FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

C.J.L.G., A JUVENILE MALE, *Petitioner*,	No. 16-73801
v.	Agency No. A206-838-888
WILLIAM P. BARR, Attorney General, *Respondent.*	OPINION

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted En Banc December 10, 2018
San Francisco, California

Filed May 3, 2019

Before: Sidney R. Thomas, Chief Judge, and Susan P. Graber, M. Margaret McKeown, William A. Fletcher, Richard A. Paez, Marsha S. Berzon, Johnnie B. Rawlinson, Consuelo M. Callahan, Sandra S. Ikuta, Jacqueline H. Nguyen and Andrew D. Hurwitz, Circuit Judges.

Opinion by Judge Hurwitz;
Concurrence by Judge Paez;
Concurrence by Judge Berzon;
Dissent by Judge Callahan

SUMMARY*

Immigration

Granting C.J.L.G.'s petition for review of a Board of Immigration Appeals' decision, the en banc court concluded that the Immigration Judge who ordered C.J. removed erred by failing to advise him about his apparent eligibility for Special Immigrant Juvenile ("SIJ") status, and remanded.

SIJ status provides a path to lawful permanent residency for at-risk children and requires a child to obtain a state-court order declaring him dependent or placing him under the custody of a court-appointed individual or entity. The state court must find that (1) "reunification with 1 or both . . . parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;" and (2) it would not be in the child's "best interest to be returned to [his] parent's previous country." 8 U.S.C. § 1101(a)(27)(J). After obtaining a state court order, the child must obtain the consent of the Secretary of Homeland Security to the granting of SIJ status by filing an I-360 petition with the United States Citizenship and Immigration Services ("USCIS"). If USCIS grants the petition, the child may apply for adjustment of status, and a visa must be immediately available when he applies.

The en banc court noted that, under 8 C.F.R. § 1240.11(a)(2), an IJ is required to inform a petitioner subject to removal proceedings of "apparent eligibility to

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

apply for any of the benefits enumerated in this chapter," and observed that this court's case law provides that the "apparent eligibility" standard is triggered whenever the facts before the IJ raise a reasonable possibility that the petitioner may be eligible for relief.

The en banc court concluded that the information presented during CJ's proceedings made it reasonably possible that he could establish eligibility for SIJ status. In this respect, the en banc court concluded that (1) his mother's comment that CJ's father left her a long time ago and CJ's statement that he had had no paternal contact for many years demonstrated that reunification with one parent might be impossible due to abandonment; and (2) the death threats CJ received from a gang in Honduras when he was 14 years old showed that returning to that country might not be in his best interest.

The en banc court rejected the government's contention that SIJ status is not a form of relief covered by the "apparent eligibility" standard of 8 C.F.R. § 1240.11(a)(2), explaining that a successful SIJ application plainly can lead to relief from removal and that the SIJ regulations are among those in the referenced subchapter. The en banc court also rejected the government's contention that an IJ is only required to advise a juvenile of potential eligibility for SIJ relief *after* the child has obtained a state court order, an approved I-360 petition from USCIS, and an immediately available visa. The en banc court concluded that this approach would eviscerate the utility of advice by the IJ and substantially undermine the core purpose of the IJ's duty to advise—to inform a minor of rights and avenues of relief *of which he may not yet be aware*.

The en banc court also observed that, although the IJ could not have granted CJ relief from removal at the time of the hearing, she could have continued the proceedings to allow him to apply for SIJ status. Noting that any eventual decision to grant or deny a continuance is within the discretion of the IJ, the en banc court stated that the IJ should exercise that decision in light of CJ's apparent eligibility for SIJ status and may now also consider how far CJ has proceeded in the SIJ process. Therefore, the en banc court granted the petition for review, vacated the removal order, and remanded for a new hearing before the IJ.

Finally, noting that CJ will be represented by counsel in future administrative proceedings, the en banc court stated that it need not address his contention that appointment of counsel for minors in removal proceedings is constitutionally required.

Concurring, Judge Paez wrote separately because he disagreed with the majority's decision to remain silent on the issue of a child's right to counsel in immigration removal proceedings. Judge Paez would reach the fundamental question raised in this proceeding: whether the Fifth Amendment's guaranty of due process entitles children to appointed counsel in immigration proceedings. He would hold that it does, for indigent children under age 18 who are seeking asylum, withholding of removal, relief under the Convention Against Torture, or another form of relief for which they may be eligible, such as SIJ status.

Concurring in part and concurring in the judgment, Judge Berzon wrote to note that consideration of the right to counsel question for minors in removal proceedings has been unnecessarily hindered by this court's decisions in *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016), *reh'g en banc*

denied, 908 F.3d 1157 (9th Cir. 2018) (Berzon, J., dissenting from denial of rehearing en banc), which held that the right to counsel question must be considered in a petition for review from an individual child's removal proceedings, and not through a class action filed in the district court. Judge Berzon wrote that a more developed factual record than is available here would have given the court more information on which to decide whether minors in removal proceedings have a right to counsel and whether that right is universal or may be limited to certain categories of cases. Judge Berzon wrote that the court was not answering any of those questions in this en banc proceeding, quite possibly because of qualms concerning fashioning the precise parameters of a right to counsel for minors in a single case. Accordingly, Judge Berzon observed that the court shut one door to the courthouse in *J.E.F.M.* on the promise of keeping another open, only to duck out of that door—for now—as well.

Dissenting, Judge Callahan, joined by Judge Ikuta, wrote that she must dissent because the majority required more of the IJ than was required or appropriate. Judge Callahan would hold that the information presented at CJ's hearing before the IJ did not create a reasonable possibility that CJ qualified for relief. In this respect, Judge Callahan wrote that this court has explained that an IJ is required to inform an alien only of his "apparent eligibility" *at the time of the hearing*.

Accordingly, Judge Callahan concluded that, even assuming that SIJ status is a "benefit" contemplated by this regulation, there was no such "apparent eligibility" at the time of CJ's hearing: CJ had not commenced any proceeding in a juvenile court, nor demonstrated any need or reason to do so. Nor was there any evidence indicating whether the Secretary of Homeland Security would consent

to an application by CJ, or that a visa was immediately available.

COUNSEL

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OPINION

HURWITZ, Circuit Judge:

A gang held 14-year-old C.J.L.G. ("CJ") at gunpoint in his native Honduras and threatened to kill his family after he rejected recruitment attempts. CJ and his mother Maria then fled their homeland and sought asylum in the United States. Although finding CJ credible, an immigration judge ("IJ") denied his request for asylum and ordered him removed. The Board of Immigration Appeals ("BIA") dismissed CJ's appeal.

CJ petitions for review, arguing, among other things, that the IJ erred by failing to recognize he was an at-risk child potentially eligible for relief as a Special Immigrant Juvenile ("SIJ") and to so advise him. Because we conclude that the IJ erroneously failed to advise CJ about his eligibility for SIJ status, we grant the petition.

I. Background

In June 2014, CJ and Maria were apprehended in Texas after entering the country without inspection. Because Maria was the subject of a prior removal order, separate removal proceedings were instituted against CJ.

At his initial hearing before an IJ in November 2014, CJ appeared with Maria but without counsel. When the IJ informed them that she would "not appoint an attorney for [CJ]" but that they had "the right to find an attorney . . . at [their] own expense," Maria said she did not "have money to pay for an attorney" but requested time to find one. Maria was unable to find counsel despite several continuances, and ultimately agreed to represent CJ herself. When Maria explained that CJ feared returning to Honduras "because of

the gangs," the IJ gave her an asylum application and questioned her about her son. In response to one question, Maria stated that CJ's father had left her long ago.

In June 2015, Maria filed the asylum application on CJ's behalf. She also sought withholding of removal and protection under the Convention Against Torture. The IJ accepted the application and set CJ's case for a hearing.

At that hearing, CJ testified that gang members threatened to kill him and other family members on three occasions after he rejected recruitment attempts. On the third occasion, CJ was held at gunpoint and given one day to decide whether to join the gang; he and Maria then fled Honduras. CJ testified that it had been "many years" since he had any contact with his father.

The IJ expressly found CJ credible but denied his applications for relief from removal. On appeal to the BIA, now represented by counsel, CJ contended that the IJ had erred by failing to appoint counsel or advise him about SIJ status. The BIA dismissed the appeal, concluding that, although the IJ must "inform the respondent of any apparent forms of relief from removal," CJ had not established eligibility for SIJ status. The BIA also found that it lacked jurisdiction to consider whether CJ had a constitutional right to appointed counsel.

A three-judge panel denied CJ's petition for review. *C.J.L.G. v. Sessions*, 880 F.3d 1122, 1150–51 (9th Cir. 2018). The panel held that CJ had no right to appointed counsel and that the IJ did not err in failing to inform CJ

about his potential ability to obtain SIJ status.[1] *Id.* at 1147–50. A majority of active judges voted to grant CJ's petition for rehearing en banc, and the panel opinion was vacated. *C.J.L.G. v. Sessions*, 904 F.3d 642, 642 (9th Cir. 2018).

II. Discussion

A.

An IJ is required to inform a petitioner subject to removal proceedings of "apparent eligibility to apply for any of the benefits enumerated in this chapter." 8 C.F.R. § 1240.11(a)(2). One of the benefits listed "in this chapter" is SIJ status. *Id.* § 1245.1(a), (e)(2)(vi)(B)(3).

Congress created SIJ status in 1990 to provide a path to lawful permanent residency for certain at-risk children. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 5005–06; *see Bianka M. v. Superior Court*, 423 P.3d 334, 337–38 (Cal. 2018). A child seeking SIJ protection must first obtain a state-court order declaring him dependent or placing him under the custody of a court-appointed "individual or entity." 8 U.S.C. § 1101(a)(27)(J)(i). The state court issuing the order must find that (1) "reunification with 1 or both . . . parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;" and (2) it would not be in the child's "best interest to be returned

[1] Judge Owens concurred, noting that the opinion "does not hold, or even discuss, whether the Due Process Clause mandates counsel for unaccompanied minors." 880 F.3d at 1151 (Owens, J., concurring) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1039–41 (9th Cir. 2016) (McKeown, J., joined by M. Smith, J., specially concurring)).

to [his] parent's previous country." *Id.* § 1101(a)(27)(J)(i)–(ii).[2]

After obtaining a state court order, the child must obtain the consent of the Secretary of Homeland Security to the granting of SIJ status by filing an I-360 petition with the United States Citizenship and Immigration Services ("USCIS"). *See id.* § 1101(a)(27)(J)(iii); 6 USCIS Policy Manual, pt. J, ch. 2(A), ch. 4(E)(1) (current as of Apr. 19, 2019). In reviewing an I-360 petition, "USCIS relies on the expertise of the juvenile court . . . and does not reweigh the evidence," but may deny relief if it determines that the state court order had no reasonable factual basis or was sought "primarily or solely to obtain an immigration benefit." 6 USCIS Policy Manual, pt. J, ch. 2(D)(5); *see* H.R. Rep. No. 105-405, at 130 (1997) (Conf. Rep.).

If USCIS grants the petition, the child may apply for adjustment of status. 6 USCIS Policy Manual, pt. J, ch. 4(A). A "visa must be immediately available" when he applies. 8 C.F.R. § 1245.2(a)(2)(i)(A); *see* 8 U.S.C. § 1153(b)(4) (establishing quota for SIJ visas). A child who is not in removal proceedings applies to USCIS for adjustment of status, *see* 8 C.F.R. § 245.2(a)(1), but one in removal proceedings must seek it from the IJ, *id.* § 1245.2(a)(1)(i); 6 USCIS Policy Manual, pt. J, ch. 4(A) n.2. If the child was the subject of a removal order before

[2] The dissent accurately notes that, at the time of his IJ hearing, CJ was with his mother and not adjudicated a dependent. Before 2008, regulations required the state court to find the minor eligible for foster placement before SIJ status could be awarded. 8 C.F.R. § 204.11(c)(4)–(5). But in that year, Congress replaced the foster placement requirement with the requirement that reunification with at least one parent be not viable. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, 5079.

obtaining SIJ status, he cannot adjust status unless the IJ also vacates the removal order. *See* 8 U.S.C. § 1182(a)(9)(A)(ii) (providing that a person under a removal order is inadmissible). The IJ has discretion both in deciding whether to reopen removal proceedings, *see* 8 C.F.R. § 1003.2(a), and in whether to grant a subsequent adjustment application, *see* 8 U.S.C. § 1255(a).

B.

The "apparent eligibility" standard of 8 C.F.R. § 1240.11(a)(2) is triggered whenever the facts before the IJ raise a "reasonable possibility that the petitioner may be eligible for relief." *Moran-Enriquez v. INS*, 884 F.2d 420, 423 (9th Cir. 1989). A failure to advise can be excused only when the petitioner's eligibility for relief is not "plausible." *See United States v. Rojas-Pedroza*, 716 F.3d 1253, 1265–67 (9th Cir. 2013) (finding no prejudice from the IJ's failure to advise about eligibility to apply for voluntary departure because it was not "plausible" IJ would grant it); *United States v. Arrieta*, 224 F.3d 1076, 1082–83 (9th Cir. 2000) (finding prejudice from the IJ's advisement failure because excludability waiver under 8 U.S.C. § 1182(h) was "plausible").

The information presented during CJ's proceedings made it reasonably possible that he could establish eligibility for SIJ status. Maria's comment that CJ's father left her "a long time ago," and CJ's statement that he had no paternal contact for "many years" demonstrated that reunification with one parent might be impossible "due to . . . abandonment." *See* 8 U.S.C. § 1101(a)(27)(J)(i). And CJ's testimony about the death threats he received from the gang showed that returning to Honduras might not be in his "best interest." *See id.* § 1101(a)(27)(J)(ii). Indeed, once he became aware of his potential eligibility for SIJ status, CJ

obtained the required state-court order and has now filed an I-360 petition.[3]

The government does not suggest that it was not reasonably possible at the time of CJ's hearing that he could obtain SIJ status or that the IJ was not aware of the facts suggesting CJ's eligibility for relief. Rather, it contends that SIJ status is not a form of relief from removal covered by 8 C.F.R. § 1240.11(a)(2). That argument fails. A successful SIJ application plainly can lead to relief from removal, *see* 6 USCIS Policy Manual, pt. J, ch. 4(A), and SIJ regulations are among those in the referenced subchapter, 8 C.F.R. § 1245.1(a), (e)(2)(vi)(B)(3).

In the alternative, the government argues that the IJ is only required to advise a juvenile of potential eligibility for SIJ relief *after* the child has obtained a state-court order, an approved I-360 petition from USCIS, and an immediately available visa. "We do not read the regulation so grudgingly. [It] obviously is meant to prompt the IJ to help an alien explore legal avenues of relief that might not be apparent to him or his attorney." *Moran-Enriquez*, 884 F.2d at 423. To adopt the government's position here would require a minor to complete all but the final step for SIJ status—seeking adjustment of status from the IJ—before triggering the IJ's duty to advise him of SIJ eligibility. This is a nonsensical approach. It would eviscerate the utility of advice by the IJ and substantially undermine the core purpose of the IJ's duty

[3] We **GRANT** CJ's motion for judicial notice of the state-court order, but **DENY** his other requests for judicial notice (Dkt. 133).

to advise—to inform a minor of rights and avenues of relief *of which he may not yet be aware*.[4]

To be sure, CJ's eventual ability to obtain SIJ status depended on future decisions by a state court and USCIS. But the regulation speaks of "apparent eligibility," not certain entitlement. 8 C.F.R. § 1240.11(a)(2). We have made plain that "[t]he regulations do not require . . . a reviewing court to conclude that an alien would certainly qualify for relief." *Bui v. INS*, 76 F.3d 268, 271 (9th Cir. 1996). Thus, in *Bui*, we held that an IJ was required to advise Bui about potential eligibility for a waiver of excludability under 8 U.S.C. § 1182(h) even though the record did not show he could satisfy every element necessary to obtain relief. *Id.* To obtain the waiver, Bui had to show he had a U.S. citizen or permanent resident relative, and that the relative would suffer extreme hardship were Bui deported. *Id.* And, to adjust his status, Bui needed both the waiver and an immediately available visa approved by USCIS. *Id.* at 270–71 (citing 8 U.S.C. §§ 1182(h), 1255(a)). Although the record contained no evidence of hardship and the government argued that no visa would be available, the IJ nonetheless had a duty to advise because the record "raised an inference of the existence of relatives and the possibility of relief." *Id.* at 271. Indeed, we had previously explained that the advisement duty "[b]y definition" involves situations where, as here, the petitioner does not "make a complete showing of eligibility." *Moran-Enriquez*,

[4] We are mindful that the duty to advise minors about SIJ status "places a significant burden on already overburdened Immigration Judges." *Moran-Enriquez*, 884 F.2d at 423. But, "it is a burden clearly contemplated by the regulation promulgated by the Attorney General" and the statute passed by Congress. *Id.*

884 F.2d at 423; *see also Arrieta*, 224 F.3d at 1082–83 (holding that failure to advise was prejudicial because, "although the evidence produced by Mr. Arrieta does not guarantee that he would have been granted [the] waiver, it provides the 'something more' that makes it plausible that he would have received one").[5]

C.

When the IJ fails to provide the required advice, the appropriate course is to "grant the petition for review, reverse the BIA's dismissal of [the petitioner's] appeal of the IJ's failure to inform him of this relief, and remand for a new [ ] hearing." *Bui*, 76 F.3d at 271; *see also Moran-Enriquez*, 884 F.2d at 423 (ordering remand). The government argues that we should not do so here because the IJ could not have granted the state court order, the I-360 petition, or a visa during the removal proceedings that are the subject of this petition for review. But that was precisely the situation in *Bui* and *Moran-Enriquez*. *See Bui*, 76 F.3d at 271 (remanding even though Bui might not be able to obtain a visa); *Moran-Enriquez*, 884 F.2d at 422–23 (same).

More importantly, although the IJ could not have granted CJ relief from removal at the time of the hearing, she could

[5] We have suggested that advisement may not be required if a petitioner would be eligible for relief only after a change in the law or a change in his personal circumstances. *See, e.g.*, *United States v. Lopez-Velasquez*, 629 F.3d 894, 901 (9th Cir. 2010) (en banc) (noting that Lopez could obtain relief "only with a change in law *and* the passage of eight months"); *United States v. Moriel-Luna*, 585 F.3d 1191, 1198 n.2 (9th Cir. 2009) (noting that Moriel-Luna "needed not only time but also to either marry his U.S.-citizen girlfriend or to have his parents successfully petition for citizenship"). This is not such a case.

have continued the proceedings to allow him to apply for SIJ status. Indeed, the BIA recently held that an IJ should do so when the child is "actively pursuing" the state-court order.[6] *See In re Zepeda-Padilla*, 2018 WL 1897722, at *1–2 (B.I.A. Feb. 16, 2018) (unpublished). The record makes plain that, once CJ was informed of eligibility for that status, he vigorously—and successfully—pursued the required order. And, had the IJ granted a continuance while CJ navigated the SIJ process, he would not currently be subject to a removal order. Because that order was entered, CJ's road to relief has become more difficult; even if he obtains SIJ status, he can apply for relief only if his removal proceedings are reopened. *See* 8 U.S.C. § 1182(a)(9)(A)(ii); *Bonilla v. Lynch*, 840 F.3d 575, 589 (9th Cir. 2016) (explaining that reopening vacates the removal order).

To be sure, any eventual "decision to grant or deny the continuance is within 'the sound discretion of the judge.'" *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009) (quoting *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1247 (9th Cir. 2008) (per curiam)). But the IJ should exercise that

[6] The Attorney General recently stated that, in assessing a motion for a continuance, "an immigration judge will generally need an evidentiary submission by the respondent, which should include copies of relevant submissions in the collateral proceeding, supporting affidavits, and the like." *Matter of L-A-B-R-*, 27 I. & N. Dec. 405, 418 (A.G. 2018). But that general rule should not prevent the IJ from granting a continuance when, as here, the child is unaware of his apparent eligibility for relief until so advised, and thereafter diligently pursues relief. *See id*. at 412 (approving tribunals' use of "context-specific multifactor balancing tests, rather than attempting to craft bright-line, one-size-fits-all definitions"); *see also id*. at 413 ("The good-cause standard in section 1003.29 requires consideration and balancing of all relevant factors in assessing a motion for continuance to accommodate a collateral matter.").

discretion in light of CJ's apparent eligibility for SIJ status, something overlooked at the time of his hearing, and may now also consider how far he has proceeded in the process. We therefore grant the petition for review, vacate the removal order, and remand for a new hearing before the IJ.[7]

PETITION GRANTED.

PAEZ, Circuit Judge, joined by FLETCHER and BERZON, Circuit Judges, concurring:

I concur in the majority's opinion—as far as it goes. I agree that the Immigration Judge ("IJ") had a duty to advise CJ of his apparent eligibility for Special Immigrant Juvenile ("SIJ") relief. I write separately because I disagree with the majority's decision to remain silent on the issue of a child's right to counsel in immigration removal proceedings. As the majority acknowledges, CJ's asylum, withholding of removal, and Convention Against Torture ("CAT") claims may come back to this court. I would reach the fundamental question raised in this proceeding: whether the Fifth Amendment's guaranty of due process entitles children to

[7] Because CJ will be represented by counsel in future administrative proceedings, we need not address his contention that appointment of counsel is constitutionally required. Because we have vacated the order of removal, we also do not address the denial of CJ's asylum, withholding of removal, and CAT claims. If a new order of removal is entered, these issues (including any claim based on denial of counsel remaining after new proceedings before the IJ) can be addressed in a future petition for review. *See Singh v. Gonzales*, 499 F.3d 969, 975 (9th Cir. 2007) (holding that the court was not barred from reviewing a claim on a successive petition for review where "[t]here has never been a final judgment on the merits with respect" to that claim).

appointed counsel in immigration proceedings. I would hold that it does, for indigent children under age 18 who are seeking asylum, withholding of removal, CAT, or another form of relief for which they may be eligible, such as SIJ status.[1]

I.

The majority states that because CJ now has counsel, we need not address his argument that appointed counsel is constitutionally required for indigent children in removal proceedings. That was the critical issue raised in the petition for rehearing en banc. In *J.E.F.M. v. Lynch*, we stated that the only proper way for immigrant children to pursue their right to counsel claims was by exhausting the administrative process of their removal orders and then seeking review in federal court. 837 F.3d 1026, 1038 (9th Cir. 2016). "Following discussion at oral argument, to facilitate a test case," the government provided counsel in *J.E.F.M.* with "notice of any minor without counsel that the government is aware of ordered removed by an immigration judge following a merits hearing." *Id*. at 1037 n.10. We described such a case as one where "a right-to-counsel claim [would be] teed up for appellate review." *Id*. at 1038. Now, we have

[1] I consider the right to counsel for indigent children under age 18 because that is the age referenced in the parties' briefs. *See* Petitioner's Opening Brief at 24 n.9 ("This country's legal systems use the age of 18 more consistently than any other when marking the boundary between childhood and adulthood."); Respondent's Answering Brief at 38 (interpreting CJ's argument to be for children under 18 to receive the right to counsel). I recognize, however, that immigration law applies age 21 as the boundary between eligibility for SIJ status or asylum status as the "derivative" of a parent's successful asylum application. *See, e.g.*, 8 U.S.C. § 1101(b)(1), *Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1159 (9th Cir. 2004).

that case, and the majority inexplicably punts the question yet again.

Such cases are extremely difficult to bring, and I am aware of only one other in this circuit. *See id*. at 1037. About fifteen years ago, in *Guzman-Heredia v. Gonzales*, No. 04-72769 (9th Cir.), a child appeared pro se and was ordered removed. *J.E.F.M.*, 837 F.3d at 1037. Pro bono counsel raised the issue of the child's right to counsel before the Board of Immigration Appeals ("BIA"), but the case ultimately settled. *Id*. Since then, thousands of unrepresented children have been ordered removed. Transactional Records Access Clearinghouse, *Representation for Unaccompanied Children in Immigration Court* (Nov. 25, 2014), http://trac.syr.edu/immigration/reports/371/_(tracking over 27,000 children without counsel ordered removed in a ten-year span).[2] Until CJ's case arose through the *J.E.F.M.* discovery process, only *one* other child seeking appointed counsel had made it to this court of appeals. Because of children's lack of understanding of the immigration and appellate systems, as well as their youthful emotional and intellectual maturity levels, this is unsurprising.

[2] Transactional Records Access Clearinghouse ("TRAC"), a nonpartisan multi-year project affiliated with Syracuse University, reviews and presents data based on information from the government. Transactional Records Access Clearinghouse, *About the Project*, https://trac.syr.edu/immigration/about.html (last visited Feb. 27, 2019). The data reflects fiscal years, rather than calendar years. *See, e.g.*, Transactional Records Access Clearinghouse, *Children: Amid a Growing Court Backlog Many Still Unrepresented* (Sept. 28, 2017), https://trac.syr.edu/immigration/reports/482/.

II.

Immigrant children "in deportation proceedings are entitled to the fifth amendment guaranty of due process." *Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1160 (9th Cir. 2004) (internal quotation omitted). This has been true "[f]or over one hundred years." *Id*. at 1161 (citing *Yamataya v. Fisher*, 189 U.S. 86 (1903)). Indeed, "every individual in removal proceedings is entitled to a full and fair hearing." *Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013) (en banc) (citing *Colmenar v. I.N.S.*, 210 F.3d 967, 971 (9th Cir. 2000)); *see also* 8 U.S.C. § 1229a(b)(4)(B). Due process rights persist regardless of whether the immigrant entered unlawfully, *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), was apprehended soon after entry, *United States v. Raya-Vaca*, 771 F.3d 1195, 1202–03 (9th Cir. 2014), or has conceded removability and then seeks relief, *see, e.g.*, *Morgan v. Mukasey*, 529 F.3d 1202, 1205, 1211 (9th Cir. 2008).

A violation of the right to retained counsel is uniquely important, and thus we do not require a showing of prejudice to grant relief. Generally, immigrants must show prejudice when they argue a due process violation. *See Tamayo-Tamayo v. Holder*, 725 F.3d 950, 954 (9th Cir. 2013). But "an individual who is wrongly denied the assistance of counsel at the merits hearing need not show prejudice" at all. *Gomez-Velazco v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018) (citations omitted) (contrasting removal, i.e. merits, hearings from other interactions an immigrant may have with government agents); *see, e.g.*, *Montes-Lopez v. Holder*, 694 F.3d 1085, 1090 (9th Cir. 2012) (holding there was no need to show prejudice where an IJ denied an immigrant his right to counsel by failing to grant a continuance due to the absence of his retained counsel); *cf. Acewicz v. I.N.S.*,

984 F.2d 1056, 1062 (9th Cir. 1993) (recognizing that infringements of the right to counsel are prejudicial where counsel "could have better marshalled specific facts or arguments in presenting the petitioner's case for asylum or withholding of deportation" (citation omitted)). This is in part because "denial of counsel more fundamentally affects the whole of a proceeding than ineffective assistance of counsel." *Montes-Lopez*, 694 F.3d at 1092 (noting that "the absence of counsel can change an alien's strategic decisions, prevent him or her from making potentially-meritorious legal arguments, and limit the evidence the alien is able to include in the record").[3]

"The importance of counsel, particularly in asylum cases where the law is complex and developing, can neither be overemphasized nor ignored." *Reyes-Palacios v. I.N.S.*, 836 F.2d 1154, 1155 (9th Cir. 1988). For immigrant children, that is especially true. In *Jie Lin v. Ashcroft*, we held that a child was denied effective assistance of counsel, in violation of due process, by counsel's inept performance. 377 F.3d 1014, 1034 (9th Cir. 2004). There, the counsel's "lack of preparation prevented her from researching and presenting basic *legal* arguments fundamental to the asylum

[3] Other circuits have reached the same conclusion. *See Leslie v. Attorney Gen.*, 611 F.3d 171, 174–75 (3d Cir. 2010) (holding there was no need to show prejudice where IJ failed to inform immigrant of the availability of free legal services); *Montilla v. I.N.S.*, 926 F.2d 162, 169 (2d Cir. 1991) (declining to add a prejudice requirement where an IJ failed to notify an immigrant of his right to counsel and to provide him with a list of free legal services); *Castaneda-Delgado v. I.N.S.*, 525 F.2d 1295, 1300–01 (7th Cir. 1975) (rejecting the government's argument that immigrants must show prejudice when they had been given a continuance of less than 48 hours after being informed of the right to obtain counsel); *Cheung v. I.N.S.*, 418 F.2d 460, 464 (D.C. Cir. 1969) (holding there was no need to show prejudice when immigrant was given inadequate time to consider retaining counsel).

claim" and "her lack of investigation left her unable to present critical *facts* to support Lin's claim." *Id*. at 1024; *see also id*. at 1024–27. CJ's case poses the question: If an attorney's failure to investigate and research her child client's case can be a Fifth Amendment violation, *id*. at 1024, then how can a child without any counsel have a proceeding that comports with due process?

In other civil contexts where children face grave consequences, courts and legislatures have already answered this question: children have due process rights to appointed counsel. *See, e.g.*, *In re Gault*, 387 U.S. 1, 36–37 (1967) (civil juvenile delinquency proceedings that may result in commitment); *Kent v. United States*, 383 U.S. 541, 561 (1966) (civil proceedings seeking to transfer children to adult criminal courts); *In re Roger S.*, 569 P.2d 1286, 1296 (Cal. 1977) (civil proceedings for a child's commitment to state hospital); *see also* Cal. Welf. & Inst. Code § 366.26(f) (child's right to counsel in hearing terminating parental rights); Tex. Fam. Code Ann. § 107.012 (same).

Despite these background principles, at oral argument, the government refused to concede it would *ever* be appropriate to appoint counsel in order to have a "full and fair" deportation proceeding, including if a hypothetical two-year-old child were alone in court. Recording of Oral Argument at 29:41–32:47, *C.J.L.G. v. Barr*, No. 16-73801 (9th Cir. Dec. 10, 2018), https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000014799 (responding negatively to inquiries about right to appointed counsel for a three-year-old, a two-year-old, and a baby in a basket).

I cannot ignore this mockery of judicial and administrative processes. There are thousands of very real children in removal proceedings without counsel. Data from August 2017 shows that four out of every ten children whose cases began in 2016 were unrepresented, where there were over 33,000 new cases—and that number rose to three out of every four children whose cases began in 2017, where there were about 19,000 new cases. Transactional Records Access Clearinghouse, *Children: Amid a Growing Court Backlog Many Still Unrepresented* (Sept. 28, 2017), https://trac.syr.edu/immigration/reports/482/. Many of them are fleeing persecution. CJ is fleeing threats from gangs, and his case demonstrates a child's need for counsel in removal proceedings so that the proceedings may be constitutionally "full and fair," especially where the child's proceedings are made even more complex by virtue of the child's potential eligibility for relief through SIJ status or asylum. *Oshodi*, 729 F.3d at 889.

III.

Where due process interests are at stake in a child's removal proceedings, this court looks to the familiar test formulated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Flores-Chavez*, 362 F.3d at 1160. The *Mathews* test recognizes three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or

> substitute procedural requirement would entail.

424 U.S. at 335.

When determining whether there is a right to counsel in civil proceedings, like here, the court must "set [the] net weight" of those three factors "against the presumption that there is a right to appointed counsel only where the indigent, if he is unsuccessful, may lose his personal freedom." *Lassiter v. Dep't of Social Servs. of Durham Cty.*, 452 U.S. 18, 27 (1981). The *Lassiter* presumption is rebuttable. *Id.* at 31.

Turner v. Rogers, 564 U.S. 431, 446–48 (2011) further clarified the *Mathews* test for assessing whether due process requires counsel in civil proceedings. First, courts should look to whether the critical question at issue in the cases is straightforward. *Id*. (noting that the question of a defendant's indigence in a contempt proceeding is straightforward). Second, courts should consider whether there is an asymmetry of counsel. *Id*. at 446–47. Where one side is represented, it "could make the proceedings *less* fair overall, increasing the risk" of an erroneous decision. *Id*. at 447. Third, courts should look to the substitute procedural safeguards, such as adequate notice and a fair opportunity to present one's case. *Id*. at 447–48.

The test established in *Mathews*, elaborated upon in *Lassiter* and *Turner*, and applied in many other cases, requires courts to look at structural procedures that exist and those that are sought by a category of claimants—not the procedures applied in a single claimant's case. For example, when addressing the three factors in *Mathews*, the Court focused on the general social security disability benefit recipient. In assessing the private interest, the Court used

terms such as "a recipient" or "a [disabled] worker" and considered the average delay in payment of benefits. *Mathews*, 424 U.S. at 340–42; *see also Turner*, 564 U.S. at 446–49 (examining, generally "an indigent's right to paid counsel" in a contempt proceeding for failing to pay child support). In *Flores-Chavez*, we applied the *Mathews* test to determine whether notice of a child's removal proceedings must be provided to the adult with custody of the child. 362 F.3d at 1161. Under the first and third factors, we looked only at immigrant children generally, not the particular child's interests. *Id*. at 1161–62. Under the second factor, we treated Flores's case as "demonstrat[ive]," but we did not limit ourselves to Flores's facts. *Id*. at 1161.

I analyze the *Mathews* factors, with consideration of the *Lassiter* presumption and *Turner* factors, to assess the right to counsel for children under age 18 in removal proceedings, and I treat CJ's particular case as "demonstrative."

A.

First, the private interest affected is "the loss of a significant liberty interest." *Flores-Chavez*, 362 F.3d at 1161. Courts have long recognized that "deportation is a penalty—at times a most serious one." *Bridges v. Wixon*, 326 U.S. 135, 154 (1945); *see also id.* at 164 (Murphy, J., concurring) ("The impact of deportation upon the life of an alien is often as great if not greater than the imposition of a criminal sentence.").

When a child may be deported, the interest is especially great. *See Jie Lin*, 377 F.3d at 1033 (accounting for a "minor's age, intelligence, education, information, and understanding and ability to comprehend" in removal proceedings). For an immigrant seeking asylum, withholding of removal, or CAT protection, the liberty

interest is greater still. *Oshodi*, 729 F.3d at 894 (noting, "the private interest could hardly be greater"). The impact of deportation could be persecution, including potential police beatings, torture, and sexual assault as in *Oshodi*, *id*. at 886, harm to a child and his family for failure to comply with a coercive government practice, as alleged in *Jie Lin*, 377 F.3d at 1021, or gun violence at the hands of gang members as in CJ's case.

A child in removal proceedings, especially a child with a claim for asylum, withholding of removal, or CAT relief, has a significant liberty interest. The first *Mathews* factor weighs in favor of CJ.

B.

The second factor in *Mathews* is the risk of error and adequacy of the challenged procedures.

Risk of Error

At the outset, the risk of error for children without counsel is high. Pro se children in immigration proceedings fare far worse than represented children. With counsel, children are nearly five times more likely to secure immigration benefits. From 2005 to 2014, only 10% of unrepresented children concluded their proceedings with an order permitting them to remain in the U.S., compared to 47% of represented children.[4] Transactional Records Access Clearinghouse, *New Data on Unaccompanied Children in Immigration Court*, Table 5 (July 15, 2014), http://trac.syr.edu/immigration/reports/359/. The disparity

[4] Courts have looked to statistics in recognizing a right to counsel in the past. *See In re Gault*, 387 U.S. at 22.

in outcomes for represented and unrepresented children was growing before the present administration. From 2012–2014, only 15% of unaccompanied children without an attorney were able to legally remain in the U.S., compared to 73% who had an attorney. Transactional Records Access Clearinghouse, *Representation for Unaccompanied Children in Immigration Court* (Nov. 25, 2014), http://trac.syr.edu/immigration/reports/371/.

CJ's own case serves as an example. He was denied relief despite having plausible asylum, withholding of removal, and CAT claims that counsel could have developed, in addition to seeking a continuance to pursue SIJ status, as the majority explains. To start, with respect to his asylum, withholding of removal, and CAT claims, CJ has a strong argument that he suffered past persecution because he was threatened multiple times, including once with a pistol pointed at his head. *See Ruano v. Ashcroft*, 301 F.3d 1155, 1160 (9th Cir. 2002) (finding past persecution where immigrant was "closely confronted" by men he knew to be armed). That the threats were perpetrated by gang members does not foreclose the possibility of immigration relief. *See Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1083 (9th Cir. 2013) (holding that witnesses who testify against gang members may constitute a particular social group). CJ's hearing testimony, which the IJ found credible, was brief. With a more fully developed record, it could become clearer whether the persecution was based on a protected status. *See Lacsina Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009) (noting that "simply asking the alien whether he has 'anything to add in support of his claim'" is insufficient record development (quoting *Colmenar*, 210 F.3d at 972)).

As amici, former IJs insist that the statistical data is not random, and the presence of counsel results in the different outcomes:

> In *amici*'s experience, only counsel can provide the time, commitment, and expertise to develop a child's case such that a full and fair hearing consistently takes place. And as *amici* observed every day from the bench, all else being equal, professional representation is the single largest factor in whether a minor successfully navigates the immigration court process.

Amicus Curiae Brief of Former Federal Immigration Judges at 12.

And this makes sense. "A child's age is far more than a chronological fact." *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) (quotation omitted) (holding that a child's age informs the *Miranda* custody analysis). A psychological study in the criminal context demonstrates that children, compared to adults, have less of an understanding of court procedures, their own rights, and the risks of their current circumstances, as well as less of an ability to reason about relevant information. Amicus Brief of Dr. Jennifer Woolard and Dr. Laurence Steinberg at 9 (citing T. Grisso et al., *Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants*, 27 Law and Human Behavior 333–63 (2003)). Participants ages 15 and younger in such a study performed comparably to "adults who are found incompetent to stand trial." *Id.* "The child requires the guiding hand of counsel at every step in the proceedings against him." *In re Gault*, 387 U.S. at 36 (quotation omitted).

Moreover, the law already recognizes that children require more procedural protections than adults in immigration proceedings.[5] The regulatory framework "contemplates that no minor alien under age eighteen should be presumed responsible for understanding his rights and responsibilities in preparing for and appearing at final immigration proceedings." *Flores-Chavez*, 362 F.3d at 1157. For instance, service on a child, without also serving the adult who has custody of the child, is not proper. *Id*. IJs "shall not accept an admission of removability from an unrepresented respondent who is incompetent or under the age of 18 and is not accompanied by an attorney or legal representative, a near relative, legal guardian, or friend." 8 C.F.R. § 1240.10(c). Providing children with counsel in removal proceedings is the next logical step.

Turner *Factors*

The *Turner* factors highlight the importance of counsel to deportation proceedings for children.

First, immigration law is exceedingly complex; it has been recognized as "second only to the Internal Revenue Code in complexity." *Castro-O'Ryan v. I.N.S.*, 847 F.2d 1307, 1312 (9th Cir. 1987) (quotation omitted); *see also* Dep't of Justice, *Immigration Court Practice Manual*

[5] The government points out that the Supreme Court has found unrepresented children capable of waiving their rights in other contexts. *Reno v. Flores*, 507 U.S. 292, 309 (1993) (waiving right to a custody hearing before an IJ); *Fare v. Michael C.*, 442 U.S. 707, 724–27 (1979) (waiving right against self-incrimination in criminal cases). However, when analyzing a waiver of the right to counsel in a removal hearing, this court factors "the minor's age, intelligence, education, information, and understanding and ability to comprehend" into its analysis. *Jie Lin*, 377 F.3d at 1033.

(2018), https://www.justice.gov/eoir/page/file/1084851/download (underscoring the complexity of pro se representation in immigration proceedings by taking nearly thirty pages to explain immigration court filings and nearly forty pages to explain a hearing before an IJ, while still not serving "in any way, [as a] substitute for a careful study of the pertinent laws and regulations"). Asylum and withholding claims that involve proving persecution on account of a particular social group are complicated for lawyers and courts, let alone children. *See Reyes-Palacios*, 836 F.2d at 1155 ("The importance of counsel, particularly in asylum cases where the law is complex and developing, can neither be overemphasized nor ignored."). Second, there is an asymmetry of counsel, as trained government attorneys serve as prosecutors in every removal case. *See Turner*, 564 U.S. at 447 (recognizing that an "asymmetry of representation" can "alter significantly the nature of the proceeding" (quotation omitted)). Third, as explained below, substitute procedural safeguards, such as the right to retain private counsel, the IJ's duty to develop the record, and the presence of a parent, are inadequate.

Existing Procedures

Under existing procedures, an immigrant has "the privilege" of being represented by counsel of his choosing, at no expense to the government. 8 U.S.C. § 1229a(b)(4)(A). An IJ must explain hearing procedures and, where the immigrant is pro se, "fully develop the record." *Agyeman v. I.N.S.*, 296 F.3d 871, 877 (9th Cir. 2002) (quoting *Jacinto v. I.N.S.*, 208 F.3d 725, 733–34 (9th Cir. 2000)). The IJ must also "inform immigrants of any ability to apply for relief from removal and the right to appeal removal orders." *J.E.F.M.*, 837 F.3d at 1036–37 (citation omitted). And, in CJ's case, he was not alone

because he had his mother's assistance. These procedures are a start, but they are not enough.

First, the privilege of paying for counsel or luck of acquiring pro bono counsel is not a substitute for a right to counsel in removal proceedings. Immigrants in removal proceedings have a right to retain counsel, and the IJ must advise immigrants of this right and the availability of pro bono legal services. 8 C.F.R. § 1240.10(a). But the ability to pay for counsel is little solace to an indigent child. The list of pro bono attorneys the IJ provides cannot fill the need for counsel. Between 2005 and 2014, IJs issued decisions in almost 30,000 cases where children did not have counsel. Transactional Records Access Clearinghouse, *New Data on Unaccompanied Children in Immigration Court*, Table 5 (July 15, 2014), http://trac.syr.edu/immigration/reports/359/. CJ's experience bore this problem out; his mother Maria indicated she tried to find counsel to no avail.[6] *See* Amicus Curiae Brief of Former Federal Immigration Judges at 19 (former IJ amici noting that CJ was in a "better" position than most children to obtain pro bono counsel and was still unable to do so).

Second, an IJ is not a substitute for counsel in removal proceedings. IJs are tasked with ensuring a modicum of due process in immigration proceedings in various ways, such as by developing the record themselves or by granting continuances for counsel to develop the record. These

[6] That CJ was able to obtain appellate counsel is inapposite. Appellate counsel cannot develop the record in immigration proceedings. *See* 8 C.F.R. § 1003.1(d)(3)(iv). A reviewing court cannot conduct factfinding outside of the administrative record. *Fisher v. I.N.S.*, 79 F.3d 955, 963 (9th Cir. 1996). An inadequate record may lead to the expulsion of children from this country who could otherwise have obtained relief with a more robust record.

safeguards have never been a substitute for counsel and recent developments in immigration law have undermined them further.

IJs are "neutral fact-finder[s]." *Reyes-Melendez v. INS*, 342 F.3d 1001, 1008 (9th Cir. 2003). But immigration "proceedings are adversarial in nature." *Jacinto*, 208 F.3d at 733. While IJs "are obligated to fully develop the record" where an immigrant appears without counsel, *id*. at 734, the IJ cannot be a child's advocate, 5 C.F.R. § 2635.101(b)(8). An IJ is ethically bound to "act impartially and not give preferential treatment to any . . . individual." *Id*. Moreover, the volume of cases on an IJ's docket severely limits the IJ's capacity to develop the record. The former Attorney General asked each IJ to complete "at least 700 cases a year." Jeff Sessions, Attorney General, Remarks to the Executive Office for Immigration Review Legal Training Program in Washington, D.C. (June 11, 2018) (remarks available at https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-executive-office-immigration-review-legal). Recently, by vacating a BIA decision that required a full evidentiary hearing for an asylum-seeker, the Attorney General signaled to IJs that they need not develop the record beyond merely asking whether information in the asylum application is true and correct. *Matter of E-F-H-L-*, 27 I. & N. Dec. 226 (A.G. 2018), *vacating* 26 I. & N. Dec. 319 (BIA 2014); *but see Lacsina Pangilinan*, 568 F.3d at 709. Given this enormous workload, the idea that every unrepresented child in immigration proceedings will have a full and fair hearing at which the IJ develops the record strains credulity. Nor is record development at a hearing the only role of an attorney. *See Jie Lin*, 377 F.3d at 1024–25 (discussing how an effective attorney would investigate factual and legal bases for a claim *before* the hearing).

Third, parents are not a substitute for counsel in removal proceedings. "It goes without saying that it is not in the interest of minors or incompetents that they be represented by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so their rights may be fully protected." *Johns v. Cty. of San Diego*, 114 F.3d 874, 876–77 (9th Cir. 1997) (quoting *Osei-Afriyie v. Medical College*, 937 F.2d 876, 882–83 (3d. Cir. 1991) (refusing to allow a parent to bring an action on behalf of his child without retaining a lawyer)); *see also Franco-Gonzales v. Holder*, 828 F. Supp. 2d 1133, 1147 (C.D. Cal. 2011) (holding that the father of a mentally incompetent immigration detainee could not serve as his representative at a custody hearing because he "lacks adequate knowledge, information, and experience in immigration law and procedure." (internal quotation omitted)).[7]

[7] The government argues that parents are helpful in court proceedings. Acknowledging parents' lack of knowledge of immigration law here, however, does not conflict with other situations where parents could be helpful to the proceedings. *See e.g.*, *Heller v. Doe*, 509 U.S. 312, 331 (1993) (recognizing that parents have information valuable to the court in commitment proceedings for mentally disabled people). Nor does acknowledging that parents may not be knowledgeable of immigration law contradict cases cited by the government concerning the rights of parents to make decisions about the care and custody of their children. *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (recognizing the right of a parent to make choices about certain individuals' visitation to her children); *United States v. Casasola*, 670 F.3d 1023, 1029 (9th Cir. 2012) (noting that parents may make decisions about naturalizing their child). It also is bizarre to argue that a parent representative serves the best interests of her child in a case like CJ's where the parent did not choose to represent her child, but was forced to by indigence and did so only after expressing a desire for counsel for her child.

