the court. See Chapters 4.2 (Commencement of Removal Proceedings), 9.3(b) (Jurisdiction).

***(ii) Cases pending before the Immigration Court*. —** If a charging document has been filed with the Immigration Court but the case has not yet been decided by the Immigration Judge, all motions must be filed with the court.

***(iii) Cases already decided by the Immigration Court*. —**

***(A) No appeal filed*. —** Where a case has been decided by the Immigration Judge, and no appeal has been filed with the Board of Immigration Appeals, motions to reopen and motions to reconsider are filed with the Immigration Court. Parties should be mindful of the strict time and number limits on motions to reopen and motions to reconsider. See Chapters 5.7 (Motions to Reopen), 5.8 (Motions to Reconsider), 5.9 (Motions to Reopen In Absentia Orders).

***(B) Appeal filed*. —** Where a case has been decided by the Immigration Judge, and an appeal has been filed with the Board of Immigration Appeals, the parties should consult the Board Practice Manual for guidance on where to file motions. The Board Practice Manual is available on the Executive Office for Immigration Review website at www.justice.gov/eoir. See also Appendix K (Where to File).

***(b) Form*. —** There is no official form for filing a motion before the Immigration Court. Motions must be filed with a cover page and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). In addition, all motions must be accompanied by a proposed order for the Immigration Judge's signature. See Chapter 3.3(c)(i) (Order of documents), Appendix Q (Sample Proposed Order). Motions and supporting documents should be assembled in the order described in Chapter 3.3(c)(i) (Order of documents).

A motion's cover page must accurately describe the motion. See Chapter 3.3(c)(vi) (Cover page and caption). Parties should note that the Immigration Court construes motions according to content rather than title. Therefore, the court applies time and number limits according to the nature of the motion rather than the motion's title. See Chapter 5.3 (Motion Limits).

Motions must state with particularity the grounds on which the motion is based. In addition, motions must identify the relief or remedy sought by the filing party.

***(c) When to file*. —** Pre-decision motions must comply with the deadlines for filing discussed in Chapter 3.1(b) (Timing of submissions). Deadlines for filing motions to reopen, motions to reconsider, and motions to reopen in absentia orders are governed by statute or regulation. See Chapters 5.7 (Motions to Reopen), 5.8 (Motions to Reconsider), 5.9 (Motions to Reopen In Absentia Orders).

***(d) Copy of underlying order*. —** Motions to reopen and motions to reconsider should be accompanied by a copy of the Immigration Judge's decision, where available.

***(e) Evidence*. —** Statements made in a motion are *not* evidence. If a motion is based upon evidence that was not made part of the record by the Immigration Judge, that evidence should be submitted with the motion. Such evidence may include sworn affidavits, declarations under the penalties of perjury, and documentary evidence. The Immigration Court will not suspend or delay adjudication of a motion pending the receipt of supplemental evidence.

All evidence submitted with a motion must comply with the requirements of Chapter 3.3 (Documents).

***(f) Filing fee*. —** Where the motion requires a filing fee, the motion must be accompanied by a fee receipt from the Department of Homeland Security (DHS) or a request that the Immigration Judge waive the fee. Filing fees are paid to DHS. See Chapter 3.4 (Filing Fees).

***(g) Application for relief*. —** A motion based upon eligibility for relief must be accompanied by a copy of the application for that relief and all supporting documents, if an application is normally required. See 8 C.F.R. § 1003.23(b)(3). A grant of a motion based on eligibility for relief does not constitute a grant of the underlying application for relief.

The application for relief must be duly completed and executed, in accordance with the requirements for such relief. The original application for relief should be held by the filing party for submission to the Immigration Court, if appropriate, after the ruling on the

motion. See Chapter 11.3 (Submitting Completed Forms). The copy that is submitted to the Immigration Court should be accompanied by a copy of the appropriate supporting documents.

If a certain form of relief requires an application, *prima facie eligibility for that relief cannot be shown without it.* For example, if a motion to reopen is based on adjustment of status, a copy of the completed Application to Adjust Status (Form I-485) should be filed *with* the motion, along with the necessary documents.

Application fees are *not* paid to the Immigration Court and should not accompany the motion. Fees for applications should be paid if and when the motion is granted in accordance with the filing procedures for that application. See Chapter 3.4(c) (Application fees).

(h) Visa petitions. **—** If a motion is based on an application for adjustment of status and there is an underlying visa petition that has been approved, a copy of the visa petition and the approval notice should accompany the motion. When a petition is subject to visa availability, evidence that a visa is immediately available should also accompany the motion (e.g., a copy of the State Department's Visa Bulletin reflecting that the priority date is "current").

If a motion is based on adjustment of status and the underlying visa petition has not yet been adjudicated, a copy of that visa petition, all supporting documents, and the filing receipt (Form I-797) should accompany the motion.

Parties should note that, in certain instances, an approved visa petition is required for motions based on adjustment of status. See, e.g., *Matter of H-A-*, 22 I&N Dec. 728 (BIA 1999), modified by *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002).

Filing fees for visa petitions are not paid to the Immigration Court and should not accompany the motion. The filing fee for a visa petition is submitted to DHS when the petition is filed with DHS.

(i) Opposing party's position. **—** The party filing a motion should make a good faith effort to ascertain the opposing party's position on the motion. The opposing party's position should be stated in the motion. If the filing party was unable to ascertain the opposing party's position, a description of the efforts made to contact the opposing party should be included.

(j) Oral argument. **—** The Immigration Court generally does not grant requests for oral argument on a motion. If the Immigration Judge determines that oral argument is necessary, the parties are notified of the hearing date.

5.3 Motion Limits

Certain motions are limited in time (when the motions must be filed) and number (how many motions may be filed). Pre-decision motions are limited in time. See Chapter 3.1(b) (Timing of submissions). Motions to reopen and motions to reconsider are limited in both time and number. See Chapters 5.7 (Motions to Reopen), 5.8 (Motions to Reconsider), 5.9 (Motions to Reopen In Absentia Orders). Time and number limits are strictly enforced.

5.4 Multiple Motions

When multiple motions are filed, the motions should be accompanied by a cover letter listing the separate motions. In addition, each motion must include a cover page and comply with the deadlines and requirements for filing. See Chapter 5.2(b) (Form), Appendix F (Sample Cover Page).

Parties are strongly discouraged from filing compound motions, which are motions that combine two separate requests. Parties should note that time and number limits apply to motions even when submitted as part of a compound motion. For example, if a motion seeks both reopening and reconsideration, and is filed more than 30 days after the Immigration Judge's decision (the deadline for reconsideration) but within 90 days of that decision (the deadline for reopening), the portion that seeks reconsideration is considered untimely.

5.5 Motion Briefs

A brief is not required in support of a motion. However, if a brief is filed, it should accompany the motion. See 8 C.F.R. § 1003.23(b)(1)(ii). In general, motion briefs should comply with the requirements of Chapters 3.3 (Documents) and 4.19 (Pre-Hearing Briefs).

A brief filed in opposition to a motion must comply with the filing deadlines for responses. See Chapter 3.1(b) (Timing of submissions).

5.6 Transcript Requests

The Immigration Court does not prepare a transcript of proceedings. See Chapter 4.10 (Record). Parties are reminded that recordings of proceedings are generally available for review by prior arrangement with the Immigration Court. See Chapter 1.6(c) (Records).

5.7 Motions to Reopen

(a) Purpose. — A motion to reopen asks the Immigration Court to reopen proceedings after the Immigration Judge has rendered a decision, so that the Immigration Judge can consider new facts or evidence in the case.

(b) Requirements. —

(i) Filing. — The motion should be filed with a cover page labeled "MOTION TO REOPEN" and comply with the deadlines and requirements for filing. See subsection (c), below, Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). If the alien is represented, the attorney must file a paper, not an electronic, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). To ensure that the Immigration Court has the alien's current address, an Alien's Change of Address Form (EOIR-33/IC) should be filed with the motion. Depending on the nature of the motion, a filing fee or fee waiver request may be required. See Chapter 3.4 (Filing Fees). If the motion is based on eligibility for relief, the motion must be accompanied by a copy of the application for that relief and all supporting documents, if an application is normally required. See Chapter 5.2(g) (Application for relief).

(ii) Content. — A motion to reopen must state the new facts that will be proven at a reopened hearing if the motion is granted, and the motion must be supported by affidavits or other evidentiary material. 8 C.F.R. § 1003.23(b)(3).

A motion to reopen is not granted unless it appears to the Immigration Judge that the evidence offered is material and was not available and could not have been discovered or presented at an earlier stage in the proceedings. See 8 C.F.R. § 1003.23(b)(3).

A motion to reopen based on an application for relief will not be granted if it appears the alien's right to apply for that relief was fully explained and the alien had an opportunity to apply for that relief at an earlier stage in the proceedings (unless

the relief is sought on the basis of circumstances that have arisen subsequent to that stage of the proceedings). 8 C.F.R. § 1003.23(b)(3).).

***(c) Time limits*. —** As a general rule, a motion to reopen must be filed within 90 days of an Immigration Judge's final order. 8 C.F.R. § 1003.23(b)(1). (For cases decided by the Immigration Judge before July 1, 1996, the motion to reopen was due on or before September 30, 1996. 8 C.F.R. § 1003.23(b)(1)). There are few exceptions. See subsection (e), below.

Responses to motions to reopen are due within fifteen (15) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

***(d) Number limits*. —** A party is permitted only one motion to reopen. 8 C.F.R. § 1003.23(b)(1). There are few exceptions. See subsection (e), below.

***(e) Exceptions to the limits on motions to reopen*. —** A motion to reopen may be filed outside the time and number limits only in specific circumstances. See 8 C.F.R. § 1003.23(b)(4).

***(i) Changed circumstances*. —** When a motion to reopen is based on a request for asylum, withholding of removal ("restriction on removal"), or protection under the Convention Against Torture, and it is premised on new circumstances, the motion must contain a complete description of the new facts that comprise those circumstances and articulate how those circumstances affect the party's eligibility for relief. See 8 C.F.R. § 1003.23(b)(4)(i). Motions based on changed circumstances must also be accompanied by evidence of the changed circumstances alleged. See 8 C.F.R. § 1003.23(b)(3).

***(ii) In absentia proceedings*. —** There are special rules pertaining to motions to reopen following an alien's failure to appear for a hearing. See Chapter 5.9 (Motions to Reopen In Absentia Orders).

***(iii) Joint motions*. —** Motions to reopen that are agreed upon by all parties and are jointly filed are not limited in time or number. See 8 C.F.R. § 1003.23(b)(4)(iv).

***(iv) DHS motions*. —** For cases in removal proceedings, the Department of Homeland Security (DHS) is not subject to time and number limits on motions to reopen. See 8 C.F.R. § 1003.23(b)(1). For cases brought in deportation or exclusion proceedings, DHS is subject to the time and number limits on motions to

reopen, unless the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum. See 8 C.F.R. § 1003.23(b)(1).

***(v) Pre-9/30/96 motions*. —** Motions filed before September 30, 1996 do not count toward the one-motion limit.

(vi) Battered spouses, children, and parents. — There are special rules for certain motions to reopen by battered spouses, children, and parents. INA § 240(c)(7)(C)(iv).

***(vii) Other*. —** In addition to the regulatory exceptions for motions to reopen, exceptions may be created in accordance with special statutes, case law, directives, or other special legal circumstances. The Immigration Judge may also reopen proceedings at any time on his or her own motion. See 8 C. F. R. § 1003.23(b)(1).

***(f) Evidence*. —** A motion to reopen must be supported by evidence. See Chapter 5.2(e) (Evidence).

***(g) Motions filed prior to deadline for appeal*. —** A motion to reopen filed prior to the deadline for filing an appeal does not stay or extend the deadline for filing the appeal.

***(h) Motions filed while an appeal is pending*. —** Once an appeal is filed with the Board of Immigration Appeals, the Immigration Judge no longer has jurisdiction over the case. See Chapter 5.2(a) (Where to file). Thus, motions to reopen should not be filed with the Immigration Court after an appeal is taken to the Board.

***(i) Administratively closed cases*. —** When proceedings have been administratively closed, the proper motion is a motion to recalendar, *not* a motion to reopen. See Chapter 5.10(t) (Motion to recalendar).

***(j) Automatic stays*. —** A motion to reopen that is filed with the Immigration Court does not automatically stay an order of removal or deportation. See Chapter 8 (Stays). For automatic stay provisions for motions to reopen to rescind in absentia orders, see Chapter 5.9(d)(iv) (Automatic stay).

***(k) Criminal convictions*. —** A motion claiming that a criminal conviction has been overturned, vacated, modified, or disturbed in some way must be accompanied by clear evidence that the conviction has actually been disturbed. Thus, neither an intention to seek post-conviction relief nor the mere eligibility for post-conviction relief, by itself, is sufficient to reopen proceedings.

5.8 Motions to Reconsider

(a) Purpose. — A motion to reconsider either identifies an error in law or fact in the Immigration Judge's prior decision or identifies a change in law that affects an Immigration Judge's prior decision and asks the Immigration Judge to reexamine his or her ruling. A motion to reconsider is based on the existing record and does not seek to introduce new facts or evidence.

(b) Requirements. — The motion should be filed with a cover page labeled "MOTION TO RECONSIDER" and comply with the deadlines and requirements for filing. See subsection (c), below, Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). If the alien is represented, the attorney must file a paper, not an electronic, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). To ensure that the Immigration Court has the alien's current address, an Alien's Change of Address Form (EOIR-33/IC) should be filed with the motion. A filing fee or a fee waiver request may be required. See Chapter 3.4 (Filing Fees).

(c) Time limits. — A motion to reconsider must be filed within 30 days of the Immigration Judge's final administrative order. 8 C.F.R. § 1003.23(b)(1). (For cases decided by the Immigration Court before July 1, 1996, the motion to reconsider was due on or before July 31, 1996. 8 C.F.R. § 1003.23(b)(1)).

Responses to motions to reconsider are due within fifteen (15) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

(d) Number limits. — As a general rule, a party may file only one motion to reconsider. See 8 C.F.R. § 1003.23(b)(1). Motions filed prior to July 31, 1996, do not count toward the one-motion limit. Although a party may file a motion to reconsider the denial of a motion to reopen, a party may not file a motion to reconsider the denial of a motion to reconsider. 8 C.F.R. § 1003.23(b)(1).

(e) Exceptions to the limits on motions to reconsider. —

(i) Alien motions. — There are no exceptions to the time and number limitations on motions to reconsider when filed by an alien.

(ii) DHS motions. — For cases in removal proceedings, the Department of Homeland Security (DHS) is not subject to time and number limits on motions to reconsider. See 8 C.F.R. § 1003.23(b)(1). For cases brought in deportation or exclusion proceedings, DHS is subject to the time and number limits on motions to

reconsider, unless the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum. See 8 C.F.R. § 1003.23(b)(1).

***(iii) Other*. —** In addition to the regulatory exceptions for motions to reconsider, exceptions may be created in accordance with special statutes, case law, directives, or other special legal circumstances. The Immigration Judge may also reconsider proceedings at any time on its own motion. 8 C.F.R. § 1003.23(b)(1).

***(f) Identification of error*. —** A motion to reconsider must state with particularity the errors of fact or law in the Immigration Judge's prior decision, with appropriate citation to authority and the record. If a motion to reconsider is premised upon changes in the law, the motion should identify the changes and, where appropriate, provide copies of that law. For citation guidelines, see Chapter 4.19(f) (Citation), Appendix J (Citation Guidelines).

***(g) Motions filed prior to deadline for appeal*. —** A motion to reconsider filed prior to the deadline for filing an appeal does not stay or extend the deadline for filing the appeal.

***(h) Motions filed while an appeal is pending*. —** Once an appeal is filed with the Board of Immigration Appeals, the Immigration Judge no longer has jurisdiction over the case. See Chapter 5.2(a) (Where to file). Thus, motions to reconsider should not be filed with an Immigration Judge after an appeal is taken to the Board.

***(i) Automatic stays*. —** A motion to reconsider does not automatically stay an order of removal or deportation. See Chapter 8 (Stays).

***(j) Criminal convictions*. —** When a criminal conviction has been overturned, vacated, modified, or disturbed in some way, the proper motion is a motion to reopen, not a motion to reconsider. See Chapter 5.7(k) (Criminal convictions).

5.9 Motions to Reopen In Absentia Orders

***(a) In general*. —** A motion to reopen requesting that an in absentia order be rescinded asks the Immigration Judge to consider the reasons why the alien did not appear at the alien's scheduled hearing. See Chapter 4.17 (In Absentia Hearing).

***(b) Filing*. —** The motion should be filed with a cover page labeled "MOTION TO REOPEN AN IN ABSENTIA ORDER" and comply with the deadlines and requirements for filing. See subsection (d), below, Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). If the alien is represented, the attorney must file a paper, not an electronic, Notice

of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). To ensure that the Immigration Court has the alien's current address, an Alien's Change of Address Form (EOIR-33/IC) should be filed with the motion. A filing fee or fee waiver request may be required, depending on the nature of the motion. See 8 C.F.R. § 1003.24(b)(2).

(c) Deportation and exclusion proceedings. **—** The standards for motions to reopen to rescind in absentia orders in deportation and exclusion proceedings differ from the standards in removal proceedings. See Chapter 7 (Other Proceedings before Immigration Judges). The provisions in subsection (d), below, apply to removal proceedings only. Parties in deportation or exclusion proceedings should carefully review the controlling law and regulations. See 8 C.F.R. § 1003.23(b)(4)(iii).

(d) Removal proceedings. **—** The following provisions apply to motions to reopen to rescind in absentia orders in removal proceedings only. Parties should note that, in removal proceedings, an in absentia order may be rescinded *only* upon the granting of a motion to reopen. The Board of Immigration Appeals does not have jurisdiction to consider direct appeals of in absentia orders in removal proceedings.

(i) Content. **—** A motion to reopen to rescind an in absentia order must demonstrate that:

- the failure to appear was because of exceptional circumstances;
- the failure to appear was because the alien did not receive proper notice; or
- the failure to appear was because the alien was in federal or state custody and the failure to appear was through no fault of the alien

INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii). The term "exceptional circumstances" refers to exceptional circumstances beyond the control of the alien (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances). INA § 240(e)(1).

(ii) Time limits. **—**

(A) Within 180 days. **—** If the motion to reopen to rescind an in absentia order is based on an allegation that the failure to appear was

because of exceptional circumstances, the motion must be filed within 180 days after the in absentia order. See INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii).

***(B) At any time*. —** If the motion to reopen to rescind an in absentia order is based on an allegation that the alien did not receive proper notice of the hearing, or that the alien was in federal or state custody and the failure to appear was through no fault of the alien, the motion may be filed at any time. See INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii).

***(C) Responses*. —** Responses to motions to reopen to rescind in absentia orders are due within fifteen (15) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

***(iii) Number limits*. —** The alien is permitted to file only one motion to reopen to rescind an in absentia order. 8 C.F.R. § 1003.23(b)(4)(ii).

***(iv) Automatic stay*. —** The removal of the alien is automatically stayed pending disposition by the Immigration Judge of the motion to reopen to rescind an in absentia order in removal proceedings. See INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii).

5.10 Other Motions

***(a) Motion to continue*. —** A request for a continuance of any hearing should be made by written motion. Oral motions to continue are discouraged. The motion should set forth in detail the reasons for the request and, if appropriate, be supported by evidence. See Chapter 5.2(e) (Evidence). It should also include the date and time of the hearing, as well as preferred dates that the party is available to re-schedule the hearing. However, parties should be mindful that the Immigration Court retains discretion to schedule continued cases on dates that the court deems appropriate.

The motion should be filed with a cover page labeled “MOTION TO CONTINUE” and comply with the deadlines and requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

The filing of a motion to continue does not excuse the appearance of an alien or representative at any scheduled hearing. Therefore, until the motion is granted, parties must appear at all hearings as originally scheduled.

(b) Motion to advance. — A request to advance a hearing date (move the hearing to an earlier date) should be made by written motion. Motions to advance are disfavored. Examples of circumstances under which a hearing date might be advanced include:

- imminent ineligibility for relief, such as a minor alien "aging out" of derivative status
- a health crisis necessitating immediate action by the Immigration Judge

A motion to advance should completely articulate the reasons for the request and the adverse consequences if the hearing date is not advanced. The motion should be filed with a cover page labeled "MOTION TO ADVANCE" and comply with the deadlines and requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

(c) Motion to change venue. — A request to change venue should be made by written motion. The motion should be supported by documentary evidence. See Chapter 5.2(e) (Evidence). The motion should contain the following information:

- the date and time of the next scheduled hearing
- an admission or denial of the factual allegations and charge(s) in the Notice to Appear (Form I-862)
- a designation or refusal to designate a country of removal
- if the alien will be requesting relief from removal, a description of the basis for eligibility
- the address and telephone number of the location at which respondent will be residing if the motion is granted
- if the address at which the alien is receiving mail has changed, a properly completed Alien's Change of Address Form (Form EOIR-33/IC)
- a detailed explanation of the reasons for the request

See generally *Matter of Rahman*, 20 I&N Dec. 480 (BIA 1992), 8 C.F.R. § 1003.20.

The motion should be filed with a cover page labeled "MOTION TO CHANGE VENUE" and comply with the deadlines and requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

The filing of a motion to change venue does not excuse the appearance of an alien or representative at any scheduled hearing. Therefore, until the motion is granted, parties must appear at all hearings as originally scheduled.

***(d) Motion for substitution of counsel*. —** See Chapter 2.3(i)(Change in representation).

(e) Motion to withdraw as counsel. — See Chapter 2.3(i) (Change in representation).

***(f) Motion for extension*. —** See Chapter 3.1(c)(iv) (Motions for extensions of filing deadlines).

***(g) Motion to accept an untimely filing*. —** See Chapter 3.1(d)(ii) (Untimely filings).

***(h) Motion for closed hearing*. —** See Chapter 4.9 (Public Access).

***(i) Motion to waive representative's appearance*. —** See Chapter 4.15 (Master Calendar Hearing).

***(j) Motion to waive respondent's appearance*. —** See Chapter 4.15 (Master Calendar Hearing).

***(k) Motion to permit telephonic appearance*. —** See Chapter 4.15 (Master Calendar Hearing).

***(l) Motion to request an interpreter*. —** See Chapter 4.15 (Master Calendar Hearing).

***(m) Motion for video testimony*. —** See Chapter 4.15 (Master Calendar Hearing).

***(n) Motion to present telephonic testimony*. —** See Chapter 4.15 (Master Calendar Hearing).

***(o) Motion for subpoena*. —** See Chapter 4.20 (Subpoenas).

***(p) Motion for consolidation*. —** See Chapter 4.21 (Combining and Separating Cases).

(q) Motion for severance. **—** See Chapter 4.21 (Combining and Separating Cases).

(r) Motion to stay removal or deportation. **—** See Chapter 8 (Stays).

(s) Motions in disciplinary proceedings. **—** Motions in proceedings involving the discipline of an attorney or representative are discussed in Chapter 10 (Discipline of Practitioners).

(t) Motion to recalendar. **—** When proceedings have been administratively closed and a party wishes to reopen the proceedings, the proper motion is a motion to recalendar, not a motion to reopen. A motion to recalendar should provide the date and the reason the case was closed. If available, a copy of the closure order should be attached to the motion. The motion should be filed with a cover page labeled "MOTION TO RECALENDAR" and comply with the requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). To ensure that the Immigration Court has the alien's current address, an Alien's Change of Address Form (EOIR-33/IC) should be filed with the motion. Motions to recalendar are not subject to time and number restrictions.

(u) Motion to amend. **—** The Immigration Judge entertains motions to amend previous filings in limited situations (e.g., to correct a clerical error in a filing). The motion should clearly articulate what needs to be corrected in the previous filing. The filing of a motion to amend does not affect any existing motion deadlines.

The motion should be filed with a cover page labeled "MOTION TO AMEND" and comply with the requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

(v) Other types of motions. **—** The Immigration Court entertains other types of motions as appropriate to the facts and law of each particular case, provided that the motion is timely, is properly filed, is clearly captioned, and complies with the general motion requirements. See Chapters 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

5.11 Decisions

Immigration Judges decide motions either orally at a hearing or in writing. If the decision is in writing, it is generally served on the parties by regular mail.

5.12 Response to Motion

Responses to motions must comply with the deadlines and requirements for filing. See 8 C.F.R. § 1003.23(a), Chapter 3 (Filing with the Immigration Court). A motion is deemed unopposed unless timely response is made. Parties should note that unopposed motions are not necessarily granted.

6 Appeals of Immigration Judge Decisions

6.1 Appeals Generally

The Board of Immigration Appeals has nationwide jurisdiction to review decisions of Immigration Judges. See 8 C.F.R. § 1003.1, Chapter 1.2(c) (Relationship to the Board of Immigration Appeals). Accordingly, appeals of Immigration Judges' decisions should be made to the Board. Appeals of Immigration Judges' decisions are distinct from motions to reopen or motions to reconsider, which are filed with the Immigration Court following a decision ending proceedings. See Chapter 5 (Motions before the Immigration Court).

This chapter is limited to appeals from the decisions of Immigration Judges in removal, deportation, and exclusion proceedings. Other kinds of appeals are discussed in the following chapters:

Chapter 7	Other Proceedings before Immigration Judges
Chapter 9	Detention and Bond
Chapter 10	Discipline of Practitioners

For detailed guidance on appeals, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

6.2 Process

(a) Who may appeal. — An Immigration Judge's decision may be appealed only by the alien subject to the proceeding, the alien's legal representative, or the Department of Homeland Security. See 8 C.F.R. § 1003.3.

(b) How to appeal. — To appeal an Immigration Judge's decision, a party must file a properly completed and executed Notice of Appeal (Form EOIR-26) with the Board of Immigration Appeals. The Form EOIR-26 must be received by the Board no later than 30 calendar days after the Immigration Judge renders an oral decision or mails a written decision. See 8 C.F.R. § 1003.38. Parties must comply with all instructions on the Form EOIR-26.

Appeals are subject to strict requirements. For detailed information on these requirements, parties should consult the Board of Immigration Appeals Practice Manual.

6.3 Jurisdiction

After an appeal has been filed, jurisdiction shifts between the Immigration Court and the Board of Immigration Appeals depending on the nature and status of the appeal. For detailed guidance on whether the Immigration Court or the Board has jurisdiction over a particular matter in which an appeal has been filed, parties should consult the Board of Immigration Appeals Practice Manual. See Appendix K (Where to File).

6.4 Waiver of Appeal

***(a) Effect of appeal waiver*. —** If the opportunity to appeal is knowingly and voluntarily waived, the decision of the Immigration Judge becomes final. See 8 C.F.R. § 1003.39. If a party waives appeal at the conclusion of proceedings before the Immigration Judge, that party generally may not file an appeal thereafter. See 8 C.F.R. § 1003.3(a)(1), *Matter of Shih*, 20 I&N Dec. 697 (BIA 1993). See also 8 C.F.R. § 1003.1(d)(2)(i)(G).

***(b) Challenging a waiver of appeal*. —** Generally, a party who waives appeal cannot retract, withdraw, or otherwise undo that waiver. If a party wishes to challenge the validity of his or her waiver of appeal, the party may do so in one of two ways: either in a timely motion filed with the Immigration Judge that explains why the appeal waiver was not valid *or* in an appeal filed directly with the Board of Immigration Appeals that explains why the appeal waiver was not valid. *Matter of Patino*, 23 I&N Dec. 74 (BIA 2001). Once an appeal is filed, jurisdiction vests with the Board, and the motion can no longer be ruled upon by the Immigration Judge. For detailed guidance on whether the Immigration Court or the Board has jurisdiction over a particular matter in which an appeal has been filed, parties should consult the Board of Immigration Appeals Practice Manual.

6.5 Certification

An Immigration Judge may ask the Board of Immigration Appeals to review his or her decision. See 8 C.F.R. §§ 1003.1(c), 1003.7. This is known as “certifying” the case to the Board. When a case is certified, an Immigration Court serves a notice of certification on the parties. Generally, a briefing schedule is served on the parties following certification.

The certification of a case is separate from any appeal in the case. Therefore, a party wishing to appeal must file an appeal *even if* the Immigration Judge has certified the case to the Board. See 8 C.F.R. § 1003.3(d).

6.6 Additional Information

For detailed guidance on appeals, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

7 Other Proceedings before Immigration Judges

7.1 Overview

While the vast majority of proceedings conducted by Immigration Judges are removal proceedings, Immigration Judges have jurisdiction over other kinds of proceedings as well. This chapter provides a brief overview of these other kinds of proceedings. They include:

- deportation proceedings and exclusion proceedings
- rescission proceedings
- limited proceedings, including:
  - credible fear proceedings
  - reasonable fear proceedings
  - claimed status review
  - asylum-only proceedings
  - withholding-only proceedings

Removal proceedings are discussed in Chapter 4 (Hearings before Immigration Judges). Additional proceedings conducted by Immigration Judges are discussed in the following chapters:

Chapter 9	Detention and Bond
Chapter 10	Discipline of Practitioners

7.2 Deportation Proceedings and Exclusion Proceedings

(a) In general. —

(i) Replaced by removal proceedings. — Beginning with proceedings commenced on April 1, 1997, deportation and exclusion proceedings have been

replaced by removal proceedings. See generally INA §§ 239, 240, 8 C.F.R. §§ 1003.12 et seq., 1240.1 et seq. However, Immigration Judges continue to conduct deportation and exclusion proceedings in certain cases that began before April 1, 1997.

***(ii) Compared with removal proceedings*. —** The procedures in deportation and exclusion proceedings are generally similar to the procedures in removal proceedings. See Chapters 2 (Appearances before the Immigration Court), 3 (Filing with the Immigration Court), 4 (Hearings before Immigration Judges), 5 (Motions before the Immigration Court), 6 (Appeals of Immigration Judge Decisions). However, deportation and exclusion proceedings are significantly different from removal proceedings in areas such as burden of proof, forms of relief available, and custody. Accordingly, parties in deportation and exclusion proceedings should carefully review the laws and regulations pertaining to those proceedings. The information in this chapter is provided as a general guideline only.

***(b) Deportation proceedings*. —**

***(i) Order to Show Cause*. —** Deportation proceedings began when the former Immigration and Naturalization Service (INS) filed an Order to Show Cause (Form I-221) with the Immigration Court after serving it on the alien in person or by certified mail. See former INA § 242B(a)(1), 8 C.F.R. § 1240.40 et seq. See also Chapter 1.2 (Function of the Office of the Chief Immigration Judge). Similar to a Notice to Appear (Form I-862), an Order to Show Cause (Form I-221) is a written notice containing factual allegations and charge(s) of deportability.

***(ii) Hearing notification*. —** In deportation proceedings, hearing notices from the Immigration Court are served on the parties, personally or by certified mail, at least 14 days prior to the hearing.

***(iii) Grounds of deportability*. —** The grounds for deportation that apply in deportation proceedings are listed in former INA § 241. In some cases, those grounds are different from the grounds of deportability in removal proceedings. Compare former INA § 241 (prior to 1997) with current INA § 237.

***(iv) Forms of relief*. —** For the most part, the same forms of relief are available in deportation proceedings as in removal proceedings. However, there are important differences. Parties in deportation proceedings should carefully review the relevant law and regulations.

***(v) Appeals*. —** In most cases, an Immigration Judge's decision in a deportation proceeding can be appealed to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions).

***(c) Exclusion proceedings*. —**

***(i) Notice to Applicant Detained for Hearing*. —** Exclusion proceedings began when the Immigration and Naturalization Service (INS) filed a Notice to Applicant for Admission Detained for Hearing before an Immigration Judge (Form I-122). See former INA § 242(b), 8 C.F.R. § 1240.30 et seq. The Form I-122 is a written notice containing the charge(s) of excludability. Unlike the Order to Show Cause, the Form I-122 *does not* contain factual allegations.

***(ii) Hearing notification*. —** In exclusion proceedings, the alien must be given a reasonable opportunity to be present at the hearing. Note that, in exclusion proceedings, notice to the alien is not governed by the same standards as in deportation proceedings. See *Matter of Nafi*, 19 I&N Dec. 430 (BIA 1987).

***(iii) Closed to public*. —** Exclusion hearings are closed to the public, unless the applicant requests that the public be allowed to attend.

***(iv) Grounds of excludability*. —** The grounds for exclusion are listed in the former INA § 212. In some cases, the grounds of excludability in exclusion proceedings are different from the grounds of inadmissibility in removal proceedings. Compare former INA § 212 (prior to 1997) with current INA § 212.

***(v) Forms of relief*. —** For the most part, the same forms of relief are available in exclusion proceedings as in removal proceedings. However, there are important differences. Parties in exclusion proceedings should carefully review the relevant law and regulations.

***(vi) Appeals*. —** An Immigration Judge's decision in an exclusion proceeding can be appealed to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions).

7.3 Rescission Proceedings

***(a) In general*. —** In a rescission proceeding, an Immigration Judge determines whether an alien's status as a lawful permanent resident should be "rescinded," or taken away, because alien was not entitled to become a lawful permanent resident. See generally 8 C.F.R. § 1246.1 et seq. An alien's lawful permanent resident status may not be

rescinded if more than 5 years have passed since the alien became a lawful permanent resident. See INA § 246(a).

***(b) Notice of Intent to Rescind*. —** A rescission proceeding begins when the Department of Homeland Security personally serves an alien with a Notice of Intent to Rescind. The alien has 30 days to submit a sworn answer in writing and/or request a hearing before an Immigration Judge. A rescission hearing is held if the alien files a timely answer which contests or denies any allegation in the Notice of Intent to Rescind *or* the alien requests a hearing.

***(c) Conduct of hearing*. —** Rescission proceedings are conducted in a manner similar to removal proceedings. See Chapter 4 (Hearings Before Immigration Judges).

***(d) Appeal*. —** An Immigration Judge's decision in a rescission proceeding can be appealed to the Board of Immigration Appeals.

7.4 Limited Proceedings

***(a) In general*. —** Certain aliens can be removed from the United States without being placed into removal proceedings. However, in some circumstances, these aliens may be afforded limited proceedings, including credible fear review, reasonable fear review, claimed status review, asylum-only proceedings, and withholding-only proceedings.

***(b) Classes of aliens*. —** The following aliens can be removed from the United States without being placed into removal proceedings. These aliens are afforded limited proceedings as described below.

***(i) Expedited removal under INA § 235(b)(1)*. —** The following aliens are subject to "expedited removal" under INA § 235(b)(1):

- aliens arriving at a port of entry without valid identity or travel documents, as required, or with fraudulent documents
- aliens interdicted at sea (in international or U.S. waters) and brought to the United States
- aliens who have not been admitted or paroled into the United States and who have not resided in the United States for two years or more

- individuals paroled into the United States after April 1, 1997, and whose parole has since been terminated

***(A) Exceptions*. —** The following aliens are *not* subject to expedited removal under INA § 235(b)(1):

- lawful permanent residents
- aliens granted refugee or asylee status
- aliens seeking asylum while applying for admission under the visa waiver program
- Cuban nationals arriving by air at a port of entry
- minors, unless they have committed certain crimes

***(B) Limited proceedings afforded*. —** As described below, aliens subject to expedited removal under INA § 235(b)(1) are afforded the following proceedings:

- if the alien expresses a fear of persecution or torture, the alien is placed into "credible fear proceedings," as described in subsection (d), (below)
- if the alien claims to be a United States citizen or a lawful permanent resident, or that he or she has been granted refugee or asylee status, the alien is allowed a "claimed status review," as described in subsection (f), (below)

(ii) Expedited removal under INA § 238(b). — Aliens who are not lawful permanent residents and who have been convicted of aggravated felonies are subject to "expedited removal" under INA § 238(b). If such an alien expresses a fear of persecution or torture, the alien is placed into "reasonable fear proceedings." See subsection (e), below.

(iii) Reinstatement of prior orders under INA § 241(a)(5). — Under INA § 241(a)(5), aliens who are subject to reinstatement of prior orders of removal are not entitled to removal proceedings. If such an alien expresses a fear of persecution or torture, the alien is placed into "reasonable fear proceedings." See subsection (e), below.

(iv) Stowaways. — If a stowaway expresses a fear of persecution or torture, he or she is placed into credible fear proceedings. See INA § 235(a)(2), subsection (d), below.

(v) Others. — In certain circumstances, the aliens listed below may be placed into asylum-only proceedings. See subsection (g), below.

- crewmembers (D visa applicants)
- certain cooperating witnesses and informants (S visa applicants)
- visa waiver applicants and visa waiver overstays
- aliens subject to removal under INA § 235(c) on security grounds

(c) Custody in limited proceedings. — An alien subject to limited proceedings may be detained during the proceedings. Immigration Judges have no jurisdiction over custody decisions for these aliens.

(d) Credible fear proceedings. — Credible fear proceedings involve stowaways and aliens subject to expedited removal under INA § 235(b)(1). See subsections (b)(i), (b)(iii), above. If such an alien expresses a fear of persecution or torture to the Department of Homeland Security (DHS) immigration officer upon being detained by DHS or applying to enter the United States, the alien is interviewed by a DHS asylum officer who evaluates whether the alien possesses a credible fear of persecution or torture. See generally INA § 235(b)(1)(B).

(i) Credible fear standard. — "Credible fear of persecution" means that there is a significant possibility that the alien can establish eligibility for asylum under INA § 208 or withholding of removal ("restriction on removal") under INA § 241(b)(3). The credibility of the alien's statements in support of the claim, and other facts known to the reviewing official, are taken into account. 8 C.F.R. §§ 208.30(e)(2), 1003.42(d).

"Credible fear of torture" means there is a significant possibility that the alien is eligible for withholding of removal ("restriction on removal") or deferral of removal under the Convention Against Torture pursuant to 8 C.F.R. §§ 208.16 or 208.17. 8 C.F.R. §§ 208.30(e)(3), 1003.42(d).

(ii) If the DHS asylum officer finds credible fear. —

(A) Stowaways. — If the DHS asylum officer finds that a stowaway has a credible fear of persecution or torture, the stowaway is placed in asylum-only proceedings before an Immigration Judge. See 8 C.F.R. § 208.30(f). In asylum-only proceedings, the stowaway can apply for asylum, withholding of removal ("restriction on removal") under INA § 241(b)(3), and protection under the Convention Against Torture. See subsection (g), below.

(B) Aliens subject to expedited removal under INA\ §235(b)(1). — If the DHS asylum officer finds that an alien subject to expedited removal under INA § 235(b)(1) has a credible fear of persecution or torture, the alien is placed in removal proceedings before an Immigration Judge. See 8 C.F.R. § 208.30(f). In removal proceedings, the alien has the same rights, obligations, and opportunities for relief as any other alien in removal proceedings. See Chapter 4 (Hearings before Immigration Judges).

(iii) If the DHS asylum officer does not find credible fear. — If the DHS asylum officer finds that the alien does *not* have a credible fear of persecution or torture, the alien may request that an Immigration Judge review this finding. See 8 C.F.R. § 208.30(g).

(iv) Credible fear review by an Immigration Judge. — The credible fear review is conducted according to the provisions in (A) through (E), below. See generally INA § 235(b)(1)(B), 8 C.F.R. § 1003.42.

(A) Timing. — The credible fear review must be concluded no later than 7 days after the date of the DHS asylum officer's decision. If possible, the credible fear review should be concluded 24 hours after the decision.

(B) Location. — If possible, the credible fear review is conducted in person. However, because of the time constraints, the credible fear review may be conducted by video or telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

(C) Representation. — Prior to the credible fear review, the alien may consult with a person or persons of the alien's choosing. In the discretion of the Immigration Judge, persons consulted may be present during the credible fear review. However, the alien is not represented at the credible fear review. Accordingly, persons acting on the alien's behalf are not entitled

to make opening statements, call and question witnesses, conduct cross examinations, object to evidence, or make closing arguments.

(D) Record of Proceedings.— DHS must give the complete record of the DHS asylum officer's credible fear determination to the Immigration Court. This record includes any notes taken by the DHS asylum officer. The Immigration Judge creates a record, which is kept separate from the Record of Proceedings in any subsequent Immigration Court proceeding involving the alien.

(E) Conduct of hearing.— A credible fear review is not as exhaustive or in-depth as an asylum hearing in removal proceedings. Rather, a credible fear review is simply a review of the DHS asylum officer's decision. Either the alien or DHS may introduce oral or written statements, and the court provides an interpreter if necessary. Evidence may be introduced at the discretion of the Immigration Judge. The hearing is recorded. Parties should be mindful that all requests for continuances are subject to the statutory time limits. See (A), above.

(v) If the Immigration Judge finds credible fear.—

(A) Stowaways.— If the Immigration Judge finds that a stowaway has a credible fear of persecution or torture, the stowaway is placed in asylum-only proceedings. See 8 C.F.R. § 1208.30(g)(2)(iv)(C). In asylum-only proceedings, the stowaway can apply for asylum, withholding of removal ("restriction on removal") under § INA 241(b)(3), and protection under the Convention Against Torture. See subsection (g), below.

(B) Aliens subject to expedited removal under INA § 235(b)(1).— If the Immigration Judge finds that an alien subject to expedited removal under INA § 235(b)(1) has a credible fear of persecution or torture, the alien is placed in removal proceedings. See 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(B). In removal proceedings, the alien has the same rights, obligations, and opportunities for relief, including the opportunity to apply for asylum, as any other alien in removal proceedings. See Chapter 4 (Hearings before Immigration Judges).

(vi) If the Immigration Judge does not find credible fear.— If the Immigration Judge does not find credible fear of persecution or torture, the alien is returned to DHS for removal. Neither party may appeal an Immigration Judge's ruling in a credible fear review. However, after providing notice to the Immigration

Judge, DHS may reconsider its determination that an alien does not have a credible fear of persecution. See 8 C.F.R. § 1208.30(g)(2)(iv)(A).

