

7 Other Proceedings before Immigration Judges

7.1 Overview

While the vast majority of proceedings conducted by Immigration Judges are removal proceedings, Immigration Judges have jurisdiction over other kinds of proceedings as well. This chapter provides a brief overview of these other kinds of proceedings. They include:

- deportation proceedings and exclusion proceedings
- rescission proceedings
- limited proceedings, including:
 - credible fear proceedings
 - reasonable fear proceedings
 - claimed status review
 - asylum-only proceedings
 - withholding-only proceedings

Removal proceedings are discussed in Chapter 4 (Hearings before Immigration Judges). Additional proceedings conducted by Immigration Judges are discussed in the following chapters:

Chapter 9	Detention and Bond
Chapter 10	Discipline of Practitioners

7.2 Deportation Proceedings and Exclusion Proceedings

(a) In general. —

(i) Replaced by removal proceedings. — Beginning with proceedings commenced on April 1, 1997, deportation and exclusion proceedings have been replaced by removal proceedings. See generally INA §§ 239, 240, 8 C.F.R.

§§ 1003.12 et seq., 1240.1 et seq. However, Immigration Judges continue to conduct deportation and exclusion proceedings in certain cases that began before April 1, 1997.

(ii) Compared with removal proceedings. — The procedures in deportation and exclusion proceedings are generally similar to the procedures in removal proceedings. See Chapters 2 (Appearances before the Immigration Court), 3 (Filing with the Immigration Court), 4 (Hearings before Immigration Judges), 5 (Motions before the Immigration Court), 6 (Appeals of Immigration Judge Decisions). However, deportation and exclusion proceedings are significantly different from removal proceedings in areas such as burden of proof, forms of relief available, and custody. Accordingly, parties in deportation and exclusion proceedings should carefully review the laws and regulations pertaining to those proceedings. The information in this chapter is provided as a general guideline only.

(b) Deportation proceedings. —

(i) Order to Show Cause. — Deportation proceedings began when the former Immigration and Naturalization Service (INS) filed an Order to Show Cause (Form I-221) with the Immigration Court after serving it on the alien in person or by certified mail. See former INA § 242B(a)(1), 8 C.F.R. § 1240.40 et seq. See also Chapter 1.2 (Function of the Office of the Chief Immigration Judge). Similar to a Notice to Appear (Form I-862), an Order to Show Cause (Form I-221) is a written notice containing factual allegations and charge(s) of deportability.

(ii) Hearing notification. — In deportation proceedings, hearing notices from the Immigration Court are served on the parties, personally or by certified mail, at least 14 days prior to the hearing.

(iii) Grounds of deportability. — The grounds for deportation that apply in deportation proceedings are listed in former INA § 241. In some cases, those grounds are different from the grounds of deportability in removal proceedings. Compare former INA § 241 (prior to 1997) with current INA § 237.

(iv) Forms of relief. — For the most part, the same forms of relief are available in deportation proceedings as in removal proceedings. However, there are important differences. Parties in deportation proceedings should carefully review the relevant law and regulations.

(v) Appeals. — In most cases, an Immigration Judge's decision in a deportation proceeding can be appealed to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions).

(c) Exclusion proceedings. —

(i) Notice to Applicant Detained for Hearing. — Exclusion proceedings began when the Immigration and Naturalization Service (INS) filed a Notice to Applicant for Admission Detained for Hearing before an Immigration Judge (Form I-122). See former INA § 242(b), 8 C.F.R. § 1240.30 et seq. The Form I-122 is a written notice containing the charge(s) of excludability. Unlike the Order to Show Cause, the Form I-122 *does not* contain factual allegations.

(ii) Hearing notification. — In exclusion proceedings, the alien must be given a reasonable opportunity to be present at the hearing. Note that, in exclusion proceedings, notice to the alien is not governed by the same standards as in deportation proceedings. See *Matter of Nafi*, 19 I&N Dec. 430 (BIA 1987).

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

(iv) Grounds of excludability. — The grounds for exclusion are listed in the former INA § 212. In some cases, the grounds of excludability in exclusion proceedings are different from the grounds of inadmissibility in removal proceedings. Compare former INA § 212 (prior to 1997) with current INA § 212.

(v) Forms of relief. — For the most part, the same forms of relief are available in exclusion proceedings as in removal proceedings. However, there are important differences. Parties in exclusion proceedings should carefully review the relevant law and regulations.

(vi) Appeals. — An Immigration Judge's decision in an exclusion proceeding can be appealed to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions).

7.3 Rescission Proceedings

(a) In general. — In a rescission proceeding, an Immigration Judge determines whether an alien's status as a lawful permanent resident should be "rescinded," or taken away, because alien was not entitled to become a lawful permanent resident. See generally 8 C.F.R. § 1246.1 et seq. An alien's lawful permanent resident status may not be rescinded if more than 5 years have passed since the alien became a lawful permanent resident. See INA § 246(a).

(b) Notice of Intent to Rescind. — A rescission proceeding begins when the Department of Homeland Security personally serves an alien with a Notice of Intent to Rescind. The alien has 30 days to submit a sworn answer in writing and/or request a hearing before an Immigration Judge. A rescission hearing is held if the alien files a timely answer which contests or denies any allegation in the Notice of Intent to Rescind or the alien requests a hearing.

(c) Conduct of hearing. — Rescission proceedings are conducted in a manner similar to removal proceedings. See Chapter 4 (Hearings Before Immigration Judges).

(d) Appeal. — An Immigration Judge's decision in a rescission proceeding can be appealed to the Board of Immigration Appeals.

7.4 Limited Proceedings

(a) In general. — Certain aliens can be removed from the United States without being placed into removal proceedings. However, in some circumstances, these aliens may be afforded limited proceedings, including credible fear review, reasonable fear review, claimed status review, asylum-only proceedings, and withholding-only proceedings.

(b) Classes of aliens. — The following aliens can be removed from the United States without being placed into removal proceedings. These aliens are afforded limited proceedings as described below.

(i) Expedited removal under INA § 235(b)(1). — The following aliens are subject to "expedited removal" under INA § 235(b)(1):

- aliens arriving at a port of entry without valid identity or travel documents, as required, or with fraudulent documents
- aliens interdicted at sea (in international or U.S. waters) and brought to the United States
- aliens who have not been admitted or paroled into the United States and who have not resided in the United States for two years or more
- individuals paroled into the United States after April 1, 1997, and whose parole has since been terminated

(A) Exceptions. — The following aliens are *not* subject to expedited removal under INA § 235(b)(1):

- lawful permanent residents
- aliens granted refugee or asylee status
- aliens seeking asylum while applying for admission under the visa waiver program
- Cuban nationals arriving by air at a port of entry
- minors, unless they have committed certain crimes

(B) Limited proceedings afforded. — As described below, aliens subject to expedited removal under INA § 235(b)(1) are afforded the following proceedings:

- if the alien expresses a fear of persecution or torture, the alien is placed into “credible fear proceedings,” as described in subsection (d), (below)
- if the alien claims to be a United States citizen or a lawful permanent resident, or that he or she has been granted refugee or asylee status, the alien is allowed a “claimed status review,” as described in subsection (f), (below)

(ii) Expedited removal under INA § 238(b). — Aliens who are not lawful permanent residents and who have been convicted of aggravated felonies are subject to “expedited removal” under INA § 238(b). If such an alien expresses a fear of persecution or torture, the alien is placed into “reasonable fear proceedings.” See subsection (e), below.

(iii) Reinstatement of prior orders under INA § 241(a)(5). — Under INA § 241(a)(5), aliens who are subject to reinstatement of prior orders of removal are not entitled to removal proceedings. If such an alien expresses a fear of persecution or torture, the alien is placed into “reasonable fear proceedings.” See subsection (e), below.

(iv) Stowaways. — If a stowaway expresses a fear of persecution or torture, he or she is placed into credible fear proceedings. See INA § 235 (a)(2), subsection (d), below.

(v) Others. — In certain circumstances, the aliens listed below may be placed into asylum-only proceedings. See subsection (g), below.

- crewmembers (D visa applicants)
- certain cooperating witnesses and informants (S visa applicants)
- visa waiver applicants and visa waiver overstay
- aliens subject to removal under INA § 235(c) on security grounds

(c) Custody in limited proceedings. — An alien subject to limited proceedings may be detained during the proceedings. Immigration Judges have no jurisdiction over custody decisions for these aliens.

(d) Credible fear proceedings. — Credible fear proceedings involve stowaways and aliens subject to expedited removal under INA § 235(b)(1). See subsections (b)(i), (b)(iii), above. If such an alien expresses a fear of persecution or torture to the Department of Homeland Security (DHS) immigration officer upon being detained by DHS or applying to enter the United States, the alien is interviewed by a DHS asylum officer who evaluates whether the alien possesses a credible fear of persecution or torture. See generally INA § 235(b)(1)(B).

(i) Credible fear standard. — “Credible fear of persecution” means that there is a significant possibility that the alien can establish eligibility for asylum under INA § 208 or withholding of removal (“restriction on removal”) under INA § 241(b)(3). The credibility of the alien’s statements in support of the claim, and other facts known to the reviewing official, are taken into account. 8 C.F.R. §§ 208.30(e)(2), 1003.42(d).

“Credible fear of torture” means there is a significant possibility that the alien is eligible for withholding of removal (“restriction on removal”) or deferral of removal under the Convention Against Torture pursuant to 8 C.F.R. §§ 208.16 or 208.17. 8 C.F.R. §§ 208.30(e)(3), 1003.42(d).

(ii) If the DHS asylum officer finds credible fear. —

(A) Stowaways. — If the DHS asylum officer finds that a stowaway has a credible fear of persecution or torture, the stowaway is placed in asylum-only proceedings before an Immigration Judge. See 8 C.F.R. § 208.30(f). In asylum-only proceedings, the stowaway can apply for asylum, withholding of removal (“restriction on removal”) under INA § 241(b)(3), and protection under the Convention Against Torture. See subsection (g), below.

(B) Aliens subject to expedited removal under INA § 235(b)(1). — If the DHS asylum officer finds that an alien subject to expedited removal under INA § 235(b)(1) has a credible fear of persecution or torture, the alien is placed in removal proceedings before an Immigration Judge. See 8 C.F.R. § 208.30(f). In removal proceedings, the alien has the same rights, obligations, and opportunities for relief as any other alien in removal proceedings. See Chapter 4 (Hearings before Immigration Judges).

(iii) If the DHS asylum officer does not find credible fear. — If the DHS asylum officer finds that the alien does *not* have a credible fear of persecution or torture, the alien may request that an Immigration Judge review this finding. See 8 C.F.R. § 208.30(g).

(iv) Credible fear review by an Immigration Judge. — The credible fear review is conducted according to the provisions in (A) through (E), below. See generally INA § 235(b)(1)(B), 8 C.F.R. § 1003.42.

(A) Timing. — The credible fear review must be concluded no later than 7 days after the date of the DHS asylum officer's decision. If possible, the credible fear review should be concluded 24 hours after the decision.

(B) Location. — If possible, the credible fear review is conducted in person. However, because of the time constraints, the credible fear review may be conducted by video or telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

(C) Representation. — Prior to the credible fear review, the alien may consult with a person or persons of the alien's choosing. In the discretion of the Immigration Judge, persons consulted may be present during the credible fear review. However, the alien is not represented at the credible fear review. Accordingly, persons acting on the alien's behalf are not entitled to make opening statements, call and question witnesses, conduct cross examinations, object to evidence, or make closing arguments.

(D) Record of Proceedings. — DHS must give the complete record of the DHS asylum officer's credible fear determination to the Immigration Court. This record includes any notes taken by the DHS asylum officer. The Immigration Judge creates a record, which is kept separate from the Record of Proceedings in any subsequent Immigration Court proceeding involving the alien.

(E) Conduct of hearing. — A credible fear review is not as exhaustive or in-depth as an asylum hearing in removal proceedings. Rather, a credible fear review is simply a review of the DHS asylum officer's decision. Either the alien or DHS may introduce oral or written statements, and the court provides an interpreter if necessary. Evidence may be introduced at the discretion of the Immigration Judge. The hearing is recorded. Parties should be mindful that all requests for continuances are subject to the statutory time limits. See (A), above.

(v) If the Immigration Judge finds credible fear. —

(A) Stowaways. — If the Immigration Judge finds that a stowaway has a credible fear of persecution or torture, the stowaway is placed in asylum-only proceedings. See 8 C.F.R. § 1208.30(g)(2)(iv)(C). In asylum-only proceedings, the stowaway can apply for asylum, withholding of removal ("restriction on removal") under § INA 241(b)(3), and protection under the Convention Against Torture. See subsection (g), below.

(B) Aliens subject to expedited removal under INA § 235(b)(1). — If the Immigration Judge finds that an alien subject to expedited removal under INA § 235(b)(1) has a credible fear of persecution or torture, the alien is placed in removal proceedings. See 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(B). In removal proceedings, the alien has the same rights, obligations, and opportunities for relief, including the opportunity to apply for asylum, as any other alien in removal proceedings. See Chapter 4 (Hearings before Immigration Judges).

(vi) If the Immigration Judge does not find credible fear. — If the Immigration Judge does not find credible fear of persecution or torture, the alien is returned to DHS for removal. Neither party may appeal an Immigration Judge's ruling in a credible fear review. However, after providing notice to the Immigration Judge, DHS may reconsider its determination that an alien does not have a credible fear of persecution. See 8 C.F.R. § 1208.30(g)(2)(iv)(A).

(e) Reasonable fear proceedings. — Reasonable fear proceedings involve aliens subject to expedited removal under INA § 238(b) and aliens subject to reinstatement of prior orders of removal under INA § 241(a)(5). See subsections (b)(ii), (b)(iii), above. If such an alien expresses a fear of persecution or torture to the Department of Homeland Security (DHS) immigration officer, the alien is interviewed by a DHS asylum officer who evaluates whether the alien has a “reasonable fear of persecution or torture.” See generally 8 C.F.R. § 1208.31.

(i) Reasonable fear standard. — “Reasonable fear of persecution or torture” means a reasonable possibility that the alien would be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or political opinion, or a reasonable possibility that the alien would be tortured if returned to the country of removal. The bars to eligibility for withholding of removal (“restriction on removal”) under INA § 241(b)(3)(B) are not considered. 8 C.F.R. § 1208.31(c).

(ii) If the DHS asylum officer finds reasonable fear. — If the DHS asylum officer finds that the alien has a reasonable fear of persecution or torture, the alien is placed in withholding-only proceedings before an Immigration Judge. See 8 C.F.R. § 208.31(e). In withholding-only proceedings, the alien can apply for withholding of removal (“restriction on removal”) under INA § 241(b)(3) and protection under the Convention Against Torture. See subsection (h), below.

(iii) If the DHS asylum officer does not find reasonable fear. — If the DHS asylum officer finds that the alien does not have a reasonable fear of persecution or torture, the alien may request that an Immigration Judge review this finding. See 8 C.F.R. § 208.31(f).

(iv) Reasonable fear review by an Immigration Judge. — The reasonable fear review is conducted according to the provisions in (A) through (E), below. See generally 8 C.F.R. § 1208.31.

(A) Timing. — In the absence of exceptional circumstances, the reasonable fear review is conducted within 10 days after the case is referred to the Immigration Court.

(B) Location. — If possible, the reasonable fear review is conducted in person. However, because of the time constraints, the reasonable fear review may be conducted by video or telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

(C) Representation. — Subject to the Immigration Judge's discretion, the alien may be represented during the reasonable fear review at no expense to the government.

(D) Record of Proceedings. — DHS must file the complete record of the DHS asylum officer's reasonable fear determination with the Immigration Court. This record includes any notes taken by the DHS asylum officer. The Immigration Judge creates a record, which is kept separate from the Record of Proceedings in any subsequent Immigration Court proceeding involving the alien.

(E) Conduct of hearing. — A reasonable fear review hearing is not as comprehensive or in-depth as a withholding of removal hearing in removal proceedings. Rather, it is a review of the DHS asylum officer's decision. Either party may introduce oral or written statements, and the court provides an interpreter if necessary. Evidence may be introduced at the discretion of the Immigration Judge. The hearing is recorded. Parties should be mindful that all requests for continuances are subject to the statutory time limits. See (A), above.

(v) If the Immigration Judge finds reasonable fear. — If the Immigration Judge finds that the alien has a reasonable fear of persecution or torture, the alien is placed in withholding-only proceedings. See 8 C.F.R. § 1208.31(g)(2). In withholding-only proceedings, the alien can apply for withholding of removal ("restriction on removal") under INA § 241(b)(3) and protection under the Convention Against Torture. See subsection (h).

(vi) If the Immigration Judge does not find reasonable fear. — If the Immigration Judge does not find a reasonable fear of persecution or torture, the alien is returned to DHS for removal. There is no appeal from an Immigration Judge's ruling in a reasonable fear review. See 8 C.F.R. § 1208.31(g)(1).

(f) Claimed status review. — If an individual is found by a Department of Homeland Security (DHS) immigration officer to be subject to expedited removal under INA § 235(b)(1), but claims to be a United States citizen or lawful permanent resident, or to have been granted asylum or admitted to the United States as a refugee, the DHS immigration officer attempts to verify that claim. If the claim cannot be verified, the individual is allowed to make a statement under oath. The case is then reviewed by an Immigration Judge in a "claimed status review." See generally 8 C.F.R. § 1235.3(b)(5).

