



## (a) Due Date

In appropriate cases, the Board sets briefing schedules and informs the parties of their respective deadlines for filing briefs. See [Chapter 4.2](#) (Process). A party may not file a brief beyond the deadline set in the briefing schedule, unless the brief is filed with the appropriate motion. See [Chapter 4.6\(g\)](#) (Supplemental briefs), [4.6\(h\)](#) (Reply briefs), [4.7\(d\)](#) (Untimely briefs).

**(1) Non-detained cases** - When the alien is not detained, the parties are generally granted 21 calendar days each, sequentially, to file their initial briefs. See [Chapter 3.1\(b\)\(1\)](#) (Construction of “day”). The appealing party is provided 21 days from the date of the briefing schedule notice to file an appeal brief, and the opposing party will have an additional 21 days (marked from the date the appealing party’s brief was due) in which to file a response brief. 8 C.F.R. § [1003.3\(c\)\(1\)](#).

If both parties file an appeal (i.e. cross-appeals), then both parties are granted the same 21-day period in which to file an appeal brief. See 8 C.F.R. § [1003.3\(c\)\(1\)](#). If either party wishes to reply to the appeal brief of the other, that party should comply with the rules for reply briefs. See [Chapter 4.6\(h\)](#) (Reply briefs).

**(2) Detained cases** - When an appeal is filed in the case of a detained alien, the alien and DHS are both given the same 21 calendar days in which to file their initial briefs. The Board will accept reply briefs filed by DHS or by the alien within 14 days after expiration of the briefing schedule. However, the Board will not suspend or delay adjudication of the appeal in anticipation of, or in response to, the filing of a reply brief. See [Chapter 4.6\(h\)](#) (Reply briefs).

**(3) Federal court remands** - If a briefing schedule is set, the parties are both given the same 21 calendar days in which to file their initial briefs. If either party wishes to reply to the appeal brief of the other, that party should comply with the rules for reply briefs. See [Chapter 4.6\(h\)](#) (Reply briefs). The Board, however, will not suspend or delay adjudication of the appeal in anticipation of, or in response to the filing of a reply brief.

## (b) Processing

If a brief arrives at the Board and is timely, the brief is added to the record of proceedings and considered in the course of the adjudication of the appeal. If a brief arrives at the Board and is untimely, the brief is rejected and returned to the sender. See [Chapter 3.1\(c\)\(1\)](#) (Meaning of “rejected”). The Board may reject a brief as untimely at any time prior to the final adjudication of the appeal.

The Board does not issue receipts for briefs. If a party wishes to confirm the Board’s receipt of a brief, the party should call the Automated Case Information Hotline for that information or, in the alternative, contact the Clerk’s Office. See [Chapter 1.6\(b\)](#) (Telephone calls), [Appendix A](#) (EOIR Directory), [Appendix H](#) (Telephonic Information). If a party wishes to document the Board’s receipt of a brief, the party should either (i) save proof of delivery (such as a courier’s delivery confirmation or a return receipt from the U.S. Postal Service) or (ii) request a conformed copy. See [Chapter 3.1\(d\)\(3\)](#) (Conformed copies).

## (c) Extensions

The Board has the authority to set briefing deadlines and to extend them. The filing of an extension request does not automatically extend the filing deadline, nor can the filing party assume that a request will be granted. Until such time as the Board affirmatively grants an extension request, the existing deadline stands.

**(1) Policy** - In the interest of fairness and the efficient use of administrative resources, extension requests are not favored; thus, they will not be granted as a matter of course. A briefing deadline must be met unless the Board expressly extends it. There is no automatic entitlement to an extension of the briefing schedule by either party.

**(A) Non-detained cases** - If a briefing extension is granted, the Board's policy is to grant an additional 21 days to file a brief regardless of the amount of time requested. The 21 days are added to the original filing deadline. Extensions are not calculated from the date the request was made or the date the briefing notice was received. It is also the Board's policy *not* to grant second briefing extension requests. Second requests are granted only in rare circumstances.

**(B) Detained cases** - If a briefing extension is granted, the Board's policy is to grant an additional 21 days to file a brief regardless of the amount of time requested. The 21 days are added to the original filing deadline and applies to both parties. Extensions are not calculated from the date the request was made or the date the briefing notice was received. It is also the Board's policy *not* to grant second briefing extension requests. Second requests are granted only in rare circumstances.

**(2) Request deadline** - Extension requests must be received by the Board by the brief's original due date. Extension requests received after the due date will not be granted.

The timely filing of an extension request does not relieve the requesting party of the obligation to meet the filing deadline. Until the extension request is affirmatively granted by the Board, the original deadline remains in effect.

**(3) Duty to avoid delay** - All parties have an ethical obligation to avoid delay. The Board's deadlines are designed to provide ample opportunity for filing, and a conscientious party should be able to meet these deadlines.

**(4) Contents** - Extension requests should be labeled "BRIEFING EXTENSION REQUEST" and be captioned accordingly. See [Appendix E](#) (Sample Cover Pages). An extension request should indicate clearly:

- when the brief is due
- the reason for requesting an extension
- a representation that the party has exercised due diligence to meet the current deadline
- that the party will meet a revised deadline
- Proof of Service upon the other party

#### **(d) Untimely Briefs**

If a party wishes the Board to consider a brief despite its untimeliness, the brief must be accompanied by a "MOTION TO ACCEPT LATE-FILED BRIEF" and comply generally with the rules for motions. See [Chapter 5.2](#) (Filing a Motion). If the motion is filed without the brief, the motion will be rejected. See [Chapter 3.1\(c\)\(1\)](#) (Meaning of "rejected"). Thus, the motion and the brief must be submitted together.

The Board has the discretion to consider a late-filed brief, but does so rarely. A motion to accept late-filed brief must set forth in detail the reasons for the untimeliness, and it should be supported by affidavits, declarations, or other evidence. If the motion is granted, the motion and brief are incorporated into the record, and the brief is considered by the Board. If the motion is denied, the motion is retained as part of the record, but the brief is returned without consideration. In either case, the parties are notified of the Board's decision on the motion.

Parties may file a motion to accept a late-filed brief only once. Subsequent late-filed brief motions will not be considered. Motions to reconsider denials of late-filed brief motions will also not be considered.

#### **(e) Decision not to File a Brief**

If a party indicates on a Notice of Appeal (Form EOIR-26) that a brief will be filed but later decides not to file a brief, that party should notify the Board in writing *before* the date the brief is due. The filing should have a cover page clearly labeled "BRIEFING WAIVER" and expressly indicate that the party will not be filing a brief. See [Appendix E](#) (Sample Cover Pages).

Failure to file a brief after an extension request has been granted is highly disfavored. See Chapter-4.16 (Summary Dismissal).

**(f) Failure to File a Brief**

When a party indicates on the Notice of Appeal (Form EOIR-26) that he or she will file a brief and thereafter fails to file a brief and fails to explain the failure to do so, the Board may summarily dismiss the appeal on that basis 8 C.F.R. § 1003.1(d)(2)(i)(E). See Chapter-4.16 (Summary Dismissal).

◀ 4.6 - Appeal Briefs

up

4.8 - Evidence on Appeal ▶

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