EOIR Policy Manual

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DEPARTMENT OF JUSTICE
QUI PRO DOMINA JUSTITIA SEQUITUR
Executive Office for Immigration Review

Part I - Introduction

Chapter 1 - The Executive Office for Immigration Review

1.1 - Scope of the EOIR Policy Manual

(a) Authority

The mission of the Executive Office for Immigration Review (EOIR) is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. EOIR accomplishes this mission by conducting immigration court proceedings under the Office of the Chief Immigration Judge (OCIJ), appellate reviews by the Board of Immigration Appeals (BIA or the Board), and administrative hearings under the Office of the Chief Administrative Hearing Officer (OCAHO).

The EOIR Director and the heads of EOIR's three adjudicatory components possess authority, inter alia, to issue operating instructions and policy guidance. See, e.g., 8 C.F.R. §§ 1003.0, 1003.1(a)(2)(i), 1003.9(b); 28 C.F.R. § 68.2. EOIR has issued public Operating Policies and Procedures Memoranda (OPPM)—under the heading of Policy Memoranda (PM)—since its creation in 1983. It first issued a BIA Practice Manual (BIAPM) in 1999 and first issued an Immigration Court Practice Manual (ICPM) in 2008.

The Policy Manual is designed to consolidate EOIR's existing policy and practice guidance available in multiple places on its website into one document.

Accordingly, any operational policies related to case adjudications previously issued by OCIJ, the BIA (other than case holds issued pursuant to regulations), or OCAHO that are not contained within the Policy Manual are no longer in effect.

(b) Purpose

EOIR provides this manual for the information and convenience of the general public and for parties that appear before the immigration courts, the BIA, and OCAHO. The manual describes procedures, requirements, and recommendations for practice before those three adjudicatory bodies.

(c) Disclaimer

Nothing in this manual shall limit the discretion or authority of EOIR's adjudicators to act in accordance with the law, including applicable statutes, regulations, and precedents. This manual does not constitute legal advice, and no parties or members of the public should construe any provision as legal advice.

Nothing in this manual is intended to supersede, alter, or amend any official policy of the Department of Justice (DOJ), including policies contained in the Justice Manual. To the extent that any policy in this manual conflicts with an official DOJ policy, the DOJ policy shall control. All EOIR employees remain subject to all official DOJ policies, including applicable policies contained in the Justice Manual.

(d) Revisions

EOIR's Office of Policy reserves the right to amend, suspend, or revoke the text, or portions of the text, of this manual at any time.

The most current version of the Policy Manual is available at the EOIR website. Questions regarding online access to the Policy Manual should be addressed to the Law Library and Immigration Research Center. See Appendix A (EOIR Directory).

The Policy 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 Policy Manual, which is posted online at the Executive Office for Immigration Review website at www.justice.gov/eoir.

For information on how to provide comments regarding this manual, see Part II, Chapter 13 (Public Input) and Part III, Chapter 14 (Public Input).

(e) Reproductions

The Policy Manual is a public document and may be reproduced without advance authorization from the Executive Office for Immigration Review.

1.2 - EOIR Components

(a) EOIR Composition

EOIR is an office of the DOJ operating under the authority and supervision of the Attorney General. EOIR is headed by a Director who is responsible for the supervision of the Deputy Director, the Chief Appellate Immigration Judge of the BIA (CAIJ), the Chief Immigration Judge (CIJ), the Chief Administrative Hearing Officer (CAHO), and all agency personnel in the execution of their duties in accordance with 8 CFR Part 1003. The CIJ supervises OCIJ, the CAIJ supervises the BIA, and the CAHO supervises OCAHO. EOIR's other components include the Office of Administration, the Office of the General Counsel, the Office of Information Technology, and the Office of Policy. See Appendix B (Organizational Chart).

(b) The Office of the Chief Immigration Judge (OCIJ)

OCIJ 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. Under the immigration laws, Immigration Judges are tasked with resolving cases in a manner that is timely, impartial, and consistent with the federal statutes and regulations and precedent decisions of the Attorney General, the BIA and federal courts. See 8 C.F.R. § 1003.10(b). Additional information regarding OCIJ is available at Part II: OCIJ Practice Manual, and on the OCIJ website.

(c) The Board of Immigration Appeals (BIA)

The BIA is the highest administrative body for interpreting and applying immigration laws. It is responsible for applying the immigration and nationality laws uniformly throughout the United States. Accordingly, the BIA has nationwide jurisdiction to review the orders of Immigration Judges and certain decisions made by the Department of Homeland Security (DHS), and to provide guidance to the Immigration Judges, DHS, and others, through published decisions. The BIA is tasked with resolving the questions before it in a manner that is timely, impartial, and consistent with federal statutes, regulations, and precedent decisions. In addition, the BIA is responsible for providing clear and uniform guidance regarding the proper interpretation and administration of the Immigration and Nationality Act (INA) and its implementing regulations. 8 C.F.R. § 1003.1(d)(1).

In addition to the BIA's appellate authority over issues related to immigration laws, it also has review authority of other issues: (1) disciplinary decisions related to recognized organizations and representatives appearing before the immigration courts, DHS, and the BIA; (2) certain visa petitions before DHS; and (3) DHS-imposed carrier fines. Additional information regarding the BIA is available at Part III: BIA Practice Manual, and on the BIA website.

Though its official title by regulation is the Board of Immigration Appeals, the BIA is frequently referred to as the Court of Immigration Appeals in line with the senior leaders' titles contained in 8 C.F.R. § 1003.1(a).

(d) The Office of the Chief Administrative Hearing Officer

OCAHO is responsible for adjudicating cases involving illegal hiring and employment eligibility verification violations ("employer sanctions"), anti-discrimination provisions, and document fraud under the INA. See INA §§ 274A, 274B, and 274C, 28 C.F.R. part 68. OCAHO's administrative law judges (ALJ) are supervised by the CAHO, who reviews the ALJs' employer sanctions and related document fraud decisions. All ALJ decisions may be reviewed by the various circuit courts of appeal. Additional information regarding OCAHO is available at Part IV: The Office of the Chief Administrative Hearing Officer and on the OCAHO website. See also Appendix B (Organizational Chart).

(e) The Office of Administration

The Office of Administration provides administrative and managerial support in several areas concerning financial management or special emphasis and compliance programs. Specifically, the Office of Administration supports the following areas: appropriations, budget and financial management, contracts and procurement, human resources, security, space and facilities management, and logistics.

(f) The Office of the General Counsel

The Office of the General Counsel (OGC) provides legal advice to all of EOIR on certain matters, including ethics, records management, release of information pursuant to the Freedom of Information Act, employee performance and discipline (except in matters related to the discipline of adjudicators for decisions made in the adjudication of cases under the Act), practitioner discipline, and other related areas not inconsistent with the law. OGC is also responsible for receiving complaints about attorneys and accredited representatives and initiates disciplinary proceedings when appropriate. See Part I, Chapter 6 (Attorney Discipline).

OGC is also responsible for administering EOIR's Fraud and Abuse Prevention Program, which operates to protect the integrity of immigration proceedings by working to reduce immigration fraud and abuse.

Individuals wishing to report immigration fraud or abuse, or other irregular activity, should contact the EOIR Fraud and Abuse Prevention Program. For contact information, see Appendix A (EOIR Directory). Where appropriate, the EOIR Fraud and Abuse Prevention Program refers cases to other authorities for further investigation. See Part I, Chapter 5.

(g) The Office of Information Technology

The Office of Information Technology (OIT) oversees EOIR's information technology (IT) infrastructure, working to supply the IT solutions and services required to meet the agency's technology needs. OIT is comprised of four directorates tailored to efficiently and effectively execute IT strategy, hardware and software optimization, and customized application development using defined processes:

(1) Chief Architect

(2) Operations Services

(3) Governance, Planning, and Support

(4) Software Development

(h) The Office of Policy

The Office of Policy is responsible for all agency policy and regulatory review and development; internal and external communications; legal education, research, and certifications; and training and legal access programs. The Office strives to maintain open communication among components through the efforts of the staff of the following divisions: Communications and Legislative Affairs Division (CLAD); Immigration Law Division (ILD); Legal Education and Research Services (LERS); and the Office of Legal Access Programs (OLAP).

CLAD maintains a Law Library and Immigration Research Center (LLIRC). The library is open to the public. See Part II, Chapter 1.6(b) (Library and Online Resources). The library also maintains a Virtual Law Library (VLL) that is accessible on EOIR's website. See Part II, Chapter 1.6(b) (Library and Online Resources). The VLL serves as a comprehensive repository of immigration-related law and information for use by attorneys and the public and is where the published BIA, DHS, and OCAHO decisions are made available to the public. The site serves as a complement to the LLIRC located within the EOIR headquarters complex.

(i) The Office of the Director

The Office of the Director also supervises three offices and programs whose functions cut across each of EOIR's components: the Office of Equal Employment Opportunity (EEO); the Office of the Ombuds; and, the Planning, Analysis, and Statistics Division (PASD).

EEO runs EOIR's EEO complaints process. Through the complaint process, EOIR employees, applicants for federal employment with EOIR, or individuals benefitting from an EOIR-administered employment program may institute a complaint if the employee or applicant believes that the employee or applicant has been discriminated against, including harassment, on the basis of one or more of the following factors: race, color,

religion, sex, age, national origin, disability (physical or mental), genetic information, sexual orientation, gender identity, reprisal, and parental status.

The Office of the Ombuds provides the EOIR workforce with a confidential, neutral, independent, and informal option to address workplace issues. The Ombuds serves to assist EOIR employees and managers at all levels of the organization to informally address individual and organizational matters. The Ombuds is a complementary resource to current EOIR resources and works to recognize, prevent, or resolve workplace disputes.

PASD develops statistical reports, analyses, and evaluations to inform EOIR strategic management efforts and support the communication of pertinent agency information to both internal and external EOIR stakeholders. PASD delivers reports and responds to ad hoc requests for data and other EOIR information. More information on EOIR's statistics and publications is available on the EOIR website.

(j) EOIR's Relationship to Other Government Offices

(1) Relationship to the Department of Homeland Security - DHS was established in March 2003 and assumed most of the functions of the now defunct Immigration and Naturalization Service (INS). DHS enforces immigration laws and administers immigration and naturalization benefits. Three components within DHS, U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE) are authorized to initiate proceedings in EOIR's immigration courts. At attorney from ICE represents DHS in those proceedings. ICE is authorized to initiate cases before OCAHO pursuant to INA §§ 274A and 274C, and an ICE attorney represents DHS in those proceedings.

(2) Relationship to the former Immigration and Naturalization Service - Prior to the creation of DHS, INS was a component of the DOJ that enforced the immigration laws and administered immigration benefits. The INS no longer exists, and DHS now performs the enforcement and benefits-granting roles of the former INS.

(3) Relationship to the Administrative Appeals Office - The Administrative Appeals Office (AAO) is a component of USCIS within 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 DOJ and should not be confused with EOIR, OCIJ, OCAHO, or the BIA. See Appendix B (Organizational Chart).

(4) Relationship to the DOJ Civil Rights Division, Immigrant and Employee Rights Section - The Immigrant and Employee Rights Section (IER) of the DOJ's Civil Rights Division enforces the provisions of INA § 274B and is authorized to initiate proceedings before OCAHO alleging violations of that section. Attorneys from IER represent the DOJ in those proceedings. Individuals who believe they have been a victim of discrimination in

violation of INA § 274B should first file a charge with IER. If IER does not act on the charge within a specified period of time, then the individual may file a complaint with OCAHO. In such cases the individual is responsible for his or her own legal representation.

(5) Relationship to Other Components of the Department of Justice - The Civil Division of a U.S. Attorney's Office or, within the DOJ's Civil Division, the Office of Immigration Litigation (OIL), the Federal Programs Branch, or the Appellate Staff generally represent the U.S. Government, including EOIR, in immigration-related civil litigation in federal court.

(6) Relationship to the Department of Health and Human Services - The Department of Health and Human Services (HHS) is responsible for the "care and custody" of unaccompanied alien children (UAC), including UAC in immigration proceedings. 8 U.S.C. § 1232(b)(1).

1.3 - Composition of the Components

(a) The Office of the Chief Immigration Judge

(1) In General - As discussed in Part II, Chapter 1.2(a) (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 EOIR. OCIJ is composed of:

(A) Chief Immigration Judge - The Chief Immigration Judge (CIJ) oversees the administration of the immigration courts nationwide.

(B) Principal Deputy Chief Immigration Judge - The Principal Deputy Chief Immigration Judge (PDCIJ) assists the chief immigration judge in overseeing the administration of the immigration courts throughout the country and supervises the deputy chief immigration judges.

(C) Regional Deputy Chief Immigration Judges - The Regional Deputy Chief Immigration Judges (RDCIJs) assist the PDCIJ in carrying out the responsibilities of that office and are responsible for daily supervision of the Assistant Chief Immigration Judges (ACIJs) within the RDCIJs' assigned geographical region.

(D) Assistant Chief Immigration Judges - The ACIJs oversee the operations of specific immigration courts. A listing of the immigration courts overseen by each ACIJ and assigned areas of responsibility is available on the EOIR website.

(E) Legal Staff: Chief Counsel and Attorney Advisors/Judicial Law Clerks - OCIJ has a sizable legal staff, which includes a chief counsel, attorney advisors at the OCIJ headquarters, and permanent and term attorney advisors and judicial law clerks (JLC) at the immigration courts nationwide. The legal staff supports the CIJ, PDCIJ, RDCIJs, ACIJs, and IJs.

(F) Language Services Unit - The Language Services Unit (LSU) oversees staff interpreters and contract interpreters at the immigration courts. The LSU conducts quality assurance programs for all interpreters.

(2) Immigration Courts - EOIR employs Immigration Judges and professional staff in the immigration courts nationwide. As a general matter, Immigration Judges determine removability and adjudicate applications for relief or protection from removal. For the specific duties of Immigration Judges, see Part I, Chapter 1.4 (Jurisdiction, Authority, and Priorities). Immigration Judge decisions are final unless timely appealed or certified to the BIA. See Part II, Chapter 6 (Appeals of Immigration Judge Decisions).

Each immigration court has a court administrator. Under the supervision of an ACIJ, the court administrator manages the daily activities of the immigration court and supervises

staff interpreters, legal assistants, and clerical and technical employees. A complete listing of the immigration courts, including the Immigration Judges assigned to each court, is available on the EOIR website.

(b) The Board of Immigration Appeals

(1) In General - The BIA is authorized by regulation to have 28 members, including a CAIJ and two Deputy Chief Appellate Immigration Judges (DCAIJs). Under the direction of the CAIJ, the BIA uses a case management system to screen all cases and manage its caseload. Using that system, the BIA adjudicates cases in one of three ways:

(A) Single Member - The majority of cases at the BIA are adjudicated by a single member. In general, a single member decides the case unless the case falls into one of six categories that require a decision by a panel of three members.

(B) Panel - Panels render decisions by majority vote. The BIA assigns cases to specific panels pursuant to the Chairman's administrative plan. The Chairman may change the composition of the sitting panels and may reassign members from time to time. Panels consisting of three members adjudicate cases not suitable for consideration by a single member. These categories are marked by the need to:

(i) settle inconsistencies among the rulings of different Immigration Judges;

(ii) establish a precedent construing the meaning of laws, regulations, or procedures;

(iii) review a decision by an Immigration Judge or DHS that is not in conformity with the law or with applicable precedents;

(iv) resolve a case or controversy of major national import;

(v) review a clearly-erroneous factual determination by an Immigration Judge; or

(vi) reverse the decision of an Immigration Judge or DHS in a final order, other than nondiscretionary dispositions.

(C) En Banc - The BIA may, by majority vote or by direction of the chairman, assign a case or group of cases for full en banc consideration. The determination of the BIA en banc represents the determination of the BIA and cannot be contradicted or overturned by a three-member panel. The BIA en banc may issue published or unpublished decisions. By regulation, en banc proceedings are not favored.

(2) Appellate Immigration Judges - Appellate Immigration Judges (AIJs)—also known as Board Members—including the CAIJ and the DCAIJs, adjudicate cases coming before the

BIA. AIJs may also occasionally serve as IJs presiding over immigration court hearings, and they are recused from considering any case on appeal for which they presided as an IJ. The CAIJ directs, supervises, and establishes internal operating procedures and policies for the BIA.

Parties appearing before the BIA may not request specific members or a specific panel to adjudicate their case. The BIA also does not respond to inquiries regarding the identity of the panel or members assigned to a pending case.

(3) Legal Staff - The BIA employs a legal staff assigned to support designated panels, members, and functions.

(4) Clerk's Office - The Office of the Clerk is responsible for managing appellate records and information for the BIA. The Chief Clerk of the BIA heads the clerk's office. Cases in which an alien is not detained are processed by two regional teams (East and West), depending on the location of the immigration court. The priority case management team processes cases involving detained aliens. The motions team processes both detained and non-detained motions for the BIA. The docket team processes adjudicated cases and serves decisions on parties. Various other teams provide management and administrative support to all operations.

(c) The Office of the Chief Administrative Hearing Officer

The OCAHO is headed by a CAHO who is responsible for the general supervision and management of the component and the Chief Administrative Law Judge (CALJ). In turn the CALJ supervises a corps of ALJs and support staff. ALJs, including the CALJ, preside at hearings mandated by provisions of the Immigration Reform and Control Act of 1986 (IRCA) and the Immigration Act of 1990.

ALJs hear cases and adjudicate issues arising under the provisions of the INA relating to: (1) knowingly hiring, recruiting, or referring for a fee unauthorized aliens, or the continued employment of unauthorized aliens, failure to comply with employment eligibility verification requirements, and requiring indemnity bonds from employees in violation of section 274A of the INA (employer sanctions); (2) immigration-related unfair employment practices in violation of section 274B of the INA; and (3) immigration-related document fraud in violation of 274C of the INA.

Hearings are conducted under applicable laws and regulations, as well as the general requirements of the Administrative Procedure Act. Employer sanctions and document fraud cases are subject to administrative review by the CAHO and/or the Attorney General. All final agency decisions are subject to review in the federal circuit courts of appeal.

ALJs may also occasionally serve as IJs presiding over immigration court hearings.

(1) Legal and Administrative Staff - In addition to the CAHO, OCAHO staff includes ALJs, a counsel, a judicial law clerk, a paralegal specialist, and a staff assistant. OCAHO also has case management staff, comprised of a supervisory management analyst and court clerk, who process and administer OCAHO's filings, records, and case management system.

1.4 - Jurisdiction, Authority, and Priorities

(a) The Office of the Chief Immigration Judge

(1) Jurisdiction - Immigration Judges generally have the jurisdiction, or authority, to determine removability, excludability, or deportability and to adjudicate certain applications for relief or protection from removal under the INA.

(2) No Jurisdiction - Although Immigration Judges exercise broad authority over matters brought before the immigration courts, Immigration Judges do not have authority over:

(A) Visa petitions;

(B) Employment authorization;

(C) Certain waivers;

(D) Naturalization applications;

(E) Revocation of naturalization;

(F) Parole into the United States under INA § 212(d)(5);

(G) Applications for advance parole;

(H) Employer sanctions;

(I) Immigration-related employment discrimination and related document fraud;

(J) Administrative fines and penalties under 8 CFR parts 280 and 1280; and

(K) DHS determinations involving safe third country agreements.

(3) Immigration Judge Decisions - Immigration Judges render oral or written decisions at the end of immigration court proceedings. See Part II, Chapter 5.11 (Decisions). An Immigration Judge's decision is final unless a party timely appeals the decision to the BIA or an Immigration Judge certifies the case to the BIA. Parties should note that the certification of a case is separate from any appeal in the case. See Part III, Chapter 4 (Appeals of Immigration Judge Decisions).

(b) The Board of Immigration Appeals

(1) Jurisdiction - The BIA generally has the authority to review appeals from the following:

(A) Decisions of Immigration Judges in removal, deportation, and exclusion proceedings (with some limitations on decisions involving voluntary departure);

(B) Decisions of Immigration Judges pertaining to asylum, withholding of deportation, withholding of removal, Temporary Protected Status, the Convention Against Torture, and other forms of relief;

(C) Decisions of Immigration Judges on motions to reopen where the proceedings were conducted in absentia;

(D) Decisions of Immigration Judges in rescission of adjustment of status cases;

(E) Some decisions pertaining to bond, parole, or detention;

(F) Decisions of DHS on family-based immigrant petitions, the revocation of family-based immigrant petitions, and the revalidation of family-based immigrant petitions (except orphan petitions);

(G) Decisions of DHS regarding waivers of inadmissibility for nonimmigrants under INA § 212(d)(3)(A)(ii);

(H) Some decisions of DHS involving administrative fines and penalties; and

(I) Discipline imposed on attorneys, recognized organizations, and accredited representatives for professional misconduct, as discussed in Part 1, Chapter 6 (Attorney Discipline); See, e.g., 8 C.F.R. § 1003.1(b).

(2) No Jurisdiction - Although the BIA exercises broad discretion over immigration matters brought before the immigration courts and DHS, the BIA does not have the authority to review:

(A) The length of a grant of voluntary departure granted by an Immigration Judge under former § 244(e) of the Immigration and Nationality Act and current INA § 240B;

(B) Direct appeals from persons removed or deported in absentia pursuant to former § 242B of the Immigration and Nationality Act and current INA § 240(b)

(C) Credible fear determinations, whether made by an Asylum Officer or an Immigration Judge;

(D) Reasonable fear determinations made by an Immigration Judge;

(E) Applications for advance parole;

(F) Applications for adjustment of status denied by DHS;

(G) Orphan petitions;

(H) Employment-based immigrant visa petitions;

(I) Waivers of the two-year foreign residence requirement for J-1 exchange visitors;

(J) H and L nonimmigrant visa petitions;

(K) K-1 fiancé(e) petitions;

(L) Employer sanctions; or

(M) Immigration-related employment discrimination and related document fraud.

(3) Standard of Review - Whenever the BIA reviews a DHS or Immigration Judge decision, it applies a specified standard of review. See 8 C.F.R. § 1003.1(d)(3).

(A) Immigration Judge Decisions - Under 8 C.F.R. § 1003.1(d)(3), the BIA applies a clearly-erroneous standard to an Immigration Judge's findings of fact, including credibility findings, and a de novo standard to questions of law, discretion, judgment, and other issues.

(B) DHS Decisions - The BIA applies a de novo standard to all appeals of DHS officer decisions.

(C) BIA Decisions - A single member, a panel of three members, or in rare instances, the entire BIA renders BIA decisions. See 8 C.F.R §§ 1003.1(a)(5), (e)(3). See Part III, Chapter 1.3. Upon the entry of a decision, the BIA serves its decision upon the parties by regular mail. For interim decisions, the BIA serves a copy of the decision on DHS and the respondent's representative, if the respondent is represented, or on DHS and the respondent if the respondent is not represented. For final decisions, the BIA serves a copy of the decision on DHS, the respondent, and the respondent's representative, if any. An order issued by the BIA is final, unless and until it is stayed, modified, rescinded, or overruled by the BIA, the Attorney General, or a federal court. A BIA order is effective as of its issuance date, unless the order provides otherwise.

The BIA generally releases decisions in one of two forms: published or unpublished. For the citation format for BIA cases, see Appendix I (Citations).

(4) Published Decisions - Published decisions are binding on the parties to the decision. Published decisions also constitute precedent that binds the BIA, the immigration courts, and DHS. The vast majority of the BIA's decisions are unpublished, but

the BIA periodically selects cases for publication. EOIR may also publish certain DHS decisions.

(A) Decisions selected for publication meet one or more of several criteria, including but not limited to: the resolution of an issue of first impression; alteration, modification, or clarification of an existing rule of law; reaffirmation of an existing rule of law; resolution of a conflict of authority; and discussion of an issue of significant public interest.

(B) EOIR's website houses copies of precedent decisions, which are also published in volumes of Administrative Decisions under the Immigration and Nationality Laws of the United States (I&N Decisions). Individuals should direct questions about how to obtain copies of published cases to the EOIR LLIRC. See Appendix A for contact information.

After determining that a decision should be published, the BIA prepares it for publication by adding headnotes and assigning an I&N decision citation. Where appropriate, the BIA also abbreviates the parties' names and redacts alien registration numbers (A-Numbers). The BIA then serves the decision on the parties in the same manner as an unpublished decision.

(C) In the past, the BIA issued precedent decisions as slip opinions, called Interim Decisions, before publication in a bound volume. The BIA greatly disfavors the use of the Interim Decision citation.

(5) Unpublished Decisions - Unpublished decisions are binding on the parties to the decision but the BIA does not consider unpublished decisions as precedent for unrelated cases. Should a party in an unrelated matter nonetheless wish to refer to an unpublished BIA decision, the party should attach a copy of that decision to the party's brief, motion, or other submission. If a copy is not available, the party should provide the relevant A-Number and decision date. See Appendix I (Citations).

The BIA will entertain requests to publish an unpublished decision, but such requests are granted sparingly.

(6) Advisory Opinions - The BIA does not issue advisory opinions.

(7) Attorney General - The Attorney General may review BIA decisions. As a result, the Attorney General, or DHS, may request that the BIA refer a decision to the Attorney General, or the BIA may do so sua sponte. The Attorney General may vacate decisions of the BIA and issue his own decisions. Decisions of the Attorney General may be published as precedent decisions in Administrative Decisions under the Immigration and Nationality Laws of the United States (I&N Decisions).

(c) The Office of the Chief Administrative Hearing Officer

(1) Jurisdiction - OCAHO generally has jurisdiction to hear and adjudicate cases involving allegations of:

(A) Knowingly hiring, recruiting, or referring for a fee, or continuing to employ, unauthorized aliens, or failing to comply with employment eligibility verification requirements in violation of INA § 274A (employer sanctions);

(B) Immigration-related unfair employment practices in violation of INA § 274B; and

(C) Immigration-related document fraud in violation of INA § 274C.

(2) No Jurisdiction - OCAHO does not have the authority to hear or review other matters, such as:

(A) Removal, deportation, or exclusion proceedings;

(B) Employment authorizations;

(C) Labor certifications or Labor Condition Applications;

(D) Employment-based visa petitions; or

(E) Other types of employment discrimination not encompassed by INA § 274B.

(3) OCAHO Decisions - OCAHO ALJs issue written decisions and orders (both interlocutory and final) during OCAHO proceedings. In every case, the ALJ will issue a final order. A final order of the ALJ becomes final unless modified, vacated, or remanded by the CAHO, the Attorney General, or a federal circuit court of appeals.

(A) Published Decisions - OCAHO publishes select decisions and orders, whether interlocutory or final. Most substantive decisions are published, and published decisions are posted on EOIR's website.

(B) Unpublished Decisions - Citation to unpublished OCAHO decisions is discouraged.

(C) Advisory Opinions - OCAHO does not issue advisory opinions.

1.5 - Court and Headquarters Locations

(a) The Office of the Chief Immigration Judge

(1) Headquarters - OCIJ, which oversees the administration of the immigration courts nationwide, is located at the EOIR headquarters in Falls Church, Virginia. See Appendix A (EOIR Directory). Access to OCIJ headquarters offices is limited to authorized personnel and their guests.

(2) Immigration Courts and Hearing Locations - OCIJ employs Immigration Judges in immigration courts nationwide. A list of immigration courts is available in Appendix A (EOIR Directory) as well as on the EOIR website.

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 DHS detention centers nationwide, as well as many federal, state, and local correctional facilities. Parties should file documents pertaining to hearings held in these locations at the appropriate location. See Part II, Chapter 3 (Filing with the Immigration Court).

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

With certain exceptions, hearings before Immigration Judges are open to the public. See Part II, Chapter 4.9 (Public Access). For additional information on the conduct of immigration court hearings, see Part II, Chapter 4.12 (Courtroom Decorum), 4.13 (Electronic Devices).

(b) Board of Immigration Appeals

The offices of the BIA are located at the EOIR headquarters in Falls Church, Virginia. See Appendix A (EOIR Directory). With the specific exceptions made for the public information window and the Oral Argument Room, access is limited to authorized personnel and their guests. See Part III, Chapter 8 (Oral Argument).

(c) The Office of the Chief Administrative Hearing Officer

The offices of OCAHO are located at EOIR headquarters in Falls Church, Virginia. See Appendix A (EOIR Directory). Access to OCAHO headquarters offices is limited to authorized personnel and their guests. In cases arising under INA § 274B, “due regard shall be given to the convenience of the parties and the witnesses in selecting a place for a hearing.” 28 C.F.R. § 68.5(b). For cases arising under INA § 274A or 274C, the hearing shall be held “at the nearest practicable place to the place where the person or entity resides or

to the place where the alleged violation occurred." *Id*. OCAHO hearings are open to the public but may be closed by an ALJ "where to do so would be in the best interests of the parties, a witness, the public, or other affected persons." 28 C.F.R. § 68.39(a).

(d) Inspection of the Record

(1) Parties - Parties to a proceeding, and their representatives, may inspect the official records of proceedings by prior arrangement with the immigration court or the BIA clerk's office, whichever has control over the record. Part II, Chapter 1.5(c) (Records), Part III, Chapter 1.5(d) (Records). Parties may review the entire record, except any classified information or documents under a protective order. EOIR prohibits the removal of records by parties or other persons. For information about obtaining copies of the records, including through FOIA request, see Chapter 1.5(d)(3)(C) (Copies of the Record) (below).

(2) Non-parties - Persons or entities who are not party to a proceeding must file a request for information pursuant to the Freedom of Information Act (FOIA) in order to inspect the record. See Part I, Chapter 2 (Freedom of Information Act).

(3) Copies of the Record

(A) Parties - Both the BIA and the immigration courts have the discretion to provide up to 25 pages of the record without charge, subject to the availability of court or clerk's office resources. The immigration court may additionally provide parties with a copy of the hearing recordings. Parties may obtain a copy of any portion of the record that is not prohibited to the party (e.g., classified information, documents under a protective order). Neither the immigration courts nor the BIA provide self-service copying. Alternatively, the parties can file a request for information pursuant to the Freedom of Information Act (FOIA) to request a complete copy of the record or the recorded hearing(s). See Part I, Chapter 2 (Freedom of Information Act).

Immigration court – Digital Audio Recordings: Immigration Judges record immigration court hearings digitally. If a party requests a copy of a hearing that was recorded digitally, the party must submit that request in writing, and the court will provide the compact disc, at the court's discretion. Alternatively, parties can file a request under FOIA to request a copy of the recorded hearing. See Part I, Chapter 2 (Freedom of Information Act).

Immigration court – Cassette Tape Recordings: Immigration Judges previously recorded immigration court hearings on cassette tapes. If a party requests a copy of a hearing that was recorded on cassette tapes, the party must provide the court with a sufficient number of 90-minute cassette tapes in order to obtain the recording. The party must submit that request in writing, and the court will provide the cassette tapes, at the court's discretion. Alternatively, parties can file a request under FOIA to request a copy of the recorded hearing. See Part I, Chapter 2 (Freedom of Information Act).

(B) Non-parties - Neither the immigration courts nor the BIA clerk's office will provide non-parties with copies of any official record, whether in whole or in part. Non-parties must file a request for information under FOIA. See Part I, Chapter 2 (Freedom of Information Act).

(C) Confidentiality - EOIR must balance the public's need for information with the protection of persons who appear before the immigration courts and the BIA. Both the immigration courts and the BIA take special precautions to ensure the confidentiality of cases involving applicants for asylum, for withholding of removal under INA § 241(b)(3), and for relief under the Convention Against Torture; reasonable fear proceedings; battered alien spouses and children; exclusion proceedings; classified information; and information subject to a protective order. See, e.g., 8 C.F.R. § 1003.27(c); see also Part II, Chapter 4.9 (Public Access), Part III, Chapter 8.5 (Public Access).

EOIR takes steps to identify records of proceedings involving battered spouses or children to prevent unauthorized disclosure.[1] EOIR keeps all records of proceedings involving battered spouses closed to the public unless the battered spouse authorizes the disclosure, and all records of proceedings involving battered children are always excluded from disclosure. See 8 C.F.R. § 1003.27(c).

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[1] Department of Justice employees who, without authorization, willfully use or disclose information related to proceedings involving a battered spouse or child to anyone (other than a sworn officer or employee of the Department of Justice for legitimate Department purposes) may be subject to disciplinary action and a civil money penalty of up to $5,000. INA § 384(c), 8 U.S.C. § 1367(c).

1.6 - Public Inquiries

(a) Communications Generally

All inquiries to any immigration court or to the BIA must contain or provide the following information for each alien:

(1) Complete name (as it appears on the charging document or petition);

(2) Alien Registration Number, if applicable;

(3) Type of proceeding (removal, deportation, exclusion, bond, visa petition, etc.);

(4) Date of the upcoming master calendar or individual calendar hearing before the immigration court, if relevant; and

(5) The completion date, if the immigration court proceedings have been completed, if applicable.

See also Part II, Chapter 3.3(c)(6) (Cover Page and Caption), Part III, Chapter 3.3(c)(6) (Cover Page and Caption), Appendix E (Sample Cover Page). If a party has more than one case before the immigration courts or the BIA, the inquiry must specify which case is the subject of the inquiry.

Callers must bear in mind that EOIR staff, including IJs, ALJs, and AIJs, cannot engage in ex parte communications. As a result, no party may speak directly with an immigration judge, ALJ, board member, or other staff assigned to a given case when the other party is not present. For this reason, the BIA does not reveal to the public the names of the members or other staff assigned to a pending case. Individuals must serve a copy of all written communications about a case on the opposing party.

Given the volume and the varying complexity of the cases before the immigration courts, the BIA, and OCAHO, EOIR staff cannot predict processing times upon request.

(b) Press Inquiries and Requests for a Speaker

All inquiries from the press or requests from organizations for speakers should be directed to the EOIR, Office of Policy, Communications and Legislative Affairs Division. For contact information, see Appendix A (EOIR Directory).

On occasion, external organizations (governmental and non-governmental) desire to have an EOIR representative officially participate in a speaking capacity at a meeting or event. To seek an EOIR speaker, requestors should send an email request to CLAD. This email request should include the date, time, and location of the meeting or event, the title or

focus of the meeting or event (including website link, if applicable), a list of other potential speakers, a description of the expected audience, and the topic to be addressed by EOIR. This process applies whether the requestor seeks an EOIR representative from an immigration court or agency headquarters. Requestors should submit speaking engagement requests at least four weeks in advance of the meeting or event.

(c) Telephone Calls

(1) Automated Case Information Hotline - The Automated Case Information Hotline (1-800-898-7180 or 240-314-1500 or TDD 800-828-1120) provides information about the status of cases before the immigration courts or the BIA. See Appendix A (EOIR Directory), Appendix H (Telephonic Information). The Automated Case Information Hotline contains a telephone menu (in English and Spanish) covering most kinds of cases. The caller must enter the alien registration 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 12 345 678). In the case of an eight-digit A-Number, the caller should enter a zero before the A-Number (e.g., A 012 345 678).

(A) For cases before the immigration courts, the Automated Case Information Hotline contains information regarding:

(i) the next hearing date, time, and location;

(ii) in cases with a processing clock, the elapsed time and status of the case processing clock; and

(iii) immigration judge decisions.

(B) For cases before the immigration courts, the Automated Case Information Hotline does not contain information regarding:

(i) bond proceedings; or

(ii) motions.

(C) For cases before the BIA, the Automated Case Information Hotline contains information regarding:

(i) appeals of most Immigration Judge decisions;

(ii) briefing deadlines; and

(iii) filing instructions.

(D) For cases before the BIA, the Automated Case Information Hotline does not contain information regarding:

(i) bond, interlocutory, and visa petition appeals;

(ii) motions before the BIA;

(iii) appeals of motions to reopen or to reconsider; or

(iv) remands from a federal court to the BIA.

(2) BIA Telephonic Instructions and Procedures System - The BIA also maintains a second telephonic system, available at 703-605-1007, known as the Board of Immigration Appeals Telephonic Instructions and Procedures System, which contains recorded answers to commonly asked questions, including how to file an appeal, motion, brief, change of address, or other document with the BIA. See Appendix A (EOIR Directory), Appendix H (Telephonic Information). When the recorded information does not adequately answer the question, pressing zero for the operator connects the caller with the BIA clerk's office staff.

(3) Live Assistance - Individuals may direct inquiries that the Automated Case Information Hotline cannot answer to the Communications and Legislative Affairs Division in the Office of Policy or to the BIA clerk's office. See Appendix A (EOIR Directory). Callers must be aware that EOIR prohibits all staff from providing any legal advice and that the caller may not construe information provided by any immigration court, OCAHO, or BIA staff members as legal advice.

(d) Mail

Individuals must address all items sent through the U.S. Postal Service, by courier, by overnight delivery, or via hand-delivery to the specific immigration court or to the BIA's street address. See Part II, Chapter 3.1(a)(5) (Filings); Part III, Chapter 3.1(a)(3) (Where to file); Appendix A (EOIR Directory). An attention line indicating the intended recipient, if the sender knows the name or office, should appear at the appropriate location on the mailing label or form. EOIR advises the parties to submit all complex inquiries in writing whenever possible and appropriate.

(e) Electronic Communications

(1) Website - EOIR maintains a website at www.justice.gov/eoir. See Appendix A (EOIR Directory). The website contains information about the immigration courts, OCIJ, OCAHO, the BIA, and the other components of EOIR.

(2) Internet Immigration Information (I³) - Internet Immigration Information (I³) is a suite of EOIR web-based products that includes eRegistry, eFiling, and eInfo. You may access eRegistry on EOIR's website. Once registered, eRegistry users may electronically file certain documents and view certain information about the cases for which the registered user has filed a Notice of Entry of Appearance as an Attorney or Representative before the immigration court or the BIA. Parties should consult the website for instructions and more information.

(3) Electronic Registry (eRegistry) - Attorneys and fully accredited representatives who are authorized to appear before EOIR must electronically register with EOIR in order to practice before the immigration courts or the BIA. See 8 C.F.R. § 1292.1(f). eRegistry is the online process that is used to electronically register with EOIR. A list of frequently-asked questions, with corresponding answers, is available on the EOIR website.

(4) Electronic Filing (eFiling) - Both the immigration courts and the BIA accept some electronic submissions. The agency is more than halfway complete in full implementation of the EOIR Case and Appeals System, a system that provides for attorneys and representatives of record to submit filings electronically. All immigration courts and the BIA continue to accept the Notice of Entry of Appearance as an Attorney or Representative Before the Immigration Court (Form EOIR-28) and the Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27), respectively. See Part II, Chapter 2 (Appearances Before the Immigration Court); Part III, Chapter 2 (Appearances Before the Board). More information about this ECAS and the eFiling initiative can be found on the EOIR website.

OCAHO is conducting a voluntary pilot program that allows parties in enrolled cases before OCAHO to file and serve case documents by email. More information about OCAHO's email filing pilot can be found on the EOIR website.

(5) Electronic Case Information (eInfo) - The Electronic Case Information, or eInfo, is a web-based product available through ECAS that provides information about the status of cases before an Immigration Judge or the BIA. The information provided by eInfo is similar to that which is available by telephone via the Automated Case Information Hotline but provides more extensive information and a copy of the BIA decision and underlying Immigration Judge decision, when available. At this time, however, eInfo is available only to registered attorneys and fully accredited representatives, who may view clients' information using their EOIR ID for those cases in which they have entered a Notice of Appearance.

(6) Email - Neither the immigration courts nor the BIA accepts inquiries by email, except for email generated through the I³ suite of web-based products. In rare emergency circumstances, email filings may be accepted at certain immigration courts following public notice of such capability.

(7) Faxes - The immigration courts and the BIA do not generally accept faxes or other electronic transmissions sent directly without prior authorization. See Part II, Chapter 3.1(a)(7) (Faxes), Part III, Chapter 3.1(a)(5) (Faxes). However, the BIA may accept faxes that are sent to a third party and then hand-delivered under certain circumstances. See Part III, Chapter 3.1(a)(5) (Faxes). OCAHO accepts faxes only in certain limited circumstances. See Part IV, Chapter 3.2(d) (Filing by Facsimile).

(f) Emergencies, Expedite Requests, Requests to Advance Hearing Dates

If circumstances require urgent action by an Immigration Judge or the BIA, parties should follow the procedures set forth in Part II, Chapter 5.10(b) (Motion to advance), Part II, Chapter 8 (Stays), Part III, Chapter 6 (Stays and Expedite Requests), as appropriate.

1.7 - Electronic Devices

(a) Overview

This section outlines possession and use of electronic devices in EOIR space. However, in any immigration court or detention facility administered under agreement between EOIR and federal, state, or local authorities, the facility's rules regarding possession and use of electronic devices, those rules apply in addition to the rules described below. For example, in some facilities, individuals, including attorneys, are prohibited from bringing cellular telephones, laptop computers, and other electronic devices into the facility.

Nothing in this section shall be construed to restrict or interfere with the reasonable use of adaptive technology by a person with a disability.

Violators are subject to possible penalties by authority of the Federal Protective Service, per 40 U.S.C. § 1315 and 41 C.F.R. subpart C, 102-74.365 thru 102-74.455.

(b) Possession

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. All electronic devices must be turned off in courtrooms and during hearings, unless otherwise authorized for attorneys or representatives of record or DHS attorneys representing the government, as described below.

(c) Use

In courtrooms, only attorneys or representatives of record and attorneys from DHS representing the government are authorized to use laptop computers, electronic calendars, and other electronic devices commonly used to conduct business activities, provided they are used to conduct immediately relevant court and business-related activities. Such devices may only be used in silent/vibrate mode. The use of such devices must not disrupt the hearing, and the immigration judge has the discretion to prohibit the continued use of any electronic devices that pose a disruption to ongoing proceedings. Cellular telephones and other electronic devices must be turned off when not in use to conduct business activities in the courtroom. No device may be used by any person other than the immigration judge to record any part of a hearing.

At the discretion of the Immigration Judge, Board member, or administrative law judge, continued business-related use of otherwise authorized electronic devices may be deemed a disruption to proceedings and subsequently prohibited. Relatedly, Immigration Judges have discretion to impose other remedial measures to maintain proper order in the courtroom, under 8 C.F.R. § 1003.10(b). Similar discretion lies with Board members under

8 C.F.R. § 1003.1(d)(1)(ii) and Administrative Law Judges under 28 C.F.R. § 68.28(a)(7) and (8).

Outside of courtrooms and hearings, electronic devices may be used by any person in non-recording mode, but they must be made silent, and usage must be limited and non-disruptive.

1.8 - Security

(a) Building Security

EOIR typically conducts proceedings in two general types of facilities: (1) federal or leased buildings controlled by the General Services Administration (non-detained), and (2) detention facilities controlled by DHS (detained). In any facility, individuals must pass through a security screening prior to entering the court, which may result in delays. Further, access to administrative offices in any facility is limited to authorized personnel and immigration court staff.

In each location, however, specific facility protocol varies, and visitors should check the EOIR website prior to arrival to ensure compliance. In addition, the COVID-19 outbreak may affect certain facilities' protocol. Please visit the EOIR website detailing operational status for further information.

(1) Non-Detained Facilities - Courtroom security is of utmost concern. Building security is determined by each individual facility and detailed on the EOIR website. All Immigration Judges are responsible for familiarizing themselves with what types of security resources are available to them (and under what circumstances) in their courtrooms. In unusual and appropriate circumstances, an Immigration Judge may adjourn a non-detained hearing for security reasons until those concerns have been appropriately addressed.

(2) Detained Facilities - All individuals who visit or work in a detention facility—including Immigration Judges, staff, and visitors—must be aware of and comply with security guidelines and practices in place at the respective facilities, specifically as it relates to contraband.

Contraband is generally defined as goods or merchandise whose importation, exportation, or possession is prohibited. The definition of what is or is not contraband in a particular detention facility is left to the sole and absolute discretion of the facility administrator, i.e., the warden or officer-in-charge. The difference in security classifications between facilities often means that an item not considered contraband in one facility may be considered contraband in another. No standard definition of contraband applies to every facility.

The presiding Immigration Judge is responsible for determining if security measures are adequate to ensure the personal safety of those in the courtroom. If the Immigration Judge determines that existing security precautions are inadequate, the Immigration Judge may immediately request that the responsible officials upgrade security in the courtroom to an appropriate level. Failure by such officials to comply with a reasonable request for increased security may warrant an adjournment of the scheduled hearing until the necessary level of courtroom security is available. Immigration Judges may also request reduced or modified courtroom security, but the ultimate decision of whether to reduce or modify courtroom security lies with the responsible officials. Immigration Judges must

nonetheless commence a hearing if the responsible official denies their request to reduce or modify courtroom security.

Consequently, individuals who visit or work in a detention facility must be familiar with and cognizant of applicable security guidelines. Security guidelines and questions about such guidelines should be directed to the court administrator. The obligation, however, to become aware of and to fully comply with security guidelines applicable to a facility or facilities rests with each individual. Deviation from established security guidelines could be detrimental to the health and well-being of individuals inside the facility.

Chapter 2 - Freedom of Information Act

2.1 - FOIA, 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. EOIR OGC responds to FOIA requests for EOIR records, including records related to the immigration courts, the BIA, and the OCAHO.

2.2 - Requests

(a) Contact

For detailed guidance on how to file a FOIA request, individuals requesting information under the Freedom of Information Act should consult EOIR's FOIA website or contact the EOIR FOIA unit. See Appendix A (Directory).

(b) Who May File

(1) Parties

(A) Inspecting the Record - Parties to a proceeding and their legal representatives may inspect the official record of proceedings by making prior arrangements with court staff. Parties to proceedings before the immigration courts may make arrangements with the relevant immigration court staff, while parties to proceedings before the BIA should make arrangements with the BIA clerk's office. A FOIA request is not required.

(B) 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 below. However, in limited instances, such as when the record is small or only a portion of the record is needed, immigration court and BIA clerk's office staff have the discretion to provide a party with a copy of the record or portion of the record without a FOIA request.

(C) Non-Parties - Persons who are not a party to a proceeding must file a FOIA request with the EOIR OGC if they wish to see or obtain copies of the record of proceeding.

(c) Location

Individuals may submit FOIA requests in writing or via email. Individuals should submit written requests to the following address:

Office of the General Counsel
Attn: FOIA Service Center
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

Individuals should submit requests via email to the following email address:
EOIR.FOIARequests@usdoj.gov

(d) Form

EOIR does not have an official form for filing FOIA requests. Individuals should not use the DHS Freedom of Information/Privacy Act Request (Form G-639) to file such requests.

(e) Information Required

FOIA 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 A-Number of that alien. The more precise and comprehensive the information provided in the FOIA request, the better and more expeditiously OGC can process the request.

(f) Fee

There is no fee to file a FOIA request, but EOIR may charge a fee to locate, review, and reproduce the records. See 28 C.F.R. § 16.10.

(g) Processing Times

Processing times for FOIA requests vary, depending on factors such as the nature of the request and the location of the record.

(h) When to File

(1) Timing - Individuals should file a FOIA request as soon as possible, especially when a party is facing a filing deadline. Parties should not wait until receiving a briefing schedule or other timeline from the immigration court or the BIA before submitting a FOIA request.

(2) Effect on Filing Deadlines - Parties should not delay the filing of an appeal, motion, brief, or other document while awaiting a response to a FOIA request. Failure to receive FOIA materials prior to a filing deadline does *not* excuse the party from meeting a filing deadline regardless of the timeliness of the request for FOIA materials.

(i) Limitations

a. **Statutory Exemptions -** FOIA laws exempt certain information in agency records, such as classified material and information that would cause a clearly-unwarranted invasion of personal privacy, from release under FOIA. See 5 U.S.C. § 552(b)(1)-(9). Where appropriate, OGC will redact (i.e., remove or black out) such information and provide a copy of the redacted record to the requesting party. If material is redacted, OGC staff will indicate the applicable exemptions for the redaction.

(i) Agency's Duty - The FOIA statute does not require the EOIR, its OGC, the immigration courts, or the BIA to perform legal research, nor does it entitle the requesting person to copies of documents that are available for sale or on the Internet.

2.3 - 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 (e.g., the alien, the petitioner, the complainant, the respondent, the carrier) must consent in writing to the release of that information.

2.4 - Appeals and Denials

If the EOIR OGC denies a FOIA request, either in whole or in part, the requesting party may appeal the decision to the Office of Information and Policy, Department of Justice. The Office of Information and Policy website contains information on how to appeal a denial of a FOIA request. Individuals may read additional rules regarding FOIA appeals at 28 C.F.R. § 16.8.

2.5 - Privacy Act

The Privacy Act permits an individual to gain access to records or any information pertaining to that individual which is contained in a system of records, subject to certain limitations and exemptions. The Privacy Act applies only to records of United States citizens or lawful permanent residents. 5 U.S.C. § 552a(a)(2). Most records maintained by EOIR related to immigration proceedings are not of United States citizens or lawful permanent residents, and EOIR can easily separate those that are. Please note that, pursuant to 28 C.F.R. §§ 16.83, 16.84, the Privacy Act cannot be used as a correction mechanism for "official records," i.e., information contained in an EOIR record of proceedings (ROP).

Requests for amendment of correction of records should be marked PRIVACY ACT AMENDMENT REQUEST and addressed to:

Office of the General Counsel
Attn: Michelle Curry
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

More information on Privacy Act requests is available on EOIR's website and the Department of Justice's Office of Privacy and Civil Liberties website.

Chapter 3 - Forms

All EOIR forms are available on the EOIR website. Click here to access the list of downloadable forms.

Chapter 4 - ECAS

The EOIR Courts & Appeals System (ECAS) is part of the agency's overarching information technology effort. The goal of ECAS is to phase out paper filing and processing and retain all records and case-related documents in electronic format. ECAS is being deployed in stages but will eventually be expanded to all courts and the BIA.

For further information, including a list of locations in which ECAS is currently deployed, Terms and Conditions, and a User Manual, please visit EOIR's website. In addition, visit the ECAS portal for registration and case information.

Chapter 5 - Fraud and Abuse Prevention Program

(a) Overview

The Fraud and Abuse Prevention Program (Fraud Program) provides a submission process for complaints regarding issues of immigration fraud, including immigration scams. The Fraud Program takes actions to address these issues within EOIR.

(b) Referrals

The Fraud Program also makes referrals to law enforcement or disciplinary authorities where appropriate. Relatedly, the Fraud Program supports fraud and unauthorized practitioner investigations, prosecutions, and disciplinary proceedings initiated by local, state, and federal law enforcement and disciplinary authorities.

(c) Training

The Fraud Program also provides training for EOIR personnel, outreach materials, and education for the public on these issues. The Fraud Program works in collaboration with EOIR's Attorney Discipline Program.

(d) Additional Information

For more information about the Fraud Program, including information about submitting a complaint, scam alerts, and further resources, please visit EOIR's website.

Chapter 6 - Attorney Discipline

(a) Overview

EOIR regulates the professional conduct of immigration attorneys and representatives in order to protect the public, preserve the integrity of immigration proceedings and adjudications, and maintain high professional standards among immigration practitioners. EOIR's Disciplinary Counsel investigates complaints involving alleged misconduct associated with practice before EOIR's immigration courts and the Board of Immigration Appeals to determine whether an attorney or representative has engaged in criminal, unethical, or unprofessional conduct.

(b) Additional Information

For further information on the Attorney Discipline Program, including lists of attorneys who previously were or currently are disciplined and the complaint process, please visit the Attorney Discipline website.

Chapter 7 - Conduct and Professionalism for Adjudicators

EOIR takes seriously allegations of adjudicator misconduct, especially when such allegations concern the integrity of the hearing process. Accordingly, EOIR provides a procedure through which government entities or the public, including parties to proceedings, may report allegations of misconduct. Stakeholders also periodically raise issues of adjudicator conduct directly with EOIR supervisors and management, which may, in turn, be treated as complaints. For further information, please see EOIR Policy Memorandum 21-8 in Part VII of the Policy Manual or visit EOIR's website.

Part II - OCIJ Practice Manual

- Introductory Information
- Chapter 1 - The Immigration Court
- Chapter 2 - Appearances Before the Immigration Court
- Chapter 3 - Filing with the Immigration Court
- Chapter 4 - Hearings Before the Immigration Judges
- Chapter 5 - Motions before the Immigration Court
- Chapter 6 - Appeals of Immigration Judge Decisions
- Chapter 7 - Other Proceedings before Immigration Judges
- Chapter 8 - Stays
- Chapter 9 - Detention and Bond
- Chapter 10 - Discipline of Practitioners
- Chapter 11 - Forms
- Chapter 12 - Freedom of Information Act (FOIA)
- Chapter 13 - Public Input

Chapter 1 - The Immigration Court

1.1 - Scope of Part II: The Office of the Chief Immigration Judge

(a) Authority

As noted in Part 1, Chapter 1.1(a), the Executive Office for Immigration Review (EOIR) is charged with administering the immigration courts nationwide. In 2006, the Attorney General directed EOIR to issue a practice manual for the parties who appear in immigration court. The EOIR Policy Manual, Part II: Office of the Chief Immigration Judge, documents those practices.

(b) Purpose

This part of the manual is provided for the information and convenience of the general public and for parties that appear before the immigration courts. Part II 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 Part II 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 B (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 B (Organizational Chart). 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 Part III of the Policy Manual.

(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 former 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 B (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 B (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 B (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.

(1) Chief Immigration Judge - The Chief Immigration Judge (CIJ) oversees the administration of the immigration courts nationwide.

(2) Principal Deputy Chief Immigration Judge - The Principal Deputy Chief Immigration Judge (PDCIJ) assists the chief immigration judge in overseeing the administration of the immigration courts throughout the country and supervises the deputy chief immigration judges.

(3) Regional Deputy Chief Immigration Judges - The Regional Deputy Chief Immigration Judges (RDCIJs) assist the PDCIJ in carrying out the responsibilities of that office and are responsible for daily supervision of the Assistant Chief Immigration Judges (ACIJs) within the RDCIJs' assigned geographical region.

(4) Assistant Chief Immigration Judges - The ACIJs oversee the operations of specific immigration courts. A listing of the immigration courts overseen by each ACIJ and assigned areas of responsibility is available on the EOIR website.

(5) Legal Staff: Chief Counsel and Attorney Advisors/Judicial Law Clerks - OCIJ has a sizable legal staff, which includes a chief counsel, attorney advisors at the OCIJ headquarters, and permanent and term attorney advisors and judicial law clerks (JLC) at the immigration courts nationwide. The legal staff supports the CIJ, PDCIJ, RDCIJs, ACIJs, and IJs.

(6) Language Services Unit - The Language Services Unit (LSU) oversees staff interpreters and contract interpreters at the immigration courts. The LSU conducts quality assurance programs for all interpreters.

(b) Immigration Courts - EOIR employs Immigration Judges and professional staff in the immigration courts nationwide. As a general matter, Immigration Judges determine removability and adjudicate applications for relief or protection from removal. For the specific duties of Immigration Judges, see Part I, Chapter 1.4 (Jurisdiction, Authority, and

Priorities). Immigration Judge decisions are final unless timely appealed or certified to the BIA. See Part II, Chapter 6 (Appeals of Immigration Judge Decisions).

Each immigration court has a court administrator. Under the supervision of an ACIJ, the court administrator manages the daily activities of the immigration court and supervises staff interpreters, legal assistants, and clerical and technical employees. A complete listing of the immigration courts, including the Immigration Judges assigned to each court, is available on the EOIR website.

(1) Court Administrators - 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 Director by following the procedures outlined on the EOIR website at www.justice.gov/eoir or by sending an email to: judicial.conduct@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 - Jurisdiction and Authority

(a) Jurisdiction

Immigration Judges generally have the authority to:

(1) Make determinations of removability, deportability, and excludability

(2) 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

(3) Review credible fear and reasonable fear determinations made by the Department of Homeland Security (DHS)

(4) Conduct claimed status review proceedings

(5) Conduct custody hearings and bond redetermination proceedings

(6) Make determinations in rescission of adjustment of status and departure control cases

(7) 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

(8) Conduct disciplinary proceedings pertaining to attorneys and accredited representatives, as discussed in Chapter 10 (Discipline of Practitioners)

(9) Administer the oath of citizenship in administrative naturalization ceremonies conducted by DHS

(10) Conduct removal proceedings initiated by the Office of Special Investigations

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

(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:

(1) Visa petitions

(2) Employment authorization

(3) Certain waivers

(4) Naturalization applications

(5) Revocation of naturalization

(6) Parole into the United States under INA § 212(d)(5)

(7) Applications for advance parole

(8) Employer sanctions

(9) Administrative fines and penalties under 8 C.F.R. parts 280 and 1280

(10) 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 also Appendix B (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.

1.5 - Public Access

(a) Court Locations

(1) 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 A (EOIR Directory).

(2) Hearing locations - There are more than 734 Immigration Judges in more than 70 immigration courts in the United States. A list of immigration courts is available in Appendix A (EOIR Directory), as well as on the Executive Office for Immigration Review website at http://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)(1) (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

(1) Law Library and Immigration Research Center - The Office of Policy, CLAD, maintains a Law Library and Immigration Research Center (LLIRC) at 5107 Leesburg Pike, Suite 1824, 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) 605-1103 or visit the EOIR website at www.justice.gov/eoir. See Appendix A (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. LLIRC staff may, however, provide guidance in locating published decisions of the Board.

Limited self-service copying is available in the LLIRC.

(2) 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

(1) 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)(1) (Administrative Control Court), 4.10(c) (Record of Proceedings). Removal of records by parties or other unauthorized persons is prohibited.

(2) 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).

(3) 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).

(i) 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.

(ii) 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.

(iii) 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).

(iv) 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.

1.6 - Inquiries

(a) Generally

(1) All inquiries to an immigration court must contain or provide the following information for each alien:

(A) Complete name (as it appears on the charging document)

(B) Alien registration number ("A number")

(C) Type of proceeding (removal, deportation, exclusion, bond, etc.)

(D) Date of the upcoming master calendar or individual calendar hearing

(E) The completion date, if the court proceedings have been completed

See also Chapter 3.3(c)(6) (Cover page and caption), Appendix E (Sample Cover Pages).

(b) Press Inquiries

All inquiries from the press should be directed to the Executive Office for Immigration Review, Office of Policy, Communications and Legislative Affairs Division. For contact information, see Appendix A (EOIR Directory).

(c) Automated Case Information Hotline

The Automated Case Information Hotline provides information about the status of cases before an immigration court or the Board of Immigration Appeals. See Appendix A (EOIR Directory), Appendix H (Telephonic Information). The Automated Case Information Hotline 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 12 345 678). 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).

(1) Immigration Court - The Automated Case Information Hotline contains information regarding:

(A) The next hearing date, time, and location

(B) In asylum cases, the elapsed time and status of the asylum clock

(C) Immigration Judge decisions

(D) The Automated Case Information Hotline does not contain information regarding:

(E) Bond proceedings

(F) Motions

(2) Additional Inquiries - Inquiries that cannot be answered by the Automated Case Information Hotline 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)(1) (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 Case Information Hotline. 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 (EOIR Directory).

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)(7) (Faxes and e-mail).

(g) Electronic Communications

(1) Internet - The Executive Office for Immigration Review (EOIR) maintains a website at www.justice.gov/eoir. See Appendix A (EOIR 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).

(2) Email - Immigration courts generally do not accept inquiries by email.

(3) Internet Immigration Information (I^3) - The Internet Immigration Information (I^3, pronounced "I-cubed") is a suite of EOIR web-based products that includes eRegistry, eFiling, and eInfo. Access to these online electronic products is available on EOIR's website at http://www.justice.gov/eoir/internet-immigration-info.

(4) Electronic Registry (eRegistry) - Attorneys and fully accredited representatives who are accredited to appear before EOIR must electronically register with EOIR in order to practice before the immigration courts. eRegistry is the online process that is used to electronically register with EOIR. See Chapter 2.3(b)(1) (eRegistry).

(5) Electronic filing (eFiling) - The 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 2.3(c) (Appearances).

(6) Electronic Case Information (eInfo) - The Electronic Case Information System or "eInfo" provides information about the status of cases before an immigration court or the Board of Immigration Appeals. The information provided by eInfo is similar to that which is available by telephone via the Automated Case Information Hotline. See Chapter 1.7(c) (Automated Case Information Hotline). eInfo is available only to registered attorneys and fully accredited representatives who electronically register with EOIR. See subsection (A), above.

(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.

Chapter 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)(1) (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. The immigration court will not recognize a representative using a Form EOIR-27 or a Form G-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:

(1) 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

(2) The Notice of Entry of Appearance of Attorney or Representative (Form G-28) is used to enter an appearance before DHS

(c) Electronic Entry of Appearance

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 EOIR website.

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.

After registering with the EOIR eRegistry, attorneys and accredited representatives may file either an electronic or paper Form EOIR-28 in the following situations:

(1) The first appearance of the representative, either at a hearing or by filing a pleading, motion, application, or other document

(2) Whenever a case is remanded to the immigration court

(3) Any change of business address or telephone number for the attorney or representative

(4) Upon reinstatement following an attorney's suspension or expulsion from practice

(d) Paper Entry of Appearance

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. See also Chapter 11 (Forms), Appendix D (Forms). A paper, not an electronic, Form EOIR-28 must be filed in the following situations:

(1) A bond redetermination request made before the filing of a Notice to Appear with an immigration court

(2) A motion to reopen

(3) A motion to reconsider

(4) A motion to recalendar proceedings that are administratively closed

(5) A motion to substitute counsel

(6) A case in which there is more than one open proceeding

(7) Disciplinary proceedings

(e) Notice to Opposing Party

In all instances of representation, DHS 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).

(f) 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). 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.

(1) 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.

(2) Form EOIR-33/IC - The alien should use only the most current version of the Alien's Change of Address Form (Form EOIR-33/IC). The Form EOIR-33/IC is available at the immigration court and on the EOIR website. See also Chapter 11 (Forms) and Appendix D (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.

(3) 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).

(1) 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).

(2) 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. As in most civil or administrative proceedings, the government does not 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)(1) (eRegistry), below.

(1) 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.

(1) 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 D (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.

(2) 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.

(3) 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.

(4) 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

When filing a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) an attorney must check the box indicating whether the entry of appearance is for all proceedings, custody and bond proceedings only, or all proceedings other than custody and bond proceedings. 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). When an attorney wishes to change the scope of his or her appearance in a particular case, the attorney or representative must file a new Form EOIR-28 and, if necessary, a motion to withdraw or substitute counsel. For example:

- If an attorney previously filed a Form EOIR-28 and checked the box indicating that the entry of appearance is for custody and bond proceedings only, and the attorney later wishes to represent the same alien in removal proceedings as well, the attorney must file a new Form EOIR-28 and check the box indicating that the entry of appearance is for all proceedings.
- If an attorney previously filed a Form EOIR-28 and checked the box indicating that the entry of appearance is for all proceedings, and the attorney later no longer wishes to represent the alien in removal proceedings but does wish to continue representing the alien in custody and bond proceedings only, the attorney must file a motion to withdraw from the removal proceedings as well as a new Form EOIR-28 in which the attorney has checked the box indicating that the entry of appearance is for custody and bond proceedings only.

(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)(2) (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.

(1) 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 apprise 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).

(2) 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)(1), 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)(1) (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 EOIRB33/IC) to notify the immigration court of a change in the attorney's address.

(1) 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.

(2) 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 (1) through (3), below.

(1) 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 E (Sample Cover Pages). The motion should contain the following information:

- whether the motion to substitute counsel is for all proceedings, custody and bond proceedings only, or all proceedings other than custody and bond proceeding

- 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.

(2) 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 E (Sample Cover Pages). The motion should contain the following information:

- whether the motion to withdraw is for all proceedings, custody and bond proceedings only, or all proceedings other than custody and bond proceedings
- 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.