(i) Timing. — Claimed status reviews are scheduled as expeditiously as possible, preferably no later than 7 days after the case was referred to the

Immigration Court and, if possible, within 24 hours. Claims to United States citizenship may require more time to permit the alien to obtain relevant documentation.

(ii) Location. — If possible, the claimed status review is conducted in person. However, because of the time constraints, the claimed status review may be conducted by video or telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

(iii) Representation. — Prior to the claimed status review, the individual subject to the review may consult with a person or persons of his or her choosing. In the discretion of the Immigration Judge, persons consulted may be present during the claimed status review. However, the individual subject to the review is not represented during the review. Accordingly, persons acting on his or her behalf are not entitled to make opening statements, call and question witnesses, conduct cross examinations, object to evidence, or make closing arguments.

(iv) Record of Proceedings. — The Immigration Judge creates a Record of Proceedings. If an individual subject to a claimed status review is later placed in removal proceedings, the Record of Proceedings for the claimed status review is merged with the Record of Proceedings for the removal proceedings.

(v) Conduct of hearing — Either party may introduce oral or written statements, and an interpreter is provided if necessary. Though the claimed status review is limited in nature, claims to status, particularly claims to United States citizenship, can be complicated and may require extensive evidence. Therefore, the Immigration Judge has the discretion to continue proceedings to allow DHS and the person making the claim to collect and submit evidence. The hearing is recorded.

(vi) If the Immigration Judge verifies the claimed status. — If the Immigration Judge determines that the individual subject to the review is a United States citizen or lawful permanent resident, or that he or she has been granted asylum or refugee status, the expedited removal order is vacated, or cancelled, and the proceedings are terminated.

Unless the Immigration Judge determines that the person in proceedings is a United States citizen, DHS may elect to place him or her in removal proceedings. In removal proceedings, he or she has the same rights, obligations, and opportunities for relief as any other alien in removal proceedings. See Chapter 4 (Hearings before Immigration Judges).

(vii) If the Immigration Judge cannot verify the claimed status. — If the Immigration Judge determines that the subject of a claimed status review is not a United States citizen or lawful permanent resident, and that he or she has not been granted asylee or refugee status, the individual is returned to DHS for removal. There is no appeal from an Immigration Judge's ruling in a claimed status review.

(g) Asylum-only proceedings. — Asylum-only proceedings are limited proceedings in which the Immigration Judge considers applications for asylum, withholding of removal ("restriction on removal") under INA § 241(b)(3), and protection under the Convention Against Torture.

(i) Beginning asylum-only proceedings. — Asylum-only proceedings are commenced as follows, depending upon the status of the alien.

(A) Stowaways with a credible fear of persecution or torture. — When a Department of Homeland Security (DHS) asylum officer or an Immigration Judge finds that a stowaway has a credible fear of persecution or torture, the stowaway's matter is referred to the Immigration Court for an asylum-only proceeding. See 8 C.F.R. §§ 208.30(f), 1208.2(c)(1)(ii), 1208.30(g)(2)(iv)(C).

(B) Crewmembers (D visa applicants). — When an alien crewmember expresses a fear of persecution or torture to a DHS immigration officer, he or she is removed from the vessel and taken into DHS custody. The crewmember is then provided an Application for Asylum and for Withholding of Removal (Form I-589), which must be completed and returned to DHS within 10 days unless DHS extends the deadline for good cause. The application is then referred to the Immigration Court for an asylum-only proceeding. See 8 C.F.R. §§ 1208.2(c)(1)(i), 1208.5(b)(1)(ii).

(C) Visa waiver applicants and overstays. — When an alien who has applied for admission, been admitted, or overstayed his or her admission under the visa waiver program expresses a fear of persecution or torture to a DHS immigration officer, or applies for asylum with DHS, the matter may be referred to the Immigration Court for an asylum-only proceeding. See 8 C.F.R. §§ 1208.2(c)(1)(iii), 1208.2(c)(1)(iv).

(D) Certain cooperating witnesses and informants (S visa applicants). — When an alien who has applied for admission, or been admitted, with an S visa expresses a fear of persecution or torture to a DHS immigration officer, or applies for asylum with DHS, the matter is referred to

the Immigration Court for an asylum-only proceeding. See 8 C.F.R. § 1208.2(c)(1)(vi).

(E) Persons subject to removal under INA § 235(c) on security grounds. — When a DHS immigration officer or an Immigration Judge suspects that an arriving alien appears removable as described in INA § 235(c), the alien is ordered removed, and the matter is referred to a DHS district director. A DHS regional director may then order the case referred to an Immigration Judge for an asylum-only proceeding. See 8 C.F.R. §§ 1208.2(c)(1)(v), 1235.8.

(ii) Scope of the proceedings. — Asylum-only proceedings are limited to applications for asylum, withholding of removal (“restriction on removal”) under INA § 241(b)(3), and protection under the Convention Against Torture. Neither the alien nor DHS may raise any other issues, including issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief. See 8 C.F.R. § 1208.2(c)(3)(i).

(iii) Conduct of the proceedings. — Asylum-only proceedings are conducted under the procedures governing removal proceedings. See 8 C.F.R. § 1208.2(c)(3). See also Chapter 4 (Hearings before Immigration Judges).

(iv) Appeals. — Decisions by Immigration Judges in asylum-only proceedings may be appealed to the Board of Immigration Appeals.

(h) Withholding-only proceedings. — Withholding-only proceedings are limited proceedings involving aliens subject to expedited removal under INA § 238(b) and aliens subject to reinstatement of prior orders of removal under INA § 241(a)(5), who have a reasonable fear of persecution or torture. See 8 C.F.R. § 1208.2(c)(2). In withholding-only proceedings, the Immigration Judge considers applications for withholding of removal (“restriction on removal”) under the Immigration and Nationality Act and protection under the Convention Against Torture.

(i) Beginning withholding-only proceedings. — When a DHS asylum officer or Immigration Judge finds that an alien subject to expedited removal under INA § 238(b) or an alien subject to reinstatement of a prior order of removal under INA § 241(a)(5) has a reasonable fear of persecution or torture, the matter is referred to the Immigration Court for a withholding-only proceeding. See 8 C.F.R. §§ 208.31(e), 1208.31(g)(2).

(ii) Scope of the proceedings. — Withholding-only proceedings are limited to applications for withholding of removal (“restriction on removal”) under INA

§ 241(b)(3) and protection under the Convention Against Torture. Neither the alien nor DHS may raise any other issues, including issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief. 8 C.F.R. § 1208.2(c)(3)(i).

(iii) Conduct of the proceedings. — Withholding-only proceedings are conducted under the procedures governing removal proceedings. See 8 C.F.R. § 1208.2(c)(3). See also Chapter 4 (Hearings before Immigration Judges).

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

8 Stays

8.1 In General

A stay prevents the Department of Homeland Security from executing an order of removal, deportation, or exclusion. Stays are automatic in some instances and discretionary in others. This chapter provides general guidance regarding stays. For particular cases, parties should consult the controlling law and regulations. See INA §§ 240(b)(5)(C), 240(c)(7)(C)(iv), 8 C.F.R. §§ 1003.2(f), 1003.6, 1003.23(b)(1)(v), 1003.23(b)(4)(ii).

For cases under the jurisdiction of the Board of Immigration Appeals, parties should consult the Board of Immigration Appeals Practice Manual. The Board of Immigration Appeals Practice Manual is available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir/biainfo.htm.

8.2 Automatic Stays

(a) Removal proceedings. — There are limited circumstances in which an order of removal is automatically stayed:

- during the 30-day period for filing the direct appeal of an Immigration Judge's decision on the merits, unless the right to appeal has been waived
- during the direct appeal of an Immigration Judge's decision on the merits of the case (not including bond and custody determinations)
- during the period in which a case is certified to the Board of Immigration Appeals
- during the period between the filing of a motion to reopen to rescind an in absentia order and the Immigration Judge's ruling on that motion
- pending the final disposition, including appeal, of certain motions to reopen by battered spouses, children, and parents

An appeal or motion must be timely and properly filed for an automatic stay to take effect.

When a stay is automatic, the Immigration Judge does not issue an order staying removal.

(b) Deportation and exclusion proceedings. — There are important differences between the automatic stay provisions in deportation and exclusion proceedings and the automatic stay provisions in removal proceedings. Those differences are not covered in this Practice Manual. Accordingly, parties in deportation or exclusion proceedings should carefully review the controlling law and regulations.

8.3 Discretionary Stays

An Immigration Judge is authorized to grant stays as a matter of discretion, but only for matters within the Immigration Judge's jurisdiction. See Chapters 1.5 (Jurisdiction and Authority), 6.3 (Jurisdiction). Immigration Judges consider requests for discretionary stays only when a motion to reopen or a motion to reconsider is pending before the Immigration Court.

(a) Motion required. — A request for a discretionary stay should be made by written motion. The motion should be filed with a cover page labeled "MOTION TO STAY REMOVAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

If the execution of an order is imminent, the motion should be filed with a cover page labeled "EMERGENCY MOTION TO STAY REMOVAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

(b) Contents. — A motion for a discretionary stay should state the complete case history and all relevant facts. It should also include a copy of the order that the party wants stayed, if available. If the moving party does not have a copy of the order, that party should provide the date of the order and a detailed description of the Immigration Judge's ruling and reasoning, as articulated by the Immigration Judge. If the facts are in dispute, the moving party should provide appropriate evidence. See Chapter 5.2(e) (Evidence).

(c) Pending motions. — The mere filing of a motion for a discretionary stay of an order does not prevent the execution of the order. Therefore, the order may be executed unless and until the motion is granted.

9 Detention and Bond

9.1 Detention

(a) In general. — The Department of Homeland Security (DHS) bears the responsibility for the apprehension and detention of aliens. Immigration Judges have jurisdiction over custody determinations under certain circumstances. See generally 8 C.F.R. § 1003.19. See also Chapter 9.3 (Bond Proceedings).

(b) Place and conditions. — Aliens may be detained in a Department of Homeland Security (DHS) Processing Facility, or in any public or private detention facility contracted by DHS to detain aliens. See 8 C.F.R. § 235.3(e). Immigration Judges have no jurisdiction over the location of detention and the conditions in the detention facility.

(c) Appearance at hearings. — The Department of Homeland Security is responsible for ensuring that detained aliens appear at all hearings.

(d) Transfers and Release. — The Department of Homeland Security (DHS) sometimes transfers detained aliens between detention facilities.

(i) Notification. — DHS is obligated to notify the Immigration Court when an alien is moved between detention locations. See 8 C.F.R. § 1003.19(g).

In addition, DHS is responsible for notifying the Immigration Court when an alien is released from custody. See 8 C.F.R. § 1003.19(g). Nonetheless, the alien should file an Alien's Change of Address Form (Form EOIR-33/IC) with the Immigration Court to ensure that Immigration Court records are up-to-date.

(ii) Venue. — If an alien has been transferred while proceedings are pending, the Immigration Judge with original jurisdiction over the case retains jurisdiction until that Immigration Judge grants a motion to change venue. Either DHS or the alien may file a motion to change venue. See Chapter 5 (Motions before the Immigration Court). If DHS brings the alien before an Immigration Judge in another Immigration Court and a motion to change venue has not been granted, the second Immigration Judge does not have jurisdiction over the case, except for bond redeterminations.

(e) Conduct of hearing. — Proceedings for detained aliens are expedited. Hearings are held either at the detention facility or at the Immigration Court, either by video

or telephone conference. For more information on hearings conducted by video or telephone conference, see Chapter 4.7 (Hearings by Video or Telephone Conference).

(i) Special considerations for hearings in detention facilities. — For hearings in detention facilities, parties must comply with the facility's security restrictions. See Chapter 4.14 (Access to Court).

(ii) Orientation. — In some detention facilities, detainees are provided with orientations or "rights presentations" by non-profit organizations. The Executive Office for Immigration Review also funds orientation programs at a number of detention facilities, which are administered by the EOIR Legal Orientation and Pro Bono Program. See Chapter 1.4(c) (Legal Orientation and Pro Bono Program).

9.2 Detained Juveniles

(a) In general. — There are special procedures for juveniles in federal custody, whether they are accompanied or unaccompanied. See generally 8 C.F.R. § 1236.3. For purposes of this chapter, a juvenile is defined as an alien under 18 years of age. An unaccompanied juvenile is defined as an alien under 18 years of age who does not have a parent or legal guardian in the United States to provide care and physical custody.

(b) Place and conditions of detention. — The Department of Homeland Security (DHS) bears the initial responsibility for apprehension and detention of juveniles. When DHS determines that a juvenile is accompanied by a parent or legal guardian, DHS retains responsibility for the juvenile's detention and removal. When DHS determines that a juvenile is unaccompanied and must be detained, he or she is transferred to the care of the Department of Health and Human Services, Office of Refugee Resettlement, which provides for the care and placement, where possible, of the unaccompanied juvenile. See 6 U.S.C. § 279.

(c) Representation and conduct of hearing. — For provisions regarding the representation of juveniles, and the conduct of hearings involving juveniles, see Chapter 4.22 (Juveniles).

(d) Release. — Unaccompanied juveniles who are released from custody are released to a parent, a legal guardian, an adult relative who is not in Department of Homeland Security detention, or, in limited circumstances, to an adult who is not a family member.

9.3 Bond Proceedings

(a) In general. — In certain circumstances, an alien detained by the Department of Homeland Security (DHS) can be released from custody upon the payment of bond. Initially, the bond is set by DHS. Upon the alien's request, an Immigration Judge may conduct a "bond hearing," in which the Immigration Judge has the authority to redetermine the amount of bond set by DHS.

Bond proceedings are separate from removal proceedings. See generally 8 C.F.R. §§ 1003.19, 1236.1.

(b) Jurisdiction. — Except as provided in subsections (i) through (iii), below, an Immigration Judge generally has jurisdiction to conduct a bond hearing if the alien is in Department of Homeland Security (DHS) custody. The Immigration Judge also has jurisdiction to conduct a bond hearing if the alien is released from DHS custody upon payment of a bond and, within 7 days of release, files a request for a bond redetermination with the Immigration Court.

An Immigration Judge has jurisdiction over such cases even if a charging document has not been filed. In addition, an Immigration Judge has jurisdiction to rule on whether he or she has jurisdiction to conduct a bond hearing.

(i) No jurisdiction by regulation. — By regulation, an Immigration Judge does not have jurisdiction to conduct bond hearings involving:

- aliens in exclusion proceedings
- arriving aliens in removal proceedings
- aliens ineligible for release on security or related grounds
- aliens ineligible for release on certain criminal grounds

8 C.F.R. § 1003.19(h)(2)(i).

(ii) No jurisdiction by mootness. — A bond becomes moot, and the Immigration Judge loses jurisdiction to conduct a bond hearing, when an alien:

- departs from the United States, whether voluntarily or involuntarily

- is granted relief from removal by the Immigration Judge, and the Department of Homeland Security does not appeal
- is granted relief from removal by the Board of Immigration Appeals
- is denied relief from removal by the Immigration Judge, and the alien does not appeal
- is denied relief from removal by the Board of Immigration Appeals

(iii) Other. — Immigration Judges do not have bond jurisdiction in certain limited proceedings. See generally Chapter 7 (Other Proceedings before Immigration Judges).

(c) Requesting a bond hearing. — A request for a bond hearing may be made in writing. In addition, except as provided in subsection (iii), below, a request for a bond hearing may be made orally 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.usdoj.gov/eoir.

(i) Contents. — A request for a bond hearing should state:

- the full name and alien registration number (“A number”) of the alien
- the bond amount set by the Department of Homeland Security
- if the alien is detained, the location of the detention facility

(ii) No fee. — There is no filing fee to request a bond hearing.

(iii) Where to request. — A request for a bond hearing is made, in order of preference, to:

- if the alien is detained, the Immigration Court having administrative control over the alien’s place of detention;
- the Immigration Court with administrative control over the case;
or

- the Office of the Chief Immigration Judge for designation of an appropriate Immigration Court

8 C.F.R. § 1003.19(c). See Chapter 3.1(a)(i) (Administrative Control Courts).

(iv) Multiple requests. — If an Immigration Judge or the Board of Immigration Appeals has previously ruled in bond proceedings involving an alien, a subsequent request for a bond hearing must be in writing, and the alien must show that his or her circumstances have changed materially since the last decision. In addition, the request must comply with the requirements listed in subsection (c)(i), above. 8 C.F.R. § 1003.19(e).

(d) Scheduling a hearing. — In general, after receiving a request for a bond hearing, the Immigration Court schedules the hearing for the earliest possible date and notifies the alien and the Department of Homeland Security.

In limited circumstances, an Immigration Judge may rule on a bond redetermination request without holding a hearing.

If an alien requests a bond hearing during another type of hearing (for example, during a master calendar hearing in removal proceedings), the Immigration Judge may:

- stop the other hearing and conduct a bond hearing on that date
- complete the other hearing and conduct a bond hearing on that date
- complete the other hearing and schedule a bond hearing for a later date
- stop the other hearing and schedule a bond hearing for a later date

(e) Bond hearings. — In a bond hearing, the Immigration Judge determines whether the alien is eligible for bond. If the alien is eligible for bond, the Immigration Judge considers whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for further immigration proceedings, and whether the alien is a threat to national security. In general, bond hearings are less formal than hearings in removal proceedings.

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

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

(iii) Generally not recorded. — Bond hearings are generally not recorded.

(iv) Record of Proceedings. — The Immigration Judge creates a record, which is kept separate from the Records of Proceedings for other Immigration Court proceedings involving the alien.

