

Immigration Court Practice Manual



The Practice Manual has been assembled as a public service to parties appearing before the Immigration Courts. This manual is not intended, in any way, to substitute for a careful study of the pertinent laws and regulations. Readers are advised to review Chapter 1.1 before consulting any information contained herein.

The Practice Manual is updated periodically. The legend at the bottom of each page reflects the last revision date. Updates to the Practice Manual are available through the EOIR website at www.justice.gov/eoir.

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Chapter 3 Filing with the Immigration Court

3.1 Delivery and Receipt

(a) Filing. — Documents are filed either with the Immigration Judge during a hearing or with the Immigration Court outside of a hearing. For documents filed outside of a hearing, the filing location is usually the same as the hearing location. However, for some hearing locations, documents are filed at a separate “Administrative Control Court.” See subsection (i), below, 8 C.F.R. §§ 1003.31, 1003.13.

(i) Administrative Control Courts. — “Administrative Control Courts” maintain the Records of Proceeding for hearings that take place at certain remote hearing locations. A list of these locations, and of the Administrative Control Courts responsible for these locations, is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

(ii) Shared administrative control. — In some instances, two or more Immigration Courts share administrative control of cases. Typically, these courts are located close to one another, and one of the courts is in a prison or other detention facility. Where courts share administrative control of cases, documents are filed at the hearing location. Cases are sometimes transferred between the courts without a motion to change venue. However, if a party wishes for a case to be transferred between the courts, a motion to change venue is required. See Chapter 5.10(c) (Motion to change venue). A list of courts with shared administrative control is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

(iii) Receipt rule. — An application or document is not deemed “filed” until it is received by the Immigration Court. All submissions received by the Immigration Court are date-stamped on the date of receipt. Chapter 3.1(c) (Must be “timely”). The Immigration Court does not observe the “mailbox rule.” Accordingly, a document is not considered filed merely because it has been received by the U.S. Postal Service, commercial courier, detention facility, or other outside entity.

(iv) Postage problems. — All required postage or shipping fees must be paid by the sender before an item will be accepted by the Immigration Court. When using a courier or similar service, the sender must properly complete the packing slip, including the label and billing information. The Immigration Court does not pay postage due or accept mailings without sufficient postage. Further, the

Immigration Court does not accept items shipped by courier without correct label and billing information.

(v) Filings. — Filings sent through the U.S. Postal Service or by courier should be sent to the Immigration Court's street address. Hand-delivered filings should be brought to the Immigration Court's public window during that court's filing hours. Street addresses and hours of operation for the Immigration Courts are available in on the Executive Office for Immigration Review website at www.justice.gov/eoir. Addresses are also available in Appendix A (Immigration Court Addresses).

Given the importance of timely filing, parties are encouraged to use courier or overnight delivery services, whenever appropriate, to ensure timely filing. However, the failure of any service to deliver a filing in a timely manner does not excuse an untimely filing. See Chapter 3.1(c)(iii) (Delays in delivery).

(vi) Separate envelopes. — Filings pertaining to unrelated matters should not be enclosed in the same envelope. Rather, filings pertaining to unrelated matters should be sent separately or in separate envelopes within a package.

(vii) Faxes. — The Immigration Court does not accept faxes unless the transmission has been specifically authorized by the Immigration Court staff or the Immigration Judge. Unauthorized transmissions are not made part of the record and are discarded without consideration of the document or notice to the sender.

(viii) E-filing. — The Immigration Court accepts electronic submission of the Notice of Entry of Appearance as an Attorney or Representative Before the Immigration Court (Form EOIR-28) via its EOIR Case & Appeals System (ECAS) from all licensed attorneys and fully-accredited representatives. See Chapter 2.1(b) (Entering an Appearance). All other filings may be submitted to the assigned Immigration Court by ECAS (where available), email, mail or other shipping/delivery service, or in-person. Please refer to instructions specific to electronic filings, available through the ECAS portal or online at <http://www.justice.gov/eoir/filing-email>.

(b) Timing of submissions. — Filing deadlines depend on the stage of proceedings and whether the alien is detained. Deadlines for filings submitted while proceedings are pending before the Immigration Court (for example, applications, motions, responses to motions, briefs, pre-trial statements, exhibits, and witness lists) are as specified in subsections (i), (ii), and (iii), below, unless otherwise specified by the Immigration Judge. Deadlines for filings submitted after proceedings before the

Immigration Court have been completed are as specified in subsections (iv) and (v), below.

Deadlines for filings submitted while proceedings are pending before the Immigration Court depend on whether the next hearing is a master calendar or an individual calendar hearing.

Untimely filings are treated as described in subsection (d)(ii), below. Failure to timely respond to a motion may result in the motion being deemed unopposed. See Chapter 5.12 (Response to Motion). Immigration Judges may deny a motion before the close of the response period without waiting for a response from the opposing party. See Chapter 5.12 (Response to Motion). “Day” is constructed as described in subsection (c), below.

(i) Master calendar hearings. —

(A) Non-detained aliens. — For master calendar hearings involving non-detained aliens, filings must be submitted at least fifteen (15) days in advance of the hearing if requesting a ruling at or prior to the hearing. Otherwise, filings may be made either in advance of the hearing or in open court during the hearing.

When a filing is submitted at least fifteen days prior to a master calendar hearing, the response must be submitted within ten (10) days after the original filing with the Immigration Court. If a filing is submitted less than fifteen days prior to a master calendar hearing, the response may be presented at the master calendar hearing, either orally or in writing.

