Challenges and Best Practices in Docketing and Case Managements

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Challenges and Best Practices in Docketing and Case Managements

Presented by: ACIJ Theresa M. Scala, Judge Tammy L. Fitting, and Judge John C. Odell

- **Overview**
  - Detained cases are priority!!
    - All cases involving individuals in detention or custody, regardless of the custodian, are priorities for completion.
      - This includes all aliens in the custody of DHS and aliens in the care and custody of the Department of Health and Human Services (such as unaccompanied children who do not have a sponsor identified).
- **Case Priorities**
  - Detained cases
  - Expedited cases
  - Cases subject to a federal court-ordered deadline
    - *See* Memorandum from Director James R. McHenry, *Case Priorities and Immigration Court Performance Measures*, at 1-3 (Jan. 17, 2018) [hereinafter "Director's Memo Jan. 17, 2018"]
- **Immigration Court Performance Measures**
  - The purpose of the performance measures is "to help determine which courts are operating in a healthy and efficient manner, and which courts may be in need of more specialized attention in the form of additional resources, training, court management, creative thinking and planning, and/or other action as appropriate."
    - Director's Memo Jan. 17, 2018 at 5.
  - Detained Court Completion Goals
    - **85%** of all non-status detained removal cases should be completed within 60 days of filing of the Notice to Appear (NTA), reopening or recalendaring of the case, remands from the Board of Immigration Appeals (BIA), or notification of detention.
    - **85%** of all motions should be adjudicated within 40 days of filing.
    - **90%** of all custody redeterminations should be completed within 14 days of the request for redetermination.
    - **95%** of all hearings should be completed on the initial scheduled individual merits hearing date.
    - **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)(l)(B)(iii)(III).

        - **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).
        - **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.
        - **85%** of all Institutional Hearing Program (IHP) removal cases should be completed prior to the alien's release from detention by the IHP custodian.
        - *See* Director's Memo Jan. 17, 2018 at Appendix A.
    - What else is EOIR tracking?
        - Clearance rate (the ratio of new cases filed to cases completed)
        - Age of pending cases
    - **Challenges**:
        - Tension between meeting these completion goals and affording the respondent sufficient due process to avoid remands.
        - Ex. When the respondent has demonstrated good cause for a continuance to find an attorney, it is difficult for the IJ to meet its completion goal in that case. *See* Operating Policy & Procedure Memoranda for OCIJ, *Continuances* 17-01 [hereinafter "OPPM 17-01"]
- **Immigration Judges Performance Measures**
    - Complete 700 cases per year.
    - Less than 15% remand rate (including BIA and Circuit Courts)
    - Meet half of the following benchmarks during the rating period:
        - In 85% of non-status detained removal cases, no more than 3 days elapse from merits hearing to immigration judge case completion.
        - In 85% of motions matters, no more than 20 days elapse from immigration judge receipt of the motion to adjudication of the motion.
        - In 90% of custody redetermination cases, case is completed on the initial scheduled custody redetermination hearing date unless DHS does not produce the alien on the hearing date.
        - In 95% of all cases, individual merits hearing is completed on the initial scheduled hearing date, unless, if applicable, DHS does not produce the alien on the hearing date.
        - In 100% of credible fear and reasonable fear reviews, case is completed on the initial hearing date unless DHS does not produce the alien on the hearing date.
- **Bond hearings**
    - **Rules:**
        - Jurisdiction for bond hearing begins with custody; a charging document is not needed for the alien to request, or the IJ staff to schedule, a bond hearing

- Bond hearing request may be written or oral

- **Best Practices**:
  - Each court should have established procedures for receiving and scheduling bond hearing requests as soon as possible.
    - *See* Uniform Docketing System Manual
  - Avoid taking lengthy testimony by relying on witness statements
  - Dispose of bond hearing on jurisdictional grounds
  - Schedule bond hearings along with regular master calendar hearings. Due to schedule restraints, the Court should not wait to schedule all bond hearings together.

- **Credible Fear Reviews**
  - **Rules**:
    - The Court must conduct a credible fear review as close to **24 hours, but no later than 7 days**, after the date of the supervisory asylum officer's decision. INA § 235(b)(1)(B)(iii)(III)
    - The respondent has the right to consult with a person or persons of the alien's choosing prior to the review. 8 C.F.R. 1003.42(c).
  - **Challenges**:
    - Respondents often request a continuance prior to the credible fear review hearing in order to look for an attorney, consult with current counsel, or to ensure the attorney's presence at the credible fear review hearing. If the Court grants the continuance, it likely cannot conduct the review within the statutory deadline of 7 days.
    - Sometimes a respondent's attorney will try to expand the scope of the credible fear review or convert it into a full-blown asylum hearing.
  - **Best Practices**:
    - (b) (5) [redacted]

- **Reasonable Fear Reviews**
  - **Rules**:
    - The Court must conduct a reasonable fear review **no later than 10 days** after the filing of the I-863 with the immigration court.

        - At the reasonable fear interview, the alien can be represented by counsel, present evidence, and the alien's attorney can make a closing statement. 8 C.F.R. § 1208.31(c).
        - Unlike credible fear reviews, 8 C.F.R. § 1208.31 provides no special procedural rules for reasonable fear reviews.
    - **Best Practices**:
        - (b) (5) [redacted]

- **IHP Cases**
    - Should be scheduled as expeditiously as possible and completed prior to the incarcerated alien's Earliest Possible Release Date (EPRD)
- **Motions to Reopen/Reconsider**
    - **Best Practices**:
        - Make a list of common issues and case law in MTRs, such as the time and number bars or requirement to file accompanying application for relief.
- **Remanded Cases**
    - **Challenge**: Remands are now subject to completion goals
    - **Best Practices**:
        - Notice to the parties: Upon receipt of the ROP, the Court should send a notice to the parties providing them a deadline to request additional hearing time or submit additional evidence or briefing
            - Notice should be limited to the issues mentioned in the remand.
        - Oral decisions on remanded cases: Incorporate by reference all prior findings to the extent they are not inconsistent with the current decision.
- **Continuances**
    - *See* OPPM 17-01 for current operating guidelines and policy.
    - **Rules**:
        - IJs must announce on the record or explain in writing heir reasons to grant or deny a motion to continue.
        - An IJ may grant a motion for continuance for good cause shown. 8 C.F.R. § 1003.29.
        - An assessment of good cause will depend on the specific factors of each case, including but not limited to:
            - Reason for the continuance
            - Any opposition to the continuance
            - Timing of the request
                - Dilatory continuances are strongly disfavored
            - The respondent's detention status

- Complexity of the case
- Number and length of an prior continuances
- Concerns for administrative efficiency and case delays

- *See Matter of Hashmi*, 24 I&N Dec. 785, 790 (BIA 2009).