(v) Evidence. — Documents for the Immigration Judge to consider are filed in open court or, if the request for a bond hearing was made in writing, together with the request. Since the Record of Proceedings in a bond proceeding is kept separate and apart from other Records of Proceedings, documents already filed in removal proceedings must be resubmitted if the filing party wishes them to be considered in the bond proceeding.

If documents are filed in advance of the hearing, the documents should be filed *together with* the request for a bond hearing. If a document is filed in advance of the hearing but separate from the request for a bond hearing, it should be filed with a cover page labeled “BOND PROCEEDINGS.” See Appendix F (Sample Cover Page).

Unless otherwise directed by the Immigration Judge, the deadlines and requirements for filings in Chapter 3 (Filing with the Immigration Court) do not apply in bond proceedings.

(vi) Conduct of hearing. — While the Immigration Judge decides how each hearing is conducted, parties should submit relevant evidence and:

- the Department of Homeland Security (DHS) should state whether a bond has been set and, if a bond has been set, the amount of the bond and the DHS justification for that amount
- the alien or the alien’s representative should make an oral statement (an “offer of proof” or “proffer”) addressing whether the alien’s release would pose a danger to property or persons, whether the alien is likely to appear for future immigration proceedings, and whether the alien poses a danger to national security

At the Immigration Judge's discretion, witnesses may be placed under oath and testimony taken. However, parties should be mindful that bond hearings are generally briefer and less formal than hearings in removal proceedings.

(vii) Decision. — The Immigration Judge's decision is based on any information that is available to the Immigration Judge or that is presented by the parties. See 8 C.F.R. § 1003.19(d).

Usually, the Immigration Judge's decision is rendered orally. Because bond hearings are generally not recorded, the decision is not transcribed. If either party appeals, the Immigration Judge prepares a written decision based on notes from the hearing.

(f) Appeals. — Either party may appeal the Immigration Judge's decision to the Board of Immigration Appeals. If the alien appeals, the Immigration Judge's bond decision remains in effect while the appeal is pending. If the Department of Homeland Security appeals, the Immigration Judge's bond decision remains in effect while the appeal is pending unless the Board issues an emergency stay or the decision is automatically stayed by regulation. See 8 C.F.R. §§ 1003.6(c), 1003.19(i).

For detailed guidance on when Immigration Judges' decisions in bond proceedings are stayed, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir/biainfo.htm.

9.4 Continued Detention Review

(a) In general. — Generally, the Department of Homeland Security (DHS) must remove or release detained aliens within 90 days of a final order of removal. However, DHS may continue to detain an alien whose removal from the United States is not "reasonably foreseeable," if the alien's release would pose a special danger to the public. See INA § 241(a)(6), 8 C.F.R. § 1241.14(f). Such a decision by DHS to continue to detain an alien is reviewed by an Immigration Judge in "continued detention review proceedings." The proceedings begin with a DHS determination that continued detention is required and are divided into two phases: (1) reasonable cause hearings and (2) continued detention review merits hearings. See subsections (c), (d), below.

(b) DHS determination. — If an alien has been ordered removed but remains detained, he or she may request that the Department of Homeland Security (DHS) determine whether there is a significant likelihood of removal in the reasonably foreseeable

future. See 8 C.F.R. § 1241.13. If there is a significant likelihood of removal in the reasonably foreseeable future, DHS may continue to detain the alien.

If there is *not* a significant likelihood of removal in the reasonably foreseeable future, the alien is released unless DHS determines, based on a full medical and physical examination, that the alien should be subject to continued detention because the alien's release would pose a special danger to the public. Following such a determination, the matter is referred to an Immigration Judge for a reasonable cause hearing. See 8 C.F.R. § 1241.14(f).

(c) Reasonable cause hearing. — A reasonable cause hearing is a brief hearing to evaluate the evidence supporting the determination by the Department of Homeland Security (DHS) that the alien's release would pose a special danger to the public. In the hearing, the Immigration Judge decides whether DHS's evidence is sufficient to establish reasonable cause to go forward with a continued detention review merits hearing, or whether the alien should be released. See generally 8 C.F.R. § 1241.14.

(i) Timing. — The reasonable cause hearing begins no later than 10 business days after referral to the Immigration Court.

(ii) Location. — If possible, the reasonable cause hearing is conducted in person, but may be conducted by telephone conference or video conference, at the Immigration Judge's discretion. See Chapter 4.7 (Hearings by Video or Telephone Conference).

(iii) Representation. — The alien is provided with a list of free or low-cost legal service providers and may be represented at no expense to the government.

(iv) Conduct of hearing. — DHS may offer any evidence that is material and relevant to the proceeding. The alien has a reasonable opportunity to examine evidence against him or her, to present evidence and witnesses on his or her own behalf, and to cross-examine witnesses presented by DHS.

(v) Record of Proceedings. — The Immigration Judge creates a Record of Proceedings, and the hearing is recorded. The Record of Proceedings is not combined with records of any other Immigration Court proceedings involving the same alien.

(vi) Immigration Judge's decision. — If the Immigration Judge finds that DHS has met its burden of showing reasonable cause to go forward with a continued detention review merits hearing, the alien is notified, and the merits hearing is scheduled.

If the Immigration Judge finds that DHS has *not* met its burden, the Immigration Judge dismisses the proceedings, and the alien is released under conditions determined by DHS.

(vii) Appeals. — If the Immigration Judge finds that DHS has not met its burden of showing reasonable cause to go forward with a continued detention review merits hearing, DHS may appeal to the Board of Immigration Appeals. The appeal must be filed within two business days after the Immigration Judge's order. The Immigration Judge's order dismissing the proceedings is stayed pending adjudication of an appeal, unless DHS waives the right to appeal.

If the Immigration Judge finds that DHS *has* met its burden, the decision is not appealable by the alien.

(d) Continued detention review merits hearing. — In the continued detention review merits hearing, the Department of Homeland Security (DHS) has the burden of proving by clear and convincing evidence that the alien should remain in custody because the alien's release would pose a special danger to the public. See generally 8 C.F.R. § 1241.14.

(i) Timing. — The continued detention review merits hearing is scheduled promptly. If the alien requests, the merits hearing is scheduled to commence within 30 days of the decision in the reasonable cause hearing.

(ii) Representation. — The alien is provided with a list of free and low-cost legal service providers and may be represented at no expense to the government.

(iii) Conduct of hearing. — The Immigration Judge may receive into evidence any oral or written statement that is material and relevant to the proceeding. The alien has a reasonable opportunity to examine evidence against him or her, to present evidence and witnesses on his or her own behalf, and to cross-examine witnesses presented by DHS. In addition, the alien has the right to cross-examine the author of any medical or mental health reports used as a basis for DHS's determination that the alien's release would pose a special danger to the public.

(iv) Immigration Judge's decision. — If the Immigration Judge determines that DHS has met its burden of showing that the alien should remain in custody as a special danger to the public, the Immigration Judge orders the continued detention of the alien.

If the Immigration Judge determines that DHS has *not* met its burden, the Immigration Judge dismisses the proceedings, and the alien is released under conditions determined by DHS.

(v) Appeals. — Either party may appeal the Immigration Judge's decision to the Board of Immigration Appeals. Appeals by DHS must be filed within 5 business days of the Immigration Judge's order. Appeals by aliens are subject to the same deadlines as appeals in removal proceedings. For detailed guidance on appeals, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.usdoj.gov/doir/biainfo.htm.

If the Immigration Judge dismisses the proceedings and orders the alien released, the order is stayed pending adjudication of any DHS appeal, unless DHS waives the right to appeal.

(e) Periodic review. — Following proceedings in which the alien's continued detention has been ordered, the alien may periodically request that the Department of Homeland Security (DHS) review his or her continued detention. The alien must show that, due to a material change in circumstances, the alien's release would no longer pose a special danger to the public. Such requests may be made no earlier than 6 months after the most recent decision of the Immigration Judge or the Board of Immigration Appeals.

If DHS does not release the alien, the alien may file a motion with the Immigration Court to set aside its prior determination in the proceedings. The alien must show that, due to a material change in circumstances, the alien's release would no longer pose a special danger to the public. If the Immigration Judge grants the motion, a new continued detention review merits hearing is held. If the motion is denied, the alien may appeal to the Board.

10 Discipline of Practitioners

10.1 Practitioner Discipline Generally

The Executive Office for Immigration Review has the authority to impose disciplinary sanctions on attorneys or accredited representatives who violate rules of professional conduct in practice before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security. See 8 C.F.R. §§ 1003.1(d)(2)(iii), 1003.1(d)(5), 1003.101-106, 1292.3. See also *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

Generally, discipline of practitioners is initiated by the filing of a complaint. See Chapter 10.5 (Filing a Complaint). Any individual, including Immigration Judges, may file a complaint about the conduct of a practitioner.

10.2 Definition of Practitioner

For purposes of this Chapter, “practitioner” refers to an alien’s attorney or representative, as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(j), respectively. The term “representative” refers to non-attorneys authorized to practice before the Immigration Courts and the Board of Immigration Appeals, including law students and law graduates, reputable individuals, accredited representatives, accredited officials, and persons formerly authorized to practice. See 8 C.F.R. §§ 1001.1(j), 1292.1(a) - (b). See also Chapter 2 (Appearances Before the Immigration Court).

10.3 Jurisdiction

(a) Immigration Judges. — Immigration Judges have the authority to file complaints concerning practitioners who appear before them.

The disciplinary procedures described in this chapter do not apply to Immigration Judges. For information on Immigration Judge conduct, see Chapter 1.3(c) (Immigration Judge conduct and professionalism).

(b) Practitioners. — The disciplinary procedures described in this chapter apply to practitioners who practice before the Immigration Courts, the Board of Immigration Appeals, or the Department of Homeland Security. See 8 C.F.R. § 1003.101.

(c) DHS attorneys. — The disciplinary procedures described in this chapter do not apply to attorneys who represent the Department of Homeland Security (DHS). The conduct of DHS attorneys is governed by DHS rules and regulations. Concerns or complaints about the conduct of DHS attorneys may be raised in writing with the DHS Office of the Chief Counsel where the Immigration Court is located. A list of DHS Offices of the Chief Counsel is available on the DHS website at www.ice.gov/about/district_offices.htm.

(d) Unauthorized practice of law. — The disciplinary procedures described in this chapter apply to *practitioners* who assist in the unauthorized practice of law. See 8 C.F.R. § 1003.102(m). Anyone may file a complaint against a practitioner who is assisting in the unauthorized practice of law. See 10.5 (Filing a Complaint).

The disciplinary procedures described in this chapter do not apply to *non-practitioners* engaged in the unauthorized practice of law. Anyone harmed by an individual practicing law without authorization should contact the appropriate law enforcement or consumer protection agency. In addition, persons harmed by such conduct are encouraged to contact the Executive Office for Immigration Review Fraud Program. See Chapter 1.4(b) (EOIR Fraud Program), Appendix B (EOIR Directory).

In general, the unauthorized practice of law includes certain instances where non-attorneys perform legal services, give legal advice, or represent themselves to be attorneys. Individuals engaged in the unauthorized practice of law include some immigration specialists, visa consultants, and “notarios.”

10.4 Conduct

The following conduct by practitioners may result in discipline:

- frivolous behavior, under the following standard:
 - a practitioner engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to harass or to cause unnecessary delay
- ineffective assistance of counsel, as previously determined in a finding by the Board of Immigration Appeals or an Immigration Judge in an immigration proceeding, if a disciplinary complaint is filed within one year of the finding

- repeated failure to appear for scheduled hearings in a timely manner without good cause
- conduct that would constitute contempt of court in a judicial proceeding
- misconduct resulting in disbarment, suspension from practicing law, or resignation with an admission of misconduct from a state licensing authority or federal court
- a conviction for a serious crime
- a false statement of material fact or law, if made knowingly or with reckless disregard
- a false certification of a copy of a document, if made knowingly or with reckless disregard
- assisting in the unauthorized practice of law
- grossly excessive fees
- bribery, coercion, or attempted bribery or coercion, with the intent to affect the outcome of an immigration case
- improperly soliciting clients
- misrepresenting qualifications or services offered

See 8 C.F.R. § 1003.102. These examples do not constitute the only grounds for which disciplinary sanctions may be imposed.

10.5 Filing a Complaint

(a) Who may file. — Anyone may file a complaint against a practitioner, including Immigration Judges, Board Members, the practitioner's clients, Department of Homeland Security personnel, and other practitioners. 8 C.F.R. § 1003.104(a)(1).

(b) What to file. — Complaints must be submitted in writing. Persons filing complaints are encouraged to use the Immigration Practitioner Complaint Form, (Form EOIR-44). See Chapter 11.2 (Obtaining Blank Forms), Appendix E (Forms). The Form EOIR-44 provides important information about the complaint process, the confidentiality

of complaints, and the types of misconduct that can result in discipline by the Executive Office for Immigration Review. Complaints should be specific and as detailed as possible, and supporting documentation should be provided if available.

(c) *Where to file.* — Complaints alleging practitioner misconduct before the Immigration Courts or the Board of Immigration Appeals should be filed with the Executive Office for Immigration Review, Office of the General Counsel (OGC). 8 C.F.R. § 1003.104(a)(1). The completed Form EOIR-44 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: Bar Counsel

See Appendix B (EOIR Directory). After receiving a complaint, OGC decides whether to initiate disciplinary proceedings. 8 C.F.R. § 1003.104(b). See Chapter 10.7 (Disciplinary Proceedings).

(d) *When to file.* — Complaints should be filed as soon as possible. There are no time limits for filing most complaints. However, complaints based on ineffective assistance of counsel must be filed within one year of a finding of ineffective assistance of counsel by an Immigration Judge or the Board of Immigration Appeals. 8 C.F.R. § 1003.102(k).

10.6 Duty to Report

A practitioner who practices before the Immigration Courts, the Board of Immigration Appeals, or the Department of Homeland Security has an affirmative duty to report whenever he or she:

- has been found guilty of, or pled guilty or *nolo contendere* to, a serious crime (as defined in 8 C.F.R. § 1003.102(h)); or
- has been disbarred or suspended from practicing law, or has resigned with an admission of misconduct

8 C.F.R. §§ 1003.103(c), 1292.3(c)(4). The practitioner must report the misconduct, criminal conviction, or discipline to the Executive Office for Immigration Review, Office of the General Counsel within 30 days of the issuance of the relevant initial order. This duty applies even if an appeal of the conviction or discipline is pending.

10.7 Disciplinary Proceedings

(a) In general. — Disciplinary proceedings take place in certain instances where a complaint against a practitioner is filed with the Executive Office for Immigration Review, Office of the General Counsel, or a practitioner self-reports. See Chapters 10.5 (Filing a Complaint), 10.6 (Duty to Report). See generally 8 C.F.R. §§ 1003.101 - 1003.109.

(b) Preliminary investigation. — When a complaint against a practitioner is filed, or a practitioner self-reports, the Executive Office for Immigration Review, Office of the General Counsel (OGC) conducts a preliminary investigation. Upon concluding the investigation, OGC may elect to:

- take no further action;
- issue a warning letter or informal admonition to the practitioner;
- enter into an agreement in lieu of discipline; or
- initiate disciplinary proceedings by filing a Notice of Intent to Discipline (NID) with the Board of Immigration Appeals and serving a copy on the practitioner

(c) Notice of Intent to Discipline. — The NID contains the charge(s), the preliminary inquiry report, proposed disciplinary sanctions, instructions for filing an answer and requesting a hearing, and the mailing address and telephone number of the Board of Immigration Appeals.

(i) Petition for Immediate Suspension. — If a practitioner subject to a Notice of Intent to Discipline (NID) has been convicted of a serious crime, or disbarred or suspended from practicing law by a state licensing authority or federal court, the Executive Office for Immigration Review, Office of the General Counsel files a petition with the Board of Immigration Appeals to immediately suspend the practitioner from practicing before the Immigration Courts and the Board until the conclusion of the disciplinary proceedings.

The Board may set aside such a suspension upon good cause shown, if doing so is in the interest of justice. The hardships that typically accompany suspension from practice, such as loss of income and inability to complete pending cases, are usually insufficient to set aside a suspension order.

(ii) DHS motion to join in disciplinary proceedings. — The Department of Homeland Security (DHS) may file a motion to join in the disciplinary

proceedings. If the motion is granted, any suspension or expulsion from practice before the Immigration Courts and the Board of Immigration Appeals will also apply to practice before DHS.

(d) Answer. — A practitioner subject to a Notice of Intent to Discipline (NID) has 30 days from the date of service to file a written answer with the Board of Immigration Appeals and serve a copy on the Executive Office for Immigration Review, Office of the General Counsel (OGC). See Chapter 3.2 (Service on the Opposing Party). The answer is deemed filed when it is *received* by the Board.

(i) Contents. — In the answer, the practitioner must admit or deny each allegation in the NID. Each allegation not expressly denied is deemed admitted. In addition, the answer must state whether the practitioner requests a hearing. If a hearing is not requested, the opportunity to request a hearing is deemed waived.

(ii) Motion for Extension of Time to Answer. — The deadline for filing an answer may be extended for good cause shown, pursuant to a written motion filed with the Board of Immigration Appeals no later than 3 working days before the deadline. The motion should be filed with a cover page labeled “MOTION FOR EXTENSION OF TIME TO ANSWER” and comply with the requirements for filing. For information on the requirements for filing with the Board, parties should consult the Board of Immigration Appeals Practice Manual, which is available at the Executive Office for Immigration Review website at www.usdoj.gov/eoir/biainfo.htm.