(3) 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 (1) and (2), 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 and Recognized Organizations

A fully accredited representative is an individual who is not an attorney and is approved by the Assistant Director for Policy or the Assistant Director's designee to represent aliens before the Board, the Immigration Courts, and the Department of Homeland Security (DHS). A partially accredited representative is authorized to practice solely before DHS. An accredited representative must, among other requirements, have the character and fitness to represent aliens and be employed by, or be a volunteer for, a non-profit religious, charitable, social service, or similar organization which has been recognized by the Assistant Director for Policy or the Assistant Director's designee to represent aliens. 8 C.F.R. §§ 1292.1(a)(4), 1292.11(a), 1292.12(a)-(e). Accreditation of an individual is valid for a period of up to three years, and recognition of an organization is valid for a period of up to six years. 8 C.F.R. §§ 1292.11(f), 1292.12(d). Both may be renewed. 8 C.F.R. § 1292.16. Before representing an individual before the Immigration Court, a fully 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) Recognized Organizations

The Assistant Director for Policy or the Assistant Director's designee, in the exercise of discretion, may recognize an eligible organization to provide representation through accredited representatives. See 8 C.F.R. § 1292.11(a); Chapter 2.2(b) (Legal Service Providers). To be recognized by EOIR, an organization must affirmatively apply for that recognition. Such an organization must establish, among other requirements, that it is a non-profit religious, charitable, social service, or similar organization, and, if the organization charges fees, has a written policy for accommodating clients unable to pay fees for immigration legal services, is a Federal tax-exempt organization, and has at its disposal adequate knowledge, information, and experience in immigration law and procedure. The qualifications and procedures for organizations seeking recognition are set forth in the regulations. 8 C.F.R. §§ 1292.11, 1292.13. A recognized organization also has reporting, recordkeeping, and posting requirements. 8 C.F.R. § 1292.14. Questions regarding recognition may be directed to the Office of Legal Access Programs in the EOIR Office of Policy. See Appendix A (EOIR Directory).

(**b) Accredited Representatives**

Recognized organizations, or organizations applying for recognition, may request accreditation of individuals who are employed by or volunteer for that organization. The Assistant Director for Policy or the Assistant Director's designee, in the exercise of discretion, may approve accreditation of an eligible individual. No individual may apply on his or her own behalf. The qualifications and procedures for individuals seeking accreditation are set forth in the regulations. 8 C.F.R. §§ 1292.12, 1292.13. In addition, an accredited representative must register with EOIR's eRegistry in order to practice before the Immigration Courts. See Chapters 2.3(b)(1) (eRegistry), 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." Chapter 2.7 (Immigration Specialists). Accredited representatives must be expressly accredited by the Assistant Director for Policy or the Assistant Director's designee and must be employed by an institution specifically recognized by the Assistant Director for Policy or the Assistant Director's designee.

(d) Verification

To verify that an individual has been accredited by EOIR, the public can either:

- consult the Recognition and Accreditation Lists at https://www.justice.gov/eoir/, or
- contact the Recognition and Accreditation Coordinator (see Appendix A (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., 1292.13.

(h) Request to be Removed from List of Recognized Organizations or Accredited Representatives

A recognized organization or an accredited representative who no longer wishes to be on the Recognized Organizations and Accredited Representatives Roster must submit a written request to the Recognition and Accreditation Coordinator. See Appendix A (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

(1) 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.

(2) 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

(1) 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.

(2) 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 and Abuse Prevention Program. See Chapter 1.4(b) (EOIR Fraud and Abuse Prevention 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).

Chapter 3 - Filing with the Immigration Court

- 3.1 - Delivery and Receipt
- 3.2 - Service on the Opposing Party
- 3.3 - Documents
- 3.4 - Filing Fees

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 (1), below, 8 C.F.R. §§ 1003.31, 1003.13.

(1) Administrative Control Courts – "Administrative Control Courts" create and maintain the Records of Proceeding for the immigration courts within an assigned geographical area. 8 C.F.R. § 1003.11. A list of the administrative control courts along with their areas of assigned responsibility and other hearing locations is available to the public on the Executive Office for Immigration Review website at www.justice.gov/eoir.

(2) 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.

(3) 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.

(4) 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.

(5) 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 (EOIR Directory).

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)(3) (Delays in Delivery), below.

(6) 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.

(7) Faxes - The Immigration Court does not accept faxes unless the transmission has been specifically authorized 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.

(8) 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) via its EOIR Case & Appeals System (ECAS) from all licensed attorneys and fully-accredited representatives. See Chapter 2.1(b) (Entering an Appearance). All other filings may be submitted to the assigned Immigration Court by ECAS (where available), email, mail or other shipping/delivery service, or in-person. Please refer to instructions specific to electronic filings, available through the ECAS portal or online at http://www.justice.gov/eoir/filing-email.

(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 (1), (2), and (3), 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 (4) and (5), 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)(2), below. Failure to timely respond to a motion may result in the motion being deemed unopposed. See Chapter 5.12 (Response to Motion). Immigration Judges may deny a motion before the close of the

response period without waiting for a response from the opposing party. See Chapter 5.12 (Response to Motion). "Day" is constructed as described in subsection (c), below.

(1) 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.

(2) 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.

(3) 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 by mail, courier, in person at the court window, or in open court at a master calendar hearing.

(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)(1) and (b)(2), above. The amendment should be accompanied by a cover page with an appropriate caption, such as "AMENDMENT TO PREVIOUSLY FILED ASYLUM APPLICATION." See Appendix E (Sample Cover Pages).

(4) 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 ten (10) days after the motion was received by the immigration court, unless otherwise specified by the Immigration Judge. See Chapter 5.7 (Motions to Reopen), Chapter 5.8 (Motions to Reconsider). See also Chapter 5.12 (Response to Motion).

(5) 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).

(6) Specific deadlines - The deadlines for specific types of filings are listed in Appendix C (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.

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

(2) 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." 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.

(3) 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)(3) (Receipt Rule), above.

(4) 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 E (Sample Cover Pages). 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.

(1) 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"), both above. See also subsection (2), 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.

(2) 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"), both above.

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

(3) 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.

(4) 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 (3), 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 F (Sample Certificate 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)(3) (Receipt Rule).

(1) 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 F (Sample Certificate of Service). When documents are submitted as a package, the Proof of Service should be placed at the bottom of the package.

(1) 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.

(2) 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

(1) 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).

(2) 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)(1) (Service of an electronically filed Form EOIR-28), 3.2(e)(2) (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. The certificate must also state that the interpreter is competent to translate the language of the document, and that the interpretation was true and accurate to the best of the interpreter's abilities.

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 G (Sample Certificates of Translation).

(b) Signatures

No forms, motions, briefs, or other submissions are properly filed without the filing party's signature, executed in ink or by digital or electronic means. As circumstances require, all signatures are subject to authentication requirements.

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.

(1) Simulated Signatures - Signature stamps 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).

(2) 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).

(3) Accredited representatives - Accredited representatives must sign their own submissions. See Chapter 2.4(f) (Signatures).

(4) 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).

(5) 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).

(6) 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).

(1) 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)(6) (Cover Page and Caption), 3.3(e)(2) (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)(6) (Cover Page and Caption), 3.3(e)(2) (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)(6) (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)(3) (Motions), 3.2(e) (Proof of Service), 3.3(c)(6) (Cover Page and Caption), 3.3(e)(2) (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)(3) (Motions), 3.2(e) (Proof of Service), 3.3(c)(6) (Cover Page and Caption), 3.3(e)(2) (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)(6) (Cover Page and Caption), 3.3(e)(2) (Publications as evidence), 3.4 (Filing Fees).

(2) 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)(3)(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.

(3) 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 N (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.

(4) 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 (3), above.

(5) 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.

(6) 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 E (Sample Cover Pages). 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").

(7) 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.

(8) 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.

(9) Forms - Forms should be completed in full and must comply with certain requirements. See Chapter 11 (Forms). See also Appendix D (Forms).

(d) Originals and Reproductions

(1) Briefs and motions - The original of a brief or motion must always be signed. See Chapter 3.3(b) (Signatures).

(2) Forms - The original of a form must always be signed. 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.

(3) 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.

(4) Photographs - If a party wishes to submit a photograph, the party should follow the guidelines in subsection (3), 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.

(1) 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.

(2) 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.

(3) Internet publications - When a party submits an internet publication as evidence, the party should follow the guidelines in subsection (2), above, as well as provide the complete internet address for the material.

(4) 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 M (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

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

1. a motion to reopen (except a motion that is based exclusively on a claim for asylum)
2. 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.

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

1. a motion to reopen that is based exclusively on a claim for asylum
2. a motion to reconsider that is based on an underlying a claim for asylum
3. a motion filed while proceedings are pending before the Immigration Court
4. a motion requesting only a stay of removal, deportation, or exclusion
5. a motion to recalendar
6. any motion filed by the Department of Homeland Security
7. a motion that is agreed upon by all parties and is jointly filed ("joint motion")
8. a motion to reopen a removal order entered in absentia if the motion is filed under INA § 240(b)(5)(C)(ii)
9. 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
10. 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

(1) 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.

(2) 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)(1), 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.

In all cases, the immigration judge will issue a decision on a fee waiver request in writing or on the record.

(e) Amount of Payment

(1) 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.

(2) 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 D (Forms).

(3) 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

(1) 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.

(2) 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).

Chapter 4 - Hearings Before the 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. Individual DHS offices, including USCIS and ICE OPLA field offices, are not required to file a Notice to Appear with any particular immigration court, but EOIR maintains an administrative control court list as a guide for about where DHS may file charging documents and which immigration courts generally have jurisdiction over particular DHS offices or detention locations. See Chapter 3.1(a)(1) (Administrative Control Courts). 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 sometime 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(d) (Scope of Appearances), 2.3(i)(1) (Substitution of Counsel).

(c) Multiple Representation

For guidance on the limited circumstances in which parties may be represented by more than one representative, see Chapters 2.3(d) (Scope of Representation), 2.3(e) (Multiple Representatives).

(d) Withdrawal or Substitution

Withdrawal of counsel can be requested by oral or written motion. See Chapter 2.3(i)(2) (Withdrawal of Counsel). Substitution of counsel also can be requested by oral or written motion. See Chapter 2.3(i)(1) (Substitution of Counsel).

4.5 - Hearing and Filing Location

There are more than 734 Immigration Judges in more than 70 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 Chapter 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 Chapter 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

(1) 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.

(2) 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).

(3) Motions to close hearing - For hearings not subject to the special rules in subsection (1), above, parties may make an oral or written motion asking that the Immigration Judge close the hearing. 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 E (Sample Cover Pages).

(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 Communications and Legislative Affairs and the Court Administrator before attending a hearing. See Appendix A (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 Part III of this manual.

(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.

(1) 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.

(2) 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.

(3) 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 Chapter 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. All electronic devices must be turned off in courtrooms and during hearings, unless otherwise authorized under subsection (c) below. Outside of courtrooms and hearings, electronic devices may be used in non-recording mode, but they must be made silent, and usage must be limited and non-disruptive. No device may be used by any person other than the Immigration Judge to record any part of a hearing. See subsection (a), above. For further discussion on the use of electronic devices, see EOIR PM 19-10, *EOIR Security Directive: Policy for Public Use of Electronic Devices in EOIR Space* (Mar. 20, 2019).

(c) Use of Electronic Devices during Hearings

In any hearing before an Immigration Judge, only attorneys or representatives of record and attorneys from DHS representing the government may use laptop computers, electronic calendars, and other electronic devices commonly used to conduct business activities, provided they are used to conduct immediately relevant court and business related activities. Such devices may only be used in silent/vibrate mode. The use of such devices must not disrupt the hearing, and the Immigration Judge has the discretion to prohibit the continued use of any electronic devices that pose a disruption to ongoing proceedings. Cellular telephones and other electronic devices must be turned off when not in use to conduct business activities in the courtroom. No device may be used by any person other than the Immigration Judge to record any part of a hearing. See subsection (a), above. For further discussion on the use of electronic devices, see EOIR PM 19-10, *EOIR Security Directive: Policy for Public Use of Electronic Devices in EOIR Space* (Mar. 20, 2019).

(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

(1) 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.

(2) 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.

(3) 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)(2) (Address Obligations of Represented Aliens).

(i) Pleadings

At the master calendar hearing, the parties should be prepared to plead as follows.

(1) 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 L (Sample Oral Pleading). To make the master calendar hearing process more expeditious and efficient, representatives are strongly encouraged to use this oral pleading format.

(2) 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 K (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; OPPM 05–03, Background and Security Investigations in Proceedings before Immigration Judges and the Board of Immigration Appeals (Mar. 28, 2005). For non-covered relief, such investigations are not required but may warrant a discretionary grant of a continuance for DHS to complete the investigations. See 8 C.F.R § 1003.47(j)–(k). Questions regarding background checks and security investigations should be addressed to DHS.

(1) 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).

The Immigration Judge must, on the record, inform the respondent (1) that DHS has provided her with a biometrics instruction form; (2) of the date she must comply with those instructions; and (3) that failure to comply with those instructions or later provide biometric or other biographical information to DHS, without good cause, will constitute abandonment of the application for relief and an order will be entered dismissing the application. OPPM 05–03, Background and Security Investigations in Proceedings before Immigration Judges and the Board of Immigration Appeals (Mar. 28, 2005).

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.

(2) 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.

(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 (1) and (2), below. Respondents and representatives requesting waivers of appearances should note the limitations on waivers of appearances described in subsection (3), 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.

(1) 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 E (Sample Cover Pages). 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.

(2) 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 E (Sample Cover Pages). 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.

(3) 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 E (Sample Cover Pages). 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 (1) through (5), below.

(1) 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.

(2) Availability - A representative or respondent appearing by telephone must be available during the entire master calendar hearing.

(3) Cellular telephones - Unless expressly permitted by the Immigration Judge, cellular telephones should not be used for telephonic appearances.

(4) 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.

(5) 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.

(1) 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 E (Sample Cover Pages).

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

(2) 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 E (Sample Cover Pages). 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.

(3) 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 E (Sample Cover Pages). 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).

(1) 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).

(2) 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).

(3) 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 M (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).

If the respondent is requesting relief that requires background investigations and security checks, the Immigration Judge must inquire, on the record, whether DHS completed them. If they are completed, the Immigration Judge must ensure the note the name of the DHS counsel who reported the completeness and the date on the Immigration Judge Worksheet. If the background investigations are security checks are incomplete due to the respondent's lack of compliance without good cause, the Immigration Judge may deem the application for the covered form of relief abandoned and enter an order dismissing the application.

If the background investigations and security checks were not completed due to DHS, DHS may seek a continuance. Additionally, the Immigration Judge may proceed with the merits hearing; while she can deny relief, she cannot render a decision granting any covered form of relief until the background investigations and security checks are complete. If, after hearing the merits of the case, the Immigration Judge would grant covered relief, she must reschedule the matter for a date when DHS believes the background investigations and security checks will be complete. If, in the meantime, she decides to write a draft opinion, she must not discuss its existence or content with either party. EOIR PM 05–03, Background and Security Investigations in Proceedings before Immigration Judges and the Board of Immigration Appeals (Mar. 28, 2005), available at https://www.justice.gov/sites/default/files/eoir/legacy/2005/04/12/05-03.pdf.

If relief is granted that entitles the respondent to a document from DHS, the Immigration Judge's decision must include an advisal to the respondent that she will need to contact an appropriate office of DHS to obtain a new document. EOIR PM 05–03, Background and Security Investigations in Proceedings before Immigration Judges and the Board of Immigration Appeals (Mar. 28, 2005), available at https://www.justice.gov/sites/default/files/eoir/legacy/2005/04/12/05-03.pdf.

(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 EOIR website.

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 E (Sample Cover Pages).

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)

(1) 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 E (Sample Cover Pages).

(2) 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.

Briefs and other submissions should always be paginated. Parties must limit the body of their briefs to 25 pages. If a party believes it cannot adequately address the issues in the case within the page limit, the party may make a motion to increase the page limit. Pre-hearing briefs should always be paginated.

(c) Format

(1) 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 E (Sample Cover Pages). 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).

(2) 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

(3) 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.

(4) Footnotes - Substantive arguments should be restricted to the text of pre-hearing briefs. The excessive use of footnotes is discouraged.

(5) 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.

(6) 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 M (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 E (Sample Cover Pages). 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 I (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 E (Sample Cover Pages). 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)(3) (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).

(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 E (Sample Cover Pages). 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 E (Sample Cover Pages). 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).

Chapter 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 E (Sample Cover Pages). 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).

(1) 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).

(2) 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 (1), (2), (3), below, Appendix J (Where to File a Motion). 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).

(1) 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).

(2) 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.

(3) 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 Part III of this manual. See also Appendix J (Where to File a Motion).

(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 E (Sample Cover Pages). In addition, all motions must be accompanied by the appropriate proposed order for the Immigration Judge's signature. Motions and supporting documents should be assembled in the order described in Chapter 3.3(c)(1) (Order of Documents).

A motion's cover page must accurately describe the motion. See Chapter 3.3(c)(6) (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 E (Sample Cover Pages).

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

(1) 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 E (Sample Cover Pages). 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).

(2) 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 ten (10) 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).

(1) 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).

(2) 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).

(3) 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).

(4) 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).

(5) Pre-9/30/96 motions - Motions filed before September 30, 1996 do not count toward the one-motion limit.

(6) 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).

(7) 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)(4) (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 E (Sample Cover Pages). 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 ten (10) 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

(1) Alien motions - There are no exceptions to the time and number limitations on motions to reconsider when filed by an alien.

(2) 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).

(3) 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 I (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 E (Sample Cover Pages). 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.

(1) 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).

(2) 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 ten (10) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

(3) 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).

(4) 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 E (Sample Cover Pages).

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. A motion to advance should completely articulate the reasons for the request. 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 E (Sample Cover Pages).

(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
- a fixed street address where the alien may be reached for further hearing notification
- 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," accompanied by a proposed order for change of venue, and comply with the deadlines and requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix E (Sample Cover Pages).

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)(4) (Motions for extensions of filing deadlines).

(g) Motion to Accept an Untimely Filing

See Chapter 3.1(d)(2) (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 E (Sample Cover Pages). 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 E (Sample Cover Pages).

(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 E (Sample Cover Pages).

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. Immigration Judges may deny a motion before the close of the response period without waiting for a response from the opposing party if the motion does not comply with the applicable legal requirements. Examples include:

- Denial of a motion to withdraw as counsel of record that does not contain a statement that the attorney has notified the respondent of the request to withdraw as counsel or, if the respondent could not be notified, an explanation of the efforts made to notify the respondent of the request. See Chapter 2.3(i)(2) (Withdrawal of Counsel).
- Denial of a motion to change venue that does not identify the fixed address where the respondent may be reached for further hearing notification. See Chapter 5.10(c) (Motion to Change Venue), 8 C.F.R. § 1003.20(b).

Chapter 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 Part III of this manual.

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 Part III of this 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 Part III of this manual. See Appendix J (Where to File a Motion).

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 Part III of this 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 Part III of this manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

Chapter 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:

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7.2 - Deportation Proceedings and Exclusion Proceedings

(a) In General

(1) 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.

(2) 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

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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

(1) 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.

(2) 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).

(3) Closed to public - Exclusion hearings are closed to the public, unless the applicant requests that the public be allowed to attend.

(4) 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.

(5) 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.

(6) 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.

(1) 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
- 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)

(2) 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.

(3) 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.

(4) 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.

(5) 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)(1), (b)(3), 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).

(1) 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).

(2) 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).

(3) 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).

(4) 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.

(5) 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).

(6) 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)(2), (b)(3), 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 "A reasonable fear of persecution or torture." See generally 8 C.F.R. § 1208.31.

(1) 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).

(2) 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.

(3) 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).

(4) 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.

(5) 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 ("A restriction on removal") under INA § 241(b)(3) and protection under the Convention Against Torture. See subsection (h).

(6) 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).

(1) 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.

(2) 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).

(3) 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.

(4) 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.

(5) 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.

(6) 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).

(7) 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.

(1) 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.

(2) 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).

(3) 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).

(4) 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.

(1) 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).

(2) 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).

(3) 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).

***(*4) Appeals -** Decisions by Immigration Judges in withholding-only proceedings may be appealed to the Board of Immigration Appeals.

7.5 - ABC Settlement

(a) ABC Class Members

Members of the class covered by the ABC Settlement Agreement, who timely registered to receive benefits under the agreement (either by applying directly or by applying for TPS, if Salvadoran) may be entitled to certain rights and benefits pursuant to the agreement. *See American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991). ABC class members include Salvadorans who entered the United States on or before September 19, 1990, and Guatemalans who entered the United States on or before October 1, 1990.[1]

(b) Certain El Salvador and Guatemala Nationals

Section 203 of the Nicaraguan Adjustment and Central American Relief Act ("NACARA") provides that certain nationals of El Salvador and Guatemala are eligible to apply for suspension of deportation, or NACARA cancellation, under standards similar to those in effect prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). Pub. L. No. 105-100, 111 Stat. 2160 (1997).

To qualify for NACARA relief as a Salvadoran or Guatemalan national, the applicant must have either:

(1) filed an application for asylum on or before April 1, 1990; or

(2) registered for benefits under *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) and not been apprehended at the time of entry if such entry occurred after December 19, 1990. 8 C.F.R. § 1240.61(a)(1)-(2).

A Salvadoran national is considered to have registered for *ABC* benefits if he or she entered the United States on or before September 19, 1990, and either applied for temporary protected status on or before October 31, 1991, or submitted an ABC registration form on or before October 31, 1991. *Id.* § 1240.60(1). A Guatemalan national is considered to have registered for *ABC* benefits if he or she entered the United States on or before October 1, 1990, and submitted an ABC registration form on or before December 31, 1991. 8 C.F.R. § 1240.60(2).

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[1] Administrative closure was expressly authorized for certain ABC class members in order to implement the ABC settlement agreement and provide such class members the opportunity to exercise their rights under the agreement. *See* 8 C.F.R. §§ 1240.62(b) and 1240.70(f)-(h); *ABC*, 760 F. Supp. At 805; *Matter of Castro-Tum*, 27 I&N Dec. 271, 276–77 (2018).

Chapter 8 - Stays

8.1 - In General

A stay prevents the Department of Homeland Security (DHS) 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 the procedures to follow when filing for a stay before the immigration court or the Board of Immigration Appeals (BIA). For particular cases, parties should note that the procedures are not the same before the immigration court and the BIA and 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), and 1003.23(b)(4)(ii), (iii)(C).

An alien under a final order of deportation or removal may seek a stay of deportation or removal from DHS. A denial of the stay by DHS does not preclude an immigration judge or the BIA from granting a stay in connection with a previously filed motion to reopen or motion to reconsider. DHS shall take all reasonable steps to comply with a stay granted by an immigration judge or the BIA, but such a stay shall cease to have effect if granted or communicated after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed. 8 C.F.R. §§ 241.6, 1241.6.

In the context of bond proceedings, the BIA has the authority to grant a stay of the execution of an immigration judge's decision when DHS has appealed or provided notice of intent to appeal by filing the Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) with the Immigration Court within one business day of the Immigration Judge's bond order, and file the appeal within 10 business days. The BIA may also entertain motions to reconsider discretionary stays it has granted. See 8 C.F.R. § 1003.19(i)(1)-(2); see also Chapter 9.3(f) (Appeals).

There are important differences between the automatic stay provisions in deportation and exclusion proceedings and the automatic stay provisions in removal proceedings. Other than a motion to reopen in absentia deportation proceedings, those differences are not covered in this Policy Manual. Accordingly, parties in deportation or exclusion proceedings should carefully review the controlling law and regulations.

8.2 - Automatic Stays

There are certain circumstances when an immigration judge's order of removal is automatically stayed pending further action on an appeal or motion. When a stay is automatic, the immigration courts and the BIA do not issue a written order on the stay.

(a) During the Appeal Period

After an immigration judge issues a final decision on the merits of a case (not including bond or custody, credible fear, claimed status review, or reasonable fear determinations), the order is automatically stayed for the 30-day period for filing an appeal with the BIA. However, the order is not stayed if the losing party waived the right to appeal. 8 C.F.R. § 1003.6(a).

(b) During the Adjudication of an Appeal

If a party appeals an immigration judge's decision on the merits of the case (not including bond and custody determinations) to the BIA during the appeal period, the order of removal is automatically stayed during the BIA's adjudication of the appeal. 8 C.F.R. § 1003.6(a). The stay remains in effect until the BIA renders a final decision in the case.

(c) During the Adjudication of Case Certified to the BIA

A removal order is stayed while the BIA adjudicates a case that is before that appellate body by certification. 8 C.F.R. § 1003.6(a); see also Chapter 6.5 (Certification). The stay remains in effect until the BIA renders a final decision in the case or declines to accept certification of the case.

(d) Motions to Reopen

(1) Removal Proceedings - An immigration judge's removal order is stayed during the period between the filing of a motion to reopen removal proceedings conducted in absentia and the immigration judge's ruling on that motion. 8 C.F.R. § 1003.23(b)(4)(ii).

An immigration judge's removal order is automatically stayed during the BIA's adjudication of an appeal of the immigration judge's ruling in certain motions to reopen filed by battered spouses, children, and parents. INA § 240(c)(7)(C)(iv).

An immigration judge's order is not automatically stayed in appeals to the BIA from an immigration judge's denial of a motion to reopen removal proceedings conducted in absentia, and motions to reopen or reconsider a prior BIA decision are not automatically stayed.

(2) Deportation Proceedings - An immigration judge's deportation order is stayed during the period between the filing of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B and the immigration judge's ruling on that motion, as well as during the adjudication by the BIA of any subsequent appeal of that motion. 8 C.F.R. § 1003.23(b)(4)(iii)(C).

Automatic stays only attach to the original appeal from an immigration judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B. See 8 C.F.R. § 1003.23(b)(4)(iii)(C). Additionally, there is no automatic stay to a motion to reopen or reconsider the BIA's prior dismissal of an appeal from an immigration judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B.

(e) Federal Court Remands

A federal court remand to the BIA results in an automatic stay of an order of removal if:

(1) The BIA's decision before the federal court involved a direct appeal of an immigration judge's decision on the merits of the case (excluding bond and custody determinations); or

(2) The BIA's decision before the federal court involved an appeal of an immigration judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B.

8.3 - Discretionary Stays

(a) Jurisdiction

Both immigration judges and the BIA have authority to grant and reconsider stays as a matter of discretion but only for matters within the judges' or the BIA's respective jurisdiction. See Chapters 1.5 (Jurisdiction and Authority), 9.3(b) (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.

In most cases, the BIA entertains stays only when there is an appeal from an immigration judge's denial of a motion to reopen removal proceedings or a motion to reopen or reconsider a prior BIA decision pending before the BIA. The BIA may also consider a stay of an immigration judge's bond decision while a bond appeal is pending in order to prevent the alien's release from detention. See Chapter 9.3(f) (Appeals).

(b) Motion to Reopen to Apply for Asylum, Withholding of Removal under the Act, or Protection under the Convention Against Torture

Time and numerical limitations do not apply to motions to reopen to apply for asylum, withholding of removal under the Act, or protection under the Convention Against Torture if the motion is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. The filing of a motion to reopen in such circumstances does not automatically stay an alien's removal. The alien may request a stay and if granted by the immigration court shall not be removed pending disposition of the motion. If the original asylum application was denied based on a finding that it was frivolous, the alien is ineligible to file a motion to reopen or reconsider or for a stay of removal. 8 C.F.R. § 1003.23(b)(4)(i).

When filing a motion to reopen to apply for asylum, withholding of removal under the Act, or protection under the Convention Against Torture based on changed country conditions, the alien does not need to file a copy of his or her record of proceedings or A-file.

(c) Motion Required

Parties should submit a request for a discretionary stay by filing a written motion. The motion should comply with all the requirements for filing, including formatting, inclusion of a proof of service, and submission of possible fees. See Chapter 3 (Filing with the Immigration Court), Appendix E (Sample Cover Pages).

(1) Contents - A party requesting a discretionary stay of removal before the immigration court should submit a motion stating 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). A discretionary request to stay removal, deportation, or exclusion may be submitted at any time after an alien becomes subject to a final order of removal, deportation, or exclusion if a motion to reopen or reconsider is pending before the immigration court.

A party requesting a discretionary stay of removal, deportation, or exclusion before BIA should follow the procedures described below:

(A) Who May Request - An alien (or an alien's representative) may request a discretionary stay of removal, deportation, or exclusion only if the alien's case is currently before the BIA and the alien is subject to a removal, deportation, or exclusion order.

(B) Timing of Request - A request to stay removal, deportation, or exclusion may be submitted at any time during the pendency of a case before the BIA.

(C) Form of Request - Requests to stay removal, deportation, or exclusion must be made in writing. The BIA prefers that stay requests be submitted in the form of a "MOTION TO STAY REMOVAL." See Appendix E (Sample Cover Pages).

(D) Contents - The motion should contain a complete recitation of the relevant facts and case history and indicate the current status of the case. The motion must also contain a specific statement of the time exigencies involved. Motions containing vague or general statements of urgency are not persuasive.

A copy of the existing immigration judge or BIA order should be included, when available. When the moving party does not have a copy of the order, the moving party should provide the date of the immigration judge's decision and a detailed description of both the ruling and the basis of that ruling, as articulated by the immigration judge. If the facts are in dispute, the moving party should furnish evidence supporting the motion to stay.

(E) Format - The motion should comply with the general rules for filing motions. See Chapter 5.2 (Filing a Motion). The motion must include a Proof of Service. See Chapter 3.2 (Service on the Opposing Party), Appendix F (Sample Certificate of Service).

(F) Fee - A motion to stay removal, deportation, or exclusion does not, by itself, require a filing fee. The underlying appeal or motion, however, may still require a fee. See Chapter 3.4 (Filing Fees).

(2) Emergency v. Non-Emergency - The immigration courts and the BIA categorize stay requests into two categories: emergency and non-emergency. When filing a stay request with the immigration court, the parties should submit their motion with a cover page either

labeled “MOTION TO STAY REMOVAL” or “EMERGENCY MOTION TO STAY REMOVAL,” as relevant.

(A) Emergency - The immigration courts and the BIA may rule immediately on an “emergency” stay request. The immigration court and the BIA only consider a stay request to be an emergency when an alien is:

1. in DHS’s physical custody and removal, deportation, or exclusion is imminent;
2. turning himself or herself in to DHS custody in order to be removed, deported, or excluded and removal, deportation, or

exclusion is expected to occur within the next 3 business days; or

3. scheduled to self-execute an order of removal, deportation, or exclusion within the next 3 business days.

The motion should contain a specific statement of the time exigencies involved.

If a party is seeking an emergency stay from the BIA, the party must contact the BIA’s Emergency Stay Unit by calling 703-306-0093. If a party is seeking an emergency stay from an immigration court, he or she must call the immigration court from which the removal order was issued. EOIR otherwise will not be able to properly process the request as an emergency stay. The BIA’s Emergency Stay Unit is closed on federal holidays. It will consider an emergency stay request only on non-holiday weekdays from 9:00 a.m. to 5:30 p.m. (Eastern Time). Immigration courts will consider stay requests during posted operating hours.

An alien may supplement a non-emergency stay request with an emergency stay request if qualifying circumstances, such as when an alien reports to DHS custody for imminent removal, arise.

Parties can obtain instructions for filing an emergency stay motion with the BIA by calling the same numbers. For a list of immigration court numbers, see Appendix A (EOIR Directory) or visit EOIR’s website.

When circumstances require immediate attention from the BIA or immigration courts, EOIR may, at the adjudicator’s discretion, entertain a telephonic stay request.

EOIR promptly notifies the parties of its decision.

(B) Non-Emergency - The immigration courts and the BIA do not rule immediately on a “non-emergency” stay request. Instead, the request is considered during the normal course of adjudication. Non-emergency stay requests include those from aliens who are not facing removal within the next 3 business days, and who are either:

1. not in detention; or
2. in detention but not facing imminent removal, deportation, or exclusion.

(d) Pending Motions

Neither the immigration judges nor the BIA automatically grant discretionary stays. The mere filing of a motion for a discretionary stay of an order does not prevent the execution of the order. Therefore, DHS may execute the underlying removal, deportation, or exclusion order unless and until the immigration judge or the BIA grants the motion for a stay.

(e) Adjudication and Notice

When an immigration judge or the BIA grants a discretionary stay of removal, deportation, or exclusion, the immigration judge or the BIA issues a written order. When a discretionary stay is granted, the parties are promptly notified about the decision.

(f) Duration

A discretionary stay of removal, deportation, or exclusion lasts until the immigration judge adjudicates the motion to reopen or motion to reconsider or until the BIA renders a final decision on the merits of the appeal, motion to reopen, or the motion to reconsider.

Chapter 9 - Detention and Bond

- 9.1 - Detention
- 9.2 - Detained Juveniles
- 9.3 - Bond Proceedings
- 9.4 - Detention Review

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.

(1) 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.

(2) 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).

(1) 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).

(2) 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. For guidance on entering an appearance in bond proceedings, see Chapter 2.3(d) (Scope of Representation); see also generally 8 C.F.R. §§ 1003.17(a), 1003.19, 1236.1.

(b) Jurisdiction

Except as provided in subsections (1) through (3), 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.

(1) 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).

(2) 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

(3) 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 (3), 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.

(1) 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

(2) No fee - There is no filing fee to request a bond hearing.

(3) 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)(1) (Administrative Control Courts).

(4) 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)(1), 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.

(1) Location - Generally, a bond hearing is held at the Immigration Court where the request for bond redetermination is filed.

(2) Representation - In a bond hearing, the alien may be represented at no expense to the government.

(3) Generally not recorded - Bond hearings are generally not recorded.

(4) 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.

(5) 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 E (Sample Cover Pages).

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.

(6) 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.

(7) 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 Part III of this manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

9.4 - 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." While background investigations and security checks are not required, as custody decisions require promptness, the regulations do allow for some consideration of these matters: "[i]n scheduling an initial custody redetermination hearing, the Immigration Judge shall, to the extent practicable consistent with the expedited nature of such cases, take account of the brief initial period of time needed for DHS to conduct the automated portions of its identity, law enforcement, or security investigations or examinations with respect to aliens detained in connection with immigration proceedings." 8 C.F.R § 1003.47(k); EOIR PM 05–03, Background and Security Investigations in Proceedings before Immigration Judges and the Board of Immigration Appeals (Mar. 28, 2005), available at https://www.justice.gov/sites/default/files/eoir/legacy/2005/04/12/05-03.pdf. 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. § 241.13. 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, including a mental-health evaluation, 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.

(1) Initiation - Jurisdiction vests with the Immigration Court when DHS files a Form I-863 (Notice of Referral to the Immigration Judge) with the court having jurisdiction over the place of the alien's custody.

(2) Timing - The reasonable cause hearing begins no later than 10 business days after referral to the Immigration Court. These hearings must take priority over all other hearings with the exception of credible fear review hearings.

(3) 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).

(4) 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.

(5) Conduct of hearing - At the outset of the hearing, the immigration judge will explain the alien's rights to the alien, including a reasonable opportunity to examine evidence and witnesses presented by DHS, and to present evidence on his or her own behalf. DHS may offer any evidence that is material and relevant to the proceeding. EOIR will provide an interpreter for the hearing.

(6) 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.

(7) 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.

The Immigration Judge will render a decision in oral or written form. An oral decision will be made on the record, in summary form. The oral decision must be identified as "the decision of the Immigration Judge."

Written (reserved) decisions must be issued within five business days after the close of the record, unless that time period is extended 1) by an agreement of both parties; 2) because of a delay caused by the alien; or 3) by a determination by the Chief Immigration Judge that "exceptional circumstances make it impractical to render the decision on a highly

expedited basis." Approval for an extension based upon certification by the Chief Immigration Judge must be obtained no later than the third business day after the hearing is concluded.

(8) 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 Board of Immigration Appeals determines that DHS has met its burden, the case will be remanded to the immigration judge to conduct a CDR merits hearing, scheduled to commence within 30 days from the Board's order.

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.

(1) Initiation - The Immigration Court's jurisdiction vests for a CDR merits hearing after either the Immigration Court or the Board, pursuant to a final decision in a reasonable cause hearing, has determined that DHS's determination and evidence is sufficient to establish reasonable cause to proceed with a CDR merits hearing.

(2) 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.

(3) 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.

(4) Conduct of hearing - The Immigration Judge may receive into evidence any oral or written statement that is material and relevant to the proceeding. The ROP that was used for the reasonable cause hearing will also be used for the continued detention review merits hearing. The alien has the right to be represented at no cost to the government and shall be given a list of free legal service providers. 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. In addition to receiving a written statement of rights, the Immigration Judge will explain these rights to the alien at the beginning of the hearing.

(5) 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.

The Immigration Judge may render either an oral or written (reserved) decision. Written decisions must be issued within ten days after the close of the record, subject to extension pursuant to the same procedures as those for reasonable cause hearings.

(6) 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 Part III of this 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 will be scheduled to be held within 30 days of the grant of the motion. If the motion is denied, the alien may appeal to the Board.

Chapter 10 - Discipline of Practitioners

10.1 - Practitioner Discipline Generally

The Executive Office for Immigration Review has the authority to impose disciplinary sanctions on attorneys, recognized organizations, and 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), 1003.101-111, 292.3. See also *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

Generally, discipline of practitioners and recognized organizations 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 or recognized organization.

10.2 - Definition of Practitioner and Recognized Organization

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), 1292.1(a)(4), 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).

For purposes of this Chapter, the term "recognized organization" is defined as a non-profit, federal tax-exempt, religious, charitable, social service, or similar organization established in the United States that has been recognized by the Assistant Director for Policy or the Assistant Director's designee to represent aliens through accredited representatives before DHS only or before the Board, the Immigration Courts, and DHS. See 8 C.F.R. § 1292.11.

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) Recognized Organizations

EOIR is authorized to discipline a recognized organization if it finds it to be in the public interest to do so. 8 C.F.R. § 1003.110. It is in the public interest to discipline a recognized organization that violates one or more of the grounds specified in 8 C.F.R. § 1003.110(b). Specific grounds for discipline of recognized organizations are listed in Chapter 10.4(b) (Recognized Organizations).

(d) 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, U.S. Immigration and Customs Enforcement website at www.ice.gov.

(e) 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 Chapter 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 and Abuse Prevention Program. See Chapter 1.4(b) (EOIR Fraud and Abuse Prevention Program), Appendix A (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

(a) Practitioners

Conduct by practitioners that may result in discipline includes the following:

- 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;
- action that would constitute contempt of court in a judicial proceeding;
- 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;
- failing to control and manage the workload so that each matter can be handled competently;
- failing to comply with all time and filing limitations; and

- failing to 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); or
- repeatedly filing boilerplate submission.

For a full explanation of each ground for discipline, consult the regulations at 8 C.F.R. § 1003.102.

(b) Recognized Organizations

Conduct by recognized organizations which may result in discipline includes the following:

- knowingly or with reckless disregard providing a false statement or misleading information in applying for recognition or accreditation of its representative;
- knowingly or with reckless disregard providing false statements or misleading information to clients or prospective clients regarding the scope of its authority or services;
- failing to provide adequate supervision of accredited representatives;
- employing, or receiving services from, or affiliating with, an individual who performs an activity that constitutes the unauthorized practice of law or immigration fraud; or
- engaging in the practice of law through staff when the organization does not have an attorney or accredited representative.

For a full explanation of each ground for discipline, consult the regulations at 8 C.F.R. § 1003.110(b).

10.5 - Filing a Complaint

(a) Who May File

Anyone may file a complaint against a practitioner or recognized organization, 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), 1292.19(a).

(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 D (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, or complaints against recognized organizations, should be filed with the Executive Office for Immigration Review disciplinary counsel. 8 C.F.R. §§ 1003.104(a)(1), 1292.19(a). 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 22041
Attn: Disciplinary Counsel

See Appendix A (EOIR Directory). After receiving a complaint, the EOIR disciplinary counsel decides whether to initiate disciplinary proceedings. 8 C.F.R. §§ 1003.104(b), 1292.19(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, the Department of Homeland Security, and, if applicable, the authorized officer of each recognized organization with which a practitioner is affiliated, has an affirmative duty to report whenever the practitioner:

- 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 and, if applicable, the authorized officer of each recognized organization, 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 or recognized organization is filed with the Executive Office for Immigration Review disciplinary counsel, or a practitioner or recognized organization 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 or recognized organization is filed, or a practitioner or recognized organization 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 or recognized organization.

(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.

(1) 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.

(2) 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.

(3) Petition for Interim Suspension - In certain circumstances, the Executive Office for Immigration Review Disciplinary Counsel may petition for an interim suspension from practice of an accredited representative before the Board and the Immigration Courts. 8 C.F.R. § 1003.111(a)(1). DHS may ask that the accredited representative be similarly suspended from practice before DHS. 8 C.F.R. § 1003.111(a)(2).

The petition must demonstrate by a preponderance of the evidence that the accredited representative poses a substantial threat of irreparable harm to clients or prospective clients. See 8 C.F.R. § 1003.111(a)(3).

(d) Answer

A practitioner or recognized organization 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.

(1) Contents - In the answer, the practitioner, or, in cases involving recognized organizations, the organization, 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 or recognized organization requests a hearing. If a hearing is not requested, the opportunity to request a hearing is deemed waived. 8 C.F.R. § 1003.105(c)(2).

(2) 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 Part III of this manual, which is available at the Executive Office for Immigration Review website at www.justice.gov/eoir.

(3) Default order - If the practitioner or, in cases involving recognized organizations, the organization, 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. 8 C.F.R. § 1003.105(d)(2).

(4) Motion to set aside default order - A practitioner or, in cases involving recognized organizations, the organization, subject to a default order may file a written motion with the Board of Immigration Appeals to set aside a default order. The motion to set aside a default order must be filed within 15 days of service of the default order. 8 C.F.R. § 1003.105(d)(2). 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 Part III of this manual.

The motion must show that the failure to file a timely answer was caused by exceptional circumstances beyond the control the practitioner or recognized organization, such as the serious illness or the death of an immediate relative, but not including less compelling circumstances. 8 C.F.R. § 1003.105(d)(2).

(e) Adjudication

Except as described in subsection (g) below, if a practitioner, or, in cases involving recognized organizations, the organization, 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.

(1) Adjudication without hearing - If the practitioner or recognized organization 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.

(2) Adjudication with hearing - If the practitioner or recognized organization 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 or, in the case of a recognized organization, the location of the recognized organization, and the convenience of witnesses. The practitioner or the recognized organization is afforded adequate time to prepare the case in advance of the hearing.

(B) Representation - The practitioner or, in cases involving recognized organizations, the organization, 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.

(3) Decision - In rendering a decision, the adjudicating official considers the complaint, the preliminary inquiry report, the Notice of Intent to Discipline, the practitioner's, or, in cases involving recognized organizations, the organization's, answer, pleadings, briefs, evidence, any supporting documents, and any other materials.

(4) Sanctions authorized - A broad range of sanctions are authorized, including disbarment from immigration practice, suspension from immigration practice, and public or private censure. 8 C.F.R. § 1003.101(a).

The Executive Office for Immigration Review is also authorized to impose sanctions against a recognized organization, including revocation, termination, and such other sanctions as deemed appropriate. 8 C.F.R. § 1003.110.

(5) 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 D (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.

(1) 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 Part III of this 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

(2) 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 22041
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)(1), 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 disbarred, 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 or recognized organization that 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 the practitioner or recognized organization 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 or recognized organization 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. With exceptions for accredited representatives specified in subsection (d) below, to be reinstated following a suspension, a practitioner must:

- file a motion with the Board of Immigration Appeals requesting to be reinstated;
- 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; and
- serve a copy of the motion on the EOIR Disciplinary Counsel and the DHS Disciplinary Counsel.

8 C.F.R. § 1003.107(a)(1).

The Executive Office for Immigration Review Disciplinary Counsel or the DHS Disciplinary Counsel may file a written response, including supporting documents or evidence, objecting to reinstatement on the ground that the practitioner failed to comply with the terms of the suspension. 8 C.F.R. § 1003.107(a)(2). Failure to meet the definition of an attorney or accredited representative will result in the request for reinstatement being denied. 8 C.F.R. § 1003.107(b)(3). If the practitioner failed to comply with the terms of the suspension, the Board will deny the motion and indicate the circumstances under which reinstatement may be sought.

(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 to appear before the Board, the Immigration Courts, or DHS; 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 Disbarred

A practitioner who has been disbarred 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) Accredited Representatives

(1) Suspended - When an accredited representative is suspended past the expiration of the period of accreditation, the representative may not seek reinstatement. After the representative's suspension period has expired, a new request for accreditation may be submitted by the recognized organization pursuant to 8 C.F.R. §§ 1003.107(c)(1), 1292.13.

(2) Disbarred - An accredited representative who has been disbarred may not seek reinstatement. 8 C.F.R. § 1003.107(c)(2).

(e) Cases Pending at Reinstatement

Suspension or disbarment 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 practitioner at the time that discipline was imposed. See Chapter 2.3(c) (Appearances).

Chapter 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 relief. 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 D (Forms). Form names and numbers can be obtained from the Immigration Courts and the Clerk's Office of the Board of Immigration Appeals. See Appendix A (EOIR Directory).

(b) Obtaining EOIR Forms

Appendix D (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 above.

(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)(5) (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)(5) (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)(8) (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). No form requiring an ink signature will be considered complete if submitted with a digital or electronic signature. In all instances, the filing party must comply with the particular form instructions.

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).

Chapter 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 A (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 A (EOIR Directory). General guidelines are as follows.

(a) Who May File

(1) 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).

(2) 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

(1) 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 A (EOIR Directory).

(2) 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.

(3) 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).

(4) 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

(1) Timing - A FOIA request should be filed as soon as possible, especially when a party is facing a filing deadline.

(2) 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

(1) 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.

(2) 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.

(3) 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.

Chapter 13 - Public Input

(a) Policy Manual - The Executive Office for Immigration Review welcomes and encourages the public to provide comments on the Policy Manual. In particular, the public is encouraged to identify errors or ambiguities in the text and to propose revisions for future editions.

Correspondence regarding Part II of the Policy 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 22041

The public is asked not to combine comments regarding the EOIR Policy Manual with other inquiries, including inquiries regarding specific matters pending before the Immigration Courts.

(b) Regulations and Published Rules - Periodically, EOIR issues new regulations. New regulations are published in the *Federal Register*, in most law libraries, and in many public libraries. The public is encouraged to submit comments on regulations as instructions provide in each relevant publication.

Part III - BIA Practice Manual

- Introductory Information
- Chapter 1 - The Board of Immigration Appeals
- Chapter 2 - Appearances Before the Board
- Chapter 3 - Filing with the Board
- Chapter 4 - Appeals of Immigration Judge Decisions
- Chapter 5 - Motions before the Board
- Chapter 6 - Stays and Expedite Requests
- Chapter 7 - Bond
- Chapter 8 - Oral Argument
- Chapter 9 - Visa Petitions
- Chapter 10 - Fines
- Chapter 11 - Discipline
- Chapter 12 - Forms
- Chapter 13 - Freedom of Information Act (FOIA)
- Chapter 14 - Other Information

Chapter 1 - The Board of Immigration Appeals

1.1 - Scope of Part III: The Board of Immigration Appeals

(a) Authority

The Board of Immigration Appeals has the authority to prescribe rules governing proceedings before it. 8 C.F.R. § 1003.1(d)(4).

(b) Purpose

This part of the manual describes procedures, requirements, and recommendations for practice before the Board of Immigration Appeals. Part III is provided for the information and convenience of the general public and for parties that appear before the Board.

(c) Disclaimer

This manual does not carry the weight of law or regulation. This manual is not intended, nor should it be construed in any way, as legal advice, nor does it extend or limit the jurisdiction of the Board as established by law and regulation.

(d) Revisions

The Board reserves the right to amend, suspend, or revoke the text of Part III at its discretion. To obtain updates of this manual, see Chapter 14.2 (Updates to the Policy Manual).

1.2 - Function of the Board

(a) Role

The Board of Immigration Appeals is the highest administrative body for interpreting and applying immigration laws. 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 the orders of Immigration Judges and certain decisions made by the Department of Homeland Security (DHS), and to provide guidance to the Immigration Judges, DHS, and others, through published decisions. 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 and regulations, and to provide clear and uniform guidance to Immigrations Judges, DHS, and the general public on the proper interpretation and administration of the Immigration and Nationality Act and its implementing regulations. 8 C.F.R. § 1003.1(d)(1).

The Board also has appellate review authority of disciplinary decisions of recognized organizations and representatives appearing before the Immigration Courts, DHS, and the Board. See Chapter 11 (Discipline).

(b) Location within the Federal Government

The Board of Immigration Appeals is a component of the Executive Office for Immigration Review (EOIR) and, along with the Office of the Chief Immigration Judge (OCIJ) and the Office of the Chief Administrative Hearing Officer (OCAHO), operates under the supervision of the Director of the Executive Office for Immigration Review. 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 B (Organizational Chart).

(c) Relationship to the Immigration Court

The Office of the Chief Immigration Judge (OCIJ) oversees the administration of the Immigration Courts nationwide and exercises administrative supervision over Immigration Judges. The Immigration Judges, as independent adjudicators, make determinations of removability, deportability, and excludability, and adjudicate applications for relief. The Board, in turn, reviews the decisions of the Immigration Judges. The decisions of the Board are binding on the Immigration Judges, unless modified or overruled by the Attorney General or a federal court. See Chapters 1.4(a) (Jurisdiction), 1.4(d) (Board decisions). For detailed guidance on practice before the Immigration Courts, consult Part II of this manual.

(d) Relationship to the Department of Homeland Security (DHS)

The Department of Homeland Security was created in 2002 and assumed most of the responsibilities of the now abolished Immigration and Naturalization Service (INS). DHS is responsible for the enforcement of the immigration laws and the administration of immigration and naturalization benefits. In contrast, the Board and the Immigration Courts are responsible for the independent adjudication of cases under the immigration and nationality laws. Thus, DHS is entirely separate from the Department of Justice and is deemed a party when appearing before the Board or an Immigration Court. See Chapters 1.4(a) (Jurisdiction), 1.4(d) (Board decisions), 1.4(f) (Department of Homeland Security).

(e) Relationship to the former Immigration and Naturalization Service (INS)

Prior to the creation of the Department of Homeland Security (DHS), the Immigration and Naturalization Service (INS) was the component of the Department of Justice responsible for the enforcement of the immigration laws and the administration of immigration benefits. The role of the INS has now been assumed by the DHS. See subsection (d), above.

(f) Relationship to other EOIR Offices

(1) Office of the Chief Administrative Hearing Officer (OCAHO) - The Office of the Chief Administrative Hearing Officer (OCAHO) is an independent entity within EOIR. OCAHO is responsible for hearings involving employer sanctions, and document fraud under the Immigration and Nationality Act. The Board does not review decisions made by OCAHO. Additional information regarding OCAHO, is available on the EOIR website.

(2) Office of the General Counsel - The Office of the General Counsel (OGC) for EOIR provides legal advice to all of EOIR, including the Board. OGC is responsible for Freedom of Information Act (FOIA) requests for information from the Board. See Part I, Chapter 2 (FOIA), Appendix A (EOIR Directory). OGC is also responsible for receiving complaints about attorneys and accredited representatives and initiates disciplinary proceedings when appropriate. See Chapter 11 (Discipline). OGC is also responsible for administering EOIR's Fraud Program, which was created to protect the integrity of immigration proceedings by reducing immigration fraud and abuse. Individuals wishing to report immigration fraud or abuse, or other irregular activity, should contact the EOIR Fraud Program. For contact information, see Appendix A (EOIR Directory).

(3) Office of Policy

(A) Communications and Legislative Affairs Division - The Communications and Legislative Affairs Division (CLAD) of EOIR's Office of Policy is responsible for public relations for EOIR. CLAD serves as the Board's liaison with the press. See Appendix A (EOIR Directory). CLAD houses EOIR's Law Library and Immigration Research Center (LLIRC).

This law library is maintained for the staff of EOIR and is open to the public. See Chapter 1.5(b) (Library). The LLIRC also maintains a "Virtual Law Library" that is accessible at EOIR's website. The Virtual Law Library serves as a comprehensive repository of immigration-related law and information for use by attorneys and the general public. The site serves as a complement to the LLIRC located within the headquarters complex of EOIR.

(B) Office of Legal Access Programs - The Office of Legal Access Programs (OLAP) of EOIR's Office of Policy is responsible for improving access to representation for persons appearing before the Immigration Courts and the Board. The Assistant Director for Policy, through OLAP, administers the Recognition and Accreditation Program, including the recognition of organizations and the accreditation of their representatives wishing to practice before the Immigration Courts, the Board, and/or DHS. More information on OLAP is available on the EOIR website.

(C) Legal Education and Research Services Division - The Legal Education and Research Services (LERS) Division of EOIR's Office of Policy develops and coordinates headquarters and nationwide substantive legal training and professional development for new and experienced judges, attorneys, and others within EOIR who are directly involved in EOIR's adjudicative functions.

(g) Relationship to the Administrative Appeals Office (AAO) - The Administrative Appeals Office (AAO), previously referred to as the Administrative Appeals Unit (AAU), is a component of DHS. The AAO is responsible for adjudicating 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 EOIR and should not be confused with EOIR or the Board. See Appendix B (Organizational Chart).

(h) Relationship to the Office of Immigration Litigation (OIL) - The Office of Immigration Litigation (OIL) conducts civil trial and appellate litigation in the federal courts and represents the United States in civil suits brought against the federal government regarding the movement of citizens and aliens across U.S. borders. OIL is a separate and distinct component of the Department of Justice, located within the Civil Division, and should not be confused with EOIR or the Board. See Appendix B (Organizational Chart).

1.3 - Composition of the Board

(a) General

The Board consists of 28 Board Members, including a Chairman and up to two Vice Chairmen. Under the direction of the Chairman, the Board uses a case management system to screen all cases and manage its caseload. 8 C.F.R. § 1003.1(e). Under this system, the Board adjudicates cases in one of three ways:

(1) Individual - The majority of cases at the Board are adjudicated by a single Board Member. In general, a single Board Member decides the case unless the case falls into one of six categories that require a decision by a panel of three Board Members. These categories are:

(A) the need to settle inconsistencies among the rulings of different immigration judges

(B) the need to establish a precedent construing the meaning of laws, regulations, or procedures

(C) the need to review a decision by an Immigration Judge or DHS that is not in conformity with the law or with applicable precedents

(D) the need to resolve a case or controversy of major national import

(E) the need to review a clearly erroneous factual determination by an Immigration Judge

(F) the need to reverse the decision of an Immigration Judge or DHS in a final order, other than nondiscretionary dispositions.

(2) Panel - Cases not suitable for consideration by a single Board Member are adjudicated by a panel consisting of three Board Members. The panel of three Board Members renders decisions by majority vote. Cases are assigned to specific panels pursuant to the Chairman's administrative plan. The Chairman may change the composition of the sitting panels and may reassign Board Members from time to time.

(3) En Banc - The Board may, by majority vote or by direction of the Chairman, assign a case or group of cases for full en banc consideration. 8 C.F.R. § 1003.1(a)(5). By regulation, en banc proceedings are not favored.

(b) Chairman and Vice Chairman

The Chairman directs, supervises, and establishes internal operating procedures and policies for the Board. The Chairman is assisted in the performance of his or her duties by one or two Vice Chairmen. The Chairman and Vice Chairmen are sitting Board Members.

(c) Board Members

Board Members, including the Chairman and the Vice Chairmen, adjudicate cases coming before the Board. 8 C.F.R. § 1003.1(a)(2)(i)(E). Board Members may recuse themselves under any circumstances considered sufficient to require such action. A vacancy, absence, or unavailability of a Board Member does not impair the right of the remaining members to exercise all the powers of the Board. When circumstances so warrant, Immigration Judges, retired Board Members, retired Immigration Judges, Administrative Law Judges, and senior EOIR attorneys with at least ten years of experience in the field of immigration law may be designated as Temporary Board Members. 8 C.F.R. § 1003.1(a)(4). Parties appearing before the Board may not request specific Board Members or a specific panel to adjudicate their case. The Board also does not entertain inquiries regarding the identity of the panel or Board Members assigned to a pending case.

(d) Legal Staff

The Board employs a legal staff assigned to support designated panels, Board Members, and functions. See generally 8 C.F.R. § 1003.1(a)(6).

(e) Clerk's Office

The Office of the Clerk is responsible for managing appellate records and information for the Board. The Clerk's Office is headed by the Chief Clerk of the Board. Cases in which an alien is not detained are processed by two regional teams (East and West), depending on the location of the Immigration Court. Cases involving detained aliens are processed by the Priority Case Management team. The Docket team processes adjudicated cases and serves decisions on parties. Various other teams provide management and administrative support to all operations.

1.4 - Jurisdiction and Authority

(a) Jurisdiction

The Board generally has the authority to review appeals from the following:

(1) decisions of Immigration Judges in removal, deportation, and exclusion proceedings (with some limitations on decisions involving voluntary departure), pursuant to 8 C.F.R. §§ 1003.1(b)(1), (2), (3)

(2) decisions of Immigration Judges pertaining to asylum, withholding of deportation, withholding of removal, Temporary Protected Status, the Convention Against Torture, and other forms of relief

(3) decisions of Immigration Judges on motions to reopen where the proceedings were conducted in absentia

(4) decisions of Immigration Judges in rescission of adjustment of status cases, as provided in 8 C.F.R. part 1246

(5) some decisions pertaining to bond, parole, or detention, as provided in 8 C.F.R part 1236, subpart A

(6) decisions of DHS on family-based immigrant petitions, the revocation of family-based immigrant petitions, and the revalidation of family-based immigrant petitions (except orphan petitions)

(7) decisions of DHS regarding waivers of inadmissibility for nonimmigrants under § 212(d)(3)(A)(ii) of the Immigration and Nationality Act

(8) decisions of DHS involving administrative fines and penalties under 8 C.F.R. part 1280

See 8 C.F.R. §§ 1003.1(b), 1292.3. The Board may review these matters either upon appeal by one of the parties or by certification. See 8 C.F.R. § 1003.1(b), (c). Regarding the Board's scope of review, see Chapter 1.4(c) (Scope of review).

The Board also has the authority to discipline attorneys, recognized organizations and accredited representatives for professional misconduct, as discussed in Chapter 11 (Discipline)

(b) No Jurisdiction

Although the Board exercises broad discretion over immigration matters brought before the Immigration Courts and DHS, there are certain matters that the Board generally does not have the authority to review, such as:

(1) the length of a grant of voluntary departure granted by an Immigration Judge under former § 244(e) of the Immigration and Nationality Act and current § 240B of the Immigration and Nationality Act

(2) direct appeals from persons removed or deported in absentia pursuant to former § 242B of the Immigration and Nationality Act and current § 240(b) of the Immigration and Nationality Act

(3) credible fear determinations, whether made by an Asylum Officer or an Immigration Judge

(4) reasonable fear determinations made by Immigration Judge

(5) applications for advance parole

(6) applications for adjustment of status denied by DHS

(7) orphan petitions

(8) employment-based immigrant visa petitions

(9) waivers of the two-year foreign residence requirement for J-1 exchange visitors

(10) H and L nonimmigrant visa petitions

(11) K-1 fiancé/fiancée petitions

(12) employer sanctions

See 8 C.F.R. § 103.3, 28 C.F.R. §§ 68.53(a), 68.55.

(c) Scope of Review

(1) Immigration Judge Decisions

(A) Questions of fact - By regulation, the Board applies a clearly erroneous standard to an Immigration Judge's findings of fact, including credibility findings. See 8 C.F.R. § 1003.1(d)(3)(i).

(B) Questions of law - The Board applies a de novo standard of review to questions of law, discretion, judgment, and other issues. See 8 C.F.R. § 1003.1(d)(3)(ii).

(2) DHS officer decisions - The Board applies a de novo standard to all appeals of DHS officer decisions. 8 C.F.R. § 1003.1(d)(3)(iii).

(d) Board decisions

Board decisions are rendered either by a single Board Member, by a panel of three, or in rare instances, the entire Board. See Chapter 1.3(a) (Composition of the Board). Upon the entry of a decision, the Board serves its decision upon the parties by regular mail. An order issued by the Board is final, unless and until it is stayed, modified, rescinded, or overruled by the Board, the Attorney General, or a federal court. See generally 8 C.F.R. § 1003.1(d)(7), (g). An order is deemed effective as of its issuance date, unless the order provides otherwise. Board decisions are generally released in one of two forms: published or unpublished. For the citation format for Board cases, see Chapter 4.6(d) (Citation).

(1) Published decisions - Published decisions are binding on the parties to the decision. Published decisions also constitute precedent that binds the Board, the Immigration Courts, and DHS. The vast majority of the Board's decisions are unpublished, but the Board periodically selects cases to be published. See 8 C.F.R. § 1003.1(g). DHS decisions may also be published. See 8 C.F.R. §§ 103.3(c); 1103.3(c).

(A) Criteria - Decisions selected for publication meet one or more of several criteria, including but not limited to: the resolution of an issue of first impression; alteration, modification, or clarification of an existing rule of law; reaffirmation of an existing rule of law; resolution of a conflict of authority; and discussion of an issue of significant public interest.

(B) Publication - When a decision is selected for publication, it is prepared for release to the public. Headnotes are added, and an I&N Decision citation is assigned. Where appropriate, the parties' names are abbreviated, and alien registration numbers ("A numbers") are redacted. The decision is then served on the parties in the same manner as an unpublished decision.

Precedent decisions are collected and published in bound volumes of *Administrative Decisions Under Immigration and Nationality Laws of the United States* ("I&N Decisions"). Copies of individual decisions may be obtained from the Board's Internet site. See Chapter 1.6(e) (Electronic communications). Questions about how to obtain copies of published cases may be directed to the EOIR's library. See Chapter 1.5(b) (Library).

(C) Interim Decisions - In the past, the Board issued precedent decisions as slip opinions, called "Interim Decisions," before publication in a bound volume. See subsection (B), above. While precedent decisions are still assigned an "Interim Decision"

number for administrative reasons, the proper citation is always to the volume and page number of the bound volume. See subsection (B), above. The use of the Interim Decision citation is greatly disfavored by the Board.

(2) Unpublished decisions - Unpublished decisions are binding on the parties to the decision but are *not* considered precedent for unrelated cases. Should a party in an unrelated matter nonetheless wish to refer to an unpublished Board decision, a copy of that decision should be attached to the party's brief, motion, or other submission. If a copy is not available, the alien registration number ("A number") and decision date should be provided. The Board will entertain requests to publish an unpublished decision, but such requests are granted sparingly.

(3) Advisory opinion - The Board does not issue advisory opinions.

(e) Immigration Judges

As a general matter, Immigration Judges decide issues of removability, deportability, and admissibility, and adjudicate applications for relief. The Board has broad authority to review the decisions of Immigration Judges. See 8 C.F.R. § 1003.1(b). While the Immigration Courts and the Board are both components of EOIR, the two are separate and distinct entities. Thus, administrative supervision of Immigration Judges is vested in the Office of the Chief Immigration Judge, not the Board. See Chapter 1.2(c) (Relationship to the Immigration Courts).

(f) Department of Homeland Security

The Department of Homeland Security (DHS) enforces the immigration and nationality laws and represents the U.S. government's interests in removal, deportation, and exclusion 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. When appearing before the Board, DHS is deemed a party to the proceedings. See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)), Appendix B (Organizational Chart). The decisions of the Board are binding on DHS, unless modified or overruled by the Attorney General or a federal court. See Chapters 1.4(a) (Jurisdiction), 1.4(d) (Board decisions).

(g) Attorney General

Decisions of the Board are reviewable by the Attorney General and may be referred to the Attorney General, at the request of the Attorney General, DHS, or the Board. The Attorney General may vacate decisions of the Board and issue his or her own decisions. 8 C.F.R. § 1003.1(d)(1)(i), 1003.1(h). Decisions of the Attorney General may be published as precedent decisions in *Administrative Decisions Under Immigration and Nationality Laws of the United States* ("I&N Decisions").

(h) Federal Courts

The decisions of the Board are reviewable in 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. The Board cannot advise parties regarding the propriety of or means for seeking judicial review. The Board is not a party before the federal courts. When Board decisions are litigated before the federal courts, the United States government is represented by the Office of Immigration Litigation (OIL) or the United States Attorney's Office. See Chapter 1.2(h) (Relationship to the Office of Immigration Litigation (OIL)). When a federal court remands a case back to the Board for further action, the Board is usually notified by the office representing the government in the proceedings before the federal court.

1.5 - Public Access

(a) Office location

The Board of Immigration Appeals is located in Falls Church, Virginia, which is within the metropolitan Washington, D.C. area. With the specific exceptions made for the public information window, and on appropriate occasions the Oral Argument Room, access to Board facilities is limited to authorized personnel.

