



**Case Priorities / Performance Measures / Continuances
Docketing and Case Management
(Non-Detained)**

2018 Executive Office for Immigration Review
Legal Training Program



Case Priorities

2018 Executive Office for Immigration Review
Legal Training Program

By the completion of this session, you should:

- Be familiar with the docketing system for non-detained cases;
- Be familiar with recent memoranda and guidance on case priorities, performance measures, continuances, and change of venue in the non-detained setting;
- Be prepared to resolve, mitigate, and manage common challenges and issues that arise in the non-detained setting; and
- Be prepared to implement best practices in the non-detained setting.



Case Priorities
2018 Executive Office for Immigration Review
Legal Training Program

History:

- EOIR has always designated **detained** cases as priorities for completion. Note: EOIR also utilized case completion measures for non-detained cases from FY 2002 to FY 2009
- In 2014, EOIR began designating other types of "priority" cases for docketing and processing purposes, and those priority designations have been subsequently modified three times—most recently on January 31, 2017



Case Priorities
2018 Executive Office for Immigration Review
Legal Training Program

CASE PRIORITIES: All cases involving individuals in detention or custody, regardless of the custodian, are priorities for completion.

Equally, cases subject to a statutory or regulatory deadlines, cases subject to a federal court-ordered deadline, and cases otherwise subject to an established benchmark for completion, are also priorities. See App. A of January 17, 2018 Memo.

COURT PERFORMANCE MEASURES

1. (85%) of all non-status detained removals cases should be completed within 60 days of filing of the Notice to Appear (NTA), reopening or recalendar of the case, remand from the Board of Immigration Appeals (BIA), or notification of detention.
2. (85%) of all non-status non-detained removal cases should be completed within 365 days (1 year) of filing of the NTA, reopening or recalendar of the case, remand from the BIA, or notification of release from custody.
3. (85%) of all motions should be adjudicated within 40 days of filing.
4. (90%) of all custody redeterminations should be completed within 14 days of the request.
5. Ninety-five percent (95%) of all hearings should be completed on the initial scheduled individual merits hearing date.
6. (100%) of all credible fear reviews should be completed within seven (7) days of the initial determination by an asylum officer that an alien does not have a credible fear of persecution. See INA § 235(b)(1)(B)(iii)(III). One hundred percent (100%) of all reasonable fear reviews should be completed within 10 days of the filing of the negative reasonable fear determination as reflected in Form 1-863. See 8 C.F.R. § 1208.31(g).
7. (100%) of all expedited asylum cases should be completed within the statutory deadline and consistent with established EOIR policy. See INA 208(d)(5)(A)(iii); OPPM 13-02.
8. (85%) of all Institutional Hearing Program (IHP) removal cases should be completed prior to the alien's release from detention by the IHP custodian.
9. (100%) of all electronic and paper records should be accurate and complete.



Case Priorities

2018 Executive Office for Immigration Review
Legal Training Program

Why are Court Performance Measures being implemented?

In 2016 and 2017, the **House Committee on Appropriations** directed EOIR to establish a goal that the median lengths of detained cases be no longer than 60 days and non-detained cases be no longer than 365 days.



Case Priorities
2018 Executive Office for Immigration Review
Legal Training Program

Why are Court Performance Measures being implemented?

And, the **DOJ** Office of Inspector General and the **GAO**, both recommended that EOIR reinstate goals for the completion of non-detained cases.



Case Priorities
2018 Executive Office for Immigration Review
Legal Training Program

The designation of a category of cases as priority places an expectation that such cases should be completed expeditiously and without undue delay consistent with due process.



Case Priorities
2018 Executive Office for Immigration Review
Legal Training Program

Most Important: The designation of a case as a priority does not limit the discretion afforded an immigration judge under applicable law, nor is it intended to mandate a specific outcome in any particular case.



Court Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

“To delay Justice is Injustice.” [William Penn](#)

The timely and efficient decision of cases serves Justice. Unwarranted delays and delayed decision making do not.