(e) Reasonable fear proceedings. — Reasonable fear proceedings involve aliens subject to expedited removal under INA § 238(b) and aliens subject to reinstatement of prior orders of removal under INA § 241(a)(5). See subsections (b)(ii), (b)(iii), above. If such an alien expresses a fear of persecution or torture to the Department of Homeland Security (DHS) immigration officer, the alien is interviewed by a DHS asylum officer who evaluates whether the alien has a "reasonable fear of persecution or torture." See generally 8 C.F.R. § 1208.31.

(i) Reasonable fear standard. — "Reasonable fear of persecution or torture" means a reasonable possibility that the alien would be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or political opinion, or a reasonable possibility that the alien would be tortured if returned to the country of removal. The bars to eligibility for withholding of removal ("restriction on removal") under INA § 241(b)(3)(B) are not considered. 8 C.F.R. § 1208.31(c).

(ii) If the DHS asylum officer finds reasonable fear. — If the DHS asylum officer finds that the alien has a reasonable fear of persecution or torture, the alien is placed in withholding-only proceedings before an Immigration Judge. See 8 C.F.R. § 208.31(e). In withholding-only proceedings, the alien can apply for withholding of removal ("restriction on removal") under INA § 241(b)(3) and protection under the Convention Against Torture. See subsection (h), below.

(iii) If the DHS asylum officer does not find reasonable fear. — If the DHS asylum officer finds that the alien does not have a reasonable fear of persecution or torture, the alien may request that an Immigration Judge review this finding. See 8 C.F.R. § 208.31(f).

(iv) Reasonable fear review by an Immigration Judge. — The reasonable fear review is conducted according to the provisions in (A) through (E), below. See generally 8 C.F.R. § 1208.31.

(A) Timing. — In the absence of exceptional circumstances, the reasonable fear review is conducted within 10 days after the case is referred to the Immigration Court.

(B) Location. — If possible, the reasonable fear review is conducted in person. However, because of the time constraints, the reasonable fear review may be conducted by video or telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

***(C) Representation*. —** Subject to the Immigration Judge's discretion, the alien may be represented during the reasonable fear review at no expense to the government.

***(D) Record of Proceedings*. —** DHS must file the complete record of the DHS asylum officer's reasonable fear determination with the Immigration Court. This record includes any notes taken by the DHS asylum officer. The Immigration Judge creates a record, which is kept separate from the Record of Proceedings in any subsequent Immigration Court proceeding involving the alien.

***(E) Conduct of hearing*. —** A reasonable fear review hearing is not as comprehensive or in-depth as a withholding of removal hearing in removal proceedings. Rather, it is a review of the DHS asylum officer's decision. Either party may introduce oral or written statements, and the court provides an interpreter if necessary. Evidence may be introduced at the discretion of the Immigration Judge. The hearing is recorded. Parties should be mindful that all requests for continuances are subject to the statutory time limits. See (A), above.

***(v) If the Immigration Judge finds reasonable fear*. —** If the Immigration Judge finds that the alien has a reasonable fear of persecution or torture, the alien is placed in withholding-only proceedings. See 8 C.F.R. § 1208.31(g)(2). In withholding-only proceedings, the alien can apply for withholding of removal ("restriction on removal") under INA § 241(b)(3) and protection under the Convention Against Torture. See subsection (h).

***(vi) If the Immigration Judge does not find reasonable fear*. —** If the Immigration Judge does not find a reasonable fear of persecution or torture, the alien is returned to DHS for removal. There is no appeal from an Immigration Judge's ruling in a reasonable fear review. See 8 C.F.R. § 1208.31(g)(1).

***(f) Claimed status review*. —** If an individual is found by a Department of Homeland Security (DHS) immigration officer to be subject to expedited removal under INA § 235(b)(1), but claims to be a United States citizen or lawful permanent resident, or to have been granted asylum or admitted to the United States as a refugee, the DHS immigration officer attempts to verify that claim. If the claim cannot be verified, the individual is allowed to make a statement under oath. The case is then reviewed by an Immigration Judge in a "claimed status review." See generally 8 C.F.R. § 1235.3(b)(5).

***(i) Timing*. —** Claimed status reviews are scheduled as expeditiously as possible, preferably no later than 7 days after the case was referred to the Immigration Court and, if possible, within 24 hours. Claims to United States citizenship may require more time to permit the alien to obtain relevant documentation.

***(ii) Location*. —** If possible, the claimed status review is conducted in person. However, because of the time constraints, the claimed status review may be conducted by video or telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

***(iii) Representation*. —** Prior to the claimed status review, the individual subject to the review may consult with a person or persons of his or her choosing. In the discretion of the Immigration Judge, persons consulted may be present during the claimed status review. However, the individual subject to the review is not represented during the review. Accordingly, persons acting on his or her behalf are not entitled to make opening statements, call and question witnesses, conduct cross examinations, object to evidence, or make closing arguments.

***(iv) Record of Proceedings*. —** The Immigration Judge creates a Record of Proceedings. If an individual subject to a claimed status review is later placed in removal proceedings, the Record of Proceedings for the claimed status review is merged with the Record of Proceedings for the removal proceedings.

(v) Conduct of hearing — Either party may introduce oral or written statements, and an interpreter is provided if necessary. Though the claimed status review is limited in nature, claims to status, particularly claims to United States citizenship, can be complicated and may require extensive evidence. Therefore, the Immigration Judge has the discretion to continue proceedings to allow DHS and the person making the claim to collect and submit evidence. The hearing is recorded.

(vi) If the Immigration Judge verifies the claimed status. — If the Immigration Judge determines that the individual subject to the review is a United States citizen or lawful permanent resident, or that he or she has been granted asylum or refugee status, the expedited removal order is vacated, or cancelled, and the proceedings are terminated.

Unless the Immigration Judge determines that the person in proceedings is a United States citizen, DHS may elect to place him or her in removal proceedings. In removal proceedings, he or she has the same rights, obligations, and opportunities for relief as any other alien in removal proceedings. See Chapter 4 (Hearings before Immigration Judges).

(vii) If the Immigration Judge cannot verify the claimed status. **—** If the Immigration Judge determines that the subject of a claimed status review is not a United States citizen or lawful permanent resident, and that he or she has not been granted asylee or refugee status, the individual is returned to DHS for removal. There is no appeal from an Immigration Judge's ruling in a claimed status review.

(g) Asylum-only proceedings. **—** Asylum-only proceedings are limited proceedings in which the Immigration Judge considers applications for asylum, withholding of removal ("restriction on removal") under INA § 241(b)(3), and protection under the Convention Against Torture.

(i) Beginning asylum-only proceedings. **—** Asylum-only proceedings are commenced as follows, depending upon the status of the alien.

(A) Stowaways with a credible fear of persecution or torture. **—** When a Department of Homeland Security (DHS) asylum officer or an Immigration Judge finds that a stowaway has a credible fear of persecution or torture, the stowaway's matter is referred to the Immigration Court for an asylum-only proceeding. See 8 C.F.R. §§ 208.30(f), 1208.2(c)(1)(ii), 1208.30(g)(2)(iv)(C).

(B) Crewmembers (D visa applicants). **—** When an alien crewmember expresses a fear of persecution or torture to a DHS immigration officer, he or she is removed from the vessel and taken into DHS custody. The crewmember is then provided an Application for Asylum and for Withholding of Removal (Form I-589), which must be completed and returned to DHS within 10 days unless DHS extends the deadline for good cause. The application is then referred to the Immigration Court for an asylum-only proceeding. See 8 C.F.R. §§ 1208.2(c)(1)(i), 1208.5(b)(1)(ii).

(C) Visa waiver applicants and overstays. **—** When an alien who has applied for admission, been admitted, or overstayed his or her admission under the visa waiver program expresses a fear of persecution or torture to a DHS immigration officer, or applies for asylum with DHS, the matter may be referred to the Immigration Court for an asylum-only proceeding. See 8 C.F.R. §§ 1208.2(c)(1)(iii), 1208.2(c)(1)(iv).

(D) Certain cooperating witnesses and informants (S visa applicants). **—** When an alien who has applied for admission, or been admitted, with an S visa expresses a fear of persecution or torture to a DHS immigration officer, or applies for asylum with DHS, the matter is referred to

the Immigration Court for an asylum-only proceeding. See 8 C.F.R. § 1208.2(c)(1)(vi).

(E) Persons subject to removal under INA § 235(c) on security grounds. — When a DHS immigration officer or an Immigration Judge suspects that an arriving alien appears removable as described in INA § 235(c), the alien is ordered removed, and the matter is referred to a DHS district director. A DHS regional director may then order the case referred to an Immigration Judge for an asylum-only proceeding. See 8 C.F.R. §§ 1208.2(c)(1)(v), 1235.8.

(ii) Scope of the proceedings. — Asylum-only proceedings are limited to applications for asylum, withholding of removal ("restriction on removal") under INA § 241(b)(3), and protection under the Convention Against Torture. Neither the alien nor DHS may raise any other issues, including issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief. See 8 C.F.R. § 1208.2(c)(3)(i).

(iii) Conduct of the proceedings. — Asylum-only proceedings are conducted under the procedures governing removal proceedings. See 8 C.F.R. § 1208.2(c)(3). See also Chapter 4 (Hearings before Immigration Judges).

(iv) Appeals. — Decisions by Immigration Judges in asylum-only proceedings may be appealed to the Board of Immigration Appeals.

(h) Withholding-only proceedings. — Withholding-only proceedings are limited proceedings involving aliens subject to expedited removal under INA § 238(b) and aliens subject to reinstatement of prior orders of removal under INA § 241(a)(5), who have a reasonable fear of persecution or torture. See 8 C.F.R. § 1208.2(c)(2). In withholding-only proceedings, the Immigration Judge considers applications for withholding of removal ("restriction on removal") under the Immigration and Nationality Act and protection under the Convention Against Torture.

(i) Beginning withholding-only proceedings. — When a DHS asylum officer or Immigration Judge finds that an alien subject to expedited removal under INA § 238(b) or an alien subject to reinstatement of a prior order of removal under INA § 241(a)(5) has a reasonable fear of persecution or torture, the matter is referred to the Immigration Court for a withholding-only proceeding. See 8 C.F.R. §§ 208.31(e), 1208.31(g)(2).

***(ii) Scope of the proceedings*. —** Withholding-only proceedings are limited to applications for withholding of removal ("restriction on removal") under INA § 241(b)(3) and protection under the Convention Against Torture. Neither the alien nor DHS may raise any other issues, including issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief. 8 C.F.R. § 1208.2(c)(3)(i).

***(iii) Conduct of the proceedings*. —** Withholding-only proceedings are conducted under the procedures governing removal proceedings. See 8 C.F.R. § 1208.2(c)(3). See also Chapter 4 (Hearings before Immigration Judges).

***(iv) Appeals*. —** Decisions by Immigration Judges in withholding-only proceedings may be appealed to the Board of Immigration Appeals.

8 Stays

8.1 In General

A stay prevents the Department of Homeland Security from executing an order of removal, deportation, or exclusion. Stays are automatic in some instances and discretionary in others. This chapter provides general guidance regarding stays. For particular cases, parties should consult the controlling law and regulations. See INA §§ 240(b)(5)(C), 240(c)(7)(C)(iv), 8 C.F.R. §§ 1003.2(f), 1003.6, 1003.23(b)(1)(v), 1003.23(b)(4)(ii).

For cases under the jurisdiction of the Board of Immigration Appeals, parties should consult the Board of Immigration Appeals Practice Manual. The Board of Immigration Appeals Practice Manual is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

8.2 Automatic Stays

(a) Removal proceedings. — There are limited circumstances in which an order of removal is automatically stayed:

- during the 30-day period for filing the direct appeal of an Immigration Judge's decision on the merits, unless the right to appeal has been waived
- during the direct appeal of an Immigration Judge's decision on the merits of the case (not including bond and custody determinations)
- during the period in which a case is certified to the Board of Immigration Appeals
- during the period between the filing of a motion to reopen to rescind an in absentia order and the Immigration Judge's ruling on that motion
- pending the final disposition, including appeal, of certain motions to reopen by battered spouses, children, and parents

An appeal or motion must be timely and properly filed for an automatic stay to take effect.

When a stay is automatic, the Immigration Judge does not issue an order staying removal.

***(b) Deportation and exclusion proceedings*. —** There are important differences between the automatic stay provisions in deportation and exclusion proceedings and the automatic stay provisions in removal proceedings. Those differences are not covered in this Practice Manual. Accordingly, parties in deportation or exclusion proceedings should carefully review the controlling law and regulations.

8.3 Discretionary Stays

An Immigration Judge is authorized to grant stays as a matter of discretion, but only for matters within the Immigration Judge's jurisdiction. See Chapters 1.5 (Jurisdiction and Authority), 6.3 (Jurisdiction). Immigration Judges consider requests for discretionary stays only when a motion to reopen or a motion to reconsider is pending before the Immigration Court.

***(a) Motion required*. —** A request for a discretionary stay should be made by written motion. The motion should be filed with a cover page labeled "MOTION TO STAY REMOVAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

If the execution of an order is imminent, the motion should be filed with a cover page labeled "EMERGENCY MOTION TO STAY REMOVAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

***(b) Contents*. —** A motion for a discretionary stay should state the complete case history and all relevant facts. It should also include a copy of the order that the party wants stayed, if available. If the moving party does not have a copy of the order, that party should provide the date of the order and a detailed description of the Immigration Judge's ruling and reasoning, as articulated by the Immigration Judge. If the facts are in dispute, the moving party should provide appropriate evidence. See Chapter 5.2(e) (Evidence).

***(c) Pending motions*. —** The mere filing of a motion for a discretionary stay of an order does not prevent the execution of the order. Therefore, the order may be executed unless and until the motion is granted.

9 Detention and Bond

9.1 Detention

***(a) In general*. —** The Department of Homeland Security (DHS) bears the responsibility for the apprehension and detention of aliens. Immigrations Judges have jurisdiction over custody determinations under certain circumstances. See generally 8 C.F.R. § 1003.19. See also Chapter 9.3 (Bond Proceedings).

***(b) Place and conditions*. —** Aliens may be detained in a Department of Homeland Security (DHS) Processing Facility, or in any public or private detention facility contracted by DHS to detain aliens. See 8 C.F.R. § 235.3(e). Immigration Judges have no jurisdiction over the location of detention and the conditions in the detention facility.

***(c) Appearance at hearings*. —** The Department of Homeland Security is responsible for ensuring that detained aliens appear at all hearings.

***(d) Transfers and Release*. —** The Department of Homeland Security (DHS) sometimes transfers detained aliens between detention facilities.

> ***(i) Notification*. —** DHS is obligated to notify the Immigration Court when an alien is moved between detention locations. See 8 C.F.R. § 1003.19(g).
>
> In addition, DHS is responsible for notifying the Immigration Court when an alien is released from custody. See 8 C.F.R. § 1003.19(g). Nonetheless, the alien should file an Alien's Change of Address Form (Form EOIR-33/IC) with the Immigration Court to ensure that Immigration Court records are up-to-date.
>
> ***(ii) Venue*. —** If an alien has been transferred while proceedings are pending, the Immigration Judge with original jurisdiction over the case retains jurisdiction until that Immigration Judge grants a motion to change venue. Either DHS or the alien may file a motion to change venue. See Chapter 5 (Motions before the Immigration Court). If DHS brings the alien before an Immigration Judge in another Immigration Court and a motion to change venue has not been granted, the second Immigration Judge does not have jurisdiction over the case, except for bond redeterminations.

***(e) Conduct of hearing*. —** Proceedings for detained aliens are expedited. Hearings are held either at the detention facility or at the Immigration Court, either by video or telephone conference. For more information on hearings conducted by video or telephone conference, see Chapter 4.7 (Hearings by Video or Telephone Conference).

***(i) Special considerations for hearings in detention facilities*. —** For hearings in detention facilities, parties must comply with the facility's security restrictions. See Chapter 4.14 (Access to Court).

***(ii) Orientation*. —** In some detention facilities, detainees are provided with orientations or "rights presentations" by non-profit organizations. The Executive Office for Immigration Review also funds orientation programs at a number of detention facilities, which are administered by the EOIR Legal Orientation Program. See Chapter 1.4(c) (Legal Orientation Program).

9.2 Detained Juveniles

***(a) In general*. —** There are special procedures for juveniles in federal custody, whether they are accompanied or unaccompanied. See generally 8 C.F.R. § 1236.3. For purposes of this chapter, a juvenile is defined as an alien under 18 years of age. An unaccompanied juvenile is defined as an alien under 18 years of age who does not have a parent or legal guardian in the United States to provide care and physical custody.

***(b) Place and conditions of detention*. —** The Department of Homeland Security (DHS) bears the initial responsibility for apprehension and detention of juveniles. When DHS determines that a juvenile is accompanied by a parent or legal guardian, DHS retains responsibility for the juvenile's detention and removal. When DHS determines that a juvenile is unaccompanied and must be detained, he or she is transferred to the care of the Department of Health and Human Services, Office of Refugee Resettlement, which provides for the care and placement, where possible, of the unaccompanied juvenile. See 6 U.S.C. § 279.

***(c) Representation and conduct of hearing*. —** For provisions regarding the representation of juveniles, and the conduct of hearings involving juveniles, see Chapter 4.22 (Juveniles).

***(d) Release*. —** Unaccompanied juveniles who are released from custody are released to a parent, a legal guardian, an adult relative who is not in Department of Homeland Security detention, or, in limited circumstances, to an adult who is not a family member.

9.3 Bond Proceedings

***(a) In general*. —** In certain circumstances, an alien detained by the Department of Homeland Security (DHS) can be released from custody upon the payment of bond. Initially, the bond is set by DHS. Upon the alien's request, an Immigration Judge may conduct a "bond hearing," in which the Immigration Judge has the authority to redetermine the amount of bond set by DHS.

Bond proceedings are separate from removal proceedings. See generally 8 C.F.R. §§ 1003.19, 1236.1.

***(b) Jurisdiction*. —** Except as provided in subsections (i) through (iii), below, an Immigration Judge generally has jurisdiction to conduct a bond hearing if the alien is in Department of Homeland Security (DHS) custody. The Immigration Judge also has jurisdiction to conduct a bond hearing if the alien is released from DHS custody upon payment of a bond and, within 7 days of release, files a request for a bond redetermination with the Immigration Court.

An Immigration Judge has jurisdiction over such cases even if a charging document has not been filed. In addition, an Immigration Judge has jurisdiction to rule on whether he or she has jurisdiction to conduct a bond hearing.

***(i) No jurisdiction by regulation*. —** By regulation, an Immigration Judge does not have jurisdiction to conduct bond hearings involving:

- aliens in exclusion proceedings
- arriving aliens in removal proceedings
- aliens ineligible for release on security or related grounds
- aliens ineligible for release on certain criminal grounds

8 C.F.R. § 1003.19(h)(2)(i).

***(ii) No jurisdiction by mootness*. —** A bond becomes moot, and the Immigration Judge loses jurisdiction to conduct a bond hearing, when an alien:

- departs from the United States, whether voluntarily or involuntarily

- is granted relief from removal by the Immigration Judge, and the Department of Homeland Security does not appeal
- is granted relief from removal by the Board of Immigration Appeals
- is denied relief from removal by the Immigration Judge, and the alien does not appeal
- is denied relief from removal by the Board of Immigration Appeals

***(iii) Other*. —** Immigration Judges do not have bond jurisdiction in certain limited proceedings. See generally Chapter 7 (Other Proceedings before Immigration Judges).

***(c) Requesting a bond hearing*. —** A request for a bond hearing may be made in writing. In addition, except as provided in subsection (iii), below, a request for a bond hearing may be made orally in court or, at the discretion of the Immigration Judge, by telephone. If available, a copy of the Notice to Appear (Form I-862) should be provided. The telephone number of each Immigration Court is listed on the Executive Office for Immigration Review website at www.justice.gov/eoir.

***(i) Contents*. —** A request for a bond hearing should state:

- the full name and alien registration number ("A number") of the alien
- the bond amount set by the Department of Homeland Security
- if the alien is detained, the location of the detention facility

***(ii) No fee*. —** There is no filing fee to request a bond hearing.

***(iii) Where to request*. —** A request for a bond hearing is made, in order of preference, to:

- if the alien is detained, the Immigration Court having jurisdiction over the alien's place of detention;
- the Immigration Court with administrative control over the case; or

- the Office of the Chief Immigration Judge for designation of an appropriate Immigration Court

8 C.F.R. § 1003.19(c). See Chapter 3.1(a)(i) (Administrative Control Courts).

***(iv) Multiple requests*. —** If an Immigration Judge or the Board of Immigration Appeals has previously ruled in bond proceedings involving an alien, a subsequent request for a bond hearing must be in writing, and the alien must show that his or her circumstances have changed materially since the last decision. In addition, the request must comply with the requirements listed in subsection (c)(i), above. 8 C.F.R. § 1003.19(e).

***(d) Scheduling a hearing*. —** In general, after receiving a request for a bond hearing, the Immigration Court schedules the hearing for the earliest possible date and notifies the alien and the Department of Homeland Security.

In limited circumstances, an Immigration Judge may rule on a bond redetermination request without holding a hearing.

If an alien requests a bond hearing during another type of hearing (for example, during a master calendar hearing in removal proceedings), the Immigration Judge may:

- stop the other hearing and conduct a bond hearing on that date
- complete the other hearing and conduct a bond hearing on that date
- complete the other hearing and schedule a bond hearing for a later date
- stop the other hearing and schedule a bond hearing for a later date

***(e) Bond hearings*. —** In a bond hearing, the Immigration Judge determines whether the alien is eligible for bond. If the alien is eligible for bond, the Immigration Judge considers whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for further immigration proceedings, and whether the alien is a threat to national security. In general, bond hearings are less formal than hearings in removal proceedings.

***(i) Location*. —** Generally, a bond hearing is held at the Immigration Court where the request for bond redetermination is filed.

(ii) Representation.— In a bond hearing, the alien may be represented at no expense to the government.

(iii) Generally not recorded.— Bond hearings are generally not recorded.

(iv) Record of Proceedings.— The Immigration Judge creates a record, which is kept separate from the Records of Proceedings for other Immigration Court proceedings involving the alien.

(v) Evidence.— Documents for the Immigration Judge to consider are filed in open court or, if the request for a bond hearing was made in writing, together with the request. Since the Record of Proceedings in a bond proceeding is kept separate and apart from other Records of Proceedings, documents already filed in removal proceedings must be resubmitted if the filing party wishes them to be considered in the bond proceeding.

If documents are filed in advance of the hearing, the documents should be filed *together with* the request for a bond hearing. If a document is filed in advance of the hearing but separate from the request for a bond hearing, it should be filed with a cover page labeled "BOND PROCEEDINGS." See Appendix F (Sample Cover Page).

Unless otherwise directed by the Immigration Judge, the deadlines and requirements for filings in Chapter 3 (Filing with the Immigration Court) do not apply in bond proceedings.

(vi) Conduct of hearing.— While the Immigration Judge decides how each hearing is conducted, parties should submit relevant evidence and:

- the Department of Homeland Security (DHS) should state whether a bond has been set and, if a bond has been set, the amount of the bond and the DHS justification for that amount

- the alien or the alien's representative should make an oral statement (an "offer of proof" or "proffer") addressing whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for future immigration proceedings, and whether the alien poses a danger to national security

At the Immigration Judge's discretion, witnesses may be placed under oath and testimony taken. However, parties should be mindful that bond hearings are generally briefer and less formal than hearings in removal proceedings.

***(vii) Decision*. —** The Immigration Judge's decision is based on any information that is available to the Immigration Judge or that is presented by the parties. See 8 C.F.R. § 1003.19(d).

Usually, the Immigration Judge's decision is rendered orally. Because bond hearings are generally not recorded, the decision is not transcribed. If either party appeals, the Immigration Judge prepares a written decision based on notes from the hearing.

***(f) Appeals*. —** Either party may appeal the Immigration Judge's decision to the Board of Immigration Appeals. If the alien appeals, the Immigration Judge's bond decision remains in effect while the appeal is pending. If the Department of Homeland Security appeals, the Immigration Judge's bond decision remains in effect while the appeal is pending unless the Board issues an emergency stay or the decision is automatically stayed by regulation. See 8 C.F.R. §§ 1003.6(c), 1003.19(i).

For detailed guidance on when Immigration Judges' decisions in bond proceedings are stayed, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

9.4 Continued Detention Review

***(a) In general*. —** Generally, the Department of Homeland Security (DHS) must remove or release detained aliens within 90 days of a final order of removal. However, DHS may continue to detain an alien whose removal from the United States is not "reasonably foreseeable," if the alien's release would pose a special danger to the public. See INA § 241(a)(6), 8 C.F.R. § 1241.14(f). Such a decision by DHS to continue to detain an alien is reviewed by an Immigration Judge in "continued detention review proceedings." The proceedings begin with a DHS determination that continued detention is required and are divided into two phases: (1) reasonable cause hearings and (2) continued detention review merits hearings. See subsections (c), (d), below.

***(b) DHS determination*. —** If an alien has been ordered removed but remains detained, he or she may request that the Department of Homeland Security (DHS) determine whether there is a significant likelihood of removal in the reasonably foreseeable

future. See 8 C.F.R. § 1241.13. If there is a significant likelihood of removal in the reasonably foreseeable future, DHS may continue to detain the alien.

If there is *not* a significant likelihood of removal in the reasonably foreseeable future, the alien is released unless DHS determines, based on a full medical and physical examination, that the alien should be subject to continued detention because the alien's release would pose a special danger to the public. Following such a determination, the matter is referred to an Immigration Judge for a reasonable cause hearing. See 8 C.F.R. § 1241.14(f).

***(c) Reasonable cause hearing*. —** A reasonable cause hearing is a brief hearing to evaluate the evidence supporting the determination by the Department of Homeland Security (DHS) that the alien's release would pose a special danger to the public. In the hearing, the Immigration Judge decides whether DHS's evidence is sufficient to establish reasonable cause to go forward with a continued detention review merits hearing, or whether the alien should be released. See generally 8 C.F.R. § 1241.14.

***(i) Timing*. —** The reasonable cause hearing begins no later than 10 business days after referral to the Immigration Court.

***(ii) Location*. —** If possible, the reasonable cause hearing is conducted in person, but may be conducted by telephone conference or video conference, at the Immigration Judge's discretion. See Chapter 4.7 (Hearings by Video or Telephone Conference).

***(iii) Representation*. —** The alien is provided with a list of free or low-cost legal service providers and may be represented at no expense to the government.

***(iv) Conduct of hearing*. —** DHS may offer any evidence that is material and relevant to the proceeding. The alien has a reasonable opportunity to examine evidence against him or her, to present evidence and witnesses on his or her own behalf, and to cross-examine witnesses presented by DHS.

***(v) Record of Proceedings*. —** The Immigration Judge creates a Record of Proceedings, and the hearing is recorded. The Record of Proceedings is not combined with records of any other Immigration Court proceedings involving the same alien.

***(vi) Immigration Judge's decision*. —** If the Immigration Judge finds that DHS has met its burden of showing reasonable cause to go forward with a continued detention review merits hearing, the alien is notified, and the merits hearing is scheduled.

If the Immigration Judge finds that DHS has *not* met its burden, the Immigration Judge dismisses the proceedings, and the alien is released under conditions determined by DHS.

(vii) Appeals. — If the Immigration Judge finds that DHS has not met its burden of showing reasonable cause to go forward with a continued detention review merits hearing, DHS may appeal to the Board of Immigration Appeals. The appeal must be filed within two business days after the Immigration Judge's order. The Immigration Judge's order dismissing the proceedings is stayed pending adjudication of an appeal, unless DHS waives the right to appeal.

If the Immigration Judge finds that DHS *has* met its burden, the decision is not appealable by the alien.

(d) Continued detention review merits hearing. — In the continued detention review merits hearing, the Department of Homeland Security (DHS) has the burden of proving by clear and convincing evidence that the alien should remain in custody because the alien's release would pose a special danger to the public. See generally 8 C.F.R. § 1241.14.

(i) Timing. — The continued detention review merits hearing is scheduled promptly. If the alien requests, the merits hearing is scheduled to commence within 30 days of the decision in the reasonable cause hearing.

(ii) Representation. — The alien is provided with a list of free and low-cost legal service providers and may be represented at no expense to the government.

(iii) Conduct of hearing. — The Immigration Judge may receive into evidence any oral or written statement that is material and relevant to the proceeding. The alien has a reasonable opportunity to examine evidence against him or her, to present evidence and witnesses on his or her own behalf, and to cross-examine witnesses presented by DHS. In addition, the alien has the right to cross-examine the author of any medical or mental health reports used as a basis for DHS's determination that the alien's release would pose a special danger to the public.

(iv) Immigration Judge's decision. — If the Immigration Judge determines that DHS has met its burden of showing that the alien should remain in custody as a special danger to the public, the Immigration Judge orders the continued detention of the alien.

If the Immigration Judge determines that DHS has *not* met its burden, the Immigration Judge dismisses the proceedings, and the alien is released under conditions determined by DHS.

***(v) Appeals*. —** Either party may appeal the Immigration Judge's decision to the Board of Immigration Appeals. Appeals by DHS must be filed within 5 business days of the Immigration Judge's order. Appeals by aliens are subject to the same deadlines as appeals in removal proceedings. For detailed guidance on appeals, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

If the Immigration Judge dismisses the proceedings and orders the alien released, the order is stayed pending adjudication of any DHS appeal, unless DHS waives the right to appeal.

***(e) Periodic review*. —** Following proceedings in which the alien's continued detention has been ordered, the alien may periodically request that the Department of Homeland Security (DHS) review his or her continued detention. The alien must show that, due to a material change in circumstances, the alien's release would no longer pose a special danger to the public. Such requests may be made no earlier than 6 months after the most recent decision of the Immigration Judge or the Board of Immigration Appeals.

If DHS does not release the alien, the alien may file a motion with the Immigration Court to set aside its prior determination in the proceedings. The alien must show that, due to a material change in circumstances, the alien's release would no longer pose a special danger to the public. If the Immigration Judge grants the motion, a new continued detention review merits hearing is held. If the motion is denied, the alien may appeal to the Board.

10 Discipline of Practitioners

10.1 Practitioner Discipline Generally

The Executive Office for Immigration Review has the authority to impose disciplinary sanctions on attorneys or accredited representatives who violate rules of professional conduct in practice before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security. See 8 C.F.R. §§ 1003.1(d)(2)(iii), 1003.1(d)(5),1003.101-106, 292.3. See also *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

Generally, discipline of practitioners is initiated by the filing of a complaint. See Chapter 10.5 (Filing a Complaint). Any individual, including Immigration Judges, may file a complaint about the conduct of a practitioner.

10.2 Definition of Practitioner

For purposes of this Chapter, "practitioner" refers to an alien's attorney or representative, as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(j), respectively. The term "representative" refers to non-attorneys authorized to practice before the Immigration Courts and the Board of Immigration Appeals, including law students and law graduates, reputable individuals, accredited representatives, accredited officials, and persons formerly authorized to practice. See 8 C.F.R. §§ 1001.1(j), 1292.1(a) - (b). See also Chapter 2 (Appearances Before the Immigration Court).

10.3 Jurisdiction

(a) Immigration Judges. — Immigration Judges have the authority to file complaints concerning practitioners who appear before them.

The disciplinary procedures described in this chapter do not apply to Immigration Judges. For information on Immigration Judge conduct, see Chapter 1.3(c) (Immigration Judge conduct and professionalism).

(b) Practitioners. — The disciplinary procedures described in this chapter apply to practitioners who practice before the Immigration Courts, the Board of Immigration Appeals, or the Department of Homeland Security. See 8 C.F.R. § 1003.101.

***(c) DHS attorneys*. —** The disciplinary procedures described in this chapter do not apply to attorneys who represent the Department of Homeland Security (DHS). The conduct of DHS attorneys is governed by DHS rules and regulations. Concerns or complaints about the conduct of DHS attorneys may be raised in writing with the DHS Office of the Chief Counsel where the Immigration Court is located. A list of Offices of the Chief Counsel is available on the DHS website at www.ice.gov.

***(d) Unauthorized practice of law*. —** The disciplinary procedures described in this chapter apply to *practitioners* who assist in the unauthorized practice of law. See 8 C.F.R. § 1003.102(m). Anyone may file a complaint against a practitioner who is assisting in the unauthorized practice of law. See 10.5 (Filing a Complaint).

The disciplinary procedures described in this chapter do not apply to *non-practitioners* engaged in the unauthorized practice of law. Anyone harmed by an individual practicing law without authorization should contact the appropriate law enforcement or consumer protection agency. In addition, persons harmed by such conduct are encouraged to contact the Executive Office for Immigration Review Fraud Program. See Chapter 1.4(b) (EOIR Fraud Program), Appendix B (EOIR Directory).

In general, the unauthorized practice of law includes certain instances where non-attorneys perform legal services, give legal advice, or represent themselves to be attorneys. Individuals engaged in the unauthorized practice of law include some immigration specialists, visa consultants, and “notarios.”

10.4 Conduct

The following conduct by practitioners may result in discipline. See 8 C.F.R. § 1003.102. For a full explanation of each ground for discipline, the regulation should be consulted. These examples do not constitute the only grounds for which disciplinary sanctions may be imposed.

- grossly excessive fees
- bribery or coercion
- offering false evidence, or making a false statement of material fact or law
- improperly soliciting clients
- disbarment or suspension, or resignation while a disciplinary investigation or proceeding is pending

- misrepresenting qualifications or services offered
- conduct that would constitute contempt of court in a judicial proceeding
- a conviction for a serious crime
- falsely certifying a copy of a document
- frivolous behavior, as defined in 8 C.F.R. § 1003.102(j)
- ineffective assistance of counsel
- repeated failure to appear
- assisting in the unauthorized practice of law
- engaging in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process
- failing to provide competent representation to a client
- failing to abide by a client's decisions
- failing to act with reasonable diligence and promptness
    - a practitioner's workload must be controlled and managed so that each matter can be handled competently
    - a practitioner has the duty to comply with all time and filing limitations
    - a practitioner should carry through to conclusion all matters undertaken for a client, consistent with the scope of representation
- failing to maintain communication with the client
- failing to disclose adverse legal authority
- failing to submit a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28)
- repeatedly filing boilerplate submission

10.5 Filing a Complaint

***(a) Who may file*. —** Anyone may file a complaint against a practitioner, including Immigration Judges, Board Members, the practitioner's clients, Department of Homeland Security personnel, and other practitioners. 8 C.F.R. § 1003.104(a)(1).

***(b) What to file*. –** Complaints must be submitted in writing. Persons filing complaints are encouraged to use the Immigration Practitioner Complaint Form, (Form EOIR-44). See Chapter 11.2 (Obtaining Blank Forms), Appendix E (Forms). The Form EOIR-44 provides important information about the complaint process, the confidentiality of complaints, and the types of misconduct that can result in discipline by the Executive Office for Immigration Review. Complaints should be specific and as detailed as possible, and supporting documentation should be provided if available.

***(c) Where to file*. —** Complaints alleging practitioner misconduct before the Immigration Courts or the Board of Immigration Appeals should be filed with the Executive Office for Immigration Review disciplinary counsel. 8 C.F.R.§ 1003.104(a)(1). The completed Form EOIR-44 and supporting documents should be sent to:

United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 20530
Attn: Disciplinary Counsel

See Appendix B (EOIR Directory). After receiving a complaint, the EOIR disciplinary counsel decides whether to initiate disciplinary proceedings. 8 C.F.R. § 1003.104(b). See Chapter 10.7 (Disciplinary Proceedings).

***(d) When to file*. —** Complaints should be filed as soon as possible. There are no time limits for filing most complaints. However, complaints based on ineffective assistance of counsel must be filed within one year of a finding of ineffective assistance of counsel by an Immigration Judge, the Board of Immigration Appeals, or a federal court judge or panel. 8 C.F.R. § 1003.102(k).

10.6 Duty to Report

A practitioner who practices before the Immigration Courts, the Board of Immigration Appeals, or the Department of Homeland Security has an affirmative duty to report whenever he or she:

- has been found guilty of, or pled guilty or *nolo contendere* to, a serious crime (as defined in 8 C.F.R. § 1003.102(h)); *or*

- has been disbarred or suspended from practicing law, or has resigned while a disciplinary investigation or proceeding is pending

8 C.F.R. §§ 1003.103(c), 292.3(c)(4). The practitioner must report the misconduct, criminal conviction, or discipline to the Executive Office for Immigration Review disciplinary counsel within 30 days of the issuance of the relevant initial order. This duty applies even if an appeal of the conviction or discipline is pending.

10.7 Disciplinary Proceedings

***(a) In general*. —** Disciplinary proceedings take place in certain instances where a complaint against a practitioner is filed with the Executive Office for Immigration Review disciplinary counsel, or a practitioner self-reports. See Chapters 10.5 (Filing a Complaint), 10.6 (Duty to Report). See generally 8 C.F.R. §§ 1003.101 - 1003.109.

In some cases, practitioners are subject to summary disciplinary proceedings, which involve distinct procedures as described in subsection (g), below.

In general, disciplinary hearings are conducted in the same manner as Immigration Court proceedings, as appropriate. 8 C.F.R. § 1003.106(a)(1)(v).

***(b) Preliminary investigation*. —** When a complaint against a practitioner is filed, or a practitioner self-reports, the Executive Office for Immigration Review disciplinary counsel conducts a preliminary investigation. Upon concluding the investigation, the EOIR disciplinary counsel may elect to:

- take no further action;

- issue a warning letter or informal admonition to the practitioner;

- enter into an agreement in lieu of discipline; or

- initiate disciplinary proceedings by filing a Notice of Intent to Discipline (NID) with the Board of Immigration Appeals and serving a copy on the practitioner

(c) Notice of Intent to Discipline.— Except as described in subsection (g), below, the Notice of Intent to Discipline (NID) contains the charge(s), the preliminary inquiry report, proposed disciplinary sanctions, instructions for filing an answer and requesting a hearing, and the mailing address and telephone number of the Board of Immigration Appeals.

(i) Petition for Immediate Suspension.— In certain circumstances, the Executive Office for Immigration Review disciplinary counsel files a petition with the Board of Immigration Appeals to immediately suspend the practitioner from practicing before the Immigration Courts and the Board. These circumstances include a conviction of a serious crime, disbarment or suspension from practicing law, or resignation while disciplinary proceedings are pending. Practitioners subject to a petition for immediate suspension are placed in summary disciplinary proceedings, as described in subsection (g), below.

The Board may set aside such a suspension upon good cause shown, if doing so is in the interest of justice. The hardships that typically accompany suspension from practice, such as loss of income and inability to complete pending cases, are usually insufficient to set aside a suspension order.

(ii) DHS motion to join in disciplinary proceedings.— The Department of Homeland Security (DHS) may file a motion to join in the disciplinary proceedings. If the motion is granted, any suspension or expulsion from practice before the Immigration Courts and the Board of Immigration Appeals will also apply to practice before DHS.

(d) Answer.— A practitioner subject to a Notice of Intent to Discipline (NID) has 30 days from the date of service to file a written answer with the Board of Immigration Appeals and serve a copy on the counsel for the government. See Chapter 3.2 (Service on the Opposing Party). The answer is deemed filed when it is *received* by the Board.

(i) Contents.— In the answer, the practitioner must admit or deny each allegation in the NID. Each allegation not expressly denied is deemed admitted. In addition, the answer must state whether the practitioner requests a hearing. If a hearing is not requested, the opportunity to request a hearing is deemed waived.

(ii) Motion for Extension of Time to Answer.— The deadline for filing an answer may be extended for good cause shown, pursuant to a written motion filed

with the Board of Immigration Appeals no later than 3 working days before the deadline. The motion should be filed with a cover page labeled "MOTION FOR EXTENSION OF TIME TO ANSWER" and comply with the requirements for filing. For information on the requirements for filing with the Board, parties should consult the Board of Immigration Appeals Practice Manual, which is available at the Executive Office for Immigration Review website at www.justice.gov/eoir.

***(iii) Default order*. —** If the practitioner does not file a timely answer, the Board of Immigration Appeals issues a default order imposing the discipline proposed in the NID, unless special considerations are present.

***(iv) Motion to set aside default order*. —** A practitioner may file a written motion with the Board of Immigration Appeals to set aside a default order. The motion must be filed within 15 days of service of the default order. The motion should be filed with a cover page labeled "MOTION TO SET ASIDE DEFAULT ORDER" and comply with the requirements for filing. For information on the requirements for filing with the Board, parties should consult the Board of Immigration Appeals Practice Manual.

In the motion, the practitioner must show that the failure to file a timely answer was caused by exceptional circumstances beyond the practitioner's control, such as his or her serious illness or the death of an immediate relative, but not including less compelling circumstances.

***(e) Adjudication*. —** Except as described in subsection (g) below, if a practitioner files a timely answer, the matter is referred to an Immigration Judge or Administrative Law Judge who will act as the adjudicating official in the disciplinary proceedings. An Immigration Judge cannot adjudicate a matter in which he or she filed the complaint or which involves a practitioner who regularly appears in front of that Immigration Judge.

***(i) Adjudication without hearing*. —** If the practitioner files a timely answer without a request for a hearing, the adjudicating official provides the parties with the opportunity to file briefs and evidence to support or refute any of the charges or affirmative defenses, and the matter is adjudicated without a hearing.

***(ii) Adjudication with hearing*. —** If the practitioner files a timely answer with a request for a hearing, a hearing is conducted as described in subsections (A) through (E), below.

***(A) Timing and location*. —** The time and place of the hearing is designated with due regard to all relevant factors, including the location of the practitioner's practice or residence and the convenience of witnesses.

The practitioner is afforded adequate time to prepare his or her case in advance of the hearing.

***(B) Representation*. —** The practitioner may be represented by counsel at no expense to the government.

***(C) Pre-hearing conferences*. —** Pre-hearing conferences may be held to narrow issues, obtain stipulations between the parties, exchange information voluntarily, or otherwise simplify and organize the proceeding.