- Recurring Requests for Continuances
  - Requests to obtain additional evidence
    - An alien's request for a continuance due to a lack of preparation and a need to obtain and present additional evidence must be supported, at a minimum, by a reasonable showing that the lack of preparation occurred despite a diligent good faith effort to be ready to proceed and that any additional evidence which the alien seeks to present is probative, noncumulative, and significantly favorable to him. *Matter of Sibrun*, 18 I&N Dec. 354, 356-57 (BIA 1983)
    - The respondent is not entitled to an automatic continuance to obtain corroborating evidence to establish his asylum claim. *Matter of L-A-C-*, 26 I&N Dec. 516 (BIA 2015).
  - Awaiting adjudication by USCIS
    - I-130 Petition
      - The Court should evaluate the following factors to analyze whether good cause exists to continue proceedings to await adjudication by the USCIS of a pending family-based visa petition:
        - (1) the DHS's response to the motion to continue;
        - (2) whether the underlying visa petition is prima facie approvable;
        - (3) the respondent's statutory eligibility for adjustment of status;
        - (4) whether the respondent's application for adjustment merits a favorable exercise of discretion; and
        - (5) the reason for the continuance and any other relevant procedural factors.
      - *Hashmi*, 24 I&N Dec. at 790.
    - U Visa Application:
      - The Court should consider the following factors to determine whether good cause exists for a continuance to await the adjudication of a pending U visa application:
        - (1) the DHS's position with respect to the request,
        - (2) whether the underlying visa petition is prima facie approvable, and

        - (3) the reason for the continuance request, along with any other relevant procedural factors.
    - *Matter of Sanchez Sosa*, 25 I&N Dec. 807, 813-14. (BIA 2012).
- Collateral attacks
    - An alien may not collaterally attack the legitimacy of an otherwise valid state or federal criminal conviction in immigration proceedings. *See generally Matter of Ponce De Leon-Ruiz*, 21 I&N Dec. 154 (BIA 1996, 1997; AG. 1997).
    - While the respondent is free to pursue his collateral attack in the proper court, the mere fact that he is doing so does not justify a continuance in his or her immigration proceedings. *See generally Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996).
    - Though the respondent may have filed a post-conviction motion in regard to his criminal conviction in a state court, the filing does not render the conviction as non-final for immigration purposes. *See Matter of Cardenas Abreu*, 24 I&N Dec. 795, 802 n. 8 (BIA 2009); *see also Madrigal-Calvo*, 21 I&N Dec. at 327 (Collateral attacks upon an applicant's conviction "do not operate to negate the finality of [the] conviction unless and until the conviction is overturned.").
        - The Court "cannot go behind the judicial record to determine the guilt or innocence of the alien." *Madrigal-Calvo*, 21 I&N Dec. at 327.
- Continuances to obtain counsel
    - The Court should grant at least one continuance for the respondent to find counsel.
        - *See* OPPM 17-01 at 4.
    - For each additional request, the IJ should inquire as to the respondent's diligence in securing representation and other relevant information to determine whether good cause exists.
- Continuances for Attorney preparation
    - The Court should grant at least one continuance for recently retained counsel to familiarize him or herself with the case.
        - *See* OPPM 17-01 at 4-5.
    - All subsequent requests should be reviewed carefully and consider:
        - Length of time between master and individual hearings
        - Overall complexity of the case
        - Number and length of prior continuances
    - Continuances due to a practitioner's workload are disfavored.

        - "A practitioner's workload must be controlled and managed so that each matter can be handled competently." 8 C.F .R. § 1003 .102(q)(l).
    - Continuances of Merits Hearings
        - The IJ should closely review all requests to continue an already schedule individual merits hearing, especially if made close in time to the actual hearing.
        - The IJ should generally not continue individual merits hearings absent a genuine showing of good cause or a clear case law basis.
            - If granted, IJ should make best efforts to fill that hearing slot with another individual merits hearing after providing sufficient notice.
        - *See* OPPM 17-01 at 5.
    - Continuances Requested by DHS
        - If DHS requests a continuance to complete background checks or obtain the ROP, the IJ should inquire on the record about the ongoing process to complete these tasks.
        - OPPM 17-01 at 5-6.
- **Motions to Change Venue**
    - *See* OPPM 18-01 for current operating guidelines and policy.
    - **Rules**:
        - Motion to change venue can be made orally or in writing. Oral motions must be recorded (DAR), and the IJ must issue a written order using either the long or standardized form.
        - Once a party files a motion to change venue, the other party must be given notice and an opportunity to respond, and the IJ must rule on the motion in a written order.
        - Standard for granting a motion for COV is "good cause" 8 C.F.R. § 1003.20(b).
            - Motions for COV for dilatory purposes are disfavored
            - Motions for COV after an individual merits hearing has been scheduled or commenced are <u>strongly</u> disfavored
    - 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).
    - Venue in Detained Cases
        - The Court does not automatically change venue when DHS relocates detained aliens.
        - The DHS filing a Form I-830, by itself, does not constitute a motion for COV.

        - If DHS fails to produce a detainee because that alien has been moved to another location, the Immigration Court retains venue and administrative control over the case.
        - If DHS produces the alien at 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. *See Matter of Reyes*, 26 I&N Dec. 528, 530–31 (BIA 2015)
    - **Best Practices:**
        - Sending Court:
            - Prior to granting a motion for COV, IJs should make every effort to complete as much of the case as possible, including pleadings/removability, determine forms of relief sought, and set deadlines for filing of all applications.
            - 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.
        - Receiving Court:
            - Prior rulings of law should not be altered by receiving court unless:
                - There has been a supervening rule of law
                - Compelling or unusual circumstances
                - New evidence available to receiving judge
                - Clear error in prior ruling that its result is manifestly unjust
            - Should pick up where the previous court left off,
                - If individual hearing is not scheduled before transfer, IJ should determine whether a MC hearing is necessary upon transfer to new court;
                    - MC should be scheduled no later than 14 days from COV.
                - If individual hearing was already scheduled, the receiving court should schedule an individual hearing with no interim MC hearing.
            - Court should notify parties that they are expected to proceed and resolve any substitution of counsel issues in advance of the hearing date.
        - *See* OPPM 18-01
- **Adjournment Codes**
    - *See* OPPM 17-02 for current operating guidelines and policy.
    - **Best practices**:
        - (b) (5) [redacted].

        - (b) (5) [redacted]
            - *See* Sample IJ Worksheet Appendix B.
- **Common scheduling issues**
    - Specialized master calendars
        - Status dockets
        - Expedited Hearings
            - **Challenges**:
                - Complying with the statutory and regulatory deadlines
            - **Best Practices**:
                - (b) (5) [redacted]
    - Hybrid dockets (IJ overseeing both detained and non-detained)
        - **Challenges**: Managing a dual calendar to ensure hearing openings for detained cases that cannot be set out as far as non-detained cases
        - **Best Practices**: (b) (5) [redacted]
    - Pro se litigants
        - **Challenges**:
            - Request for continuances to find counsel and evidence
            - Not prepared to testify
            - Need for additional hearing time
        - **Best Practices**:
            - (b) (5) [redacted]
    - Practitioner-related issues
        - Judge shopping/TA shopping
        - Not following practice manual
            - No E-28
            - No proposed orders
        - Continuances for attorney preparation and collateral attacks on convictions
            - Follow guidance above on continuances

        - Change of Venue
            - Follow guidance above on COV
    - Docketing delays
        - Due to technical difficulties with CASE or DAR.
        - Language/interpreters for certain dialects are difficult to find
            - **Best Practice**: (b) (5) [redacted].

- **Group rights hearings**
    - **Rule**: The IJ has the obligation to advise all respondents in an initial master calendar hearing of their rights. 8 C.F.R. § 1240.10
        - Right to representation
        - Availability of pro bono legal services and ascertain that the respondent has in fact received
        - Ascertain that the respondent has received a copy of appeal rights
        - Right to examine and object to the evidence against him or her, to present evidence in his or her own behalf and to cross-examine witnesses presented by the government.
    - **Challenges**:
        - Avoiding due process violation claims
            - After a respondent is called individually, the IJ should immediately ask the respondent whether he or she understood the rights explained to him or her.
                - *See* Sample IJ Script
    - **Best Practices**:
        - (b) (5) [redacted]
        - Stick to the Script. This helps keep the flow of the hearing, and other participants understand their roles.

U.S. Department of Justice

Executive Office for Immigration Review

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Director

January 17, 2018

MEMORANDUM TO: The Office of the Chief Immigration Judge
All Immigration Judges
All Court Administrators
All Immigration Court Staff

FROM: James R. McHenry III JM
Director

SUBJECT: Case Priorities and Immigration Court Performance Measures

This memorandum is effective immediately, applies prospectively to all new cases filed and to all immigration court cases reopened, recalendared, or remanded, and serves to rescind the January 31, 2017, memorandum entitled "Case Processing Priorities" and all other prior memoranda establishing case processing or docketing priorities.