Court Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

- ❖ What do performance measures do?
(PM's)
- ❖ PM's help prioritize cases fairly, timely,
and uniformly in accordance with law.
- ❖ PM's help judges to see what is due!

11



Court Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

1. Eighty-five percent (85%) of all non-status **detained** removals cases should be completed within 75 days of filing of the Notice to Appear (NTA), reopening or recalendaring of the case, remand from the Board of Immigration Appeals (BIA), or notification of detention.

A status case is (1) one where the I J is required to continue the case pursuant to law to await the adjudication of an application or petition by USCIS, (2) one where the I J is required to reserve a decision rather than completing the case pursuant to law or policy, or (3) one which is subject to a deadline established by a federal court order.

12



Court Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

COURT PERFORMANCE MEASURES

A completed removal case is one in which a final decision has been rendered concluding the case at the immigration court level. “Completed” means an order of removal, an order of voluntary departure, an order terminating proceedings, or an order granting protection or relief from removal was issued. For other types of cases, a completed case is one in which a final decision has been rendered appropriate for the specific type of proceeding.

13



Court Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

2. Eighty-five percent (85%) of all non-status **non-detained** removal cases should be completed within 365 days (1 year) of filing of the NTA, reopening or recalendaring of the case, remand from the BIA, or notification of release from custody.

A "removal" case includes a case in removal proceedings, in addition to any reopened, recalendared, or remanded cases in exclusion or deportation proceedings.

14



Court Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

3. Eight-five percent (85%) of all motions should be adjudicated within 40 days of filing. (I.J. 20 days!)
4. Ninety percent (90%) of all custody redetermination should be completed within 14 days of the request for redetermination.
5. Ninety-five percent (95%) of all hearings should be completed on the initial scheduled individual merits hearing date. (See continuance reference guide)

15



Court Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

6. One hundred percent (100%) of all **credible fear reviews** should be completed within seven **(7) days** of the initial determination by an AO that an alien does not have a credible fear of persecution. See INA § 235(b)(1)(B)(iii)(III). One hundred percent (100%) of all **reasonable fear reviews** should be completed within **10 days** of the filing of the negative reasonable fear determination as reflected in Form I-863. See 8 C.F.R. § 1208.31(g).

16



Court Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

7. One hundred percent (100%) of all **expedited asylum** cases should be completed within the statutory deadline and consistent with EOIR policy. See INA 208(d)(5)(A)(iii); OPPM 13-02. (180 days)

8. Eighty-five percent (85%) of all Institutional Hearing Program (IHP) removal cases should be completed prior to the alien's release from prison.

17



Court Performance Measures
2018 Executive Office for Immigration Review
Legal Training Program

9. One hundred percent (100%) of all electronic and paper records should be accurate and complete.

Help your clerks help you!

Be accurate on the adjournment codes.

18



Continuances
2018 Executive Office for Immigration Review
Legal Training Program

Operating Policies and Procedures Memorandum 17-01: Continuances – See the new EOIR Policy Manual !

- Intended to provide guidance to assist Judges with fair and efficient docket management relating to the use of continuances.
- Not intended to limit the discretion of the Judge.
- Not to be construed as mandating a particular outcome in any specific case.

19



Continuances
2018 Executive Office for Immigration Review
Legal Training Program

- OPPM 17-01 reminds Judges that in all cases in which a continuance is granted at a hearing, they must make the reason(s) for the adjournment clear on the record.
- Judges can state the reasons orally or by in a written order.
- In all cases, the judge annotates the case worksheet with the adjournment code.



Continuances
2018 Executive Office for Immigration Review
Legal Training Program

- Multiple and lengthy continuances complicate the resolution of individual cases by prolonging the time between hearings.
- Multiple continuances strain overall court resources, including administrative and interpreter resources.
- Multiple continuances consume docket time that could be used to resolve other cases.

Therefore, it is critically important that Judges grant continuances where warranted by a showing of good cause or by established by case law!



Continuances
2018 Executive Office for Immigration Review
Legal Training Program

The authority for continuances is 8 C.F.R. § 1003.29, which provides that an:

"immigration judge may grant a motion for continuance for good cause shown."