(B) Detained aliens. — For master calendar hearings involving detained aliens, filing deadlines are as specified by the Immigration Court.

(ii) Individual calendar hearings. —

(A) Non-detained aliens. — For individual calendar hearings involving non-detained aliens, filings must be submitted at least fifteen (15) days in advance of the hearing. This provision does not apply to exhibits or witnesses offered solely to rebut and/or impeach. Responses to filings that were submitted in advance of an individual calendar hearing must be filed within ten (10) days after the original filing with the Immigration Court. Objections to evidence may be made at any time, including at the hearing.

(B) Detained aliens. — For individual calendar hearings involving detained aliens, filing deadlines are as specified by the Immigration Court.

(iii) Asylum applications. — Asylum applications are categorized as either “defensive” or “affirmative.” A defensive asylum application is filed with the Immigration Court by an alien already in proceedings. An affirmative asylum application is filed with the Department of Homeland Security (DHS) Asylum Office by an alien not in removal proceedings. If the DHS Asylum Office declines to grant an affirmative asylum application, removal proceedings may be initiated. In that case, the asylum application is referred to an Immigration Judge, who may grant or deny the application. See 8 C.F.R. § 1208.4.

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

(A) Defensive applications. — Defensive asylum applications are filed by mail, courier, in person at the court window, or in open court at a master calendar hearing. For information regarding lodging an application for purposes of employment authorization, see Chapter 4.15(l) (Asylum Clock).

(B) Affirmative applications. — Affirmative asylum applications referred to an Immigration Court by the DHS Asylum Office are contained in the Record of Proceedings. Therefore, there is no need for the alien to re-file the application with the Immigration Court. After being placed in Immigration Court proceedings, the alien may amend his or her asylum application. For example, the alien may submit amended pages of the application, as long as all changes are clearly reflected. Such amendments must be filed by the usual filing deadlines, provided in subsections (b)(i) and (b)(ii), above. The amendment should be accompanied by a cover page with an appropriate caption, such as “AMENDMENT TO PREVIOUSLY FILED ASYLUM APPLICATION.” See Appendix F (Sample Cover Page).

(iv) Reopening and reconsideration. — Deadlines for filing motions to reopen and motions to reconsider with the Immigration Court are governed by statute and regulation. See Chapter 5 (Motions). Responses to such motions are due within ten (10) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge. See Chapter 5.7 (Motions

to Reopen), Chapter 5.8 (Motions to Reconsider). See also Chapter 5.12 (Response to Motion)

(v) Appeals. — Appeals must be received by the Board of Immigration Appeals no later than 30 calendar days after the Immigration Judge renders an oral decision or mails a written decision. See 8 C.F.R. § 1003.38, Chapter 6 (Appeals of Immigration Judge Decisions).

(vi) Specific deadlines. — The deadlines for specific types of filings are listed in Appendix D (Deadlines).

(c) Must be “timely.” — The Immigration Court places a date stamp on all documents it receives. Absent persuasive evidence to the contrary, the Immigration Court’s date stamp is controlling in determining whether a filing is “timely.” Because filings are date-stamped upon arrival at the Immigration Court, parties should file documents as far in advance of deadlines as possible.

(i) Construction of “day.” — All filing deadlines are calculated in calendar days. Thus, unless otherwise indicated, all references to “days” in this manual refer to calendar days rather than business days.

(ii) Computation of time. — Parties should use the following guidelines to calculate deadlines.

(A) Deadlines on specific dates. — A filing may be due by a specific date. For example, an Immigration Judge may require a party to file a brief by June 21, 2008. If such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(B) Deadlines prior to hearings. — A filing may be due a specific period of time *prior to* a hearing. For example, if a filing is due 15 days prior to a hearing, the day of the hearing counts as “day 0” and the day before the hearing counts as “day 1.” Because deadlines are calculated using calendar days, Saturdays, Sundays, and legal holidays are counted. If, however, such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(C) Deadlines following hearings. — A filing may be due within a specific period of time *following* a hearing. For example, if a filing is due 15 days after a master calendar hearing, the day of the hearing counts as “day 0” and the day following the hearing counts as “day 1.” In such cases, the

day of the hearing counts as “day 0” and the day following the hearing counts as “day 1.” Because deadlines are calculated using calendar days, Saturdays, Sundays, and legal holidays are counted. If, however, such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(D) Deadlines following Immigration Judges’ decisions. —

Pursuant to statute or regulation, a filing may be due within a specific period of time following an Immigration Judge’s decision. For example, appeals, motions to reopen, and motions to reconsider must be filed within such deadlines. See 8 C.F.R. §§ 1003.38(b), 1003.23. In such cases, the day the Immigration Judge renders an oral decision or mails a written decision counts as “day 0.” The following day counts as “day 1.” Statutory and regulatory deadlines are calculated using calendar days. Therefore, Saturdays, Sundays, and legal holidays are counted. If, however, a statutory or regulatory deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(E) Deadlines for responses. —

A response to a filing may be due within a specific period of time following the original filing. For example, if a response to a motion is due within 10 days after the motion was filed with the Immigration Court, the day the original filing is received by the Immigration Court counts as “day 0.” The following day counts as “day 1.” Because deadlines are calculated using calendar days, Saturdays, Sundays, and legal holidays are counted. If, however, such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(iii) Delays in delivery. — Postal or delivery delays do not affect existing deadlines. Parties should anticipate all postal or delivery delays, whether a filing is made by first class mail, priority mail, or overnight or guaranteed delivery service. The Immigration Court does not excuse untimeliness due to postal or delivery delays, except in rare circumstances. See Chapter 3.1(a)(iii) (Receipt rule).