I. Background

On December 6, 2017, the Attorney General issued a memorandum to all Executive Office for Immigration Review (EOIR) employees outlining several principles to follow to ensure that the adjudication of immigration court cases serves the national interest. It also provided that the Director of EOIR may issue further guidance to ensure the achievement of those principles. Pursuant to 8 C.F.R. § 1003.0(b)(1)(ii) and (iv), the EOIR Director has the authority to "[d]irect the conduct of all EOIR employees to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases and otherwise to manage the docket of matters to be decided by the immigration judges" and to "[e]valuate the performance of the Office of the Chief Immigration Judge (OCIJ) and take corrective action where needed."

Accordingly, pursuant to that authority and in accordance with the Attorney General's principles, this memorandum lays out EOIR's specific priorities and goals in the adjudication of immigration court cases.

II. Case Prioritization

EOIR has always designated detained cases as priorities for completion. 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.

The repeated changes in case prioritization have caused confusion and created difficulty in comparing and tracking case data over time. But, most importantly, the frequent shifting priority designations did not enhance docket efficiency. Not only were cases repeatedly moved to accommodate new priorities without a clear plan for resolving both the new and older cases, but also the designations did not adequately stress the importance of completing all cases in a timely manner.

For example, less than 10% of cases currently pending meet the definition of "priority" outlined in the January 31, 2017, memorandum—a statistic that conveys a potentially mistaken impression regarding the importance of completing the other 600,000-plus pending cases that do not bear a "priority" designation.

Accordingly, to address concerns and confusion, it is appropriate to clarify EOIR's priorities and goals to ensure that the adjudication of cases serves the national interest consistent with the principles outlined by the Attorney General.

All cases involving individuals in detention or custody, regardless of the custodian, are priorities for completion.[1] Likewise, cases subject to a statutory or regulatory deadline, cases subject to a federal court-ordered deadline, and cases otherwise subject to an established benchmark for completion, including those listed in Appendix A, are also priorities. As developments warrant, other priority designations may be established as appropriate, and other categories of cases may be tracked regardless of whether they reflect a priority designation.

The designation of a category of cases as priority is an indication of an expectation that such cases should be completed expeditiously and without undue delay consistent with due process. Because the designations outlined in this memorandum apply prospectively, it is not intended to require the rescheduling of currently-docketed cases. The designation of priority cases is also not intended to diminish or reduce the significance of other cases. Indeed, the timely completion of *all* cases consistent with due process remains a matter of the utmost importance for the agency. Finally, the designation of a case as a priority is not intended to limit the discretion afforded an immigration judge under applicable law, nor is it intended to mandate a specific outcome in any particular case.

[1] Cases of aliens in the custody of the Department of Homeland Security and aliens in the care and custody of the Department of Health and Human Services who do not have a sponsor identified were priorities under prior policy and remain so under this new policy.

III. Immigration Court Benchmarks and Performance Metrics

Apart from designated case priorities, EOIR's case processing has also involved other types of evaluative measures over time, such as statutory or regulatory deadlines for the completion of certain types of cases, including under the Immigration and Nationality Act (INA), the Government Performance and Results Act (GPRA) of 1993, and the GPRA Modernization Act of 2010. Although these case completion goals have not previously denoted case priorities *per se*, they do serve as indicators of the importance of completing certain classes of cases in a timely manner.

Historically, EOIR also utilized case completion measures for non-detained cases from FY 2002 to FY 2009, but it eliminated those measures in FY 2010, leading to confusion regarding the extent to which the timely completion of non-detained cases was perceived as a priority for the agency. The abolition of non-detained case completion benchmarks was also subsequently criticized by both the Department of Justice (DOJ) Office of Inspector General and the Government Accountability Office, both of whom recommended that EOIR reinstate goals for the completion of non-detained cases. In 2016 and 2017, the House Committee on Appropriations also directed EOIR to establish a goal that the median length of detained cases be no longer than 60 days and the median length of non-detained cases be no longer than 365 days.

Although EOIR has previously stated that case completion goals are statements of agency priorities and has tracked performance relative to those goals, it has not expressly designated cases subject to such measures as priorities, unless they happened to fall into another category that was a priority (*e.g.* detained cases). This has led to even further confusion regarding the interaction between case priorities and case resolution goals, especially because the overwhelming majority of pending cases in recent years were neither designated as a priority nor subject to a performance goal.

Almost every trial court system utilizes performance measures or case completion metrics to ensure that it is operating efficiently and appropriately. Some of these are established by statute or regulation whereas others are set by policy; nevertheless, trial court performance measures are an essential and widely-recognized tool for ensuring healthy and effective court operations.

In the federal system, for example, the Civil Justice Reform Act of 1990 requires semiannual reporting of the number of certain types of civil cases and motions pending beyond a particular date with the intent of reducing litigation delays in federal district courts. Many administrative adjudicatory systems also feature case processing time standards, either by statute,

regulation, or policy.[2] At the state level, most states have adopted court case processing time standards, many of which follow model standards approved by the American Bar Association (ABA).[3]

In fact, over 25 years ago, the ABA recognized the importance of establishing court performance standards to ensure effective case management and to avoid undue delay; in doing so, it outlined seven essential elements for managing cases, including several that are now being implemented by EOIR such as "[p]romulgation and monitoring of time and clearance standards for the overall disposition of cases," "[a]doption of a trial-setting policy which schedules a sufficient number of cases to ensure efficient use of judge time while minimizing resettings caused by overscheduling," "[c]ommencement of trials on the original date scheduled with adequate advance notice," and "[a] firm, consistent policy for minimizing continuances."[4] In short, court performance measures and case completion goals are common, well-established, and necessary mechanisms for evaluating how well a court is functioning at performing its core role of adjudicating cases.

EOIR is no exception to the rule that court performance measures are a necessary accountability tool to ensure that a court is operating at peak efficiency, nor is there anything novel or unique about applying performance measures to EOIR's immigration courts.[5] Rather, a review of such measures is vital to ensure that the immigration court system is performing strongly, that EOIR is adjudicating cases fairly, expeditiously, and uniformly consistent with its mission, and that it is addressing its pending caseload in support of the principles established by the Attorney General.

Accordingly, to ensure that EOIR is meeting these goals, the court-based performance measures outlined in Appendix A to this memorandum will be tracked by EOIR, and court

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[2] *See, e.g.*, 42 U.S.C. § 1395ff (establishing hearing deadlines for cases before administrative law judges at the Department of Health and Human Services); Fed. Energy Regulatory Comm'n, Summary of Procedural Time Standards for Hearing Cases, https://www.ferc.gov/legal/admin-lit/time-sum.asp (last updated Mar. 10, 2017) (outlining time standards for administrative law judges hearing cases at the Federal Energy Regulatory Commission).

[3] *See Case Processing Time Standards*, Nat'l Ctr. for State Courts, http://www.ncsc.org/cpts (last visited January 9, 2018); *Model Time Standards for State Trial Courts* (Nat'l Ctr. for State Courts 2011), http://www.ncsc.org/Services-and-Experts/Technology-tools/~/media/Files/PDF/CourtMD/Model-Time-Standards-for-State-Trial-Courts.ashx.

[4] *See* Judicial Admin. Div., Am. Bar Ass'n, *Standards Relating to Trial Courts* § 2.51 (vol. II 1992), *available at* https://www.americanbar.org/content/dam/aba/migrated/divisions/Judicial/MO/MemberDocuments/trialcourtstandards.authcheckdam.pdf.

[5] EOIR's other adjudicatory components, the Board of Immigration Appeals and the Office of the Chief Administrative Hearing Office, are also subject to performance measures.

performance in meeting them will be regularly audited. These goals are intended to help determine which courts are operating in a healthy and efficient manner, and which courts may be in need of more specialized attention in the form of additional resources, training, court management, creative thinking and planning, and/or other action as appropriate.