(b) Library

(1) Law Library and Immigration Research Center - EOIR maintains a Law Library and Immigration Research Center (LLIRC) at 5107 Leesburg Pike, Suite 1824, Falls Church, Virginia 22041. The library is located on the eighteenth floor of Skyline Tower of the Skyline complex. The library maintains select sources of immigration law, including Board decisions, federal statutes and regulations, federal case reporters, immigration law treatises, and various secondary source materials. The library serves the Board and the component agencies of EOIR, but is also open to the public. For hours, directions, and collection information, contact the library at (703) 605-1103 or visit EOIR's Internet site. See Appendix A (EOIR Directory). The LLIRC is not a lending library, and all materials must be viewed on the premises. While library staff may assist patrons in locating materials, library staff is not available for research assistance. Library staff may not provide legal advice or guidance regarding the filing, procedures, or follow-up for matters before the Board or the Immigration Courts. Library staff may, however, provide guidance in locating published decisions of the Board. The LLIRC does not accept any filings for any individual proceedings. See Chapter 3 (Filings with the Board). Limited self-service photocopying is available in the library. Smoking is prohibited.

(2) Virtual Law Library - The LLIRC also maintains a "Virtual Law Library" accessible at EOIR's website. The Virtual Law Library serves as a comprehensive repository of immigration-related law and information for use by attorneys and the general public.

(c) Oral Argument

The public may attend oral argument under certain circumstances. See Chapter 8 (Oral Argument).

(d) Records

(1) Inspection by parties - Parties to a proceeding, and their legal representatives, may inspect the official records of proceedings by prior arrangement with the Clerk's Office. Parties may review the entire record, except any portion of the record that is prohibited to the party (e.g., classified information, documents under a protective order). Removal of records by parties or other unauthorized persons is prohibited.

(2) Inspection by non-parties - Persons or entities who are not party to a proceeding must file a request for information pursuant to the Freedom of Information Act (FOIA). See Chapter 13 (Freedom of Information Act). The Clerk's Office may not permit non-parties to inspect the record or any part thereof.

(3) Copies for parties - The Clerk's Office, subject to the availability of resources, may provide up to 25 pages of the record to a party without charge. Otherwise, the Clerk's Office may, in its discretion, refer the party to the FOIA Unit for assistance. For parties inspecting the record on site, limited self-service copying is available. Parties may obtain a copy of any portion of the record, provided that portion is not prohibited to the party (e.g., classified information, documents under a protective order).

(4) Copies for non-parties - The Clerk's Office will not provide non-parties with copies of any official record, whether in whole or in part. Non-parties must file a request for information pursuant to the Freedom of Information Act (FOIA). See Chapter 13 (Freedom of Information Act).

(5) Confidentiality - The Board must balance the public's need for information with the protection of persons who appear before the Board. The Board takes special precautions to ensure the confidentiality of cases involving asylum applicants, battered alien spouses and children, exclusion proceedings, and classified information.

1.6 - Inquiries

(a) All Communications

All inquiries to the Board must contain or provide the following information for each alien:

(1) complete name (as it appears on the charging document or petition)

(2) alien registration number ("A number"), if applicable

(3) type of proceeding (removal, deportation, exclusion, bond, visa petition)

See also Chapter 3.3(c)(6) (Cover page and caption). If a party has more than one case before the Board, the inquiry must specify which case is the subject of the inquiry.

(b) Telephone Calls

Most questions to the Board can be answered through one of two automated phone numbers, Automated Case Information Hotline (also known as the "1-800 phone number") and "BIA TIPS". See Appendix H (Telephonic Information). Requests for action must be in writing, unless there is an emergency situation. See generally Chapter 6 (Stays and Expedite Requests). Requests for information may be made in writing or telephonically, pursuant to the procedures set forth below. Collect calls are not accepted.

(1) Simple inquiries

(A) Automated Case Information Hotline - The Automated Case Information Hotline provides information about the status of cases before an Immigration Judge or the Board. See Appendix A (EOIR Directory), Appendix H (Telephonic Information). The Automated Case Information Hotline contains a phone menu (in English and Spanish) covering most kinds of cases. The caller must provide the alien registration number ("A number") of the alien involved. A numbers have nine digits (e.g., A234 567 890). Formerly, A numbers had eight digits (e.g., A12 345 678). In the case of an eight-digit A number, the caller should enter a "0" before the A number (e.g., A012 345 678). For cases before the Board, Automated Case Information Hotline contains information regarding:

(i) appeals of most Immigration Judge decisions

(ii) briefing deadlines

(iii) filing instructions

For cases before the Board, Automated Case Information Hotline does not contain information regarding:

(i) bond, interlocutory, and visa petition appeals

(ii) motions before the Board

(iii) appeals of motions to reopen or to reconsider

(iv) remands from a federal court to the Board

If an inquiry cannot be answered by calling the Automated Case Information Hotline, inquiries may be directed to the Clerk's Office. See Appendix A (EOIR Directory). Callers must be aware that clerks, like all Board staff, are prohibited from providing any legal advice, and that no information provided by the Clerk's Office may be construed as legal advice.

(B) BIA TIPS - The Board of Immigration Appeals Telephonic Instructions and Procedures System or "BIA TIPS" contains recorded answers to commonly asked questions, including how to file an appeal, motion, brief, change of address, or other document with the Board. See Appendix A (EOIR Directory), Appendix H (Telephonic Information). When the recorded information does not adequately answer the question, pressing "0" for the operator connects the caller with Clerk's Office staff.

(2) Complex inquiries - Callers must bear in mind that the Board may not engage in ex parte communications or provide legal advice. Complex inquiries are best submitted in writing, whenever possible and appropriate. In the event that a telephonic inquiry is inappropriate for the Clerk's Office, the Clerk's Office may advise a caller to submit an inquiry in writing or otherwise refer the caller to qualified personnel. See Appendix A (EOIR Directory).

(3) Projected processing times - Given the volume and the varying complexity of the cases before the Board, the Board cannot predict processing times upon request. However, most parties can expect to receive a filing receipt for an appeal, a motion to reopen, or a motion to reconsider within 1-2 weeks of filing.

(4) Inquiries to specific staff members - Because of concerns regarding ex parte communications and judicial propriety, the Board does not permit parties to communicate directly with the Board Members or other staff assigned to any given case. For this reason, the Board does not reveal to the public the names of the Board Members or other staff who are assigned to a pending case.

(5) Emergencies and expedite requests - The Board provides special procedures for emergency situations. See Chapter 6 (Stays and Expedite Requests).

(c) Faxes

The Board does not accept faxes or other electronic transmissions transmitted directly to the Board without prior authorization. Faxes that are sent to a third party and then hand-delivered to the Board are acceptable under certain circumstances. See Chapter 3.1(a)(5) (Faxes).

(d) Mail and other forms of delivery

The Board no longer uses different addresses for different means of delivery. All mail sent through the U.S. Postal Service, courier, overnight delivery, or hand-delivered items must be addressed to the Board's street address. See Appendix A (Mailing Address). The public should carefully observe the guidelines in Chapter 3.1(a)(3) (Where to file). An "attention" line indicating the intended recipient, if the name or office is known, should appear at the bottom left of the envelope or at the appropriate location on the mailing label or form.

(e) Electronic Communications

(1) Internet - The Executive Office for Immigration Review (EOIR) maintains an Internet web site at http://www.justice.gov/eoir. See Appendix A (EOIR Directory). The site contains information about the Board and other components of EOIR, such as newly published regulations and Board precedent decisions, events at EOIR, and a copy of this manual.

(2) Internet Immigration Information (I3) - The Internet Immigration Information (I3, pronounced "I-cubed") is a suite of EOIR web-based products that includes eRegistry, eFiling, and eInfo. Access to these online electronic products is available on EOIR's website.

(A) Electronic Registry (eRegistry) - Attorneys and fully accredited representatives who are accredited to appear before EOIR must electronically register with EOIR in order to practice before the Board. eRegistry is the online process that is used to electronically register with EOIR. See Chapter 2.1(b) (Entering an Appearance).

(B) Electronic filing (eFiling) - The Board has limited electronic filing or "eFiling." At this time, the Board will accept either electronic or paper submission of the Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). The electronic submission of the Form EOIR-27 may only be made by registered attorneys and fully accredited representatives. See Chapter 2.1(b) (Entering an Appearance). EOIR will not allow an electronic submission of the Form EOIR-27 by a representative who is not registered. The Board does not have electronic filing for other forms at this time. Certain forms can, however, be filled in online, but must be printed for hard copy submission to the Board. See Chapter 12.2(b) (Obtaining Forms).

(C) Electronic Case Information (eInfo) - The Electronic Case Information or "eInfo" is a web-based product that provides information about the status of cases before an Immigration Judge or the Board. The information provided by eInfo is similar to that which

is available by telephone via the Automated Case Information Hotline. At this time, however, eInfo is available only to registered attorneys and fully accredited representatives who will be able to view their clients' case information for which they have entered a Notice of Appearance using their EOIR ID. For instructions and more information on EOIR's suite of web-based products listed in subsections (A), (B), and (C), parties should consult EOIR's website.

(3) E-mail - The Board does not correspond with the public through e-mail communications except for e-mail generated through the I3 suite of web-based products. See subsection (ii), above.

(4) Faxes - See subsections (c), above.

(f) Emergencies and Expedite Requests - If imminent deportation or other impending circumstances require urgent Board action, parties should follow the procedures set forth in Chapter 6 (Stays and Expedite Requests).

Chapter 2 - Appearances Before the Board

2.1 - Representation Generally

(a) Types of representatives

The regulations specify who may represent parties before the Board. See 8 C.F.R. § 1292.1. As a practical matter, there are four categories of people who may present cases to the Board: unrepresented aliens (Chapter 2.2), attorneys (Chapter 2.3), accredited representatives (Chapter 2.4), and certain kinds of individuals who are expressly recognized by the Board (Chapter 2.5 and 2.9).

No one else is recognized to practice before the Board. Non-lawyer "immigration specialists," "visa consultants," and "notarios" are not authorized to represent parties before the Board. See Chapter 2.7 (Immigration Specialists).

(b) Entering an appearance

(1) Notice of Appearance - All representatives must file a Notice of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) for each represented party on a separate Form EOIR-27. Representatives must use the most current version of the form, which can be found on EOIR's website. Note that this form is not the one used before the Immigration Court (Form EOIR-28) and that the Board will not recognize a representative using Form EOIR-28. Unrepresented persons ("pro se" aliens) should not file a Notice of Appearance. An original Notice of Appearance should always be filed in the following situations:

- the filing of an appeal
- the filing of a motion to reopen
- the filing of a motion to reconsider
- the first appearance of an attorney or representative
- any change of business address for the attorney or representative

(2) eRegistry registration requirement - Attorneys and fully accredited representatives who are accredited to appear before EOIR must register with EOIR's eRegistry in order to practice before the Board. See 8 C.F.R. § 1292.1(f). An attorney or fully accredited representative who fails to provide required registration information risks being administratively suspended from practice before EOIR. Access and instructions for eRegistry can be found on EOIR's website. Once EOIR has activated the registered account, the attorney or fully accredited representative will be assigned a unique EOIR ID number.

(3) eFiling - Registered attorneys and fully accredited representatives will have the option to electronically file a Notice of Appearance (Form EOIR-27). Registered attorneys

and fully accredited representatives who elect to file electronically may also wish to submit a printed copy of the electronic Form EOIR-27 when filing an appeal, motion to reopen, and motion to reconsider with the Board.

(4) Notice to opposing party - In all instances of representation, the other party must be served with a copy of the Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). See Chapter 3.2 (Service).

(5) Filings and communications - Whenever a party is represented, the party should submit all filings and communications to the Board through the representative. Filings should always be made by a party to the proceedings, or a party's representative, and not by a third party. See Chapter 4.3(d) (Persons not party to the appeal), 5.1(c) (Persons not party to the proceeding).

2.2 - Unrepresented Aliens ("Pro se" Appearances)

(a) Generally

An individual in proceedings may represent himself or herself before the Board.

Many individuals choose to be represented by an attorney or accredited representative. Due to the complexity of the immigration and nationality laws, the Board recommends that those who can obtain professional representation do so.

(b) Pro Bono Program

The Board cannot give advice on when to obtain professional representation or whom to select. However, EOIR provides general information for persons seeking free legal services on its website through the Office of Legal Access Programs. The website also includes information on the BIA Pro Bono Project, which matches attorney brief writers with indigent aliens who have cases on appeal.

(c) Address Obligations

Whether represented or not, all aliens in proceedings before the Board must notify the Board within 5 business days of any change of address. See 8 C.F.R. § 1003.38(e). In all instances, the Board sends communications to the last properly provided address. If an alien fails to keep address information up to date, the Board may treat that failure as abandonment of the alien's appeal or motion.

(1) Form EOIR-33/BIA - Changes of address *must* be made in writing and only on Form EOIR-33/BIA. Unless the alien is detained, *no other means of notification is acceptable*. Changes communicated through 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. For information on obtaining or reproducing Form EOIR-33/BIA, see Chapter 12 (Forms) and Appendix D (Forms).

(2) Appeals - When an appeal is filed, the Board relies on the address for the alien that appears in the Notice of Appeal (Form EOIR-26) until such time as a change of address is reported through the filing of a Change of Address Form (Form EOIR-33/BIA).

(3) Motions - The Board recommends that an alien file a Change of Address Form (Form EOIR-33/BIA) whenever filing a motion to reopen, a motion to reconsider, or a motion to recalendar. This will ensure that the Board has the alien's current address when it adjudicates the motion.

(4) Federal court remands - When the Board is notified of a federal court remand, the Board relies on the address for the alien that was last provided to the Board. To ensure that

the Board has the most current address, aliens are encouraged to file a Change of Address Form (Form EOIR-33/BIA) with the Board whenever a federal court remands his or her case to the Board.

(d) Address Obligations of Detained Aliens

When an alien is detained, DHS is obligated by regulation to report to the Board any changes in the alien's location, including where the alien is detained and when the alien is released. See 8 C.F.R. § 1003.19(g).

(1) While detained - In recognition of the unique address problems of detained persons and to help ensure that the Board's records remain current, the Board recommends that detained persons notify the Board of their transfer from one facility or institution to another. Whenever possible, a detained alien should report his or her transfer on the Change of Address Form (Form EOIR-33/BIA). See subsection (b), above.

(2) When released - DHS is responsible for notifying the Board when an alien is released from custody. 8 C.F.R. § 1003.19(g). Nonetheless, the alien should file a Change of Address Form (Form EOIR-33/BIA) with the Board to ensure that the Board's records are current.

2.3 - Attorneys

(a) Right to Counsel

An alien in immigration proceedings may be represented by an attorney of his or her own choosing at no cost to the government. Unlike criminal proceedings, the government is not obligated to provide legal counsel. The Immigration Courts provide lists of attorneys who may represent aliens for little or no cost, and many of these attorneys handle cases on appeal as well. Bar associations and nonprofit agencies can also refer aliens to practicing attorneys.

(b) Qualifications

An attorney may practice before the Board 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 of any court 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 Board who is the subject of such disciplinary action in any jurisdiction must promptly notify the Board of that action. See Chapter 11.6 (Duty to Report).

(1) eRegistry - Attorneys must electronically register through eRegistry on the EOIR website in order to practice before the Board. See 8 C.F.R. § 1292.1(f). An attorney who fails to provide required registration information risks being administratively suspended from practice before EOIR. Access and instructions for eRegistry can be found on EOIR's website. Once EOIR has activated the registered account, the attorney will be assigned a unique EOIR ID number.

(c) Appearances

Attorneys must enter an appearance before the Board by filing a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) for each represented alien. See 8 C.F.R. §§ 1003.2(g)(1), 1003.3(a)(3). A Notice of Appearance should always be filed in the situations described in Chapter 2.1(b) (Entering an Appearance). The Notice of Appearance must be served on the opposing party. See Chapter 3.2 (Service). If information is omitted from the Notice of Appearance or the form is not properly completed, the attorney's appearance may not be recognized, and the filing may be rejected.

(1) Form EOIR-27 - Practitioners *must* use the most current version of the form, which can be found on the EOIR website. Practitioners should observe the distinction between the Board's Notice of Appearance (Form EOIR-27) and Immigration Courts' version (Form EOIR-28). The Board will not recognize a practitioner based on an Immigration Court appearance form (Form EOIR-28), whether filed with the Immigration Court or the Board.

The Board will accept from a registered attorney either the electronic or paper submission of the Form EOIR-27, though practitioners may wish to file a paper copy in conjunction with electronic submission.

(2) Attorney information - The Notice of Appearance must bear an individual's attorney's current address and the attorney's original signature in compliance with the requirements of Chapter 3.3(b) (Signatures). The EOIR ID number issued by EOIR through the eRegistry process *must* be provided on the Notice of Appearance.

(3) 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 Appearance. 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, or disbarred – must be listed and the state bar number, if any, provided.

(4) Discipline information - An attorney who is subject to discipline must provide additional information on the form and may include an explanatory supplement. An attorney who fails to provide discipline information risks not being recognized by the Board and may be subject to disciplinary action by EOIR.

(d) Scope of Representation

Once an attorney has made an appearance, he or she has an obligation to continue representation until such time as the alien terminates representation, another attorney enters an appearance, or a motion to withdraw as counsel has been granted by the Board. Therefore, outside the context of oral argument, the Board generally does not allow limited appearances. See subsection (f), (g), and (j), below. See also Chapter 8.6(b) (Multiple representation).

(1) Multiple representatives - Sometimes, an alien may retain more than one attorney at a time. When that is the case, one of the attorneys must be identified as the primary attorney. All of the attorneys must file Notices of Appearances (Form EOIR-27), and each Form EOIR-27 must be annotated to reflect which is the primary attorney. Only the primary attorney will receive mailings from the Board. *All* of the attorneys, regardless of primary or non-primary designation, are representatives of record and are individually responsible as attorneys for the alien. All submissions to the Board must bear the name of one of the representatives of record and be signed by the attorney. See subsection (b), above. See also Chapter 3.3(b) (Signatures).

Circumstances may arise that require the Board to switch service of mailings from the primary attorney to a secondary attorney or representative. For example, if the primary attorney is suspended from practice before the Board and Immigration Courts, or a discrepancy exists as to the designation of primary and non-primary in received Notice of

Appearances, or no designation is made by attorneys or representatives. When discrepancies occur, the Board will make reasonable efforts to resolve the discrepancy with the attorneys. However, service of Board notices and orders will not be delayed as a result of the suspension of the primary attorney, discrepancies as to designations of primary and non-primary on the Notice of Appearance, or failure to designate the primary attorney/representative. As noted above, *all* the attorneys are representatives of the record, and the Board may change the primary attorney designation when warranted.

(2) Change in firm - In the event that an attorney departs a law firm but wishes to continue as attorney of record, the attorney should promptly submit a new Notice of Appearance. The Notice of Appearance must reflect any change of address and should apprise the Board of his or her change in office affiliation. The attorney should check the "new address" box in the address block on the Notice of Appearance. The attorney should also update his or her eRegistry information online prior to submitting a new electronic or paper Form EOIR-27. See subsection (i) below.

(3) 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 Notice of Appearance (Form EOIR-27) and thereby become the attorney of record. Similarly, if a law firm wishes to reassign responsibility for a case from the attorney of record to another attorney in the firm, the new attorney must file a Form EOIR-27. Until such time as another attorney files a Form EOIR-27 (or a motion to withdraw is granted by the Board), the original attorney of record remains the attorney of record and is responsible for the case. See subsection (j), below.

(f) Law Firms

(1) Firm not the representative - Only individuals, not firms or offices, may represent parties before the Board. In every instance of representation, a named attorney must enter an appearance to act as the attorney of record. Accordingly, the Board does not accept appeals, motions, briefs, or other filing submitted by a law firm, law office, or other entity, if they do not include the name and signature of the attorney of record. See subsection (f), above. See also Chapter 3.3(b)(2) (Law Firms). If at any time, more than one attorney represents an alien, one of the attorneys must be designated as the primary attorney to receive Board notices and orders. See subsection (f) above.

(2) No filings "on behalf of" - The Board only accepts filing by the attorney of record, not *on behalf of* the attorney of record. Thus, any filing from an attorney who is not the attorney of record *must* be accompanied by a completed Notice of Appearance (Form EOIR-27), whereupon that attorney will become the new attorney of record. See subsection (j), below. Limited appearances for purposes of filing an appeal, motion, brief, or other document are not recognized. See subsection (e), above.

(g) Service upon Counsel

Service of papers upon counsel of a represented party constitutes service on the represented party. 8 C.F.R. § 1292.5(a).

(h) Address obligations of counsel

Attorneys who enter an appearance before the Board have an affirmative duty to keep the Board apprised of their current address and contact information. See 8 C.F.R. § 1003.38(e). Changes of address should be made by filing an updated Notice of Appearance (Form EOIR-27), *not* through the alien Change of Address Form (Form EOIR-33/BIA). If a registered attorney has a new address, he or she must update the eRegistry information online prior to submitting a new Form EOIR-27. An attorney filing a change of his or her address should check the "New Address" box in the address block on the Notice of Appearance.

(1) Compound changes of address - Attorneys must submit a separate Notice of Appearance for each alien represented. An attorney may not submit a list of clients for whom his or her change of address should be entered.

(2) Address obligations of represented aliens - Even when an alien is represented, the alien is still responsible for keeping the Board apprised of his or her current address. Changes of address for the alien may not be made on the Notice of Appearance (Form EOIR-27) but must be made on the Change of Address Form (Form EOIR-33/BIA). See Chapter 2.2(c) (Address obligations).

(i) Change in Representation

A represented alien may substitute or release counsel at his or her discretion. A representative may withdraw from representation under certain conditions. Aliens and their representatives must keep the Board apprised of all changes in representation.

(1) Substitution of counsel - A represented alien may substitute counsel at his or her discretion. When an alien wishes to substitute a new attorney for a previous counsel, the new attorney must file a Notice of Appearance (Form EOIR-27). The new attorney is expected to serve a copy of the Notice of Appearance on prior counsel and the opposing party. See Chapter 3.2 (Service).

Upon receipt of the new Notice of Appearance, the Board automatically recognizes new counsel, and prior counsel need not file a motion to withdraw. However, until such time as a new Notice of Appearance has been filed, prior counsel remains the attorney of record and is accountable as such.

Extension requests that are based on substitution of counsel are not favored. See Chapter 4.7(c) (Extensions).

(2) Release of counsel - A represented alien may, at his or her discretion, terminate representation at any time.

If a represented alien dismisses his or her attorney and does not retain a new attorney immediately, the represented alien should notify the Board through correspondence with a cover page labeled. "NOTICE OF DISMISSAL OF ATTORNEY." See Appendix E (Sample Cover Pages). This "dismissal notice" should contain the full name, alien registration number ("A number"), and complete address of the alien, as well as the name of the attorney being dismissed. The dismissal notice should also contain Proof of Service indicating that both the attorney and DHS have been served. See Chapter 3.2 (Service). An updated Change of Address Form (Form EOIR-33/BIA) should accompany the dismissal notice.

If a represented alien dismisses one attorney, but retains a new attorney who immediately files a Notice of Appearance (Form EOIR-27), the alien need not file a dismissal notice for the first attorney.

If, after a dismissal notice has been filed, an alien retains a new attorney, the new attorney must file a Notice of Appearance (Form EOIR-27). See subsection (d), above.

(3) Withdrawal of counsel - Counsel seeking withdrawal should file a motion with a cover page labeled "MOTION TO WITHDRAW AS COUNSEL." See Chapter 3.2 (Service), Appendix E (Sample Cover Pages). The motion should contain the following information:

- the last known address of the represented alien
- evidence that the attorney has notified or attempted to notify the alien of the request to withdraw as counsel
- evidence that either (a) the alien is aware of pending deadlines, existing obligations, and the consequences for failing to comply with those deadlines and obligations, or (b) the attorney attempted to notify the alien of those deadlines and obligations

See *Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988). Withdrawal should be effected in a timely fashion to avoid compromising the interests of the alien.

(j) Attorney misconduct

The Board has the authority to impose disciplinary sanctions upon attorneys and representatives who violate rules of professional conduct in practice before the Board, the Immigration Courts, and DHS. See Chapter 11 (Discipline). Where an attorney in a case has been suspended from practice before the Board and the alien has not retained new counsel, the Board will treat the alien as pro se. All mailings from the Board, including briefing schedules and orders, will be mailed directly to the alien. Any filing from an attorney who has been suspended from practice before the Board will be rejected.

(k) Administrative suspension

If an attorney fails to comply with mandatory eRegistry registration requirement, he or she may be administratively suspended from practice before the Board. 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). See Chapter 2.1(b) (Registry Requirement).

2.4 - Accredited Representatives

(a) Generally

An accredited representative is a person who is approved by the Assistant Director for Policy or the Assistant Director's designee to represent aliens before the Board, the Immigration Courts, and/or DHS. He or she must be a person who works for a specific nonprofit religious, charitable, social service, or similar organization which has been recognized to represent aliens. A fully accredited representative may represent aliens before the Board, the Immigration Courts, and DHS, whereas partially accredited representatives may only represent individuals before DHS. Accreditation is valid for a period of up to three years and can be renewed. See 8 C.F.R. §§ 1292.1(a)(4), 1292.12.

(b) eRegistry

A fully accredited representative must electronically register with EOIR in order to practice before the Board (eRegistry). See 8 C.F.R. § 1292.1(f). A fully accredited representative who fails to provide required registration information risks being administratively suspended from practice before EOIR. Access and instructions for eRegistry can be found on the EOIR website. Once EOIR has activated the registered account, the fully accredited representative will be assigned a unique EOIR ID number.

Because partially accredited representatives cannot practice before the Board or Immigration Courts, they are not eligible or required to register.

(c) EOIR-27

Accredited representatives must file a Notice of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) in order to represent an individual before the Board. See Chapter 2.3(d) (Appearances). Accredited representatives should be careful to use the most current version of the Notice of Appearance (Form EOIR-27), which can be found on EOIR's website. The Board will accept electronic or paper submission of the Form EOIR-27. If a registered fully accredited representative has a new address, he or she must update his or her eRegistry information online prior to submitting a new electronic or paper Form EOIR-27. An accredited representative filing a change of his or her address should check the "New Address" box in the address block on the Notice of Appearance.

(d) Qualifying Organizations

The Assistant Director for Policy or the Assistant Director's designee officially recognizes certain nonprofit, religious, charitable, social service, and similar organizations as legal service providers. See 8 C.F.R. § 1292.11. To be recognized by EOIR, an organization must affirmatively apply for that recognition. Such an organization must establish to the

satisfaction of the Assistant Director for Policy or the Assistant Director's designee that it has access to adequate knowledge, information, and experience in immigration law and procedure. The qualifications and procedures for organizations seeking EOIR recognition are set forth in the regulations. See 8 C.F.R. § 1292.11. Questions regarding recognition may be directed to the OLAP in the EOIR Office of Policy. See Appendix A (EOIR Directory). Additional information regarding Recognition & Accreditation is available on the EOIR website.

(e) Qualifying Representatives

The Assistant Director for Policy or the Assistant Director's designee accredits persons as representatives of qualifying organizations. See 8 C.F.R. § 1292.12. Representatives of recognized organizations are not, however, automatically accredited by EOIR. Rather, the recognized organizations must affirmatively apply for accreditation on each representative's behalf. See 8 C.F.R. §§ 1292.12(b), 1292.13.

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

(f) 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 and must be employed by a nonprofit institution specifically recognized by the Assistant Director for Policy or the Assistant Director's designee.

(g) Verification

To verify that an individual has been accredited by EOIR, the public can either:

- consult the Recognition & Accreditation rosters at EOIR's website, or
- contact the R&A Coordinator (see Appendix A (EOIR Directory))

(h) 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).

(i) Signatures

Only the accredited representative who is the representative of record may sign submissions to the Board. An accredited representative, even in the same organization,

may not sign or file on another accredited representative's behalf. See Chapter 3.3(b) (Signatures).

(j) Representative Misconduct

Accredited representatives must comply with certain standards of professional conduct. See 8 C.F.R. §§ 1003.101 et seq; 1292.13.

(k) Request to be Removed from List of Accredited Representatives

An accredited representative who no longer wishes to represent aliens should write to the R&A Coordinator and request to be removed from the list. See Appendix A (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 Board if certain conditions are met. Recognition by the Board is not automatic and must be requested in writing. See 8 C.F.R. § 1292.1(a)(2).

(b) Law Students

(1) Notice of Appearance - A law student must file a Notice of Entry Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). He or she should check the box on the Notice of Appearance for law students 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. Law students are not issued EOIR ID numbers, and this part of the form can be left blank. If the law student has a supervising attorney or fully accredited representative who has been issued an EOIR ID number, that number should be included on the reverse side of the form.

(2) Representation statement - A law student wishing to appear before the Board 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. 8 C.F.R. § 1292.1(a)(2). Such statement should be filed with the Notice of Appearance (Form EOIR-27).

(c) Law Graduates

(1) Notice of Appearance - A law graduate must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). The law graduate should be careful to use the most current version of the form, which can be found on the EOIR website. He or she should check the box on the Notice of Appearance 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. Law graduates are not issued EOIR ID numbers, and this part of the form is left blank. If the supervising attorney or fully accredited representative has been issued an EOIR ID number, that number should be included on the reverse side of the form.

(2) Representation statement - A law graduate wishing to appear before the Board must file a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative. That statement should also state that the law graduate is appearing without direct or indirect remuneration from the alien being

represented. 8 C.F.R. § 1292.1(a)(2). Such statement should be filed with the Notice of Appearance (Form EOIR-27).

(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 Board. Paralegals who do not work for an attorney risk being charged with the unauthorized practice of law.

2.7 - Immigration Specialists

Immigration specialists – which include visa consultants and "notarios" – are *not* authorized to practice law or appear before the Board. These individuals are generally 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).

2.8 - Family Members

If a party is a child, then a parent or legal guardian may represent the child before the Board, provided the parent or legal guardian clearly informs the Board 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 Board to do so. See Chapter 2.9(a) (Reputable individuals).

2.9 - Others

(a) Reputable Individuals

In appropriate circumstances, the Board will allow a "reputable individual" to appear on behalf of an 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 Board

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.

To appear before the Board, a reputable individual must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). He or she should check the box on the Notice of Appearance. Reputable individuals are not issued EOIR ID numbers, and this part of the form can be left blank. 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 Notice of Appearance.

(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 Foreign Government Officials

An accredited foreign government official may appear before the Board in his or her official capacity and with the alien's consent. See 8 C.F.R. § 1292.1(a)(5). To appear before the Board, an accredited foreign government official must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). An accredited foreign government official should check the box on the Notice of Appearance and provide on the reverse side of the form the words "ACCREDITED OFFICAL OF [name of country]." Accredited foreign government officials are not issued EOIR ID numbers and this part of the form can be left blank.

(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 Board. See 8 C.F.R. § 1292.1(c).

(e) Foreign Student Advisors

A foreign student advisor is not authorized to appear before the Board, unless the advisor is an accredited representative. See Chapter 2.4 (Accredited Representatives).

2.10 - Amicus Curiae

The Board may grant permission to an amicus curiae to appear, on a case-by-case basis, where it serves the public interest. 8 C.F.R. § 1292.1(d). The decision to grant or deny a request to appear as amicus curiae is within the sole discretion of the Board. An appearance as amicus curiae is not a request to represent a party before the Board. The Notice of Appearance (Form EOIR-27) is therefore not required. See Chapter 2.1(a) (Types of Representatives).

The Board generally limits the appearance of amicus curiae to the filing of briefs. See Chapter 4.6(i) (Amicus curiae briefs). Amicus curiae may request an opportunity to present oral argument, but such requests are granted sparingly. See Chapter 8.7(d)(8) (Amicus Curiae).

A person or organization wishing to make an appearance as an amicus curiae must file a written request with the Clerk's Office, preferably with a cover page labeled "REQUEST TO APPEAR AS AMICUS CURIAE." See Appendix A (EOIR Directory), Appendix E (Sample Cover Pages). That request should specify the name and alien registration number ("A number") of the matter in which an amicus curiae wishes to appear and articulate why amicus curiae should be permitted to appear. A brief should accompany the request to appear as amicus curiae. If the Board grants the request, the parties will be provided an opportunity to respond. See Chapter 4.6(h) (Reply briefs), 4.6(i) (Amicus curiae briefs). The request and brief should be served on all parties to the proceedings. See Chapter 3.2 (Service).

The Board may, at its discretion, acknowledge helpful amicus curiae brief(s) and contributors.

Chapter 3 - Filing with the Board

- 3.1 - Delivery and Receipt
- 3.2 - Service
- 3.3 - Documents
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3.1 - Delivery and Receipt

(a) Filing

Most appeals and motions adjudicated by the Board are filed directly with the Board. Some appeals and motions, however, are filed with DHS. See Chapters 4.2(b) (Filing), 5.2 (Filing a Motion), 7.3(a) (Filing), 9.3(c)(2) (Where to file), Appendix J(Where to File a Motion). No appeal, motion, correspondence, or other filing intended for the Board should ever be filed with an Immigration Court.

(1) Receipt rule - For appeals and motions that must be filed with the Board, the appeal or motion is not deemed "filed" until it is *received* at the Board. The Board does not observe the "mailbox rule." Accordingly, receipt by any other entity – be it the U.S. Postal Service, commercial courier, or detention facility – does *not* suffice. See Chapter 1.5 (a) (Office location), Appendix A (Mailing Address, EOIR Directory).

(2) Postage problems - All required postage or shipping fees must be paid *by the sender* before an item will be accepted by the Board. The sender is responsible for paying the proper postage in all instances. When using a courier or similar service, the sender is responsible for properly completing the packing slip, including the label and the billing information. The Board therefore rejects mailings for which the required postage has not been paid or the courier billing information has not been properly completed. See Chapter 3.1(c)(1) (Meaning of "rejected").

(3) Where to file - All filings to the Board must be sent to the following street address:

Board of Immigration Appeals

Clerk's Office

5107 Leesburg Pike, Suite 2000

Falls Church, VA 22041

The Board no longer uses different addresses for different means of delivery. All mail sent through the U.S. Postal Service, courier, overnight delivery, or hand-delivered items must be addressed to the street address above. See Appendix A (Mailing Address, EOIR Directory).

An "attention" line indicating the intended recipient, if the name or office is known, should appear at the bottom left of the envelope or at the appropriate location on the mailing label or form. Parties must use the correct postage on all items mailed to the Board. See subsection (ii), above. The Board will not pay postage due, and the U.S. Postal Service will return any item with insufficient postage to the sender.

Given the importance of timely filing, the Board encourages parties to use courier and overnight delivery services, whenever appropriate. However, the failure of a courier or overnight delivery service does not excuse parties from meeting filing deadlines. See Chapter 3.1(b)(4) (Delays in delivery).

(4) Separate envelopes - Unrelated cases should not be sent in one envelope. To avoid confusion, each case should either be sent separately or, if mailed as a package, in its own envelope within that package.

(5) Faxes

(A) Sent directly to the Board - The Board does not accept faxes or other electronic transmissions without prior authorization. Unauthorized transmissions are discarded without consideration of the document or notice to the sender. Facsimiles ("faxes") transmitted directly to the Board will be accepted only when solicited *by the Board* in emergencies and other compelling circumstances. See generally Chapter 6 (Stays and Expedite Requests). Faxes must be sent to the attention of the person at the Board who authorized the fax.

(B) Sent through a third party - Faxes that are sent to a third party, such as a local counsel or a local delivery agent, and then hand-delivered to the Board are acceptable under the following conditions:

- the original document must bear an original signature
- the original document must be available to the Board upon request
- the fax copy must be legible
- the filing must clearly reflect that the submission comes from the representative of record or the party to the proceeding, not the counsel receiving the fax or the agent who is delivering it
- fax header information will not be used to identify the filing party, the nature of the submission, or the timeliness of the submission
- the filing party is always responsible for the filing's legibility and timeliness

Signatures are discussed at Chapter 3.3(b) (Signatures).

(6) eFiling - The Board will accept either electronic or paper submission of the Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). Only registered attorneys and fully accredited representatives may file the Form EOIR-27 electronically. See Chapter 2.1(b) (Entering an Appearance). EOIR will not allow an electronic submission of the Form EOIR-27 by any attorney or representative who is not registered.

The Board does not have electronic filing for *any* other forms or documents. Certain forms can, however, be filled in online, but must be printed for hard copy submission to the Board. See Chapter 12.2(b) (Obtaining Forms).

(b) Must be "Timely"

The Board places a date stamp on all filings received by the Clerk's Office. See Appendix A (Mailing Address, EOIR Directory). Absent persuasive evidence to the contrary, the Board's date stamp is controlling in the computation of whether a filing is "timely." Because filings are date-stamped upon arrival at the Board, the Board strongly recommends that parties file as far in advance of the deadline as possible and, whenever possible, use overnight delivery couriers (such as Federal Express, United Parcel Service, DHL, etc.) to ensure timely receipt.

(1) Construction of "day" - All due dates at the Board are calculated in calendar days. Thus, unless otherwise indicated, all references to "days" in this manual refer to calendar days, not business days.

(2) Computation of time - For purposes of computing appeal and motion deadlines, time is measured from the date of the decision (or the mailing date of the decision, if later) to the date that the appeal or motion is received by the Board.

When counting days, the day that the decision is made (or mailed) counts as "day 0." The day after the date the decision is made (or mailed) counts as "day 1." Because the Board uses calendar days to calculate deadlines, Saturdays, Sundays, and legal holidays *are* counted toward the computation of a deadline. If, however, a deadline date falls on a weekend or a legal holiday, the deadline is construed to fall on the next business day.

(3) Specific deadlines - Specific deadlines for specific types of filings are discussed elsewhere. See Appendix C (Deadlines).

(4) Delays in delivery - Postal or delivery delays do not affect existing deadlines, nor does the Board excuse untimeliness due to such delays, except in rare circumstances. Parties should anticipate all Post Office and courier delays, whether the filing is made through first class mail, priority mail, or any overnight or other guaranteed delivery service. Delays caused by incorrect postage or mailing error by the sending party do not affect existing deadlines. See Chapter 3.1(a)(2) (Postage problems).

(5) 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 file a motion asking the Board to accept untimely filing. See Chapter 3.1(c)(3) (Untimely). Parties must include documentary evidence to support their motion, including such evidence as affidavits and declarations under the penalty of perjury. The Board will consider each motion on a case-by-case basis.

(6) Effect of extension requests - All deadlines must be met. A pending extension request does not excuse a party from meeting a filing deadline. Unopposed requests are not automatically granted. Extensions must be affirmatively granted before a filing will be accepted past the original deadline. See Chapters 4.5 (Appeal Deadlines), 4.7(c) (Extensions).

(c) Defective Filings

(1) Meaning of "rejected" - When the Board "rejects" a filing, the filing is returned to the sender. The term "rejected" means that the filing is defective, and the Board cannot consider the filing. It is *not* an adjudication of the filing or a decision regarding its content.

(2) Improperly filed - If an appeal, motion, or brief is not properly filed, it is rejected by the Clerk's Office and returned to the party with an explanation for the rejection. Parties wishing to correct the defect and refile after a rejection must do so by the original deadline, unless an extension is expressly granted by the Board. See Chapter 4.5(b) (Extensions), 4.7(c) (Extensions), 5.3 (Motion Limits). The most common reasons for rejecting an appeal or motion are (A) failure to pay a fee or submit a fee waiver application when a fee is required, and (B) failure to submit a proof of service on the opposing party, which is always required. [1405406] See Chapters 3.2 (Service), 3.4 (Filing Fees), Appendix F (Sample Proof of Service).

(3) Untimely - If an appeal is untimely, the appeal is dismissed. See 8 C.F.R. §§ 1003.1(d)(2)(i)(G), 1003.38(b). If a motion is untimely, the motion is denied. See 8 C.F.R. § 1003.2(b)(2), (c)(2). If a brief is untimely, it is rejected and returned to the party with an explanation for the rejection. Parties wishing to refile an untimely brief must file a motion asking the Board to accept the untimely brief and attach the original submission. See Chapter 4.7(d) (Untimely briefs). Parties must include documentary evidence to support their motion, including such evidence as affidavits and declarations under the penalty of perjury.

(d) Filing Receipts

The Board issues receipts for certain filings. Whether or not a receipt is issued, however, parties are encouraged to obtain and retain corroborative documentation of delivery, such as mail delivery receipts and courier tracking information. (As a precaution against loss, parties should also keep copies of all items sent to the Board.)

(1) Receipt issued - The Board routinely issues receipts only for Notices of Appeal (Form EOIR-26), motions to reopen, and motions to reconsider. A receipt is not an adjudication of timeliness or a determination that a filing falls within the Board's jurisdiction, but an acknowledgment that a filing has been received by the Board.

If a filing receipt is not received within approximately two weeks, parties may call the Automated Case Information Hotline for current information on appeals or the Clerk's Office for current information on appeals or motions. See Appendix A (EOIR Directory).

(2) Receipt not issued - A receipt is not issued for filings other than Notices of Appeals, motions to reopen, and motions to reconsider. The Board does not provide written receipts for other motions, briefs, or memoranda. See Chapter 4.7(b) (Processing).

(3) Conformed copies - When a filing arrives at the Clerk's Office, a time-and-date stamp is placed on the filing. If a filing party desires a "conformed copy" (i.e., a copy of the filing bearing the Board's time-and-date stamp), the original must be accompanied by an accurate copy of the filing, prominently marked "CONFORMED COPY; RETURN TO SENDER." The filing must also contain a self-addressed stamped envelope or comparable return delivery packaging. The Board does not return conformed copies without a prepaid return envelope or packaging.

3.2 - Service

(a) Service Requirement

For all filings before the Board, a party must:

- provide, or "serve," a copy on the opposing party (or, if the party is represented, the party's representative), *and*
- declare, in writing, that a copy has been served on the opposing party (or, if the party is represented, the party's representative)

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 Assistant Chief Counsel is the designated officer to receive service. The opposing party is *never* the Board or the Immigration Judge.

This written declaration is called a "Proof of Service," which is also referred to as a "Certificate of Service." See subsection (d), below, and Appendix F(Sample Certificates of Service). See also 8 C.F.R. §§ 1003.2(g)(1), 1003.3(a)(1), 1003.3(c).

(b) Method of Service

Service may be accomplished by hand or by mail. Service is complete upon hand delivery of papers to a responsible person at the address of the person being served or upon the mailing of the papers.

(c) Timing of Service

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

(d) Proof of Service

An appeal or motion, and all subsequent filings in support of an appeal or motion, must be accompanied by Proof of Service on the opposing party. See 8 C.F.R. §§ 1003.2(g)(1), 1003.3(a)(1), 1003.3(c). See also Appendix F (Sample Certificates of Service). Some forms, such as the Notice of Appeal (Form EOIR-26), contain a Certificate of Service, which functions as a Proof of Service. The Board rejects any submission that is filed without Proof of Service on the opposing party. See Chapter 3.1(c)(1) (Meaning of "rejected"). The only exception is a motion that is agreed upon by all parties and jointly filed (because both parties are presumed to have seen the motion they are filing together).

A Proof of Service must specify the following:

- 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., 1st class mail, overnight delivery, hand-delivery, etc.)
- the document or documents being served
- the name of the person serving the document

Every Proof of Service must be signed by the person serving the document. Unlike the document being served, the Proof of Service need not be signed by the party but may be signed by someone designated by the party.

(e) Representatives and Service

(1) Service upon a representative - Service upon a representative constitutes service upon the person or entity represented. For example, if an alien is represented by an attorney, DHS must serve the attorney and need not serve the alien. See 8 C.F.R. § 1292.5(a).

(2) Service by a represented alien - The Board recommends that, whenever an alien is represented, the alien allow his or her representative to handle a filing with the Board. See Chapter 2.1(d) (Filings and Communications). If, however, a represented alien wishes to file a document without the assistance of his or her representative, the alien should serve copies of that document on both DHS and the representative, with a separate Proof of Service for each. See subsection (d), above.

(f) Proof of Service and the Notice of Appearance

All filings with the Board must include a Proof of Service that identifies the item being filed. See subsection (d), above. Thus, the completed Proof of Service on counsel's Notice of Appearance (Form EOIR-27) by itself is *not* considered sufficient proof of service of documents accompanying the Notice of Appearance.

The electronic submission of a Notice of Appearance (Form EOIR-27) with the Board is not proof of service on DHS. Registered attorney and accredited representatives who electronically submit a Form EOIR-27 still must serve DHS with the completed printed copy of the electronic submission.

3.3 - Documents

(a) Language

All Notices of Appeal (Form EOIR-26) must be submitted in the English language or be accompanied by a certified English translation. 8 C.F.R. § 1003.3(a)(3).

All motions and documentation filed in support of an appeal or motion must either be in the English language or be accompanied by an English language translation and a certification signed by the translator, printed or typed, in accordance with the regulations. See 8 C.F.R. § 1003.2(g)(1). Such 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. See 8 C.F.R. § 1003.33. See also Appendix G (Sample Certificates of Translation).

(b) Signatures

No appeal, motion, brief, or request for Board action is properly filed without a signature from either the alien, the alien's representative, or a representative of DHS. A Proof of Service also requires a signature, but may be signed by someone designated by the filing party. See Chapter 3.2(d) (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 a typed or printed version of the name.

(1) Paper submissions - Signature stamps, computer-generated, and typed signatures are *not* acceptable for documents filed with the Board. These signatures do not convey the signer's personal authorization, attestation, and accountability for the filing. Reproductions of signatures *are* acceptable when contained in a photocopy or fax of an original document as long as the original is available to the Board upon request. See subsection (d), below. See also Chapter 3.1(a) (Filing).

(2) Electronic submissions - When a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) is electronically submitted, the electronic acknowledgment and submission of the Form EOIR-27 constitutes the signature of the alien's representative. Other computer-generated signatures created outside of the EOIR electronic filing process are not acceptable on documents filed with the Board.

(3) Law firms - Only the attorney of record – not a law firm, law office, or other attorney – may sign a submission to the Board. See Chapters 2.3(d) (Appearances), 2.3(f) (Multiple Representatives), 2.3(g) (Law Firms).

(4) Accredited representatives - Accredited representatives must sign their own submissions. See Chapter 2.4(i) (Signatures).

(5) Paralegals and other staff - Paralegals and other staff are not authorized to practice before the Board and may not sign a submission to the Board. See Chapter 2.6 (Paralegals). However, paralegals may sign a Proof of Service when authorized by the filing party. See Chapter 3.2(d) (Proof of Service).

(6) Other representatives - Only those individuals who have been authorized by the Board to represent a party and have submitted a Notice of Appearance (Form EOIR-27) may sign submissions to the Board. See Chapters 2.5 (Law Students and Law Graduates), 2.9 (Others). Non-lawyer "immigration specialists," "notarios," and "visa consultants" are not authorized to represent a party before the Board. See Chapter 2.7 (Immigration Specialists).

(7) 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 Board prefers all filings and (where appropriate) supporting documents to be typed or printed, but will accept handwritten filings. The filing party should make sure that items submitted to the Board are legible.

The Board does not accept electronic media (e.g., CDs, DVDs, VHS tapes, audio cassette tapes, thumb drives, or other electronic medium). Where possible, the Board will return electronic media to the sender. The Board also does not accept faxes or other electronic transmissions without prior authorization by the Board. See Chapter 3.1(a)(5) (Faxes).

(1) Order of documents. Filings should be assembled as follows. All forms should be filled out completely.

(A) Appeals - An appeal package should comply with the instructions on the Notice of Appeal (Form EOIR-26). The appeal package should contain (in order):

1. filing fee (if applicable, stapled to the Notice of Appeal) or fee receipt (if fee paid electronically)
2. Notice of Appeal (Form EOIR-26) (with its Certificate of Service completed)
3. Fee Waiver Request (Form EOIR-26A, if unable to pay the filing fee)
4. Notice of Appearance (Form EOIR-27, if the person appealing is represented)

5. supporting documentation (if any)

See Chapters 2.1(b) (Entering an Appearance), 3.2(d) (Proof of Service), 3.4 (Filing Fees), 4.4 (Filing an Appeal).

(B) Motions - A motion package should contain (in order):

1. filing fee (if applicable, stapled to the cover page of the motion) or fee receipt (if paid electronically)
2. motion (with appropriate cover page)
3. supporting documentation (if any)
4. Fee Waiver Request (Form EOIR-26A, if unable to pay the filing fee)
5. Notice of Appearance (Form EOIR-27, if the moving party is represented)
6. Change of Address (Form EOIR-33/BIA, which is recommended even if the alien's address has not changed)
7. Proof of Service

See Chapters 2.1(b) (Entering an Appearance), 3.2(d) (Proof of Service), 3.3(c)(6) (Cover page and caption), 3.4 (Filing Fees), 5.1(b) (Representatives), 5.2 (Filing a Motion).

(C) Supplementary filings - The Board accepts supplementary filings only in limited situations. See, e.g., Chapter 4.6(g) (Supplemental briefs). A supplementary filing should contain (in order):

1. supplementary filing (with cover page and caption)
2. supporting documentation
3. Notice of Appearance (Form EOIR-27, if represented and a new appearance is being made)
4. Proof of Service

See also Chapters 2.1(b) (Entering an Appearance), 3.2(d) (Proof of Service), 3.3(c)(6) (Cover page and caption).

(2) Number of copies - Only the *original* of each appeal or motion need be filed with the Board. Similarly, only one set of supporting documents need be filed with the Board. Multiple copies of any appeal, motion, or supporting document should not be filed, unless otherwise instructed. Where there is a consolidated proceeding, only one copy need be filed for the entire group. See Chapters 4.6(e) (Consolidated briefs), 4.10(a) (Consolidated appeals).

(3) Number of pages - Briefs and other submissions should *always* be paginated. Parties must limit the body of their briefs or motions to 25 pages. If a party believes it cannot adequately dispose of the issues in the case within the page limit, the party may make a motion with the Board to increase the page limit.

(4) Paper size and quality - All documents should be submitted on standard 8 ½" x 11" paper, in order to fit into the record of proceedings. See 8 C.F.R. § 1003.32(b). Use of legal size paper (8½" x 14") is discouraged, as is paper of other sizes. See subsection (x), below.

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

Briefs and motions should be one-sided. Supporting documentation should also be one-sided.

(5) Tabs - Parties are strongly encouraged to use indexing tabs to separate the distinct portions of an appeal or motion package. Because Immigration Courts generally refer to court exhibits by number, the Board prefers that parties use alphabetic tabs of a permanent nature to avoid confusion.

(6) Cover page and caption - All motions, briefs, and supplemental filings should include a cover page. The cover page should include a caption and contain the following information:

- the name and address of the filing party
- the title of the filing (such as "RESPONDENT'S MOTION TO REOPEN" or "DHS BRIEF ON APPEAL")
- 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
- the type of proceeding involved (such as removal, deportation, exclusion, bond, visa petition)

See Appendix E (Sample Cover Pages). 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," "EXPEDITE REQUEST," "JOINT MOTION").

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

(8) Binding - The Immigration Courts and the Board use a two-hole punch system to maintain files. The Board appreciates receiving briefs and materials pre-punched with two holes along the top (centered and 2¾" apart). 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 inadvertently damaged in the process. Submissions may be stapled in the top left corner. The use of removable binder clips is unacceptable. The use of ACCO-type fasteners is discouraged.

(9) Forms - Forms should be completed in full and must comply with certain requirements. See Chapter 12 (Forms). See also Appendix D (Forms).

(10) Photographs and odd-sized documents - The Board recommends that parties not submit original photographs or other original documents unless instructed to do so. See subsection (d), below. If a party nonetheless wishes to submit a photograph, the party should: print identifying information on the back of the photograph, including the alien's name and alien registration number ("A number"), display the photograph on an 8½" x 11" sheet of paper, and print the same identifying information on the sheet of paper as well. The Board does not accept photographs submitted on electronic media (e.g., CDs, DVDs, VHS tapes, audio cassette tapes, thumb drives, or other electronic medium). See subsection (c) above.

The Board also discourages the submission of other odd-sized materials, such as official certificates, and strongly advises that parties submit photocopies. See Chapter 3.3(d)(4) (Supporting documents). If a party nonetheless wishes to submit an odd-sized document, the document should be prepared in the same way as a photograph. The Board will not accept odd-sized materials submitted on electronic media. See subsection (c) above.

(d) Originals and Reproductions

(1) Notices of Appeal - The original Notice of Appeal (Form EOIR-26) must always bear the original signature of the person filing the appeal or that person's representative. See Chapter 3.3(b) (Signatures). A copy of a signed original is acceptable, provided that the signed original is available to the Board upon request. See Chapter 3.1(a) (Filing).

(2) Motions - The original of a motion must always bear an original signature. See Chapter 3.3(b) (Signatures). A copy of a signed original is acceptable, provided that the signed original is available to the Board upon request. However, a Notice of Appeal (Form EOIR-26) *may* not be used to file a motion.

(3) Forms - The original of a form must always bear a signature. See Chapter 3.3(b) (Signatures), 12.3 (Submitting Completed Forms).

(4) Supporting documents - The Board strongly recommends that parties submit copies of supporting documents, not originals, unless instructed otherwise. The Board does not accept electronic media (e.g., CDs, DVDs, VHS tapes, audio cassette tapes, thumb drives, or other electronic medium) in place of original supporting documents. See Chapter 3.3(c) (Format). Parties should retain original documents in the event that an Immigration Judge or the Board requests them at a later date. The Board does not as a practice return original documents, nor can the Board ensure the return of any original documents submitted to it.

All reproductions should be clear, legible, and made on standard-sized paper. See Chapter 3.3(c)(4) (Paper size and quality). Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original, but not by electronic media. See Chapter 3.3(c) (Format). The Board prefers that all documents, unless voluminous, be one-sided.

Parties wishing to submit original photographs, certificates, or other odd-sized documents should consult Chapter 3.3(c)(10) (Photographs and odd-sized documents).

(e) Source Materials

When a party relies on a source of law that is not readily and publicly available free of charge, a copy of that source of law *must* be provided to the Board and the other party. When a party relies upon any supporting document, a copy of that document *must* be provided to the Board and the other party.

(1) Source of law - When a party relies on a source of law that is not readily available, that source of law should be reproduced in or attached to the brief. Similarly, if citation is made to governmental memoranda, legal opinions, advisory opinions, communiques, or other ancillary legal authority or source, copies of such items should be provided by the citing party, along with the brief.

(2) Source of factual information - Photocopied secondary source material filed in support of an appeal or motion must be clearly marked and have identifying information, including the precise title, date, and page of the material being provided. The Board strongly encourages the submission of title pages containing identifying information for the published matter (e.g., author, year of publication). Identifying information should appear on the document itself and not just in a list of exhibits or table of contents. Any copy of the State Department Country Reports on Human Rights Practices must indicate the year of that particular report.

Regarding the propriety of submitting evidence, see Chapter 4.8 (Evidence on Appeal).

(3) Highlighting - When a party submits voluminous secondary source material, that party should highlight or otherwise indicate the pertinent passages of that secondary source material.

(f) Federal Court Remands

(1) Circuit court or district court orders - When a federal court orders further action in a case before the Board, the parties are asked to provide a copy of the federal court order to the Board. Parties should not assume federal court orders are provided by the federal court to the Board.

(2) Copies of certified record - 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. Copies of a certified record do not need to be included with submissions to the Board.

(3) Documents filed with federal court - Proceedings before a federal court are separate from proceedings before the Board. Documents submitted by parties to the federal court are not part of the record before the Board and may need to be submitted directly to the Board. However, parties should wait to submit such documents until the Board confirms that it has received the federal court's order. See Chapter 4.2(j) (Federal Court Remands). Also, parties must meet all other filing requirements covered in this chapter.

(g) Criminal Conviction Documents

Documents regarding criminal convictions must comport with the requirements set forth in 8 C.F.R. § 1003.41.

3.4 - Filing Fees

(a) When Required

A filing fee must be submitted together with an appeal or motion filed directly with the Board in the following instances:

- any appeal filed with the Board (except an appeal of a custody bond determination)
- 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)

See 8 C.F.R. §§ 1003.2(g)(2)(i), 1003.3, 1003.8, 1103.7. For purposes of determining filing fee requirements, the term "asylum" here includes withholding of removal, withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

If the filing party is unable to pay the fee, he or she should request that the fee be waived. See subsection (c), below.

Filing fees should not be confused with *application* fees. See subsection (i), below.

(b) When Not Required

A filing fee is not required in the following instances:

- a custody bond appeal
- a motion to reopen that is based exclusively on a claim for asylum
- a motion to reconsider that is based on an underlying claim for asylum
- a motion filed while an appeal, a motion to reopen, or a motion to reconsider is already pending before the Board
- a motion requesting only a stay of removal, deportation, or exclusion
- a motion to recalendar
- any appeal or motion filed by DHS
- a motion that is agreed upon by all parties and is jointly filed (a "joint motion")
- an appeal or motion filed under a law, regulation, or directive that does not require a filing fee

See 8 C.F.R. §§ 1003.2(g)(2)(i), 1003.3, 1003.8, 1103.7. For purposes of determining filing fee requirements, the term "asylum" here includes withholding of removal, withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

(c) When Waived

When an appeal or motion normally requires a filing fee, the Board has the discretion to waive that fee upon a showing of economic hardship or incapacity.

Fee waivers are *not* automatic but must be requested through the filing of a Fee Waiver Request (Form EOIR-26A). The Fee Waiver Request form must be filed along with the Notice of Appeal (Form EOIR-26) or the motion. The form requests information about monthly income and expenses and requires the applicant to declare, under penalty of perjury, that he or she is unable to pay the fee due to personal economic hardship.

Fees are not reimbursed merely because the appeal is sustained, the motion is granted, or a party withdraws the appeal or motion.

(d) Amount of Payment

The filing fee, in all cases in which a fee is required, is $110 and must be paid in the *precise* amount. If a fee is required, but is paid in any other amount other than $110, the filing will be rejected. See Chapter 3.1(c)(1) (Meaning of "rejected").

(e) Number of Payments for a Consolidated Proceeding

Only one fee should be paid in a consolidated proceeding. See Chapter 4.10(a) (Consolidated appeals). For example, if family members appeared in consolidated proceeding before an Immigration Judge, they need file only one appeal and pay only one filing fee on appeal.

If the proceedings were not consolidated below by an Immigration Judge, a separate filing fee is required for each family member. For example, if spouses filed separate claims for relief and those claims were ruled upon separately by an Immigration Judge, their appeals would have to be filed separately, with a separate fee for each.

(f) Form of Payment

When a filing fee is required for an appeal or motion filed directly with the Board, the fee must be paid electronically, by check, or by money order in U.S. dollars. Checks or money orders must be drawn from a bank or institution that is located within the United States. 8 C.F.R. § 1003.8(a). Checks must be pre-printed with the name of the bank, as well as the account holder's name, address, and phone number. Checks and money orders are to be made payable to the "United States Department of Justice." The check or money order must include the full name and alien registration number ("A number") of the alien or, in the case of a consolidated proceeding, the lead alien. Electronic payments must be submitted through the EOIR Payment Portal.
The Board does not accept cash. The Board uses the Treasury Department's OTCNet check capture process. When you provide a check as payment, you authorize the Board either to use information from your check to make a one-time electronic fund transfer from

your account or to process the payment as a check transaction. For inquiries, please contact the Clerk's Office by calling 703-605-1007. For information regarding the Privacy Act Statement, please see notice below:
Privacy Act - A Privacy Act Statement required by 5 U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from the Federal Register at: (https://www.federalregister.gov/articles/2003/02/04/03-2521/privacy-act-of-1974-as-amended-system-of-records), or by calling toll free at (1-866-945-7920) to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by money order.

(g) Defective or Missing Payment

If a filing fee is required for an appeal or motion but is not submitted or is defective, the filing will be rejected. See Chapter 3.1(c)(1) (Meaning of "rejected"). If a fee payment is not in the correct amount of $110, the filing will be rejected. If a fee payment is uncollectible (for example, a check "bounces"), the appeal or motion will be dismissed or denied as improperly filed.

(h) Attaching the Fee

For appeals filed with the Board, any filing fee payment should be stapled to the Notice of Appeal (Form EOIR-26 or Form EOIR-45) as indicated on the form. For motions, any fee payment should be stapled to the cover sheet. For any fee payment made electronically, the fee receipt should be submitted with the filing.

(i) Application Fees

The Board does not collect fees for underlying applications for relief (e.g., adjustment of status, cancellation of removal). Application fees should be paid to DHS or other agency in accordance with the instructions on the application form. The fee structure for applications for relief and other immigration benefits is set forth in the regulations at 8 C.F.R. § 1103.7.

When a motion before the Board is based upon newly available eligibility for relief, payment of the fee for the underlying application is not a prerequisite to filing the motion. Jurisdiction over an application for new relief lies with the Immigration Courts, and thus the application fee need not be paid unless and until the application comes before an Immigration Judge.

3.5 - Briefs

The requirements for briefs are discussed elsewhere in this manual. See Chapters 4.6 (Appeal Briefs), 5.4 (Motion Briefs).

3.6 - Expedite Requests

Parties seeking urgent Board action should follow the procedures set forth in Chapter 6 (Stays and Expedite Requests).

Chapter 4 - Appeals of Immigration Judge Decisions

4.1 - Types of Appeals

The Board entertains appeals from the decisions of Immigration Judges and certain decisions of the Department of Homeland Security (DHS). See Chapter 1.4(a) (Jurisdiction). Unless otherwise indicated, this chapter is limited to appeals from the decisions of Immigration Judges pertaining to the removal, deportation, or exclusion of aliens.

Other kinds of appeals are discussed in the following chapters:

Chapter 7 Bond

Chapter 9 Visa Petitions

Chapter 10 Fines

Chapter 11 Discipline

4.2 - Process

(a) Immigration Judge Decision

An Immigration Judge presides over courtroom proceedings in removal, deportation, exclusion, and other proceedings. See Chapter 1.2(c) (Relationship to the Immigration Courts). The parties in such proceedings are the alien and DHS. See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)).

(1) Oral vs. written - The decision of an Immigration Judge may be rendered either orally or in writing. When a decision is rendered orally, the Immigration Judge recites the entire decision in the parties' presence and provides them with a written memorandum order summarizing the oral decision. When a decision is rendered in writing, the decision is served on the parties by first class mail or by personal service. See 8 C.F.R § 1003.37.

(2) Appeal to the Board vs. Motion before the Immigration Judge - After the Immigration Judge renders a decision, a party may either file an appeal with the Board or file a motion with the Immigration Judge. Once a party files an appeal with the Board, jurisdiction is vested with the Board, and the Immigration Judge is divested of jurisdiction over the case. Accordingly, once an appeal has been filed with the Board, an Immigration Judge may no longer entertain a motion to reopen or a motion to reconsider. For that reason, if a party first files a motion with the Immigration Judge and then files an appeal with the Board, the Immigration Judge loses jurisdiction over the motion, and the record of proceedings is transferred to the Board for consideration of the appeal.

(3) Certification vs. Appeal - Certification to the Board is entirely separate and distinct from the filing of an appeal, and the two should not be confused. See Chapter 4.18 (Certification by an Immigration Judge).

(b) Filing

If an appeal is taken from the decision of an Immigration Judge, it must be filed properly and within the time allowed. See Chapters 3 (Filing with the Board), 4.5 (Appeal Deadlines). An appeal of an Immigration Judge decision must be filed directly with the Board, using the Notice of Appeal (Form EOIR-26). 8 C.F.R. § 1003.3(a). See Chapter 3.1 (Delivery and Receipt). The appeal may *not* be filed with DHS or an Immigration Court. Erroneous filing of an appeal with DHS or an Immigration Court does not constitute filing with the Board and will not excuse the filing party from the appeal deadline.

If an appeal is received by the Board but has not been properly filed (for example, the filing fee is missing or Proof of Service has not been completed), the appeal may be rejected. See Chapter 3.1(c) (Defective Filings); Chapter 3.1(c)(1) (Meaning of "rejected"). Rejection does *not* extend the filing deadline. Instead, it can result in an untimely filing and, ultimately, dismissal of the appeal. See Chapter 4.5(b) (Extensions).