Categorically, not all children in immigration court will be with a parent, but CJ's case demonstrates how even a well-meaning parent cannot act as a lawyer.[8] Maria did not understand all of the IJ's instructions or questions. She submitted an asylum application replete with errors and garbled language. And she neither asked CJ questions to develop the record, nor submitted any evidence other than CJ's birth certificate. The IJ never gave CJ the opportunity to waive his right to counsel or weigh in on whether he wanted Maria to represent him. *See Jie Lin*, 377 F.3d at 1032–33 (looking for record evidence that the child in deportation proceedings "knowingly and intelligently waived his Fifth Amendment right to counsel, particularly in light of the added protections he is due as a minor"). Further, it is possible that the presence of a parent could diminish the fairness of a hearing under circumstances where the child was less willing to share critical information in the presence of his parent, such as if the child faced persecution on the basis of a sexual orientation that was contrary to his parent's

[8] Where a child accompanies a parent seeking refugee or asylee status, they usually may apply for legal status together. In such a situation, the child seeks "derivative" status of the parent. *See* Dep't of Homeland Sec'y, *Form I-589 Instructions* (2017); U.S. Citizenship and Immigration Servs., *Obtaining Derivative Refugee or Asylee Status for Children*, https://my.uscis.gov/exploremyoptions/obtain_refugee_asylum_status_for_children (last updated Jan. 28, 2019). That was not the case here; CJ was not a derivative of his mother's asylum application. CJ was in a separate asylum proceeding and filed his own application, with the help of his mother and possibly a notario. *See* American Bar Ass'n, *About Notario Fraud* (July 19, 2018), https://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fight-notario-fraud/about_notario_fraud/. I do not consider the right to counsel for children who are eligible to apply for asylum as the derivative of a parent or relative.

religious beliefs. *See* Amicus Curiae Brief of Former Federal Immigration Judges at 17–18.

The presence of a parent at a child's immigration proceedings does not overcome the asymmetry of counsel problem and is not an adequate substitute safeguard. *See Turner*, 564 U.S. at 446–47.

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At bottom, the risk of error in a removal proceeding where an unrepresented child is seeking relief is high. A child faces a maze of exceedingly complex laws in a foreign country and foreign language. The proceedings are lopsided because the government is represented. And the abstract possibility of finding or affording private counsel, the record-development duty of neutral IJs, and the chance that a child will have an adult who does not understand immigration law with him, all fail as procedural safeguards.

C.

The third *Mathews* factor requires consideration of the burdens that requiring government-funded counsel for indigent children may place on the administrative process. "[C]onserving scarce fiscal and administrative resources is a factor that must be weighed," but "[f]inancial cost alone is not a controlling weight in determining whether due process requires a particular procedural safeguard prior to some administrative decision." *Mathews*, 424 U.S. at 348. The government also has an interest in fair proceedings and correct decisions. *Lassiter*, 452 U.S. at 27–28; *Flores-Chavez*, 362 F.3d at 1162 (recognizing that it is a "great benefit" to the government to have children attend their removal proceedings rather than be ordered removed in absentia).

Undoubtedly, providing counsel to immigrant children at government expense would be costly. Notably, the government already chooses to spend money on attorneys to prosecute children in removal proceedings. An attorney representing the government was present at all five of CJ's hearings in immigration court—and an earlier hearing for which the IJ had not provided CJ notice. At each hearing, there was a different government attorney. In other words, the government has chosen to spend money on multiple attorneys learning the case file of and prosecuting one immigrant child. Further still, the government continued to pour resources into arguing that CJ has no right to counsel in a BIA appeal, argument before a three-judge panel of this court, and argument before this en banc court, which, at the end of the day, corrects a due process violation that may have been prevented had CJ been provided counsel in immigration court in the first instance.

Providing counsel would be costly to the government, but the government already chooses to undertake similar costs here.[9] It would also lead to fairer, more accurate

[9] In addition to funding government prosecutors in removal proceedings, the federal government also chooses to fund attorneys for some immigrants in some proceedings. For example, the National Qualified Representative Program provides representation to unrepresented and detained mentally incompetent individuals and the Baltimore Representation Initiative for Unaccompanied Children "funds direct representation in immigration proceedings at the Baltimore Immigration Court for unaccompanied children under age 16 and whose cases are not joined with an adult's (regardless of the child's eligibility for immigration relief)." Department of Justice, Federal Agency Resources (Oct. 24, 2018), https://www.justice.gov/olp/federal-agency-resources (describing federal grant programs "and other Federal resources"). In *J.E.F.M.*, we recognized projects "the Executive ha[d] taken" to confront the lack of legal representation for children including awarding $1.8 million to 100 legal fellows to represent children in

decisions—decisions that a broader public might view as more legitimate. The third factor in the *Mathews* test therefore points both directions. To the extent this factor favors the government, it cannot balance the scales weighed down with children's liberty interests and a high risk of error.

D.

Finally, the outcome of the *Mathews* analysis must be weighed against a presumption that the right to appointed counsel is only afforded to individuals whose "physical liberty" is at risk if they lose. *Lassiter*, 452 U.S. at 26–27. Here, that outcome, especially given the strength of the first and second factors, overcomes the *Lassiter* presumption.

Sending child asylum-seekers back to hostile environments where they may have experienced persecution implicates a forceful liberty interest. In CJ's case, for example, his physical liberty is at risk—not because of incarceration—but because of the death threat and other threats of violence made against him. CJ credibly testified that gang members pointed a pistol to his forehead, said he had one day to decide whether to join them, and that if he told his mother—as he evidently did before fleeing with her—they would kill him.

Moreover, the disparity of outcomes between children who are represented and those who are not represents an unconscionable risk of error. As diligent as IJs are, they cannot be the children's advocates and, as former IJs have

removal proceedings through the Justice AmeriCorps program. 837 F.3d at 1040–41 (citation omitted).

said, there is no substitute for counsel. *See* Amicus Curiae Brief of Former Federal Immigration Judges at 12, 16.

IV.

Children do not need to be "left to thread their way alone through the labyrinthine maze of immigration laws." *J.E.F.M.*, 837 F.3d at 1040 (McKeown, J., specially concurring). In fact, due process prohibits this reality. I would recognize a due process right to counsel for indigent children in removal proceedings. Based on the record presented, I would limit the class of indigent children under 18 who are required appointed counsel to those who are seeking asylum, withholding of removal, CAT, or another form of relief for which they are apparently eligible, such as SIJ status. As the Supreme Court said when recognizing a right to appointed counsel for children in another context, "[u]nder our Constitution, the condition of being a boy does not justify a kangaroo court." *In re Gault*, 387 U.S. at 28.

BERZON, Circuit Judge, concurring in part and concurring in the judgment:

I concur in the majority's opinion and also join Judge Paez's excellent concurrence in full. I wish only to note, once again, that consideration of the right to counsel question for minors in removal proceedings has been unnecessarily hindered by this court's decisions in an earlier case. *See J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016), *reh'g en banc denied*, 908 F.3d 1157 (9th Cir. 2018) (Berzon, J., dissenting from denial of rehearing en banc).

J.E.F.M. held, erroneously in my view, that the right to counsel question must be considered in a petition for review

from an individual child's removal proceedings, such as this one, and not through a class action filed in the district court. 837 F.3d at 1038. But as this case amply demonstrates, a more developed factual record than is available here—where C.J. had no counsel in his removal proceedings and where the Immigration Judge and the Board of Immigration Appeals had no jurisdiction over the constitutional due process question, *see Padilla-Padilla v. Gonzales*, 463 F.3d 972, 977 (9th Cir. 2006)—would have given us more information on which to decide whether minors in removal proceedings have a right to counsel. Such a record would also have aided in deciding whether that right is universal or, as Judge Paez suggests, may be limited to certain categories of cases, based on such criteria as the claims raised, the age of the child, or whether the child is accompanied or not.

We are not answering any of those questions in this en banc proceeding, quite possibly because of qualms concerning fashioning the precise parameters of a right to counsel for minors in a single case. So we shut one door to the courthouse in *J.E.F.M.* on the promise of keeping another open, only to duck out of that door—for now—as well.

CALLAHAN, Circuit Judge, joined by IKUTA, Circuit Judge, dissenting:

The majority commendably decides this appeal on a narrow issue. Unfortunately, it requires more of the Immigration Judge (IJ) than is required or appropriate, and accordingly, I must dissent.

As noted by the majority, an IJ is required to inform an alien seeking relief from removal of his "apparent eligibility

to apply for any benefits enumerated in this chapter." 8 C.F.R. § 1240.11(a)(2). The majority then concludes that because the "information presented during CJ's proceedings made it reasonably plausible that he could establish eligibility for SIJ status," Maj. Op. at 12, the IJ failed to provide "the required advice," and the appropriate remedy is to grant the petition for review, reverse the BIA's dismissal of the appeal, and remand for a new hearing. *See* Maj Op. at 15. The asserted remedy flows from the premise, but the premise is a step too far. I would hold that the information presented at CJ's hearing before the IJ did not create a reasonable possibility that CJ qualified for relief.

An IJ "shall inform the alien of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the alien an opportunity to make application during the hearing, in accordance with the provisions of § 1240.8(d)." 8 C.F.R. § 1240.11(a)(2).[1] We

[1] It is far from clear that "SIJ status" (which the majority uses to refer to the criteria required for an alien to be deemed a "special immigrant" under 8 C.F.R. § 204.11 and U.S.C. § 1101(a)(27)(J)), constitutes one "of the benefits enumerated in this chapter" for purposes of 8 C.F.R. § 1240.11(a)(2). The regulation at issue, 8 C.F.R. § 1240.11, is contained in Chapter V, "Executive Office for Immigration Review," which establishes a number of immigration benefits, including asylum, withholding of removal, adjustment of status, and temporary protected status. However, the regulatory section that explains special immigrant status, 8 C.F.R. § 204.11, is contained in Chapter I, Department of Homeland Security. In other words, special immigrant status is not a benefit of the chapter at issue in § 1240.11(a)(2).

Moreover, special immigrant status is not analogous to the immigration benefits described in Chapter V. Each of those benefits are forms of relief from removal. By contrast, a determination that an alien qualifies for special immigrant status provides no relief itself. Rather, the alien who qualifies for SIJ status can then seek relief from removal

have held that this is a mandatory duty: "if an IJ fails to advise an alien of an avenue of relief potentially available to him, we will remand for consideration of the alien's eligibility for that relief." *Moran-Enriquez v. INS*, 884 F.2d 420, 423 (9th Cir. 1989); *United States v. Hernandez*, 163 F.3d 559, 563 (9th Cir. 1998) (holding that "[t]his provision is mandatory"). However,

> IJs are not expected to be clairvoyant; the record before them must fairly raise the issue: "'Until the [alien] himself or some other person puts information before the judge that makes such eligibility "apparent," this duty does not come into play.'" *Bu Roe v. INS*, 771 F.2d 1328, 1334 (9th Cir.1985) (quoting *United States v. Barraza-Leon*, 575 F.2d 218, 222 (9th Cir. 1978)).

Moran-Enriquez, 884 F.2d at 423. Moreover, as we have explained, "an IJ's duty is limited to informing an alien of a reasonable possibility that the alien is eligible for relief *at the time of the hearing*," or, in some narrow circumstances, where the alien may become eligible imminently. *United States v. Lopez-Velasquez*, 629 F.3d 894, 895 (9th Cir. 2010).

The majority assumes that § 1240.11(a)(2) applies to SIJ status and then asserts that a failure to advise about SIJ status can only be excused when the petitioner's eligibility is not

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by applying for adjustment of status. 8 U.S.C. 1255(a). The alien can obtain relief only if "the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and an immigrant visa is immediately available to him at the time his application is filed."

"plausible." They then opine that "Maria's comment that CJ's father left her 'a long time ago,' and CJ's statement that he had no paternal contact for 'many years' demonstrated that reunification with one parent might be impossible 'due to . . . abandonment.'" Maj. Op. at 12. Perhaps reunification with CJ's father was extremely unlikely, but that was not the issue before the IJ.

Reasonableness or plausibility should be considered in a particular context.[2] The applicable statute, 8 U.S.C. 1101(a)(27)(J)(i), sets forth three requirements that CJ cannot reasonably or plausibly meet. First, the statute requires that the petitioner "*has been declared dependent on a juvenile court* located in the United States or whom *such a court* has legally committed to, or placed under the custody

[2] The majority's invocation of the term "plausible" from our opinion in *United States v. Rojas-Pedroza*, 716 F.3d 1253, 1265–67 (9th Cir. 2013), should not be read as an expansion of the "reasonable possibility" standard set forth in *Moran-Enriquez*, 884 F.3d at 423. In *Rojas-Pedroza*, we explained that the standard for relief due to an IJ's failure to inform a petitioner of apparent eligibility for relief has two steps: first, is the petitioner's eligibility of relief "apparent"; and second, was the petitioner prejudiced by the failure? *Rojas-Pedroza*, 716 F.3d 1262–63. We reiterated our prior statement that "apparent eligibility" means "where the record, fairly reviewed by an individual who is intimately familiar with the immigration laws—as IJs no doubt are—raises a reasonable possibility that the petitioner may be eligible for relief." *Id.* (quoting *United States v. Lopez-Velasquez*, 629 F.3d at 897). Recognizing some ambiguity as to whether Rojas "had apparent eligibility for relief," we focused on the second component: prejudice. In the context of whether Rojas had established a plausible case for discretionary relief by the IJ, we concluded in light of his immigration record and prior convictions he had "failed to carry his burden of establishing plausible grounds for relief." *Rojas-Pedroza*, 716 F.3d at 1266–67. Thus, nothing in *Rojas-Pedroza* suggests that a petitioner does not have to show a "reasonable possibility" that he is apparently eligible for relief.

of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States." *Id.* (emphasis added). Here, at the time of his immigration hearing, CJ had not been declared a dependent by any court in the United States or placed in custody by any court. Indeed, he had not even commenced any such proceeding in any court.

Second, the statute, requires that the juvenile's "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." 8 U.S.C. § 1101(a)(27)(J)(i). If this statute is read to require a showing that reunification with neither parent is viable, then there was no possibility of CJ meeting the requirement. He has always been in his mother's custody and care. If the statute is read to require only a showing that reunification with one of two parents is not viable, then CJ could meet this requirement. However, he still could not have shown that any court had declared him a dependent.

Third, the statute requires that "the Secretary of Homeland Security consents to the grant of special immigrant juvenile status." *Id.* § 1101(a)(27)(J). Although neither the statute nor the regulations provides much guidance on what is required for consent, the USCIS has promulgated a policy manual, which provides that before consenting, USCIS must review the juvenile court order to conclude that the request for SIJ classification is bona fide. *See* USCIS Policy Manual, vol. 6, pt. J, ch. 2, D.5. (May 23, 2018); 76 Fed. Reg. 54978, 54985 (Sept. 6, 2011). The USCIS will not give its consent if the juvenile court order was sought primarily or solely to obtain an immigration benefit. *See* USCIS Policy Manual, vol. 6, pt. J, ch. 2, D.5. Here, the record indicates that the alien's mother would seek

to have CJ placed under her custody solely for the purpose of seeking SIJ status and adjustment of status to avoid deportation.

The majority's application of the reasonable or plausible standard overlooks the statute's three requirements. First, the majority overlooks the requirement that to be eligible for SIJ status, a state court must have declared the applicant a dependent, and thus imposes an unreasonable burden on IJs. The majority tasks the IJ with predicting not whether it is plausible that were CJ to apply to a state court he might obtain relief, but whether it was "reasonably possible at the time of CJ's hearing that he could obtain SIJ status." Maj. Op. at 13. But this would require that IJs have an intimate knowledge of state law. Moreover, in CJ's case—aside from immigration proceedings—there was no apparent need or reason for CJ to invoke any state's dependency proceedings as he was at all times in his mother's custody and care.[3]

Indeed, at the time of CJ's hearing before the IJ it was not clear whether California courts would consider a child's request for SIJ findings. It was not until 2018 that the California Supreme Court clarified that "a conclusion that a proceeding is primarily motivated by a desire to secure SIJ

[3] The fact that CJ has subsequently obtained a state-court order and has filed a petition with the United States Citizenship and Immigration Services speaks well of his attorneys. But his success does not change the fact that when CJ appeared before the IJ with his mother, there was no reasonable possibility, under the controlling legislation, that he was eligible for immigration relief.

findings is not a ground for declining to issue the findings." *Bianka M. v. Superior Court*, 5 Cal. 5th 1004, 1025 (2018).[4]

The majority also overlooks the consent requirement. The state court's dependency determination is not controlling. Even after obtaining such an order, the alien must file a petition with the USCIS, and the Secretary of Homeland Security must consent to the grant of special immigrant juvenile status. As noted above, it is far from clear that the Secretary would give such consent.

Finally, the majority overlooks the fact that even after obtaining such consent, the alien must then seek relief from removal by applying for adjustment of status. 8 U.S.C. § 1255(a). The alien is not eligible for such relief unless "an immigrant visa is immediately available to [the petitioner] at the time his application is filed." The record does not show that an immigrant visa is available to CJ. And even then, the IJ must determine whether to grant relief as a matter of discretion. *See id.*

In sum, the IJ was required to inform CJ only of his "apparent eligibility to apply for any benefits enumerated in this chapter," 8 C.F.R. § 1240.11(a)(2), "at the time of the hearing." *Lopez-Velasquez*, 629 F.3d at 895. Even assuming that SIJ status is a "benefit" contemplated by this regulation, there was no such "apparent eligibility" at the time of the hearing here. CJ had not commenced any proceeding in a juvenile court, nor demonstrated any need or reason to do so. Nor was there any evidence indicating whether the Secretary

[4] The California Supreme Court further noted that "the Legislature in 2016 amended Code of Civil Procedure section 155 to make clear that a court must issue findings relevant to SIJ status, if factually supported, regardless of its assessment of the child's perceived motivations in invoking the court's jurisdiction." *Id*. at 1024.

of Homeland Security would consent to an application by CJ, or that a visa was immediately available. In sum, at the time of the hearing, CJ had no apparent eligibility for benefits.

The majority's empathy for CJ is understandable, but does not, in my mind, justify defining "apparent eligibility" so broadly as to require IJs to advise petitioners of potential avenues of relief for which they are not yet (and may never be) statutorily eligible. Accordingly, I dissent.

TRAC Immigration

Representation for Unaccompanied Children in Immigration Court

Unaccompanied children[1] are represented by an attorney in only about one-third (32%) of 63,721 cases pending in Immigration Court as of October 31, 2014, according to the latest data. Some 43,030 juveniles have *not* as yet been able to hire an attorney to assist them or to find pro bono representation (see Figure 1). For the 21,588 children's cases filed and already decided since the surge of unaccompanied minors from Central America began three years ago, only 41 percent had representation.

Using a decade's worth of court records, a previous TRAC report found that whether or not an unaccompanied juvenile had an attorney was the single most important factor influencing the case's outcome. This report examines factors related to finding representation and presents new results — using data updated through October 2014 — on outcome depending upon whether the unaccompanied juvenile was represented.

As before, these results are based on case-by-case Immigration Court records obtained by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University from the Executive Office for Immigration Review (EOIR) under the Freedom of Information Act.

TRAC Series on Juveniles and Families in Immigration Court

I: *New Data on Unaccompanied Children*
II: *Representation for Unaccompanied Children*
III: *Representation for Women with Children*
IV: *Representation Makes 14-Fold Difference*
V: *Potential Impact of Targeted Raids*
VI: *Many Unrepresented Families Quickly Ordered Deported*
VII: *Children: Amid a Growing Court Backlog Many Still Unrepresented*
Tools: *Juvenile Deportation Proceedings* and *Women With Children*

Figure 1. Pending Cases in Immigration Court Involving Unaccompanied Juveniles

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

The Impact of Representation on Outcome

Outcomes for unaccompanied children whose cases were filed and decided during the past three years were examined. The preiod from FY 2012 through FY 2014 was selected since it covers the recent surge in cases involving unaccompanied minors from Central America that began in FY 2012. With the updated data current through the end of October 2014, court records show that over twenty thousand of these cases have already been decided.

Here are the results for children arriving during this latest surge (see Figure 2):

- ***Outcome if attorney present.*** In almost three out of four (73%) of the cases in which the child was represented, the court allowed the

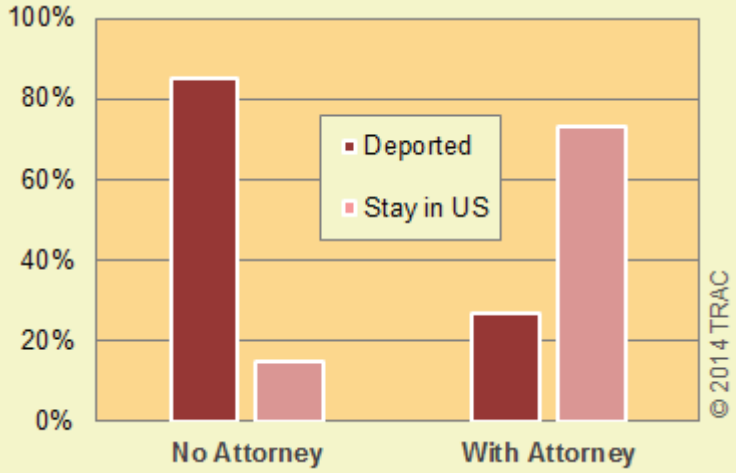

Figure 2. Decisions in Immigration Court Cases

child to remain in the United States. The child was ordered removed in slightly more than one in ten (12%) of these cases. And in the remaining 15 percent the judge entered a "voluntary departure" (VD) order. (While with a VD order the child is required to leave the country, the child avoids many of the more severe legal consequences of a removal order.)

- ***Outcome if no attorney.*** Where the child appeared alone without representation, only 15 percent were allowed to remain in the country. All the rest were ordered deported — 80 percent through the entry of a removal order, and 5 percent with a VD order.

Table 1 compares outcome for unaccompanied children whose cases were filed and decided during the past three years with all cases from the last ten years.

Table 1. Decisions in Immigration Court Cases Involving Unaccompanied Juveniles

Fiscal Year Case Filed	No Attorney				With Attorney			
	Cases Decided	Removal Order	Voluntary Departure	Stay in U.S.	Cases Decided	Removal Order	Voluntary Departure	Stay in U.S.
Ten Year Total*	34,263	79%	11%	10%	33,694	27%	24%	49%
Since Surge Began								
FY 2014	4,778	88%	2%	11%	1,208	16%	15%	69%
FY 2013	4,623	74%	4%	22%	3,710	9%	11%	80%
FY 2012	3,416	79%	10%	10%	3,843	14%	19%	67%
FY 2012 through FY 2014	12,817	80%	5%	15%	8,761	12%	15%	73%

** Covers FY 2005 - FY 2014 plus first month of FY 2015 (October 2014)*

Representation Rates and the Volume of Juvenile Cases

The surge in juvenile cases before the Immigration Courts is graphically displayed month-by-month in Figure 3 and its supporting detail table. The rise that began in FY 2012 was fairly gradual at first. In March 2012 the number of new juvenile cases filed each month passed 1,000. In March 2013 the number exceeded 2,000 for the first time, and 3,000 cases were filed in December 2013. Three months later in March 2014 the number of new juvenile cases filed surpassed 5,000, and by May filings had reached 8,000 cases. The peak was reached during June 2014 with 8,571 cases filed and then fell rapidly. By September 2014 the number had fallen below the 1,000 mark, declining to 886. (Because of delays in court recording, the numbers for the last few months may understate actual filings.)

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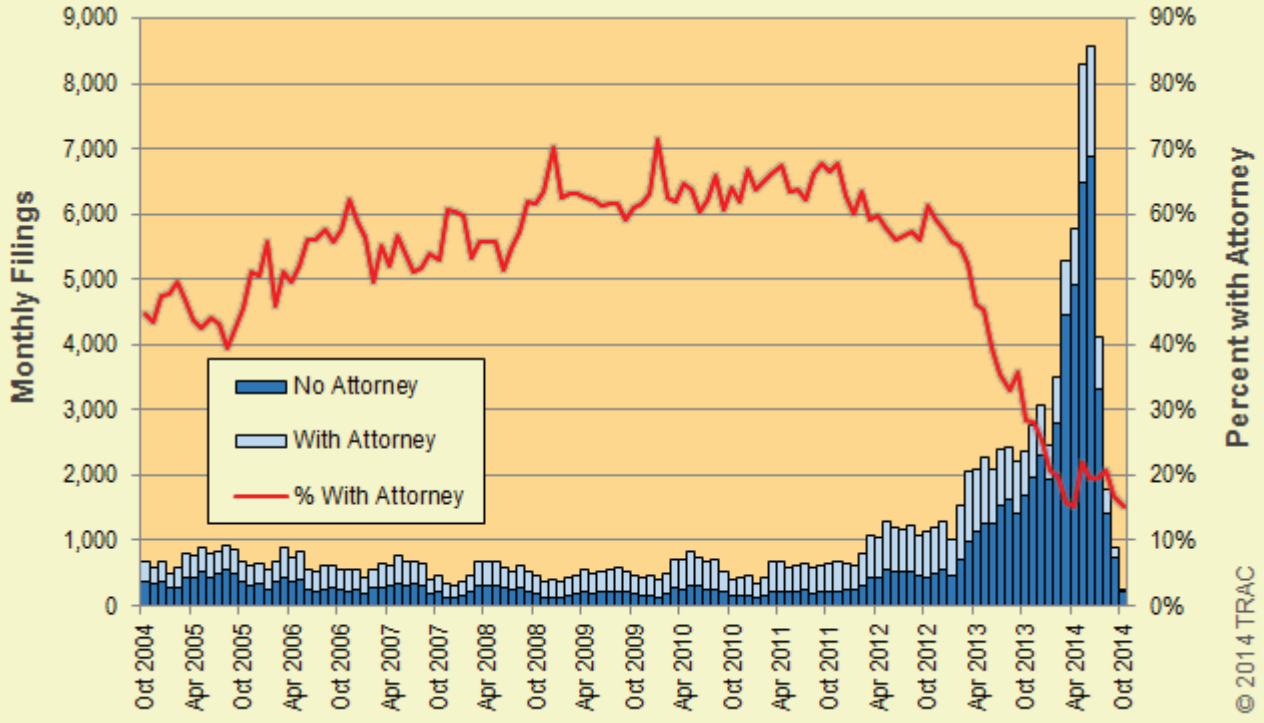

Figure 3. Immigration Court Cases Involving Unaccompanied Juveniles
Filed by Month *(See data)*

Figure 3 also graphs how the proportion of unaccompanied children's cases with representation has been impacted by the surge. For several years starting about September 2008, representation rates had ranged generally between 60 and 70 percent. But as the volume of cases began to rise during FY 2012, representation rates immediately started falling. While the *number* of represented cases rose, they did not keep up with the rising tide of cases, so that the *proportion* of represented children fell. Because these children are not entitled to a court-appointed attorney, and many unaccompanied children are without resources to hire one, the supply of attorneys with the necessary expertise, willingness and ability to provide their services without compensation clearly appears to have been inadequate to meet the growing need.

These filing dates reflect when the case was first filed, and many of these cases end up being transferred to a different city's Immigration Court when the children themselves move. Thus several months can pass before a juvenile case reaches its latest court. One would therefore expect recent months to have the lowest rates of representation, but this has not been the case. Representation rates hit their low point for cases filed six months ago in March 2014 (16%) and April 2014 (15%). These rates actually rebounded for cases filed in May (22%) and June (20%) when the peak of filings occurred, perhaps due to the mobilization of community legal resources in response to the media attention this issue was then receiving (see detail table to Figure 3).

Pending Cases by Nationality

As for the representation of unaccompanied children in the 63,721 court cases still pending as of October 31, 2014, Table 2 shows that most of these cases (67%) were filed during FY 2014. We also see that because cases without attorneys tend to move through the court system more quickly, cases that have been pending longer tend to be those where the unaccompanied juvenile had an attorney.

Table 3 provides details on representation for pending cases involving unaccompanied children by nationality. Over 9 out of 10 (92%) of these juveniles are from the Central American countries of Honduras, El Salvador, and Guatemala. While these three countries dominate, two more countries have at least 1,000 pending cases — Mexico and Ecuador. These five countries accounted for 97 percent of all pending juvenile cases.

While there are differences in representation rates by nationality, these differences appear to be at least partially explained by when their cases were filed. The more recent their arrival, the lower their representation rates. For example, three out of four (74%) of those from Honduras and two out of three from El Salvador (65%) and Guatemala (67%) arrived just last year (FY 2014). In contrast, the number of those who arrived last year was 60 percent for Mexicans and only 49 percent for children from Ecuador.

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Table 2. Pending Immigration Court Cases Involving Unaccompanied Juveniles

Fiscal Year Case Filed	Pending Cases	No Attorney	With Attorney	Percent With Attorney
Total	63,721	43,030	20,691	32%
FY 2015	229	198	31	14%
FY 2014	42,857	34,130	8,727	20%
FY 2013	13,373	7,183	6,190	46%
FY 2012	4,182	1,226	2,956	71%
before FY 2012	3,080	293	2,787	90%

Table 3. Nationality and Representation

Nationality	Pending Cases	No Attorney	With Attorney	Percent With Attorney
All	63,721	43,030	20,691	32%
Honduras	20,965	15,843	5,122	24%
El Salvador	19,352	12,400	6,952	36%
Guatemala	18,074	12,017	6,057	34%
Mexico	2,698	1,663	1,035	38%
Ecuador	1,030	425	605	59%

Other	1,602	682	920	57%

Pending Cases by Court Location

Pending cases involving unaccompanied children are not distributed evenly across the country. Half of these pending cases can be found in just six of the more than 50 Immigration Courts. New York City heads the list with one out of every eight (12.3%) or 7,865 cases. Houston has the second largest number of pending cases (5,964), following by Arlington, Virginia (5,178) in third place. Los Angeles (4,920), Baltimore (3,949) and San Francisco (3,698) make up the remaining six with the largest number of pending cases with unaccompanied juveniles.

Fifteen percent (15%) of the Immigration Court's backlog as of October 31, 2014 was composed of cases involving unaccompanied children, but this percentage varied sharply by court. For those courts with at least 10,000 cases in their overall backlog, only 3 percent of these involved unaccompanied children in Phoenix, while in Arlington the proportion was 29 percent — nearly twice the national average. For the Immigration Courts with sizable backlogs of under 10,000 cases, the highest concentration of juvenile cases could be found in Charlotte, North Carolina and Baltimore, Maryland. For each of these, unaccompanied children's cases made up fully 44 percent of their backlog. Table 4 provides comparable figures for all of the Immigration Court locations.

Table 4. Immigration Court Backlog by Location

Immigration Court	Current Backlog		
	Total	Unaccompanied Children	Percent
All Courts	421,972	63,721	15%
Charlotte	4,745	2,094	44%
Baltimore	8,953	3,949	44%
Arlington	17,575	5,178	29%
New Orleans	8,039	2,350	29%
Memphis	8,248	2,189	27%
Harlingen	8,386	1,968	23%
Kansas City	3,805	857	23%
Dallas	7,291	1,616	22%
Hartford	2,201	474	22%
Houston	29,273	5,964	20%
Boston	11,289	2,022	18%
Miami	18,348	3,247	18%
Philadelphia	5,456	952	17%
Atlanta	13,012	2,257	17%
Orlando	6,376	1,104	17%
Cleveland	5,551	898	16%
Bloomington	3,217	456	14%
New York	56,837	7,865	14%
Omaha	5,344	703	13%
Newark	19,678	2,559	13%
San Francisco	28,569	3,698	13%
Portland	2,635	328	12%
West Valley	1,679	182	11%
Chicago	17,996	1,783	10%
Las Vegas	4,032	398	10%
Los Angeles	50,545	4,920	10%
Detroit	3,934	377	10%
San Diego	3,240	307	9%

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Seattle	5,009	445	9%
Denver	8,826	712	8%
York	475	37	8%
San Antonio	18,892	1,168	6%
Saipan	23	1	4%
Honolulu	136	5	4%
Phoenix	11,334	377	3%
Buffalo	3,344	110	3%
Imperial	1,564	29	2%
Tucson	1,650	26	2%
Napanoch	254	3	1%
El Paso	7,160	73	1%
New York — DET	506	5	1%
Guaynabo	243	2	1%
Houston — Detained	1,541	11	1%
Florence	421	3	1%
Eloy	990	7	1%
Adelanto	675	4	1%
Oakdale	354	2	1%
Los Fresnos	384	2	1%
Lumpkin	400	2	1%
Miami — Krome	513	1	0%
Tacoma	730	1	0%
Elizabeth	277	0	0%
Hagatna	[illegible]	0	0%

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Courts also varied in terms of the proportion of their pending cases in which unaccompanied children were represented by attorneys. While the national average, as noted above, was that one-third (32%) of pending cases were represented, among the six courts with the largest number of these cases, representation rates varied from a low of 19 percent in the Arlington, Virginia court to a high of 43 percent in New York City.

Table 5 provides representation rates for all courts with at least 25 pending cases involving unaccompanied juveniles. Courts in Texas captured both the top and bottom spots. For the El Paso Immigration Court, over three out of four of its 73 pending cases had attorneys, while only 6 percent of the 1,968 children's cases pending before the Harlingen Immigration Court were represented.

Table 5. Pending Cases Involving Unaccompanied Juveniles, by Immigration Court*

Immigration Court	Unaccompanied Children	With Attorney	
		Number	Percent
All Courts	63,721	20,691	32%
El Paso	73	56	77%
Omaha	703	499	71%
York	37	26	70%
Hartford	474	263	55%
Cleveland	898	498	55%
Tucson	26	14	54%
Boston	2,022	1,056	52%
Imperial	29	14	48%
Philadelphia	952	447	47%
Bloomington	456	209	46%

Denver	712	313	44%
New York	7,865	3,392	43%
Orlando	1,104	475	43%
Las Vegas	398	168	42%
Detroit	377	157	42%
Los Angeles	4,920	1,958	40%
Kansas City	857	337	39%
Newark	2,559	999	39%
San Francisco	3,698	1,423	38%
Portland	328	122	37%
San Diego	307	114	37%
Seattle	445	164	37%
Buffalo	110	40	36%
Miami	3,247	1,117	34%
San Antonio	1,168	391	33%
West Valley	182	53	29%
Phoenix	377	109	29%
Memphis	2,189	626	29%
Baltimore	3,949	1,084	27%
Houston	5,964	1,532	26%
Atlanta	2,257	506	22%
Charlotte	2,094	469	22%
Chicago	1,783	378	21%
Arlington	5,173	968	19%
New Orleans	2,350	394	17%
Dallas	1,616	185	11%
Harlingen	1,968	113	6%

** Courts with at least 25 pending cases involving unaccompanied juveniles.*

cited in C.J.L.G. v. Barr
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Further Details

TRAC has compiled results (updated through October 31, 2014) on many additional factors with respect to representation as well as outcome by state, Immigration Court, hearing location, nationality and custody status. Details by juvenile type and whether juveniles were present or absent at the court hearing when their cases were decided are also available. These data are accessible through TRAC's free web-based data access tool.

Footnotes

[1] *For this report, we use the term unaccompanied children to refer to juveniles who were unaccompanied when they were apprehended. The Immigration Court, including its priority docket, restricts the term to those unaccompanied children who have not been later reunited with a parent or legal guardian. TRAC's web-based data tool allows users to examine the data as well for cases meeting this more restrictive definition. See About the Data where these distinctions are discussed in more detail.*

Report date: November 25, 2014

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TRAC Immigration

About the Project

TRAC's Immigration Project is a unique new multi-year effort to systematically go after very detailed information from the government, check it for accuracy and completeness and then make it available in an understandable way to the American people, Congress, immigration groups and others.

The project has been supported by the JEHT Foundation, the Ford Foundation, the Carnegie Corporation of New York, the Evelyn and Walter Haas Jr. Fund and Syracuse University.

The most visible aspect of the project is this site, which is very much a work in progress. It now includes:

1. Separate clearly written reports on important immigration matters — administrative enforcement, criminal enforcement, staffing, etc.
2. A special TRAC-developed tool that provides one-click access to the very latest monthly data on the criminal enforcement of the immigration laws, along with a clear explanatory text.
3. Detailed reports on the handling of asylum matters by over 200 immigration judges.
4. An extensive library of reports on immigration matters by the GAO, CRS and inspectors general.
5. A plain English glossary of frequently used words and acronyms common to the immigration world.

Cited in C.J.L.G. v. Barr
No. 16-73801, archived on April 30, 2019

Currently available on TRAC's Immigration site are reports focusing on Border Patrol apprehensions along the border, Border Patrol staffing, criminal enforcement in the federal district courts and government inspections activities at the designated ports of entry. Additional reports and studies are under development on a range of subjects such as the granting of immigration benefits — green cards, naturalization, affirmative asylum, etc — and the workings of the immigration courts. These reports and the latest data obtained from the government will be posted to our new site as the information is obtained from the various agencies, checked for accuracy and completeness and analyzed.

Finally, our goal is to make the immigration project a cooperative effort. TRAC therefore wishes to extend an invitation to all members of the immigration community, scholars, media and the general public **to contact us** with your comments and suggestions about topics needing better coverage, possible data sources, etc.

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TRAC Immigration

Children: Amid a Growing Court Backlog Many Still Unrepresented

Despite a dramatic drop-off in new Immigration Court cases involving unaccompanied children this year, the backlog of pending children's cases has continued to rise. The latest case-by-case court data show that the court backlog of these children's cases reached an all-time high of 88,069 at the end of August 2017[1].

These detailed case-by-case Immigration Court records trace court proceedings on removal orders sought by the Department of Homeland Security (DHS) for unaccompanied children (UAC) who have been apprehended by the agency. The data, current through August 31, 2017, was obtained and analyzed by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University from the Executive Office for Immigration Review (EOIR) under the Freedom of Information Act.

TRAC Series on Juveniles and Families in Immigration Court

I: *New Data on Unaccompanied Children*
II: *Representation for Unaccompanied Children*
III: *Representation for Women with Children*
IV: *Representation Makes 14-Fold Difference*
V: *Potential Impact of Targeted Raids*
VI: *Many Unrepresented Families Quickly Ordered Deported*
VII: *Children: Amid a Growing Court Backlog Many Still Unrepresented*
Tools: *Juvenile Deportation Proceedings* and *Women With Children*

The surge in unaccompanied children attempting to enter the country peaked during FY 2014 when there were 56,691 new child cases filed in the Immigration Court. More recently, in FY 2016, there were 48,401 new juvenile cases. This year has seen new UAC court cases plummet. During the first eleven months of FY 2017 court records show only 21,398 new cases.

Given the falling number of new cases, the continued rise in the court's backlog of UAC cases since President Trump assumed office is surprising. The current backlog of 88,069 represents four times the number of new UAC cases that reached the court during the first eleven months of FY 2017.

No. 16-73801 archived on April 30, 2019
cited in C.J.L.G. v. Barr

Table 1. Pending Immigration Court Unaccompanied Children Cases By When Case Began

Fiscal Year	Number
Total	88,069
Pending since:	
2017	19,600
2016	33,283
2015	12,126
2014	16,693
2013	3,782
2012	1,242
2011	455
2010	350
2009	173
2008	147
2007	73
2006	75
2005	70

** as of August 31, 2017*

Litigation on some UAC cases necessitate complex applications for relief that may involve other government agencies and can stretch on for several years. There are still 16,693 cases pending that began during FY 2014. However the largest number of UAC cases still pending were initiated during the last two years. See Table 1.

Representation Rates

Previous research has shown that individuals who have an attorney have much higher odds of success in Immigration Court. See side-bar. Despite many initiatives to increase the availability of representation in children's cases, still nearly three out of ten children whose cases began during FY 2015 were unrepresented. (A total of 19,202 of these cases have already been decided, while 12,126 are still pending.) The figure rises to four out of every ten for cases that began during FY 2016, and jumps to three out of four for cases that originated during FY 2017. See Figure 2.

Few children appearing in Immigration Court have the financial resources to hire an attorney, even though in most of the matters it is reasonable to assume they do not comprehend the nature of the proceedings they face or the complex procedural and substantive challenges of the immigration law. In addition, most unaccompanied minors do not speak English.

While representation rates may rise, particularly for cases that began during this past fiscal year, court records clearly document that there is still a large unmet need for more attorneys despite widespread efforts to provide representation for these children.

For additional details on these cases see the accompanying web-based tool which provides the public with detailed access to the data TRAC has compiled on these cases.

Using this tool, you can drill in to pinpoint how many cases have been filed for any particular nationality, state, immigration court, and hearing location, and also find the current status of these cases. For those cases in which the proceedings have concluded, the outcome is provided. Additional details on each case are also available in the data tool.

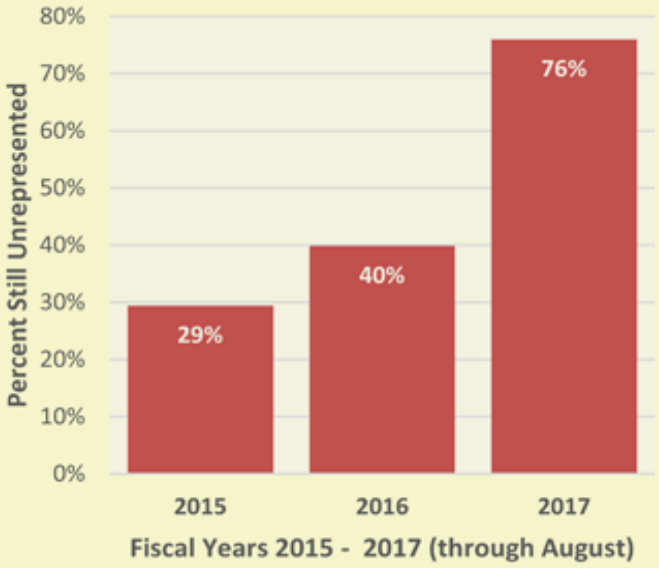

Figure 1. Percent Unaccompanied Children Still Unrepresented by Fiscal Year Case Began

Footnotes

[1] *The court backlog at the end of August 2017 for all types of cases, including UAC proceedings, was 632,261.*

TRAC is a nonpartisan, nonprofit data research center affiliated with the Newhouse School of Public Communications and the Whitman School of Management, both at Syracuse University. For more information, to subscribe, or to donate, contact trac@syr.edu or call 315-443-3563.

Report date: September 28, 2017

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

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TRAC Immigration

New Data on Unaccompanied Children in Immigration Court

The recent surge of tens of thousands of unaccompanied children attempting to enter the country has touched off a heated debate. Some ask whether having Immigration Judges decide the fate of these children only postpones their inevitable deportation since it is alleged that few have any valid claim to remain in the United States. Others hotly dispute this contention.

TRAC Series on Juveniles and Families in Immigration Court

I: New Data on Unaccompanied Children
II: Representation for Unaccompanied Children
III: Representation for Women with Children
IV: Representation Makes 14-Fold Difference
V: Potential Impact of Targeted Raids
VI: Many Unrepresented Families Quickly Ordered Deported
VII: Children: Amid a Growing Court Backlog Many Still Unrepresented
Tools: Juvenile Deportation Proceedings and Women With Children

This special report presents information derived from current and detailed case-by-case Immigration Court records tracing decisions on removal orders sought by the Department of Homeland Security (DHS) concerning unaccompanied children who have been apprehended by the agency. The data, current through June 30, 2014, was obtained by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University from the Executive Office for Immigration Review (EOIR) under the Freedom of Information Act.

The data trace the status of over 100,000 such cases. The information includes every instance over the last decade flagged as a juvenile case currently recorded in EOIR files. In each of these cases, the Department of Homeland Security instituted the action requesting that the court issue an order to deport these children. Because the DHS has authority to screen and then immediately deport unaccompanied Mexican children without any formal hearing, only a small proportion of children from Mexico are referred to the Immigration Court by the DHS. For this reason unaccompanied children who are immediately deported by DHS are not part of the court data examined here. See About the Data for additional details.

No. 16-73801c archived on April 30, 2019
cited in C.J.L.G. v. Barr

Table 1. Juvenile Cases Filed in Immigration Courts

Fiscal Year	Total Filed	Currently Pending	Percent Pending
2005	8,900	74	0.8%
2006	7,906	92	1.2%
2007	7,049	117	1.7%
2008	6,249	209	3.3%
2009	5,726	437	7.6%
2010	7,162	1,036	14.5%
2011	6,425	1,462	22.8%
2012	11,411	4,771	41.8%
2013	21,351	14,812	69.4%
2014*	19,671	18,631	94.7%
2005-2014	101,850	41,641	40.9%

**through June 2014*

As shown in Table 1, cases filed in the courts in the last few years (since the increase began) make up about half of the total cases filed. As of end of June, court proceedings had been completed on 59 percent of all cases (60,209 matters out of the 101,850). Proceedings were ongoing for the remaining 41 percent.

Accompanying this special report is a new web-based tool which provides the public with detailed access to the data TRAC has compiled on these cases. Using this

Table 2. Pending Workload in Immigration Courts*

Type	Number	Percent
Juvenile cases	41,641	11%
Other cases	333,862	89%

tool, you can drill in to pinpoint how many cases have been filed for any particular nationality, state, immigration court, and hearing location, and also find the current status of these cases. For those cases in which the proceedings have concluded, the outcome is provided. Additional details on each case are also available in the data tool.

While public attention has been focused on the plight of juveniles arriving at our borders and their growing numbers, unaccompanied children make up a small proportion of those impacted by the current administration's enforcement activities. Although the recorded number of new Immigration Court juvenile cases during the last three months (April - June 2014) has doubled over the previous six months of this fiscal year (October 2013 - March 2014), these cases still make up only 11 percent of the Immigration Court's backlog — a total of 41,641 pending juvenile cases out of the total backlog of 375,503 cases. See Table 2 and Figure 1.

total	375,503	100%

*as of June 30, 2014

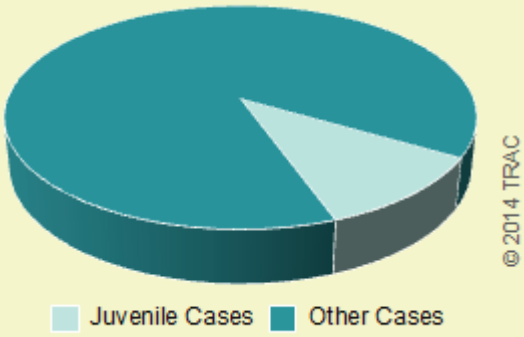

Figure 1. Pending Workload in Immigration Courts

How Often Does a Child Appear Unrepresented?

It is well established that the odds of prevailing in court are much better for an individual who has the assistance of a lawyer. Yet the government is under no obligation to provide legal counsel to the indigent — even if they are children — in Immigration Court proceedings. Meanwhile, the government itself is always represented by an attorney.