(D) Timing of submissions. — Deadlines for filings in disciplinary proceedings are as follows, unless otherwise specified by the adjudicating official. Filings must be submitted at least thirty (30) days in advance of the hearing. Responses to filings that were submitted in advance of a hearing must be filed within fifteen (15) days after the original filing.

***(E) Conduct of hearing*. —** At the hearing, each party has a reasonable opportunity to present evidence and witnesses, to examine and object to the other party's evidence, and to cross-examine the other party's witnesses.

***(iii) Decision*. —** In rendering a decision, the adjudicating official considers the complaint, the preliminary inquiry report, the Notice of Intent to Discipline, the practitioner's answer, pleadings, briefs, evidence, any supporting documents, and any other materials.

***(iv) Sanctions authorized*. —** A broad range of sanctions are authorized, including expulsion from immigration practice, suspension from immigration practice, and public or private censure.

***(v) Appeal*. —** The decision of the adjudicating official may be appealed to the Board of Immigration Appeals. A party wishing to appeal must file a Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case (Form EOIR-45). See Chapter 11.2 (Obtaining Blank Forms), Appendix E (Forms). The Form EOIR-45 is specific to disciplinary proceedings. The Form EOIR-45 must be received by the Board no later than 30 calendar days after the adjudicating official renders an oral decision or mails a written decision.

Parties should note that, on appeal, the Board may increase the sanction imposed by the adjudicating official. See *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

***(f) Where to file documents*. —** Documents in disciplinary proceedings should be filed as described below.

***(i) Board of Immigration Appeals*. —** When disciplinary proceedings are pending before the Board of Immigration Appeals, documents should be filed with the Board. For the Board's mailing address, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir. Examples of when to file documents with the Board include:

- after the filing of a Notice of Intent to Discipline, but before an adjudicating official is appointed to the case
- after a default order has been entered
- after an appeal has been filed

***(ii) Adjudication*. —** When disciplinary proceedings are pending before an adjudicating official, documents should be sent to:

United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 20530
Attn: Chief Clerk of the Immigration Court

***(g) Summary disciplinary proceedings*. —** Summary disciplinary proceedings are held in cases where a petition for immediate suspension has been filed. See (c)(i), above. A preliminary inquiry report is not required to be filed with the Notice of Intent to Discipline (NID) in summary disciplinary proceedings.

These proceedings are conducted as described above, except that for the case to be referred to an adjudicating official, the practitioner must demonstrate in the answer to the NID that there is a material issue of fact in dispute or that certain special considerations are present. If the practitioner's answer meets this requirement, disciplinary proceedings are held as described in subsections (d) through (f), above. If the practitioner fails to meet this requirement, the Board issues an order imposing discipline. For additional information, see 8 C.F.R. §§ 1003.103(b), 1003.106(a).

10.8 Notice to Public

***(a) Disclosure generally authorized*. —** In general, action taken on a Notice of Intent to Discipline may be disclosed to the public. See 8 C.F.R. § 1003.108(c).

***(b) Lists of disciplined practitioners*. —** Lists of practitioners who have been expelled, suspended, or publicly censured are posted at the Immigration Courts, at the Board of Immigration Appeals, and on the Executive Office for Immigration Review website at www.justice.gov/eoir. These lists are updated periodically.

10.9 Effect on Practitioner's Pending Immigration Cases

***(a) Duty to advise clients*. —** A practitioner who is disciplined is obligated to advise all clients whose cases are pending before the Immigration Courts, the Board of Immigration Appeals, or the Department of Homeland Security that he or she has been disciplined.

***(b) Pending cases deemed unrepresented*. —** Once a practitioner has been expelled or suspended, the practitioner's pending cases are deemed unrepresented. The Immigration Court rejects filings that are submitted by a practitioner after he or she has been expelled or suspended. See Chapter 3.1(d) (Defective filings).

***(c) Ineffective assistance of counsel*. —** The imposition of discipline on a practitioner does not, by itself, constitute evidence of ineffective assistance of counsel in the practitioner's former cases.

***(d) Filing deadlines*. —** An order of practitioner discipline does not automatically excuse parties from meeting any applicable filing deadlines.

10.10 Reinstatement

***(a) Following suspension*. —** Following a suspension, reinstatement is not automatic. To be reinstated following a suspension, a practitioner must:

- file a motion with the Board of Immigration Appeals requesting to be reinstated; and

- show that he or she is an attorney or representative as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(j), respectively

8 C.F.R. § 1003.107(a).

(b) During suspension for more than one year. — A practitioner suspended for more than one year may file a petition for reinstatement with the Board of Immigration Appeals after one year has passed or one-half of the suspension has elapsed, whichever is greater. The practitioner must serve a copy of the petition on the Executive Office for Immigration Review disciplinary counsel. In the petition, the practitioner must show that:

- he or she is an attorney or representative as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(g), respectively;
- he or she possesses the moral and professional qualifications required for immigration practice; and
- his or her reinstatement will not be detrimental to the administration of justice

8 C.F.R. § 1003.107(b).

The Board has the discretion to hold a hearing to determine if the practitioner meets all of the requirements for reinstatement. If the Board denies a petition for reinstatement, the practitioner is barred from filing a subsequent petition for reinstatement for one year from the date of denial.

(c) If expelled. — A practitioner who has been expelled may file a petition for reinstatement with the Board of Immigration Appeals after one year has passed, under the provisions described in subsection (b), above.

(d) Cases pending at reinstatement. — Suspension or expulsion terminates representation. A practitioner reinstated to immigration practice who wishes to represent clients before the Immigration Court, the Board of Immigration Appeals, or the Department of Homeland Security must enter a new appearance in each case, even if he or she was the attorney at the time that discipline was imposed. See Chapter 2.3(c) (Appearances).

11 Forms

11.1 Forms Generally

There is an official form that must be used to:

- appear as a representative — see Chapter 2.1(b) (Entering an appearance)
- report a change of address — see Chapter 2.2(c) (Address obligations)
- request most kinds of reliefs — see 8 C.F.R. parts 299, 1299
- file an appeal — see Chapter 6 (Appeals of Immigration Judge Decisions)
- request a fee waiver on appeal — see Chapter 3.4 (Filing Fees)

There is an official form that should be used to:

- file a practitioner complaint — see Chapter 10.5 (Filing a Complaint)

There is *no* official form to:

- file a motion — see Chapter 5.2(b) (Form)
- file a FOIA request — see Chapter 12 (Freedom of Information Act)

11.2 Obtaining Blank Forms

***(a) Identifying EOIR forms*. —** Many forms used by the Executive Office for Immigration Review (EOIR) do not appear in the regulations. All of the EOIR forms most commonly used by the public are identified in this manual. See Appendix E (Forms). Form names and numbers can be obtained from the Immigration Courts and the Clerk's Office of the Board of Immigration Appeals. See Appendices A (Immigration Court Addresses), B (EOIR Directory).

(b) Obtaining EOIR forms. — Appendix E (Forms) contains a list of frequently requested forms and information on where to obtain them. In general, EOIR forms are available from the following sources:

- the EOIR website at www.justice.gov/eoir
- the Immigration Courts
- the Clerk's Office of the Board of Immigration Appeals
- certain Government Printing Office Bookstores

Parties should be sure to use the most recent version of each form, which will be available from the sources listed here.

(c) Obtaining DHS forms. — In general, DHS forms are available at www.uscis.gov.

(d) Photocopied forms. — Photocopies of blank EOIR forms may be used, provided that they are an accurate duplication of the government-issued form and are printed on the correct size and stock of paper. See 8 C.F.R. §§ 299.4(a), 1299.1. The filing party is responsible for the accuracy and legibility of the form. The paper used to photocopy the form should also comply with Chapter 3.3(c)(v) (Paper size and document quality). The most recent version of the form *must be used* and is available from the sources listed in subsection (b), above.

For the forms listed in subsection (f), below, the use of colored paper is strongly encouraged, but not required.

(e) Computer-generated forms. — Computer-generated versions of EOIR forms may be used, provided that they are an accurate duplication of the government-issued form and are printed on the correct size and stock of paper. See 8 C.F.R. §§ 299.4(a), 1299.1. The filing party is responsible for the accuracy and legibility of the form. The paper used to photocopy the form should also comply with Chapter 3.3(c)(v) (Paper size and document quality). The most recent version of the form *must be used* and is available from the sources listed in subsection (b), above.

At this time, only the Notice of Entry of Appearance as Attorney or Representative before the Immigration Court (Form EOIR-28) can be filed electronically with the Immigration Court. See Chapters 3.1(a)(viii) (E-filing), 2.1(b) (Entering an appearance).

For the forms listed in subsection (f), below, when filing a paper form, the use of colored paper is strongly encouraged, but not required.

***(f) Form colors*. —** Forms are no longer required to be filed on paper of a specific color. However, the use of colored paper for the forms listed below is strongly encouraged. Any submission that is not a form must be on white paper.

blue	–	EOIR-26	(Notice of Appeal / Immigration Judge Decision)
tan	–	EOIR-26A	(Appeal Fee Waiver Request)
yellow	–	EOIR-27	(Notice of Appearance before the Board of Immigration Appeals)
green	–	EOIR-28	(Notice of Appearance before the Immigration Court)
pink	–	EOIR-29	(Notice of Appeal / DHS decision)
pink	–	EOIR-33/BIA	(Change of Address / Board of Immigration Appeals)
blue	–	EOIR-33/IC	(Change of Address / Immigration Court)

11.3 Submitting Completed Forms

Completed forms must comply with the signature requirements in Chapter 3.3(b) (Signatures).

11.4 Additional Information

For further information on filing requirements, see Chapter 3 (Filing with the Immigration Court). See also Chapters 5 (Motions before the Immigration Court), 6 (Appeals of Immigration Judge Decisions), 8 (Stays), 9 (Detention and Bond), 10 (Discipline of Practitioners), 12 (Freedom of Information Act).

12 Freedom of Information Act (FOIA)

12.1 Generally

The Freedom of Information Act (FOIA) provides the public with access to federal agency records, with certain exceptions. See 5 U.S.C. § 552. The Executive Office for Immigration Review, Office of the General Counsel, responds to FOIA requests for Immigration Court records. See Appendix B (EOIR Directory).

12.2 Requests

For detailed guidance on how to file a FOIA request, individuals requesting information under the Freedom of Information Act should consult the Executive Office for Immigration Review (EOIR) website at www.justice.gov/eoir or contact the EOIR FOIA unit. See Appendix B (EOIR Directory). General guidelines are as follows.

***(a) Who may file*. —**

***(i) Parties*. —**

***(A) Inspecting the record*. —** Parties to an Immigration Court proceeding, and their legal representatives, may inspect the official record of proceedings by prior arrangement with Immigration Court staff. A FOIA request is not required. See Chapter 1.6(c) (Records).

***(B) Obtaining copies of the record*. —** As a general rule, parties may only obtain a copy of the record of proceedings by filing a FOIA request. See subsection (b), below. However, in limited instances, Immigration Court staff have the discretion to provide a party with a copy of the record or portion of the record, without a FOIA request. See Chapter 1.6(c) (Records).

***(ii) Non-parties*. —** Persons who are not a party to a proceeding before an Immigration Court must file a FOIA request with the EOIR Office of the General Counsel if they wish to see or obtain copies of the record of proceedings. See subsection (b), below.

(b) How to file. —

***(i) Form*. —** FOIA requests must be made in writing. See 28 C.F.R. § 16.1 et seq. The Executive Office for Immigration Review (EOIR) does not have an official form for filing FOIA requests. The Department of Homeland Security Freedom of Information /Privacy Act Request (Form G-639) should not be used to file such requests. For information on where to file a FOIA request, see Appendix B (EOIR Directory).

***(ii) Information required*. —** Requests should thoroughly describe the records sought and include as much identifying information as possible regarding names, dates, subject matter, and location of proceedings. For example, if a request pertains to an alien in removal proceedings, the request should contain the full name and alien registration number ("A number") of that alien. The more precise and comprehensive the information provided in the FOIA request, the better and more expeditiously the request can be processed.

***(iii) Fee*. —** No fee is required to file a FOIA request, but fees may be charged to locate, review, and reproduce records. See 28 C.F.R. § 16.3(c).

***(iv) Processing times*. —** Processing times for FOIA requests vary depending on the nature of the request and the location of the records.

***(c) When to file*. —**

***(i) Timing*. —** A FOIA request should be filed as soon as possible, especially when a party is facing a filing deadline.

***(ii) Effect on filing deadlines*. —** Parties should not delay the filing of an application, motion, brief, appeal, or other document while awaiting a response to a FOIA request. Non-receipt of materials requested pursuant to FOIA does *not* excuse a party's failure to meet a filing deadline.

***(d) Limitations*. —**

***(i) Statutory exemptions*. —** Certain information in agency records, such as classified material and information that would cause a clearly unwarranted invasion of personal privacy, is exempted from release under FOIA. See 5 U.S.C. § 552(b)(1)-(9). Where appropriate, such information is redacted (i.e., removed or cut out), and a copy of the redacted record is provided to the requesting party. If material is redacted, the reasons for the redaction are indicated.

(ii) Agency's duty. **—** The FOIA statute does not require the Executive Office for Immigration Review, its Office of the General Counsel, or the Immigration Courts to perform legal research, nor does it entitle the requesting person to copies of documents that are available for sale or on the internet.

(iii) Subject's consent. **—** When a FOIA request seeks information that is exempt from disclosure on the grounds of personal privacy, the subject of the record must consent in writing to the release of the information.

12.3 Denials

If a FOIA request is denied, either in whole or in part, the requesting party may appeal the decision to the Office of Information and Privacy, Department of Justice. Information on how to appeal a denial of a FOIA request is available on the Office of Information and Privacy website at www.justice.gov/oip. The rules regarding FOIA appeals can be found at 28 C.F.R. § 16.9.

13 Other Information

13.1 Reproduction of the Practice Manual

The Practice Manual is a public document and may be reproduced without advance authorization from the Executive Office for Immigration Review.

13.2 Online Access to the Practice Manual

The most current version of the Practice Manual is available at the Executive Office for Immigration Review website at www.justice.gov/eoir. Questions regarding online access to the Practice Manual should be addressed to the Law Library and Immigration Research Center. See Appendix B (EOIR Directory).

13.3 Updates to the Practice Manual

The Practice Manual is updated periodically. The date of the most recent update is indicated at the bottom of each page. Parties should make sure to consult the most recent version of the Practice Manual, which is posted online at the Executive Office for Immigration Review website at www.justice.gov/eoir.

13.4 Public Input

***(a) Practice Manual*. —** The Executive Office for Immigration Review welcomes and encourages the public to provide comments on the Practice Manual. In particular, the public is encouraged to identify errors or ambiguities in the text and to propose revisions for future editions.

Correspondence regarding the Practice Manual should be addressed to:

United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 20530

The public is asked not to combine comments regarding the Immigration Court Practice Manual with other inquiries, including inquiries regarding specific matters pending before the Immigration Courts.

(b) Regulations and Published Rules. — Periodically, the Executive Office for Immigration Review issues new regulations. New regulations are published in the *Federal Register*, which is available online at www.ofr.gov, in most law libraries, and in many public libraries. The public is encouraged to submit comments on proposed regulations. Comments may be submitted at www.regulations.gov or as directed in the *Federal Register*.

APPENDIX A

Immigration Court Addresses

Arizona			
Eloy	1705 E. Hanna Rd., Suite 366 Eloy, AZ 85131 (520) 466-3671	***Phoenix***	200 East Mitchell Drive, Suite 200 Phoenix, AZ 85012 (602) 640-2747
Florence	3260 N. Pinal Parkway Ave. Florence, AZ 85132 (520) 868-3341	***Tucson***	300 West Congress, Suite 300 Tucson, AZ 85701 (520) 670-5212

California			
Adelanto	Adelanto Detention Facility 10250 Rancho Road, Suite 201A Adelanto, CA 92301 760-246-5404	***Los Angeles***	606 S. Olive St., 15th Floor Los Angeles, CA 90014 (213) 894-2811
East Mesa	East Mesa CCA 446 Alta Rd. San Diego, CA 92158 (619) 661-3327	***San Diego***	401 West "A" St., Suite 800 San Diego, CA 92101 (619) 557-6052
Imperial	2409 La Brucherie Rd. Imperial, CA 92251 (760) 370-5200	***San Francisco***	100 Montgomery St., Suite 800 San Francisco, CA 94104 (415) 705-4415

Colorado			
Denver	1961 Stout Street, Suite 3103 Denver, CO 80294 (303) 844-5815	***Aurora Hearing Location***	3130 N. Oakland Street Aurora, CO 80010 (303) 361-0488

Connecticut	
Hartford	AA Ribicoff Federal Bldg. & Courthouse 450 Main St., Room 628 Hartford, CT 06103-3015 (860) 240-3881

Florida			
Miami	One Riverview Square 333 S. Miami Ave., Suite 700 Miami, FL 33130 (305) 789-4221	***Orlando***	3535 Lawton Road, Suite 200 Orlando, FL 32803 (407) 722-8900
Miami Krome	Krome North Processing Center 18201 SW 12th St., Bldg. #1, Suite C Miami, FL 33194 (786) 422-8700 Mailing Address: P.O. Box 940998 Miami, FL 33194		

Georgia			
Atlanta	180 Spring Street SW, Suite 241 Atlanta, GA 30303 (404) 331-0907	***Stewart***	146 CCA Road Lumpkin, GA 31815 (229) 838-1320

Hawaii	
Honolulu	PJKK Federal Bldg. 300 Ala Moana Blvd., Room 8-112 Honolulu, HI 96850 (808) 541-1870

Illinois			
Chicago	525 West Van Buren Street Suite 500 Chicago, IL 60607 (312) 697-5800	***Chicago Detained***	536 Clark St., Room B1330/1320 Chicago, IL 60605 (312) 697-5800 Mailing Address: 525 West Van Buren Street Suite 500 Chicago, IL 60607

Louisiana			
New Orleans	One Canal Place 365 Canal St., Suite 2450 New Orleans, LA 70130 (504) 589-3992	***Oakdale***	1900 E. Whatley Rd. Oakdale, LA 71463 (318) 335-0365

Maryland	
Baltimore	George Fallon Federal Bldg. 31 Hopkins Plaza, Room 440 Baltimore, MD 21201 (410) 962-3092

Massachusetts	
Boston	JFK Federal Bldg. 15 New Sudbury St., Room 320 Boston, MA 02203 (617) 565-3080

Michigan	
Detroit	P.V. McNamara Federal Bldg. 477 Michigan Ave., Suite 440 Detroit, MI 48226 (313) 226-2603

Minnesota	
Bloomington	Bishop Henry Whipple Federal Building 1 Federal Drive, Suite 1850 Fort Snelling, MN 55111 (612) 725-3765

Missouri	
Kansas City	2345 Grand Blvd., Suite 525 Kansas City, MO 64108 (816) 581-5000

Nebraska	
Omaha	1717 Avenue H, Suite 100 Omaha, NE 68110 (402) 348-0310

Nevada	
Las Vegas	3365 Pepper Lane, Suite 200 Las Vegas, NV 89120 (702) 458-0227

New Jersey			
Elizabeth	625 Evans St., Room 148A Elizabeth, NJ 07201 (908) 787-1390	***Newark***	970 Broad St., Room 1200 Newark, NJ 07102 (973) 645-3524

New York			
Batavia	4250 Federal Drive, Room F108 Batavia, NY 14020 (585) 345-4300	***New York***	26 Federal Plaza 12th Floor, Room 1237 New York, NY 10278 (917) 454-1040
Buffalo	130 Delaware Ave., Suite 410 Buffalo, NY 14202 (716) 551-3442	***Ulster***	Ulster Correctional Facility Berme Road P.O. Box 800 Napanoch, NY 12458 (845) 647-2223
Fishkill	Downstate Correctional Facility 121 Red Schoolhouse Rd. Fishkill, NY 12524 (845) 838-5700	***Varick Street***	201 Varick St., Room 1140 New York, NY 10014 (212) 620-6279

North Carolina	
Charlotte	5701 Executive Center Dr., Suite 400 Charlotte, NC 28212 (704) 817-6140

Northern Mariana Islands	
Saipan	Marina Heights II Building, Suite 301 Marina Heights Business Park Saipan, MP 96950 (670) 322-0601

Ohio	
Cleveland	801 W. Superior Ave. Suite 13 - 100 Cleveland, OH 44113 (216) 802-1100

Oregon	
Portland	1220 SW 3rd Ave., Suite 500 Portland, OR 97204 (503) 326-6341

Pennsylvania			
Philadelphia	Robert Nix Federal Bldg & Courthouse 900 Market Street, Suite 504 Philadelphia, PA 19107 (215) 656-7000	***York***	3400 Concord Rd., Suite 2 York, PA 17402 (717) 755-7555 Mailing Address: P.O. Box 20370 York, PA 17402

Puerto Rico	
San Juan	San Patricio Office Center #7 Tabonuco St., Room 401 Guaynabo, PR 00968-4605 (787) 749-4386

Tennessee	
Memphis	80 Monroe Ave., Suite 501 Memphis, TN 38103 (901) 528-5883

Texas			
Dallas	1100 Commerce St., Suite 1060 Dallas, TX 75242 (214) 767-1814	***Houston SPC***	Houston Service Processing Center 5520 Greens Rd. Houston, TX 77032 (281) 594-5600
El Paso	700 E. San Antonio St., Suite 750 El Paso, TX 79901 (915) 534-6020	***Pearsall***	566 Veterans Drive Pearsall, TX 78061 (210) 368-5700
El Paso SPC	Service Processing Center 8915 Montana Ave., Suite 100 El Paso, TX 79925 (915) 771-1600	***Port Isabel***	Port Isabel Detention Center 27991 Buena Vista Blvd. Los Fresnos, TX 78566 (956) 547-1788 Mailing Address: 2009 West Jefferson Ave., Suite 300 Harlingen, TX 78550
Harlingen	2009 West Jefferson Ave., Suite 300 Harlingen, TX 78550 (956) 427-8580	***San Antonio***	800 Dolorosa St., Suite 300 San Antonio, TX 78207 (210) 472-6637
Houston	600 Jefferson Street, Suite 900 Houston, TX 77002 (713) 718-3870		

Utah	
Salt Lake City	2975 South Decker Lake Drive, Suite 200 West Valley City, UT 84119 (801) 524-3000

Virginia			
Arlington	1901 South Bell Street, Suite 200 Arlington, VA 22202 (703) 603-1300	***Headquarters***	1901 South Bell Street, Suite 200 Arlington, VA 22202 (703) 603-1350

Washington			
Seattle	1000 Second Ave., Suite 2500 Seattle, WA 98104 (206) 553-5953	***Tacoma***	1623 East J St., Suite 3 Tacoma, WA 98421 (253) 779-6020

APPENDIX B

EOIR Directory

EOIR Website
www.justice.gov/eoir

EOIR eRegistry
Technical Assistance
eRegistration.support@usdoj.gov

ASQ
Automated Status Query System
(800) 898-7180
(204) 314-1500
24 hours, 7 days a week

Office of the Chief Immigration Judge
United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 20530
(703) 305-1247
8:00 a.m. to 5:00 p.m., Monday - Friday, except holidays

Practice Manual Comments
United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 20530

Concerns/Complaints about Immigration Judge Conduct www.justice.gov/eoir

Board of Immigration Appeals
For addresses, see the Board of Immigration Appeals Practice Manual.

Clerk's Office
(703) 605-1007
8:00 a.m. to 4:30 p.m.
Monday - Friday, except holidays

Emergency Stay Information
(703) 605-1007
24 hours, 7 days a week

Oral Argument Coordinator
(703) 605-1007
8:00 a.m. to 4:30 p.m.
Monday - Friday, except holidays

Telephonic Instructions and Procedures System (BIA TIPS)
(703) 605-1007
24 hours, 7 days a week

Office of the General Counsel
United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 20530
(703) 305-0470
8:00 a.m. to 5:00 p.m., Monday - Friday, except holidays

EOIR Disciplinary Counsel
United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 20530
Attn: Disciplinary Counsel

EOIR Fraud Program
United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 20530
Attn: Fraud Program

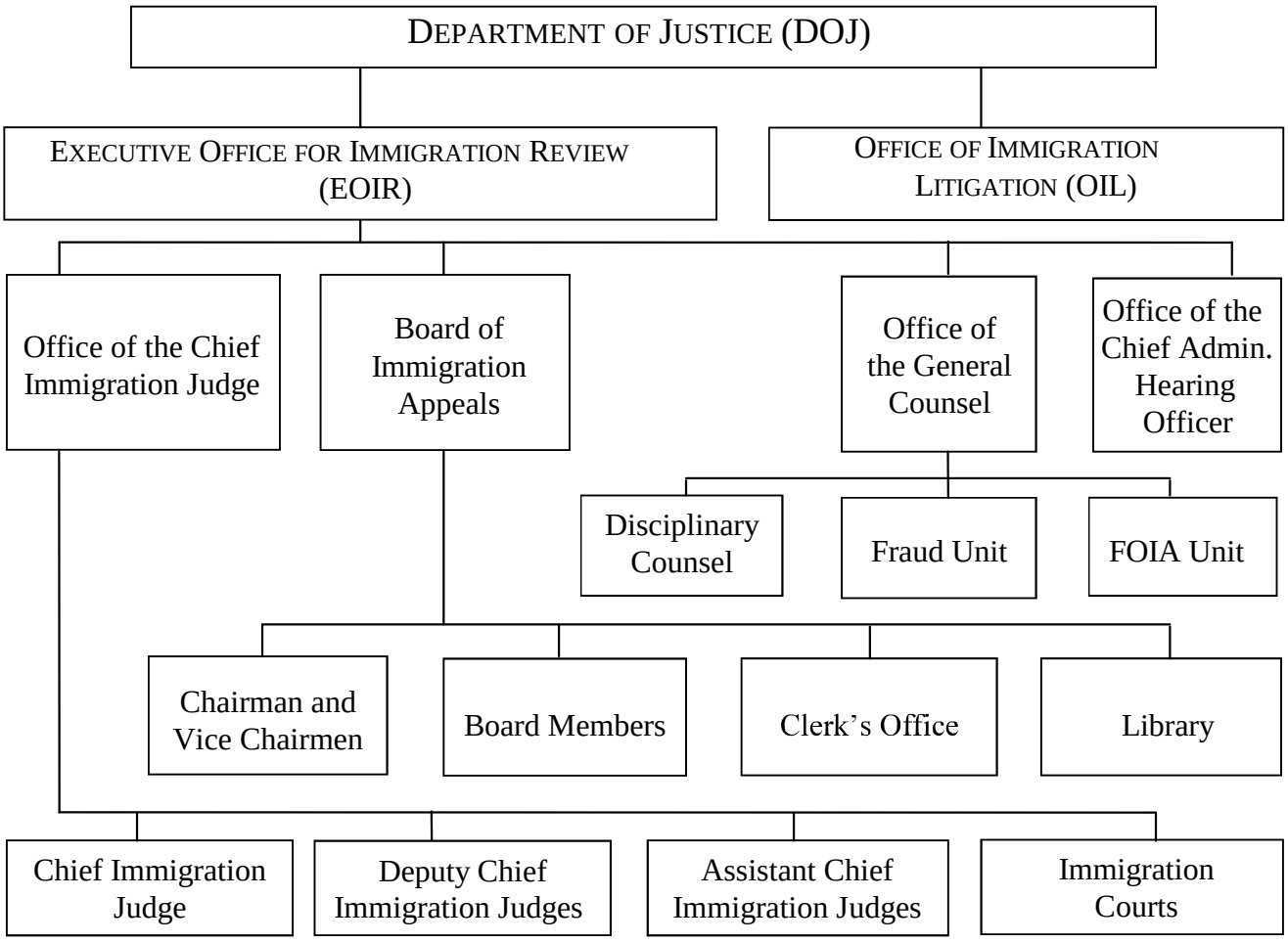
Freedom of Information Act Requests (FOIA)
United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel–FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 1903
Falls Church, VA 20530
(703) 605-1297

Office of Legislative and Public Affairs
United States Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1902
Falls Church, VA 20530
(703) 305-0289
9:00 a.m. to 5:00 p.m., Monday - Friday, except holidays

Law Library and Immigration Research Center
5201 Leesburg Pike, Suite 1200
Falls Church, VA 20530
(703) 605-1103
9:00 a.m. to 4:00 p.m., Monday - Friday, except holidays
Virtual Law Library: www.justice.gov/eoir

APPENDIX C

Practice Manual Organizational Chart



This chart is a general illustration of the organizational relationship between certain components of the Department of Justice. The chart does not display all components of offices displayed, nor does it represent their relative authority. See Chapter 1 (The Immigration Court). These components were selected because of their practical importance to persons appearing before the Immigration Courts and the Board of Immigration Appeals.

APPENDIX D

Deadlines

This table is provided for general guidance *only*. To determine the particular deadlines in a given case, parties *must* consult the pertinent regulations and the text of this manual. The Immigration Judge has discretion to set deadlines for pre-decision filings.

Filing		**Deadline** ***(the construction of "day" is discussed in Practice Manual Chapter 3.1(c)(i))***	**Practice Manual Chapter**
Changes of address or telephone number	alien	5 days after the alien's change of address or telephone number	2.2(c)
	representative	promptly	2.3(h)
Filings in advance of master calendar hearing	filings	15 days before the hearing, if requesting a ruling *(if alien is detained, deadline is determined by the Immigration Court)*	3.1(b)(i)
	responses	10 days after the filing is received by the Immigration Court *(if alien is detained, deadline is determined by the Immigration Court)*	
Filings in advance of individual calendar hearing	filings	15 days before the hearing *(if alien is detained, deadline is determined by the Immigration Court)*	3.1(b)(ii)
	responses	10 days after the filing is received by the Immigration Court *(if alien is detained, deadline is determined by the Immigration Court)*	

Filing		Deadline *(the construction of "day" is discussed in Practice Manual Chapter 3.1(c)(i))*	Practice Manual Chapter
Asylum applications *	defensive applications	at a master calendar hearing	3.1(b)(iii)(A)
	affirmative applications	referred to Immigration Court by DHS	3.1(b)(iii)(B)
Post-decision motions	motions to reopen	90 days after a final administrative order by the Immigration Judge, with certain exceptions	5.7(c)
	motions to reconsider	30 days after a final administrative order by the Immigration Judge	5.8(c)
	motions to reopen in absentia removal order	180 days after in absentia order, if based on exceptional circumstances	5.9(d)(ii)(A)
		at any time, if based on lack of proper notice	5.9(d)(ii)(B)
Deadlines for appeals to BIA		30 days after the decision was rendered orally or mailed	6.2

***** *An alien filing an application for asylum should be mindful that the application must be filed within one year after the date of the alien's arrival in the United States, unless certain exceptions apply. INA § 208(a)(2)(B), 8 C.F.R. § 1208.4(a)(2).*

APPENDIX E

Forms

This appendix contains a list of frequently requested immigration forms and the best sources for obtaining copies of those forms.

Online copies of forms. Many forms can be downloaded or printed from the website of the agency responsible for that form. For example, forms beginning with "EOIR-," as well as certain forms beginning with "I-" that are filed with the Immigration Court, can be found at www.justice.gov/eoir under the link "EOIR Forms." Other forms, including forms beginning with "I-," can be found at www.uscis.gov under the link "Immigration Forms."

Paper copies of forms. If an immigration form is not available online, the best source for obtaining one is the agency that is responsible for that form. The table below identifies those agencies. (Local offices often provide forms on a walk-in basis.) Other sources for forms include voluntary agencies (VOLAGs), public service organizations, law offices, and certain Government Printing Office Bookstores. See 8 C.F.R. §§ 299.2, 299.3.

Reproducing forms. Forms may be photocopied, computer-generated, or downloaded, but must comply with all requirements listed in Chapter 11.2 (Obtaining Blank Forms).

Abbreviations

AAO	=	Administrative Appeals Office, DHS
BIA	=	Board of Immigration Appeals
CIS	=	Citizenship and Immigration Services, DHS
EOIR	=	Executive Office for Immigration Review
IC	=	Immigration Court
IJ	=	Immigration Judge
OGC	=	Office of the General Counsel, EOIR

PURPOSE	FORM	NAME	GET FROM
accredited representative application	Form EOIR-31	Request for Recognition as a Nonprofit Religious, Charitable, Social Service, or Similar Organization Established in the United States	BIA
adjustment of status	Form I-485	Application to Register Permanent Residence or Adjust Status	CIS
appeal of attorney discipline decision	Form EOIR-45	Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case	IC BIA OGC
appeal of IJ decision	Form EOIR-26	Notice of Appeal from a Decision of an Immigration Judge	IC BIA
appeal of CIS decision (AAO jurisdiction)	Form I-290B	Notice of Appeal or Motion	CIS
appeal of CIS decision (BIA jurisdiction)	Form EOIR-29	Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer	CIS
appearance as representative (before the BIA)	Form EOIR-27	Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals	IC BIA
appearance as representative (before an IC)	Form EOIR-28	Notice of Entry of Appearance as Attorney or Representative before the Immigration Court	IC
asylum, withholding of removal (restriction on removal), Convention Against Torture	Form I-589	Application for Asylum and for Withholding of Removal	IC CIS
attorney / representative complaint form	Form EOIR-44	Immigration Practitioner Complaint Form	IC BIA OGC
cancellation of removal (non-permanent residents)	Form EOIR-42B	Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents	IC
cancellation of removal (permanent residents)	Form EOIR-42A	Application for Cancellation of Removal for Certain Permanent Residents	IC

PURPOSE	FORM	NAME	GET FROM
change of address (cases pending before BIA)	Form EOIR-33 / BIA	Alien's Change of Address Form / Board of Immigration Appeals	IC BIA
change of address (cases pending before an IC)	Form EOIR-33 / IC	Alien's Change of Address Form / Immigration Court	IC
fee waiver (appeals or motions	Form EOIR-26A	Fee Waiver Request	IC BIA
motion (any kind)	none	There is no official form for motions filed with an IC or the BIA. Do not use the Notice of Appeal (Form EOIR-26) for motions.	n/a
NACARA suspension of deportation/special rule cancellation	Form I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal	CIS
return to unrelinquished domicile	Form I-191	Application for Advance Permission to Return to Unrelinquished Domicile	CIS
suspension of deportation	Form EOIR-40	Application for Suspension of Deportation	IC
temporary protected status	Form I-821	Application for Temporary Protected Status	CIS
visa petition (employment-based)	Form I-140	Immigrant Petition for Alien Worker	CIS
visa petition (family-based)	Form I-130	Petition for Alien Relative	CIS
waiver of inadmissibility	Form I-601	Application for Waiver of Grounds of Inadmissibility	CIS

APPENDIX F
Sample Cover Page

A. Tourney, Esquire
1234 Center Street
Anytown, ST 99999

Filing party. If pro se, the alien should provide his or her own name and address in this location. If a representative, the representative should provide his or her name and complete business address.

DETAINED

*Detention status. If the alien is detained, the word "*DETAINED*" should appear prominently in the top right corner, preferably highlighted.*

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ANYTOWN, STATE

Court. The Immigration Court location (city or town) and state should be provided.

In the Matters of:

Jane Smith
John Smith
Jill Smith

In removal proceedings

File Nos.: A 012 345 678
A 012 345 679
A 012 345 680

A numbers. The alien registration number of <u>every person</u> included in the submission should be listed.

Name and type of proceeding. The full name of <u>every person</u> included in the submission should be listed.

Immigration Judge Susan Jones **Next Hearing: September 22, 2008 at 1:00 p.m.**

Name of the Immigration Judge and the date and time of the next hearing. This information should always be listed.

RESPONDENT'S PRE-HEARING BRIEF

Filing title. The title of the submission should be placed in the middle and bottom of the page.

APPENDIX G

Sample Proof of Service

Instructions:

By law, all submissions to the Immigration Court *must* be filed with a "Proof of Service" (or "Certificate of Service"). See Chapter 3.2 (Service on the Opposing Party). This Appendix provides guidelines on how to satisfy this requirement.

What is required. To satisfy the law, you must do *both* of the following:

1. *Serve the opposing party.* Every time you file a submission with the Immigration Court, you must give, or "serve," a copy on the opposing party. If you are an alien in proceedings, the opposing party is the Department of Homeland Security.

2. *Give the Immigration Court a completed Proof of Service.* You must submit a signed "Proof of Service" to the Immigration Court along with your document(s). The Proof of Service tells the Immigration Court that you have given a copy of the document(s) to the opposing party.

Sample Proof of Service. You do not have to use the sample contained in this Appendix. You may write up your own Proof of Service if you like. However, if you use this sample, you will satisfy the Proof of Service requirement.

Sending the Proof of Service. When you have to supply a Proof of Service, be sure to staple or otherwise attach it to the document(s) that you are serving.

Forms that contain a Proof of Service. Some forms, such as the Application for Cancellation of Removal for Certain Permanent Residents (Form EOIR-42A), contain a Certificate of Service, which functions as a Proof of Service for the form. You must complete the Certificate of Service to satisfy the Proof of Service requirement *for that form*. Such a Certificate of Service only functions as a Proof of Service for the form on which it appears, not for any supporting documents that you file with the form. If you are filing supporting documents with a form that contains a Certificate of Service, you must file a separate Proof of Service for those documents.

Forms that do not contain a Proof of Service. Forms that do not contain a Certificate of Service are treated like any other document. Therefore, you must supply the Proof of Service for those forms.

Sample Proof of Service

_____
(Name of alien or aliens)

_____
("A number" of alien or aliens)

PROOF OF SERVICE

On _____, I, _____,
(date) (printed name of person signing below)

served a copy of this _____
(name of document)

and any attached pages to _____
(name of party served)

at the following address: _____
(address of party served)

_____
(address of party served)

by _____.
(method of service, for example overnight courier, hand-delivery, first class mail)

_____ _____
(signature) (date)

APPENDIX H

Sample Certificate of Translation

All submissions to the Immigration Court, if not in the English language, must be accompanied by a translation and certificate of translation. See Chapter 3.3(a) (Language).

CERTIFICATE OF TRANSLATION

I, _____, am competent to translate from
(name of translator)

_____ into English, and certify that the translation of
(language)

_____
(names of documents)

is true and accurate to the best of my abilities.

_____ _____
(signature of translator) (typed/printed name of translator)

_____
(address of translator)

_____
(address of translator)

_____
(telephone number of translator)

APPENDIX I

Telephonic Information

Do you want to know the status of your case before an Immigration Judge or the Board of Immigration Appeals?

All you have to do is

ASQ

(800) 898-7180
(204) 314-1500

The Automated Status Query System contains information regarding your case, including your next hearing date, asylum processing, the Immigration Judge's decision, or your case appeal.

This service is available 24 hours a day, 7 days a week.

Need information on how to file an appeal, motion, or anything else with the Board of Immigration Appeals?

Let us give you some

BIA TIPS

(703) 605-1007

Call the Board of Immigration Appeals Telephonic Instructions and Procedures System for recorded information on how to file an appeal, motion, brief, change of address, and other documents with the Board.

This service is available 24 hours a day, 7 days a week.

APPENDIX J

Citation Guidelines*

When filing papers with the Immigration Court, parties should keep in mind that accurate and complete legal citations strengthen the argument made in the submission. This Appendix provides guidelines for frequently cited sources of law.

The Immigration Court generally follows *A Uniform System of Citation* (also known as the "Blue Book"), but diverges from that convention in certain instances. The Immigration Court appreciates but does not require citations that follow the examples used in this Appendix. The citation categories are:

I. Cases
II. Regulations
III. Statutes/laws
IV. Legislative history
V. Treaties and international materials
VI. Publications and communications by governmental agencies, and
VII. Commonly cited commercial publications

Note that, for the convenience of filing parties, some of the citation formats in this Appendix are less formal than those used in the published cases of the Board of Immigration Appeals. Once a source has been cited in full, the objective is brevity without compromising clarity.

This Appendix concerns the citation of legal authority. For guidance on citing to the record and other sources, see Chapter 3.3(e) (Source materials) and Chapter 4.18(d) (Citation).

As a practice, the Immigration Court prefers italics in case names and publication titles, but underlining is an acceptable alternative.

□ □ □ □ □

* This appendix is substantially based on Appendix J (Citation Guidelines) in the Board of Immigration Appeals Practice Manual. The Office of the Chief Immigration Judge wishes to acknowledge the efforts of all those involved in the preparation of that appendix.

I. *Decisions, Briefs, and Exhibits*

General guidance: *Abbreviations in case names.* As a general rule, well-known agency abbreviations (e.g., DHS, INS, FBI, Dep't of Justice) may be used in a case name, but without periods. If an agency name includes reference to the "United States," it is acceptable to abbreviate it to "U.S." However, when the "United States" is named as a party in the case, do not abbreviate "United States." For example:

DHS v. Smith	.....	not *D.H.S. v. Smith*
U.S. Dep't of Justice v. Smith	.....	not *United States Department of Justice v. Smith*
United States v. Smith	.....	not *U.S. v. Smith*

Short form of case names. After a case has been cited in full, a shortened form of the name may be used thereafter. For example:

full: *INS v. Phinpathya*, 464 U.S. 183 (1984)

short: *Phinpathya*, 464 U.S. at 185

full: *Matter of Nolasco*, 22 I&N Dec. 632 (BIA 1999)

short: *Nolasco*, 22 I&N Dec. at 635

Citations to a specific point. Citations to a specific point should include the precise page number(s) on which the point appears. For example:

Matter of Artigas, 23 I&N Dec. 99, 100 (BIA 2001)

Citations to a dissent or concurrence. If citing to a dissent or concurrence, this should be indicated in a parenthetical notation. For example:

Matter of Artigas, 23 I&N Dec. 99, 109-110 (BIA 2001) (dissent)

Board decisions: *Published decisions.* Precedent decisions by the Board of Immigration Appeals ("Board") are binding on the Immigration Court, unless modified or overruled by the Attorney General or a federal court. All precedent Board decisions are available on the Executive Office for Immigration Review website at www.justice.gov/eoir. Precedent decisions should be cited in the "I&N Dec." form illustrated below. The citation must identify the adjudicator (BIA, A.G., etc.) and the year of the decision. Note that there are no spaces in "I&N" and that only "Dec." has a period.