(c) Stays

An alien may seek a stay of deportation or stay of removal while an appeal is pending before the Board. Stays are automatic in some instances, but discretionary in others. Stays are discussed in Chapter 6 (Stays and Expedite Requests).

(d) Processing

Once an appeal is properly filed, a written receipt is sent to both the alien and DHS. The Board will then obtain the record of proceedings from the Immigration Court. In appropriate cases, a briefing schedule is provided to both sides. Also, in appropriate cases, a transcript is prepared, and copies are sent to the parties along with the briefing schedule. See subsections (e), (f) below.

(e) Briefing schedule

When a Notice of Appeal is filed, a receipt is issued to acknowledge receipt of the appeal. A briefing schedule is then issued in which the parties are notified of the deadlines for filing a brief. See Chapter 4.7 (Briefing Deadlines). The briefs must arrive at the Board by the dates set in the briefing schedule. See Chapter 3.1 (Delivery and Receipt). In the event that a briefing extension is requested and granted, a briefing extension notice is issued. See Chapter 4.7(c) (Extensions).

For federal court remands, the Board determines whether a brief is required. If a briefing schedule is set, the parties are notified of the deadlines for filing, and the briefs must arrive at the Board by the set dates. See Chapters 3.1 (Delivery and Receipt), 4.7 (Briefing Deadlines).

(f) Transcription

The Board transcribes Immigration Court proceedings in appropriate cases.

(1) Preparation of transcripts - The Board transcribes proceedings, where appropriate, after receiving a properly filed appeal from the decision of an Immigration Judge. Where a transcript is prepared, the transcript is sent to both parties along with the briefing schedule via regular mail. The Board does not entertain requests to send transcripts by overnight delivery or other means.

(2) Requests for transcripts - Transcripts are not normally prepared for the following types of appeals: bond determinations; denials of motions to reopen (including motions to reopen in absentia proceedings); denials of motions to reconsider; and interlocutory appeals.

Proceedings of these types may in some instances be transcribed at the discretion of the Board. If a party desires a transcript for any of these types of proceedings, he or she should send correspondence with a cover page labeled "REQUEST FOR TRANSCRIPTION." See Appendix E (Sample Cover Pages). That correspondence should briefly state the reasons for the request. However, a request for transcription does *not* affect the briefing schedule. Parties are still required to meet briefing deadlines.

Digitally recorded hearings may be listened to at the Board or an Immigration Court. Contact the Clerk's Office or the local Immigration Court to make arrangements to listen to the digitally recorded hearings.

Hearings recorded on cassette tapes can be listened to only where the tapes are stored. Contact the Clerk's Office or the local Immigration Court to determine where the cassette recordings are located and available for listening. Arrangements for parties to listen to cassette tapes

For more information on digitally or cassette recorded hearings, parties should consult Part II of this manual the Immigration Court Practice Policy Manual, which is available on the EOIR website.

(3) Defects in the transcript - Obvious defects in the transcript (e.g., photocopying errors, large gaps in the recorded record) should be brought to the immediate attention of the Clerk's Office. Such requests should be filed separately under a cover page titled "REQUEST FOR CORRECTION OF TRANSCRIPT." See Appendix A (EOIR Directory), Appendix E (Sample Cover Pages). The Board, in its discretion, may remedy the defect where appropriate and feasible.

Defects do *not* excuse the parties from existing briefing deadlines. Those deadlines remain in effect until the parties are notified otherwise. See Chapter 4.7(c) (Extensions).

Where the Board does not or cannot remedy the purported defect in the transcript, and the party believes that defect to be significant to the party's argument or the adjudication of the appeal, the party should identify the defect and argue its significance with specificity in the appeal brief. The Board recommends that the brief be supported by a sworn, detailed statement. The Board will consider any allegations of transcript error in the course of adjudicating the appeal.

(4) Corrected oral decisions - When an Immigration Judge issues an oral decision, the Immigration Judge reviews the transcription of the oral decision and may make minor, clerical corrections to the decision. These corrected decisions are returned to the Board and served on the parties. If a party believes the corrections are significant to the party's argument or the adjudication of the appeal, the party should identify the correction and its significance with specificity in the appeal brief. Corrections do *not* excuse the parties from existing briefing deadlines. If the corrected decision is served after the briefing schedule

has expired, the parties should file a “Motion to Accept Supplemental Brief.” See Chapter 4.6(g) (Supplemental Briefs).

(5) Stipulated record of proceedings - Whether or not a transcript is available, the alien and DHS may prepare and sign a stipulation regarding the facts of events that transpired below. The parties may also correct errors or omissions in the record by stipulation.

(g) Oral Argument

The Board occasionally grants oral argument at the request of one of the parties. In such cases, parties present their case orally to a panel of three or more Board Members in a courtroom setting. See Chapter 8 (Oral Argument).

(h) Record on Appeal

The actual contents of the record on appeal vary from case to case, but generally include the following items: charging documents; hearing notices; notices of appearance; applications for relief and any accompanying documents; court-filed papers and exhibits; transcript of proceedings and oral decision of the Immigration Judge, if prepared; written memorandum order or decision of the Immigration Judge; Notice of Appeal; briefing schedules; briefs; motions; correspondence; and any prior decisions by the Board.

(i) Decision

Upon entry of a decision, the Board serves its decision upon the parties. See Chapter 1.4(d) (Board Decisions). The decision is sent by regular mail to the parties.

4.3 - Parties

(a) Parties to an Appeal

(1) The alien - Only an alien who was the subject of an Immigration Court proceeding, or the alien's representative, may file an appeal. The Notice of Appeal (Form EOIR-26) must identify the names and alien registration numbers ("A numbers") of every person included in the appeal. *The appeal is limited to those persons identified*. 8 C.F.R. § 1003.3(a)(1). Thus, families should take special care – in each and every filing – to identify by name and alien registration number ("A number") every family member included in the appeal. See Chapters 4.4(b)(3) (How many to file), 4.10 (Combining and Separating Appeals).

(2) DHS - DHS is deemed a party to the Immigration Court proceeding. See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)). Thus, DHS is entitled to appeal an Immigration Judge decision and is deemed a party for any appeal filed by the alien. An appeal filed by DHS must also identify the names and alien registration numbers of every person from whose proceeding DHS is filing that appeal.

(3) Other persons or entities - No other person or entity may file an appeal of an Immigration Judge decision.

(b) Parties who have waived appeal

(1) Effect of appeal waiver - If the opportunity to appeal is knowingly and intelligently 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).

(2) 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 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. See Chapter 4.2(a)(2) (Appeal to the Board vs. Motion before the Immigration Judge).

(c) Representation

A party to an appeal may appear without representation ("pro se") or with representation. See Chapter 2 (Appearances before the Board). If a party wishes to be represented, he or she may be represented by an individual authorized to provide representation under the regulations. See 8 C.F.R. § 1292.1. See also Chapter 2 (Appearances before the Board).

Whenever a party is represented, the party should submit all filings, documents, and communications to the Board through his or her representative. See Chapter 2.1(d) (Filings and Communications).

(d) Persons not Party to the Appeal

Only a party to an appeal, or a party's representative, may file an appeal, motion, or document or send correspondence regarding that appeal. Family members, employers, and other third parties may not submit appeals, filings, or supporting documents and material. Filings received from third parties will be returned to the sender where possible.

If anyone who is not a party to the appeal wishes to make a submission to the Board regarding a particular case, that person or entity should make the submission through one of the parties. Third parties who wish to appear as amicus curiae should consult Chapter 2.10 (Amicus Curiae).

4.4 - Filing an Appeal

(a) Rules for Filing

An appeal must be filed in accordance with the general rules for filing. See Chapter 3.1 (Delivery and Receipt). For the order in which documents should be filed, see Chapter 3.3(c)(1)(A) (Appeals).

(b) Notice of Appeal

For any appeal of an Immigration Judge decision, a completed and executed Notice of Appeal (Form EOIR-26) must be timely filed with the Board. See Chapter 4.5 (Appeal Deadlines). See also 8 C.F.R. § 1003.3(a)(1). Parties must read carefully and comply with the instructions on the Notice of Appeal (Form EOIR-26).

(1) When to file - See Chapter 4.5 (Appeal Deadlines).

(2) Where to file - For appeals of Immigration Judge decisions, the Notice of Appeal (Form EOIR-26) must be filed with the Board. It may *not* be filed with DHS or an Immigration Court. Filing an appeal of an Immigration Judge decision with DHS or an Immigration Court will not be accepted as proper filing with the Board. See Chapter 1.6(d) (Mail and other forms of delivery).

(3) How many to file - A single Notice of Appeal (Form EOIR-26) must be filed for each alien who is appealing the decision of an Immigration Judge, *unless* the appeal is from proceedings that were consolidated by the Immigration Judge. See Chapters 4.3(a) (Parties to an appeal), 4.10(a) (Consolidated appeals). Only the original Notice of Appeal must be filed. Additional copies of the Notice of Appeal need not be submitted.

(4) Completing the Notice of Appeal - For appeals of Immigration Judge decisions, the Notice of Appeal (Form EOIR-26) contains instructions on how to complete the form. Parties should be careful to complete the form accurately and completely.

(A) A numbers - The alien registration number ("A number") of *every* person included in the appeal should appear on the form.

(B) Important data - The party appealing should make sure the form is completed in full, including the parts of the form that request the date of the Immigration Judge's oral decision or written order, and the type of proceeding (removal, deportation, exclusion, asylum, bond, denial of a motion to reopen by an Immigration Judge, or denial of a motion to reconsider by an Immigration Judge).

(C) Brief in support of the appeal - The appealing party must indicate on the Notice of Appeal (Form EOIR-26) whether or not a brief will be filed in support of the appeal. If a

party indicates that a brief will be filed and thereafter fails to file a brief, the appeal may be summarily dismissed. See Chapters 4.7(e) (Decision not to file a brief), 4.16 (Summary Dismissal). The Board strongly encourages the filing of briefs. See Chapter 4.6 (Appeal Briefs).

(D) Grounds for the appeal - Space is provided on the Notice of Appeal for a concise statement to identify the grounds for the appeal. The statement of appeal is not limited to the space on the form but may be continued on additional sheets of paper. Any additional sheets, however, should be attached to the Notice of Appeal (Form EOIR-26) and labeled with the name and alien registration number ("A number") of everyone included in the appeal.

Parties are advised that vague generalities, generic recitations of the law, and general assertions of Immigration Judge error are unlikely to apprise the Board of the reasons for appeal.

(E) Summary dismissal - If neither the Notice of Appeal (Form EOIR-26) nor the documents filed with it adequately identify the basis for the appeal, the appeal may be summarily dismissed. See Chapter 4.16(b) (Failure to specify grounds for appeal). If a party indicates on the Notice of Appeal that a brief will be filed in support of the appeal and thereafter fails to file a brief, the appeal may be summarily dismissed. See Chapter 4.7(e) (Decision not to file a brief). There are other grounds for summary dismissal. See 8 C.F.R. § 1003.1(d)(2). See also Chapter 4.16 (Summary Dismissal).

(5) Mistakes to avoid

(A) Mixing unrelated appeals - Parties and representatives should not "mix" unrelated appeals on one Notice of Appeal (Form EOIR-26). Each Immigration Judge decision must be appealed separately. For example, one Notice of Appeal should not combine the appeal of a bond determination and the appeal of an Immigration Judge decision regarding eligibility for relief. See Chapter 7.3(a)(1) (Separate Notice of Appeal). The appealing party should attach a copy of the decision being appealed to the Notice of Appeal.

(B) Using the Notice of Appeal for motions - A Notice of Appeal (Form EOIR-26) may *not* be used to file a motion with the Board. See Chapter 5 (Motions before the Board).

(C) Using the Notice of Appeal to appeal to a federal court - A Notice of Appeal (Form EOIR-26) may not be used to challenge a decision *made by* the Board. In this instance, the proper filing is a motion to reconsider with the Board or an action in the appropriate United States district or circuit court.

(c) Proof of Service

The Certificate of Service portion of the Notice of Appeal (Form EOIR-26) must be completed. See Chapter 3.2(d) (Proof of Service).

(d) Fee or Fee Waiver

The appeal must be accompanied by the appropriate filing fee or a completed Fee Waiver Request (Form EOIR-26A). 8 C.F.R. §§ 1003.3(a)(1), 1003.8. See Chapter 3.4 (Filing Fees).

(e) Notice of Appearance

If a party is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) must accompany the Notice of Appeal (Form EOIR-26). See Chapter 4.3(c) (Representation). Registered representatives must submit a paper copy of the Form EOIR-27 with the Notice of Appeal. An electronically filed Form EOIR-27 may be submitted after the Board receives the Notice of Appeal. If the electronic submission of the Form EOIR-27 precedes the receipt of the Notice of Appeal, the electronic submission may be rejected.

(f) Copy of Order

Parties are encouraged to include a copy of either the memorandum order of the oral decision or the written decision being appealed.

(g) Confirmation of Receipt

The Board routinely issues receipts for Notices of Appeal (Form EOIR-26). The Board does not provide receipts for appellate briefs or supplemental filings. See Chapter 3.1(d) (Filing Receipts).

4.5 - Appeal Deadlines

(a) Due Date

A Notice of Appeal (Form EOIR-26) must be filed no later than 30 calendar days after the Immigration Judge renders an oral decision or mails a written decision. 8 C.F.R. § 1003.38(b).

The 30-day period is computed as described in Chapter 3.1(b)(2) (Computation of time). The Board does not follow the "mailbox rule" but calculates deadlines according to the time of receipt at the Clerk's Office. See Chapter 3.1 (Delivery and Receipt). The 30-day deadline and method of computation applies to all parties, including persons detained by DHS or other federal or state authorities.

(b) Extensions

The regulations set strict deadlines for the filing of an appeal, and the Board does not have the authority to extend the time in which to file a Notice of Appeal (Form EOIR-26). See 8 C.F.R § 1003.38(b).

(c) Detained Persons

Detained persons are subject to the same 30-day appeal deadline. All appeals, regardless of origin, must be received by the Board in the time allotted. An appeal is not timely filed simply because it is deposited in the detention facility's internal mail system or is given to facility staff to mail prior to the deadline.

4.6 - Appeal Briefs

(a) Filing

An appeal brief must comply with the general requirements for filing. See Chapter 3.1 (Delivery and Receipt). The appeal brief must be timely. See Chapter 4.7 (Briefing Deadlines). It should have a cover page. See Appendix E (Sample Cover Pages). The briefing notice from the Board should be stapled on top of the cover page or otherwise attached to the brief in accordance with the instructions on the briefing notice. The brief must be served on the other party. See Chapter 3.2(d) (Proof of Service). There is no fee for filing a brief.

(1) Appeals from Immigration Judge decisions - For appeals from Immigration Judge decisions, the appeal brief must be filed directly with the Board. 8 C.F.R § 1003.3(c)(1).

(2) Appeals from Department of Homeland Security decisions - For appeals from decisions of the Department of Homeland Security, the brief should be filed with DHS, not the Board, and in accordance with the instructions on the appeal form.

(b) Brief-Writing Guidelines

A brief advises the Board of a party's position and arguments. A well-written brief is in any party's best interest and is therefore of great importance to the Board. The brief should be clear, concise, well-organized, and should cite the record and legal authorities fully, fairly, and accurately.

Briefs should always recite those facts which are appropriate and germane to the adjudication of the appeal, and should cite proper legal authority, where such authority is available. See Chapter 4.6(d) (Citation). Briefs should not belabor facts or law that are not in dispute. Parties are encouraged to expressly identify in their briefs when they agree with the Immigration Judge's recitation of facts or law.

Briefs should *always* be paginated. Parties must limit the body of their briefs or motions to 25 pages. If a party believes it cannot adequately dispose of the issues in the case within the page limit, the party may make a motion with the Board to increase the page limit.

(c) Format

Briefs should comport with the requirements set out in Chapter 3.3 (Documents).

(1) Signature - Briefs should be signed by the person who prepared the brief. See Chapter 3.3(b) (Signatures). If prepared by a registered attorney or accredited representative, the EOIR ID number should also be provided. See Chapter 2.1(b)(2) (Registry Requirement).

(2) A number - The alien registration number ("A number") of each alien should appear on the cover page of the brief and on the bottom right corner of each page thereafter.

If an alien has more than one alien registration number assigned to him or her, then every alien registration number should appear on the cover page of the brief.

If a brief is filed in a consolidated appeal and a comprehensive listing of alien registration numbers is impractical on every page, the first page of the brief should contain the name and alien registration number of every alien included in the appeal. The alien registration number of the lead alien, followed by "et al.", should appear as a footer on the bottom right corner of each page thereafter. See Chapter 4.10(a) (Consolidated appeals).

Unrelated proceedings should not be addressed in the same brief, *unless* proceedings have been consolidated by the Immigration Judge or the Board. If proceedings have been consolidated, this should be stated in the introductory portion of the brief. If proceedings have not been consolidated, a separate brief should be filed for each individual case. If a party wishes unrelated appeals to be considered together (but not consolidated), this may be requested in the introductory portion of the brief. See Chapter 4.10 (Combining and Separating Appeals).

(3) Caption - Parties should use captions and cover pages in all filings. See Chapter 3.3(c)(6) (Cover page and caption), Appendix E (Sample Cover Pages).

(4) Recommended contents - The following items should be included in the brief:

- a concise statement of facts and procedural history of the case
- a statement of issues presented for review
- the standard of review
- a summary of the argument
- the argument
- a short conclusion stating the precise relief or remedy sought

(5) References to parties - To avoid confusion, use of "appellant" and "appellee" is discouraged. When litigation titles are desired or necessary, the following guidelines should be followed:

- removal proceedings: the alien is referred to as "respondent"
- deportation proceedings: the alien is referred to as "respondent"
- exclusion proceedings: the alien is referred to as "applicant"
- bond proceedings: the alien is referred to as "respondent"
- visa petition proceedings: the sponsoring individual or entity is referred to as "petitioner" and the alien being petitioned for is referred to as "beneficiary"
- all proceedings: the Immigration Judge should be referred to as "the Immigration Judge"

- all proceedings: the Department of Homeland Security should be referred to as "DHS" or "Department of Homeland Security"

Care must be taken not to confuse DHS with the Immigration Court or the Immigration Judge. See Chapter 1.4(f) (Department of Homeland Security).

Complete names, titles, agency designations, or descriptive terms are preferred when referring to third parties.

(6) Statement of facts - A brief's statement of facts should be concise. If facts are not in dispute, the brief should simply and expressly adopt the facts as set forth in the decision of the Immigration Judge. If facts are in dispute or, in the party's estimation, are insufficiently developed in the decision of the Immigration Judge, the party's brief should set out the facts clearly and expressly identify the points of contention.

Facts, like case law, require citations. Parties should support factual assertions by citation to the record. When referring to the record, parties should follow Chapter 4.6(d) (Citation). Sweeping assertions of fact that are made without citation to their location in the record are not helpful. Likewise, facts that were not established on the record may not be introduced for the first time on appeal. *Matter of Fedorenko*, 19 I&N Dec. 57 (BIA 1984).

The Board admonishes all parties: Do not misstate or misrepresent the facts, or omit unfavorable facts that are relevant to the adjudication of the appeal. A brief's accuracy and integrity are paramount to the persuasiveness of the argument and the proper adjudication of the appeal.

(7) Footnotes - Substantive arguments should be restricted to the text of the brief. Excessive use of footnotes is discouraged.

(8) Headings and other markers - The brief should employ headings, subheadings, and spacing to make the brief more readable. Short paragraphs with topic sentences and proper headings facilitate the coherence and cohesion of an argument.

(9) Chronologies - A brief should contain a chronology of the facts, especially in those instances where the facts are complicated or involve several events. Chart or similar graphic representations that chronicle events are welcome.

(10) Multiple briefs - The Board prefers that arguments in an appeal brief not incorporate by cross-reference arguments that have been made elsewhere, such as in a pretrial brief or motion brief. Whenever possible, arguments should be contained in full in the appeal brief.

(d) Citation

Parties are expected to provide complete and clear citation to all authorities, factual or legal. The Board asks all parties to comply with the citation conventions articulated here and in Appendix I (Citation Guidelines).

(1) Board decisions (precedent) - In the past, the Board issued precedent decisions in slip opinion or "Interim Decision" form. See Chapter 1.4(d)(1)(C) (Interim Decisions). Citations to the Interim Decisions form are now greatly disfavored.

Precedent Board decisions are published in an "I&N Dec." form. See Chapter 1.4(d) (Board Decisions). Citations to Board decisions should be made in accordance with their publication in *Administrative Decisions Under Immigration & Nationality Laws of the United States*. The proper citation form includes the volume number, the reporter abbreviation ("I&N Dec."), the first page of the decision, the name of the adjudicator (BIA, A.G., etc.), and the year of the decision. Example: *Matter of Gomez-Giraldo*, 20 I&N Dec. 957 (BIA 1995).

All precedent decisions should be cited as "Matter of." The use of "*In re*" is not favored. Example: *Matter of Yanez*, 23 I&N Dec. 390 (BIA 2002), not *In re Yanez*, 23 I&N Dec. 390 (BIA 2002).

Citations to a specific point in a precedent decision should include the precise page number(s) on which the point appears. Example: *Matter of Artigas*, 23 I&N Dec. 99, 100 (BIA 2001).

Citations to a separate opinion in a precedent decision should include a parenthetical identifying whether it is a dissent or concurrence. Example: *Matter of Artigas*, 23 I&N Dec. 99, 109-110 (BIA 2001) (dissent).

(2) Board decisions (non-precedent) - Citation to non-precedent Board cases by parties not bound by the decision is discouraged. When it is necessary to refer to an unpublished decision, the reference should include the alien's full name, alien registration number, the adjudicator, and the decision date. Because the Board uses "*Matter of*" as a signal for a published case, its use with unpublished cases is discouraged. Example: Jane Smith, A012 345 678 (BIA July 1, 2009). A copy of the decision should be provided whenever possible. See Chapter 1.4(d)(2) (Unpublished Decisions).

(3) Attorney General (precedent) - When the Attorney General issues a precedent decision, the decision is published in the *Administrative Decisions Under Immigration & Nationality Laws of the United States*. Attorney General precedent decisions should be cited in accordance with the same rules set forth in subsections (i) and (ii), above.

(4) Department of Homeland Security (precedent) - Certain precedent decisions of the Department of Homeland Security, as well as those of the former Immigration and Naturalization Service, appear in the *Administrative Decisions Under Immigration &*

Nationality Laws of the United States. These decisions should be cited in accordance with the same rules set forth in subsections (i) and (ii), above.

(5) Federal and state court cases - Federal and state court decisions should be cited according to standard legal convention, as identified by the latest edition of *A Uniform System of Citation*, commonly known as the "Blue Book." If the case being cited is unpublished, a copy of that case should be provided.

(6) Statutes, rules, regulations, and other legal authorities and sources - Statutes, rules, regulations, and other standard sources of law should be cited according to standard legal convention, as identified by the latest edition of *A Uniform System of Citation*, commonly known as the "Blue Book." Sources of law or information that are peculiar to immigration law (e.g., the Foreign Affairs Manual) should be cited according to the convention of the immigration bar or cited in such a way as to make the source clear and accessible to the reader. Where citation is made to a source that is not readily available to the Board or the other party, a copy should be attached to the brief. See Chapter 3.3(e) (Source materials).

(7) Transcript of proceedings - If an argument on appeal is based on an error in fact, procedure, or conduct that is manifested in the transcript, the Notice of Appeal or brief should provide citations to the transcript. Passages in the transcript of proceedings should be cited according to page number: "Tr. at _____." Line citations are welcome, but not necessary.

Where a transcript is not prepared, the audio recording should be cited as "Hearing for" and include the alien's name, the alien registration number ("A number"), and the date and time of the hearing. Example: "Hearing for John Smith, A012 345 679, February 11, 2014 at 1:00 p.m." If a party obtains a compact disk ("CD") of a hearing that was digitally recorded, the numbered tracks of the CD should not be cited. Rather, the relevant portion of the recording should be quoted in the citing party's brief, identifying what portion of the hearing the quotation took place (e.g., direct examination, cross-examination). See Chapter 4.2(f) (Transcription).

(8) Decision of the Immigration Judge - If an argument on appeal is based on an error in the Immigration Judge's decision, the decision of the Immigration Judge, whether rendered orally or in writing, should be cited as "I.J. at _____." If the reference is to a decision other than the decision being appealed, the citation should indicate the nature of the proceeding and the date. Example: "I.J. bond decision at 5 (Jan. 2, 2013)."

(9) Text from briefs - Text from the alien's brief should be cited as "Applicant's brief at _____" or "Respondent's brief at _____", whichever is appropriate. Text from the DHS brief should be cited as "DHS brief at _____."

(10) Exhibits - Exhibits designated during the hearing should be cited as they were designated by the Immigration Judge. Example: "Exh. _____." Exhibits accompanying an appeal, brief, or motion should identify the exhibit and what it is attached to. Example: "Motion to Reopen Exh. 2."

(11) Certified record - 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. See Chapter 1.4(h) (Federal Courts). The Board does not cite to the certified record in subsequent proceedings, and neither should the parties. Parties should instead follow the citation conventions discussed in the subsections above.

(e) Consolidated Briefs

Where cases have been consolidated, one brief may be submitted on behalf of all the aliens in the consolidated proceeding, provided that every alien's full name and alien registration number ("A number") appear on the consolidated brief. See generally Chapters 4.6(c)(2) (A number), 4.10(a) (Consolidated appeals). A consolidated brief may not be filed if the cases have not been consolidated by the Board or an Immigration Judge.

(f) Response Briefs

When the appealing party files an appeal brief, the other party may file a "response brief," in accordance with the briefing schedule issued by the Board. See Chapter 4.7 (Briefing Deadlines).

If the appealing party fails to file a brief, the other party may nonetheless file one, provided it is filed in accordance with the briefing schedule issued by the Board.

(g) Supplemental Briefs

The Board usually does not accept supplemental briefs filed outside the period granted in the briefing schedule, except as described below.

(1) New authorities - Whenever a party discovers new authority subsequent to filing of a brief in a particular case, the party should notify the Board of the new authority through correspondence with a cover page entitled "STATEMENT OF NEW LEGAL AUTHORITIES." See Appendix E (Sample Cover Pages). Such correspondence must be served upon the other party. See Chapter 3.2 (Service). It must also be limited to the citation of new authorities and may not contain any legal argument or discussion. Parties are admonished that the Board will not consider any correspondence that appears in form or substance to be a supplemental brief.

(ii) New Argument - If a party discovers new authority and wishes to file a supplemental brief, or in any way substitute for the original brief, the party should submit the brief along

with a “MOTION TO ACCEPT SUPPLEMENTAL BRIEF” that complies generally with the rules for motions, including service on the opposing party. See Chapter 5.2 (Filing a Motion). The motion should set forth the reason or reasons why the Board should permit the moving party to supplement the original brief. (For example, if a motion to file a supplemental brief is based on a change in the law, the moving party would identify that change and argue the significance of the new authority to the appeal.)

(h) Reply Briefs

The Board does not normally accept briefs outside the time set in the briefing schedule, including any brief filed by the appealing party in reply to the response brief of the opposing party. See subsection (f), above.

The Board may, in its discretion, consider an appealing party’s “reply brief” when the following conditions are met: (i) the brief is accompanied by a “MOTION TO ACCCEPT REPLY BRIEF,” (ii) the motion is premised upon and asserts surprise at the assertions of the other party, (iii) the brief identifies and challenges the assertions of the other party, and (iv) the motion and brief are filed with the Board within 21 days of the filing of the other party’s brief. The brief should comply generally with the rules for motions. See Chapter 5.2 (Filing a Motion). If the appeal was filed by a detained alien, see Chapter 4.7(a)(2) (Detained cases).

The Board will not suspend or delay adjudication of the appeal in anticipation of, or in response to, the filing of a reply brief.

(i) Amicus Curiae Briefs

Amicus curiae briefs are subject to the same rules as parties’ briefs. See Chapter 4.6 (Appeal Briefs), 4.7 (Briefing Deadlines). The filing of multiple coordinated briefs from different amici that raise similar points is disfavored. Rather, prospective amici should submit a joint brief along with the request to appear. See generally Chapter 2.10 (Amicus Curiae). In addition, the Board may, at its discretion, acknowledge helpful amicus curiae brief(s) and contributors.

4.7 - Briefing Deadlines

(a) Due Date

In appropriate cases, the Board sets briefing schedules and informs the parties of their respective deadlines for filing briefs. See Chapter 4.2 (Process). A party may not file a brief beyond the deadline set in the briefing schedule, unless the brief is filed with the appropriate motion. See Chapter 4.6(g) (Supplemental briefs), 4.6(h) (Reply briefs), 4.7(d) (Untimely briefs).

(1) Non-detained cases - When the alien is not detained, the parties are generally granted 21 calendar days each, sequentially, to file their initial briefs. See Chapter 3.1(b)(1) (Construction of "day"). The appealing party is provided 21 days from the date of the briefing schedule notice to file an appeal brief, and the opposing party will have an additional 21 days (marked from the date the appealing party's brief was due) in which to file a response brief. 8 C.F.R. § 1003.3(c)(1).

If both parties file an appeal (i.e. cross-appeals), then both parties are granted the same 21-day period in which to file an appeal brief. See 8 C.F.R. § 1003.3(c)(1). If either party wishes to reply to the appeal brief of the other, that party should comply with the rules for reply briefs. See Chapter 4.6(h) (Reply briefs).

(2) Detained cases - When an appeal is filed in the case of a detained alien, the alien and DHS are both given the same 21 calendar days in which to file their initial briefs. The Board will accept reply briefs filed by DHS or by the alien within 14 days after expiration of the briefing schedule. However, the Board will not suspend or delay adjudication of the appeal in anticipation of, or in response to, the filing of a reply brief. See Chapter 4.6(h) (Reply briefs).

(3) Federal court remands - If a briefing schedule is set, the parties are both given the same 21 calendar days in which to file their initial briefs. If either party wishes to reply to the appeal brief of the other, that party should comply with the rules for reply briefs. See Chapter 4.6(h) (Reply briefs). The Board, however, will not suspend or delay adjudication of the appeal in anticipation of, or in response to the filing of a reply brief.

(b) Processing

If a brief arrives at the Board and is timely, the brief is added to the record of proceedings and considered in the course of the adjudication of the appeal. If a brief arrives at the Board and is untimely, the brief is rejected and returned to the sender. See Chapter 3.1(c)(1) (Meaning of "rejected"). The Board may reject a brief as untimely at any time prior to the final adjudication of the appeal.

The Board does not issue receipts for briefs. If a party wishes to confirm the Board's receipt of a brief, the party should call the Automated Case Information Hotline for that information or, in the alternative, contact the Clerk's Office. See Chapter 1.6(b) (Telephone calls), Appendix A (EOIR Directory), Appendix H (Telephonic Information). If a party wishes to document the Board's receipt of a brief, the party should either (i) save proof of delivery (such as a courier's delivery confirmation or a return receipt from the U.S. Postal Service) or (ii) request a conformed copy. See Chapter 3.1(d)(3) (Conformed copies).

(c) Extensions

The Board has the authority to set briefing deadlines and to extend them. The filing of an extension request does not automatically extend the filing deadline, nor can the filing party assume that a request will be granted. Until such time as the Board affirmatively grants an extension request, the existing deadline stands.

(1) Policy - In the interest of fairness and the efficient use of administrative resources, extension requests are not favored; thus, they will not be granted as a matter of course. A briefing deadline must be met unless the Board expressly extends it. There is no automatic entitlement to an extension of the briefing schedule by either party.

(A) Non-detained cases - If a briefing extension is granted, the Board's policy is to grant an additional 21 days to file a brief regardless of the amount of time requested. The 21 days are added to the original filing deadline. Extensions are not calculated from the date the request was made or the date the briefing notice was received. It is also the Board's policy *not* to grant second briefing extension requests. Second requests are granted only in rare circumstances.

(B) Detained cases - If a briefing extension is granted, the Board's policy is to grant an additional 21 days to file a brief regardless of the amount of time requested. The 21 days are added to the original filing deadline and applies to both parties. Extensions are not calculated from the date the request was made or the date the briefing notice was received. It is also the Board's policy *not* to grant second briefing extension requests. Second requests are granted only in rare circumstances.

(2) Request deadline - Extension requests must be received by the Board by the brief's original due date; however, requests filed the same day as a brief is due are particularly disfavored and granted only in the most compelling of circumstances. Extension requests received after the due date will not be granted.

The timely filing of an extension request does not relieve the requesting party of the obligation to meet the filing deadline. Until the extension request is affirmatively granted by the Board, the original deadline remains in effect.

(3) Duty to avoid delay - All parties have an ethical obligation to avoid delay. The Board's deadlines are designed to provide ample opportunity for filing, and a conscientious party should be able to meet these deadlines.

(4) Contents - Extension requests should be labeled "BRIEFING EXTENSION REQUEST" and be captioned accordingly. See Appendix E (Sample Cover Pages). An extension request should indicate clearly:

- when the brief is due
- the reason for requesting an extension
- a representation that the party has exercised due diligence to meet the current deadline
- that the party will meet a revised deadline
- Proof of Service upon the other party

(d) Untimely Briefs

If a party wishes the Board to consider a brief despite its untimeliness, the brief must be accompanied by a "MOTION TO ACCEPT LATE-FILED BRIEF" and comply generally with the rules for motions. See Chapter 5.2 (Filing a Motion). If the motion is filed without the brief, the motion will be rejected. See Chapter 3.1(c)(1) (Meaning of "rejected"). Thus, the motion and the brief must be submitted together.

The Board has the discretion to consider a late-filed brief, but does so rarely. A motion to accept late-filed brief must set forth in detail the reasons for the untimeliness, and it should be supported by affidavits, declarations, or other evidence. If the motion is granted, the motion and brief are incorporated into the record, and the brief is considered by the Board. If the motion is denied, the motion is retained as part of the record, but the brief is returned without consideration. In either case, the parties are notified of the Board's decision on the motion.

Parties may file a motion to accept a late-filed brief only once. Subsequent late-filed brief motions will not be considered. Motions to reconsider denials of late-filed brief motions will also not be considered.

(e) Decision not to File a Brief

If a party indicates on a Notice of Appeal (Form EOIR-26) that a brief will be filed but later decides not to file a brief, that party should notify the Board in writing *before* the date the brief is due. The filing should have a cover page clearly labeled "BRIEFING WAIVER" and expressly indicate that the party will not be filing a brief. See Appendix E (Sample Cover Pages).

Failure to file a brief after an extension request has been granted is highly disfavored. See Chapter 4.16 (Summary Dismissal).

(f) Failure to File a Brief

When a party indicates on the Notice of Appeal (Form EOIR-26) that he or she will file a brief and thereafter fails to file a brief and fails to explain the failure to do so, the Board may summarily dismiss the appeal on that basis 8 C.F.R. § 1003.1(d)(2)(i)(E). See Chapter 4.16 (Summary Dismissal).

4.8 - Evidence on Appeal

(a) Record Evidence

The Board considers only that evidence that was admitted in the proceedings below.

(b) New Evidence on Appeal

The Board does not consider new evidence on appeal. If new evidence is submitted, that submission may be deemed a motion to remand proceedings to the Immigration Judge for consideration of that evidence and treated accordingly. 8 C.F.R. § 1003.1(d)(3)(iv). See Chapter 5.8 (Motions to Remand).

(c) Administrative Notice on Appeal

The Board may, at its discretion, take administrative notice of commonly known facts not appearing in the record. 8 C.F.R. § 1003.1(d)(3)(iv). For example, the Board may take administrative notice of current events and contents of official documents, such as country condition reports prepared by the U.S. Department of State.

(d) Representations of Counsel

Representations made by counsel in a brief or motion are not evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

4.9 - New Authorities Subsequent to Appeal

Whenever a party discovers new authority subsequent to the filing of a Notice of Appeal or brief, whether that authority supports or detracts from the party's arguments, that party should notify the Board of the new authority. See Chapter 4.6(g)(1) (New authorities). If either party wishes to brief new authority, that party should consult Chapter 4.6(g)(2) (New argument).

4.10 - Combining and Separating Appeals

(a) Consolidated Appeals

Consolidation of appeals is the administrative joining of separate appeals into a single adjudication for all the parties involved. Consolidation is generally limited to appeals involving immediate family members, although the Board may consolidate other appeals where the cases are sufficiently interrelated.

Most of the consolidated cases before the Board were consolidated by the Immigration Judge in the proceedings below. The Board may consolidate appeals at its discretion or upon request of one or both of the parties, when appropriate. For example, the Board 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 request that states the reasons for requesting consolidation. Such a request should include a cover page labeled "REQUEST FOR CONSOLIDATION OF APPEALS." See Appendix E (Sample Cover Pages). A copy of the request should be filed for each case included in the request for consolidation. The request should be filed as soon as possible.

(b) Concurrent Consideration of Appeals

Concurrent consideration is the adjudication of unrelated appeals in tandem for the purposes of consistent adjudication and administrative efficiency. The Board may concurrently consider unrelated appeals at its discretion or upon request of one or both of the parties. Concurrent consideration must be sought through the filing of a written request that states the reasons for concurrent consideration. Such a request should include a cover page labeled "REQUEST FOR CONCURRENT CONSIDERATION OF APPEALS." See Appendix E (Sample Cover Pages). Concurrent consideration differs from consolidated appeals in that, however similar the case or the adjudications, the appeals remain separate and distinct from one another. Concurrent consideration is appropriate, for example, when unrelated cases involve the same legal issue.

(c) Severance of Appeals

Severance of appeals is the division of a consolidated appeal into separate appeals, relative to each individual involved. The Board may sever appeals at its discretion or upon request of one or both of the parties. See *Matter of Taerghodsi*, 16 I&N Dec. 260 (BIA 1977). Severance must be sought through the filing of a written request that states the reasons for requesting severance. Such a request should include a cover page labeled "REQUEST FOR SEVERANCE OF APPEALS." See Appendix E (Sample Cover Pages). Parties are advised, however, that such a request must be clear and filed as soon as possible.

4.11 - Withdrawing an Appeal

(a) Procedure

An appealing party may, at any time prior to the entry of a decision by the Board, voluntarily withdraw his or her appeal, with or without the consent of the opposing party. The withdrawal must be in writing and filed with the Board. The cover page to the withdrawal should be labeled "MOTION TO WITHDRAW APPEAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Board), Appendix E (Sample Cover Pages).

(b) Untimely Withdrawal

If a withdrawal is not received by the Board prior to the Board's rendering of a decision, the withdrawal will not be recognized, and the Board's decision will become binding.

(c) Effect of Withdrawal

When an appeal is withdrawn, the decision of the Immigration Judge becomes immediately final and binding as if no appeal had ever been filed, and the alien is then subject to the Immigration Judge's original decision. See 8 C.F.R. § 1003.4. Thus, if the alien appeals an Immigration Judge's order of removal or deportation, and then withdraws the appeal, the DHS may at that point remove or deport the alien. If the alien appeals an Immigration Judge's order in which the alien was granted voluntary departure, and then withdraws the appeal, the period of voluntary departure runs from the date of the Immigration Judge's decision, not the date of the appeal's withdrawal.

(d) Distinction from Motion to Remand

Parties should not confuse a motion to withdraw appeal with a motion to remand. The two motions are distinct from one another and have very different consequences. While a motion to withdraw appeal is filed by a party who chooses to accept the decision of the Immigration Judge, a motion to remand is filed by a party who wants the case returned to the Immigration Judge for further consideration. See Chapter 5.8 (Motion to Remand).

(e) Represented Aliens

If a represented alien wishes to withdraw an appeal, the alien's representative should file the withdrawal. If a represented alien insists on filing the withdrawal himself or herself, the withdrawal should indicate whether it is being made with the advice and consent of the representative. The withdrawal should also be filed with Proof of Service on the alien's representative. See Chapter 3.2(d) (Proof of Service), Appendix F (Sample Certificates of Service).

4.12 - Non-Opposition to Appeal

(a) Failure to Oppose

The failure of the opposing party to affirmatively oppose an appeal does not automatically result in the appeal being sustained. While the Board may consider the opposing party's silence in adjudicating the appeal, the silence does not dictate the disposition of the appeal.

(b) Express Non-opposition

The opposing party may affirmatively express non-opposition to an appeal at any time prior to the entry of a decision by the Board. Such non-opposition should be expressed either in the response to the appeal or in the form of a notice labeled "NON-OPPOSITION TO APPEAL" and should be properly served on the other party. See Chapter 3.2 (Service), Appendix E (Sample Cover Pages). While the Board may weigh the opposing party's non-opposition in adjudicating the appeal, that non-opposition does not dictate the disposition of the appeal.

(c) Withdrawal of Opposition

The opposing party may withdraw opposition to an appeal at any time prior to the entry of a decision by the Board. Such non-opposition should be expressed in the form of a notice labeled "WITHDRAWAL OF OPPOSITION TO APPEAL" and be properly served on the other party. See Chapter 3.2 (Service), Appendix E (Sample Cover Pages). While the Board may weigh the opposing party's withdrawal of opposition in adjudication of the appeal, that withdrawal does not dictate that disposition of the appeal.

4.13 - Effect of Departure

(a) Alien Appeal

Departure from the United States can jeopardize an alien's right to appeal, even when the departure is authorized or compelled by DHS. Departure from the United States prior to filing an appeal may be construed as a waiver of the right to appeal. Departure from the United States while an appeal is pending may be construed as a withdrawal of that appeal. See 8 C.F.R. §§ 1003.3(e), 1003.4.

(b) DHS Appeal

The alien's departure from the United States while a DHS appeal is pending does not constitute a withdrawal of the DHS appeal, nor does it render the DHS appeal moot.

4.14 - Interlocutory Appeals

(a) Nature of Interlocutory Appeals

Most appeals are filed *after* the Immigration Judge issues a final decision in the case. In contrast, an interlocutory appeal asks the Board to review a ruling by the Immigration Judge before the Immigration Judge issues a final decision.

(b) Bond Appeals

Bond appeals should not be confused with interlocutory appeals. There are separate rules for bond appeals. See Chapter 7 (Bond).

(c) Scope of Interlocutory Appeals

The Board does not normally entertain interlocutory appeals and generally limits interlocutory appeals to instances involving either important jurisdictional questions regarding the administration of the immigration laws or recurring questions in the handling of cases by Immigration Judges. See *Matter of K-*, 20 I&N Dec. 418 (BIA 1991).

(d) Filing an Interlocutory Appeal

Interlocutory appeals should be timely filed on a Notice of Appeal (Form EOIR-26). Next to the words "What decision are you appealing?" in box 5, type or write in the words "INTERLOCUTORY APPEAL." Do not check any of the three options in box 5. The appeal must indicate the date of the Immigration Judge's decision, the precise nature and disposition of that decision, and the precise issue being appealed. If the interlocutory appeal is based upon a written decision, a copy of that decision should be included with the appeal.

(e) Briefing

The Board does not normally issue briefing schedules for interlocutory appeals. If an appealing party wishes to file a brief, the brief should accompany the Notice of Appeal or be promptly submitted after the Notice of Appeal is filed. If an opposing party wishes to file a brief, the brief should be filed as soon as possible after the appeal is filed. The Board will not, however, suspend or delay adjudication of an interlocutory appeal in anticipation of, or in response to, the filing of a brief.

4.15 - Summary Affirmance

Under certain circumstances, the Board may affirm, without opinion, the decision of an Immigration Judge or DHS officer. The Board may affirm a decision if all of these conditions are met:

- the Immigration Judge or DHS decision reached the correct result
- any errors in the decision were harmless or nonmaterial
- either (a) the issues on appeal are squarely controlled by existing Board or federal court precedent and do not involve the application of a precedent to a novel factual situation, or (b) the factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion

See 8 C.F.R § 1003.1(e)(4). By regulation, a summary affirmance order reads: "The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. See 8 C.F.R. 3.1(e)(4)." 8 C.F.R. § 1003.1(e)(4)(ii).

A summary affirmance order will not contain further explanation or reasoning. Such an order approves the result reached by the Immigration Judge or DHS. Summary affirmance does not mean that the Board approves of all the reasoning of that decision, but it does reflect that any errors in the decision were considered harmless or not material to the outcome of the case. See 8 C.F.R. § 1003.1(e)(4).

Note that any motion to reconsider or motion to reopen filed after a summary affirmance order should be filed with the Board. See Chapters 5.6 (Motions to Reopen) and 5.7 (Motions to Reconsider). However, by regulation, the Board cannot entertain a motion based solely on an argument that the case should not have been affirmed without opinion. See 8 C.F.R. § 1003.2(b)(3).

4.16 - Summary Dismissal

(a) Nature of "Summary" Dismissal

Under certain circumstances, the Board is authorized to dismiss an appeal without reaching its merits. See 8 C.F.R. § 1003.1(d)(2)(i).

(b) Failure to Specify Grounds for Appeal

When a party takes an appeal, the Notice of Appeal (Form EOIR-26) must identify the reasons for the appeal. A party should be specific and detailed in stating the grounds of the appeal, specifically identifying the finding of fact, the conclusions of law, or both, that are being challenged. 8 C.F.R. § 1003.3(b). An appeal, or any portion of an appeal, may be summarily dismissed if the Notice of Appeal (Form EOIR-26), and any brief or attachment, fails to adequately inform the Board of the specific reasons for the appeal. 8 C.F.R. § 1003.1(d)(2)(i)(A).

(c) Failure to File a Brief

An appeal may be summarily dismissed if the Notice of Appeal (Form EOIR-26) indicates that a brief or statement will be filed in support of the appeal, but no brief, statement, or explanation for not filing a brief is filed within the briefing deadline. 8 C.F.R. § 1003.1(d)(2)(i)(E). See Chapter 4.7(e) (Decision not to file a brief).

(d) Other Grounds for Summary Dismissal

An appeal can also be summarily dismissed for the following reasons:

- the appeal is based on a finding of fact or conclusion of law that has already been conceded by the appealing party
- the appeal is from an order granting the relief requested
- the appeal is filed for an improper purpose
- the appeal does not fall within the Board's jurisdiction
- the appeal is untimely
- the appeal is barred by an affirmative waiver of the right of appeal
- the appeal fails to meet essential statutory or regulatory requirements
- the appeal is expressly prohibited by statute or regulation

See 8 C.F.R. § 1003.1(d)(2)(i).

(e) Sanctions

Attorneys and accredited representatives are admonished that the filing of an appeal that is summarily dismissed may be deemed frivolous behavior and may result in

discipline. 8 C.F.R. § 1003.1(d)(2)(iii). See Chapters 4.17 (Frivolous Appeals), 11 (Discipline of Practitioners).

4.17 - Frivolous Appeals

If it appears to the Board, at any time, that an appeal is filed for an improper purpose or to cause unnecessary delay, the appeal may be dismissed. See 8 C.F.R. § 1003.1(d)(2)(i)(D). The filing of a frivolous appeal may be grounds for discipline against the attorney or accredited representative. See Chapter 11.4 (Conduct).

4.18 - Certification by an Immigration Judge

An Immigration Judge may ask the Board to review his or her decision. 8 C.F.R. § 1003.7. To "certify" a case to the Board, an Immigration Court serves a notice of certification on the parties. That notice informs the parties that the case has been certified and sets a briefing schedule.

The right to appeal is separate and distinct from certification. To safeguard the opportunity to appeal and be heard by the Board, parties should file an appeal even if an Immigration Judge has certified the case. 8 C.F.R. § 1003.3(d).

4.19 - Federal Court Remands

(a) Nature of Federal Court Remands

The decisions of the Board are reviewable in certain federal courts, depending on the nature of the appeal. Where an appeal is taken from a Board decision regarding of an Immigration Judge's ruling, the federal court may remand the case back to the Board for further proceedings. For example, the federal court may remand to allow the Board to consider our prior decision because of a change in law or ask the Board to re-examine our prior decision in light of the court's rulings.

(b) Notification

When the Board receives notification of a federal court's order from the Office of Immigration Litigation (OIL) or the United States Attorney's Office, a written notification is sent to both the alien and DHS.

(c) Notice of Appearance

If a party is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) must be submitted. See Chapter 4.3 (Representation). An electronically filed Form EOIR-27 may be submitted after the Board sends notification of receipt of a federal court remand. If the electronic submission of the Form EOIR-27 precedes issuance of notification of a federal court remand, the electronic submission may be rejected.

(d) Briefing and Transcript

In appropriate cases, a briefing schedule is provided to both parties and informs the parties of their respective deadlines for filing briefs. If a briefing schedule is set, the parties are both given the same 21 calendar days in which to file their initial briefs. See Chapter 4.7(a) (Due dates). Filing guidance can be found Chapter 3 (Filing with the Board) and Chapter 4.2(e) (Briefing schedule), 4.6 (Appeal briefs), 4.7(c) (Briefing extensions). Also, in appropriate cases, a transcript is sent to the parties along with the briefing schedule. See Chapter 4.2(f) (Transcription).

4.20 - ABC Settlement

(a) ABC Class Members

Members of the class covered by the ABC Settlement Agreement, who timely registered to receive benefits under the agreement (either by applying directly or by applying for TPS, if Salvadoran) may be entitled to certain rights and benefits pursuant to the agreement. *See American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991). ABC class members include Salvadorans who entered the United States on or before September 19, 1990, and Guatemalans who entered the United States on or before October 1, 1990.[1]

(b) Certain El Salvador and Guatemala Nationals

Section 203 of the Nicaraguan Adjustment and Central American Relief Act ("NACARA") provides that certain nationals of El Salvador and Guatemala are eligible to apply for suspension of deportation, or NACARA cancellation, under standards similar to those in effect prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). Pub. L. No. 105-100, 111 Stat. 2160 (1997).

To qualify for NACARA relief as a Salvadoran or Guatemalan national, the applicant must have either:

(1) filed an application for asylum on or before April 1, 1990; or

(2) registered for benefits under *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) and not been apprehended at the time of entry if such entry occurred after December 19, 1990. 8 C.F.R. § 1240.61(a)(1)-(2).

A Salvadoran national is considered to have registered for *ABC* benefits if he or she entered the United States on or before September 19, 1990, and either applied for temporary protected status on or before October 31, 1991, or submitted an ABC registration form on or before October 31, 1991. *Id.* § 1240.60(1). A Guatemalan national is considered to have registered for *ABC* benefits if he or she entered the United States on or before October 1, 1990, and submitted an ABC registration form on or before December 31, 1991. 8 C.F.R. § 1240.60(2).

(c) BIA role

The BIA will not evaluate whether a class member is eligible for a *de novo* asylum adjudication before an Asylum Officer. Rather, DHS/USCIS is assigned the role of making substantive determinations of an alien's eligibility.

(d) Decision and Disposition Codes

When a case is administratively closed pursuant to the ABC Settlement Agreement, staff should select the ABC decision code on the back of the relevant circulation sheet.

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[1] Administrative closure was expressly authorized for certain ABC class members in order to implement the ABC settlement agreement and provide such class members the opportunity to exercise their rights under the agreement. *See* 8 C.F.R. §§ 1240.62(b) and 1240.70(f)-(h); *ABC*, 760 F. Supp. At 805; *Matter of Castro-Tum*, 27 I&N Dec. 271, 276–77 (2018)

Chapter 5 - Motions before the Board

5.1 - Who May File

(a) Parties

Only an alien who is the subject of an underlying appeal before the Board, the alien's representative, or DHS 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. See Appendix E (Sample Cover Pages). The Board will *not* assume that a motion includes all family members (or group members in a consolidated proceeding). See Chapter 4.10 (Combining and Separating Appeals).

(b) Representatives

Motions may be filed either by a party, if unrepresented ("pro se"), or by a party's representative. See Chapter 2 (Appearances before the Board). Whenever a party is represented, the party should submit all motions to the Board through the representative. See Chapter 2.1(d) (Filings and Communications).

(1) Motions to reopen and motions to reconsider - All motions to reopen and motions to reconsider must be accompanied by a Notice of Entry of Appearance as Attorney or Representatives Before the Board of Immigration Appeals (Form EOIR-27), even if the representative is already the representative of record. See Chapter 2 (Appearances before the Board).

(2) All other motions - On any motion that is not a motion to reopen or a motion to reconsider, if a representative is already the representative of record, the motion need not be accompanied by a Notice of Appearance. However, if a representative is appearing for the first time, the representative must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) along with that motion. See Chapter 2 (Appearances before the Board).

(c) Persons not Party to the Proceeding

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 Board action in a particular case, the request should be made through one of the parties. Third parties who wish to appear as amicus curiae should consult Chapter 2.10 (Amicus Curiae).

5.2 - Filing a Motion

(a) Jurisdiction

Motions must be filed in the right place. See Appendix J (Where to File a Motion). The Board may entertain motions only in those cases in which it has jurisdiction.

(1) Cases never before the Board - The Board cannot entertain motions for cases that have never been before it. Cases "never before the Board" include both appeals that were never filed and appeals that were rejected for a filing defect that was never remedied.

(2) Cases pending before the Board - Where an appeal is pending before the Board, all motions regarding that appeal should be filed with the Board.

(3) Cases already decided by the Board

(A) Motions to reopen and motion to reconsider - As a general rule, where an appeal has been decided by the Board and no case is currently pending, a motion to reopen or a motion to reconsider may be filed with the Board. See Chapters 5.6 (Motions to Reopen), 5.7 (Motions to Reconsider). Parties should be mindful of the strict time and number limits on motions to reopen and motions to reconsider. See Chapter 5.6(c) (Time limits), 5.6(d) (Number limits), 5.7(c) (Time limits), 5.7(d) (Number limits).

(B) Motions subsequent to remand - Once a case has been remanded to the Immigration Judge, the only motion that the Board will entertain is a motion to reconsider the decision to remand. All other motions must be filed with the Immigration Judge. Motions to reconsider a remand order are not favored, and concerns regarding the decision to remand should be presented to the Immigration Judge.

(C) Motions on appeals dismissed for lack of jurisdiction - Where an appeal has been dismissed for lack of jurisdiction, the Board cannot consider a motion to reopen. See *Matter of Mladineo*, 14 I&N Dec. 591 (BIA 1974). The only motion that the Board may entertain is a motion to reconsider the Board's finding that it lacks jurisdiction.

(D) Motions on appeals dismissed as untimely - Where an appeal has been dismissed as untimely, the Board does not have jurisdiction to consider a motion to reopen. The only motion that the Board may entertain is a motion to reconsider the Board's finding that the appeal was untimely. See *Matter of Lopez*, 22 I&N Dec. 16 (BIA 1998).

(E) Motion on appeals affirmed without opinion - By regulation, the Board cannot entertain a motion based solely on an argument that the case should not have been affirmed without opinion. See Chapter 4.15 (Summary Affirmance). Otherwise, the Board retains jurisdiction over any motion to reconsider or motion to reopen filed after a

summary affirmance order. See Chapters 5.6 (Motions to Reopen) and 5.7 (Motions to Reconsider).

(b) Form

There is no official form for filing a motion before the Board. Motions should not be filed on a Notice of Appeal (Form EOIR-26), which is used exclusively for the filing of appeals.

Motions and supporting documents must comply with the general rules and procedures for filing. See Chapter 3 (Filing with the Board). The Board prefers that motions and supporting documents be assembled in a certain order. See Chapter 3.3(c)(1)(B) (Motions).

A motion should be characterized and labeled as accurately as possible. The Board construes a motion according to its content, not its title, and applies time and number limits accordingly. See Chapter 5.3 (Motion Limits).

Motions should clearly contain all pertinent information, and the Board recommends that parties use captions containing the following material:

- title (Example: "Respondent's Motion to Reopen")
- the full name (as it appears on the charging document) for each alien included in the motion
- the alien registration number ("A number") for each alien involved in the motion
- the type of hearing or adjudication underlying the motion (e.g., removal, deportation, exclusion, bond, visa petition)
- the adjudicator whose decision underlies the motion (e.g., the Immigration Court, the DHS officer, or the Board), where appropriate

All motions must be made in writing, signed, and served on all parties. A motion must identify *all* persons included in the motion. See Chapter 5.1(a) (Parties). A motion must state with particularity the grounds on which it is based and must identify the relief or remedy sought by the moving party.

If a motion involves a detained or incarcerated alien, the motion should clearly state that information. The Board recommends that the cover page to the motion be prominently marked "DETAINED" in the upper right corner and highlighted, if possible. See Appendix E (Sample Cover Pages).

(c) Proof of Service

All motions must be served on the other party and must contain Proof of Service. See Chapter 3.2 (Service), Appendix F (Sample Certificates of Service).

(d) Motion Fee and Fee Waivers

Where required, a motion must be accompanied by the appropriate filing fee or Fee Waiver Request (Form EOIR-26A). See Chapter 3.4 (Filing Fees).

(e) Copy of Underlying Order

Motions to reopen and motions to reconsider should be accompanied by a copy of the Board's order.

(f) Evidence

Statements made in a motion are not evidence. If a motion is predicated upon evidence that was not made part of the record by the Immigration Judge, that evidence should be submitted with the motion. Such evidence includes sworn affidavits, declarations under the penalty of perjury, and documentary evidence. The Board will not suspend or delay adjudication of a motion pending the receipt of supplemental evidence.

Any material that is not in the English language must be accompanied by a certified English translation. 8 C.F.R §§ 1003.2(g)(1), 1003.33. See Chapter 3.3(a) (Language). Documents regarding criminal convictions must comport with the requirements set forth in 8 C.F.R. § 1003.41.

(g) Application for Relief

A motion based upon eligibility for relief must be accompanied by a copy of the application for that relief, if an application is normally required. See 8 C.F.R. § 1003.2(c)(1).

The application for relief must be duly completed and executed in accordance with the requirements for such relief. The original of an application for relief is generally not required, but should be held by the filing party for submission to the Immigration Judge or DHS following the Board's ruling on the motion. See Chapter 12.3 (Submitting Completed Forms). The copy that is submitted to the Board 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 application for that relief (Form I-485) should be filed *with* the motion, along with the necessary documents. See subsection (h), below.

Application fees are not paid to the Board and should not accompany the motion. Fees for applications should be paid if and when the case is remanded to the Immigration Judge in accordance with the filing procedures for that application. See Chapter 3.4(i) (Application fees).

(h) Visa Petitions

If a motion is based on adjustment of status and there is an underlying visa petition that has been approved, evidence of the approved visa petition should accompany the motion. When a petition is subject to visa availability, evidence that a visa is immediately available to the beneficiary should also accompany the motion (e.g., a copy of the State Department's Visa Bulletin reflecting that the petition 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 should accompany the motion. If the visa petition has already been filed with DHS, evidence of that filing should accompany the motion.

Parties are advised that, in certain instances, an approved visa petition is required. 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 Board 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) Oral Argument

The Board generally does not grant requests for oral argument on a motion. See Chapter 8.2(b) (Motions).

(j) Draft Orders

Parties should not include draft orders in the motion filing. The Board always issues its own order.

(k) Confirmation of Receipt

The Board issues filing receipts for motions to reopen and motions to reconsider. The Board does not issue filing receipts for other types of motions. See Chapter 3.1(d) (Filing receipts). The Board will, however, return a conformed copy of a filed motion if it complies with Chapter 3.1(d)(3) (Conformed copies).

5.3 - Motion Limits

Certain motions are limited in time (when the motion must be filed) and number (how many motions may be filed). Motions to reopen and motions to reconsider are limited in both time and number. See Chapters 5.6 (Motion to Reopen), 5.7 (Motions to Reconsider). Motions to accept a late-filed brief are limited in number. See Chapter 4.7(d) (Untimely briefs). These time and number limits are strictly enforced.

A compound motion is a motion that combines a motion to reopen or a motion to reconsider with another motion (or with each other). Time and number limits on motions to reopen and motions to reconsider apply even when part of a compound motion, and the Board will consider only that portion of the motion that is not time or number barred. For example, if a motion seeks both reopening and reconsideration, and is filed more than 30 days after the Board's decision but within 90 days of that decision, the Board will entertain the portion of the motion that seeks reopening, but not the portion that seeks reconsideration.

5.4 - Motion Briefs

A motion need not be supported by a brief. However, if a brief is filed, it should accompany the motion. See 8 C.F.R. § 1003.2(g)(3). A brief filed in opposition to a motion must be filed within 13 days from the date of service of the motion. 8 C.F.R. § 1003.2(g)(3).

Motion briefs should generally follow the filing requirements, writing guidelines, formatting requirements, and citation conventions set forth in Chapter 4.6 (Appeal Briefs). Motion briefs should also comport with the requirements set out in Chapter 3.3 (Documents). The Board does not issue briefing schedules on motions.

5.5 - Transcript Requests

The Board does not prepare a transcript of proceedings in response to a motion. If a party feels that a transcript is necessary, the party should file a motion articulating why a transcript is necessary. See generally Chapter 4.2(f) (Transcription).

Digitally recorded hearings may be listened to at the Board or the Immigration Court. Contact the Clerk's Office or the local Immigration Court to make arrangements to listen to the digitally recorded hearings.

Hearings recorded on cassette tapes can be listened to only where the tapes are stored. Contact the Clerk's Office or the local Immigration Court on where the cassette recordings are located and available for listening.

For more information on digitally or cassette recorded hearings, parties should consult Part II of this Manual, which is available on the EOIR website.

5.6 - Motions to Reopen

(a) Purpose

A motion to reopen asks the Board to reopen proceedings in which the Board has already rendered a decision in order to consider new facts or evidence in the case.

(b) Requirements

(1) Filing - Motions to reopen must comply with the general requirements for filing a motion. See Chapter 5.2 (Filing a Motion). Depending on the nature of the motion, a filing fee may be required. See Chapter 3.4 (Filing Fees).

(2) Content - A motion to reopen must state the new facts that will be proven at a reopened hearing, and the motion must be supported by affidavits or other evidentiary material. 8 C.F.R. § 1003.2(c)(1).

A motion to reopen will not be granted unless it appears to the Board 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. § 1003.2(c)(1).

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). See 8 C.F.R. § 1003.2(c)(1).

(c) Time Limits

As a general rule, a motion to reopen must be filed within 90 days of the Board's final administrative decision. 8 C.F.R. § 1003.2(c)(2). (For cases decided by the Board before July 1, 1996, the motion to reopen was due on or before September 30, 1996. 8 C.F.R. § 1003.2(c)(2).) There are few exceptions. See subsection (f), below.

(d) Number Limits

A party is permitted only one motion to reopen. 8 C.F.R. § 1003.2(c)(2). 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 in very specific circumstances. See 8 C.F.R. § 1003.2(c)(3).

(1) Changed circumstances - When a motion to reopen is based on a request for asylum, withholding or removal, or relief 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. § 1003.2(c)(3)(ii). Motions based on changed circumstances must also be accompanied by evidence of the changed circumstances alleged. See 8 C.F.R. § 1003.2(c).

(2) In absentia proceedings - There are special rules pertaining to motions to reopen following an alien's failure to appear for a hearing. An "in absentia" order (an order entered when the alien did not come to the hearing) cannot be appealed to the Board. *Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999). If an alien misses a hearing and the Immigration Judge orders the alien removed from the United States, the alien must file a motion to reopen with the Immigration Judge, explaining why he or she missed the hearing. (Unlike the in absentia order, the Immigration Judge's ruling on the motion can be appealed.) Such motions are subject to strict deadlines under certain circumstances. See 8 C.F.R. §§ 1003.2(c)(3)(i), 1003.23(b)(4)(ii), 1003.23(b)(4)(iii).

(3) Joint motions - Motions that are agreed upon by all parties and are jointly filed are not limited in time or number. See 8 C.F.R. § 1003.2(c)(3)(iii).

(4) DHS motions - For cases in removal proceedings, DHS may not be subject to time and number limits on motions to reopen. See 8 C.F.R. § 1003.2(c)(2), (3). For cases brought in deportation or exclusion, 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. § 1003.2(c)(3)(iv).

(5) Pre-9/30/96 motions - Motions filed before September 30, 1996, do not count toward the one-motion limit.

(6) Battered spouses, children, and parents - There are special rules for certain motions to reopen by battered spouses, children, and parents. See Immigration and Nationality Act § 240(c)(7)(C)(iv).

(7) 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 Board may also reopen proceedings at any time on its own initiative. 8 C.F.R. § 1003.2(a).