Continuances
2018 Executive Office for Immigration Review
Legal Training Program

As the Supreme Court has recognized, “one illegally present in the United States who wishes to remain already has a substantial incentive to prolong litigation in order to delay physical deportation for as long as possible.” *INS v. Rios-Pineda*, 471 U.S. 444, 450 (1985). Moreover, “as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States.” *INS v. Doherty*, 502 U.S. 314, 323 (1992).



Continuances
2018 Executive Office for Immigration Review
Legal Training Program

A. Continuances to Obtain Counsel - it remains general policy that at least one continuance should be granted.

For additional continuances, inquire as to the diligence in securing representation and other relevant information to determine whether there is “**good cause**” for the continuance and for how long.



Continuances
2018 Executive Office for Immigration Review
Legal Training Program

B. Continuances for Attorney Preparation - to allow recently retained counsel preparation prior to the docketing of an individual hearing are common, additional requests must be reviewed carefully. Is “good cause” established?

Factors:

- The time between the master and the individual hearing.
- The overall complexity of the case in determining the need for and length of any continuance.
- The number and length of prior continuances.
- Any, frequent or multiple requests for more preparation time based on counsel’s workload related to large numbers of other pending cases should be rare and warrant careful review.



Continuances
2018 Executive Office for Immigration Review
Legal Training Program

C. Continuances of Individual Merits Hearings

- Individual hearings are typically scheduled far in advance.
- Schedules have been carefully accommodated.
- Slots for individual hearings cannot be easily filled by other cases, especially if the decision to continue the hearing is made close to the scheduled date.
- Some continuances of individual hearings are unavoidable, especially with an unexpected illness or death.
- Continuance of an individual hearing has a significant adverse ripple effect on the ability to schedule other hearings across a Judge’s docket.



Continuances
2018 Executive Office for Immigration Review
Legal Training Program

C. Continuances of Individual Merits Hearings

- For a continuance request made well in advance, the Judge must adjudicate that request quickly and, if granted, must endeavor to fill that hearing slot with another individual hearing with sufficient notice.
- Further, because an individual hearing are scheduled far in advance and generally only after considering the availability of a respondent's representative, a continuance based on a scheduling conflict with a respondent's representative that arose after you set hearing should be rare and should be considered very carefully.
- In sum, Judges generally should not continue individual merits hearings absent a genuine showing of good cause or a clear case law basis.



Changes of Venue

2018 Executive Office for Immigration Review
Legal Training Program



Changes of Venue (COV)
2018 Executive Office for Immigration Review
Legal Training Program

**Operating Policies and Procedures Memorandum 18-01:
Changes of Venue – See the new EOIR Policy Manual !**

- **Changes of Venue** (COV) create problems in caseload management and inefficiencies in our courts.
- These policies and procedures, require that Judges, in fairness to the receiving Court, ensures that "**good cause** has been shown" before granting a COV.



Changes of Venue (COV)
2018 Executive Office for Immigration Review
Legal Training Program

- **Venue for Immigration Court** proceedings lies with the Court where the charging document is filed by the Department of Homeland Security (DHS). 8 C.F.R. §§ 1003.14(a) & 1003.20(a).
- Immigration Judges **may**, upon a proper motion, change venue in those proceedings pursuant to the authority contained in 8 C.F.R. § 1003.20.
- **The standard for granting a motion for COV is “good cause.”** 8 C.F.R. § 1003.20(b).



Changes of Venue (COV)
2018 Executive Office for Immigration Review
Legal Training Program

- The regulation provides authority to grant a change of venue only when: (A) one of the parties has filed a motion for COV and (B) the other party has been given notice and an opportunity to respond. See 8 C.F.R. § 1003.20(b).
- Immigration Judges may not *sua sponte* change venue.