For example:

Matter of Balsillie, 20 I&N Dec. 486 (BIA 1992)

Unpublished decisions. Citation to unpublished decisions is discouraged because these decisions are not binding on the Immigration Court in other cases. When reference to an unpublished case is necessary, a copy of the decision should be provided, and the citation should include the alien's full name, the alien registration number, the adjudicator, and the precise date of the decision. Italics, underlining, and "*Matter of"* should not be used. For example:

Jane Smith, A 012 345 678 (BIA July 1, 1999)

"Interim Decision." In the past, the Board issued precedent decisions in slip opinion or "Interim Decision" form. Because all published cases are now available in final form (as "I&N Decisions"), citations to "Interim Decisions" are no longer appropriate and are disfavored.

"Matter of," not *"In re."* All precedent decisions should be cited as *"Matter of*." The use of *"In re"* is disfavored. For example: *Matter of Yanez*, not *In re Yanez*.

For a detailed description of the Board's publication process, see Board Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

IJ decisions: If referring to an earlier decision in the case by the Immigration Judge, the decision should be cited. This applies whether the decision was issued orally or in writing. Citations to decisions of Immigration Judges should state the nature of the proceedings, the page number, and the date. For example:

IJ Bond Proceedings Decision at 5 (Dec. 12, 2008)

AG decisions: Precedent decisions by the Attorney General are binding on the Immigration Court, and should be cited in accordance with the rules for precedent decisions by the Board of Immigration Appeals. All precedent decisions by the Attorney General are available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

Matter of Y-L-, 23 I&N Dec. 270 (AG 2002)

DHS decisions: Precedent decisions by the Department of Homeland Security and the former Immigration and Naturalization Service should be cited in accordance with the rules for precedent decisions by the Board of Immigration Appeals.

Federal & state courts: *Generally.* Federal and state court decisions should generally be cited according to the standard legal convention, as set out in the latest edition of *A Uniform System of Citation* (also known as the "Blue Book"). For example:

> *INS v. Phinpathya*, 464 U.S. 183 (1984)
>
> *Saakian v. INS*, 252 F.3d 21 (1st Cir. 2001)
>
> *McDaniel v. United States*, 142 F. Supp. 2d 219 (D. Conn. 2001)

U.S. Supreme Court. The Supreme Court Reporter citation ("S.Ct.") should be used only when the case has not yet been published in the United States Reports ("U.S.").

Unpublished cases. Citation to unpublished state and federal court cases is discouraged. When citation to an unpublished decision is necessary, a copy of the decision should be provided, and the citation should include the docket number, court, and precise date. Parties are also encouraged to provide the LexisNexis or Westlaw number. For example:

> *Bratco v. Mukasey*, No. 04-726367, 2007 WL 4201263 (9th Cir. Nov. 29, 2007) (unpublished)

Precedent cases not yet published. When citing to recent precedent cases that have not yet been published in the Federal Reporter or other print format, parties should provide the docket number, court, and year. Parties are also encouraged to provide the LexisNexis or Westlaw number. For example:

> *Grullon v. Mukasey*, __ F.3d __, No. 05-4622, 2007 U.S. App. LEXIS 27325 (2d Cir. 2007)

Briefs & exhibits: *Text from briefs*. If referring to text from a brief, the brief should be cited. The citation should state the filing party's identity, the nature of proceedings, the page number, and the date. For example:

> Respondent's Bond Appeal Brief at 5 (Dec. 12, 2008)

Exhibits. Exhibits designated during a hearing should be cited as they were designated by the Immigration Judge. For example:

> Exh. 3

Exhibits accompanying a brief should be cited by alphabetic tab or page number. For example:

> Respondent's Pre-Hearing Brief, Tab A

□ □ □ □ □

II. *Regulations*

General guidance: *Regulations generally.* There are two kinds of postings in the Federal Register: those that are simply informative in nature (such as "notices" of public meetings) and those that are regulatory in nature (referred to as "rules"). There are different types of "rules," including "proposed," "interim," and "final." The type of rule will determine whether or not (and for how long) the regulatory language contained in that rule will be in effect. Generally speaking, proposed rules are not law and do not have any effect on any case, while interim and final rules do have the force of law and, depending on timing, may affect a given case.

Federal Register and Code of Federal Regulations. Regulations appear first in the Federal Register (Fed. Reg.) and then in the Code of Federal Regulations (C.F.R.). Once regulations appear in a volume of the C.F.R., do not cite to the Federal Register *unless* there is a specific reason to do so (discussed below).

C.F.R.: For the Code of Federal Regulations, always identify the volume, the section number, and the year. The year need not be given after the first citation, unless a subsequent citation refers to a regulation published in a different year. Always use periods in the abbreviation "C.F.R." For example:

full: 8 C.F.R. § 1003.1 (2002)

short: 8 C.F.R. § 1003.1

Fed. Reg.: Citations to regulatory material in the Federal Register should be used only when:

- the citation is to information that will never appear in the C.F.R., such as a public notice or announcement
- the rule contains regulatory language that will be, but is not yet, in the C.F.R.
- the citation is to information associated with the rule, but which will not appear in the C.F.R. (e.g., a preamble or introduction to a rule)
- the rule contains proposed or past language of a regulation that is pertinent in some way to the filing or argument

The first citation to the Federal Register should always include (i) the volume, (ii) the abbreviated form "Fed. Reg.", (iii) the page number, (iv) the date, and (v) important identifying information such as "proposed rule," "interim rule," "supplementary information," or the citation where the rule will appear. For example:

full: 67 Fed. Reg. 52627 (Aug. 13, 2002) (proposed rule)

full: 67 Fed. Reg. 38341 (June 4, 2002) (to be codified at 8 C.F.R. §§ 100, 103, 236, 245a, 274a, and 299)

short: 67 Fed. Reg. at 52627-28; 67 Fed. Reg. at 38343

Since the Federal Register does not use commas in its page numbers, do not use a comma in page numbers. Use abbreviations for the month.

When citing the preamble to a rule, identify it exactly as it is titled in the Federal Register, e.g., 67 Fed. Reg. 54878 (Aug. 26, 2002) (supplementary information).

□ □ □ □ □

III. *Statutes / Laws*

General guidance: *Full citations*. Whenever citing a statute for the first time, be certain to include all the pertinent information, including the name of the statute, its public law number, statutory cite, and a parenthetical identifying where the statute was codified (if applicable). The only exception is the Immigration and Nationality Act, which is illustrated below.

Short citations. The use of short citations is encouraged, but only after the full citation has been used.

Special rule for U.S.C. and C.F.R. There are two abbreviations that never need to be spelled out: "U.S.C." for the U.S. Code and the "C.F.R." for the Code of Federal Regulations. Always use periods with these abbreviations.

Special rule for the INA. Given the regularity with which the Immigration and Nationality Act is cited before the Immigration Court, there is generally no need to provide the Public Law Number, the Stat. citation, or U.S.C. citation. The Immigration Court will presume INA citations refer to the current language of the Act unless the year is provided.

State statutes. State statutes should be cited as provided in *A Uniform System of Citation* (also known as the "Blue Book").

Sections of law. Full citations are often lengthy, and filing parties are sometimes uncertain where to put the section number in the citation. For the sake of simplicity, use the word "section" and give the section number in front of the full citation to the statute. Once a full citation has been given, use the short citation form with a section symbol "§." This practice applies whether the citation is used in a sentence or after it. For example:

> The definition of the term "alien" in section 101(a)(3) of the Immigration and Nationality Act applies to persons who are not citizens or nationals of the United States. The term "national of the United States" is expressly defined in INA § 101(a)(22), but the term "citizen" is more complex. *See* INA §§ 301-309, 316, 320.

USC: Citations to the United States Code, always identify the volume, the section number, and the year. The year need not be given after the first citation, unless a subsequent citation refers to a section published in a different year. Always use periods in the abbreviation "U.S.C." For example:

full: 18 U.S.C. § 16 (2006)

short: 18 U.S.C. § 16

INA: full: section xxx of Immigration and Nationality Act

short: INA § xxx

USA PATRIOT: full: section xxx of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272

short: USA PATRIOT Act § xxx

LIFE: full: section xxx of Legal Immigration and Family Equity Act, Pub. L. No. 106-553, 114 Stat. 2762 (2000), *amended by* Pub. L. No. 106-554, 114 Stat. 2763 (2000)

short: LIFE Act § xxx

CCA: full: section xxx of Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631

short: CCA § xxx

NACARA: full: section xxx of Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, tit. II, 111 Stat. 2193 (1997), *amended by* Pub. L. No. 105-139, 111 Stat. 2644 (1997)

short: NACARA § xxx

IIRIRA: full: section xxx of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546

short: IIRIRA § xxx

AEDPA: full: section xxx of Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214

short: AEDPA § xxx

INTCA: full: section xxx of Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4305, *amended by* Pub. L. No. 105-38, 11 Stat. 1115 (1997)

short: INTCA § xxx

MTINA: full: section xxx of Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1733

short: MTINA § xxx

IMMACT90: full: section xxx of Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978

short: IMMACT90 § xxx

ADAA: full: section xxx of Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181

short: ADAA § xxx

IMFA: full: section xxx of Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537

short: IMFA § xxx

IRCA: full: section xxx of Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359

short: IRCA § xxx

IRFA: full: section xxx of International Religious Freedom Act of 1988, Pub. L. No. 105-292, 112 Stat. 2787

short: IRFA § xxx

□ □ □ □ □

IV. *Legislative History*

General guidance: *Difficult to locate.* Because sources of legislative history are often difficult to locate, err on the side of providing more information, rather than less. If a source is difficult to locate, include a copy of the source with your filing (or an Internet address for it) and make clear reference to that source in your filing.

Sources. To locate legislative history, try the Library of Congress website (www.thomas.loc.gov) or commercial services. Citation to common electronic sources is encouraged.

Bills: Provide the following information the first time a bill is cited: (i) the bill number, (ii) the number of the Congress, (iii) the session of that Congress, (iv) the section number of the bill, if you are referring to a specific section, (v) the Congressional Record volume, (vi) the Congressional Record page or pages, (vii) the date of that Congressional Record, and (viii) the edition of the Congressional Record, if known. For example:

full: S. 2104, 100th Cong., 2d Sess. § 102, 134 Cong. Rec. 2216 (daily ed. Mar. 15, 1988)

short: 134 Cong. Rec. at 2218

Reports: Provide the following information the first time a report is cited: (i) whether it is a Senate or House report, (ii) the report number, (iii) the year, and (iv) where it is reprinted (a reference to where the document is available electronically is acceptable). The short form may refer either to the page numbers of the report or the page numbers where the report is reprinted. For example:

full: H.R. Conf. Rep. No. 104-828 (1996), *available in* 1996 WL 563320

short: H.R. Conf. Rep. No. 104-828, at 5

full: S. Rep. No. 98-225 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182

short: 1984 U.S.C.C.A.N. at 3183

Many committee reports are available on-line through the Library of Congress web site (www.thomas.loc.gov) or commercial services. Copies of the U.S. Code Congressional & Administrative News (U.S.C.C.A.N.), which compiles many legislative documents, are available in some public libraries.

Hearings: Provide the following information the first time a hearing is cited: (i) name of the hearing, (ii) the committee or subcommittee that held it, (iii) the number of the Congress, (iv) the session of that Congress, (v) the page or pages of the hearing, (vi) the date or year of the hearing, and (vii) information about what is being cited (such as the identity of the person testifying and context for the testimony). For example:

> Operations of the Executive Office for Immigration Review (EOIR): Hearing before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary, 107th Cong., 2d Sess. 19 (2002) (testimony of EOIR Director)

□ □ □ □ □

V. *Treaties and International Materials*

CAT:

full: Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988)

short: Convention Against Torture, art. 3

UNHCR Handbook:

full: Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Geneva 1992)

short: UNHCR Handbook ¶ xxx
[use paragraph symbol "¶" or abbreviation "para."]

U.N. Protocol on Refugees:

full: Article xxx of the United Natio n s Protocol Relating to the Status of Refugees, Jan. 31, 1967, [1968] 19 U.S.T. 6223

short: U.N. Refugee Protocol, art. xxx

□ □ □ □ □

VI. *Publications and Communications by Governmental Agencies*

General guidance: *No universal citation form.* In immigration proceedings, parties cite to a wide variety of administrative agency publications and communications, and there is no one format that fits all such documents. For that reason, use common sense when citing agency documents, and err on the side of more information, rather than less.

Difficult to locate material. If the document may be difficult for the Immigration Court to locate, include a copy of the document with your filing.

Internet material. If a document is posted on the Internet, identify the website where the document can be found or include a copy of the document with a legible Internet address.

Practice Manual: The Immigration Court Practice Manual is not legal authority. However, if there is reason to cite it, the preferred form is to identify the specific provision by chapter and section along with the date at the bottom of the page on which the cited section appears. For example:

full: Immigration Court Practice Manual, Chapter 8.5(a)(iii) (January xx, xxxx)

short: Practice Manual, Chap. 8.5(a)(iii)

Forms: Forms should first be cited according to their full name and number. A short citation form may be used thereafter. See Appendix E (Forms) for a list of common immigration forms. For example:

full: Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26)

short: Notice of Appeal *or* Form EOIR-26

If a form does not have a name, use the form number as the citation.

Country reports: State Department country reports appear both as compilations in Congressional committee prints and as separate reports and profiles. Citations to country reports should always contain the publication date and the specific page numbers (if available). Provide an Internet address when available. The first citation to any country report should contain all identifying

information, and a short citation form may be used thereafter. For example:

full: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Nigeria Country Reports on Human Rights Practices – 2001* (Mar. 2002), *available at* http://www.state.gov/g/drl/rls/hrrpt/2001/af/8397.htm

short: *2001 Nigeria Country Reports*

full: Committees on Foreign Relations and International Relations, 104th Cong., 1st Sess., *Country Reports on Human Rights Practices for 1994* xxx (Joint Comm Print 1995)

short: *1994 Country Reports* at page xxx

full: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *The Philippines – Profile of Asylum Claims and Country Conditions* xxx (June 1995)

short: *1995 Philippines Profile* at page xxx

Visa Bulletin: Citations to the State Department's Visa Bulletin should include the volume, number, month, and year of the specific issue being cited. For example:

full: U.S. Dep't of State Visa Bulletin, Vol. VIII, No. 55 (March 2003)

short: Visa Bulletin (March 2003)

Internal documents: A citation to an internal government document, such as a memo or cable, should contain as much identifying information as possible. Be sure to include any identifying heading (e.g., the "re" line in a memo) and the precise date of the document being cited. Include a copy of the document with the filing or indicate where it has been reprinted publicly. For example:

Dep't of State cable (no. 97-State-174342) (Sept. 17, 1997) (copy attached)

Office of the General Counsel, INS, U.S. Dep't of Justice, Compliance with Article 3 of the Convention Against Torture in cases of removable aliens (May 14, 1997), reprinted in 75 *Interpreter Releases* 375 (Mar. 16, 1998)

Religious Freedom Reports:

The International Religious Freedom Act of 1998 (IRFA) mandates that the Department of State issue an Annual Report on International Religious Freedom (State Department Report). IRFA further authorizes Immigration Judges to use the State Department Report as a resource in asylum adjudications. The State Department Report should be cited as follows:

full: Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *Annual Report on International Religious Freedom* (Sept. 2007)

short: 2007 *Religious Freedom Report* at page xxx

IRFA also mandates the issuance of an Annual Report by the United States Commission on International Religious Freedom (USCIRF Report). The USCIRF is a government body that is independent of the executive branch. Citations to the USCIRF Report should be distinguishable from citations to the Department of State report:

full: United States Commission on International Religious Freedom, *Annual Report of the United States Commission on International Religious Freedom*, xxx (May 2007)

short: 2007 USCIRF Annual Report at page xxx

□ □ □ □ □

VII. *Commonly Cited Commercial Publications*

General guidance: *No universal citation form.* In immigration proceedings, parties cite to a wide variety of commercial texts and publications. Use common sense when citing these documents. If a document is difficult to locate, include a copy of the document with your filing (or an Internet address for it) and make clear reference to that document in your filing.

No endorsements or disparagements. The following list contains citations to specific publications that are frequently cited in filings before the Immigration Court. Their inclusion in the list is not an endorsement of the publication, nor is omission from this list a disparagement of any other publication.

Use of quotation marks, italics or underlining, and first initials. For all filings, parties should use a single format for all publications – quotation marks around any article title (whether in a book, law review, or periodical), italics or underlining for the name of any publication (whether a book, treatise, or periodical), and reference to authors' last names only (although use of first initials is appropriate where there are multiple authors with the same last name).

Shortened names. Many publications have long titles. It is acceptable to use a shortened form of the title *after* the full title has been used. Be certain to use a short form that clearly refers back to the full citation. Page and/or section numbers should always be used, whether the publication is cited in full or in shortened form.

Articles in Books: Articles in books should identify the author (by last name only), title of the article, and the publication that contains that article (including the editor and year). For example:

full: Massimino, "Relief from Deportation Under Article 3 of the United Nations Convention Against Torture," *in* 2 *1997-98 Immigration & Nationality Law Handbook* 467 (American Immigration Lawyers Association, ed., 1997)

short: Massimino at 469

Bender's: Bender's Immigration Bulletin should be cited by author (last name only), article, volume, publication, month, and year. For example:

full: Sullivan, "When Representations Cross the Line," 1 *Bender's Immigration Bulletin* (Oct. 1996)

short: Sullivan at 3

Immigration Briefings: This publication should be cited by author (last name only), article, volume, publication, month, and year. For example:

full: Elliot, "Relief From Deportation: Part I," 88-8 *Immigration Briefings* (Aug. 1988)

short: Elliot at 18

Immigration Law and Procedure: Citations to treatises require particular attention because their pagination is often complex. The first citation to this treatise must be in full and contain the volume number, the section number, the page number, the edition, and year. For example:

full: 2 Gordon, Mailman & Yale-Loehr, *Immigration Law and Procedure* § 51.01(1)(a), at 51-3 (rev. ed. 1997)

short: 2 *Immigration Law and Procedure* § 51.01(1)(a), at 51-3

Interpreter Releases: Citations should state the volume, title, page number(s), and precise date. Provide a parenthetical explanation for the citation when appropriate. For example:

full: 75 *Interpreter Releases* 275-76 (Feb. 23, 1998) (regarding INS guidelines on when to consent to reopening of proceedings)

short: 75 *Interpreter Releases* at 276

If an article has a title and named author, provide that information. For example:

full: Wettstein, "Lawful Domicile for Purposes of INA § 212(c): Can It Begin with Temporary Residence," in 71 *Interpreter Releases* 1273 (Sept. 26, 1994)

short: Wettstein at 1274

Law Reviews: Law review articles should identify the author (by last name) and the title of the article, followed by the volume, name, page number(s), and year of the publication. For example:

full: Hurwitz, "Motions Practice Before the Board of Immigration
Appeals," 20 San Diego L. Rev. 79 (1982)

short: Hurwitz, 20 San Diego L. Rev. at 80

Sutherland: Citations to this treatise should include the volume number, author, name of the publication, section number, page number(s), and edition. For example:

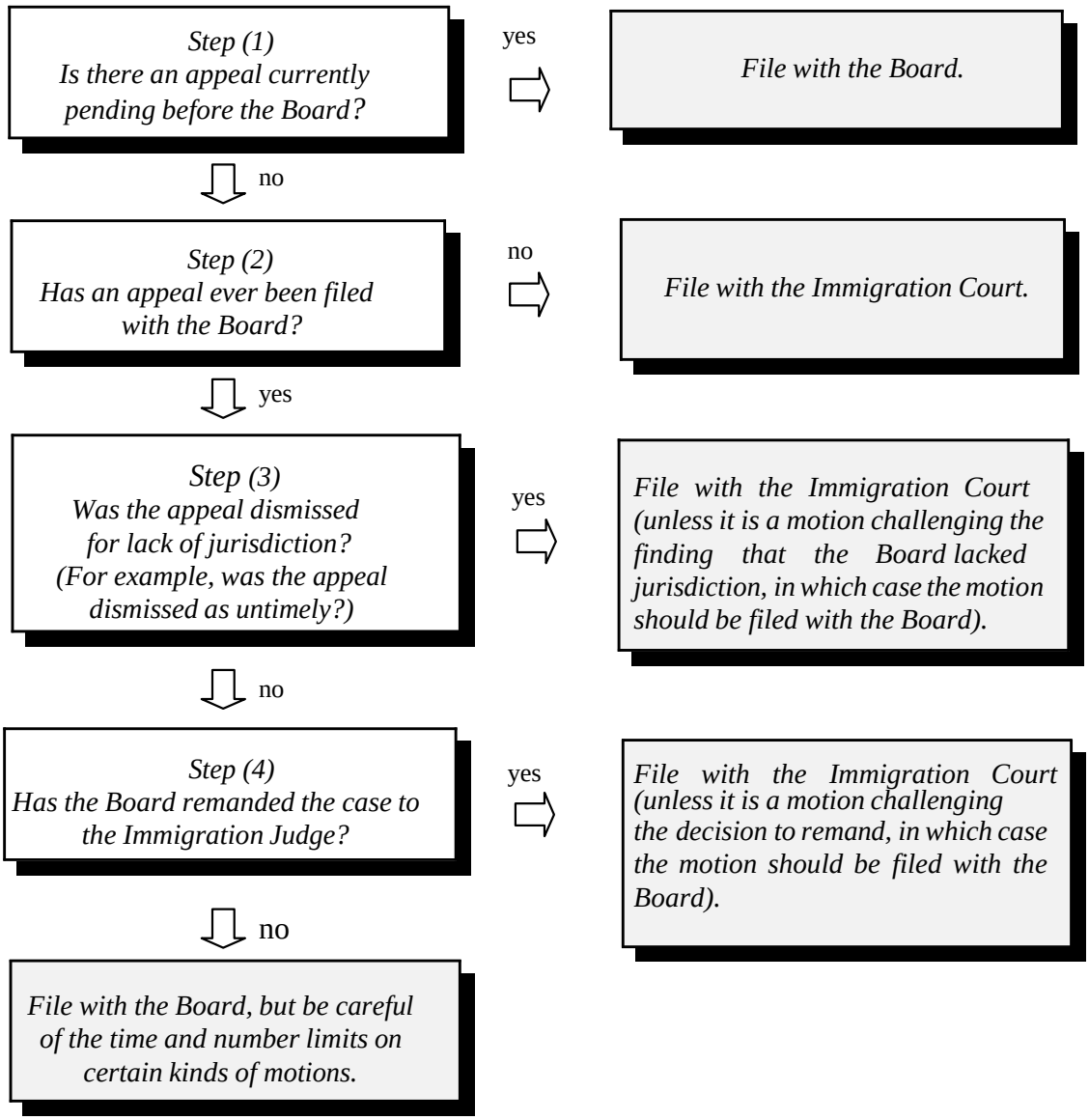
full: 2A Singer, *Sutherland Statutory Construction* § 47.11, at 144 (4th ed. 1984)

short: 2A *Sutherland* § 47.11, at 144

□ □ □ □ □

APPENDIX K
Where to File

This Appendix provides guidance on where to file documents in removal proceedings. Parties should still review the pertinent regulations and must be careful to observe the rules regarding filings, especially the time and number limits on motions. See Chapters 3 (Filing with the Immigration Court), 5.2 (Filing a Motion), 5.3 (Motion Limits). In cases in which the Immigration Court has jurisdiction, documents must be filed with the Immigration Court having administrative control over the Record of Proceedings. See Chapter 3.1 (Delivery and Receipt). For information on how to file documents with the Board of Immigration Appeals, parties should consult the Board of Immigration Appeals Practice Manual.



APPENDIX L

Sample Written Pleading

Prior to entering a pleading, parties are expected to have reviewed the pertinent regulations, as well as Chapter 4 of the Immigration Court Practice Manual (Hearings before Immigration Judges).

[name and address of attorney or representative]

United States Department of Justice
Executive Office for Immigration Review
Immigration Court
[the court's location (city or town) and state]

In the Matter of:	)	
	)	**File No.: [the respondent's A number]**
[the respondent's name]	)	
	)	
In removal proceedings	)	
	)	

RESPONDENT'S WRITTEN PLEADING

On behalf of my client, I make the following representations:

1. The respondent concedes proper service of the Notice to Appear, dated _____.

2. I have explained to the respondent (through an interpreter, if necessary):

   a. the rights set forth in 8 C.F.R. § 1240.10(a);
   b. the consequences of failing to appear in court as set forth in INA § 240(b)(5);
   c. the limitation on discretionary relief for failure to appear set forth in INA § 240(b)(7);
   d. the consequences of knowingly filing or making a frivolous application as set forth in INA § 208(d)(6);
   e. the requirement to notify the court within five days of any change of address or telephone number, using Form EOIR-33/IC pursuant to 8 C.F.R. § 1003.15(d).

3. The respondent concedes the following allegation(s) _____, and denies the following allegation(s) _____.

4. The respondent concedes the following charge(s) of removability _____, and denies the following charge(s) of removability _____.

5. In the event of removal, the respondent;

☐ names _____ as the country to which removal should be directed;

OR

☐ declines to designate a country of removal.

6. The respondent will be applying for the following forms of relief from removal:

☐ Termination of Proceedings
☐ Asylum
☐ Withholding of Removal (Restriction on Removal)
☐ Adjustment of Status
☐ Cancellation of Removal pursuant to INA § _____
☐ Waiver of Inadmissibility pursuant to INA § _____
☐ Voluntary Departure
☐ Other (specify) _____
☐ None

7. If the relief from removal requires an application, the respondent will file the application (other than asylum), no later than fifteen (15) days before the date of the individual calendar hearing, unless otherwise directed by the court. The respondent acknowledges that, if the application(s) are not timely filed, the application(s) will be deemed waived and abandoned under 8 C.F.R. § 1003.31(c).

If the respondent is filing a defensive asylum application, the asylum application will be filed in open court at the next master calendar hearing.

8. If background and security investigations are required, the respondent has received the DHS biometrics instructions and will timely comply with the instructions. I have explained the instructions to the respondent (through an interpreter, if necessary). In addition, I have explained to the respondent (through an interpreter, if necessary), that, under 8 C.F.R. § 1003.47(d), failure to provide biometrics or other biographical information within the time allowed will constitute abandonment of the application unless the respondent demonstrates that such failure was the result of good cause.

9. The respondent estimates that _____ hours will be required for the respondent to present the case.

10. ☐ It is requested that the Immigration Court order an interpreter proficient in the _____ language, _____ dialect;

OR

☐ The respondent speaks English and does not require the services of an interpreter.

_____ _____

Date Attorney or Representative for the Respondent

RESPONDENT'S PLEADING DECLARATION

I, _____, have been advised of my rights in these proceedings by my attorney or representative. I understand those rights. I waive a further explanation of those rights by this court.

I have been advised by my attorney or representative of the consequences of failing to appear for a hearing. I have also been advised by my attorney of the consequences of failing to appear for a scheduled date of departure or deportation. I understand those consequences.

I have been advised by my attorney or representative of the consequences of knowingly filing a frivolous asylum application. I understand those consequences.

I have been advised by my attorney or representative of the consequences of failing to follow the DHS biometrics instructions within the time allowed. I understand those consequences.

I understand that if my mailing address changes I must notify the court within 5 days of such change by completing an Alien's Change of Address Form (Form EOIR-33/IC) and filing it with this court.

Finally, my attorney or representative has explained to me what this Written Pleading says. I understand it, I agree with it, and I request that the court accept it as my pleading.

_____ _____

Date Respondent

CERTIFICATE OF INTERPRETATION

I, _____, am competent to translate and interpret from
(name of interpreter)

_____ into English, and I certify that I have read this entire document to the
(name of language)

respondent in _____, and that the respondent stated that he or she understood
(name of language)

the document before he or she signed the Pleading Declaration above.

_____
(signature of interpreter)

_____
(typed/printed name of interpreter)

OR

I, _____, certify that _____, a telephonic
(name of attorney or representative) (name of interpreter)

interpreter who is competent to translate and interpret from _____into English, read
(name of language)

this entire document to the respondent in _____and that the respondent stated
(name of language)

that he or she understood the document before he or she signed the Pleading Declaration above.

_____
(signature of attorney or representative)

_____
(typed/printed name of attorney or representative)

APPENDIX M

Sample Oral Pleading

Prior to entering a pleading, attorneys and representatives are expected to have thoroughly reviewed all pertinent laws, regulations, and cases, as well as the Immigration Court Practice Manual.

* * *

I, [*state your name*], on behalf of [*state the name of your client*], do concede proper service of the Notice to Appear dated [*state date of the NTA*], and waive a formal reading thereof.

I represent to the court that I have discussed with my client the nature and purpose of these proceedings, discussed specifically the allegations of facts and the charge(s) of removability, and further advised my client of his or her legal rights in removal proceedings.

I further represent to the court that I have fully explained to my client the consequences of failing to appear for a removal hearing or a scheduled date of departure as well as the consequences under section 208(d)(6) of the Act of knowingly filing or making a frivolous asylum application. My client knowingly and voluntarily waives the oral notice required by section 240(b)(7) of the Act.

As to each of these points, I am satisfied my client understands fully. On behalf of my client, I enter the following plea before this court:

One, [*he or she*] admits allegation(s) #_____to _____.

– And/Or –

[*he or she*] denies allegation(s) # _____to _____.

Two, [*he or she*] concedes the charge(s) of removability.

– Or –

[*he or she*] denies the charge(s) of removability.

Three, [*he or she*] seeks the following applications for relief from removal: [*state all applications, including termination of proceedings, if applicable*].

My client acknowledges that, if any applications are not timely filed, the applications will be deemed waived and abandoned under 8 C.F.R. § 1003.31(c). [*He or she*] acknowledges receipt of the DHS biometrics instructions, and understands that, under 8 C.F.R. § 1003.47(d), failure to timely comply with the biometrics instructions will constitute abandonment of the applications.

I request until [*state date to be filed*] to submit such applications to the court with proper service on the Department of Homeland Security.

I represent to the court that my client is prima facie eligible for the relief stated herein.

I request [*time/hours*] to present my client's case in chief.

I request an interpreter proficient in the [*state name of language*] language, [*state name of any applicable dialect*] dialect.

– Or –

I represent that my client is proficient in English and will not require the services of an interpreter. If any witnesses require an interpreter, I will notify the court no later than fifteen days prior to the Individual Calendar hearing.

My client designates [*state name of country*] as his/her country of choice for removal if removal becomes necessary.

– Or –

My client declines to designate a country of removal.

* * *

APPENDIX N

Sample Subpoena

Subpoenas are issued to require that witnesses attend a hearing or that documents be produced. Prior to requesting a subpoena, parties are expected to have reviewed the pertinent regulations, as well as Chapter 4 of the Immigration Court Practice Manual (Hearings before Immigration Judges).

United States Department of Justice
Executive Office for Immigration Review
Immigration Court
[the court's location (city or town) and state]

SUBPOENA

In the Matter of :[the respondent's name and A number] Date: _____

To: [the name and address of the individual being subpoenaed]

[If testifying in court]

Pursuant to 8 C.F.R. § 1003.35(b), you are hereby commanded to appear before Immigration Judge [name] at [the court's address] on [the date and time of the hearing] to give testimony in connection with the [removal, deportation, etc.] proceedings being conducted under the authority of the Immigration and Nationality Act, relating to [the respondent's name], concerning [the topic(s) of testimony].

[If testifying by telephone]

Pursuant to 8 C.F.R. § 1003.35(b), you are hereby commanded to give telephonic testimony before Immigration Judge [name] on [the date and time of hearing] in connection with the [removal, deportation, etc.] proceedings being conducted under the authority of the Immigration and Nationality Act, relating to [the respondent's name], concerning [the topic(s) of testimony].

[If necessary]

You are further commanded to bring with you the following items: [books, papers, documents, etc.].

_____
[name]
Immigration Judge

Page 1 of 2

RETURN ON SERVICE OF SUBPOENA

I hereby certify that on the _____day of _____, 20___, I served the above subpoena on the witness named above by _____

(specify type of service)

_____.

_____
(Name)

_____
(Title)

APPENDIX O

Sample Criminal History Chart

The following sample criminal history chart is provided for general guidance. A party submitting a criminal history chart should attach all pertinent documentation. Prior to submitting any filings, parties are expected to have reviewed the pertinent regulations, as well as Chapter 3 of the Immigration Court Practice Manual (Filing with the Immigration Court).

RESPONDENT'S CRIMINAL HISTORY CHART

Respondent's name: Jane Smith
Respondent's A number: A012 345 678

Tab A, pp. 1-5	Rap Sheet	Federal Bureau of Investigation
Tab B, pp. 6-11	Rap Sheet	California Department of Justice

Tab, Pages	**Arrest Date & Court Docket No.**	**Charges**	**Disposition**	**Immigration Consequences**
C, 12-14	01/22/89 CO901583A	HS 11350 Possession of a controlled substance.	Pleaded not guilty. Prosecution diverted. Dismissed 04/25/89 on motion of DA.	No conviction because diverted without entry of any plea. Diversion neither completed nor terminated because charge dismissed by DA.
D, 15-18	07/27/91 SCO42665A	PC 496.1 Misd: receipt of stolen property. PC 466 Possession of burglary tools.	Pleaded guilty. 90 days in jail. Expunged in 2000. Dismissed.	CIMT. None.
E, 19-20	10/07/95 CO11475A	PC 490.5 Misd: petty theft.	Pleaded not guilty. Dismissed.	None.

APPENDIX P

Sample Table of Contents

This sample table of contents is provided for general guidance regarding organization and layout. The documents submitted in Immigration Court proceedings vary depending on the type of proceeding, the form of relief requested, if any, and the circumstances of the particular case. Prior to making any submissions, parties are expected to have reviewed the pertinent regulations, as well as Chapter 3 of the Immigration Court Practice Manual (Filing with the Immigration Court).

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TAB **PAGES**

C **Good Moral Character**

D **Biographical Information**

E **State and Federal Tax Returns**

APPENDIX Q

Sample Proposed Order

A proposed order is submitted with every motion filed. Prior to filing a motion, parties are expected to have reviewed the pertinent regulations, as well as Chapter 5 of the Immigration Court Practice Manual (Motions before the Immigration Court).

United States Department of Justice
Executive Office for Immigration Review
Immigration Court
[the court's location (city or town) and state]

In the Matter of: [the respondent's name] A Number: [the respondent's A number]

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of ["the respondent's" or "DHS's"] [title of motion], it is HEREBY ORDERED that the motion be ☐ **GRANTED** ☐ **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☐ Other:

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by ..

_____ _____
Date [name]
Immigration Judge

Certificate of Service
This document was served by: [ ] Mail [ ] Personal Service
To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Alien's Atty/Rep [ ] DHS
Date: _____ By: Court Staff_____

GLOSSARY

The following are brief explanations of some words and abbreviations commonly used in Immigration Court proceedings.

Accredited Representative

A person who is approved by the Board of Immigration Appeals to represent aliens before the Immigration Courts and the Board. He or she must work for a specific nonprofit, religious, charitable, social service, or similar organization. The organization must be authorized by the Board to represent aliens.

AEDPA

An abbreviation for the Antiterrorism and Effective Death Penalty Act.

Affidavit

A document in which a person states facts, swearing that the facts are true and accurate. The person should sign the affidavit under oath and the signature should be witnessed by an official, such as a notary public.

"A Number"

The alien registration number, which the Department of Homeland Security assigns to each alien. It is an "A" followed by eight numbers. For example: A12 345 678. Some recently-issued A numbers consist of an "A" followed by nine digits. For example: A 200 345 678. Cases before the Immigration Courts and the Board of Immigration Appeals are tracked by A number.

Administrative Closing

An order by an Immigration Judge removing a case from the Immigration Court's calendar. Once a case has been administratively closed, the court will not take any action on the case until a request to recalendar is filed by one of the parties.

Affirmative Asylum Application

An asylum application filed with the Department of Homeland Security Asylum Office by an alien not in removal proceedings. If the Department of Homeland Security Asylum Office declines to grant an affirmative asylum application, removal proceedings may be initiated. In that case, the asylum application is referred to an Immigration Court for a hearing.

Alien

A person who is not a citizen or national of the United States.

Applicant

A person in exclusion proceedings.

Assistant Chief Counsel

The attorney representing the Department of Homeland Security in Immigration Court proceedings. Though the "Assistant Chief Counsel" is the attorney's official title, he or she is sometimes referred to as the "DHS attorney," the "government attorney," or the "trial attorney."

Asylum Clock

The number of days elapsed since the filing of an asylum application, not including any delays in the proceeding caused by the alien. Certain asylum applicants are eligible to receive employment authorization from the Department of Homeland Security after the asylum clock reaches 180 days.

Asylum-Only Proceedings

Immigration Court proceedings in which an alien is limited to applying for asylum, withholding of removal ("restriction on removal") under the INA and protection under CAT. Asylum-only proceedings involve aliens who are not entitled to be placed in removal proceedings.

Attorney of Record

An attorney who has properly entered an appearance with the Immigration Court in a particular case and is held responsible as an attorney for the respondent.

Beneficiary

An alien who is sponsored by a relative or a business, or otherwise benefits from a visa petition.

BIA

An abbreviation for the Board of Immigration Appeals.

Biometrics Instructions

The term often used to refer to the Department of Homeland Security "*Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services*." The biometrics instructions inform aliens how to comply with the background and security investigation requirements for certain forms of relief from removal, such as asylum, adjustment of status, and cancellation of removal. The biometrics instructions also inform aliens how to pay the fees for those applications.

Board

An abbreviation for the Board of Immigration Appeals.

Board of Immigration Appeals

The part of the Executive Office for Immigration Review that is authorized to review most decisions of Immigration Judges and some types of decisions of Department of Homeland Security officers.

Bond

The amount of money set by the Department of Homeland Security or an Immigration Judge as a condition to release a person from detention for an Immigration Court hearing at a later date.

Bond Proceedings

An Immigration Court hearing on a request to redetermine a bond set by the Department of Homeland Security. Bond proceedings are separate from other Immigration Court proceedings.

CA

An abbreviation for Court Administrator.

CAT

An abbreviation for the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

CBP

An abbreviation for U.S. Customs and Border Protection, a part of the Department of Homeland Security.

Certificate of Translation

A formal statement in which a translator shows that he or she has accurately translated a foreign-language document into English.

C.F.R.

An abbreviation for the Code of Federal Regulations.

Charging Document

The document that orders an alien to appear before an Immigration Judge. Immigration Court proceedings begin when the Department of Homeland Security mails or delivers the charging document to the alien and files it with the Immigration Court. In general, the charging document states why the Department of Homeland Security believes the alien should be deported from the United States. The charging document in removal proceedings is called the Notice to Appear (Form I-862).

Claimed Status Review

Immigration Court proceedings involving aliens subject to expedited removal under INA § 235(b)(1) who claim to be United States citizens or lawful permanent residents, or to have been granted refugee or asylee status.

Code of Federal Regulations

The official interpretations of laws passed by Congress. These interpretations are known as "regulations." Regulations are first published in a government publication called the *Federal Register*. After publication in the *Federal Register*, regulations can be found in the Code of Federal Regulations. Most immigration regulations are in Title 8, Aliens and Nationality.

Convention Against Torture

An abbreviation for the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Credible Fear Proceedings

Immigration Court proceedings in which an Immigration Judge reviews a finding by a Department of Homeland Security asylum officer that a stowaway or an alien subject to expedited removal under INA § 235(b)(1) does not have a credible fear of persecution or torture.

DAR

An abbreviation for digital audio recording.

Declaration under Penalty of Perjury

A statement by a person, in which the person states that the information is true, to support his or her request or application. For example, a declaration may list the facts and then state: "I declare under penalty of perjury (under the laws of the United States of America) that the foregoing is true and correct." This statement should be followed by the date, signature, and printed name of the person signing.

Defensive Asylum Application

An asylum application filed with an Immigration Judge by an alien already in removal proceedings.

Deportation Proceedings

An Immigration Court proceeding begun before April 1, 1997, against a person believed to be in the United States without legal status, to determine whether the person should be deported from the United States.

DHS

An abbreviation for the Department of Homeland Security.

DHS Attorney

A term sometimes used to refer to an Assistant Chief Counsel in Immigration Court.

DOJ

An abbreviation for the United States Department of Justice.

EOIR

An abbreviation for the Executive Office for Immigration Review.

eRegistry

An online registry of attorneys and fully accredited representatives. In order to practice before the Immigration Court or the Board, all attorneys and fully accredited representatives must register with EOIR's eRegistry. Registrants receive an EOIR UserID number.

Ex Parte Communication

Any communication about a case between a party and an Immigration Judge which does not include the other party. Ex parte communications are generally prohibited. A party cannot speak about a case with the Immigration Judge when the other party is not present. In addition, all written communications about a case must be served on the opposing party.

Exclusion Proceedings

An Immigration Court proceeding begun before April 1, 1997, to determine whether a person should be allowed to legally enter the United States.

Executive Office for Immigration Review

The part of the United States Department of Justice that is responsible for the Immigration Courts and the Board of Immigration Appeals.

FOIA

An abbreviation for the Freedom of Information Act.

ICE

An abbreviation for the U.S. Immigration and Customs Enforcement, a part of the Department of Homeland Security.

Immigration Court

Any of the more than 50 courts nationwide administered by the Executive Office for Immigration Review. In general, proceedings in Immigration Court involve aliens charged as present in the United States in violation of the immigration laws.

Immigration Court Proceedings

In general, proceedings in Immigration Court involve aliens charged as present in the United States in violation of the immigration laws. Several types of proceedings are held in Immigration Court, including removal proceedings (begun on or after April 1, 1997), deportation proceedings (begun prior to April 1, 1997), exclusion proceedings (begun prior to April 1, 1997), bond proceedings, rescission proceedings, credible fear proceedings, reasonable fear proceedings, claimed status review, asylum-only proceedings, and withholding-only proceedings.