(f) Evidence

A motion to reopen must be supported by evidence. See Chapter 5.2(f) (Evidence).

(g) Motions Filed While an Appeal is Pending

Once an appeal is filed with the Board, the Immigration Judge no longer has jurisdiction over the case. See Chapter 4.2(a)(2) (Appeal to the Board vs. motion before the Immigration Judge). Thus, motions to reopen should not be filed with an Immigration Judge after an appeal is taken to the Board. A motion to reopen that is filed with the Board during the pendency of an appeal is generally treated as a motion to remand for further proceedings before an Immigration Judge. 8 C.F.R. § 1003.2(c)(4). See Chapter 5.8 (Motions to Remand).

(h) Administratively Closed Cases

When proceedings have been administratively closed, the proper motion is a motion to recalendar, *not* a motion to reopen. See Chapter 5.9(h) (Motion to recalendar).

(i) Automatic Stays

A motion to reopen that is filed with the Board does not automatically stay an order of removal or deportation. See Chapter 6 (Stays and Expedite Requests).

(j) 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, without more, is sufficient to reopen proceedings.

5.7 - Motions to Reconsider

(a) Purpose

A motion to reconsider either identifies an error in law or fact in a prior Board decision or identifies a change in law that affects a prior Board decision and asks the Board to re-examine its ruling. A motion to reconsider is based on the existing record and does not seek to introduce new facts or evidence.

(b) Requirements

Motions to reconsider must comply with the general requirements for filing a motion. See Chapter 5.2 (Filing a 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 Board's decision. 8 C.F.R. § 1003.2(b)(2). (For cases decided by the Board before July 1, 1996, the motion to reconsider was due on or before July 31, 1996.) 8 C.F.R. § 1003.2(b)(2).

(d) Number Limits

As a general rule, a party may file only one motion to reconsider. See 8 C.F.R. § 1003.2(b)(2). 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. § 1003.2(b)(2).

(e) Summary Affirmance Orders

A motion to reconsider may not be based solely on an argument that an Immigration Judge's decision should not have been affirmed without opinion. See 8 C.F.R. § 1003.2(b)(3).

(f) Exceptions to the Limits on Motions to Reconsider

(1) Alien motions - There are no exceptions to the time and number limitations on motions to reconsider when filed by an alien.

(2) DHS motions - DHS motions to reconsider are subject to certain limitations. See 8 C.F.R. § 1003.2(b)(2).

(3) Other - Exceptions to the time and number limits on motions to reconsider may be created by statute, published case law, or regulations. The Board may also reconsider proceedings at any time on its own initiative. 8 C.F.R. § 1003.2(a).

(g) Identification of Error

A motion to reconsider must state with particularity the errors of fact or law in the prior Board 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. See Chapter 4.6(d)(6) (Statutes, rules, regulations, and other legal authorities and sources).

(h) Motions Filed While an Appeal is Pending

Once an appeal is filed with the Board, the Immigration Judge no longer has jurisdiction over the case. See Chapter 4.2(a)(2) (Appeal to the Board vs. motion before the Immigration Judge). Thus, motions to reconsider should not be filed with an Immigration Judge after an appeal is taken to the Board. A motion to reconsider that is filed with the Board during the pendency of an appeal is generally treated as a motion to remand for further proceedings before an Immigration judge. 8 C.F.R. § 1003.2(b)(1). See Chapter 5.8 (Motions to Remand).

(i) Automatic Stays

A motion to reconsider does not automatically stay an order or removal or deportation. See Chapter 6 (Stays and Expedite Requests).

(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 5.6(j) (Criminal convictions).

5.8 - Motions to Remand

(a) Purpose

A motion to remand seeks to return jurisdiction of a case pending before the Board to the Immigration Judge. Parties may, in appropriate circumstances, move to remand proceedings to the Immigration Judge to consider newly available evidence or newly acquired eligibility for relief.

(b) Requirements

Motions to remand are subject to the same substantive requirements as motions to reopen. See *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992). Accordingly, evidence and applications for relief, if involved, must be submitted with the motion.

The Board may deny a motion to remand where the evidence was discoverable at an earlier stage in the proceedings, is not material or probative, or is otherwise defective. As with motions to reopen, parties submitting new evidence should articulate the purpose of the new evidence and explain its prior unavailability. See Chapter 5.2(f) (Evidence).

(c) Limitations

Unlike motions to reopen, motions to remand are not limited in time or number because they are made during the pendency of an appeal.

(d) Remands to DHS

Where an appeal is taken from a decision made by a DHS officer, the Board may remand the case to DHS. For example, the Board may remand a visa petition denial to DHS for further development of the petition record. Where an appeal is taken from an Immigration Judge decision, however, the Board cannot remand proceedings to DHS. For example, the Board cannot remand proceedings to a DHS Asylum Office once an Immigration Judge has ruled on an asylum application.

(e) Post-Remand Appeals

If the Board grants a motion to remand resulting in a new Immigration Judge decision, a party may file a new appeal. In that new appeal, the party may pursue any new issues or any unresolved issues from the prior appeal.

5.9 - Other Motions

(a) Motion to Expedite. See Chapter 6.4 (Expedite Requests).

(b) Motion to Withdraw Appeal

Motions to withdraw an appeal are discussed in Chapter 4.11 (Withdrawing an Appeal). Parties are reminded not to confuse a motion to withdraw an appeal with a motion to remand. If a party wishes a case returned to the Immigration Judge for consideration of a newly available form of relief (e.g. adjustment of status), the correct motion is a *motion to remand*. In contrast, when a motion to withdraw an appeal is filed, the decision of the Immigration Judge immediately becomes final as if no appeal had ever been filed. If an appeal is withdrawn, DHS may remove or deport the alien, if the Immigration Judge so ordered. See Chapter 4.11 (Withdrawing an Appeal), 5.8 (Motions to Remand).

(c) Motion to Withdraw as Counsel or Representative

See Chapter 2.3(j) (Change in representation).

(d) Motion to Stay Deportation or Removal

See Chapter 6 (Stays and Expedite Requests).

(e) Motion to Consolidate

See Chapter 4.10 (Combining and Separating Appeals).

(f) Motion to Sever

See Chapter 4.10 (Combining and Separating Appeals).

(g) Motion to Join

See Chapter 4.10 (Combining and Separating Appeals).

(h) Motion to Recalendar

When proceedings have been administratively closed or continued indefinitely and a party wishes to "reopen" those 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 for the case being closed. If available, a copy of the closure order should be attached to the motion. Motions to recalendar should be properly filed, clearly captioned, and comply with the general motion requirements. See Chapter 5.2 (Filing a Motion), Appendix E (Sample Cover Pages). To ensure that the Board has the alien's current address, a Change of

Address Form (EOIR-33/BIA) should also be filed. Motions to recalendar are not subject to time and number restrictions, nor do they require a fee or Fee Waiver Request (Form EOIR-26A).

(i) Motion to Hold in Abeyance

The Board does not normally entertain motions to hold cases in abeyance while other matters are pending (e.g., waiting for a visa petition to become current, waiting for criminal conviction to be overturned).

(j) Motion to Stay Suspension

Motions involving the discipline of an attorney or accredited representative are discussed in Chapter 11 (Discipline).

(k) Motion to Amend

The Board will entertain a motion to amend a previous filing 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 appeal or motion deadlines.

(l) Other Types of Motions

The Board will entertain other types of motions, as appropriate to the facts and law of each particular case, provided that the motion is properly filed, is clearly captioned, and complies with the general motion requirements. See Chapter 5.2 (Filing a Motion), Appendix E (Sample Cover Pages).

5.10 - Decisions

Upon the entry of a decision, the Board serves its decision upon the parties by regular mail. See Chapter 1.4(d) (Board decisions).

5.11 - Non-Opposition to Motion

A motion will be deemed unopposed unless the opposing party responds within 13 days from the date of service of the motion. See 8 C.F.R. § 1003.2(g)(3). However, the opposing party's failure to oppose a motion, or affirmative non-opposition to a motion, will not necessarily result in a grant of that motion. See Chapter 4.12 (Non-Opposition to Appeal).

Chapter 6 - Stays and Expedite Requests

6.1 - In General

A stay prevents DHS 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 the procedures to follow when filing for a stay before the Immigration Court or the Board. For particular cases, parties should note that the procedures are not the same before the Immigration Court and the Board and 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), and 1003.23(b)(4)(ii),(iii)(C).

An alien under a final order of deportation or removal may seek a stay of deportation or removal from DHS. A denial of the stay by DHS does not preclude an immigration judge or the Board from granting a stay in connection with a previously filed motion to reopen or motion to reconsider. DHS shall take all reasonable steps to comply with a stay granted by an Immigration Judge or the Board, but such a stay shall cease to have effect if granted or communicated after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed. 8 C.F.R. §§ 241.6, 1241.6.

In the context of bond proceedings, the Board has the authority to grant a stay of the execution of an Immigration Judge's decision when DHS has appealed or provided notice of intent to appeal by filing the Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) with the Immigration Court within one business day of the Immigration Judge's bond order, and file the appeal within 10 business days. The Board may also entertain motions to reconsider discretionary stays it has granted. See 8 C.F.R. § 1003.19(i)(1)-(2); see also Chapter 6.3 (Discretionary Stays).

There are important differences between the automatic stay provisions in deportation and exclusion proceedings and the automatic stay provisions in removal proceedings. Other than a motion to reopen in absentia deportation proceedings, those differences are not covered in this Policy Manual. Accordingly, parties in deportation or exclusion proceedings should carefully review the controlling law and regulations.

6.2 - Automatic Stays

There are certain circumstances when an Immigration Judge's order of removal is automatically stayed pending further action on an appeal or motion. When a stay is automatic, the Immigration Courts and the Board do not issue a written order on the stay.

(a) During the Appeal Period

After an Immigration Judge issues a final decision on the merits of a case (not including bond or custody, credible fear, claimed status review, or reasonable fear determinations), the order is automatically stayed for the 30-day period for filing an appeal with the Board. However, the order is not stayed if the losing party waived the right to appeal. 8 C.F.R. § 1003.6(a).

(b) During the Adjudication of an Appeal

If a party appeals an Immigration Judge's decision on the merits of the case (not including bond and custody determinations) to the Board during the appeal period, the order of removal is automatically stayed during the Board's adjudication of the appeal. 8 C.F.R. § 1003.6(a). The stay remains in effect until the Board renders a final decision in the case.

(c) During the Adjudication of Case Certified to the Board

A removal order is stayed while the Board adjudicates a case that is before that appellate body by certification. 8 C.F.R. § 1003.6(a); see also Chapter 4.18 (Certification by an Immigration Judge). The stay remains in effect until the Board renders a final decision in the case or declines to accept certification of the case.

(d) Motions to Reopen

(1) Removal Proceedings - An Immigration Judge's removal order is stayed during the period between the filing of a motion to reopen removal proceedings conducted in absentia and the Immigration Judge's ruling on that motion. 8 C.F.R. § 1003.23(b)(4)(ii). An Immigration Judge's removal order is automatically stayed during the Board's adjudication of an appeal of the Immigration Judge's ruling in certain motions to reopen filed by battered spouses, children, and parents. INA § 240(c)(7)(C)(iv). An Immigration Judge's order is not automatically stayed in appeals to the Board from an Immigration Judge's denial of a motion to reopen removal proceedings conducted in absentia, and motions to reopen or reconsider a prior Board decision are not automatically stayed.

(2) Deportation Proceedings - An Immigration Judge's deportation order is stayed during the period between the filing of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B and the Immigration Judge's ruling on that motion, as well as during the adjudication by the Board of any subsequent appeal of that

motion. 8 C.F.R. § 1003.23(b)(4)(iii)(C).
Automatic stays only attach to the original appeal from an Immigration Judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B. See 8 C.F.R. § 1003.23(b)(4)(iii)(C). Additionally, there is no automatic stay to a motion to reopen or reconsider the Board's prior dismissal of an appeal from an Immigration Judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B.

(e) Federal Court Remands

A federal court remand to the Board results in an automatic stay of an order of removal if:

- The Board's decision before the federal court involved a direct appeal of an Immigration Judge's decision on the merits of the case (excluding bond and custody determinations); or
- The Board's decision before the federal court involved an appeal of an Immigration Judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B.

6.3 - Discretionary Stays

(a) Jurisdiction

Both Immigration Judges and the Board have authority to grant and reconsider stays as a matter of discretion but only for matters within the judges' or the Board's respective jurisdiction. See Chapters 1.4 (Jurisdiction and Authority), 7.2 (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.

In most cases, the Board entertains stays only when there is an appeal from an Immigration Judge's denial of a motion to reopen removal proceedings or a motion to reopen or reconsider a prior Board decision pending before the Board. The Board may also consider a stay of an Immigration Judge's bond decision while a bond appeal is pending in order to prevent the alien's release from detention. See Chapter 7.3(a)(4) (Stays).

(b) Motion to Reopen to Apply for Asylum, Withholding of Removal under the Act, or Protection under the Convention Against Torture

Time and numerical limitations do not apply to motions to reopen to apply for asylum, withholding of removal under the Act, or protection under the Convention Against Torture if the motion is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. The filing of a motion to reopen in such circumstances does not automatically stay an alien's removal. The alien may request a stay and if granted by the Immigration Court shall not be removed pending disposition of the motion. If the original asylum application was denied based on a finding that it was frivolous, the alien is ineligible to file a motion to reopen or reconsider or for a stay of removal. 8 C.F.R. § 1003.23(b)(4)(i).

When filing a motion to reopen to apply for asylum, withholding of removal under the Act, or protection under the Convention Against Torture based on changed country conditions, the alien does not need to file a copy of his or her record of proceedings or A-file.

(c) Motion Required

Parties should submit a request for a discretionary stay by filing a written motion. The motion should comply with all the requirements for filing, including formatting, inclusion of a proof of service, and submission of possible fees. See Chapter 3 (Filing with the Board), Appendix E (Sample Cover Pages).

(1) Contents - A party requesting a discretionary stay of removal before the Immigration Court should submit a motion stating 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. A discretionary request to stay removal, deportation, or exclusion may be submitted at any time after an alien becomes subject to a final order of removal, deportation, or exclusion if a motion to reopen or reconsider is pending before the Immigration Court.

A party requesting a discretionary stay of removal, deportation, or exclusion before Board should follow the procedures described below:

(A) Who May Request - An alien (or an alien's representative) may request a discretionary stay of removal, deportation, or exclusion only if the alien's case is currently before the Board and the alien is subject to a removal, deportation, or exclusion order.

(B) Timing of Request - A request to stay removal, deportation, or exclusion may be submitted at any time during the pendency of a case before the Board.

(C) Form of Request - Requests to stay removal, deportation, or exclusion must be made in writing. The Board prefers that stay requests be submitted in the form of a "MOTION TO STAY REMOVAL." See Appendix E (Sample Cover Pages).

(D) Contents - The motion should contain a complete recitation of the relevant facts and case history and indicate the current status of the case. The motion must also contain a specific statement of the time exigencies involved. Motions containing vague or general statements of urgency are not persuasive.

A copy of the existing Immigration Judge or Board order should be included, when available. When the moving party does not have a copy of the order, the moving party should provide the date of the Immigration Judge's decision and a detailed description of both the ruling and the basis of that ruling, as articulated by the Immigration Judge. If the facts are in dispute, the moving party should furnish evidence supporting the motion to stay.

(E) Format - The motion should comply with the general rules for filing motions. See Chapter 5.2 (Filing a Motion). The motion must include a Proof of Service. See Chapter 3.2 (Service), Appendix F (Sample Certificates of Service).

(F) Fee - A motion to stay removal, deportation, or exclusion does not, by itself, require a filing fee. The underlying appeal or motion, however, may still require a fee. See Chapter 3.4 (Filing Fees).

(2) Emergency v. Non-Emergency - The Immigration Courts and the Board categorize stay requests into two categories: emergency and non-emergency. When filing a stay request with the Immigration Court, the parties should submit their motion with a cover page either labeled "MOTION TO STAY REMOVAL" or "EMERGENCY MOTION TO STAY REMOVAL," as relevant.

(A) Emergency - The Immigration Courts and the Board may rule immediately on an "emergency" stay request. The Immigration Court and the Board only consider a stay request to be an emergency when an alien is:

(i) in DHS's physical custody and removal, deportation, or exclusion is imminent;

(ii) turning himself or herself in to DHS custody in order to be removed, deported, or excluded and removal, deportation, or exclusion is expected to occur within the next 3 business days; or

(iii) scheduled to self-execute an order of removal, deportation, or exclusion within the next 3 business days.

The motion should contain a specific statement of the time exigencies involved.

If a party is seeking an emergency stay from the Board, the party must contact the Board's Emergency Stay Unit by calling 703-306-0093. If a party is seeking an emergency stay from an Immigration Court, he or she must call the Immigration Court from which the removal order was issued. EOIR otherwise will not be able to properly process the request as an emergency stay. The Board's Emergency Stay Unit is closed on federal holidays. It will consider an emergency stay request only on non-holiday weekdays from 9:00 a.m. to 5:30 p.m. (Eastern Time). Immigration courts will consider stay requests during posted operating hours.

An alien may supplement a non-emergency stay request with an emergency stay request if qualifying circumstances, such as when an alien reports to DHS custody for imminent removal, arise.

Parties can obtain instructions for filing an emergency stay motion with the Board by calling the same numbers. For a list of Immigration Court numbers, see Appendix A (EOIR Directory) in the Immigration Court Policy Manual or visit EOIR's website at www.justice.gov/eoir/eoir-immigration-court-listing.

When circumstances require immediate attention from the Board or Immigration Courts, EOIR may, at the adjudicator's discretion, entertain a telephonic stay request.

EOIR promptly notifies the parties of its decision.

(B) Non-Emergency - The Immigration Courts and the Board do not rule immediately on a "non-emergency" stay request. Instead, the request is considered during the normal course of adjudication. Non-emergency stay requests include those from aliens who are not facing removal within the next 3 business days, and who are either:

(i) not in detention; or

(ii) in detention but not facing imminent removal, deportation, or exclusion.

(d) Pending Motions

Neither the Immigration Judges nor the Board automatically grant discretionary stays. The mere filing of a motion for a discretionary stay of an order does not prevent the execution of the order. Therefore, DHS may execute the underlying removal, deportation, or exclusion order unless and until the Immigration Judge or the Board grants the motion for a stay.

(e) Adjudication and Notice

When an Immigration Judge or the Board grants a discretionary stay of removal, deportation, or exclusion, the Immigration Judge or the Board issues a written order. When a discretionary stay is granted, the parties are promptly notified about the decision.

(f) Duration

A discretionary stay of removal, deportation, or exclusion lasts until the Immigration Judge adjudicates the motion to reopen or motion to reconsider or until the Board renders a final decision on the merits of the appeal, motion to reopen, or the motion to reconsider.

6.4 - Expedite Requests

(a) Requirements

Appeals and motions may be expedited only upon the filing of a motion to expedite and a demonstration of impending and irreparable harm or similar good cause. The motion must contain a complete articulation of the reasons to expedite and the consequences to the moving party if the request is not granted.

Expedited requests are generally not favored and should be requested only in compelling circumstances. Examples of appropriate reasons to request expedited treatment include: (i) imminent removal from the United States; (ii) imminent ineligibility for relief, such as a minor "aging out" of derivative status; (iii) circumstances threatening to moot the appeal absent prompt action by the Board; and (iv) a health crisis precipitating a need for immediate Board action.

(b) Procedure

Motions to expedite should be filed in accordance with the general rules and procedures for other motions. See Chapter 5.2 (Filing a Motion). Any request for expeditious processing should be made through a written "MOTION TO EXPEDITE" that bears the name and alien registration number ("A number") of the affected alien and articulates the grounds for the request. Use of a cover page is highly recommended. See Appendix E (Sample Cover Pages). In a genuine emergency, a party may contact the Clerk's Office of the Board by telephone. See Appendix A (EOIR Directory). Even in such situations, the moving party must be prepared to file a written "MOTION TO EXPEDITE" immediately.

(c) Response

The Board will consider all expedited requests that are properly filed. When a request is granted, the Board will expedite the case without notifying the parties that the request has been granted. For administrative reasons, the Board cannot reply to all requests.

Chapter 7 - Bond

- 7.1 - Bond Appeals Generally
- 7.2 - Jurisdiction
- 7.3 - Procedure
- 7.4 - Mootness

7.1 - Bond Appeals Generally

In certain circumstances, an alien detained by the Department of Homeland Security (DHS) can be released from custody. When an alien asks an Immigration Judge to review a DHS custody decision, it is called a "bond redetermination." Appeals from custody decisions are commonly called "bond appeals." Bond proceedings are separate from removal proceedings. See generally 8 C.F.R. §§ 1003.19, 1236.1.

Bond proceedings differ procedurally from other immigration proceedings. For example, an alien can request a bond redetermination without a formal motion, without paying a fee, and without the usual filing deadlines.

7.2 - Jurisdiction

(a) Continuing Jurisdiction

An alien may ask the Immigration Judge or DHS to change a bond decision if:

- the alien is in detention (or was in detention within the last seven days),
- the alien's removal or deportation proceedings are still open before an Immigration Judge or the Board, and
- the request for a change in bond is not moot as described in Chapter 7.4 (Mootness)

The alien may ask even if:

- the alien has previously asked the Immigration Judge to change a bond decision, *provided* the alien can show that his or her circumstances have changed materially since the last bond decision
- the alien appealed a previous bond decision to the Board

(b) Appellate Jurisdiction

(1) Immigration Judge decisions - The Board has jurisdiction over appeals of Immigration Judge bond rulings. See 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3)(i). The Board also has general emergency stay authority when DHS appeals an Immigration Judge's custody decision. See 8 C.F.R. § 1003.19(h)(4)(i).

(2) DHS decisions - The Board has jurisdiction over certain appeals involving DHS bond decisions made subsequent to an Immigration Judge ruling. See 8 C.F.R. § 1236.1(d)(3). The Board does *not* have jurisdiction over appeals from DHS custody decisions 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).

(3) Jurisdictional issues - The Board has jurisdiction to rule on whether an Immigration Judge has jurisdiction to make a bond determination.

(c) No Jurisdiction

The Board does not have authority to review a bond decision when the alien:

- departs the United States, whether voluntarily or involuntarily

- is granted relief by the Immigration Judge and DHS does not appeal
- is granted relief from removal by the Board
- is denied relief from removal by the Immigration Judge and the alien does not appeal
- is denied relief from removal by the Board
- is released on the conditions requested in the bond appeal
- is released on conditions more favorable than those requested in the bond appeal
- has a subsequent bond redetermination request granted by an Immigration Judge and DHS does not appeal

7.3 - Procedure

(a) Filing

When an alien may appeal the bond decision of an Immigration Judge, the appeal is filed in the same manner as any other appeal of an Immigration Judge decision. See Chapters 3 (Filing with the Board), 4 (Appeals of Immigration Judge Decisions). In those few instances in which an alien may appeal to the Board from the custody determination of DHS, the appeal is filed in the same manner as a visa petition appeal. See Chapters 7.2(b)(2) (DHS decisions), 9 (Visa Petitions).

(1) Separate Notice of Appeal - A bond appeal must be filed on its own Notice of Appeal (Form EOIR-26, if an Immigration Judge decision, or Form EOIR-29, if a DHS decision) and *must not* be combined with an appeal of a decision regarding the alien's removal or deportation (often referred to as the decision "on the merits" of the case). The Notice of Appeal should be completed in full and specify the date of the bond decision being appealed.

(2) Deadline

(A) Immigration Judge decision - When an Immigration Judge renders the bond decision, the appeal has the same 30-day deadline as any other appeal from an Immigration Judge decision. See Chapter 4.5 (Appeal Deadlines).

(B) Department of Homeland Security decision - In the limited instances in which the Board has jurisdiction over the appeal from a DHS bond decision, the deadline for filing an appeal is 10 days from the date of the DHS bond decision. See 8 C.F.R. § 1236.1(d)(3). See also Chapter 3.1(b) (Must be "Timely").

(3) Fee - Generally, there is no filing fee for a bond appeal. However, when an alien is appealing the amount of a voluntary departure bond in removal proceedings, there is a $110 filing fee.

(4) Stays

(A) Stays of deportation or removal - Stays of deportation or removal are not available in bond proceedings. See 8 C.F.R. § 1236.1(d)(4). See also Chapter 6 (Stays and Expedite Requests).

(B) Stays of bond decisions - If an alien appeals a bond decision, that decision remains in effect while the appeal is pending. The same is true for a DHS appeal, unless the decision is "stayed" by regulation (which here means that the Immigration Judge's decision does not go into effect and the DHS decision to detain the alien remains in effect until the Board decides the appeal). See 8 C.F.R. § 1003.19(i)(2).

A bond decision is stayed by regulation when either:

- DHS has determined that an alien should not be released, but the Immigration Judge authorized the alien's release

- DHS sets a bond of $10,000 or more, but the Immigration Judge sets a lower bond amount

For such a stay to take effect, DHS must file a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) with the Immigration Court within one business day of the Immigration Judge's bond order, and file the appeal within 10 business days. The stay remains in effect until the Board decides the appeal, or 90 days from the filing of the appeal, whichever occurs first. The 90 days is tolled 21 days if the Board grants an alien's briefing extension request, and is extended if a discretionary stay is pending or for referral to the Attorney General.

When a stay is not automatic, DHS may ask the Board to grant an emergency stay. See 8 C.F.R. § 1003.19(i)(1), *Matter of Joseph*, 22 I&N Dec. 660 (BIA 1999). See also Chapter 6 (Stays and Expedited Requests).

(b) Processing

Appeals of bond decisions made by Immigration Judges are briefed and processed in the same manner as appeals of Immigration Judge removal decisions, except that bond hearings are not transcribed. See Chapters 3 (Filing with the Board), 4 (Appeals of Immigration Judge Decisions). Appeals of bond decisions made by DHS officers are briefed and processed in the same manner as visa petition appeals. See Chapter 9 (Visa Petitions).

(1) Briefing schedule - Where the appeal is taken from an Immigration Judge decision, the Board issues a filing receipt and a briefing schedule. See Chapter 4.2(e) (Briefing schedule). Where the appeal is taken from a DHS decision, DHS is responsible for the briefing. See Chapter 9.3(d)(2) (Briefing schedule). Briefs, when submitted, should comply with the general rules for briefing. See Chapter 4.6 (Appeal Briefs).

(2) Transcripts - Bond proceedings are less formal than other Immigration Court proceedings. See *Matter of Chirinos*, 16 I&N Dec. 276 (BIA 1977). Bond hearings are seldom recorded and are not routinely transcribed. See generally Chapter 4.2(f) (Transcription).

(3) Decision - Upon entry of a decision regarding a bond appeal, the Board serves the decision on the parties by regular mail. See Chapter 1.4(d) (Board decisions).

7.4 - Mootness

A bond appeal is deemed moot whenever the alien:

- departs the United States, whether voluntarily or involuntarily
- is granted relief by the Immigration Judge and the DHS does not appeal
- is granted relief by the Board
- is denied relief by the Immigration Judge and the alien does not appeal
- is denied relief by the Board
- is released on the conditions requested in the appeal

Chapter 8 - Oral Argument

8.1 - Oral Argument Coordinator

All inquiries and requests (not coming from the news media) regarding the scheduling, attendance, seating, and administration of oral argument should be directed to the Oral Argument Coordinator. News media should contact the Office of Communications and Legislative Affairs. See Chapter 8.5(c) (News media).

All correspondence must be addressed as follows:

Oral Argument Coordinator
Clerk's Office
Board of Immigration Appeals
5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

The Oral Argument Coordinator may also be reached at (703) 605-1007.

8.2 - Selection of Cases

(a) Appeals

Oral argument is held at the discretion of the Board and is rarely granted. When an appeal has been taken, oral argument, if desired, must be requested on the Notice of Appeal. 8 C.F.R. § 1003.1(e)(7). Oral argument must be requested at the outset of the appeal, or oral argument may be deemed waived. In either the Notice of Appeal or a brief, the appealing party should explain the reason for requesting oral argument and articulate how oral argument would supplement any written submissions. The Board generally does not seek oral argument from parties who do not request it.

(b) Motions

Oral argument is available, though infrequently granted, to parties moving to have the Board reopen or reconsider their case. 8 C.F.R. § 1003.2(h). The moving party should request oral argument in a separate but accompanying document with a cover page labeled "REQUEST FOR ORAL ARGUMENT." See Appendix E (Sample Cover Pages). The request must explain the reason for requesting oral argument and articulate how oral argument would supplement any written submissions. While the Board reserves the authority to schedule oral argument, the Board generally does not seek oral argument from parties who did not initially request it.

(c) Requests by Responding Parties

Either party to an appeal or motion may request oral argument.

(1) Appeals - In the event the party opposing the appeal wishes to request oral argument, the request must be made prior to the expiration of the briefing schedule. That party should request oral argument in a separate but accompanying document with a cover page labeled "REQUEST FOR ORAL ARGUMENT." See Appendix E (Sample Cover Pages). The request must explain the reason for requesting oral argument and articulate how oral argument would supplement any written submissions.

(2) Motions - In the event that a party responding to a motion wishes to request oral argument, the request should accompany the reply to the motion, which itself must be filed in accordance with the deadline set in the regulations. See 8 C.F.R. § 1003.2(g)(3). That party should request oral argument in a separate, but accompanying document with a cover page labeled "REQUEST FOR ORAL ARGUMENT." See Appendix E (Sample Cover Pages). The request must explain the reason for requesting oral argument and articulate how oral argument would supplement any written submissions.

(d) Criteria

Cases are selected for oral argument because they meet one or more of a number of criteria, including but not limited to: (i) the resolution of an issue of first impression; (ii) alteration, modification, or clarification of an existing rule of law; (iii) reaffirmation of an existing rule of law; (iv) the resolution of a conflict of authority; and (v) discussion of an issue of significant public interest.

8.3 - Notification

(a) Request Granted

If a request for oral argument is granted, the Board notifies the parties through a notice of selection sent after the briefing schedule has concluded. The notice will specify the time and place scheduled for oral arguments, and the issues the parties need to address. Parties are generally provided at least 30 days' advance notice of the date scheduled for oral argument. The parties are also provided with a copy of this chapter, and any other materials the Board deems appropriate.

(1) Confirmation received - Once a party confirms interest in oral argument, the oral argument calendar is fixed, and the parties are subject to the rules and obligations that attach to oral argument. Supplemental briefs may be filed, but the parties are not sent a supplemental briefing schedule. See Chapter 8.7(d)(5) (Supplemental briefs).

(2) Confirmation not received - If a party does not confirm an interest in oral argument, the Board deems the party's request waived and adjudicates the case on the existing record.

(3) Continuance or postponement - Parties are expected to make all reasonable efforts to resolve conflicts in their schedules to permit them to attend oral argument as scheduled. In view of the difficulty in meeting the scheduling needs of the Board and the parties, the Board disfavors motions for continuance or postponement.

(b) Request Denied

If a request for oral argument is denied, the Board does not specifically notify the parties but simply adjudicates the merits of the appeal or motion. Thus, parties should never assume that oral argument will be granted. The Board's Oral Argument Coordinator will notify the parties when a request for oral argument has been granted.

8.4 - Location

Oral argument is conducted on site at the Board in Falls Church, Virginia. In rare instances, the Board may conduct oral argument in a location other than Falls Church. 8 C.F.R. § 1003.1(e)(7).

Due to the outbreak of COVID-19, the Board is also authorized to conduct oral argument by telephone or by video teleconferencing.

8.5 - Public Access

(a) General Public

(1) Oral argument - With the exceptions noted below, oral argument is generally open to the public and employees of the Department of Justice, subject to space limitations and priorities given to the parties and the news media. See generally 8 C.F.R. § 1003.27(a).

- Oral arguments involving applications for asylum or withholding of deportation/removal, or a claim brought under the Convention Against Torture are open to the public *unless* the alien (or the alien's representative, if represented) expressly requests that the oral argument be closed. In cases involving such applications or claims, the Board will inquire of the alien (or the alien's representative) whether the oral argument should be closed.
- Exclusion proceedings are closed to the public *unless* alien (or the alien's representative, if represented) expressly requests that the oral argument be open to the public.
- Oral arguments involving an alien abused spouse or child are closed to the public. Oral arguments involving an alien spouse may be open to the public if the abused spouse expressly agrees that the oral argument and record of proceedings will be open to the public.
- Oral arguments are closed to the public if information is to be presented or discussed which is subject to a protective order or documents filed under seal by DHS.

See generally 8 C.F.R. §§ 1003.27, 1003.31(d), 1003.46, 1208.6, 1240.10(b), 1240.11(c)(3)(i), 1240.32, 1240.33(c)(1). Only parties, their representatives, and persons authorized by the Board in advance, including employees of the Department of Justice, may attend a closed argument. If classified information is to be presented, or discussed during an oral argument, the proceedings are closed to the public. Also, no one may be present in the oral argument room without, among other things, the appropriate security clearance and a legitimate "need-to-know" the information. See generally Executive Order 13526 and any related orders.

The Board may limit attendance or hold a closed hearing if appropriate to protect parties or witnesses, or when a closed hearing is otherwise in the public interest. See generally 8 C.F.R. § 1003.27(b).

(2) Requests to open oral argument - In appropriate cases, parties may waive their right to a closed hearing and permit oral argument to be open to the public. The request must be made in writing and sent to the Oral Argument Coordinator at least 15 days prior to the scheduled date of oral argument. The request must be served upon the other party. See Chapter 3.2 (Service). The request should be phrased as follows:

"I hereby request and consent that oral argument in the matter of [name of party] be open to the public and, further, I hereby consent that information contained within the record of proceedings may be released to the public. I acknowledge that this waiver of confidentiality may not be withdrawn after oral argument has begun."

Parties may not retract their request within 24 hours of the scheduled time for oral argument. Also, parties may not request that specific persons be excluded from an open oral argument.

(3) Requests to close oral argument - Certain types of oral argument cases are automatically closed to the public. See Chapter 8.5(a)(2) (Closed argument). The Board may, at its discretion, close oral argument. See generally 8 C.F.R. § 1003.27(b). A party may request that oral argument be closed, but must do so in writing at least 15 days prior to the time of oral argument and serve the request on the other party. See Chapter 3.2 (Service). The request must set forth in detail the rationale for closing the hearing.

(4) Reserved seating - A party may request that the Board reserve up to 5 gallery seats for the party's invitees. A reserved seating request must be made to the Oral Argument Coordinator at least 15 days prior to the scheduled date of oral argument. The Board tries to accommodate all reasonable requests for additional seating, subject to space limitations and any special considerations that may arise.

(b) Recording and Broadcasting

The public, including the parties and the news media, may not bring any recording or broadcasting devices into oral argument, whether photographic, audio, video, or electronic in nature. See generally 8 C.F.R. § 1003.28.

(c) News Media

Representatives of the news media may attend oral argument that is open to the public. The Board reserves 10 gallery seats for members of the media. The news media are subject to the general prohibition on recording and broadcasting. See subsection (b), above. The news media are welcome to contact the Office of Communications and Legislative Affairs for information about cases selected for oral argument and to request reserved seating. Seating reservations should be made at least 24 hours in advance of the scheduled time for oral argument. See Appendix A (EOIR Directory).

8.6 - Appearances

(a) Notices of Appearance

Only parties, their representatives, and amicus curiae invited by the Board may participate in oral argument. See generally Chapter 2 (Appearances before the Board). Every representative who wishes to argue before the Board must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). See Chapter 2.1(b) (Entering an Appearance). If, at any time after the filing of the appeal, there is a change in representation, the new representative must immediately file a Notice of Appearance. See Chapters 2.1(b) (Entering an Appearance), 2.3(d) (Appearances), 2.3(j) (Change in representation).

(b) Multiple Representation

Parties are limited to one representative of record. See Chapter 2.3(f) (Multiple representatives). If a representative of record wishes to share oral argument with another person, or wishes another person to argue in his or her place, he or she must submit a written request to the Oral Argument Coordinator at least 15 days in advance of the scheduled oral argument. The request must also be served upon the other party. That person must both satisfy the appearance requirements and file a separate Notice of Appearance (Form EOIR-27). See Chapter 2.1 (Representation Generally). The Notice of Appearance should reflect that his or her appearance is solely for the purpose of participating in oral argument, which is done by writing in large letters at the top of the form the words: “ORAL ARGUMENT ONLY.” The Notice of Appearance must be sent directly to the Oral Argument Coordinator.

Representatives who appear solely for the purpose of oral argument are advised that, once oral argument is concluded, all notices and Board correspondence will be sent only to the representative of record. The representative of record is responsible for providing copies of notices or correspondence to the representative who entered an appearance strictly for oral argument purposes.

(c) Motions to Withdraw

Once oral argument is scheduled, motions to withdraw as counsel are entertained only where good cause is shown. See Chapter 2.3(j)(3) (Withdrawal of Counsel). Substitution of counsel is permitted. See Chapter 2.3(j)(1) (Substitution of Counsel).

8.7 - Rules of Oral Argument

(a) Attire

The Board expects all persons to respect the decorum of the court. Representatives are expected to appear in business attire. All others in attendance are expected to dress in proper attire.

(b) Electronic devices

(1) Recording devices - Only the Board may record oral argument. No devices of any kind, including cameras, video recorders, and cassette/digital recorders, may be used by any person other than the Board to record any part of the oral argument.

(2) Possession of electronic devices during oral argument - Subject to section (iii) below, all persons - including parties and members of the press - may bring laptop computers, tablets, cellular telephones, electronic calendars, and other electronic devices commonly used to conduct business activities, including electronic devices which have collateral recording capability provided that they are *not* used to record the oral argument. All electronic devices must be turned off in courtrooms and during oral argument, unless otherwise authorized under section (iii) below. Outside of courtrooms and oral argument, electronic devices may be used in non-recording mode, but they must be made silent, and usage must be limited and non-disruptive. For further discussion on the use of electronic devices, see EOIR PM 19-10, *EOIR Security Directive: Policy for Public Use of Electronic Devices in EOIR Space* (Mar. 20, 2019), available at https://www.justice.gov/eoir/file/1146191/download.

(3) Use of electronic devices during oral argument - Only attorneys or representatives of record and attorneys from DHS representing the government may use laptop computers, tablets, electronic calendars, and other electronic devices commonly used to conduct business activities, provided they are used for immediately relevant court and business related activities and *not* used to record the oral argument. Such devices may only be used in silent/vibrate mode. The use of such devices must not disrupt oral argument, and Board Members have the discretion to prohibit the continued use of any electronic devices that pose a disruption to ongoing proceedings. Cellular telephones and other electronic devices must be turned off when not in use to conduct business activities in the courtroom. For further discussion on the use of electronic devices, see EOIR PM 19-10, *EOIR Security Directive: Policy for Public Use of Electronic Devices in EOIR Space* (Mar. 20, 2019), available at https://www.justice.gov/eoir/file/1146191/download.

(c) Conduct

All persons attending oral argument must respect the dignity of the proceedings. Talking is not permitted in the gallery during oral argument, nor may attendees depart or enter the room once oral argument has begun. Disruptive behavior is not tolerated.

(1) Representatives - Attorneys and other representatives are expected to observe the professional conduct rules and regulations of their licensing authorities and to present, at all times, a professional demeanor becoming of an officer of the court.

(2) Represented parties - Parties who are represented are welcome, but not required, to attend oral argument. Represented parties are permitted to observe but may not speak during oral argument.

(3) Detained aliens - Detained aliens are not permitted to attend oral argument.

(4) Amici curiae - Amici curiae are subject to the same rules of conduct as representatives. See Chapter 8.7(d)(8) (Amicus curiae).

(d) Prior to Oral Argument

(1) Check in - On the day of oral argument, parties are required to check in at least 30 minutes prior to the scheduled time for oral argument. The Oral Argument Coordinator will advise the parties regarding the procedures for check in.

(2) Adverse weather conditions - In the event of adverse weather conditions, parties should contact the Oral Argument Coordinator for guidance or otherwise comply with the instructions provided in the selection notice.

(3) Failure to appear for oral argument - In the event that either party fails to appear for oral argument, the Board may hear the argument of the side that does appear, in which case the argument is entered into the record and considered by the Board in rendering its decision. Given the administrative burden of scheduling oral argument, the Board considers an unexplained failure to appear to be a serious discourtesy to both the Board and the other party and will sanction representatives accordingly. The party whose representative fails to appear will not be penalized for that failure, except insofar as that party will be deprived of the benefit of his or her case being argued.

(4) Late arrival for oral argument - If a party is unable to arrive for oral argument at the appointed time due to extenuating circumstances, such as travel delays, the party should immediately contact the Oral Argument Coordinator or, if the Oral Argument Coordinator is not available, a senior manager in the Clerk's Office. See Appendix A (EOIR Directory).

(5) Supplemental briefs - While the Board generally does not accept supplemental briefs, an exception is made for cases that have been granted oral argument. Parties may submit supplemental briefs in anticipation of oral argument, but parties are not sent a

supplementary briefing schedule. Parties may submit supplemental briefs until 15 days prior to the date of oral argument. Parties may reply to supplemental briefs up until 7 days prior to the date of oral argument. Supplemental briefs should be directed to the Oral Argument Coordinator. Supplemental briefs are subject to the same requirements as other briefs. See generally Chapters 3 (Filing with the Board), 3.2 (Service), 4.6 (Appeal Briefs), 5.4 (Motion Briefs). Amicus curiae are subject to the same supplemental briefing rules and limitations as the parties. See generally Chapters 2.10 (Amicus Curiae), Chapter 4.6(i) (Amicus curiae briefs). Supplemental briefs must be served on the opposing party as expeditiously as they are served on the Board.

(6) Additional authorities - Both oral argument and any supplemental briefs should be based on a thorough research of legal authorities and should include all legal authority that a party might wish to rely upon in oral argument. In the event that a party locates additional legal authority subsequent to the filing of a supplemental brief, parties should observe the following:

(A) Supplemental authorities - If a party inadvertently omits a legal authority and wishes to refer to it at oral argument, that party must so notify the Board (and provide a copy, where appropriate) in advance of oral argument. See Chapter 3.2 (Service). Opposing parties must be informed (and provided a copy, where appropriate) as expeditiously as the Board. Parties may not use supplemental authority, however, as an excuse to file a supplemental brief after the time for briefing has expired. Once the supplemental briefing deadline has passed, see subsection (v), above, the Board will not consider any filing that appears in form or substance to be a brief.

(B) New authorities - If a party discovers a newly available authority, that party should inform the Oral Argument Coordinator and the opposing party immediately. Parties should promptly submit a statement regarding the significance, or lack thereof, of the new authority to the matter being argued. The Board will thereafter determine what action, if any, will be taken in light of the new authority.

(7) Exhibits - The Board accepts no new evidence on appeal. If a party wishes to display exhibits used in the proceeding below, or wishes to use presentation aids that do not constitute evidence, the party must make prior arrangements with the Oral Argument Coordinator for delivery and display. The party is also responsible for removing any exhibits or presentation aids at the conclusion of the proceeding.

(8) Reviewing the record of proceedings - Parties wishing to review the record of proceedings should make arrangements with the Oral Argument Coordinator prior to oral argument. Absent special arrangements, the record is not available for review in the 2 hours prior to the scheduled time for oral argument.

(e) Oral Argument

Oral argument should be approached as an opportunity to expand upon, and not merely repeat, a party's written arguments. The Board does not accept new evidence on appeal, and the Board also does not hear testimony. Parties arguing before the Board should follow the rules and guidelines below.

(1) Oral argument table - Parties are generally limited to two legal staff each at the oral argument table. This limit includes representatives, paralegals, and all other personnel. Represented parties who attend oral argument may not sit at the oral argument tables but are provided priority seating in the gallery.

(2) Addressing the Board - Individual Board Members are to be referred to as either "Board Member _____" or "Your Honor." Titles, such as "Chairman _____" and "Vice Chairman _____," may also be used. The Board Members as a group may be referred to either as "the Board" or "Your Honors."

(3) Standing and sitting - Parties should stand when addressing the Board. A podium is provided, and the parties must speak from that podium during opening and closing statements. At other times, parties may respond to the Board's questions from the oral argument table.

(4) Familiarity with the record - Parties are expected to be thoroughly familiar with the record. Parties should prepare oral argument with the understanding that the Board Members have studied the briefs and are also thoroughly familiar with the record.

(5) Opening statements - At the commencement of oral argument, persons to argue before the Board should rise and introduce themselves. Opening statements are encouraged. An opening statement should include a brief introduction to the case and the core issue or issues being argued. Parties should not read at length from briefs, authorities, or the record.

(6) Recitation of facts - A brief chronological statement of the pertinent facts, where warranted, is welcome at the outset of oral argument. Extensive recitation of facts, however, is discouraged.

(7) Recitation of law - Oral argument should focus upon the critical points of law that can be properly addressed during the time for oral argument. In their oral presentation, parties may not cite to any case, reported or otherwise, that does not appear in either of the parties' briefs, unless one of two conditions is met: the Board and opposing counsel have been notified in advance of the intention to cite to that case, or the citation is in response to a Board Member's question or the opposing party's oral argument. See Chapter 8.7(d)(6) (Additional authorities).

(8) Argument - Parties are generally allotted 30 minutes per side to present their arguments with a portion of time reserved for rebuttal, if desired by a party. If a party

anticipates needing more than 30 minutes, the party should submit a request for additional time, in writing, to the Oral Argument Coordinator at least 15 days prior to the date of oral argument. A copy of the request should be served on the opposing party as well.

If oral argument will be shared by two representatives, the Oral Argument Coordinator must be notified in writing at least 15 days prior to the scheduled oral argument. The allotted time may be apportioned between them according to their discretion. Representatives should not duplicate each other's arguments.

(9) Rebuttal - At the outset of oral argument or at the conclusion of his or her presentation, a party may reserve time for rebuttal, provided there is time remaining.

(10) Questions from the bench - Board members may ask questions at any time during oral argument. Parties should answer the Board's questions as directly as possible. Board Member questions apply toward the 30 minutes allotted for argument and do not extend that time.

(11) Marking of time - Parties are notified when their time for oral argument has elapsed. Parties are expected to monitor their own time, especially when reserving time for co-counsel or rebuttal. In the event of disagreement, the Board's timekeeping is controlling.

(12) Cessation of oral argument - At any point during oral argument, the Board may terminate oral argument if further argument appears unnecessary. The Board may terminate oral argument even if a party's allotted time has not expired.

(13) Amicus curiae - Amicus curiae may present oral argument only upon advance permission of the Board. Such permission is granted sparingly. The time allotted to amicus curiae is determined on a case-by-case basis. Amicus curiae argue after both sides have concluded their arguments. Amicus curiae are subject to the same oral argument rules and limitations as the parties.

Where appropriate, the Board may provide parties an opportunity to respond to the oral argument of amicus curiae.

8.8 - Conclusion to Oral Argument

(a) Decision of the Board

Decisions are normally not rendered on the day of oral argument. Subsequent to oral argument, cases are processed in the standard manner. See Chapter 1.4(d) (Board decisions).

(b) Supplemental Briefs

The Board expects all issues to be fully briefed and argued by the conclusion of oral argument. Parties may not file supplemental briefs after oral argument, unless they are expressly solicited by the Board or warranted by emergent developments in the law or the case.

(c) Transcripts

The Board digitally records oral argument. A transcript is prepared following oral argument and is served on the parties.

Chapter 9 - Visa Petitions

9.1 - Visa Petitions Generally

A visa petition is the first step toward obtaining lawful permanent residence for a foreign-born individual or family. It is usually filed by a United States citizen, lawful permanent resident, or employer. Visa petitions are adjudicated by DHS and, once approved, may be revoked or revalidated by DHS under certain circumstances. If a visa petition is denied or revoked, or the revalidation of a visa petition is denied, an appeal may be taken to the Board in some instances.

For visa petition appeals within the Board's jurisdiction, DHS is initially responsible for management of the appeal, including the processing of briefs. The Board's role in the appeal process does not begin until the completed record is received from DHS.
See 8 C.F.R. § 1003.5(b).

9.2 - Jurisdiction Generally

Visa petitions are adjudicated by the appropriate District Director or Service Center Director of the DHS office having jurisdiction over the petition. Upon adjudication of a visa petition, revocation of a visa petition approval, or revalidation of a visa petition approval, the District Director or Service Center Director will notify the petitioner in writing of the decision. An appeal may be taken to the Board where authorized by statute and regulation. See 8 C.F.R. §§ 1003.1(b)(5), 1205.2(d). See also Chapter 1.4 (Jurisdiction and Authority).

9.3 - Visa Petition Denials

(a) Jurisdiction

The Board has appellate jurisdiction over family-based immigrant petitions filed in accordance with section 204 of the Immigration and Nationality Act, with the exception of petitions on behalf of certain orphans. See 8 C.F.R. § 1003.1(b)(5). See generally Chapter 1.4 (Jurisdiction and Authority). The Board does not have jurisdiction over employment-based visa petitions. See 8 C.F.R. §§ 103.2, 103.3, 1205.2(d). See also Chapters 1.2(g) (Relationship to the Administrative Appeals Office (AAO)), 1.4 (Jurisdiction and Authority).

(b) Standing

Only the petitioner, not the beneficiary or a third party, may appeal the denial of a visa petition. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985). Self-petitioners – including battered spouses, battered children, and certain relatives of deceased citizens – also have standing to appeal. See Immigration and Nationality Act §§ 204(a)(1)(A)(ii), (iii), (iv); 204(a)(1)(B)(ii), (iii), and 204(l); 8 C.F.R. § 204.2.

(c) Filing the Appeal

(1) How to file - Appeals of all visa petition decisions are made on the Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer (Form EOIR-29). 8 C.F.R. § 1003.3(a)(2). (This form is different from the Form EOIR-26 used in Immigration Court proceedings.) This form is also used for petition-based appeals from the decisions of Service Center Directors. The appeal form must be signed by the petitioner, not the beneficiary. The rare exceptions to that rule are those cases in which the alien "self-petitions," such as battered spouses and children, certain widows and widowers, and applicants seeking temporary admission despite being inadmissible (section 212(d)(3)(A) waiver).

(2) Where to file - Unlike appeals from the decisions of Immigration Judges, appeals of visa petition denials are filed directly with DHS, in accordance with the applicable regulations, any instructions that appear on the DHS decision, and any instructions that appear on the reverse of the Notice of Appeal (Form EOIR-29). See generally 8 C.F.R. § 1003.3(a)(2). The appeal must be filed with the DHS office having administrative control over the petition record.

(3) When to file - The deadline for the appeal is 30 days from the date of service of the decision being appealed.

(4) Fee - The filing fee for a petition-based appeal is $110. See 8 C.F.R. §§ 1003.8(b), 1103.7. Unlike appeals of Immigration Judge decisions, the fee for a petition-based appeal

is filed directly with DHS, in accordance with DHS instructions. The fee should be paid in the manner instructed by DHS.

(5) Representation - A petitioner may be represented by an attorney or other authorized representative. See generally Chapter 2 (Appearances before the Board). If a petitioner is represented, the appeal should be accompanied by a completed and executed Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR-27). See 8 C.F.R. § 1292.4(a). Note that this form is not the one used to practice before DHS (Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28)) and that the Board will not recognize a representative using Form G-28. Registered attorneys and fully accredited representatives should not submit any Form EOIR-27 until the Board confirms that it has received the petition record from DHS. The Board will not forward any Form EOIR-27 to DHS.

(6) Supporting briefs - Briefs, if desired, are filed with DHS, at the same office as the Notice of Appeal (Form EOIR-29) and in accordance with any briefing schedule set by DHS. See 8 C.F.R. § 1003.3(c)(2). Requests to extend the time for filing a brief should be directed to DHS. In rare instances, the Board may, in its discretion, authorize briefs to be filed directly with the Board. 8 C.F.R. § 1003.3(c)(2).

Absent special instructions from DHS, briefs on visa petition appeals should generally follow the guidelines set forth in Chapters 3.3 (Documents) and 4.6 (Appeal Briefs).

(7) Evidence - The Board does not consider new evidence on appeal. If new evidence is submitted in the course of an appeal, the submission may be deemed a motion to remand the petition to DHS for consideration of that new evidence. If the petitioner wishes to submit new evidence, the petitioner should articulate the purpose of the new evidence and explain its prior unavailability. Any document submitted to the Board should comport with the guidelines set forth in Chapter 3.3 (Documents).

However, the Board will generally not consider evidence – or remand the petition – where the proffered evidence was expressly requested by DHS and the petitioner was given a reasonable opportunity to provide it before the petition was adjudicated by DHS. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(8) Stipulations - The Board encourages the parties, whenever possible, to stipulate to any facts or events that pertain to the adjudication of the visa petition.

(d) Processing

Once an appeal has been properly filed with DHS and the petition record is complete, DHS forwards the petition record to the Board for adjudication of the appeal. After the Board receives the record from DHS, the Board issues a notice to the parties acknowledging it has the record and the appeal.

(1) Record on appeal - The record on appeal consists of all decisions and documents in the petition record, including some or all of the following items: visa petition and supporting documentation, DHS notices, evidence submitted in response to DHS notices, DHS decisions, the Notice of Appeal, any briefs on appeal, the record of any prior DHS action, and the record of any prior Board action.

(2) Briefing schedule - Briefing schedules, if any, are issued by DHS and are to be completed prior to the forwarding of the record to the Board. Accordingly, the Board generally does not issue briefing schedules in visa petition cases. See Chapter 9.3(c)(6) (Supporting briefs).

(3) Status inquiries/DHS - Until the record is received by the Board, all status inquiries must be directed to the DHS office where the appeal was filed. *The Board has no record of the appeal until the record is received by the Board*. Since the Board and DHS are distinct and separate entities, the Board cannot track or provide information on cases that remain within the possession of DHS.

(4) Status inquiries/Board - Confirmation that the Board has received a petition record from DHS can be obtained from the Clerk's Office. See Appendix A (EOIR Directory). The Board tracks petition-based appeals by the beneficiary's name and alien registration number ("A number"). All status inquiries must contain this information. See generally Chapter 1.6(a) (All Communications).

(5) Adjudication - Upon the entry of a decision, the Board serves the decision upon the parties by regular mail. An order issued by the Board is final, unless and until it is stayed, modified, rescinded, or overruled by the Board, the Attorney General, or a federal court. An order is deemed effective as of its issuance date, unless the order provides otherwise. See Chapter 1.4(d) (Board decisions).

(e) Motions

Motions filed during the pendency of an appeal should be filed where the record is located. Motions may not be filed with the Board until the petition and record have been received by the Board. See Chapter 9.3(d)(4) (Status inquiries/Board).

All motions filed subsequent to the Board's adjudication of an appeal, including motions to reopen and motions to reconsider the Board's decision are to be filed with the DHS office having administrative control over the record, not with the Board. 8 C.F.R. § 1003.2(g)(2)(ii).

(f) Withdrawal of Appeal

The petitioner may, at any time prior to the entry of a decision by the Board, voluntarily withdraw the appeal. To withdraw an appeal, the petitioner should file a written request, with a cover page labeled "WITHDRAWAL OF VISA PETITION APPEAL" with either DHS or

the Board, whichever holds the file at the time the withdrawal is submitted. See Chapter 4.11 (Withdrawing an Appeal), Appendix E (Sample Cover Pages).

9.4 - Visa Revocation Appeals

(a) Jurisdiction

The Board has appellate jurisdiction over the revocation of visa petition approvals. 8 C.F.R. §§ 1003.1(b)(5), 1205.2(d). The Board does not have jurisdiction over automatic revocations of visa petitions. 8 C.F.R. § 1205.1. See *Matter of Zaidan*, 19 I&N Dec. 297 (BIA 1985).

(b) Standing

Only the petitioner, not the beneficiary or a third party, may appeal the revocation of a visa petition approval. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985). Self-petitioners – including battered spouses, battered children, and certain relatives of deceased citizens – also have standing to appeal. 8 C.F.R. § 1205.2(d).

(c) Filing the Appeal

Revocation appeals are filed according to the same rules as appeals of visa petition denials. See Chapter 9.3(c) (Filing the Appeal). The only difference is that the petitioner or self-petitioner must file the appeal within 15 days after the service of notice of the revocation. 8 C.F.R. § 1205.2(d).

(d) Processing

Revocation appeals are processed in the same manner as visa petition denials. See Chapter 9.3(d) (Processing).

(e) Motions

Motions related to revocation appeals are handled in the same manner as motions for visa petition denials. See Chapter 9.3(e) (Motions).

(f) Withdrawal of Appeal

Withdrawals of revocation appeals are handled in the same manner as withdrawals of visa petition appeals. See Chapter 9.3(f) (Withdrawal of appeal).

9.5 - Visa Revalidation Appeals

(a) Jurisdiction

Certain immigrant petitions are valid for a limited period of time, after which they expire unless revalidated. 8 C.F.R. § 214.2(k)(5). The Board has appellate jurisdiction over the revalidation of visa petitions that fall within the Board's jurisdiction. See Chapter 9.2 (Jurisdiction Generally). See also 8 C.F.R. § 1003.1(b)(5).

(b) Standing

Only the petitioner, not the beneficiary or a third party, may appeal a visa petition revalidation decision. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985).

(c) Filing the Appeal

Appeals of visa revalidation decisions are filed in the same manner as appeals of visa petition denials. See Chapter 9.3(c) (Filing the Appeal).

(d) Processing

Revalidation appeals are processed in the same manner as visa petition denials. See Chapter 9.3(d) (Processing).

(e) Motions

Motions related to revalidation appeals are handled in the same manner as motions for visa petition denials. See Chapter 9.3(e) (Motions).

(f) Withdrawal of Appeal

Withdrawals of revalidation appeals are handled in the same manner as withdrawals of visa petition appeals. See Chapter 9.3(f) (Withdrawal of Appeal).

9.6 - Federal Court Remands

(a) Generally

When Board decisions involving visa petitions are reviewed by a federal court, DHS provides that court with a certified copy of the record. Also, since the Board is not a party before the federal courts, the United States government is represented by the Office of Immigration Litigation (OIL) or the United States Attorney's Office. See Chapter 1.2(h) (Relationship to the Office of Immigration Litigation (OIL)). When a federal court remands a case back to the Board for further action, the Board is notified by the office representing the government in the proceedings before the federal court.

The Board cannot advise petitioners or self-petitioners regarding the propriety of or means for seeking judicial review of Board decisions involving visa petitions.

(b) Processing

When the Board receives notification of a federal court's order from the Office of Immigration Litigation (OIL) or the United States Attorney's Office, a written notification is sent to the parties. The Board will obtain the record of proceedings from DHS. In appropriate cases, a briefing schedule is provided to both parties.

(c) Representation

If a petitioner is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) must be submitted. See generally Chapter 2 (Appearances before the Board). Note that this form is not the one used to practice before DHS (Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28)) and that the Board will not recognize a representative using Form G-28. Registered attorneys or fully accredited representatives should not submit any Form EOIR-27 until the Board confirms that it has received the petition record from DHS. The Board will not forward any Form EOIR-27 to DHS.

Chapter 10 - Fines

10.1 - Fines Generally

Certain provisions of the Immigration and Nationality Act render individuals and carriers liable for transporting unauthorized aliens into the United States. See Immigration and Nationality Act § 273; 8 C.F.R. part 1280. Fines may be assessed by a DHS Special Agent in Charge, the DHS Associate Director for Operations, U.S. Citizenship and Immigration Services, or the DHS National Fines Office. 8 C.F.R. § 1280.1.

In fines cases, DHS is initially responsible for appeal management, including initial briefing. The Board's role in the appeal process does not begin until the completed record is received from DHS.

10.2 - Jurisdiction

Where a DHS officer enters an adverse decision against an individual or carrier in a fines case, an appeal may be taken to the Board. 8 C.F.R. § 1280.1(b).

10.3 - Processing

(a) Standing

Only the individual or carrier being fined may file an appeal. However, if that individual or carrier admits the allegations in the Notice of Intent to Fine or does not answer it, the opportunity to appeal is waived. See 8 C.F.R. § 1280.1.

(b) Filing the Appeal

(1) How to file - Fine appeals are made on the Notice of Appeal (Form EOIR-29). 8 C.F.R. § 1003.3(a)(2). (This form is different from the Form EOIR-26 used in Immigration Court proceedings.)

(2) Where to file - Unlike appeals from the decisions of Immigration Judges, fine appeals are filed with DHS, in accordance with the applicable regulations and any instructions that appear on the DHS decision. See generally 8 C.F.R. § 1003.3(a)(2). The appeal must be filed with the DHS office having administrative control over the fine record.

(3) When to file - A fine appeal must be filed within 15 days after the mailing of the notification of decision. See 8 C.F.R. § 1280.1.

(4) Fee - The filing fee for a fine appeal is $110. See 8 C.F.R. § 1003.8(b). Unlike appeals of Immigration Judge decisions, the fee is filed directly with DHS, in accordance with DHS instructions. The fee should be paid in the manner instructed by DHS.

(5) Representation - An individual or carrier appealing a fine decision may be represented by an attorney or other authorized representative. See generally Chapter 2 (Appearances before the Board). If that individual or carrier is represented, the appeal should be accompanied by a completed and executed Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR-27). See 8 C.F.R. § 1292.4(a). Note that this form is not the one used to practice before DHS (Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28)) and that the Board will not recognize a representative using Form G-28. Registered attorneys and fully accredited representatives should not submit any Form EOIR-27 until the Board confirms that it has received the record and appeal from DHS. The Board will not forward any Form EOIR-27 to DHS.

(6) Supporting briefs - Briefs, if desired, are filed with DHS, at the same office as the Notice of Appeal (Form EOIR-29) and in accordance with any briefing schedule set by DHS. See 8 C.F.R. § 1003.3(c)(2). Requests to extend the time for filing a brief should be directed to DHS. The Board may, in its discretion, authorize briefs to be filed directly with the Board. 8 C.F.R. § 1003.3(c)(2).

Absent special instructions from DHS, briefs on fine appeals should generally follow the guidelines set forth in Chapters 3.3 (Documents) and 4.6 (Appeal Briefs).

(7) Evidence - The Board does not consider new evidence on appeal. If new evidence is submitted in the course of an appeal, the submission may be deemed a motion to remand the matter to DHS for consideration of that new evidence. If the individual or carrier wishes to submit new evidence, that individual or carrier should articulate the purpose of the new evidence and explain its prior unavailability. Any document submitted to the Board should comport with the guidelines set forth in Chapter 3.3 (Documents).

However, the Board will not consider evidence or remand the matter where the proffered evidence was expressly requested by DHS and a reasonable opportunity to provide it was given before the matter was adjudicated by DHS. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(8) Stipulations - The Board encourages the parties, whenever possible, to stipulate to any facts or events that pertain to the adjudication of the appeal.

(c) Processing

Once an appeal has been properly filed with DHS and the record is complete, DHS forwards the record to the Board for adjudication of the appeal. After the Board receives the record from DHS, the Board issues a notice to the parties acknowledging receipt of the record and appeal.

(1) Record on appeal - The record on appeal consists of all decisions and documents in the record, including some or all of the following items: the Notice of Intent to Fine, any written defense or correspondence, any documentary evidence submitted to DHS, the record of any personal interviews, the DHS decision, the Notice of Appeal, any briefs on appeal, the record of any prior DHS action, and the record of any prior Board action.

(2) Briefing schedule - Briefing schedules are issued by DHS and are to be completed prior to the forwarding of the record to the Board. Accordingly, the Board generally does not issue briefing schedules in fine cases.

(3) Status inquiries/DHS - Until the record is received by the Board, all status inquiries must be directed to the DHS office where the appeal was filed. *The Board has no record of the appeal until the record is received by the Board*. Since the Board and DHS are distinct and separate entities, the Board cannot track or provide information on cases that remain within the possession of DHS.

(4) Status inquiries/Board - Confirmation that the Board has received a fine record from DHS can be obtained from the Clerk's Office. See Appendix A (EOIR Directory). The Board tracks fine appeals by the name and an assigned case number for the individual or

carrier. All status inquiries should contain this information. See generally Chapter 1.6(a) (All Communications).

(5) Adjudication - Upon the entry of a decision, the Board serves the decision upon the parties by regular mail. An order issued by the Board is final, unless and until it is stayed, modified, rescinded, or overruled by the Board, the Attorney General, or a federal court. An order is deemed effective as of its issuance date, unless the order provides otherwise. See Chapter 1.4(d) (Board decisions).