(iii) Default order. — If the practitioner does not file a timely answer, the Board of Immigration Appeals issues a default order imposing the discipline recommended by OGC, unless special considerations are present.

(iv) Motion to set aside default order. — A practitioner may file a written motion with the Board of Immigration Appeals to set aside a default order. The motion must be filed within 15 days of service of the default order. The motion should be filed with a cover page labeled “MOTION TO SET ASIDE DEFAULT ORDER” and comply with the requirements for filing. For information on the requirements for filing with the Board, parties should consult the Board of Immigration Appeals Practice Manual.

In the motion, the practitioner must show that the failure to file a timely answer was caused by exceptional circumstances beyond the practitioner’s control, such as his or her serious illness or the death of an immediate relative, but not including less compelling circumstances.

(e) Adjudication. — If a practitioner files a timely answer, the matter may be referred to an Immigration Judge or other appropriate official who will act as the adjudicating official in the disciplinary proceedings. An Immigration Judge cannot adjudicate a matter in which he or she filed the complaint or which involves a practitioner who regularly appears in front of that Immigration Judge.

(i) Adjudication without hearing. — If the practitioner files a timely answer without a request for a hearing, the matter is adjudicated without a hearing.

(ii) Adjudication with hearing. — If the practitioner files a timely answer with a request for a hearing, a hearing is conducted as described subsections (A) through (D), below.

(A) Timing and location. — The time and place of the hearing is designated with due regard to the location of the practitioner's practice or residence, the convenience of witnesses, and any other relevant factors. The practitioner is afforded adequate time to prepare his or her case in advance of the hearing.

(B) Representation. — The practitioner may be represented by counsel at no expense to the government.

(C) Pre-hearing conferences. — Pre-hearing conferences may be held to narrow issues, obtain stipulations between the parties, exchange information voluntarily, or otherwise simplify and organize the proceeding.

(D) Conduct of hearing. — At the hearing, the practitioner has a reasonable opportunity to present evidence and witnesses, to examine and object to the government's evidence, and to cross-examine the government's witnesses.

(iii) Decision. — In rendering a decision, the adjudicating official considers the preliminary inquiry report, the Notice of Intent to Discipline, the practitioner's answer and any supporting documents, and evidence and testimony presented at the hearing, if a hearing was held.

(iv) Sanctions authorized. — A broad range of sanctions are authorized, including expulsion from immigration practice, suspension from immigration practice, and public or private censure.

(v) Appeal. — The decision of the adjudicating official may be appealed to the Board of Immigration Appeals. A party wishing to appeal must file a Notice of

Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case (Form EOIR-45). See Chapter 11.2 (Obtaining Blank Forms), Appendix E (Forms). The Form EOIR-45 is specific to disciplinary proceedings. The Form EOIR-45 must be received by the Board no later than 30 calendar days after the adjudicating official renders an oral decision or mails a written decision.

Parties should note that, on appeal, the Board may increase the sanction imposed by the adjudicating official. See *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

(g) Where to file documents. — As in most immigration proceedings, documents in disciplinary proceedings should be filed with the adjudicator with jurisdiction over the case, as described below.

(i) Timely response. — Prior to a timely response, documents should be filed with the Board of Immigration Appeals.

(ii) Default order. — If a default order has been entered, documents should be filed with the Board.

(iii) Adjudication. — During adjudication by an adjudicating official, documents should be filed with the adjudicating official.

(iv) Appeal. — If an appeal has been filed, documents should be filed with the Board.

10.8 Notice to Public

(a) Disclosure generally authorized. — In general, action taken on a Notice of Intent to Discipline may be disclosed to the public. See 8 C.F.R. § 1003.108(c).

(b) Lists of disciplined practitioners. — Lists of practitioners who have been expelled, suspended, or publically censured are posted at the Immigration Courts, at the Board of Immigration Appeals, and on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. These lists are updated periodically.

10.9 Effect on Practitioner's Pending Immigration Cases

(a) Duty to advise clients. — A practitioner who is disciplined is obligated to advise all clients whose cases are pending before the Immigration Courts, the Board of

Immigration Appeals, or the Department of Homeland Security that he or she has been disciplined.

(b) Pending cases deemed unrepresented. — Once a practitioner has been expelled or suspended, the practitioner's pending cases are deemed unrepresented. The Immigration Court rejects filings that are submitted by a practitioner after he or she has been expelled or suspended. See Chapter 3.1(d) (Defective filings).

(c) Ineffective assistance of counsel. — The imposition of discipline on a practitioner does not, by itself, constitute evidence of ineffective assistance of counsel in the practitioner's former cases.

(d) Filing deadlines. — An order of practitioner discipline does not automatically excuse parties from meeting any applicable filing deadlines.

10.10 Reinstatement

(a) Following suspension. — Following a suspension, reinstatement is not automatic. To be reinstated following a suspension, a practitioner must:

- file a motion with the Board of Immigration Appeals requesting to be reinstated; and
- show that he or she is an attorney or representative as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(j), respectively

8 C.F.R. § 1003.107(a).

(b) During suspension for more than one year. — A practitioner suspended for more than one year may file a petition for reinstatement with the Board of Immigration Appeals after one year has passed or one-half of the suspension has elapsed, whichever is greater. The practitioner must serve a copy of the petition on the Executive Office for Immigration Review, Office of the General Counsel. In the petition, the practitioner must show that:

- he or she is an attorney or representative as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(g), respectively;
- he or she possesses the moral and professional qualifications required for immigration practice; and

- his or her reinstatement will not be detrimental to the administration of justice

8 C.F.R. § 1003.107(b).

The Board has the discretion to hold a hearing to determine if the practitioner meets all of the requirements for reinstatement. If the Board denies a petition for reinstatement, the practitioner is barred from filing a subsequent petition for reinstatement for one year from the date of denial.

(c) If expelled. — A practitioner who has been expelled may file a petition for reinstatement with the Board of Immigration Appeals after one year has passed, under the provisions described in (b), above.

(d) Cases pending at reinstatement. — Suspension or expulsion terminates representation. A practitioner reinstated to immigration practice who wishes to represent clients before the Immigration Court, the Board of Immigration Appeals, or the Department of Homeland Security must enter a new appearance in each case, even if he or she was the attorney at the time that discipline was imposed. See Chapter 2.3(c) (Appearances).

11 Forms

11.1 Forms Generally

There is an official form that must be used to:

- appear as a representative — see Chapter 2.1(b) (Entering an appearance)
- report a change of address — see Chapter 2.2(c) (Address obligations)
- request most kinds of reliefs — see 8 C.F.R. parts 299, 1299
- file an appeal — see Chapter 6 (Appeals of Immigration Judge Decisions)
- request a fee waiver on appeal — see Chapter 3.4 (Filing Fees)

There is an official form that should be used to:

- file a practitioner complaint — see Chapter 10.5 (Filing a Complaint)

There is *no* official form to:

- file a motion — see Chapter 5.2(b) (Form)
- file a FOIA request — see Chapter 12 (Freedom of Information Act)

11.2 Obtaining Blank Forms

(a) Identifying EOIR forms. — Many forms used by the Executive Office for Immigration Review (EOIR) do not appear in the regulations. All of the EOIR forms most commonly used by the public are identified in this manual. See Appendix E (Forms). Form names and numbers can be obtained from the Immigration Courts and the Clerk's Office of the Board of Immigration Appeals. See Appendices A (Immigration Court Addresses), B (EOIR Directory).

(b) Obtaining EOIR forms. — Appendix E (Forms) contains a list of frequently requested forms and information on where to obtain them. In general, EOIR forms are available from the following sources:

- the EOIR website at www.usdoj.gov/eoir
- the Immigration Courts
- the Clerk's Office of the Board of Immigration Appeals
- certain Government Printing Office Bookstores

Parties should be sure to use the most recent version of each form, which will be available from the sources listed here.

(c) Obtaining DHS forms. — In general, DHS forms are available at www.uscis.gov.

(d) Photocopied forms. — Photocopies of blank EOIR forms may be used, provided that they are an accurate duplication of the government-issued form and are printed on the correct size and stock of paper. See 8 C.F.R. §§ 299.4(a), 1299.1. The filing party is responsible for the accuracy and legibility of the form. The paper used to photocopy the form should also comply with Chapter 3.3(c)(v) (Paper size and document quality). The most recent version of the form *must be used* and is available from the sources listed in subsection (b), above.

For the forms listed in subsection (f), below, the use of colored paper is strongly encouraged, but not required.

(e) Computer-generated forms. — Computer-generated versions of EOIR forms may be used, provided that they are an accurate duplication of the government-issued form and are printed on the correct size and stock of paper. See 8 C.F.R. §§ 298.4(a), 1299.1. The filing party is responsible for the accuracy and legibility of the form. The paper used to photocopy the form should also comply with Chapter 3.3(c)(v) (Paper size and document quality). The most recent version of the form *must be used* and is available from the sources listed in subsection (b), above. At this time, forms cannot be filed electronically with the Immigration Court.

For the forms listed in subsection (f), below, the use of colored paper is strongly encouraged, but not required.

(f) Form colors. — Forms are no longer required to be filed on paper of a specific color. However, the use of colored paper for the forms listed below is strongly encouraged. Any submission that is not a form must be on white paper.

blue	—	EOIR-26	(Notice of Appeal / Immigration Judge Decision)
tan	—	EOIR-26A	(Appeal Fee Waiver Request)
yellow	—	EOIR-27	(Notice of Appearance before the Board of Immigration Appeals)
green	—	EOIR-28	(Notice of Appearance before the Immigration Court)
pink	—	EOIR-29	(Notice of Appeal / DHS decision)
pink	—	EOIR-33/BIA	(Change of Address / Board of Immigration Appeals)
blue	—	EOIR-33/IC	(Change of Address / Immigration Court)

11.3 Submitting Completed Forms

Completed forms must comply with the signature requirements in Chapter 3.3(b) (Signatures).

11.4 Additional Information

For further information on filing requirements, see Chapter 3 (Filing with the Immigration Court). See also Chapters 5 (Motions before the Immigration Court), 6 (Appeals of Immigration Judge Decisions), 8 (Stays), 9 (Detention and Bond), 10 (Discipline of Practitioners), 12 (Freedom of Information Act).

12 Freedom of Information Act (FOIA)

12.1 Generally

The Freedom of Information Act (FOIA) provides the public with access to federal agency records, with certain exceptions. See 5 U.S.C. § 552. The Executive Office for Immigration Review, Office of the General Counsel, responds to FOIA requests for Immigration Court records. See Appendix B (EOIR Directory).

12.2 Requests

For detailed guidance on how to file a FOIA request, individuals requesting information under the Freedom of Information Act should consult the Executive Office for Immigration Review (EOIR) website at www.usdoj.gov/eoir or contact the EOIR FOIA unit. See Appendix B (EOIR Directory). General guidelines are as follows.

(a) Who may file. —

(i) Parties. —

(A) Inspecting the record. — Parties to an Immigration Court proceeding, and their legal representatives, may inspect the official record of proceedings by prior arrangement with Immigration Court staff. A FOIA request is not required. See Chapter 1.6(c) (Records).

(B) Obtaining copies of the record. — As a general rule, parties may only obtain a copy of the record of proceedings by filing a FOIA request. See subsection (b), below. However, in limited instances, Immigration Court staff have the discretion to provide a party with a copy of the record or portion of the record, without a FOIA request. See Chapter 1.6(c) (Records).

(ii) Non-parties. — Persons who are not a party to a proceeding before an Immigration Court must file a FOIA request with the EOIR Office of General Counsel if they wish to see or obtain copies of the record of proceedings. See subsection (b), below.

(b) How to file. —

(i) Form. — FOIA requests must be made in writing. See 28 C.F.R. § 16.1 et seq. The Executive Office for Immigration Review (EOIR) does not have an official form for filing FOIA requests. The Department of Homeland Security Freedom of Information /Privacy Act Request (Form G-639) should not be used to file such requests. For information on where to file a FOIA request, see Appendix B (EOIR Directory).

(ii) Information required. — Requests should thoroughly describe the records sought and include as much identifying information as possible regarding names, dates, subject matter, and location of proceedings. For example, if a request pertains to an alien in removal proceedings, the request should contain the full name and alien registration number (“A number”) of that alien. The more precise and comprehensive the information provided in the FOIA request, the better and more expeditiously the request can be processed.

(iii) Fee. — No fee is required to file a FOIA request, but fees may be charged to locate, review, and reproduce records. See 28 C.F.R. § 16.3(c).

(iv) Processing times. — Processing times for FOIA requests vary depending on the nature of the request and the location of the records.

(c) When to file. —

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

(ii) Effect on filing deadlines. — Parties should not delay the filing of an application, motion, brief, appeal, or other document while awaiting a response to a FOIA request. Non-receipt of materials requested pursuant to FOIA does *not* excuse a party’s failure to meet a filing deadline.

(d) Limitations. —

(i) Statutory exemptions. — Certain information in agency records, such as classified material and information that would cause a clearly unwarranted invasion of personal privacy, is exempted from release under FOIA. See 5 U.S.C. § 552(b)(1)-(9). Where appropriate, such information is redacted (i.e., removed or cut out), and a copy of the redacted record is provided to the requesting party. If material is redacted, the reasons for the redaction are indicated.

(ii) Agency's duty. — The FOIA statute does not require the Executive Office for Immigration Review, its Office of the General Counsel, or the Immigration Courts to perform legal research, nor does it entitle the requesting person to copies of documents that are available for sale or on the internet.

(iii) Subject's consent. — When a FOIA request seeks information that is exempt from disclosure on the grounds of personal privacy, the subject of the record must consent in writing to the release of the information.

12.3 Denials

If a FOIA request is denied, either in whole or in part, the requesting party may appeal the decision to the Office of Information and Privacy, Department of Justice. Information on how to appeal a denial of a FOIA request is available on the Office of Information and Privacy website at www.usdoj.gov/oip. The rules regarding FOIA appeals can be found at 28 C.F.R. § 16.9.

13 Other Information

13.1 Reproduction of the Practice Manual

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

13.2 Online Access to the Practice Manual

The most current version of the Practice Manual is available at the Executive Office for Immigration Review website at www.usdoj.gov/eoir. Questions regarding online access to the Practice Manual should be addressed to the Law Library and Immigration Research Center. See Appendix B (EOIR Directory).

13.3 Updates to the Practice Manual

The Practice Manual is updated periodically. The date of the most recent update is indicated at the bottom of each page. Parties should make sure to consult the most recent version of the Practice Manual, which is posted online at the Executive Office for Immigration Review website at www.usdoj.gov/eoir.

13.4 Public Input

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

Correspondence regarding the Practice Manual should be addressed to:

United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
Attn: Practice Manual Committee

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

(b) Regulations and Published Rules. — Periodically, the Executive Office for Immigration Review issues new regulations. New regulations are published in the *Federal Register*, which is available online at www.gpoaccess.gov, in most law libraries, and in many public libraries. The public is encouraged to submit comments on proposed regulations. Comments may be submitted at www.regulations.gov or as directed in the *Federal Register*.

APPENDIX A

Immigration Court Addresses

Arizona			
Eloy	1705 E. Hanna Rd., Suite 366 Eloy, AZ 85231 (520) 466-3671	Phoenix	200 East Mitchell Drive, Suite 200 Phoenix, AZ 85012 (602) 640-2747
Florence	3260 N. Pinal Parkway Ave. Florence, AZ 85232 (520) 868-3341	Tucson	160 N. Stone Ave., Suite 300 Tucson, AZ 85701-1502 (520) 670-5212

California			
East Mesa	East Mesa CCA 446 Alta Rd. San Diego, CA 92158 (619) 661-3327	Los Angeles	606 S. Olive St., 15th Floor Los Angeles, CA 90014 (213) 894-2811
El Centro	1115 North Imperial Ave. El Centro, CA 92243 (760) 353-2328	San Diego	401 West "A" St., Suite 800 San Diego, CA 92101 (619) 557-6052
Imperial	2409 La Brucherie Rd. Imperial, CA 92251 (760) 355-0070	San Francisco	120 Montgomery St., Suite 800 San Francisco, CA 94104 (415) 705-4415
Lancaster	Mira Loma Facility 45100 N. 60th St., West Lancaster, CA 93536 (661) 942-8633	San Pedro	Temporarily closed For inquiries and filings, please contact the Los Angeles Immigration Court.