Immigration Judge

The official who presides over proceedings in Immigration Court. In general, Immigration Judges determine removability and adjudicate applications for relief from removal.

INA

An abbreviation for the Immigration and Nationality Act**.**

INS

An abbreviation for the Immigration and Naturalization Service. INS has been abolished and its functions have been transferred to the Department of Homeland Security.

In Absentia Hearing

A hearing conducted without the alien's presence after the alien failed to appear as required.

Individual Calendar Hearing

Hearings scheduled by the Immigration Court for testimony and evidence. These hearings are also known as "merits hearings."

IJ

An abbreviation for Immigration Judge.

IRCA

An abbreviation for the Immigration Reform and Control Act of 1986.

IIRIRA

An abbreviation for the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

LIFE

An abbreviation for Legal Immigration and Family Equity Act.

LODGED ASYLUM APPLICATION

A defensive asylum application that is submitted at the Immigration Court filing window outside of a hearing for the purpose of employment authorization. The lodged date is not the filing date and a lodged asylum application is not considered filed. A respondent who lodges an asylum application must still file an asylum application before an Immigration Judge at a master calendar hearing.

LPR

An abbreviation for lawful permanent resident.

Master Calendar Hearing

Hearings held for pleadings, scheduling, and other similar matters. A respondent's first appearance before an Immigration Judge in removal proceedings is at a master calendar hearing.

Merits Hearing

A term sometimes used to refer to an individual calendar hearing.

NACARA
An abbreviation for the Nicaraguan Adjustment and Central American Relief Act.

Notice Attorney
A term sometimes used in Immigration Court to refer to the primary attorney.

Notice to Appear
The charging document (Form I-862) used by the Department of Homeland Security to begin removal proceedings.

NTA
An abbreviation for Notice to Appear.

OCIJ
An abbreviation for the Office of the Chief Immigration Judge.

Office of the Chief Immigration Judge
The part of the Executive Office for Immigration Review that oversees the Immigration Courts.

OIL
The abbreviation for the Office of Immigration Litigation, a part of the United States Department of Justice.

Order to Show Cause
The charging document (Form I-221) used by the Department of Homeland Security before April 1, 1997, to begin deportation proceedings.

OSC
An abbreviation for Order to Show Cause.

Party
The term used to refer to the alien or the Department of Homeland Security in Immigration Court.

Petitioner
A person who files a visa petition.

Practitioner
A person who is authorized to represent aliens before the Immigration Courts and the Board of Immigration Appeals.

Pre-Decision Motion

A motion filed before the conclusion of Immigration Court proceedings.

Primary Attorney

An attorney who has properly entered an appearance with the Immigration Court in a particular case and is designated to receive mailings from the court, including notices of hearings. If, at any time, more than one attorney represents an alien, one of the attorneys must be designated as the primary attorney**.** Only the primary attorney, also known as the "notice attorney," will receive mailings from the Immigration Court.

Pro Se

A term used to refer to an alien who does not have an attorney or representative in Immigration Court.

Proof of Service

A formal statement in which a party shows that he or she has provided a copy of a document to the other party.

REAL ID

An abbreviation for the REAL ID Act of 2005.

Reasonable Fear Proceedings

Immigration Court proceedings in which an Immigration Judge reviews a finding by a Department of Homeland Security asylum officer that an alien subject to expedited removal under INA §§ 238(b) or 241(a)(5) does not have a reasonable fear of persecution or torture.

Record of Proceedings

The official file containing documents relating to an alien's case.

Removal Proceedings

An Immigration Court proceeding begun on or after April 1, 1997, to determine whether a person can be admitted to the United States or removed from the United States.

Reputable Individual

An individual who possesses good moral character and meets certain other requirements. In appropriate circumstances, an Immigration Judge may allow a reputable individual to represent an alien in Immigration Court proceedings.

Respondent
A person in removal or deportation proceedings.

ROP
An abbreviation for Record of Proceedings.

Serve
To give, deliver, or mail a document to the opposing party. For an alien, the opposing party is the Department of Homeland Security.

Stay
An order by an Immigration Judge, or a rule of law, that stops the Department of Homeland Security from removing an alien.

Transcript
A printed copy of the recording of a hearing before an Immigration Judge.

Trial Attorney
A term sometimes used to refer to an Assistant Chief Counsel.

USCIS
An abbreviation for U.S. Citizenship and Immigration Services, a part of the Department of Homeland Security.

Visa Petition
A form asking the Department of Homeland Security to determine if an alien is qualified to become a lawful permanent resident. Filing the visa petition is the first step in obtaining lawful permanent resident status (a "green card").

Withholding-Only Proceedings
Immigration Court proceedings in which an alien is limited to applying for withholding of removal ("restriction on removal") under the INA and protection under CAT. Withholding-only proceedings involve certain aliens who are not entitled to be placed in removal proceedings.

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U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A[redacted]

In Matter of:

Respondent: [redacted] currently residing at:

[redacted]
(Number, street, city, state, and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1) You are not a citizen or national of the United States;

2) You are a native of CONGO and a citizen of CONGO;

3) You were admitted to the United States at UNKNOWN POE on or about UNKNOWN DOE;

4) You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by the Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237 (a) (1) (A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: alien immigrants who are not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card or other valid entry document required by the Act, or who are not in possession of a valid unexpired passport, or other suitable travel document, or identity and nationality document if such document is required by regulations issued by the Attorney General under section 212 (a) (7) (A) (i) (I) of the Act.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

55 EAST MONROE ST., SUITE 1900, CHICAGO, IL 60603-0000
(Complete Address of Immigration Court, Including Room Number, if any)

on November 26, 2002 (Date) at 09:00 AM (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

Edward R. Jeszka, Supervisory Asylum Officer
(Signature and Title of Issuing Officer)

Date: NOV 0 5 2002

CHICAGO, IL
(City and State)

See reverse for important information

Form I-862(. 4-1-97)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the judge before whom you the appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____
(Signature of Respondent)

Before:

_____
(Signature and Title of INS Officer)

Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on NOV 8 2002, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

[X] in person [ ] by certified mail, return receipt requested [ ] by regular mail

[X] Attached is a list of organizations and attorneys which provide free legal services.

[ ] The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

_____
(Signature of Respondent if Personally Served)

Gloria L. Rios Contract Reg
(Signature and Title of Officer)

AMERICAN IMMIGRATION COUNCIL

PENNSTATE The Dickinson School of Law

AMERICAN BAR ASSOCIATION Commission on Immigration

PRACTICE ADVISORY[1]

June 2014

NOTICES TO APPEAR: LEGAL CHALLENGES AND STRATEGIES

The Notice to Appear ("NTA")[2] is the charging document issued by an authorized agent of the United States Department of Homeland Security ("DHS") to persons who will face removal in adversarial proceedings.[3] Once an NTA is filed with the Executive Office for Immigration Review ("EOIR" or "immigration court"), jurisdiction vests with the immigration court and noncitizens enter into proceedings that will determine whether they may be removed from the United States.[4]

This practice advisory provides guidance regarding NTAs to attorneys representing noncitizens who: 1) likely will be issued an NTA; 2) have been issued an NTA which has not yet been filed with EOIR; or 3) have been issued an NTA which has been filed with EOIR. The advisory provides an overview of the legal requirements for an NTA and strategies available to attorneys to cancel, mitigate, or challenge the contents of the NTA. It also sets forth scenarios when it might be beneficial to petition the government to issue an NTA against a noncitizen. In addition to presenting possible legal and procedural arguments, the advisory presents possible strategies for attorneys wishing to seek prosecutorial discretion in connection with NTA issuance and filing.

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[1] Copyright 2014. This practice advisory was drafted by Penn State Law's Center for Immigrants' Rights students Lauren Hartley ('15) and James Gilbert ('14) under the supervision of Professor Shoba Sivaprasad Wadhia, the Center's director. The authors thank ABA Commission on Immigration members Professor Denise Gilman, Cyrus D. Mehta, and Michelle Lamar Saenz-Rodriguez and American Immigration Council staff Mary Kenney and Emily Creighton for their invaluable editorial feedback, in addition to the other staff members of those organizations who participated in the project, including Melissa Crow, Beth Werlin, Tanisha Bowens-McCatty, and Seth Garfinkel.

The materials contained herein represent the opinions of the authors and editors and should not be construed to be those of either the American Bar Association unless adopted pursuant to the bylaws of the Association. Nothing contained herein is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. These materials and any forms and agreements herein are intended for educational and informational purposes only.

[2] Following the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, former exclusion and deportation proceedings were merged into removal proceedings and the prior charging document, titled an Order to Show Cause, was replaced with the Notice to Appear. *See Vartelas v. Holder*, 132 S.Ct. 1479, 1480-81 (2012).

[3] *See* INA § 239.

[4] 8 C.F.R. § 1003.14(a) (2014); 8 C.F.R. § 1239.1 (2014); *see also* INA § 240 (2012).

TABLE OF CONTENTS

I. BACKGROUND

A. Who Is Subject To an NTA and Who Will Issue It?

The NTA is a document issued to noncitizens who the government believes are inadmissible or removable, and who will not be subjected to a summary form of removal such as reinstatement of removal[5] or expedited removal.[6] In other words, it is issued to place an individual in a full removal proceeding before an immigration judge, which will determine whether the noncitizen is to be removed or allowed to remain in the U.S. Various officials within DHS are empowered to issue NTAs in a variety of circumstances.[7] This section describes the three major components within DHS responsible for issuing most NTAs.

1. ICE

U.S. Immigration and Customs Enforcement ("ICE") is an arm of DHS which conducts investigations and enforcement and removal operations.[8] ICE officers may issue NTAs,[9] and ICE trial attorneys represent the government in removal proceedings against noncitizens before immigration judges.[10] Agents authorized to issue NTAs exercise considerable discretion in cases originating from their own offices and in cases referred to them by other agencies.[11] ICE

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[5] *See* INA § 241(a)(5). Reinstatement of removal is a summary removal procedure that generally applies to noncitizens who return to the U.S. after a prior removal. For an overview of reinstatement of removal, see TRINA REALMUTO, REINSTATEMENT OF REMOVAL, NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD AND AMERICAN IMMIGRATION COUNCIL'S LEGAL ACTION CENTER (April 29, 2013) *available at* http://www.nationalimmigrationproject.org/legalresources/practice_advisories/2013-4-29%20Reinstatement%20of%20Removal.pdf.

[6] *See* INA § 235(b)(1)(A)(i). Expedited removal is a form of summary removal that may apply to noncitizens seeking entry or who have recently entered the country. By statute, they can be removed without any further proceedings.

[7] Regulations identify over 40 categories of immigration officials authorized to issue an NTA. 8 C.F.R. § 239.1 (2014). In 2012, ICE issued 60.1% of all NTAs, USCIS issued 17.1%, CBP's Office of Border Patrol issued 13.5% and CBP's Office of Field Operations issued 9.3%. OFFICE OF IMMIGRATION STATISTICS, POLICY DIRECTORATE, ANNUAL REPORT, IMMIGRATION ENFORCEMENT ACTIONS, DEPARTMENT OF HOMELAND SECURITY (Dec 2013), *available at* https://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2012_1.pdf.

[8] *Overview*, ICE, http://www.ice.gov/about/overview/ (last visited April 4, 2014).

[9] 8 C.F.R. § 239.1 (2014).

[10] *Office of the Principal Legal Advisor*, ICE, http://www.ice.gov/about/offices/leadership/opla/ (last visited March 23, 2014). OPLA is the Office of Principal Legal Advisor for ICE. In every ICE jurisdiction there is a Chief Counsel, who supervises staff in the main office and may supervise additional sub-offices in the jurisdiction. For a list of OPLAs, see *About ICE: Office of the Principal Legal Advisor*, ICE, http://www.ice.gov/contact/opla/ (last accessed February 28, 2014).

[11] *See, e.g.*, Memorandum from John Morton, Director, U.S. Immigration & Customs Enforcement, Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and

categorizes cases in terms of what it considers as its three highest priorities: 1) "aliens who pose a danger to national security or a risk to public safety"; 2) "recent illegal entrants"; and 3) "aliens who are fugitives or otherwise obstruct immigration controls."[12] ICE, however, is not limited to issuing NTAs for cases in these three priority categories.[13]

2. USCIS

U.S. Citizenship & Immigration Services ("USCIS") is tasked with overseeing lawful migration to the U.S.,[14] and may issue an NTA when it finds a noncitizen has not complied with regulations governing admission or maintaining lawful status after admission. USCIS often encounters such cases when an individual applies for an immigration benefit, such as adjustment of status or naturalization, and the benefit is denied.

On November 7, 2011, USCIS issued a policy memorandum providing guidance on issuance of NTAs and referral to ICE.[15] USCIS *will* issue an NTA in two types of cases:

- when required by statute or regulation[16]; and
- fraud cases, with a statement of findings substantiating fraud.[17]

USCIS *may* issue an NTA in the following types of cases:

- national security cases, which are governed by guidance from the Fraud Detection and National Security Directorate;
- cases involving fraud on Form N-400, the Application for Naturalization;[18] and

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Removal of Aliens (Mar. 2, 2011), *available at* http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf [hereinafter Morton Priorities Memo].

12 *Id.*

13 CENTER FOR IMMIGRANTS' RIGHTS, PENNSYLVANIA STATE UNIVERSITY DICKINSON SCHOOL OF LAW, TO FILE OR NOT TO FILE 16 (OCT. 2013), *prepared for* the American Bar Association's Commission on Immigration, *available at* https://law.psu.edu/sites/default/files/documents/pdfs/NTAReportFinal.pdf [hereinafter TO FILE OR NOT TO FILE] (noting anecdotal evidence that a significant number of noncitizens who do not fall into the three priority categories have also been issued NTAs).

14 *See About Us*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, http://www.uscis.gov/aboutus (last visited March 22, 2014).

15 *See* USCIS Policy Memorandum, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens (November 7, 2011), *available at* USCIS.gov/NTA [hereinafter USCIS Policy Memo].

16 Instances where NTA issuance is required by statute or regulation include: termination of Conditional Residence Status; denial of Petition to Remove the Conditions of Residence; denial of Petition of Entrepreneur to Remove Conditions; termination of refugee status by the District Director; certain denials of adjustment of status under the Nicaraguan Adjustment and Central American Relief Act and the Haitian Refugee Immigration Fairness Act; and certain actions in asylum and related cases. USCIS Policy Memo, *supra* note 13, at 2-3, 7-8.

17 *See id.*, at 2-3.

18 *See id.*, at 7.

- a limited category of "other" cases, *e.g.*, where applicants request NTA issuance either in order to renew adjustment of status or denied N-400 applications, or where asylum applicants seek NTA issuance to a non-dependent relative for family reunification purposes.

USCIS will refer to ICE all cases involving criminal convictions that appear to render the noncitizen inadmissible or removable[19] and National Security Entry Exit Registration System (NSEERS) violator cases; if ICE declines to issue an NTA , USCIS will not do so.[20]

3. CBP

U.S. Customs and Border Protection ("CBP") operates primarily at designated ports of entry and manages customs, immigration, security, and agricultural inspection duties.[21] CBP makes thousands of determinations daily concerning the admissibility of arriving noncitizens.[22] It also operates in the interior of the country, primarily through its component, the U.S. Border Patrol. If an arriving noncitizen[23] is deemed inadmissible, does not withdraw her request for admission, is not placed in expedited removal proceedings, and does not make an asylum claim, then CBP will issue an NTA.[24] The Border Patrol made 364,768 apprehensions in 2012,[25] but issued only 31,506 NTAs in that same year.[26]

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19 *See,* USCIS Policy Memo, *supra* note 13. Some of the egregious public safety [EPS] cases listed in the memo include: murder, rape or sexual abuse of a minor under INA § 101(a)(43)(A); offenses relating to explosive materials or firearms under INA § 101(a)(43)(E); crimes of violence for which the term of imprisonment imposed, or where the penalty for a pending case, is at least one year under INA § 101(a)(43)(F); offenses relating to child pornography under INA § 101(a)(43)(I); offenses relating to peonage, slavery, involuntary servitude, and trafficking in persons under INA § 101(a)(43)(K)(iii); offenses relating to alien smuggling under INA § 101(a)(43)(N). *Id.* at 3-4. The policy memo does not provide similar examples of non-egregious public safety cases, but simply refers to "criminal offense[s] not included on the EPS list." *Id*. at 5.

20 USCIS Policy Memo, *supra* note 13, at 3-6.

21 *See About CBP*, U.S. CUSTOMS AND BORDER PROTECTION, http://www.cbp.gov/about (last visited March 22, 2014).

22 *Id.*

23 8 C.F.R. § 1.1(q) (2014) defines "arriving aliens" as "an applicant for admission coming or attempting to come into the United States at a port-of-entry" or one who is in transit or interdicted at sea.

24 Just a few reasons CBP may issue an NTA include: noncitizen refuses voluntary return, noncitizen makes a non-frivolous claim to asylum, or noncitizen possesses false documentation. TO FILE OR NOT TO FILE, *supra* note 13, at 17 (citing Letter from Martha Terry, U.S. Customs & Border Protection FOIA Division, to Shoba Sivaprasad Wadhia 2 (July 10, 2013), *available at* http://law.psu.edu/_file/Immigrants/FOIA-CBP-NTA.pdf).

25 OFFICE OF IMMIGRATION STATISTICS, *supra* note 7, at 3, table 1.

26 *Id*. at 5, table 4.

B. What Are the Requirements of an NTA?

INA § 239 sets forth the elements an NTA should include.[27] Below is a description of the four key elements of an NTA, how they relate to removal proceedings, and where they are found on the NTA.[28] Practitioners should note that related regulatory language states that "omission of any of these items shall not provide the alien with any substantive or procedural rights."[29] Whether this regulation imposes a valid restriction on the statute is beyond the scope of this practice advisory.

1. Establishing the Prima Facie Case for Inadmissibility or Deportability of a Noncitizen in Removal Proceedings

Under INA § 239(a)(1) (2012), an NTA should include: the nature of the proceedings, the legal authority under which the proceedings are conducted, the acts or conduct alleged to be in violation of the law, the charges against the noncitizen and the statutory provisions alleged to have been violated.[30]

- **Nature of the Proceeding**

The nature of the proceedings is represented on the NTA by three checkable boxes labeled: 1) "You are an arriving alien", 2) "You are an alien present in the United States who has not been admitted or paroled", or 3) "You have been admitted to the United States, but are deportable for the following reasons stated below." Option one, "arriving aliens," designates applicants for admission arriving at a port of entry or intercepted at sea.[31] Option two designates those who have entered the United States and allegedly have not been admitted or paroled. The INA defines "admitted" as a lawful entry after inspection and authorization by an immigration officer.[32] The Attorney General may grant "parole", or conditional entry, to certain noncitizens on a discretionary case-by-case basis for "urgent humanitarian reasons or significant public

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27 INA § 239.

28 *See* Part V. Appendix, sample NTA form.

29 8 C.F.R. § 1003.15 (2014) is an accompanying regulation promulgated by EOIR further defining the administrative information that must be included for the immigration court in the NTA.

30 INA § 239(a)(1).

31 8 C.F.R. § 1.1(q) (2014).

32 INA § 101(a)(13)(A). *See also, Matter of Quilantan,* 25 I&N Dec. 285 (BIA 2010) (holding that a noncitizen seeking to prove she has been admitted under INA § 101(a)(13)(A) need prove only procedural regularity in her entry; she is not required to prove that she was questioned by immigration authorities or admitted in a particular status); INSPECTION AND ENTRY AT A PORT OF ENTRY: WHEN HAS THERE BEEN AN ADMISSION?, AMERICAN IMMIGRATION COUNCIL, LEGAL ACTION CENTER, (Jan 19, 2013) *available at* http://www.legalactioncenter.org/sites/default/files/inspection_and_entry_at_a_port_of_entry_4-11-13_fin_0.pdf (A person who was simply "waved through" at border entry is considered to have been admitted, regardless of her possession of proper entry documents at the time, and may need to prove the admission through her own testimony or that of a fellow passenger.).

benefit."[33] If either of the first two boxes is checked, the noncitizen will be charged with inadmissibility under a ground listed in INA § 212. The last option designates noncitizens who were admitted but who are now alleged to be present in the country in violation of the conditions under which they were admitted, which includes the grounds listed in INA § 237. If the third box is checked, it indicates that the noncitizen has been admitted, but will be charged with deportability under a ground listed in INA § 237.

A noncitizen who believes she has been improperly designated as either an arriving alien or an alien present without having been admitted or paroled must prove she was admitted.[34] Because fewer avenues for relief are available to noncitizens deemed arriving aliens and to noncitizens deemed present but not admitted or paroled, an incorrectly marked box may limit a noncitizen's options for relief.

- **Allegations of Acts or Conduct in Violation of the Law**

The next section of the NTA is where the issuing officer lists the allegations against the noncitizen which the government alleges give rise to the prima facie case of removability. DHS is required to allege and prove that the individual is not a U.S. citizen, as U.S. citizens are not deportable.[35] The government's allegations may be derived from interviews with applicants themselves or from documents, such as records of conviction or an application for asylum or lawful permanent residence, submitted by the noncitizen to USCIS. These applications or records may be factually untrue or the applicable facts may have been transcribed incorrectly by the issuing officer, so it is important to verify the alleged facts with the client.

- **Charges Against the Noncitizen**

The issuing officer is required to list the section of the INA which gives rise to the charge of removability. While the government is required to list a charge, lack of specificity may not doom an NTA.[36] Additionally, there is no requirement to list every charge against the noncitizen, and the government may add or substitute charges at any time during a proceeding.[37]

2. Time and Place of the Proceedings

The NTA not only provides notice of the charges against the noncitizen but also serves as notification of the time and place of his hearing before the immigration judge ("IJ"). It is possible to change venue after the NTA has been filed by filing a motion to change venue and

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33 INA § 212(d)(5).

34 *See Matter of Quilantan*, *supra* note 32.

35 *See* Section II.A.2 *infra*, which notes that once the government proves birth outside the country, the burden shifts to the noncitizen to rebut a presumption of non-citizenship.

36 *See, e.g., Lazaro v. Mukasey*, 527 F.3d 977, 980 (9th Cir. 2008) (The NTA was found not to be legally deficient even though DHS failed to include the subsection of INA § 101(a)(43) the noncitizen was alleged to have violated).

37 8 C.F.R. § 1240.10(e) (2014); *see KaCheung v. Holder*, 678 F.3d 66, 70 (1st Cir. 2012) (affirming federal regulations and court precedent that the government may substitute or add charges at any time during removal proceedings).

demonstrating good cause.[38] Although the statute states that the NTA should include the time and place of the removal proceedings,[39] the regulations require only that DHS provide this information "where practicable."[40] If DHS fails to provide this information, then the immigration court is responsible for providing notice of the time and place for the hearing.[41]

3. Securing Counsel

In order for the noncitizen to have the opportunity to secure counsel, the INA requires 10 days to elapse between service of the NTA and the first removal hearing, unless the noncitizen requests an earlier hearing date in writing.[42] The government is required to provide a list of individuals willing to represent noncitizens in proceedings on a pro bono basis, which is updated quarterly.[43] Once the 10 days have elapsed, the government is free to pursue a removal hearing regardless of whether the noncitizen has legal representation.

4. Service of the NTA

Service of the NTA provides a noncitizen with notice regarding certain rights and responsibilities. The noncitizen is now on notice, for example, that proceedings are being initiated and that he or she has a duty to report all address changes to the immigration court.[44] It also can lead to invocation of the stop-time rule, meaning it ends periods of presence or residence in the U.S., which can make individuals ineligible for certain forms of immigration relief.[45]

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38 8 C.F.R. § 1003.20 (2014).

39 INA § 239(a)(1)(G)(i).

40 8 C.F.R § 1003.18(b) (2014).

41 *Id.* At least three circuits have held that the notice requirement is satisfied when an NTA is issued without a date or time for removal proceedings but is followed up by a hearing notice, issued by the immigration court, which includes such information. *See Popa v. Holder*, 571 F.3d 890, 894-96 (9th Cir. 2009); *Gomez-Palacios v. Holder*, 560 F.3d 354, 359 (5th Cir. 2009); *Dababneh v. Gonzales*, 471 F.3d 806 (7th Cir. 2006).

42 INA § 239(b)(1).

43 INA § 239(b)(2); 8 C.F.R. § 1003.61(a) (2014).

44 The respondent must receive: notice of the right to counsel or authorized representative at no expense to the government (8 C.F.R. § 1003.15(b)(5) (2014)); notice of the responsibility to inform the court of any changes to address or telephone number and that failure to provide such information may result in an in absentia hearing (8 C.F.R. § 1003.15(b)(7) (2014)); notice that failure to appear at a hearing in the absence of exceptional circumstances may result in an in absentia hearing in accordance with INA § 240(b)(5) (INA § 239(a)(2)(a)(ii)).

45 The statute states that service of an NTA ends the accrual of continuous physical presence or continuous residence needed to qualify for cancellation of removal, INA § 240A(d)(1)(a), and the BIA has called this the "stop-time rule." *Matter of Camarillo*, 25 I&N Dec. 644 (BIA 2011).

Service by mail is sufficient if there is proof the government attempted to deliver the NTA to the last address provided by the noncitizen.[46] DHS may invoke a presumption of service if it can prove the mailing was 1) properly addressed, 2) had sufficient postage, and 3) was properly deposited in the mail.[47] Noncitizens confined, for example, in prison, a mental institution, or a hospital, and who are competent to understand the nature of the proceedings against them must be served personally. In addition, service must be made upon the person in charge of the institution. For those who are confined and unable to understand the nature of the proceedings against them, the regulation states that DHS should serve only the person in charge of the institution in which they are confined.[48] For those who are deemed mentally incompetent, whether or not they are confined in an institution, and minors under the age of 14, the regulation states that DHS should serve the NTA upon the person with whom they reside, and when possible, serve a near relative, guardian, committee or friend.[49]

C. How Does DHS's Filing of the NTA with EOIR Affect My Case?

The filing of the NTA with the immigration court is a significant step in the removal process. Filing vests jurisdiction with the immigration court,[50] and impacts the availability of prosecutorial discretion. Prior to filing, various DHS agencies have significant discretion to decide whether to issue an NTA. After issuance, DHS continues to have discretion to proceed with removal proceedings by filing the NTA with the court or cancelling the NTA altogether – and thus cancelling removal proceedings.[51] In the post-filing stage, the scope of the discretion narrows, most often consisting of joint motions to administratively close or terminate proceedings which must be granted by the IJ.[52] Nonetheless, some practitioners feel that prosecutorial discretion is easier to obtain after the NTA is filed. In addition, there is a higher prevalence of training and awareness regarding prosecutorial discretion among IJs and ICE trial attorneys as compared to most NTA-issuing officers.[53] Also, in practical terms, counsel is often not retained until after the filing of the NTA, which precludes an attorney from seeking a positive exercise of prosecutorial discretion – for example, by persuading DHS to cancel an issued NTA or not to file the issued NTA with EOIR – during the pre-filing stage.[54]

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46 INA § 239(c); 8 C.F.R. § 1003.15 (2014).

47 *Busquets-Ivars v. Ashcroft*, 333 F.3d 1008, 1010 (9th Cir. 2003); *In re Grijalva*, 21 I&N Dec. 27 (BIA 1995).

48 8 C.F.R. § 103.8(c)(2)(i) (2014).

49 8 C.F.R. § 103.8(c)(2)(ii) (2014).

50 8 C.F.R. §§ 1003.14(a), 1239(a) (2014).

51 TO FILE OR NOT TO FILE, *supra* note 13, at 12-17.

52 *Id.* at 18.

53 Survey Response, New York Practitioner (on file with authors). Notes from the Field were gathered via a survey prepared and distributed by the authors, titled, "A Questionnaire for Attorneys and Advocates: Legal Challenges and Strategies Related to Notices to Appear." *See* appendix for survey form. All survey responses are on file with the authors. Hereinafter we will designate the survey responses as "Survey Response, [Geographic Designator] Practitioner." A number follows where more than one survey respondent shared geographic locations.

54 *See, e.g.*, 8 C.F.R. § 239.2 (2014).

Note from the Field: "As a practical matter, it is after the NTA is filed that there is a better opportunity to invoke discretion with a more receptive [trial attorney] who is conversant with prosecutorial discretion rather than an ICE [enforcement and removal operations officer]. The [trial attorney] will be more amenable to join in a motion to administratively close or terminate a removal case in order to reduce caseload."

- New York Practitioner[55]

D. What Practical Concerns Should I Consider in Response to an NTA?

Immigration attorneys must consider the risks of challenging NTAs and/or seeking prosecutorial discretion, just as they would weigh the risks of any course of legal action for a client. They should educate their clients on the possible outcomes and relative likelihood of success of various options after carefully evaluating 1) whether viable relief would be available in removal proceedings or outside of removal proceedings, before USCIS, if proceedings are terminated; 2) what options would result in the most permanent form of relief for the client; 3) whether more time or more information is needed to utilize a particular strategy; 4) whether contesting removal would have any impact on the ultimate goal of discretionary relief; 5) whether a particular strategy would negatively impact an existing relationship with local DHS immigration judges, incur ill will at the expense of the client or bring attention to negative facts about the client that might not otherwise have been known.[56] Immigration lawyers also should ensure their clients understand the financial, procedural, temporal and legal ramifications of certain strategies; some clients may simply want to wrap up their cases as soon as possible without incurring further expense or, for detained clients especially, enduring the additional psychological and emotional toll any additional time in detention may take.[57]

E. When Should I Consider and How Should I Pursue Prosecutorial Discretion?

In the immigration context, when an agency favorably exercises prosecutorial discretion, "it essentially decides not to assert the full scope of [enforcement] authority available to the agency in a given case."[58] Prosecutorial discretion can be considered as a strategy to pursue in connection with NTAs, along with other legal or procedural strategies.

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55 Survey Response, New York Practitioner.

56 National Immigration Project, Presentation at the Seattle Seminar: Fundamentals of Evidence (Oct. 14, 2009) (on file with authors).

57 At the end of FY 2013, the national average number of days between recorded filing date and the date a case was closed was 562 days. *Immigration Court Backlog Up 85% from Five Years Ago*, TRAC (Oct 25, 2013), http://trac.syr.edu/whatsnew/email.131025.html.

58 Memorandum from John Morton, Director, U.S. Immigration & Customs, on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, 2 (July. 17, 2011) available at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf [hereinafter Morton Prosecutorial Discretion Memo]. For a general discussion of prosecutorial discretion strategies, see MARY KENNEY, LEGAL ACTION CENTER, AMERICAN IMMIGRATION

Note from the Field: "In some cases, we charge our clients based on the amount of time we spend on the case. As a cost-benefit analysis, many times prosecutorial discretion techniques appear to have so little chance of succeeding, the clients tell us not even to try."

- New Jersey Practitioner[59]

Practically speaking, a formal request for the government to exercise prosecutorial discretion, whether pre- or post-filing, may be made in writing to the local director of the DHS component handling the case.[60] In some jurisdictions, there are specific individuals or email addresses designated to receive requests for prosecutorial discretion and joint motions.[61] Attorneys should check with local immigration law practitioners and professional organizations, such as AILA or ABA chapters, for relevant information and tips.

Note from the Field: "We do pursue prosecutorial discretion in cases where it seems like the best strategy, usually because the client is not eligible for any form of relief that would be more permanent. The process can often be extremely time-consuming, because ICE is not always responsive and there are no firm guidelines

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COUNCIL, PRACTICE ADVISORY, PROSECUTORIAL DISCRETION: HOW TO ADVOCATE FOR YOUR CLIENT (updated June 24, 2011) *available at* http://www.legalactioncenter.org/sites/default/files/ProsecutorialDiscretion-11-30-10.pdf. For a concise history of DHS internal memos urging the exercise of prosecutorial discretion, see TO FILE OR NOT TO FILE at 24-33, (citing most importantly Memorandum from William J. Howard, Principal Legal Advisor, U.S. Immigration & Customs Enforcement, on Prosecutorial Discretion (Oct. 24, 2005); Morton Priorities Memo, *supra* note 13; John Morton, Director, U.S. Immigration & Customs Enforcement, on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011), *available at* http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf; John Morton, Director, U.S. Immigration & Customs Enforcement, on Prosecutorial Discretion: Certain Crime Victims, Witnesses and Plaintiffs (Jun. 17, 2011), *available at* http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf).

[59] Survey Response, New Jersey Practitioner.

[60] AMERICAN IMMIGRATION LAWYERS ASSOCIATION, REPRESENTING CLIENTS IN IMMIGRATION COURT 103 (2009-2010). For a fuller discussion of how to make a request for prosecutorial discretion, see MARY KENNEY, *supra* note 58.

[61] A joint motion is a form of prosecutorial discretion in which the ICE trial attorney joins with the noncitizen to move the court to take a particular action, for example, a joint motion to administratively close proceedings. In some instances, joint motions are incorporated into the regulations and may provide added benefits to a noncitizen, for example, providing an exception to a missed deadline for filing a motion to reopen. 8 C.F.R. § 1003.23(b)(4)(iv) (2014). As a practical note, joint motions typically arise after the filing of the NTA with the immigration court.

that we can invoke to insist on consideration of our requests. We have found that it is much easier to deal with ICE Office of Chief Counsel than ICE ERO in discussing prosecutorial discretion. As a result, it is often easier to reach an agreement after the NTA is filed and more difficult to discuss prosecutorial discretion in connection with the NTA issuance process, which is usually conducted by ICE ERO."

- Texas Practitioner 1[62]

II. PRE-FILING STRATEGIES

While it is not always possible to address an NTA before it is filed with the court, attorneys should consider the possibility of seeking prosecutorial discretion during this pre-filing stage in appropriate cases. Prosecutorial discretion at this stage includes the decision whether or not to file an NTA, what charges to include in an NTA, whether to cancel an issued NTA, and whether to amend an NTA that has been issued before it is filed.[63] Nationally, DHS has issued internal memos and policies encouraging the exercise of prosecutorial discretion as early as possible in the context of immigration proceedings, especially before removal proceedings begin.[64] National DHS policy discourages filing NTAs against noncitizens who do not fit stated "priority" enforcement categories: "aliens who pose a threat to national security or a risk to public safety;" "recent illegal entrants;" and "fugitive aliens."[65] A noncitizen outside of these three categories may obtain a favorable exercise of prosecutorial discretion to avoid filing of an NTA with the immigration court if she can convince the appropriate immigration official of the strength of the equities in her case.

In many instances, a noncitizen does not know an NTA is being prepared before he receives it, and thus is unable to consult with an attorney before it is issued. In some cases, however, it may be clear that the government plans to file an NTA and possible to negotiate to modify the contents of the NTA, postpone service of the NTA, or convince the issuing officer not to file or to cancel the NTA.

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62 Survey Response, Texas Practitioner 1.

63 Morton Prosecutorial Discretion Memo, *supra* note 58. This section draws upon the detailed description of prosecutorial discretion and NTAs found in TO FILE OR NOT TO FILE, *supra* note 13. In most cases, there is no meaningful difference between the time an NTA is issued and when it is filed, meaning there is not time for an attorney to intervene post-issuance but pre-filing.

64 *See* TO FILE OR NOT TO FILE, *supra* note 13, at 19-20.

65 *See* Morton Priorities Memo, *supra* note 58.

Note from the Field: "I could see this possibility [knowing an NTA will be issued] existing where you learn of an immigrant who has been arrested by local law enforcement and who will almost certainly be served with an NTA as a result of Secure Communities."[66]

- Texas Practitioner 1[67]

A. How Can I Negotiate with the Government on Behalf of my Client to Obtain a Favorable Exercise of Prosecutorial Discretion Before the NTA is Filed?

One argument ICE officials have presented for not utilizing prosecutorial discretion before filing an NTA is that they often do not see details of a noncitizen's case until after they issue an NTA.[68] A client may have strong positive equities, but these are largely unknown to ICE prior to the commencement of removal proceedings.[69] Therefore, attorneys might use pre-filing negotiations as an opportunity to provide ICE with more client information. Different attorneys will make different decisions about what information to disclose at this stage; some will decide to disclose all relevant client information, while others may choose to present only client equities and minimize potentially negative facts. When determining what information should be shared, attorneys should consider the practical and strategic considerations mentioned above.[70]

1. Urging the Government Not to File an NTA or to Cancel an NTA that has been Issued but Not Filed

The decision to exercise prosecutorial discretion to decline to issue or file an NTA is particularly relevant where the noncitizen is eligible and has applied for another form of relief before USCIS – such as VAWA relief,[71] a U visa,[72] DACA,[73] adjustment of status,[74] or naturalization.[75] When

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[66] Secure Communities is a program established in 2008. Under the program, the FBI checks fingerprints sent taken by local and state law enforcement agencies are automatically checked against DHS immigration databases. If ICE suspects an arrestee is removable, an arrestee's fingerprints match a record in the immigration databases, ICE will often either take the individual into custody and then issue an NTA, or issue an NTA against individuals who have already been released by local law enforcement. The program has been criticized as an overly broad "dragnet." *See e.g.*, Hiroshi Motomura, *The Discretion that Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil Criminal Line*, 58 UCLA L. REV. 1819 (Aug. 2011) (describing the role and effect of the program in its interaction with state, local, and federal policies and the impact of criminal arrest on civil immigration issues).

[67] Survey Response, Texas Practitioner 1.

[68] Notes from Meeting between ICE-OPLA and Immigration Attorneys Following Up on the To File or Not to File Report 2 (November 21, 2013) (on file with the authors) [hereinafter ICE-OPLA Meeting Notes]. In the words of one ICE official, the government has a "thin" file before receiving the information elicited after filing the NTA.

[69] *See id.*

[70] *See supra* Section I.D ("What Strategic and Practical Concerns Should I Consider in Response to an NTA?").

[71] *See* INA §§ 204(a)(1)(A) (iii), (iv), or (vii) and §204 (a)(1)(B)(ii) or (iii);

a client has such an application pending, attorneys can request that USCIS adjudicate the application immediately, and that other DHS components refrain from placing the noncitizen in removal proceedings until the application is adjudicated.[76] Written requests for prosecutorial discretion should include evidence of a noncitizen's expectation of obtaining a certain visa or status, such as visa petitions, approval notices, or other documentation of eligibility for relief.[77]

Officials authorized to *issue* an NTA may also cancel that NTA before it is *filed* with the immigration court, by regulation, where they are satisfied that: 1) the respondent is a U.S. citizen; 2) the respondent is in fact not deportable or inadmissible under immigration laws; 3) the respondent is deceased; 4) the respondent is not in the U.S.; 5) the NTA was issued for failure to file a timely petition under 216(c) but that failure is excused by 216(d)(2)(B); 6) the NTA was improvidently issued; or 7) the circumstances of the case have changed to such an extent that continuation is no longer in the best interest of the government.[78] The last two scenarios allow some flexibility to argue for prosecutorial discretion. However, even where this regulation does not provide specific grounds for cancellation of the NTA, attorneys may still argue that an NTA should be cancelled as a matter of prosecutorial discretion; for example, if there are compelling

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§ 245(a) and (c). VAWA relief (which stands for Violence Against Women Act) is an immigration benefit similar to an I-130 visa petition for a noncitizen relative, but is meant to allow the petitioner to seek status independently, without the involvement of their abusive U.S. citizen or LPR spouse or family member. For more information and the relationship between VAWA, U visas, and T visas, see *Violence Against Women Act (VAWA) Provides Protection for Immigrant Women and Victims of Crime*, AMERICAN IMMIGRATION COUNCIL, LEGAL ACTION CENTER, http://www.legalactioncenter.org/just-facts/violence-against-women-act-vawa-provides-protections-immigrant-women-and-victims-crime (last visited March 24, 2014).

[72] INA § 101(a)(15)(U) (definition and requirements). U visas are available to victims of crimes who agree cooperate with law enforcement in the prosecution of crimes. *See also* INA §§ 212(d)(14) (inadmissibility waiver), 214(p) (requirements), and 245(m) (adjustment of status applications).

[73] *See* Memorandum from Janet Napolitano, Secretary, Department of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), *available at* http://1.usa.gov/M5MZhH. DACA, or Deferred Action for Childhood Arrivals, is a program that allows certain noncitizens who arrived in the U.S. under age sixteen to obtain deferred action for two years, subject to renewal. *See also* USCIS Frequently Asked Questions Regarding DACA, USCIS, http://1.usa.gov/TJysu6.

[74] INA § 245.

[75] *See* INA §§ 312(a), 316(a), 318, 319(a), 334(b).

[76] *See* AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *supra* note 60, at 106; *see also* PROSECUTORIAL DISCRETION: HOW TO ADVOCATE FOR YOUR CLIENT, *supra* note 58.

[77] *Id*. See also the sample motion and practice advisories referenced in the index.

[78] 8 C.F.R. § 239.2 (2014). Cases have been terminated for similar reasons. *See, i.e.*, *Matter of G-Y-R*, 23 I. & N. Dec. 181 (BIA 2001) (An in absentia order of removal was inappropriate where it could not be determined respondent did not receive and could not be charged with receiving NTA); *Matter of Rosa Mejia-Andino*, 23 I&N Dec. 533 (BIA 2001) (Proper for IJ to terminate proceedings against minor where NTA failed to meet requirements of service). *See also* Shoba S. Wadhia, Letter from Martha Terry, *supra* note 24.

humanitarian reasons to cancel the NTA or if the noncitizen does not fit within the DHS priority enforcement categories.