(d) Motions

Motions filed during the pendency of an appeal should be filed where the fine record is located. Motions may not be filed with the Board until the record has been received by the Board. See Chapter 10.3(c)(4) (Status inquiries/Board).

All motions filed subsequent to the Board's adjudication of an appeal, including motions to reopen and motions to reconsider the Board's decision, are to be filed with the DHS office having administrative control over the record, not with the Board. 8 C.F.R. § 1003.2(g)(2)(ii).

(e) Withdrawal of Appeal

The appeal may, at any time prior to the entry of a decision by the Board, be voluntarily withdrawn. To withdraw an appeal, the individual or carrier should file a written request, with a cover page labeled "WITHDRAWAL OF FINE APPEAL," with either DHS or the Board, whichever holds the file at the time the withdrawal is submitted. See Chapter 4.11 (Withdrawing an Appeal), Appendix E (Sample Cover Pages). If the appeal is before the Board, Proof of Service on DHS should be submitted with the withdrawal. See Chapters 3.2(d) (Proof of Service), 4.11 (Withdrawing an Appeal).

10.4 - Personal Interviews

(a) Remand

The Board has the authority to request or direct a personal interview of the individual or carrier. See 8 C.F.R. § 1280.1. A remand may be warranted when DHS enters a decision without granting a personal interview, either initially or on remand. See 8 C.F.R. § 1280.1. A remand may also be warranted when the DHS decision does not adequately state the reasons for assessing the fine. *Matter of Air India "Flight No. 101"*, 21 I&N Dec. 890 (BIA 1997).

(b) Invalidation of Fine

If DHS fails to grant an interview, the Board may invalidate the fine. *Matter of "Beechcraft B-95, #N21JC"*, 17 I&N Dec. 147 (BIA 1979).

Chapter 11 - Discipline

11.1 - Practitioner and Recognized Organization Discipline Generally

The Board has the authority to impose disciplinary sanctions upon attorneys, recognized organizations, and accredited representatives who violate rules of professional conduct in practice before the Board, the Immigration Courts, and the Department of Homeland Security (DHS). 8 C.F.R. §§ 1003.1(b)(13), (d)(2)(iii), (d)(5), 1003.101-111; 292.3; 1292.3. See also *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

11.2 - Definition of Practitioner and Recognized Organizations

For purposes of this Chapter, the term “practitioner” is defined as an attorney, as defined in 8 C.F.R. § 1001.1(f), or accredited representative, as defined in 8 C.F.R. §§ 1001.1(j), 1292.1(a)(4), unless otherwise specified.

For purposes of this Chapter, the term “recognized organization” is defined as an organization that has been approved by the Assistant Director for Policy or the Assistant Director’s designee to represent aliens, through accredited representatives, before the Board, the Immigration Courts, and/or DHS. See 8 C.F.R. § 1292.11.

11.3 - Jurisdiction

(a) Practitioners

The Board is authorized to discipline any practitioner if the Board finds it to be in the public interest to do so. 8 C.F.R. §§ 1003.101(a), 292.3(a). Pursuant to regulations, it is in the public interest to discipline any practitioner who has engaged in criminal, unethical, or unprofessional conduct or in frivolous behavior. 8 C.F.R. §§ 1003.101(a), 1003.102, 292.3(b).

(b) Recognized Organizations

The Board is authorized to discipline a recognized organization if the Board finds it to be in the public interest to do so. 8 C.F.R. §§ 1003.110 and 1003.111. It is in the public interest to discipline a recognized organization that violates one or more of the grounds specified in 8 C.F.R. §§ 1003.110(b), 1292.3.

(c) DHS Attorneys

The Board's disciplinary authority does not extend to attorneys who represent DHS. The conduct of DHS attorneys is governed by DHS rules and regulations. Concerns or complaints about the conduct of DHS attorneys should be raised with DHS.

(d) Immigration Judges

The Board's disciplinary authority does not extend to Immigration Judges. Concerns regarding an Immigration Judge's conduct may be directly raised with the Office of the Chief Immigration Judge (OCIJ).

(e) Immigration Specialists

The Board does not have authority to discipline individuals such as "immigration specialists," "visa consultants," "notarios," and other individuals who engage in the unauthorized practice of law. However, the Board has the authority to discipline practitioners who assist in the unauthorized practice of law. 8 C.F.R. § 1003.102(m). The Board encourages anyone harmed by the unauthorized practice of law to report it to the appropriate law enforcement, consumer protection, and other authorities. In addition, persons harmed by such conduct are encouraged to contact the Executive Office for Immigration Review Fraud Program. See Chapter 1.2(f)(ii) (Office of the General Counsel), Appendix A (EOIR Directory).

11.4 - Conduct

(a) Practitioners

A practitioner may be disciplined by the Board for:

- frivolous behavior, as defined in 8 C.F.R. § 1003.102(j) and discussed at 8 C.F.R. § 1003.1(d)(2)(iii)
- ineffective assistance of counsel as provided in 8 C.F.R. § 1003.102(k)
- misconduct resulting in disbarment from, suspension by, or resignation from a state or federal licensing authority while a disciplinary investigation or proceeding is pending
- conviction of a serious crime
- a false statement of material fact or law made knowingly or with reckless disregard
- false certification of a copy of a document made knowingly or with reckless disregard
- assisting the unauthorized practice of law
- grossly excessive fees
- bribery, coercion, or an attempt at either, with the intention of affecting the outcome of an immigration case
- improper solicitation of clients or using "runners"
- misrepresenting qualifications or services
- repeated failure to appear for scheduled hearings in a timely manner without good cause
- courtroom conduct that would constitute contempt of court in a judicial proceeding
- engaging in conduct prejudicial to administration of justice
- failing to provide competent representation
- failing to abide by a client's decision
- failing to act with reasonable diligence
- failing to maintain communication with a client
- failing to disclose legal authority to an adjudicator
- failing to submit a completed Notice of Appearance
- repeatedly filing notices, motions, briefs, or claims that reflect little or no attention to the specific factual or legal issues applicable to a client's case, but rather rely on boilerplate language indicative of a substantive failure to completely and diligently represent the client

See 8 C.F.R. § 1003.102. This list is not exhaustive or exclusive, and other grounds for discipline may be identified by the Board. 8 C.F.R. § 1003.102.

(b) Recognized Organizations

A recognized organization may be disciplined by the Board for:

- Making false statements or providing misleading information in applying for recognition or accreditation of its representative
- misrepresenting scope of authority or services
- failing to provide adequate supervision of accredited representatives
- engaging in the practice of law through staff when organization does not have an attorney or accredited representative

See 8 C.F.R. § 1003.110. This list is not exhaustive or exclusive, and other grounds for discipline may be identified by the Board. 8 C.F.R. § 1003.110.

11.5 - Complaints

(a) Who May File

Anyone may file a complaint against a practitioner or recognized organization, including aggrieved clients, adjudicators, DHS personnel, and other practitioners. 8 C.F.R. §§ 1003.104(a)(1), 1292.19(a).

(b) What to File

Complaints must be submitted in writing on the Immigration Practitioner/Organization Complaint Form (Form EOIR 44), which can be downloaded from the Internet. See Chapter 12.2(b) (Obtaining Forms), Appendix D (Forms). The complaint form provides important information about the complaint process, confidentiality, and the kinds of misconduct that the Board can discipline. Complaints should be specific and as detailed as possible, providing supporting documentation when it is available.

(c) Where to File

(1) Misconduct before Board or Immigration Judge - Complaints alleging misconduct before the Board or an Immigration Court are filed with the Office of the General Counsel of the Executive Office for Immigration Review (EOIR). 8 C.F.R. § 1003.104(a)(1). The completed form and supporting documents should be sent to:

Office of the General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
Attn: Disciplinary Counsel

EOIR's Disciplinary Counsel decides whether or not to initiate disciplinary proceedings. 8 C.F.R. § 1003.104(b).

(2) Misconduct before DHS - Complaints involving such conduct before DHS are to be filed with the DHS Disciplinary Counsel. 8 C.F.R. §§ 1003.104(a)(2); 292.3(d).

(d) When to File

Complaints based on ineffective assistance of counsel must be filed within one year of a finding of ineffective assistance of counsel by the Board or the Immigration Court. 8 C.F.R. § 1003.102(k).

11.6 - Duty to Report

A practitioner who practices before the Board, the Immigration Courts, or DHS and, if applicable, the authorized officer of each recognized organization with which a practitioner is affiliated, has an affirmative duty to report whenever the practitioner:

- 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 suspended or disbarred, or has resigned with an admission of misconduct, or has resigned while a disciplinary investigation or proceeding is pending

8 C.F.R. § 1003.103(c). The practitioner and, if applicable, the authorized official of each recognized organization must report the misconduct, criminal conviction, or discipline to the EOIR Disciplinary Counsel within 30 days of the issuance of the relevant initial order. The practitioner also must report the misconduct, criminal conviction, or discipline to the DHS Disciplinary Counsel within 30 days of issuance of the relevant initial order. 8 C.F.R. § 292.3(c)(4). The duty to report applies even if an appeal of the conviction or discipline is pending.

11.7 - Procedure

The regulations provide the procedures for filing complaints and imposing sanctions for misconduct before the Board and the Immigration Courts. See 8 C.F.R. § 1003.101 et seq. The regulations also contain procedures for filing complaints regarding misconduct before DHS. 8 C.F.R. §§ 292.3; 1292.3.

(a) Initiation of Proceedings

(1) Notice of Intent to Discipline - Disciplinary proceedings begin when the EOIR Disciplinary Counsel or the DHS Disciplinary Counsel files a Notice of Intent to Discipline with the Board and serves a copy on the practitioner and/or authorized officer of the organization. The Notice contains a statement of the charge(s) against the practitioner and/or recognized organization, a copy of the inquiry report (if any), proposed disciplinary sanctions, the procedure for filing an answer to the Notice or requesting a hearing, and the contact information for the Board. 8 C.F.R. §§ 1003.105(a), 292.3.

(2) Petition for Immediate Suspension - When the Notice of Intent to Discipline concerns a practitioner who has either been convicted of a serious crime or is subject to suspension or disbarment by a state or federal licensing authority, the EOIR Disciplinary Counsel or the DHS Disciplinary Counsel may petition for the immediate suspension of that attorney. 8 C.F.R. §§ 1003.103(a)(1), 1292.3, 292.3(c).

Usually filed in conjunction with the Notice of Intent to Discipline, the petition for immediate suspension seeks the practitioner's immediate suspension from practice before the Board and the Immigration Courts. 8 C.F.R. § 1003.103(a). DHS may ask that the practitioner be similarly suspended from practice before DHS.

The regulations direct that, upon the filing of a petition for immediate suspension, the Board will suspend the practitioner for as long as disciplinary proceedings are pending. 8 C.F.R. § 1003.103(a)(4). The regulations permit the immediate suspension to be set aside when the Board deems it in the interest of justice to do so. 8 C.F.R. § 1003.103(a)(4). The usual hardships that accompany a suspension from practice (e.g., loss of income, duty to complete pending cases) are generally not sufficient to set aside an immediate suspension order. *Matter of Rosenberg*, 24 I&N Dec. 744, 745 (BIA 2009).

(3) Petition for Interim Suspension - In conjunction with the Notice of Intent to Discipline or at any time during the disciplinary proceedings, the EOIR Disciplinary Counsel may petition for an interim suspension from practice of an accredited representative before the Board and the Immigration Courts. 8 C.F.R. § 1003.111(a)(1). DHS may ask that the accredited representative be similarly suspended from practice before DHS. 8 C.F.R. § 1003.111(a)(2).

In the petition, counsel for the government must demonstrate by a preponderance of the evidence that the accredited representative poses a substantial threat of irreparable harm. 8 C.F.R. § 1003.111(a)(3).

(b) Response

The subject of a Notice of Intent to Discipline has 30 days from the date of service to file a written answer to the Notice and to request a hearing. 8 C.F.R. § 1003.105(c)(1). An answer is deemed filed at the time it is received by the Board. See Chapter 3.1(b) (Must be "Timely"). The answer should be served on both the EOIR Disciplinary Counsel and the DHS Disciplinary Counsel. The time in which to file an answer may be extended for good cause shown through the filing of a motion no later than 3 working days before the filing deadline. 8 C.F.R. § 1003.105(c)(1).

In the answer, the practitioner who is subject to summary disciplinary proceedings must make a prima facie showing to the Board that there is a material issue of fact in dispute with regard to the basis for the proceedings, or that one of the exceptions set forth in the regulations applies. 8 C.F.R. § 1003.106(a)(1).

(1) Timely answer - If the answer to summary disciplinary proceedings is timely and the Board determines that there is a material issue of fact in dispute or that one of the exceptions set forth in the regulations applies, the matter will be referred to the Chief Immigration Judge for appointment of an appropriate adjudicator, generally an Immigration Judge, to conduct a disciplinary hearing. 8 C.F.R. § 1003.106(a)(1). The answer of a practitioner or, in cases involving recognized organizations, the organization, must specifically admit or deny each of the allegations in the Notice of Intent to Discipline. Each allegation not denied is deemed admitted. 8 C.F.R. § 1003.105(c)(2).

If the practitioner or, in cases involving recognized organizations, the organization, wishes to have a hearing, the request for a hearing must be contained in the written answer. Otherwise, the opportunity to request a hearing will be deemed waived. 8 C.F.R. § 1003.105(c)(3).

Regardless of whether a hearing has been requested, the Board will refer a case to the Chief Immigration Judge for appointment of an adjudicator if the case involves a charge or charges that cannot be adjudicated under the summary disciplinary proceeding provisions. 8 C.F.R. § 1003.106(a)(1). If the practitioner fails to make a prima facie showing that there is a material issue of fact in dispute or that one of the exceptions set forth in the regulations applies, the Board shall issue a final order imposing discipline.

(2) No answer or untimely answer - If the Board does not receive a timely answer, the failure to answer is deemed an admission of the allegations in the Notice of Intent to Discipline, and the practitioner is thereafter precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(d). The regulations require the Board to enter a default order

imposing the discipline recommended by the EOIR Disciplinary Counsel and the DHS Disciplinary Counsel, absent the presence of special considerations. 8 C.F.R. § 1003.105(d)(2).

A practitioner or the organization subject to a default order may move to set aside that order, provided that the motion is filed within 15 days of the date of service of the default order and that his or her failure to answer was due to exceptional circumstances beyond the control of the practitioner or recognized organization (e.g., the practitioner serious illness, death of an immediate relative). 8 C.F.R. § 1003.105(d)(2).

(c) Hearing

If the matter is referred to the Chief Immigration Judge, the disciplinary hearings will largely be conducted in the same manner as immigration proceedings. 8 C.F.R. § 1003.106. However, the Immigration Judge presiding over the disciplinary proceeding will not be one before whom the practitioner regularly appears. 8 C.F.R. § 1003.106(a)(1)(i).

(d) Appeals

The regulations provide that the Board may entertain an appeal filed by a practitioner or, in cases involving a recognized organization, the organization, wishing to challenge the adjudicator's disciplinary ruling. 8 C.F.R. § 1003.106(c). The appeal must be received by the Board within 30 days of the oral decision or, if no oral decision was rendered, 30 days of the date of mailing of the written decision. The proper form for filing a practitioner/organization discipline appeal is the Notice of Appeal (Form EOIR-45), which can be downloaded from the Internet. See Chapter 12.2(b) (Obtaining Forms), Appendix D (Forms).This form is specific to disciplinary proceedings and is different from the Notices of Appeal in other types of proceedings. [S]ee Appendix D (Forms).The parties must comply with all of the other standard provisions for filing appeals with the Board. 8 C.F.R. § 1003.106(c). See Chapter 4 (Appeals of Immigration Judge Decisions).

(e) Motions

As with most motions in immigration proceedings, motions should be filed with the adjudicator who has jurisdiction over the case.

11.8 - Sanctions

The Board is authorized to impose a broad range of sanctions against practitioners, including "disbarment" (permanent suspension) from immigration practice, public or private censure, and other sanctions deemed appropriate by the Board. 8 C.F.R. § 1003.101(a). The Board may even increase the level of disciplinary sanction. *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003). The Board is also authorized to impose sanctions against a recognized organization, including revocation, termination, and such other sanctions as deemed appropriate. 8 C.F.R. 1003.110.

When a practitioner has been disbarred or suspended, that information is made available to the public on the EOIR website, at the Board, and at the Immigration Courts. See Chapter 11.9 (Confidentiality).

11.9 - Confidentiality

The regulations discuss confidentiality and public disclosure at the various stages of disciplinary proceedings. See 8 C.F.R. § 1003.108. As a general rule, action taken on a Notice of Intent to Discipline may be disclosed to the public. 8 C.F.R. § 1003.108(c).

11.10 - Effect on Cases before the Board

(a) Duty to Advise Clients

A practitioner or organization who is disciplined is obligated to advise all clients with a case pending before either the Board or an Immigration Court that they been disciplined by the Board.

(b) Pending Cases Deemed Unrepresented

Once a practitioner has been disciplined by the Board and is currently not authorized to practice before the Board and the Immigration Courts, the Board will deem that practitioner's pending cases to be unrepresented. Filings that are submitted after a practitioner has been disbarred or suspended will be rejected and returned to the party whenever possible. If the practitioner is later reinstated by the Board, he or she must file a new Notice of Entry of Appearance (Form EOIR-27) in every case, even if he or she previously represented that party. See Chapter 11.12(c) (Cases pending at the time of reinstatement).

(c) Ineffective Assistance of Counsel

The imposition of discipline on an attorney does not constitute per se evidence of ineffective assistance of counsel in any case formerly represented by that attorney.

(d) Filing Deadlines

An order of practitioner or organization discipline does not automatically excuse parties from meeting any applicable filing deadlines.

11.11 - List of Suspended and Expelled Attorneys

A list of practitioners who have been suspended or disbarred from immigration practice appears on EOIR's website. The list is updated periodically. Copies are also posted at the Board and in the Immigration Courts.

11.12 - Reinstatement

(a) Expiration of Suspension

When a period of suspension has run, reinstatement is not automatic. 8 C.F.R. § 1003.107(a). With exceptions for accredited representatives specified in subsection (c), a practitioner who has been suspended from immigration practice and who wishes to be reinstated must:

- file a motion with the Board requesting to be reinstated
- show that he or she can meet the definition of "attorney" set forth in 8 C.F.R. § 1001.1(f) (or § 1001.1(j) if an "accredited representative")
- serve a copy of such motion on the EOIR Disciplinary Counsel and the DHS Disciplinary Counsel. 8 C.F.R. § 1003.107(a)(1)

The EOIR Disciplinary Counsel or the DHS Disciplinary Counsel may file a written response, including supporting documents or evidence, objecting to reinstatement on the ground that the practitioner failed to comply with the terms of the suspension. 8 C.F.R. § 1003.107(a)(2). Failure to meet the definition of an attorney or accredited representative will result in the request for reinstatement being denied. 8 C.F.R. § 1003.107(b)(3). If the practitioner failed to comply with the terms of the suspension, the Board will deny the motion and indicate the circumstances under which reinstatement may be sought.

(b) Petition for Early Reinstatement

With exceptions for accredited representatives specified in subsection (c), a practitioner who has been disbarred or has been suspended for a year or more may seek early reinstatement with the Board if he or she:

- petitions after one year or one-half of the term of suspension has expired, whichever is greater
- can meet the regulatory definition in 8 C.F.R. § 1001.1(f) or § 1001.1(j)
- can demonstrate by clear, unequivocal, and convincing evidence that he or she possesses the moral and professional qualifications required to return to immigration practice
- can show that reinstatement will not be detrimental to the administration of justice

8 C.F.R. § 1003.107(b)(1). *Matter of Krivonos*, 24 I&N Dec. 292, 293 (BIA 2007). Failure to meet any one of these criteria will result in the request for reinstatement being denied. Once a request for reinstatement is denied, the practitioner may not seek reinstatement for another full year unless the practitioner is eligible under subsection (a) above. 8 C.F.R. § 1003.107(b)(3). The Board may, in its discretion, hold a hearing to determine if the attorney meets all the regulatory requirements for reinstatement.

Requests for reinstatement must be served on the EOIR Disciplinary Counsel and the DHS Disciplinary Counsel. 8 C.F.R. § 1003.107(b)(1).

(c) Accredited Representatives

(1) Suspended - When an accredited representative is suspended past the expiration of the period of accreditation, the representative may not seek reinstatement. After the representative's suspension period has expired, a new request for accreditation may be submitted by the recognized organization pursuant to 8 C.F.R. § 1292.13. 8 C.F.R. § 1003.107(c)(1).

(2) Disbarred - An accredited representative who has been disbarred may not seek reinstatement. 8 C.F.R. § 1003.107(c)(2).

(d) Cases Pending at the Time of Reinstatement

Suspension or disbarment by the Board terminates representation. A practitioner reinstated to immigration practice by the Board who wishes to represent individuals before the Board or the Immigration Courts must enter a new appearance in each case, even if he or she was the attorney of record at the time that discipline was imposed. The practitioner should include proof of reinstatement with each new appearance. See Chapter 2.3(d) (Appearances).

Chapter 12 - Forms

12.1 - Forms Generally

There is an official form that must be used to:

- file an appeal - see Chapter 4.4(b) (Notice of Appeal)
- request a fee waiver - see Chapter 3.4 (Filing Fees)
- 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 relief - see 8 C.F.R. parts 299, 1299

There is an official form that should be used to:

- file a practitioner complaint - see Chapter 11.5 (Complaints)

There is no official form to:

- file a motion - see Chapter 5.2(b) (Form)

An appeal form, such as the Form EOIR-26, should *never* be used to file a motion.

12.2 - Obtaining Blank Forms

(a) Identifying EOIR Forms

Many forms used by the Executive Office for Immigration Review (EOIR) do not appear in the regulations. Form names and numbers can be obtained from the clerks of most Immigration Courts and the Clerk's Office of the Board. See Appendix A (EOIR Directory). All of the forms most commonly used by the public are identified in this manual. See Appendix D (Forms).

(b) Obtaining Forms

Appendix D (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
- the local Immigration Court
- the Clerk's Office, Board of Immigration Appeals
- certain Government Printing Office (GPO) Bookstores

Parties should be sure to use the most recent version of each form, which will be available from the sources listed here.

(c) 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. If colored paper is used, it should comply with subsection (e) below. The paper used to photocopy the form should also comply with Chapter 3.3(c)(4) (Paper size and quality). The most recent version of the form must be used and is available from the sources listed in subsection (b), above.

(d) 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. If colored paper is used, it should comply with subsection (e) below. The paper used to photocopy the form should also comply with Chapter 3.3(c)(4) (Paper size and 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, the Board will accept either the electronic or paper submission of the Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). The electronic submission of the Form EOIR-27 may only be made, at this time, by registered attorneys and fully accredited representatives. See Chapter 2.1(b) (Entering an Appearance); 3.1(a)(6) (eFiling). The Board does not have electronic filing for other forms or documents.

(e) Form Colors

The Board no longer requires forms to be filed on paper of a specific color. All forms may now be filled on white paper. Any submission that is not a form must be on white paper.

The use of colored paper is still welcome, but only in the following instances:

- Blue - EOIR-26 (Notice of Appeal/Immigration Judge decision)
- Tan - EOIR-26A (Fee Waiver Request)
- Yellow - EOIR-27 (Notice of Appearance)
- Pink - EOIR-29 (Notice of Appeal/DHS decision)
- Pink - EOIR-33/BIA (Change of Address)

(f) Non-Form Filings

Where a filing is not form-based (e.g., a motion or a request), the Board strongly recommends the use of a cover page. See Appendix E (Sample Cover Pages).

12.3 - Submitted Completed Forms

The Board will accept photocopies of completed forms, provided that the original completed form bears an original signature and is available to the Board upon request. The most recent version of the form must be used and is available from the sources listed in Chapter 12.2(b) (Obtaining Forms). All filing requirements should be observed. See Chapter 3 (Filings with the Board). See also Chapters 4 (Appeals of Immigration Judge Decisions), 5 (Motions before the Board), 7 (Bond), 9 (Visa Petitions), 10 (Fines).

Chapter 13 - Freedom of Information Act (FOIA)

13.1 - Generally

The Freedom of Information Act (FOIA) provides the public access, with certain exceptions, to federal agency records. See 5 U.S.C. § 552. The Office of the General Counsel, Executive Office for Immigration Review, responds to FOIA requests for Board records. See Part I, Chapter 2 (FOIA).

13.2 - Requests

(a) Who may file.

(1) Parties.

(A) Inspecting the record. Parties to a proceeding, and their legal representatives, may inspect the official record of proceedings by prior arrangement with the Clerk's Office. A FOIA request is not required. See Chapter 1.5(d) (Records).

(B) Obtaining copies of record. As a general rule, parties who want a copy of the record of proceedings must file a FOIA request. See subsection (b), below. However, when the record is small or only a portion of the record is needed, parties may contact the Clerk's Office for assistance in obtaining a copy. See Chapter 1.5(d) (Records).

(2) Non-parties. Persons who are not party to a proceeding before the Board must file a request with the Office of the General Counsel, Executive Office for Immigration Review, if they wish to see or obtain copies of the record of proceedings.

(b) How to file.

(1) Form. FOIA requests must be made in writing. See 28 C.F.R. § 16.1 et seq. Requests may be sent to:

U.S. Department of Justice
Executive Office for Immigration Review
Office of the General Counsel – FOIA Service Center
FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 2150
Falls Church, VA 22041
EOIR.FOIARequests@usdoj.gov

(2) 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.

(3) Fee. There is no fee to file a FOIA request, but fees may be charged for the review, search, and reproduction of records. See 28 C.F.R. § 16.3(c).

(4) Processing times. Processing times for FOIA requests vary, depending on such factors as the nature of the request and the location of the record.

(c) When to file.

(1) Time. A FOIA request should be filed as soon as possible, especially when a party is facing a filing deadline. Parties should not wait to receive a briefing schedule or other response from the Board before submitting a FOIA request.

(2) Effect on filing deadlines. Parties should not delay the filing of an appeal, motion, brief, or other document while awaiting a response to a FOIA request. Failure to receive FOIA materials prior to a filing deadline does not excuse the party from meeting a filing deadline.

(d) Limitations.

(1) 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 the Freedom of Information Act. 5 U.S.C. § 552(b)(1)-(9). Where appropriate, records of redacted (*e.g.*, removed or cut out) and copies of the redacted material are provided to the requested person. When material is redacted, the reason or reasons for the redaction are indicated.

(2) Agency's duty. The FOIA statute does not require the Executive Office for Immigration Review, its Office of the General Counsel, or the Board to perform legal research, nor does it entitle the requesting person to copies of documents that are available for sale or on the internet.

(3) 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 (*e.g.*, the alien, the petitioner, the carrier) must consent in writing to the release of that information.

13.3 - Denials

If a FOIA request is denied, in whole or in part, the requesting party may appeal that decision to the office of Information and Privacy, Department of Justice. Information on how to appeal the denial of a FOIA request is available on the Office of Information and Privacy's website. The rules regarding FOIA appeals can be found at 28 C.F.R. § 16.9.

Chapter 14 - Other Information

- 14.1 - Reproduction of the Policy Manual
- 14.2 - Updates to the Policy Manual
- 14.3 - Public Input

14.1 - Reproduction of the Policy Manual

The Policy Manual is a public document and may be reproduced without advance authorization from the Board.

14.2 - Updates to the Policy Manual

The current version of the Policy Manual, which includes all updates, is posted on EOIR's website. The Policy Manual can be read, downloaded, and/or printed from that site. Questions about accessing the Policy Manual should be directed to the Office of Policy's Communications and Legislative Affairs Division at PAO.EOIR@usdoj.gov.

14.3 - Public Input

(a) Part III of the Policy Manual. The Board welcomes and encourages the public to provide comments on Part III, to identify errors or ambiguities in this text, and to propose revisions to improve this text in the future.

Correspondence should be addressed to the Chairman of the Board of Immigration Appeals. See Appendix A (EOIR Directory). The public is asked not to combine comments on the Policy Manual with inquiries regarding specific cases pending before the Board.

(b) Regulations and Published Rules. Periodically, the Executive Office for Immigration Review engages in federal rulemaking in the Federal Register. Immigration regulations are revised to better effectuate existing law and to comport with new law as it is promulgated. The public is encouraged to participate in the rulemaking process.

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. Copies of the Federal Register are also available from the Government Printing Office (GPO) for purchase. Call (202) 512-1800 (not a toll free call) or (866) 512-1800 (toll free), or visit the GPO website at www.gpo.gov for more information on GPO publications and bookstore locations.

Part IV - OCAHO Practice Manual

- Introductory Information
- Chapter 1 - Scope and Definitions
- Chapter 2 - Parties and Representation
- Chapter 3 - Filing and Service of Pleadings
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Chapter 1 - Scope and Definitions

- 1.1 - Scope
- 1.2 - Definitions

1.1 - Scope

(a) Generally

This Part is a guide that sets forth the applicable rules of practice and procedure for cases before OCAHO in the EOIR. The guidance set forth in this manual should be followed by the parties who appear before OCAHO, unless the CAHO or presiding ALJ directs otherwise. Guidance set forth in this manual does not relieve the parties from their obligation to be familiar with and to follow controlling law and regulations governing adjudication of cases before the OCAHO. This Policy Manual does not limit the discretion of ALJs to act in accordance with law and regulation.

(b) Applicability of Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure may be used as a general guide in any situation not provided for or controlled by:

- this Policy Manual;
- OCAHO's rules of practice and procedure (28 C.F.R. Part 68);
- the Administrative Procedure Act (5 U.S.C. §§ 551-559); or
- any other applicable statute, executive order, or regulation.

1.2 - Definitions

For purposes of this Part of the EOIR Policy Manual, certain relevant terms are defined as follows:

(a) Certification

Certification means a formal assertion in writing of specified fact(s), signed by the person making the certification and thereby attesting to the truth of the content of the writing.

(b) Certify

Certify means the act of executing a certification.

(c) Chief Administrative Hearing Officer

The CAHO is the official who, pursuant to the authority delegated by the director of EOIR:

- exercises administrative supervision over the Chief ALJ, the ALJs, and other staff assigned to OCAHO;
- manages and directs hearings and duties within the jurisdiction of OCAHO; and
- exercises discretionary authority to review the decisions and orders of the ALJs in cases arising under INA §§ 274A and 274C.

(d) Chief Administrative Law Judge

The Chief Administrative Law Judge is an ALJ who, in addition to performing the general duties of an ALJ, serves as the immediate supervisor of all other OCAHO ALJs. Subject to the supervision of the director of EOIR and the CAHO, the Chief ALJ is responsible for the supervision, direction, and scheduling of the ALJs in the conduct of the hearings and duties assigned to them.

(e) Complainant

Complainant means:

- in cases arising under INA §§ 274A and 274C, DHS, Immigration and Customs Enforcement;
- in cases arising under INA § 274B:
    - the Special Counsel in the Immigrant and Employee Rights Section, Civil Rights Division, U.S. Department of Justice;
    - the person or entity who has filed a charge with the Special Counsel that later forms the basis of an OCAHO complaint; or

- in private actions, an individual or private organization who filed an OCAHO complaint.

(f) Complaint

Complaint means the formal document initiating an adjudicatory proceeding before OCAHO.

(g) Decision

Decision means any findings of fact or conclusions of law by an ALJ or the CAHO.

(h) Entry

Entry means the date the ALJ, CAHO, or Attorney General signs the order.

(i) Final Order

Final order means an order by the ALJ, CAHO, or Attorney General that disposes of a particular proceeding or a distinct portion of a proceeding, thereby concluding the jurisdiction of the Department of Justice over that proceeding or portion thereof.

(j) Hearing

Hearing means a live proceeding before an ALJ that involves the submission of evidence and sworn testimony, as well as arguments on behalf of the parties, to aid in the disposition of the matter before OCAHO.

(k) Interlocutory Order

Interlocutory order means an order that decides some point or matter but is not a final order or a final decision resolving the whole controversy. An interlocutory order decides some intervening issue(s) or matter pertaining to the proceeding and requires further steps to be taken in order for the ALJ to adjudicate the case fully.

(l) Motion

Motion means an oral or written request made by a person or party for some action to be taken by an ALJ or the CAHO.

(m) Order

Order means a determination or mandate by an ALJ, the CAHO, or the Attorney General that resolves some point or directs some action in the proceeding.

(n) Ordinary Mail

Ordinary mail means the mail service provided by the United States Postal Service using only standard postage fees. Ordinary mail does not include special systems, electronic transfers, or other means that have the effect of providing expedited service.

(o) Party

Party means all persons or entities named or admitted as a complainant, respondent, or intervenor in a proceeding. The definition also includes any person who filed a charge with the Special Counsel that resulted in a filing of a complaint with OCAHO concerning an unfair immigration-related employment practice.

(p) Pleading

Pleading means any of the following documents submitted to the CAHO, the ALJ, or the Chief ALJ: the complaint; the answer; supplements or amendments to the complaint or answer; motions; and any replies that may be permitted to any answer, motion, supplement, or amendment.

(q) Respondent

Respondent means a party to an adjudicatory proceeding, other than a complainant, against whom findings may be made or who may be required to provide relief or take remedial action.

(r) Special Counsel

Special Counsel means the Special Counsel for Unfair Immigration-Related Employment Practices appointed by the President under INA § 274B. In the case of a vacancy in the position, the Special Counsel means the designated officer or employee acting as Special Counsel during such vacancy.

Chapter 2 - Parties and Representation

2.1 - Representation Generally

(a) Types of Representatives

The regulations specify who may represent parties before OCAHO. *See* 28 C.F.R. § 68.33. As a practical matter, four categories of people may present cases before OCAHO: unrepresented or *pro se* parties, attorneys, law students, and other individuals approved by the presiding ALJ.

(b) Entering an Appearance

(1) Notice of Appearance - Except for government attorneys filing a complaint, each person representing a party before OCAHO must file a notice of appearance. The notice of appearance must include:

- the name of the case or controversy;
- the case number, if assigned; and
- the party on whose behalf the appearance is made.

The notice of appearance must be signed by the representative and must be accompanied by a certification indicating that the notice was served on all parties of record.

(2) Request for Hearing Filed with Immigration and Customs Enforcement - A request for hearing signed by a party or their representative and filed with Immigration and Customs Enforcement pursuant to INA § 274A(e)(3)(A) or 274C(d)(2)(A) and containing the same information listed above will be considered a notice of appearance for that party or representative on behalf of the respondent for whom the request for hearing was made. Therefore, a separate notice of appearance is not required to be filed with OCAHO. However, additional or different representatives (including other attorneys in the same firm or organization) seeking to represent the respondent must file a notice of appearance.

(c) Proof of Authority

Any individual acting in a representative capacity in an OCAHO proceeding may be required by the ALJ to show authority to act in such capacity.

(d) Withdrawal or Substitution of a Representative

An attorney or representative who seeks to withdraw from representing a party or to substitute a party's representative must submit a written motion to the ALJ. The ALJ will enter an order either granting or denying the motion for withdrawal or substitution.

2.2 - Unrepresented Parties (Pro Se Appearances)

Any individual in OCAHO proceedings may represent himself or herself, or may represent any corporation, partnership, or unincorporated association of which that individual is a partner or general officer. Individuals appearing on behalf of a corporation, partnership, or unincorporated association must file a notice of appearance in accordance with Chapter 2.1(b) (Entering an Appearance). Individuals appearing solely on behalf of themselves do not need to file a notice of appearance.

2.3 - Attorneys

(a) Qualifications

An attorney may practice before OCAHO if admitted to practice before the federal courts or before the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States.

(b) Appearance

Attorneys must enter an appearance before OCAHO in accordance with Chapter 2.1(b) (Entering an Appearance). See 28 C.F.R. § 68.33(f).

(c) Proof of Qualifications

An attorney's own representation that the attorney is in good standing before any qualifying court will be sufficient proof of the attorney's qualifications to appear before OCAHO, unless otherwise ordered by the ALJ.

2.4 - Law Students

(a) Generally

Law students who are enrolled in an accredited law school may appear before OCAHO if certain conditions are met. Recognition by OCAHO is not automatic and must be requested in writing. See 28 C.F.R. § 68.33(c)(2).

(b) Advance Approval

A law student seeking to appear before OCAHO must seek advance approval by filing a statement with the ALJ proving current participation in a legal assistance program or clinic conducted by the law school.

(c) Supervision

Practice before the ALJ must be under direct supervision of a faculty member or an attorney. The ALJ may determine the amount of supervision required of the supervising faculty member or attorney.

(d) Remuneration

An appearance by a law student must be without direct or indirect remuneration.

2.5 - Other Individuals

(a) Generally

An individual who is neither an attorney nor a law student may be allowed to provide representation to a party before OCAHO if certain conditions are met. Recognition by OCAHO is not automatic and must be requested in writing. See 28 C.F.R. § 68.33(c)(3).

(b) Application

An individual who is neither an attorney nor a law student must file a written application with the ALJ in order to represent a party before OCAHO.

(1) Contents - The application must demonstrate that the individual possesses knowledge of administrative procedures, technical expertise, and other qualifications necessary to render valuable service in the proceedings. The application also must demonstrate that the individual is otherwise competent to advise and assist in the presentation of matters in the proceedings.

(2) Timing - A written application by an individual who is neither an attorney nor a law student to represent a party in proceedings must be submitted to the ALJ within 10 days of receipt of the Notice of Case Assignment by the party on whose behalf the individual wishes to appear. However, this period of time for filing the application may be extended by the ALJ.

(c) Inquiry on Qualifications or Ability

The ALJ may, at any time, inquire as to the qualifications or ability of any non-attorney to render assistance in proceedings before the A

(d) Denial of Authority to Appear

The ALJ may enter an order denying the privilege of appearing to any individual if the ALJ finds that the individual:

- does not possess the requisite qualifications to represent others;
- is lacking in character or integrity;
- has engaged in unethical or improper professional conduct; or
- has engaged in an act involving moral turpitude.

2.6 - Government Parties

(a) Generally

DHS, Immigration and Customs Enforcement, and the Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section, may be represented by their respective counsel in prosecuting OCAHO proceedings.

(b) Separation of Functions

Any officer, employee, or agent of the Federal Government who performs investigative or prosecutorial functions in connection with any proceeding before OCAHO is not allowed to participate or advise in the decision of the ALJ in that proceeding or any factually-related proceeding, except as a witness or counsel in the proceedings.

2.7 - Intervenor in Unfair Immigration-Related Employment Cases

(a) Generally

The Special Counsel, or any other interested person or private organization, may petition to intervene as a party in unfair immigration-related employment cases under INA § 274B. The ALJ may grant or deny such a petition.

(b) Limitation on Participation

The participation of any intervenor may be limited to the extent prescribed by the ALJ.

(c) Officers of the Department of Homeland Security

An officer of DHS may not petition to intervene as a party in unfair immigration-related employment practice cases.

2.8 - Amicus Curiae

A person or organization wishing to file a brief as an amicus curiae must file a motion or petition with the ALJ or with the CAHO, if the matter is under review. The ALJ or CAHO, as applicable, will grant or deny leave to file such brief. An amicus curiae will not be allowed to participate in any way in the conduct of the hearing, including the presentation of evidence and the examination of witnesses.

2.9 - Conduct of Parties, Representatives, and Witnesses

(a) Generally

All persons appearing in proceedings before OCAHO are expected to act with integrity and in an ethical manner.

(b) Exclusion of Parties, Witnesses, and Representatives

The ALJ may exclude from proceedings parties, witnesses, and their representatives for any of the following reasons:

- refusal to comply with directions;
- continued use of dilatory tactics;
- refusal to adhere to reasonable standards of orderly and ethical conduct;
- failure to act in good faith; or
- violation of the prohibition against ex parte communications.

The ALJ must state on the record the cause for excluding a party, witness, or representative from a particular proceeding, and may suspend the proceeding for a reasonable time to enable a party to obtain another attorney or representative.

(c) Other Sanctions for Parties, Witnesses, and Representatives

If any person in proceedings before OCAHO engages in the behavior listed below, the ALJ may apply through counsel to the appropriate United States District Court to request any appropriate remedies. Prohibited conduct includes:

- disobeying or resisting any lawful order or process;
- misbehaving during a hearing, or so near the place of a hearing that the individual's conduct disrupts the hearing;
- neglecting to produce any document or other item after having been ordered to do so;
- refusing to appear after having been subpoenaed;
- upon appearing, refusing to take the oath or affirmation as a witness; or after having taken the oath or affirmation, refusing to be examined according to law.

2.10 - Ex Parte Communications

(a) Generally

Except with other employees of the EOIR, the ALJ (or CAHO, if the matter is under review) may not consult any person or party on any fact in issue unless notice and an opportunity to participate is given to all parties. See 28 C.F.R. § 68.36(a). Therefore, parties, representatives, and other individuals must not communicate (or attempt to communicate) with the ALJ or CAHO on any issue of law or fact relevant to a particular proceeding before OCAHO unless all parties to the proceeding are given notice and an opportunity to respond.

(b) Scheduling Matters

Communications by OCAHO, the assigned ALJ, or any party or representative for the sole purpose of scheduling hearings, scheduling prehearing conferences, or requesting extensions of time are not considered to be ex parte communications. However, all other parties in the proceeding must be notified of such requests and communications and must be given an opportunity to respond.

(c) Sanctions

Any party or participant who makes a prohibited ex parte communication, or encourages or solicits another person to make any such communication, may be subject to any appropriate sanction. Sanctions may include, but are not limited to, exclusion from the proceedings and an adverse ruling on the issue that was the subject of the prohibited ex parte communication.

Chapter 3 - Filing and Service of Pleadings

3.1 - Filing and Service of Complaints

(a) Filing the Complaint

A party filing a complaint must file an original and four copies of the complaint (and all required supporting documents) with the CAHO.

(b) Contents of Complaints

All complaints filed under INA §§ 274A, 274B, and 274C must contain the following:

- a clear and concise statement of facts upon which an assertion of jurisdiction is predicated;
- the names and addresses of the respondents who are alleged to have committed the violation(s);
- the names and addresses of the agents and/or representatives of the respondents;
- the alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred; and
- a short statement containing the remedies and/or sanctions sought to be imposed against the respondent(s).

(c) Parties to be Served

All complaints must be accompanied by a statement identifying the party or parties to be served by OCAHO with the complaint and the Notice of Case Assignment.

(d) Additional Requirements for Complaints Under INA §§ 274A and 274C

Complaints filed pursuant to INA § 274A or 274C must be signed by an attorney and must be accompanied by:

- a copy of the Notice of Intent to Fine, and
- a copy of the Request for Hearing.

Complaints filed pursuant to INA § 274A or 274C should also include a cover sheet that clearly identifies:

- the respondent;
- the respondent's attorney or representative (if any);
- updated names, addresses, phone numbers, fax numbers, and email addresses (if any) of all parties and attorneys or representatives to be served in the case; and
- the city and state where the alleged violation(s) occurred.

(e) Additional Requirements for Complaints Under INA § 274B

Complaints filed pursuant to INA § 274B must be signed by the complainant and accompanied by:

- a copy of the charge that was previously filed with the Special Counsel pursuant to INA § 274B(b)(1), and
- a copy of the Special Counsel's letter of determination regarding the charge.

Complaints filed pursuant to INA § 274B may be filed using the Form EOIR-58, Unfair Immigration-Related Employment Practices Complaint Form. However, use of the Form EOIR-58 is optional. An individual may file a complaint under INA § 274B in another format as long as it contains all of the required information specified above in paragraph (b).

(f) Service of the Complaint

Service of the complaint, along with a Notice of Case Assignment, will be made by OCAHO after the complaint is filed. Accordingly, a party filing a complaint with OCAHO is not required to serve a copy of the complaint on the respondent directly. However, in circumstances where OCAHO encounters difficulty with perfecting service, OCAHO may direct that a party execute service. Service of the complaint and Notice of Case Assignment is considered complete upon receipt by the addressee or addressee's agent.

3.2 - Filing and Service of All Other Pleadings

(a) Filing

Parties must file an original and two copies of all pleadings (including attachments) other than the complaint. All pleadings other than the complaint must be filed with the ALJ assigned to the case. If an ALJ has not yet been assigned to the case, pleadings should be filed with the CAHO.

(b) Methods of Filing

Unless otherwise specified by OCAHO, pleadings must be mailed or delivered to the following address:

Office of the Chief Administrative Hearing Officer
5107 Leesburg Pike
Suite 2500
Falls Church, VA 22041

If a party requests a returned copy of a document filed with OCAHO, that party must provide an additional copy as well as a stamped, self-addressed envelope.

(c) Service of Pleadings

Service of any pleading upon any party may be made by personal delivery or by mailing a copy to a party's last known address. All pleadings filed with OCAHO must be accompanied by a certification indicating service to all parties of record. The certification must also specify the manner and date of service. When a party is represented by an attorney, service must be made upon that attorney.

(d) Filing by Facsimile

Parties may file pleadings with OCAHO by facsimile only to toll the running of a time limit. When filing a pleading by facsimile, a party must satisfy the following requirements:

- the party must forward the original signed pleading and all accompanying documents to OCAHO concurrently with the transmission of the facsimile;
- the party must serve the pleading on all parties of record by facsimile or by same-day hand delivery. If service cannot be made by facsimile or same-day hand delivery, the party must serve the pleading on all parties of record by overnight delivery service; and

the party filing by facsimile must include in the certificate of service filed with OCAHO a certification that service has been made on all parties of record by one of the expedited service methods listed in the previous paragraph.

3.3 - Form of Pleadings

(a) Caption

All pleadings filed with OCAHO (including the complaint) must contain a caption setting forth the following information:

- the statutory provision under which the proceeding is instituted;
- the title of the proceeding;
- the case number assigned by OCAHO (if known);
- the names of all parties (or, for all pleadings after the complaint, at least the first party named as the complainant and respondent, respectively); and
- a designation of the type of pleading (e.g., complaint, motion to dismiss, etc.).

(b) Signature, Date, and Contact Information

Every pleading filed with OCAHO must be signed, dated, and must contain the address and telephone number of the party or representative who is filing the pleading.

(c) Format

Pleadings must be on standard size (8½ x 11) paper and must be typewritten whenever possible. Illegible documents (whether handwritten, typewritten, photocopied, or otherwise) will not be accepted. Papers may be reproduced by any duplicating process, provided that all copies are clear and legible.

(d) Language

All pleadings and other documents submitted to OCAHO must be submitted in the English language or, if in a foreign language, must be accompanied by a certified English translation. See 28 C.F.R. § 68.7(e).

3.4 - Time Computations

(a) Generally

In computing any period of time under OCAHO's rules or in an order issued by the ALJ or the CAHO, the first day is the day following the act or event and includes the last day of the period.

- If the last day of the period is a Saturday, Sunday, or federal holiday, the time period includes the next business day.
- When the period of time prescribed is 7 days or less, intermediate Saturdays, Sundays, and federal holidays will be excluded from the computation

(b) Computation of Time for Filing with OCAHO

A pleading is not deemed filed until it is received by OCAHO.

(c) Computation of Time for Service

Service of all pleadings other than complaints is deemed effective at the time of mailing.

If a party must take some action within a prescribed period after the service of a document, and the document is served by ordinary mail, 5 days will be added to the prescribed period. This 5-day additional response period does not apply if a compliance date is otherwise specified by the CAHO or the ALJ.

3.5 - Filing an Answer

(a) Requirement to File an Answer

Any respondent contesting any material fact alleged in a complaint, or contending that the amount of a proposed penalty or award is excessive, or contending entitlement to judgment as a matter of law must file an answer within 30 days after service of the complaint.

(b) Failure to File an Answer

Failure to file an answer within the time provided may be deemed a waiver of the respondent's right to appear and contest the allegations of the complaint. If a respondent fails to file an answer, the ALJ may enter a judgment by default. See Chapter 4.8(b) (Default).

(c) Contents of an Answer

The respondent's answer must include:

- a statement of facts supporting each affirmative defense; and
- a statement that the respondent admits, denies, or does not have (and is unable to obtain) sufficient information to admit or deny each allegation.
    - A statement of lack of information will have the effect of a denial.
    - Any allegation not expressly denied will be deemed to be admitted.

(d) Reply to the Answer

Complainants may file a reply to an answer, responding to each affirmative defense asserted in the answer.

3.6 - Amendments to Pleadings; Supplemental Pleadings

(a) Amendments to Pleadings

The ALJ may allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the ALJ's final order in a case, if a determination on the merits of the case would be facilitated by the amendment. The ALJ may place conditions on amendments as necessary to avoid prejudicing the public interest and the rights of the parties.

(b) Supplemental Pleadings

Upon reasonable notice and just terms, the ALJ may allow parties to file supplemental pleadings setting forth transactions or events that have occurred or new law promulgated since the date of the pleadings, if relevant to any of the issues involved.

(c) Issues not Raised by the Pleadings

When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the pleadings. The ALJ may allow the parties to make amendments as necessary to make the pleadings conform to the evidence.

3.7 - Electronic Filing Pilot Program

(a) Generally

OCAHO is currently conducting a voluntary electronic filing pilot program which allows parties in enrolled cases to file and serve case documents by email.

(b) Eligibility to Participate

An opportunity to participate in the pilot program will be offered in all OCAHO cases filed after May 30, 2014. Enrollment in the pilot program is limited to those cases in which all parties to the case agree to participate and certify that they and/or their representatives have access to the necessary technology and agree to follow the procedures and instructions for the pilot program. Necessary technology includes:

- access to a scanner that can create documents in portable document format (PDF);
- up-to-date software for creating and reading PDF documents; and
- an email account that can send and receive email attachments up to 10 megabytes in size.

(c) Procedures for Participation

After OCAHO receives the answer from the respondent in a case, OCAHO will send an invitation to participate in the pilot program to all parties in the case. The invitation will include specific instructions outlining the procedures for the pilot program as well as a certification form the parties must complete and sign in order to participate in the pilot program.

For a case to be enrolled in the pilot program, each party must submit the signed certification form in hard copy to OCAHO and serve a copy of the certification on the opposing party. The certification must:

- identify the email address the party will use for all case-related communications and submissions;
- certify that only authorized individuals will have access to that email address;
- attest that the party has access to the necessary technology; and
- consent to abide by the specific procedures for filing and service outlined in the electronic filing instructions that were sent to each party.

If all parties to a case agree to participate in the pilot and meet the certification requirements, they will be notified by mail and email that their case has been accepted into the pilot program. Thereafter, all case documents must be filed with OCAHO and served on the other parties in the case by email.

All documents submitted under the pilot program that require a signature (including motions, briefs, and other pleadings) must include a handwritten, scanned signature. All files submitted by email must be in PDF.

For cases enrolled in the pilot program, all decisions and orders issued by the ALJ (or, in cases of administrative review, the CAHO) will be signed, scanned, and emailed to all parties in the case in PDF.

(d) Instructions for Electronic Filing

(1) Enrollment in the Pilot Program - Within 10 days of receipt of a letter from the ALJ, along with a registration form and certification and these instructions, each party must file a registration form and certification, in hard copy with simultaneous service on the opposing party, designating one primary email address for purposes of sending and receiving case-related documents. A party may elect to designate secondary email addresses for sending documents only (see paragraph (d)(2) below). Each party must certify the following by original, handwritten signature:

- that the designated primary email address will be monitored regularly by the party or attorney in the case and submissions to OCAHO will be sent using only the designated primary or secondary email address; if changed, this email address will be updated promptly by notice filed with OCAHO and simultaneously served on the opposing party;
- that the designated email address and all documents sent and received in the case will be accessible only to authorized individuals;
- that all communications and submissions in the case from the designated email address will be made by (or at the direction and with the approval of) the party or representative;
- that the party has access to the technology necessary to fully comply with the instructions for electronic filing;
- that, if and when necessary, the party will register at the Department of Justice ProofPoint secure mail decryption site to retrieve encrypted messages;
- that the party agrees to accept electronic service of case-related documents in the case from the opposing party and from OCAHO at the designated email address;
- that the party affirms that all signatures on filings are genuine and are made with the intent to ratify and authenticate the contents of those documents; and
- that the party consents to accept scanned signatures from OCAHO and the opposing party on case-related documents as the equivalent of physical signatures.

(2) Secondary Email Addresses - Parties may designate secondary email addresses for sending case-related documents to OCAHO. In order to designate a secondary email address, the individual responsible for that email address must submit the certification described in paragraph (d)(1) above (and indicate on the certification that the address is a secondary email address). Once this certification has been submitted, the designated

secondary email address will be allowed to send documents to OCAHO in accordance with the instructions. However, secondary email addresses will not be added to the service list, and thus will not receive service of case-related documents from OCAHO or the opposing party.

(3) Filing Documents by Email - Once a case is enrolled in the electronic filing pilot program, all case-related documents must be submitted to OCAHO by sending an email to the designated OCAHO email address. Only those documents attached to an email directed to the appropriate email address and emailed simultaneously to the opposing party will be considered filed. The email notifying the ALJ of the incoming case-related documents will serve as a cover letter. The case-related documents to be filed must be attached to that incoming email. Those case-related documents constitute the "filing."

(4) Format of Electronically-Filed Documents - Prior to transmission, all case-related documents to be filed must be converted to PDF. The PDFs should be created using up-to-date software to ensure that OCAHO and the opposing party will be able to open and read them properly.

(5) Size of Documents - No email, including attachments, may exceed 10 megabytes (MB). If a case-related document is too large to be attached to one email, it must be separated into multiple, clearly-labeled, consecutively paginated attachments and sent in separate emails. There is no limit on the number of attachments as long as the email size does not exceed the 10 MB limit. Parties are permitted to send multiple emails. When multiple emails comprise a single submission, clearly indicate the order and total number in the "Subject" line of the email (for example, "In re: John Doe Prehearing Statement 1 of 3"). Case-related documents exceeding 50 pages in length, including exhibits to pleadings and briefs, must also be submitted to OCAHO in hard copy format in addition to the electronic transmission. However, a party is not required to serve a hard copy of such documents on the opposing party.

(6) Signatures - Case-related documents submitted by email must include a signature. The signature must be a hand-written signature on the document that has been scanned. The signature will have the same effect as an original hand-written signature.

(7) Effective Dates of Service and Filing - Service is complete when the email containing the case-related document is sent. A case-related document will be considered timely filed if the document containing the case-related document is received by OCAHO before midnight Eastern Time on the day the case-related document must be filed. A timestamp on the "sent" line of the email will be used to verify when the document was sent, taking into account any difference in the party's time zone.

(8) Certificate of Service - A certificate of service must be included in all case-related documents filed electronically.

(9) Confirmation of Receipt - Parties may request confirmation that the ALJ has received case-related documents filed by email. To request confirmation, the filing party may either enable the "read receipt" tracking option on his or her email application when sending his or her email containing the case-related document or request that OCAHO staff reply to that email confirming its receipt.

(10) Subpoenas - Parties may not file and serve third-party subpoenas electronically.

(11) Service or Filing of Physical Copy When Necessary - At his or her discretion on a case-by-case basis, the ALJ may require parties enrolled in the pilot program to file and/or serve a physical copy of case-related documents in addition to the electronic copy (for example, if OCAHO or a party is experiencing technical difficulties and is unable to email or access a document).

Chapter 4 - Prehearing Procedures

4.1 - Motions to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted

(a) Generally

The respondent may move for dismissal of the complaint on the ground that the complainant has failed to state a claim upon which relief can be granted.

Filing a motion to dismiss for failure to state a claim upon which relief can be granted does not affect the time period for filing an answer. Therefore, the respondent must also file an answer within 30 days after the service of the complaint, unless otherwise ordered by the ALJ. See 28 C.F.R. § 68.9(a); Chapter 3.5(a) (Requirement to File an Answer).

Filing a motion to dismiss for failure to state a claim upon which relief can be granted does not waive the respondent's right to offer evidence in the event that the motion is not granted.

(b) Response to Motion

If a respondent files a motion to dismiss for failure to state a claim upon which relief can be granted, the complainant may file a response to such motion within 10 days after the motion is served. See 28 C.F.R. § 68.11(b).

(c) Dismissal by the Administrative Law Judge

If the ALJ determines that the complainant has failed to state a claim upon which relief can be granted, the ALJ may dismiss the complaint.

This dismissal may be based on a motion from the respondent or may be on the ALJ's own motion.

However, in the prehearing phase of the proceeding, the complainant must be given an opportunity to show cause why the complaint should not be dismissed before the ALJ may, upon his or her own initiative, dismiss a complaint in its entirety for failure to state a claim upon which relief may be granted.

4.2 - Other Motions and Requests

(a) Generally

During OCAHO proceedings, parties may request action by the CAHO or the presiding ALJ by filing a motion.

Before an ALJ is assigned to a case, parties may file a motion with the CAHO seeking action on a non-adjudicatory matter in the case.

After a case is assigned to an ALJ, and while that case is still pending before the ALJ, any application for an order or any other request must be made by motion addressed to the ALJ.

After a request for review by the CAHO is filed, any application for an order or any other request must be made by motion addressed to the CAHO.

(b) Form of Motions

Motions must be made in writing, unless the ALJ consents to accept a motion orally in the course of an oral hearing.

(c) Contents of Motions

All motions must:

- state with particularity the grounds for the motion; and
- set forth the relief or order sought.

(d) Responses to Motions

Whether a motion is made orally or in writing, all parties will be given a reasonable opportunity to respond or object to the motion or request.

(1) Responses to Written Motions - A party may file a response in support of, or in opposition to, a written motion within 10 days after such motion is served.

The ALJ (or if the matter is on review before the CAHO, the CAHO) may set an alternative time period for response to a written motion.

Parties may file affidavits or other evidence upon which they wish to rely along with the response to a written motion.

(2) Briefs and Memoranda - Parties may file written memoranda or briefs with motions or responses to motions, stating the points and authorities relied upon in support of the party's position.

(3) Oral Argument - No oral argument will be heard on motions, unless the ALJ (or if the matter is on review before the CAHO, the CAHO) directs otherwise.

(4) Additional Replies and Responses - Parties may not file a reply to a response to a motion, a counter-response to a reply, or any other responsive documents related to motions unless granted permission by the ALJ, or if the matter is on review before the CAHO, the CAHO.

4.3 - Prehearing Statements

(a) Generally

At any time prior to a hearing, the ALJ may order any party to file a prehearing statement.

(b) Stipulated Facts

Prior to filing prehearing statements, the parties should communicate and confer in a good faith effort to reach stipulations (or agreement) of fact in the case to the fullest extent possible.

(c) Contents of Prehearing Statements

A prehearing statement must identify the name of the party who is filing it and must include the following information (unless otherwise ordered by the ALJ):

- the issues involved in the proceedings;
- facts stipulated to, along with a statement that the parties have communicated or conferred in a good faith effort to stipulate to the fullest extent possible;
- facts in dispute;
- witnesses;
- exhibits by which disputed facts will be litigated;
- a brief statement of applicable law;
- the conclusions to be drawn from the applicable law and facts;
- the estimated time required for presentation of the party's case; and
- any other appropriate comments, suggestions, or information that might assist the parties and/or the ALJ in preparing for the hearing or that might otherwise aid in the disposition of the proceeding.

4.4 - Prehearing Conferences

(a) Generally

At any reasonable time prior to a hearing, the ALJ may direct the parties or their representatives to participate in a prehearing conference.

A prehearing conference may be held upon motion or request of the party or in the ALJ's discretion.

Prehearing conferences will usually be conducted by telephone or video teleconference, unless otherwise ordered by the ALJ.

Parties will be given reasonable notice of the time, place, and manner of the prehearing conference.

(b) Matters to be Considered at Prehearing Conferences

The following matters may be considered at prehearing conferences:

- negotiation, compromise, settlement, or simplification of issues;
- whether amendments to pleadings are necessary;
- the possibility of obtaining stipulation of facts;
- the possibility of obtaining stipulations of the authenticity, accuracy, and admissibility of documents;
- the limitations on the number of expert or other witnesses;
- the exchange of copies of proposed exhibits;
- identification of documents or matters for which official notice may be requested;
- a schedule to be followed by the parties for subsequent actions in the case;
- disposition of pending motions; and
- such other matters as may expedite or aid in the disposition of the case.

(c) Record of Prehearing Conferences

A verbatim record of a prehearing conference will ordinarily not be kept, unless the ALJ directs otherwise.

(d) Orders Following Prehearing Conferences

The ALJ will typically issue a written order summarizing actions taken as a result of a prehearing conference.

4.5 - Consolidation of Cases

(a) Generally

The ALJ may order two or more cases to be consolidated into a single case when the same or similar evidence is relevant and material to the matters at issue in each case.

(**b) Method of Consolidation**

Any party may file a motion requesting that cases be consolidated. Alternatively, the ALJ may order that cases be consolidated upon the judge's own initiative.

(c) Record of Proceedings in Consolidated Cases

When two or more cases are consolidated, a single record of the consolidated proceedings will be made. Evidence introduced in one matter may be considered as introduced in the other consolidated matter(s).

(d) Decisions in Consolidated Cases

The ALJ may issue separate or joint decisions in consolidated cases.

4.6 - Expedition and Continuances

(a) Expedition

Cases before OCAHO must proceed with all reasonable speed, insofar as practicable and with due regard to the convenience of the parties and due process.

(b) Continuances generally

Parties may request continuances of scheduled hearings. However, continuances will be granted only in cases where the requester:

- has a prior judicial commitment;
- can demonstrate undue hardship; or
- can show other good cause for the continuance.

(c) How to Request a Continuance

A party seeking a continuance typically must file a written motion for continuance and must serve a copy of the motion on all parties in the case. Alternatively, a party may request a continuance during a prehearing conference or during the hearing.

(d) Time Limit for Requesting a Continuance

Parties must file requests for continuances no later than 14 days prior to the date of a scheduled hearing, unless good cause arises thereafter. If a party files a motion for a continuance fewer than 14 days before a scheduled hearing, the party must:

- file the request in writing (and serve the request on all parties of record);
- communicate the request telephonically to the ALJ or a member of the ALJ's staff; and
- communicate the request telephonically to all other parties in the case.

(e) Ruling on a Request for a Continuance

If time permits, the ALJ will enter a written order in advance of the scheduled hearing that either grants or denies the request for continuance. If time does not permit entry of a written order, the ALJ will issue an oral ruling by telephone to the party requesting the continuance.

If the ALJ issues an oral ruling to the party requesting the continuance, that party must telephonically notify all other parties in the case of the ALJ's ruling.

If the ALJ issues an oral ruling on a request for a continuance, the ALJ will subsequently confirm the ruling in writing.

4.7 - Settlement Officer Program

(a) Purpose and Eligibility

(1) Purpose - The Office of the Chief Administrative Hearing Officer (OCAHO) offers a voluntary process whereby the parties in cases before OCAHO may use a settlement officer to mediate settlement negotiations as a means of alternative dispute resolution.

(2) Settlement officers - Subject to Section I.C., the following persons may serve as a settlement officer:

(A) Any active Administrative Law Judge (ALJ) may serve as a settlement officer in any OCAHO proceeding, except that an ALJ may not serve as the presiding ALJ and a settlement officer in the same case.

(B) The Chief Administrative Hearing Officer (CAHO) may serve as a settlement officer in any proceeding which is not potentially subject to administrative review by the CAHO.

(3) The presiding ALJ, in consultation with the Chief Administrative Law Judge (CALJ), shall designate the settlement officer in an appropriate case. The CALJ shall maintain a roster of available settlement officers to facilitate that consultation and shall ensure an efficient distribution of cases among available settlement officers.

(A) The settlement officer shall have no official, financial, or personal conflict of interest with respect to the parties or the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the settlement officer may serve.

(B) The settlement officer convenes and oversees settlement conferences and negotiations, confers with the parties jointly and/or individually, and seeks voluntary resolution of issues. Unlike the presiding ALJ, the settlement officer does not render a formal decision in the case.

(3) Eligibility - The OCAHO Settlement Officer Program applies to all adjudicatory proceedings before OCAHO subject to the following provisions:

(A) A case shall not be referred to a settlement officer if any party objects to referral of the matter to a settlement officer.