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Few children appearing in Immigration Court have the financial resources to hire an attorney, even though in most of the matters it is reasonable to assume they do not comprehend the nature of the proceedings they face or the complex procedural and substantive challenges of the immigration law. (Of course, there is also a language barrier, since most unaccompanied minors do not speak English.) While many immigration lawyers and law clinics attempt to provide legal assistance on a pro bono basis, their numbers are insufficient to meet the need. One result of this is that children were not represented about half of the time (48%) they appeared in Immigration Court, although there is wide variation by state and hearing location. Less than a third (31%) have thus far been able to secure an attorney in currently pending cases. See Table 3.

Table 3. How Often Juveniles Appear With and Without Representation

Immigration Court Cases	No Attorney	With Attorney	Percent With Attorney
Total Closed	29,173	31,036	52%
Pending	28,578	13,063	31%
Total Cases Filed	57,751	44,099	43%

How Often Do Immigration Judges Conclude That Children Can Stay?

The data show that in a large number of cases, Immigration Judges decline to order these children's removal. Many are found to have legitimate legal grounds to remain in this country. The data also show that outcomes in these cases are all too often determined by whether an attorney was present to assist the child in presenting his or her case. For this reason, results are tabulated separately for children with and without representation. (For those cases in which Immigration Court proceedings have concluded, the child was represented in 31,036 cases, and appeared without an attorney in the remaining 29,173 of juvenile cases heard by an Immigration Judge.)

Here are the results in brief:

- ***Outcome if attorney present.*** In almost half (47%) of the cases in which the child was represented, the court allowed the child to remain in the United States. The child was ordered removed in slightly more than one in four (28%) of these cases. And in the remaining quarter (26%) the judge entered a "voluntary departure" (VD) order. (While with a VD order the child is required to leave the country, the child avoids many of the more severe legal consequences of a

removal order.)

- ***Outcome if no attorney.*** Where the child appeared alone without representation, nine out of ten children were ordered deported — 77 percent through the entry of a removal order, and 13 percent with a VD order. One in ten (10%) were allowed to remain in the country.

Table 4 provides year-by-year outcome data for these cases. This table is based on the fiscal year the DHS filed the case in the Immigration Courts, and not the year of the court's decision. This arrangement of data facilitates examining the outcomes for any particular cohort of children defined by when they were apprehended and placed in removal proceedings. Given the increasing numbers of unaccompanied children that are now arriving, it is reasonable to ask the question "Do these children appear to have any less legitimate claims to remain in the country than those who arrived earlier in the decade?"

Answers to this question must be tentative, given the large proportion of cases that remain to be decided for children who have arrived recently. However, outcomes thus far do not suggest that children who have arrived during the recent surge present less worthy cases. Examining cases filed during the last 21 months (FY 2013 through June 30, 2014) for which outcomes have been reached, a greater proportion of the children have been allowed to remain in this country, and a smaller percentage were ordered deported, relative to earlier cohorts of children. This was true both for those who were represented as well as those who were not. For example, for children who had the assistance of an attorney, less than one out of three were ordered deported, while two-thirds were allowed by the Immigration Judge to stay. This is a higher proportion of children allowed to remain in the U.S. than the roughly 50/50 split that was previously seen for the decade as a whole. Even without the assistance of an attorney, over a quarter of recently arrived children have been allowed by an Immigration Judge to remain, as compared with only 10 percent for the decade as a whole.

Table 4. Outcomes for Juvenile Cases in the Immigration Courts

Fiscal Year	No Attorney				With Attorney			
	Cases Decided	Removal Order	Voluntary Departure	Stay in U.S.	Cases Decided	Removal Order	Voluntary Departure	Stay in U.S.
2005	4,967	82%	10%	8%	3,859	38%	31%	31%
2006	3,792	82%	13%	6%	4,022	40%	32%	28%
2007	3,173	81%	14%	4%	3,759	41%	25%	34%
2008	2,719	83%	12%	5%	3,521	40%	22%	38%
2009	2,123	69%	24%	7%	3,166	23%	32%	45%
2010	2,558	70%	22%	8%	3,568	17%	29%	54%
2011	2,071	71%	19%	9%	2,892	18%	23%	59%
2012	3,238	79%	10%	10%	3,402	14%	20%	65%
2013	3,797	70%	4%	25%	2,742	9%	13%	78%
2014*	735	55%	3%	42%	305	12%	22%	66%
2005-2014	29,173	77%	13%	10%	31,036	28%	26%	47%

*through June 2014

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Reasons Children Are Allowed To Stay

The DHS initiates these court proceedings by seeking a removal order, and the Immigration Judge has to decide whether or not it is appropriate under the particular set of facts given the law that applies to the case. While an Immigration Judge may find that a specific type of relief provided by immigration statutes should be granted, the removal order also can be denied when DHS does not have valid grounds for removing the individual. In the case of unaccompanied juveniles, there are a range of statutory protections that may apply and that can result in the court denying the government's request. For example, asylum may apply to those fleeing persecution. Special Immigrant Juvenile Status (SIJS) can be granted to protect children who have been abused, abandoned or neglected. T-visas exist for those found to be victims of human trafficking, while U-visas can be granted for victims of certain crimes.

Most of the time, whether these special forms of relief are granted is determined by some other government agency and not directly by an Immigration Judge and thus would not be recorded as the basis for the court's decision. Only when the judge is the person that actually grants a specific form of relief does the court's database record the type of relief granted, such as asylum. One of the reasons that decisions in court cases frequently take time, apart from the court's own backlog of cases, is because court proceedings may be adjourned waiting for another government body to act on applications

under these provisions.

When another agency has granted one of these forms of relief, the Immigration Judge typically will order the case "terminated," or close the case for "other" unspecified reasons, either through a decision or some form of administrative closure. As shown in Table 5, when the child has an attorney, "terminated" and "other" are the most common reasons recorded for closing a case and allowing the child to remain in the country. Relief personally ordered by the Immigration Judge occurs less frequently.

Table 5. Specific Outcomes for Juvenile Cases in the Immigration Courts

Case Outcome	Number		Percent	
	No Attorney	With Attorney	No Attorney	With Attorney
Removal Order	22,406	8,607	77%	28%
Voluntary Departure	3,759	7,970	13%	26%
Stay in U.S.				
Case Terminated	1,128	6,572	4%	21%
Relief Granted	168	2,710	1%	9%
Prosecutorial Discretion	315	1,775	1%	6%
Other Closure	1,397	3,402	5%	11%
Total Closed	29,173	31,036	100%	100%

DHS itself can recommend that a case be closed and the child be allowed to remain in the country through the exercise of its longstanding prosecutorial discretion (PD) authority. Since FY 2012, the court has included PD as a basis for the closure of a case. Since that time, PD has been the reason for 9 percent of juvenile closures. Examined another way, this amounts to 3 percent of all concluded juvenile cases filed during the last decade.

Look for Further Updates

TRAC plans to continue tracking Immigration Court proceedings on juvenile cases. We will regularly update this data series focusing on children, and will provide public access to the updated results via our web-based data access tool. This will allow the public to examine when court proceedings are concluded as well as the outcomes reached. TRAC will also continue to add information on new filings as soon as the court records on the filing are received. If you would like to receive automatic notification when we post new data, follow us on Twitter or sign up for our email alerts.

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No. 16-73801 archived on April 30, 2019

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Immigration Court Practice Manual

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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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The Office of the Chief Immigration Judge expresses its gratitude to the many Immigration Judges, Court Administrators, and other individuals who provided comments and suggestions during the preparation of the Immigration Court Practice Manual. The Office of the Chief Immigration Judge also expresses its appreciation to former Chief Immigration Judge David L. Neal for his leadership in creating the Practice Manual. In addition, the Office of the Chief Immigration Judge recognizes the original members of the Practice Manual Committee for their dedication in creating this publication:

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Judge Stephen S. Griswold
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Scott M. Rosen, Chief Counsel, OCIJ
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U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

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December 2016

Immigration Court Practice Manual

In 2006, the Attorney General instructed the Director of the Executive Office for Immigration Review, in consultation with the Immigration Judges, to issue a practice manual for the parties who appear before the Immigration Courts. This directive arose out of the public's desire for greater uniformity in Immigration Court procedures and a call for Immigration Courts to implement their "best practices" nationwide.

Accordingly, the Office of the Chief Immigration Judge published the Immigration Court Practice Manual in February 2008. The Practice Manual is a comprehensive guide that sets forth uniform procedures, recommendations, and requirements for practice before the Immigration Courts. The requirements set forth in this manual are binding on the parties who appear before the Immigration Courts, unless the Immigration Judge directs otherwise in a particular case. The Practice Manual does not limit the discretion of Immigration Judges to act in accordance with law and regulation.

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The Practice Manual is intended to be a "living document," and the Office of the Chief Immigration Judge updates it in response to changes in law and policy, as well as in response to comments by the parties using it. We welcome suggestions and encourage the public to provide comments, to identify errors or ambiguities in the text, and to propose revisions. Information regarding where to send your correspondence is included in Chapter 13 of the Practice Manual.

The Office of the Chief Immigration Judge has made the Immigration Court Practice Manual available through the EOIR website at www.justice.gov/eoir. We encourage you to share the Practice Manual with any individuals or organizations that may benefit from it.

MaryBeth Keller
Chief Immigration Judge

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Chapter 1 The Immigration Court

1.1 Scope of the Practice Manual

(a) Authority. — The Executive Office for Immigration Review (EOIR) is charged with administering the Immigration Courts nationwide. The Attorney General has directed the Director of EOIR, in consultation with the Immigration Judges, to issue an Immigration Court Practice Manual.

(b) Purpose. — This manual is provided for the information and convenience of the general public and for parties that appear before the Immigration Courts. The manual describes procedures, requirements, and recommendations for practice before the Immigration Courts. The requirements set forth in this manual are binding on the parties who appear before the Immigration Courts, unless the Immigration Judge directs otherwise in a particular case.

(c) Disclaimer. — This manual is not intended nor should it be construed in any way, as legal advice. The manual does not extend or limit the jurisdiction of the Immigration Courts as established by law and regulation. Nothing in this manual shall limit the discretion of Immigration Judges to act in accordance with law and regulation.

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(d) Revisions. — The Office of the Chief Immigration Judge reserves the right to amend, suspend, or revoke the text of this manual at any time at its discretion. For information on how to obtain the most current version of this manual, see Chapter 13.3 (Updates to the Practice Manual). For information on how to provide comments regarding this manual, see Chapter 13.4 (Public Input).

1.2 Function of the Office of the Chief Immigration Judge

(a) Role. — The Office of the Chief Immigration Judge oversees the administration of the Immigration Courts nationwide and exercises administrative supervision over Immigration Judges. Immigration Judges are responsible for conducting Immigration Court proceedings and act independently in deciding matters before them. Immigration Judges are tasked with resolving cases in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act, federal regulations, and precedent decisions of the Board of Immigration Appeals and federal appellate courts.

(b) Location within the federal government. — The Office of the Chief Immigration Judge (OCIJ) is a component of the Executive Office for Immigration Review (EOIR). Along with the Board of Immigration Appeals and the Office of the Chief Administrative Hearing Officer, OCIJ operates under the supervision of the Director of EOIR. See 8 C.F.R. § 1003.0(a). In turn, EOIR is a component of the Department of Justice and operates under the authority and supervision of the Attorney General. See Appendix C (Organizational Chart).

(c) Relationship to the Board of Immigration Appeals. — The Board of Immigration Appeals is the highest administrative tribunal adjudicating immigration and nationality matters. The Board is responsible for applying the immigration and nationality laws uniformly throughout the United States. Accordingly, the Board has been given nationwide jurisdiction to review decisions of Immigration Judges and certain decisions made by the Department of Homeland Security (DHS). The Board is tasked with resolving the questions before it in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act (INA) and federal regulations. The Board is also tasked with providing clear and uniform guidance to Immigration Judges, DHS, and the general public on the proper interpretation and administration of the INA and the federal regulations. See 8 C.F.R. § 1003.1(d)(1). See also Appendix C (Organizational Chart)..Finally, the Board has authority over the disciplining and sanctioning of representatives appearing before the Immigration Courts, DHS, and the Board. See Chapter 10 (Discipline of Practitioners).

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For detailed guidance on practice before the Board, parties should consult the Board of Immigration Appeals Practice Manual, which is available at www.justice.gov/eoir.

(d) Relationship to the Department of Homeland Security. — The Department of Homeland Security (DHS) was created in 2003 and assumed most of the functions of the now-abolished Immigration and Naturalization Service. DHS is responsible for enforcing immigration laws and administering immigration and naturalization benefits. By contrast, the Immigration Courts and the Board of Immigration Appeals are responsible for independently adjudicating cases under the immigration laws. Thus, DHS is entirely separate from the Department of Justice and the Executive Office for Immigration Review. In proceedings before the Immigration Court or the Board, DHS is deemed to be a party and is represented by its component, U.S. Immigration and Customs Enforcement (ICE). See Chapters 1.5(a) (Jurisdiction), 1.5(c) (Immigration Judge decisions), 1.5(e) (Department of Homeland Security).

(e) Relationship to the Immigration and Naturalization Service. — Prior to the creation of the Department of Homeland Security (DHS), the Immigration and Naturalization Service (INS) was responsible for enforcing immigration laws and administering immigration and naturalization benefits. INS was a component of the Department of Justice. INS has been abolished and its role has been assumed by DHS, which is entirely separate from the Department of Justice. See subsection (d), above.

(f) Relationship to the Office of the Chief Administrative Hearing Officer. — The Office of the Chief Administrative Hearing Officer (OCAHO) is an independent entity within the Executive Office for Immigration Review. OCAHO is responsible for hearings involving employer sanctions, anti-discrimination provisions, and document fraud under the Immigration and Nationality Act. OCAHO's Administrative Law Judges are not affiliated with the Office of the Chief Immigration Judge. The Board of Immigration Appeals does not review OCAHO decisions. See Appendix C (Organizational Chart).

(g) Relationship to the Administrative Appeals Office. — The Administrative Appeals Office (AAO), sometimes referred to as the Administrative Appeals Unit (AAU), was a component of the former Immigration and Naturalization Service and is now a component of the Department of Homeland Security (DHS). The AAO adjudicates appeals from DHS denials of certain kinds of applications and petitions, including employment-based immigrant petitions and most nonimmigrant visa petitions. See 8 C.F.R. §§ 103.2, 103.3. The AAO is not a component of the Department of Justice. The AAO should not be confused with the Executive Office for Immigration Review, the Office of the Chief Immigration Judge, or the Board of Immigration Appeals. See Appendix C (Organizational Chart).

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(h) Relationship to the Office of Immigration Litigation (OIL). — The Office of Immigration Litigation (OIL) represents the United States government in immigration-related civil trial litigation and appellate litigation in the federal courts. OIL is a component of the Department of Justice, located in the Civil Division. OIL is separate and distinct from the Executive Office for Immigration Review (EOIR). OIL should not be confused with EOIR, the Office of the Chief Immigration Judge, or the Board of Immigration Appeals. See Appendix C (Organizational Chart).

1.3 Composition of the Office of the Chief Immigration Judge

(a) General. — The Office of the Chief Immigration Judge (OCIJ) supervises and directs the activities of the Immigration Courts. OCIJ operates under the supervision of the Director of the Executive Office for Immigration Review (EOIR). OCIJ develops operating policies for the Immigration Courts, oversees policy implementation, evaluates

the performance of the Immigration Courts, and provides overall supervision of the Immigration Judges.

(i) Chief Immigration Judge. — The Chief Immigration Judge oversees the administration of the Immigration Courts nationwide.

(ii) Deputy Chief Immigration Judges. — The Deputy Chief Immigration Judges assist the Chief Immigration Judge in carrying out his or her responsibilities.

(iii) Assistant Chief Immigration Judges. — The Assistant Chief Immigration Judges oversee the operations of specific Immigration Courts. A listing of the Immigration Courts overseen by each Assistant Chief Immigration Judge is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

(iv) Legal staff. — OCIJ's legal staff supports the Chief Immigration Judge, Deputy Chief Immigration Judges, and Assistant Chief Immigration Judges, as well as the Immigration Judges and Immigration Court law clerks nationwide.

(v) Language Services Unit. — The Language Services Unit oversees staff interpreters and contract interpreters at the Immigration Courts. The Language Services Unit conducts quality assurance programs for all interpreters.

(vi) Court Evaluation Team. — The Court Evaluation Team coordinates periodic comprehensive evaluations of the operations of each Immigration Court and makes recommendations for improvements.

(vii) Court Analysis Unit. — The Court Analysis Unit monitors Immigration Court operations and assists the courts by analyzing caseloads and developing systems to collect caseload data.

(b) Immigration Courts. — There are more than 200 Immigration Judges in more than 50 Immigration Courts nationwide. As a general matter, Immigration Judges determine removability and adjudicate applications for relief from removal. For the specific duties of Immigration Judges, see Chapter 1.5 (Jurisdiction and Authority). The decisions of Immigration Judges are final unless timely appealed or certified to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions).

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Court Administrators are assigned to the local office of each Immigration Court. Under the supervision of an Assistant Chief Immigration Judge, the Court Administrator manages the daily activities of the Immigration Court and supervises staff interpreters, legal assistants, and clerical and technical employees.

In each Immigration Court, the Court Administrator serves as the liaison with the local office of the Department of Homeland Security, the private bar, and non-profit organizations that represent aliens. In some Immigration Courts, a Liaison Judge also participates as a liaison with these groups.

A listing of the Immigration Courts is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

***(c) Immigration Judge conduct and professionalism.* —** Immigration Judges strive to act honorably, fairly, and in accordance with the highest ethical standards, thereby ensuring public confidence in the integrity and impartiality of Immigration Court proceedings. Alleged misconduct by Immigration Judges is taken seriously by the Department of Justice and the Executive Office for Immigration Review (EOIR), especially if it impugns the integrity of the hearing process.

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Usually, when a disagreement arises with an Immigration Judge's ruling, the disagreement is properly raised in a motion to the Immigration Judge or an appeal to the Board of Immigration Appeals. When a party has an immediate concern regarding an Immigration Judge's conduct that is not appropriate for a motion or appeal, the concern may be raised with the Assistant Chief Immigration Judge (ACIJ) responsible for the court or the ACIJ for Conduct and Professionalism. Contact information for ACIJs is available on the EOIR website at www.justice.gov/eoir.

In the alternative, parties may raise concerns regarding an Immigration Judge's conduct directly with the Office of the Chief Immigration (OCIJ) by following the procedures outlined on the EOIR website at www.justice.gov/eoir or by sending an e-mail to OCIJ at: EOIR.IJConduct@usdoj.gov. Where appropriate, concerns may also be raised with the Department of Justice, Office of Professional Responsibility. All concerns, and any actions taken, may be considered confidential and not subject to disclosure.

1.4 Other EOIR Components

***(a) Office of the General Counsel.* —** The Office of the General Counsel (OGC) provides legal advice to the Executive Office for Immigration Review. OGC also functions as a resource and point of contact for the public in certain instances. In particular, OGC

responds to Freedom of Information Act requests related to immigration proceedings. See Chapter 12 (Freedom of Information Act). OGC receives complaints of misconduct involving immigration practitioners, and initiates disciplinary proceedings where appropriate. See Chapter 10 (Discipline of Practitioners).

(b) EOIR Fraud and Abuse Prevention Program. — The Executive Office for Immigration Review (EOIR) Fraud and Abuse Prevention Program was created to protect the integrity of immigration proceedings by reducing immigration fraud and abuse. The EOIR Fraud and Abuse Prevention Program assists Immigration Judges and EOIR staff in identifying fraud. In addition, the program shares information with law enforcement and investigative authorities. The program is an initiative of the EOIR Office of the General Counsel, as directed by the Attorney General.

Immigration fraud and abuse can take many forms. Fraud is sometimes committed during Immigration Court proceedings by individuals in proceedings and by their attorneys. In addition, aliens are often victimized by fraud committed by individuals not authorized to practice law, who are frequently referred to as "immigration specialists," "visa consultants," "travel agents," and "notarios."

Where a person suspects that immigration fraud has been committed, he or she may report this to the EOIR Fraud and Abuse Prevention Program. Where appropriate, the EOIR Fraud and Abuse Prevention Program refers cases to other authorities for further investigation.

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Individuals wishing to report immigration fraud or abuse, or other irregular activity, should contact the EOIR Fraud and Abuse Prevention Program. For contact information, see Appendix B (EOIR Directory).

(c) Office of Legal Access Programs (OLAP). — The Office of Legal Access Programs (OLAP) is responsible for improving access to legal information and to representation for persons appearing before the Immigration Courts and the Board. OLAP is also responsible for the Recognition and Accreditation Program, including the recognition of organizations and the accreditation of their representatives wishing to practice before the Immigration Courts, the Board, and DHS. For contact information, see Appendix B (EOIR Directory).

(i) Legal Orientation Program. — The Legal Orientation Program (LOP) was created to provide detained aliens with essential and easy-to-understand information regarding the Immigration Court process, including their rights, responsibilities, and options for relief from removal. The LOP is a program of the

Office of Legal Access Programs within the Executive Office for Immigration Review.

The LOP is carried out locally through subcontracts with nonprofit legal agencies in cooperation with a number of local Immigration Courts and detention facilities.

The LOP providers conduct "group orientations," which are general rights presentations given to detained aliens prior to their first Immigration Court hearing. "Individual orientations" and "self-help workshops" are then provided to unrepresented detainees to assist them with understanding their cases and identifying potential claims for relief from removal. While the LOP does not pay for legal representation, all detained aliens at LOP sites are provided access to program services, which may also include assistance with either locating pro bono counsel or representing themselves before the court.

More information about the LOP is available on the EOIR website at www.justice.gov/eoir.

(d) Office of Communications and Legislative Affairs. — The Office of Communications and Legislative Affairs (OCLA) is responsible for the public relations of the Executive Office for Immigration Review (EOIR), including the Office of the Chief Immigration Judge. Because the Department of Justice policy prohibits interviews with Immigration Judges, OCLA serves as EOIR's liaison with the press.

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(e) Law Library and Immigration Research Center. — The Law Library and Immigration Research Center (LLIRC) is maintained by the Executive Office for Immigration Review (EOIR) for use by EOIR staff and the general public. The LLIRC maintains a "Virtual Law Library" accessible on the EOIR website at www.justice.gov/eoir. See Chapter 1.6(b) (Library and online resources).

1.5 Jurisdiction and Authority

(a) Jurisdiction. — Immigration Judges generally have the authority to:

- make determinations of removability, deportability, and excludability
- adjudicate applications for relief from removal or deportation, including, but not limited to, asylum, withholding of removal ("restriction on

removal"), protection under the Convention Against Torture, cancellation of removal, adjustment of status, registry, and certain waivers

- review credible fear and reasonable fear determinations made by the Department of Homeland Security (DHS)
- conduct claimed status review proceedings
- conduct custody hearings and bond redetermination proceedings
- make determinations in rescission of adjustment of status and departure control cases
- take any other action consistent with applicable law and regulation as may be appropriate, including such actions as ruling on motions, issuing subpoenas, and ordering pre-hearing conferences and statements

See 8 C.F.R. §§ 1240.1(a), 1240.31, 1240.41.

Immigration Judges also have the authority to:

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- conduct disciplinary proceedings pertaining to attorneys and accredited representatives, as discussed in Chapter 10 (Discipline of Practitioners)
- administer the oath of citizenship in administrative naturalization ceremonies conducted by DHS
- conduct removal proceedings initiated by the Office of Special Investigations

(b) No jurisdiction. — Although Immigration Judges exercise broad authority over matters brought before the Immigration Courts, there are certain immigration-related matters over which Immigration Judges do not have authority, such as:

- visa petitions
- employment authorization
- certain waivers

- naturalization applications
- revocation of naturalization
- parole into the United States under INA § 212(d)(5)
- applications for advance parole
- employer sanctions
- administrative fines and penalties under 8 C.F.R. parts 280 and 1280
- determinations by the Department of Homeland Security involving safe third country agreements

See 8 C.F.R. §§ 103.2, 1003.42(h), 28 C.F.R. § 68.26.

(c) Immigration Judge decisions. — Immigration Judges render oral and written decisions at the end of Immigration Court proceedings. See Chapter 4.16(g) (Decision). A decision of an Immigration Judge is final unless a party timely appeals the decision to the Board of Immigration Appeals or the case is certified to the Board. Parties should note that the certification of a case is separate from any appeal in the case. See Chapter 6 (Appeals of Immigration Judge Decisions).

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(d) Board of Immigration Appeals. — The Board of Immigration Appeals has broad authority to review the decisions of Immigration Judges. See 8 C.F.R. § 1003.1(b). See also Chapter 6 (Appeals of Immigration Judge Decisions). Although the Immigration Courts and the Board are both components of the Executive Office for Immigration Review, the two are separate and distinct entities. Thus, administrative supervision of Board Members is vested in the Chairman of the Board, not the Office of the Chief Immigration Judge. See Chapter 1.2(c) (Relationship to the Board of Immigration Appeals). See Appendix C (Organizational Chart).

(e) Department of Homeland Security. — The Department of Homeland Security (DHS) enforces the immigration and nationality laws and represents the United States government's interests in immigration proceedings. DHS also adjudicates visa petitions and applications for immigration benefits. See, e.g., 8 C.F.R. § 1003.1(b)(4), (5). DHS is entirely separate from the Department of Justice and the Executive Office for Immigration Review. When appearing before an Immigration Court, DHS is deemed a party to the proceedings and is represented by its component, U.S. Immigration and

Customs Enforcement (ICE). See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)).

(f) Attorney General. — Decisions of Immigration Judges are reviewable by the Board of Immigration Appeals. The Board's decisions may be referred to the Attorney General for review. Referral may occur at the Attorney General's request, or at the request of the Department of Homeland Security or the Board. The Attorney General may vacate any decision of the Board and issue his or her own decision in its place. See 8 C.F.R. § 1003.1(d)(1)(i), (h). Decisions of the Attorney General may be published as precedent decisions. The Attorney General's precedent decisions appear with the Board's precedent decisions in Administrative Decisions Under Immigration and Nationality Law of the United States ("I&N Decisions").

(g) Federal courts. — Decisions of Immigration Judges are reviewable by the Board of Immigration Appeals. In turn, decisions of the Board are reviewable in certain federal courts, depending on the nature of the appeal. When a decision of the Board is reviewed by a federal court, the Board provides that court with a certified copy of the record before the Board. This record includes the Record of Proceedings before the Immigration Judge.

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1.6 Public Access

(a) Court locations.

(i) Office of the Chief Immigration Judge. — The Office of the Chief Immigration Judge, which oversees the administration of the Immigration Courts nationwide, is located at the Executive Office for Immigration Review headquarters in Falls Church, Virginia. See Appendix B (EOIR Directory).

(ii) Hearing locations. — There are more than 200 Immigration Judges in more than 50 Immigration Courts in the United States. A list of Immigration Courts is available in Appendix A (Immigration Court Addresses), as well as on the Executive Office for Immigration Review website at www.justice.gov/eoir.

Immigration Judges sometimes hold hearings in alternate locations, such as designated detail cities where the caseload is significant but inadequate to warrant the establishment of a permanent Immigration Court. Immigration Judges also conduct hearings in Department of Homeland Security detention centers nationwide, as well as many federal, state, and local correctional facilities. Documents pertaining to hearings held in these locations are filed at the

appropriate Administrative Control Court. See Chapter 3.1(a)(i) (Administrative Control Court).

In addition, hearings before Immigration Judges are sometimes conducted by video conference or, under certain conditions, by telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

With certain exceptions, hearings before Immigration Judges are open to the public. See Chapter 4.9 (Public Access). The public's access to immigration hearings is discussed in Chapter 4.14 (Access to Court). For additional information on the conduct of hearings, see Chapters 4.12 (Courtroom Decorum), 4.13 (Electronic Devices).

(b) Library and online resources. —

(i) Law Library and Immigration Research Center. — The Board of Immigration Appeals maintains a Law Library and Immigration Research Center (LLIRC) at 5201 Leesburg Pike, Suite 1200, Falls Church, Virginia. The LLIRC maintains select sources of immigration law, including Board decisions, federal statutes and regulations, federal case reporters, immigration law treatises, and various secondary sources. The LLIRC serves the Executive Office for Immigration Review (EOIR), including the Office of the Chief Immigration Judge and the Immigration Courts, as well as the general public. For hours of operation, directions, and collection information, contact the LLIRC at (703) 506-1103 or visit the EOIR website at www.justice.gov/eoir. See Appendix B (EOIR Directory).

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The LLIRC is not a lending library, and all printed materials must be reviewed on the premises. LLIRC staff may assist patrons in locating materials, but are not available for research assistance. LLIRC staff do not provide legal advice or guidance regarding filing or procedures for matters before the Immigration Courts. LLRC staff may, however, provide guidance in locating published decisions of the Board.

Limited self-service copying is available in the LLIRC.

(ii) Virtual Law Library. — The LLIRC maintains a "Virtual Law Library," accessible on the Executive Office for Immigration Review website at www.justice.gov/eoir. The Virtual Law Library serves as a comprehensive repository of immigration-related law and information for use by the general public.

(c) Records. —

(i) Inspection by parties. — Parties to a proceeding, and their representatives, may inspect the official record, except for classified information, by prior arrangement with the Immigration Court having control over the record. See Chapters 3.1(a)(i) (Administrative Control Court), 4.10(c) (Record of Proceedings). Removal of records by parties or other unauthorized persons is prohibited.

(ii) Inspection by non-parties. — Persons or entities who are not a party to a proceeding must file a request for information pursuant to the Freedom of Information Act (FOIA) to inspect the Record of Proceedings. See Chapter 12 (Freedom of Information Act).

(iii) Copies for parties. — The Immigration Court has the discretion to provide parties or their legal representatives with a copy of the hearing recordings and up to 25 pages of the record without charge, subject to the availability of court resources. Self-service copying is not available. However, parties may be required to file a request under FOIA to obtain these items. See Chapter 12 (Freedom of Information Act).

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(A) Digital audio recordings. — Immigration Court hearings are recorded digitally. If a party is requesting a copy of a hearing that was recorded digitally, the court will provide the compact disc.

(B) Cassette recordings. — Previously, Immigration Court hearings were recorded on cassette tapes. If a party is requesting a copy of a hearing that was recorded on cassette tapes, the party must provide a sufficient number of 90-minute cassette tapes.

(iv) Copies for non-parties. — The Immigration Court does not provide non-parties with copies of any official record, whether in whole or in part. To obtain an official record, non-parties must file a request for information under FOIA. See Chapter 12 (Freedom of Information Act).

(v) Confidentiality. — The Immigration Courts take special precautions to ensure the confidentiality of cases involving aliens in exclusion proceedings, asylum applicants, battered alien spouses and children, classified information, and information subject to a protective order. See Chapter 4.9 (Public Access).

1.7 Inquiries

(a) Generally. — All inquiries to an Immigration Court must contain or provide the following information for each alien:

- complete name (as it appears on the charging document)
- alien registration number ("A number")
- type of proceeding (removal, deportation, exclusion, bond, etc.)
- date of the upcoming master calendar or individual calendar hearing
- the completion date, if the court proceedings have been completed

See also Chapter 3.3(c)(vi) (Cover page and caption), Appendix F (Sample Cover Page).

(b) Press inquiries. — All inquiries from the press should be directed to the Executive Office for Immigration Review, Office of Communications and Legislative Affairs. For contact information, see Appendix B (EOIR Directory).

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(c) Automated Case Information Hotline. — The Automated Case Information Hotline provides information about the status of cases before an Immigration Court or the Board of Immigration Appeals. See Appendix B (EOIR Directory), Appendix I (Telephonic Information). The Automated Case Information Hotline contains a telephone menu (in English and Spanish) covering most kinds of cases. The caller must enter the alien registration number ("A number") of the alien involved. A numbers have nine digits (e.g., A 234 567 890). Formerly, A numbers had eight digits (e.g., A 12 345 678). In the case of an eight-digit A number, the caller should enter a "0" before the A number (e.g., A 012 345 678).

For cases before the Immigration Court, the Automated Case Information Hotline contains information regarding:

- the next hearing date, time, and location
- in asylum cases, the elapsed time and status of the asylum clock
- Immigration Judge decisions

The Automated Case Information Hotline does not contain information regarding:

- bond proceedings
- motions

Inquiries that cannot be answered by the Automated Case Information Hotline may be directed to the Immigration Court in which the proceedings are pending or to the appropriate Administrative Control Court. See Chapter 3.1(a)(i) (Administrative Control Courts). Callers must be aware that Court Administrators and other staff members are prohibited from providing any legal advice and that no information provided by Court Administrators or other staff members may be construed as legal advice.

(d) Inquiries to Immigration Court staff. — Most questions regarding Immigration Court proceedings can be answered through the automated telephone number, known as the Automated Case Information Hotline. See subsection (c), above. For other questions, telephone inquiries may be made to Immigration Court staff. Collect calls are not accepted.

If a telephone inquiry cannot be answered by Immigration Court staff, the caller may be advised to submit an inquiry in writing, with a copy served on the opposing party. See Appendix A (Immigration Court Addresses).

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In addition, Court Administrators and other staff members cannot provide legal advice to parties.

(e) Inquiries to specific Immigration Judges. — Callers must bear in mind that Immigration Judges cannot engage in ex parte communications. A party cannot speak about a case with the Immigration Judge when the other party is not present, and all written communications about a case must be served on the opposing party.

(f) Faxes. — Immigration Courts generally do not accept inquiries by fax. See Chapter 3.1(a)(vii) (Faxes and e-mail).

(g) Electronic communications. —

(i) Internet. — The Executive Office for Immigration Review (EOIR) maintains a website at www.justice.gov/eoir. See Appendix A (Directory). The website contains information about the Immigration Courts, the Office of the Chief Immigration Judge, the Board of Immigration Appeals, and the other components

of EOIR. It also contains newly published regulations, the Board's precedent decisions, and a copy of this manual. See Chapters 1.4(e) (Law Library and Immigration Research Center), 1.6(b) (Library and online resources).

(ii) E-mail. — Immigration Courts generally do not accept inquiries by e-mail.

(iii) Internet Immigration Information (I^3). — The Internet Immigration Information (I^3, pronounced "I-cubed") is a suite of EOIR web-based products that includes eRegistry, eFiling, and eInfo. Access to these online electronic products is available on EOIR's website at http://www.justice.gov/eoir/internet-immigration-info.

(A) Electronic Registry (eRegistry). — Attorneys and fully accredited representatives who are accredited to appear before EOIR must electronically register with EOIR in order to practice before the Immigration Courts. eRegistry is the online process that is used to electronically register with EOIR. See Chapter 2.3(b)(i) (eRegistry).

(B) Electronic filing (eFiling). — 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) except in certain situations. See Chapter 2.3(c) (Appearances).

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(C) Electronic Case Information (eInfo). — The Electronic Case Information System or "eInfo" provides information about the status of cases before an Immigration Court or the Board of Immigration Appeals. The information provided by eInfo is similar to that which is available by telephone via the Automated Case Information Hotline. See Chapter 1.7(c) (Automated Case Information Hotline). eInfo is available only to registered attorneys and fully accredited representatives who electronically register with EOIR. See subsection (A), above.

(h) Emergencies and requests to advance hearing dates. — If circumstances require urgent action by an Immigration Judge, parties should follow the procedures set forth in Chapters 5.10(b) (Motion to advance) or 8 (Stays), as appropriate.

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Chapter 2 Appearances before the Immigration Court

2.1 Representation Generally

(a) Types of representatives. — The regulations specify who may represent parties in immigration proceedings. See 8 C.F.R. § 1292.1. As a practical matter, there are four categories of people who may present cases in Immigration Court: unrepresented aliens (Chapter 2.2), attorneys (Chapter 2.3), accredited representatives (Chapter 2.4), and certain categories of persons who are expressly recognized by the Immigration Court (Chapters 2.5, 2.8, and 2.9).

Attorneys and accredited representatives must register with EOIR in order to practice before the Immigration Court. See 8 C.F.R. § 1292.1(a)(1), (a)(4), (f); Chapters 2.3(b)(i) (eRegistry), 2.4 (Accredited Representatives).

No one else is recognized to practice before the Immigration Court. Non-lawyer immigration specialists, visa consultants, and "notarios" are *not* authorized to represent parties before an Immigration Court.

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(b) Entering an appearance. — All representatives must file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See 8 C.F.R. §§ 1003.17(a), 1003.23(b)(1)(ii). A Form EOIR-28 may be filed in one of two ways: either as an electronic Form EOIR-28, or as a paper Form EOIR-28.

Persons appearing without an attorney or representative ("pro se") should not file a Form EOIR-28.

Note that different forms are used to enter an appearance before an Immigration Court, the Board of Immigration Appeals, and the Department of Homeland Security (DHS). The forms used to enter an appearance before the Board and DHS are as follows:

- the Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27) is used to enter an appearance before the Board
- the Notice of Entry of Appearance of Attorney or Representative (Form G-28) is used to enter an appearance before DHS

The Immigration Court will not recognize a representative using a Form EOIR-27 or a Form G-28.

(i) Electronic entry of appearance. — After registering with the EOIR eRegistry, attorneys and accredited representatives may file either an electronic or paper Form EOIR-28 in the following situations:

- the first appearance of the representative, either at a hearing or by filing a pleading, motion, application, or other document
- whenever a case is remanded to the Immigration Court
- any change of business address or telephone number for the attorney or representative
- upon reinstatement following an attorney's suspension or expulsion from practice

In order to file an electronic Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), an attorney or accredited representative should refer to the instructions for the EOIR eRegistry, which can be found on the Executive Office for Immigration Review website at www.justice.gov/eoir/.

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Attorneys and accredited representatives who electronically file a Form EOIR-28 close to a hearing may be required to complete a paper Form EOIR-28 at the hearing.

(ii) Paper entry of appearance. — A paper, not an electronic, Form EOIR-28 must be filed in the following situations:

- A bond redetermination request made before the filing of a Notice to Appear with an Immigration Court
- A motion to reopen
- A motion to reconsider
- A motion to recalendar proceedings that are administratively

closed

- A motion to substitute counsel
- A case in which there is more than one open proceeding
- Disciplinary proceedings

When filing a paper Form EOIR-28, representatives should be sure to use the most current version of the form, which can be found on the EOIR website at www.justice.gov/eoir. See also Chapter 11 (Forms), Appendix E (Forms).

(c) Notice to opposing party. — In all instances of representation, the Department of Homeland Security must be served with a copy of the Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 3.2 (Service on the Opposing Party). Even when an attorney or accredited representative files a Form EOIR-28 electronically with the Immigration Court, a printed copy of the electronically filed Form EOIR-28 must be served on the Department of Homeland Security for each case. See Chapter 3.2(c) (Method of service).

(d) Who may file. — 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). An individual who is not a party to a proceeding may not file documents with the court. See Chapters 5.1(c) (Persons not party to the proceedings), 3.2 (Service on the Opposing Party).

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2.2 Unrepresented Aliens ("Pro se" Appearances)

(a) Generally. — An individual in proceedings may represent himself or herself before the Immigration Court.

Many individuals choose to be represented by an attorney or accredited representative. Due to the complexity of the immigration and nationality laws, the Office of the Chief Immigration Judge recommends that those who can obtain qualified professional representation do so. See Chapters 2.3(b) (Qualifications), 2.4 (Accredited Representatives), 2.5 (Law Students and Law Graduates).

***(b) Legal service providers*. —** The Immigration Courts cannot give advice regarding the selection of a representative. However, aliens in proceedings before an Immigration Court are provided with a list of free or low cost legal service providers within the region in which the Immigration Court is located. See 8 C.F.R. §§ 1003.61(a), 1292.2(a). The list is maintained by the Office of the Chief Immigration Judge and contains information on attorneys, bar associations, and certain non-profit organizations willing to provide legal services to indigent individuals in Immigration Court proceedings at little or no cost. The free or low cost legal service providers may not be able to represent every individual who requests assistance.

In addition, all of the lists of free legal service providers nationwide are available on the EOIR website at www.justice.gov/eoir.

***(c) Address obligations*. —** Whether represented or not, aliens in proceedings before the Immigration Court must notify the Immigration Court within 5 days of any change in address or telephone number, using the Alien's Change of Address Form (Form EOIR-33/IC). See 8 C.F.R. § 1003.15(d)(2). In many instances, the Immigration Court will send notification as to the time, date, and place of hearing or other official correspondence to the alien's address. If an alien fails to keep address information up to date, a hearing may be held in the alien's absence, and the alien may be ordered removed even though the alien is not present. This is known as an "in absentia" order of removal.

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Parties should note that notification to the Department of Homeland Security of a change in address does not constitute notification to the Immigration Court.

***(i) Change of address or telephone number*. —** Changes of address or telephone number must be in writing and *only* on the Alien's Change of Address Form (Form EOIR-33/IC). Unless the alien is detained, *no other means of notification are acceptable*. Changes in address or telephone numbers communicated through pleadings, motion papers, correspondence, telephone calls, applications for relief, or other means will *not* be recognized, and the address information on record will not be changed.

***(ii) Form EOIR-33/IC*. —** The alien should use only the most current version of the Aliens's Change of Address Form (Form EOIR-33/IC). The Form EOIR-33/IC is available at the Immigration Court and on the Executive Office for Immigration Review website at www.justice.gov/eoir. See also Chapter 11 (Forms) and Appendix E (Forms). Individuals in proceedings should observe the distinction between the Immigration Court's Change of Address Form (Form EOIR-33/IC) and

the Board of Immigration Appeal's Change of Address Form (Form EOIR-33/BIA). The Immigration Courts will not recognize changes in address or telephone numbers communicated on the Board of Immigration Appeal's Change of Address Form (Form EOIR-33/BIA), and the address information on record will not be changed.

(iii) Motions. — An alien should file an Alien's Change of Address Form (Form EOIR-33/IC) when filing a motion to reopen, a motion to reconsider, or a motion to recalendar. This ensures that the Immigration Court has the alien's most current address when it adjudicates the motion.

(d) Address obligations of detained aliens. — When an alien is detained, the Department of Homeland Security (DHS) is obligated to report the location of the alien's detention to the Immigration Court. DHS is also obligated to report when an alien is moved between detention locations and when he or she is released. See 8 C.F.R. § 1003.19(g).

(i) While detained. — As noted in (d), above, DHS is obligated to notify the Immigration Court when an alien is moved between detention locations. See 8 C.F.R. § 1003.19(g).

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(ii) When released. — The Department of Homeland Security is responsible for notifying the Immigration Court when an alien is released from custody. 8 C.F.R. § 1003.19(g). Nonetheless, the alien should file an Alien's Change of Address Form (Form EOIR-33/IC) with the Immigration Court within 5 days of release from detention to ensure that Immigration Court records are current. See Chapter 2.2(c) (Address obligations).

2.3 Attorneys

(a) Right to counsel. — An alien in immigration proceedings may be represented by an attorney of his or her choosing, at no cost to the government. Unlike in criminal proceedings, the government is *not* obligated to provide legal counsel. The Immigration Court provides aliens with a list of attorneys who may be willing to represent aliens for little or no cost, and many of these attorneys handle cases on appeal as well. See Chapter 2.2(b) (Legal service providers). Bar associations and nonprofit agencies can also refer aliens to practicing attorneys.

(b) Qualifications. — An attorney may practice before the Immigration Court only if he or she is a member in good standing of the bar of the highest court of any state,

possession, territory, or Commonwealth of the United States, or the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law. See 8 C.F.R. §§ 1001.1(f), 1292.1(a)(1). Any attorney practicing before the Immigration Court who is the subject of such discipline in any jurisdiction must promptly notify the Executive Office for Immigration Review, Office of the General Counsel. See Chapter 10.6 (Duty to Report). In addition, an attorney must be registered with EOIR in order to practice before the Immigration Court. See 8 C.F.R. § 1292.1(f), and Chapter 2.3(b)(i) (eRegistry), below.

(i) eRegistry. — An attorney must register with the EOIR eRegistry in order to practice before the Immigration Court. See 8 C.F.R. § 1292.1(f). Registration must be completed online on the EOIR website at www.justice.gov/eoir.

(**A**) ***Administrative suspension.*** — If an attorney fails to register, he or she may be administratively suspended from practice before the Immigration Court. See 8 C.F.R. § 1292.1(f). Multiple attempts by an unregistered attorney to appear before EOIR may result in disciplinary sanctions. See 8 C.F.R. § 1003.101(b).

(B) ***Appearance by unregistered attorney.*** — An Immigration Judge may, under extraordinary and rare circumstances, permit an unregistered attorney to appear at one hearing if the attorney files a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), and provides, on the record, the following registration information: name; date of birth; business address(es); business telephone number(s); e-mail address; and bar admission information (including bar number if applicable) for all the jurisdictions in which the attorney is licensed to practice, including those in which he or she is inactive. See 8 C.F.R. § 1292.1(f). An unregistered attorney who is permitted to appear at one hearing in such circumstances must complete the electronic registration process without delay after that hearing.

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(c) Appearances. — Attorneys must enter an appearance before the Immigration Court by filing a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See 8 C.F.R. §§ 1003.17(a), 1003.23(b)(1)(ii). A Form EOIR-28 may be filed in one of two ways: either as an electronic Form EOIR-28, or as a paper Form EOIR-28. See Chapter 2.1(b) (Entering an appearance). A Form EOIR-28 should always be filed in the situations described in Chapter 2.1(b) (Entering an appearance). If a paper Form EOIR-28 is submitted with other documents, the Form

EOIR-28 should be at the front of the package. See Chapter 3.3(c) (Format). It should *not* be included as an exhibit, as part of an exhibit, or with other supporting materials. In addition, whether filed electronically or on paper, the Form EOIR-28 must be served on the opposing party. See Chapter 3.2 (Service on the Opposing Party). If information is omitted from the Form EOIR-28 or it is not properly completed, the attorney's appearance may not be recognized, and the accompanying filing may be rejected.

(i) Form EOIR-28. — When filing Form EOIR-28 on paper rather than electronically, attorneys should use the most current version of the Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), which can be found on the Executive Office for Immigration Review (EOIR) website at www.justice.gov/eoir. See also Chapter 11 (Forms), Appendix E (Forms). The use of green paper when filing a paper Form EOIR-28 is strongly encouraged. See Chapter 11.2(f) (Form colors).