2. Negotiating With the Government on the Charges to Include/Exclude from the NTA and the Timing of Filing

If local immigration officials are amenable, attorneys might be able to negotiate which charges are included in NTAs and thereby procure more favorable NTAs for their clients. One instance where attorneys might negotiate with DHS to include different charges is when a dispute arises about whether an individual is deportable or inadmissible. When the charges are based on deportation grounds under INA § 237, the government has the burden to establish that the respondent is deportable by "clear and convincing" evidence.[79] When the charges are based on grounds of inadmissibility under INA § 212, once the government has proven alienage (non-citizenship), the burden shifts to the respondent to present evidence that he or she is "clearly and beyond doubt" entitled to be admitted and is not inadmissible.[80] Therefore, an attorney for a noncitizen who can prove lawful admission might urge the preparing agency to issue an NTA charging removability under INA § 237, since the burden is more favorable to the noncitizen.[81]

Another possible benefit of negotiating with ICE is that prosecutorial discretion might be exercised to delay the filing of an NTA, which may result in a filing date more favorable to the client. As an example, the service of an NTA stops the accumulation of certain required periods of residency for purposes of LPR and non-LPR Cancellation of Removal;[82] thus, a later service date might allow the noncitizen to accumulate the necessary period of residence for this type of relief.[83]

B. Can I Ensure an ICE Attorney Has Reviewed the NTA Before It is Filed?

The short answer to the question of whether an ICE attorney must review each NTA is: not at this time. In fall of 2013, the "To File or Not to File" report used a qualitative study of NTA filings as the basis for a recommendation that ICE consistently implement a program for attorney

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79 INA § 240(c)(2)(B).

80 INA § 240(c)(2)(A).

81 As an example, if an attorney has evidence that her client was admitted via a "wave through", the attorney could advocate for charges under §237 instead of §212. *See* INSPECTION AND ENTRY AT A PORT OF ENTRY, *supra* note 32.

82 INA § 240A. LPR Cancellation is only available to lawful permanent residents (LPRs). The statute stipulates that the LPR show he has been lawfully admitted in permanent residence status for five years and has had seven years of lawful, continuous residence in the U.S. INA § 240A(a). Non-LPR Cancellation of Removal is available to non-LPRs and requires showing ten years of continuous physical presence. INA § 240A(b). Under the stop-time rule, service of an NTA ends the accrual of continuous physical presence or continuous residence needed to qualify for cancellation, *Matter of Camarillo*, 25 I&N Dec. 644. Note the stop-time rule does not apply to counting five years of permanent residence for LPRs.

83 AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *supra* note 60, at 107.

review of NTAs.[84] In a follow-up meeting with ICE representatives, an ICE-OPLA official stated that ICE has adopted an internal attorney review program in most ICE offices.[85] According to ICE, in offices that have implemented the attorney review program, every NTA should be reviewed by an ICE attorney before it is filed.[86] This measure is meant to improve the factual and legal sufficiency of NTAs and to ensure that ICE does not issue NTAs as a matter of routine, but considers prosecutorial discretion for all cases. Anecdotal evidence suggests that this policy has not been implemented by all ICE offices.[87] A practitioner might consider making an inquiry about the attorney review program; however, attorneys should note that there is no public policy memorandum by ICE officially conveying its intent to establish an agency-wide attorney review program.

C. Are There Any Scenarios in Which I might Urge the Government to File an NTA? What Risks Are Associated With This Strategy?

In some cases, there may be a benefit to placing a non-citizen client into formal removal proceedings triggered by the filing of an NTA. Attorneys should thoroughly explore the risks involved in seeking the filing of an NTA, in consultation with their clients.

Attorneys representing clients who are subject to expedited removal,[88] administrative removal,[89] or reinstatement of removal orders[90] may attempt to have NTAs issued in order to move their clients into full removal proceedings where they may apply for relief from removal rather than facing immediate deportation. Formal removal proceedings offer far greater procedural protections as well. [91] Of course, the attorney must verify the client's willingness to undergo the

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[84] TO FILE OR NOTE TO FILE, *supra* note 13. In 2011, OPLA conducted a two-month program to review certain categories of cases for prosecutorial discretion, including cases where an NTA had not yet been filed with EOIR. Data on the cases of NTAs that were not filed because of the program has not been made publicly available, but the program shows ICE is aware of the desirability of attorney review of NTAs with an eye to prosecutorial discretion possibilities. *See* TO FILE OR NOT TO FILE, *supra* note 13, at 60-62 (citing Peter Vincent, Principal Legal Advisor, U.S. Immigration & Custom Enforcement, on Case-By-Case Review of Incoming and Certain Pending Cases 1 (Nov. 17, 2011); *Next Steps in the Implementation of the Prosecutorial Discretion Memorandum and the August 18th Announcement on Immigration Enforcement Priorities,* U.S. Immigration & Customs Enforcement (Nov. 17, 2011)).

[85] ICE-OPLA Meeting Notes, *supra* note 67.

[86] *See* TO FILE OR NOT TO FILE, *supra* note 13, at 60-62 (recommending the attorney review program); ICE-OPLA Meeting Notes, *supra* note 67 (noting ICE adoption of the program).

[87] ICE-OPLA Meeting Notes, *supra* note 67; *see also* TO FILE OR NOT TO FILE, *supra* note 13, at 51-52 (including a former IJ's opinion that lack of attorney review was a primary contributor to the inconsistent and sloppy NTAs he frequently encountered, with non-attorney filing authorities often relying on boilerplate forms.

[88] INA § 235.

[89] INA § 238.

[90] INA § 241(a)(5).

[91] *Compare* INA § 238(b) (expedited removal procedures) *with* INA § 241(a)(5) (regular or formal removal procedures). *See also* TO FILE OR NOT TO FILE *supra* note 13, at 7 n.9 (citing

formal, and often lengthy, removal process, especially if the client is facing a long period of detention.[92] If a client simply wishes to return home as quickly as possible, it might be inadvisable to seek an NTA and full removal proceedings.

In rare cases, a client who is not facing removal proceedings at all may wish to receive an NTA if he or she has a particularly strong case for a form of relief that is only available in formal removal proceedings – such as non-LPR cancellation of removal under INA § 240A(b).[93] DHS has the discretion to issue an NTA and place a person potentially eligible for non-LPR cancellation of removal into formal removal proceedings governed by INA § 240.[94] Since a grant of cancellation of removal results in LPR status, practitioners whose clients have particularly strong cases might consider requesting that DHS initiate removal proceedings as a means to obtain cancellation. There are reports that some DHS offices have been willing to issue an NTA in this manner; however, other offices have been unwilling to do so.[95]

Note from the Field: "In Chicago, [it] is virtually impossible [to get DHS to agree to issue an NTA]. There have been rumors of one or two NTA's filed upon request over the past several years, but generally speaking DHS is not interested in entertaining a request to issue an NTA because of compelling cancellation of removal facts."

- Chicago Practitioner[96]

David A. Martin, *A Defense of Immigration-Enforcement Discretion: The Legal and Policy Flaws in Kris Kobach's Latest Crusade*, 122 YALE L.J. ONLINE 167 (2012), *available at* http://www.yalelawjournal.org/images/pdfs/1119.pdf; KATE M. MANUEL AND TODD GARVEY, CONG. RESEARCH SERV., R42924, PROSECUTORIAL DISCRETION IN IMMIGRATION ENFORCEMENT: LEGAL ISSUES (2013), *available at* http://www.fas.org/sgp/crs/misc/R42924.pdf).

92 At the end of FY 2013, the national average number of days between recorded filing date and the date a case was closed was 562. *Immigration Court Backlog Up 85% from Five Years Ago*, TRAC (Oct 25, 2013), http://trac.syr.edu/whatsnew/email.131025.html.

93 INA § 240A(b). Importantly however, attorneys with clients who entered on a visa waiver program should note that the noncitizen would have waived the right to a full removal hearing, and would therefore be ineligible for a formal removal hearing. *See* INA § 217 (establishing the visa waiver program); 8 C.F.R. § 235.3(b)(10) (2014) (listing those who have entered on a visa waiver as a category of noncitizens subject to expedited removal procedures outlined in the same section, unless subject to one of several exemptions including asylum claims and claims of US citizenship).

94 *See, e.g., Matter of E-R-M & L-R-M*, 25 I. & N. Dec. 520 (BIA 2011).

95 Survey Response, Chicago Practitioner.

96 *Id.*

Note from the Field: "We would be extremely cautious about suggesting that a client can be placed into removal proceedings in order to apply for cancellation…Cancellation cases are extremely difficult to win, and it may be better for individual respondent to continue without papers under the radar rather than risk the possibility of losing the cancellation case and getting deported. Of course, when you seek to place your client into removal proceedings, you do not know which judge you might draw."

- Texas Practitioner 1[97]

Note from the Field: "One of the AFODs [Area Field Office Directors] has instructed us that [USCIS issuing an NTA in order to initiate removal proceedings and apply for cancellation] is the procedure for initiating proceedings. Our client has an extremely strong case for cancellation, so we sent a brief and a packet of corroborating evidence to the AFOD of USCIS in Philadelphia, requesting that USCIS issue our client a Notice to Appear. We are now waiting to hear back from USCIS."

- Pennsylvania Practitioner 2[98]

Note from the Field: "I have taken clients to ICE to have NTAs issued to proceed with cancellation. But, never through USCIS."

- Pennsylvania Practitioner 3[99]

III. POST-FILING STRATEGIES

After the NTA is filed with the court, jurisdiction vests with EOIR and the interest of the United States is represented through a trial attorney from ICE.[100] DHS has a greatly diminished discretionary role in post-filing proceedings.[101] Although discretion is reduced, an attorney for

97 Survey Response, Texas Practitioner 1.

98 Survey Response, Pennsylvania Practitioner 2.

99 Survey Response, Pennsylvania Practitioner 3.

100 8 C.F.R. § 1003.14(a) (2014).

101 *See* Daniel M. Kowalski, *BIA Offers New Standard for Administrative Closure, Highlights Importance of Decisional Independence*, LEXISNEXIS LEGAL NEWSROOM IMMIGRATION LAW, http://www.lexisnexis.com/legalnewsroom/immigration/b/insidenews/archive/2012/02/02/bia-offers-new-standard-for-administrative-closure-highlights-importance-of-decisional-independence.aspx (last visited on March 4, 2014) (citing Shoba Sivaprasad Wadhia, AILA InfoNet Doc. No. 12020259 (posted Feb. 2, 2012)).

the respondent may continue to attempt to persuade ICE attorneys to exercise what discretion is still available.[102] In most cases, at this stage, ICE's exercise of discretion takes the form of dropping charges, or joining the respondent in a motion to administratively close or terminate removal proceedings (or not opposing the respondent's motion). In addition, an attorney for the respondent may pursue other legal and procedural means of challenging an NTA or seeking termination of proceedings once the NTA has been filed with the immigration court.

Note from the Field: "It should first be noted that protocol for requesting a joint motion to terminate or other type of motion after the NTA has been filed varies greatly. In most jurisdictions, the best way to make an initial request for a review of a joint motion is either through email or phone contact with the ICE Office of Chief Counsel. Once contact has been made, a lawyer should review the facts of the case and make a "pitch" on behalf of the client. This is the one opportunity where the lawyer can tell the story for the client making the request more personal and not just a formal written request with no background information. Many times the ICE trial attorney will request evidence or ask for time to review the file before making a decision on the request. There may be negative information that is contained in the file that can be overcome based on recently acquired equities or other policy considerations. In any situation, it can only work to your client's advantage to make personal contact before filing the motion. Like in any professional situation, personal relationships can be very helpful when negotiating with opposing counsel. Some jurisdictions will ask counsel to prepare the motion and others will require counsel to use language that has been deemed "acceptable" to the office of chief counsel. Attorneys should speak to local counsel when filing a request outside of their normal jurisdiction."

- Texas Practitioner 2[103]

Note from the Field: "We were able to negotiate with ICE to drop one of the charges on the NTA after it was filed. As a result, we were able to apply for relief for which our clients would have otherwise been ineligible and to narrow the scope of the merits proceedings."

- Texas Practitioner 1[104]

A. Administrative Closure

"Administrative closure" is a procedure that suspends immigration proceedings by removing the case from the immigration court's active docket.[105] When an IJ administratively closes a case,

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[102] Once the NTA has been filed and proceedings initiated, the noncitizen named in the NTA is generally referred to as the respondent.

[103] Survey Response, Texas Practitioner 2.

[104] Survey Response, Texas Practitioner 1.

the government need not issue or file a new NTA to renew proceedings, as the case is still on the immigration court's docket.[106] Proceedings may resume if a motion to recalendar is filed with the court by either party.[107] If there is an application pending before the immigration court that provides a basis for work authorization at the time of administrative closure, work authorization will continue to be available after administrative closure.[108] Administrative closure does not result in a final order of removal.

Note from the Field: "Attorneys must strategize under what circumstances they should seek administrative closure. AC is beneficial if the respondent is subject to an I-130 or I-485 petition, but the priority date has not become current. The advocate can also make a judgment call whether to seek administrative closure when the underlying relief application is not so strong, such as a weak asylum claim or when the asylum application has been filed beyond the 1 year deadline, and the withholding standard may not be met. In such cases, AC may be preferable especially if the respondent can continue to seek employment authorization. The same decision should be made between AC and a weak cancellation of removal case."

- New York Practitioner[109]

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[105] *Matter of Avetisyan,* 25 I&N Dec. 688, 692 (BIA 2012); *see* AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *supra* note 60, at 104-05; *see also* Debbie Smith, *Administrative Closure: New BIA Standards*, CATHOLIC LEGAL IMMIGRATION NETWORK, INC., https://cliniclegal.org/February2012Newsletter/Admin (last visited Feb. 25, 2014, 10:08 AM); *see also* Shoba Sivaprasad Wadhia, *The Immigration Prosecutor and the Judge: Examining the Role of the Judiciary in Prosecutorial Discretion Decisions* 16 HARV, LATINO L. REV. 32 (2013) ("Administrative closure" is a procedure by which an IJ or the BIA removes a case from its docket as a matter of "administrative convenience.").

[106] *Matter of Avetisyan,* 25 I&N Dec. at 695; *Matter of Gutierrez*, 21 I&N Dec. 479 (BIA 1996) (overruled on other grounds); *Matter of Lopez-Barrios*, 20 I&N Dec. 203, 204 (BIA 1990).

[107] *See* EOIR Policy Memorandum, Operating Policies and Procedures Memorandum 13-01 Continuances and Administrative Closure (March 7, 2013), *available at* http://www.justice.gov/eoir/efoia/ocij/oppm13/13-01.pdf, (March 25, 2014, 10:13 AM); see e.g., Template: Joint Motion to Administratively Close Proceedings*,* U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, http://www.ice.gov/doclib/foia/prosecutorial-discretion/template-joint-motion-admin-close-proceedings.pdf, (last visited March 2, 2014); *see also, e.g., Matter of Cervantes-Torres*, 21 I&N Dec. 351, 352 (BIA 1996).

[108] *See e.g.*, 8 C.F.R. § 274.a.l2(c)(8) (When an application for asylum has not been decided and 150 days have elapsed, an asylum applicant may apply for employment authorization). The DHS Administrative Appeals Office has explained that an asylum applicant remains eligible for employment continues after the case is administratively closed. *See* Application for Employment Authorization (Form I-765) pursuant to 8 C.F.R. § 274a.12(c)(8) from the Administrative Appeals Office (Dep't of Homeland Security Sept. 6, 2013) (non-precedent decision), available at http://www.aila.org/content/default.aspx?bc=9418|10567|45915.

[109] Survey Response, New York Practitioner.

Note from the Field: "I have not yet been successful in terminating or closing a case over the objection of ICE counsel, but the fact that this is an option has, I think, made ICE counsel more willing to cooperate."

- Pennsylvania Practitioner 1[110]

Note from the Field: "In Chicago, we have had numerous agreements to administratively close for DACA and to pursue I-601A provisional unlawful presence waivers…Gaining administrative closure in Chicago requires clean facts for OCC to agree–no DUIs (unless perhaps a single simple misdemeanor DUI a long time ago) taxes in order, etc."

- Chicago Practitioner[111]

Prior to January 31, 2012, IJs were unable to grant a motion to administratively close if either party opposed the motion.[112] Following the BIA's decision in *Matter of Avetisyan,*[113] IJs may now close proceedings over the objection of an opposing party (usually the government).[114] IJs are required to consider and weigh six factors before exercising discretion: "1) the reason administrative closure is sought; 2) the basis for any opposition to administrative closure; 3) the likelihood the respondent will succeed on the petition, application, or other action that is being pursued outside the removal proceeding; 4) the anticipated time period of the closure; 5) the responsibility of either party in contributing to the delay; and 6) the expected outcome of removal proceedings when the case is finally re-calendared."[115] In addition, attorneys should be aware of the body of cases which developed prior to the Board's decision in *Matter of Avetisyan*, as they may continue to influence decisions today.[116]

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110 Survey Response, Pennsylvania Practitioner 1.

111 Survey Response, Chicago Practitioner.

112 *Matter of Gutierrez*, 21 I&N Dec. 479.

113 *Matter of Avetisyan,* 25 I&N Dec. 688 (BIA 2012).

114 *Id.*, 25 I&N Dec. at 697; *see also* DEFERRED ACTION FOR CHILDHOOD ARRIVALS, AMERICAN IMMIGRATION COUNCIL, LEGAL ACTION CENTER, (July 25, 2013) *available at* http://www.legalactioncenter.org/practice-advisories/deferred-action-childhood-arrivals (Only the immigration judge may decide whether to terminate or administratively close proceedings.)

115 *Matter of Avetisyan,* 25 I&N Dec. at 696.

116 *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009); *Matter of Rajah*, 25 I&N Dec. 127 (BIA 2009).

B. Motions to Terminate

"After commencement of the hearing, only an IJ may terminate proceedings upon request or motion by either party."[117] If a motion to terminate is granted, dismissal of the matter is generally without prejudice and the agency may file the same charges at a later time, unless barred by res judicata.[118]

Counsel for the respondent may consider contacting the ICE trial attorney in order to persuade him to exercise favorable prosecutorial discretion and join with the respondent in a motion to terminate. When a joint motion to terminate is filed, the IJ will likely expect both the respondent and ICE to justify why the motion should be granted.[119]

The respondent may file a motion to terminate because, among other reasons, the NTA is defective, DHS has failed to meet its burden, or because the noncitizen has established a prima facie case for naturalization and has presented especially appealing humanitarian factors.[120]

An attorney for the respondent may also seek termination by arguing that the government has issued a legally deficient NTA.[121] Challenging an NTA for legal deficiency is holding DHS accountable to the procedural and substantive guarantees provided under the immigration statutes and regulations. However, as is the case when deciding to pursue any legal strategy, it is important to carefully weigh and discuss with the client the possible costs and benefits of a motion to challenge a legally deficient NTA. In some cases, a weak deficiency argument touching only on relatively trivial matters may delay proceedings that could result in permanent relief or engender disfavor with the ICE trial attorney or the IJ, with possible negative consequences for the client. Even successful challenges may sometimes be met with a quick re-issuance of an NTA including the same charges as before, but free from the errors which sustained the initial challenge. In other cases, termination may benefit the client—for example, by allowing the opportunity to seek relief affirmatively before USCIS or extending the date on which the stop-time rule is triggered so that the client is eligible for additional forms of relief.[122]

Another consideration is that a successful challenge, which requires reissuance of the NTA, may result in the respondent appearing before a different IJ or DHS trial attorney. Therefore, depending on the IJ assigned to the case, it may be more advantageous not to challenge the faulty NTA and to proceed with the merits.

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117 *In re G-N-C-*, 22 I&N Dec. 281 (BIA 1998).

118 8 C.F.R. § 1239.2(c) (2014); *see also* U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE OF IMMIGRATION REVIEW, IMMIGRATION JUDGE BENCHBOOK, MOTIONS, http://www.justice.gov/eoir/vll/benchbook/tools/Motions%20to%20Reopen%20Guide.htm (last visited April 3, 2014).

119 *In re G-N-C-*, 22 I&N Dec. at 284.

120 8 C.F.R. § 1239.2(f) (2014); *Matter of Acosta-Hidalgo,* 24 I&N Dec. 103 (BIA 2007).

121 TO FILE OR NOT TO FILE, *supra* note 13, at 51-52.

122 For discussion of the stop-time rule and its relation to cancellation, *see supra* note notes 45 and 81-82, and accompanying text.

In cases where termination is obtained based on a simple legal deficiency in the NTA, removal proceedings may generally start anew once the defective NTA is cured and a new one is filed. On the other hand, if termination is obtained for a more robust reason, then DHS may be foreclosed from re-litigating the same issues that led to the termination of the prior proceeding.[123]

> **Note from the Field:** "We attempted to negotiate with ICE to terminate proceedings and then issue a new NTA ("repaper"). This was desirable, because the initial NTA had triggered the "stop-time rule" and made our client ineligible for cancellation of removal. With termination and a new NTA, our client would qualify for relief. We did not get [an] agreement with ICE."
>
> - Texas Practitioner 1[124]

Below are common grounds for seeking a motion to terminate, other than prosecutorial discretion.

1. Legal and Factual Challenges to the NTA

The Notice to Appear (NTA) is a charging document issued by the prosecuting agency, not an order of an administrative court. As such, factual allegations in the NTA are not evidence, and the legal conclusions concerning inadmissibility or deportability are not binding.[125] After receiving the NTA it is important to meet with the client and discuss the factual allegations presented in the NTA. At times, it may appear advantageous to concede factual and legal allegations in an effort to pursue relief from removal; however, it might be a mistake to concede any point of fact or law made on the NTA without being absolutely sure that the government is correct and can meet its burden where applicable.[126] It is possible that the government may have overreached in its charges or alleged a fact that was not accurate. In addition, if your client has arguments to prohibit the use of evidence unlawfully obtained by the government with a motion to suppress, it may be crucial to deny the charges and relevant allegations in the Notice to Appear (NTA) and not to concede alienage. [127]

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123 *Ramon-Sepulveda v. INS*, 824 F.2d 749 (9th Cir. 1987) (The court, in applying res judicata, ordered the termination of removal proceedings when the INS issued an Order to Show Cause based on a birth certificate which the court had previously found was not newly discovered evidence under 8 C.F.R. § 242.22 (1983)).

124 Survey Response, Texas Practitioner 1.

125 National Immigration Project, *supra* note 56.

126 AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *supra* note 60, at 106. Some practitioners find it strategically useful to not concede anything, and thereby force the government to meet its burden of persuasion without any "help" from the respondent. National Immigration Project, *supra* note 56.

127 *See* AMERICAN IMMIGRATION COUNCIL, MOTIONS TO SUPPRESS IN REMOVAL PROCEEDINGS: A GENERAL OVERVIEW (Nov. 13, 2013) *available at*

- **Defensive Claim to Citizenship**

DHS is prohibited from deporting United States citizens.[128] In some instances, citizens are detained by ICE and issued an NTA. In removal proceedings, the government has the burden to prove "alienage" by "clear, convincing, and unequivocal evidence of foreign birth."[129] If the government is able to establish that the respondent was born abroad, then there is a presumption of alienage unless the respondent produces substantial credible evidence in support of his claim to citizenship.[130] A respondent who was born abroad still may be a citizen either because she acquired the status or she derived it from a relative.[131] Some clients are unaware of their status as United States citizens; in such cases, it may be necessary to research the citizenship of several past generations to make this determination.

- **Failure to Prove Alienage**

If the respondent concedes that he is not a citizen, the government is relieved of the sometimes difficult hurdle of proving alienage. If it is clear that there is no claim to U.S. citizenship, but discretionary relief likely is available, it may be preferable to concede alienage or removability and move on to demonstrating that discretion should be favorably exercised.[132] If no such relief is available, the respondent may choose instead to respond to the allegations by neither admitting nor denying the charges but instead calling on the government to prove its allegations.[133]

While IJs may terminate proceedings based on DHS's failure to carry its burden of proving alienage, this termination does not recognize a respondent's citizenship or bestow citizenship.[134] It simply means *alienage* is not established. If the person is in fact a citizen, it will generally still be necessary to obtain a finding of citizenship with supporting documentation.

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http://www.legalactioncenter.org/practice-advisories/motions-suppress-removal-proceedings-general-overview.

[128] INA § 240(c)(3)(A); 8 C.F.R. § 1240.8 (2014).

[129] AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *supra* note 60, at 101; *see also Woodby v. INS*, 385 U.S. 276, 277 (1966); 8 C.F.R. § 1240.8 (2014).

[130] AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *supra* note 60, at 100. *Matter of A-M-,* 7 I&N Dec. 322 (BIA 1965); *Matter of Leyva*, 16 I&N Dec. 118 (BIA 1977).

[131] *See* INA §§ 301-309, 320.

[132] AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *supra* note 60, at 106.

[133] National Immigration Project, *supra* note 56.

[134] AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *supra* note 60, at 100; Michael Wishnie, *Proportionality in Immigration Law: Does the Punishment Fit the Crime in Immigration Court?* AMERICAN IMMIGRATION COUNCIL, IMMIGRATION POLICY CENTER 12 (April 2012), *available at* http://www.immigrationpolicy.org/sites/default/files/docs/wishnie_-_proportionality_in_immigration_041112.pdf ("There are many circumstances in immigration law in which immigration judges or the courts will dismiss a removal proceedings, restoring the respondent to the status quo ante—including, specifically allowing an apparently undocumented person to walk out of the courtroom at liberty. Such cases include those in which the government fails to carry its initial burden of proof to establish alienage…").

- **Prima Facie Case of Inadmissibility or Deportability Not Established in the NTA**

The government is required to provide allegations in the NTA that, if proven, demonstrate that the noncitizen is removable under an applicable provision of the INA. If the NTA fails to allege sufficient facts to establish removability, then, even if all the allegations are true, the proceedings should be dismissed. This dismissal should take place over any objection of the ICE attorney.[135] Additionally, because the allegations on the NTA are not facts, unless conceded or proven by clear and convincing evidence, dismissal should be sought if the respondent has denied the allegations and the agency has failed to meet its burden. For example, an attorney might seek dismissal if the record of conviction does not reflect a ground of removability or ICE fails to provide sufficient evidence that a particular crime is a ground of removability under INA § 237.

- **Improper Charges Under §§ 212 and 237**

After analyzing the allegations in the NTA and comparing them to the charges listed, it is not unheard of to find that the charges are incongruent with the allegations. In particular, the government may overreach concerning charges and allegations involving crimes of moral turpitude or crimes they believe to be aggravated felonies. Additionally, charges may include convictions that have not yet become sufficiently final for immigration purposes.[136] The government may charge a properly admitted noncitizen with inadmissibility under INA § 212, but then make an inconsistent allegation that he or she is deportable under INA § 237.

2. Procedural Challenges to the NTA

The government does not always follow proper procedures in issuing and filing an NTA. Procedural errors can sometimes form the basis for a challenge to an NTA.

- **Improper Service**

Under the INA, "if personal service is not practicable…service by mail… shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with [INA § 239](a)(1)(F)."[137]

The BIA, however, has held that termination is proper when DHS mails the NTA to the last address it has on file when the record reflects that the noncitizen did not receive the NTA and therefore was never notified of the proceedings or the obligation to provide updated address information under INA § 239.[138] Additionally, at least one circuit has held notice is not proper if: 1) it was not proven that the noncitizen received actual notice, 2) the noncitizen proved that he was represented by an attorney who had filed a notice of appearance with the immigration court prior to the sending of the notice, and 3) DHS failed to prove it had sent notice to the attorney of record.[139]

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135 AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *supra* note 60, at 105.

136 INA § 101(a)(48)(A); *Orabi v. AG of the United States,* 738 F.3d 535 (3d Cir. 2014) (A conviction is not sufficiently final until direct appellate review is exhausted or waived).

137 INA § 239(c); 8 C.F.R. § 1003.13 (2014).

138 *See, In re G-Y-R* 23 I. & N. Dec. 181, 192 (BIA 2001).

139 *Hamazaspyan v. Holder,* 590 F.3d 744 (9th Cir. 2009).

- **Lacking a Signature**

An NTA filed with the court must bear the original signature of an officer with the authority to issue the NTA under the regulations.[140] However, at least one circuit has held there is no requirement that the signature actually be legible.[141]

3. Other Basis for Termination

- **Qualifies for Relief or Benefit**

As with administrative closure, if a respondent can demonstrate prima facie eligibility for an immigration benefit from USCIS, she may ask ICE to join in a motion to terminate to pursue an application for the benefit. For example, a noncitizen prima facie eligible for a U visa can request that DHS join a motion to terminate proceedings to permit USCIS to adjudicate the U visa application.[142] A noncitizen also may request termination to pursue VAWA, DACA, naturalization, a provisional unlawful presence waiver, or adjustment of status.[143] While some forms of protection like deferred action may be pursued during removal proceedings, other applications, such as naturalization[144] or – in some circumstances – adjustment of status, require termination of proceedings before USCIS has jurisdiction to adjudicate the claim.[145]

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140 *See* U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE OF IMMIGRATION REVIEW, IMMIGRATION JUDGE BENCHBOOK, TOOLS, http://www.justice.gov/eoir/vll/benchbook/tools/Purpose%20and%20History%20of%20MC.htm (last visited March 5, 2014); *see also* Jurisdiction, 65 Fed. Reg. 76,121 (Dec. 6, 2000) (to be codified in 8 C.F.R. § 208.2(b) (2014)) (explaining that "…in general, only the charging document with the original signature of the Service officer who issued the charging document may be filed with the Immigration Court."); *see* also H. Raymond Fasano, *Litigating Technical Issues When There Is No Relief In Immigration Proceedings*, in 12TH ANNUAL NEW YORK CHAPTER HANDBOOK 3-4 (American Immigration Lawyers Association 2014).

141 *Kohli v. Gonzales*, 473 F.3d 1061 (9th Cir. 2007).

142 8 C.F.R. § 214.14(c)(1) (2014).

143 For a discussion regarding these types of relief, *see supra* section II.A. .

144 *In re Acosta Hidalgo*, 24 I. & N. Dec. 103 (B.I.A. 2007) (The basis for termination of removal proceedings for the purpose of pursuing naturalization is extremely limited and absent an affirmative communication by DHS regarding prima facie eligibility for naturalization, the IJ must give priority to the agency's decision to institute removal proceedings).

145 8 C.F.R. § 1245.2(a)(1)(i) (2014); *Adjudicator's Field Manual* (AFM) ch. 23.2(b). For a more detailed discussion of adjustment for "arriving aliens" and those in removal proceedings, see the following practice advisories: MARY KENNEY, LEGAL ACTION CENTER, AMERICAN IMMIGRATION COUNCIL, PRACTICE ADVISORY, USCIS ADJUSTMENT OF STATUS OF "ARRIVING ALIENS" WITH AN UNEXECUTED FINAL ORDER OF REMOVAL (updated Nov. 6, 2008) *available at* http://www.legalactioncenter.org/sites/default/files/lac_pa_060308_arraliens.pdf; MARY KENNEY, LEGAL ACTION CENTER, AMERICAN IMMIGRATION COUNCIL, PRACTICE ADVISORY, "ARRIVING ALIENS" AND ADJUSTMENT OF STATUS: WHAT IS THE IMPACT OF THE GOVERNMENT'S INTERIM RULE OF MAY 12, 2006? (updated Nov. 5, 2008) *available at* http://www.legalactioncenter.org/sites/default/files/ar_alien.pdf.

Note from the Field: "I have gained administrative closure or termination in several cases involving hardship when cancellation was nonetheless doubtful or when ten-year residency requirement had not been reached. I've also received closure or termination for long term residents, with ten years presence or more, with no criminal record, when the hardship was not that great, but the alien was a productive member of society."

- Pennsylvania Practitioner 1[146]

Note from the Field: "I've had success procuring administrative closure or termination for several DACA-eligible or DACA approved kids."

- Pennsylvania Practitioner 1[147]

- **Claim Preclusion (res judicata/collateral estoppel)[148]**

As noted above, if proceedings are terminated or closed, the government may file a new NTA with the immigration court and begin new proceedings against the noncitizen. When the government brings the same charges or alleges the same facts as it did in prior proceedings, or charges or facts that could have been included in previous proceedings, the respondent may have grounds to terminate the proceedings based on the principle of res judicata.[149] "A party seeking to invoke res judicata must establish three elements: "(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.""[150]

146 Survey Response, Pennsylvania Practitioner 1.

147 Survey Response, Pennsylvania Practitioner 1.

148 Claim preclusion arguments, if successful, prevent parties from re-litigating issues that were settled in previous proceedings. One court illustrated this when it stated, "Res judicata bars the government from bringing a second case based on evidence (a birth certificate) that it could have presented in the first case." *Bravo-Pedroza v. Gonzales*, 475 F.3d 1358, 1359 (9th Cir. 2007).

149 AMERICAN IMMIGRATION LAWYERS ASSOCIATION, *supra* note 60, at 108; *see also Bravo-Pedroza v. Gonzales*, 475 F.3d 1358 (9th Cir. 2007); *Medina v. INS*, 993 F.2d 499 (5th Cir, 1993), *Ramon-Sepulveda v. INS*, 824 F.2d 749 (9th Cir. 1987).

150 *Duhaney v. AG of the United States*, 621 F.3d 340, 347 (3d Cir. 2010).

IV. CONCLUSION

> **Note from the Field:** "I successfully convinced an ERO officer & his supervisors not to charge my client who had multiple tax convictions with an aggravated felony. But then, when we filed a 'when released' habeas motion, ERO was overruled and the NTA was amended to add the aggravated felony charge. Ultimately, I got DHS to drop the aggravated felony charge in exchange for waiving appeal on the IJ's manifestly incorrect aggravated felony holding and we did a 15-min LPR cancellation hearing to secure client's green card & release."
>
> - Tennessee Practitioner[151]

> **Note from the Field:** [Describing negotiations with ICE after an NTA was filed] "As for how we got DHS to drop the charges: it honestly was shockingly easy. We just called and asked her to drop the false claim [to U.S. citizenship] charge. We asked to speak with the attorney who would be working on our Master Hearing. We explained our argument to her (that we didn't think she had made a false claim under the law) and the fact that the charge would have draconian consequences on our client's life. We told her that our client had never been in trouble before and is a young woman. The attorney told us she had to think about it but then got back to us a few days later and said she and her supervisor decided to drop the two charges. We hadn't even asked her to drop the other one so it was a nice surprise! I think it was a combination of everything in our case, including that our client is married to a US citizen and could adjust based on that marriage. Going into the conversation, we were all pretty pessimistic but felt it was worth a try. We were very happy when we were successful. It was a great lesson for us that it doesn't hurt to ask and may actually help a lot."
>
> - New York Practitioner 2[152]

NTAs are a basic element in the practice of immigration law. Practitioners representing noncitizens who may one day be in removal proceedings, or who are currently in removal proceedings, will provide a substantial benefit to their clients by gaining fundamental insights regarding the pre-filing and post-filing options available for challenging or modifying an NTA. While not every client will benefit from the strategies described in this advisory, it is our hope that noncitizens in a position to use them are afforded that opportunity. Practitioners should carefully examine an issued or filed NTA for factual deficiencies and legal defects in order to mount an effective challenge. If practicable, practitioners should strive to use the tool of prosecutorial discretion to better assist their clients in obtaining favorable results in their cases.

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151 Survey Response, Tennessee Practitioner.

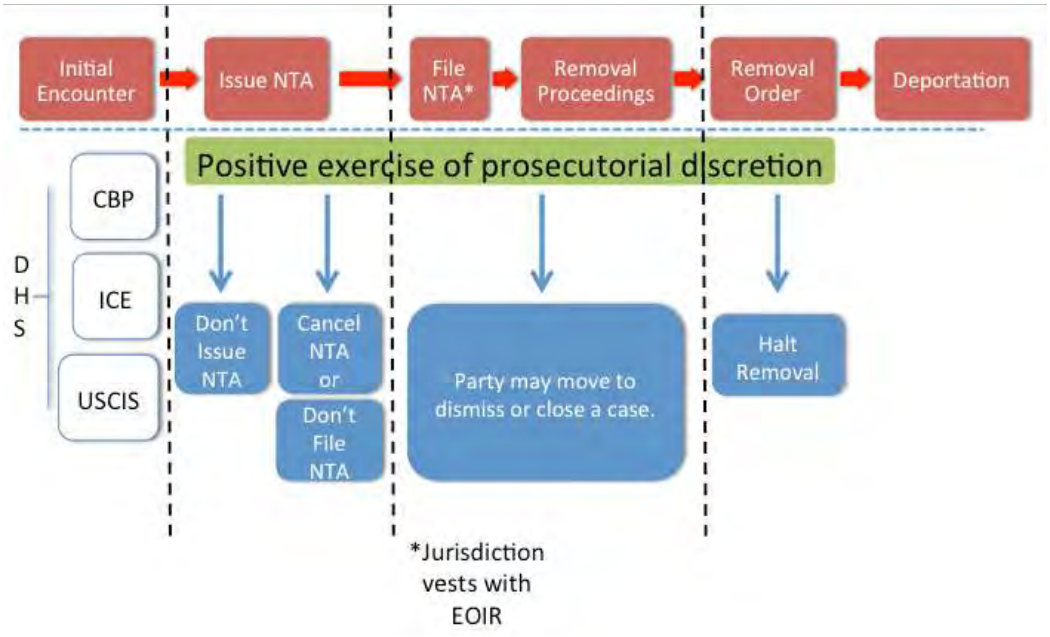
152 Survey Response, New York Practitioner 2.

If you have questions or comments regarding this advisory or additional practice tips surrounding Notices to Appear, we would welcome your input. Please send your comments to **centerforimmigrantsr@law.psu.edu.**

V. APPENDIX

1) Timeline of NTAs and Exercises of Prosecutorial Discretion

From CENTER FOR IMMIGRANTS' RIGHTS, PENNSYLVANIA STATE UNIVERSITY DICKINSON SCHOOL OF LAW, TO FILE OR NOT TO FILE (OCT. 2013).



2) Glossary of Terms

- **Notice to Appear (NTA)**

An NTA is a charging document which includes information about the charges levied against him/her as the basis for removability. The NTA is also required to include the time and place the removal proceedings will be held.

- **Issue an NTA**

An immigration officer issues an NTA to a noncitizen who is believed to be removable. INA § 239(a)(1) (2012) uses the phrase "shall be given" and the term "service" to mean issuance of an NTA. On the other hand, 8 C.F.R. § 239.1 (2014) uses the terms "issuance" and "issue." Often, the terms "issue," "prepare," and "serve" are used interchangeably. In this report, the terms "issue," "prepare," and "serve" are used interchangeably unless quoted from other sources.

- **Cancel an NTA**

An immigration officer authorized to issue an NTA may cancel it before the NTA is filed with an immigration court.[153]

[153] *See* 8 C.F.R. § 239.2(a) (2014).

- **File an NTA**

An immigration officer files an NTA with an immigration court, and filing of the NTA officially commences a removal proceeding against a noncitizen.[154]

- **Dismiss a matter before the immigration court**

Once a removal proceeding is commenced, any party may move for dismissal of the matter.[155] Ultimately, the jurisdiction to dismiss a matter lies with the immigration judge. Often, the terms "dismiss" and "terminate" are used interchangeably.

- **Administratively close a matter**

Once removal proceedings are commenced, any party may move for administrative closure of the matter. Ultimately, the jurisdiction to close a matter lies with the immigration judge. Administrative closure is only a temporary resolution of the proceedings, as the case remains on the immigration court docket and additional hearings may be scheduled later.[156] In this report, the term "administrative closure" or "administratively closed" is used to mean "administrative closure," unless quoted from other sources.

3) List of Selected Related Practice Advisories and Sample Motions

- National Immigration Project, Termination or Administrative Closure of Removal Proceedings Based on Prima Facie Eligibility for DACA and Sample Motion (Jan. 29, 2014).

- American Immigration Council's Legal Action Center, American Immigration Lawyer's Association, and National Immigration Project, Deferred Action for Childhood Arrivals (updated April 22, 2013).

- National Immigration Project, Reinstatement of Removal (updated April 29, 2013).

- American Immigration Council's Legal Action Center, Prosecutorial Discretion: How to Advocate for Your Client (updated June 24, 2011).

- Immigration and Customs Enforcement, Template: Joint Motion to Administratively Close Proceedings, FOIA Library (last visited April 21, 2014).

[154] *See* 8 C.F.R. § 1003.14 (2014).
[155] *See* 8 C.F.R. §§ 239.2(c), 239.2(a) (2014).
[156] For more details on administrative closure, see Memorandum from Brian M. O'Leary, Chief Immigration Judge, U.S. Department of Justice Executive Office for Immigration Review, on Operating Policies and Procedures Memorandum 13-01: Continuances and Administrative Closure (Mar. 7, 2013), *available at* http://www.justice.gov/eoir/efoia/ocij/oppm13/13-01.pdf.

4) Sample NTA

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No: A055-555-555

In the Matter of:

Respondent: RAMOS, Jorge currently residing at:

Port Isabel, SPC, 27991 Buena Vista Blvd., Los Fresnos, TX 78566

(Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

[X] 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1) You are not a citizen of the United States.
2) You are a native of Mexico and a citizen of Mexico.
3) You entered the United States at or near Hidalgo, TX on or about 6/11/2010.
4) You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document.
5) You were not then admitted or paroled after inspection by an immigration officer.
6) You were, on August 18, 2009,, convicted in the Superior Court of Los Angeles for the offense of Receive Etc Known Stolen Property.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 212(a)(7)(A)(i)(I)- of the Immigration and Nationality Act, as amended, as immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationaqlity as required under the regulations issued by the AG.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

Harlingen EOIR, 2009 West Jefferson, Ste. 300, Harlingen, TX 7855

(Complete Address of Immigration Court, including Room Number, if any)

on to be set (Date) at to be set (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

SDDO

(Signature and Title of Issuing Officer)

Date: 9/21/10 Harlingen, TX

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

5) Sample of Survey Used to Gather Notes from the Field

PENNSTATE
1855
The Dickinson School of Law

Shoba Sivaprasad Wadhia
Samuel Weiss Faculty Scholar
Clinical Professor of Law and Director
Center for Immigrants' Rights

The Pennsylvania State University
329 Innovation Boulevard, Ste. 118
State College, PA 16803

Office: 814-865-3823
Fax: 814-865-9042
ssw11@psu.edu

A Questionnaire for Attorneys and Advocates:
Legal Challenges And Strategies Related to Notices to Appear

American Immigration Council's Legal Action Center, American Bar Association Commission on Immigration, and Penn State Law's Center for Immigrants' Rights Project on Notices to Appear, Spring 2014

Purpose: Building upon the report "To File or Not to File a Notice to Appear: Improving the Government's Use of Prosecutorial Discretion" (Click for Link to File or Not To File), the purpose of this survey is to gather experiences and practice tips from attorneys for possible inclusion in a practice advisory focused on Notices to Appear ("NTA"). We will not use any identifying information you provide here in any other venue without your prior consent.

