

**LOCAL OPERATING PROCEDURES  
UNITED STATES IMMIGRATION COURT  
BUFFALO & BATAVIA, NEW YORK**

**These rules are adopted pursuant to the authority of 8 C.F.R. § 1003.40 for the purpose of facilitating the convenient, efficient, and orderly conduct of the business of the Immigration Courts in Buffalo and Batavia, New York.**

PROCEDURE 1. PRE-TRIAL MOTIONS PRACTICE

- A. In addition to complying with 8 C.F.R. § 1003.23(a), all written pre-hearing motions shall be accompanied by a proposed order in duplicate for signature by the Immigration Judge. Proposed orders must conform to the format contained in Appendix E. All written pre-trial motions will be decided on the basis of the written record unless the Immigration Judge determines that oral argument is necessary.
- B. A written motion under this procedure or pursuant to 8 C.F.R. § 1003.23(a) must be responded to by the opposing party within ten (10) days of being served in person, or within thirteen (13) days if served by mail, by filing the response with the Immigration Court and upon service to the opposing party. Upon order of the Immigration Court, for good cause shown, a different time may be set for responses to pre-trial motions. **PRE-TRIAL MOTIONS NOT RESPONDED TO WILL BE DEEMED UNOPPOSED PURSUANT TO 8 C.F.R. § 1003.23(a).**
- C. Pursuant to 8 C.F.R. § 1003.32(a), the parties must use a certificate of service that conforms to the format in Appendix D.
- D. Motion to Withdraw/Substitute Representation
1. Motions for withdrawal of representation shall be made in writing to the assigned Immigration Judge setting forth:
    - a. The reason(s) for the withdrawal;
    - b. That a good faith effort was made to locate alternate representation with a recitation of the specific efforts made, including referral to appropriate bar associations or other organizations.
    - c. That the client was notified of the date, time, and place of any scheduled hearing(s) before the Immigration Judge; of the necessity of appearing at such hearing; and of the consequences of failure to appear.
  2. Such motion must be filed no later than thirty (30) days prior to the next Individual

Calendar hearing date. No time limitation applies to Master Calendar hearings. Motions not timely filed will only be granted by the Immigration Judge for good cause shown.

3. Substituted counsel or representative shall forthwith file with the Immigration Court a properly completed **Form EOIR-28, Notice of Entry of Appearance As Attorney or Representative Before Immigration Judge**.

E. Motions for Change of Venue

In addition to complying with 8 C.F.R. §§ 1003.20 and 1003.23(a), all written motions for change of venue shall contain Respondent's plea to the allegation(s) and charge(s) contained in the charging document; a designation of a country in the event of removal or a refusal to designate such a country; the relief from removal, if any, to be sought by Respondent; the date and time of the scheduled hearing before the Immigration Judge; and the name of the Immigration Judge if any hearings have occurred prior to the filing of the motion to change venue. Please note that a request for a change of venue does not toll the 1 year filing deadline for asylum applications.

PROCEDURE 2. CONTINUANCES

Parties seeking a continuance of any scheduled hearing before an Immigration Judge shall file a written motion for continuance no less than fifteen (15) calendar days prior to the scheduled hearing. The motion shall set forth the reason(s) that a continuance is requested. Unless notified by the Immigration Judge that a motion for continuance has been granted, all parties must attend the hearing and be prepared to proceed. Motions for continuance within the fifteen (15) day period prior to the hearing will be considered only in the discretion of the Immigration Judge for good cause shown.

PROCEDURE 3. TRIAL PREPARATION

A. At the Master Calendar hearing, the parties shall be prepared as follows:

1. Respondent shall be prepared to respond to the allegation(s) contained in the charging document, and designate a country of removal.
2. Respondent shall be prepared to indicate all relief applications to be made, if any.
3. Respondent shall submit any motions for subpoenas in accordance with Procedure 1 of these Rules and 8 C.F.R. §§ 1003.35(b) and 1287.4.
4. Both parties shall be prepared to state (in hours) the estimated time needed to present the case and request, if needed, the presence of an interpreter at the

Individual Calendar hearing.

5. The Department of Homeland Security (DHS) shall be prepared to state its position on all issues and applications for relief.
6. Time of Arrival: All aliens/attorneys must timely appear at the court and signify their presence by signing in at the Immigration Court reception window. If counsel wishes to have his/her appearance waived, in addition to the alien's, he/she may indicate as such on any proposed order submitted to the Immigration Court. As a matter of courtesy, if attorneys appear at the Immigration Court and personally sign in prior to the time set for their hearing, their cases will be called first in the order of counsel appearance. Attorneys arriving later than the time of the scheduled hearing will be called in the normal order of arrival as reflected by the sign-in sheet posted at the Immigration Court reception window.

B. In lieu of a personal appearance at the Master Calendar hearing, appearance may be entered as follows:

1. A written pleading by counsel for the respondent may be filed with the Immigration Court. The written pleading must be in compliance with the written pleading format at Appendix B and be coupled with a Motion to Waive Presence at the Master Calendar hearing, pursuant to 8 C.F.R. § 1003.25(a). The pleading and the Motion to Waive Presence must be filed no less than ten (10) calendar days prior to the scheduled Master Calendar hearing. The motion must be accompanied by a proposed order in compliance with the order format approved by this Immigration Court. **UNLESS SUCH ORDER IS SIGNED BY THE IMMIGRATION JUDGE, THE RESPONDENT'S PRESENCE IS NOT EXCUSED.**

Additional matters may be set forth in the written pleading, supplementing the written pleading format, in the discretion of the submitting party.

For the approved formats for the written pleadings, the waiver of presence at the Master Calendar hearing, and the proposed order, see the attached Appendix of the Local Operating Procedures.