(B) In cases in which one or more of the parties are appearing pro se (i.e., without an attorney or other representative authorized under 28 C.F.R. § 68.33), if all pro se parties have been fully informed about the settlement officer procedure and have consented to its use, the presiding ALJ may in his or her discretion refer the case to a settlement officer notwithstanding a party's pro se status.

(C) The presiding ALJ shall not refer the case to a settlement officer, because the case is not appropriate for referral, if the ALJ determines that:

(i) A definitive or authoritative resolution of the matter is required for precedential value;

(ii) The case involves or may bear upon significant questions of government policy that require additional procedures before a final resolution may be made;

(iv) Maintaining uniform interpretation and application of established policies or precedent is of special importance and settlement would not likely reach consistent results among individual decisions;

(v) The matter significantly affects persons or organizations who are not parties to the proceeding;

(vi) A full public record of the proceeding is important; or

(vii) The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in light of changed circumstances.

(D) Cases potentially subject to administrative review by the CAHO cannot be referred to the CAHO to act as a settlement officer.

(E) Cases actively under administrative review by the CAHO are not eligible for referral to a settlement officer.

(F) A subpoena proceeding is not eligible for referral to a settlement officer.

(b) Method of Referral; Timing and Effect

(1) Referral of a case to a settlement officer - The presiding ALJ may refer a case to a settlement officer upon:

(A) Receipt of written confirmation of consent to referral from each party in the case and,

(B) Subject to 5 U.S.C. § 572(b) and Section I.C.3, determination by the presiding ALJ that the case is appropriate for referral.

(2) Decision not to refer a case to a settlement officer - No party has a right to have a case referred to a settlement officer. The decision of the presiding ALJ not to refer a case to a settlement officer in no way precludes or prohibits the parties from conducting

settlement negotiations between themselves or from reaching a settlement agreement and proceeding in accordance with 28 C.F.R. § 68.14.

(3) Order; stay of proceedings - If the presiding ALJ determines that referral to a settlement officer is appropriate in accordance with Section II.A, the presiding ALJ shall issue an order referring the case to a settlement officer, designating the name of the settlement officer to whom the presiding ALJ is referring the case, and specifying whether and to what extent the procedural deadlines in the case have been stayed. If settlement is not reached, the presiding ALJ shall set appropriate procedural deadlines upon termination of the settlement officer proceedings.

(4) Time limitations

(A) A request for referral of a case to a settlement officer may be made at any time while proceedings are pending up to 30 days prior to the date scheduled for a hearing in the matter.

(B) Settlement negotiations before a settlement officer shall not exceed sixty (60) days from the date of referral to the settlement officer. However, with the consent of the parties, the settlement officer may, in his or her discretion, seek to extend the time period for negotiations for a reasonable amount of time, not to exceed an additional thirty (30) days. If an extension of the negotiation period is sought, the settlement officer shall seek approval of the extension from the presiding ALJ. If the presiding ALJ determines that an extension of the negotiation period is appropriate, the presiding ALJ shall issue an order extending the period of settlement negotiations and specifying whether and to what extent the procedural deadlines in the case continue to be stayed.

(c) Settlement Conferences; Powers and Duties of Settlement Officers; Attendance of Parties and Representatives

(1) Settlement conferences - In general, the settlement officer should communicate with the parties by telephone or video conference call. However, the settlement officer may schedule an in-person conference with the parties when:

(A) The parties or the offices of the attorneys or other representatives of the parties are in the same metropolitan area where the settlement officer is located, and

(B) The settlement officer determines that such conference is necessary to resolve the case (or substantial issues therein) and represents a prudent use of resources.

(2) Powers and duties of settlement officer

(A) The settlement officer shall convene and preside over conferences and settlement negotiations between the parties.

(B) The settlement officer may confer with the parties jointly and/or individually.

(C) The settlement officer may require that an attorney or other representative authorized under 28 C.F.R. § 68.33 for each represented party be present at settlement conferences and that the parties or representatives with full settlement authority also be present or available by telephone.

(i) A unit or agency of government may satisfy the attendance requirement if represented by an attorney who has authority to settle (or can seek approval of a settlement from superiors with such authority), and who is knowledgeable about the facts of the case, the government unit's position, and the policies and procedures under which the governmental unit decides whether to accept proposed settlements.

(ii) If the action is brought by the government on behalf of one or more individuals, at least one such individual must also attend or be present or available by telephone.

(3) The settlement officer may impose other reasonable requirements on the parties to expedite an amicable resolution of the case.

(d) Confidentiality

(1) Generally - No evidence regarding statements or conduct in the settlement proceedings under this settlement officer program shall be admissible in the underlying proceeding or any subsequent administrative proceeding before OCAHO, except by stipulation of all parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena. The settlement officer shall not discuss any aspect of the case with the presiding ALJ, except to request an extension of the negotiation period pursuant to Section II.D.2. The settlement officer shall not be subpoenaed or called as a witness in any hearing in the case or any subsequent administrative proceeding before OCAHO with respect to any statement or conduct during the settlement discussions.

(2) Statutory confidentiality provisions - The proceedings before the settlement officer shall be subject to the confidentiality provisions of 5 U.S.C. § 574, which generally prohibit disclosure of dispute resolution communications by parties and a settlement officer unless a specific enumerated exception applies.

(3) Confidentiality agreements between the parties - Parties may agree to alternative confidentiality protections by entering into a confidentiality agreement between themselves. However, if the agreement provides for alternative confidentiality protections regarding disclosure by the settlement officer, the parties must inform the settlement officer of any modifications to the confidentiality protections of 5 U.S.C. § 574 before commencement of settlement negotiations utilizing the settlement officer procedure.

(e) Termination of Settlement Negotiations

(1) Settlement of the case - If settlement is reached pursuant to negotiations under this settlement officer program, the parties shall proceed in accordance with 28 C.F.R. § 68.14.

(2) Expiration of time - If the time period—including any extension granted pursuant to Section II.D.2—for settlement negotiations before a settlement officer expires, settlement negotiations before the settlement officer shall be terminated and the case shall be returned to the presiding ALJ for appropriate further action.

(3) Termination by the parties or settlement officer - Settlement negotiations before the settlement officer shall be terminated immediately if a party unambiguously indicates that it no longer wishes to participate or, if in the view of the settlement officer, further negotiations would be unproductive or otherwise inappropriate. Upon such termination, the case shall be returned to the presiding ALJ for appropriate further action.

(4) Continued negotiations by the parties - The termination of settlement negotiations before the settlement officer in no way precludes or prohibits the parties from continuing or resuming settlement negotiations between themselves or from reaching a settlement agreement and proceeding in accordance with 28 C.F.R. § 68.14.

(f) Availability of Settlement Officer Program Rules

A copy of the rules pertaining to OCAHO's settlement officer program shall be distributed to all parties in eligible OCAHO cases at or around the time the ALJ issues an order for prehearing statements (or similar order), unless the ALJ in his or her discretion determines that such notice would be more appropriate at another stage in the case.

(g) Review of Program

The OCAHO Settlement Officer Program will be reviewed as needed and amended to reflect any required changes.

4.8 - Settlement and Consent Findings

(a) Generally

Parties and their authorized representatives may (and are encouraged to) engage in settlement negotiations during the course of OCAHO proceedings. If the parties have entered into a settlement agreement, they must take one of the following actions:

- submit to the ALJ the settlement agreement containing consent findings, along with a proposed decision and order; or
- notify the ALJ that the parties have reached a full settlement and have agreed to the dismissal of the case.

(b) Contents of Consent Findings

A settlement agreement containing consent findings and a proposed decision and order disposing of a case (or any part of a case) must include the following provisions:

- that the decision and order based on consent findings shall have the same force and effect as a decision and order made after full hearing;
- that the entire record on which any decision and order may be based consists solely of the complaint, Notice of Case Assignment, and any other pleadings and documents specified by the ALJ;
- a waiver of any further procedural steps before the ALJ; and
- a waiver of any right to challenge or contest the validity of the decision and order entered into in accordance with the agreement.

(c) Disposition and Dismissal

(1) Consent Findings - If the ALJ is satisfied with the timeliness, form, and substance of an agreement containing consent findings, the ALJ will accept the agreement by entering a decision and order based upon the agreed findings. However, the ALJ may conduct a hearing to determine the fairness of the agreement.

(2) Settlement - Dismissal of an OCAHO case based on settlement is subject to the approval of the ALJ. The ALJ may require the parties to file a copy of the settlement agreement.

(d) OCAHO Settlement Officer Program

(1) Purpose and Eligibility - In appropriate circumstances and with the consent of all parties in the case, an OCAHO case may be referred to a settlement officer to mediate settlement negotiations as a means of alternative dispute resolution. Any active OCAHO

ALJ (other than the presiding ALJ in that case) may serve as a settlement officer. The CAHO may also serve as a settlement officer in a case under INA § 274B.

The settlement officer convenes and oversees settlement conferences and negotiations, confers with the parties jointly and/or individually, and seeks voluntary resolution of issues. Unlike the presiding ALJ, the settlement officer does not render a formal decision in the case.

(2) How Cases May Be Referred to a Settlement Officer - The presiding ALJ may refer a case to a settlement officer if:

- the ALJ determines that the case is appropriate for referral to a settlement officer; and
- the ALJ receives written confirmation from each party in the case stating that they consent to referral of the case to a settlement officer.

If the presiding ALJ determines that referral to a settlement officer is appropriate, the presiding ALJ will issue an order referring the case to the settlement officer, designating the name of the settlement officer to whom the case is being referred, and specifying whether and to what extent the procedural deadlines in the case have been stayed.

The parties may request referral of a case to a settlement officer at any time while proceedings are pending up to 30 days prior to the date scheduled for a hearing in the case. Settlement negotiations before the settlement officer may not extend beyond 60 days from the date of referral to the settlement officer. However, if the parties consent, the settlement officer may seek to extend the time period for negotiations for a reasonable amount of time (but not more than an additional 30 days).

No party has a right to have a case referred to a settlement officer. The decision of the presiding ALJ not to refer a case to a settlement officer in no way precludes or prohibits the parties from conducting settlement negotiations between themselves or from reaching a settlement and proceeding in accordance with 28 C.F.R. § 68.14.

(3) Conduct of Settlement Negotiations - The settlement officer will generally communicate with the parties by telephone or video conference call. However, the settlement officer may schedule an in-person conference with the parties in certain circumstances.

The settlement officer will convene and preside over conferences and settlement negotiations between the parties. The settlement officer may confer with the parties jointly and/or individually. Additionally, the settlement officer may require that an attorney or other authorized representative for each party be present at settlement conferences, and may require that the parties or representatives with full settlement authority also be

present or available by telephone. The settlement officer may also impose other reasonable requirements on the parties to expedite an amicable resolution of the case.

(4) Confidentiality of Settlement Negotiations - No evidence regarding statements or conduct in the settlement proceedings under the settlement officer program will be admissible in the underlying OCAHO proceeding – or in any subsequent proceeding before OCAHO – except by stipulation of all parties. Any document disclosed in the settlement process may not be used by any other party in litigation unless it is obtained through appropriate discovery or subpoena. The settlement officer will not discuss any aspect of the case with the presiding ALJ, except to request an extension of the negotiation period. The settlement officer also may not be subpoenaed or called as a witness in any hearing in the case or in any subsequent administrative proceeding before OCAHO with respect to any statement or conduct during the settlement discussions.

The proceedings before the settlement officer will be subject to the confidentiality provisions of 5 U.S.C. § 574, which generally prohibit the parties and the settlement officer from disclosing any dispute resolution communications, unless a specific exception applies. Parties may also agree to alternative confidentiality protections by entering into a confidentiality agreement between themselves. However, if the agreement provides for alternative confidentiality protections regarding disclosure by the settlement officer, the parties must inform the settlement officer of any modifications to the confidentiality protections of 5 U.S.C. § 574 before beginning settlement negotiations using the settlement officer procedure.

(5) Termination of Settlement Negotiations - If settlement is reached pursuant to negotiations under the settlement officer program, the parties must proceed in accordance with 28 C.F.R. § 68.14. See paragraphs (a)-(c) of this section.

If the time period for settlement negotiations before a settlement officer expires, settlement negotiations before the settlement officer will be terminated and the case will be returned to the presiding ALJ for appropriate further action.

If any party unambiguously indicates that it no longer wishes to participate in settlement negotiations, or if the settlement officer determines that further negotiations would be unproductive or otherwise inappropriate, the settlement negotiations before the settlement officer will be terminated and the case will be returned to the presiding ALJ for appropriate further action.

The termination of settlement negotiations before the settlement officer in no way precludes or prohibits the parties from continuing or resuming settlement negotiations between themselves, and the parties may still reach a settlement agreement and proceed in accordance with 28 C.F.R. § 68.14.

4.9 - Abandonment and Default

(a) Dismissal Based on Abandonment

Parties and their representatives must timely respond to all orders issued by the ALJ and must appear at the time and place set for hearings and prehearing conferences. If a party fails to respond to orders issued by the ALJ or fails to appear at a hearing or prehearing conference without demonstrating good cause for such failure to appear, the ALJ may dismiss that party's complaint or request for hearing on the grounds that it has been abandoned. If a party fails to appear for a hearing or prehearing conference, the party must show good cause for the failure to appear either:

- prior to the time for hearing;
- within 10 days after the time for hearing; or
- within such other period as the ALJ may allow.

(b) Default

If a respondent fails to timely file an answer to the complaint, or if any party fails to appear at a hearing (without good cause shown), the ALJ may enter a judgment by default against that party.

4.10 - Summary Decision

(a) Generally

A party may file a motion for summary decision on all or any part of the complaint.

(b) Timing

A motion for summary decision may not be filed within either of the following time periods:

- if by the complainant, fewer than 30 days after receipt of the complaint by the respondent; or
- if by any party, within 20 days prior to any hearing.

(c) Responses

Within 10 days after service of a motion for summary decision, any other party may file a response to the motion. A party filing a response to a motion for summary decision may support or oppose the motion and may file a counter-motion for summary decision. The ALJ may extend the time for filing responses to motions for summary decision.

(d) Affidavits

A party filing a motion for summary decision or a response to a motion for summary decision may file affidavits in support of the motion or response. Any affidavits submitted with the motion must set forth such facts as would be admissible as evidence in OCAHO proceedings and must show affirmatively that the affiant is competent to testify to the matters stated therein.

(e) Arguments and Briefs

The ALJ may direct the parties to conduct oral argument or submit briefs related to a motion for summary decision.

(f) Standards for Summary Decision

The ALJ will enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue of material fact and that a party is entitled to summary decision.

When a motion for summary decision is properly filed and supported, a party opposing the motion cannot rest upon the mere allegations or denials of their pleadings. The party's response must set forth specific facts showing that there is a genuine issue of material fact for the hearing.

(g) Form of Summary Decision

Any final order entered as a summary decision by the ALJ will conform to the requirements for all final orders. See Chapter 7 (Final Orders and Attorney's Fees); 28 C.F.R. § 68.52. A final order entered as a summary decision must include:

- findings of fact and conclusions of law (and the reasons therefor) on all issues presented; and
- any terms and conditions of the final order.

(h) Genuine Issue of Material Fact

If a genuine issue of material fact is raised, the ALJ will set the case for an evidentiary hearing.

4.11 - Waiver of Right to Appear

(a) Generally

Parties may waive their right to appear before the ALJ or to present evidence or argument.

(b) Form of Waiver

A party wishing to waive the right to appear must do so in writing with the presiding ALJ (or with the CAHO, if an ALJ has not yet been assigned).

(c) Consequences of Waiver

If all parties properly waive their right to appear, the ALJ will not conduct an evidentiary hearing. Rather, the ALJ will base the final decision solely on the relevant written evidence submitted by the parties, together with any pleadings the parties submit with respect to the issues in the case.

Chapter 5 - Discovery

5.1 - Discovery Generally

(a) Methods of Discovery

During OCAHO proceedings, parties may obtain discovery by one or more of the following methods:

- depositions by oral examination or written questions;
- written interrogatories;
- requests for production of documents or things, or permission to enter upon land or other property for inspection or other purposes;
- requests for physical and mental examinations; and
- requests for admissions.

(b) Scope of Discovery

Parties may generally obtain discovery regarding any matter that is not privileged and that is relevant to the subject matter involved in the proceeding. This includes:

- the existence, description, nature, custody, condition, and location of any relevant books, documents, or other tangible things; and
- the identity and location of persons having knowledge of any discoverable matter.

(c) Limitations on Discovery

The ALJ may limit the frequency or extent of discovery either on the judge's own initiative or pursuant to a motion for a protective order. See Chapter 5.9 (Protective Orders) for more information on protective orders.

(d) Filing Requests for Discovery with OCAHO

Unless otherwise ordered by the ALJ, parties should not file requests for discovery, answers, or responses thereto with the ALJ.

5.2 - Written Interrogatories

(a) Generally

An interrogatory is a written question or set of questions submitted to another party in a proceeding. In OCAHO proceedings, any party may serve upon any other party written interrogatories to be answered in writing by the party served. If the party served is a public or private corporation, partnership, association, or government agency, the interrogatories may be answered by any authorized officer or agent. The person answering the interrogatories must furnish such information as is available to the party.

(b) Service of Interrogatories

A copy of the interrogatories must be served on all parties to the proceeding.

(c) Answers and Objections

Each interrogatory must be answered separately and fully in writing under oath or affirmation, unless it is objected to. If the answering party objects to any interrogatory, the party must state the reasons for the objection in lieu of an answer. The answers and objections must be signed by the person making them. A person or entity upon whom interrogatories are served may respond by submitting business records, if they are sufficient to answer the interrogatories. The answering party must indicate to which interrogatory the documents respond.

(d) Service of Answers and Objections

The party upon whom the interrogatories were served must serve a copy of the answers or objections on all parties to the proceeding within 30 days after service of the interrogatories. The ALJ may extend or shorten the deadline for service of answers and objections.

5.3 - Requests for Production or Inspection

(a) Generally

Any party may serve on any other party a request to:

- produce (and permit the other party to inspect and copy) any designated documents or things in the possession, custody, or control of the party; and
- inspect land in the possession, custody, or control of the party.

(b) Contents of the Request

A request for production or inspection must:

- identify the items to be inspected (either by individual item or by category);
- describe each item or category with reasonable particularity; and
- specify a reasonable time, place, and manner for performing the inspection and any related acts.

(c) Response to the Request

The party upon whom the request is served must serve a written response to the requesting party within 30 days after service of the request. With respect to each item or category, the response must state either:

- that the party will permit inspection and related activities as requested; or
- that the party objects in whole or in part to the requested inspection, along with the reasons for objection.

(d) Service of the Request and Response

A copy of each request for production and each written response must be served on all parties to the case.

5.4 - Requests for Admissions

(a) Generally

A party may serve on any other party a written request for admission of:

- the genuineness and authenticity of any relevant document described in or attached to the request; or
- the truth of any specified relevant fact.

(b) Response

A party served with a request for admissions must serve a response upon the requesting party within 30 days after service of the request. The ALJ may extend or shorten the deadline for service of the response. For each requested admission, the response must include:

- a written statement specifically denying the relevant matters for which admission was requested;
- a written statement setting forth in detail the reasons why the responding party can neither admit nor deny the request(s) for admission;
- written objections that some or all of the matters involved are privileged or irrelevant and why, or that the request is otherwise improper and why; or
- a written statement that some or all of the matters involved are admitted.

(c) Failure to Deny or Object

If the answering party does not specifically deny or object to any particular request for admission as outlined above, the matter will be deemed admitted. All requests for admission and responses thereto will be solely for the purposes of the pending proceeding before OCAHO.

(d) Lack of Information or Knowledge

If an answering party gives lack of information or knowledge as a reason for failure to admit or deny a specific request for admission, the party must also state that the party made a reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable the party to admit or deny the request(s).

(e) Withdrawal or Amendment of Admissions

A party wishing to withdraw or amend an admission must file a motion with the ALJ.

(f) Effect of Admissions

Any matter admitted (and not properly withdrawn or amended) will be treated as conclusively established for purposes of the OCAHO proceeding.

5.5 - Depositions

(a) Generally

Any party may seek to take the deposition of a witness in an OCAHO proceeding.

(b) Notice

Any party desiring to take the deposition of a witness must give notice in writing to the witness and all other parties. If the deposition will be taken within the continental United States, notice must be given at least 10 days in advance of the date and time of the deposition. If the deposition will be taken elsewhere, notice must be given at least 20 days in advance of the date and time of the deposition. The ALJ may modify these time restrictions. The written notice must include the following information:

- the time and place of the deposition;
- the name and address of each witness;
- a written request for the production of documents (if documents are requested); and
- the method by which the testimony will be recorded.

(c) How Depositions May be Taken

Depositions may be taken by oral examination or written questions before any person having power to administer oaths.

(d) Method of Recording Depositions

Any party taking a deposition by oral examination must provide a method by which the testimony will be recorded (and must bear the cost of the recording). Unless otherwise ordered by the ALJ, a deposition may be recorded by sound, video, or stenographic means. If a deposition is recorded by non-stenographic means, any party may arrange (at that party's expense) for a transcript to be made from the recording.

(e) Procedures for Taking Depositions

Each witness testifying by deposition must testify under oath.

Any other party will have the right to cross-examine the witness.

All questions asked and answers thereto must be recorded by the method provided by the party taking the deposition.

The person administering the oath must certify in writing that the transcript or recording is a true record of the testimony given by the witness.

(f) Review of the Transcript or Recording

The witness must review the transcript or recording within 30 days of notification that it is available. After reviewing the transcript or recording, the witness must indicate in writing any changes in form or substance, unless such review is waived by the witness and the parties by stipulation.

(g) Motion to Terminate or Limit Examination

During a deposition, a party or the witness may request suspension of the deposition on the grounds of bad faith in the conduct of the examination, oppression of a deponent or party, or improper questions asked. If such a request is made, the deposition will be adjourned. Once the deposition is adjourned, the objecting party or witness must immediately file a motion with the ALJ requesting a ruling on the party's or witness's objections to the deposition.

5.6 - Subpoenas

(a) Generally

The ALJ may issue subpoenas as authorized by statute either prior to or subsequent to the filing of a complaint. A party may file a request for issuance of a subpoena with the ALJ using the Form EOIR-30.

(b) Possible Subjects of Subpoenas

Subpoenas may require:

- attendance and testimony of witnesses; and/or
- production of things, including, but not limited to papers, books, documents, records, correspondence, or tangible things under the possession and control of the person or entity to whom the subpoena is addressed.

(c) Service of Subpoenas

A party may serve a subpoena by overnight courier service, overnight mail, certified mail, or personal delivery by any person 18 years of age or older.

(d) Contents of Subpoenas

The subpoena must identify the person to whom it is returnable (and the place, date, and time at which it is returnable), and must identify:

- the person or things subpoenaed; and/or
- the nature of the evidence to be examined and copied, and the date and time when access is requested.

(e) Subpoenas Directed to Nonparties

If a non-party is subpoenaed, the requestor must give notice to all parties to the case. In cases under INA § 274B, if a complaint has not yet been filed, the requestor must give notice to individuals or entities who have been charged with an unfair immigration-related employment practice, the individual initiating the alleged unfair immigration-related employment practice and the Immigrant and Employee Rights Section (in the Civil Rights Division of the U.S. Department of Justice). Receipt of the subpoena will serve as notice for purposes of this paragraph.

(f) Petitions to Revoke or Modify Subpoenas

Any person served with a subpoena issued by an ALJ who intends not to comply with the subpoena must file a petition to revoke or modify the subpoena with the ALJ within 10 days after the date of service of the subpoena.

The party filing a petition to revoke or modify must serve a copy on all parties to the proceeding. If a complaint has not been filed in the matter, service must be made on the individual or entity that requested the subpoena.

A party will have standing to challenge a subpoena issued to a non-party if the party can claim a personal right or privilege in the discovery sought.

The petition to revoke or modify must:

- specifically identify each portion of the subpoena with which the petitioner intends not to comply;
- with respect to each such portion, state the grounds upon which the petitioner relies; and
- include a copy of the subpoena with the petition.

Within 8 days after receipt of the petition to revoke or modify, the individual or entity that requested the subpoena may file a response to the petition.

The ALJ will make a final determination upon the petition and will serve a copy of the determination on all involved parties, individuals, and entities.

(g) Failure to Comply with a Subpoena

If any person fails to comply with a lawfully-issued subpoena, the ALJ may apply through appropriate counsel to the appropriate United States District Court for an order requiring compliance with the subpoena.

(h) Mileage and Witness Fees

Other than a witness subpoenaed on behalf of the Federal Government, a witness cannot be required to attend a deposition or hearing unless the mileage and witness fee applicable to witnesses in courts of the United States is paid in advance of the date of the proceeding.

5.7 - Supplementation of Discovery Responses

(a) Generally

A party who has responded to a request for discovery with a response that was complete at the time that it was made generally does not need to supplement that response with information acquired thereafter.

(b) Exceptions

A party is required to supplement a previous discovery response under the following circumstances:

- A party must timely supplement a response with respect to any question directly addressed to:
    - the identity and location of persons having knowledge of discoverable matters; and
    - the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert is expected to testify, and the substance of the testimony.
- A party must timely amend a prior response if the party later obtains information upon the basis of which the party knows the response:
    - was incorrect when made; or
    - though correct when made, is no longer true and the circumstances are such that a failure to amend the response may constitute knowing concealment.

5.8 - Motions to Compel Responses to Discovery

(a) Generally

If a party or witness fails to adequately respond to a proper request for discovery, the party seeking discovery may file a motion with the ALJ for an order compelling a response in accordance with the request. An evasive or incomplete response to discovery may be treated as a failure to respond.

(b) Good Faith Efforts to Confer

Before a party files a motion to compel a response to discovery, the party must make a good faith effort to confer with the person or party allegedly failing to properly respond to a request for discovery in an effort to secure information or material without action by the ALJ.

(c) Contents of the Motion

A motion to compel a response to discovery must include:

- the nature of the questions or request at issue;
- the response or objections of the party upon whom the request was served;
- arguments in support of the motion; and
- a certification that the moving party has conferred (or attempted to confer) in good faith with the person or party failing to make a proper response to discovery.

(d) Response

The answering or objecting party may file a response to the motion to compel. The response must contain adequate justification for that party's objections, or argument showing why the party's answers to the discovery requests at issue were sufficient.

(e) Administrative Law Judge Action on the Motion to Compel

If the ALJ determines that the answers of a party or witness do not comply with the OCAHO rules regarding discovery, the ALJ may order the party or witness the make a proper answer to discovery.

(f) Failure to Comply with an Order by the Administrative Law Judge

If a party fails to comply with an order from the ALJ related to a request for discovery, the ALJ may:

- infer and conclude that the admission, testimony, documents, or other evidence at issue would have been adverse to the non-complying party;
- rule that for the purposes of the proceeding the matters involved will be taken as established adversely to the non-complying party;
- rule that the non-complying party may not introduce certain evidence or otherwise rely upon certain testimony, documents, or other evidence presented by a non-complying party or witness;
- rule that the non-complying party may not object to introduction and use of secondary evidence to show what the withheld evidence or testimony would have shown;
- rule that a pleading, motion, or other submission related to the insufficient discovery response be stricken;
- render a decision against the non-complying party; and/or
- make and enter any necessary protective orders.

5.9 - Protective Orders

(a) Generally

A party or person from whom discovery or testimony is sought may file a motion with the ALJ requesting a protective order to:

- protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense;
- protect privileged communications;
- protect data and other material the disclosure of which would unreasonably prejudice a party, witness, or third party; or
- prevent undue disclosure of classified or sensitive materials or matters.

(b) Contents of a Protective Order

A protective order issued by the ALJ may order that:

- discovery not be had;
- discovery may be had only on specified terms and conditions, including designation of the time, extent, duration, or place;
- discovery may be had only by a method of discovery different than that selected by the party seeking discovery;
- certain matters not deemed relevant may not be inquired into;
- the scope of discovery be limited to certain matters; or
- certain evidence not be introduced.

(c) Classified or Sensitive Matters

If the ALJ determines that classified or sensitive matters or materials must be made part of the record, the ALJ may either:

- direct the producing party to prepare an unclassified or non-sensitive summary or extract of the original, to be admitted as evidence in the record; or
- provide an opportunity for arrangements to permit a party or a representative to have access to such matters or materials (such as obtaining security clearances or providing access subject to assurances against future disclosure).

(d) Restricted Access

If necessary and appropriate, the ALJ may direct that there be a restricted access portion of the official case record. The restricted access portion of the record will contain any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings.

Chapter 6 - Hearings

6.1 - Hearings Generally

(a) Location

In cases under INA § 274B, the ALJ will give due regard to the convenience of the parties and the witnesses in selecting a place for the hearing. In cases under INA §§ 274A and 274C, hearings will be held at the nearest practicable place to where the respondent resides or where the alleged violation occurred.

(b) Rights of Parties

Every party will have the right to:

- present a case or defense by:
    - oral and/or documentary evidence;
    - depositions; and
    - duly authenticated copies of records and documents;
- submit rebuttal evidence;
- conduct cross-examination necessary for a full and complete disclosure of the facts;
- make a written and/or oral statement of position;
- be heard by objection, motion, and argument; and
- exercise any other rights essential to a fair hearing.

(c) Public Hearings

OCAHO hearings are generally open to the public. However, the ALJ may order any hearing (or part thereof) closed if it would be in the best interests of the parties, a witness, the public, or other affected persons.

6.2 - Evidence

(a) Generally

All relevant, material and reliable evidence is admissible in OCAHO proceedings. However, evidence may be excluded by the ALJ if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by consideration of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence.

The ALJ may also limit the cross-examination of witnesses to reasonable bounds so as not to prolong the hearing unnecessarily and unduly burden the record.

Material and relevant evidence will not be excluded merely because it is not the best evidence, unless its authenticity is successfully challenged. If the authenticity of evidence is challenged, the party presenting it will be given a reasonable opportunity to establish its authenticity.

Stipulations of fact may be introduced in evidence with respect to any issue.

Compilations, charts, summaries of data, and photostatic copies of documents may be admitted in evidence if the proceedings will be expedited by their admission, and if the material upon which they are based is available for examination by the parties.

(b) Objections and Offers of Proof

Objections to the admission or exclusion of evidence must be in short form, stating the grounds for the objection.

A party need not make a formal exception to the rulings of the ALJ on the admission or exclusion of evidence; a properly made objection will suffice.

Any offer of proof made in connection with an objection to a ruling of the ALJ excluding evidence or testimony must include:

- a statement of the substance of the evidence or testimony; and
- if the excluded evidence is in documentary or written form, a reference to the documents or records and a copy of such evidence marked for identification.

(c) Federal Rules of Evidence

Unless otherwise provided by statute or by OCAHO rules, the Federal Rules of Evidence will be used as a general guide in OCAHO proceedings.

(d) Authenticity

A party wishing to challenge the authenticity of documents submitted prehearing as proposed exhibits must file a written objection prior to the hearing. The ALJ may permit a party to challenge the authenticity of documents at a later time if the party demonstrates good cause for failure to file written objection(s) prior to the hearing.

(e) Official Notice

The ALJ may take official notice of any material fact which is among the traditional matters of judicial notice. The parties will be given adequate notice of facts that are officially noticed and will be given an opportunity to disprove the officially-noticed facts.

(f) Designation of Parts of Documents

Where relevant and material matter offered into evidence is included in a document containing other matter which is not material or relevant and is not intended to be put into evidence, the party offering the matter must plainly designate the portions of the document being offered, segregating and excluding the immaterial or irrelevant parts.

When only portions of a document are to be relied upon, the offering party must prepare the pertinent excerpts along with a statement indicating the purpose for which such materials will be offered. The offering party must file those excerpts with the ALJ and serve them upon all parties to the case. The original document should also be made available for examination and use by opposing counsel for purposes of cross-examination.

If the extraneous materials would encumber the record, the ALJ may direct that the full document not be received into evidence. Instead, the document may be marked for identification and the relevant and material parts thereof may be read into the record. Additionally, the ALJ may direct that a copy of the full document be provided to all parties, who will be given an opportunity to examine the document and offer into evidence other material and relevant portions.

(g) Records in Other Proceedings

If any party offers into evidence any portion of the record in another proceeding or in a civil or criminal action, the party must present a true copy in the form of an exhibit.

6.3 - Exhibits

(a) Generally

All exhibits offered in evidence must be numbered and marked with a designation identifying the party who offered the exhibit.

(b) Exchange of Exhibits

When a party offers written exhibits in evidence, the party must provide a copy to each of the parties and must provide two copies to the ALJ (unless directed otherwise). The parties must exchange copies of exhibits at the earliest practicable time, preferably before the hearing.

(c) Substitution of Copies

The ALJ may allow a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

6.4 - Use of Depositions at Hearings

(a) Generally

Depositions may be used at hearings against any party who was present or represented at the taking of the deposition (or who had due notice thereof) in any of the following ways:

- Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.
- The deposition of an expert witness may be used by any party for any purpose, unless the ALJ rules that such use would be unfair.
- The deposition of a party or of an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party may be used by any other party for any purpose.
- The deposition of a witness may be used by any party for any purpose if the ALJ finds:
    - that the witness is dead;
    - that the witness is out of the United States or more than 100 miles from the place of hearing (unless it appears that the absence of the witness was procured by the party offering the deposition);
    - that the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment;
    - that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
    - upon application and notice, that such exceptional circumstances exist to make it desirable to allow the deposition to be used.

(b) Introducing Only Part of a Deposition

If only part of a deposition is offered into evidence by a party, any other party may require him or her to introduce all of the deposition that is relevant to the part introduced, and any party may introduce any other parts.

(c) Substitution of Parties

Substitution of parties does not affect the right to use depositions previously taken. When a previous proceeding has been dismissed and another proceeding involving the parties and their representatives or successors in interest has been brought, all depositions lawfully taken in the former proceeding may be used in the latter proceeding if they were originally taken therefor.

(d) Format of Depositions Entered into Evidence

A party offering deposition testimony into evidence may offer it in either stenographic or non-stenographic form. However, if offered in non-stenographic form, the party must also provide a transcript of the portions offered.

(e) Objections to Admissibility

A party may object to the introduction into evidence of any deposition or part thereof for any reason that would require exclusion of the evidence if the witness were currently present and testifying.

The following objections are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one that might have been remedied if presented at that time:

- objections to the competency of the witness; and
- objections to the competency, relevancy, or materiality of testimony.

The following objections are considered waived unless objection is made before or during the taking of the deposition:

- errors and irregularities occurring at the oral examination in the manner of taking the deposition;
- errors and irregularities in the form of the questions or answers;
- errors and irregularities in the oath or affirmation;
- errors and irregularities in the conduct of parties; and
- errors of any kind which might have been remedied if promptly presented.

6.5 - Record of Hearings

(a) Generally

A verbatim written record of all hearings will be kept by OCAHO. All evidence upon which the ALJ relies for decision will be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence will be marked for identification and incorporated into the record.

(b) Transcripts

Parties and the public may obtain transcripts of the hearing from the official court reporter of record. The parties will be responsible for any fees in connection with obtaining the transcript for their own use.

(c) Corrections to the Official Transcript

Any party wishing to make corrections to the official transcript must file a motion for correction within 10 days of the receipt of the transcript by the ALJ, or within such other time as may be permitted by the ALJ. Corrections will be permitted only when errors of substance are involved, and only upon approval of the ALJ.

6.6 - Closing the Record

(a) After Hearing

When a hearing is held in an OCAHO case, the record will be closed at the conclusion of the hearing.

(b) Additional Evidence After the Record is Closed

Once the record is closed, no additional evidence will be accepted into the record, except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record. A party wishing to submit additional documents or other evidence after the record is closed must file the documents or evidence within 20 days after the close of the hearing and must serve copies on all other parties. Any other party may file a response to or comment on the additional documents or evidence.

6.7 - Post-Hearing Briefs and Proposed Orders

Within 20 days of the filing of the official hearing transcript (or within such additional time as the ALJ may allow), the ALJ may require the parties to file proposed findings of fact, conclusions of law, and orders, along with supporting briefs. Such proposed findings, conclusions, and orders must be served on all parties, and must refer to all portions of the record and all authorities relied upon in support of each proposal.

Chapter 7 - Final Orders and Attorney's Fees

7.1 - Entry of Final Order

The ALJ will enter a final order within 60 days after receipt of the hearing transcript or of post-hearing briefs, proposed findings of fact, and/or conclusions of law. The time for entry of a final order may be extended by the CAHO for good cause.

7.2 - Final Orders in Cases Under INA § 274A

A person or entity named in the complaint who is found, by a preponderance of the evidence, to have violated INA § 274A, will be subject to the appropriate orders and penalties as set forth in 8 U.S.C. § 1324a, 28 C.F.R. § 68.52(c), and 28 C.F.R. § 85.5.

7.3 - Final Orders in Cases Under INA § 274B

A person or entity named in the complaint who is found, by a preponderance of the evidence, to have violated INA § 274B, will be subject to the appropriate orders and penalties as set forth in 8 U.S.C. § 1324b, 28 C.F.R. § 68.52(d), and 28 C.F.R. § 85.5.

7.4 - Final Orders in Cases Under INA § 274C

A person or entity named in the complaint who is found, by a preponderance of the evidence, to have violated INA § 274C, will be subject to the appropriate orders and penalties as set forth in 8 U.S.C. § 1324c, 28 C.F.R. § 68.52(e), and 28 C.F.R. § 85.5.

7.5 - Attorney's Fees in Cases Under INA §§ 274A and 274C

(a) Generally

Pursuant to 5 U.S.C. § 504, a prevailing respondent may receive an award of attorney's fees in cases under INA §§ 274A and 274C.

(b) Application

A prevailing respondent seeking attorney's fees must file an application with the ALJ. Any application for attorney's fees must be accompanied by an itemized statement from the attorney or representative stating the actual time expended and the rate at which fees and other expenses were computed.

(c) Standard

An award of attorney's fees will not be made if the ALJ determines that the complainant's position was substantially justified, or that special circumstances make the award unjust.

7.6 - Attorney's Fees in Cases Under INA § 274B

(a) Generally

The ALJ may allow a prevailing party (other than the United States) a reasonable attorney's fee in cases under INA § 274B.

(b) Application

A prevailing party seeking attorney's fees must file an application with the ALJ. Any application for attorney's fees must be accompanied by an itemized statement from the attorney or representative stating the actual time expended and the rate at which fees and other expenses were computed.

(c) Standard

An award of attorney's fees may be made if the losing party's argument is without reasonable foundation in law and fact.

7.7 - Corrections to Orders

(a) Corrections to Final Orders in Cases Under INA §§ 274A and 274C

The ALJ may correct any clerical mistakes or typographical errors in a final order under INA §§ 274A and 274C at any time within 30 days after the entry of the final order. Changes other than clerical mistakes or typographical errors may only be made by the CAHO under the administrative review provisions of 28 C.F.R. § 68.54.

(b) Corrections to Final Orders in Cases Under INA § 274B

The ALJ may correct any clerical mistakes or typographical errors in a final order under INA § 274B at any time within 60 days after the entry of the final order.

7.8 - Final Agency Order

(a) Final Agency Order in Cases Under INA §§ 274A and 274C

In cases under INA §§ 274A and 274C, the ALJ's final order becomes the final agency order 60 days after the entry of the order, unless:

- the CAHO modifies, vacates, or remands the ALJ's final order pursuant to 28 C.F.R. § 68.54; or
- the order is referred to the Attorney General pursuant to 28 C.F.R. § 68.55.

(b) Final Agency Order in Cases Under INA § 274B

In cases under INA § 274B, the ALJ's final order becomes the final agency order on the date the order is issued.

Chapter 8 - Review and Appeal

8.1 - Review of Interlocutory Orders by the Chief Administrative Hearing Officer

(a) Authority

In cases arising under INA §§ 274A and 274C, the CAHO may review an interlocutory order issued by the ALJ if:

- the ALJ recommends in writing when issuing the interlocutory order that the CAHO should review the order;
- within 10 days of the date of entry of the interlocutory order, a party files a written request that the CAHO review the interlocutory order; or
- within 10 days of the date of entry of the interlocutory order, the CAHO issues a notification of review of the interlocutory order, stating the issues to be reviewed.

(b) Standards for Review

The CAHO may administratively review an interlocutory order only if:

- the order concerns an important question of law on which there is a substantial difference of opinion; and
- an immediate review will advance the ultimate termination of the proceeding, or subsequent review will be an inadequate remedy.

(c) Filing and Service of Requests for Interlocutory Review and Related Documents

A party seeking review by the CAHO of an interlocutory order must file a request for review within 10 days of the date of entry of the interlocutory order.

All requests for review, briefs, and other filings related to review by the CAHO must be filed and served by facsimile or same-day hand-delivery (or, if such filing and service cannot be made, by overnight delivery). If a party files a document related to review by the CAHO by facsimile, the party must concurrently forward the original signed document to OCAHO.

The request for review must contain a clear statement of why interlocutory review is appropriate under the standards for review set forth above.

(d) Written and Oral Arguments

In any case in which review of an interlocutory order has been properly requested or ordered, the parties may file briefs or other written statements within 21 days of the date of entry of the interlocutory order.

At the request of a party, or on the CAHO's own initiative, the CAHO may permit or require additional filings, or may conduct oral argument in person or telephonically.

(e) Stay of Proceedings

Review of an interlocutory order by the CAHO will not automatically stay the proceeding unless the ALJ or the CAHO determines that a stay is required.

(f) Decision and Order of the Chief Administrative Hearing Officer

Within 30 days of the date of entry of the interlocutory order by the ALJ, the CAHO may issue an order modifying, vacating, or remanding the interlocutory order. If the CAHO does not modify, vacate, or remand the interlocutory order within 30 days, the ALJ's interlocutory order will be deemed adopted.

(g) Effect of Interlocutory Review

An order by the CAHO modifying or vacating an interlocutory order will also remand the case to the ALJ. Further proceedings in the case will be conducted consistent with the CAHO's order.

Regardless of whether an interlocutory order is reviewed by the CAHO, all parties retain the right to request administrative review of the final order of the ALJ in the case.

8.2 - Review of Final Orders by the Chief Administrative Hearing Officer

(a) Authority

In cases arising under INA §§ 274A and 274C, the CAHO may review any final order issued by the ALJ.

(b) Filing and Service of a Request for Review and Related Documents

A party seeking review by the CAHO of a final order of the ALJ must file a request for administrative review within 10 days of the date of entry of the ALJ's final order.

All requests for review, briefs, and other filings related to review by the CAHO must be filed and served by facsimile or same-day hand-delivery (or, if such filing and service cannot be made, by overnight delivery). If a party files a document related to review by the CAHO by facsimile, the party must concurrently forward the original signed document to OCAHO.

The request for review must state the reasons for or basis upon which the party seeks review.

(c) Notification of Administrative Review

The CAHO may initiate an administrative review on his or her own initiative by issuing a notification of administrative review within 10 days of the date of entry of the ALJ's final order. This notification will state the issues to be reviewed.

(d) Written and Oral Arguments

In any case in which administrative review has been properly requested or ordered, the parties may file briefs or other written statements within 21 days of the date of entry of the ALJ's final order.

At the request of a party, or on the CAHO's own initiative, the CAHO may permit or require additional filings, or may conduct oral argument in person or telephonically.

(e) Decision and Order of the Chief Administrative Hearing Officer

Within 30 days of the date of entry of the final order by the ALJ (but not before the time for filing briefs has expired), the CAHO may enter an order modifying or vacating the ALJ's order or remanding the case to the ALJ for further proceedings.

If the CAHO enters an order remanding the case to the ALJ, the ALJ will conduct further proceedings consistent with the CAHO's order.

The CAHO is not obligated to enter an order unless the ALJ's order is modified, vacated, or remanded.

(f) Final Agency Order

If the CAHO enters an order modifying or vacating (and not remanding) the ALJ's final order, and the CAHO's order is not referred to the Attorney General pursuant to 28 C.F.R. § 68.55, the CAHO's order will become the final agency order 30 days after the date of entry of the order.

8.3 - Disqualification of the Chief Administrative Hearing Officer

In the event of disqualification or recusal of the CAHO, the administrative review of cases under INA §§ 274A and 274C will be referred to the director of EOIR for further proceedings. In those circumstances, the director of EOIR will exercise review authority identical to that of the CAHO pursuant to 28 C.F.R. §§ 68.53 and 68.54.

8.4 - Referral of Cases to the Attorney General for Review

(a) Procedures for Referral of Cases to the Attorney General

An OCAHO final order under INA § 274A or 274C may be referred to the Attorney General for review:

- if the Attorney General directs the CAHO to refer the final order for review; or
- if the Secretary of Homeland Security timely and properly requests that the CAHO refer the final order to the Attorney General for review.

No other parties or individuals are authorized to request referral of a final order to the Attorney General for review.

(b) Procedures for Review

If a final order is referred to the Attorney General for review, the Attorney General will review the final order in accordance with the following procedures:

- All parties will be given the opportunity to submit briefs or other written statements pursuant to a schedule established by the CAHO or the Attorney General.
- The Attorney General will enter an order that adopts, modifies, vacates, or remands the final order under review. The Attorney General's order will be stated in writing and will be transmitted to all parties in the case and to the CAHO.
- If the Attorney General remands the case, the CAHO or the ALJ will conduct further proceedings consistent with the Attorney General's order.
- No specific time limit is established for the Attorney General's review.

(c) Final Agency Order

If the Attorney General enters an order adopting, modifying, or vacating (and not remanding) the final order, the Attorney General's order will become the final agency order on the date of the Attorney General's order.

8.5 - Judicial Review of Final Agency Orders

(a) Judicial Review of Final Agency Orders in Cases Under INA §§ 274A and 274C

A person or entity adversely affected by a final agency order in cases under INA §§ 274A and 274C may file a petition for review of the final agency order in the United States Court of Appeals for the appropriate circuit within 45 days of the date of the final agency order.

(b) Judicial Review of Final Agency Orders in Cases Under INA § 274B

Any person aggrieved by a final agency order in cases under INA § 274B may file a petition for review of the final agency order in the appropriate United States Court of Appeals for the appropriate circuit within 60 days of the date of the final agency order. The appropriate circuit is the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. See 28 C.F.R. § 68.57.

Part V - Miscellaneous

- Chapter 1 - Representation
- Chapter 2 - Facilities Protocols
- Chapter 3 - Naturalization Ceremonies
- Chapter 4 - EOIR Courts & Appeals System
- Chapter 5 - Other Resources

Chapter 1 - Representation

1.1 - Representation

Competent and professional pro bono representation can benefit immigration proceedings. As a general rule, a "pro bono representative" is an attorney or other representative specified in 8 C.F.R. § 1292.1 who provides legal representation without any present or future expectation of remuneration from the respondent (other than filing fees and nominal costs). Uncompensated initial consultations or initial court appearances, with the ultimate intention or goal of compensation by the respondent, are contrary to the spirit of pro bono representation. While an attorney or representative may be regularly compensated by an employing firm or organization, representation should be provided solely and honestly for the public good. *See American Bar Association Model Rules of Professional Conduct Rule* 6.1-6.2. Further, using the cover of potential pro bono representation as a means of soliciting clients when a significant motive for the solicitation is pecuniary gain is both contrary to the purpose of pro bono representation and a potential violation of EOIR's rules of professional conduct. *See* 8 C.F.R. § 1003.102(d).

The Office of Legal Access Programs (OLAP), part of EOIR's Office of Policy, works to improve the efficiency of immigration court hearings. OLAP programs and initiatives related to representation include:

- Recognition & Accreditation (R&A) Program
- List of Pro Bono Legal Service Providers
- Model Hearing Program
- BIA Pro Bono Project
- National Qualified Representative Program (NQRP) and other congressionally mandated "pilot innovation programs"

Further information about these OLAP's programs and initiatives are detailed throughout this Chapter. External training programs under the Office of Policy, Legal Education and Research Services, provide information to parties in proceedings are not representation programs.

1.2 - Pro Bono Representation

EOIR policy regarding pro bono representation is found in Policy Memorandum 21-08 in Part VII of the Policy Manual.

1.3 - Recognition & Accreditation (R&A) Program

Federal regulations at 8 C.F.R. § 1292.11-.20 allow non-attorney "Accredited Representatives" to represent aliens before the Department of Homeland Security (DHS) and EOIR, which includes the immigration courts and the BIA. These representatives are accredited through the Recognition and Accreditation (R&A) Program, which aims to increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice. Accredited Representatives may only provide immigration legal services through Recognized Organizations. Only non-profit, federally tax-exempt entities may apply to be recognized.

For further information, including procedures to apply for or renew recognition (Form EOIR-31) or accreditation (Form EOIR-31A), please visit the Recognition & Accreditation Program webpage. EOIR policy regarding administrative review of R&A Program determinations is found in Policy Memorandum 20-02 in Part VII of the Policy Manual.

1.4 - List of Pro Bono Legal Service Providers

EOIR policy regarding pro bono representation is found in Policy Memorandum 21-08 in Part VII of the Policy Manual.

1.5 - Model Hearing Program

The Model Hearing Program (MHP) is an educational program coordinated by the Office of Policy to improve the quality of advocacy before the immigration courts, as well as to increase levels of competent and professional pro bono representation. MHP provides hands-on immigration court training and is designed for those with little or no experience in immigration proceedings who are interested in representing indigent immigrants on a pro bono basis in immigration court.

All MHPs share a basic structure. First, substantive training in a specific area of immigration law is provided by the non-profit organization sponsoring the MHP. This is followed by a model hearing presided over by an immigration judge from the local immigration court. The in-court model hearing focuses on practice, procedure, and advocacy skills. Participants commit to a minimal level of pro bono representation throughout the year, and may receive training materials and CLE credit.

Invitations from organizations for EOIR employees to participate in an MHP should be sent to the Office of Policy. For further information please visit EOIR's website.

1.6 - BIA Pro Bono Project

The BIA Pro Bono Project promotes pro bono representation at the Board level. Through the BIA Pro Bono Project, EOIR assists in identifying potentially meritorious cases based upon criteria determined by the partnering volunteer groups. Once cases are identified and reviewed, case summaries are then distributed via email to pro bono representatives across the United States within two weeks of the filing of the appeal. Volunteers who accept a case under the Project then enter an appearance and proceed as usual. Although volunteers typically receive the file before a briefing schedule is issued, they may request additional time to file an appeal brief as appropriate. For further information about the BIA Pro Bono Project, please visit EOIR's website.

1.7 - National Qualified Representative Program

As part of enhanced procedural protections, EOIR's National Qualified Representative Program (NQRP) is a program that provides Qualified Representatives to certain unrepresented and detained respondents who are found by an immigration judge or the BIA to be incompetent to represent themselves in immigration proceedings.

EOIR carries out the NQRP through the effort of federal staff and a contract. For further information, please visit EOIR's website.

Chapter 2 - Facilities Protocols

- 2.1 - Security
- 2.2 - Electronic Devices

2.1 - Security

EOIR typically conducts proceedings in two general types of facilities: (1) federal or leased buildings controlled by the General Services Administration (non-detained), and (2) detention facilities controlled by DHS (detained). In any facility, individuals must pass through a security screening prior to entering the court, which may result in delays. Further, access to administrative offices in any facility is limited to authorized personnel and immigration court staff.

In each location, however, specific facility protocol varies, and visitors should check the EOIR website prior to arrival to ensure compliance. In addition, emergency circumstances (e.g., pandemic; natural disasters) may affect certain facilities' protocol. Please visit the EOIR website detailing operational status for further information.

General information in regard to both types is provided below.

Non-Detained Facilities

Courtroom security is of utmost concern. Building security is determined by each individual facility and detailed on the EOIR website.

All immigration judges are responsible for familiarizing themselves with what types of security resources are available to them (and under what circumstances) in their courtrooms. In unusual and appropriate circumstances, an immigration judge may adjourn a non-detained hearing for security reasons until those concerns have been appropriately addressed.

Detained Facilities

All individuals who visit or work in a detention facility—including immigration judges, staff, and visitors—must be aware of and comply with security guidelines and practices in place at the respective facilities, specifically as it relates to contraband.

Contraband is generally defined as goods or merchandise whose importation, exportation, or possession is prohibited. The definition of what is or is not contraband in a particular detention facility is left to the sole and absolute discretion of the facility administrator, i.e., the warden or officer-in-charge. The difference in security classifications between facilities often means that an item not considered contraband in one facility may be considered contraband in another. No standard definition of contraband applies to every facility.

The presiding immigration judge is responsible for determining if security measures are adequate to ensure the personal safety of those in the courtroom. If the immigration judge determines that existing security precautions are inadequate, the immigration judge may immediately request that the responsible officials upgrade security in the courtroom to an

appropriate level. Failure by such officials to comply with a reasonable request for increased security may warrant an adjournment of the scheduled hearing until the necessary level of courtroom security is available. Immigration judges may also request reduced or modified courtroom security, but the ultimate decision of whether to reduce or modify courtroom security lies with the responsible officials. Immigration judges must nonetheless commence a hearing if the responsible official denies their request to reduce or modify courtroom security.

Consequently, individuals who visit or work in a detention facility must be familiar with and cognizant of applicable security guidelines. Security guidelines and questions about such guidelines should be directed to the court administrator. The obligation, however, to become aware of and to fully comply with security guidelines applicable to a facility or facilities rests with each individual. Deviation from established security guidelines could be detrimental to the health and well-being of individuals inside the facility.

2.2 - Electronic Devices

This section outlines possession and use of electronic devices in EOIR space. However, in any immigration court or detention facility administered under agreement between EOIR and federal, state, or local authorities, the facility's rules regarding possession and use of electronic devices, those rules apply in addition to the rules described below. For example, in some facilities, individuals, including attorneys, are prohibited from bringing cellular telephones, laptop computers, and other electronic devices into the facility.

Nothing in this section shall be construed to restrict or interfere with the reasonable use of adaptive technology by a person with a disability.

Violators are subject to possible penalties by authority of the Federal Protective Service, per 40 U.S.C. § 1315 and 41 C.F.R. subtitle C, 102-74.365 thru 102-74.455.

Possession: 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. All electronic devices must be turned off in courtrooms and during hearings, unless otherwise authorized for attorneys or representatives of record or DHS attorneys representing the government, as described below.

Use: In courtrooms, only attorneys or representatives of record and attorneys from DHS representing the government are authorized to use laptop computers, electronic calendars, and other electronic devices commonly used to conduct business activities, provided they are used to conduct immediately relevant court and business-related activities. Such devices may only be used in silent/vibrate mode. The use of such devices must not disrupt the hearing, and the immigration judge has the discretion to prohibit the continued use of any electronic devices that pose a disruption to ongoing proceedings. Cellular telephones and other electronic devices must be turned off when not in use to conduct business activities in the courtroom. No device may be used by any person other than the immigration judge to record any part of a hearing.

At the discretion of the immigration judge, Board member, or administrative law judge, continued business-related use of otherwise authorized electronic devices may be deemed a disruption to proceedings and subsequently prohibited. Relatedly, immigration judges have discretion to impose other remedial measures to maintain proper order in the courtroom, under 8 C.F.R. § 1003.10(b) Similar discretion lies with Board members under 8 C.F.R. § 1003.1(d)(l)(ii) and administrative law judges under 28 C.F.R. § 68.28(a)(7) and (8).

Outside of courtrooms and hearings, electronic devices may be used by any person in non-recording mode, but they must be made silent, and usage must be limited and non-disruptive.

Chapter 3 - Naturalization Ceremonies

Immigration judges have authority to administer the Oath of Allegiance in administrative naturalization ceremonies conducted by DHS. 8 C.F.R. § 1337.2. Requests for an immigration judge to preside over a naturalization ceremony should be made to the Office of Policy or the Office of the Chief Immigration Judge.

Chapter 4 - EOIR Courts & Appeals System

The EOIR Courts & Appeals System (ECAS) is part of the agency's overarching information technology effort. The goal of ECAS is to phase out paper filing and processing and retain all records and case-related documents in electronic format. ECAS is being deployed in stages but will eventually be expanded to all courts and the BIA.

For further information, including a list of locations in which ECAS is currently deployed, Terms and Conditions, and a User Manual, please visit EOIR's website. In addition, visit the ECAS portal for registration and case information.

Chapter 5 - Other Resources

- 5.1 - Immigration Court Helpdesk/Immigration Court Online Resource
- 5.2 - Legal Orientation Program
- 5.3 - Legal Orientation Program for Custodians of Unaccompanied Alien Children

5.1 - Immigration Court Helpdesk/Immigration Court Online Resource

The Immigration Court Helpdesk (ICH) is a program available to non-detained respondents in five immigration courts. It is intended to be a live resource for aliens seeking general information for whom attending a scheduled orientation is not an option due to lack of knowledge, timing, or other factors. The services rendered at the ICH are not a substitute for legal advice.

The Immigration Court Online Resource (ICOR) is a centralized location for information and resources about immigration proceedings before EOIR that expands the agency's Immigration Court Helpdesk model to anyone with Internet access at any time. Like the ICH, ICOR is not a substitute for legal advice. To use this resource, please visit the ICOR website.

5.2 - Legal Orientation Program

The Office of Policy operates the general Legal Orientation Program (LOP), a program intended to provide information about immigration court procedures, and other basic information, to groups of detained aliens. These programs are not legal advice should not be considered a substitute for seeking and obtaining legal counsel. There are four components of the LOP, none of which constitute the provision of legal advice:

1) Group orientation - This general overview of immigration removal proceedings and forms of relief is open to aliens regardless of representation status and allows for general questions.

2) Individual orientation - This component provides an opportunity for unrepresented individuals to have a private conversation with a service provider with the intent of providing such an alien with generally applicable information to more specific questions without rendering legal judgment or providing legal advice.

3) Self-help workshops - This component provides aliens with general guidance on specific topics and ensures access to self-help legal materials.

4) Referral to Pro Bono Legal Services - Referrals to no-cost legal providers may occur as need and available providers are available.

The general LOP does not reduce an alien's detention time or length of proceedings, nor does it increase representation rates for detained aliens. EOIR manages the LOP through a contract to provide program services. EOIR has previously determined that the general LOP constitutes a wasteful program.

5.3 - Legal Orientation Program for Custodians of Unaccompanied Alien Children

As a program within the Office of Policy, the Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC) provides informational presentations to the custodians (*i.e.* non-parent, adult caregivers) of unaccompanied alien children (UAC) who are in removal proceedings.

The purpose of this program is to inform the children's custodians of their responsibilities to ensure the child's appearance at all immigration proceedings and to protect the children from mistreatment, exploitation, and trafficking (in fulfillment of the duties provided for in the Trafficking Victims Protection Reauthorization Act). EOIR works with the Department of Health and Human Services, Office of Refugee Resettlement, to carry out this program nationally.

Specifically, the LOPC educates custodians on:

- The immigration court process;
- The importance of children's attendance at removal hearings and consequences of failure to appear;
- Forms of immigration relief available to children in removal proceedings; and
- The custodians' responsibility to protect the children from mistreatment, exploitation, and human trafficking.

EOIR oversees the LOPC through a contract that includes management of the LOPC National Call Center. For further information, please visit EOIR's website.

Part VI - Operating Policies and Procedures Memoranda

All Operating Policies and Procedures Memoranda (OPPM) remaining in effect were issued prior to 2018. Thus, technical details throughout the documents in this Chapter reflect the period of the documents' enactments and may not represent current terminology. Such details include, but are not limited to, references to types of immigration proceedings, citations, contact information, and EOIR technology systems. Unless context indicates otherwise, any such references in the OPPM should be read to refer to the most current terminology.

Operating Policies and Procedures Memoranda

OPPM 25-01 (PDF) Asylum EAD Clock in Immigration Court Proceedings

BIA OPPM 24-01 (PDF) Classified Information at the Board of Immigration Appeals (accessible)

OPPM 24-01 (PDF) Classified Information in Immigration Court Proceedings (accessible)

OPPM 18-01 (PDF) Change of Venue *(Replaces OPPM 01-02)*

OPPM 17-04 (PDF) Applications for Cancellation of Removal or Suspension of Deportation that are Subject to the Cap

OPPM 17-03 (PDF) Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children (*Cancelled December 21, 2023, by DM 24-01*)

OPPM 10-01 (PDF) Procedures for Handling Requests for a Stipulated Removal Order

OPPM 09-02 (PDF) Protective Orders and the Sealing of Records in Immigration Proceedings *(Replaces OPPM 02-02)*

OPPM 05-04 (PDF) Security Guidelines in Detention Facilities

OPPM 05-03 (PDF) Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals

OPPM 05-02 (PDF) Procedures for Issuing Recusal Orders in Immigration Proceedings

OPPM 03-06 (PDF) Procedures for Going Off-Record During Proceedings *(Supplements OPPM 98-2)*

OPPM 01-01 (PDF) Immigration Court Evaluation Program

OPPM 99-5 (PDF) Implementation of Article 3 of the UN Convention Against Torture

OPPM 98-2 (PDF) Guidelines for Recording Immigration Hearings *(Replaces OPPM 83-3)*

OPPM 97-8 (PDF) Naturalization Oath Ceremonies

OPPM 97-7 (PDF) Procedures for Identifying Potential Battered Spouse/Battered Child Cases

OPPM 97-3 (PDF) Procedures for Credible Fear and Claimed Status Reviews (Interim)

OPPM 97-2 (PDF) Notices of Immigration Judge Hearings (Interim)

OPPM 93-1 (PDF) Immigration Judges Decisions and Orders

OPPM 88-9 (PDF) Courtroom Security

OPPM 84-9 (PDF) Processing Hearing Transcriptions

OPPM 84-1 (PDF) Case Priorities and Processing

Part VII - Policy Memoranda

Policy Memoranda (PM) that served the sole purpose of rescinding previous Operating Policies and Procedures Memoranda (OPPMs) are not included in the Policy Manual. The absence of those documents does not reverse their effect, and any policies canceled by those PM remain canceled.

PM 20-16, *OCAHO Settlement Officer Program*, has been incorporated into the OCAHO Practice Manual. Accordingly, it is not included as a separate document in the Policy Manual.