Changes of Venue (COV)
2018 Executive Office for Immigration Review
Legal Training Program

- In limited circumstances, a case can be moved between detained and non-detained courts without a motion for COV. Such “clerical transfers” are only authorized when allowed under the administrative control list courts.
- Changes of venue delay case adjudications and create caseload management difficulties. Therefore, more than two COV motions by the same party are disfavored.
- **Further, motions to change venue solely for dilatory purposes should not be condoned or granted.**
- Motions to change venue after a merits hearing has begun are strongly disfavored.



Changes of Venue (COV)
2018 Executive Office for Immigration Review
Legal Training Program

Law of the Case Doctrine:

- Once a Judge issues an order changing venue to another court, the receiving Judge is not free to hear the case *de novo* and ignore any orders prior to the venue change, unless exceptional circumstances, described in this OPPM, permit departure from this policy.
- *In essence, this rule requires that once a court finally decides any issue of law, the ruling should not be altered by the receiving court.*



Changes of Venue (COV)
2018 Executive Office for Immigration Review
Legal Training Program

A. Specific Requirements for Oral and Written Motions for COV

- If either party makes an oral COV motion, the Judge must record the motion, and the decision on the Digital Audio Recording (DAR) system.
- The Judge must issue a written order (either a long-form order or a standardized order generated by CASE) on every oral and written motion for COV. Notations in the ROP or on the worksheet are insufficient.
- The court administrator at the receiving court will return to the sending court any ROP that does not contain a written order.



Changes of Venue (COV)
2018 Executive Office for Immigration Review
Legal Training Program

B. Mandatory Forwarding Address for Non-Detained Cases

COV should not be granted without identification of a fixed street address, including city, state and ZIP code, where the respondent can be reached for further hearing notification. 8 C.F.R. § 1003.20(c).

Best Practice: (Proof of Residence)



Changes of Venue (COV)
2018 Executive Office for Immigration Review
Legal Training Program

C. Pleadings, Issue Resolution, and Scheduling

Before granting a COV, the Judge must make every effort, consistent with due process requirements, to **complete as much of the case as possible** in the time available.

Specifically, obtain pleadings; resolve the issue of deportability, removability, or inadmissibility; determine what form(s) of relief will be sought; set a date certain by which the relief application(s), if any, must be filed with the court; and state on the record that failure to comply with the filing deadline will constitute abandonment of the relief application(s) and may result in the Judge rendering a decision on the record as constituted.



Changes of Venue (COV)
2018 Executive Office for Immigration Review
Legal Training Program

D. Merits or Master?

- Where the case is ready for an individual merits hearing, the Judge should also determine, when granting the motion, whether the case should be scheduled for a master hearing or an individual merits hearing at the new court.
- If the latter, the Judge should indicate on the worksheet that the case should be scheduled for an individual merits hearing.
- For cases set to a master calendar after a COV, the master hearing at the new court should occur as soon as practicable and **no later than 14 days (for a detained case) or 60 days (for a non-detained case) after the date the change of venue was granted.**



Changes of Venue (COV)
2018 Executive Office for Immigration Review
Legal Training Program

E. Venue in Cases Involving Asylum Applications

Please be mindful that COV orders or clerical transfers in cases involving asylum applications may have asylum-clock implications. See OPPM 13-02, *The Asylum Clock*. (EOIR Policy Manual)

Be mindful of the one-year asylum filing deadline.

Nothing in this OPPM is intended to limit the discretion of an Immigration Judge, and nothing herein should be construed as mandating a particular outcome in any specific case. If you have any questions regarding this OPPM, please contact your Assistant Chief Immigration Judge. Because they read way gooder!