(iv) Motions for extensions of filing deadlines. — Immigration Judges have the authority to grant motions for extensions of filing deadlines that are not set by regulation. A deadline is only extended upon the *granting* of a motion for an extension. Therefore, the mere filing of a motion for an extension does not excuse a party’s failure to meet a deadline. Unopposed motions for extensions are not automatically granted.

(A) Policy. — Motions for extensions are not favored. In general, conscientious parties should be able to meet filing deadlines. In addition, every party has an ethical obligation to avoid delay.

(B) Deadline. — A motion for an extension should be filed as early as possible, and must be received by the original filing deadline.

(C) Contents. — A motion for an extension should be filed with a cover page labeled “MOTION FOR EXTENSION” and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). A motion for an extension should clearly state:

- when the filing is due
- the reason(s) for requesting an extension
- that the party has exercised due diligence to meet the current filing deadline
- that the party will meet a revised deadline
- if the parties have communicated, whether the other party consents to the extension

(d) Defective filings. — Filings may be deemed defective due to improper filing, untimely filing, or both.

(i) Improper filings. — If an application, motion, brief, exhibit, or other submission is not properly filed, it is rejected by the Immigration Court with an explanation for the rejection. Parties are expected to exercise due diligence. Parties wishing to correct the defect and refile after a rejection must do so promptly. See Chapters 3.1(b) (Timing of submissions), 3.1(c) (Must be “timely”). See also subsection (ii), below. The term “rejected” means that the filing is returned to the filing party because it is defective and therefore will not be considered by the Immigration Judge. It is not an adjudication of the filing or a decision regarding its content. Examples of improper submissions include:

- if a fee is required, failure to submit a fee receipt or fee waiver request

- failure to include a proof of service upon the opposing party
- failure to comply with the language, signature, and format requirements
- illegibility of the filing

If a document is improperly filed but not rejected, the Immigration Judge retains the authority to take appropriate action.

(ii) Untimely filings. — The untimely submission of a filing may have serious consequences. The Immigration Judge retains the authority to determine how to treat an untimely filing. Accordingly, parties should be mindful of the requirements regarding timely filings. See Chapters 3.1(b) (Timing of submissions), 3.1(c) (Must be “timely”).

Untimely filings, if otherwise properly filed, are not rejected by Immigration Court staff. However, parties should note that the consequences of untimely filing are sometimes as follows:

- if an application for relief is untimely, the alien’s interest in that relief is deemed waived or abandoned
- if a motion is untimely, it is denied
- if a brief or pre-trial statement is untimely, the issues in question are deemed waived or conceded
- if an exhibit is untimely, it is not entered into evidence or it is given less weight
- if a witness list is untimely, the witnesses on the list are barred from testifying
- if a response to a motion is untimely, the motion is deemed unopposed

(iii) Motions to accept untimely filings. — If a party wishes the Immigration Judge to consider a filing despite its untimeliness, the party must make an oral or written motion to accept the untimely filing. A motion to accept an untimely filing must explain the reasons for the late filing and show good cause for

acceptance of the filing. In addition, parties are strongly encouraged to support the motion with documentary evidence, such as affidavits and declarations under the penalty of perjury. The Immigration Judge retains the authority to determine how to treat an untimely filing.

(iv) Natural or manmade disasters. — Natural or manmade disasters may occur that create unavoidable filing delays. Parties wishing to file untimely documents after a disaster must comply with the requirements of subsection (iii), above.

(e) Filing receipts. — The Immigration Court does not issue receipts for filings. Parties are encouraged, however, to obtain and retain corroborative documentation of delivery, such as mail delivery receipts or courier tracking information. As a precaution, parties should keep copies of all items sent to the Immigration Court.

(f) Conformed copies. — A time-and-date stamp is placed on each filing received by the Immigration Court. If the filing party desires a “conformed copy” (i.e., a copy of the filing bearing the Immigration Court’s time-and-date stamp), the original must be accompanied by an accurate copy of the filing, prominently marked “CONFORMED COPY; RETURN TO SENDER.” If the filing is voluminous, only a copy of the cover page and table of contents needs to be submitted for confirmation. The filing must also contain a self-addressed stamped envelope or comparable return delivery packaging. The Immigration Court does not return conformed copies without a prepaid return envelope or packaging.

3.2 Service on the Opposing Party

(a) Service requirements. — For all filings before the Immigration Court, a party must:

- provide, or “serve,” an identical copy on the opposing party (or, if the party is represented, the party’s representative), and
- except for filings served during a hearing or jointly-filed motions agreed upon by all parties, declare in writing that a copy has been served.

The written declaration is called a “Proof of Service,” also referred to as a “Certificate of Service.” See subsection (e), below, Appendix G (Sample Proof of Service). See also 8 C.F.R. §§ 1003.17(a), 1003.23(b)(1)(ii), 1003.32(a).

(b) Whom to serve. — For all filings before the Immigration Court, the opposing party must be served. For an alien in proceedings, the opposing party is the Department of Homeland Security (DHS). In most instances, a DHS Chief Counsel or a specific DHS Assistant Chief Counsel is the designated officer to receive service. Parties may contact the Immigration Court for the DHS address. The opposing party is never the Immigration Judge or Immigration Court.

(c) Method of service. — Service on the opposing party may be accomplished by hand-delivery, by U.S. Postal Service, or by commercial courier. Where service on the opposing party is accomplished by hand-delivery, service is complete when the filing is hand-delivered to a responsible person at the address of the individual being served.