Attorneys should observe the distinction between the Immigration Courts' Notice of Appearance (Form EOIR-28) and the Board of Immigration Appeal's Notice of Appearance (Form EOIR-27). The Immigration Courts will not recognize an attorney based on a Form EOIR-27, whether filed with the Board or the Immigration Court. Accordingly, when a case is remanded from the Board to the Immigration Court, the attorney must file a new Form EOIR-28.

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(ii) Attorney information. — The Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) must bear an individual attorney's current address and the attorney's signature in compliance with the requirements of Chapter 3.3(b) (Signatures). When filing a paper Form EOIR-28, all information required on the form, including the date, should be typed or printed clearly. Note that the EOIR ID number issued by EOIR through the eRegistry process must be provided on the Form EOIR-28.

(iii) Bar information. — When an attorney is a member of a state bar which has a state bar number or corresponding court number, the attorney must provide that number on the Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). If the attorney has been admitted to more than one state bar, *each and every* state bar to which the attorney has ever been admitted–including states in which the attorney is no longer an active member or has been suspended, expelled, or disbarred–must be listed and the state bar number, if any, provided.

(iv) Disciplinary information. — The box regarding attorney bar membership and disciplinary action on the Form EOIR-28 must only be checked if the attorney is not subject to any order disbarring, suspending, or otherwise restricting him or her in the practice of law. If the attorney is subject to discipline, then the attorney must provide information on the back of the form. (Attorneys may attach an explanatory supplement or other documentation to the form.) An attorney who fails to provide discipline information will not be recognized by the Immigration Court and may be subject to disciplinary action.

(d) Scope of representation. — When filing a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) an attorney must check the box indicating whether the entry of appearance is for all proceedings, custody and bond proceedings only, or all proceedings other than custody and bond proceedings. Once an attorney has made an appearance, that attorney has an obligation to continue representation until such time as a motion to withdraw or substitute counsel has been granted by the Immigration Court. See Chapter 2.3(i) (Change in representation). When an attorney wishes to change the scope of his or her appearance in a particular case, the attorney or representative must file a new Form EOIR-28 and, if necessary, a motion to withdraw or substitute counsel. For example:

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- If an attorney previously filed a Form EOIR-28 and checked the box indicating that the entry of appearance is for custody and bond proceedings only, and the attorney later wishes to represent the same alien in removal proceedings as well, the attorney must file a new Form EOIR-28 and check the box indicating that the entry of appearance is for all proceedings.

- If an attorney previously filed a Form EOIR-28 and checked the box indicating that the entry of appearance is for all proceedings, and the attorney later no longer wishes to represent the alien in removal proceedings but does wish to continue representing the alien in custody and bond proceedings only, the attorney must file a motion to withdraw from the removal proceedings as well as a new Form EOIR-28 in which the attorney has checked the box indicating that the entry of appearance is for custody and bond proceedings only.

(e) Multiple representatives. — Sometimes, an alien may retain more than one attorney at a time. In such cases, *all* of the attorneys are representatives of record, and will all be held responsible as attorneys for the respondent. One of the attorneys is recognized as the primary attorney (notice attorney). All of the attorneys must file Notices of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form

EOIR-28), checking the appropriate box to reflect whether the attorney is the primary attorney or a non-primary attorney. All submissions to the Immigration Court must bear the name of one of the representatives of record and be signed by that attorney. See subsection (c), above. See also Chapter 3.3(b) (Signatures).

(f) Law firms. — Only individuals, not firms or offices, may represent parties before the Immigration Court. In every instance of representation, a named attorney must enter an appearance to act as an attorney of record. In addition, all filings must be signed by an attorney of record. See Chapter 3.3(b) (Signatures). Accordingly, the Immigration Court does not recognize appearances or accept pleadings, motions, briefs, or other filings submitted by a law firm, law office, or other entity if the name and signature of an attorney of record is not included. See subsection (e), above. See also Chapter 3.3(b)(ii) (Law firms). If, at any time, more than one attorney represents an alien, one of the attorneys must be designated as the primary attorney (notice attorney). See subsection (e), above.

(i) Change in firm. — In the event that an attorney departs a law firm but wishes to continue representing the alien, the attorney must promptly file a new Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28). The new Notice of Appearance must reflect any change of address and apprize the Immigration Court of his or her change in affiliation. The attorney should check the "new address" box in the address block of the new Form EOIR-28, which must be served on the opposing party. See Chapter 3.2 (Service on the Opposing Party).

(ii) Change in attorney. — If the attorney of record leaves a law firm but the law firm wishes to retain the case, another attorney in the firm must file a motion for substitution of counsel. Similarly, if a law firm wishes to reassign responsibility for a case from one attorney to another attorney in the firm, the new attorney must file a motion for substitution of counsel. Until such time as a motion for substitution of counsel is granted, the original attorney remains the alien's attorney and is responsible for the case. See subsection (i)(i), below.

(g) Service upon counsel. — Service of papers upon counsel of a represented party constitutes service on the represented party. See 8 C.F.R. § 1292.5(a), Chapter 3.2(f) (Representatives and service).

(h) Address obligations of counsel. — Attorneys who enter an appearance before the Immigration Court have an affirmative duty to keep the Immigration Court apprised of their current address and telephone number. See 8 C.F.R. § 1003.15(d)(2). Changes in counsel's address or telephone number should be made by updating the

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attorney's registration information in the EOIR eRegistry to include the new address and telephone number. See Chapter 2.3(b)(i) (eRegistry). In addition, once the new address is added to the attorney's registration information, the attorney must submit a new electronic or paper Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) for each alien for which the attorney address is being changed. If an attorney has multiple addresses, the attorney should make sure that the appropriate attorney address is designated for each alien. See Chapter 2.3(c) (Appearances). The attorney also should check the "New Address" box in the address block on the Form EOIR-28. The attorney should *not* submit an Alien's Change of Address Form (Form EOIRB33/IC) to notify the Immigration Court of a change in the attorney's address.

(i) No compound changes of address. — An attorney may not simply submit a list of clients for whom his or her change of address should be entered. Attorneys must submit a new electronic or paper Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) for each alien he or she represents.

(ii) Address obligations of represented aliens. — Even when an alien is represented, the alien is still responsible for keeping the Immigration Court apprised of his or her address and telephone number. Changes of address or telephone number for the alien may not be made on the Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) but must be made on the Alien's Change of Address Form (Form EOIR-33/IC). See Chapter 2.2(c) (Address obligations).

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(i) Change in representation. — Changes in representation may be made as described in subsections (i) through (iii), below.

(i) Substitution of counsel. — When an alien wishes to substitute a new attorney for a previous attorney, the new attorney must submit a written or oral motion for substitution of counsel, accompanied by a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28). The new attorney must file a paper Form EOIR-28, not an electronic Form EOIR-28. See 8 C.F.R. § 1003.17(b), Chapter 2.1(b) (Entering an appearance). If in writing, the motion should be filed with a cover page labeled "MOTION FOR SUBSTITUTION OF COUNSEL" 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 contain the following information:

- whether the motion to substitute counsel is for all proceedings, custody and bond proceedings only, or all proceedings other than custody and bond proceedings

- the reason(s) for the substitution of counsel, in conformance with applicable state bar and other ethical rules

- evidence that prior counsel has been notified about the motion for substitution of counsel

- evidence of the alien's consent to the substitution of counsel

If the motion is in writing, the new counsel should serve a copy of the motion and executed Form EOIR-28 on prior counsel as well as the Department of Homeland Security. A Proof of Service of the motion and Form EOIR-28 on prior counsel is sufficient to show that prior counsel has been notified about the motion to substitute counsel.

In adjudicating a motion for substitution of counsel, the time remaining before the next hearing and the reason(s) given for the substitution are taken into consideration. Extension requests based on substitution of counsel are not favored.

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If a motion for substitution of counsel is granted, prior counsel need not file a motion to withdraw. However, until a motion for substitution of counsel is granted, the original counsel remains the alien's attorney of record and must appear at all scheduled hearings.

The granting of a motion for substitution of counsel does *not* constitute a continuance of a scheduled hearing. Accordingly, parties must be prepared to proceed at the next scheduled hearing.

(ii) Withdrawal of counsel. — When an attorney wishes to withdraw from representing an alien, and the alien has not obtained a new attorney, the attorney must submit a written or oral motion to withdraw. See 8 C.F.R. § 1003.17(b). If in writing, the motion should be filed with a cover page labeled "MOTION TO WITHDRAW AS COUNSEL" 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 contain the following information:

- whether the motion to withdraw is for all proceedings, custody and bond proceedings only, or all proceedings other than custody and bond proceedings

- the reason(s) for the withdrawal of counsel, in conformance with applicable state bar or other ethical rules

- the last known address of the alien

- a statement that the attorney has notified the alien of the request to withdraw as counsel or, if the alien could not be notified, an explanation of the efforts made to notify the alien of the request

- evidence of the alien's consent to withdraw or a statement of why evidence of such consent is unobtainable

- evidence that the attorney notified or attempted to notify the alien, with a recitation of specific efforts made, of (a) pending deadlines; (b) the date, time, and place of the next scheduled hearing; (c) the necessity of meeting deadlines and appearing at scheduled hearings; and (d) the consequences of failing to meet deadlines or appear at scheduled hearings

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In adjudicating a motion to withdraw, the time remaining before the next hearing and the reason(s) given for the withdrawal are taken into consideration.

Until a motion to withdraw is granted, the attorney who filed the motion remains the alien's attorney of record and must attend all scheduled hearings.

(iii) Release of counsel. — When an alien elects to terminate representation by counsel, the counsel remains the attorney of record until the Immigration Judge has granted either a motion for substitution of counsel or a motion to withdraw, as appropriate. See subsections (i) and (ii), above.

(j) Appearances "on behalf of." — Appearances "on behalf of" occur when a second attorney appears on behalf of the attorney of record at a specific hearing before the Immigration Court. The attorney making the appearance need not work at the same firm as the attorney of record. Appearances "on behalf of" are permitted as described below.

First, the attorney making the appearance must notify the Immigration Judge on the record that he or she is appearing on behalf of the attorney of record.

Second, the attorney making the appearance must file a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) with the Immigration Court and serve it on the opposing party. The attorney must file a paper Form EOIR-28, not an electronic Form EOIR-28. See Chapter 2.1(b) (Entering an appearance). The attorney must check the box on the Form EOIR-28 indicating that he or she is making an appearance on behalf of the attorney of record and fill in the name of the attorney of record.

Third, the appearance on behalf of the attorney of record must be authorized by the Immigration Judge.

At the hearing, the attorney making the appearance may file documents on behalf of the alien. The attorney making the appearance cannot file documents on behalf of the alien at any other time. See Chapters 3.3(b) (Signatures), 3.2 (Service on the Opposing Party). The attorney of record need not file a new Form EOIR-28 after the hearing.

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(k) Attorney misconduct. — The Executive Office for Immigration Review has the authority to impose disciplinary sanctions upon attorneys and representatives who violate rules of professional conduct before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security. See Chapter 10 (Discipline of Practitioners). Where an attorney in a case has been suspended from practice before the Immigration Court and the alien has not retained new counsel, the Immigration Court treats the alien as unrepresented. In such a case, all mailings from the Immigration Court, including notices of hearing and orders, are mailed directly to the alien. Any filing from an attorney who has been suspended from practice before the Immigration Court is rejected. See Chapter 3.1(d) (Defective filings).

2.4 Accredited Representatives and Recognized Organizations

A fully accredited representative is an individual who is not an attorney and is approved by the Director of the Office of Legal Access Programs (OLAP) to represent aliens before the Board, the Immigration Courts, and the Department of Homeland Security (DHS). A partially accredited representative is authorized to practice solely before DHS. An accredited representative must, among other requirements, have the character and fitness to represent aliens and be employed by, or be a volunteer for, a non-profit religious, charitable, social service, or similar organization which has been

recognized by the OLAP Director to represent aliens. 8 C.F.R. §§ 1292.1(a)(4), 1292.11(a) , 1292.12(a)-(e). Accreditation of an individual is valid for a period of up to three years, and recognition of an organization is valid for a period of up to six years. 8 C.F.R. §§ 1292.11(f), 1292.12(d). Both may be renewed. 8 C.F.R. § 1292.16. Before representing an individual before the Immigration Court, a fully accredited representative must:

- register with the EOIR eRegistry, and
- file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28).

See Chapters 2.1(b) (Entering an appearance), 2.3(b) (Qualifications), 2.3(c) (Appearances), 2.4(e) (Applicability of attorney rules).

(a) Recognized organizations. —The OLAP Director, in the exercise of discretion, may recognize an eligible organization to provide representation through accredited representatives. See 8 C.F.R. § 1292.11(a); Chapter 2.2(b) (Legal Service Providers). To be recognized by EOIR, an organization must affirmatively apply for that recognition. Such an organization must establish, among other requirements, that it is a non-profit religious, charitable, social service, or similar organization, and, if the organization charges fees, has a written policy for accommodating clients unable to pay fees for immigration legal services, is a Federal tax-exempt organization, and has at its disposal adequate knowledge, information, and experience in immigration law and procedure. The qualifications and procedures for organizations seeking recognition are set forth in the regulations. 8 C.F.R. §§ 1292.11, 1292.13. A recognized organization also has reporting, recordkeeping, and posting requirements. 8 C.F.R. § 1292.14. Questions regarding recognition may be directed to the EOIR, Office of Legal Access Programs. See Appendix B (EOIR Directory).

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(***b) Accredited representatives***. — Recognized organizations, or organizations applying for recognition, may request accreditation of individuals who are employed by or volunteer for that organization. The OLAP Director, in the exercise of discretion, may approve accreditation of an eligible individual. No individual may apply on his or her own behalf. The qualifications and procedures for individuals seeking accreditation are set forth in the regulations. 8 C.F.R. §§ 1292.12, 1292.13. In addition, an accredited representative must register with EOIR's eRegistry in order to practice before the Immigration Courts. See Chapters 2.3(b)(i) (eRegistry), 2.4(e) (Applicability of attorney

rules).

Accreditation is not transferrable from one representative to another, and no individual retains accreditation upon his or her separation from the recognized organization.

(c) Immigration specialists. — Accredited representatives should not be confused with non-lawyer immigration specialists, visa consultants, and "notarios." See Chapter 2.7 (Immigration Specialists). Accredited representatives must be expressly accredited by the OLAP Director and must be employed by an institution specifically recognized by the OLAP Director.

(d) Verification. — To verify that an individual has been accredited by EOIR, the public can either:

- consult the Recognition and Accreditation Lists at https://www.justice.gov/eoir/, or
- contact the Recognition and Accreditation Coordinator (see Appendix B (Directory)).

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(e) Applicability of attorney rules. — Except in those instances set forth in the regulations and this manual, accredited representatives are to observe the same rules and procedures as attorneys. See Chapter 2.3 (Attorneys).

(f) Signatures. — Only the accredited representative who is the representative of record may sign submissions to the Immigration Court. An accredited representative, even in the same organization, may not sign or file documents on behalf of another accredited representative. See Chapter 3.3(b) (Signatures).

(g) Representative misconduct. — Accredited representatives must comply with certain standards of professional conduct. See 8 C.F.R. §§ 1003.101 et seq., 1292.13.

(h) Request to be removed from list of recognized organizations or accredited representatives. — A recognized organization or an accredited representative who no longer wishes to be on the Recognized Organizations and Accredited Representatives Roster must submit a written request to the Recognition and Accreditation Coordinator. See Appendix B (EOIR Directory).

2.5 Law Students and Law Graduates

(a) Generally. — Law students and law graduates (law school graduates who are not yet admitted to practice law) may appear before the Immigration Court if certain conditions are met and the appearance is approved by the Immigration Judge. Recognition by the Immigration Court is not automatic and must be requested in writing. See 8 C.F.R. § 1292.1(a)(2).

(b) Law students. —

(i) Notice of Appearance. — A law student does not register with the Executive Office for Immigration Review eRegistry and cannot electronically file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.3(b) (Qualifications). A law student must file a paper Form EOIR-28. The law student should be careful to use the most current version of the Form EOIR-28, which is available on the EOIR website at www.justice.gov/eoir. He or she should check the box on the Form EOIR 28 indicating that he or she is a law student as defined in 8 C.F.R. § 1292.1(a)(2), and provide on the reverse side of the form both the name of the supervising attorney or accredited representative and that person's business address, if different from that of the law student. The supervising attorney or accredited representative must be registered to practice before EOIR and the Form EOIR-28 should also include the EOIR ID number of the supervising attorney or fully accredited representative.

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(ii) Representation statement. — A law student wishing to appear before the Immigration Court must file a statement that he or she is participating in a legal aid program or clinic conducted by a law school or nonprofit organization and is under the direct supervision of a faculty member, licensed attorney, or accredited representative. The statement should also state that the law student is appearing without direct or indirect remuneration from the alien being represented. Such statement should be filed with the Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28). The law student's supervisor may be required to accompany the law student at any hearing. 8 C.F.R. § 1292.1(a)(2).

(c) Law graduates. —

(i) Notice of Appearance. — A law graduate does not register with the Executive Office for Immigration Review eRegistry and cannot electronically file a Notice of Entry of Appearance as Attorney or Representative Before the

Immigration Court (Form EOIR-28). See Chapter 2.3(b) (Qualifications). A law graduate must file a paper Form EOIR-28. The law graduate should be careful to use the most current version of the Form EOIR-28, which is available on the EOIR website at www.justice.gov/eoir. He or she should check the box on the Form EOIR 28 indicating that he or she is a law graduate as defined in 8 C.F.R. § 1292.1(a)(2), and provide on the reverse side of the form both the name of the supervising attorney or accredited representative and that person's business address, if different from that of the law graduate. The supervising attorney or accredited representative must be registered to practice before EOIR and the Form EOIR-28 should also include the EOIR ID number of the supervising attorney or fully accredited representative.

(ii) Representation statement. — A law graduate wishing to appear before the Immigration Court must file a statement that he or she is under the direct supervision of a licensed attorney, or accredited representative. The statement should also state that the law graduate is appearing without direct or indirect remuneration from the alien being represented. Such statement should be filed with the Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28). The law graduate's supervisor may be required to accompany the law graduate at any hearing. 8 C.F.R. § 1292.1(a)(2).

(d) Representative misconduct. — Law students and law graduates must comply with standards of professional conduct. See 8 C.F.R. § 1003.101 et seq.

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2.6 Paralegals

Paralegals are professionals who assist attorneys in the practice of law. They are not themselves licensed to practice law and therefore may not represent parties before the Immigration Court.

2.7 Immigration Specialists

Immigration specialists—who include visa consultants and "notarios"—are not authorized to practice law or appear before the Immigration Court. These individuals may be violating the law by practicing law without a license. As such, they do not qualify either as accredited representatives or "reputable individuals" under the regulations. See Chapters 2.4 (Accredited Representatives), 2.9(a) (Reputable individuals).

Anyone, including members of the public, may report instances of suspected misconduct by immigration specialists to the Executive Office for Immigration Review, Fraud and Abuse Prevention Program. See Chapter 1.4(b) (EOIR Fraud and Abuse Prevention Program).

2.8 Family Members

If a party is a child, then a parent or legal guardian may represent the child before the Immigration Court, provided the parent or legal guardian clearly informs the Immigration Court of their relationship. If a party is an adult, a family member may represent the party *only* when the family member has been authorized by the Immigration Court to do so. See Chapter 2.9(a) (Reputable individuals).

2.9 Others

(a) Reputable individuals. — Upon request, an Immigration Judge has the discretion to allow a reputable individual to appear on behalf of an alien, if the Immigration Judge is satisfied that the individual is capable of providing competent representation to the alien. See 8 C.F.R. § 1292.1(a)(3). To qualify as a reputable individual, an individual must meet all of the following criteria:

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- be a person of good moral character
- appear on an individual basis, at the request of the alien
- receive no direct or indirect remuneration for his or her assistance
- file a declaration that he or she is not being remunerated for his or her assistance
- have a preexisting relationship with the alien (e.g., relative, neighbor, clergy), except in those situations where representation would otherwise not be available, and
- be officially recognized by the Immigration Court

Any individual who receives any sort of compensation or makes immigration appearances on a regular basis (such as a non-lawyer "immigration specialist," "visa

consultant," or "notario") does not qualify as a "reputable individual" as defined in the regulations.

A reputable individual does not register with the Executive Office for Immigration Review eRegistry and cannot electronically file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.3(b) (Qualifications). To appear before the Immigration Court, a reputable individual must file a paper Form EOIR-28. The reputable individual should be careful to use the most current version of the Form EOIR-28, which is available on the EOIR website at www.justice.gov/eoir. The reputable individual should check the box on the Form EOIR-28 indicating that he or she is a reputable individual as defined in 8 C.F.R. § 1292.1(a)(3). Identification Numbers ("EOIR ID numbers") are not issued to reputable individuals, and therefore need not be provided on the Form EOIR-28. A person asking to be recognized as a reputable individual should file a statement attesting to each of the criteria set forth above. This statement should accompany the Form EOIR-28.

(b) Fellow inmates. — The regulations do not provide for representation by fellow inmates or other detained persons. Fellow inmates do not qualify under any of the categories of representatives enumerated in the regulations.

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(c) Accredited officials of foreign governments. — An accredited official who is in the United States may appear before the Immigration Court in his or her official capacity with the alien's consent. See 8 C.F.R. § 1292.1(a)(5). An accredited official does not register with the Executive Office for Immigration Review eRegistry and cannot electronically file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.3(b) (Qualifications). To appear before the Immigration Court, an accredited official must file a paper Form EOIR-28. The accredited official should be careful to use the most current version of the Form EOIR-28, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir. An accredited official should check the box on the Form EOIR-28 indicating that he or she is an accredited foreign government official as defined in 8 C.F.R. § 1292.1(a)(5). Identification Numbers ("EOIR ID numbers") are not issued to accredited officials, and therefore need not be provided on the Form EOIR-28. The individual must also submit evidence verifying his or her status as an accredited official of a foreign government.

(d) Former employees of the Department of Justice. — Former employees of the Department of Justice may be restricted in their ability to appear before the Immigration Court. See 8 C.F.R. § 1292.1(c).

(e) Foreign student advisors. — Foreign student advisors, including "Designated School Officials," are not authorized to appear before the Immigration Court, unless the advisor is an accredited representative. See Chapter 2.4 (Accredited Representatives).

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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.

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(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.

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(vii) Faxes and e-mail. — The Immigration Court does not accept faxes or other electronic submissions unless the transmission has been specifically requested 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) except in certain situations. See Chapter 2.1(b) (Entering an Appearance). All other filings must be submitted as paper submissions to the Immigration Court.

(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.

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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).

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(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.

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(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.

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(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

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(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").

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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.

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(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.

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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.

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(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).

3.3 Documents

(a) Language and certified translations. — All documents filed with the Immigration Court must be in the English language or accompanied by a certified English translation. See 8 C.F.R. §§ 1003.33, 1003.23(b)(1)(i). An affidavit or declaration in English by a person who does not understand English must include a certificate of interpretation stating that the affidavit or declaration has been read to the person in a language that the person understands and that he or she understood it before signing. The certificate must also state that the interpreter is competent to translate the language of the document, and that the interpretation was true and accurate to the best of the interpreter's abilities.

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A certification of translation of a foreign-language document or declaration must be typed, signed by the translator, and attached to the foreign-language document. A certification must include a statement that the translator is competent to translate the language of the document and that the translation is true and accurate to the best of the translator's abilities. If the certification is used for multiple documents, the certification must specify the documents. The translator's address and telephone number must be included. See Appendix H (Sample Certificate of Translation).

(b) Signatures. — No forms, motions, briefs, or other submissions are properly filed without an original signature from either the alien, the alien's representative, or a representative of the Department of Homeland Security. For purposes of filing a Form EOIR-28, the electronic acknowledgement and submission of an electronically filed Form EOIR-28 constitutes the signature of the alien's representative. A Proof of Service also requires a signature but may be filed by someone designated by the filing party. See Chapter 3.2(e) (Proof of Service).

A signature represents a certification by the signer that: he or she has read the document; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is grounded in fact; the document is submitted in good faith; and the document has not been filed for any improper purpose. See 8 C.F.R. § 1003.102(j)(1). A signature represents the signer's authorization, attestation, and accountability. Every signature must be accompanied by the typed or printed name.

(i) Simulated signatures. — Signature stamps and computer-generated signatures are not acceptable on documents filed with the Immigration Court. These signatures do not convey the signer's personal authorization, attestation, and accountability for the filing. See also Chapters 3.1(a) (Filing), 3.3(d) (Originals and reproductions).

(ii) Law firms. — Except as provided in Chapter 2.3(j) (Appearances "on behalf of"), only an attorney of record–not a law firm, law office, or other attorney–may sign a submission to the Immigration Court. See Chapters 2.3(c) (Appearances), 2.3(e) (Multiple representatives), 2.3(f) (Law firms).

(iii) Accredited representatives. — Accredited representatives must sign their own submissions. See Chapter 2.4(f) (Signatures).

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(iv) Paralegals and other staff. — Paralegals and other staff are not authorized to practice before the Immigration Court and may not sign a submission to the Immigration Court. See Chapter 2.6 (Paralegals). However, a paralegal may sign a Proof of Service when authorized by the filing party. See Chapter 3.2(e) (Proof of Service).

(v) Other representatives. — Only those individuals who have been authorized by the Immigration Court to represent a party and have submitted a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) may sign submissions to the Immigration Court. See Chapters 2.5 (Law students and Law Graduates), 2.9 (Others).

(vi) Family members. — A family member may sign submissions on behalf of a party only under certain circumstances. See Chapter 2.8 (Family Members).

(c) Format. — The Immigration Court prefers all filings and supporting documents to be typed, but will accept handwritten filings that are legible. Illegible filings will be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings). All filings must be signed by the filing party. See Chapter 3.3(b) (Signatures).

(i) Order of documents. — Filings should be assembled as follows. All forms should be filled out completely. If a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) is required, it should be submitted at the front of the package. If a Form EOIR-28 has been filed electronically, a printed copy of the Form EOIR-28 is generally not required. See Chapter 2.1(b) (Entering an Appearance).

(A) Applications for relief. — An application package should comply with the instructions on the application. The application package should contain (in order):

(1) Form EOIR-28 (if required)
(2) Cover page
(3) If applicable, fee receipt (stapled to the application) or motion for a fee waiver
(4) Application
(5) Proposed exhibits (if any) with table of contents
(6) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees).

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(B) Proposed exhibits. — If proposed exhibits are not included as part of an application package, the proposed exhibit package should contain (in order):

(1) Form EOIR-28 (if required)
(2) Cover page
(3) Table of contents
(4) Proposed exhibits
(5) Proof of Service

See Chapters 2.1(b) (Entering an appearance), Chapters 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees).

(C) Witness list. — A witness list package should contain (in order):

(1) Form EOIR-28 (if required)
(2) Cover page
(3) Witness list (in compliance with the requirements of Chapter 3.3(g) (Witness lists))
(4) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption).

(D) Motions to reopen. — A motion package for a motion to reopen should contain (in order):

(1) Form EOIR-28
(2) Cover page
(3) If applicable, fee receipt (stapled to the motion or application) or motion for a fee waiver
(4) Motion to reopen
(5) A copy of the Immigration Judge's decision
(6) If applicable, a motion brief
(7) If applicable, a copy of the application for relief
(8) Supporting documentation (if any) with table of contents
(9) Alien's Change of Address Form (Form EOIR-33/IC) (recommended even if the alien's address has not changed)
(10) A proposed order for the Immigration Judge's signature
(11) Proof of Service

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See Chapters 2.1(b) (Entering an appearance), 2.2(c)(iii) (Motions), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees), 5 (Motions before the Immigration Court).

(E) Motions to reconsider. — A motion package for a motion to reconsider should contain (in order):

(1) Form EOIR-28
(2) Cover page
(3) If applicable, fee receipt (stapled to the motion or application) or motion for a fee waiver
(4) Motion to reconsider

(5) A copy of the Immigration Judge's decision
(6) If applicable, a motion brief
(7) If applicable, a copy of the application for relief
(8) Supporting documentation (if any) with table of contents
(9) Alien's Change of Address Form (Form EOIR-33/IC) (recommended even if the alien's address has not changed)
(10) A proposed order for the Immigration Judge's signature
(11) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 2.2(c)(iii) (Motions), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees), 5 (Motions before the Immigration Court).

***(F) Other filings*. —** Other filing packages, including pre-decision motions and briefs, should contain (in order):

(1) Form EOIR-28 (if required)
(2) Cover page
(3) If applicable, fee receipt (stapled to the filing) or motion for a fee waiver
(4) The filing
(5) Supporting documentation (if any) with table of contents
(6) If a motion, a proposed order for the Immigration Judge's signature
(7) Proof of service

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See Chapters 2.1(b) (Entering an appearance), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees).

(ii) Number of copies. — Except as provided in subsection (A) and (B), below, only the original of each application or other submission must be filed with the Immigration Court. For all filings, a copy must be served on the opposing party. See Chapter 3.2 (Service on the Opposing Party). Multiple copies of a filing (e.g., a brief, motion, proposed exhibit, or other supporting documentation) should not be filed unless otherwise instructed by the Immigration Judge.

***(A) Defensive asylum applications*. —** For defensive asylum applications, parties must submit to the Immigration Court the original

application. See Chapter 3.1(b)(iii)(A) (Defensive applications). In addition, a copy must be served on the opposing party. See Chapter 3.2 (Service on the Opposing Party).

(B) Consolidated cases. — In consolidated cases, parties should submit a separate copy of each submission for placement in each individual Record of Proceedings. However, a "master exhibit" may be filed in the lead individual's file for exhibits and supporting documentation applicable to more than one individual, with the approval of the Immigration Judge.

(iii) Pagination and table of contents. — All documents, including briefs, motions, and exhibits, should always be paginated by consecutive numbers placed at the bottom center or bottom right hand corner of each page.

Whenever proposed exhibits or supporting documents are submitted, the filing party should include a table of contents with page numbers identified. See Appendix P (Sample Table of Contents).

Where a party is filing more than one application, the party is encouraged to submit a separate evidence package, with a separate table of contents, for each application.

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(iv) Tabs. — Parties should use alphabetic tabs, commencing with the letter "A." The tabs should be affixed to the right side of the pages. In addition, parties should carefully follow the pagination and table of contents guidelines in subsection (iii), above.

(v) Paper size and document quality. — All documents should be submitted on standard 8½" x 11" paper, in order to fit into the Record of Proceedings. See 8 C.F.R. § 1003.32(b). The use of paper of other sizes, including legal-size paper (8½" x 14"), is discouraged. If a document is smaller than 8½" x 11", the document should be affixed to an 8½" x 11" sheet of paper or enlarged to 8½" x 11". If a document is larger than 8½" x 11", the document should be reduced in size by photocopying or other appropriate means, as authorized by the Immigration Judge. This provision does not apply to documents whose size cannot be altered without altering their authenticity. All documents must be legible. Copies that are so poor in quality as to be illegible may be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings).

Paper should be of standard stock white, opaque, and unglazed. Given its fragility and tendency to fade, photo-sensitive facsimile paper should never be used.

Ink should be dark, preferably black.

Briefs, motions, and supporting documentation should be single-sided.

(vi) Cover page and caption. **—** All filings should include a cover page. The cover page should include a caption and contain the following information:

- the name of the filing party
- the address of the filing party
- the title of the filing (such as "RESPONDENT's APPLICATION FOR CANCELLATION OF REMOVAL," "DHS WITNESS LIST," "RESPONDENT's MOTION TO REOPEN")
- the full name for each alien covered by the filing (as it appears on the charging document)
- the alien registration number ("A number") for each alien covered by the filing (if an alien has more than one A number, all the A numbers should appear on the cover page with a clear notation that the alien has multiple A numbers)
- the type of proceeding involved (such as removal, deportation, exclusion, or bond)
- the date and time of the hearing

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See Appendix F (Sample Cover Page). If the filing involves special circumstances, that information should appear prominently on the cover page, preferably in the top right corner and highlighted (e.g., "DETAINED," "JOINT MOTION," "EMERGENCY MOTION").

(vii) Fonts and spacing. **—** Font and type size must be easily readable. "Times Roman 12 point" font is preferred. Double-spaced text and single-spaced footnotes are also preferred. Both proportionally spaced and monospaced fonts are acceptable.

(viii) Binding. — The Immigration Court and the Board of Immigration Appeals use a two-hole punch system to maintain files. All forms, motions, briefs, and other submissions should always be pre-punched with holes along the top (centered and 2 ¾" apart). Submissions may be stapled in the top left corner. If stapling is impracticable, the use of removable binder clips is encouraged. Submissions should neither be bound on the side nor commercially bound, as such items must be disassembled to fit into the record of proceedings and might be damaged in the process. The use of ACCO-type fasteners and paper clips is discouraged.

(ix) Forms. — Forms should be completed in full and must comply with certain requirements. See Chapter 11 (Forms). See also Appendix E (Forms).

(d) Originals and reproductions. —

(i) Briefs and motions. — The original of a brief or motion must always bear an original signature. See Chapter 3.3(b) (Signatures).

(ii) Forms. — The original of a form must always bear an original signature. See Chapters 3.3(b) (Signatures), 1.4 (Submitting completed forms). In certain instances, forms must be signed in the presence of the Immigration Judge.

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(iii) Supporting documents. — Photocopies of supporting documents, rather than the originals, should be filed with the Immigration Court and served on the Department of Homeland Security (DHS). Examples of supporting documents include identity documents, photographs, and newspaper articles.

If supporting documents are filed at a master calendar hearing, the alien must make the originals available to DHS at the master calendar hearing for possible forensics examination at the Forensics Documents Laboratory. In addition, the alien must bring the originals to all individual calendar hearings.

If supporting documents are filed after the master calendar hearing(s), the filing should note that originals are available for review. In addition, the alien must bring the originals to all individual calendar hearings.

The Immigration Judge has discretion to retain original documents in the Record of Proceedings. The Immigration Judge notes on the record when original documents are turned over to DHS or the Immigration Court.

(iv) Photographs. — If a party wishes to submit a photograph, the party should follow the guidelines in subsection (iii), above. In addition, prior to bringing the photograph to the Immigration Court, the party should print identifying information, including the party's name and alien registration number (A number), on the back of the original photograph.

(e) Source materials. — Source materials should be provided to the Immigration Court and highlighted as follows.

(i) Source of law. — When a party relies on a source of law in any filing (e.g., a brief, motion, or pre-trial statement) that is not readily available, that source of law should be reproduced and provided to the Immigration Court and the other party, along with the filing. Similarly, if a party relies on governmental memoranda, legal opinions, advisory opinions, communiques, or other ancillary legal authority or sources in any filing, copies of such items should be provided to the Immigration Court and the other party, along with the filing.

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(ii) Publications as evidence. — When a party submits published material as evidence, that material must be clearly marked with identifying information, including the precise title, date, and page numbers. If the publication is difficult to locate, the submitting party should identify where the publication can be found and authenticated.

In all cases, the party should submit title pages containing identifying information for published material (e.g., author, year of publication). Where a title page is not available, identifying information should appear on the first page of the document. For example, when a newspaper article is submitted, the front page of the newspaper, including the name of the newspaper and date of publication, should be submitted where available, and the page on which the article appears should be identified. If the front page is not available, the name of the newspaper and the publication date should be identified on the first page of the submission.

Copies of State Department Country Reports on Human Rights Practices, as well as the State Department Annual Report on International Religious Freedom, must indicate the year of the particular report.

(iii) Internet publications. — When a party submits an internet publication as evidence, the party should follow the guidelines in subsection (ii), above, as well as provide the complete internet address for the material.

(iv) Highlighting. — When a party submits secondary source material ("background documents"), that party should highlight or otherwise indicate the pertinent portions of that secondary source material. Any specific reference to a party should always be highlighted.

(f) Criminal conviction documents. — Documents regarding criminal convictions must comport with the requirements of 8 C.F.R. § 1003.41. 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. The criminal history chart should contain the following information for each arrest:

- arrest date
- court docket number
- charges
- disposition
- immigration consequences, if any

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The documentation should be paginated, with the corresponding pages indicated on the criminal history chart. For a sample, see Appendix O (Sample Criminal History Chart). Under "Immigration Consequences," parties should simply state their "bottom-line" position (for example: "not an aggravated felony"). Parties may supplement the criminal history chart with a pre-hearing brief. See Chapter 4.19 (Pre-Hearing Briefs).

(g) Witness lists. — A witness list should include the following information for each witness, except the respondent:

- the name of the witness
- if applicable, the alien registration number ("A number")
- a written summary of the testimony

- the estimated length of the testimony
- the language in which the witness will testify
- a curriculum vitae or resume, if called as an expert

3.4 Filing Fees

(a) Where paid. — Fees for the filing of motions and applications for relief with the Immigration Court, when required, are paid to the Department of Homeland Security as set forth in 8 C.F.R. § 1103.7. The Immigration Court does not collect fees. See 8 C.F.R. §§ 1003.24, 1103.7.

(b) Filing fees for motions. —

(i) When required. —The following motions require a filing fee:

- a motion to reopen (except a motion that is based exclusively on a claim for asylum)
- a motion to reconsider (except a motion that is based on an underlying claim for asylum)

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8 C.F.R. §§ 1003.23(b)(1), 1003.24, 1103.7. For purposes of determining filing fee requirements, the term "asylum" here includes withholding of removal ("restriction on removal"), withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Where a filing fee is required, the filing fee must be paid in advance to the Department of Homeland Security and the fee receipt must be submitted with the motion. If a filing party is unable to pay the fee, he or she should request that the fee be waived. See subsection (d), below.

(ii) When not required. — The following motions do not require a filing fee:

- a motion to reopen that is based exclusively on a claim for asylum

- a motion to reconsider that is based on an underlying a claim for asylum
- a motion filed while proceedings are pending before the Immigration Court
- a motion requesting only a stay of removal, deportation, or exclusion
- a motion to recalendar
- any motion filed by the Department of Homeland Security
- a motion that is agreed upon by all parties and is jointly filed ("joint motion")
- a motion to reopen a removal order entered in absentia if the motion is filed under INA § 240(b)(5)(C)(ii)
- a motion to reopen a deportation order entered in absentia if the motion is filed under INA § 242B(c)(3)(B), as it existed prior to April 1, 1997
- a motion filed under law, regulation, or directive that specifically does not require a filing fee

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8 C.F.R. §§ 1003.23(b)(1), 1003.24, 1103.7. For purposes of determining filing fee requirements, the term "asylum" here includes withholding of removal ("restriction on removal"), withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

(c) Application fees. —

(i) When required. — When an application for relief that requires a fee is filed during the course of proceedings, the fee for that application must be paid in advance to the Department of Homeland Security (DHS). Instructions for paying application fees can be found in the DHS biometrics instructions, which are available on the Executive Office for Immigration Review website at

www.justice.gov/eoir. A fee receipt must be submitted when the application is filed with the Immigration Court.

If a filing party is unable to pay the fee, the party should file a motion for a fee waiver. See subsection (d), below.

(ii) When not required. — When an application for relief that requires a fee is the underlying basis of a motion to reopen, the fee for the application need not be paid to the Department of Homeland Security (DHS) in advance of the motion to reopen. Rather, only the fee for the motion to reopen must be paid in advance. The fee receipt for the motion to reopen must be attached to that motion. See subsection (b)(i), above. If the motion to reopen is granted, the fee for the underlying application must then be paid to DHS and that fee receipt must be submitted to the Immigration Court. See Chapter 3.1(c) (Must be "timely").

(d) When waived. — When a fee to file an application or motion is required, the Immigration Judge has the discretion to waive the fee upon a showing that the filing party is unable to pay the fee. However, the Immigration Judge will not grant a fee waiver where the application for relief is a Department of Homeland Security (DHS) form and DHS regulations prohibit the waiving of such fee. See 8 C.F.R. §§ 103.7, 1103.7.

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Fee waivers are not automatic. The request for a fee waiver must be accompanied by a properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. § 1746, substantiating the filing party's inability to pay the fee. If a filing is submitted without a required fee and the request for a fee waiver is denied, the filing will be deemed defectively filed and may be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings).

Fees are not reimbursed merely because the application or motion is granted.

(e) Amount of payment. —

(i) Motions to reopen or reconsider. — When a filing fee is required, the fee for motions to reopen or reconsider is $110. 8 C.F.R. § 1103.7(b)(2). The fee is paid to the Department of Homeland Security in advance. The fee receipt and motion are then filed with the Immigration Court.

(ii) Applications for relief. — Application fees are found in the application instructions and in the federal regulations. See 8 C.F.R. §§ 103.7, 1103.7(b)(1). See also Chapter 11 (Forms), Appendix E (Forms).

***(iii) Background and security checks*. —** The Department of Homeland Security (DHS) biometrics fee is found in the DHS biometrics instructions provided to the aliens in the Immigration Court. 8 C.F.R. § 1003.47(d). The Immigration Judge cannot waive the DHS biometrics fee.

***(f) Payments in consolidated proceedings*. —**

***(i) Motions to reopen and reconsider*. —** Only one motion fee should be paid in a consolidated proceeding. For example, if several aliens in a consolidated proceeding file simultaneous motions to reopen, only one motion fee should be paid.

***(ii) Applications for relief*. —** To determine the amount of the fee to be paid for applications filed in consolidated proceedings, the parties should follow the instructions on the application. In some cases, a fee is required for each application. For example, if each alien in a consolidated proceeding wishes to apply for cancellation of removal, a fee is required for each application.

***(g) Form of payment*. —** When a fee is required to file an application for relief or a motion to reopen or reconsider, the fee is paid to the Department of Homeland Security and the form of the payment is governed by federal regulations. See 8 C.F.R. § 103.7.

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***(h) Defective or missing payment*. —** If a fee is required to file an application for relief or motion but a fee receipt is not submitted to the Immigration Court (for example, because the fee was not paid in advance to the Department of Homeland Security), the filing is defective and may be rejected or excluded from evidence. If a fee is not paid in the correct amount or is uncollectible, the filing is defective and may be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings).

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Chapter 4 Hearings before the Immigration Judges

4.1 Types of Proceedings

Immigration Judges preside over courtroom proceedings in removal, deportation, exclusion, and other kinds of proceedings. See Chapter 1.5(a) (Jurisdiction). This chapter describes the procedures in removal proceedings.

Other kinds of proceedings conducted by Immigration Judges are discussed in the following chapters:

Chapter 7	Other Proceedings before Immigration Judges
Chapter 9	Detention and Bond
Chapter 10	Discipline of Practitioners

Note: Prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the two major types of courtroom proceedings conducted by Immigration Judges were deportation and exclusion proceedings. In 1996, the IIRIRA replaced deportation proceedings and exclusion proceedings with removal proceedings. The new removal provisions went into effect on April 1, 1997. See INA § 240, as amended by IIRIRA § 309(a). The regulations governing removal proceedings are found at 8 C.F.R. §§ 1003.12-1003.41, 1240.1-1240.26. For more information on deportation and exclusion proceedings, see Chapter 7 (Other Proceedings before Immigration Judges).

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4.2 Commencement of Removal Proceedings

(a) Notice to Appear. — Removal proceedings begin when the Department of Homeland Security files a Notice to Appear (Form I-862) with the Immigration Court after it is served on the alien. See 8 C.F.R. §§ 1003.13, 1003.14. The Notice to Appear, or "NTA," is a written notice to the alien which includes the following information:

- the nature of the proceedings
- the legal authority under which the proceedings are conducted
- the acts or conduct alleged to be in violation of the law

- the charge(s) against the alien and the statutory provision(s) alleged to have been violated
- the opportunity to be represented by counsel at no expense to the government
- the consequences of failing to appear at scheduled hearings
- the requirement that the alien immediately provide the Attorney General with a written record of an address and telephone number

The Notice to Appear replaces the Order to Show Cause (Form I-221), which was the charging document used to commence deportation proceedings, and the Notice to Applicant for Admission Detained for Hearing before an Immigration Judge (Form I-122), which was the charging document used to commence exclusion proceedings. See 8 C.F.R. § 1003.13.

(b) Failure to prosecute. — On occasion, an initial hearing is scheduled before the Department of Homeland Security (DHS) has been able to file a Notice to Appear with the Immigration Court. For example, DHS may serve a Notice to Appear, which contains a hearing date, on an alien, but not file the Notice to Appear with the court until some time later. Where DHS has not filed the Notice to Appear with the court by the time of the first hearing, this is known as a "failure to prosecute." If there is a failure to prosecute, the respondent and counsel may be excused until DHS files the Notice to Appear with the court, at which time a hearing is scheduled. Alternatively, at the discretion of the Immigration Judge, the hearing may go forward if both parties are present in court and DHS files the Notice to Appear in court at the hearing.

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4.3 References to Parties and the Immigration Judge

The parties in removal proceedings are the alien and the Department of Homeland Security (DHS). See Chapter 1.2(d) (Relationship to the Department of Homeland Security). To avoid confusion, the parties and the Immigration Judge should be referred to as follows:

- the alien should be referred to as "the respondent"
- the Department of Homeland Security should be referred to as "the Department of Homeland Security or "DHS"

- the attorney for the Department of Homeland Security should be referred to as "the Assistant Chief Counsel," "the DHS attorney," or "the government attorney"
- the respondent's attorney should be referred to as "the respondent's counsel" or "the respondent's representative"
- the respondent's representative, if not an attorney, should be referred to as "the respondent's representative"
- the Immigration Judge should be referred to as "the Immigration Judge" and addressed as "Your Honor" or "Judge __"

Care should be taken not to confuse the Department of Homeland Security with the Immigration Court or the Immigration Judge. See Chapter 1.5(e) (Department of Homeland Security).

4.4 Representation

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(a) Appearances. — A respondent in removal proceedings may appear without representation ("pro se") or with representation. See Chapter 2 (Appearances before the Immigration Court). If a party wishes to be represented, he or she may be represented by an individual authorized to provide representation under federal regulations. See 8 C.F.R. § 1292.1. See also Chapter 2 (Appearances before the Immigration Court). Whenever a respondent is represented, the respondent should submit all filings, documents, and communications to the Immigration Court through his or her representative. See Chapter 2.1(d) (Who may file).