Colorado	
Denver	Byron G. Rogers Federal Bldg. 1961 Stout St., Room 1403 Denver, CO 80294 (303) 844-5815

Connecticut

Hartford AA Ribicoff Federal Bldg. & Courthouse
450 Main St., Room 509
Hartford, CT 06103-3015
(860) 240-3881

Florida

Miami	One Riverview Square 333 S. Miami Ave., Suite 700 Miami, FL 33130 (305) 789-4221	Orlando	80 North Hughey Ave., Suite 203 Orlando, FL 32801 (407) 648-6565
Miami Krome	Krome North Processing Center 18201 SW 12th St., Bldg. #1, Suite C Miami, FL 33194 (305) 530-7196		
	Mailing Address: P.O. Box 940998 Miami, FL 33194		

Georgia

Atlanta 180 Spring Street SW, Suite 241
Atlanta, GA 30303
(404) 331-090

Hawaii

Honolulu PJKK Federal Bldg.
300 Ala Moana Blvd., Room 8-112
Honolulu, HI 96850
(808) 541-1870

Illinois			
Chicago	55 East Monroe St., Suite 1900 Chicago, IL 60603-5701 (312) 353-7313	Chicago Detained	536 Clark St., Room B1330/1320 Chicago, IL 60605 (312) 353-1387

Louisiana			
New Orleans	One Canal Place 365 Canal St., Suite 2450 New Orleans, LA 70130 (504) 589-3992	Oakdale	1900 E. Whatley Rd. Oakdale, LA 71463 (318) 335-0365 Mailing Address: P.O. Box 750 Oakdale, LA 71463

Maryland	
Baltimore	George Fallon Federal Bldg. 31 Hopkins Plaza, Room 440 Baltimore, MD 21201 (410) 962-3092

Massachusetts	
Boston	JFK Federal Bldg. 15 New Sudbury St., Room 320 Boston, MA 02203 (617) 565-3080

Michigan	
Detroit	P.V. McNamara Federal Bldg. 477 Michigan Ave., Suite 440 Detroit, MI 48226 (313) 226-2603

Minnesota

Bloomington 7850 Metro Parkway, Suite 320
Bloomington, MN 55425
(612) 725-3765

Nevada

Las Vegas 3365 Pepper Lane, Suite 200
Las Vegas, NV 89120
(702) 458-0227

New Jersey

Elizabeth	625 Evans St., Room 148A Elizabeth, NJ 07201 (973) 693-4113	Newark	970 Broad St., Room 1135 Newark, NJ 07102 (973) 645-3524
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New York

Batavia	4250 Federal Drive, Room F108 Batavia, NY 14020 (585) 345-4300	New York	26 Federal Plaza 12th Floor, Room 1237 New York, NY 10278 (917) 454-1040
Buffalo	130 Delaware Ave., Suite 410 Buffalo, NY 14202 (716) 551-3442	Ulster	Ulster Correctional Facility Berme Rd. P.O. Box 800 Napanoch, NY 12458 (845) 647-5506
Fishkill	Downstate Correctional Facility 121 Red Schoolhouse Rd. Fishkill, NY 12524 (845) 831-3657	Varick Street	201 Varick St., Room 1140 New York, NY 10014 (212) 620-6279

Ohio

Cleveland 801 W. Superior Ave.
Suite 13 - 100
Cleveland, OH 44113
(216) 802-1100

Oregon

Portland 1220 S.W. Third Ave., Suite 218
Portland, OR 97204
(503) 326-6341

Pennsylvania

Philadelphia	1600 Callowhill St., Suite 400 Philadelphia, PA 19130 (215) 656-7000	York	3400 Concord Rd., Suite 2 York, PA 17402 (717) 755-7555 Mailing Address P.O. Box 20370 York, PA 17402
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Puerto Rico

San Juan San Patricio Office Center
#7 Tabonuco St., Room 401
Guaynabo, PR 00968-4605
(787) 749-4386

Tennessee

Memphis Clifford B. Davis Federal Bldg.
167 North Main, Room 460
Memphis, TN 38103
(901) 544-3818

Texas			
Dallas	1100 Commerce St., Suite 404 Dallas, TX 75242 (214) 767-1814	Houston	2320 LaBranch St., Room 2235 Houston, TX 77004 (713) 718-3870
El Paso	700 E. San Antonio St., Suite 675 El Paso, TX 79901 (915) 534-6020	Houston	Houston Service Processing Center 5520 Greens Rd. Houston, TX 77032 (281) 987-2112
El Paso	Service Processing Center 8915 Montana Ave. El Paso, TX 79925 (915) 225-0750	Los Fresnos	Port Isabel Processing Center 27991 Buena Vista Blvd., Bldg. 37 Los Fresnos, TX 78566 (956) 547-1789 Mailing Address: 201 East Jackson St. Harlingen, TX 78550-0000
Harlingen	2009 West Jefferson Ave., Suite 300 Harlingen, Texas 78550 (956) 427-8580	San Antonio	800 Dolorosa St., Suite 300 San Antonio, TX 78207 (210) 472-6637

Utah	
Salt Lake City	5500 W. Amelia Earhart Drive, Suite 160 Salt Lake City, UT 84116 (801) 524-3000

Virginia	
Arlington	901 N. Stuart St., Suite 1300 Arlington, VA 22203 (703) 235-2307
Headquarters	5107 Leesburg Pike, Suite 1850 Falls Church, VA 22041 (703) 305-0273

Washington			
Seattle	1000 Second Ave., Suite 2500 Seattle, WA 98104 (206) 553-5953	Tacoma	1623 East J St. Tacoma, WA 98421 (253) 779-6020

APPENDIX B

EOIR Directory

EOIR Website

www.usdoj.gov/eoir

ASQ

Automated Status Query System

(800) 898-7180

(703) 305-1662

24 hours, 7 days a week

Office of the Chief Immigration Judge

United States Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500

Falls Church, VA 22041

(703) 305-1247

8:00 a.m. to 5:00 p.m., Monday - Friday, except holidays

Practice Manual Comments

United States Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500

Falls Church, VA 22041

Attn: Practice Manual Committee

**Concerns/Complaints about Immigration
Judge Conduct**

www.usdoj.gov/eoir

Board of Immigration Appeals

For addresses, see the Board of Immigration Appeals Practice Manual.

Clerk's Office

(703) 605-1007

8:00 a.m. to 4:30 p.m.

Monday - Friday, except holidays

Emergency Stay Information

(703) 605-1007

24 hours, 7 days a week

Oral Argument Coordinator

(703) 605-1007

8:00 a.m. to 4:30 p.m.

Monday - Friday, except holidays

**Telephonic Instructions and Procedures
System (BIA TIPS)**

(703) 605-1007

24 hours, 7 days a week

Office of the General Counsel

United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
(703) 305-0470
8:00 a.m. to 5:00 p.m., Monday - Friday, except holidays

EOIR Bar Counsel

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: Bar Counsel

EOIR Fraud Program

United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
Attn: Fraud Program

Freedom of Information Act Requests (FOIA)

United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel-FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
(703) 605-1297

Office of Legislative and Public Affairs

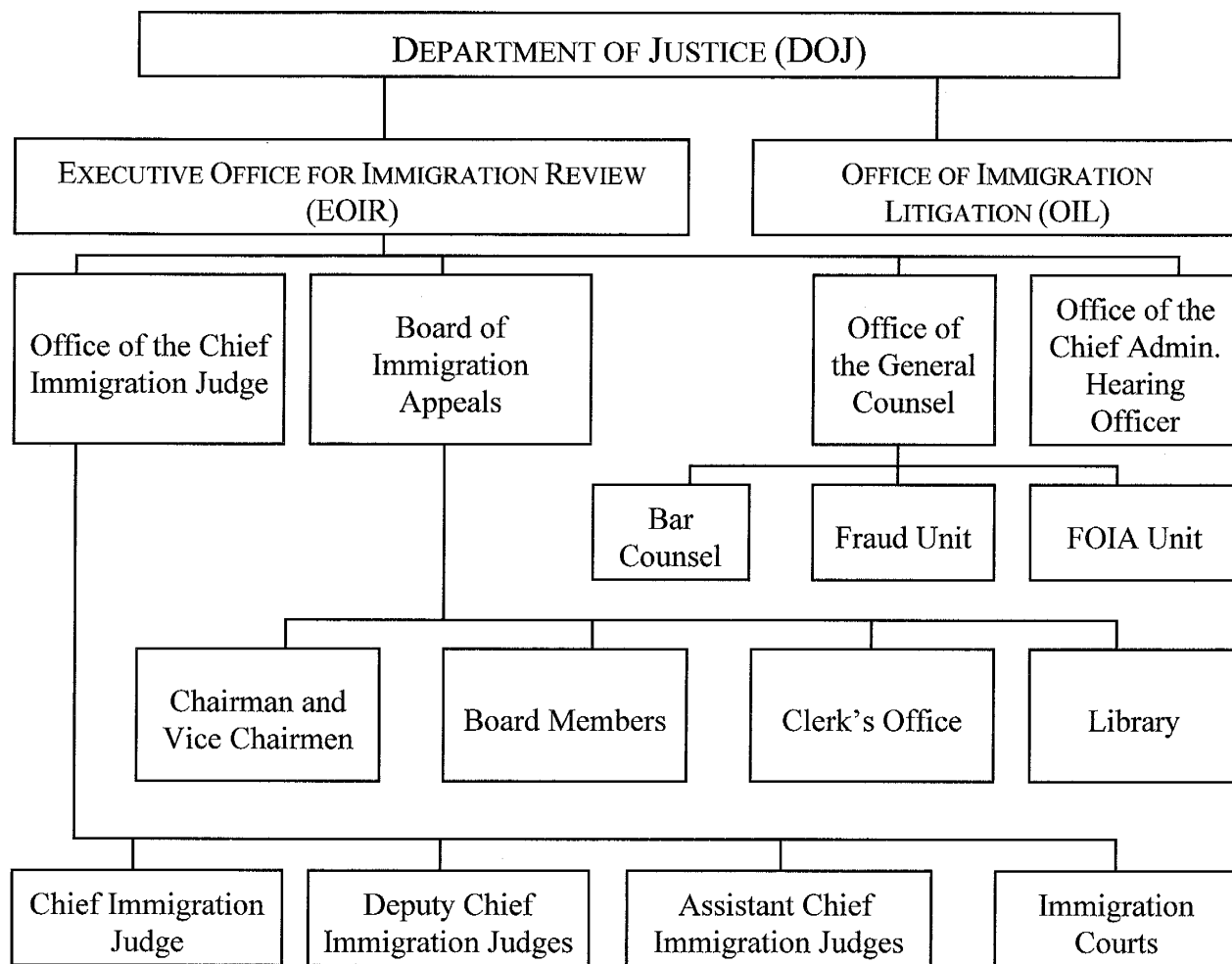
United States Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1902
Falls Church, VA 22041
(703) 305-0289
9:00 a.m. to 5:00 p.m., Monday - Friday, except holidays

Law Library and Immigration Research Center

5201 Leesburg Pike, Suite 1200
Falls Church, VA 22041
(703) 506-1103
9:00 a.m. to 4:00 p.m., Monday - Friday, except holidays
Virtual Law Library: www.usdoj.gov/eoir

APPENDIX C

Practice Manual Organizational Chart



This chart is a general illustration of the organizational relationship between certain components of the Department of Justice. The chart does not display all components of offices displayed, nor does it represent their relative authority. See Chapter 1 (The Immigration Court). These components were selected because of their practical importance to persons appearing before the Immigration Courts and the Board of Immigration Appeals.

APPENDIX D

Deadlines

This table is provided for general guidance *only*. To determine the particular deadlines in a given case, parties *must* consult the pertinent regulations and the text of this manual. The Immigration Judge has discretion to set deadlines for pre-decision filings.

Filing		Deadline (the construction of "day" is discussed in Practice Manual Chapter 3.1(c)(i))	Practice Manual Chapter
<i>Changes of address or telephone number</i>	alien	5 days after the alien's change of address or telephone number	2.2(c)
	representative	promptly	2.3(h)
<i>Filings in advance of master calendar hearing</i>	filings	15 days before the hearing, if requesting a ruling <i>(if alien is detained, deadline is determined by the Immigration Court)</i>	3.1(b)(i)
	responses	10 days after the filing is received by the Immigration Court <i>(if alien is detained, deadline is determined by the Immigration Court)</i>	
<i>Filings in advance of individual calendar hearing</i>	filings	30 days before the hearing <i>(if alien is detained, deadline is determined by the Immigration Court)</i>	3.1(b)(ii)
	responses	15 days after the filing is received by the Immigration Court <i>(if alien is detained, deadline is determined by the Immigration Court)</i>	

Filing		Deadline <i>(the construction of "day" is discussed in Practice Manual Chapter 3.1(c)(i))</i>	Practice Manual Chapter
Asylum applications *	defensive applications	at a master calendar hearing	3.1(b)(iii)(A)
	affirmative applications	referred to Immigration Court by DHS	3.1(b)(iii)(B)
Post-decision motions	motions to reopen	90 days after a final administrative order by the Immigration Judge, with certain exceptions	5.7(c)
	motions to reconsider	30 days after a final administrative order by the Immigration Judge	5.8(c)
	motions to reopen in absentia removal order	180 days after in absentia order, if based on exceptional circumstances	5.9(d)(ii)(A)
		at any time, if based on lack of proper notice	5.9(d)(ii)(B)
Deadlines for appeals to BIA		30 days after the decision was rendered orally or mailed	6.2

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

APPENDIX E

Forms

This appendix contains a list of frequently requested immigration forms and the best sources for obtaining copies of those forms.

On-line copies of forms. Many forms can be downloaded or printed from the website of the agency responsible for that form. For example, forms beginning with "EOIR-," as well as certain forms beginning with "I-" that are filed with the Immigration Court, can be found at www.usdoj.gov/eoir under the link "EOIR Forms." Other forms, including forms beginning with "I-," can be found at www.uscis.gov under the link "Immigration Forms."

Paper copies of forms. If an immigration form is not available on-line, the best source for obtaining one is the agency that is responsible for that form. The table below identifies those agencies. (Local offices often provide forms on a walk-in basis.) Other sources for forms include voluntary agencies (VOLAGs), public service organizations, law offices, and certain Government Printing Office Bookstores. See 8 C.F.R. §§ 299.2, 299.3.

Reproducing forms. Forms may be photocopied, computer-generated, or downloaded, but must comply with all requirements listed in Chapter 11.2 (Obtaining Blank Forms).

Abbreviations

AAO	=	Administrative Appeals Office, DHS
BIA	=	Board of Immigration Appeals
CIS	=	Citizenship and Immigration Services, DHS
EOIR	=	Executive Office for Immigration Review
IC	=	Immigration Court
IJ	=	Immigration Judge
OGC	=	Office of the General Counsel, EOIR

PURPOSE	FORM	NAME	GET FROM
accredited representative application	Form EOIR-31	Request for Recognition as a Nonprofit Religious, Charitable, Social Service, or Similar Organization Established in the United States	BIA
adjustment of status	Form I-485	Application to Register Permanent Residence or Adjust Status	CIS
appeal of attorney discipline decision	Form EOIR-45	Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case	IC BIA OGC
appeal of IJ decision	Form EOIR-26	Notice of Appeal from a Decision of an Immigration Judge	IC BIA
appeal of CIS decision (AAO jurisdiction)	Form I-290B	Notice of Appeal or Motion	CIS
appeal of CIS decision (BIA jurisdiction)	Form EOIR-29	Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer	CIS
appearance as representative (before the BIA)	Form EOIR-27	Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals	IC BIA
appearance as representative (before an IC)	Form EOIR-28	Notice of Entry of Appearance as Attorney or Representative before the Immigration Court	IC
asylum, withholding of removal (restriction on removal), Convention Against Torture	Form I-589	Application for Asylum and for Withholding of Removal	IC CIS
attorney / representative complaint form	Form EOIR-44	Immigration Practitioner Complaint Form	IC BIA OGC
cancellation of removal (non-permanent residents)	Form EOIR-42B	Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents	IC
cancellation of removal (permanent residents)	Form EOIR-42A	Application for Cancellation of Removal for Certain Permanent Residents	IC
change of address (cases pending before BIA)	Form EOIR-33 / BIA	Alien's Change of Address Form / Board of Immigration Appeals	IC BIA

PURPOSE	FORM	NAME	GET FROM
change of address (cases pending before an IC)	Form EOIR-33 / IC	Alien's Change of Address Form / Immigration Court	IC
fee waiver (appeals or motions)	Form EOIR-26A	Fee Waiver Request	IC BIA
motion (any kind)	none	There is no official form for motions filed with an IC or the BIA. Do not use the Notice of Appeal (Form EOIR-26) for motions.	n/a
NACARA suspension of deportation/special rule cancellation	Form I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal	CIS
return to unrelinquished domicile	Form I-191	Application for Advance Permission to Return to Unrelinquished Domicile	CIS
suspension of deportation	Form EOIR-40	Application for Suspension of Deportation	IC
temporary protected status	Form I-821	Application for Temporary Protected Status	CIS
visa petition (employment-based)	Form I-140	Immigrant Petition for Alien Worker	CIS
visa petition (family-based)	Form I-130	Petition for Alien Relative	CIS
waiver of inadmissibility	Form I-601	Application for Waiver of Grounds of Inadmissibility	CIS

APPENDIX F

Sample Cover Page

A. Tourney, Esquire
1234 Center Street
Anytown, ST 99999

DETAINED

Filing party. If pro se, the alien should provide his or her own name and address in this location. If a representative, the representative should provide his or her name and complete business address.

Detention status. If the alien is detained, the word "DETAINED" should appear prominently in the top right corner, preferably highlighted.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ANYTOWN, STATE

In the Matters of:

Jane Smith

John Smith

Jill Smith

In removal proceedings

Court. The Immigration Court location (city or town) and state should be provided.

File Nos.: A 12 345 678

A 12 345 679

A 12 345 680

A numbers. The alien registration number of every person included in the submission should be listed.

Name and type of proceeding. The full name of every person included in the submission should be listed.

Immigration Judge Susan Jones

Next Hearing: September 22, 2008 at 1:00 p.m.

Name of the Immigration Judge and the date and time of the next hearing. This information should always be listed.

RESPONDENT'S PRE-HEARING BRIEF

Filing title. The title of the submission should be placed in the middle and bottom of the page.

APPENDIX G

Sample Proof of Service

Instructions:

By law, all submissions to the Immigration Court *must* be filed with a "Proof of Service" (or "Certificate of Service"). See Chapter 3.2 (Service on the Opposing Party). This Appendix provides guidelines on how to satisfy this requirement.