List of EOIR Policy Memoranda

PM 25-06 (PDF) Cancellation of Operating Policies And Procedures Memorandum 23-01

PM 25-05 (PDF) Cancellation of Policy Memorandum 21-26

PM 25-04 (PDF) Cancellation of Policy Memorandum 21-16

PM 25-03 (PDF) Cancellation of Director's Memorandum 22-02

PM 25-02 (PDF) EOIR's Core Policy Values

PM 24-01 (PDF) Updated Guidance for Receipt of Notices to Appear Filed by the Department of Homeland Security

PM 21-28 (PDF) Cancellation of Policy Memorandum 21-07 and New Method for Updating Adjournment, Call-Up, and Case Identification Codes

PM 21-27 (PDF) Terminology

PM 21-25 (PDF) Effect of Department of Homeland Security Enforcement Priorities

PM 21-24 (PDF) Cancellation of Policy Memorandum 21-10 and Information on EOIR Fees and Fee Waivers

PM 21-23 (PDF) Dedicated Docket

PM 21-22 (PDF) Cancellation of Policy Memorandum 21-09

PM 21-21 (PDF) Cancellation of Policy Memorandum 20-04

PM 21-20 (PDF) Cancellation of Policy Memorandum 19-12

PM 21-19 (PDF) Cancellation of Policy Memoranda 19-02 and 19-03

PM 21-18 (PDF) Revised Case Flow Processing Before the Immigration Courts

PM 21-17 (PDF) Cancellation of Policy Memorandum 21-05

PM 21-15 (PDF) Adjudicator Independence and Impartiality

PM 21-14 (PDF) Rulemakings and Federal Court Orders

PM 21-03 (PDF) Immigration Court Hearings Conducted by Telephone and Video Teleconferencing

PM 21-01 (PDF) Guidelines for the Implementation of the Settlement Agreement in *Mendez Rojas v. Wolf*

PM 20-12 (PDF) Adjudicating Applications for CNMI Resident Status and Extending the Asylum Application Bar for Certain Persons in the CNMI

PM 20-11 (PDF) Filings and Signatures

PM 20-09 (PDF) The Immigration Court Practice Manual and Orders

PM 20-07 (PDF) Case Management and Docketing Practices

PM 20-06 (PDF) Section 7611 of the National Defense Authorization Act of 2020, Public Law 116-92

PM 20-02 (PDF) Administrative Review of Recognition and Accreditation Determinations

PM 19-14 (PDF) Allegations of Misconduct by EOIR Adjudicators and Ex Parte Communications

PM 19-11 (PDF) "No Dark Courtrooms"

PM 19-10 (PDF) Policy for Public Use of Electronic Devices in EOIR Space

PM 19-09 (PDF) OCAHO Case Completion Goals

PM 19-07 (PDF) Identifying and Reporting Fraud and Abuse

PM 19-06 (PDF) Internal Reporting of Suspected Ineffective Assistance of Counsel and Professional Misconduct

PM 19-01 (PDF) New Format for Memoranda and Cancellation of OPPMs

List of EOIR Director’s Memoranda

DM 24-01 (PDF) Children's Cases in Immigration Court

DM 23-04 (PDF) Department of Homeland Security Enforcement Priorities and Prosecutorial Discretion Initiatives

DM 23-03 (PDF) The Role of Child Advocates in Immigration Court

DM 23-02 (PDF) Language Access in Immigration Court

DM 23-01 (PDF) The Status Docket

DM 22-08 (PDF) The Asylum Procedures Rule

DM 22-07 (PDF) Internet-Based Hearings

DM 22-06 (PDF) Friend of the Court

DM 22-05 (PDF) Cancellation of Policy Memoranda 19-05, 21-06, and 21-13

DM 22-04 (PDF) Filing Deadlines in Non-Detained Cases

DM 22-03 (PDF) Administrative Closure

DM 22-01 (PDF) Encouraging and Facilitating Pro Bono Legal Services

Part VIII - Uniform Docketing System Manual

Uniform Docketing System Manual (PDF)

Appendices

- Appx A - Directory
- Appx B - Org Chart
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- Appx D - Forms
- Appx E - Cover Pages
- Appx F - Cert. of Service
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- Appx K - Ex. Pleading
- Appx L - Ex. Oral Pleading
- Appx M - Ex. Crm. History
- Appx N - Ex. TOC
- Appx. O - Table of Changes

Appx A - Directory
Immigration Court Addresses

	Arizona		
Eloy	1705 E. Hanna Rd., Suite 366 Eloy, AZ 85131 520-466-3671	**Phoenix**	250 N. 7th Avenue #300 Phoenix, AZ 85007 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, Ste. 201A Adelanto, CA 92301 760-246-5404	Otay Mesa	7488 Calzada de la Fuente San Diego, CA 92154 Mailing Address:: P.O. Box 438150 619-661-5600 San Ysidro, CA 92143-8150
Imperial	2409 La Brucherie Road Imperial, CA 92251 760-370-5200	Sacramento	John Moss Federal Building 650 Capitol Mall, Suite 4-200 Sacramento, CA 95814 916-447-9301
Los Angeles - N. Los Angeles Street	300 North Los Angeles Street Room 4330 Los Angeles, CA 90012 213-576-4701	San Diego	880 Front Street, Suite 4240 San Diego, CA 92101 619-510-4500 619-557-6052
Los Angeles – West Los Angeles		San Francisco	100 Montgomery Street, Suite 800

Immigration Court	5245 Pacific Concourse Drive Los Angeles, CA 90045 310-335-2100		San Francisco, CA 94104 415-705-4415
		San Francisco (Detained)	630 Sansome Street, 4th Floor, Room 475 San Francisco, CA 94111 415-705-1033
Los Angeles - Van Nuys Boulevard	6230 Van Nuys Blvd. 3rd Floor, Suite 300 Van Nuys, CA 91401 818-904-5200	Santa Ana	1241 E. Dyer Road, Suite 200 Santa Ana, CA 92705 714-481-4900
Concord	1855 Gateway Boulevard Ste 850 Concord, CA 94520		
Colorado			
Aurora	3130 N. Oakland Street Aurora, CO 80010 303-361-0488	Denver	1961 Stout Street, Suite 3101 Denver, CO 80294 303-844-5815
Connecticut			
Hartford	AA Ribicoff Federal Building & Courthouse 450 Main Street Room 628 Hartford, CT 06103-3015 860-240-3881		
Florida			
Miami	One Riverview Square	Orlando	500 N. Orange Ave, Suite 1100

	333 S. Miami Avenue, Suite 700 Miami, FL 33130 305-789-4221		Orlando, FL 32801 407-244-8900
Miami Krome (Detained)	Krome North Processing Center 18201 SW 12th Street Miami, FL 33194 786-422-8700		
	Georgia		
Atlanta	180 Ted Turner Drive, SW, Suite 241 Atlanta, GA 30303 404-653-2140	Stewart	146 CCA Road PO Box 248 Lumpkin, GA 31815 229-838-1320
Atlanta (Annex)	Peachtree Summit Federal Building 401 W. Peachtree Street NW, Suite 2600 Atlanta, GA 30308 404-554-9400		
	Hawaii		
Honolulu	PJKK Federal Building 300 Ala Moana Blvd., Rm. 8-112 Honolulu, HI 96850 808-541-1870		
	Illinois		
Chicago	55 E. Monroe St., Suite 1500	Chicago Detained	536 Clark Street, Suite 340

	Chicago, IL 60603 312-220-0965		Chicago, IL 60605 312-294-8400
Indiana			
Indianapolis	Minton-Capehart Federal Building 575 N. Pennsylvania Street, Suite 617 Indianapolis, IN 46204 317-464-1399		
Louisiana			
LaSalle	830 Pine Hill Road P.O. Box 2179 Jena, LA 71342 318-335-6880	Oakdale	1900 E. Whatley Road Oakdale, LA 71463 318-335-0365
New Orleans	One Canal Place 365 Canal Street, Suite 500 New Orleans, LA 70130 504-589-3992		
Maryland			
Baltimore	George Fallon Federal Building 31 Hopkins Plaza, Rm. 440 Baltimore, MD 21201 410-962-3092	Hyattsville	3311 Toledo Road, Ste. 105 Hyattsville, MD 20782 301-955-3600
Massachusetts			
Boston	JFK Federal Building	Chelmsford	150 Apollo Drive, Suite 100

	15 New Sudbury Street Room 320 Boston, MA 02203 617-565-3080	Chelmsford, MA 01824 978-497-9000
	Michigan	
Detroit	P.V. McNamara Federal Building 477 Michigan Avenue, Suite 440 Detroit, MI 48226 313-226-2603	
	Minnesota	
Bloomington/Fort Snelling	Bishop Henry Whipple Federal Bldg. 1 Federal Drive, Suite 1850 Fort Snelling, MN 55111 612-725-3765	
	Missouri	
Kansas City	2345 Grand Boulevard, 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	110 North City Parkway, Suite 400 Las Vegas, NV 89106	

	702-458-0227		
New Jersey			
Elizabeth	625 Evans Street Room 148A Elizabeth, NJ 07201 908-787-1355	Newark	970 Broad Street, Room 1200 Newark, NJ 07102 973-645-3524
New Mexico			
Otero	26 McGregor Range Rd., Door #1 Chaparral, NM 88081 575-824-8900		
New York			
Batavia	4250 Federal Drive, Room F108 Batavia, NY 14020 585-345-4300	New York – Federal Plaza	26 Federal Plaza, 12th Floor, Room 1237 New York, NY 10278 917-454-1040
Buffalo	130 Delaware Avenue, Suite 410 Buffalo, NY 14202 716-551-3442	Ulster	Ulster Correctional Facility 750 Berme Road P.O. Box 800 Napanoch, NY 12458 845-647-2223
New York – Broadway	Ted Weiss Federal Building 290 Broadway, 15th Floor New York, NY 10007 212-240-4900	New York – Varick	201 Varick Street, Room 1140 New York, NY 10014 646-638-5766
North Carolina			
Charlotte	5701 Executive Center Drive, 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 Mailing Address: P.O. Box 505595 Saipan, MP 96950	
Ohio		
Cleveland	801 W. Superior Avenue Suite 13 - 100 Cleveland, OH 44113 216-802-1100	
Oregon		
Portland	1220 SW 3rd Avenue, Suite 500 Portland, OR 97204 503-326-6341	
Pennsylvania		
Philadelphia	Robert Nix Federal Bldg and Courthouse 900 Market Street, Suite 504 Philadelphia, PA 19107 215-717-2400	17402
Puerto Rico		

Guaynabo (San Juan)	San Patricio Office Center #7 Tabonuco Street, Room 401 Guaynabo, PR 00968-4605 787-749-4386		
Tennessee			
Memphis	Brinkley Plaza 80 Monroe Ave, Lower Level Suite G-10 Memphis, TN 38103 901-528-5883		
Texas			
Conroe	806 Hilbig Road Conroe, TX 77301 936-520-5400	Houston – Greenspoint Park	16800 Greenspoint Park Drive, 2nd Floor Houston, TX 77060 281-765-5900
Dallas	1100 Commerce Street, Suite 1060 Dallas, TX 75242 214-767-1814	Houston - S. Gessner Road	8701 S. Gessner Road, 10th Floor Houston, TX 77074 713-995-3900
El Paso	700 E. San Antonio Avenue Suite 750 El Paso, TX 79901 915-534-6020	Laredo	1406 Jacaman Rd., Suite B Laredo, TX 78041 956-523-6200
El Paso SPC	Service Processing Center 8915 Montana Avenue, Suite 100 El Paso, TX 79925 915-771-1600	Pearsall	566 Veterans Drive Pearsall, TX 78061 210-368-5700

Fort Worth IAC	819 Taylor Street, Suite 600 Fort Worth, TX 76102 817-333-0500	Port Isabel	Port Isabel Processing Center 27991 Buena Vista Blvd. Los Fresnos, TX 78566 956-254-5700
Harlingen	2009 West Jefferson Avenue Suite 300 Harlingen, TX 78550 956-427-8580	San Antonio	800 Dolorosa Street, Suite 300 San Antonio, TX 78207 210-472-6637
Houston – Jefferson Street	Continental Center II 500 Jefferson Street, Suite 300 Houston, TX 77002 713-286-4300		
Utah			
Salt Lake City	2975 South Decker Lake Drive Suite 200 West Valley City, UT 84119 801-524-3000		
Virginia			
Annandale	7619 Little River Turnpike, Suite 400 Annandale, VA 22003 703-343-4000	Richmond IAC	10 S. 6th Street Richmond, VA 23219 804-343-2900
Falls Church IAC	5107 Leesburg Pike Falls Church, VA 22041 703-756-8002	Sterling	21400 Ridgetop Circle, Suite 200 Sterling, VA 20166 703-674-4600
Washington			

Seattle	915 2nd Ave., Suite 613 Seattle, WA 98174 206-342-7200	Tacoma	1623 East J Street, Suite 3 Tacoma, WA 98421 253-779-6020

Automated Case Information Hotline

(800) 898-7180 or (240) 314-1500

24 hours a day, 7 days a week

Office of the Chief Immigration Judge Headquarters

Address

United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041

Phone

(703) 305-1247

8:00 a.m. to 5:00 p.m. (ET), Monday - Friday (except federal holidays)

Board of Immigration Appeals

Address

Board of Immigration Appeals
Clerk's Office
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

Reminders:

- Deliveries must be received during normal window hours.
- Window hours are: 8:00 am-4:30 pm (ET), Monday – Friday, except federal holidays.
- For further information, call (703) 605-1007.
- Use caution when there is a filing deadline.
- Deadlines are determined by when the mailing is received by the Clerk's Office.

When the intended recipient of correspondence is a particular person or office within the BIA, the sender should label the envelope or packaging to the attention of that person or office. Example: “ATTN: Oral Argument Coordinator.” The BIA uses a single address for delivery regardless of the means of delivery.

Phone

Clerk’s Office
(703) 605-1007
8:00 a.m. – 5:00 p.m. (EST), Monday – Friday (except holidays)

BIA Telephonic Instructions and Procedures System (BIA TIPS)
(703) 605-1007
24 hours a day, 7 days a week

Oral Argument Coordinator
(703) 605-1007
8:00 a.m. – 5:00 p.m. (ET), Monday – Friday (except federal holidays)

Emergency Stay Information
(703) 605-1007
24 hours a day, 7 days a week

Emergency Stay Unit
(703) 305-0093
9:00 a.am – 5:30 p.m. (ET), Monday - Friday (except federal holidays)

Office of the Chief Administrative Hearing Officer

Address

United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, VA 22041

Phone

(703) 305-0864

Fax

(703) 305-0803

Office of the General Counsel

Address

United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

Phone

(703) 305-0470

9:00 a.m. to 5:00 p.m. (ET), Monday – Friday (except federal holidays)

(A) Disciplinary Counsel - To send mail to the EOIR disciplinary counsel, please send it to the above OGC address with the line “Attn: Disciplinary Counsel." The Attorney Discipline program may also be reached by phone at (703) 305-0470.

(B) Fraud and Abuse Prevention Program - To reach the Fraud and Abuse Prevention Program directly, please use the contact information immediately below.

Address

United States Department of Justice
Executive Office for Immigration Review
Fraud and Abuse Prevention Program
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

Phone

(877) 388-3840
8:00 a.m. to 4:00 p.m. (ET), Monday – Friday (except federal holidays)

Email

EOIR.Fraud.Program@usdoj.gov

(C) Freedom of Information Act - To reach the FOIA Office directly, please use the contact information immediately below.

Address

U.S. Department of Justice
Executive Office for Immigration Review
Office of General Counsel – FOIA Service Center
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

Phone

(703) 605-1297

Email

EOIR.FOIARequests@usdoj.gov

Office of Policy

(A) Communications and Legislative Affairs Division

Address

United States Department of Justice
Executive Office for Immigration Review
Office of Policy
Communications and Legislative Affairs Division
5107 Leesburg Pike, Suite 1800
Falls Church, VA 22041

Phone

(703) 305-0289

9:00 a.m. – 5:00 p.m. (ET), Monday – Friday (except federal holidays)

Fax

(703) 605-0365

Email

PAO.EOIR@usdoj.gov

(i) Law Library and Information Research Center

Address

United States Department of Justice
Executive Office for Immigration Review
Office of Policy
Communications and Legislative Affairs Division
Law Library and Information Research Center

5107 Leesburg Pike, Suite 1800
Falls Church, VA 22041

Phone

(703) 605-1103
9:00 a.m. – 4:00 p.m. (ET), Monday – Friday (except federal holidays)

(B) Recognition and Accreditation Program

Address

United States Department of Justice
Executive Office for Immigration Review
Office of Policy
Office of Legal Access Programs
Attn: R&A Coordinator
5107 Leesburg Pike, Suite 1900
Falls Church, VA 22041

Email

R-A-Info@usdoj.gov

(C) List of Pro Bono Legal Service Providers

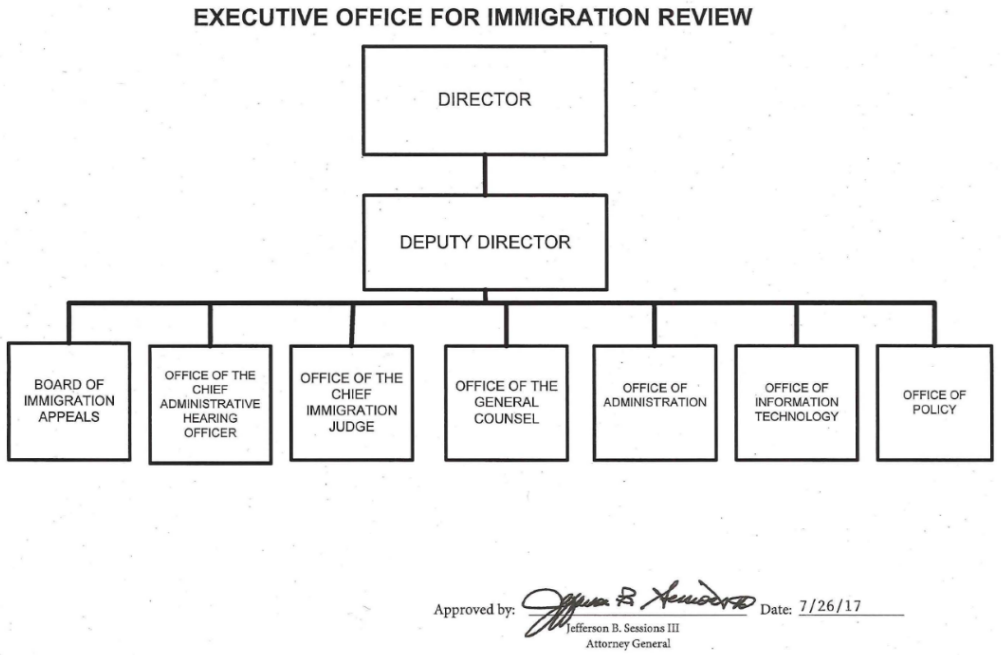
Address

United States Department of Justice
Executive Office for Immigration Review
Office of Policy
Office of Legal Access Programs
Attn: List Coordinator
5107 Leesburg Pike, Suite 1900
Falls Church, VA 22041

Email

ProBono.ListAdmin@usdoj.gov

Appx B - Org Chart
Organizational Chart



Executive Office for Immigration Review Organizational Chart

Appx C - Deadlines

These tables are 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. Adjudicators have discretion to set deadlines for pre-decision filings. The construction of "day" is discussed at Part II, 3.1(c)(1) (Delivery and Receipt, Construction of "day"); Part III 3.1(b)(1) (Delivery and Receipt, Construction of "day"); Part IV, 3.4 (Time Computations).

Note that this table contains only the most common deadlines for filings before EOIR.

OCIJ Deadlines

Filing		Deadline	Policy Manual Reference
Changes of address or telephone number	Alien	5 days after the alien's change of address or telephone number.	Part II, 2.2(c)-(d)
	Representative	Promptly.	Part II, 2.2(c)-(d)
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)	Part II, 3.1(b)(1)
	Responses	10 days after the filing is received by the immigration court (if alien is detained, deadline is determined by the immigration court)	Part II, 3.1(b); 5.12
Filings in advance of individual calendar hearing	Filings	15 days before the hearing (if alien is detained, deadline is determined by the immigration court)	Part II, 3.1(b)(2)

	Responses	10 days after the filing is received by the Immigration Court (if alien is detained, deadline is determined by the immigration court)	Part II, 3.1(b)(2)
Asylum Applications	Defensive Applications	within one year after arrival to the United States[1]	Part II, 3.1(b)(3)(A)
	Affirmative Applications	filed with DHS within one year after arrival to the United States*	Part II, 3.1(b)(3)(B)
Post-Decision Motions	Motions to Reopen	90 days after a final administrative order by the immigration judge, with certain exceptions	Part II, 3.1(b)(4); 5.7
	Motions to Reconsider	30 days after a final administrative order by the immigration judge	Part II, 3.1(b)(4); 5.8
	Motions to Reopen in absentia Removal Order	180 days after in absentia order, if based on exceptional circumstances	Part II, 3.1(b)(4); 5.9(d)(2)(A)
		at any time, if based on lack of proper notice	Part II, 3.1(b)(4); 5.9(d)(2)(B)

BIA Deadlines

Type of Filing		Deadline	Policy Manual Reference
Changes of address or telephone number	Alien	5 days after the alien's change of address or telephone number.	Part III, 2.2(c)-(d)
	Representative	Promptly	Part III, 2.2(c)-(d)
Immigration Judge	Notice of Appeal (Form EOIR-26)	30 days of the decision being	Part III, 4.5

Decision Appeals		rendered orally or mailed	
	Appeal brief (by appealing party)	21 days of the date of the briefing notice	Part III, 4.7(a)
	Response brief (by opposing party)	21 days of the appealing party's briefing deadline	Part III, 4.6(h); 4.7(a)(1)
		21 days of the date of briefing notice if the appeal is filed by a detained alien	Part III, 4.6(h); 4.7(a)(2)
	Reply brief (by appealing party)	21 days of the filing of the response brief, with motion	Part III, 4.6(f)
		14 days of the expiration of the briefing schedule, if the appeal is filed by a detained alien, with motion	
	Cross appeal brief (by either party)	21 days of the date of the briefing notice (both parties)	Part III, 4.7(a)(1)
Motions before the BIA	Motion to reopen	90 days of a final administrative order by the BIA, with certain exceptions	Part III, 5.6(c)
	Motion to Reconsider	30 days of a final administrative order by the BIA	Part III, 5.7(c)
	Motion brief	filed with motion	Part III, 5.4
	Response brief	13 days of the date of service of the motion brief	Part III, 5.4
Bond Appeals	Appeal of Immigration Judge Decision	30 days of the decision being rendered orally or mailed	Part III, 7.3(a)(2)(A)

	Appeal of DHS Decision	10 days of the date of the DHS decision	Part III, 7.3(a)(2)(B)
Discipline Cases	Response to a Notice of Intent to Discipline	30 days from the date of service of the Notice of Intent to Discipline	Part III, 11.7(b)
	Motion to Set Aside Default Order	15 days after date of service of default order	Part III, 11.7(b)(2)
	Appeal of Final Order of Discipline	30 days of the decision being rendered orally or mailed	Part III, 11.7(d)
Fines Appeals	DHS Fine Decision	15 days after date of mailing of the DHS decision	Part III, 10.3(b)(3)
Visa-related Appeals	Visa petition denial	30 days after service of the decision or mailed	Part III, 9.3(c)(3)
	Visa revocation	15 days after service of the revocation notice	Part III, 9.4(c)
	Visa revalidation denial	30 days after service of the decision	Part III, 9.5

OCAHO Deadlines

Type of Filing or Document	Deadline*	Policy Manual Reference
Application by non-attorney to represent a party before OCAHO	10 days after receipt of the Notice of Case Assignment	Part IV, 2.5(b)(2)
Answer to a complaint	30 days after service of the complaint	Part IV, 3.5(a); 4.1(a)
Response to a motion	10 days after service of the motion	Part IV, 4.1(b); 4.2(d)

Request for continuance of a scheduled hearing	No later than 14 days prior to the date of the scheduled hearing	Part IV, 4.6(b)
Motion for summary decision	If motion is filed by complainant, no fewer than 30 days after receipt of the complaint by the respondent	Part IV, 4.9
	If motion is filed by either party, no later than 20 days prior to the date of a scheduled hearing	Part IV, 4.9
Answers and objections to written interrogatories**	30 days after service of the interrogatories	Part IV, 5.2(c)
Answers to requests for production or inspection**	30 days after service of the request	Part IV, 5.3(c)
Responses to requests for admissions**	30 days after service of the request	Part IV, 5.4(b)
Notice of deposition (for depositions taken within the continental United States)**	At least 10 days in advance of the date and time of the deposition	Part IV, 5.5(b)
Notice of deposition (for depositions taken outside the continental United States)**	At least 20 days in advance of the date and time of the deposition	Part IV, 5.5(b)
Petition to revoke or modify a subpoena	10 days after service of the subpoena	Part IV, 5.6(f)
Response to a petition to revoke or modify a subpoena	Eight days after receipt of the petition to revoke or modify a subpoena	Part IV, 5.6(f)
Motion for corrections to transcript of a hearing	10 days after receipt of the transcript by the administrative law judge	Part IV, 6.5(c)
Additional documents or evidence after the record of hearing is closed	20 days after the close of the hearing	Part IV, 6.6(b)
Post-hearing briefs and proposed orders	20 days after the filing of the official hearing transcript	Part IV, 6.7

Request for administrative review of an interlocutory order	10 days after the date of entry of the interlocutory order	Part IV, 8.1(c)
Briefs related to a request for administrative review of an interlocutory order	21 days of the date of entry of the interlocutory order	Part IV, 8.1(d)
Request for administrative review of a final order	10 days of the date of entry of the final order	Part IV, 8.2(b)
Briefs related to a request for administrative review of a final order	21 days of the date of entry of the final order	Part IV, 8.2(b)

*The administrative law judge may, in his or her discretion, extend or modify some of the deadlines contained in this table. Additionally, the administrative law judge may establish specific date deadlines for certain filings in a case. Furthermore, if a party must take some action within a prescribed period after the service of a document, and the document is served by ordinary mail, five days will be added to the prescribed period. This five-day additional response period does not apply if a specific date deadline is otherwise specified by the CAHO or the ALJ, and does not apply if the response time is based on the date of entry of an order rather than on the date of service.

** Unless otherwise ordered by the administrative law judge, parties should not file requests for discovery or answers or responses thereto with the administrative law judge. The deadlines listed here are the deadlines for submitting a response to the requesting party, not to OCAHO. Of course, petitions and motions relating to discovery must be filed with the administrative law judge and served on the opposing party.

[1] 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).

Appx D - 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 courts, can be found on EOIR's website. Other forms, including forms beginning with “I-,” can be found on the USCIS website.

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 may 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 Part II, Chapter 11 (OCIJ) and Part III, Chapter 12 (BIA).

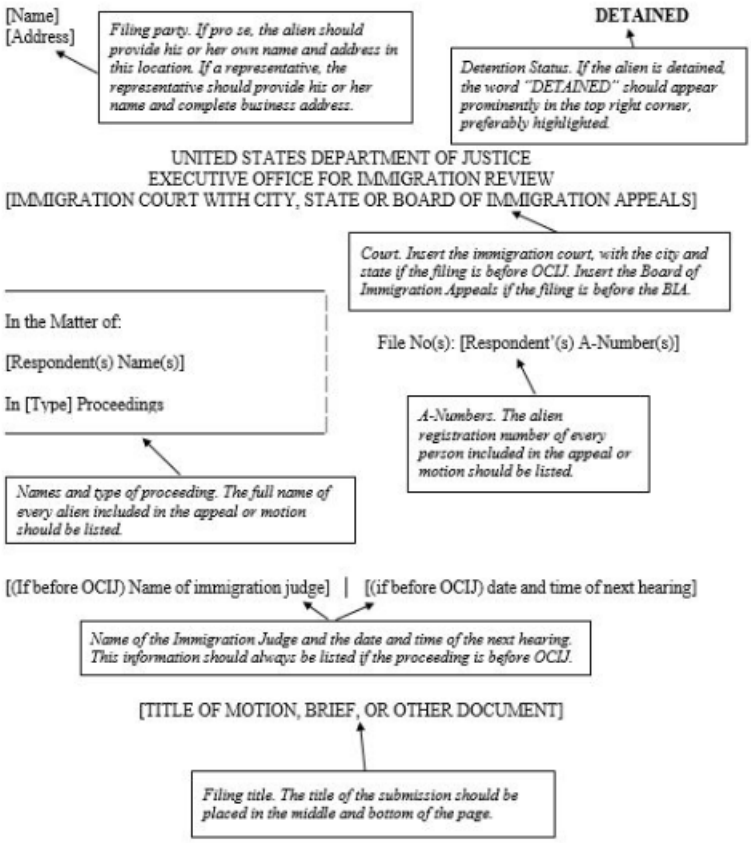
Purpose	Form	Name	Available From
Accredited representative application	Form EOIR-31A	Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative	OLAP
Adjustment of status	Form I-485	Application to Register Permanent Residence or Adjust Status	USCIS
Appeal of attorney discipline decision	Form EOIR-45	Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case	immigration court, BIA, OGC
Appeal of IJ Decision	Form EOIR-26	Notice of Appeal from a Decision of an Immigration Judge	Immigration court, BIA
Appeal of CIS Decision (AAO jurisdiction)	Form I-290B	Notice of Appeal or Motion	USCIS

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	USCIS
Appearance as a Representative (BIA)	Form EOIR-27	Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals	Immigration court, BIA
Appearance as a Representative (before an immigration court)	Form EOIR-28	Notice of Entry of Appearance as Attorney or Representative before the Immigration Court	Immigration court
Asylum, Withholding of Removal (restriction on removal), Convention Against Torture	Form I-589	Application for Asylum and for Withholding of Removal	Immigration court, USCIS
Attorney/Representative complaint form	Form EOIR-44	Immigration Practitioner Complaint Form	Immigration court, BIA, OGC
Cancellation of Removal (Non-Permanent Residents)	Form EOIR-42B	Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents	Immigration court
Cancellation of Removal (Permanent Residents)	Form EOIR-42A	Application for Cancellation of Removal for Certain Permanent Residents	Immigration court
Change of Address (cases pending before BIA)	Form EOIR-33/BIA	Alien's Change of Address Form / Board of Immigration Appeals	Immigration court, BIA
Change of Address (cases pending before an IC)	Form EOIR-33/IC	Alien's Change of Address Form / Immigration Court	Immigration court
Complaint in INA § 274B Case before OCAHO	Form EOIR-58	Unfair Immigration-Related Employment Practices Complaint Form	OCAHO
Fee Waiver (appeals or motions	Form EOIR-26A	Fee Waiver Request	Immigration court, 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

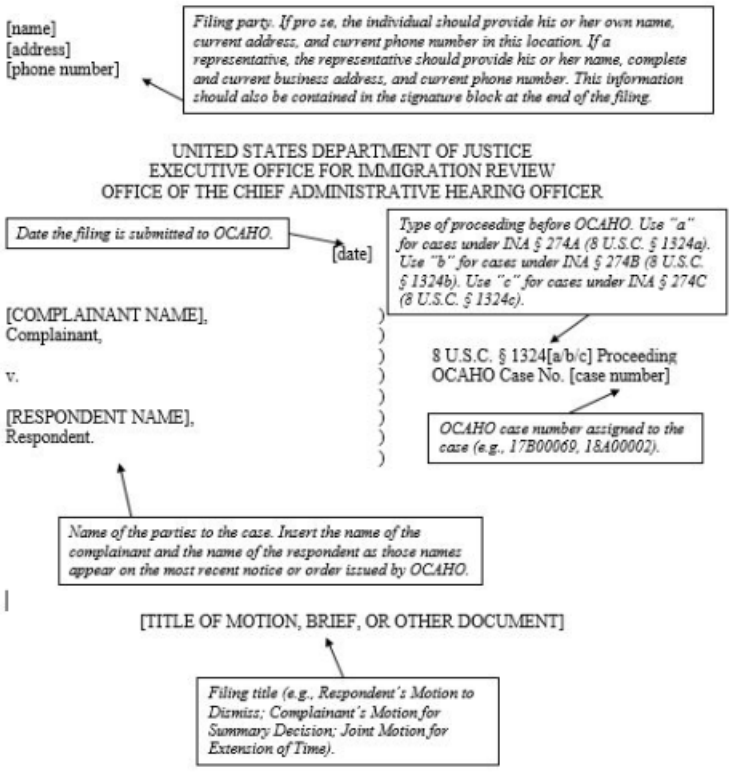
NACARA Suspension of Deportation/Special Rule Cancellation	Form I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal	USCIS
Recognized Organization Application	Form EOIR-31	Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization	OLAP
Request to be included on the List of Pro Bono Legal Service Providers in Immigration Proceedings	Form EOIR-56	Optional application for a non-profit organization, pro bono referral service, or private attorney to apply to be included on the List of Pro Bono Legal Service Providers.	OOD
Return To Unrelinquished Domicile	Form I-191	Application for Advance Permission to Return to Unrelinquished Domicile	USCIS
Subpoena in OCAHO Case	Form EOIR-30	OCAHO Subpoena Form	OCAHO
Suspension of Deportation	Form EOIR-40	Application for Suspension of Deportation	Immigration court
Temporary Protected Status	Form I-821	Application for Temporary Protected Status	USCIS
Visa Petition (Employment-Based)	Form I-140	Immigrant Petition for Alien Worker	USCIS
Visa Petition (Family-Based)	Form I-130	Petition for Alien Relative	USCIS
Waiver of Inadmissibility	Form I-601	Application for Waiver of Grounds of Inadmissibility	USCIS

Appx E - Cover Pages

Sample Cover Page for Filings with the Immigration Courts and the BIA



Sample Cover Page for Filings with OCAHO



Appx F - Cert. of Service

(a) Overview

All submissions regarding proceedings before the immigration court, the BIA, or OCAHO must include a "certificate of service" (or "proof of service"). See Chapter 6:(2) (Service on the Opposing Party). This Appendix provides guidelines on how to satisfy this requirement.

(b) Requirements

To satisfy the requirement to include a certificate of service, the filing party must do both of the following:

(1) Serve the opposing party

(A) Every time a party files a submission, the party must give, or "serve," a copy on the opposing party. If the filing party is an alien in proceedings, the opposing party is DHS. If the case is filed by an individual before OCAHO, the opposing party is the employer. If the employer is represented by an attorney, the attorney must be served with a copy of each filing with OCAHO.

(B) Give the immigration court, the BIA, or OCAHO a completed Proof of Service (or certificate of service for cases before OCAHO).

(c) Proof of service

(1) The filing party must submit a signed "proof of service" (or certificate of service for cases before OCAHO) along with the party's document(s). The proof of service (or certificate of service for cases before OCAHO) tells the immigration court/the BIA/OCAHO that the filing party has given a copy of the document(s) to the opposing party.

(d) Sample certificate of service

The parties do not have to use the samples contained in this Appendix. The filing party may write up his or her own certificate of service or certificate of service. However, these samples will satisfy the proof of service/certificate of service requirement if they are properly completed.

(e) Sending the certificate of service

Whenever a party has to supply a certificate of service, it should be stapled or otherwise attached at the end of the document(s) that the party is serving.

(d) Forms that contain a certificate of service

Some forms, such as the Application for Cancellation of Removal for Certain Permanent Residents (Form EOIR-42A) or the Notice of Appeal (EOIR-26), contain a certificate of service, which functions as a proof of service for the form. The filing party 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 are filed with the form. If the filing party includes supporting documents with a form that contains a certificate of service, the party must file a separate proof of service for those documents.

(e) Forms filed before the immigration court or BIA that do not contain a certificate of service

Forms that do not contain a certificate of service are treated like any other document. Therefore, the filing party must supply the certificate of service for those forms when filing before the immigration court or the BIA.

(f) Sample certificate of service for filings before the immigration court or the BIA

_____
(Name of alien(s) in proceedings)

_____
(A-Number of alien(s) in proceedings)

CERTIFICATE OF SERVICE

On _____, I, _____,
(*date*) (*printed name of person signing below*)

served a copy of this _____
(*type 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, ICE OPLA eService*)

_____ _____
(*signature*) (*date*)

(g) Sample certificate of service for filing before OCAHO

All OCAHO pleadings and briefs must be filed with a certificate of service.

CERTIFICATE OF SERVICE

I hereby certify that on [date of service], I have served this [name of document (e.g., Complainant's Motion for Summary Decision, Respondent's Answer, etc.)] on the following persons by [method of delivery* (e.g., ordinary mail, FedEx overnight delivery, etc.)] at the addresses indicated below:

[Party/representative name]
[Party/representative address]

[Additional party/representative name]
[Additional party/representative address]

[Signature of individual serving the document]

_____

[Name of individual serving the document]
[Address of individual serving the document]
[Phone number]

*Please note that the method of service used to deliver a particular filing must be the same for all parties served except where otherwise permitted by regulation.

Appx G - Cert. of Translation

(a) Certificate of translation

All submissions, if not in the English language, must be accompanied by a translation and certificate of translation. See Chapter 6:(3)(a) (Language and Translations).

(b) Sample certificate of translation

CERTIFICATE OF TRANSLATION

I, _____, am competent to translate from
(*name of translator*)

_____ language 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*)

(c) Sample certificate of sight translation

CERTIFICATE OF SIGHT TRANSLATION

I, _____, am competent to interpret between English and
(*name of translator*)

_____ and certify that I have read
(*language*)

_____
(*names of documents*)

to the respondent in _____. The respondent stated that he/she
(*language*)

understood its contents.

_____ _____
(*signature of translator*) (*typed/printed name of translator*)

_____
(*address of translator*)

_____
(*address of translator*)

_____
(*telephone number of translator*)

Appx H - Hotlines

Do you want to know the status of your case before an immigration judge or the Board of Immigration Appeals?

Automated Case Information Hotline

(800) 898-7180
(240) 314-1500

The Automated Case Information Hotline contains information regarding your case, including your next hearing date, asylum proceeding, 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?

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 BIA.

This service is available 24 hours a day, 7 days a week.

Appx I - Citations

(a) Legal Citations Generally

When filing papers before EOIR, 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. EOIR generally follows A Uniform System of Citation (also known as the "Blue Book") but diverges from that convention in certain instances. EOIR appreciates but does not require citations that follow the examples used in this Appendix. 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 BIA. 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 6:(3)(e) (Source Materials), Chapter 7:(19)(f) (Citation), Chapter 8:(6)(d) (Citation). As a practice, EOIR prefers italics in case names and publication titles, but underlining is an acceptable alternative. The citation categories are:

(1) Cases

(A) General guidance

(i) Abbreviations in case names - As a general rule, well-known agency abbreviations (e.g., DHS, INS, FBI, DOJ) 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*.

(ii) Short form of case names - After a case has been cited in full, a shortened form of the name may be used thereafter, with a reference to the specific page number that is cited. For example: *INS v. Phinpathya*, 464 U.S. 183 (1984); *Phinpathya*, 464 U.S. at 185; *Matter of Nolasco*, 22 I&N Dec. 632 (BIA 1999); *Nolasco*, 22 I&N Dec. at 635.

(iii) 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).

(iv) Citations to a dissent or concurrence - Citations to a dissent or concurrence should be indicated in a parenthetical notation. For example: *Matter of Artigas*, 23 I&N Dec. 99, 109-110 (BIA 2001) (dissent).

(B) Board of Immigration Appeals decisions

(i) Published decisions - Precedent decisions by the BIA are binding on the immigration courts, unless modified or overruled by the Attorney General or a federal court. All precedent BIA decisions are available on the EOIR website. 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).

(ii) Unpublished decisions - Citation to unpublished decisions is discouraged because these decisions are not binding on the immigration courts 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 A-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).

(iii) "Interim decisions" - While the BIA still assigns precedent decisions an interim decision number for administrative reasons, the proper citation is always to the volume and page number of the bound volume – the I&N Decision citation.

(iv) "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*.

(C) Attorney General Decisions - Precedent decisions by the Attorney General are binding on the immigration court and the BIA and should be cited in accordance with the rules for precedent decisions by the BIA. All precedent decisions by the Attorney General are available on the EOIR website. *Matter of Y-L-*, 23 I&N Dec. 270 (AG 2002).

(D) OCAHO Decisions

(i) Published Decisions - OCAHO publishes substantive decisions that may be cited and used as precedent in subsequent OCAHO cases. All precedent OCAHO decisions are available on the EOIR website. Precedent decisions should be cited in the form illustrated below. The citation must identify the case name, volume number, reference number, page number(s), and year of the decision. For cases published in a bound volume and on OCAHO's website (Volumes 1-8), the citation should be as follows: [*Complainant*] *v.* [*Respondent*], [Volume Number] OCAHO no. [Reference Number], [First Page of Case], [Specific Page Referred To] ([Year]). For example: *Ipina v. Mich. Jobs Comm'n*, 8 OCAHO no. 1036, 559, 574 (1999). For cases published only in loose-leaf volumes on OCAHO's website (Volumes 9 and up), the party should follow the above format but should omit the "First Page of Case," since it will always be "1." For example: *United States v. Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1157, 6 (2012). When the complainant in the case is the United States of America, "United States" should be used as the complainant's name in the case citation.

(ii) Unpublished decisions - Under the Administrative Procedure Act, an agency decision or order may not be "relied on, used, or cited as precedent by an agency against a party other than an agency" unless it has either been published or the party has actual and timely notice of the terms of the decision. 5 U.S.C. § 552(a)(2). Therefore, except in very limited circumstances, only published OCAHO decisions should be cited to and relied upon by parties. However, if an unpublished decision is cited, the party citing it must attach a copy of the decision, and should cite the decision according to the following format: [*Complainant*] *v.* [*Respondent*], [OCAHO Case No.] ([Date of Decision]) ([Title of Decision]). For example: *United States v. Felipe, Inc.*, OCAHO Case No. 89100151 (Oct. 11, 1989) (Order for Civil Money Penalty for Paperwork Violations).

(iii) Published decisions in subpoena cases - Published decisions in OCAHO subpoena matters should be cited according to the following format: *In re Investigation of* [*Respondent Name*], [Volume Number] OCAHO no. [Reference Number], [First Page of Case (if in Volumes 1-8)], [Specific Page Referred To] ([Year]). For example: *In re Investigation of Wal-Mart Stores, Inc.*, 5 OCAHO no. 754, 264, 265 (1995).

(iv) Short citation format - If a case has already been cited in a document, a short-form citation may be used for all subsequent citations to that case. The proper short citation format for OCAHO cases is: [*Shortened case name*], [Volume Number] OCAHO no. [Reference Number], at [Specific Page Referred To]. The shortened case name should be the complainant's name, unless the complainant is the United States, in which case the shortened case name should be the respondent's name. For example: *Ipina*, 8 OCAHO no. 1036, at 574; *Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1157, at 6. In the first example, the shortened case name is the complainant's name. In the second example, because the complainant was the United States, the shortened case name is the respondent's name.

(E) Federal and State courts

(i) 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: *Taylor v. United States*, 495 U.S. 575 (1990); *Singh v. Holder*, 749 F.3d 622 (7th Cir. 2014); *Velasquez-Escovar v. Holder*, _F.3d_, No. 10-73714 (9th Cir. 2014); *United States v. Madera*, 521 F. Supp. 2d 149 (D. Conn. 2007).

(ii) 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.").

(iii) 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).

(iv) 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).

(F) DHS decisions - Precedent decisions by DHS and the former INS should be cited in accordance with the rules for precedent decisions by the BIA.

(G) Briefs and exhibits

(i) 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). For OCAHO, the case caption should be cited, i.e., [Complainant name] v. [Respondent name], the title of the brief, [e.g., Respondent's Motion for Summary Judgment], the page number and the date.

(ii) Exhibits - Exhibits designated during a hearing should be cited as they were designated by the immigration judge or ALJ. 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. For OCAHO, exhibits to a brief should be cited by party and alphabetic or numeric tab and page, e.g., Respondent's Exhibit 3 at 5.

(2) Regulations

(A) General Guidance - There are two kinds of publications 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.

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).

(B) Code of Federal Regulations (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.

(i) Federal Register (Fed. Reg.) - Citations to regulatory material in the Federal Register should be used only when:

a. the citation is to information that will never appear in the C.F.R., such as a public notice or announcement;

b. the rule contains regulatory language that will be, but is not yet, in the C.F.R.;

c. the citation is to information associated with the rule but that will not appear in the C.F.R. (e.g., a preamble or introduction to a rule); or

d. 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).

(3) Statutes and Public Laws

(A) General Guidance

(i) 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), e.g., Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631. The only exception is the Immigration and Nationality Act, which is illustrated below.

(ii) Short Citations - The use of short citations is encouraged, but only after the full citation has been used.

b. Special Rule for the INA - Given the regularity with which the Immigration and Nationality Act is cited before EOIR, there is generally no need to provide the Public Law Number, the Stat. citation, or U.S.C. citation. EOIR will presume INA citations refer to the current language of the INA unless the year is provided. full - section xxx of the Immigration and Nationality Act; short - INA § xxx.

(B) State Statutes - State statutes should be cited as provided in A Uniform System of Citation (also known as the "Blue Book").

(C) 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.

(D) U.S. Code (U.S.C.) - 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.

(b) Frequently Cited Statutes

ADAA
Full: Section xxx of Anti-Drug Abuse Act of 1988 (ADAA), Pub. L. No. 100-690, 102 Stat. 4181
Short: ADAA § xxx

AEDPA
Full: Section xxx of Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214
Short: AEDPA § xxx

CCA
Full: Section xxx of Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631
Short: CCA § xxx

CPSA
Full: Section xxx of Adam Walsh Child Protection Act and Safety Act of 2006 (CPSA or Adam Walsh Act), Pub. L. No. 109-248, 120 Stat. 587.
Short: CPSA § xxx
Short: Adam Walsh Act § xxx

CSPA
Full: section xxx of Child Status Protection of 2002 (CSPA), Pub. L. No. 107-208, 116 Stat. 927
Short: CSPA § xxx

IIRIRA
Full: section xxx of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Division C of Pub. L. No. 104-208, 110 Stat. 3009-546
Short: IIRIRA § xxx

IMFA
Full: section xxx of Immigration Marriage Fraud Amendments of 1986 (IMFA), Pub. L. No. 99-639, 100 Stat. 3537
Short: IMFA § xxx

IMMACT90
Full: section xxx of Immigration Act of 1990 (IMMACT90), Pub. L. No. 101-649, 104 Stat. 4978
Short: IMMACT90 § xxx

INTCA
Full: section xxx of Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Pub. L. No. 103.416, 108 Stat. 4305, amended by Pub. L. No. 105-38, 111 Stat. 1115 (1997)
Short: INTCA § xxx

IRCA
Full: section xxx of Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359
Short: IRCA § xxx

IRFA
Full: section xxx of International Religious Freedom Act of 1988 (IRFA), Pub. L. No. 105-292, 112 Stat. 2787
Short: IRFA § xxx

LIFE
Full: section xxx of Legal Immigration and Family Equity Act (LIFE), Pub. L. No. 106-553, 114 Stat. 2762 (2002), amended by Pub. L. No. 106-554, 114 Stat. 2763 (2000)
Short: LIFE Act § xxx

MTINA
Full: section xxx of Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Pub. L. No. 102-232, 105 Stat. 1733
Short: MTINA § xxx

NACARA
Full: section xxx of Nicaraguan Adjustment and Central American Relief Act (NACARA), 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

TVPRA
Full: section xxx of William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044
Short: TVPRA § xxx

USA PATRIOT
Full: section xxx of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT), Pub. L. No. 107-56, 115 Stat. 272
Short: USA PATRIOT Act § xxx

VAWA
Full: section xxx of Violence Against Women and Department of Justice Reauthorization Act of 2013 (VAWA 2013), Pub. L. No. 113-4, 127 Stat. 54
Short: VAWA (2013) § xxx

(c) Legislative History

Because sources of legislative history (i.e., the Congressional materials leading up to the passage of a law such as committee reports) are often difficult to locate, parties should 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.

To locate legislative history, try the Library of Congress's website. Citation to common electronic sources is encouraged.

(A) 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 specific section number of the bill, if applicable, (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. 744, 113th Cong., 1st. Sess., 159 Cong. Rec. 4499-501 (daily ed. June. 17, 2013)
Short: 159 Cong. Rec. at 4499-01

(B) Committee 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 at* 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

(C) 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 (v) information about what is being cited (such as the identity of the person testifying and context for the testimony). For example:

Operations of the 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)

(d) Treaties and International Materials

(A) Commonly Cited 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
or
UNHCR Handbook para.

U.N. Protocol on Refugees
Full: Article xxx of the United Nation's Protocol Relating to the Status of Refugees, Jan. 31, 1967, [1968] 19 U.S.T. 6223
Short: U.N. Refugee Protocol, art. xxx

(e) Publications and Communications by Government Agencies

(A) General Guidance - 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, parties should use common sense when citing agency documents and err on the side of more information, rather than less. If the document may be difficult for EOIR to locate, include a copy of the document with your filing. 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 website.

(B) Policy Manual - The EOIR Policy Manual is not a 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: EOIR Policy Manual, Chapter II.2(3) (DATE)
Short: Policy Manual, Chap. II.2.3

(C) Forms - Forms should first be cited according to their full name and number. A short citation form may be used thereafter. See Appendix D: 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.

(D) 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 2017 Human Rights Report* (Apr. 2018)*, available at* https://www.state.gov/documents/organization/277277.pdf
Short: *2017 Nigeria Human Rights Report*

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

(E) 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)

(F) Foreign Affairs Manual - Citations to the State Department's Foreign Affairs Manual should include the section number, and if applicable, the note number. For example:

Full: Vol. 9, Foreign Affairs Manual § 41.81 note 9.1
Short: 9 FAM 41.81

(G) 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

(H) 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:

full: Memorandum from Donald Neufeld, Acting Assoc. Dir. of Domestic Operations, USCIS, to Field Leadership, re: Applicability of Section 245(k) to Certain Employment-Based Adjustment of Status Applications filed under Section 245(a) of the Immigration and

Nationality Act, at x (July 14, 2008*), available at*
http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2008/245%28k%29_14jul08.pdf
Short: Neufeld Memo (July 2008)

(f) Commonly Cited Commercial Publications

(A) General Guidance

(i) No universal citation form - In immigration proceedings, parties cite to a wide variety of commercial texts and publications. If a document is difficult to locate, parties should include a copy of the document with filings (or a website for it) and make clear reference to that document in the filing.

(ii) No endorsements or disparagements - The specific publications listed below are frequently cited in filings before the BIA. Their inclusion in this guidance is not an endorsement of the publication, nor is omission from this guidance a disparagement of any other publication.

(iii) Use of quotation marks, italics or underlining, and first initials - For purposes of appeals, motions, briefs, and other filings, EOIR recommends using 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 (use of first initials is appropriate where multiple authors share the same last name).

(iv) 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. Use a short form that clearly refers to the full citation. Always use page and/or section numbers, whether the publication is cited in full or in shortened form.

(v) 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

(vi) Bender's Immigration Bulletin - 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

(vii) 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

(viii) Immigration Law and Procedure - Citations to treatises require particular attention to detail 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

(ix) Interpreter Releases - Citations to this publication should indicate 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 *Interpreter Releases* 1273 (Sept. 26, 1994)
Short: Wettstein at 1274

(x) 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:

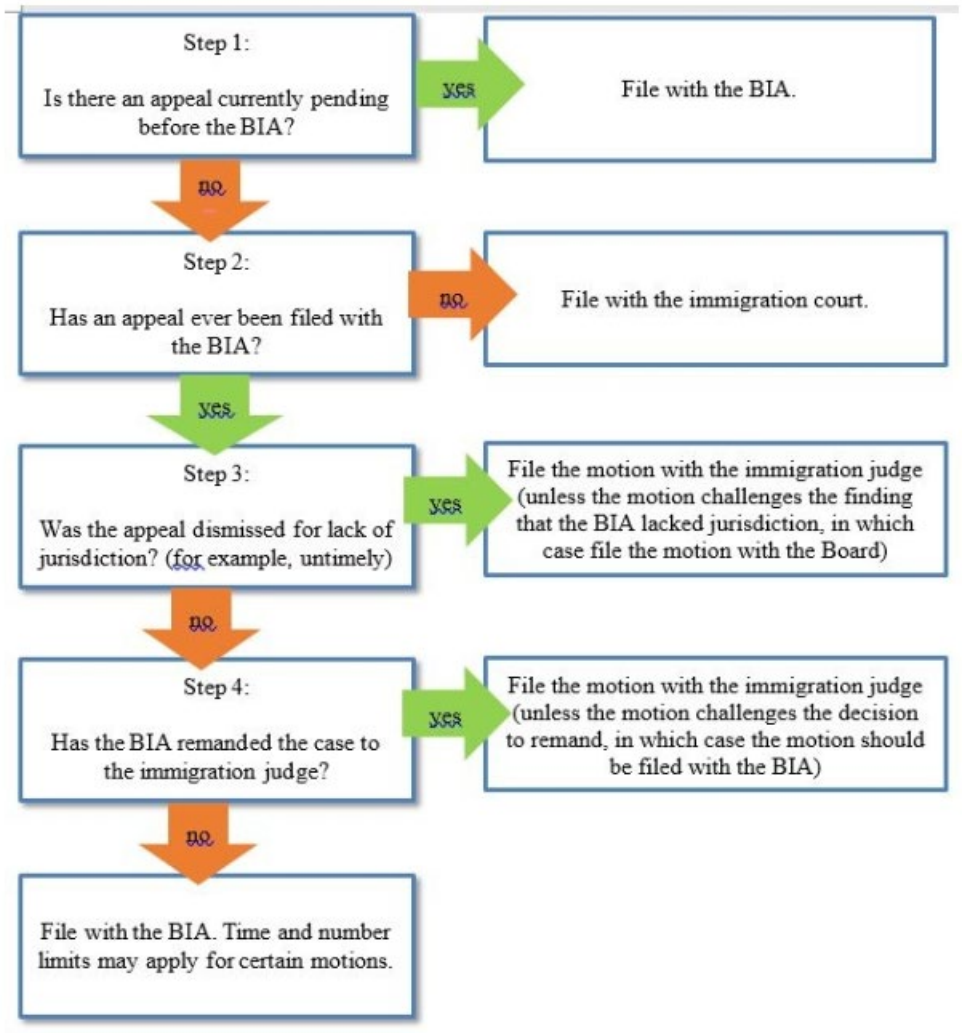
Full: Hurwitz, "Motions Practice Before the Board of Immigration Appeals," 20 San Diego L. Rev. 79 (1982)
Short: Hurwitz, 20 San Diego L. Rev. at 80

(xi) 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

Appx J - Filing Motions
Where to File a Motion

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 Part II, 5.3 (Motion Limits); Part III, 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 Part II, 3.1 (Delivery and Receipt); Part III, 3.1 (Delivery and Receipt). Please also refer to Part 1, Chapter 4 (ECAS) for information about electronic filing options.



Appx K - Ex. Pleading
Sample Written Pleading

Prior to entering a pleading, parties are expected to have reviewed the pertinent regulations, as well as Chapter 7: Removal Proceedings 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:	
[the respondent's name]	**File No.: [the respondent's A-Number]**
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 in accordance with the deadline directed by the Immigration Judge, or, if the Immigration Judge has not directed a deadline, in accordance with the deadlines contained in the EOIR Policy Manual. 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).

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

[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:	
[the respondent's name]	**File No.: [the respondent's A-Number]**
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

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

Note – Please refer to the sample certificates of translation in Appendix G: Sample Certificates of Translation as relevant or needed.

Appx L - Ex. Oral Pleading
Sample Oral Pleading

Prior to entering a pleading, parties are expected to have reviewed the pertinent regulations, as well as Chapter 7: Removal Proceedings Before Immigration Judges.

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) # [charge number(s) from NTA] to [charge number(s) from NTA].

[and/or]

[he or she] denies allegation(s) # [charge number(s) from NTA] to [charge number(s) from NTA].

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 DHS.

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.

Appx M - Ex. Crm. History
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 6: Filings with the Immigration Court and the BIA.

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	1/22/1989 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	07/27/1991 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	10/07/1995 CO11475A	PC 490.5 Misd: petty theft.	Pleaded not guilty. Dismissed.	None.

Appx N - Ex. TOC
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 6: Filings with the Immigration Court and the BIA.

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A. Hardship

B. Physical Presence

C. Good Moral Character

D. Biographical Information

E. State and Federal Tax Returns

Appx. O – Immigration Court Adjournment Codes

Adjournment Codes with Definitions & Clock Status		
Code	**Definition**	**Clock Status**
01	Respondent to seek representation	Stops
1A	Case transferred from non-detained to detained docket	Runs
1B	Case transferred from detained to non-detained docket	Runs
02	Preparation - respondent/attorney/representative	Stops
03	Preparation - DHS	Runs
3A	IJ detail	Runs
04	DHS or DHS administrative file unavailable for hearing	Runs
4A	Technical malfunction (not video)	Runs
4B	Interpreter must leave	Runs
4C	Interpreter appeared but wrong language or dialect	Runs
4E	ROP missing	Runs
4F	Telephonic interpreter unavailable	Runs
5A	Hearing advanced by respondent/attorney/rep. motion	Neutral

Adjournment Codes with Definitions & Clock Status		
Code	**Definition**	**Clock Status**
5D	Hearing advanced by DHS motion	Neutral
7A	DHS application process - respondent initiated	Runs
8A*	IJ completion prior to hearing	Stops
8B*	IJ completion at hearing	Stops
09	Respondent in custody (DHS/HHS/IHP) not presented	Runs
9A	Docket Management (Postpone hearing)	Runs
9B	Docket Management (Advance hearing)	Neutral
9C	Docket Management (Case moved/Off-Calendar)	Runs
9V	Vacated master calendar hearing	Runs
10	Notice sent/served incorrectly	Runs
11	Other no-show by respondent/respondent's attorney or rep.	Stops
12	Other respondent/respondent's attorney/representative request	Stops
13	Insufficient time to complete hearing	Runs

Adjournment Codes with Definitions & Clock Status		
Code	**Definition**	**Clock Status**
17	MC to IC - merits hearing	Runs
22	Respondent or Rep. rejected earliest hearing	Neutral
25	To allow for scheduling of priority case	Runs
26	Respondent request for an in-person hearing	Runs
27	DHS request for an in-person hearing	Runs
28	IJ determined and in-person hearing is necessary	Runs
30	Consolidation with family members	Runs
31	RC to SC merits hearing	Runs
32	Interpreter not ordered	Runs
33	Interpreter ordered, but FTA	Runs
34	IJ leave	Runs
36	Respondent delayed records/fingerprint check	Stops
44	Cooperating witness/law enforcement	Runs
45	Joint request of both parties	Runs

Adjournment Codes with Definitions & Clock Status		
Code	**Definition**	**Clock Status**
46	Video malfunction	Runs
47	New Charge filed by DHS	Runs
48	Interpreter appeared but disqualified	Runs
59	Court closure/postponement	Runs
61	Appointment of Qualified Representative	Runs
62	Competency	Runs
64	IJ reassignment	Runs
66	DHS delayed due to biometrics	Runs
67	IJ has a public speaking engagement	Runs
68	IJ Attending a CLE course	Runs
74	Public Health (illness of the parties)	Runs
99	Data entry error	Runs
F4	FERM resets	Runs
PD	Prosecutorial Discretion	Runs

Adjournment Codes with Definitions & Clock Status		
Code	**Definition**	**Clock Status**
RD	**Reserved decision suspension/cancellation**	**Runs**
RO	**Reset order**	**Runs**
RR	**Reserved decision**	**Runs**
T4	**T42 resets**	**Runs**
TQ	**Placed in trial queue**	**Runs**

*The EAD clock runs when this adjournment code is used for a decision granting a change of venue.

Call-Up Codes	
Code	**Definition**
AB	**Respondent/Attorney/Representative to file brief (not appeal)**
DD	**Decision of the IJ is delayed due to extenuating circumstances during a continued detention review hearing**
DS	**Status docket**

Call-Up Codes	
Code	**Definition**
IA	**Interlocutory appeal filed by DHS to appeal the denial of a motion for protective order**
IB	**DHS to file brief (other than for appeal)**
MR	**Pending IJ response to motion or request - motion for change of venue; motion for termination; request for continuance, etc.**
OA	**Off Calendar Initiative Response - Respondent agreed to go Off Calendar**
OB	**Off Calendar Initiative Response - DHS agreed to go Off Calendar**
OC	**Off Calendar Initiative Response**
OD	**Off Calendar Initiative Response - DHS opposed to go Off Calendar**
OR	**Off Calendar Initiative Response - Respondent opposed to go Off Calendar**
RA	**Relief Applications**
RC	**DHS to provide records checks**
RI	**DHS to file response to Reset Order**
RO	**Respondent/Attorney/Representative to file response to Reset Order**
RR	**Reserved Decision**

Call-Up Codes	
Code	**Definition**
SA	**Respondent/Attorney/Representative to file supporting documents**
SI	**DHS to file supporting documents**
SR	**Pending State Department response to asylum application**
WP	**Written Pleadings**

Case Identifiers	
Code	**Definition**
4M	**NTA not filed within 120 days of EPRD**
AL	***Al Otro Lado* Litigation**
AM	**Pilot AMI**
AO	**Asylum Office Rule**
AU	**Address Unknown**
BR	***Brito* Class Action Litigation**

Case Identifiers	
Code	**Definition**
C1	**Central America 2018**
CD	**Civil Detention Hearing**
CF	**Caseflow Management Process**
DD	**Dedicated Docket**
DS	**Status Docket**
EC	**SEP-C (for child)**
EM	**Electronic Monitoring**
EP	**SEP-P (for parent)**
FA	**Family Units**
FL	***Franco* Litigation**
FM	**Family Expedited Removal Management**
HC	**Home Curfew**
IR	**Interim Final Rule**
MP	**Migrant Protection Protocol**

Case Identifiers	
Code	**Definition**
MR	**Medez-Rojas Case**
OC	**Off Calendar Initiative**
PB	**EOIR *Pro Bono* Representation**
PG	**Pangea Legal Services**
PL	**Padilla Class Members**
PO	**Protective Order**
PP	**Presidential Proclamation Case**
PT	**Pre-Trial/Hearing**
RD	**Reserved Suspension Decision**
RO	**Reset Order Work Flow**
SR	**Stipulated Removal**
SX	**Stipulated Removal Order - Denied**
TM	**Triage Master**
UP	**UPM Grace Period**

Case Identifiers	
Code	**Definition**
VG	***Vangala* Settlement**

Image

Immigration Court Adjournment Codes

April 2024

Respondent-Related Adjournments		EAD Clock Effect
Respondent to seek representation	01	Stops
Preparation - respondent/attorney/representative	02	Stops
Other no-show by respondent/respondent's attorney or rep.	11	Stops
Other respondent/respondent's attorney/representative request	12	Stops
Respondent or Rep. rejected earliest hearing	22	Neutral
Respondent request for an in-person hearing	26	Runs
Consolidation with family members	30	Runs
Respondent delayed records/fingerprint check	36	Stops
Joint request of both parties	45	Runs
Hearing advanced by motion	5A	Neutral
DHS application process – respondent initiated	7A	Runs

DHS-Related Adjournments		EAD Clock Effect
Preparation - DHS	03	Runs
DHS or DHS administrative file unavailable for hearing	04	Runs
Respondent in custody (DHS/HHS/IHP) not presented	09	Runs
DHS request for an in-person hearing	27	Runs
Cooperating witness/law enforcement	44	Runs
New charge filed by DHS	47	Runs
Hearing advanced by motion	5D	Neutral
DHS delayed due to biometrics	66	Runs
Prosecutorial Discretion	PD	Runs

Court Administrators & Advanced Users Only		EAD Clock Effect
Docket Management (Postpone hearing)	9A	Runs
Docket Management (Advance hearing)	9B	Neutral
Docket Management (Case moved Off-Calendar)	9C	Runs

IJ-Related Adjournments		EAD Clock Effect
Insufficient time to complete hearing	13	Runs
IJ determined an in-person hearing is necessary	28	Runs
IJ leave	34	Runs
IJ detail	3A	Runs
Interpreter appeared but wrong language or dialect	4C	Runs
IJ reassignment	64	Runs
IJ has a public speaking engagement	67	Runs
IJ Attending a CLE course	68	Runs
Reserved decision suspension/cancellation	RD	Runs
Reserved decision	RR	Runs

Operational Adjournments		EAD Clock Effect
Notice sent/served incorrectly	10	Runs
MC to IC – merits hearing	17	Runs
Case transferred from non-detained to detained docket	1A	Runs
Case transferred from detained to non-detained docket	1B	Runs
To allow for scheduling of priority case	25	Runs
RC to SC merits hearing	31	Runs
Interpreter not ordered	32	Runs
Interpreter ordered, but FTA	33	Runs
Video malfunction	46	Runs
Interpreter appeared but disqualified	48	Runs
Technical malfunction (not video)	4A	Runs
Interpreter must leave	4B	Runs
ROP missing	4E	Runs
Telephonic interpreter unavailable	4F	Runs
Court closure/postponement	59	Runs
Appointment of Qualified Representative	61	Runs
Competency	62	Runs
Public Health (illness of the parties)	74	Runs
IJ completion prior to hearing	8A*	Stops
IJ completion at hearing	8B*	Stops
Data entry error	99	Runs
Vacated master calendar hearing	9V	Runs
FERM resets	F4	Runs
T42 resets	T4	Runs
Placed in trial queue	TQ	Runs
Reset order	RO	Runs

***The EAD clock runs when this adjournment code is used for a decision granting a change of venue.**

Call-Ups		
Respondent/Attorney/Representative to file brief (not appeal)	AB	
Decision of the IJ is delayed due to extenuating circumstances during a continued detention review hearing	DD	
Status Docket	DS	
Interlocutory appeal filed by DHS to appeal the denial of a motion for protective order	IA	
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Pre-Trial/Hearing	PT	
Reserved Suspension Decision	RD	
Reset Order Work Flow	RO	
Stipulated Removal	SR	
Stipulated Removal Order – Denied	SX	
Triage Master	TM	
UPM Grace Period	UP	
Vangala Settlement	VG	

Appx. P. - Table of Changes

FOR DIRECTOR REVIEW REGARDING OTHER DOCUMENTS IN ARCHIVE.

The most recent version of the Immigration Court Practice Manual and BIA Practice Manual, along with the associated table of changes, can be accessed through the archives.