As published here in Appendix A, these court-based goals are not intended to apply specifically to any individual employee; rather, these goals apply to the court as a whole, and all court employees accordingly share responsibility for working together to successfully meet them.[6]

OCIJ will provide additional "not-to-exceed" guidelines for each goal, as appropriate. Further, some cases may be subject to more than one goal. EOIR will also track the clearance rate (the ratio of new cases filed to cases completed) and the age of existing cases at each court and may announce future goals for those statistics at a later date.

Many of these measures derive from statutory or regulatory mandates, including the INA; others derive from EOIR's goals developed under GPRA. Still others, such as a goal of ensuring file completion and accuracy, are simply reflections of the standard that a professional administrative court system should endeavor to attain. Although many of these goals have already existed for several years at EOIR, their current designation clarifies that cases subject to a goal should be considered priority cases and reiterates that the goals themselves reflect considered policy judgments regarding optimal court performance and functioning that EOIR's immigration courts should strive to achieve.

EOIR is already meeting, or close to meeting, some of these goals; for instance, the median length of time a detained case is pending at the immigration court level is currently less than 60 days. For other goals, they may appear merely aspirational at first, and the agency is cognizant that it may take time for them to be fully realized. Nevertheless, as a professional administrative court system within the DOJ exercising the Attorney General's delegated authority, EOIR should strive to become the preeminent administrative adjudicatory agency in the federal government and to fulfill its mission at the highest level possible. Further, by making you aware of these goals, you can begin thinking about how, with these goals in mind, EOIR's day-to-day activities can be streamlined to improve efficiency while maintaining due process. Moreover, there is no doubt that as the agency puts into place additional resources, training, and

[6] In autumn 2017, following collective bargaining, EOIR and the National Association of Immigration Judges jointly agreed to remove language from Article 22 of their labor agreement that had limited EOIR's ability to measure and evaluate immigration judge performance. Although many of the policy considerations relevant for setting court performance goals are also relevant for setting performance metrics for individual immigration judges, especially regarding goals that have existed in some form at EOIR already for several years, the implementation of those metrics specifically for immigration judges is subject to an ongoing process and is beyond the scope of this memorandum.

more efficient processes, you will continue impress with your dedication to our mission. As the Attorney General indicated, every employee at EOIR can contribute something to improve the system, and your creative suggestions regarding more effective case management are welcome.

IV. Conclusion

Thank you for your dedication and professionalism as we work together as a team to ensure that the adjudication of immigration court cases serves the national interest in accordance with the principles outlined by the Attorney General.

Please contact your Assistant Chief Immigration Judge with any questions you may have concerning this memorandum.

This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum should be construed as mandating a particular outcome in any specific case.

Attachment

APPENDIX A

IMMIGRATION COURT PERFORMANCE MEASURES

1. Eighty-five percent (85%) of all non-status[7] detained removal[8] cases should be completed[9] within 60 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.

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.

3. Eight-five percent (85%) of all motions should be adjudicated within 40 days of filing.

4. Ninety percent (90%) of all custody redeterminations 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.

6. One hundred percent (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 I-863. *See* 8 C.F.R. § 1208.31(g).

7. One hundred percent (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. Eighty-five percent (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. One hundred percent (100%) of all electronic and paper records should be accurate and complete.

---

[7] A status case is (1) one in which an immigration judge is required to continue the case pursuant to binding authority in order to await the adjudication of an application or petition by U.S. Citizenship and Immigration Services, (2) one in which the immigration judge 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.

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

[9] A completed removal case is one in which a final decision has been rendered concluding the case at the immigration court level and encompasses an order of removal, an order of voluntary departure, an order terminating proceedings, or an order granting protection or relief from removal. For other types of cases, a completed case is one in which a final decision has been rendered appropriate for the specific type of case proceeding.

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

July 31, 2017

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: MaryBeth Keller
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 17-01: *Continuances*

This Operating Policies and Procedures Memorandum (OPPM) supplements and amends OPPM 13-01. It is intended to provide guidance to assist Immigration Judges with fair and efficient docket management relating to the use of continuances. It is not intended to limit the discretion of an Immigration Judge, and nothing herein should be construed as mandating a particular outcome in any specific case. Rather, its purpose is to provide guidance on the fair and efficient handling of motions for continuance in order to ensure that adjudicatory inefficiencies do not exacerbate the current backlog of pending cases nor contribute to the denial of justice for respondents and the public.

This OPPM also reminds Immigration Judges that in all situations in which a continuance is granted at a hearing, they must make the reason(s) for the adjournment clear on the record, by stating the reasons orally or by setting forth in writing the reason(s) in an order. In all cases, the judge should also annotate the case worksheet on the left side of the Record of Proceedings with the corresponding adjournment code. The Court Administrators and court staff must ensure that each adjournment code is accurately entered into CASE.

The number of pending cases before immigration courts currently exceeds 600,000. Although multiple factors may have contributed to this case load, Immigration Judges must ensure that lower productivity and adjudicatory inefficiency do not further exacerbate this situation. To that end, it is more important than ever that Immigration Judges ensure that our resources are used efficiently.

In particular, the delays caused by granting multiple and lengthy continuances, when multiplied across the entire immigration court system, exacerbate already crowded immigration dockets. In 2012, the Office of the Inspector General of the U.S. Department of Justice found that "frequent and lengthy continuances" were a significant contributing factor to increased case processing times and that over half of all cases surveyed had one or more continuances, with an average in those cases of four continuances and 368 days of continuance, per case. U.S. Department of Justice, Office of Inspector General, *Management of Immigration Cases and Appeals by the Executive Office for Immigration Review* (Oct. 2012), https://oig.justice.gov/reports/2012/e1301.pdf. A recent report by the U.S. Government Accountability Office showed that the use of continuances in immigration proceedings increased 23% between fiscal years 2006 and 2015. U.S. Government Accountability Office, *Immigration Courts, Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges* (June 2017), https://www.gao.gov/assets/690/685022.pdf. Furthermore, despite an increase in the hiring of Immigration Judges, initial case completion numbers in Fiscal Year 2016 were essentially the same as in Fiscal Year 2012, and recent overall case completion numbers have declined notably compared to the numbers from Fiscal Years 2004 to 2011. U.S. Department of Justice, Executive Office for Immigration Review, Statistics Yearbooks FY 2004-FY 2016, https://www.justice.gov/eoir/statistical-year-book.

In addition to complicating the resolution of individual cases by prolonging the time between hearings, multiple continuances can strain overall court resources, including administrative and interpreter resources, and consume docket time that could otherwise be used to resolve additional cases. Therefore, it is critically important that Immigration Judges use continuances appropriately and only where warranted for good cause or by authority established by case law.

The Immigration and Nationality Act (INA) generally does not establish any specific "right" to a continuance in immigration proceedings. Rather, the availability of continuances is primarily governed by 8 C.F.R. § 1003.29, which provides that an "immigration judge may grant a motion for continuance for good cause shown." In certain circumstances, case law further refines the regulatory definition of good cause and informs consideration of specific types of continuance requests, including requests to obtain additional evidence and requests to continue proceedings to await adjudication by U.S. Citizenship and Immigration Services (USCIS) of a relevant petition. In other situations, because the reasons for requesting a continuance vary widely, an assessment of good cause will depend on the specific factors of each case. Nevertheless, in general, the reason and support for the request as well as any opposition to it, the timing of the request, the respondent's detention status, the complexity of the case, the number and length of any prior continuances, and concerns for administrative efficiency are all appropriate factors to be considered in determining whether to grant a continuance and for how long.

Overall, while administrative efficiency cannot be the only factor considered by an Immigration Judge with regard to a motion for continuance, it is sound docket management to carefully consider administrative efficiency, case delays, and the effects of multiple continuances on the efficient administration of justice in the immigration courts. This consideration is even more salient in cases where the respondent is detained. In all cases, an Immigration Judge must carefully consider not just the number of continuances granted, but also the length of such continuances. Most importantly, Immigration Judges should not routinely or automatically grant continuances absent a showing of good cause or a clear case law basis.