Where service on the opposing party is accomplished by U.S. Postal Service or commercial courier, service is complete when the filing is deposited with the U.S. Postal Service or the commercial courier. Note that this rule differs from the rule for filings—filings with the Immigration Court are deemed complete when documents are received by the court, not when documents are mailed. See Chapter 3.1(a)(iii) (Receipt Rule).

(i) Service of an electronically filed Form EOIR-28. — The electronic filing of a Form EOIR-28 with the Immigration Court does not constitute service on the Department of Homeland Security. Attorneys and accredited representatives must serve the Department of Homeland Security with a printed copy of the Form EOIR-28 for each case. See Chapter 2.1(c) (Notice to Opposing Party).

(d) Timing of service. — The Proof of Service must bear the actual date of transmission and accurately reflect the means of transmission (e.g., hand delivery, regular mail, overnight mail, commercial courier, etc.). Service must be calculated to allow the other party sufficient opportunity to act upon or respond to served material.

(e) Proof of Service. — A Proof of Service is required for all filings, except filings served on the opposing party during a hearing or jointly-filed motions agreed upon by all parties. See 8 C.F.R. § 1003.17(a), 1003.23(b)(1)(ii), 1003.32(a). See also Appendix G (Sample Proof of Service). When documents are submitted as a package, the Proof of Service should be placed at the bottom of the package.

(i) Contents of Proof of Service. — A Proof of Service must state:

- the name or title of the party served
- the precise and complete address of the party served

- the date of service
- the means of service (e.g., hand delivery, regular mail, overnight mail, commercial courier, etc.)
- the document or documents being served

A Proof of Service must contain the name and signature of the person serving the document. A Proof of Service may be signed by an individual designated by the filing party, unlike the document(s) being served, which must be signed by the filing party.

(ii) Certificates of Service on applications. — Certain forms, such as the Application for Cancellation of Removal for Certain Permanent Residents (Form EOIR-42A), contain a Certificate of Service, which functions as a Proof of Service. Such a Certificate of Service only functions as a Proof of Service for the form on which it appears, not for any supporting documents filed with the form. If supporting documents are filed with an application containing a Certificate of Service, a separate Proof of Service for the entire submission must be included.

(f) Representatives and service. —

(i) Service on a representative. — Service on a representative constitutes service on the person or entity represented. If an alien is represented by an attorney, the Department of Homeland Security must serve the alien's attorney but need not serve the alien. See 8 C.F.R. § 1292.5(a), Chapter 2 (Appearances before the Immigration Court).

(ii) Service by a represented alien. — Whenever a party is represented, the party should submit all filings and communications to the Immigration Court through the representative. See 8 C.F.R. § 1292.5(a), Chapter 2.1 (Representation Generally).

(g) Proof of Service and Notice of Appearance. — All filings with the Immigration Court must include a Proof of Service that identifies the item being filed, unless served during a hearing. Thus, a completed Proof of Service on a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) does not constitute Proof of Service of documents accompanying the Form EOIR-28. See Chapters 3.2(c)(i) (Service of an electronically filed Form EOIR-28), 3.2(e)(ii) (Service by a represented alien).

Parties appearing in Immigration Court or conducting business with the Immigration Court are not allowed access to telephones, photocopying machines, or other equipment within the Immigration Court's administrative offices.

4.15 Master Calendar Hearing

(a) Generally. — A respondent's first appearance before an Immigration Judge in removal proceedings is at a master calendar hearing. Master calendar hearings are held for pleadings, scheduling, and other similar matters. See subsection (e), below.

(b) Request for a prompt hearing. — To allow the respondent an opportunity to obtain counsel and to prepare to respond, at least ten days must elapse between service of the Notice to Appear (Form I-862) on the respondent and the initial master calendar hearing. The respondent may waive this ten-day requirement by signing the "Request for Prompt Hearing" contained in the Notice to Appear. The respondent may then be scheduled for a master calendar hearing within the ten-day period. See INA § 239(b)(1).

(c) Notification. — The Notice to Appear (Form I-862) served on the respondent may contain notice of the date, time, and location of the initial master calendar hearing. If so, the respondent must appear at that date, time, and location. If the Notice to Appear does not contain notice of the date, time, and location of the initial master calendar hearing, the respondent will be mailed a notice of hearing containing this information. If there are any changes to the date, time, or location of a master calendar hearing, the respondent will be notified by mail at the address on record with the Immigration Court. See Chapter 2.2(c) (Address obligations).

(d) Arrival. — Parties should arrive at the Immigration Court prior to the time set for the master calendar hearing. Attorneys and representatives should check in with the Immigration Court staff and sign in, if a sign-in sheet is available. Parties should be mindful that they may encounter delays in passing through mandatory security screening prior to entering the court. See Chapters 4.8 (Attendance), 4.14 (Access to Court).

(e) Scope of the master calendar hearing. — As a general matter, the purpose of the master calendar hearing is to:

- advise the respondent of the right to an attorney or other representative at no expense to the government
- advise the respondent of the availability of free and low-cost legal service providers and provide the respondent with a list of such providers in the area where the hearing is being conducted

- advise the respondent of the right to present evidence
- advise the respondent of the right to examine and object to evidence and to cross-examine any witnesses presented by the Department of Homeland Security
- explain the charges and factual allegations contained in the Notice to Appear (Form I-862) to the respondent in non-technical language
- take pleadings
- identify and narrow the factual and legal issues
- set deadlines for filing applications for relief, briefs, motions, pre-hearing statements, exhibits, witness lists, and other documents
- provide certain warnings related to background and security investigations
- schedule hearings to adjudicate contested matters and applications for relief
- advise the respondent of the consequences of failing to appear at subsequent hearings
- advise the respondent of the right to appeal to the Board of Immigration Appeals

See INA §§ 240(b)(4), 240(b)(5), 8 C.F.R. §§ 1240.10, 1240.15.

