



Challenges and Best Practices in Docketing and Case Management

2018 Executive Office for Immigration Review
Legal Training Program



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COURSE DESCRIPTION AND LEARNING OBJECTIVES

This presentation will provide an overview of docketing and case management in the detained setting. The presentation will review recent memoranda on case priorities, performance measures, continuances, change of venue, scheduling of bond hearings, credible and reasonable fear reviews and the use of group rights advisals. The presentation will provide guidance on best practices for fairly and efficiently managing the unique challenges of detained dockets in light of recent performance measures and case completion goals. Additionally, the presentation will cover common scheduling issues that arise with detained case management, such as specialized master calendars, hybrid dockets, pro se litigants, docketing delays and practitioner-related issues. Finally, the presentation will discuss how to resolve, mitigate, and manage these challenges.



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CASE PRIORITIES

- All cases involving individuals in detention or custody, regardless of the custodian, are priorities for completion.
- Cases of Respondents in the custody of DHS and Respondents in the care and custody of the Department of Health and Human Services (such as unaccompanied children who do not have a sponsor identified).



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CASE PRIORITIES

- Cases subject to a statutory or regulatory deadline;
- Cases subject to a federal court-ordered deadline;
- Cases otherwise subject to an established benchmark for completion, including those listed in Appendix A, infra, are also priorities.



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PERFORMANCE MEASURES

TASK	TIMEFRAME	PERCENTAGE
DETAINED REMOVALS NON-STATUS	Within 60 days of filing of NTA, reopening, re- calendaring, or BIA remand	85%
NON-DETAINED NON-STATUS	Within 365 days (1 year) of filing of the NTA, reopening, re-calendaring, BIA remand, or notification of release from custody	85%



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PERFORMANCE MEASURES

TASK	TIMEFRAME	PERCENTAGE
MOTIONS	20 days from receipt by IJ	85%
CUSTODY REDETERMINATIONS	14 days from request	90%
INDIVIDUAL HEARINGS	On the first day scheduled	95%
CREDIBLE FEAR REVIEWS	Within 7 days from initial determination by asylum officer	100%
REASONABLE FEAR REVIEWS	Within 10 days from the filing of the negative reasonable fear determination	100%



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PERFORMANCE MEASURES

<u>TASK</u>	<u>TIMEFRAME</u>	<u>PERCENTAGE</u>
EXPEDITED ASYLUM CASES Not considered expedited if: 1: an affirmative application is referred by USCIS with 75 days or more in the asylum clock 2: No-show at interview with USCIS and USCIS stops the clock	INA § 208(d)(5)(A)(iii): 180 days from application filing	100%
IHP REMOVAL CASES	Prior to the Respondent's release from detention by the IHP custodian	85%



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MOTIONS

I. IN GENERAL

- OCIJ has updated chapters 3.1(b) and 5.12 of the Immigration Court Practice Manual to make it clear that an Immigration Judge may deny a motion prior to the close of the motion's response period, **when appropriate**. Immigration Judges may deny a motion before the close of the response period without waiting for a response from the opposing party if the motion does not comply with the applicable legal requirements.
- OCIJ has shortened the response period for motions to reopen, motions to reconsider, and motions to rescind in absentia orders from 15 to 10 days.



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II. MOTIONS TO CHANGE VENUE

A. IMMIGRATION JUDGE AUTHORITY TO CHANGE VENUE

- Immigration Judges may, upon a proper motion, change venue when one of the parties has filed a motion for COV and the other party has been given notice and an opportunity to respond, and good cause is shown. Immigration Judges may not *sua sponte* change venue. 8 C.F.R. § 1003.20.
 - Exception: clerical transfers that are authorized under the administrative control list for paired courts:
<https://www.justice.gov/eoir/paired-court-clerical-transfers-allowed>.



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II. MOTIONS TO CHANGE VENUE (CONTINUED)

B. REQUIREMENT TO FOLLOW THE LAW OF THE CASE DOCTRINE IN CHANGE OF VENUE CASES

- Any issue of law already decided should not be altered by the receiving court.
 - Exceptions: 1) a supervening rule of law; 2) compelling or unusual circumstances; 3) new evidence available to the second Immigration Judge; and 4) such clear error in the previous decision that its result would be manifestly unjust.



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II. MOTIONS TO CHANGE VENUE (CONTINUED)

C. SPECIFIC REQUIREMENTS FOR ORAL AND WRITTEN MOTIONS FOR CHANGE OF VENUE

- Oral motions: The Immigration Judge must record the motion on DAR and issue a written order regardless if a customized template or standardized form is used.
- Written motions: The Immigration Judge must issue a written order regardless if a customized template or standardized form is used.