Further, although the appropriate use of continuances serves to protect due process, which Immigration Judges must safeguard above all, there is also a strong incentive by respondents in immigration proceedings to abuse continuances, and Immigration Judges must be equally vigilant in rooting out continuance requests that serve only as dilatory tactics. As the Supreme Court has recognized, "[o]ne 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). Continuance requests that seek only to prolong

a removable alien's presence in the United States serve neither the public's interest nor the interests of justice, including the related interests of other aliens with meritorious claims whose cases may be delayed collaterally. Thus, as a general matter, continuance requests solely for dilatory purposes should not be countenanced by Immigration Judges.

With these principles in mind, there are several specific recurring categories of continuance requests, all of which may cause significant docketing and administrative efficiency concerns, which warrant additional guidance:

A. Continuances to Obtain Counsel

With regard to granting a continuance to give a respondent the opportunity to obtain legal counsel, it remains general policy that at least one continuance should be granted for that purpose. Such a continuance should be of reasonable length, but it is appropriate for Immigration Judges to consider the overall context of the case in determining that length, particularly when all respondents are initially provided a list of pro bono legal service providers in accordance with 8 C.F.R. § 1240.10(a)(2). For each additional request for a continuance, the Immigration Judge should inquire as to the respondent's diligence in securing representation and other relevant information to determine whether there is good cause for a further continuance and, if so, the length of any such continuance.

B. Continuances for Attorney Preparation

Although continuances to allow recently retained counsel to become familiar with a case prior to the scheduling of an individual merits hearing are common, subsequent requests for preparation time should be reviewed carefully, especially given that the time between a master calendar hearing and an individual merits hearing, which often exceeds one year in a non-detained case, already encompasses substantial time for preparation. It is also appropriate for Immigration Judges to consider the overall complexity of the case in determining the appropriateness and length of any continuance for attorney preparation time, as well as the number and length of prior continuances for preparation time. In addition, frequent or multiple requests for additional preparation time based on a practitioner's workload concerns related to large numbers of other pending cases should be rare and warrant careful review. "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). Thus, for a practitioner who takes on more cases than he or she can responsibly and professionally handle, necessitating the need for multiple continuances across multiple cases, it may also be appropriate for an Immigration Judge to consider referral to EOIR disciplinary counsel for further action and possible sanction for a violation of 8 C.F.R. § 1003.102.

C. Continuances of Merits Hearings

Of particular importance are requests to continue an individual merits hearing that has already been scheduled. Such hearings are typically scheduled far in advance, which provides ample opportunity for preparation time, and often involve interpreters or third-party witnesses whose schedules have been carefully accommodated. Moreover, slots for individual merits hearings cannot be easily filled by other cases, especially if the decision to continue the hearing is made close in time to the scheduled date. Although some continuances of individual merits hearings are unavoidable, especially in situations involving an unexpected illness or death, the continuance of an individual merits hearing necessarily has a significant adverse ripple effect on the ability to schedule other hearings across an Immigration Judge's docket. Thus, such a request should be reviewed very carefully, especially if it is made close in time to the hearing. For a continuance request made well in advance of the scheduled date of the hearing, an Immigration Judge should adjudicate that request expeditiously and, if granted, should endeavor to fill that hearing slot with another individual merits hearing after providing sufficient notice. Further, because an individual merits hearing is typically scheduled far in advance and generally only after considering the availability of a respondent's representative, a request for a continuance based on a scheduling conflict with a respondent's representative that arose after the individual merits hearing has been calendared should be rare and should be considered very carefully. In sum, Immigration Judges generally should not continue individual merits hearings absent a genuine showing of good cause or a clear case law basis.

D. Continuances Requested By DHS

Continuance requests made by a trial attorney of the U.S. Department of Homeland Security (DHS) should also be comparatively rare. For continuance requests made by DHS to allow time to complete background investigations and security checks or to allow time to obtain a

respondent's file, it is appropriate for the Immigration Judge to inquire on the record about the ongoing process for obtaining background and security checks or for obtaining the alien's file.

As OPPM 13-01 notes, the legal maxim that "justice delayed is justice denied" is a common refrain in the context of immigration proceedings. Although fundamental fairness and due process require that legal proceedings be postponed in appropriate circumstances, Immigration Judges must also be mindful of the effects of frequent and lengthy continuances, particularly when they are not supported by good cause, on the efficient administration of justice for both respondents and the public.

If you have any questions regarding this OPPM, please contact your Assistant Chief Immigration Judge.

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

January 17, 2018

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: MaryBeth Keller
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 18-01: *Change of Venue*

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I. Introduction

Changes of Venue (COV) create problems in caseload management and operational inefficiencies in our courts. This Operating Policies and Procedures Memorandum (OPPM) sets forth guidance to mitigate these challenges. These policies and procedures, however, require that every Immigration Judge, in fairness to the receiving Immigration Court, ensures that "good cause has been shown" before granting a motion for COV. This OPPM replaces OPPM 01-02.

II. Immigration Judge Authority to Change Venue

Venue for Immigration Court proceedings lies with the Immigration 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). The regulation provides authority to grant a change of venue only when one of the parties has filed a motion for COV and 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.

In limited circumstances, a case can be moved between detained and non-detained courts without the necessity of a motion for COV. Such "clerical transfers" are only authorized when allowed under the administrative control list for paired courts. In all other cases, a motion for COV is required before a case can be moved from one Immigration Court to another. Because changes of venue necessarily delay case adjudications and create caseload management difficulties, more than two motions to change venue by the same party are disfavored. Further, motions to change venue solely for dilatory purposes should not be condoned by Immigration Judges. Motions to change venue after a merits hearing has begun are strongly disfavored.

III. Requirement to Follow the Law of the Case Doctrine in Change of Venue Cases

Once an Immigration 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. The law of the case doctrine, while non-statutory, is a well-established legal doctrine with a long-standing foundation in the federal courts. 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. Adherence to this doctrine is so critical in COV situations that even the Supreme Court has declared that "the policies supporting the doctrine apply *with even greater force to transfer decisions* than to decisions of substantive law; transferee courts that feel entirely free to revisit transfer decisions of a coordinate court threaten to send litigants into a vicious circle of litigation." *Christianson v. Colt Industries Operating Corp*., 486 U.S. 800, 816 (1988) (emphasis added).

Following the law of the case doctrine is crucial "to preserve the ordered functioning of the judicial process." *United States v. Baynes*, 400 F. Supp. 285, 310 n.3 (E.D. Penn.), *aff'd*, 517 F.2d 1399 (3d Cir. 1975). It is also used "to prevent 'delay, harassment, inconsistency, and in some instances judge-shopping.'" *General Electric Co. v. Westinghouse Electric Corp*., 297 F. Supp. 84,

86 (D. Mass. 1969). Moreover, it "promotes the finality and efficiency of the judicial process by 'protecting against the agitation of settled issues.'" *Christianson*, 486 U.S. at 816.

Immigration Judges are not expected to follow this rule blindly, however. The law of the case doctrine is not absolute; rather, there are certain delineated circumstances where departure from the doctrine may be permitted. As one court indicated, the "rule was not absolute and all-embracing and there are exceptional circumstances which will permit one judge of a district court to overrule a decision by another judge of the same court in the same case." *United States v. Wheeler*, 256 F.2d 745,747 (3d Cir.), cert. denied, 383 U.S. 873 (1958). Circumstances which may warrant a deviation from this policy include: 1) a supervening rule of law; 2) compelling or unusual circumstances; 3) new evidence available to the second judge; and 4) such clear error in the previous decision that its result would be manifestly unjust. *Hayman Cash Register Co. v. Sarokin*, 669 F.2d 162, 169 (3d Cir.1982). *See also Christianson*, 486 U.S. at 816; *Arizona v. California*, 460 U.S. 605, 617 (1983).