(f) Opening of a master calendar hearing. — The Immigration Judge turns on the recording equipment at the beginning of the master calendar hearing. The hearing is recorded except for off-the-record discussions. See Chapter 4.10 (Record). On the record, the Immigration Judge identifies the type of proceeding being conducted (e.g., a removal proceeding); the respondent's name and alien registration number ("A number"); the date, time, and place of the proceeding; and the presence of the parties. The Immigration Judge also verifies the respondent's name, address, and telephone number. If the respondent's address or telephone number have changed, the respondent must submit an Alien's Change of Address Form (Form EOIR-33/IC).

If necessary, an interpreter is provided to an alien whose command of the English language is inadequate to fully understand and participate in the hearing. See Chapter 4.11 (Interpreters), subsection (o), below. If necessary, the respondent is placed under oath.

(g) *Pro se respondent.* — If the respondent is unrepresented (“pro se”) at a master calendar hearing, the Immigration Judge advises the respondent of his or her hearing rights and obligations, including the right to be represented at no expense to the government. In addition, the Immigration Judge ensures that the respondent has received a list of providers of free and low-cost legal services in the area where the hearing is being held. The respondent may waive the right to be represented and choose to proceed pro se. Alternatively, the respondent may request that the Immigration Judge continue the proceedings to another master calendar hearing to give the respondent an opportunity to obtain representation.

If the proceedings are continued but the respondent is not represented at the next master calendar hearing, the respondent will be expected to explain his or her efforts to obtain representation. The Immigration Judge may decide to proceed with pleadings at that hearing or to continue the matter again to allow the respondent to obtain representation. If the Immigration Judge decides to proceed with pleadings, he or she advises the respondent of any relief for which the respondent appears to be eligible. Even if the respondent is required to enter pleadings without representation, the respondent still has the right to obtain representation before the next hearing. See Chapter 4.4 (Representation).

(h) *Entry of appearance.* — If a respondent is represented, the representative should file any routinely submitted documents at the beginning of the master calendar hearing. The representative must also serve such documents on the opposing party. See Chapter 3.2 (Service on the Opposing Party). Routinely-submitted documents include the Notice of Appearance (Form EOIR-28) and the Alien’s Change of Address Form (Form EOIR-33/IC). See Chapters 2.1(b) (Entering an appearance), 2.2(c) (Address obligations), 2.3(h)(ii) (Address obligations of represented aliens).

(i) *Pleadings.* — At the master calendar hearing, the parties should be prepared to plead as follows.

(i) *Respondent.* — The respondent should be prepared:

- to concede or deny service of the Notice to Appear (Form I-862)

- to request or waive a formal reading of the Notice to Appear (Form I-862)
- to request or waive an explanation of the respondent's rights and obligations in removal proceedings
- to admit or deny the charges and factual allegations in the Notice to Appear (Form I-862)
- to designate or decline to designate a country of removal
- to state what application(s) for relief from removal, if any, the respondent intends to file
- to identify and narrow the legal and factual issues
- to estimate (in hours) the amount of time needed to present the case at the individual calendar hearing
- to request a date on which to file the application(s) for relief, if any, with the Immigration Court
- to request an interpreter for the respondent and witnesses, if needed

A sample oral pleading is included in Appendix M (Sample Oral Pleading). To make the master calendar hearing process more expeditious and efficient, representatives are strongly encouraged to use this oral pleading format.

(ii) Department of Homeland Security. — The DHS attorney should be prepared:

- to state DHS's position on all legal and factual issues, including eligibility for relief
- to designate a country of removal

- to file with the Immigration Court and serve on the opposing party all documents that support the charges and factual allegations in the Notice to Appear (Form I-862)
- to serve on the respondent the DHS biometrics instructions, if appropriate

(j) Written pleadings. — In lieu of oral pleadings, the Immigration Judge may permit represented parties to file written pleadings, if the party concedes proper service of the Notice to Appear (Form I-862). See Appendix L (Sample Written Pleading). The written pleadings must be signed by the respondent and the respondent's representative.

The written pleading should contain the following:

- a concession that the Notice to Appear (Form I-862) was properly served on the respondent
- a representation that the hearing rights set forth in 8 C.F.R. § 1240.10 have been explained to the respondent
- a representation that the consequences of failing to appear in Immigration Court have been explained to the respondent
- an admission or denial of the factual allegations in the Notice to Appear (Form I-862)
- a concession or denial of the charge(s) in the Notice to Appear (Form I-862)
- a designation of, or refusal to designate, a country of removal
- an identification of the application(s) for relief from removal, if any, the respondent intends to file
- a representation that any application(s) for relief (other than asylum) will be filed no later than fifteen (15) days before the individual calendar hearing, unless otherwise directed by the Immigration Judge
- an estimate of the number of hours required for the individual calendar hearing