(b) Notice of Appearance. — Representatives before the Immigration Court must file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). If at any time after the commencement of proceedings there is a change in representation, the new representative must file a new Form EOIR-28, as well as complying with the other requirements for substitution of counsel, if applicable. See Chapters 2.1(b) (Entering an appearance), 2.3(c) (Appearances), 2.3(d) (Scope of Appearances), 2.3(i)(i) (Substitution of counsel).

(c) Multiple representation. — For guidance on the limited circumstances in which parties may be represented by more than one representative, see Chapters 2.3(d) (Scope of representation), 2.3(e) (Multiple representatives).

(d) Withdrawal or substitution. — Withdrawal of counsel can be requested by oral or written motion. See Chapter 2.3(i)(ii) (Withdrawal of counsel). Substitution of counsel also can be requested by oral or written motion. See Chapter 2.3(i)(i)(Substitution of counsel).

4.5 Hearing and Filing Location

There are more than 200 Immigration Judges in over 50 Immigration Courts nationwide. The hearing location is identified on the Notice to Appear (Form I-862) or hearing notice. See Chapter 4.15(c) (Notification). Parties should note that documents are not necessarily filed at the location where the hearing is held. For information on hearing and filing locations, see Chapter 3.1(a) (Filing). If in doubt as to where to file documents, parties should contact the Immigration Court.

4.6 Form of the Proceedings

An Immigration Judge may conduct removal hearings:

- in person
- by video conference
- by telephone conference, except that evidentiary hearings on the merits may only be held by telephone if the respondent consents after being notified of the right to proceed in person or by video conference

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See INA § 240(b)(2), 8 C.F.R. § 1003.25(c). See also Chapter 4.7 (Hearings by Video or Telephone Conference).

Upon the request of the respondent or the respondent's representative, the Immigration Judge has the authority to waive the appearance of the respondent and/or the respondent's representative at specific hearings in removal proceedings. See 8 C.F.R. § 1003.25(a). See also Chapter 4.15(m) (Waivers of appearances).

4.7 Hearings by Video or Telephone Conference

(a) In general. — Immigration Judges are authorized by statute to hold hearings by video conference and telephone conference, except that evidentiary hearings on the

merits may only be conducted by telephone conference if the respondent consents after being notified of the right to proceed in person or through video conference. See INA § 240(b)(2), 8 C.F.R. § 1003.25(c). See also Chapter 4.6 (Form of the Proceedings).

(b) Location of parties. — Where hearings are conducted by video or telephone conference, the Immigration Judge, the respondent, the DHS attorney, and the witnesses need not necessarily be present together in the same location.

(c) Procedure. — Hearings held by video or telephone conference are conducted under the same rules as hearings held in person.

(d) Filing. — For hearings conducted by video or telephone conference, documents are filed at the Immigration Court having administrative control over the Record of Proceedings. See Chapter 3.1(a) (Filing). The locations from which the parties participate may be different from the location of the Immigration Court where the documents are filed. If in doubt as to where to file documents, parties should contact the Immigration Court.

In hearings held by video or telephone conference, Immigration Judges often allow documents to be faxed between the parties and the Immigration Judge. Accordingly, all documents should be single-sided. Parties should not attach staples to documents that may need to be faxed during the hearing.

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(e) More information. — Parties should contact the Immigration Court with any questions concerning an upcoming hearing by video or telephone conference.

4.8 Attendance

Immigration Court hearings proceed promptly on the date and time that the hearing is scheduled. Any delay in the respondent's appearance at a master calendar or individual calendar hearing may result in the hearing being held "in absentia" (in the respondent's absence). See 8 C.F.R. § 1003.26. See also Chapters 4.15 (Master Calendar Hearing), 4.16 (Individual Calendar Hearing), 4.17 (In Absentia Hearing).

Any delay in the appearance of either party's representative without satisfactory notice and explanation to the Immigration Court may, in the discretion of the Immigration Judge, result in the hearing being held in the representative's absence.

Respondents, representatives, and witnesses should be mindful that they may encounter delays in going through the mandatory security screening at the Immigration

Court, and should plan accordingly. See 4.14 (Access to Court). Regardless of such delays, all individuals must pass through the security screening and be present *in the courtroom* at the time the hearing is scheduled.

For hearings at detention facilities, parties should be mindful of any additional security restrictions at the facility. See 4.14 (Access to Court). Individuals attending such a hearing must always be present at the time the hearing is scheduled, regardless of any such additional security restrictions.

4.9 Public Access

(a) General public. —

(i) Hearings. — Hearings in removal proceedings are generally open to the public. However, special rules apply in the following instances:

- Evidentiary hearings involving an application for asylum or withholding of removal ("restriction on removal"), or a claim brought under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, are open to the public unless the respondent expressly requests that the hearing be closed. In cases involving these applications or claims, the Immigration Judge inquires whether the respondent requests such closure.

- Hearings involving an abused alien child are closed to the public. Hearings involving an abused alien spouse are closed to the public unless the abused spouse agrees that the hearing and the Record of Proceedings will be open to the public.

- Proceedings are closed to the public if information may be considered which is subject to a protective order and was filed under seal.

See 8 C.F.R. §§ 1003.27, 1003.31(d), 1003.46, 1208.6, 1240.10(b), 1240.11(c)(3)(i). Only parties, their representatives, employees of the Department of Justice, and persons authorized by the Immigration Judge may attend a closed hearing.

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(ii) Immigration Judges authorized to close hearings. — The Immigration Judge may limit attendance or close a hearing to protect parties, witnesses, or the public interest, even if the hearing would normally be open to the public. See 8 C.F.R. § 1003.27(b).

(iii) Motions to close hearing. — For hearings not subject to the special rules in subsection (i), above, parties may make an oral or written motion asking that the Immigration Judge close the hearing. See 8 C.F.R. § 1003.27(b). The motion should set forth in detail the reason(s) for requesting that the hearing be closed. If in writing, the motion should include a cover page labeled "MOTION FOR CLOSED HEARING" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

(b) News media. — Representatives of the news media may attend hearings that are open to the public. The news media are subject to the general prohibition on electronic devices in the courtroom. See Chapter 4.13 (Electronic Devices). The news media are strongly encouraged to notify the Office of Communications and Legislative Affairs and the Court Administrator before attending a hearing. See Appendix B (EOIR Directory).

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4.10 Record

(a) Hearings recorded. — Immigration hearings are recorded electronically by the Immigration Judge. See 8 C.F.R. § 1240.9. Parties may listen to recordings of hearings by prior arrangement with Immigration Court staff. See Chapters 1.6(c) (Records), 12.2 (Requests).

The entire hearing is recorded except for those occasions when the Immigration Judge authorizes an off-the-record discussion. On those occasions, the results of the off-the-record discussion are summarized by the Immigration Judge on the record. The Immigration Judge asks the parties if the summary is true and complete, and the parties are given the opportunity to add to or amend the summary, as appropriate. Parties should request such a summary from the Immigration Judge, if the Immigration Judge does not offer one.

(b) Transcriptions. — If an Immigration Judge's decision is appealed to the Board of Immigration Appeals, the hearing is transcribed in appropriate cases and a transcript is sent to both parties. For information on transcriptions, parties should consult the Board

Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

***(c) Record of Proceedings*. —** The official file containing the documents relating to an alien's case is the Record of Proceedings, which is created by the Immigration Court. The contents of the Record of Proceedings vary from case to case. However, at the conclusion of Immigration Court proceedings, the Record of Proceedings generally contains the Notice to Appear (Form I-862), hearing notice(s), the attorney's Notice of Appearance (Form EOIR-28), Alien's Change of Address Form(s) (Form EOIR-33/IC), application(s) for relief, exhibits, motion(s), brief(s), hearing tapes (if any), and all written orders and decisions of the Immigration Judge.

4.11 Interpreters

Interpreters are provided at government expense to individuals whose command of the English language is inadequate to fully understand and participate in removal proceedings. In general, the Immigration Court endeavors to accommodate the language needs of all respondents and witnesses. The Immigration Court will arrange for an interpreter both during the individual calendar hearing and, if necessary, the master calendar hearing. See 8 C.F.R. § 1003.22, Chapter 4.15(c) (Other requests).

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The Immigration Court uses staff interpreters employed by the Immigration Court, contract interpreters, and telephonic interpretation services. Staff interpreters take an oath to interpret and translate accurately at the time they are employed by the Department of Justice. Contract interpreters take an oath to interpret and translate accurately in court. See 8 C.F.R. § 1003.22.

4.12 Courtroom Decorum

***(a) Addressing the Immigration Judge*. —** The Immigration Judge should be addressed as either "Your Honor" or "Judge __." See Chapter 4.3 (References to Parties and the Immigration Judge). The parties should stand when the Immigration Judge enters and exits the courtroom.

***(b) Attire*. —** All persons appearing in the Immigration Court should respect the decorum of the court. Representatives should appear in business attire. All others should appear in proper attire.

(c) Conduct. — All persons appearing in the Immigration Court should respect the dignity of the proceedings. No food or drink may be brought into the courtroom, except as specifically permitted by the Immigration Judge. Disruptive behavior in the courtroom or waiting area is not tolerated.

(i) Communication between the parties. — Except for questions directed at witnesses, parties should not converse, discuss, or debate with each other or another person during a hearing. All oral argument and statements made during a hearing must be directed to the Immigration Judge. Discussions that are not relevant to the proceedings should be conducted outside the courtroom.

(ii) Representatives. — Attorneys and other representatives should observe the professional conduct rules and regulations of their licensing authorities. Attorneys and representatives should present a professional demeanor at all times.

(iii) Minors. — Children in removal proceedings must attend all scheduled hearings unless their appearance has been waived by the Immigration Judge. Unless participating in a hearing, children should not be brought to the Immigration Court. If a child disrupts a hearing, the hearing may be postponed with the delay attributed to the party who brought the child. Children are not allowed to stay in the waiting area without supervision.

For Immigration Courts in Department of Homeland Security detention facilities or federal, state, or local correctional facilities, the facility's rules regarding the admission of children, representatives, witnesses, and family members will apply in addition to this subsection. See 4.14 (Access to Court).

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4.13 Electronic Devices

(a) Recording devices. — Removal proceedings may only be recorded with the equipment used by the Immigration Judge. No device of any kind, including cameras, video recorders, and cassette recorders, may be used by any person other than the Immigration Judge to record any part of a hearing. See 8 C.F.R. § 1003.28.

(b) Possession of electronic devices during hearings. — Subject to subsection (c), below, all persons, including parties and members of the press, may keep in their possession laptop computers, cellular telephones, electronic calendars, and other electronic devices commonly used to conduct business activities, including electronic

devices which have collateral recording capability. Cellular telephones must be turned off during hearings. All other such devices must be turned off or made silent during hearings. No device may be used by any person other than the Immigration Judge to record any part of a hearing. See subsection (a), above.

(c) Use of electronic devices during hearings. — In any hearing before an Immigration Judge, all persons, including parties and members of the press, may use laptop computers, electronic calendars, and other electronic devices commonly used to conduct business activities. Such devices may only be used in silent mode. The use of such devices must not disrupt the hearing. Cellular telephones must be turned off during hearings. No device may be used by any person other than the Immigration Judge to record any part of a hearing. See subsection (a), above.

(d) Courtrooms administered under agreement. — In any Immigration Court or detention facility administered under agreement between the Executive Office for Immigration Review and federal, state, or local authorities, the facility's rules regarding the possession and use of electronic devices shall apply in addition to subsections (a) through (c), above. In some facilities, individuals, including attorneys, are not allowed to bring cellular telephones, laptop computers, and other electronic devices into the facility.

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4.14 Access to Court

(a) Security screening. —

(i) All Immigration Courts. — All Immigration Courts require individuals attending a hearing to pass through security screening prior to entering the court. All individuals attending a hearing should be mindful that they may encounter delays in passing through the security screening.

(ii) Detention facilities. — For hearings held in Department of Homeland Security detention facilities or federal, state, or local correctional facilities, compliance with additional security restrictions may be required. For example, individuals may be required to obtain advance clearance to enter the facility. In addition, cellular telephones, laptop computers, and other electronic devices are not allowed at some of these facilities. All persons attending a hearing at such a facility should be aware of the security restrictions in advance. Such individuals should contact the Immigration Court or the detention facility in advance if they have specific questions related to these restrictions.

(iii) Timeliness required. — Respondents, representatives, and witnesses must always be present in the courtroom at the time the hearing is scheduled. This applies regardless of any delays encountered in complying with the mandatory security screening and, if the hearing is held at a detention facility, with any additional security restrictions. See Chapter 4.8 (Attendance).

(b) No access to administrative offices. — Access to each Immigration Court's administrative offices is limited to Immigration Court staff and other authorized personnel. 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).

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(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.

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(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.

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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 applications(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.

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(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.

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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

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- 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.

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(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.

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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 <u>not</u> 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 .

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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.

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(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.

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(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.

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(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

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(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.

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(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).

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(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.

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(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

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(a) In general. Any delay in the respondent's appearance at a master calendar or individual calendar hearing may result in the respondent being ordered removed "in absentia" (in the respondent's absence). See 8 C.F.R. § 1003.26(c). See also Chapter 4.8 (Attendance). There is no appeal from a removal order issued in absentia. However, parties may file a motion to reopen to rescind an in absentia removal order. See Chapter 5.9 (Motions to Reopen In Absentia Orders).

(b) Deportation and exclusion proceedings. — Parties should note that in absentia orders in deportation and exclusion proceedings are governed by different standards than in absentia orders in removal proceedings. For the provisions governing in absentia orders in deportation and exclusion proceedings, see 8 C.F.R. § 1003.26. See also Chapter 7 (Other Hearings before Immigration Judges).

4.18 Pre-Hearing Conferences and Statements

(a) Pre-hearing conferences. — Pre-hearing conferences are held between the parties and the Immigration Judge to narrow issues, obtain stipulations between the

parties, exchange information voluntarily, and otherwise simplify and organize the proceeding. See 8 C.F.R. § 1003.21(a).

Pre-hearing conferences may be requested by a party or initiated by the Immigration Judge. A party's request for a pre-hearing conference may be made orally or by written motion. If in writing, the motion should be filed with a cover page labeled "MOTION FOR A PRE-HEARING CONFERENCE," and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

Even if a pre-hearing conference is not held, the parties are strongly encouraged to confer prior to a hearing in order to narrow issues for litigation. Parties are further encouraged to file pre-hearing statements following such discussions. See subsection (b), below.

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- the estimated time required to present the case
- a statement of unresolved issues in the proceeding

See 8 C.F.R. § 1003.21(b).

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(b) Pre-hearing statements. — An Immigration Judge may order the parties to file a pre-hearing statement See 8 C.F.R. § 1003.21(b). Parties are encouraged to file a pre-hearing statement even if not ordered to do so by the Immigration Judge. Parties also are encouraged to file pre-hearing briefs addressing questions of law. See Chapter 4.19 (Pre-Hearing Briefs).

(i) Filing. — A pre-hearing statement should be filed with a cover page with an appropriate label (e.g., "PARTIES' PRE-HEARING STATEMENT"), and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

(ii) Contents of a pre-hearing statement. — In general, the purpose of a pre-hearing statement is to narrow and reduce the factual and legal issues in advance of an individual calendar hearing. For example, a pre-hearing statement may include the following items:

- a statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible
- a list of proposed witnesses and what they will establish
- a list of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction
- the estimated time required to present the case
- a statement of unresolved issues in the proceeding

See 8 C.F.R. § 1003.21(b).

4.19 Pre-Hearing Briefs

(a) Generally. — An Immigration Judge may order the parties to file pre-hearing briefs. Parties are encouraged to file pre-hearing briefs even if not ordered to do so by the Immigration Judge. Parties are also encouraged to file pre-hearing statements to narrow and reduce the legal and factual issues in dispute. See Chapter 4.18(b) (Pre-hearing statements).

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(b) Guidelines. — Pre-hearing briefs advise the Immigration Judge of a party's positions and arguments on questions of law. A well-written pre-hearing brief is in the party's best interest and is of great importance to the Immigration Judge. Pre-hearing briefs should be clear, concise, and well-organized. They should cite the record, as appropriate. Pre-hearing briefs should cite legal authorities fully, fairly, and accurately.

Pre-hearing briefs should always recite those facts that are appropriate and germane to the adjudication of the issue(s) at the individual calendar hearing. They should cite proper legal authority, where such authority is available. See subsection (f), below. Pre-hearing briefs should not belabor facts or law that are not in dispute. Parties are encouraged to expressly identify in their pre-hearing briefs those facts or law that are not in dispute.

There are no limits to the length of pre-hearing briefs. Parties are encouraged, however, to limit the body of their briefs to 25 pages, provided that the issues in question can be adequately addressed. Pre-hearing briefs should always be paginated.

(c) Format. —

(i) Filing. — Pre-hearing briefs should be filed with a cover page with an appropriate label (e.g., "RESPONDENT's PRE-HEARING BRIEF"), and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). Pre-hearing briefs must be signed by the respondent, the respondent's primary attorney (notice attorney) or representative, or the representative of the Department of Homeland Security. See Chapter 3.3(b) (Signatures). See also Chapter 2 (Appearances before the Immigration Court).

(ii) Contents. — Unless otherwise directed by the Immigration Judge, the following items should be included in a pre-hearing brief:

- a concise statement of facts
- a statement of issues
- a statement of the burden of proof
- a summary of the argument
- the argument
- a short conclusion stating the precise relief or remedy sought

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(iii) Statement of facts. — Statements of facts in pre-hearing briefs should be concise. Facts should be set out clearly. Points of contention and points of agreement should be expressly identified.

Facts, like case law, require citation. Parties should support factual assertions by citing to any supporting documentation or exhibits, whether in the record or accompanying the brief. See subsection (f), below.

Do not misstate or misrepresent the facts, or omit unfavorable facts that are relevant to the legal issue. A brief's accuracy and integrity are paramount to the persuasiveness of the argument and the decision regarding the legal issue(s) addressed in the brief.

(iv) Footnotes. — Substantive arguments should be restricted to the text of pre-hearing briefs. The excessive use of footnotes is discouraged.

(v) Headings and other markers. — Pre-hearing briefs should employ headings, sub-headings, and spacing to make the brief more readable. Short paragraphs with topic sentences and proper headings facilitate the coherence and cohesiveness of arguments.

(vi) Chronologies. — Pre-hearing briefs should contain a chronology of the facts, especially where the facts are complicated or involve several events. Charts or similar graphic representations that chronicle events are welcome. See Appendix O (Sample Criminal History Chart).

(d) Consolidated pre-hearing briefs. C Where cases have been consolidated, one pre-hearing brief may be submitted on behalf of all respondents in the consolidated proceeding, provided that each respondent's full name and alien registration number ("A number") appear on the consolidated pre-hearing brief. See Chapter 4.21 (Combining and Separating Cases).

(e) Responses to pre-hearing briefs. — When a party files a pre-hearing brief, the other party may file a response brief. A response brief should be filed with a cover page with an appropriate label (e.g., "DHS RESPONSE TO PRE-HEARING BRIEF"), and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). Response briefs should comply with the guidelines for pre-hearing briefs set forth above.

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(f) Citation. — Parties are expected to provide complete and clear citations to all factual and legal authorities. Parties should comply with the citation guidelines in Appendix J (Citation Guidelines).

4.20 Subpoenas

(a) Applying for a subpoena. — A party may request that a subpoena be issued requiring that witnesses attend a hearing or that documents be produced. See 8 C.F.R. §§ 1003.35, 1287.4(a)(2)(ii). A request for a subpoena may be made by written motion or by oral motion. If made in writing, the request should be filed with a cover page labeled "MOTION FOR SUBPOENA," and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). Whether made orally or in writing, a motion for a subpoena must:

- provide the court with a proposed subpoena
- state what the party expects to prove by such witnesses or documentary evidence
- show affirmatively that the party has made diligent effort, without success, to produce the witnesses or documentary evidence

If requesting a subpoena for telephonic testimony, the party should also comply with Chapter 4.15(o)(iii) (Telephonic testimony).

(b) Contents. — A proposed subpoena should contain:

- the respondent's name and alien registration number (AA number")
- the type of proceeding
- the name and address of the person to whom the subpoena is directed
- a command that the recipient of the subpoena:
  - testify in court at a specified time,
  - testify by telephone at a specified time, or
  - produce specified books, papers, or other items
- a return on service of subpoena

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See 8 C.F.R. § 1003.35(b)(3), Appendix N (Sample Subpoena).

(c) Appearance of witness. — If the witness whose testimony is required is more than 100 miles from the Immigration Court where the hearing is being conducted, the subpoena must provide for the witness's appearance at the Immigration Court nearest to the witness to respond to oral or written interrogatories, unless the party calling the witness has no objection to bringing the witness to the hearing. See 8 C.F.R. § 1003.35(b)(4).

(d) Service. — A subpoena issued under the above provisions may be served by any person over 18 years of age not a party to the case. See 8 C.F.R. § 1003.35(b)(5).

4.21 Combining and Separating Cases

(a) Consolidated cases. — Consolidation of cases is the administrative joining of separate cases into a single adjudication for all of the parties involved. Consolidation is generally limited to cases involving immediate family members. The Immigration Court may consolidate cases at its discretion or upon motion of one or both of the parties, where appropriate. For example, the Immigration Court may grant consolidation when spouses or siblings have separate but overlapping circumstances or claims for relief. Consolidation must be sought through the filing of a written motion that states the reasons for requesting consolidation. Such motion should include a cover page labeled "MOTION FOR CONSOLIDATION" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). A copy of the motion should be filed for each case included in the request for consolidation. The motion should be filed as far in advance of any filing deadline as possible. See Chapter 3.1(b) (Timing of submissions).

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(b) Severance of cases. — Severance of cases is the division of a consolidated case into separate cases, relative to each individual. The Immigration Court may sever cases in its discretion or upon request of one or both of the parties. Severance must be sought through the filing of a written motion that states the reasons for requesting severance. Such motion should include a cover page labeled "MOTION FOR SEVERANCE" and comply with the deadlines and requirements for filing. See Chapter 3 (Filing before the Immigration Court), Appendix F (Sample Cover Page). A copy of the motion should be filed for each case included in the request for severance. Parties are advised, however, that such motion should be filed as far in advance of any filing deadline as possible. See Chapter 3.1(b) (Timing of submissions).

4.22 Juveniles

(a) Scheduling. — Immigration Courts do their best to schedule cases involving unaccompanied juveniles on a separate docket or at a fixed time in the week or month, separate and apart from adult cases.

(b) Representation. — An Immigration Judge cannot appoint a legal representative or a guardian ad litem for unaccompanied juveniles. However, the

Executive Office for Immigration Review encourages the use of pro bono legal resources for unaccompanied juveniles. For further information, see Chapter 2.2(b) (Legal service providers).

***(c) Courtroom orientation*. —** Juveniles are encouraged, under the supervision of court personnel, to explore an empty courtroom, sit in all locations, and practice answering simple questions before the hearing. The Department of Health and Human Services, Office of Refugee Resettlement, provides orientation for most juveniles in their native languages, explaining Immigration Court proceedings.

***(d) Courtroom modifications*. —** Immigration Judges make reasonable modifications for juveniles. These may include allowing juveniles to bring pillows, or toys, permitting juveniles to sit with an adult companion, and permitting juveniles to testify outside the witness stand next to a trusted adult or friend.

***(e) Detained juveniles*. —** For additional provisions regarding detained juveniles, see Chapter 9.2 (Detained Juveniles).

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Chapter 5 Motions before the Immigration Court

5.1 Who May File

(a) Parties. — Only an alien who is in proceedings before the Immigration Court (or the alien's representative), or the Department of Homeland Security may file a motion. A motion must identify all parties covered by the motion and state clearly their full names and alien registration numbers ("A numbers"), including all family members in proceedings. See Chapter 5.2(b) (Form), Appendix F (Sample Cover Page). The Immigration Judge will *not* assume that the motion includes all family members (or group members in consolidated proceedings). See Chapter 4.21 (Combining and Separating Cases).

(b) Representatives. — Whenever a party is represented, the party should submit all motions to the Court through the representative. See Chapter 2.1(d) (Who may file).

(i) Pre-decision motions. — If a representative has already filed a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), and the Immigration Judge has not rendered a final order in the case, a motion need not be accompanied by a Form EOIR-28. However, if a representative is appearing for the first time, the representative must file a Form EOIR-28 along with the motion. See Chapter 2 (Appearances before the Immigration Court).

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(ii) Post-decision motions. — All motions to reopen, motions to reconsider, and motions to reopen to rescind an in absentia order filed by a representative must be accompanied by a Form EOIR-28, even if the representative is already the representative of record. See Chapter 2 (Appearances before the Immigration Court).

(c) Persons not party to the proceedings. — Only a party to a proceeding, or a party's representative, may file a motion pertaining to that proceeding. Family members, employers, and other third parties may not file a motion. If a third party seeks Immigration Court action in a particular case, the request should be made through a party to the proceeding.

5.2 Filing a Motion

(a) Where to file. **—** The Immigration Court may entertain motions only in those cases in which it has jurisdiction. See subsections (i), (ii), (iii), below, Appendix K (Where to File). If the Immigration Court has jurisdiction, motions are filed with the Immigration Court having administrative control over the Record of Proceedings. See Chapter 3.1(a) (Filing).

(i) Cases not yet filed with the Immigration Court. **—** Except for requests for bond redetermination proceedings, the Immigration Court cannot entertain motions if a charging document (i.e., a Notice to Appear) has not been filed with the court. See Chapters 4.2 (Commencement of Removal Proceedings), 9.3(b) (Jurisdiction).

(ii) Cases pending before the Immigration Court. **—** If a charging document has been filed with the Immigration Court but the case has not yet been decided by the Immigration Judge, all motions must be filed with the court.

(iii) Cases already decided by the Immigration Court. **—**

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(A) No appeal filed. **—** Where a case has been decided by the Immigration Judge, and no appeal has been filed with the Board of Immigration Appeals, motions to reopen and motions to reconsider are filed with the Immigration Court. Parties should be mindful of the strict time and number limits on motions to reopen and motions to reconsider. See Chapters 5.7 (Motions to Reopen), 5.8 (Motions to Reconsider), 5.9 (Motions to Reopen In Absentia Orders).

(B) Appeal filed. **—** Where a case has been decided by the Immigration Judge, and an appeal has been filed with the Board of Immigration Appeals, the parties should consult the Board Practice Manual for guidance on where to file motions. The Board Practice Manual is available on the Executive Office for Immigration Review website at www.justice.gov/eoir. See also Appendix K (Where to File).

(b) Form. **—** There is no official form for filing a motion before the Immigration Court. Motions must be filed with a cover page and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). In addition, all motions must be accompanied by the appropriate proposed order for the Immigration Judge's signature. See Appendix Q (Sample Proposed Order).

Motions and supporting documents should be assembled in the order described in Chapter 3.3(c)(i) (Order of documents).

A motion's cover page must accurately describe the motion. See Chapter 3.3(c)(vi) (Cover page and caption). Parties should note that the Immigration Court construes motions according to content rather than title. Therefore, the court applies time and number limits according to the nature of the motion rather than the motion's title. See Chapter 5.3 (Motion Limits).

Motions must state with particularity the grounds on which the motion is based. In addition, motions must identify the relief or remedy sought by the filing party.

(c) When to file. — Pre-decision motions must comply with the deadlines for filing discussed in Chapter 3.1(b) (Timing of submissions). Deadlines for filing motions to reopen, motions to reconsider, and motions to reopen in absentia orders are governed by statute or regulation. See Chapters 5.7 (Motions to Reopen), 5.8 (Motions to Reconsider), 5.9 (Motions to Reopen In Absentia Orders).

(d) Copy of underlying order. — Motions to reopen and motions to reconsider should be accompanied by a copy of the Immigration Judge's decision, where available.

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(e) Evidence. — Statements made in a motion are *not* evidence. If a motion is based upon evidence that was not made part of the record by the Immigration Judge, that evidence should be submitted with the motion. Such evidence may include sworn affidavits, declarations under the penalties of perjury, and documentary evidence. The Immigration Court will not suspend or delay adjudication of a motion pending the receipt of supplemental evidence.

All evidence submitted with a motion must comply with the requirements of Chapter 3.3 (Documents).

(f) Filing fee. — Where the motion requires a filing fee, the motion must be accompanied by a fee receipt from the Department of Homeland Security (DHS) or a request that the Immigration Judge waive the fee. Filing fees are paid to DHS. See Chapter 3.4 (Filing Fees).

(g) Application for relief. — A motion based upon eligibility for relief must be accompanied by a copy of the application for that relief and all supporting documents, if an application is normally required. See 8 C.F.R. § 1003.23(b)(3). A grant of a motion

based on eligibility for relief does not constitute a grant of the underlying application for relief.

The application for relief must be duly completed and executed, in accordance with the requirements for such relief. The original application for relief should be held by the filing party for submission to the Immigration Court, if appropriate, after the ruling on the motion. See Chapter 11.3 (Submitting Completed Forms). The copy that is submitted to the Immigration Court should be accompanied by a copy of the appropriate supporting documents.

If a certain form of relief requires an application, *prima facie eligibility for that relief cannot be shown without it.* For example, if a motion to reopen is based on adjustment of status, a copy of the completed Application to Adjust Status (Form I-485) should be filed *with* the motion, along with the necessary documents.

Application fees are *not* paid to the Immigration Court and should not accompany the motion. Fees for applications should be paid if and when the motion is granted in accordance with the filing procedures for that application. See Chapter 3.4(c) (Application fees).

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(h) Visa petitions. — If a motion is based on an application for adjustment of status and there is an underlying visa petition that has been approved, a copy of the visa petition and the approval notice should accompany the motion. When a petition is subject to visa availability, evidence that a visa is immediately available should also accompany the motion (e.g., a copy of the State Department's Visa Bulletin reflecting that the priority date is "current").

If a motion is based on adjustment of status and the underlying visa petition has not yet been adjudicated, a copy of that visa petition, all supporting documents, and the filing receipt (Form I-797) should accompany the motion.

Parties should note that, in certain instances, an approved visa petition is required for motions based on adjustment of status. See, e.g., *Matter of H-A-*, 22 I&N Dec. 728 (BIA 1999), modified by *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002).

Filing fees for visa petitions are not paid to the Immigration Court and should not accompany the motion. The filing fee for a visa petition is submitted to DHS when the petition is filed with DHS.

(i) Opposing party's position. **—** The party filing a motion should make a good faith effort to ascertain the opposing party's position on the motion. The opposing party's position should be stated in the motion. If the filing party was unable to ascertain the opposing party's position, a description of the efforts made to contact the opposing party should be included.

(j) Oral argument. **—** The Immigration Court generally does not grant requests for oral argument on a motion. If the Immigration Judge determines that oral argument is necessary, the parties are notified of the hearing date.

5.3 Motion Limits

Certain motions are limited in time (when the motions must be filed) and number (how many motions may be filed). Pre-decision motions are limited in time. See Chapter 3.1(b) (Timing of submissions). Motions to reopen and motions to reconsider are limited in both time and number. See Chapters 5.7 (Motions to Reopen), 5.8 (Motions to Reconsider), 5.9 (Motions to Reopen In Absentia Orders). Time and number limits are strictly enforced.

5.4 Multiple Motions

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When multiple motions are filed, the motions should be accompanied by a cover letter listing the separate motions. In addition, each motion must include a cover page and comply with the deadlines and requirements for filing. See Chapter 5.2(b) (Form), Appendix F (Sample Cover Page).

Parties are strongly discouraged from filing compound motions, which are motions that combine two separate requests. Parties should note that time and number limits apply to motions even when submitted as part of a compound motion. For example, if a motion seeks both reopening and reconsideration, and is filed more than 30 days after the Immigration Judge's decision (the deadline for reconsideration) but within 90 days of that decision (the deadline for reopening), the portion that seeks reconsideration is considered untimely.

5.5 Motion Briefs

A brief is not required in support of a motion. However, if a brief is filed, it should accompany the motion. See 8 C.F.R. § 1003.23(b)(1)(ii). In general, motion briefs should comply with the requirements of Chapters 3.3 (Documents) and 4.19 (Pre-Hearing Briefs).

A brief filed in opposition to a motion must comply with the filing deadlines for responses. See Chapter 3.1(b) (Timing of submissions).

5.6 Transcript Requests

The Immigration Court does not prepare a transcript of proceedings. See Chapter 4.10 (Record). Parties are reminded that recordings of proceedings are generally available for review by prior arrangement with the Immigration Court. See Chapter 1.6(c) (Records).

5.7 Motions to Reopen

(a) Purpose. — A motion to reopen asks the Immigration Court to reopen proceedings after the Immigration Judge has rendered a decision, so that the Immigration Judge can consider new facts or evidence in the case.

(b) Requirements. —

(i) Filing. — The motion should be filed with a cover page labeled "MOTION TO REOPEN" and comply with the deadlines and requirements for filing. See subsection (c), below, Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). If the alien is represented, the attorney must file a paper, not an electronic, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). To ensure that the Immigration Court has the alien's current address, an Alien's Change of Address Form (EOIR-33/IC) should be filed with the motion. Depending on the nature of the motion, a filing fee or fee waiver request may be required. See Chapter 3.4 (Filing Fees). If the motion is based on eligibility for relief, the motion must be accompanied by a copy of the application for that relief and all supporting documents, if an application is normally required. See Chapter 5.2(g) (Application for relief).

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(ii) Content. — A motion to reopen must state the new facts that will be proven at a reopened hearing if the motion is granted, and the motion must be supported by affidavits or other evidentiary material. 8 C.F.R. § 1003.23(b)(3).

A motion to reopen is not granted unless it appears to the Immigration Judge that the evidence offered is material and was not available and could not

have been discovered or presented at an earlier stage in the proceedings. See 8 C.F.R. § 1003.23(b)(3).

A motion to reopen based on an application for relief will not be granted if it appears the alien's right to apply for that relief was fully explained and the alien had an opportunity to apply for that relief at an earlier stage in the proceedings (unless the relief is sought on the basis of circumstances that have arisen subsequent to that stage of the proceedings). 8 C.F.R. § 1003.23(b)(3).).

(c) Time limits. **—** As a general rule, a motion to reopen must be filed within 90 days of an Immigration Judge's final order. 8 C.F.R. § 1003.23(b)(1). (For cases decided by the Immigration Judge before July 1, 1996, the motion to reopen was due on or before September 30, 1996. 8 C.F.R. § 1003.23(b)(1)). There are few exceptions. See subsection (e), below.

Responses to motions to reopen are due within ten (10) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

(d) Number limits. **—** A party is permitted only one motion to reopen. 8 C.F.R. § 1003.23(b)(1). There are few exceptions. See subsection (e), below.

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(e) Exceptions to the limits on motions to reopen. **—** A motion to reopen may be filed outside the time and number limits only in specific circumstances. See 8 C.F.R. § 1003.23(b)(4).

(i) Changed circumstances. **—** When a motion to reopen is based on a request for asylum, withholding of removal ("restriction on removal"), or protection under the Convention Against Torture, and it is premised on new circumstances, the motion must contain a complete description of the new facts that comprise those circumstances and articulate how those circumstances affect the party's eligibility for relief. See 8 C.F.R. § 1003.23(b)(4)(i). Motions based on changed circumstances must also be accompanied by evidence of the changed circumstances alleged. See 8 C.F.R. § 1003.23(b)(3).

(ii) In absentia proceedings. **—** There are special rules pertaining to motions to reopen following an alien's failure to appear for a hearing. See Chapter 5.9 (Motions to Reopen In Absentia Orders).

(iii) Joint motions. — Motions to reopen that are agreed upon by all parties and are jointly filed are not limited in time or number. See 8 C.F.R. § 1003.23(b)(4)(iv).

(iv) DHS motions. — For cases in removal proceedings, the Department of Homeland Security (DHS) is not subject to time and number limits on motions to reopen. See 8 C.F.R. § 1003.23(b)(1). For cases brought in deportation or exclusion proceedings, DHS is subject to the time and number limits on motions to reopen, unless the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum. See 8 C.F.R. § 1003.23(b)(1).

(v) Pre-9/30/96 motions. — Motions filed before September 30, 1996 do not count toward the one-motion limit.

(vi) Battered spouses, children, and parents. — There are special rules for certain motions to reopen by battered spouses, children, and parents. INA § 240(c)(7)(C)(iv).

(vii) Other. — In addition to the regulatory exceptions for motions to reopen, exceptions may be created in accordance with special statutes, case law, directives, or other special legal circumstances. The Immigration Judge may also reopen proceedings at any time on his or her own motion. See 8 C. F. R. § 1003.23(b)(1).

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(f) Evidence. — A motion to reopen must be supported by evidence. See Chapter 5.2(e) (Evidence).

(g) Motions filed prior to deadline for appeal. — A motion to reopen filed prior to the deadline for filing an appeal does not stay or extend the deadline for filing the appeal.

(h) Motions filed while an appeal is pending. — Once an appeal is filed with the Board of Immigration Appeals, the Immigration Judge no longer has jurisdiction over the case. See Chapter 5.2(a) (Where to file). Thus, motions to reopen should not be filed with the Immigration Court after an appeal is taken to the Board.

(i) Administratively closed cases. — When proceedings have been administratively closed, the proper motion is a motion to recalendar, *not* a motion to reopen. See Chapter 5.10(t) (Motion to recalendar).

(j) Automatic stays. — A motion to reopen that is filed with the Immigration Court does not automatically stay an order of removal or deportation. See Chapter 8 (Stays). For automatic stay provisions for motions to reopen to rescind in absentia orders, see Chapter 5.9(d)(iv) (Automatic stay).

(k) Criminal convictions. — A motion claiming that a criminal conviction has been overturned, vacated, modified, or disturbed in some way must be accompanied by clear evidence that the conviction has actually been disturbed. Thus, neither an intention to seek post-conviction relief nor the mere eligibility for post-conviction relief, by itself, is sufficient to reopen proceedings.

5.8 Motions to Reconsider

(a) Purpose. — A motion to reconsider either identifies an error in law or fact in the Immigration Judge's prior decision or identifies a change in law that affects an Immigration Judge's prior decision and asks the Immigration Judge to reexamine his or her ruling. A motion to reconsider is based on the existing record and does not seek to introduce new facts or evidence.

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(b) Requirements. — The motion should be filed with a cover page labeled "MOTION TO RECONSIDER" and comply with the deadlines and requirements for filing. See subsection (c), below, Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). If the alien is represented, the attorney must file a paper, not an electronic, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). To ensure that the Immigration Court has the alien's current address, an Alien's Change of Address Form (EOIR-33/IC) should be filed with the motion. A filing fee or a fee waiver request may be required. See Chapter 3.4 (Filing Fees).

(c) Time limits. — A motion to reconsider must be filed within 30 days of the Immigration Judge's final administrative order. 8 C.F.R. § 1003.23(b)(1). (For cases decided by the Immigration Court before July 1, 1996, the motion to reconsider was due on or before July 31, 1996. 8 C.F.R. § 1003.23(b)(1)).

Responses to motions to reconsider are due within ten (10) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

(d) Number limits. — As a general rule, a party may file only one motion to reconsider. See 8 C.F.R. § 1003.23(b)(1). Motions filed prior to July 31, 1996, do not

count toward the one-motion limit. Although a party may file a motion to reconsider the denial of a motion to reopen, a party may not file a motion to reconsider the denial of a motion to reconsider. 8 C.F.R. § 1003.23(b)(1).

(e) Exceptions to the limits on motions to reconsider. —

(i) Alien motions. — There are no exceptions to the time and number limitations on motions to reconsider when filed by an alien.

(ii) DHS motions. — For cases in removal proceedings, the Department of Homeland Security (DHS) is not subject to time and number limits on motions to reconsider. See 8 C.F.R. § 1003.23(b)(1). For cases brought in deportation or exclusion proceedings, DHS is subject to the time and number limits on motions to reconsider, unless the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum. See 8 C.F.R. § 1003.23(b)(1).

(iii) Other. — In addition to the regulatory exceptions for motions to reconsider, exceptions may be created in accordance with special statutes, case law, directives, or other special legal circumstances. The Immigration Judge may also reconsider proceedings at any time on its own motion. 8 C.F.R. § 1003.23(b)(1).

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(f) Identification of error. — A motion to reconsider must state with particularity the errors of fact or law in the Immigration Judge's prior decision, with appropriate citation to authority and the record. If a motion to reconsider is premised upon changes in the law, the motion should identify the changes and, where appropriate, provide copies of that law. For citation guidelines, see Chapter 4.19(f) (Citation), Appendix J (Citation Guidelines).

(g) Motions filed prior to deadline for appeal. — A motion to reconsider filed prior to the deadline for filing an appeal does not stay or extend the deadline for filing the appeal.

(h) Motions filed while an appeal is pending. — Once an appeal is filed with the Board of Immigration Appeals, the Immigration Judge no longer has jurisdiction over the case. See Chapter 5.2(a) (Where to file). Thus, motions to reconsider should not be filed with an Immigration Judge after an appeal is taken to the Board.

(i) Automatic stays. — A motion to reconsider does not automatically stay an order of removal or deportation. See Chapter 8 (Stays).

(j) Criminal convictions. — When a criminal conviction has been overturned, vacated, modified, or disturbed in some way, the proper motion is a motion to reopen, not a motion to reconsider. See Chapter 5.7(k) (Criminal convictions).

5.9 Motions to Reopen In Absentia Orders

(a) In general. — A motion to reopen requesting that an in absentia order be rescinded asks the Immigration Judge to consider the reasons why the alien did not appear at the alien's scheduled hearing. See Chapter 4.17 (In Absentia Hearing).

(b) Filing. — The motion should be filed with a cover page labeled "MOTION TO REOPEN AN IN ABSENTIA ORDER" and comply with the deadlines and requirements for filing. See subsection (d), below, Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). If the alien is represented, the attorney must file a paper, not an electronic, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). To ensure that the Immigration Court has the alien's current address, an Alien's Change of Address Form (EOIR-33/IC) should be filed with the motion. A filing fee or fee waiver request may be required, depending on the nature of the motion. See 8 C.F.R. § 1003.24(b)(2).

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(c) Deportation and exclusion proceedings. — The standards for motions to reopen to rescind in absentia orders in deportation and exclusion proceedings differ from the standards in removal proceedings. See Chapter 7 (Other Proceedings before Immigration Judges). The provisions in subsection (d), below, apply to removal proceedings only. Parties in deportation or exclusion proceedings should carefully review the controlling law and regulations. See 8 C.F.R. § 1003.23(b)(4)(iii).

(d) Removal proceedings. — The following provisions apply to motions to reopen to rescind in absentia orders in removal proceedings only. Parties should note that, in removal proceedings, an in absentia order may be rescinded *only* upon the granting of a motion to reopen. The Board of Immigration Appeals does not have jurisdiction to consider direct appeals of in absentia orders in removal proceedings.

(i) Content. — A motion to reopen to rescind an in absentia order must demonstrate that:

- the failure to appear was because of exceptional circumstances;
- the failure to appear was because the alien did not receive proper notice; or
- the failure to appear was because the alien was in federal or state custody and the failure to appear was through no fault of the alien.

INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii). The term "exceptional circumstances" refers to exceptional circumstances beyond the control of the alien (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances). INA § 240(e)(1).

(ii) Time limits. —

(A) Within 180 days. — If the motion to reopen to rescind an in absentia order is based on an allegation that the failure to appear was because of exceptional circumstances, the motion must be filed within 180 days after the in absentia order. See INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii).

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(B) At any time. — If the motion to reopen to rescind an in absentia order is based on an allegation that the alien did not receive proper notice of the hearing, or that the alien was in federal or state custody and the failure to appear was through no fault of the alien, the motion may be filed at any time. See INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii).

(C) Responses. — Responses to motions to reopen to rescind in absentia orders are due within ten (10) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

(iii) Number limits. — The alien is permitted to file only one motion to reopen to rescind an in absentia order. 8 C.F.R. § 1003.23(b)(4)(ii).

(iv) Automatic stay. — The removal of the alien is automatically stayed pending disposition by the Immigration Judge of the motion to reopen to rescind

an in absentia order in removal proceedings. See INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii).

5.10 Other Motions

(a) Motion to continue. **—** A request for a continuance of any hearing should be made by written motion. Oral motions to continue are discouraged. The motion should set forth in detail the reasons for the request and, if appropriate, be supported by evidence. See Chapter 5.2(e) (Evidence). It should also include the date and time of the hearing, as well as preferred dates that the party is available to re-schedule the hearing. However, parties should be mindful that the Immigration Court retains discretion to schedule continued cases on dates that the court deems appropriate.

The motion should be filed with a cover page labeled "MOTION TO CONTINUE" and comply with the deadlines and requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

The filing of a motion to continue does not excuse the appearance of an alien or representative at any scheduled hearing. Therefore, until the motion is granted, parties must appear at all hearings as originally scheduled.

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(b) Motion to advance. **—** A request to advance a hearing date (move the hearing to an earlier date) should be made by written motion. Motions to advance are disfavored. Examples of circumstances under which a hearing date might be advanced include:

- imminent ineligibility for relief, such as a minor alien "aging out" of derivative status
- a health crisis necessitating immediate action by the Immigration Judge

A motion to advance should completely articulate the reasons for the request and the adverse consequences if the hearing date is not advanced. The motion should be filed with a cover page labeled "MOTION TO ADVANCE" and comply with the deadlines and requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

(c) Motion to change venue. **—** A request to change venue should be made by written motion. The motion should be supported by documentary evidence. See Chapter 5.2(e) (Evidence). The motion should contain the following information:

- the date and time of the next scheduled hearing
- an admission or denial of the factual allegations and charge(s) in the Notice to Appear (Form I-862)
- a designation or refusal to designate a country of removal
- if the alien will be requesting relief from removal, a description of the basis for eligibility
- a fixed street address where the alien may be reached for further hearing notification
- if the address at which the alien is receiving mail has changed, a properly completed Alien's Change of Address Form (Form EOIR-33/IC)
- a detailed explanation of the reasons for the request

See generally *Matter of Rahman*, 20 I&N Dec. 480 (BIA 1992), 8 C.F.R. § 1003.20.

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The motion should be filed with a cover page labeled "MOTION TO CHANGE VENUE," accompanied by a proposed order for change of venue, and comply with the deadlines and requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

The filing of a motion to change venue does not excuse the appearance of an alien or representative at any scheduled hearing. Therefore, until the motion is granted, parties must appear at all hearings as originally scheduled.

(d) Motion for substitution of counsel. — See Chapter 2.3(i)(Change in representation).