In maintaining this requirement from OPPM 01-02, this OPPM continues to emphasize that the law of the case doctrine is consistent with all existing immigration laws and regulations, and its application can be inferred from 8 C.F.R. § 1240.1(b). Moreover, one coherent record is necessary to comply with the requirements for review once an appeal is filed. *See* 8 C.F.R. § 1003.5. Lastly, because the law of the case doctrine has been categorized "only as a rule of policy and not as one of law," *Wilson v. Ohio River Co*., 236 F. Supp. 96, 98 (S.D. W.V.A. 1964), pursuant to the authority under 8 C.F.R. § 1003.9, the law of the case doctrine, as stated in this section, shall apply in COV circumstances.

The law of the case doctrine includes the recognition of another Immigration Judge's COV order. Absent one of the circumstances discussed above, Immigration Judges cannot return a case to the sending court on the ground that the change of venue was improper.

IV. Specific Requirements for Oral and Written Motions for Change of Venue

A. Oral Motions

If either party makes an oral motion for COV, the Immigration Judge must record the motion, as well as his or her decision on the motion, on the Digital Audio Recording (DAR) system.

The Immigration Judge must issue a written order (either a long-form order or a standardized order generated by the case management system) on the oral motion for COV. Notations in the ROP or on the Immigration Judge worksheet are insufficient to grant a motion for COV. The court administrator at the receiving court will return to the sending court any ROP that does not contain a written order.

B. Written Motions

The Immigration Judge must issue a written order (either a long-form order or a standardized order generated by the case management system) on the motion for COV. Notations

in the ROP or on the Immigration Judge worksheet are insufficient to grant a motion for COV. The court administrator at the receiving court will return to the sending court any ROP that does not contain a written order.

V. Administrative Requirements for Valid Venue Changes

A. 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). This requirement was instituted to avoid a court receiving an ROP through a motion for COV and having no way to notify the party of a hearing date at the new location. It also allows the sending court to determine the correct receiving court to which the case should be transferred.

B. Pleadings, Issue Resolution, and Scheduling

Prior to granting a motion for COV, the assigned Immigration Judge should make every effort, consistent with procedural due process requirements, to complete as much of the case as possible in the time available. Specifically, the Immigration Judge should attempt to 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. In cases where the Immigration Judge has completed these actions but not yet scheduled the case for an individual merits hearing, the Immigration Judge should also determine, when granting a change of venue, whether the case should be scheduled for a master calendar hearing or an individual merits hearing at the new court. If the latter, the Immigration Judge should indicate on the worksheet that a case involving a change of venue should be scheduled for an individual merits hearing, and Immigration Court staff will identify the record of proceeding for the receiving court to schedule upon receipt. In situations where a non-detained case is already scheduled for an individual merits hearing and a change of venue is subsequently granted, the case should be scheduled for an individual merits hearing at the new venue without an intervening master calendar hearing, and Immigration Court staff will identify the record of proceeding for the receiving court to schedule accordingly.

When it is anticipated based on the guidance above that the case will proceed immediately to an individual merits hearing at the new venue, the Immigration Judge granting the change of venue must advise the respondent that any arrangements to retain existing counsel or obtain new counsel should be made sufficiently in advance of the hearing in the new venue to enable that hearing to proceed on the date scheduled. When deciding on motions to continue in the receiving court, the Immigration Judge is encouraged to consider, among all the relevant facts and circumstances, the respondent's efforts to resolve any representation issues before the subsequent hearing and the amount of time the respondent has had to do so.

For cases to be scheduled on a master calendar after a change of venue has been granted, the master calendar 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.

Note, however, that in the case of a defensive asylum application, a copy of the asylum application, Form I-589, submitted to support a motion for COV is not considered filed. In this situation, if the motion for COV is granted, the Form I-589 must be separately filed with the court, either at the window or by mail. *See* OPPM 16-01, *Filing Applications for Asylum*.

C. Venue in Detained Cases

For various reasons, DHS sometimes relocates detained aliens after charging documents have been filed. The Immigration Court does not automatically change venue, however, when DHS moves an alien to a location outside the administrative control of the court where the case is pending. Further, the DHS filing a Form I-830, by itself, does not constitute a motion for COV. If DHS fails to produce a detainee because that alien has been moved to another location, the Immigration Court retains venue and administrative control over the case. If DHS produces the alien 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. Nothing in this paragraph precludes an alien from filing a motion to change venue if he or she is moved to a detention location outside the administrative control of the court where the case is otherwise pending.

D. Venue in Cases Involving Asylum Applications

Judges should 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*. Judges should also 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.

IMMIGRATION JUDGE WORKSHEET

: Immigration Judge **TACOMA IMMIGRATION COURT**

Date of Custody:

Name: _____ **Attorney: ❒ EOIR 28 in ROP**	**DOB:**	**A** _____ **Language:** _____ **Nationality:** _____

Rights & Other Matters:

☐ Oath: Swear/Affirm 8 CFR §1240.10(a)(5) _____ (date)
☐ True & Complete Name

Pro Se

☐ Purpose: Removed from U.S.
☐ NTA Received?
☐ Received legal aide list & appeal rights 8 CFR §1240.10(a)(2), (3)
☐ Right to attorney at own expense 8 CFR §1240.10(a)(1)
☐ Reset to MC or
☐ Waiver of Counsel? _____ (date)

☐ Evidence: examine & object, present own, & cross-examine §1240.10(a)(1)(4)
☐ Designate country of removal & Asylum, WH, CAT (1 year bar)
☐ Appeal to higher court
☐ Understand Rights?
☐ NTA Exhibit 1 8 CFR §1240.10(a)(7)

Pleadings:

Rep.

☐ Acknowledge Atty.?
☐ NTA Concede Service
☐ Waive Reading of NTA & explanation of Rights?_____(date)
☐ NTA Exhibit 1 8 CFR §1240.10(a)(7)

☐ Read & explain factual allegations & charges in NTA 8 CFR §1240.10(a)(6)

§212(a) ( )( )( )( ) §237( ) ( )( )( )
§212(a) ( )( )( )( ) §237( ) ( )( )( )

☐ Factual Allegations: ☐ Admit _____ ☐ Denies _____
☐ Removability: ☐ Concedes ☐ Denies ☐ Found ☐ Sustained
☐ Country designated _____ ☐ Alien ☐ DHS
8 CFR §1240.10(f)
☐ Fear Return ☐ No-Date Waived: ☐ Yes/Basis:

Relief Questions:

☐ Date of First Entry? _____
☐ Parents or grandparents USCs? _____
☐ LPR? _____ Adjust in U.S. & 212(h)?_____
☐ Visa Petition? _____
☐ Spouse ☐ LPR ☐ USC? _____
☐ Parent ☐ LPR ☐ USC? _____
☐ Child ☐ LPR ☐ USC? _____
☐ Criminal History? _____
☐ Immigration History? _____
☐ Statutory Bars? _____
☐ Vict. Of Violent Crime _____
☐ Medical Condition _____

Advisals/Date:

☐ Frivolous Warnings _____
☐ Biometrics _____
☐ FTA _____
☐ Address _____
☐ VD Reqs._____ /Advisals_____
☐ Reentry _____
☐ Application Sworn & Sign

Relief Applications:

☐ VD/Pre (120) ☐ VD/Post (60)
☐ 240A(a) E-42A ☐ 240A(b)(1) ❒ 240A(b)(2) E-42B
☐ Asylum/Withholding: ☐ 1 year, ☐ Real ID ☐ CAT
☐ 245 I-485 ☐ 212(c) I-191 ☐ 212(h) I-601 ☐ 212(i) ☐ 209(c)
☐ Suspension E-44 ☐NACARA ☐ TPS ☐ ABC ☐ Refugee I-602
☐ Other _____
☐ Application Fee ☐ Paid ☐ Fee Waived

Order(s):

_____

☐ Safeguards

Appeal:

Waived: ☐ Alien ☐ Govt. ☐Both
Reserved: ☐ Alien ☐ Govt. ☐Both
NOA Due _____

Exhibits:		
1 NTA		

M/I/B	Date:	DHS/Attorney	Interpreter/Oath	Adjourned to:	Reason:	Code:	Call Up:

IMMIGRATION JUDGE WORKSHEET

PLEASE KEEP THIS WORKSHEET ON TOP LEFT SIDE OF ROP **5-16-18 TLF**

AILA Doc. No. 18082203. (Posted 12/12/19)

IMMIGRATION COURT, TACOMA, WA

Notes: **A** _____

PLEASE KEEP THIS WORKSHEET ON TOP LEFT SIDE OF ROP **5-16-18 TLF**

Script for Group Detained Initial Master Hearings

1. Group Hearing - Initial Matters:

We will now proceed to a group hearing. If your name is called, you will be part of the group.

a. This is IJ _____in the Immigration Court in Tacoma, Washington.
b. Today's date is _____.
c. These are group detained removal proceedings.
d. The respondents are present, detained, and unrepresented.
e. Representing the government is _____.
f. These proceedings are being conducted in the English and Spanish languages.
g. The [previously sworn] [official] interpreter in the Spanish language is _____.

    1) **If not previously sworn:** "Do you swear or affirm to interpret accurately and correctly from Spanish to English and from English to Spanish to the best of your ability?"

h. The members of the group include the following respondents. Please stand as I call your name:

    1) Name (First, Middle, Last (spell as necessary) _____, Case Number _____.
    2) Thank you for standing.
    3) Which language do you wish to proceed in?

2. Administer Oath:

a. At this time, I will ask the members of the group to raise their right hand and be sworn in:

    1) "Do you swear or affirm that the testimony you will give in these proceedings will be the truth?"
    2) ["Yes by all."] Please be seated.

3. **Rights Advisals:**

a. To the respondents:

1) I will first address you as a group to explain your rights in these proceedings.
2) Then I will then call each of you individually to discuss the specific facts of your case.
3) The purpose of these proceedings is first to determine if you are removable from the United States.
4) When I speak to you individually, I will explain why the government seeks your removal.
5) I will then ask you if the government allegations and charges are true.
6) If I find you removable, I will then consider all possibilities for relief from removal in your case.

b. [If you are a lawful permanent resident of the United States, you are advised that if you are ordered removed today and you do not appeal, your permanent resident status will be immediately terminated.]

c. Each of you should have received a copy of the Notice to Appear in your case. That is the document in which the Government gives the reasons why it believes you could be removed from the United States. If you believe you have not received a copy of the Notice to Appear in your case, please stand up.

1) [NOTE RESULTS: "Let the record reflect that no one is standing."]

I will mark the Notice to Appear as Exhibit 1 in each of your cases.

d. You each have the right to be represented by an attorney or qualified representative of your own choosing and at no expense to the United States Government. Each of you should have received a copy of the free legal services list. The organizations on the list may be willing to represent you for little or no money if you cannot afford a lawyer on your own. If you believe you did not receive a copy of the free legal services list I just mentioned, please stand.

1) [NOTE RESULTS – "No one is standing" or, if anyone has not received a copy, ask the Bailiff to provide a copy.]

e. When I speak to you individually I will ask if you want to have more time to try to find a lawyer to help you. If you want more time I will set your case over to another day.

f. If you do not want a lawyer, you must represent yourself.

g. I will advise you that you each have the right to examine and object to any evidence presented against you. You have the right to question any witnesses presented against you. And, you have the right to present your own evidence including documents, witnesses, and your own testimony.

h. If the law says you must be removed, you have the right to name a country of removal. If you are afraid to return to your country, you can decline to designate a country and you can apply for asylum, withholding of removal, and protection under the Convention Against Torture. You must file your asylum application within one year of your last entry into the United States or you may become ineligible for asylum.

i. The Court will make a decision in your case, and you have the right to appeal to a higher court if you disagree with the Court's decision. Each of you should have received a copy of your appeal rights. If you believe you did not receive a copy of your appeal rights, please stand.

    1) [NOTE RESULTS – "No one is standing" or, if anyone has not received a copy, ask the Bailiff to provide a copy.]

j. If you wish to appeal your case, I will explain your rights further. However, if you do not wish to fight your case further when I ask you if you want to appeal the decision, you can tell me no.

k. You also have the right to apply for voluntary departure. Voluntary departure is a privilege, and you must show that you merit a favorable exercise of the Court's discretion. There are two types of voluntary departure.

    1) For **Pre-conclusion** voluntary departure, you must request it before the Court has proceeded to any other applications for relief on the merits of your case. You must not be an arriving alien. You must concede removability, withdraw all other applications for relief from removal, accept voluntary departure as a final decision, and waive appeal on all issues.

    2) You can request **Post-conclusion** voluntary departure at any time during the course of removal proceedings. You do not need to concede removability or withdraw any applications for relief from removal, or waive appeal; but you must have been physically present in the United States for at least one year by the time the Notice to Appear was served on you. You must also show that you are a person of good moral character for the proceeding five years.

For both forms of voluntary departure, you cannot be convicted of an aggravated felony, you must not be an arriving alien, and you must not be removable on security-related grounds. Because you are being detained, both forms of voluntary departure will be under safeguards, meaning you will remain in custody until you depart the United States. Also, depending on your country of citizenship, you may be required to pay the travel expenses of your return trip and provide the Department of Homeland Security with a valid travel document. If you have received voluntary departure from an Immigration Judge in the past, you may not be eligible to receive this form of relief again.

l. If you are removed and you return to the United States without special permission, you could be charged with a crime in the United States. If you are convicted of illegally reentering the United States after deportation, you could face criminal penalties, including fines and up to 20 years in federal prison.

m. If you are released from immigration custody during your removal proceedings, you must give the court a good address where you can receive mail in the United States. If you fail to appear at any future hearings in your case, you could be ordered removed from the United States in your absence.

4. <u>Call Each Case</u>:

a. I will now call the first case, Mr./Ms._____, case number _____. Please step up to counsel table and be seated next to the interpreter [or, "please use the headset with the interpreter."]

1) Please state your true and complete name for the record.
2) Is Spanish your best language?
3) Did you understand all of the rights that I explained to you?
4) Do you want more time to try to find an attorney or to prepare in your case?

(1) [If yes, reset the case.]
(2) [Advise the respondent of the nature of the charges]
(3) [Mark the DHS evidence and remind the respondent to show it (along with the hearing notice) to any attorney he/she may hire.]

b. Do you want to represent yourself without a lawyer?

1) [If yes, verify age.]

2) [Ask about mental health issues for possible Franco-class membership]
3) [Make finding: "I find that you have knowingly waived your right to be represented by an attorney.]

c. Do you have any questions before I go through the charging document?

d. The government handed you a document called a Record of Deportable Alien, along with other documents relating to your case [including records of convictions]. Did you receive it?

e. I will mark it as Exhibit 2 in your case.

5. Pleadings:

The Notice to Appear was personally served on you on _____ and it has your signature [and/or fingerprint].

a. The government charges in your case that you could be removed from the United States because . . .

1) [look at NTA and briefly explain the nature of the charge(s))].

b. [Go through each allegation on the NTA]:

1) Are you a citizen or national of the United States?
2) Are you a native of _____ and a citizen of _____,?
3) Etc.

c. INA § 212 charges: Based on your admissions [and the evidence submitted by the Department of Homeland Security in Exhibit 2], I sustain the charges and find that you are removable as charged in the Notice to Appear.

INA § 237 charges: Based on your admissions [and the evidence submitted by the Department of Homeland Security in Exhibit 2], I find that DHS has met its burden to show by clear and convincing evidence that you are removable as charged in the Notice to Appear.

6. Designate country of removal:

If you have to be removed from the United States, do you want to name your country as the country of removal?