- a request for an interpreter, if needed, that follows the guidelines in subsection (n), below
- if background and security investigations are required, a representation that:
 - the respondent has been provided Department of Homeland Security (DHS) biometrics instructions
 - the DHS biometrics instructions have been explained to the respondent
 - the respondent will timely comply with the DHS biometrics instructions prior to the individual calendar hearing
 - the consequences of failing to comply with the DHS biometrics instructions have been explained to the respondent
- a representation by the respondent that he or she:
 - understands the rights set forth in 8 C.F.R. § 1240.10 and waives a further explanation of those rights by the Immigration Judge
 - if applying for asylum, understands the consequences under INA § 208(d)(6) of knowingly filing or making a frivolous asylum application
 - understands the consequences of failing to appear in Immigration Court or for a scheduled departure
 - understands the consequences of failing to comply with the DHS biometrics instructions
 - knowingly and voluntarily waives the oral notice required by INA § 240(b)(7) regarding limitations on discretionary relief following an in absentia removal order, or authorizes his or her representative to waive such notice

- understands the requirement in 8 C.F.R. § 1003.15(d) to file an Alien's Change of Address Form (Form EOIR-33/IC) with the Immigration Court within five (5) days of moving or changing a telephone number

Additional matters may be included in the written pleading when appropriate. For example, the party may need to provide more specific information in connection with a request for an interpreter. See subsection (p), below.

(k) Background checks and security investigations. — For certain applications for relief from removal, the Department of Homeland Security (DHS) is required to complete background and security investigations. See 8 C.F.R. § 1003.47. Questions regarding background checks and security investigations should be addressed to DHS.

(i) Non-detained cases. — If a non-detained respondent seeks relief requiring background and security investigations, the DHS attorney provides the respondent with the DHS biometrics instructions. The respondent is expected to promptly comply with the DHS biometrics instructions by the deadlines set by the Immigration Judge. Failure to timely comply with these instructions will result in the application for relief not being considered unless the applicant demonstrates that such failure was the result of good cause. 8 C.F.R. § 1003.47(d).

In all cases in which the respondent is represented, the representative should ensure that the respondent understands the DHS biometrics instructions and the consequences of failing to timely comply with the instructions.

(ii) Detained cases. — If background and security investigations are required for detained respondents, DHS is responsible for timely fingerprinting the respondent and obtaining all necessary information. See 8 C.F.R. § 1003.47(d).

(l) Asylum Clock. — The Immigration Court operates an asylum adjudications clock which measures the length of time an asylum application has been pending for each asylum applicant in removal proceedings. The asylum clock is an administrative function that tracks the number of days elapsed since the application was filed, not including any delays requested or caused by the applicant and ending with the final administrative adjudication of the application. This period also does not include administrative appeal or remand.

Where a respondent has applied for asylum, the Immigration Judge determines during the master calendar hearing whether the case is an expedited asylum case. If so, the Immigration Judge asks on the record whether the applicant wants an "expedited

asylum hearing date,” meaning an asylum hearing scheduled for completion within 180 days of the filing. If the case is being adjourned for an alien-related reason, the asylum clock will stop until the next hearing.

Certain asylum applicants are eligible to receive employment authorization from the Department of Homeland Security (DHS) 180 days after the application is filed, not including delays in the proceedings caused by the applicant. To facilitate DHS’s adjudication of employment authorization applications, the Executive Office for Immigration Review (EOIR) provides DHS with access to its asylum adjudications clock for cases pending before EOIR. See INA §§ 208(d)(2), 208(d)(5)(A)(iii); 8 C.F.R. § 1208.7.

(i) Lodged Asylum Applications. — For the purpose of employment authorization, DHS considers a defensive asylum application “filed” as of the date the application is filed with the Immigration Court, unless the application is first lodged with the court. If the application is first lodged with the court, DHS considers the date on which the application is lodged for the purpose of determining eligibility for employment authorization. An alien may lodge an asylum application at the Immigration Court’s public window during that court’s filing hours, or by sending it to the Immigration Court by mail or courier.

The lodged date is not the filing date, and a lodged asylum application is not considered filed. A respondent who lodges a defensive asylum application must still file the completed application by mail, courier, at the court window, or before an Immigration Judge at a master calendar hearing. See Chapter 3.1(b)(III)(A) (Defensive applications).

The Immigration Court places a date stamp and a “lodged not filed” stamp on the application, and returns the application to the alien. The court does not retain a copy of the lodged application, and it is not placed in the record of proceedings; however, the date that the application was lodged with the court is electronically transmitted to DHS.

(A) Requirements for lodging. — Only a respondent who plans to file a defensive asylum application, but has not yet done so, may lodge an asylum application. An asylum applicant may only lodge an asylum application once. If an asylum application is lodged, it must be lodged before that application is filed before an Immigration Judge at a master calendar hearing. An applicant who already has an asylum application pending with the court may not lodge an asylum application. Accordingly, if a respondent files an application with DHS and DHS refers that application

to the court, the respondent may not lodge an asylum application.

If an alien lodges an asylum application by mail or courier, the application must be accompanied by a self-addressed stamped envelope or comparable return delivery packaging. It must also be accompanied by a cover page or include a prominent annotation on the top of the front page of the form stating that it is being submitted for the purpose of lodging .

Note that a Proof of Service is not required to lodge an application.

(B) Defective lodging. — Under certain circumstances, an asylum application which is submitted for the purpose of lodging the application is rejected. Examples of defective submissions include:

- the Form I-589 does not have the applicant's name
- the Form I-589 does not have the A-number
- the Form I-589 is not signed by the applicant
- the Form I-589 has already been lodged with the court
- the Form I-589 has already been filed with the court
- the Form I-589 was referred to the court from USCIS
- the Form I-589 is being submitted for lodging at the incorrect court location
- the case is pending before the Board of Immigration Appeals
- the case is not pending before EOIR

An application that is submitted by mail or courier for the purpose of lodging is subject to rejection for the following additional defects:

- the application is not accompanied by a self-addressed stamped envelope or comparable return delivery packaging;
or

- The application is not accompanied by a cover page or does not include a prominent annotation on the top of the front page of the form stating that it is being submitted for the purpose of lodging.