(e) Motion to withdraw as counsel. — See Chapter 2.3(i) (Change in representation).

(f) Motion for extension. — See Chapter 3.1(c)(iv) (Motions for extensions of filing deadlines).

(g) Motion to accept an untimely filing. — See Chapter 3.1(d)(ii) (Untimely filings).

(h) Motion for closed hearing. — See Chapter 4.9 (Public Access).

(i) Motion to waive representative's appearance. — See Chapter 4.15 (Master Calendar Hearing).

(j) Motion to waive respondent's appearance. — See Chapter 4.15 (Master Calendar Hearing).

(k) Motion to permit telephonic appearance. — See Chapter 4.15 (Master Calendar Hearing).

(l) Motion to request an interpreter. — See Chapter 4.15 (Master Calendar Hearing).

(m) Motion for video testimony. — See Chapter 4.15 (Master Calendar Hearing).

(n) Motion to present telephonic testimony. — See Chapter 4.15 (Master Calendar Hearing).

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(o) Motion for subpoena. — See Chapter 4.20 (Subpoenas).

(p) Motion for consolidation. — See Chapter 4.21 (Combining and Separating Cases).

(q) Motion for severance. — See Chapter 4.21 (Combining and Separating Cases).

(r) Motion to stay removal or deportation. — See Chapter 8 (Stays).

(s) Motions in disciplinary proceedings. — Motions in proceedings involving the discipline of an attorney or representative are discussed in Chapter 10 (Discipline of Practitioners).

(t) Motion to recalendar. — When proceedings have been administratively closed and a party wishes to reopen the proceedings, the proper motion is a motion to recalendar, not a motion to reopen. A motion to recalendar should provide the date and

the reason the case was closed. If available, a copy of the closure order should be attached to the motion. The motion should be filed with a cover page labeled "MOTION TO RECALENDAR" and comply with the requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). To ensure that the Immigration Court has the alien's current address, an Alien's Change of Address Form (EOIR-33/IC) should be filed with the motion. Motions to recalendar are not subject to time and number restrictions.

(u) Motion to amend. — The Immigration Judge entertains motions to amend previous filings in limited situations (e.g., to correct a clerical error in a filing). The motion should clearly articulate what needs to be corrected in the previous filing. The filing of a motion to amend does not affect any existing motion deadlines.

The motion should be filed with a cover page labeled "MOTION TO AMEND" and comply with the requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

(v) Other types of motions. — The Immigration Court entertains other types of motions as appropriate to the facts and law of each particular case, provided that the motion is timely, is properly filed, is clearly captioned, and complies with the general motion requirements. See Chapters 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

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5.11 Decisions

Immigration Judges decide motions either orally at a hearing or in writing. If the decision is in writing, it is generally served on the parties by regular mail.

5.12 Response to Motion

Responses to motions must comply with the deadlines and requirements for filing. See 8 C.F.R. § 1003.23(a), Chapter 3 (Filing with the Immigration Court). A motion is deemed unopposed unless timely response is made. Parties should note that unopposed motions are not necessarily granted. Immigration Judges may deny a motion before the close of the response period without waiting for a response from the opposing party if the motion does not comply with the applicable legal requirements. Examples include:

- Denial of a motion to withdraw as counsel of record that does not contain a statement that the attorney has notified the respondent of the request to withdraw as counsel or, if the respondent could not be notified, an explanation of the efforts made to notify the respondent of the request. See Chapter 2.3(i)(ii) (Withdrawal of counsel).

- Denial of a motion to change venue that does not identify the fixed address where the respondent may be reached for further hearing notification. See Chapter 5.10(c) (Motion to change venue), 8 C.F.R. § 1003.20(b).

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Chapter 6 Appeals of Immigration Judge Decisions

6.1 Appeals Generally

The Board of Immigration Appeals has nationwide jurisdiction to review decisions of Immigration Judges. See 8 C.F.R. § 1003.1, Chapter 1.2(c) (Relationship to the Board of Immigration Appeals). Accordingly, appeals of Immigration Judges decisions should be made to the Board. Appeals of Immigration Judges decisions are distinct from motions to reopen or motions to reconsider, which are filed with the Immigration Court following a decision ending proceedings. See Chapter 5 (Motions before the Immigration Court).

This chapter is limited to appeals from the decisions of Immigration Judges in removal, deportation, and exclusion proceedings. Other kinds of appeals are discussed in the following chapters:

Chapter 7	Other Proceedings before Immigration Judges
Chapter 9	Detention and Bond
Chapter 10	Discipline of Practitioners

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For detailed guidance on appeals, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

6.2 Process

(a) Who may appeal. **—** An Immigration Judge's decision may be appealed only by the alien subject to the proceeding, the alien's legal representative, or the Department of Homeland Security. See 8 C.F.R. § 1003.3.

(b) How to appeal. **—** To appeal an Immigration Judge's decision, a party must file a properly completed and executed Notice of Appeal (Form EOIR-26) with the Board of Immigration Appeals. The Form EOIR-26 must be received by the Board 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. Parties must comply with all instructions on the Form EOIR-26.

Appeals are subject to strict requirements. For detailed information on these requirements, parties should consult the Board of Immigration Appeals Practice Manual.

6.3 Jurisdiction

After an appeal has been filed, jurisdiction shifts between the Immigration Court and the Board of Immigration Appeals depending on the nature and status of the appeal. For detailed guidance on whether the Immigration Court or the Board has jurisdiction over a particular matter in which an appeal has been filed, parties should consult the Board of Immigration Appeals Practice Manual. See Appendix K (Where to File).

6.4 Waiver of Appeal

(a) Effect of appeal waiver. — If the opportunity to appeal is knowingly and voluntarily waived, the decision of the Immigration Judge becomes final. See 8 C.F.R. § 1003.39. If a party waives appeal at the conclusion of proceedings before the Immigration Judge, that party generally may not file an appeal thereafter. See 8 C.F.R. § 1003.3(a)(1), *Matter of Shih*, 20 I&N Dec. 697 (BIA 1993). See also 8 C.F.R. § 1003.1(d)(2)(i)(G).

(b) Challenging a waiver of appeal. — Generally, a party who waives appeal cannot retract, withdraw, or otherwise undo that waiver. If a party wishes to challenge the validity of his or her waiver of appeal, the party may do so in one of two ways: either in a timely motion filed with the Immigration Judge that explains why the appeal waiver was not valid *or* in an appeal filed directly with the Board of Immigration Appeals that explains why the appeal waiver was not valid. *Matter of Patino*, 23 I&N Dec. 74 (BIA 2001). Once an appeal is filed, jurisdiction vests with the Board, and the motion can no longer be ruled upon by the Immigration Judge. For detailed guidance on whether the Immigration Court or the Board has jurisdiction over a particular matter in which an appeal has been filed, parties should consult the Board of Immigration Appeals Practice Manual.

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6.5 Certification

An Immigration Judge may ask the Board of Immigration Appeals to review his or her decision. See 8 C.F.R. §§ 1003.1(c), 1003.7. This is known as "certifying" the case to the Board. When a case is certified, an Immigration Court serves a notice of

certification on the parties. Generally, a briefing schedule is served on the parties following certification.

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 8 C.F.R. § 1003.3(d).

6.6 Additional Information

For detailed guidance on appeals, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

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Chapter 7 Other Proceedings before Immigration Judges

7.1 Overview

While the vast majority of proceedings conducted by Immigration Judges are removal proceedings, Immigration Judges have jurisdiction over other kinds of proceedings as well. This chapter provides a brief overview of these other kinds of proceedings. They include:

- deportation proceedings and exclusion proceedings
- rescission proceedings
- limited proceedings, including:
  - credible fear proceedings
  - reasonable fear proceedings
  - claimed status review
  - asylum-only proceedings
  - withholding-only proceedings

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Removal proceedings are discussed in Chapter 4 (Hearings before Immigration Judges). Additional proceedings conducted by Immigration Judges are discussed in the following chapters:

Chapter 9	Detention and Bond
Chapter 10	Discipline of Practitioners

7.2 Deportation Proceedings and Exclusion Proceedings

(a) In general. —

(i) Replaced by removal proceedings. — Beginning with proceedings commenced on April 1, 1997, deportation and exclusion proceedings have been replaced by removal proceedings. See generally INA §§ 239, 240, 8 C.F.R. §§ 1003.12 et seq., 1240.1 et seq. However, Immigration Judges continue to conduct deportation and exclusion proceedings in certain cases that began before April 1, 1997.

(ii) Compared with removal proceedings. — The procedures in deportation and exclusion proceedings are generally similar to the procedures in removal proceedings. See Chapters 2 (Appearances before the Immigration Court), 3 (Filing with the Immigration Court), 4 (Hearings before Immigration Judges), 5 (Motions before the Immigration Court), 6 (Appeals of Immigration Judge Decisions). However, deportation and exclusion proceedings are significantly different from removal proceedings in areas such as burden of proof, forms of relief available, and custody. Accordingly, parties in deportation and exclusion proceedings should carefully review the laws and regulations pertaining to those proceedings. The information in this chapter is provided as a general guideline only.

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(b) Deportation proceedings. —

(i) Order to Show Cause. — Deportation proceedings began when the former Immigration and Naturalization Service (INS) filed an Order to Show Cause (Form I-221) with the Immigration Court after serving it on the alien in person or by certified mail. See former INA § 242B(a)(1), 8 C.F.R. § 1240.40 et seq. See also Chapter 1.2 (Function of the Office of the Chief Immigration Judge). Similar to a Notice to Appear (Form I-862), an Order to Show Cause (Form I-221) is a written notice containing factual allegations and charge(s) of deportability.

(ii) Hearing notification. C In deportation proceedings, hearing notices from the Immigration Court are served on the parties, personally or by certified mail, at least 14 days prior to the hearing.

(iii) Grounds of deportability. — The grounds for deportation that apply in deportation proceedings are listed in former INA § 241. In some cases, those

grounds are different from the grounds of deportability in removal proceedings. Compare former INA § 241 (prior to 1997) with current INA § 237.

(iv) Forms of relief. — For the most part, the same forms of relief are available in deportation proceedings as in removal proceedings. However, there are important differences. Parties in deportation proceedings should carefully review the relevant law and regulations.

(v) Appeals. — In most cases, an Immigration Judge's decision in a deportation proceeding can be appealed to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions).

(c) Exclusion proceedings. —

(i) Notice to Applicant Detained for Hearing. — Exclusion proceedings began when the Immigration and Naturalization Service (INS) filed a Notice to Applicant for Admission Detained for Hearing before an Immigration Judge (Form I-122). See former INA § 242(b), 8 C.F.R. § 1240.30 et seq. The Form I-122 is a written notice containing the charge(s) of excludability. Unlike the Order to Show Cause, the Form I-122 *does not* contain factual allegations.

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(ii) Hearing notification. — In exclusion proceedings, the alien must be given a reasonable opportunity to be present at the hearing. Note that, in exclusion proceedings, notice to the alien is not governed by the same standards as in deportation proceedings. See *Matter of Nafi*, 19 I&N Dec. 430 (BIA 1987).

(iii) Closed to public. — Exclusion hearings are closed to the public, unless the applicant requests that the public be allowed to attend.

(iv) Grounds of excludability. — The grounds for exclusion are listed in the former INA § 212. In some cases, the grounds of excludability in exclusion proceedings are different from the grounds of inadmissibility in removal proceedings. Compare former INA § 212 (prior to 1997) with current INA § 212.

(v) Forms of relief. — For the most part, the same forms of relief are available in exclusion proceedings as in removal proceedings. However, there are

important differences. Parties in exclusion proceedings should carefully review the relevant law and regulations.

(vi) Appeals. — An Immigration Judge's decision in an exclusion proceeding can be appealed to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions).

7.3 Rescission Proceedings

(a) In general. — In a rescission proceeding, an Immigration Judge determines whether an alien's status as a lawful permanent resident should be "rescinded," or taken away, because alien was not entitled to become a lawful permanent resident. See generally 8 C.F.R. § 1246.1 et seq. An alien's lawful permanent resident status may not be rescinded if more than 5 years have passed since the alien became a lawful permanent resident. See INA § 246(a).

(b) Notice of Intent to Rescind. — A rescission proceeding begins when the Department of Homeland Security personally serves an alien with a Notice of Intent to Rescind. The alien has 30 days to submit a sworn answer in writing and/or request a hearing before an Immigration Judge. A rescission hearing is held if the alien files a timely answer which contests or denies any allegation in the Notice of Intent to Rescind *or* the alien requests a hearing.

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(c) Conduct of hearing. — Rescission proceedings are conducted in a manner similar to removal proceedings. See Chapter 4 (Hearings Before Immigration Judges).

(d) Appeal. — An Immigration Judge's decision in a rescission proceeding can be appealed to the Board of Immigration Appeals.

7.4 Limited Proceedings

(a) In general. — Certain aliens can be removed from the United States without being placed into removal proceedings. However, in some circumstances, these aliens may be afforded limited proceedings, including credible fear review, reasonable fear review, claimed status review, asylum-only proceedings, and withholding-only proceedings.

(b) Classes of aliens. — The following aliens can be removed from the United States without being placed into removal proceedings. These aliens are afforded limited proceedings as described below.

(i) Expedited removal under INA § 235(b)(1). — The following aliens are subject to "expedited removal" under INA § 235(b)(1):

- aliens arriving at a port of entry without valid identity or travel documents, as required, or with fraudulent documents
- aliens interdicted at sea (in international or U.S. waters) and brought to the United States
- aliens who have not been admitted or paroled into the United States and who have not resided in the United States for two years or more
- individuals paroled into the United States after April 1, 1997, and whose parole has since been terminated

(A) Exceptions. — The following aliens are *not* subject to expedited removal under INA § 235(b)(1):

- lawful permanent residents
- aliens granted refugee or asylee status
- aliens seeking asylum while applying for admission under the visa waiver program
- minors, unless they have committed certain crimes

(B) Limited proceedings afforded. — As described below, aliens subject to expedited removal under INA § 235(b)(1) are afforded the following proceedings:

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- if the alien expresses a fear of persecution or torture, the alien is placed into "credible fear proceedings," as described in subsection (d), (below)

- if the alien claims to be a United States citizen or a lawful permanent resident, or that he or she has been granted refugee or asylee status, the alien is allowed a "claimed status review," as described in subsection (f), (below)

(ii) Expedited removal under INA § 238(b). **—** Aliens who are not lawful permanent residents and who have been convicted of aggravated felonies are subject to "expedited removal" under INA § 238(b). If such an alien expresses a fear of persecution or torture, the alien is placed into "reasonable fear proceedings." See subsection (e), below.

(iii) Reinstatement of prior orders under INA § 241(a)(5). **—** Under INA § 241(a)(5), aliens who are subject to reinstatement of prior orders of removal are not entitled to removal proceedings. If such an alien expresses a fear of persecution or torture, the alien is placed into "reasonable fear proceedings." See subsection (e), below.

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(iv) Stowaways **—** If a stowaway expresses a fear of persecution or torture, he or she is placed into credible fear proceedings. See INA § 235(a)(2), subsection (d), below.

(v) Others. **—** In certain circumstances, the aliens listed below may be placed into asylum-only proceedings. See subsection (g), below.

- crewmembers (D visa applicants)

- certain cooperating witnesses and informants (S visa applicants)

- visa waiver applicants and visa waiver overstays

- aliens subject to removal under INA § 235(c) on security grounds

(c) Custody in limited proceedings. — An alien subject to limited proceedings may be detained during the proceedings. Immigration Judges have no jurisdiction over custody decisions for these aliens.

(d) Credible fear proceedings. — Credible fear proceedings involve stowaways and aliens subject to expedited removal under INA § 235(b)(1). See subsections (b)(i), (b)(iii), above. If such an alien expresses a fear of persecution or torture to the Department of Homeland Security (DHS) immigration officer upon being detained by DHS or applying to enter the United States, the alien is interviewed by a DHS asylum officer who evaluates whether the alien possesses a credible fear of persecution or torture. See generally INA § 235(b)(1)(B).

(i) Credible fear standard. — "Credible fear of persecution" means that there is a significant possibility that the alien can establish eligibility for asylum under INA § 208 or withholding of removal ("restriction on removal") under INA § 241(b)(3). The credibility of the alien's statements in support of the claim, and other facts known to the reviewing official are taken into account. 8 C.F.R. §§ 208.30(e)(2), 1003.42(d).

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"Credible fear of torture" means there is a significant possibility that the alien is eligible for withholding of removal ("restriction on removal") or deferral of removal under the Convention Against Torture pursuant to 8 C.F.R. §§ 208.16 or 208.17. 8 C.F.R. §§ 208.30(e)(3), 1003.42(d).

(ii) If the DHS asylum officer finds credible fear. —

(A) Stowaways. — If the DHS asylum officer finds that a stowaway has a credible fear of persecution or torture, the stowaway is placed in asylum-only proceedings before an Immigration Judge. See 8 C.F.R. § 208.30(f). In asylum-only proceedings, the stowaway can apply for asylum, withholding of removal ("restriction on removal") under INA § 241(b)(3), and protection under the Convention Against Torture. See subsection (g), below.

(B) Aliens subject to expedited removal under INA § 235(b)(1). **—** If the DHS asylum officer finds that an alien subject to expedited removal under INA § 235(b)(1) has a credible fear of persecution or torture, the alien is placed in removal proceedings before an Immigration Judge. See 8 C.F.R. § 208.30(f). In removal proceedings, the alien has the same rights, obligations, and opportunities for relief as any other alien in removal proceedings. See Chapter 4 (Hearings before Immigration Judges).

(iii) If the DHS asylum officer does not find credible fear. **—** If the DHS asylum officer finds that the alien does *not* have a credible fear of persecution or torture, the alien may request that an Immigration Judge review this finding. See 8 C.F.R. § 208.30(g).

(iv) Credible fear review by an Immigration Judge. **—** The credible fear review is conducted according to the provisions in (A) through (E), below. See generally INA § 235(b)(1)(B), 8 C.F.R. § 1003.42.

(A) Timing. **—** The credible fear review must be concluded no later than 7 days after the date of the DHS asylum officer's decision. If possible, the credible fear review should be concluded 24 hours after the decision.

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(B) Location. **—** If possible, the credible fear review is conducted in person. However, because of the time constraints, the credible fear review may be conducted by video or telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

(C) Representation. **—** Prior to the credible fear review, the alien may consult with a person or persons of the alien's choosing. In the discretion of the Immigration Judge, persons consulted may be present during the credible fear review. However, the alien is not represented at the credible fear review. Accordingly, persons acting on the alien's behalf are not entitled to make opening statements, call and question witnesses, conduct cross examinations, object to evidence, or make closing arguments.

(D) Record of Proceedings. **—** DHS must give the complete record of the DHS asylum officer's credible fear determination to the Immigration Court. This record includes any notes taken by the DHS asylum officer. The Immigration Judge creates a record, which is kept separate from the Record of Proceedings in any subsequent Immigration Court proceeding involving the alien.

(E) Conduct of hearing. **—** A credible fear review is not as exhaustive or in-depth as an asylum hearing in removal proceedings. Rather, a credible fear review is simply a review of the DHS asylum officer's decision. Either the alien or DHS may introduce oral or written statements, and the court provides an interpreter if necessary. Evidence may be introduced at the discretion of the Immigration Judge. The hearing is recorded. Parties should be mindful that all requests for continuances are subject to the statutory time limits. See (A), above.

(v) If the Immigration Judge finds credible fear. **—**

(A) Stowaways. **—** If the Immigration Judge finds that a stowaway has a credible fear of persecution or torture, the stowaway is placed in asylum-only proceedings. See 8 C.F.R. § 1208.30(g)(2)(iv)(C). In asylum-only proceedings, the stowaway can apply for asylum, withholding of removal ("restriction on removal") under INA § 241(b)(3), and protection under the Convention Against Torture. See subsection (g), below.

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(B) Aliens subject to expedited removal under INA § 235(b)(1). **—** If the Immigration Judge finds that an alien subject to expedited removal under INA § 235(b)(1) has a credible fear of persecution or torture, the alien is placed in removal proceedings. See 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(B). In removal proceedings, the alien has the same rights, obligations, and opportunities for relief, including the opportunity to apply for asylum, as any other alien in removal proceedings. See Chapter 4 (Hearings before Immigration Judges).

(vi) If the Immigration Judge does not find credible fear. **—** If the Immigration Judge does not find credible fear of persecution or torture, the alien is returned to DHS for removal. Neither party may appeal an Immigration Judge's

ruling in a credible fear review. However, after providing notice to the Immigration Judge, DHS may reconsider its determination that an alien does not have a credible fear of persecution. See 8 C.F.R. § 1208.30(g)(2)(iv)(A).

(e) Reasonable fear proceedings. — Reasonable fear proceedings involve aliens subject to expedited removal under INA § 238(b) and aliens subject to reinstatement of prior orders of removal under INA § 241(a)(5). See subsections (b)(ii), (b)(iii), above. If such an alien expresses a fear of persecution or torture to the Department of Homeland Security (DHS) immigration officer, the alien is interviewed by a DHS asylum officer who evaluates whether the alien has a Areasonable fear of persecution or torture." See generally 8 C.F.R. § 1208.31.

(i) Reasonable fear standard. — "Reasonable fear of persecution or torture" means a reasonable possibility that the alien would be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or political opinion, or a reasonable possibility that the alien would be tortured if returned to the country of removal. The bars to eligibility for withholding of removal ("restriction on removal") under INA § 241(b)(3)(B) are not considered. 8 C.F.R. § 1208.31(c).

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(ii) If the DHS asylum officer finds reasonable fear. — If the DHS asylum officer finds that the alien has a reasonable fear of persecution or torture, the alien is placed in withholding-only proceedings before an Immigration Judge. See 8 C.F.R. § 208.31(e). In withholding-only proceedings, the alien can apply for withholding of removal ("restriction on removal") under INA § 241(b)(3) and protection under the Convention Against Torture. See subsection (h), below.

(iii) If the DHS asylum officer does not find reasonable fear. — If the DHS asylum officer finds that the alien does not have a reasonable fear of persecution or torture, the alien may request that an Immigration Judge review this finding. See 8 C.F.R. § 208.31(f).

(iv) Reasonable fear review by an Immigration Judge. — The reasonable fear review is conducted according to the provisions in (A) through (E), below. See generally 8 C.F.R. § 1208.31.

(A) Timing. **—** In the absence of exceptional circumstances, the reasonable fear review is conducted within 10 days after the case is referred to the Immigration Court.

(B) Location. **—** If possible, the reasonable fear review is conducted in person. However, because of the time constraints, the reasonable fear review may be conducted by video or telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

(C) Representation. **—** Subject to the Immigration Judge's discretion, the alien may be represented during the reasonable fear review at no expense to the government.

(D) Record of Proceedings. **—** DHS must file the complete record of the DHS asylum officer's reasonable fear determination with the Immigration Court. This record includes any notes taken by the DHS asylum officer. The Immigration Judge creates a record, which is kept separate from the Record of Proceedings in any subsequent Immigration Court proceeding involving the alien.

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(E) Conduct of hearing. **—** A reasonable fear review hearing is not as comprehensive or in-depth as a withholding of removal hearing in removal proceedings. Rather, it is a review of the DHS asylum officer's decision. Either party may introduce oral or written statements, and the court provides an interpreter if necessary. Evidence may be introduced at the discretion of the Immigration Judge. The hearing is recorded. Parties should be mindful that all requests for continuances are subject to the statutory time limits. See (A), above.

(v) If the Immigration Judge finds reasonable fear. **—** If the Immigration Judge finds that the alien has a reasonable fear of persecution or torture, the alien is placed in withholding-only proceedings. See 8 C.F.R. § 1208.31(g)(2). In withholding-only proceedings, the alien can apply for withholding of removal ("restriction on removal") under INA § 241(b)(3) and protection under the Convention Against Torture. See subsection (h).

(vi) If the Immigration Judge does not find reasonable fear. — If the Immigration Judge does not find a reasonable fear of persecution or torture, the alien is returned to DHS for removal. There is no appeal from an Immigration Judge's ruling in a reasonable fear review. See 8 C.F.R. § 1208.31(g)(1).

(f) Claimed status review. — If an individual is found by a Department of Homeland Security (DHS) immigration officer to be subject to expedited removal under INA § 235(b)(1), but claims to be a United States citizen or lawful permanent resident, or to have been granted asylum or admitted to the United States as a refugee, the DHS immigration officer attempts to verify that claim. If the claim cannot be verified, the individual is allowed to make a statement under oath. The case is then reviewed by an Immigration Judge in a "claimed status review." See generally 8 C.F.R. § 1235.3(b)(5).

(i) Timing. — Claimed status reviews are scheduled as expeditiously as possible, preferably no later than 7 days after the case was referred to the Immigration Court and, if possible, within 24 hours. Claims to United States citizenship may require more time to permit the alien to obtain relevant documentation.

(ii) Location. — If possible, the claimed status review is conducted in person. However, because of the time constraints, the claimed status review may be conducted by video or telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

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(iii) Representation. — Prior to the claimed status review, the individual subject to the review may consult with a person or persons of his or her choosing. In the discretion of the Immigration Judge, persons consulted may be present during the claimed status review. However, the individual subject to the review is not represented during the review. Accordingly, persons acting on his or her behalf are not entitled to make opening statements, call and question witnesses, conduct cross examinations, object to evidence, or make closing arguments.

(iv) Record of Proceedings. — The Immigration Judge creates a Record of Proceedings. If an individual subject to a claimed status review is later placed in removal proceedings, the Record of Proceedings for the claimed status review is merged with the Record of Proceedings for the removal proceedings.

(v) Conduct of hearing. — Either party may introduce oral or written statements, and an interpreter is provided if necessary. Though the claimed status review is limited in nature, claims to status, particularly claims to United States citizenship, can be complicated and may require extensive evidence. Therefore, the Immigration Judge has the discretion to continue proceedings to allow DHS and the person making the claim to collect and submit evidence. The hearing is recorded.

(vi) If the Immigration Judge verifies the claimed status. — If the Immigration Judge determines that the individual subject to the review is a United States citizen or lawful permanent resident, or that he or she has been granted asylum or refugee status, the expedited removal order is vacated, or cancelled, and the proceedings are terminated.

Unless the Immigration Judge determines that the person in proceedings is a United States citizen, DHS may elect to place him or her in removal proceedings. In removal proceedings, he or she has the same rights, obligations, and opportunities for relief as any other alien in removal proceedings. See Chapter 4 (Hearings before Immigration Judges).

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(vii) If the Immigration Judge cannot verify the claimed status. — If the Immigration Judge determines that the subject of a claimed status review is not a United States citizen or lawful permanent resident, and that he or she has not been granted asylee or refugee status, the individual is returned to DHS for removal. There is no appeal from an Immigration Judge's ruling in a claimed status review.

(g) Asylum-only proceedings. — Asylum-only proceedings are limited proceedings in which the Immigration Judge considers applications for asylum, withholding of removal ("restriction on removal") under INA § 241(b)(3), and protection under the Convention Against Torture.

(i) Beginning asylum-only proceedings. — Asylum-only proceedings are commenced as follows, depending upon the status of the alien.

(A) Stowaways with a credible fear of persecution or torture. — When a Department of Homeland Security (DHS) asylum officer or an Immigration Judge finds that a stowaway has a credible fear of persecution

or torture, the stowaway's matter is referred to the Immigration Court for an asylum-only proceeding. See 8 C.F.R. §§ 208.30(f), 1208.2(c)(1)(ii), 1208.30(g)(2)(iv)(C).

(B) Crewmembers (D visa applicants). — When an alien crewmember expresses a fear of persecution or torture to a DHS immigration officer, he or she is removed from the vessel and taken into DHS custody. The crewmember is then provided an Application for Asylum and for Withholding of Removal (Form I-589), which must be completed and returned to DHS within 10 days unless DHS extends the deadline for good cause. The application is then referred to the Immigration Court for an asylum-only proceeding. See 8 C.F.R. §§ 1208.2(c)(1)(i), 1208.5(b)(1)(ii).

(C) Visa waiver applicants and overstays. — When an alien who has applied for admission, been admitted, or overstayed his or her admission under the visa waiver program expresses a fear of persecution or torture to a DHS immigration officer, or applies for asylum with DHS, the matter may be referred to the Immigration Court for an asylum-only proceeding. See 8 C.F.R. §§ 1208.2(c)(1)(iii), 1208.2(c)(1)(iv).

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(D) Certain cooperating witnesses and informants (S visa applicants). — When an alien who has applied for admission, or been admitted, with an S visa expresses a fear of persecution or torture to a DHS immigration officer, or applies for asylum with DHS, the matter is referred to the Immigration Court for an asylum-only proceeding. See 8 C.F.R. § 1208.2(c)(1)(vi).

(E) Persons subject to removal under INA § 235(c) on security grounds. — When a DHS immigration officer or an Immigration Judge suspects that an arriving alien appears removable as described in INA § 235(c), the alien is ordered removed, and the matter is referred to a DHS district director. A DHS regional director may then order the case referred to an Immigration Judge for an asylum-only proceeding. See 8 C.F.R. §§ 1208.2(c)(1)(v), 1235.8.

(ii) Scope of the proceedings. — Asylum-only proceedings are limited to applications for asylum, withholding of removal ("restriction on removal") under INA

§ 241(b)(3), and protection under the Convention Against Torture. Neither the alien nor DHS may raise any other issues, including issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief. See 8 C.F.R. § 1208.2(c)(3)(i).

(iii) Conduct of the proceedings. — Asylum-only proceedings are conducted under the procedures governing removal proceedings. See 8 C.F.R. § 1208.2(c)(3). See also Chapter 4 (Hearings before Immigration Judges).

(iv) Appeals. — Decisions by Immigration Judges in asylum-only proceedings may be appealed to the Board of Immigration Appeals.

(h) Withholding-only proceedings. — Withholding-only proceedings are limited proceedings involving aliens subject to expedited removal under INA § 238(b) and aliens subject to reinstatement of prior orders of removal under INA § 241(a)(5), who have a reasonable fear of persecution or torture. See 8 C.F.R. § 1208.2(c)(2). In withholding-only proceedings, the Immigration Judge considers applications for withholding of removal ("restriction on removal") under the Immigration and Nationality Act and protection under the Convention Against Torture.

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(i) Beginning withholding-only proceedings. — When a DHS asylum officer or Immigration Judge finds that an alien subject to expedited removal under INA § 238(b) or an alien subject to reinstatement of a prior order of removal under INA § 241(a)(5) has a reasonable fear of persecution or torture, the matter is referred to the Immigration Court for a withholding-only proceeding. See 8 C.F.R. §§ 208.31(e), 1208.31(g)(2).

(ii) Scope of the proceedings. — Withholding-only proceedings are limited to applications for withholding of removal ("restriction on removal") under INA § 241(b)(3) and protection under the Convention Against Torture. Neither the alien nor DHS may raise any other issues, including issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief. 8 C.F.R. § 1208.2(c)(3)(i).

(iii) Conduct of the proceedings. — Withholding-only proceedings are conducted under the procedures governing removal proceedings. See 8 C.F.R. § 1208.2(c)(3). See also Chapter 4 (Hearings before Immigration Judges).

***(iv) Appeals*. —** Decisions by Immigration Judges in withholding-only proceedings may be appealed to the Board of Immigration Appeals.

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Chapter 8 Stays

8.1 In General

A stay prevents the Department of Homeland Security (DHS) from executing an order of removal, deportation, or exclusion. Stays are automatic in some instances and discretionary in others. This chapter provides general guidance regarding the procedures to follow when filing for a stay before the immigration court or the Board of Immigration Appeals (BIA). For particular cases, parties should note that the procedures are not the same before the immigration court and the BIA and should consult the controlling law and regulations. See INA §§ 240(b)(5)(C), 240(c)(7)(C)(iv); 8 C.F.R. §§ 1003.2(f), 1003.6, 1003.23(b)(1)(v), and 1003.23(b)(4)(ii),(iii)(C).

An alien under a final order of deportation or removal may seek a stay of deportation or removal from DHS. A denial of the stay by DHS does not preclude an immigration judge or the BIA from granting a stay in connection with a previously filed motion to reopen or motion to reconsider. DHS shall take all reasonable steps to comply with a stay granted by an immigration judge or the BIA, but such a stay shall cease to have effect if granted or communicated after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed. 8 C.F.R. §§ 241.6, 1241.6.

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In the context of bond proceedings, the BIA has the authority to grant a stay of the execution of an immigration judge's decision when DHS has appealed or provided notice of intent to appeal by filing the Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) with the Immigration Court within one business day of the Immigration Judge's bond order, and file the appeal within 10 business days. The BIA may also entertain motions to reconsider discretionary stays it has granted. See 8 C.F.R. § 1003.19(i)(1)-(2); see also Chapter 9.3(f) (Appeals).

There are important differences between the automatic stay provisions in deportation and exclusion proceedings and the automatic stay provisions in removal proceedings. Other than a motion to reopen in absentia deportation proceedings, those differences are not covered in this Practice Manual. Accordingly, parties in deportation or exclusion proceedings should carefully review the controlling law and regulations.

8.2 Automatic Stays

There are certain circumstances when an immigration judge's order of removal is automatically stayed pending further action on an appeal or motion. When a stay is automatic, the immigration courts and the BIA do not issue a written order on the stay.

(a) During the Appeal Period. — After an immigration judge issues a final decision on the merits of a case (not including bond or custody, credible fear, claimed status review, or reasonable fear determinations), the order is automatically stayed for the 30-day period for filing an appeal with the BIA. However, the order is not stayed if the losing party waived the right to appeal. 8 C.F.R. § 1003.6(a).

(b) During the Adjudication of an Appeal. — If a party appeals an immigration judge's decision on the merits of the case (not including bond and custody determinations) to the BIA during the appeal period, the order of removal is automatically stayed during the BIA's adjudication of the appeal. 8 C.F.R. § 1003.6(a). The stay remains in effect until the BIA renders a final decision in the case.

(c) During the Adjudication of Case Certified to the BIA. — A removal order is stayed while the BIA adjudicates a case that is before that appellate body by certification. 8 C.F.R. § 1003.6(a); see also Chapter 6.5 (Certification). The stay remains in effect until the BIA renders a final decision in the case or declines to accept certification of the case.

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(d) Motions to Reopen. —

(i) Removal Proceedings. — An immigration judge's removal order is stayed during the period between the filing of a motion to reopen removal proceedings conducted in absentia and the immigration judge's ruling on that motion. 8 C.F.R. § 1003.23(b)(4)(ii).

An immigration judge's removal order is automatically stayed during the BIA's adjudication of an appeal of the immigration judge's ruling in certain motions to reopen filed by battered spouses, children, and parents. INA § 240(c)(7)(C)(iv).

An immigration judge's order is not automatically stayed in appeals to the BIA from an immigration judge's denial of a motion to reopen removal proceedings

conducted in absentia, and motions to reopen or reconsider a prior BIA decision are not automatically stayed.

(ii) Deportation Proceedings. — An immigration judge's deportation order is stayed during the period between the filing of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B and the immigration judge's ruling on that motion, as well as during the adjudication by the BIA of any subsequent appeal of that motion. 8 C.F.R. § 1003.23(b)(4)(iii)(C).

Automatic stays only attach to the original appeal from an immigration judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B. See 8 C.F.R. § 1003.23(b)(4)(iii)(C). Additionally, there is no automatic stay to a motion to reopen or reconsider the BIA's prior dismissal of an appeal from an immigration judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B.

(e) Federal Court Remands. — A federal court remand to the BIA results in an automatic stay of an order of removal if:

1. The BIA's decision before the federal court involved a direct appeal of an immigration judge's decision on the merits of the case (excluding bond and custody determinations); or

2. The BIA's decision before the federal court involved an appeal of an immigration judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B.

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8.3 Discretionary Stays

(a) Jurisdiction. — Both immigration judges and the BIA have authority to grant and reconsider stays as a matter of discretion but only for matters within the judges' or the BIA's respective jurisdiction. See Chapters 1.5 (Jurisdiction and Authority), 9.3(b) (Jurisdiction). Immigration judges consider requests for discretionary stays only when a motion to reopen or a motion to reconsider is pending before the immigration court.

In most cases, the BIA entertains stays only when there is an appeal from an immigration judge's denial of a motion to reopen removal proceedings or a motion to

reopen or reconsider a prior BIA decision pending before the BIA. The BIA may also consider a stay of an immigration judge's bond decision while a bond appeal is pending in order to prevent the alien's release from detention. See Chapter 9.3(f) (Appeals).

***(b) Motion to Reopen to Apply for Asylum, Withholding of Removal under the Act, or Protection under the Convention Against Torture*. —** Time and numerical limitations do not apply to motions to reopen to apply for asylum, withholding of removal under the Act, or protection under the Convention Against Torture if the motion is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. The filing of a motion to reopen in such circumstances does not automatically stay an alien's removal. The alien may request a stay and if granted by the immigration court shall not be removed pending disposition of the motion. If the original asylum application was denied based on a finding that it was frivolous, the alien is ineligible to file a motion to reopen or reconsider or for a stay of removal. 8 C.F.R. § 1003.23(b)(4)(i).

When filing a motion to reopen to apply for asylum, withholding of removal under the Act, or protection under the Convention Against Torture based on changed country conditions, the alien does not need to file a copy of his or her record of proceedings or A-file.

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***(c) Motion Required*. —** Parties should submit a request for a discretionary stay by filing a written motion. The motion should comply with all the requirements for filing, including formatting, inclusion of a proof of service, and submission of possible fees. See Chapter 3 (Filing with the Immigration Court), Appendix F: Sample Cover Page.

> ***(i) Contents*. —** A party requesting a discretionary stay of removal before the immigration court should submit a motion stating the complete case history and all relevant facts. It should also include a copy of the order that the party wants stayed, if available. If the moving party does not have a copy of the order, that party should provide the date of the order and a detailed description of the immigration judge's ruling and reasoning, as articulated by the immigration judge. If the facts are in dispute, the moving party should provide appropriate evidence. See Chapter 5.2(e) (Evidence). A discretionary request to stay removal, deportation, or exclusion may be submitted at any time after an alien becomes

subject to a final order of removal, deportation, or exclusion if a motion to reopen or reconsider is pending before the immigration court.

A party requesting a discretionary stay of removal, deportation, or exclusion before BIA should follow the procedures described below:

(A) Who May Request. **—** An alien (or an alien's representative) may request a discretionary stay of removal, deportation, or exclusion only if the alien's case is currently before the BIA and the alien is subject to a removal, deportation, or exclusion order.

(B) Timing of Request. **—** A request to stay removal, deportation, or exclusion may be submitted at any time during the pendency of a case before the BIA.

(C) Form of Request. **—** Requests to stay removal, deportation, or exclusion must be made in writing. The BIA prefers that stay requests be submitted in the form of a "MOTION TO STAY REMOVAL." See Appendix F: Sample Cover Page.

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(D) Contents. **—** The motion should contain a complete recitation of the relevant facts and case history and indicate the current status of the case. The motion must also contain a specific statement of the time exigencies involved. Motions containing vague or general statements of urgency are not persuasive.

A copy of the existing immigration judge or BIA order should be included, when available. When the moving party does not have a copy of the order, the moving party should provide the date of the immigration judge's decision and a detailed description of both the ruling and the basis of that ruling, as articulated by the immigration judge. If the facts are in dispute, the moving party should furnish evidence supporting the motion to stay.

(E) Format. **—** The motion should comply with the general rules for filing motions. See Chapter 5.2 (Filing a Motion). The motion must include

a Proof of Service. See Chapter 3.2 (Service on the Opposing Party), Appendix G: Sample Proof of Service.

(F) Fee. — A motion to stay removal, deportation, or exclusion does not, by itself, require a filing fee. The underlying appeal or motion, however, may still require a fee. See Chapter 3:4 (Filing Fees).

(ii) Emergency v. Non-Emergency. — The immigration courts and the BIA categorize stay requests into two categories: emergency and non-emergency. When filing a stay request with the immigration court, the parties should submit their motion with a cover page either labeled "MOTION TO STAY REMOVAL" or "EMERGENCY MOTION TO STAY REMOVAL," as relevant.

(A) Emergency. — The immigration courts and the BIA may rule immediately on an "emergency" stay request. The immigration court and the BIA only consider a stay request to be an emergency when an alien is:

1. in DHS's physical custody and removal, deportation, or exclusion is imminent;
2. turning himself or herself in to DHS custody in order to be removed, deported, or excluded and removal, deportation, or exclusion is expected to occur within the next 3 business days; or
3. scheduled to self-execute an order of removal, deportation, or exclusion within the next 3 business days.

cited in O.L.L.G. v. Barr
No. 16-73801 rc archived on April 30, 2019

The motion should contain a specific statement of the time exigencies involved.

If a party is seeking an emergency stay from the BIA, the party must contact the BIA's Emergency Stay Unit by calling 703-306-0093. If a party is seeking an emergency stay from an immigration court, he or she must call the immigration court from which the removal order was issued. EOIR otherwise will not be able to properly process the request as an emergency stay. The BIA's Emergency Stay Unit is closed on federal holidays. It will consider an emergency stay request only on non-holiday weekdays from

9:00 a.m. to 5:30 p.m. (Eastern Time). Immigration courts will consider stay requests during posted operating hours.

An alien may supplement a non-emergency stay request with an emergency stay request if qualifying circumstances, such as when an alien reports to DHS custody for imminent removal, arise.

Parties can obtain instructions for filing an emergency stay motion with the BIA by calling the same numbers. For a list of immigration court numbers, see Appendix A or visit EOIR's website at www.justice.gov/eoir/eoir-immigration-court-listing.

When circumstances require immediate attention from the BIA or immigration courts, EOIR may, at the adjudicator's discretion, entertain a telephonic stay request.

EOIR promptly notifies the parties of its decision.

(B) Non-Emergency. — The immigration courts and the BIA do not rule immediately on a "non-emergency" stay request. Instead, the request is considered during the normal course of adjudication. Non-emergency stay requests include those from aliens who are not facing removal within the next 3 business days, and who are either:

1. not in detention; or
2. in detention but not facing imminent removal, deportation, or exclusion.

No. 16-73801 Cited in C.L.L.S. v. Barr
Archived on April 30, 2019

(d) Pending Motions. — Neither the immigration judges nor the BIA automatically grant discretionary stays. The mere filing of a motion for a discretionary stay of an order does not prevent the execution of the order. Therefore, DHS may execute the underlying removal, deportation, or exclusion order unless and until the immigration judge or the BIA grants the motion for a stay.

(e) Adjudication and Notice. — When an immigration judge or the BIA grants a discretionary stay of removal, deportation, or exclusion, the immigration judge or the BIA issues a written order. When a discretionary stay is granted, the parties are promptly notified about the decision.

(f) Duration. **—** A discretionary stay of removal, deportation, or exclusion lasts until the immigration judge adjudicates the motion to reopen or motion to reconsider or until the BIA renders a final decision on the merits of the appeal, motion to reopen, or the motion to reconsider.

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

Chapter 9 Detention and Bond

9.1 Detention

(a) In general. — The Department of Homeland Security (DHS) bears the responsibility for the apprehension and detention of aliens. Immigrations Judges have jurisdiction over custody determinations under certain circumstances. See generally 8 C.F.R. § 1003.19. See also Chapter 9.3 (Bond Proceedings).

(b) Place and conditions. — Aliens may be detained in a Department of Homeland Security (DHS) Processing Facility, or in any public or private detention facility contracted by DHS to detain aliens. See 8 C.F.R. § 235.3(e). Immigration Judges have no jurisdiction over the location of detention and the conditions in the detention facility.

(c) Appearance at hearings. — The Department of Homeland Security is responsible for ensuring that detained aliens appear at all hearings.

(d) Transfers and Release. — The Department of Homeland Security (DHS) sometimes transfers detained aliens between detention facilities.

cited in C.J.L.G. v. Barr
No. 16-7380 retaken on April 30, 2019

(i) Notification. — DHS is obligated to notify the Immigration Court when an alien is moved between detention locations. See 8 C.F.R. § 1003.19(g).

In addition, DHS is responsible for notifying the Immigration Court when an alien is released from custody. See 8 C.F.R. § 1003.19(g). Nonetheless, the alien should file an Alien's Change of Address Form (Form EOIR-33/IC) with the Immigration Court to ensure that Immigration Court records are up-to-date.

(ii) Venue. — If an alien has been transferred while proceedings are pending, the Immigration Judge with original jurisdiction over the case retains jurisdiction until that Immigration Judge grants a motion to change venue. Either DHS or the alien may file a motion to change venue. See Chapter 5 (Motions before the Immigration Court). If DHS brings the alien before an Immigration Judge in another Immigration Court and a motion to change venue has not been granted, the second Immigration Judge does not have jurisdiction over the case, except for bond redeterminations.

(e) Conduct of hearing. — Proceedings for detained aliens are expedited. Hearings are held either at the detention facility or at the Immigration Court, either by video or telephone conference. For more information on hearings conducted by video or telephone conference, see Chapter 4.7 (Hearings by Video or Telephone Conference).

(i) Special considerations for hearings in detention facilities. — For hearings in detention facilities, parties must comply with the facility's security restrictions. See Chapter 4.14 (Access to Court).

(ii) Orientation. — In some detention facilities, detainees are provided with orientations or "rights presentations" by non-profit organizations. The Executive Office for Immigration Review also funds orientation programs at a number of detention facilities, which are administered by the EOIR Legal Orientation Program. See Chapter 1.4(c) (Legal Orientation Program).

9.2 Detained Juveniles

(a) In general. — There are special procedures for juveniles in federal custody, whether they are accompanied or unaccompanied. See generally 8 C.F.R. § 1236.3. For purposes of this chapter, a juvenile is defined as an alien under 18 years of age. An unaccompanied juvenile is defined as an alien under 18 years of age who does not have a parent or legal guardian in the United States to provide care and physical custody.

No. 16-73801 cited in C.J.L.G. v. Barr
archived on April 30, 2019

(b) Place and conditions of detention. — The Department of Homeland Security (DHS) bears the initial responsibility for apprehension and detention of juveniles. When DHS determines that a juvenile is accompanied by a parent or legal guardian, DHS retains responsibility for the juvenile's detention and removal. When DHS determines that a juvenile is unaccompanied and must be detained, he or she is transferred to the care of the Department of Health and Human Services, Office of Refugee Resettlement, which provides for the care and placement, where possible, of the unaccompanied juvenile. See 6 U.S.C. § 279.