What is required. To satisfy the law, you must do *both* of the following:

1. *Serve the opposing party.* Every time you file a submission with the Immigration Court, you must give, or "serve," a copy on the opposing party. If you are an alien in proceedings, the opposing party is the Department of Homeland Security.
2. *Give the Immigration Court a completed Proof of Service.* You must submit a signed "Proof of Service" to the Immigration Court along with your document(s). The Proof of Service tells the Immigration Court that you have given a copy of the document(s) to the opposing party.

Sample Proof of Service. You do not have to use the sample contained in this Appendix. You may write up your own Proof of Service if you like. However, if you use this sample, you will satisfy the Proof of Service requirement.

Sending the Proof of Service. When you have to supply a Proof of Service, be sure to staple or otherwise attach it to the document(s) that you are serving.

Forms that contain a Proof of Service. Some forms, such as the Application for Cancellation of Removal for Certain Permanent Residents (Form EOIR-42A), contain a Certificate of Service, which functions as a Proof of Service for the form. You must complete the Certificate of Service to satisfy the Proof of Service requirement *for that form*. Such a Certificate of Service only functions as a Proof of Service for the form on which it appears, not for any supporting documents that you file with the form. If you are filing supporting documents with a form that contains a Certificate of Service, you must file a separate Proof of Service for those documents.

Forms that do not contain a Proof of Service. Forms that do not contain a Certificate of Service are treated like any other document. Therefore, you must supply the Proof of Service for those forms.

Sample Proof of Service

(Name of alien or aliens)

("A number" of alien or aliens)

PROOF OF SERVICE

On _____, I, _____,
(date) (printed name of person signing below)

served a copy of this _____
(name of document)

and any attached pages to _____
(name of party served)

at the following address: _____
(address of party served)

(address of party served)

by _____
(method of service, for example overnight courier, hand-delivery, first class mail)

(signature)

(date)

APPENDIX H

Sample Certificate of Translation

All submissions to the Immigration Court, if not in the English language, must be accompanied by a translation and certificate of translation. See Chapter 3.3(a) (Language).

CERTIFICATE OF TRANSLATION

I, _____, am competent to translate from
(name of translator)

_____ into English, and certify that the translation of
(language)

(names of documents)

is true and accurate to the best of my abilities.

(signature of translator)

(typed/printed name of translator)

(address of translator)

(address of translator)

(telephone number of translator)

APPENDIX I

Telephonic Information

Do you want to know the
status of your case before an
Immigration Judge or the
Board of Immigration Appeals?

All you have to do is

ASQ

(800) 898-7180

(703) 305-1662

The Automated Status Query
System contains information
regarding your case, including your
next hearing date, asylum
processing, the Immigration Judge's
decision, or your case appeal.

This service is available 24 hours
a day, 7 days a week.

Need information on how to
file an appeal, motion, or
anything else with the
Board of Immigration Appeals?

Let us give you some

BIA TIPS

(703) 605-1007

Call the Board of Immigration
Appeals Telephonic Instructions and
Procedures System for recorded
information on how to file an appeal,
motion, brief, change of address,
and other documents with the
Board.

This service is available 24 hours
a day, 7 days a week.

APPENDIX J

Citation Guidelines*

When filing papers with the Immigration Court, parties should keep in mind that accurate and complete legal citations strengthen the argument made in the submission. This Appendix provides guidelines for frequently cited sources of law.

The Immigration Court generally follows *A Uniform System of Citation* (also known as the “Blue Book”), but diverges from that convention in certain instances. The Immigration Court appreciates but does not require citations that follow the examples used in this Appendix. The citation categories are:

- I. Cases
- II. Regulations
- III. Statutes/laws
- IV. Legislative history
- V. Treaties and international materials
- VI. Publications and communications by governmental agencies,
and
- VII. Commonly cited commercial publications

Note that, for the convenience of filing parties, some of the citation formats in this Appendix are less formal than those used in the published cases of the Board of Immigration Appeals. Once a source has been cited in full, the objective is brevity without compromising clarity.

This Appendix concerns the citation of legal authority. For guidance on citing to the record and other sources, see Chapter 3.3(e) (Source materials) and Chapter 4.18(d) (Citation).

As a practice, the Immigration Court prefers italics in case names and publication titles, but underlining is an acceptable alternative.

□ □ □ □ □

* This appendix is substantially based on Appendix J (Citation Guidelines) in the Board of Immigration Appeals Practice Manual. The Office of the Chief Immigration Judge wishes to acknowledge the efforts of all those involved in the preparation of that appendix.

I. Decisions, Briefs, and Exhibits

General guidance: *Abbreviations in case names.* As a general rule, well-known agency abbreviations (e.g., DHS, INS, FBI, Dep't of Justice) may be used in a case name, but without periods. If an agency name includes reference to the "United States," it is acceptable to abbreviate it to "U.S." However, when the "United States" is named as a party in the case, do not abbreviate "United States." For example:

DHS v. Smith not *D.H.S. v. Smith*

U.S. Dep't of Justice v. Smith not *United States Department of Justice v. Smith*

United States v. Smith not *U.S. v. Smith*

Short form of case names. After a case has been cited in full, a shortened form of the name may be used thereafter. For example:

full: *INS v. Phinpathya*, 464 U.S. 183 (1984)

short: *Phinpathya*, 464 U.S. at 185

full: *Matter of Nolasco*, 22 I&N Dec. 632 (BIA 1999)

short: *Nolasco*, 22 I&N Dec. at 635

Citations to a specific point. Citations to a specific point should include the precise page number(s) on which the point appears. For example:

Matter of Artigas, 23 I&N Dec. 99, 100 (BIA 2001)

Citations to a dissent or concurrence. If citing to a dissent or concurrence, this should be indicated in a parenthetical notation. For example:

Matter of Artigas, 23 I&N Dec. 99, 109-110 (BIA 2001) (dissent)

Board decisions: *Published decisions.* Precedent decisions by the Board of Immigration Appeals ("Board") are binding on the Immigration Court, unless modified or overruled by the Attorney General or a federal court. All precedent Board decisions are available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. Precedent decisions should be cited in the "I&N Dec." form illustrated below. The citation must identify the adjudicator (BIA, A.G., etc.) and the year of the decision. Note that

there are no spaces in "I&N" and that only "Dec." has a period. For example:

Matter of Balsillie, 20 I&N Dec. 486 (BIA 1992)

Unpublished decisions. Citation to unpublished decisions is discouraged because these decisions are not binding on the Immigration Court in other cases. When reference to an unpublished case is necessary, a copy of the decision should be provided, and the citation should include the alien's full name, the alien registration number, the adjudicator, and the precise date of the decision. Italics, underlining, and "*Matter of*" should not be used. For example:

Jane Smith, A12 345 678 (BIA July 1, 1999)

"Interim Decision." In the past, the Board issued precedent decisions in slip opinion or "Interim Decision" form. Because all published cases are now available in final form (as "I&N Decisions"), citations to "Interim Decisions" are no longer appropriate and are disfavored.

"Matter of," not "In re." All precedent decisions should be cited as "*Matter of*." The use of "*In re*" is disfavored. For example: *Matter of Yanez*, not *In re Yanez*.

For a detailed description of the Board's publication process, see Board Practice Manual, which is available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir/biainfo.htm.

IJ decisions:

If referring to an earlier decision in the case by the Immigration Judge, the decision should be cited. This applies whether the decision was issued orally or in writing. Citations to decisions of Immigration Judges should state the nature of the proceedings, the page number, and the date. For example:

IJ Bond Proceedings Decision at 5 (Dec. 12, 2008)

AG decisions:

Precedent decisions by the Attorney General are binding on the Immigration Court, and should be cited in accordance with the rules for precedent decisions by the Board of Immigration Appeals. All precedent decisions by the Attorney General are available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir.

Matter of Y-L-, 23 I&N Dec. 270 (AG 2002)

DHS decisions: Precedent decisions by the Department of Homeland Security and the former Immigration and Naturalization Service should be cited in accordance with the rules for precedent decisions by the Board of Immigration Appeals.

Federal & state courts: *Generally.* Federal and state court decisions should generally be cited according to the standard legal convention, as set out in the latest edition of *A Uniform System of Citation* (also known as the “Blue Book”). For example:

INS v. Phinpathya, 464 U.S. 183 (1984)

Saakian v. INS, 252 F.3d 21 (1st Cir. 2001)

McDaniel v. United States, 142 F. Supp. 2d 219 (D. Conn. 2001)

U.S. Supreme Court. The Supreme Court Reporter citation (“S.Ct.”) should be used only when the case has not yet been published in the United States Reports (“U.S.”).

Unpublished cases. Citation to unpublished state and federal court cases is discouraged. When citation to an unpublished decision is necessary, a copy of the decision should be provided, and the citation should include the docket number, court, and precise date. Parties are also encouraged to provide the LexisNexis or Westlaw number. For example:

Bratco v. Mukasey, No. 04-726367, 2007 WL 4201263 (9th Cir. Nov. 29, 2007) (unpublished)

Precedent cases not yet published. When citing to recent precedent cases that have not yet been published in the Federal Reporter or other print format, parties should provide the docket number, court, and year. Parties are also encouraged to provide the LexisNexis or Westlaw number. For example:

Grullon v. Mukasey, ___ F.3d ___, No. 05-4622, 2007 U.S. App. LEXIS 27325 (2d Cir. 2007)

Briefs and Exhibits: *Text from briefs.* If referring to text from a brief, the brief should be cited. The citation should state the filing party’s identity, the nature of proceedings, the page number, and the date. For example:

Respondent’s Bond Appeal Brief at 5 (Dec. 12, 2008)

Exhibits. Exhibits designated during a hearing should be cited as they were designated by the Immigration Judge. For example:

Exh. 3

Exhibits accompanying a brief should be cited by alphabetic tab or page number. For example:

Respondent's Pre-Hearing Brief, Tab A

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II. Regulations

General guidance: *Regulations generally.* There are two kinds of postings in the Federal Register: those that are simply informative in nature (such as “notices” of public meetings) and those that are regulatory in nature (referred to as “rules”). There are different types of “rules,” including “proposed,” “interim,” and “final.” The type of rule will determine whether or not (and for how long) the regulatory language contained in that rule will be in effect. Generally speaking, proposed rules are not law and do not have any effect on any case, while interim and final rules do have the force of law and, depending on timing, may affect a given case.

Federal Register and Code of Federal Regulations. Regulations appear first in the Federal Register (Fed. Reg.) and then in the Code of Federal Regulations (C.F.R.). Once regulations appear in a volume of the C.F.R., do not cite to the Federal Register *unless* there is a specific reason to do so (discussed below).

C.F.R.: For the Code of Federal Regulations, always identify the volume, the section number, and the year. The year need not be given after the first citation, unless a subsequent citation refers to a regulation published in a different year. Always use periods in the abbreviation “C.F.R.” For example:

full: 8 C.F.R. § 1003.1 (2002)

short: 8 C.F.R. § 1003.1

Fed. Reg.: Citations to regulatory material in the Federal Register should be used only when:

- the citation is to information that will never appear in the C.F.R., such as a public notice or announcement
- the rule contains regulatory language that will be, but is not yet, in the C.F.R.
- the citation is to information associated with the rule, but which will not appear in the C.F.R. (e.g., a preamble or introduction to a rule)
- the rule contains proposed or past language of a regulation that is pertinent in some way to the filing or argument

The first citation to the Federal Register should always include (i) the volume, (ii) the abbreviated form "Fed. Reg.", (iii) the page number, (iv) the date, and (v) important identifying information such as "proposed rule," "interim rule," "supplementary information," or the citation where the rule will appear. For example:

- full: 67 Fed. Reg. 52627 (Aug. 13, 2002) (proposed rule)
- full: 67 Fed. Reg. 38341 (June 4, 2002) (to be codified at 8 C.F.R. §§ 100, 103, 236, 245a, 274a, and 299)
- short: 67 Fed. Reg. at 52627-28; 67 Fed. Reg. at 38343

Since the Federal Register does not use commas in its page numbers, do not use a comma in page numbers. Use abbreviations for the month.

When citing the preamble to a rule, identify it exactly as it is titled in the Federal Register, e.g., 67 Fed. Reg. 54878 (Aug. 26, 2002) (supplementary information).

□ □ □ □ □

III. Statutes / Laws

General guidance: *Full citations.* Whenever citing a statute for the first time, be certain to include all the pertinent information, including the name of the statute, its public law number, statutory cite, and a parenthetical identifying where the statute was codified (if applicable). The only exception is the Immigration and Nationality Act, which is illustrated below.

Short citations. The use of short citations is encouraged, but only after the full citation has been used.

Special rule for U.S.C. and C.F.R. There are two abbreviations that never need to be spelled out: "U.S.C." for the U.S. Code and the "C.F.R." for the Code of Federal Regulations. Always use periods with these abbreviations.

Special rule for the INA. Given the regularity with which the Immigration and Nationality Act is cited before the Immigration Court, there is generally no need to provide the Public Law Number, the Stat. citation, or U.S.C. citation. The Immigration Court will presume INA citations refer to the current language of the Act unless the year is provided.

State statutes. State statutes should be cited as provided in *A Uniform System of Citation* (also known as the "Blue Book").

Sections of law. Full citations are often lengthy, and filing parties are sometimes uncertain where to put the section number in the citation. For the sake of simplicity, use the word "section" and give the section number in front of the full citation to the statute. Once a full citation has been given, use the short citation form with a section symbol "§." This practice applies whether the citation is used in a sentence or after it. For example:

The definition of the term "alien" in section 101(a)(3) of the Immigration and Nationality Act applies to persons who are not citizens or nationals of the United States. The term "national of the United States" is expressly defined in INA § 101(a)(22), but the term "citizen" is more complex. See INA §§ 301-309, 316, 320.

USC: For cites to the United States Code, always identify the volume, the section number, and the year. The year need not be given after the first citation, unless a subsequent citation refers to a section published in a different year. Always use periods in the abbreviation "U.S.C." For example:

full: 18 U.S.C. § 16 (2006)

short: 18 U.S.C. § 16

INA: full: section xxx of Immigration and Nationality Act

short: INA § xxx

USA PATRIOT: full: section xxx of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272

short: USA PATRIOT Act § xxx

LIFE: full: section xxx of Legal Immigration and Family Equity Act, Pub. L. No. 106-553, 114 Stat. 2762 (2000), *amended by* Pub. L. No. 106-554, 114 Stat. 2763 (2000)

short: LIFE Act § xxx

CCA: full: section xxx of Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631

short: CCA § xxx

NACARA: full: section xxx of Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, tit. II, 111 Stat. 2193 (1997), *amended by* Pub. L. No. 105-139, 111 Stat. 2644 (1997)

short: NACARA § xxx

IIRIRA:	full:	section xxx of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546
	short:	IIRIRA § xxx
AEDPA:	full:	section xxx of Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214
	short:	AEDPA § xxx
INTCA:	full:	section xxx of Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4305, <i>amended by</i> Pub. L. No. 105-38, 111 Stat. 1115 (1997)
	short:	INTCA § xxx
MTINA:	full:	section xxx of Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1733
	short:	MTINA § xxx
IMMACT90:	full:	section xxx of Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978
	short:	IMMACT90 § xxx
ADAA:	full:	section xxx of Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181
	short:	ADAA § xxx
IMFA:	full:	section xxx of Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537
	short:	IMFA § xxx

IRCA: full: section xxx of Immigration Reform and Control Act of 1986,
Pub. L. No. 99-603, 100 Stat. 3359

short: IRCA § xxx

IRFA: full: section xxx of International Religious Freedom Act of 1988,
Pub. L. No. 105-292, 112 Stat. 2787.

short: IRFA § xxx

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IV. Legislative History

General guidance: *Difficult to locate.* Because sources of legislative history are often difficult to locate, err on the side of providing more information, rather than less. If a source is difficult to locate, include a copy of the source with your filing (or an Internet address for it) and make clear reference to that source in your filing.

Sources. To locate legislative history, try the Library of Congress website (www.thomas.loc.gov) or commercial services. Citation to common electronic sources is encouraged.

Bills: Provide the following information the first time a bill is cited: (i) the bill number, (ii) the number of the Congress, (iii) the session of that Congress, (iv) the section number of the bill, if you are referring to a specific section, (v) the Congressional Record volume, (vi) the Congressional Record page or pages, (vii) the date of that Congressional Record, and (viii) the edition of the Congressional Record, if known. For example:

full: S. 2104, 100th Cong., 2d Sess. § 102, 134 Cong. Rec. 2216 (daily ed. Mar. 15, 1988)

short: 134 Cong. Rec. at 2218

Reports: Provide the following information the first time a report is cited: (i) whether it is a Senate or House report, (ii) the report number, (iii) the year, and (iv) where it is reprinted (a reference to where the document is available electronically is acceptable). The short form may refer either to the page numbers of the report or the page numbers where the report is reprinted. For example:

full: H.R. Conf. Rep. No. 104-828 (1996), *available in* 1996 WL 563320

short: H.R. Conf. Rep. No. 104-828, at 5

full: S. Rep. No. 98-225 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182

short: 1984 U.S.C.C.A.N. at 3183

Many committee reports are available on-line through the Library of Congress web site (www.thomas.loc.gov) or commercial services. Copies of the U.S. Code Congressional & Administrative News

(U.S.C.C.A.N.), which compiles many legislative documents, are available in some public libraries.