(m) Waivers of appearances. — Respondents and representatives must appear at all master calendar hearings unless the Immigration Judge has granted a waiver of appearance for that hearing. Waivers of appearances for master calendar hearings are described in subsections (i) and (ii), below. Respondents and representatives requesting waivers of appearances should note the limitations on waivers of appearances described in subsection (iii), below.

Representatives should note that a motion for a waiver of a representative's appearance is distinct from a representative's motion for a *telephonic appearance*. Motions for telephonic appearances are described in subsection (n), below.

(i) Waiver of representative's appearance. — A representative's appearance at a master calendar hearing may be waived only by written motion filed in conjunction with written pleadings. See subsection (j), above. The written motion should be filed with a cover page labeled "MOTION TO WAIVE REPRESENTATIVE'S APPEARANCE" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). The motion should state the date and time of the master calendar hearing and explain the reason(s) for requesting a waiver of the representative's appearance.

(ii) Waiver of respondent's appearance. — A respondent's appearance at a master calendar hearing may be waived by oral or written motion. See 8 C.F.R. § 1003.25(a). If in writing, the motion should be filed with a cover page labeled "MOTION TO WAIVE RESPONDENT'S APPEARANCE" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). The motion should state the date and time of the master calendar hearing and explain the reason(s) for requesting a waiver of the respondent's appearance.

(iii) Limitations on waivers of appearances. —

(A) Waivers granted separately. — A waiver of a representative's appearance at a master calendar hearing does not constitute a waiver of the respondent's appearance. A waiver of a respondent's appearance at a

master calendar hearing does not constitute a waiver of the representative's appearance.

(B) Pending motion. — The mere filing of a motion to waive the appearance of a representative or respondent at a master calendar hearing does not excuse the appearance of the representative or respondent at that hearing. Therefore, the representative or respondent must appear in person unless the motion has been granted.

(C) Future hearings. — A waiver of the appearance of a representative or respondent at a master calendar hearing does not constitute a waiver of the appearance of the representative or respondent at any future hearing.

(n) Telephonic appearances. — In certain instances, respondents and representatives may appear by telephone at some master calendar hearings at the Immigration Judge's discretion. For more information, parties should contact the Immigration Court.

An appearance by telephone may be requested by written or oral motion. If in writing, the motion should be filed with a cover page labeled "MOTION TO PERMIT TELEPHONIC APPEARANCE" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). The motion should state the date and time of the master calendar hearing and explain the reason(s) for requesting a telephonic appearance. In addition, the motion should state the telephone number of the representative or respondent.

Parties requesting an appearance by telephone should note the guidelines in subsections (i) through (v), below.

(i) Representative's telephonic appearance is not a waiver of respondent's appearance. — Permission for a *representative* to appear by telephone at a master calendar hearing does not constitute a waiver of the *respondent's* appearance at that hearing. A request for a waiver of a respondent's appearance at a master calendar hearing must comply with the guidelines in subsection (m), above.

(ii) Availability. — A representative or respondent appearing by telephone must be available during the entire master calendar hearing.

(iii) Cellular telephones. — Unless expressly permitted by the Immigration Judge, cellular telephones should not be used for telephonic appearances.

(iv) Pending motion. — The mere filing of a motion to permit a representative or respondent to appear by telephone at a master calendar hearing does not excuse the appearance in person at that hearing by the representative or respondent. Therefore, the representative or respondent must appear in person unless the motion has been granted.

(v) Future hearings. — Permission for a representative or respondent to appear by telephone at a master calendar hearing does not constitute permission for the representative or respondent to appear by telephone at any future hearing.

(o) Other requests. — In preparation for an upcoming individual calendar hearing, the following requests may be made at the master calendar hearing or afterwards, as described below.

(i) Interpreters. — If a party anticipates that an interpreter will be needed at the individual calendar hearing, the party should request an interpreter, either by oral motion at a master calendar hearing, by written motion, or in a written pleading. Parties are strongly encouraged to submit requests for interpreters at the master calendar hearing rather than following the hearing. A written motion to request an interpreter should be filed with a cover page labeled “MOTION TO REQUEST AN INTERPRETER,” and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

A request for an interpreter, whether made by oral motion, by written motion, or in a written pleading, should contain the following information:

- the name of the language requested, including any variations in spelling
- the specific dialect of the language, if applicable
- the geographical locations where such dialect is spoken, if applicable
- the identification of any other languages in which the respondent or witness is fluent

- any other appropriate information necessary for the selection of an interpreter

(ii) Video testimony. — In certain instances, witnesses may testify by video at the individual calendar hearing, at the Immigration Judge’s discretion. Video testimony may be requested only by written motion. For more information, parties should contact the Immigration Court.

A written motion to request video testimony should be filed with a cover page labeled “MOTION TO PRESENT VIDEO TESTIMONY,” and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). A motion to present video testimony must include an explanation of why the witness cannot appear in person. In addition, parties wishing to present video testimony must comply with the requirements for witness lists. See Chapter 3.3(g) (Witness lists).

If video testimony is permitted, the Immigration Judge specifies the time and manner under which the testimony is taken.

(iii) Telephonic testimony. — In certain instances, witnesses may testify by telephone, at the Immigration Judge’s discretion. If a party wishes to have witnesses testify by telephone at the individual calendar hearing, this may be requested by oral motion at the master calendar hearing or by written motion. If telephonic testimony is permitted, the court specifies the time and manner under which the testimony is taken. For more information, parties should contact the Immigration Court.