2. A telephonic hearing request may be made in lieu of a personal appearance. Such requests must be filed no less than ten (10) calendar days prior to the scheduled Master Calendar hearing, and must be coupled with a Motion to Waive Presence at the Master Calendar hearing, pursuant to 8 C.F.R. § 1003.25(a). The motion must be accompanied by a proposed order in compliance with the order format approved by the Immigration Court. **UNLESS SUCH ORDER IS SIGNED BY THE IMMIGRATION JUDGE, THE RESPONDENT'S PRESENCE IS NOT EXCUSED.**

- C. At the Individual Calendar hearing, both parties shall be prepared to present all remaining testimony and evidence on all issues, including rebuttal.

#### PROCEDURE 4. GENERAL

**All matters shall proceed at the time and date scheduled for hearing. Parties shall be prepared to go forward with their cases.**

#### PROCEDURE 5. FILING PROCEDURE

- A. In addition to complying with 8 C.F.R. § 1003.32, all documents and applications submitted for consideration by the Immigration Judge shall be two-hole punched at the top of the page with holes 2 3/4 inches apart. Where there are more than one exhibits and documents in support of a motion or claim, they shall be paginated and shall have as the first page a table of contents with page number identification. The use of bottom-aligned exhibit tabs with letter designations is required for multiple documents. **SUBMISSIONS NOT IN COMPLIANCE WILL NOT BE ACCEPTED NOR WILL THEY BE CONSIDERED.**
- B. Except for asylum applications, which must be filed in open court, in addition to complying with 8 C.F.R. §§ 1003.31 and 1003.32, all proposed exhibits, applications and briefs must be filed with the Immigration Court no later than fifteen (15) calendar days prior to the scheduled Individual Calendar hearing, unless otherwise authorized or directed by the Immigration Judge. The Immigration Court may refuse to accept late-filed documents by any party.
- C. Attorneys shall name all proposed witnesses they intend to present at Immigration Court and provide a brief offering as to each witness' testimony. All proposed witness lists, along with the offer, must be filed with the Immigration Court no later than fifteen (15) days prior to the scheduled Individual Calendar hearing, unless otherwise directed by the Immigration Judge, or where good cause is shown. Failure to comply with this procedure may result in the Immigration Court rejecting the witnesses and returning the documents to the originating party.

#### PROCEDURE 6. PRE-HEARING STATEMENT OF POSITION

Pursuant to 8 C.F.R. §§ 1003.21 and 1003.31, at the Immigration Judge's discretion, parties may be required to provide a pre-trial memorandum.

APPENDIX TO LOCAL OPERATING PROCEDURES

TABLE OF CONTENTS

- (A) Written Pleading in Removal Proceedings
  
- (B) Motion to Waive Presence at Master Calendar Hearing
  
- (C) Order Waiving Appearance, Setting Due Date for Applications, and Setting Trial Date
  
- (D) Certificate of Service
  
- (E) Proposed Order Format

*Note: The formats provided in these appendices should be adapted as appropriate to suit the particular circumstances of the proceeding.*



8. It is requested that a \_\_\_\_\_ language interpreter be provided.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney/Representative for Respondent

I, \_\_\_\_\_, attest to my full knowledge and understanding of my rights set forth in 8 C.F.R. § 1240.10. I waive a further explanation of such rights by this Immigration Court.

I have been advised of, and understand, the consequences of filing a frivolous asylum application pursuant to INA §§ 208(d)(4)(A) and 208(d)(6).

Further, I understand the consequences of failing to appear for a removal proceeding as set forth in INA § 240(b)(5) or a scheduled date of departure. I knowingly and voluntarily waive the oral notice required by INA § 240(b)(7).

Finally, I understand that in accordance with 8 C.F.R. § 1003.15(d)(2), if my address changes I must notify the Immigration Court within 5 days of such change by completing and mailing Form EOIR-33.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Respondent

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION COURT  
UNITED STATES IMMIGRATION COURT  
BUFFALO, NEW YORK**

In the Matter of:                    )  
  )  
  )  
Respondent                            )  
\_\_\_\_\_ )

File No: \_\_\_\_\_

In Removal Proceedings

**Motion to waive appearance at Master Calendar Hearing**

Upon completing and timely submitting the Written Pleading Statement, consistent with the Written Pleading format for this Immigration Court, Respondent, through counsel, requests a waiver of his/her appearance at the Master Calendar hearing scheduled for \_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney/Representative for Respondent



**CERTIFICATE OF SERVICE**

CASE NAME: \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_,

I caused \_\_\_\_\_ (Indicate who is being served)

to be served the \_\_\_\_\_ (Describe the documents being served)

(Check one)

\_\_\_\_\_ by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid and depositing the same with the United States Postal Service to the person at the address set forth below.

\_\_\_\_\_ by causing to be personally delivered a true copy thereof to the person at the address set forth below.

\_\_\_\_\_ by (specific either Federal Express, United Parcel Service, etc.) to the person at the address set forth below.

\_\_\_\_\_ by certified mail, return receipt requested, to the person at the address set forth below.

(ADDRESS OF THE PERSON BEING SERVED)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

\_\_\_\_\_, 200\_\_\_\_\_.

\_\_\_\_\_  
Signature

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
BUFFALO, NEW YORK**

In the Matter of:            )  
  )  
  )  
Respondent                    )  
\_\_\_\_\_                          )

File No: \_\_\_\_\_  
  
In Removal Proceedings

ON BEHALF OF DHS:

ON BEHALF OF RESPONDENT:

**ORDER**

(INSERT BODY OF THE PROPOSED ORDER)

DONE AND ORDERED this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, at  
Buffalo, New York.

\_\_\_\_\_  
U.S. Immigration Judge