Hearings:

Provide the following information the first time a hearing is cited: (i) name of the hearing, (ii) the committee or subcommittee that held it, (iii) the number of the Congress, (iv) the session of that Congress, (v) the page or pages of the hearing, (vi) the date or year of the hearing, and (vii) information about what is being cited (such as the identity of the person testifying and context for the testimony). For example:

Operations of the Executive Office for Immigration Review (EOIR):
Hearing before the Subcomm. on Immigration and Claims of the House
Comm. on the Judiciary, 107th Cong., 2d Sess. 19 (2002) (testimony of
EOIR Director)

□ □ □ □ □

V. *Treaties and International Materials*

- CAT:**
- full: Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988)
- short: Convention Against Torture, art. 3
- UNHCR Handbook:**
- full: Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Geneva 1992)
- short: UNHCR Handbook ¶ xxx
[use paragraph symbol “¶” or abbreviation “para.”]
- U.N. Protocol on Refugees:**
- full: Article xxx of the United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, [1968] 19 U.S.T. 6223
- short: U.N. Refugee Protocol, art. xxx

□ □ □ □ □

VI. Publications and Communications by Governmental Agencies

General guidance: *No universal citation form.* In immigration proceedings, parties cite to a wide variety of administrative agency publications and communications, and there is no one format that fits all such documents. For that reason, use common sense when citing agency documents, and err on the side of more information, rather than less.

Difficult to locate material. If the document may be difficult for the Immigration Court to locate, include a copy of the document with your filing.

Internet material. If a document is posted on the Internet, identify the website where the document can be found or include a copy of the document with a legible Internet address.

Practice Manual: The Immigration Court Practice Manual is not legal authority. However, if there is reason to cite it, the preferred form is to identify the specific provision by chapter and section along with the date at the bottom of the page on which the cited section appears. For example:

full: Immigration Court Practice Manual, Chapter 8.5(a)(iii)
(January xx, xxxx)

short: Practice Manual, Chap. 8.5(a)(iii)

Forms: Forms should first be cited according to their full name and number. A short citation form may be used thereafter. See Appendix E (Forms) for a list of common immigration forms. For example:

full: Notice of Appeal from a Decision of an Immigration Judge
(Form EOIR-26)

short: Notice of Appeal *or* Form EOIR-26

If a form does not have a name, use the form number as the citation.

Country reports: State Department country reports appear both as compilations in Congressional committee prints and as separate reports and profiles. Citations to country reports should always contain the publication date and the specific page numbers (if available). Provide an Internet address when available. The first citation to any country report should

contain all identifying information, and a short citation form may be used thereafter. For example:

full: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Nigeria Country Reports on Human Rights Practices – 2001* (Mar. 2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8397.htm>

short: *2001 Nigeria Country Reports*

full: Committees on Foreign Relations and International Relations, 104th Cong., 1st Sess., *Country Reports on Human Rights Practices for 1994* xxx (Joint Comm Print 1995)

short: *1994 Country Reports* at page xxx

full: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *The Philippines – Profile of Asylum Claims and Country Conditions* xxx (June 1995)

short: *1995 Philippines Profile* at page xxx

Visa Bulletin:

Citations to the State Department's Visa Bulletin should include the volume, number, month, and year of the specific issue being cited. For example:

full: U.S. Dep't of State Visa Bulletin, Vol. VIII, No. 55 (March 2003)

short: Visa Bulletin (March 2003)

Internal documents:

A citation to an internal government document, such as a memo or cable, should contain as much identifying information as possible. Be sure to include any identifying heading (e.g., the "re" line in a memo) and the precise date of the document being cited. Include a copy of the document with the filing or indicate where it has been reprinted publicly. For example:

Dep't of State cable (no. 97-State-174342) (Sept. 17, 1997) (copy attached)

Office of the General Counsel, INS, U.S. Dep't of Justice, Compliance with Article 3 of the Convention Against Torture in cases of removable aliens (May 14, 1997), reprinted in *75 Interpreter Releases* 375 (Mar. 16, 1998)

**Religious Freedom
Reports:**

The International Religious Freedom Act of 1998 (IRFA) mandates that the Department of State issue an Annual Report on International Religious Freedom (State Department Report). IRFA further authorizes Immigration Judges to use the State Department Report as a resource in asylum adjudications. The State Department Report should be cited as follows:

full: Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *Annual Report on International Religious Freedom* (Sept. 2007)

short: 2007 *Religious Freedom Report* at page XXX

IRFA also mandates the issuance of an Annual Report by the United States Commission on International Religious Freedom (USCIRF Report). The USCIRF is a government body that is independent of the executive branch. Citations to the USCIRF Report should be distinguishable from citations to the Department of State report:

full: United States Commission on International Religious Freedom, *Annual Report of the United States Commission on International Religious Freedom* (May 2007)

short: 2007 USCIRF Annual Report at page XXX

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VII. Commonly Cited Commercial Publications

General guidance: *No universal citation form.* In immigration proceedings, parties cite to a wide variety of commercial texts and publications. Use common sense when citing these documents. If a document is difficult to locate, include a copy of the document with your filing (or an Internet address for it) and make clear reference to that document in your filing.

No endorsements or disparagements. The following list contains citations to specific publications that are frequently cited in filings before the Immigration Court. Their inclusion in the list is not an endorsement of the publication, nor is omission from this list a disparagement of any other publication.

Use of quotation marks, italics or underlining, and first initials. For all filings, parties should use a single format for all publications – quotation marks around any article title (whether in a book, law review, or periodical), italics or underlining for the name of any publication (whether a book, treatise, or periodical), and reference to authors' last names only (although use of first initials is appropriate where there are multiple authors with the same last name).

Shortened names. Many publications have long titles. It is acceptable to use a shortened form of the title *after* the full title has been used. Be certain to use a short form that clearly refers back to the full citation. Page and/or section numbers should always be used, whether the publication is cited in full or in shortened form.

Articles in Books: Articles in books should identify the author (by last name only), title of the article, and the publication that contains that article (including the editor and year). For example:

full: Massimino, "Relief from Deportation Under Article 3 of the United Nations Convention Against Torture," in 2 1997-98 *Immigration & Nationality Law Handbook* 467 (American Immigration Lawyers Association, ed., 1997)

short: Massimino at 469

- Bender's:** Bender's Immigration Bulletin should be cited by author (last name only), article, volume, publication, month, and year. For example:
- full: Sullivan, "When Representations Cross the Line," 1 *Bender's Immigration Bulletin* (Oct. 1996)
- short: Sullivan at 3
- Immigration Briefings:** This publication should be cited by author (last name only), article, volume, publication, month, and year. For example:
- full: Elliot, "Relief From Deportation: Part I," 88-8 *Immigration Briefings* (Aug. 1988)
- short: Elliot at 18
- Immigration Law and Procedure:** Citations to treatises require particular attention because their pagination is often complex. The first citation to this treatise must be in full and contain the volume number, the section number, the page number, the edition, and year. For example:
- full: 2 Gordon, Mailman & Yale-Loehr, *Immigration Law and Procedure* § 51.01(1)(a), at 51-3 (rev. ed. 1997)
- short: 2 *Immigration Law and Procedure* § 51.01(1)(a), at 51-3
- Interpreter Releases:** Citations should state the volume, title, page number(s), and precise date. Provide a parenthetical explanation for the citation when appropriate. For example:
- full: 75 *Interpreter Releases* 275-76 (Feb. 23, 1998) (regarding INS guidelines on when to consent to reopening of proceedings)
- short: 75 *Interpreter Releases* at 276

If an article has a title and named author, provide that information. For example:

full: Wettstein, "Lawful Domicile for Purposes of INA § 212(c): Can It Begin with Temporary Residence," in 71 *Interpreter Releases* 1273 (Sept. 26, 1994)

short: Wettstein at 1274

Law Reviews:

Law review articles should identify the author (by last name) and the title of the article, followed by the volume, name, page number(s), and year of the publication. For example:

full: Hurwitz, "Motions Practice Before the Board of Immigration Appeals," 20 *San Diego L. Rev.* 79 (1982)

short: Hurwitz, 20 *San Diego L. Rev.* at 80

Sutherland:

Citations to this treatise should include the volume number, author, name of the publication, section number, page number(s), and edition. For example:

full: 2A Singer, *Sutherland Statutory Construction* § 47.11, at 144 (4th ed. 1984)

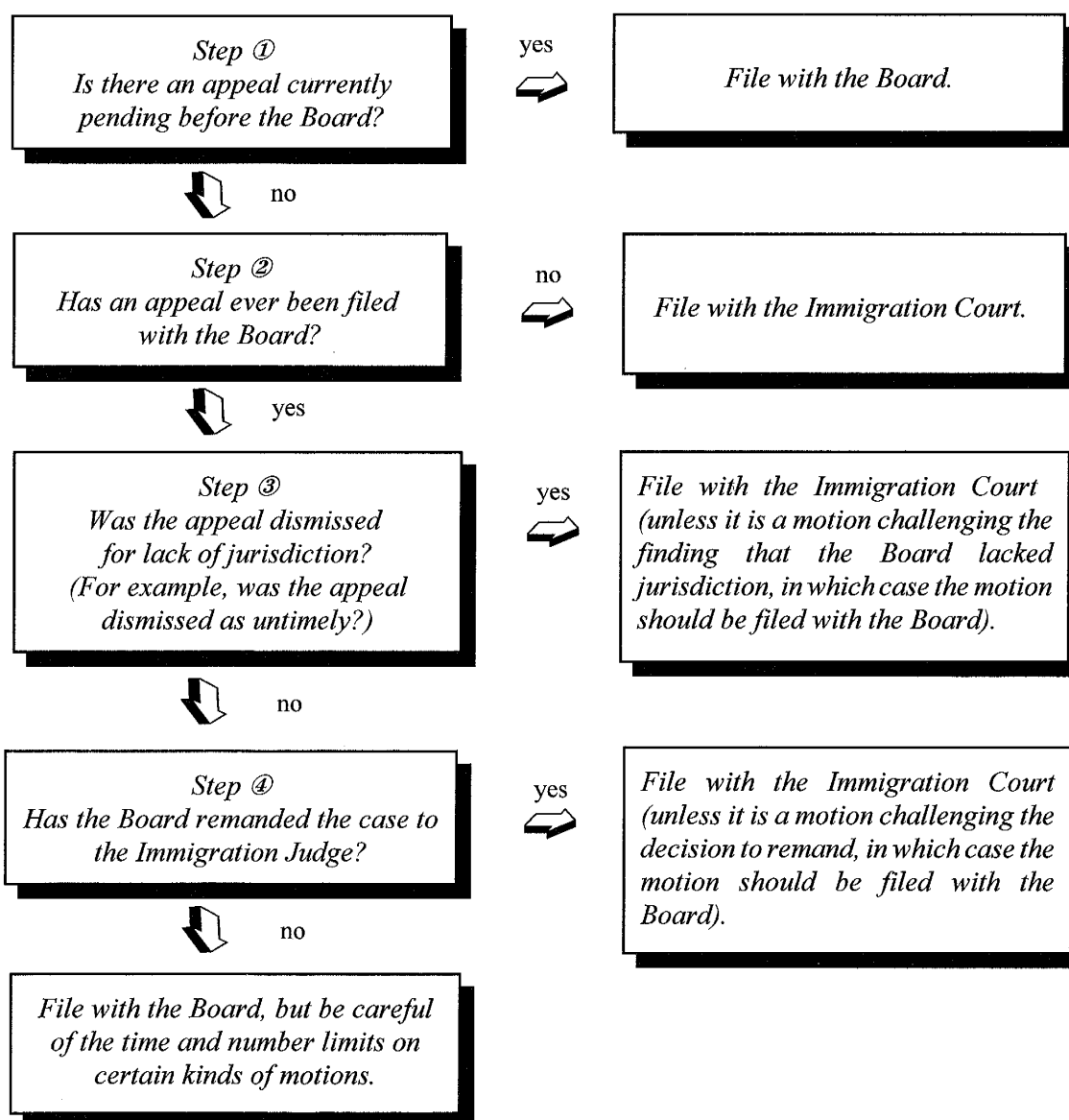
short: 2A *Sutherland* § 47.11, at 144

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APPENDIX K

Where to File

This Appendix provides guidance on where to file documents in removal proceedings. Parties should still review the pertinent regulations and must be careful to observe the rules regarding filings, especially the time and number limits on motions. See Chapters 3 (Filing with the Immigration Court), 5.2 (Filing a Motion), 5.3 (Motion Limits). In cases in which the Immigration Court has jurisdiction, documents must be filed with the Immigration Court having administrative control over the Record of Proceedings. See Chapter 3.1 (Delivery and Receipt). For information on how to file documents with the Board of Immigration Appeals, parties should consult the Board of Immigration Appeals Practice Manual.



APPENDIX L

Sample Written Pleading

Prior to entering a pleading, parties are expected to have reviewed the pertinent regulations, as well as Chapter 4 of the Immigration Court Practice Manual (Hearings before Immigration Judges).

[name and address of attorney or representative]

United States Department of Justice
Executive Office for Immigration Review
Immigration Court
[the court's location (city or town) and state]

_____)	
In the Matter of:)	
)	File No.: [the respondent's A number]
[the respondent's name])	
)	
In removal proceedings)	
_____)	

RESPONDENT'S WRITTEN PLEADING

On behalf of my client, I make the following representations:

1. The respondent concedes proper service of the Notice to Appear, dated _____.
2. I have explained to the respondent (through an interpreter, if necessary):
 - a. the rights set forth in 8 C.F.R. § 1240.10(a);
 - b. the consequences of failing to appear in court as set forth in INA § 240(b)(5);
 - c. the limitation on discretionary relief for failure to appear set forth in INA § 240(b)(7);
 - d. the consequences of knowingly filing or making a frivolous application as set forth in INA § 208(d)(6);
 - e. the requirement to notify the court within five days of any change of address or telephone number, using Form EOIR-33/IC pursuant to 8 C.F.R. § 1003.15(d).

3. The respondent concedes the following allegation(s) _____, and denies the following allegation(s) _____.
4. The respondent concedes the following charge(s) of removability _____, and denies the following charge(s) of removability _____.
5. In the event of removal, the respondent;
- ☐ names _____ as the country to which removal should be directed;
- OR
- ☐ declines to designate a country of removal.
6. The respondent will be applying for the following forms of relief from removal:
- ☐ Termination of Proceedings
- ☐ Asylum
- ☐ Withholding of Removal (Restriction on Removal)
- ☐ Adjustment of Status
- ☐ Cancellation of Removal pursuant to INA § _____
- ☐ Waiver of Inadmissibility pursuant to INA § _____
- ☐ Voluntary Departure
- ☐ Other (specify) _____
- ☐ None
7. If the relief from removal requires an application, the respondent will file the application (other than asylum), no later than thirty (30) days before the date of the individual calendar hearing, unless otherwise directed by the court. The respondent acknowledges that, if the application(s) are not timely filed, the application(s) will be deemed waived and abandoned under 8 C.F.R. § 1003.31(c).
- If the respondent is filing a defensive asylum application, the asylum application will be filed in open court at the next master calendar hearing.
8. If background and security investigations are required, the respondent has received the DHS biometrics instructions and will timely comply with the instructions. I have explained the instructions to the respondent (through an interpreter, if necessary). In addition, I have explained to the respondent (through an interpreter, if necessary), that, under 8 C.F.R. § 1003.47(d), failure to provide biometrics or other biographical information within the time allowed will constitute abandonment of the application unless the respondent demonstrates that such failure was the result of good cause.

9. The respondent estimates that _____ hours will be required for the respondent to present the case.

10. ☐ It is requested that the Immigration Court order an interpreter proficient in the
_____ language, _____ dialect;

OR

☐ The respondent speaks English and does not require the services of an interpreter.

Date

Attorney or Representative for the Respondent

RESPONDENT'S PLEADING DECLARATION

I, _____, have been advised of my rights in these proceedings by my attorney or representative. I understand those rights. I waive a further explanation of those rights by this court.

I have been advised by my attorney or representative of the consequences of failing to appear for a hearing. I have also been advised by my attorney of the consequences of failing to appear for a scheduled date of departure or deportation. I understand those consequences.

I have been advised by my attorney or representative of the consequences of knowingly filing a frivolous asylum application. I understand those consequences.

I have been advised by my attorney or representative of the consequences of failing to follow the DHS biometrics instructions within the time allowed. I understand those consequences.

I understand that if my mailing address changes I must notify the court within 5 days of such change by completing an Alien's Change of Address Form (Form EOIR-33/IC) and filing it with this court.

Finally, my attorney or representative has explained to me what this Written Pleading says. I understand it, I agree with it, and I request that the court accept it as my pleading.

Date

Respondent

CERTIFICATE OF INTERPRETATION

I, _____, am competent to translate and interpret from
(name of interpreter)

_____ into English, and I certify that I have read this entire document to
(name of language)

the respondent in _____, and that the respondent stated that he or she understood
(name of language)

the document before he or she signed the Pleading Declaration above.

(signature of interpreter)

(typed/printed name of interpreter)

APPENDIX M

Sample Oral Pleading

Prior to entering a pleading, attorneys and representatives are expected to have thoroughly reviewed all pertinent laws, regulations, and cases, as well as the Immigration Court Practice Manual.

* * *

I, [*state your name*], on behalf of [*state the name of your client*], do concede proper service of the Notice to Appear dated [*state date of the NTA*], and waive a formal reading thereof.