Challenges in Docketing

2018 Executive Office for Immigration Review
Legal Training Program



Challenges

2018 Executive Office for Immigration Review
Legal Training Program

I. COMPLETION OF CASES ACCORDING TO PERFORMANCE MEASURES:

- *Completion of 85% of all non detained cases within one year where docket length is beyond the one year*

e.g.: Memphis docket is setting merits July 2021 no openings



Challenges

2018 Executive Office for Immigration Review
Legal Training Program

- *Completion of 95% of cases on initial scheduled hearing date*
 - **IJ details or conferences*
 - **No interpreter*
 - **Attorney or Respondent illness*
 - **Attorney conferences*
 - **Wrong languages or changes by Respondent*
 - **Competency issues*



Challenges

2018 Executive Office for Immigration Review
Legal Training Program

- *Completion of 100% of asylum cases within 180 days*
 - *Tracking in case is incorrect and does not measure the clock correctly*
 - *E.g.: window filing is proper and if R rejects an earlier date at a master and matter is set to merits the clock runs from the filing of the application as the code runs from and is tied to a master.*
- Practice tip:* *have asylum applications brought to IJ to set to master*
- *COVs often have clock already run*



Challenges
2018 Executive Office for Immigration Review
Legal Training Program

- **Completion of motions within 20 days**
 - Many IJs get 50 to 75 motions a day! In combination with completing hearings (3 per day) on first setting; decisions within 10 days of hearing difficult to balance all required duties
 - Practice tip: review motions daily before and after hearings to stay on top of them; have a calendaring system in place



Challenges
2018 Executive Office for Immigration Review
Legal Training Program

2. CHANGE OF VENUE SETTINGS:

- Now all COVs are required to be noted with setting to merits or master.
- If set to merits, IJ is not familiar with the issues, length of expected hearing, language and other issues for accurate setting.
- There is also no guarantee that a Respondent will appear at the hearing. Thus it may be set only for an in absentia



Challenges
2018 Executive Office for Immigration Review
Legal Training Program

3. SETTING EXPEDITED CASES ON DOCKETS

- *No slots because every hearing date is taken requiring a case to be moved, thus affecting the performance measure*
- *May result in creating a 5 year case.*



Challenges
2018 Executive Office for Immigration Review
Legal Training Program

4. SPECIALIZED DOCKETS:

- *I-360 and asylum at USCIS: processing times take adjudication well beyond the requirements set out in Court Performance Measures*
- *The lengthy processing mandates moving of dockets and requires tracking (E.g. In Memphis, the asylum pending at USCIS currently has 150 cases and the I-360 docket 298 cases*
- *Priority date backlog impacts what to do with the cases*



Challenges
2018 Executive Office for Immigration Review
Legal Training Program

5. UNPREDICTABILITY OF CASES AND HEARINGS:

- DHS often not prepared for issues or not revealing its position
- lengthy witness lists even on for example gang cases
- uncooperative, uneducated or unable Respondents or witnesses
- last minute continuances without ability to use date
- poor hearing estimates
- relay interpretation
- difficult languages or wrong language

Practice Tips:

- get to know attorneys and how long they take to set cases
- mix docket so not all difficult cases are on one day
- set language cases on longest docket space



Challenges
2018 Executive Office for Immigration Review
Legal Training Program

6. DUE PROCESS VS. CASE COMPLETION

7. REMANDS: held to less than 15%

- Problem – everything sent back is a remand including for changes in the law, circuit changes, issues arising for VD, reopening for I-130 and I-601



Challenges
2018 Executive Office for Immigration Review
Legal Training Program

ADDITIONAL PRACTICE TIPS:

- Schedule vacation, conference week and leave time into docket
- Track 5 year cases
- Track and move in asylum cases filed at window
- Set call up dates for filing well in advance and hold attorneys to the dates. Move cases in for shorter hearings
- Track languages and try to set on same day or following days
- Maintain and use good working docket
- Set adjustments or short matters as fillers or on own docket



Docketing & Best Practices for Case Management (Non-Detained)

2018 Executive Office for Immigration Review
Legal Training Program



Docketing and Case Management (Non-Detained)
2018 Executive Office for Immigration Review
Legal Training Program

By the completion of this session, you should:

- **Be familiar with the docketing system for non-detained cases;**
- Be familiar with recent memoranda and guidance on case priorities, performance measures, continuances, and change of venue in the non-detained setting;
- Be prepared to resolve, mitigate, and manage common challenges and issues that arise in the non-detained setting; and
- **Be prepared to implement best practices in the non-detained setting.**



Docketing
2018 Executive Office for Immigration Review
Legal Training Program

Initial Masters

Initial Masters are typically set automatically in CASE and reviewed by the CA to ensure equitable distribution amongst IJs and LAs.