1. Since January 31, 2012, have you negotiated with DHS to join in motions to administratively close or terminate a client's case after an NTA was filed?
    a. If yes, and you are willing to describe that experience, regardless of outcome, please share.

2. Since January 31, 2012, have you successfully obtained administrative closure or termination but then had the case repapered or filed at a later time?
    a. If yes, and you are willing to describe that experience, please share.

3. Since January 31, 2012, have you been successful in terminating or closing a case over the objection of ICE counsel?
    a. If yes, and you are willing to describe the techniques you used, please share.

4. Since January 31, 2012, have you negotiated with DHS to exercise prosecutorial discretion to ISSUE an NTA as an alternative to other forms of abbreviated removal processes such as an administrative removal order under 238(b)?
    a. If yes, and you are willing to describe that experience, regardless of outcome, please share.

5. Since January 31, 2012, have you negotiated with DHS to ISSUE an NTA because your client was eligible for cancellation of removal?
    a. If yes, and you are willing to describe that experience, regardless of outcome, please share.

6. Since January 31, 2012, have you negotiated with DHS on whether or not to file an NTA OR the substance of what the agency will include in an NTA that was under preparation?
    a. If yes, and you are willing to describe that experience, regardless of outcome, please share.

7. Since January 31, 2012, have you tried to defeat a charge or aspect of the NTA by arguing that the matter has already been, or could have been, adjudicated in an earlier proceeding (i.e. the res judicata or collateral estoppel doctrines)?
    a. If yes, and you are willing to describe that experience, regardless of outcome, please share.

8. Since January 31, 2012, have you negotiated with DHS for other forms of prosecutorial discretion pertaining to NTAs?
    a. If yes, and you are willing to describe that experience, regardless of outcome, please share.

9. If you considered utilizing prosecutorial discretion techniques, but did not, or did and were unsuccessful, what types of barriers prevented you from using those techniques or succeeding? (I.e., Resistance by DHS/ICE/IJs/other officials, difficulties in obtaining or communicating information regarding clients, personal lack of information regarding how to exercise prosecutorial discretion strategies, etc.)

10. May we contact you for additional information or to follow up on your answers? If so, please provide your name, telephone, number and email address. Again, we will not disclose any identifying information without your permission.

Please return the questionnaire by March 5th, 2014 to [redacted].
When responding, please title the subject heading as: Re: NTA Survey 2014.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

November 7, 2011 **PM-602-0050**

Policy Memorandum

SUBJECT: Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens

Purpose
This Policy Memorandum (PM) establishes new USCIS guidelines for referring cases and issuing Notices to Appear (NTAs) in a manner that promotes the sound use of the resources of the Department of Homeland Security and the Department of Justice to enhance national security, public safety, and the integrity of the immigration system. This PM supersedes Policy Memorandum No. 110, *Disposition of Cases Involving Removable Aliens*, dated July 11, 2006.

Scope
This PM applies to and is binding on all USCIS employees unless otherwise specifically provided in this PM.

Authority
Immigration and Nationality Act (INA) sections 101(a)(43), 103(a), 239, 240 and 318; Title 8, Code of Federal Regulations (8 CFR) parts/sections 2.1, 103, 204, 207.9, 208, 216.3(a), 216.6(a)(5), 236.14(c), and 239; Adjudicator's Field Manual Chapter 10.11(a).

Background
U.S. Citizenship and Immigration Services (USCIS) has authority, under the immigration laws, *see, e.g.*, INA §§ 103(a), 239; 8 CFR §§ 2.1, 239.1, to issue Form I-862, Notice to Appear, to initiate removal proceedings.[1] U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) also have authority to issue NTAs. Accordingly, USCIS must ensure that its issuance of NTAs fits within and supports the Government's overall removal priorities, while also ensuring that its NTA policies promote national security and the integrity of the nation's immigration system.

To those ends, this PM identifies the circumstances under which USCIS will issue an NTA, or will refer the case to ICE for NTA issuance, in order to effectively handle cases that involve public safety threats, criminals, and aliens engaged in fraud.

[1] *Delegation by the Secretary of the Department of Homeland Security to the Bureau of Citizenship and Immigration Services*, Delegation Number 0150.1; Paragraph 2(N). However, international District Directors and officers are not authorized to issue NTAs.

Policy

I. National Security Cases

This PM does not affect the handling of cases involving national security concerns.[2] Guidance from the Fraud Detection and National Security Directorate (FDNS)[3] will continue to govern the definition of these cases and the procedures for resolution and NTA issuance.

II. NTA Issuance Required by Statute or Regulation

USCIS will issue an NTA in the following circumstances:[4]

A. Termination of Conditional Permanent Resident Status and Denials of Form I-751, Petition to Remove the Conditions of Residence (8 CFR 216.3, 216.4, 216.5)[5]
B. Denials of Form I-829, Petition by Entrepreneur to Remove Conditions (8 CFR 216.6)
C. Termination of refugee status by the District Director (8 CFR 207.9)
D. Denials of NACARA 202 and HRIFA adjustments
    1. NACARA 202 adjustment denials (8 CFR 245.13(m));
    2. HRIFA adjustment denials (8 CFR 245.15(r)(2)(i)).
E. Asylum[6], NACARA 203, and Credible Fear cases:[7]
    1. Asylum referrals (8 CFR 208.14(c)(1));
    2. Termination of asylum or termination of withholding of removal or deportation (8 CFR 208.24(e));[8]
    3. Positive credible fear findings (8 CFR 208.30(f));
    4. NACARA 203 cases where suspension of deportation or cancellation of removal is not granted, and the applicant does not have asylum status, or lawful immigrant or non-immigrant status (8 CFR 240.70(d)).

This PM does not apply to, or change, NTA or notification procedures for Temporary Protected Status cases.[9] Further, Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, processed under the Violence Against Women Act (VAWA), should continue to

[2] National Security Cases include cases involving Terrorist Related Grounds of Inadmissibility (TRIG) pursuant to sections 212(a)(3)(B) and 212(a)(3)(F) of the INA.
[3] See, e.g., *Policy for Vetting and Adjudicating Cases with National Security Concerns* (April 11, 2008).
[4] If any Form I-751 or I-829 cases are also Egregious Public Safety cases, they will be referred to ICE in accordance with Section IV.A.1 of this PM.
[5] See the October 9, 2009 internal memo, *Adjudication of Form I-751, Petition to Remove Conditions on Residence Where the CPR Has a Final Order of Removal, Is in Removal Proceedings, or Has Filed an Unexcused Untimely Petition or Multiple Petitions.* See also the April 3, 2009 memo, *I-751 Filed Prior to Termination of Marriage.*
[6] USCIS may issue an NTA when an asylum applicant withdraws his or her asylum application.
[7] This memo does not apply to the Asylum Division's issuance of Form I-863, Notice of Referral to Immigration Judge, to certain stowaways, crewmembers, and VWP individuals who are requesting asylum or withholding of removal; reasonable fear screenings and negative credible fear screenings.
[8] See also section 208(c)(3) of the INA describing removal when asylum is terminated.
[9] See the September 12, 2003 internal memo, *Service Center Issuance of Notice to Appear (Form I-862).*

be processed under existing protocols. If the VAWA applicant's Form I-485 is denied, this memorandum is applicable in terms of NTA issuance.[10]

III. Fraud Cases with a Statement of Findings Substantiating Fraud

To protect the integrity of the immigration system and address fraud, USCIS will issue NTAs when a Statement of Findings (SOF) substantiating fraud is part of the record.[11] An NTA will be issued upon final adjudicative action on the petition and/or application or other appropriate eligibility determination.[12] NTAs will be issued even if the petition and/or application is denied for a ground other than fraud, such as lack of prosecution or abandonment, is terminated based on a withdrawal by the petitioner/applicant, or where an approval is revoked, so long as an SOF substantiating fraud is in the record.

The NTA should include the charge of fraud or misrepresentation, if possible. The appropriate charge(s) will be determined on a case-by-case basis. Consultation with local USCIS counsel to determine the appropriate charge(s) is recommended.

IV. Cases to be Referred to ICE for a Decision on NTA Issuance

A. Criminal Cases: Criminal aliens are a top immigration enforcement priority for the government. The following guidance recognizes the prioritization and requires USCIS to refer criminals to ICE for action or issue an NTA in accordance with this PM.

1. Egregious Public Safety (EPS) Cases

USCIS will refer all EPS cases, including cases with pending N-400s, to ICE prior to adjudicating the case even if USCIS can deny the petition and/or application on its merits. An EPS case is defined by USCIS and ICE as a case where information indicates the alien is under investigation for, has been arrested for (without disposition), or has been convicted of, any of the following:

a. Murder, rape, or sexual abuse of a minor as defined in section 101(a)(43)(A) of the INA.
b. Illicit trafficking in firearms or destructive devices as defined in section 101(a)(43)(C) of the INA.
c. Offenses relating to explosive materials or firearms as defined in section 101(a)(43)(E) of the INA.

[10] When making determinations, employees must keep in mind USCIS's obligations under 8 USC § 1367, which prohibits the release of any information, outside of DHS, relating to aliens who are seeking or have been approved for immigration benefit(s) under the provisions for battered spouses, children, and parents in the Violence Against Women Act.

[11] Alternatively, ICE will determine whether to issue the NTA if a criminal investigation is conducted, fraud is found, and the investigation results in criminal prosecution.

[12] This includes, but is not limited to, aliens that were granted asylum status by USCIS, adjusted to Lawful Permanent Resident status, presented fraud indicators, were subject to the Post Adjustment Eligibility Review (PAER) process in an Asylum Office, and met the PAER criteria for NTA issuance.

d. Crimes of violence for which the term of imprisonment imposed, or where the penalty for a pending case, is at least one year as defined in section 101(a)(43)(F) of the INA.
e. An offense relating to the demand for, or receipt of, ransom as defined in section 101(a)(43)(H) of the INA.
f. An offense relating to child pornography as defined in section 101(a)(43)(I) of the INA.
g. An offense relating to peonage, slavery, involuntary servitude, and trafficking in persons as defined in section 101(a)(43)(K)(iii) of the INA.
h. An offense relating to alien smuggling as described in section 101(a)(43)(N) of the INA
i. Human Rights Violators, known or suspected street gang members, or Interpol hits.
j. Re-entry after an order of exclusion, deportation or removal subsequent to conviction for a felony where a Form I-212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal, has not been approved.

All EPS cases must be referred to ICE using the procedures outlined below. The case will be referred as soon as it is identified. ICE will have an opportunity to decide if, when, and how to issue an NTA and/or detain the alien. USCIS will not issue an NTA in these cases if ICE declines to issue an NTA. If some other basis unrelated to the EPS concern becomes apparent during the course of adjudication, an NTA may be issued in accordance with this memo.

Referral Process

This referral process is utilized in order to give ICE the opportunity to determine the appropriate course of action before USCIS adjudicates the case. A decision to issue an NTA may directly affect the processing of the pending petition and/or application. Upon issuing the Referral to Immigration and Customs Enforcement (RTI), USCIS will suspend adjudication for 60 days, or until ICE provides notification of its action on the case, whichever is earlier.

In response to the RTI –

1. ICE may issue an NTA. ICE's issuance of an NTA allows USCIS to proceed with adjudication (unless jurisdiction transfers to EOIR or the pending application is an N-400), taking into account the basis for the NTA.

2. If ICE does not issue an NTA or otherwise provide notification of its action on the case within 60 days of the RTI, USCIS may resume its adjudication of the case, taking into account the referral grounds.

a. If the case is approvable, USCIS will consult with ICE prior to adjudication.

b. Once adjudicated, regardless of the decision, USCIS will notify ICE of the result by sending a copy of the original RTI to ICE with a cover memorandum advising of the outcome of the case.

EPS cases referred to ICE prior to adjudication should be called up and reviewed no later than 60 days after referral. Normally, the case should be adjudicated by USCIS. However, USCIS retains discretion to place the case on hold for more than 60 days if ICE requests additional time to conduct an investigation.[13]

Office-Specific Processes

1. Cases to be adjudicated by Service Centers and the National Benefits Center. Adjudication will be suspended and the case will immediately be sent to the appropriate Service Center Background Check Unit (BCU). The BCU will refer the case to the ICE Benefit Fraud Unit (BFU) via an RTI. A hard copy of the RTI will be placed in the A-file and/or receipt file. The BCU will retain the file unless ICE requests it or the 60 days expire.

2. Cases to be adjudicated by Field Offices. The Immigration Services Officer (ISO) will suspend adjudication and the case will immediately be referred to the local ICE Special Agent in Charge (SAC) via an RTI. A hard copy of the RTI will be placed in the A-file and/or receipt file. A copy of the RTI must also be sent to the ICE BFU. USCIS will retain the file unless ICE requests the file for their review.

An RTI should include any relevant attachments that USCIS has at the time, such as a copy of the RAP sheet and a copy of the petition and/or application.

2. Non-Egregious Public Safety Criminal Cases

If it appears that the alien is inadmissible or removable for a criminal offense not included on the EPS list, USCIS will complete the adjudication and then refer the case to ICE. This section applies to N-400 cases if the N-400 has been denied on good moral character (GMC) grounds based on the criminal offense.[14] ICE will decide if, and how, it will institute removal proceedings and whether or not it will detain the alien. USCIS will not issue an NTA if ICE declines to issue an NTA.

[13] Pursuant to 8 CFR 274a.13(d), USCIS must complete processing of an Employment Authorization Document (EAD) within 90 days or issue an interim EAD card valid up to 240 days. Officers should be mindful of this regulatory timeframe when cases with a pending Form I-765, Application for Employment Authorization, are referred to ICE.

[14] See Section V of this memo addressing N-400 cases.

If some other basis unrelated to the criminal offense becomes apparent upon return of the case to USCIS, an NTA may be issued in accordance with this memo.

Referral Process

The referral process is used to allow ICE to make a determination whether to issue an NTA, based on the totality of circumstances and its priorities. ICE will determine the appropriate grounds for removal if an NTA is issued.

Once adjudication is complete, USCIS will send an RTI to ICE. USCIS will concurrently transmit a copy of the RTI to ICE Headquarters (HQ) Enforcement and Removal Operations (ERO) Criminal Alien Division for statistical monitoring purposes. If there is any confusion or uncertainty about classifying a case as egregious versus non-egregious, the USCIS ISO should refer the matter as an EPS case using the process described above.

The accompanying A-file will be referred to ICE with the RTI, if the file is in the possession of the referring USCIS office or center. If the file is not at the referring USCIS office or center, the RTI should include any relevant attachments that USCIS has, such as a copy of the RAP sheet and a copy of the petition and/or application. Where USCIS obtained certified conviction records through normal processing of the case, USCIS will include the records with the RTI, but it will not hold the RTI on a completed case solely to obtain disposition records. Instead ICE will decide whether, and how, it will obtain such records as part of its decision to issue an NTA.

Office-Specific Processes

1. Cases adjudicated by Service Centers and the National Benefits Center. Once adjudication is completed, if the alien is removable on a criminal charge, regardless of the reason for the denial, the file will be referred to the BCU. The BCU will refer the case, along with the A-file and/or receipt file, to the appropriate ERO Field Office Director (FOD) via an RTI.

2. Cases adjudicated by Field Offices. Once adjudication is completed, if the alien is removable on a criminal charge, regardless of the reason for the denial, USCIS will prepare an RTI and refer the case, along with the A-file and/or receipt file, to the local ERO FOD.

B. National Security Entry Exit Registration System (NSEERS) Violator Cases

USCIS will refer all cases in which an application is denied based on an NSEERS violation to ICE for possible NTA issuance.

V. Cases Involving Form N-400, Application for Naturalization

The following guidance applies to the issuance of NTAs in cases in which applicants for naturalization are removable. There are two primary situations in which NTAs may be issued in connection with a filed Form N-400. If the N-400 case involves fraud (documented in the SOF) the procedures found in this section must be followed, rather than the procedures found in Section III (Fraud Cases with a Statement of Findings Substantiating Fraud). However, the below guidance does not apply to EPS cases. EPS cases must be referred in accordance with Section IV.A.1 (Egregious Public Safety Cases) of this memo. Additionally, the below guidance does not apply to non-EPS criminal cases when the N-400 can be denied on GMC grounds based on the criminal act. These cases must be denied and referred in accordance with Section IV.A.2 (Non-Egregious Public Safety Criminal Cases).

A. The first situation occurs when the applicant may be eligible to naturalize but is also deportable under section 237 of the INA. Examples include applicants convicted of aggravated felonies prior to November 29, 1990, or applicants convicted of deportable offenses after obtaining Lawful Permanent Resident (LPR) status that do not fall within the GMC period. The ISO should:

1. Make a written recommendation on the issuance of an NTA through a review of the totality of the circumstances to include factors such as: severity of crime, time since crime committed, other criminal conduct, reformation, immigration history including method of entry, length of presence in the U.S., and prior immigration violations, and contributions to society to include the pursuit of education and military service.[15]

2. Once the ISO has made a recommendation on whether or not to issue an NTA, the case should be forwarded to the N-400 NTA Review Panel (Review Panel), along with the written recommendation. A Review Panel must be formed in each Field Office and include a local Supervisory Immigration Services Officer (SISO), a local USCIS Office of Chief Counsel attorney, and a district representative. An attorney from ICE's local Office of Chief Counsel will be invited to participate and will have an advisory role on the panel. The Review Panel will make the final determination on NTA issuance. If consensus cannot be reached by the Review Panel, the case will be elevated to the District Director, through the district representative, for a final decision.

3. If the Review Panel decides to issue an NTA, place the N-400 on hold until removal proceedings have concluded. Once proceedings have concluded, or if the Review Panel declines to issue an NTA, adjudicate the case appropriately.

[15] Additional factors to be taken under consideration can be found in the June 17, 2011 ICE memo, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens.*

B. The second situation occurs when it is determined that the applicant was inadmissible at the time of adjustment or admission to the United States, thus deportable under section 237 of the INA and not eligible for naturalization under section 318 of the INA.[16] The ISO should:

1. Make a written recommendation on the issuance of an NTA through a review of the totality of the circumstances to include factors such as: willfulness of actions, fraud factors, length of LPR status, criminal history, and officer error at time of adjustment.

2. Once the ISO has made a recommendation on the issuance of the NTA, the case should be forwarded to the Review Panel (see Section V.A.2), along with the written recommendation. The Review Panel will make the final determination on NTA issuance. If consensus cannot be reached by the Review Panel, the case will be elevated to the District Director, through the district representative, for a final decision.

3. If the Review Panel decides to issue an NTA, place the N-400 on hold until removal proceedings have concluded. Once removal proceedings have concluded, adjudicate the case appropriately. If the Review Panel declines to issue an NTA, deny the case under section 318 of the INA.

VI. Other Cases

A. An alien may request NTA issuance to renew an application for adjustment or in certain cases with a denied N-400. The request must be made in writing.[17]

B. An asylum applicant issued an NTA may request NTA issuance for family members not included on the asylum application as dependents for family unification purposes. The request must be made in writing.[18]

VII. Exceptions

Exceptions to the guidance in this PM require concurrence from Regional or Center Directors, who will consult with ICE before issuing an NTA.

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[16] In the Third Circuit *only* (Pennsylvania, New Jersey, Delaware, and the U.S. Virgin Islands), based on the holding in *Garcia v. Att'y Gen.*, 553 F.3d 724 (3d Cir. 2009), if the alien has been an LPR for at least five years, the alien cannot be placed in removal proceedings for fraud or willful misrepresentation of a material fact at time of adjustment, if USCIS could have learned of the fraud or misrepresentation through reasonable diligence before the five year rescission period expired. Please consult with USCIS counsel if there are questions regarding the applicability of this precedent.

[17] USCIS retains discretion to deny a request. USCIS should consider ICE actions and determinations when making an NTA issuance decision under this section.

[18] USCIS retains discretion to deny a request.

VIII. Coordination with ICE

According to the June 2011 ICE memo regarding the exercise of prosecutorial discretion consistent with priorities,[19] USCIS will receive notice before an ICE attorney exercises prosecutorial discretion and dismisses, suspends, or closes a case. The local N-400 NTA Review Panel will work with ICE to come to a resolution if USCIS does not agree with ICE's use of prosecutorial discretion in a particular case. If concurrence cannot be reached, the case should be elevated to the USCIS Office of Chief Counsel in headquarters.

Implementation
Each field office must form an N-400 NTA Review Panel and create a process to complete RTIs and refer EPS and non-EPS criminal cases to ICE. A written list enumerating the members of the Review Panel and a document outlining the process of referral must be sent to the appropriate district office within 30 days of the issuance of this memorandum.

Use
This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law, or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information
Questions or suggestions regarding this PM should be addressed through appropriate channels to the Field Operations Directorate, Service Center Operations Directorate, or the Refugee, Asylum, and International Operations Directorate.

[19] *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, signed June 17, 2011.

Policy Number: 10076.1
FEA Number: 306-112-002b

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

JUN 17 2011

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge
All Chief Counsel

FROM: John Morton
Director

SUBJECT: Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs

Purpose:

This memorandum sets forth agency policy regarding the exercise of prosecutorial discretion in removal cases involving the victims and witnesses of crime, including domestic violence, and individuals involved in non-frivolous efforts related to the protection of their civil rights and liberties. In these cases, ICE officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice. This memorandum builds on prior guidance on the handling of cases involving T and U visas and the exercise of prosecutorial discretion.[1]

Discussion:

Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime. In practice, the vast majority of state and local law enforcement agencies do not generally arrest victims or witnesses of crime as part of an investigation. However, ICE regularly hears concerns that in some instances a state or local law enforcement officer may arrest and book multiple people at the scene of alleged domestic violence. In these cases, an arrested victim or witness of domestic violence may be booked and fingerprinted and, through the operation of the Secure

[1] For a thorough explanation of prosecutorial discretion, see the following: Memorandum from Peter S. Vincent, Principal Legal Advisor, Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal (Sept. 25, 2009); Memorandum from William J. Howard, Principal Legal Advisor, VAWA 2005 Amendments to Immigration and Nationality Act and 8 U.S.C. § 1367 (Feb. 1, 2007); Memorandum from Julie L. Myers, Assistant Secretary of ICE, Prosecutorial and Custody Discretion (Nov. 7, 2007); Memorandum from William J. Howard, Principal Legal Advisor, Prosecutorial Discretion (Oct. 24, 2005); Memorandum from Doris Meissner, Commissioner, Immigration and Naturalization Service, Exercising Prosecutorial Discretion (Nov. 17, 2000).

Communities program or another ICE enforcement program, may come to the attention of ICE. Absent special circumstances, it is similarly against ICE policy to remove individuals in the midst of a legitimate effort to protect their civil rights or civil liberties.

To avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to:

- victims of domestic violence, human trafficking, or other serious crimes;
- witnesses involved in pending criminal investigations or prosecutions;
- plaintiffs in non-frivolous lawsuits regarding civil rights or liberties violations; and
- individuals engaging in a protected activity related to civil or other rights (for example, union organizing or complaining to authorities about employment discrimination or housing conditions) who may be in a non-frivolous dispute with an employer, landlord, or contractor.

In deciding whether or not to exercise discretion, ICE officers, agents, and attorneys should consider all serious adverse factors. Those factors include national security concerns or evidence the alien has a serious criminal history, is involved in a serious crime, or poses a threat to public safety. Other adverse factors include evidence the alien is a human rights violator or has engaged in significant immigration fraud. In the absence of these or other serious adverse factors, exercising favorable discretion, such as release from detention and deferral or a stay of removal generally, will be appropriate. Discretion may also take different forms and extend to decisions to place or withdraw a detainer, to issue a Notice to Appear, to detain or release an alien, to grant a stay or deferral of removal, to seek termination of proceedings, or to join a motion to administratively close a case.

In addition to exercising prosecutorial discretion on a case-by-case basis in these scenarios, ICE officers, agents, and attorneys are reminded of the existing provisions of the Trafficking Victims Protection Act (TVPA),[2] its subsequent reauthorization,[3] and the Violence Against Women Act (VAWA).[4] These provide several protections for the victims of crime and include specific provisions for victims of domestic violence, victims of certain other crimes,[5] and victims of human trafficking.

Victims of domestic violence who are the child, parent, or current/former spouse of a U.S. citizen or permanent resident may be able to self-petition for permanent residency.[6] A U nonimmigrant visa provides legal status for the victims of substantial mental or physical abuse as

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[2] Pub. L. No. 106-386, §§101-113, 114 Stat. 1464, 1466 (codified as amended in scattered sections of the U.S.C.).
[3] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 1464, 1491 (codified as amended in scattered sections of the U.S.C.).
[4] Pub. L. No. 106-386, §§1001-1603, 114 Stat. 1464, 1491 (codified as amended in scattered sections of the U.S.C.).
[5] For a list of the qualifying crimes, see INA §101(a)(15)(U)(iii).
[6] *See* INA §101(a)(51).

a result of domestic violence, sexual assault, trafficking, and other certain crimes.[7] A T nonimmigrant visa provides legal status to victims of severe forms of trafficking who assist law enforcement in the investigation and/or prosecution of human trafficking cases.[8] ICE has important existing guidance regarding the exercise of discretion in these cases that remains in effect. Please review it and apply as appropriate.[9]

Please also be advised that a flag now exists in the Central Index System (CIS) to identify those victims of domestic violence, trafficking, or other crimes who already have filed for, or have been granted, victim-based immigration relief. These cases are reflected with a Class of Admission Code "384." When officers or agents see this flag, they are encouraged to contact the local ICE Office of Chief Counsel, especially in light of the confidentiality provisions set forth at 8 U.S.C. § 1367.

No Private Right of Action

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

[7] *See* INA §101(a)(15)(U).
[8] *See* INA §101(a)(15)(T).
[9] *See* Memorandum from John P. Torres, Director, Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations, Interim Guidance Relating to Officers Procedure Following Enactment of VAWA 2005 (Jan. 22, 2007).

APPENDIX M

Sample Oral Pleading

Prior to entering a pleading, attorneys and representatives are expected to have thoroughly reviewed all pertinent laws, regulations, and cases, as well as the Immigration Court Practice Manual.

* * *

I, [*state your name*], on behalf of [*state the name of your client*], do concede proper service of the Notice to Appear dated [*state date of the NTA*], and waive a formal reading thereof.

I represent to the court that I have discussed with my client the nature and purpose of these proceedings, discussed specifically the allegations of facts and the charge(s) of removability, and further advised my client of his or her legal rights in removal proceedings.

I further represent to the court that I have fully explained to my client the consequences of failing to appear for a removal hearing or a scheduled date of departure as well as the consequences under section 208(d)(6) of the Act of knowingly filing or making a frivolous asylum application. My client knowingly and voluntarily waives the oral notice required by section 240(b)(7) of the Act.

As to each of these points, I am satisfied my client understands fully. On behalf of my client, I enter the following plea before this court:

One, [*he or she*] admits allegation(s) #_____ to _____.

– And/Or –

[*he or she*] denies allegation(s) # _____ to _____.

Two, [*he or she*] concedes the charge(s) of removability.

– Or –

[*he or she*] denies the charge(s) of removability.

Three, [*he or she*] seeks the following applications for relief from removal: [*state all applications, including termination of proceedings, if applicable*].

My client acknowledges that, if any applications are not timely filed, the applications will be deemed waived and abandoned under 8 C.F.R. § 1003.31(c). [*He or she*] acknowledges receipt of the DHS biometrics instructions, and understands that, under 8 C.F.R. § 1003.47(d), failure to timely comply with the biometrics instructions will constitute abandonment of the applications.

I request until [*state date to be filed*] to submit such applications to the court with proper service on the Department of Homeland Security.

I represent to the court that my client is prima facie eligible for the relief stated herein.

I request [*time/hours*] to present my client's case in chief.

I request an interpreter proficient in the [*state name of language*] language, [*state name of any applicable dialect*] dialect.

– Or –

I represent that my client is proficient in English and will not require the services of an interpreter. If any witnesses require an interpreter, I will notify the court no later than fifteen days prior to the Individual Calendar hearing.

My client designates [*state name of country*] as his/her country of choice for removal if removal becomes necessary.

– Or –

My client declines to designate a country of removal.

* * *

Benefit	Requirements	Facts that Establish Eligibility	Red Flags	Action steps
DACA	Entry before 16th birthday; Resided in US before 6/15/2007' EWI or visa expired before 6/15/2012 Currently in school, graduated, obtained GED Not convicted of felony, significant misdemeanor, 3 or more misdemeanors or not threat to national security or public interest Be at least 15 years old (unless have been in removal proceedings)	Alejandra entered when she was 10; Entered April 2007 EWI since she entered Recent high school graduate Not convicted of felony, but how serious is criminal issue? At least 15 years old	Conviction of assault and battery of a household member under VA Code 18.2-57.2.	
VAWA	Spouse/Child of LPR or USC or Parent of USC If based on marriage, proof of good faith marriage. Resided with abuser Suffered battery and extreme cruelty Good moral character	Alejandra is the step child of LPR (qualifies as child under INA 101(b)(1) N/A Alejandra resided with Jose from 2007-2015 Physical and emotional abuse Look to 101(f)	Conviction of assault and battery of a household member under VA Code 18.2-57.2. How does this affect good moral character? How would this affect inadmissibility? Other issues? Immigration history?	Look at INA 101(f) Look at USCIS 2005 Good Moral Character Memo Look at *Matter of Sejas* Crime not CIMT, but even if it were, related to victimization Consider Motion to Reopen for past *in absentia* order.
VAWA Cancellation	*In this case, a person is/was the child of a LPR or USC parent and suffered battery or extreme cruelty; *3 years continuous presence *3 years showing of good moral character	Alejandra suffered emotional and physical violence by Jose. Meets requirement Criminal issues, already examined good moral	How does conviction affect good moral character? How would it affect inadmissibility? Or deportability	Look at INA 101(f) Look at USCIS 2005 Good Moral Character Memo Look at *Matter of Sejas* Crime not CIMT, but

	*Not inadmissible under 212(a)(2) or 212(a)(3) grounds or deportable under INA 237(a)(1)(G) or INA 237(a)(2) through (4) unless a domestic violence waiver is granted and no convictions of aggravated felony. *Removal would result in extreme hardship to themselves, to a parent or a child.	character and inadmissibility. How about deportability issues? Is it a crime of violence? DV offense? Her life is here, has plans to develop herself here, no family in home country	grounds? How would other immigration history problems factor in?	even if it were, related to victimization Look at *Matter of Velasquez* Consider Motion to Reopen for past *in absentia* order.

Technical Assistance Team

Jessica Mindlin, Esq.

Jessie is the VRLC's National Training Director. She's been active in the sexual assault/domestic violence movements for more than 30 years, working as a clinical law instructor, legal aid lawyer, coalition staff attorney, rape crisis counselor, domestic violence advocate, and a counselor for runaway youth. She trains attorneys, advocates, and other service providers to use existing civil laws to meet SA survivors' basic and urgent needs, specializing in victim privacy and services to victims who are minors.

Laura Mahr, Esq.

Laura provides victim-centered services and know-your-rights training to homeless survivors and those who serve them. She trains nationally on civil justice to sexual assault survivors, and specializes in addressing sexual assault within farmworker and LGBTQ communities and in employment settings.

Lindy Aldrich, Esq.

Lindy represents victims of sexual assault in a wide range of legal areas, including education, privacy, safety, and federal and state government benefits. Lindy trains around the country on a number of topics including civil legal responses for sexual assault victims, public benefits for rape victims, and how advocates and campus administers can use Title IX to better their campus sexual assault policies and response.

Stacy Malone, Esq.

Stacy is the VRLC's Executive Director. She joined the VRLC in 2004 as a pro bono attorney for the Rape Survivors Law Project, providing free legal services to SA survivors on employment, safety, privacy, and other issues. She provides direct legal representation to individual victims and trains nationally on topics such as providing civil legal services to SA victims, conducting holistic legal intakes, representing minor victims, campus SA, advocating under Title IX, and training judicial/ conduct board members.

About the VRLC

Our mission is to provide legal representation to victims of rape and sexual assault to help rebuild their lives, and to promote a national movement committed to seeking justice for every rape and sexual assault victim.

Our civil legal model helps victims stay in school, keep their jobs, secure safe housing, and find solutions to other issues resulting from the assault.

We are funded by the Office on Violence Against Women (OVW) to provide training and technical assistance to OVW Legal Assistance for Victims (LAV) and Technical Assistance (TA) grantees. Specifically, we provide information on how to identify sexual assault victims' legal needs, and how to use existing civil laws addressing privacy, education, employment, housing, immigration, and more to address those needs—especially those that the criminal justice system cannot address.

VICTIM RIGHTS LAW CENTER

Victim Rights Law Center

Training & Technical Assistance Services

VICTIM RIGHTS LAW CENTER

Boston Office
115 Broad St., 3rd Floor
Boston, MA 02110
617.399.6720

Portland Office
520 SW Yamhill, Ste. 200
Portland, OR 97204
503.274.5477

TA@victimrights.org
www.victimrights.org

Leading a New Response to Sexual Violence

Training

Through live workshops, webinars, and online courses, the VRLC trains lawyers, advocates, and other service providers across the United States and its territories.

Sexual Assault Justice Education Online Project

The VRLC offers online courses designed to build the foundations for civil legal advocacy on behalf of sexual assault survivors. The courses include web-based training modules, self-directed readings and activities, and interactive, instructor-led webinars. For more information on our online courses, email us at elearning@victimrights.org.

VRLC Webinar Series

The VRLC hosts 4–6 webinars a year on a variety of topics, including serving victims who are minors, Title IX and VAWA, conducting holistic legal intakes, privacy, public benefits for sexual assault survivors, using the civil legal system to address survivors' needs, and more.

On-Site Trainings

Each year, we train thousands of non-profit community based advocates, lawyers, and other service providers on issues related to housing, employment, immigration, privacy, financial stability, physical safety, and more. If you are interested in having us present for your organization, email us at **TA@victimrights.org**.

Technical Assistance

We provide free consultation, training, and support to help you find civil legal solutions for sexual assault survivors. Some of the issues we can help with are:

* Safety
* Financial Security
* Privacy
* Housing
* Immigration
* Education
* Employment

Individual Case Consultation

Our Technical Assistance team provides individual case consultation and support to Legal Assistance for Victims (LAV) funded advocates and lawyers seeking justice for rape and sexual assault victims. We will work with you to find solutions and strategies to meet your client's most urgent legal needs.

TA and Resource Library

With our online Technical Assistance Library, users can browse training materials, templates, sample letters and pleadings, our national manual, tips to ensure schools comply with students' rights, and information on each of the VRLC's practice areas, including education, public benefits, safety planning, victims who are minors, non-citizen victims, LGBTQ issues, farmworkers, and more. OVW grantees can request library access by emailing us at **TA@victimrights.org**.

Examples of TA We Provide

Sample Letters

* Requests for accommodations from a landlord, employer, or other entities
* Letters requesting T- or U-Visa certification for immigrant victims
* Consumer advocacy issues

Forms and Tools

* Issue spotting intake forms and instructions
* Sample candor script
* Safety planning guides for victims of non-intimate partner sexual assault
* Motions to quash a subpoena
* Mandatory reporting flow charts for victims who are older adults or minors

Training Materials

* Powerpoint presentations
* Quizzes and tip sheets
* Hypothetical scenarios for interactive activities
* Model curricula

Research and Information

* Legal research, analysis, and resources
* Sample policies and program protocols

Preparation of this material was supported by grant number 2011-TA-AX-KO24 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, and conclusions expressed are those of the author(s) and do not necessarily represent the views of the U.S. Department of Justice.

How to Fill Out a Request for Information Under the Freedom of Information Act and Privacy Act

I. Introduction

The Department of Homeland Security ("DHS") keeps an immigration file (also known as an "A file") on all immigrants with whom it comes into contact. There are many reasons a person may want to see the file that the government has on that person. When the person is applying for an immigration benefit or fighting removal, it is not only helpful, but also often critical to the success of the person's case to have a copy of the A file. The person might need to know what criminal documents the government has that could affect her eligibility for relief, or the person might need to see a paper trail of her previous immigration history to help piece together what happened.

Fortunately, a person is entitled under the Freedom of Information Act ("FOIA")[1] and Privacy Act ("PA")[2] to request copies of her immigration file from any of the DHS agencies—U.S. Citizenship and Immigration Services ("USCIS"); U.S. Customs and Border Protection ("CBP"); or Immigration Customs Enforcement ("ICE")—that may hold the record.[3]

PRACTICE TIP: Because each agency within DHS is responsible for responding to requests for its own records, it is important that before submitting your request, you determine which agency is likely to have the record(s) you are looking for, and direct your request to that agency. For example, if you want to get a copy of your client's green card application, the request should be made to USCIS. However, if you are looking to get more information about whether your client may have been processed for expedited removal at the border, then you should submit your request to CBP. In some cases you may want to, and indeed it may be best, to submit a request to all three sections.[4]

Sometimes it can be complicated to determine which agency may have the records you are looking for. To help you make this determination, USCIS provides a list of records/request types, and the agency that is likely to keep those records. The list is available on the USCIS FOIA/PA website at http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/submitting-foia-requests.

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[1] Freedom of Information Act, 5 U.S.C. §552.
[2] Privacy Act of 1974, 5 U.S.C. §552a. Unlike requests made under the FOIA, requests under the Privacy Act can only be made by lawful permanent residents or U.S. citizens.
[3] Because the process for submitting requests can change for each agency, be sure to visit the agency's website for the most up to date information.
[4] There is a different and separate process for requesting immigration records from the Executive Office of Immigration Review (or Immigration Court). Visit the EOIR website for more information about their FOIA/PA request process, http://www.justice.gov/eoir/efoia/foiafact.htm.

All FOIA/PA requests to DHS must be made in writing. The government has created a form, G-639, to help people make their requests.[5] Form G-639 may be used to make a FOIA/PA request to USCIS or ICE (although ICE also accepts online requests). Requests to CBP should be made using their online FOIA/PA request service.[6] This practice advisory will detail how to complete a FOIA/PA request using form G-639. We have attached a blank form G-639 for you to use. Section II provides step-by-step instructions on how to complete the form. Section III provides information on how to submit the FOIA request to the government. Section IV discusses additional ways to obtain immigration information about a person.

II. Instructions for Filling out the Information Request

In this section, we will walk through each numbered section of the G-639 form. You should be sure to fill out each of the sections *completely*. If the client does not know the information requested, the request could be delayed, or the documents provided in response to the FOIA request might be incomplete.

1. Section 1. Type of Request:

✓ Check the **box** that describes your situation. If you are filing the request on behalf of another person, you should respond to this question as it would apply to the person for whom you are filing the request.

If you are *not* a U.S. citizen or a lawful permanent resident and are requesting your own file, you should check the first box:

☑ **"**Freedom of Information Act (FOIA): I am not a U.S. citizen/Lawful Permanent Resident and I am requesting my own records."

On the other hand, if you *are* a U.S. citizen or a lawful permanent resident and are requesting a copy of your own file, then you should check the third box:

☑ "Privacy Act (PA): I am a U.S. citizen/Lawful Permanent Resident and I am requesting my own records."

Sometimes the requester is not the person whose records are sought. This is common when the person is in criminal or immigration custody, a juvenile, mentally incapacitated, in another country, estranged, or deceased. For example, a wife may be seeking her late husband's file. In such a case, the requester should check the second box:

[5] Form G-639 is not a requirement for a FOIA/PA request; however, we recommend you use this form because it will help ensure that you provide the information necessary to process your request. Form G-639 is available at http://www.uscis.gov/g-639.

[6] Information about how to submit a FOIA request to CBP and the CBP online request service is available at https://foiaonline.regulations.gov/foia/action/public/request/publicPreCreate.

☑ "Freedom of Information Act (FOIA): I am a U.S. citizen/Lawful Permanent Resident and I am requesting documents other than my own records."

2. Section 2. Description of Record(s) Requested.

   - ✓ Check **box** for "Complete A File (A-file)."
     Even if you are looking for a specific document, such as a naturalization application, we strongly suggest that you ask for the complete A file, if you do not have it already, to ensure that you have access to as much information as possible about your case.

   - ✓ Where it asks for "Purpose."
     This portion is optional. However, providing a general purpose may assist DHS in locating the file. It is best to be specific, but do NOT reveal anything about your immigration strategy or any facts that you do not want the government to know. For example, if you want to know whether the government has any documentation that your client may have been carrying a false document when she entered the United States, you would NOT want to disclose this possibility on the FOIA request and write that the purpose was to search for records related to your client's use of fraudulent documents.

The remaining questions in this section ask for information about the person who is the subject of the request. This information will help DHS locate the correct file. Although it is not necessary to give all of the information, you must provide information that is relevant or the request may be delayed or incomplete. If the client does not remember or have access to pertinent information, then write "Unknown."

Where it asks for:

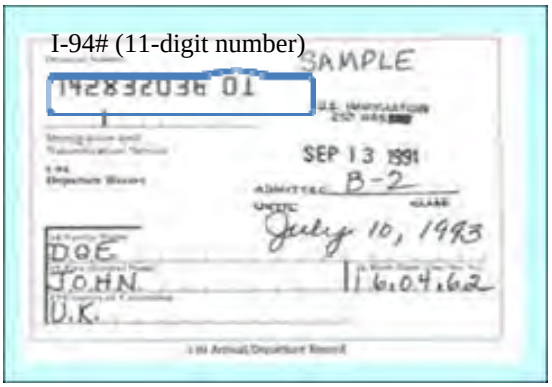
- ✓ "Family Name"—write the client's current last name.
- ✓ "Given Name"—write the client's current first name.
- ✓ "Middle Name"—write the client's middle name if she has one.
- ✓ "Other Names Used (if any)"—write in any names or permutations thereof the client has used. This includes any maiden name, the adding/dropping of a middle initial, or the adding or dropping of her mother's last name. For example, if the client's name is Juan Morales Gonzales, and he often goes by "Juan Morales," he should add "Juan Morales" as an other name used. If the client has not used other names, write "None."