I represent to the court that I have discussed with my client the nature and purpose of these proceedings, discussed specifically the allegations of facts and the charge(s) of removability, and further advised my client of his or her legal rights in removal proceedings.

I further represent to the court that I have fully explained to my client the consequences of failing to appear for a removal hearing or a scheduled date of departure as well as the consequences under section 208(d)(6) of the Act of knowingly filing or making a frivolous asylum application. My client knowingly and voluntarily waives the oral notice required by section 240(b)(7) of the Act.

As to each of these points, I am satisfied my client understands fully. On behalf of my client, I enter the following plea before this court:

One, [*he or she*] admits allegation(s) # _____ to _____.

– And/Or –

[*he or she*] denies allegation(s) # _____ to _____.

Two, [*he or she*] concedes the charge(s) of removability.

– Or –

[*he or she*] denies the charge(s) of removability.

Three, [*he or she*] seeks the following applications for relief from removal: [*state all applications, including termination of proceedings, if applicable*].

My client acknowledges that, if any applications are not timely filed, the applications will be deemed waived and abandoned under 8 C.F.R. § 1003.31(c). [*He or she*] acknowledges receipt of the DHS biometrics instructions, and understands that, under 8 C.F.R. § 1003.47(d), failure to timely comply with the biometrics instructions will constitute abandonment of the applications.

I request until [*state date to be filed*] to submit such applications to the court with proper service on the Department of Homeland Security.

I represent to the court that my client is prima facie eligible for the relief stated herein.

I request [*time/hours*] to present my client's case in chief.

I request an interpreter proficient in the [*state name of language*] language, [*state name of any applicable dialect*] dialect.

– Or –

I represent that my client is proficient in English and will not require the services of an interpreter. If any witnesses require an interpreter, I will notify the court no later than thirty days prior to the Individual Calendar hearing.

My client designates [*state name of country*] as his/her country of choice for removal if removal becomes necessary.

– Or –

My client declines to designate a country of removal.

* * *

APPENDIX N

Sample Subpoena

Subpoenas are issued to require that witnesses attend a hearing or that documents be produced. Prior to requesting a subpoena, parties are expected to have reviewed the pertinent regulations, as well as Chapter 4 of the Immigration Court Practice Manual (Hearings before Immigration Judges).

United States Department of Justice
Executive Office for Immigration Review
Immigration Court
[the court's location (city or town) and state]

SUBPOENA

In the Matter of: [the respondent's name and A number] Date: _____

To: [the name and address of the individual being subpoenaed]

[If testifying in court]

Pursuant to 8 C.F.R. § 1003.35(b), you are hereby commanded to appear before Immigration Judge [name] at [the court's address] on [the date and time of the hearing] to give testimony in connection with the [removal, deportation, etc.] proceedings being conducted under the authority of the Immigration and Nationality Act, relating to [the respondent's name], concerning [the topic(s) of testimony].

[If testifying by telephone]

Pursuant to 8 C.F.R. § 1003.35(b), you are hereby commanded to give telephonic testimony before Immigration Judge [name] on [the date and time of hearing] in connection with the [removal, deportation, etc.] proceedings being conducted under the authority of the Immigration and Nationality Act, relating to [the respondent's name], concerning [the topic(s) of testimony].

[If necessary]

You are further commanded to bring with you the following items: [books, papers, documents, etc.].

[name]
Immigration Judge

RETURN ON SERVICE OF SUBPOENA

I hereby certify that on the _____ day of _____, 20____, I served the above subpoena on the
witness named above by _____
(specify type of service)

(Name)

(Title)

APPENDIX O

Sample Criminal History Chart

The following sample criminal history chart is provided for general guidance. A party submitting a criminal history chart should attach all pertinent documentation. Prior to submitting any filings, parties are expected to have reviewed the pertinent regulations, as well as Chapter 3 of the Immigration Court Practice Manual (Filing with the Immigration Court).

RESPONDENT'S CRIMINAL HISTORY CHART

Respondent's name: Jane Smith

Respondent's A number: A12 345 678

Tab A, pp. 1-5	Rap Sheet	Federal Bureau of Investigation
Tab B, pp. 6-11	Rap Sheet	California Department of Justice

Tab, Pages	Arrest Date & Court Docket No.	Charges	Disposition	Immigration Consequences
C, 12-14	01/22/89 CO901583A	HS 11350 Possession of a controlled substance.	Pleaded not guilty. Prosecution diverted. Dismissed 04/25/89 on motion of DA.	No conviction because diverted without entry of any plea. Diversion neither completed nor terminated because charge dismissed by DA.
D, 15-18	07/27/91 SCO42665A	PC 496.1 Misd: receipt of stolen property. PC 466 Possession of burglary tools.	Pleaded guilty. 90 days in jail. Expunged in 2000. Dismissed.	CIMT. None.
E, 19-20	10/07/95 CO11475A	PC 490.5 Misd: petty theft.	Pleaded not guilty. Dismissed.	None.

APPENDIX P

Sample Table of Contents

This sample table of contents is provided for general guidance regarding organization and layout. The documents submitted in Immigration Court proceedings vary depending on the type of proceeding, the form of relief requested, if any, and the circumstances of the particular case. Prior to making any submissions, parties are expected to have reviewed the pertinent regulations, as well as Chapter 3 of the Immigration Court Practice Manual (Filing with the Immigration Court).

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APPENDIX Q

Sample Proposed Order

A proposed order is submitted with every motion filed. Prior to filing a motion, parties are expected to have reviewed the pertinent regulations, as well as Chapter 5 of the Immigration Court Practice Manual (Motions before the Immigration Court).

**United States Department of Justice
Executive Office for Immigration Review
Immigration Court
[the court's location (city or town) and state]**

In the Matter of: [the respondent's name]

A Number: [the respondent's A number]

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of ["the respondent's" or "DHS's"] [title of motion], it is HEREBY ORDERED that the motion be ☐ **GRANTED** ☐ **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☐ Other:

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by _____.

Date

[name]
Immigration Judge

Certificate of Service

This document was served by: ☐ Mail ☐ Personal Service

To: ☐ Alien ☐ Alien c/o Custodial Officer ☐ Alien's Atty/Rep ☐ DHS

Date: _____

By: Court Staff _____

GLOSSARY

The following are brief explanations of some words and abbreviations commonly used in Immigration Court proceedings.

Accredited Representative

A person who is approved by the Board of Immigration Appeals to represent aliens before the Immigration Courts and the Board. He or she must work for a specific nonprofit, religious, charitable, social service, or similar organization. The organization must be authorized by the Board to represent aliens.

AEDPA

An abbreviation for the Antiterrorism and Effective Death Penalty Act.

Affidavit

A document in which a person states facts, swearing that the facts are true and accurate. The person should sign the affidavit under oath and the signature should be witnessed by an official, such as a notary public.

“A Number”

The alien registration number, which the Department of Homeland Security assigns to each alien. It is an “A” followed by eight numbers. For example: A12 345 678. Some recently-issued A numbers consist of an “A” followed by nine digits. For example: A 200 345 678. Cases before the Immigration Courts and the Board of Immigration Appeals are tracked by A number.

Administrative Closing

An order by an Immigration Judge removing a case from the Immigration Court’s calendar. Once a case has been administratively closed, the court will not take any action on the case until a request to recalendar is filed by one of the parties.

Affirmative Asylum Application

An asylum application filed with the Department of Homeland Security Asylum Office by an alien not in removal proceedings. If the Department of Homeland Security Asylum Office declines to grant an affirmative asylum application, removal proceedings may be initiated. In that case, the asylum application is referred to an Immigration Court for a hearing.

Alien

A person who is not a citizen or national of the United States.

Applicant

A person in exclusion proceedings.

Assistant Chief Counsel

The attorney representing the Department of Homeland Security in Immigration Court proceedings. Though the “Assistant Chief Counsel” is the attorney’s official title, he or she is sometimes referred to as the “DHS attorney,” the “government attorney,” or the “trial attorney.”

Asylum Clock

The number of days elapsed since the filing of an asylum application, not including any delays in the proceeding caused by the alien. Certain asylum applicants are eligible to receive employment authorization from the Department of Homeland Security after the asylum clock reaches 180 days.

Asylum-Only Proceedings

Immigration Court proceedings in which an alien is limited to applying for asylum, withholding of removal (“restriction on removal”) under the INA and protection under CAT. Asylum-only proceedings involve aliens who are not entitled to be placed in removal proceedings.

Attorney of Record

An attorney who has properly entered an appearance with the Immigration Court in a particular case and is held responsible as an attorney for the respondent.

Beneficiary

An alien who is sponsored by a relative or a business, or otherwise benefits from a visa petition.

BIA

An abbreviation for the Board of Immigration Appeals.

Biometrics Instructions

The term often used to refer to the Department of Homeland Security “*Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services*.” The biometrics instructions inform aliens how to comply with the background and security investigation requirements for certain forms of relief from removal, such as asylum, adjustment of status, and cancellation of removal. The biometrics instructions also inform aliens how to pay the fees for those applications.

Board

An abbreviation for the Board of Immigration Appeals.

Board of Immigration Appeals

The part of the Executive Office for Immigration Review that is authorized to review most decisions of Immigration Judges and some types of decisions of Department of Homeland Security officers.

Bond

The amount of money set by the Department of Homeland Security or an Immigration Judge as a condition to release a person from detention for an Immigration Court hearing at a later date.

Bond Proceedings

An Immigration Court hearing on a request to redetermine a bond set by the Department of Homeland Security. Bond proceedings are separate from other Immigration Court proceedings.

CA

An abbreviation for Court Administrator.

CAT

An abbreviation for the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

CBP

An abbreviation for U.S. Customs and Border Protection, a part of the Department of Homeland Security.

Certificate of Translation

A formal statement in which a translator shows that he or she has accurately translated a foreign-language document into English.

C.F.R.

An abbreviation for the Code of Federal Regulations.

Charging Document

The document that orders an alien to appear before an Immigration Judge. Immigration Court proceedings begin when the Department of Homeland Security mails or delivers the charging document to the alien and files it with the Immigration Court. In general, the charging document states why the Department of Homeland

Security believes the alien should be deported from the United States. The charging document in removal proceedings is called the Notice to Appear (Form I-862).

Claimed Status Review

Immigration Court proceedings involving aliens subject to expedited removal under INA § 235(b)(1) who claim to be United States citizens or lawful permanent residents, or to have been granted refugee or asylee status.

Code of Federal Regulations

The official interpretations of laws passed by Congress. These interpretations are known as “regulations.” Regulations are first published in a government publication called the *Federal Register*. After publication in the *Federal Register*, regulations can be found in the Code of Federal Regulations. Most immigration regulations are in Title 8, Aliens and Nationality.

Convention Against Torture

An abbreviation for the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Credible Fear Proceedings

Immigration Court proceedings in which an Immigration Judge reviews a finding by a Department of Homeland Security asylum officer that a stowaway or an alien subject to expedited removal under INA § 235(b)(1) does not have a credible fear of persecution or torture.

DAR

An abbreviation for digital audio recording.

Declaration under Penalty of Perjury

A statement by a person, in which the person states that the information is true, to support his or her request or application. For example, a declaration may list the facts and then state: “I declare under penalty of perjury (under the laws of the United States of America) that the foregoing is true and correct.” This statement should be followed by the date, signature, and printed name of the person signing.

Defensive Asylum Application

An asylum application filed with an Immigration Judge by an alien already in removal proceedings.

Deportation Proceedings

An Immigration Court proceeding begun before April 1, 1997, against a person believed to be in the United States without legal status, to determine whether the person should be deported from the United States.

DHS

An abbreviation for the Department of Homeland Security.

DHS Attorney

A term sometimes used to refer to an Assistant Chief Counsel in Immigration Court.

DOJ

An abbreviation for the United States Department of Justice.

EOIR

An abbreviation for the Executive Office for Immigration Review.

Ex Parte Communication

Any communication about a case between a party and an Immigration Judge which does not include the other party. Ex parte communications are generally prohibited. A party cannot speak about a case with the Immigration Judge when the other party is not present. In addition, all written communications about a case must be served on the opposing party.

Exclusion Proceedings

An Immigration Court proceeding begun before April 1, 1997, to determine whether a person should be allowed to legally enter the United States.

Executive Office for Immigration Review

The part of the United States Department of Justice that is responsible for the Immigration Courts and the Board of Immigration Appeals.

FOIA

An abbreviation for the Freedom of Information Act.

ICE

An abbreviation for the U.S. Immigration and Customs Enforcement, a part of the Department of Homeland Security.

Immigration Court

Any of the more than 50 courts nationwide administered by the Executive Office for Immigration Review. In general, proceedings in Immigration Court involve aliens charged as present in the United States in violation of the immigration laws.

Immigration Court Proceedings

In general, proceedings in Immigration Court involve aliens charged as present in the United States in violation of the immigration laws. Several types of proceedings are held in Immigration Court, including removal proceedings (begun on or after April 1, 1997), deportation proceedings (begun prior to April 1, 1997), exclusion proceedings (begun prior to April 1, 1997), bond proceedings, rescission proceedings, credible fear proceedings, reasonable fear proceedings, claimed status review, asylum-only proceedings, and withholding-only proceedings.

Immigration Judge

The official who presides over proceedings in Immigration Court. In general, Immigration Judges determine removability and adjudicate applications for relief from removal.

INA

An abbreviation for the Immigration and Nationality Act.

INS

An abbreviation for the Immigration and Naturalization Service. INS has been abolished and its functions have been transferred to the Department of Homeland Security.

In Absentia Hearing

A hearing conducted without the alien's presence after the alien failed to appear as required.

Individual Calendar Hearing

Hearings scheduled by the Immigration Court for testimony and evidence. These hearings are also known as "merits hearings."

IJ

An abbreviation for Immigration Judge.

IRCA

An abbreviation for the Immigration Reform and Control Act of 1986.

IIRIRA

An abbreviation for the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

LIFE

An abbreviation for Legal Immigration and Family Equity Act.

LPR

An abbreviation for lawful permanent resident.

Master Calendar Hearing

Hearings held for pleadings, scheduling, and other similar matters. A respondent's first appearance before an Immigration Judge in removal proceedings is at a master calendar hearing.

Merits Hearing

A term sometimes used to refer to an individual calendar hearing.

NACARA

An abbreviation for the Nicaraguan Adjustment and Central American Relief Act.

Notice Attorney

A term sometimes used in Immigration Court to refer to the primary attorney.

Notice to Appear

The charging document (Form I-862) used by the Department of Homeland Security to begin removal proceedings.

NTA

An abbreviation for Notice to Appear.

OCIJ

An abbreviation for the Office of the Chief Immigration Judge.

Office of the Chief Immigration Judge

The part of the Executive Office for Immigration Review that oversees the Immigration Courts.

OIL

The abbreviation for the Office of Immigration Litigation, a part of the United States Department of Justice.

Order to Show Cause

The charging document (Form I-221) used by the Department of Homeland Security before April 1, 1997, to begin deportation proceedings.

OSC

An abbreviation for Order to Show Cause.

Party

The term used to refer to the alien or the Department of Homeland Security in Immigration Court.

Petitioner

A person who files a visa petition.

Practitioner

A person who is authorized to represent aliens before the Immigration Courts and the Board of Immigration Appeals.

Pre-Decision Motion

A motion filed before the conclusion of Immigration Court proceedings.

Primary Attorney

An attorney who has properly entered an appearance with the Immigration Court in a particular case and is designated to receive mailings from the court, including notices of hearings. If, at any time, more than one attorney represents an alien, one of the attorneys must be designated as the primary attorney. Only the primary attorney, also known as the "notice attorney," will receive mailings from the Immigration Court.

Pro Se

A term used to refer to an alien who does not have an attorney or representative in Immigration Court.

Proof of Service

A formal statement in which a party shows that he or she has provided a copy of a document to the other party.

REAL ID

An abbreviation for the REAL ID Act of 2005.

Reasonable Fear Proceedings

Immigration Court proceedings in which an Immigration Judge reviews a finding by a Department of Homeland Security asylum officer that an alien subject to expedited removal under INA §§ 238(b) or 241(a)(5) does not have a reasonable fear of persecution or torture.

Record of Proceedings

The official file containing documents relating to an alien's case.

Removal Proceedings

An Immigration Court proceeding begun on or after April 1, 1997, to determine whether a person can be admitted to the United States or removed from the United States.

Reputable Individual

An individual who possesses good moral character and meets certain other requirements. In appropriate circumstances, an Immigration Judge may allow a reputable individual to represent an alien in Immigration Court proceedings.

Respondent

A person in removal or deportation proceedings.

ROP

An abbreviation for Record of Proceedings.

Serve

To give, deliver, or mail a document to the opposing party. For an alien, the opposing party is the Department of Homeland Security.

Stay

An order by an Immigration Judge, or a rule of law, that stops the Department of Homeland Security from removing an alien.

Transcript

A printed copy of the recording of a hearing before an Immigration Judge.

Trial Attorney

A term sometimes used to refer to an Assistant Chief Counsel.

USCIS

An abbreviation for U.S. Citizenship and Immigration Services, a part of the Department of Homeland Security.

Visa Petition

A form asking the Department of Homeland Security to determine if an alien is qualified to become a lawful permanent resident. Filing the visa petition is the first step in obtaining lawful permanent resident status (a "green card").

Withholding-Only Proceedings

Immigration Court proceedings in which an alien is limited to applying for withholding of removal ("restriction on removal") under the INA and protection under CAT. Withholding-only proceedings involve certain aliens who are not entitled to be placed in removal proceedings.

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