(c) Representation and conduct of hearing. — For provisions regarding the representation of juveniles, and the conduct of hearings involving juveniles, see Chapter 4.22 (Juveniles).

(d) Release. — Unaccompanied juveniles who are released from custody are released to a parent, a legal guardian, an adult relative who is not in Department of Homeland Security detention, or, in limited circumstances, to an adult who is not a family member.

9.3 Bond Proceedings

(a) In general. — In certain circumstances, an alien detained by the Department of Homeland Security (DHS) can be released from custody upon the payment of bond. Initially, the bond is set by DHS. Upon the alien's request, an Immigration Judge may conduct a "bond hearing," in which the Immigration Judge has the authority to redetermine the amount of bond set by DHS.

Bond proceedings are separate from removal proceedings. For guidance on entering an appearance in bond proceedings, see Chapter 2.3(d) (Scope of representation); see also generally 8 C.F.R. §§ 1003.17(a) , 1003.19, 1236.1.

(b) Jurisdiction. — Except as provided in subsections (i) through (iii), below, an Immigration Judge generally has jurisdiction to conduct a bond hearing if the alien is in Department of Homeland Security (DHS) custody. The Immigration Judge also has jurisdiction to conduct a bond hearing if the alien is released from DHS custody upon payment of a bond and, within 7 days of release, files a request for a bond redetermination with the Immigration Court.

cited in C.L.G. v. Barr
No. 16-73801 archived on April 30, 2019

An Immigration Judge has jurisdiction over such cases even if a charging document has not been filed. In addition, an Immigration Judge has jurisdiction to rule on whether he or she has jurisdiction to conduct a bond hearing.

(i) No jurisdiction by regulation. — By regulation, an Immigration Judge does not have jurisdiction to conduct bond hearings involving:

- aliens in exclusion proceedings
- arriving aliens in removal proceedings
- aliens ineligible for release on security or related grounds

- aliens ineligible for release on certain criminal grounds

8 C.F.R. § 1003.19(h)(2)(i).

(ii) No jurisdiction by mootness. — A bond becomes moot, and the Immigration Judge loses jurisdiction to conduct a bond hearing, when an alien:

- departs from the United States, whether voluntarily or involuntarily
- is granted relief from removal by the Immigration Judge, and the Department of Homeland Security does not appeal
- is granted relief from removal by the Board of Immigration Appeals
- is denied relief from removal by the Immigration Judge, and the alien does not appeal
- is denied relief from removal by the Board of Immigration Appeals

cited in C.J.L.G. v. Barr
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(iii) Other. — Immigration Judges do not have bond jurisdiction in certain limited proceedings. See generally Chapter 7 (Other Proceedings before Immigration Judges).

(c) Requesting a bond hearing. — A request for a bond hearing may be made in writing. In addition, except as provided in subsection (iii), below, a request for a bond hearing may be made orally in court or, at the discretion of the Immigration Judge, by telephone. If available, a copy of the Notice to Appear (Form I-862) should be provided. The telephone number of each Immigration Court is listed on the Executive Office for Immigration Review website at www.justice.gov/eoir.

(i) Contents. — A request for a bond hearing should state:

- the full name and alien registration number ("A number") of the alien
- the bond amount set by the Department of Homeland Security
- if the alien is detained, the location of the detention facility

(ii) No fee. — There is no filing fee to request a bond hearing.

(iii) Where to request. — A request for a bond hearing is made, in order of preference, to:

- if the alien is detained, the Immigration Court having jurisdiction over the alien's place of detention;
- the Immigration Court with administrative control over the case; or
- the Office of the Chief Immigration Judge for designation of an appropriate Immigration Court

8 C.F.R. § 1003.19(c). See Chapter 3.1(a)(i) (Administrative Control Courts).

No. 16-73801 cited in C. J. L. G. v. Barr archived on April 30, 2019

(iv) Multiple requests. — If an Immigration Judge or the Board of Immigration Appeals has previously ruled in bond proceedings involving an alien, a subsequent request for a bond hearing must be in writing, and the alien must show that his or her circumstances have changed materially since the last decision. In addition, the request must comply with the requirements listed in subsection (c)(i), above. 8 C.F.R. § 1003.19(e).

(d) Scheduling a hearing. — In general, after receiving a request for a bond hearing, the Immigration Court schedules the hearing for the earliest possible date and notifies the alien and the Department of Homeland Security.

In limited circumstances, an Immigration Judge may rule on a bond redetermination request without holding a hearing.

If an alien requests a bond hearing during another type of hearing (for example, during a master calendar hearing in removal proceedings), the Immigration Judge may:

- stop the other hearing and conduct a bond hearing on that date
- complete the other hearing and conduct a bond hearing on that date
- complete the other hearing and schedule a bond hearing for a later date
- stop the other hearing and schedule a bond hearing for a later date

(e) Bond hearings. **—** In a bond hearing, the Immigration Judge determines whether the alien is eligible for bond. If the alien is eligible for bond, the Immigration Judge considers whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for further immigration proceedings, and whether the alien is a threat to national security. In general, bond hearings are less formal than hearings in removal proceedings.

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

(i) Location. **—** Generally, a bond hearing is held at the Immigration Court where the request for bond redetermination is filed.

(ii) Representation. **—** In a bond hearing, the alien may be represented at no expense to the government.

(iii) Generally not recorded. **—** Bond hearings are generally not recorded.

(iv) Record of Proceedings. **—** The Immigration Judge creates a record, which is kept separate from the Records of Proceedings for other Immigration Court proceedings involving the alien.

(v) Evidence. **—** Documents for the Immigration Judge to consider are filed in open court or, if the request for a bond hearing was made in writing, together with the request. Since the Record of Proceedings in a bond proceeding is kept separate and apart from other Records of Proceedings, documents already filed in

removal proceedings must be resubmitted if the filing party wishes them to be considered in the bond proceeding.

If documents are filed in advance of the hearing, the documents should be filed *together with* the request for a bond hearing. If a document is filed in advance of the hearing but separate from the request for a bond hearing, it should be filed with a cover page labeled "BOND PROCEEDINGS." See Appendix F (Sample Cover Page).

Unless otherwise directed by the Immigration Judge, the deadlines and requirements for filings in Chapter 3 (Filing with the Immigration Court) do not apply in bond proceedings.

(vi) Conduct of hearing. — While the Immigration Judge decides how each hearing is conducted, parties should submit relevant evidence and:

- the Department of Homeland Security (DHS) should state whether a bond has been set and, if a bond has been set, the amount of the bond and the DHS justification for that amount
- the alien or the alien's representative should make an oral statement (an "offer of proof" or "proffer") addressing whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for future immigration proceedings, and whether the alien poses a danger to national security

cited in C.J.L.G. v. Barr
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At the Immigration Judge's discretion, witnesses may be placed under oath and testimony taken. However, parties should be mindful that bond hearings are generally briefer and less formal than hearings in removal proceedings.

(vii) Decision. — The Immigration Judge's decision is based on any information that is available to the Immigration Judge or that is presented by the parties. See 8 C.F.R. § 1003.19(d).

Usually, the Immigration Judge's decision is rendered orally. Because bond hearings are generally not recorded, the decision is not transcribed. If either party appeals, the Immigration Judge prepares a written decision based on notes from the hearing.

(f) Appeals. — Either party may appeal the Immigration Judge's decision to the Board of Immigration Appeals. If the alien appeals, the Immigration Judge's bond decision remains in effect while the appeal is pending. If the Department of Homeland Security appeals, the Immigration Judge's bond decision remains in effect while the appeal is pending unless the Board issues an emergency stay or the decision is automatically stayed by regulation. See 8 C.F.R. §§ 1003.6(c), 1003.19(i).

For detailed guidance on when Immigration Judges' decisions in bond proceedings are stayed, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

9.4 Continued Detention Review

cited in C.J.L.G. v. Barr
No. 16-73801 archived on April 30, 2019

(a) In general. — Generally, the Department of Homeland Security (DHS) must remove or release detained aliens within 90 days of a final order of removal. However, DHS may continue to detain an alien whose removal from the United States is not "reasonably foreseeable," if the alien's release would pose a special danger to the public. See INA § 241(a)(6), 8 C.F.R. § 1241.14(f). Such a decision by DHS to continue to detain an alien is reviewed by an Immigration Judge in "continued detention review proceedings." The proceedings begin with a DHS determination that continued detention is required and are divided into two phases: (1) reasonable cause hearings and (2) continued detention review merits hearings. See subsections (c), (d), below.

(b) DHS determination. — If an alien has been ordered removed but remains detained, he or she may request that the Department of Homeland Security (DHS) determine whether there is a significant likelihood of removal in the reasonably foreseeable future. See 8 C.F.R. § 1241.13. If there is a significant likelihood of removal in the reasonably foreseeable future, DHS may continue to detain the alien.

If there is *not* a significant likelihood of removal in the reasonably foreseeable future, the alien is released unless DHS determines, based on a full medical and physical

examination, that the alien should be subject to continued detention because the alien's release would pose a special danger to the public. Following such a determination, the matter is referred to an Immigration Judge for a reasonable cause hearing. See 8 C.F.R. § 1241.14(f).

(c) Reasonable cause hearing. **—** A reasonable cause hearing is a brief hearing to evaluate the evidence supporting the determination by the Department of Homeland Security (DHS) that the alien's release would pose a special danger to the public. In the hearing, the Immigration Judge decides whether DHS's evidence is sufficient to establish reasonable cause to go forward with a continued detention review merits hearing, or whether the alien should be released. See generally 8 C.F.R. § 1241.14.

(i) Timing. **—** The reasonable cause hearing begins no later than 10 business days after referral to the Immigration Court.

(ii) Location. **—** If possible, the reasonable cause hearing is conducted in person, but may be conducted by telephone conference or video conference, at the Immigration Judge's discretion. See Chapter 4.7 (Hearings by Video or Telephone Conference).

(iii) Representation. **—** The alien is provided with a list of free or low-cost legal service providers and may be represented at no expense to the government.

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

(iv) Conduct of hearing. **—** DHS may offer any evidence that is material and relevant to the proceeding. The alien has a reasonable opportunity to examine evidence against him or her, to present evidence and witnesses on his or her own behalf, and to cross-examine witnesses presented by DHS.

(v) Record of Proceedings. **—** The Immigration Judge creates a Record of Proceedings, and the hearing is recorded. The Record of Proceedings is not combined with records of any other Immigration Court proceedings involving the same alien.

(vi) Immigration Judge's decision. **—** If the Immigration Judge finds that DHS has met its burden of showing reasonable cause to go forward with a continued detention review merits hearing, the alien is notified, and the merits hearing is scheduled.

If the Immigration Judge finds that DHS has *not* met its burden, the Immigration Judge dismisses the proceedings, and the alien is released under conditions determined by DHS.

***(vii) Appeals*. —** If the Immigration Judge finds that DHS has not met its burden of showing reasonable cause to go forward with a continued detention review merits hearing, DHS may appeal to the Board of Immigration Appeals. The appeal must be filed within two business days after the Immigration Judge's order. The Immigration Judge's order dismissing the proceedings is stayed pending adjudication of an appeal, unless DHS waives the right to appeal.

If the Immigration Judge finds that DHS *has* met its burden, the decision is not appealable by the alien.

***(d) Continued detention review merits hearing*. —** In the continued detention review merits hearing, the Department of Homeland Security (DHS) has the burden of proving by clear and convincing evidence that the alien should remain in custody because the alien's release would pose a special danger to the public. See generally 8 C.F.R. § 1241.14.

cited in C.J.L.G. v. Barr
No. 16-73801 archived on April 30, 2019

***(i) Timing*. —** The continued detention review merits hearing is scheduled promptly. If the alien requests, the merits hearing is scheduled to commence within 30 days of the decision in the reasonable cause hearing.

***(ii) Representation*. —** The alien is provided with a list of free and low-cost legal service providers and may be represented at no expense to the government.

***(iii) Conduct of hearing*. —** The Immigration Judge may receive into evidence any oral or written statement that is material and relevant to the proceeding. The alien has a reasonable opportunity to examine evidence against him or her, to present evidence and witnesses on his or her own behalf, and to cross-examine witnesses presented by DHS. In addition, the alien has the right to cross-examine the author of any medical or mental health reports used as a basis for DHS's determination that the alien's release would pose a special danger to the public.

(iv) Immigration Judge's decision. — If the Immigration Judge determines that DHS has met its burden of showing that the alien should remain in custody as a special danger to the public, the Immigration Judge orders the continued detention of the alien.

If the Immigration Judge determines that DHS has *not* met its burden, the Immigration Judge dismisses the proceedings, and the alien is released under conditions determined by DHS.

(v) Appeals. — Either party may appeal the Immigration Judge's decision to the Board of Immigration Appeals. Appeals by DHS must be filed within 5 business days of the Immigration Judge's order. Appeals by aliens are subject to the same deadlines as appeals in removal proceedings. For detailed guidance on appeals, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

If the Immigration Judge dismisses the proceedings and orders the alien released, the order is stayed pending adjudication of any DHS appeal, unless DHS waives the right to appeal.

cited in C.J.L.G. v. Barr
No. 16-7380 re-archived on April 30, 2019

(e) Periodic review. — Following proceedings in which the alien's continued detention has been ordered, the alien may periodically request that the Department of Homeland Security (DHS) review his or her continued detention. The alien must show that, due to a material change in circumstances, the alien's release would no longer pose a special danger to the public. Such requests may be made no earlier than 6 months after the most recent decision of the Immigration Judge or the Board of Immigration Appeals.

If DHS does not release the alien, the alien may file a motion with the Immigration Court to set aside its prior determination in the proceedings. The alien must show that, due to a material change in circumstances, the alien's release would no longer pose a special danger to the public. If the Immigration Judge grants the motion, a new continued detention review merits hearing is held. If the motion is denied, the alien may appeal to the Board.

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

Chapter 10 Discipline of Practitioners

10.1 Practitioner Discipline Generally

The Executive Office for Immigration Review has the authority to impose disciplinary sanctions on attorneys, recognized organizations, and accredited representatives who violate rules of professional conduct in practice before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security. See 8 C.F.R. §§ 1003.1(d)(2)(iii), 1003.1(d)(5),1003.101-111, 292.3. See also *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

Generally, discipline of practitioners and recognized organizations is initiated by the filing of a complaint. See Chapter 10.5 (Filing a Complaint). Any individual, including Immigration Judges, may file a complaint about the conduct of a practitioner or recognized organization.

10.2 Definition of Practitioner and Recognized Organization

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

For purposes of this Chapter, "practitioner" refers to an alien's attorney or representative, as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(j), 1292.1(a)(4), respectively. The term "representative" refers to non-attorneys authorized to practice before the Immigration Courts and the Board of Immigration Appeals, including law students and law graduates, reputable individuals, accredited representatives, accredited officials, and persons formerly authorized to practice. See 8 C.F.R. §§ 1001.1(j), 1292.1(a)-(b). See also Chapter 2 (Appearances Before the Immigration Court).

For purposes of this Chapter, the term "recognized organization" is defined as a non-profit, federal tax-exempt, religious, charitable, social service, or similar organization established in the United States that has been recognized by the Office of Legal Access Programs (OLAP) Director to represent aliens through accredited representatives before DHS only or before the Board, the Immigration Courts, and DHS. See 8 C.F.R. § 1292.11.

10.3 Jurisdiction

(a) Immigration Judges. — Immigration Judges have the authority to file complaints concerning practitioners who appear before them.

The disciplinary procedures described in this chapter do not apply to Immigration Judges. For information on Immigration Judge conduct, see Chapter 1.3(c) (Immigration Judge conduct and professionalism).

(b) Practitioners. — The disciplinary procedures described in this chapter apply to practitioners who practice before the Immigration Courts, the Board of Immigration Appeals, or the Department of Homeland Security. See 8 C.F.R. § 1003.101.

(c) Recognized organizations. — .
EOIR is authorized to discipline a recognized organization if it finds it to be in the public interest to do so. 8 C.F.R. § 1003.110. It is in the public interest to discipline a recognized organization that violates one or more of the grounds specified in 8 C.F.R. § 1003.110(b). Specific grounds for discipline of recognized organizations are listed in Chapter 10.4(b) (Recognized Organizations).

(d) DHS attorneys. — The disciplinary procedures described in this chapter do not apply to attorneys who represent the Department of Homeland Security (DHS). The conduct of DHS attorneys is governed by DHS rules and regulations. Concerns or complaints about the conduct of DHS attorneys may be raised in writing with the DHS Office of the Chief Counsel where the Immigration Court is located. A list of Offices of the Chief Counsel is available on the DHS website at www.ice.gov.

Cited in C.J.L.G. v. Barr
No. 16-73801 archived on April 30, 2019

(e) Unauthorized practice of law. — The disciplinary procedures described in this chapter apply to *practitioners* who assist in the unauthorized practice of law. See 8 C.F.R. § 1003.102(m). Anyone may file a complaint against a practitioner who is assisting in the unauthorized practice of law. See 10.5 (Filing a Complaint).

The disciplinary procedures described in this chapter do not apply to *non-practitioners* engaged in the unauthorized practice of law. Anyone harmed by an individual practicing law without authorization should contact the appropriate law enforcement or consumer protection agency. In addition, persons harmed by such conduct are encouraged to contact the Executive Office for Immigration Review Fraud and Abuse Prevention Program. See Chapter 1.4(b) (EOIR Fraud and Abuse Prevention Program), Appendix B (EOIR Directory).

In general, the unauthorized practice of law includes certain instances where non-attorneys perform legal services, give legal advice, or represent themselves to be attorneys. Individuals engaged in the unauthorized practice of law include some immigration specialists, visa consultants, and "notarios."

10.4 Conduct

(a) Practitioners. — Conduct by practitioners which may result in discipline includes the following:

- grossly excessive fees;
- bribery or coercion;
- offering false evidence, or making a false statement of material fact or law;
- improperly soliciting clients;
- disbarment or suspension, or resignation while a disciplinary investigation or proceeding is pending;
- misrepresenting qualifications or services offered;
- conduct that would constitute contempt of court in a judicial proceeding;
- a conviction for a serious crime;
- falsely certifying a copy of a document;
- frivolous behavior, as defined in 8 C.F.R. § 1003.102(j);
- ineffective assistance of counsel;
- repeated failure to appear;
- assisting in the unauthorized practice of law;

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- engaging in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process;
- failing to provide competent representation to a client;
- failing to abide by a client's decisions;
- failing to act with reasonable diligence and promptness;
  - a practitioner's workload must be controlled and managed so that each matter can be handled competently;
  - a practitioner has the duty to comply with all time and filing limitations; and
  - a practitioner should carry through to conclusion all matters undertaken for a client, consistent with the scope of representation.
- failing to maintain communication with the client;
- failing to disclose adverse legal authority;
- failing to submit a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28); or
- repeatedly filing boilerplate submission.

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

For a full explanation of each ground for discipline, consult the regulations at 8 C.F.R. § 1003.102.

(b) Recognized organizations. — Conduct by recognized organizations which may result in discipline includes the following:

- knowingly or with reckless disregard providing a false statement or misleading information in applying for recognition or accreditation of its representative;

- knowingly or with reckless disregard providing false statements or misleading information to clients or prospective clients regarding the scope of its authority or services;
- failing to provide adequate supervision of accredited representatives;
- employing, or receiving services from, or affiliating with, an individual who performs an activity that constitutes the unauthorized practice of law or immigration fraud; or
- engaging in the practice of law through staff when the organization does not have an attorney or accredited representative.

For a full explanation of each ground for discipline, consult the regulations at 8 C.F.R. § 1003.110(b).

10.5 Filing a Complaint

(a) Who may file. **—** Anyone may file a complaint against a practitioner or recognized organization, including Immigration Judges, Board Members, the practitioner's clients, Department of Homeland Security personnel, and other practitioners. 8 C.F.R. §§ 1003.104(a)(1), 1292.19(a).

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

(b) What to file. **—** Complaints must be submitted in writing. Persons filing complaints are encouraged to use the Immigration Practitioner Complaint Form, (Form EOIR-44). See Chapter 11.2 (Obtaining Blank Forms), Appendix E (Forms). The Form EOIR-44 provides important information about the complaint process, the confidentiality of complaints, and the types of misconduct that can result in discipline by the Executive Office for Immigration Review. Complaints should be specific and as detailed as possible, and supporting documentation should be provided if available.

(c) Where to file. **—** Complaints alleging practitioner misconduct before the Immigration Courts or the Board of Immigration Appeals, or complaints against recognized organizations, should be filed with the Executive Office for Immigration Review disciplinary counsel. 8 C.F.R. §§ 1003.104(a)(1), 1292.19(a). The completed Form EOIR-44 and supporting documents should be sent to:

United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
Attn: Disciplinary Counsel

See Appendix B (EOIR Directory). After receiving a complaint, the EOIR disciplinary counsel decides whether to initiate disciplinary proceedings. 8 C.F.R. §§ 1003.104(b), 1292.19(b). See Chapter 10.7 (Disciplinary Proceedings).

(d) When to file. — Complaints should be filed as soon as possible. There are no time limits for filing most complaints. However, complaints based on ineffective assistance of counsel must be filed within one year of a finding of ineffective assistance of counsel by an Immigration Judge, the Board of Immigration Appeals, or a federal court judge or panel. 8 C.F.R. § 1003.102(k).

10.6 Duty to Report

cited in C.J.L.G. v. Barr
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A practitioner who practices before the Immigration Courts, the Board of Immigration Appeals, the Department of Homeland Security, and, if applicable, the authorized officer of each recognized organization with which a practitioner is affiliated, has an affirmative duty to report whenever he or she:

- has been found guilty of, or pled guilty or *nolo contendere* to, a serious crime (as defined in 8 C.F.R. § 1003.102(h)); or

- has been disbarred or suspended from practicing law, or has resigned while a disciplinary investigation or proceeding is pending.

8 C.F.R. §§ 1003.103(c), 292.3(c)(4). The practitioner and, if applicable, the authorized officer of each recognized organization, must report the misconduct, criminal conviction, or discipline to the Executive Office for Immigration Review disciplinary counsel within 30 days of the issuance of the relevant initial order. This duty applies even if an appeal of the conviction or discipline is pending.

10.7 Disciplinary Proceedings

(a) In general. — Disciplinary proceedings take place in certain instances where a complaint against a practitioner or recognized organization is filed with the Executive Office for Immigration Review disciplinary counsel, or a practitioner or recognized organization self-reports. See Chapters 10.5 (Filing a Complaint), 10.6 (Duty to Report). See generally 8 C.F.R. §§ 1003.101-1003.109.

In some cases, practitioners are subject to summary disciplinary proceedings, which involve distinct procedures as described in subsection (g), below.

In general, disciplinary hearings are conducted in the same manner as Immigration Court proceedings, as appropriate. 8 C.F.R. § 1003.106(a)(1)(v).

(b) Preliminary investigation. — When a complaint against a practitioner or recognized organization is filed, or a practitioner or recognized organization self-reports, the Executive Office for Immigration Review disciplinary counsel conducts a preliminary investigation. Upon concluding the investigation, the EOIR disciplinary counsel may elect to:

- take no further action;
- issue a warning letter or informal admonition to the practitioner;
- enter into an agreement in lieu of discipline; or
- initiate disciplinary proceedings by filing a Notice of Intent to Discipline (NID) with the Board of Immigration Appeals and serving a copy on the practitioner or recognized organization.

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(c) Notice of Intent to Discipline. — Except as described in subsection (g), below, the Notice of Intent to Discipline (NID) contains the charge(s), the preliminary inquiry report, proposed disciplinary sanctions, instructions for filing an answer and requesting a hearing, and the mailing address and telephone number of the Board of Immigration Appeals.

(i) Petition for Immediate Suspension. — In certain circumstances, the Executive Office for Immigration Review disciplinary counsel files a petition with

the Board of Immigration Appeals to immediately suspend the practitioner from practicing before the Immigration Courts and the Board. These circumstances include a conviction of a serious crime, disbarment or suspension from practicing law, or resignation while disciplinary proceedings are pending. Practitioners subject to a petition for immediate suspension are placed in summary disciplinary proceedings, as described in subsection (g), below.

The Board may set aside such a suspension upon good cause shown, if doing so is in the interest of justice. The hardships that typically accompany suspension from practice, such as loss of income and inability to complete pending cases, are usually insufficient to set aside a suspension order.

***(ii) DHS motion to join in disciplinary proceedings*. —** The Department of Homeland Security (DHS) may file a motion to join in the disciplinary proceedings. If the motion is granted, any suspension or expulsion from practice before the Immigration Courts and the Board of Immigration Appeals will also apply to practice before DHS.

***(iii) Petition for Interim Suspension*. —** In certain circumstances, the Executive Office for Immigration Review Disciplinary Counsel may petition for an interim suspension from practice of an accredited representative before the Board and the Immigration Courts. 8 C.F.R. § 1003.111(a)(1). DHS may ask that the accredited representative be similarly suspended from practice before DHS. 8 C.F.R. § 1003.111(a)(2).

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The petition must demonstrate by a preponderance of the evidence that the accredited representative poses a substantial threat of irreparable harm to clients or prospective clients. See 8 C.F.R. § 1003.111(a)(3).

***(d) Answer*. —** A practitioner or recognized organization subject to a Notice of Intent to Discipline (NID) has 30 days from the date of service to file a written answer with the Board of Immigration Appeals and serve a copy on the counsel for the government. See Chapter 3.2 (Service on the Opposing Party). The answer is deemed filed when it is *received* by the Board.

***(i) Contents*. —** In the answer, the practitioner, or, in cases involving recognized organizations, the organization, must admit or deny each allegation in

the NID. Each allegation not expressly denied is deemed admitted. In addition, the answer must state whether the practitioner or recognized organization requests a hearing. If a hearing is not requested, the opportunity to request a hearing is deemed waived. 8 C.F.R. § 1003.105(c)(2).

(ii) Motion for Extension of Time to Answer. **—** The deadline for filing an answer may be extended for good cause shown, pursuant to a written motion filed with the Board of Immigration Appeals no later than 3 working days before the deadline. The motion should be filed with a cover page labeled "MOTION FOR EXTENSION OF TIME TO ANSWER" and comply with the requirements for filing. For information on the requirements for filing with the Board, parties should consult the Board of Immigration Appeals Practice Manual, which is available at the Executive Office for Immigration Review website at www.justice.gov/eoir.

(iii) Default order. **—** If the practitioner or, in cases involving recognized organizations, the organization, does not file a timely answer, the Board of Immigration Appeals issues a default order imposing the discipline proposed in the NID, unless special considerations are present. 8 C.F.R. § 1003.105(d)(2).

(iv) Motion to set aside default order. **—** A practitioner or, in cases involving recognized organizations, the organization, subject to a default order may file a written motion with the Board of Immigration Appeals to set aside a default order. The motion to set aside a default order must be filed within 15 days of service of the default order. 8 C.F.R. § 1003.105(d)(2). The motion should be filed with a cover page labeled "MOTION TO SET ASIDE DEFAULT ORDER" and comply with the requirements for filing. For information on the requirements for filing with the Board, parties should consult the Board of Immigration Appeals Practice Manual.

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The motion must show that the failure to file a timely answer was caused by exceptional circumstances beyond the control the practitioner or recognized organization, such as the serious illness or the death of an immediate relative, but not including less compelling circumstances. 8 C.F.R. § 1003.105(d)(2).

(e) Adjudication. **—** Except as described in subsection (g) below, if a practitioner, or, in cases involving recognized organizations, the organization, files a timely answer, the matter is referred to an Immigration Judge or Administrative Law Judge who will act

as the adjudicating official in the disciplinary proceedings. An Immigration Judge cannot adjudicate a matter in which he or she filed the complaint or which involves a practitioner who regularly appears in front of that Immigration Judge.

***(i) Adjudication without hearing*. —** If the practitioner or recognized organization files a timely answer without a request for a hearing, the adjudicating official provides the parties with the opportunity to file briefs and evidence to support or refute any of the charges or affirmative defenses, and the matter is adjudicated without a hearing.

***(ii) Adjudication with hearing*. —** If the practitioner or recognized organization files a timely answer with a request for a hearing, a hearing is conducted as described in subsections (A) through (E), below.

***(A) Timing and location*. —** The time and place of the hearing is designated with due regard to all relevant factors, including the location of the practitioner's practice or residence or, in the case of a recognized organization, the location of the recognized organization, and the convenience of witnesses. The practitioner or the recognized organization is afforded adequate time to prepare the case in advance of the hearing.

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***(B) Representation*. —** The practitioner or, in cases involving recognized organizations, the organization, may be represented by counsel at no expense to the government.

***(C) Pre-hearing conferences*. —** Pre-hearing conferences may be held to narrow issues, obtain stipulations between the parties, exchange information voluntarily, or otherwise simplify and organize the proceeding.

(D) Timing of submissions. — Deadlines for filings in disciplinary proceedings are as follows, unless otherwise specified by the adjudicating official. Filings must be submitted at least thirty (30) days in advance of the hearing. Responses to filings that were submitted in advance of a hearing must be filed within fifteen (15) days after the original filing.

***(E) Conduct of hearing*. —** At the hearing, each party has a reasonable opportunity to present evidence and witnesses, to examine and

object to the other party's evidence, and to cross-examine the other party's witnesses.

(iii) Decision. — In rendering a decision, the adjudicating official considers the complaint, the preliminary inquiry report, the Notice of Intent to Discipline, the practitioner's, or, in cases involving recognized organizations, the organization's, answer, pleadings, briefs, evidence, any supporting documents, and any other materials.

(iv) Sanctions authorized. — A broad range of sanctions are authorized, including disbarment from immigration practice, suspension from immigration practice, and public or private censure. 8 C.F.R. § 1003.101(a).

The Executive Office for Immigration Review is also authorized to impose sanctions against a recognized organization, including revocation, termination, and such other sanctions as deemed appropriate. 8 C.F.R. § 1003.110.

(v) Appeal. — The decision of the adjudicating official may be appealed to the Board of Immigration Appeals. A party wishing to appeal must file a Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case (Form EOIR-45). See Chapter 11.2 (Obtaining Blank Forms), Appendix E (Forms). The Form EOIR-45 is specific to disciplinary proceedings. The Form EOIR-45 must be received by the Board no later than 30 calendar days after the adjudicating official renders an oral decision or mails a written decision.

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Parties should note that, on appeal, the Board may increase the sanction imposed by the adjudicating official. See *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

(f) Where to file documents. — Documents in disciplinary proceedings should be filed as described below.

(i) Board of Immigration Appeals. — When disciplinary proceedings are pending before the Board of Immigration Appeals, documents should be filed with the Board. For the Board's mailing address, parties should consult the Board of Immigration Appeals Practice Manual, which is available on the Executive Office

for Immigration Review website at www.justice.gov/eoir. Examples of when to file documents with the Board include:

- after the filing of a Notice of Intent to Discipline, but before an adjudicating official is appointed to the case
- after a default order has been entered
- after an appeal has been filed

(ii) Adjudication. **—** When disciplinary proceedings are pending before an adjudicating official, documents should be sent to:

United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
Attn: Chief Clerk of the Immigration Court

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(g) Summary disciplinary proceedings. **—** Summary disciplinary proceedings are held in cases where a petition for immediate suspension has been filed. See (c)(i), above. A preliminary inquiry report is not required to be filed with the Notice of Intent to Discipline (NID) in summary disciplinary proceedings.

These proceedings are conducted as described above, except that for the case to be referred to an adjudicating official, the practitioner must demonstrate in the answer to the NID that there is a material issue of fact in dispute or that certain special considerations are present. If the practitioner's answer meets this requirement, disciplinary proceedings are held as described in subsections (d) through (f), above. If the practitioner fails to meet this requirement, the Board issues an order imposing discipline. For additional information, see 8 C.F.R. §§ 1003.103(b), 1003.106(a).

10.8 Notice to Public

(a) Disclosure generally authorized. **—** In general, action taken on a Notice of Intent to Discipline may be disclosed to the public. See 8 C.F.R. § 1003.108(c).

(b) Lists of disciplined practitioners. — Lists of practitioners who have been disbarred, suspended, or publicly censured are posted at the Immigration Courts, at the Board of Immigration Appeals, and on the Executive Office for Immigration Review website at www.justice.gov/eoir. These lists are updated periodically.

10.9 Effect on Practitioner's Pending Immigration Cases

(a) Duty to advise clients. — A practitioner or recognized organization that is disciplined is obligated to advise all clients whose cases are pending before the Immigration Courts, the Board of Immigration Appeals, or the Department of Homeland Security that the practitioner or recognized organization has been disciplined.

(b) Pending cases deemed unrepresented. — Once a practitioner has been expelled or suspended, the practitioner's pending cases are deemed unrepresented. The Immigration Court rejects filings that are submitted by a practitioner after he or she has been expelled or suspended. See Chapter 3.1(d) (Defective filings).

(c) Ineffective assistance of counsel. — The imposition of discipline on a practitioner does not, by itself, constitute evidence of ineffective assistance of counsel in the practitioner's former cases.

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(d) Filing deadlines. — An order of practitioner or recognized organization discipline does not automatically excuse parties from meeting any applicable filing deadlines.

10.10 Reinstatement

(a) Following suspension. — Following a suspension, reinstatement is not automatic. With exceptions for accredited representatives specified in subsection (d) below, to be reinstated following a suspension, a practitioner must:

- file a motion with the Board of Immigration Appeals requesting to be reinstated;

- show that he or she is an attorney or representative as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(j), respectively; and

- serve a copy of the motion on the EOIR Disciplinary Counsel and the DHS Disciplinary Counsel.

8 C.F.R. § 1003.107(a)(1).

The Executive Office for Immigration Review Disciplinary Counsel or the DHS Disciplinary Counsel may file a written response, including supporting documents or evidence, objecting to reinstatement on the ground that the practitioner failed to comply with the terms of the suspension. 8 C.F.R. § 1003.107(a)(2). Failure to meet the definition of an attorney or accredited representative will result in the request for reinstatement being denied. 8 C.F.R. § 1003.107(b)(3). If the practitioner failed to comply with the terms of the suspension, the Board will deny the motion and indicate the circumstances under which reinstatement may be sought.

(b) During suspension for more than one year. **—** A practitioner suspended for more than one year may file a petition for reinstatement with the Board of Immigration Appeals after one year has passed or one-half of the suspension has elapsed, whichever is greater. The practitioner must serve a copy of the petition on the Executive Office for Immigration Review disciplinary counsel. In the petition, the practitioner must show that:

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- he or she is an attorney or representative as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(g), respectively;

- he or she possesses the moral and professional qualifications required to appear before the Board, the Immigration Courts, or DHS; and

- his or her reinstatement will not be detrimental to the administration of justice.

8 C.F.R. § 1003.107(b).

The Board has the discretion to hold a hearing to determine if the practitioner meets all of the requirements for reinstatement. If the Board denies a petition for

reinstatement, the practitioner is barred from filing a subsequent petition for reinstatement for one year from the date of denial.

(c) If disbarred. **—** A practitioner who has been disbarred may file a petition for reinstatement with the Board of Immigration Appeals after one year has passed, under the provisions described in subsection (b), above.

(d) Accredited representatives. **—**

(i) Suspended. **—** When an accredited representative is suspended past the expiration of the period of accreditation, the representative may not seek reinstatement. After the representative's suspension period has expired, a new request for accreditation may be submitted by the recognized organization pursuant to 8 C.F.R. §§ 1003.107(c)(1), 1292.13).

(ii) Disbarred. **—** An accredited representative who has been disbarred may not seek reinstatement. 8 C.F.R. § 1003.107(c)(2).

(e) Cases pending at reinstatement. **—** Suspension or disbarment terminates representation. A practitioner reinstated to immigration practice who wishes to represent clients before the Immigration Court, the Board of Immigration Appeals, or the Department of Homeland Security must enter a new appearance in each case, even if he or she was the practitioner at the time that discipline was imposed. See Chapter 2.3(c) (Appearances).

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Chapter 11 Forms

11.1 Forms Generally

There is an official form that must be used to:

- appear as a representative — see Chapter 2.1(b) (Entering an appearance)
- report a change of address — see Chapter 2.2(c) (Address obligations)
- request most kinds of reliefs — see 8 C.F.R. parts 299, 1299
- file an appeal — see Chapter 6 (Appeals of Immigration Judge Decisions)
- request a fee waiver on appeal — see Chapter 3.4 (Filing Fees)

There is an official form that should be used to:

- file a practitioner complaint — see Chapter 10.5 (Filing a Complaint)

There is *no* official form to:

- file a motion — see Chapter 5.2(b) (Form)
- file a FOIA request — see Chapter 12 (Freedom of Information Act)

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11.2 Obtaining Blank Forms

(a) Identifying EOIR forms. — Many forms used by the Executive Office for Immigration Review (EOIR) do not appear in the regulations. All of the EOIR forms most commonly used by the public are identified in this manual. See Appendix E (Forms).

Form names and numbers can be obtained from the Immigration Courts and the Clerk's Office of the Board of Immigration Appeals. See Appendix A (Immigration Court Addresses), Appendix B (EOIR Directory).

(b) Obtaining EOIR forms. **—** Appendix E (Forms) contains a list of frequently requested forms and information on where to obtain them. In general, EOIR forms are available from the following sources:

- the EOIR website at www.justice.gov/eoir
- the Immigration Courts
- the Clerk's Office of the Board of Immigration Appeals
- certain Government Printing Office Bookstores

Parties should be sure to use the most recent version of each form, which will be available from the sources listed here.

(c) Obtaining DHS forms. **—** In general, DHS forms are available at www.uscis.gov.

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(d) Photocopied forms. **—** Photocopies of blank EOIR forms may be used, provided that they are an accurate duplication of the government-issued form and are printed on the correct size and stock of paper. See 8 C.F.R. §§ 299.4(a), 1299.1. The filing party is responsible for the accuracy and legibility of the form. The paper used to photocopy the form should also comply with Chapter 3.3(c)(v) (Paper size and document quality). The most recent version of the form *must be used* and is available from the sources listed in subsection (b), above.

For the forms listed in subsection (f), below, the use of colored paper is strongly encouraged, but not required.

(e) Computer-generated forms. **—** Computer-generated versions of EOIR forms may be used, provided that they are an accurate duplication of the government-issued form and are printed on the correct size and stock of paper. See 8 C.F.R. §§ 299.4(a), 1299.1. The filing party is responsible for the accuracy and legibility of the form. The

paper used to photocopy the form should also comply with Chapter 3.3(c)(v) (Paper size and document quality). The most recent version of the form *must be used* and is available from the sources listed in subsection (b), above.

At this time, only the Notice of Entry of Appearance as Attorney or Representative before the Immigration Court (Form EOIR-28) can be filed electronically with the Immigration Court. See Chapters 3.1(a)(viii) (E-filing), 2.1(b) (Entering an appearance).

For the forms listed in subsection (f), below, when filing a paper form, the use of colored paper is strongly encouraged, but not required.

(f) Form colors. **—** Forms are no longer required to be filed on paper of a specific color. However, the use of colored paper for the forms listed below is strongly encouraged. Any submission that is not a form must be on white paper.

blue	—	EOIR-26 (Notice of Appeal / Immigration Judge Decision)
tan	—	EOIR-26A (Appeal Fee Waiver Request)
yellow	—	EOIR-27 (Notice of Appearance before the Board of Immigration Appeals)
green	—	EOIR-28 (Notice of Appearance before the Immigration Court)
pink	—	EOIR-29 (Notice of Appeal / DHS decision)
pink	—	EOIR-33/BIA (Change of Address / Board of Immigration Appeals)
blue	—	EOIR-33/IC (Change of Address / Immigration Court)

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11.3 Submitting Completed Forms

Completed forms must comply with the signature requirements in Chapter 3.3(b) (Signatures).

11.4 Additional Information

For further information on filing requirements, see Chapter 3 (Filing with the Immigration Court). See also Chapters 5 (Motions before the Immigration Court), 6 (Appeals of Immigration Judge Decisions), 8 (Stays), 9 (Detention and Bond), 10 (Discipline of Practitioners), 12 (Freedom of Information Act).

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Chapter 12 Freedom of Information Act (FOIA)

12.1 Generally

The Freedom of Information Act (FOIA) provides the public with access to federal agency records, with certain exceptions. See 5 U.S.C. § 552. The Executive Office for Immigration Review, Office of the General Counsel, responds to FOIA requests for Immigration Court records. See Appendix B (EOIR Directory).

12.2 Requests

For detailed guidance on how to file a FOIA request, individuals requesting information under the Freedom of Information Act should consult the Executive Office for Immigration Review (EOIR) website at www.justice.gov/eoir or contact the EOIR FOIA unit. See Appendix B (EOIR Directory). General guidelines are as follows.

(a) Who may file. —

(i) Parties. —

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(A) Inspecting the record. — Parties to an Immigration Court proceeding, and their legal representatives, may inspect the official record of proceedings by prior arrangement with Immigration Court staff. A FOIA request is not required. See Chapter 1.6(c) (Records).

(B) Obtaining copies of the record. — As a general rule, parties may only obtain a copy of the record of proceedings by filing a FOIA request. See subsection (b), below. However, in limited instances, Immigration Court staff have the discretion to provide a party with a copy of the record or portion of the record, without a FOIA request. See Chapter 1.6(c) (Records).

(ii) Non-parties. — Persons who are not a party to a proceeding before an Immigration Court must file a FOIA request with the EOIR Office of the General Counsel if they wish to see or obtain copies of the record of proceedings. See subsection (b), below.

(b) How to file. —

(i) Form. — FOIA requests must be made in writing. See 28 C.F.R. § 16.1 et seq. The Executive Office for Immigration Review (EOIR) does not have an official form for filing FOIA requests. The Department of Homeland Security Freedom of Information /Privacy Act Request (Form G-639) should not be used to file such requests. For information on where to file a FOIA request, see Appendix B (EOIR Directory).

(ii) Information required. — Requests should thoroughly describe the records sought and include as much identifying information as possible regarding names, dates, subject matter, and location of proceedings. For example, if a request pertains to an alien in removal proceedings, the request should contain the full name and alien registration number ("A number") of that alien. The more precise and comprehensive the information provided in the FOIA request, the better and more expeditiously the request can be processed.

(iii) Fee. — No fee is required to file a FOIA request, but fees may be charged to locate, review, and reproduce records. See 28 C.F.R. § 16.3(c).

(iv) Processing times. — Processing times for FOIA requests vary depending on the nature of the request and the location of the records.

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(c) When to file. —

(i) Timing. — A FOIA request should be filed as soon as possible, especially when a party is facing a filing deadline.

(ii) Effect on filing deadlines. — Parties should not delay the filing of an application, motion, brief, appeal, or other document while awaiting a response to a FOIA request. Non-receipt of materials requested pursuant to FOIA does *not* excuse a party's failure to meet a filing deadline.

(d) Limitations. —

(i) Statutory exemptions. — Certain information in agency records, such as classified material and information that would cause a clearly unwarranted invasion of personal privacy, is exempted from release under FOIA. See 5 U.S.C. § 552(b)(1)-(9). Where appropriate, such information is redacted (i.e., removed or cut out), and a copy of the redacted record is provided to the requesting party. If material is redacted, the reasons for the redaction are indicated.

(ii) Agency's duty. **—** The FOIA statute does not require the Executive Office for Immigration Review, its Office of the General Counsel, or the Immigration Courts to perform legal research, nor does it entitle the requesting person to copies of documents that are available for sale or on the internet.

(iii) Subject's consent. **—** When a FOIA request seeks information that is exempt from disclosure on the grounds of personal privacy, the subject of the record must consent in writing to the release of the information.

12.3 Denials

If a FOIA request is denied, either in whole or in part, the requesting party may appeal the decision to the Office of Information and Privacy, Department of Justice. Information on how to appeal a denial of a FOIA request is available on the Office of Information and Privacy website at www.justice.gov/oip. The rules regarding FOIA appeals can be found at 28 C.F.R. § 16.9.

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Chapter 13 Other Information

13.1 Reproduction of the Practice Manual

The Practice Manual is a public document and may be reproduced without advance authorization from the Executive Office for Immigration Review.

13.2 Online Access to the Practice Manual

The most current version of the Practice Manual is available at the Executive Office for Immigration Review website at www.justice.gov/eoir. Questions regarding online access to the Practice Manual should be addressed to the Law Library and Immigration Research Center. See Appendix B (EOIR Directory).

13.3 Updates to the Practice Manual

The Practice Manual is updated periodically. The date of the most recent update is indicated at the bottom of each page. Parties should make sure to consult the most recent version of the Practice Manual, which is posted online at the Executive Office for Immigration Review website at www.justice.gov/eoir.

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13.4 Public Input

(a) Practice Manual. — The Executive Office for Immigration Review welcomes and encourages the public to provide comments on the Practice Manual. In particular, the public is encouraged to identify errors or ambiguities in the text and to propose revisions for future editions.

Correspondence regarding the Practice Manual should be addressed to:

United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041

The public is asked not to combine comments regarding the Immigration Court Practice Manual with other inquiries, including inquiries regarding specific matters pending before the Immigration Courts.

***(b) Regulations and Published Rules*. —** Periodically, the Executive Office for Immigration Review issues new regulations. New regulations are published in the *Federal Register*, which is available online at www.ofr.gov, in most law libraries, and in many public libraries. The public is encouraged to submit comments on proposed regulations. Comments may be submitted at www.regulations.gov or as directed in the *Federal Register*.