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II. MOTIONS TO CHANGE VENUE (CONTINUED)

D. ADMINISTRATIVE REQUIREMENTS FOR VALID VENUE CHANGES

i. Mandatory Forwarding Address for Non-Detained Cases

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



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II. MOTIONS TO CHANGE VENUE (CONTINUED)

D. ADMINISTRATIVE REQUIREMENTS FOR VALID VENUE CHANGES

ii. Pleadings, Issue Resolution, and Scheduling

Prior to granting a motion for COV, the Immigration Judge shall make every effort to complete as much of the case as possible in the time available:

- Review the pleadings to resolve the issue of removability, or inadmissibility;
- Determine what form(s) of relief will be sought;



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II. MOTIONS TO CHANGE VENUE (CONTINUED)

D. ADMINISTRATIVE REQUIREMENTS FOR VALID VENUE CHANGES

ii. Pleadings, Issue Resolution, and Scheduling

- Set a cut-off date to file applications for relief; 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 Immigration Judge rendering a decision on the record as constituted;



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II. MOTIONS TO CHANGE VENUE (CONTINUED)

D. ADMINISTRATIVE REQUIREMENTS FOR VALID VENUE CHANGES

ii. Pleadings, Issue Resolution, and Scheduling

- If individual hearing is not scheduled before transfer, the Immigration Judge should determine whether a master calendar hearing is necessary upon transfer to new court;
 - A master calendar hearing should be scheduled as soon as possible:
 - detained cases: no later than 14 days from COV
 - non-detained: no later than 60 days from COV



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II. MOTIONS TO CHANGE VENUE (CONTINUED)

D. ADMINISTRATIVE REQUIREMENTS FOR VALID VENUE CHANGES

ii. Pleadings, Issue Resolution, and Scheduling

- If individual hearing was already scheduled, the Immigration Judge should indicate on the worksheet that a case involving a change of venue should be scheduled for an individual merits hearing;
 - If non-detained: the case should be scheduled for an individual merits hearing at the new venue without an intervening master calendar hearing.



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II. MOTIONS TO CHANGE VENUE (CONTINUED)

D. ADMINISTRATIVE REQUIREMENTS FOR VALID VENUE CHANGES

ii. Pleadings, Issue Resolution, and Scheduling

- The ROP should have a sticker indicating the following:
 - Sending court;
 - Date of COV order;
 - Whether the case should be scheduled for a master calendar hearing or individual hearing at the receiving court.



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II. MOTIONS TO CHANGE VENUE (CONTINUED)

iii. Venue in Detained Cases

- The court does not automatically change venue when DHS relocates a detained Respondent;
- DHS filing of a Form I-830, by itself, does not constitute a motion for COV;
- If DHS fails to produce a Respondent because that Respondent has been moved to another location, the Immigration Court retains venue and administrative control over the case;
- If DHS produces the Respondent at a court in another location, absent a valid order changing venue or a new charging document, venue and administrative control does not reside at that location, except for bond redetermination requests, if any.



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“Although the regulations suggest that a bond hearing will usually be held in the location where the alien is detained, policies related to the scheduling of bond hearings, including determining the location of the hearing, are properly within the province of the OCIJ.”

Matter of Reyes, 26 I&N Dec. 528, 530–31 (BIA 2015).



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II. MOTIONS TO CHANGE VENUE (CONTINUED)

- Be mindful that COV orders or clerical transfers in asylum cases may have asylum-clock implications;
- Be mindful of the one-year asylum filing deadline.



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CONTINUANCES

8 C.F.R. § 1003.29 provides that an “Immigration Judge may grant a motion for continuance for good cause shown.” An assessment of good cause will depend on the specific factors of each case.

- Factors to consider:
 - reason and support for the request,
 - any opposition to it,
 - timing of the request,
 - Respondent’s detention status,
 - complexity of the case,
 - number and length of any prior continuances, and
 - concerns for administrative efficiency.



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I. RECURRING CATEGORIES OF CONTINUANCES

A. CONTINUANCES TO OBTAIN COUNSEL

- It remains general policy that at least one continuance should be granted for this purpose;
- For additional requests, Immigration Judges should inquiry into Respondent’s diligence in obtaining counsel.



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I. RECURRING CATEGORIES OF CONTINUANCES (CONTINUED)

B. CONTINUANCES FOR ATTORNEY PREPARATION

(b) (5)



- o “A practitioner’s workload must be controlled and managed so that each matter can be handled competently.” 8 C.F.R. § 1003 .102(q)(1).