1) [If yes] Are you afraid to return to _____.
2) [If no, ask DHS for a recommendation]["Based on the government's recommendation, I direct _____ as the country of removal"].

Are you afraid to return to _____?

1) [If no] I find that you have waived you right to apply for asylum, withholding, and protection under the Convention Against Torture, knowingly, voluntarily, and intelligently.
2) [If yes, advise Respondent (as per below) that he is eligible to apply for those forms of relief].

7. <u>Relief Checklist</u>:

a. When was your first entry into the United States?
b. Were you ever a lawful permanent resident of the United States?
c. Do you have a spouse, parent, or child who is a lawful permanent resident or citizen of the United States?
d. Has anyone ever filed a petition on your behalf?
e. Have you ever been the victim of a crime in the United States?

8. <u>Advisals Regarding Relief (may be given if the Respondent is eligible for the relief, but does not want to apply)</u>:

a. <u>LPR Cancellation of Removal</u>:

I will advise you that you may be eligible for cancellation of removal as a lawful permanent resident. In order to establish your eligibility for this form of relief, you must show:

1) That you have been lawfully admitted for permanent residence in the United States for no less than five years,
2) That you have resided in the United States continuously for seven years after having been admitted in any status, and
3) That you have not been convicted of an aggravated felony.
4) In addition, you must demonstrate that you merit a favorable exercise of the Court's discretion.

The Court will provide you with a copy of the application (EOIR Form E42A), and I will reset your case so you can fill it out and bring it back to court. You should include with your application any documents that you believe will establish the requirements for relief that I have just discussed. If you can, you should make a copy for yourself and the government. There

is a fee for this application. If you cannot afford to pay the fee, you can request a waiver. Do you have any questions?

I will reset your case for _____.

b. Non-LPR Cancellation of Removal:

I will advise you that you may be eligible for cancellation of removal as a non-permanent resident. In order to establish your eligibility for this form of relief, you must show:

1) That you have been physically present in the United States for a continuous period of not less than 10 years;
2) That you have been a person of good moral character during that time;
3) That you have not been convicted of a disqualifying criminal offense; and
4) That your removal would result in exceptional and extremely unusual hardship to any or all of your qualifying relatives [in this case, your _____];
5) In addition, you must demonstrate that you merit a favorable exercise of the Court's discretion.

If you are granted this form of relief, this would lead to your lawful permanent resident status in the United States and you would be eligible to receive your green card. If you do not apply now, you could not apply again for at least 10 years.

Would you like to apply for this form of relief?

1) [If yes] The Court will provide you with a copy of the application (EOIR Form E42B), and I will reset your case so you can fill it out and bring it back to court. It must be completed in English. You should include with your application any documents that you believe will establish the requirements for relief that I have just discussed. If you can, you should make a copy for yourself and the government. There is a fee for this application. If you cannot afford to pay the fee, you can request a waiver. Do you have any questions?

2) Is the Department serving the biometrics instructions on the Respondent [must be done in all cases]?

I will reset your case for _____.

3) [If no], I find that you have knowingly waived your right to apply for cancellation of removal.

c. Asylum, Withholding, and CAT:

Because you have said that you are afraid to return to your country, I will advise you that you can apply for asylum and related forms of protection in the United States.

1) In order to receive asylum in the United States, you must establish that you suffered past persecution based on race, religion, nationality, political opinion, or membership in a particular social group, or that you have a well-founded fear of persecution on account of one of these five grounds. You must also establish that you have not been convicted of an aggravated felony and that you filed your asylum application within one year of your last entry into the United States (or that you can demonstrate an exception to the 1-year filing rule).
2) In order to receive withholding of removal in the United States, you must establish that it is more likely than not that you will be persecuted because of (Barajas-Romero) the five grounds I have just mentioned.
3) In order to receive protections under the Convention Against Torture, you must establish that, if you were returned to your country, it is more likely than not that you would be tortured by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Would you like to apply for this form of relief?

1) [If yes] The Court will provide you with a copy of the application (I-589), and I will reset your case so you can fill it out and bring it back to court. You must fill the application out in English and in ink. You should include with your application any documents that you believe will establish the requirements for relief that I have just discussed. If you can, you should make a copy for yourself and the government. Do you have any questions?

   I will reset your case for _____.

4) [If no], I find that you have knowingly waived your right to apply for asylum and related protections.

[If an I-589 is filed, provide Frivolous Asylum Warnings]

Before you file an asylum application, Form I-589, the law requires that you be advised about the consequences of knowingly filing a frivolous application for asylum. If you knowingly file a frivolous application for asylum, you will be barred forever from receiving any benefit under the Immigration and Nationality Act. A frivolous application for asylum is one which contains statements or responses to questions that are deliberately fabricated. Just because your application for asylum is not granted, that does not mean your application is frivolous.

Do you understand?

Do you still want to file you asylum application?

d. Adjustment of Status (Section 245(a)):
I will advise you that you may be eligible to adjust your status to that of lawful permanent resident. If granted this form of relief, you would be eligible to receive your green card and remain in the United States. In order to establish your eligibility for this form of relief, you must show (1) that you were inspected and admitted or paroled into the United States (or that you qualify for an exception to the lawful admission requirements because a petition was filed on your behalf prior to April 30, 2001); (2) that an immigrant visa is immediately available to you; (3) that you are not inadmissible to the United States (or that you qualify for a waiver of inadmissibility); and (4) you are deserving of a favorable exercise of discretion by the Court.

Would you like to apply for this form of relief?

1) [If yes] The Court will provide you with a copy of the application (I-485), and I will reset your case so you can fill it out and bring it back to court. You should include with your application any documents that you believe will establish the requirements for relief that I have just discussed. If you can, you should make a copy for yourself and the government. Do you have any questions?

I will reset your case for _____.

2) [If no], I find that you have knowingly waived your right to apply for adjustment of status.

e. Other Forms of Relief: See "Templates" in the Immigration Judge's Benchbook.

9. Voluntary Departure or Removal Order:

I will consider voluntary departure in your case.

The government's evidence package has been marked as Exhibit 2.

To DHS: is there other criminal or immigration history?

What is the Department's position as to voluntary departure?

Sir/ma'am, is there anything else you would like to offer or say about your request for voluntary departure?

a. Voluntary Departure Granted:

The Court will exercise its discretion and grant your request for voluntary departure, on or before _____. This will be under safeguards, which means you will remain in custody until you depart the United States. The officers will come and talk to you about the arrangements. I do not find that you are eligible for any other forms of relief.

If you fail to depart the United States on or before _____, your voluntary departure will automatically become an order of remove to _____. Also, you could be subject to civil penalties of between $1000 and $5000. In addition, you would become ineligible for any benefits under the Immigration and Nationality Act for a period of 10 years.

If you file a Motion to Reopen or Reconsider during the voluntary departure period, again, you voluntary departure will automatically become an order of remove to _____, but the monetary penalties we discussed would not apply.

1) Do you understand?
2) Do you accept these conditions?
3) Do you accept this decision and waive appeal to the Board of Immigration Appeals?

I find you have knowingly waived your right to appeal.

Does the Department wish to appeal?

This will be a final order. You will receive a copy of the decision and the written advisals. The officers will come and talk to you about the arrangements. I wish you well in the future.

b. Removal Order:

Is there anything else you would like to tell me about your case?

I find that you are not eligible for any forms of relief from removal, other than voluntary departure. Although I find that you are statutorily eligible for voluntary departure, I will deny your request for voluntary departure as a matter of discretion based on [cite criminal history and/or immigration history] and your lack of offsetting equities [it may be appropriate to cite the offsetting equities if they are substantial].

I must therefore order your removal to _____.

Do you want to appeal my decision to a higher court? [If yes, go to oral decision]

Does the Department wish to appeal?

This will be a final order. You will receive a copy of the decision in this case. The officers will come and talk to you about the arrangements.