Note: If the client is looking to find records in her file under a different name, even a fake name that she used in the past, she should add that name as well.

✓ "Name at the time of entry into the U.S."—write the client's complete name when she was admitted into the U.S. This may be the same as the client's current full name.

Note: If the information the client seeks relates to a specific entry, explain as much in an addendum. However, we strongly encourage you to ask for information regarding all entries.

✓ "I-94 Admissions #"—If the applicant entered with a visa, the I-94 is a little white card received upon entering the country that looks similar to the picture below. Write in the client's I-94 # (11-digit number) from the time she was last admitted. If the client does not remember it or is unsure if she has one, write "Unknown." If the client is sure she does not have one, write "None."



Note: If the information the client seeks relates to a specific entry, provide the I-94 # for that entry and explain as much in an addendum.

✓ "Alien Registration #"— A person usually will have an alien registration number ("A number") only if she has been in contact with immigration authorities, filed an immigration petition, or had a certain type of immigration case in the past. This number begins with an "A" and is generally seven, eight, or nine digits long.

If the client has an A number, write it here. If the client does not remember it or is unsure if she has one, write "Unknown." If the client does not have one, write "None." The A number is the single most important item of information to help DHS locate your client's A file. If your client does not know her A number, then more identifying information should be provided to assist the government in locating the file. Since the government relies primarily on the A number, it may be difficult, or impossible, for the file to be found without it.

Note: Many times clients have multiple A numbers. Be sure to include all of them. Certainly include the A number that is relevant. If a client does not have an A number, her presence might not be known by DHS and there might not be any records that are responsive to the FOIA request.

- ✓ "Petition or Claim Receipt #"—if an immigrant petition has been filed for the client, write that number here. If the client does not remember it or is unsure if she has one, write "Unknown." If an immigrant petition has not been filed, write "None."
- ✓ "Country of Birth"—write the name of the country where the client was born.
- ✓ "Date of Birth"—write the month/day/year in which the client was born. If the client cannot recall this information, write her age in years.
- ✓ "Names of other family members that may appear on the requested record(s)"—write in complete names (first name, middle name, and last name) of the requestor's father, mother or other family member, like a spouse or sibling, whose name may appear in the records. For example, write in the name of any family members who submitted a family-based petition for the client.
- ✓ "Country of Origin"—write the name of the country where the client was born.

The following instructions apply to the next four questions that deal with entries: Provide the client's information for when she was first admitted into the U.S. "Admission" and "admitted" have specific meanings in immigration law. Section 101(a)(13)(A) of the Immigration and Nationality Act ("INA") defines admission as "the lawful entry of [an] alien into the United States after inspection and authorization by an immigration officer." See INA § 101(a)(13)(A). For example, noncitizens who entered the U.S. with inspection, pursuant to a visa of some kind, have been admitted. On the other hand, a person who entered without inspection mostly likely was not admitted. If the client was never admitted, provide the client's information for when she entered the U.S. for the first time. If the client cannot remember, write "Unknown." If the records the client seeks relate to a specific entry, explain as much in an addendum. Subject to this explanation, respond to the questions as follows:

- ✓ "Port-of-Entry Into the U.S."— write the names of the city and state.
- ✓ "Date of Entry"— write the date when the client entered the U.S., NOT the date when she left her country.
- ✓ "Manner of Entry"— if the client arrived on a boat, write "sea." If the client arrived on an airplane, write "air." If the client arrived in a car, truck, train, or by walking, write "land."

- ✓ "Mode of travel"—write the specific name of the vehicle on which the client came into the U.S. (i.e. name of airline, boat, bus, etc.), even if the client entered without inspection.

3. Section 3. Subject of Record Consent to Release Information.

If the request is to USCIS, and it is being made by someone other than the subject of the record, then the person who is the subject of this record *must* complete and sign this section.

- ✓ "***By my signature, I consent to allow USCIS to release to the requester named in Number 5*** *(check applicable box)*:"—the subject of the record should check the appropriate box. In most cases it will be the box for "All of my records." The client could select the box "A portion of my record." However, this is NOT recommended. There is no harm in viewing the entire file. In contrast, if the client requests a portion of the file, the agency may omit the very information the client is seeking through the FOIA.

Fill in the information in the spaces provided. Where it asks for:

- ✓ "Print Name of Subject of Record"—the client must print her full name.
- ✓ "Signature of the Subject of Record"—the client must sign her name. By signing her name, the client is certifying her agreement that USCIS may release her record to the requester listed in Section 5.

If the FOIA is for a deceased person:

- ✓ Check the box "Deceased Subject." You must provide a **COPY** of her obituary, death certificate, funeral memorial, or other proof of death.

4. Section 4. Verification of Identity.

Every person submitting a FOIA/PA request, whether to USCIS or ICE, must complete the *entire* section for the agency to verify that the client (subject of the request) is who she says she is.

Fill in the information in the spaces provided. Where it asks for:

- ✓ "Name of Subject of Record"—write the client's full first, middle, and last name.
- ✓ "Daytime Telephone"—write the client's telephone number. **Note:** All requests to ICE *must* include a daytime phone number.[7]
- ✓ "E-mail Address"—write the client's email address. If the client does not have an email address, write "N/A" or not applicable.
- ✓ "Address"—write the client's complete address.

[7] For more information, see the ICE FOIA/PA request website, http://www.ice.gov/foia/submitting_request.htm.

Note: Even if you include your office's address as your client's address in other immigration applications, it is important to include the client's actual address here.

- ✓ "Date of Birth"—write the client's date of birth.
- ✓ "Place of Birth"—write the names of the state, and country where the client was born.

Whether the FOIA request is made by a person seeking her own file or another person's file, the person whose records are sought (the person who is the subject of the request) must either (1) sign the sworn declaration or (2) provide her signature before a notary public.

- ✓ The client may choose to sign the sworn statement (declaration). By signing the statement, the client verifies under penalty of perjury under the laws of the United States that the information disclosed in the previous parts of the form is true and correct. If the client chooses this option, she must sign under the appropriate statement. Note that two sworn statements are provided; one that indicates that it was signed when the client was in the United States and a second that indicates that it was signed when the client was outside of the United States. Be sure the client signs the statement that applies to her situation.
- ✓ If the client is providing a signature that is witnessed by a notary public, the client must check the box for "Notarized Affidavit of Identity." The notary must also provide the date on which she witnessed the signing of the document, her telephone number, her signature, and the date on which her commission expires.

5. Section 5. Requestor Information.

Where it asks for "***Signature of requester***:" The client must sign in the provided line if she seeks the file on her own. If you seek the file on behalf of the client, you must sign in the provided line.

Note: If you are the client's representative and sign the form as the requester, you should include form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.[8] The person signing agrees to pay all costs incurred for the search, duplication, and review of the materials up to $25.00, when applicable. The DHS will not charge for the first 2 hours of search time or the first 100 pages copied. Therefore, if the file is small, DHS may not charge the requester at all.

Fill in the information in the spaces provided. Note that if the client is requesting her own records, she does not need to fill out this section. If you seek the FOIA on behalf of the client, you should provide your information.

[8] Form G-28 is available at www.uscis.gov.

Where it asks for:

- ✓ "Name of Requester"— write your full first, middle, and last name.
- ✓ "Daytime Telephone"— write your telephone number.
- ✓ "E-mail Address"—write your email address.
- ✓ "Address"— write your complete address.

III. Instructions for Submitting the FOIA Request.

There are 3 agencies within DHS that may hold immigration records, (1) U.S. Citizenship and Immigration Services (USCIS), (2) U.S. Customs and Border Protection (CBP), or (3) Immigration Customs Enforcement (ICE). Because individual employees of DHS may change job positions, it is not recommended that you address your request to a specific person. Rather, you should include the notation "Freedom of Information Act/ Privacy Act Request" on the front of your request envelope. In this way you will be sure that the responsible individual receives your request without delay.

1. **USCIS:** The request should be submitted by mail or fax to the following:

   National Records Center (NRC)
   FOIA/PA Office
   P.O. Box 648010
   Lee's Summit, MO 64064-8010

   Fax: (816) 350-5785

   For overnight or certified mail, send your request to:

   U.S. Citizenship and Immigration Services
   National Records Center, FOIA/PA Office
   150 Space Center Loop, Suite 300
   Lee's Summit, MO 64064-2139

   Fax: (816) 350-5785

Do *not* submit your FOIA/PA request to your local USCIS office or Service Center. USCIS processes all FOIA/PA requests at the NRC.

If you are requesting records about a person and are able to scan the subject of record's notarized signature or signature made under penalty of perjury, USCIS will accept it as an attachment to an e-mail at uscis.foia@uscis.dhs.gov.

For questions about filing a request, status updates of pending requests, and assistance in obtaining records from USCIS, contact the USCIS National Customer Service Center at: (800) 375-5283 or (800) 767-1833 Hearing Impaired TTY. You may also fax inquiries to

the National Records Center at (816) 350-5785, or e-mail your questions to uscis.foia@uscis.dhs.gov.[9]

2. **CBP:** If you would like to obtain your records from U.S. Customs and Border Protection, you may submit your request online by going to https://foiaonline.regulations.gov/foia/action/public/request/publicPreCreate

3. **ICE:** You may submit your FOIA request to ICE by mail, fax, e-mail, or electronically (online):

   U.S. Immigration and Customs Enforcement
   Freedom of Information Act Office
   500 12th Street, S.W., Stop 5009
   Washington, D.C. 20536-5009

   Fax: (202) 732-4265

   E-mail: ICE-FOIA@dhs.gov

   Electronic submission:
   http://www.ice.gov/exec/forms/foiarequest/request.asp

   Note: ICE requests that an "Affirmation/Declaration" form be submitted as well, indicating the client's name, date of birth, and the name and address of a third party whom the client wants her records disclosed to (only if the client does not want the records sent to her personally). The Affirmation/Declaration form is available on the ICE FOIA website at: http://www.ice.gov/doclib/about/pdf/affirmation-declaration.pdf.[10]

   By signing the form, the client indicates that she understands that knowingly or willfully seeking or obtaining access to records about another person under false pretense is punishable by a fine of up to $5,000, and that she is responsible for applicable fees.

Expediting a FOIA/PA Request

DHS agencies use a multi-track system to process FOIA/PA requests on a first-in, first-out basis. This means that requests can take many months. If you have a compelling

[9] For more information about how to file a FOIA/PA request with USCIS, visit the USCIS FOIA website at http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/how-file-foiapa-request.

[10] Note that the FOIA address provided on the Affirmation/Declaration form is different from the address for ICE FOIAs listed above. ICE has confirmed that either address can be used to submit FOIA requests and accompanying documents.

reason why you need your documents sooner, you can ask the agency to **expedite** your FOIA request. If this is the case, you should write a detailed explanation, along with supporting evidence, of why you need the response urgently. The standard for expediting a request for immigration records is that an individual would otherwise face an imminent threat to her life or physical safety.[11]

In addition to expediting a request, USCIS also offers requestors the option to accelerate a request if the person is in removal proceedings. USCIS uses a three-track system for its FOIA requests. Track one is for simple requests for a few documents; track two is for more complex requests, such as for a complete copy of the file; and track three is an accelerated process for cases in removal proceedings.[12] In order to receive track three processing with USCIS, you will need to write a brief cover letter requesting track three and provide a copy of the Notice to Appear, Order to Show Cause, Notice of Referral to Immigration Proceedings, or Notice of Hearing. USCIS has stated that a person can request an expedited FOIA request or Track 3 processing, but not both simultaneously.

IV. Other Ways to Request Records

Although a FOIA response can provide valuable information about a person's immigration history, it may not be complete or it might not be the most effective way to obtain the information you need. If you are attempting to find out the status of an immigration application, for example, it is quicker to use the USCIS website or hotline. Or, if your client is undocumented, the government might not have any records on file for that person, and the person should additionally file a background check with federal (FBI) and local law enforcement (in California, the CBI). If you are looking for criminal records from a specific court, you could make a records request at that court.

[11] http://www.uscis.gov/sites/default/files/USCIS/About%20Us/FOIA/How%20to%20File%20a%20FOIA%20Privact%20Act%20Request/USCIS%20FOIA%20Request%20Guide.pdf

[12] For more information about the USCIS multi-track system, see the USCIS website, http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/foia-privacy-act-overview/foiaprivacy-act-overview.

OMB No. 1615-0102; Expires 01/31/2015

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form G-639, Freedom of Information/Privacy Act Request

NOTE: Use of this form is optional. Any written format for a Freedom of Information or Privacy Act request is acceptable.

START HERE - Type or print in black ink. Read instructions before completing this form.

1. Type of Request *(Check appropriate box. **NOTE:** If you are filing this request for records on behalf of another individual, please respond to Number 1 as it would apply to that individual.)*

☐ Freedom of Information Act (FOIA): I am not a U.S. citizen/Lawful Permanent Resident and I am requesting my own records.

☐ Freedom of Information Act (FOIA): I am a U.S. citizen/Lawful Permanent Resident and I am requesting documents other than my own records.

☐ Privacy Act (PA): I am a U.S. citizen/Lawful Permanent Resident and I am requesting my own records.

☐ Amendment of Record (PA only): I am a U.S. citizen/Lawful Permanent Resident and I am requesting amendment of my own records.

☐ Other: _____

2. Description of Record(s) Requested:

NOTE: While you are not required to respond to all items in Number 2, failure to provide complete and specific information as requested may result in a delay in processing or an inability to locate the record(s) or information requested.

☐ Complete Alien File (A-File)

☐ Other *(please specify)*: _____

Purpose: ***(Optional:** You are not required to state the purpose of your request. However, doing so may assist USCIS in locating the record(s) needed to respond to your request.)*

Family Name *(Last Name)*	Given Name *(First Name)*	Middle Name

Other Names Used *(if any)*	Name at time of entry into the U.S.	I-94 Admission #

Alien Registration Number *(A#)*	Petition or Claim Receipt #	Country of Birth	Date of Birth *(mm/dd/yyyy)*

Names of other family members that may appear on requested record(s) *(i.e., spouse, daughter, son):*

Family Member's Name: Given Name *(First Name)*	Middle Name	Family Name *(Last Name)*	Relationship

Father's Name: Given Name *(First Name)*	Middle Name	Family Name *(Last Name)*

Mother's Name: Given Name *(First Name)*	Middle Name	Family Name *(Last Name, including Maiden Name)*

Country of Origin *(Place of Departure)*	Port of Entry Into the U.S.	Date of Entry *(mm/dd/yyyy)*

Manner of Entry *(Air, Sea, Land)*	Mode of Travel *(Name of Carrier)*

3. Subject of Record Consent to Release Information *(Must be signed by the subject of record(s) requested.)*

By my signature, I consent to allow USCIS to release to the requester named in Number 5 *(Check applicable box)*:

☐ All of my records ☐ A portion of my records *(If a portion, specify below what part, i.e., copy of application.)*

Print Name of Subject of Record _____

Signature of Subject of Record _____ Date *(mm/dd/yyyy)* _____

☐ **Deceased Subject - Proof of death must be attached** ***(Obituary, Death Certificate, or other proof of death required)***

4. Verification of Identity *(Required; Fill out all that apply.)*

Name of Subject of Record *(First, Middle, Last)*	Daytime Telephone	E-mail Address

Address *(Street Number and Name)*	Apt. Number

City	State	Zip Code

Date of Birth *(mm/dd/yyyy)*	Place of Birth

The Subject of Record must provide a signature under either a Notarized Affidavit of Identity or a Sworn Declaration Under Penalty of Perjury:

☐ Notarized Affidavit of Identity

Signature of Subject of Record _____ Date *(mm/dd/yyyy)* _____

Subscribed and sworn to before me this _____ day of _____ Telephone No. _____

Signature of Notary _____ My Commission Expires on _____

OR

☐ **Sworn Declaration Under Penalty of Perjury**

Executed outside the United States

If executed outside the United States: "I declare (certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

_____
Signature of Subject of Record

Executed in the United States

If executed within the United States, its territories, possessions, or commonwealths: "I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct."

_____
Signature of Subject of Record

5. Requester Information

By my signature, I consent to pay all costs incurred for search, duplication and review of materials up to $25 *(See instructions)*

Signature of Requester: _____

Name of Requester *(Fill out if different from the Subject of Record.)*	Daytime Telephone	E-mail Address

Address *(Street Number and Name)*	Apt. Number

City	State	Zip Code

U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W.
Washington, D.C. 20536

U.S. Citizenship and Immigration Services

HQOPRD 70/8.1/8.2

Interoffice Memorandum

To: Paul E. Novak
Director
Vermont Service Center

From: William R. Yates /S/
Associate Director
Operations

Date: January 19, 2005

Re: Determinations of Good Moral Character in VAWA-Based Self-Petitions

Purpose

On October 28, 2000, the President signed the Victims of Trafficking and Violence Protection Act (VTVPA), Pub. L. 106-386. Title V of the VTVPA is entitled the Battered Immigrant Women Protection Act (BIWPA), and contains several provisions amending the self-petitioning eligibility requirements for battered spouses and children contained in the Immigration and Nationality Act (INA or the Act). Those provisions were established by the Violence Against Women Act of 1994 (VAWA). The purpose of this memorandum is to inform U.S. Citizenship and Immigration Services (USCIS) adjudicators at the Vermont Service Center (VSC) of the change in the law concerning determinations of good moral character made in connection with VAWA-based self-petitions (Forms I-360).

Guidance

Sections 204(a)(1)(A) and (B) of the Act contain the self-petitioning eligibility requirements for battered spouses and children. One of the eligibility requirements is that a self-petitioner must demonstrate that he/she is a person of good moral character. A VAWA-based self-petition will be denied or revoked if the record contains evidence to establish that the self-petitioner lacks good moral character. The inquiry into good moral character focuses on the three years immediately preceding the filing of the self-petition, but the adjudicating officer may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the self-

petitioner may not have been a person of good moral character during that time.[1] A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. [2] Prior to the enactment of the BIWPA, a finding of good moral character could not be made in a battered spouse or child case filed under the VAWA immigration provisions if the self-petitioner committed an act or had a conviction that was included in section 101(f) of the Act. Section 1503(d) of the BIWPA has amended section 204(a)(1) of the Act to make an exception for battered spouses and children in certain circumstances.

Step 1: Determine whether the alien is subject to section 101(f) of the Act.

Section 101(f) of the Act describes the classes of aliens who are statutorily ineligible to be considered persons of good moral character. If the VAWA self-petitioner has committed an act or has a conviction that places him or her into one of the classes contained in section 101(f) of the Act, the adjudicator is barred from making a finding of good moral character unless the self-petitioner demonstrates that the amendments made to section 204(a)(1) of the Act apply to him or her.

Section 204(a)(1)(C) of the Act as amended provides USCIS with the discretion to make a finding of good moral character despite an act or conviction that would be a disqualifying act or conviction under INA§ 101(f) or that would otherwise adversely reflect upon a self-petitioner's moral character. A finding of good moral character may be made if: 1) the act or conviction is waivable for purposes of determining inadmissibility or deportability under INA § 212(a) or § 237(a); and 2) the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty. This change applies to all self-petitioners, including those who file under INA § 204(a)(1)(A)(v) or § 204(a)(1)(B)(iv) as self-petitioners living abroad, despite the fact that these situations are not specifically referenced in INA § 204(a)(1)(C).[3]

Step 2: Determine whether a waiver would be available.

If the adjudicator determines that the self-petitioner has committed an act or has a conviction that renders the self-petitioner inadmissible under section 212(a) of the Act or deportable under section 237(a) of the Act, and that would bar a finding of good moral character, he/she should next determine whether a waiver would be available for the act or conviction. The evidence submitted by the self-petitioner must address whether a waiver would be available for the act or conviction at issue (this includes the waivers created by the BIWPA found at sections 212(h)(1), 212(i)(1),

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[1] Preamble to Interim Regulations, 61 Fed. Reg. 13065, 13066 (Mar. 26, 1996).

[2] 8 CFR § 204.2(c)(1)(vii). See also, 8 CFR § 316.10(a)(2).

[3] This determination is based on the fact that sections 204(a)(1)(A)(v) and 204(a)(1)(B)(iv) of the Act state that the claimant must be "eligible to file a petition" under section 204(a)(1)(A)(iii) or (iv) of the Act or section 204(a)(1)(B)(ii) or (iii) of the Act, respectively, and that section 204(a)(1)(C) does not specifically preclude a waiver under this provision.

237(a)(7), and 237(a)(1)(H) of the Act). It is important to note that the adjudicator does not have to find that a waiver would be granted, only that one would be available for filing at the time the adjustment of status application (or visa application) is filed.

In situations where an adjudicator questions whether a waiver would be available because the act or conviction involves a violent or dangerous crime, he/she should consult 8 CFR 212.7(d). That provision discusses the circumstances in which a waiver of a violent or dangerous crime may be available. If the adjudicator determines that an act or conviction constitutes an aggravated felony as defined in section 101(a)(43) of the Act, he/she should refer the case for issuance of a notice to appear (NTA) in accordance with the guidelines set out in the Service Center NTA SOP.

Attached to this memorandum as Attachment 1, is a chart indicating which bars to establishing good moral character contained in section 101(f) of the Act are for acts or convictions that may be waived and which are not. This chart is intended to serve as a quick point of reference for adjudicators. Also attached, as Attachment 2, is a quick reference guide for authorities affecting false testimony determinations under section 101(f)(6) of the Act. If the adjudicator is not certain whether a particular act or conviction may be waived, the adjudicator and his/her supervisor should seek legal guidance from the VSC Counsel prior to making a final determination.

Step 3: Determine whether the act or conviction is "connected" to the battering or extreme cruelty.

If the adjudicator determines that a waiver would be available for the act or conviction at issue, he/she should next determine whether the act or conviction is "connected" to the battering or extreme cruelty. In order for an act or conviction to be considered sufficiently "connected" to the battering or extreme cruelty, the evidence must establish that the battering or extreme cruelty experienced by the self-petitioner compelled or coerced him/her to commit the act or crime for which he/she was convicted. In other words, the evidence should establish that the self-petitioner would not have committed the act or crime in the absence of the battering or extreme cruelty. To meet this evidentiary standard, the evidence submitted must demonstrate:

- The circumstances surrounding the act or conviction, including the relationship of the abuser to, and his/her role in, the act or conviction committed by the self-petitioner; and

- The requisite causal relationship between the act or conviction and the battering or extreme cruelty.

In order for a connection to be found, the battering or extreme cruelty must have been perpetrated by the self-petitioner's qualifying USC or LPR spouse, intended spouse, former spouse, or parent. However, self-petitioners are not required to establish that the act or conviction that would bar a finding of good moral character occurred during the marriage to the self-petitioner's qualifying USC or LPR spouse. If the self-petitioner establishes that there was battering or extreme

cruelty during the marriage as well as prior to the marriage to the qualifying USC or LPR spouse, the adjudicating officer may find that the self-petitioner has established the required "connection" between the act or conviction, even if it occurred prior to the marriage.

When determining whether a sufficient connection exists between the alien's disqualifying act or conviction and the battering or extreme cruelty suffered by the alien, the adjudicating officer should consider the full history of the domestic violence in the case, including the need to escape an abusive relationship. The adjudicating officer should consider all credible evidence that is in compliance with 8 U.S.C. § 1367 when making this determination. The credibility and probative value of the evidence submitted by the self-petitioner is a determination left to the discretion of the adjudicating officer.

Step 4: Determine whether the self-petitioner warrants a finding of good moral character in the exercise of discretion.

Whether a self-petitioner is a person of good moral character is, in accordance with section 204(a)(1)(C) of the Act, a discretionary determination to be made by the adjudicating officer. For example, even if the evidence submitted by a self-petitioner establishes that (1) a waiver for his or her disqualifying act or conviction is available, and (2) the requisite connection exists between his or her disqualifying act or conviction and the battering or extreme cruelty he or she suffered, the adjudicating officer may nevertheless find that the severity or gravity of the self-petitioner's act or conviction warrants an adverse finding of good moral character in the exercise of discretion.

Further Information

This provision of the BIWPA applies to all self-petitions pending on or filed on or after October 28, 2000. Personnel with questions regarding this memorandum or other VAWA-related issues, please contact Laura Dawkins, Office of Program and Regulations Development by electronic mail.

Attachments

Authorities Affecting False Testimony Determinations
(Attachment 2)

Step #1: Has the self-petitioner ever given "false testimony" for purposes of 101(f)(6):

False written statements that appear in an application, even if the application bears a statement of oath, do not constitute testimony within the meaning of section 101(f)(6). *Matter of L-D-E-*, 8 I&N Dec. 399 (BIA 1959).

False statements uttered orally under oath at a deportation hearing constitute false testimony within the meaning of section 101(f)(6) of the Act. *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1998).

False oral statements made under oath to an asylum officer can constitute "false testimony" under section 101(f)(6). *In re R-S-J*, 22 I&N Dec. 863 (BIA 1999).

Note: The Ninth Circuit, in which *In re R-S-J* arose, has held that oral statements must be made "to a court or tribunal." *Phinpathya v. INS*, 673 F.2d 1013, 1018-19 (9th Cir. 1981, rev'd on other grounds, 464 U.S. 183 (1984). However, in a more recent case, the Ninth Circuit held that false statements made under oath during a naturalization examination constitute false testimony within the meaning of section 101(f)(6). *Bernal v. INS*, 154 F.3d 1020 (9th Cir. 1998). In deciding *In re R-S-J*, the BIA concluded that an asylum officer is a member of a "tribunal" for purposes of the false testimony bar to establishing good moral character under section 101(f)(6), as that provision has been construed in the Ninth Circuit.

Outside the Ninth Circuit, false statements need not be uttered in administrative or judicial proceedings to constitute "false testimony" under section 101(f)(6), but can include statements made under oath to government officials, including Service officers and consular officials. *Matter of Namio*, 14 I&N Dec. 412 (BIA 1973) (false statement under oath to a border patrol agent); *Liwanag v. INS*, 872 F.2d 684 (5th Cir. 1989) ("false testimony" to a Service officer during an investigation).

Step #2: Was the false testimony material for purposes of 212(a)(6)(C)?

A misrepresentation is material ... if it tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536 (BIA 1980); see also *Matter of Bosuego*, 17 I&N Dec. 125, 130 (BIA 1979, 1980) (A misrepresentation made in connection with a visa application is material if the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded).

Waivable Conduct Contained in the Statutory Bars to Establishing Good Moral Character
(Attachment 1)

Provision of INA	Conduct Prohibiting Finding of Good Moral Character	Conduct Waivable?	Waiver provision	Criteria for waiver
INA § 101(f)(1)	Someone who is an habitual drunkard.	No		
INA § 101(f)(3)	Someone who engaged in prostitution within the past ten years. [INA § 212(a)(2)(D) ground of inadmissibility]	Yes	INA § 212(h)(1)(C) provides for a waiver of the § 212(a)(2)(D) ground of inadmissibility.	Alien qualifies as battered spouse or child under clause (iii), (iv), or (v) of INA § 204(a)(1)(A) or (ii), (iii), or (iv) of 204(a)(1)(B) AND Sec. of DHS must consent to the waiver (i.e. exercise favorable discretion).
INA § 101(f)(3)	Someone who has ever knowingly encouraged, induced, assisted, abetted, or abided another alien to enter or to try to enter the U.S. in violation of law. [INA § 212 (a)(6)(E) ground of inadmissibility]	Yes	INA § 212(d)(11) provides for a waiver of the § 212(a)(6)(E) ground of inadmissibility.	Aliens seeking adjustment of status as an immediate relative or immigrant under INA § 203(a) may qualify for a waiver only if the alien encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.
INA § 101(f)(3)	Aliens previously removed from the United States [INA § 212(a)(9)(A) ground of inadmissibility]	No		
INA § 101(f)(3)	Someone who committed or was convicted of either a crime involving moral turpitude or a crime relating to a controlled	Yes for CIMT Waiver for drug offense only available for single	INA § 212(h)(1)(C) provides for a waiver of the212(a)(2)(A)(i)(I) and (i)(II) grounds of	Alien qualifies as battered spouse or child under clause (iii), (iv), or (v) of INA § 204(a)(1)(A) or (ii), (iii), or

	substance that doesn't fall within one of the exceptions set forth at INA § 212(a)(2)(A)(ii). [INA § 212(a)(2)(A) ground of inadmissibility]	offense of simple possession of 30 grams or less of marijuana.	inadmissibility.	(iv) of 204(a)(1)(B) AND Sec. of DHS must consent to the waiver (i.e. exercise favorable discretion).
INA § 101(f)(3)	Someone who was convicted of two or more offenses (other than purely political offenses), regardless of whether they arose from out of a single scheme or the conviction was in a single trial, for which the aggregate sentences to confinement were 5 years or more. [INA § 212(a)(2)(B) ground of inadmissibility]	Yes	INA § 212(h)(1)(C) provides for a waiver of the 212(a)(2)(B) ground of inadmissibility.	Alien qualifies as battered spouse or child under clause (iii), (iv), or (v) of INA § 204(a)(1)(A) or (ii), (iii), or (iv) of 204(a)(1)(B) AND Sec. of DHS must consent to the waiver (i.e. exercise favorable discretion).
INA § 101(f)(3)	Someone who DHS knows or has reason to believe is, or has been an illicit trafficker in any controlled substance. [INA § 212(a)(2)(C) ground of inadmissibility]	No		
INA § 101(f)(4)	Someone whose present income is derived principally from illegal gambling activities.	No		
INA § 101(f)(5)	Someone who has been convicted of two or more gambling offenses during the period for which good moral character must be established.	No		
INA § 101(f)(6)	Someone who has given false testimony that was material for the purpose of obtaining any benefits under the INA. [INA § 212 (a)(6)(C)(i) ground of inadmissibility]	**NOTE:** Though there is no specific waiver for false testimony, an alien who gives false testimony may come within the ambit of INA § 212(a)(6)(C)(i)	INA §§ 212(i)(1) and 237 (a)(1)(H)(ii) provide for a waiver of the § 212 (a)(6)(C)(i) ground of inadmissibility.	Alien must qualify as battered spouse or child under clause (iii), (iv), or (v) of INA § 204(a)(1)(A) or (ii), (iii), or (iv) of 204(a)(1)(B) and show that refusal of admission would result in extreme

		which bars aliens who procure (or seek to procure) by fraud or willful misrepresentation, a visa, admission, other documentation or benefit under the INA. False testimony that is NOT material does not render an alien inadmissible under INA § 212(a)(6)(C)(i). However, such non-material false testimony DOES statutorily bar USCIS from making a finding of good moral character – i.e., such an "act or conviction" is not "waivable" for purposes of INA § 204(a)(1)(C). Therefore, adjudicators will need to determine two things: 1) whether the self-petitioner has ever given "false testimony"; and 2) if so, whether such testimony was "material." Attached to this chart is guidance to assist in making these determinations.		hardship to the alien or the alien's USC, LPR or qualified alien parent or child [INA § 212(i)(1)] Alien must qualify as battered spouse or child under clause (iii), (iv), or (v) of INA § 204(a)(1)(A) or (ii), (iii), or (iv) of 204(a)(1)(B). This waiver of removal also operates to waive deportation based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation. [INA §237(a)(1)(H)(ii)]
INA § 101(f)(7)	Someone who, during the period for which good moral character must be established, has been confined, as a result of	No		

	conviction, to a penal institution for an aggregate period of 180 days or more, regardless of whether the offense, or offenses, for which she has been confined were committed within or without such period.			
INA § 101(f)(8)	Someone who at any time has been convicted of an aggravated felony, where the conviction was entered on or after 11/29/90 (date of enactment of IMMACT 90).	No		

False statement or claim to U.S. citizenship or registering to vote or voting in Federal, State or local election in violation of lawful restrictions

A person who falsely claims U.S. citizenship in order to vote, who registers to vote or who votes in violation of lawful restrictions is **not** barred from a good moral character finding if:

1) each natural parent is or was a USC;
2) the person permanently resided in the U.S. prior to attaining age 16; and
3) the person reasonably believed at the time of the statement, claim, or violation that he/she was a USC.

This exception was created by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, and is retroactively applied as if included in IIRIRA on September 30, 1996. Please refer to a memorandum entitled, "Procedures for Handling Naturalization Applications of Aliens Who Voted Unlawfully or Falsely Represented Themselves as U.S. Citizens by Voting or Registering to Vote," and dated May 7, 2002, for a detailed explanation of the exception described above.

Vicarious Trauma

Vicarious Traumatization (VT), a related concept developed to describe the reactions of therapists and advocates working short-term or long-term with victims of domestic violence Advocate and therapists working with these individuals come to doubt deeply held beliefs about safety, the inherent kindness of others, and intimacy. Vicarious trauma is an aspect of work that is overlooked by many agencies because it can look differently in each staff person that may have signs of vicarious trauma or burnout. Agencies that have high turnover rates may need to evaluate the caseloads and needs of staff needing extra support in supervision and in benefits.

Book: Trauma Stewardship by Laura van Dernoot Lipsky
The author wrote about her experiences in working with domestic violence and sexual assault survivors. She developed a framework on the cycle that vicarious trauma can have on advocates and service providers. This book would be helpful and informative to read by lawyers and advocates because it offers real life scenarios on what vicarious trauma looks like through behaviors and in organizational cultures.

Trauma Informed Care

Ohio Domestic Violence Network
This is a comprehensive resource guide that offers information on the definition of domestic violence and techniques on trauma informed care of survivors of domestic and sexual violence. This manual would be a good resource for newly trained advocates because it has different chapters about recognizing trauma, cultural experience of trauma, which is especially important when serving immigrant survivors. On pages 36-27, there is insightful information to remind advocates they should not assume a client's background that there is more to cultural competency such as their political factors and upbringing that can make client's response to trauma diverse services.

http://www.odvn.org/images/stories/FinalTICManual.pdf

The Trauma Center:
http://www.traumacenter.org/
The mission of the Trauma Center is to help individuals, families and communities that have been impacted by trauma and adversity to re-establish a sense of safety and predictability in the world, and to provide them with state-of-the-art therapeutic care as they reclaim, rebuild, and renew their lives. There are several articles available on the website for free that can provide best practices on topics of childhood abuse and trauma informed care. Can you list the ones you find most advantageous, describe them, and link to them? This agency is located in Brookline, Massachusetts.

This Trauma-Informed Organizational Toolkit provides basic information on trauma informed care for agencies providing direct services to homeless families. The tool kit is offers an assessment template for agencies providing direct services to use to assess their own programs and overall function**.** This toolkit would be helpful for agencies that face challenges in providing

services to homeless families, again make the connection to why this is important for advocates working with immigrants to be familiar with. This also would be helpful for agencies that provide residential services to review and to begin thinking of ways to improve services for clients. Furthermore, this toolkit offers information on the various steps of the assessment and information on implementing policies that are created through the assessment process. http://www.familyhomelessness.org/media/90.pdf

Shelter from the Storm: Trauma Informed Care in Homelessness Services Settings
Article by Elizabeth K. Hooper, Ellen Bassuk and Jeffrey Olivet

This would be a helpful article for domestic violence agencies that provide housing to read and understand the basics of providing client centered care. The pages 83-83 has the principles of trauma informed care and this is helpful to understand the different layers of what TIC means. Furthermore, on page 89, there are different models of trauma informed care and this would be helpful to get more of an understanding of what material is out there. These different models of trauma informed care can be used as groundwork for agencies working with immigrant domestic violence survivors and it offers an array of resources that are reviewed by agencies.

http://homeless.samhsa.gov/ResourceFiles/cenfdthy.pdf

Culturally Specific Resources

Arte Sana
Arte Sana is based in Austin, Texas and promotes healing and empowerment through the arts, professional training, and community education. They offer best practices from their own direct experience has confirmed that Latinas/os are less likely to report sexual assault due to the obstacles in obtaining victim services such as language barriers, cultural factors, and a fear of deportation. Arte Sana believes that violence risk reduction program and service effectiveness depends on cultural and linguistic competency as well as ongoing collaborations *sin fronteras* (without borders).

The article on *Accessing Services for Spanish Speakers* by Abigail Fitzgerald is helpful for advocates and agencies to read because it outlines the importance of language access and the challenges with having limited Spanish speaking staff. The article outlines common issues around bilingual staff having more responsibilities in shelter settings. Furthermore, this article though dated in 2003, still offers basic information for advocates to read about the challenges Spanish speakers have in accessing domestic violence services.

Another article that still can be helpful in work with domestic violence *is Internalized Oppression and Latinos* by Laura M. Padilla. This article is helpful because often advocates and other service providers do not think about racism and oppression. In working with immigrants, it is important for advocates to recognize their own privilege and how that impacts the working relationship. This article outlines how Latinos internalize racism and how the views that were imposed about them regarding various topics such as immigration and skin color impact their

views on each other. Latina domestic violence immigrant survivors may internalize not only the abuse they have experienced but the political environment around them and this can impact their healing process and accessing services.

http://www.arte-sana.com/info.htm

ALIANZA

National Latino Alliance for the Elimination of Domestic Violence (Alianza) is in located in New Mexico addresses the particular needs and concerns of communities of color experiencing family violence. Alianza specifically addresses the needs of Latino/a families and communities, although its work helps to inform the domestic violence field in general. Alianza's work has been in four main areas: community education, policy advocacy, research, and training and technical assistance.

The manual that is in Spanish, *Defensa y Promocion de la Mujer Latina* is a manual that gives steps to Spanish speaking advocates an introduction to creating a trusting environment and running support groups. Chapter one begins the flow of the manual in providing basic points about how to beginning a support group and factors that needs to be taken in consideration. On page 10 until the end of the chapter, it provides myths that can be used as an icebreaker in support groups. The first chapter also has the power and control wheels in Spanish that can also be used for support groups as an educational took.

There are some chapters that may be outdated information. Chapter two offers an overview of the Violence Against Women Act. This chapter may not be helpful now due to changes in the law. In pages 25 and 26 there are a list of organizations that offer legal assistance and education.

Another helpful section is Chapter five because it discusses divorce. In the Latino community, it is common as described in the chapter that women sometimes do not want to separate from their abusive husband because for religious reasons and for the children.

Chapter six and seven are other sections that also are outdated are outdated because it is around public benefits and public housing. Though, there is still information that can be helpful in approaching the topic with Latina immigrant women.

Chapter eight offers information on the Title V1 Civil Rights law and is helpful for advocates to read because often times Latina immigrants are not aware of language access.

Overall this manual would be helpful for advocates to understand the lingo in Spanish for common terms that can be helpful to be used when explaining common issues with clients. Though advocates should always check laws and other new information on certain issues on public benefits and other topics that tend to change over time.

http://www.dvalianza.org/financial-independence/training-presentation-files.html

The Domestic Abuse Intervention Project

Another common agency that many domestic violence advocates have found helpful is the Duluth Model for interventions. The agency offers trainings in Duluth, Minnesota where it is based. The website below is where the commonly used power and control wheels can be found. There are various power and control wheels for different communities. The wheel on culture can be helpful in outlining the wheel for immigrants that face that are specific to them.

These different wheels of power and control can be used for individual sessions and in group sessions. An activity that is helpful is having group participants create their own power and control wheels to help them connect and identify their own experiences with others. Drawing a wheel or providing a blank wheel template can also be helpful for low literacy clients use art as a way to express themselves. Generally, clients who have been abused often times have difficulty time expressing their feelings. The power and control can be helpful to educate and begin to help clients discuss their abusive experiences and start further conversations.

http://www.theduluthmodel.org/training/wheels.html

Casa de Esperanza

Casa Esperanza is based in Minneapolis, Minnesota and offers an array of services. Casa de Esperanza is a Latina organization and lists its core values such as Latina Leadership, entrepreneurship, organizational excellence, living free of violence and community-driven solutions. Casa de Esperanza offers trainings around the country and the link below highlights the presentations and handouts from the 2014 National Latin@ Institute: Vida Plena Para TOD@S. There are several power points available under each presentation and all can be helpful.

TransVisible: The realities of TransLatina immigrant women in the U.S.
Presented by: Bamby Salcedo & Arianna Inurritegui-Lint, TransLatin@ Coalition
This presentation on transgender immigrant Latinas is helpful in understanding that community and the challenges they face in accessing services. This presentation would be particularly helpful for new advocates that do not have experience working with the Transgender Latina population.

Inmigrantes y Sobrevivientes: Intervenciones Exitosas y Culturalmente Apropiadas. (Latin@s, Immigrants and Survivors: Successful and Culturally Appropriate Interventions
Presented by: Ivonne Ortiz, NRCDV; Griselda Landeros and Leonardo Martinez, Caminar Latino

This is a two part presentation in Spanish and offers background information on best practices working with Latina immigrant victims. These two presentations build on information around the commonalities amongst Latina immigrant survivors and the best techniques to engage them in

the healing and advocacy process. This presentation would be helpful to review the importance around creating a safe space for Latina immigrant survivors of domestic violence.

Innovative strategies for engaging survivors and allies to prevent and respond to family violence in the Latin@ Community. *Enlace Comunitario; Casa de Esperanza; W.O.M.A.N., Inc.*
Presented by: Ivette Izea-Martinez & Lumarie Orozco

This is a three part presentation on mobilizing the Latino community to be more aware about domestic violence. Each PowerPoint presentation offers strategies on techniques that have been helpful in discussing domestic violence in the community with examples of outreach material. This presentation would be helpful for agencies that are interested in engaging and educating their local communities about domestic violence.

http://nationallatinonetwork.org/training-and-events/2014-latin-institute/2014-present-materials