



AMERICAN IMMIGRATION LAW FOUNDATION

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VIA E-MAIL: eoir.regs@usdoj.gov

Re: EOIR docket number 1471
RIN No. 1125-AA52
Comment to Proposed Rule “Jurisdiction and Venue in Removal Proceedings”
(72 Fed. Reg. 14494 (March 28, 2007))

Dear Mr. Chapman:

The American Immigration Law Foundation (AILF) and the American Immigration Lawyers Association (AILA) jointly submit the following comments to the proposed rule “Jurisdiction and Venue in Removal Proceedings,” 72 Fed. Reg. 14494 (March 28, 2007).

AILF is a non-profit organization founded in 1987 to increase public understanding of immigration law and policy, to promote public service and professional excellence in the immigration law field, and to advance fundamental fairness, due process, and basic constitutional and human rights in immigration law and administration. AILA is a voluntary bar association of more than 10,000 attorneys and law professors practicing and teaching in the field of immigration and nationality law. Its mission includes the

advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field.

1. The proposed rule is ambiguous in that it does not address how the location of the hearing will initially be designated.

The purpose of the proposed rule is to provide “greater clarity and consistency of interpretation” with respect to venue determinations. The rule fails to carry out this purpose, however, in that it does not address how the initial venue for a removal hearing is actually designated. Rather, the proposed rule is limited to identifying which of several locations that may be involved in a removal proceeding (e.g., location of the respondent; the IJ; the attorneys or witness; or the administrative control court) will be labeled the “venue” of the removal proceedings.

Specifically, the rule states that “venue lies at the designated place of the hearing” as identified on either the charging document or the initial notice of hearing. 72 Fed. Reg. at 14497, amending 8 CFR §1003.20(a). What is entirely missing from the rule is any discussion of how DHS or EOIR makes the initial determination of the location that is to be listed on the charging document or initial notice of hearing.¹ Without some guidelines on this critical initial decision, there is no assurance of consistency of interpretation. Instead, EOIR is free to apply different standards in different cases. Furthermore, EOIR is free to change its policy with respect to where removal hearings will take place without notice to the public or an opportunity for comment. Thus, certainty and consistency in venue determinations is undermined.

Any regulation with respect to venue should incorporate these elements, which are absent from this proposed rule. Moreover, any changes to the proposed regulation that incorporates these elements should be republished with notice to the public and an opportunity to comment.

2. In identifying which of several locations will be labeled the “venue” of the removal proceeding, the interim rule pays insufficient attention to governing statutory language and prevailing case law.

The identification of the “venue” of a removal proceeding is necessary primarily for purposes of carrying out the statutory instruction on venue determinations for petitions for review. The statute requires that a petition for review “shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.” 8 USC §1252(b)(2). Numerous courts have found that this statutory

¹ While the supplementary information in the Federal Register notice cites an example in which the hearing location is set at the detention center where the respondent is being held, 72 Fed. Reg. at 14495, there is nothing in the proposed rule itself that indicates that this alone is – and will remain – the determining factor in all cases.

requirement is not jurisdictional.² Instead, it is a venue requirement that is subject to waiver and other equitable doctrines.³ As with all venue provisions, the convenience of the parties is the underlying consideration.⁴

In *Ramos v. Ashcroft*, 371 F.3d 948, 949 (7th Cir. 2004), the court interpreted the meaning of the statutory phrase “completed the proceedings” found in 8 USC §1252(b)(2), and concluded that this phrase required that a petition for review be filed where “the immigration court is located.” *See also Georcely v. Ashcroft*, 375 F.3d 45, 48 (1st Cir. 2004) (reaching this as a “tentative conclusion” but holding that the government’s objection to venue had been forfeited). In *Ramos*, the court discussed the possibility of regulations that deemed proceedings completed in *both* the location of the immigration court and the location of the respondent, but ultimately determined that:

[A]ll regulations could do, in the absence of a statutory amendment, would be to offer the alien a choice; the statute itself ensures that the alien may petition for review in the circuit where the immigration court is located.

Ramos, 371 F.3d at 949.

In the supplementary information to the proposed regulations, EOIR does not adequately address the *Ramos* holding, its interpretation of the statute, and its impact on implementation of these regulations in, at the very least, the Seventh Circuit. To the contrary, we believe that the proposed regulations may conflict with *Ramos*. As a result, adoption of this proposed rule will likely be unenforceable in the Seventh Circuit and could well lead to a split in the circuits in how § 1252(b)(2) is implemented. As such, the Seventh circuit’s suggestion makes sense: the regulations instead could be fashioned to offer a choice as to where a petition for review could be filed, and in this way “distribute judicial review more widely among the courts of appeals.” *Ramos, id.* As they are currently written, however, they fail to adequately address the statutory language and the Seventh Circuit precedent interpreting it.

² *See, e.g., Moreno-Bravo v. Gonzales*, 463 F.3d 253, 259-60 (2d Cir. 2006); *Jama v. Gonzales*, 431 F.3d 230, 233 (5th Cir. 2005); *Bonhometre v. Gonzales*, 414 F.3d 442, 446 n. 5 (3d Cir. 2005); *Georcely v. Ashcroft*, 375 F.3d 45, 49 (1st Cir. 2004); *Nwaokolo v. INS*, 314 F.3d 303, 306 n.2 (7th Cir. 2002).

³ *See, e.g., Wilson v. Gonzales*, 471 F.3d 111, 116-17 (2d Cir. 2006) (applying a “manifest injustice” standard); *Georcely v. Ashcroft*, 375 F.3d 45, 49 (1st Cir. 2004) (objection to venue waived if not timely asserted); *Nwaokolo v. INS*, 314 F.3d 303, 306 n.2 (7th Cir. 2002) (same).

⁴ *See, e.g., Wilson v. Gonzales*, 471 F.3d at 116; *Georcely v. Ashcroft*, 375 F.3d at 49.

3. Conclusion

As explained above, the proposed rule is both ambiguous and unsatisfactory in its treatment of the issue of how venue is determined for removal proceedings. We urge EOIR to reconsider these regulations in light of these comments.

Sincerely,

American Immigration Law Foundation
American Immigration Lawyers Association