A written motion to request telephonic testimony should be filed with a cover page labeled “MOTION TO PRESENT TELEPHONIC TESTIMONY,” and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). In addition, parties wishing to present telephonic testimony must comply with the requirements for witness lists. See Chapter 3.3(g) (Witness lists).

(A) Contents. — An oral or written motion to permit telephonic testimony must include:

- an explanation of why the witness cannot appear in person

- the witness's telephone number and the location from which the witness will testify

(B) Availability. — A witness appearing by telephone must be available to testify at any time during the course of the individual calendar hearing.

(C) Cellular telephones. — Unless permitted by the Immigration Judge, cellular telephones should not be used by witnesses testifying telephonically.

(D) International calls. — If international telephonic testimony is permitted, the requesting party should bring a pre-paid telephone card to the Immigration Court to pay for the call.

4.16 Individual Calendar Hearing

(a) Generally. — Evidentiary hearings on contested matters are referred to as individual calendar hearings or merits hearings. Contested matters include challenges to removability and applications for relief.

(b) Filings. — The following documents should be filed in preparation for the individual calendar hearing, as necessary. Parties should note that, since Records of Proceedings in removal proceedings are kept separate from Records of Proceeding in bond redetermination proceedings, documents already filed in bond redetermination proceedings must be re-filed for removal proceedings. See Chapter 9.3 (Bond Proceedings).

(i) Applications, exhibits, motions. — Parties should file all applications for relief, proposed exhibits, and motions, as appropriate. All submissions must comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court).

(ii) Witness list. — If presenting witnesses other than the respondent, parties must file a witness list that complies with the requirements of Chapter 3.3(g) (Witness lists). In addition, the witness list must comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court).

(iii) Criminal history chart. — When submitting documents relating to a respondent's criminal arrests, prosecutions, or convictions, parties are encouraged to use a criminal history chart and attach all pertinent documentation, such as

arrest and conviction records. For guidance on submitting a criminal history chart, see Chapter 3.3(f) (Criminal conviction documents). For a sample, see Appendix O (Sample Criminal History Chart). Parties submitting a criminal history chart should comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court).

(c) Opening the individual calendar hearing. — The Immigration Judge turns on the recording equipment at the beginning of the individual calendar hearing. The hearing is recorded, except for off-the-record discussions. See Chapter 4.10 (Record).

On the record, the Immigration Judge identifies the type of proceeding being conducted (e.g., a removal proceeding); the respondent's name and alien registration number ("A number"); the date, time and place of the proceeding; and the presence of the parties. The Immigration Judge also verifies the respondent's name, address, and telephone number. If the respondent's address or telephone number have changed, the respondent must submit an Alien's Change of Address Form (Form EOIR-33/IC).

(d) Conduct of hearing. — While the Immigration Judge decides how each hearing is conducted, parties should be prepared to:

- make an opening statement
- raise any objections to the other party's evidence
- present witnesses and evidence on all issues
- cross-examine opposing witnesses and object to testimony
- make a closing statement

(e) Witnesses. — All witnesses, including the respondent if he or she testifies, are placed under oath by the Immigration Judge before testifying. If necessary, an interpreter is provided. See Chapters 4.11 (Interpreters), 4.15(o) (Other requests). The Immigration Judge may ask questions of the respondent and all witnesses at any time during the hearing. See INA § 240(b)(1).

(f) Pro se respondents. — Unrepresented ("pro se") respondents have the same hearing rights and obligations as represented respondents. For example, pro se respondents may testify, present witnesses, cross-examine any witnesses presented by the Department of Homeland Security (DHS), and object to evidence presented by DHS. When a respondent appears pro se, the Immigration Judge generally participates in

questioning the respondent and the respondent's witnesses. As in all removal proceedings, DHS may object to evidence presented by a pro se respondent and may cross-examine the respondent and the respondent's witnesses.

(g) Decision. — After the parties have presented their cases, the Immigration Judge renders a decision. The Immigration Judge may render an oral decision at the hearing's conclusion, or he or she may render an oral or written decision on a later date. See Chapter 1.5(c) (Immigration Judge decisions). If the decision is rendered orally, the parties are given a signed summary order from the court.

(h) Appeal. — The respondent and the Department of Homeland Security have the right to appeal the Immigration Judge's decision to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions). A party may waive the right to appeal. At the conclusion of Immigration Court proceedings, the Immigration Judge informs the parties of the deadline for filing an appeal with the Board, unless the right to appeal is waived. See Chapter 6.4 (Waiver of Appeal).

Parties should note that the Immigration Judge may ask the Board to review his or her decision. This is known as "certifying" a case to the Board. The certification of a case is separate from any appeal in the case. Therefore, a party wishing to appeal must file an appeal *even if* the Immigration Judge has certified the case to the Board. See Chapter 6.5 (Certification).

If an appeal is not filed, the Immigration Judge's decision becomes the final administrative decision in the matter, unless the case has been certified to the Board.

(i) Relief granted. — If a respondent's application for relief from removal is granted, the respondent is provided the Department of Homeland Security (DHS) post-order instructions. These instructions describe the steps the respondent should follow to obtain documentation of his or her immigration status from U.S. Citizenship and Immigration Services, a component of DHS.

More information about these post-order instructions is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

For respondents who are granted asylum, information on asylees' benefits and responsibilities is available at the Immigration Court.

4.17 In Absentia Hearing