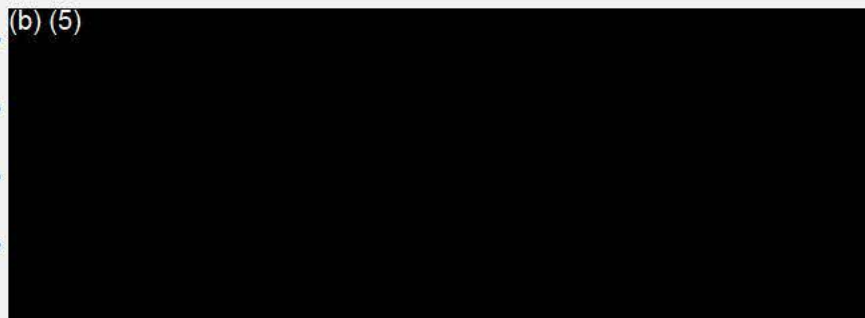


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I. RECURRING CATEGORIES OF CONTINUANCES (CONTINUED)

C. CONTINUANCES OF MERITS HEARINGS

(b) (5)





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I. RECURRING CATEGORIES OF CONTINUANCES (CONTINUED)

D. CONTINUANCES REQUESTED BY DHS

- Requests by the government should also be rare;
- If request is made to conduct background and security checks or to obtain a Respondent's file, Immigration Judges should inquire on the record as to the progress of the background checks or efforts made to obtain file;
- As OPPM 17-01 notes, on page 6, the legal maxim is that "justice delayed is justice denied."



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DOCKETING DELAY AND POSSIBLE CAUSES

A. LANGUAGE INTERPRETERS FOR CERTAIN DIALECTS ARE DIFFICULT TO FIND

- Examples:
 - Mandinka from Gambia
 - Chatino Tataltepec (Oxaca, Mexico)
- Tools to mitigate delay and manage challenge:
 - Create record with interpreter's company name and employee identification number for future reference;
 - Identify correct language and address Respondents who may speak multiple languages;
 - Group cases by language.



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DOCKETING DELAY AND POSSIBLE CAUSES (CONTINUED)

B. RESPONDENTS WITH MENTAL ILLNESSES

- When there is indicia of incompetence, Immigration Judges should conduct a Matter of M-A-M- hearing to make sure the Respondent is competent to proceed.

Matter of M-A-M-, 25 I&N Dec. 474, 474 (BIA 2011).



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DOCKETING DELAY AND POSSIBLE CAUSES (CONTINUED)

C) DHS' LAST MINUTE TRANSFERS

- Traditionally, when a Respondent was transferred to jail or prison for completion of his/her sentence, the case would be administratively closed;
- After Matter of Castro-Tum, 27 I&N Dec. 271 (BIA 2018), the case may be:
 - Transferred to IHP, when applicable, but only after either party files a Motion for Change of Venue with the court;
 - Terminated without prejudice, but only after either party files a Motion to Terminate with the court;
 - Other options open for discussion.

D) SCHEDULING ISSUES:

- IJ assigned to detention facility can cause uneven distribution of cases.



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PRACTITIONER ISSUES

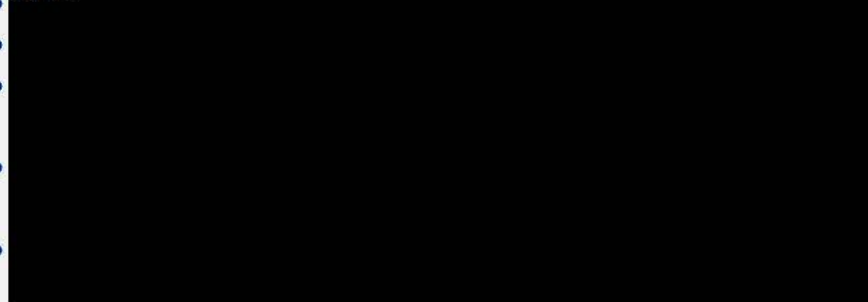
- Judge shopping/ACC shopping;
- Not following Practice Manual:
 - No E-28;
 - No proposed orders;
 - Last minute requests and late arrivals.



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TOOLS TO MITIGATE AND MANAGE DELAYS

• (b) (5)





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TOOLS TO MITIGATE AND MANAGE DELAYS (CONTINUED)

(b) (5)

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Questions?

The panel would like to extend its appreciation to Evelin Mac Clay, Attorney Advisor at Krome Immigration Court, for her outstanding contribution in preparation of this presentation.