Initial Masters are set according to the times, days, and case minimums specified in the IJ's Agenda. Typically, IJ Agendas are proposed by the ACIJ and agreed to by the IJs.

52



Docketing
2018 Executive Office for Immigration Review
Legal Training Program

IJ Monthly Calendar Summary Report

All scheduled hearings are recorded in the IJ Monthly Calendar Summary Report.

The IJ Monthly Calendar Summary Report is critical to efficient docketing.

53



Docketing
2018 Executive Office for Immigration Review
Legal Training Program

Master Resets

Masters are reset by the IJ or a LA. When resetting Masters, consider:

- Marking your IJ Monthly Calendar Summary Report as you reset cases;
- Grouping respondents by best language to minimize the necessity of multiple interpreters; and
- Grouping respondents by anticipated forms of relief for group advisals.

54



Docketing
2018 Executive Office for Immigration Review
Legal Training Program

Master Resets (Continued)

Also consider:

- Setting standard “call-up” date filing deadlines;
- Whether the respondent’s personal circumstances may appropriately be considered; and
- Stating the purpose of the next hearing and the adjournment code on the record.

55



Docketing
2018 Executive Office for Immigration Review
Legal Training Program

Master Resets (Continued)

When resetting *Contested Masters*, consider:

- Whether an Individual Hearing is necessary; and
- Whether “under-docketing” a future Master will allow sufficient time to hear the *Contested Master*.

56



Docketing
2018 Executive Office for Immigration Review
Legal Training Program

Individual Hearings

When setting Individual Hearings, consider:

- The 365-day completion goal for 85% of all non-status non-detained removal cases;
- The 180-day completion goal for 100% of expedited asylum cases; and
- The length of time required to prepare the case.

57



Best Practices
2018 Executive Office for Immigration Review
Legal Training Program

How to fairly and efficiently move a case forward

58



Best Practices
2018 Executive Office for Immigration Review
Legal Training Program



How to schedule a monthly calendar

Docket to your strengths. Consider more complex cases earlier in the workweek and “feel-good” cases closer to the weekend.

59



Best Practices
2018 Executive Office for Immigration Review
Legal Training Program



“Find out what he's up to.”

How to structure a hearing

Consider “**M-M-I**”:

- **First Master (M)**
 - Confirm: Identification, contact information, and NTA service.
 - Inform: 8 C.F.R. § 1240.10(a).
 - Provide: Pro bono attorney list.
- **Second Master (M)**
 - Record pleadings.
 - Adjudicate charges.
 - Determine relief.
- **Individual Hearing (I)**
 - Take testimony within a reasonable timeframe.
 - Issue concise oral decisions.

60



Best Practices
2018 Executive Office for Immigration Review
Legal Training Program

How to adjust to deviations

Consider setting an additional master if the respondent's attorney was recently hired or if the respondent establishes good cause to continue.



61



Best Practices
2018 Executive Office for Immigration Review
Legal Training Program

How to proceed if an attorney appears without the respondent

Ascertain whether there is good cause for the respondent's absence.

Consider a brief continuance; an *in absentia* removal order; or waiving the respondent's appearance if his or her presence is not necessary.



62



Best Practices
2018 Executive Office for Immigration Review
Legal Training Program



How to keep testimony within the time limit

Encourage the parties to stipulate to undisputed facts or elements.

Request written statements from anticipated witnesses.

Caution against irrelevant evidence, or cumulative evidence that may be proffered.

63



Best Practices
2018 Executive Office for Immigration Review
Legal Training Program

Other best practices

Be organized. Create templates for decisions. Have the relevant law readily accessible.

When rendering an oral decision, make factual findings rather than summarizing testimony.

Know the law. Apply it fairly.
Advance the docket efficiently.



64



QUESTIONS?

2018 Executive Office for Immigration Review
Legal Training Program