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APPENDIX A
Immigration Court Addresses

Arizona			
Eloy	1705 E. Hanna Rd., Suite 366 Eloy, AZ 85131 (520) 466-3671	***Phoenix***	250 N. 7th Avenue #300 Phoenix, AZ 85007 (602) 640-2747
Florence	3260 N. Pinal Parkway Ave. Florence, AZ 85132 (520) 868-3341	***Tucson***	300 West Congress, Suite 300 Tucson, AZ 85701 (520) 670-5212

California			
Adelanto	Adelanto Detention Facility 10250 Rancho Road, Suite 201A Adelanto, CA 92301 760-246-5404	***Otay Mesa***	7488 Calzada de la Fuente San Diego, CA 92154 (619) 661-5600 Mailing address: P.O. Box 438150 San Ysidro, CA 92143-8150
Imperial	2409 La Brucherie Rd. Imperial, CA 92251 (760) 370-5200		
		San Diego	401 West "A" St., Suite 800 San Diego, CA 92101 (619) 557-6052
Los Angeles	606 S. Olive St., 15th Floor Los Angeles, CA 90014 (213) 894-2811	***San Francisco***	100 Montgomery St., Suite 800 San Francisco, CA 94104 (415) 705-4415

Colorado			
Aurora	3130 N. Oakland Street Aurora, CO 80010 (303) 361-0488	***Denver***	1961 Stout Street, Suite 3103 Denver, CO 80294 (303) 844-5815

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Connecticut	
Hartford	AA Ribicoff Federal Bldg. & Courthouse 450 Main St., Room 628 Hartford, CT 06103-3015 (860) 240-3881

Florida			
Miami	One Riverview Square 333 S. Miami Ave., Suite 700 Miami, FL 33130 (305) 789-4221	***Orlando***	3535 Lawton Road, Suite 200 Orlando, FL 32803 (407) 722-8900
Krome	Krome Immigration Court 18201 SW 12th St., Bldg. #1, Suite C Miami, FL 33194 (786) 422-8700		

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Georgia			
Atlanta	180 Ted Turner Dr SW, Suite 241 Atlanta, GA 30303 (404) 331-0907	***Stewart***	146 CCA Road Lumpkin, GA 31815 (229) 838-1320

Hawaii	
Honolulu	PJKK Federal Bldg. 300 Ala Moana Blvd., Room 8-112 Honolulu, HI 96850 (808) 541-1870

Illinois			
Chicago	525 West Van Buren Street Suite 500 Chicago, IL 60607 (312) 697-5800	***Chicago Detained***	536 Clark St., Room B1330/1320 Chicago, IL 60605 (312) 697-5800 Mailing Address: 525 West Van Buren Street Suite 500 Chicago, IL 60607

Kentucky	
Louisville	332 W Broadway, 11th Floor Louisville, KY 40202 (502) 340-2000

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Louisiana			
New Orleans	One Canal Place 365 Canal St., Suite 2450 New Orleans, LA 70130 (504) 589-3992	***Oakdale***	1900 E. Whatley Rd. Oakdale, LA 71463 (318) 335-0365

Maryland	
Baltimore	George Fallon Federal Bldg. 31 Hopkins Plaza, Room 440 Baltimore, MD 21201 (410) 962-3092

Massachusetts	
Boston	JFK Federal Bldg. 15 New Sudbury St., Room 320 Boston, MA 02203 (617) 565-3080

Michigan	
Detroit	P.V. McNamara Federal Bldg. 477 Michigan Ave., Suite 440 Detroit, MI 48226 (313) 226-2603

Minnesota	
Bloomington	Bishop Henry Whipple Federal Building 1 Federal Drive, Suite 1850 Fort Snelling, MN 55111 (612) 725-3765

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Missouri	
Kansas City	2345 Grand Blvd., Suite 525 Kansas City, MO 64108 (816) 581-5000

Nebraska	
Omaha	1717 Avenue H, Suite 100 Omaha, NE 68110 (402) 348-0310

Nevada	
Las Vegas	110 North City Parkway, Suite 400 Las Vegas, NV 89106 (702) 458-0227

New Jersey			
Elizabeth	625 Evans St., Room 148A Elizabeth, NJ 07201 (908) 787-1390	***Newark***	970 Broad St., Room 1200 Newark, NJ 07102 (973) 645-3524

New Mexico	
Otero	26 McGregor Range Rd., Door #1 Chaparral, NM 88081 (915) 313-8755

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New York			
Batavia	4250 Federal Drive, Room F108 Batavia, NY 14020 (585) 345-4300	***New York***	26 Federal Plaza 12th Floor, Room 1237 New York, NY 10278 (917) 454-1040
Buffalo	130 Delaware Ave., Suite 410 Buffalo, NY 14202 (716) 551-3442	***Ulster***	Ulster Correctional Facility Berme Road P.O. Box 800 Napanoch, NY 12458 (845) 647-2223
Fishkill	Downstate Correctional Facility 121 Red Schoolhouse Rd. Fishkill, NY 12524 (845) 838-5700	***Varick Street***	201 Varick St., Room 1140 New York, NY 10014 (212) 620-6279

North Carolina	
Charlotte	5701 Executive Center Dr., Suite 400 Charlotte, NC 28212 (704) 817-6140

Northern Mariana Islands	
Saipan	Marina Heights II Building, Suite 301 Marina Heights Business Park Saipan, MP 96950 (670) 322-0601

Ohio	
Cleveland	801 W. Superior Ave. Suite 13 - 100 Cleveland, OH 44113 (216) 802-1100

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Oregon	
Portland	1220 SW 3rd Ave., Suite 500 Portland, OR 97204 (503) 326-6341

Pennsylvania			
Philadelphia	Robert Nix Federal Bldg & Courthouse 900 Market Street, Suite 504 Philadelphia, PA 19107 (215) 656-7000	***York***	3400 Concord Rd., Suite 2 York, PA 17402 (717) 755-7555 Mailing Address: P.O. Box 20370 York, PA 17402

Puerto Rico	
San Juan	San Patricio Office Center #7 Tabonuco St., Room 401 Guaynabo, PR 00968-4605 (787) 749-4386

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Tennessee	
Memphis	80 Monroe Ave., Suite 501 Memphis, TN 38103 (901) 528-5883

Texas			
Dallas	1100 Commerce St., Suite 1060 Dallas, TX 75242 (214) 767-1814	***Houston SPC***	Houston Service Processing Center 5520 Greens Rd. Houston, TX 77032 (281) 594-5600
El Paso	700 E. San Antonio St., Suite 750 El Paso, TX 79901 (915) 534-6020	***Pearsall***	566 Veterans Drive Pearsall, TX 78061 (210) 368-5700

Texas			
El Paso SPC	Service Processing Center 8915 Montana Ave., Suite 100 El Paso, TX 79925 (915) 771-1600	***Port Isabel***	Port Isabel Detention Center 27991 Buena Vista Blvd. Los Fresnos, TX 78566 (956) 547-1788 Mailing Address: 2009 West Jefferson Ave., Suite 300 Harlingen, TX 78550
Harlingen	2009 West Jefferson Ave., Suite 300 Harlingen, TX 78550 (956) 427-8580	***San Antonio***	800 Dolorosa St., Suite 300 San Antonio, TX 78207 (210) 472-6637
Houston	600 Jefferson Street, Suite 900 Houston, TX 77002 (713) 718-3870		

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Utah	
Salt Lake City	2975 South Decker Lake Drive, Suite 200 West Valley City, UT 84119 (801) 524-3000

Virginia	
Arlington	1901 South Bell Street, Suite 200 Arlington, VA 22202 (703) 603-1300

Washington			
Seattle	1000 Second Ave., Suite 2500 Seattle, WA 98104 (206) 553-5953	***Tacoma***	1623 East J St., Suite 3 Tacoma, WA 98421 (253) 779-6020

APPENDIX B
EOIR Directory

EOIR Website
www.justice.gov/eoir

EOIR eRegistry
Technical Assistance
eRegistration.support@usdoj.gov

Automated Case Information Hotline
(800) 898-7180
(240) 314-1500
24 hours, 7 days a week

Office of the Chief Immigration Judge
United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
(703) 305-1247
8:00 a.m. to 5:00 p.m., Monday - Friday, except holidays

Practice Manual Comments
United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041

Concerns/Complaints about Immigration Judge Conduct www.justice.gov/eoir

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Board of Immigration Appeals
For addresses, see the Board of Immigration Appeals Practice Manual

Clerk's Office
(703) 605-1007
8:00 a.m. to 4:30 p.m.
Monday - Friday, except holidays

Emergency Stay Information
(703) 605-1007
24 hours, 7 days a week

Oral Argument Coordinator
(703) 605-1007
8:00 a.m. to 4:30 p.m.
Monday - Friday, except holidays

Emergency Stay Coordinator
(703) 306-0093
9:00 a.m. to 5:30 p.m.
Monday – Friday, except holidays

Telephonic Instructions and Procedures System (BIA TIPS)
(703) 605-1007
24 hours, 7 days a week

Office of the General Counsel
United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041 (703) 305-0470
8:00 a.m. to 5:00 p.m., Monday - Friday, except holidays

EOIR Disciplinary Counsel
United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
Attn: Disciplinary Counsel

EOIR Fraud and Abuse Prevention Program
United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
Attn: Fraud and Abuse Prevention Program

Freedom of Information Act Requests (FOIA)
United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel–FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
(703) 605-1297

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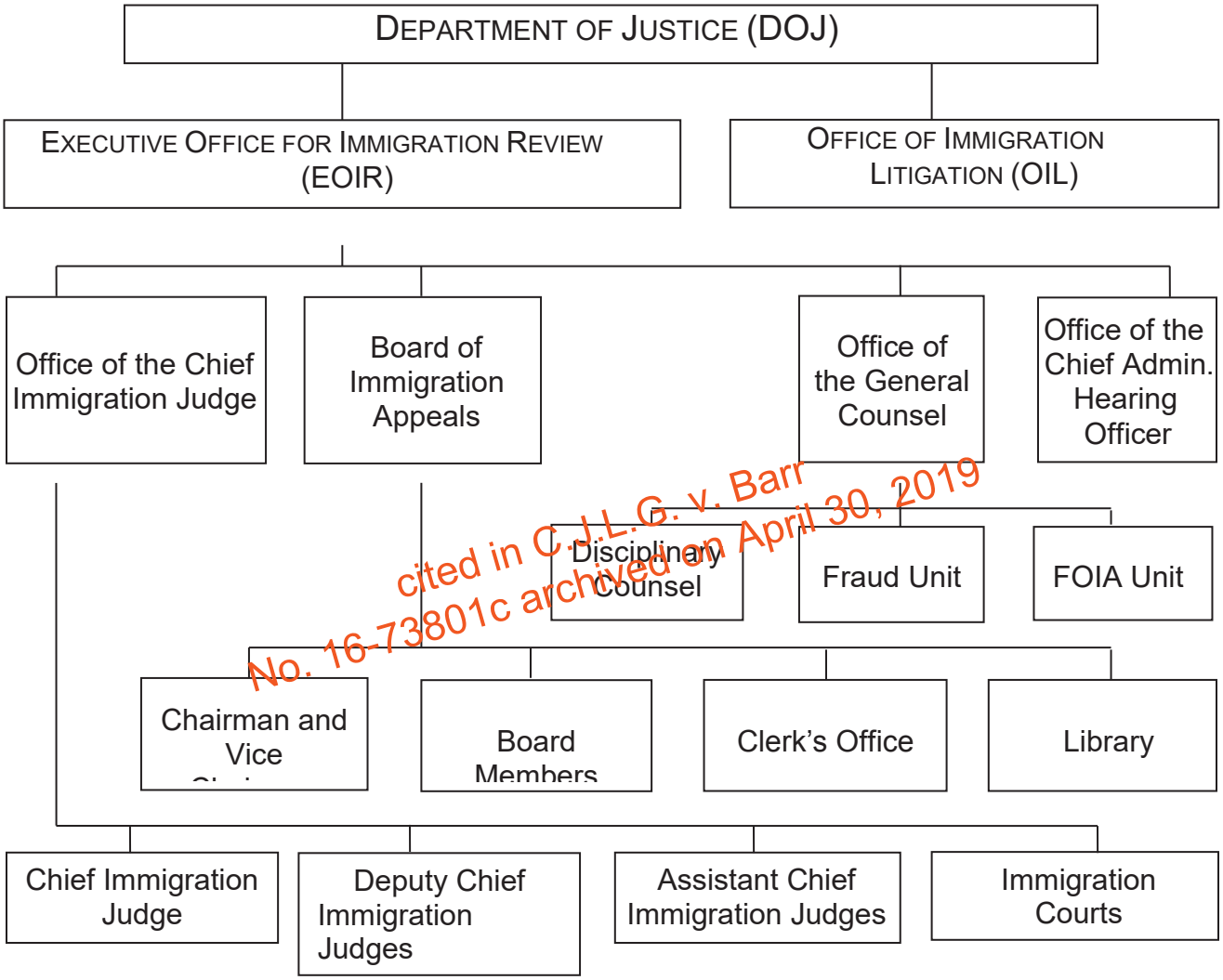
Office of Legal Access Programs
United States Department of Justice
Executive Office for Immigration Review
Office of Legal Access Programs
5107 Leesburg Pike, Suite 1900
Falls Church, VA 22041
For questions specific to recognized organizations and accredited representatives,
email R-A-Info@usdoj.gov

Office of Communications and Legislative Affairs
United States Department of Justice
Executive Office for Immigration Review
Office of Communications and Legislative Affairs
5107 Leesburg Pike, Suite 1902
Falls Church, VA 22041
(703) 305-0289
9:00 a.m. to 5:00 p.m., Monday - Friday, except holidays

Law Library and Immigration Research Center
United States Department of Justice
Executive Office for Immigration Review
Law Library and Immigration Research Center
5201 Leesburg Pike, Suite 1200
Falls Church, VA 22041
(703) 605-1103
9:00 a.m. to 4:00 p.m., Monday - Friday, except holidays
Virtual Law Library: www.justice.gov/eoir

APPENDIX C
Practice Manual Organizational Chart



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This chart is a general illustration of the organizational relationship between certain components of the Department of Justice. The chart does not display all components of offices displayed, nor does it represent their relative authority. See Chapter 1 (The Immigration Court). These components were selected because of their practical importance to persons appearing before the Immigration Courts and the Board of Immigration Appeals.

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APPENDIX D
Deadlines

This table is provided for general guidance *only*. To determine the particular deadlines in a given case, parties *must* consult the pertinent regulations and the text of this manual. The Immigration Judge has discretion to set deadlines for pre-decision filings.

Filing		Deadline *(the construction of "day" is discussed in Practice Manual Chapter 3.1(c)(i))*	Practice Manual Chapter
Changes of address or telephone number	alien	5 days after the alien's change of address or telephone number	2.2(c)
	representative	promptly	2.3(h)
Filings in advance of master calendar hearing	filings	15 days before the hearing, if requesting a ruling *(if alien is detained, deadline is determined by the Immigration Court)*	3.1(b)(i)
	responses	10 days after the filing is received by the Immigration Court *(if alien is detained, deadline is determined by the Immigration Court)*	
Filings in advance of individual calendar hearing	filings	15 days before the hearing *(if alien is detained, deadline is determined by the Immigration Court)*	3.1(b)(ii)
	responses	10 days after the filing is received by the Immigration Court *(if alien is detained, deadline is determined by the Immigration Court)*	

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Filing		Deadline *(the construction of "day" is discussed in Practice Manual Chapter 3.1(c)(i))*	Practice Manual Chapter
Asylum applications	defensive applications	within one year after arrival to the United States*	3.1(b)(iii)(A)
	affirmative applications	filed with DHS within one year after arrival to the United States*	3.1(b)(iii)(B)
Post-decision motions	motions to reopen	90 days after a final administrative order by the Immigration Judge, with certain exceptions	5.7(c)
	motions to reconsider	30 days after a final administrative order by the Immigration Judge	5.8(c)
	motions to reopen in absentia removal order	180 days after in absentia order, if based on exceptional circumstances	5.9(d)(ii)(A)
		at any time, if based on lack of proper notice	5.9(d)(ii)(B)
Deadlines for appeals to BIA		30 days after the decision was rendered orally or mailed	6.2

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***** *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).*

APPENDIX E
Forms

This appendix contains a list of frequently requested immigration forms and the best sources for obtaining copies of those forms.

Online copies of forms. Many forms can be downloaded or printed from the website of the agency responsible for that form. For example, forms beginning with "EOIR-," as well as certain forms beginning with "I-" that are filed with the Immigration Court, can be found at www.justice.gov/eoir under the link "EOIR Forms." Other forms, including forms beginning with "I-," can be found at www.uscis.gov under the link "Immigration Forms."

Paper copies of forms. If an immigration form is not available online, the best source for obtaining one is the agency that is responsible for that form. The table below identifies those agencies. (Local offices often provide forms on a walk-in basis.) Other sources for forms include voluntary agencies (VOLAGs), public service organizations, law offices, and certain Government Printing Office Bookstores. See 8 C.F.R. §§ 299.2, 299.3.

Reproducing forms. Forms may be photocopied, computer-generated, or downloaded, but must comply with all requirements listed in Chapter 11.2 (Obtaining Blank Forms).

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Abbreviations

AAO	=	Administrative Appeals Office, DHS
BIA	=	Board of Immigration Appeals
CIS	=	Citizenship and Immigration Services, DHS
EOIR	=	Executive Office for Immigration Review
IC	=	Immigration Court
IJ	=	Immigration Judge
OGC	=	Office of the General Counsel, EOIR
OLAP	=	Office of Legal Access Programs, EOIR

PURPOSE	FORM	NAME	GET FROM
accredited representative application	Form EOIR-31A	Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative	OLAP
adjustment of status	Form I-485	Application to Register Permanent Residence or Adjust Status	CIS
appeal of attorney discipline decision	Form EOIR-45	Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case	IC BIA OGC
appeal of IJ decision	Form EOIR-26	Notice of Appeal from a Decision of an Immigration Judge	IC BIA
appeal of CIS decision (AAO jurisdiction)	Form I-290B	Notice of Appeal or Motion	CIS
appeal of CIS decision (BIA jurisdiction)	Form EOIR-29	Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer	CIS
appearance as representative (before the BIA)	Form EOIR-27	Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals	IC BIA
appearance as representative (before an IC)	Form EOIR-28	Notice of Entry of Appearance as Attorney or Representative before the Immigration Court	IC
asylum, withholding of removal (restriction on removal), Convention Against Torture	Form I-589	Application for Asylum and for Withholding of Removal	IC CIS
attorney / representative complaint form	Form EOIR-44	Immigration Practitioner Complaint Form	IC BIA OGC
cancellation of removal (non-permanent residents)	Form EOIR-42B	Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents	IC
cancellation of removal (permanent residents)	Form EOIR-42A	Application for Cancellation of Removal for Certain Permanent Residents	IC

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PURPOSE	FORM	NAME	GET FROM
change of address (cases pending before BIA)	Form EOIR-33 / BIA	Alien's Change of Address Form / Board of Immigration Appeals	IC BIA
change of address (cases pending before an IC)	Form EOIR-33 / IC	Alien's Change of Address Form / Immigration Court	IC
fee waiver (appeals or motions	Form EOIR-26A	Fee Waiver Request	IC BIA
motion (any kind)	none	There is no official form for motions filed with an IC or the BIA. Do not use the Notice of Appeal (Form EOIR-26) for motions.	n/a
NACARA suspension of deportation/special rule cancellation	Form I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal	CIS
recognized organization application	Form EOIR-31	Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization	OLAP
return to unrelinquished domicile	Form I-191	Application for Advance Permission to Return to Unrelinquished Domicile	CIS
suspension of deportation	Form EOIR-40	Application for Suspension of Deportation	IC
temporary protected status	Form I-821	Application for Temporary Protected Status	CIS
visa petition (employment-based)	Form I-140	Immigrant Petition for Alien Worker	CIS
visa petition (family-based)	Form I-130	Petition for Alien Relative	CIS
waiver of inadmissibility	Form I-601	Application for Waiver of Grounds of Inadmissibility	CIS

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APPENDIX F
Sample Cover Page

A. Tourney, Esquire
1234 Center Street
Anytown, ST 99999

Filing party. If pro se, the alien should provide his or her own name and address in this location. If a representative, the representative should provide his or her name and complete business address.

DETAINED

Detention status. If the alien is detained, the word "DETAINED" should appear prominently in the top right corner, preferably highlighted.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ANYTOWN, STATE

Court. The Immigration Court location (city or town) and state should be provided.

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In the Matters of:	)	
Jane Smith	)	**File Nos.: A 012 345 678**
John Smith	)	**A 012 345 679**
Jill Smith	)	**A 012 345 680**
In removal proceedings	)	

A numbers. The alien registration number of <u>every person</u> included in the submission should be listed.

Name and type of proceeding. The full name of <u>every person</u> included in the submission should be listed.

Immigration Judge Susan Jones **Next Hearing: September 22, 2008 at 1:00 p.m.**

Name of the Immigration Judge and the date and time of the next hearing. This information should always be listed.

RESPONDENT'S PRE-HEARING BRIEF

Filing title. The title of the submission should be placed in the middle and bottom of the page.

APPENDIX G
Sample Proof of Service

Instructions:

By law, all submissions to the Immigration Court *must* be filed with a "Proof of Service" (or "Certificate of Service"). See Chapter 3.2 (Service on the Opposing Party). This Appendix provides guidelines on how to satisfy this requirement.

What is required. To satisfy the law, you must do *both* of the following:

1. *Serve the opposing party.* Every time you file a submission with the Immigration Court, you must give, or "serve," a copy on the opposing party. If you are an alien in proceedings, the opposing party is the Department of Homeland Security.

2. *Give the Immigration Court a completed Proof of Service.* You must submit a signed "Proof of Service" to the Immigration Court along with your document(s). The Proof of Service tells the Immigration Court that you have given a copy of the document(s) to the opposing party.

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Sample Proof of Service. You do not have to use the sample contained in this Appendix. You may write up your own Proof of Service if you like. However, if you use this sample, you will satisfy the Proof of Service requirement.

Sending the Proof of Service. When you have to supply a Proof of Service, be sure to staple or otherwise attach it to the document(s) that you are serving.

Forms that contain a Proof of Service. Some 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 for the form. You must complete the Certificate of Service to satisfy the Proof of Service requirement *for that form*. Such a Certificate of Service only functions as a Proof of Service for the form on which it appears, not for any supporting documents that you file with the form. If you are filing supporting documents with a form that contains a Certificate of Service, you must file a separate Proof of Service for those documents.

Forms that do not contain a Proof of Service. Forms that do not contain a Certificate of Service are treated like any other document. Therefore, you must supply the Proof of Service for those forms.

Sample Proof of Service

_____
(Name of alien or aliens)

_____
("A number" of alien or aliens)

PROOF OF SERVICE

On _____, I, _____,
(date) (printed name of person signing below)

served a copy of this _____
(name of document)

and any attached pages to _____
(name of party served)

at the following address: _____
(address of party served)

_____
(address of party served)

by _____.
(method of service, for example overnight courier, hand-delivery, first class mail)

_____ _____
(signature) (date)

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APPENDIX H
Sample Certificate of Translation

All submissions to the Immigration Court, if not in the English language, must be accompanied by a translation and certificate of translation. See Chapter 3.3(a) (Language).

CERTIFICATE OF TRANSLATION

I, _____, am competent to translate from
(name of translator)

_____ into English, and certify that the translation of
(language)

_____
(names of documents)

is true and accurate to the best of my abilities.

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_____ _____
(signature of translator) (typed/printed name of translator)

_____
(address of translator)

_____
(address of translator)

_____
(telephone number of translator)

APPENDIX I
Telephonic Information

Do you want to know the status of your case before an Immigration Judge or the Board of Immigration Appeals?

All you have to do is call the

Automated Case Information Hotline

(800) 898-7180
(240) 314-1500

The Automated Case Information Hotline contains information regarding your case, including your next hearing date, asylum processing, the Immigration Judge's decision, or your case appeal.

This service is available 24 hours a day, 7 days a week.

Need information on how to file an appeal, motion, or anything else with the Board of Immigration Appeals?

Let us give you some

BIA TIPS

(703) 605-1007

Call the Board of Immigration Appeals Telephonic Instructions and Procedures System for recorded information on how to file an appeal, motion, brief, change of address, and other documents with the Board.

This service is available 24 hours a day, 7 days a week.

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APPENDIX J
Citation Guidelines*

When filing papers with the Immigration Court, parties should keep in mind that accurate and complete legal citations strengthen the argument made in the submission. This Appendix provides guidelines for frequently cited sources of law.

The Immigration Court generally follows *A Uniform System of Citation* (also known as the "Blue Book"), but diverges from that convention in certain instances. The Immigration Court appreciates but does not require citations that follow the examples used in this Appendix. The citation categories are:

I. Cases
II. Regulations
III. Statutes/laws
IV. Legislative history
V. Treaties and international materials
VI. Publications and communications by governmental agencies, and
VII. Commonly cited commercial publications

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Note that, for the convenience of filing parties, some of the citation formats in this Appendix are less formal than those used in the published cases of the Board of Immigration Appeals. Once a source has been cited in full, the objective is brevity without compromising clarity.

This Appendix concerns the citation of legal authority. For guidance on citing to the record and other sources, see Chapter 3.3(e) (Source materials) and Chapter 4.18(d) (Citation).

As a practice, the Immigration Court prefers italics in case names and publication titles, but underlining is an acceptable alternative.

□ □ □ □ □

* This appendix is substantially based on Appendix J (Citation Guidelines) in the Board of Immigration Appeals Practice Manual. The Office of the Chief Immigration Judge wishes to acknowledge the efforts of all those involved in the preparation of that appendix.

I. *Decisions, Briefs, and Exhibits*

General guidance: *Abbreviations in case names.* As a general rule, well-known agency abbreviations (e.g., DHS, INS, FBI, Dep't of Justice) may be used in a case name, but without periods. If an agency name includes reference to the "United States," it is acceptable to abbreviate it to "U.S." However, when the "United States" is named as a party in the case, do not abbreviate "United States." For example:

DHS v. Smith	.....	not *D.H.S. v. Smith*
U.S. Dep't of Justice v. Smith	.....	not *United States Department of Justice v. Smith*
United States v. Smith	.....	not *U.S. v. Smith*

Short form of case names. After a case has been cited in full, a shortened form of the name may be used thereafter. For example:

full: *INS v. Phinpathya*, 464 U.S. 183 (1984)

short: *Phinpathya*, 464 U.S. at 185

full: *Matter of Nolasco*, 22 I&N Dec. 632 (BIA 1999)

short: *Nolasco*, 22 I&N Dec. at 635

cited in C.J.L.G. v. Barr
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Citations to a specific point. Citations to a specific point should include the precise page number(s) on which the point appears. For example:

Matter of Artigas, 23 I&N Dec. 99, 100 (BIA 2001)

Citations to a dissent or concurrence. If citing to a dissent or concurrence, this should be indicated in a parenthetical notation. For example:

Matter of Artigas, 23 I&N Dec. 99, 109-110 (BIA 2001) (dissent)

Board decisions: *Published decisions.* Precedent decisions by the Board of Immigration Appeals ("Board") are binding on the Immigration Court, unless modified or overruled by the Attorney General or a federal court. All precedent Board decisions are available on the Executive Office for Immigration Review website at www.justice.gov/eoir. Precedent decisions should be cited in the "I&N Dec." form illustrated below. The citation must identify the adjudicator (BIA, A.G., etc.) and the year of the decision. Note that there are no spaces in "I&N" and that only "Dec." has a period.

For example:

Matter of Balsillie, 20 I&N Dec. 486 (BIA 1992)

Unpublished decisions. Citation to unpublished decisions is discouraged because these decisions are not binding on the Immigration Court in other cases. When reference to an unpublished case is necessary, a copy of the decision should be provided, and the citation should include the alien's full name, the alien registration number, the adjudicator, and the precise date of the decision. Italics, underlining, and "*Matter of*" should not be used. For example:

Jane Smith, A 012 345 678 (BIA July 1, 1999)

"Interim Decision." In the past, the Board issued precedent decisions in slip opinion or "Interim Decision" form. Because all published cases are now available in final form (as "I&N Decisions"), citations to "Interim Decisions" are no longer appropriate and are disfavored.

"Matter of," not *"In re."* All precedent decisions should be cited as *"Matter of."* The use of *"In re"* is disfavored. For example: *Matter of Yanez*, not *In re Yanez*.

For a detailed description of the Board's publication process, see Board Practice Manual, which is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

Cited in C. J. L. G. v. Barr
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IJ decisions: If referring to an earlier decision in the case by the Immigration Judge, the decision should be cited. This applies whether the decision was issued orally or in writing. Citations to decisions of Immigration Judges should state the nature of the proceedings, the page number, and the date. For example:

IJ Bond Proceedings Decision at 5 (Dec. 12, 2008)

AG decisions: Precedent decisions by the Attorney General are binding on the Immigration Court, and should be cited in accordance with the rules for precedent decisions by the Board of Immigration Appeals. All precedent decisions by the Attorney General are available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

Matter of Y-L-, 23 I&N Dec. 270 (AG 2002)

DHS decisions: Precedent decisions by the Department of Homeland Security and the former Immigration and Naturalization Service should be cited in accordance with the rules for precedent decisions by the Board of Immigration Appeals.

Federal & state courts: *Generally.* Federal and state court decisions should generally be cited according to the standard legal convention, as set out in the latest edition of *A Uniform System of Citation* (also known as the "Blue Book"). For example:

> *INS v. Phinpathya*, 464 U.S. 183 (1984)
>
> *Saakian v. INS*, 252 F.3d 21 (1st Cir. 2001)
>
> *McDaniel v. United States*, 142 F. Supp. 2d 219 (D. Conn. 2001)

U.S. Supreme Court. The Supreme Court Reporter citation ("S.Ct.") should be used only when the case has not yet been published in the United States Reports ("U.S.").

Unpublished cases. Citation to unpublished state and federal court cases is discouraged. When citation to an unpublished decision is necessary, a copy of the decision should be provided, and the citation should include the docket number, court, and precise date. Parties are also encouraged to provide the LexisNexis or Westlaw number. For example:

No. 16-73801c archived on April 30, 2019
cited in C.J.L.G. v. Barr

> *Brateo v. Mukasey*, No. 04-726367, 2007 WL 4201263 (9th Cir. Nov. 29, 2007) (unpublished)

Precedent cases not yet published. When citing to recent precedent cases that have not yet been published in the Federal Reporter or other print format, parties should provide the docket number, court, and year. Parties are also encouraged to provide the LexisNexis or Westlaw number. For example:

> *Grullon v. Mukasey*, __ F.3d __, No. 05-4622, 2007 U.S. App. LEXIS 27325 (2d Cir. 2007)

Briefs & exhibits: *Text from briefs*. If referring to text from a brief, the brief should be cited. The citation should state the filing party's identity, the nature of proceedings, the page number, and the date. For example:

> Respondent's Bond Appeal Brief at 5 (Dec. 12, 2008)

Exhibits. Exhibits designated during a hearing should be cited as they were designated by the Immigration Judge. For example:

Exh. 3

Exhibits accompanying a brief should be cited by alphabetic tab or page number. For example:

Respondent's Pre-Hearing Brief, Tab A

□ □ □ □ □

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

II. *Regulations*

General guidance: *Regulations generally.* There are two kinds of postings in the Federal Register: those that are simply informative in nature (such as "notices" of public meetings) and those that are regulatory in nature (referred to as "rules"). There are different types of "rules," including "proposed," "interim," and "final." The type of rule will determine whether or not (and for how long) the regulatory language contained in that rule will be in effect. Generally speaking, proposed rules are not law and do not have any effect on any case, while interim and final rules do have the force of law and, depending on timing, may affect a given case.

Federal Register and Code of Federal Regulations. Regulations appear first in the Federal Register (Fed. Reg.) and then in the Code of Federal Regulations (C.F.R.). Once regulations appear in a volume of the C.F.R., do not cite to the Federal Register *unless* there is a specific reason to do so (discussed below).

C.F.R.: For the Code of Federal Regulations, always identify the volume, the section number, and the year. The year need not be given after the first citation, unless a subsequent citation refers to a regulation published in a different year. Always use periods in the abbreviation "C.F.R." For example:

full: 8 C.F.R. § 1003.1 (2002)

short: 8 C.F.R. § 1003.1

cited in C.J.L. G. v. Barr
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Fed. Reg.: Citations to regulatory material in the Federal Register should be used only when:

- the citation is to information that will never appear in the C.F.R., such as a public notice or announcement
- the rule contains regulatory language that will be, but is not yet, in the C.F.R.
- the citation is to information associated with the rule, but which will not appear in the C.F.R. (e.g., a preamble or introduction to a rule)
- the rule contains proposed or past language of a regulation that is pertinent in some way to the filing or argument

The first citation to the Federal Register should always include (i) the volume, (ii) the abbreviated form "Fed. Reg.", (iii) the page number, (iv) the date, and (v) important identifying information such as "proposed rule," "interim rule," "supplementary information," or the citation where the rule will appear. For example:

full: 67 Fed. Reg. 52627 (Aug. 13, 2002) (proposed rule)

full: 67 Fed. Reg. 38341 (June 4, 2002) (to be codified at 8 C.F.R. §§ 100, 103, 236, 245a, 274a, and 299)

short: 67 Fed. Reg. at 52627-28; 67 Fed. Reg. at 38343

Since the Federal Register does not use commas in its page numbers, do not use a comma in page numbers. Use abbreviations for the month.

When citing the preamble to a rule, identify it exactly as it is titled in the Federal Register, e.g., 67 Fed. Reg. 54878 (Aug. 26, 2002) (supplementary information).

□ □ □ □ □

cited in C.J.L.G. v. Barr
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III. *Statutes / Laws*

General guidance: *Full citations*. Whenever citing a statute for the first time, be certain to include all the pertinent information, including the name of the statute, its public law number, statutory cite, and a parenthetical identifying where the statute was codified (if applicable). The only exception is the Immigration and Nationality Act, which is illustrated below.

Short citations. The use of short citations is encouraged, but only after the full citation has been used.

Special rule for U.S.C. and C.F.R. There are two abbreviations that never need to be spelled out: "U.S.C." for the U.S. Code and the "C.F.R." for the Code of Federal Regulations. Always use periods with these abbreviations.

Special rule for the INA. Given the regularity with which the Immigration and Nationality Act is cited before the Immigration Court, there is generally no need to provide the Public Law Number, the Stat. citation, or U.S.C. citation. The Immigration Court will presume INA citations refer to the current language of the Act unless the year is provided.

State statutes. State statutes should be cited as provided in *A Uniform System of Citation* (also known as the "Blue Book").

Sections of law. Full citations are often lengthy, and filing parties are sometimes uncertain where to put the section number in the citation. For the sake of simplicity, use the word "section" and give the section number in front of the full citation to the statute. Once a full citation has been given, use the short citation form with a section symbol "§." This practice applies whether the citation is used in a sentence or after it. For example:

> The definition of the term "alien" in section 101(a)(3) of the Immigration and Nationality Act applies to persons who are not citizens or nationals of the United States. The term "national of the United States" is expressly defined in INA § 101(a)(22), but the term "citizen" is more complex. *See* INA §§ 301-309, 316, 320.

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USC: Citations to the United States Code, always identify the volume, the section number, and the year. The year need not be given after the first citation, unless a subsequent citation refers to a section published in a different year. Always use periods in the abbreviation "U.S.C." For example:

full: 18 U.S.C. § 16 (2006)

short: 18 U.S.C. § 16

INA:

full: section xxx of Immigration and Nationality Act

short: INA § xxx

USA PATRIOT:

full: section xxx of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272

short: USA PATRIOT Act § xxx

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LIFE:

full: section xxx of Legal Immigration and Family Equity Act, Pub. L. No. 106-553, 114 Stat. 2762 (2000), *amended by* Pub. L. No. 106-554, 114 Stat. 2763 (2000)

short: LIFE Act § xxx

CCA:

full: section xxx of Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631

short: CCA § xxx

NACARA:

full: section xxx of Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, tit. II, 111 Stat. 2193 (1997), *amended by* Pub. L. No. 105-139, 111 Stat. 2644 (1997)

short: NACARA § xxx

IIRIRA:

full: section xxx of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546

short: IIRIRA § xxx

AEDPA:

full: section xxx of Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214

short: AEDPA § xxx

INTCA:

full: section xxx of Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4305, *amended by* Pub. L. No. 105-38, 11 Stat. 1115 (1997)

short: INTCA § xxx

MTINA:

full: section xxx of Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1733

short: MTINA § xxx

cited in C.J.L.G. v. Barr
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IMMACT90:

full: section xxx of Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978

short: IMMACT90 § xxx

ADAA:

full: section xxx of Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181

short: ADAA § xxx

IMFA:

full: section xxx of Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537

short: IMFA § xxx

IRCA: full: section xxx of Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359

short: IRCA § xxx

IRFA: full: section xxx of International Religious Freedom Act of 1988, Pub. L. No. 105-292, 112 Stat. 2787

short: IRFA § xxx

□ □ □ □ □

cited in C.J.L.G. v. Barr
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IV. *Legislative History*

General guidance: *Difficult to locate.* Because sources of legislative history are often difficult to locate, err on the side of providing more information, rather than less. If a source is difficult to locate, include a copy of the source with your filing (or an Internet address for it) and make clear reference to that source in your filing.

Sources. To locate legislative history, try the Library of Congress website (www.thomas.loc.gov) or commercial services. Citation to common electronic sources is encouraged.

Bills: Provide the following information the first time a bill is cited: (i) the bill number, (ii) the number of the Congress, (iii) the session of that Congress, (iv) the section number of the bill, if you are referring to a specific section, (v) the Congressional Record volume, (vi) the Congressional Record page or pages, (vii) the date of that Congressional Record, and (viii) the edition of the Congressional Record, if known. For example:

full: S. 2104, 100th Cong., 2d Sess. § 102, 134 Cong. Rec. 2216 (daily ed. Mar. 15, 1988)

short: 134 Cong. Rec. at 2218

cited in C.S.L.G. v. Barr
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Reports: Provide the following information the first time a report is cited: (i) whether it is a Senate or House report, (ii) the report number, (iii) the year, and (iv) where it is reprinted (a reference to where the document is available electronically is acceptable). The short form may refer either to the page numbers of the report or the page numbers where the report is reprinted. For example:

full: H.R. Conf. Rep. No. 104-828 (1996), *available in* 1996 WL 563320

short: H.R. Conf. Rep. No. 104-828, at 5

full: S. Rep. No. 98-225 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182

short: 1984 U.S.C.C.A.N. at 3183

Many committee reports are available on-line through the Library of Congress web site (www.thomas.loc.gov) or commercial services. Copies of the U.S. Code Congressional & Administrative News (U.S.C.C.A.N.), which compiles many legislative documents, are available in some public libraries.

Hearings: Provide the following information the first time a hearing is cited: (i) name of the hearing, (ii) the committee or subcommittee that held it, (iii) the number of the Congress, (iv) the session of that Congress, (v) the page or pages of the hearing, (vi) the date or year of the hearing, and (vii) information about what is being cited (such as the identity of the person testifying and context for the testimony). For example:

> Operations of the Executive Office for Immigration Review (EOIR): Hearing before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary, 107th Cong., 2d Sess. 19 (2002) (testimony of EOIR Director)

□ □ □ □ □

cited in C.J.L.G. v. Barr
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V. *Treaties and International Materials*

CAT:

full: Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988)

short: Convention Against Torture, art. 3

UNHCR Handbook:

full: Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Geneva 1992)

short: UNHCR Handbook ¶ xxx
[use paragraph symbol "¶" or abbreviation "para."]

U.N. Protocol on Refugees:

full: Article xxx of the United Natio n s Protocol Relating to the Status of Refugees, Jan. 31, 1967, [1968] 19 U.S.T. 6223

short: U.N. Refugee Protocol, art. xxx

cited in C.J.L.G. v. Barr
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VI. *Publications and Communications by Governmental Agencies*

General guidance: *No universal citation form.* In immigration proceedings, parties cite to a wide variety of administrative agency publications and communications, and there is no one format that fits all such documents. For that reason, use common sense when citing agency documents, and err on the side of more information, rather than less.

Difficult to locate material. If the document may be difficult for the Immigration Court to locate, include a copy of the document with your filing.

Internet material. If a document is posted on the Internet, identify the website where the document can be found or include a copy of the document with a legible Internet address.

Practice Manual: The Immigration Court Practice Manual is not legal authority. However, if there is reason to cite it, the preferred form is to identify the specific provision by chapter and section along with the date at the bottom of the page on which the cited section appears. For example:

cited in C.J.L.G. v. Barr
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full: Immigration Court Practice Manual, Chapter 8.5(a)(iii) (January xx, xxxx)

short: Practice Manual, Chap. 8.5(a)(iii)

Forms: Forms should first be cited according to their full name and number. A short citation form may be used thereafter. See Appendix E (Forms) for a list of common immigration forms. For example:

full: Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26)

short: Notice of Appeal *or* Form EOIR-26

If a form does not have a name, use the form number as the citation.

Country reports: State Department country reports appear both as compilations in Congressional committee prints and as separate reports and profiles. Citations to country reports should always contain the publication date and the specific page numbers (if available). Provide an Internet address when available. The first citation to any country report should contain all identifying

information, and a short citation form may be used thereafter. For example:

full: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Nigeria Country Reports on Human Rights Practices – 2001* (Mar. 2002), *available at* http://www.state.gov/g/drl/rls/hrrpt/2001/af/8397.htm

short: *2001 Nigeria Country Reports*

full: Committees on Foreign Relations and International Relations, 104th Cong., 1st Sess., *Country Reports on Human Rights Practices for 1994* xxx (Joint Comm Print 1995)

short: *1994 Country Reports* at page xxx

full: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *The Philippines – Profile of Asylum Claims and Country Conditions* xxx (June 1995)

short: *1995 Philippines Profile* at page xxx

cited in C.J.L.G. v. Barr
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Visa Bulletin: Citations to the State Department's Visa Bulletin should include the volume, number, month, and year of the specific issue being cited. For example:

full: U.S. Dep't of State Visa Bulletin, Vol. VIII, No. 55 (March 2003)

short: Visa Bulletin (March 2003)

Internal documents: A citation to an internal government document, such as a memo or cable, should contain as much identifying information as possible. Be sure to include any identifying heading (e.g., the "re" line in a memo) and the precise date of the document being cited. Include a copy of the document with the filing or indicate where it has been reprinted publicly. For example:

Dep't of State cable (no. 97-State-174342) (Sept. 17, 1997) (copy attached)

Office of the General Counsel, INS, U.S. Dep't of Justice, Compliance with Article 3 of the Convention Against Torture in cases of removable aliens (May 14, 1997), reprinted in 75 *Interpreter Releases* 375 (Mar. 16, 1998)

Religious Freedom Reports:

The International Religious Freedom Act of 1998 (IRFA) mandates that the Department of State issue an Annual Report on International Religious Freedom (State Department Report). IRFA further authorizes Immigration Judges to use the State Department Report as a resource in asylum adjudications. The State Department Report should be cited as follows:

full: Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *Annual Report on International Religious Freedom* (Sept. 2007)

short: 2007 *Religious Freedom Report* at page xxx

IRFA also mandates the issuance of an Annual Report by the United States Commission on International Religious Freedom (USCIRF Report). The USCIRF is a government body that is independent of the executive branch. Citations to the USCIRF Report should be distinguishable from citations to the Department of State report:

full: United States Commission on International Religious Freedom, *Annual Report of the United States Commission on International Religious Freedom*, xxx (May 2007)

short: 2007 USCIRF Annual Report at page xxx

□ □ □ □ □

cited in C.L.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

VII. *Commonly Cited Commercial Publications*

General guidance: *No universal citation form.* In immigration proceedings, parties cite to a wide variety of commercial texts and publications. Use common sense when citing these documents. If a document is difficult to locate, include a copy of the document with your filing (or an Internet address for it) and make clear reference to that document in your filing.

No endorsements or disparagements. The following list contains citations to specific publications that are frequently cited in filings before the Immigration Court. Their inclusion in the list is not an endorsement of the publication, nor is omission from this list a disparagement of any other publication.

Use of quotation marks, italics or underlining, and first initials. For all filings, parties should use a single format for all publications – quotation marks around any article title (whether in a book, law review, or periodical), italics or underlining for the name of any publication (whether a book, treatise, or periodical), and reference to authors' last names only (although use of first initials is appropriate where there are multiple authors with the same last name).

Shortened names. Many publications have long titles. It is acceptable to use a shortened form of the title *after* the full title has been used. Be certain to use a short form that clearly refers back to the full citation. Page and/or section numbers should always be used, whether the publication is cited in full or in shortened form.

Cited in C.J.L.G. v. Barr
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Articles in Books: Articles in books should identify the author (by last name only), title of the article, and the publication that contains that article (including the editor and year). For example:

full: Massimino, "Relief from Deportation Under Article 3 of the United Nations Convention Against Torture," *in* 2 *1997-98 Immigration & Nationality Law Handbook* 467 (American Immigration Lawyers Association, ed., 1997)

short: Massimino at 469

Bender's: Bender's Immigration Bulletin should be cited by author (last name only), article, volume, publication, month, and year. For example:

full: Sullivan, "When Representations Cross the Line," 1 *Bender's Immigration Bulletin* (Oct. 1996)

short: Sullivan at 3

Immigration Briefings: This publication should be cited by author (last name only), article, volume, publication, month, and year. For example:

full: Elliot, "Relief From Deportation: Part I," 88-8 *Immigration Briefings* (Aug. 1988)

short: Elliot at 18

Immigration Law and Procedure: Citations to treatises require particular attention because their pagination is often complex. The first citation to this treatise must be in full and contain the volume number, the section number, the page number, the edition, and year. For example:

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full: 2 Gordon, Mailman & Yale-Loehr, *Immigration Law and Procedure* § 51.01(1)(a), at 51-3 (rev. ed. 1997)

short: 2 *Immigration Law and Procedure* § 51.01(1)(a), at 51-3

Interpreter Releases: Citations should state the volume, t it l e, page num ber(s), and precise date. Provide a parenthetical explanation for the citation when appropriate. For example:

full: 75 *Interpreter Releases* 275-76 (Feb. 23, 1998) (regarding INS guidelines on when to consent to reopening of proceedings)

short: 75 *Interpreter Releases* at 276

If an article has a title and named author, provide that information. For example:

full: Wettstein, "Lawful Domicile for Purposes of INA § 212(c): Can It Begin with Temporary Residence," in 71 *Interpreter Releases* 1273 (Sept. 26, 1994)

short: Wettstein at 1274

Law Reviews: Law review articles should identify the author (by last name) and the title of the article, followed by the volume, name, page number(s), and year of the publication. For example:

full: Hurwitz, "Motions Practice Before the Board of Immigration Appeals," 20 San Diego L. Rev. 79 (1982)

short: Hurwitz, 20 San Diego L. Rev. at 80

Sutherland: Citations to this treatise should include the volume number, author, name of the publication, section number, page number(s), and edition. For example:

full: 2A Singer, *Sutherland Statutory Construction* § 47.11, at 144 (4th ed. 1984)

short: 2A *Sutherland* § 47.11, at 144

Cited in C.J.L.G. v. Barr
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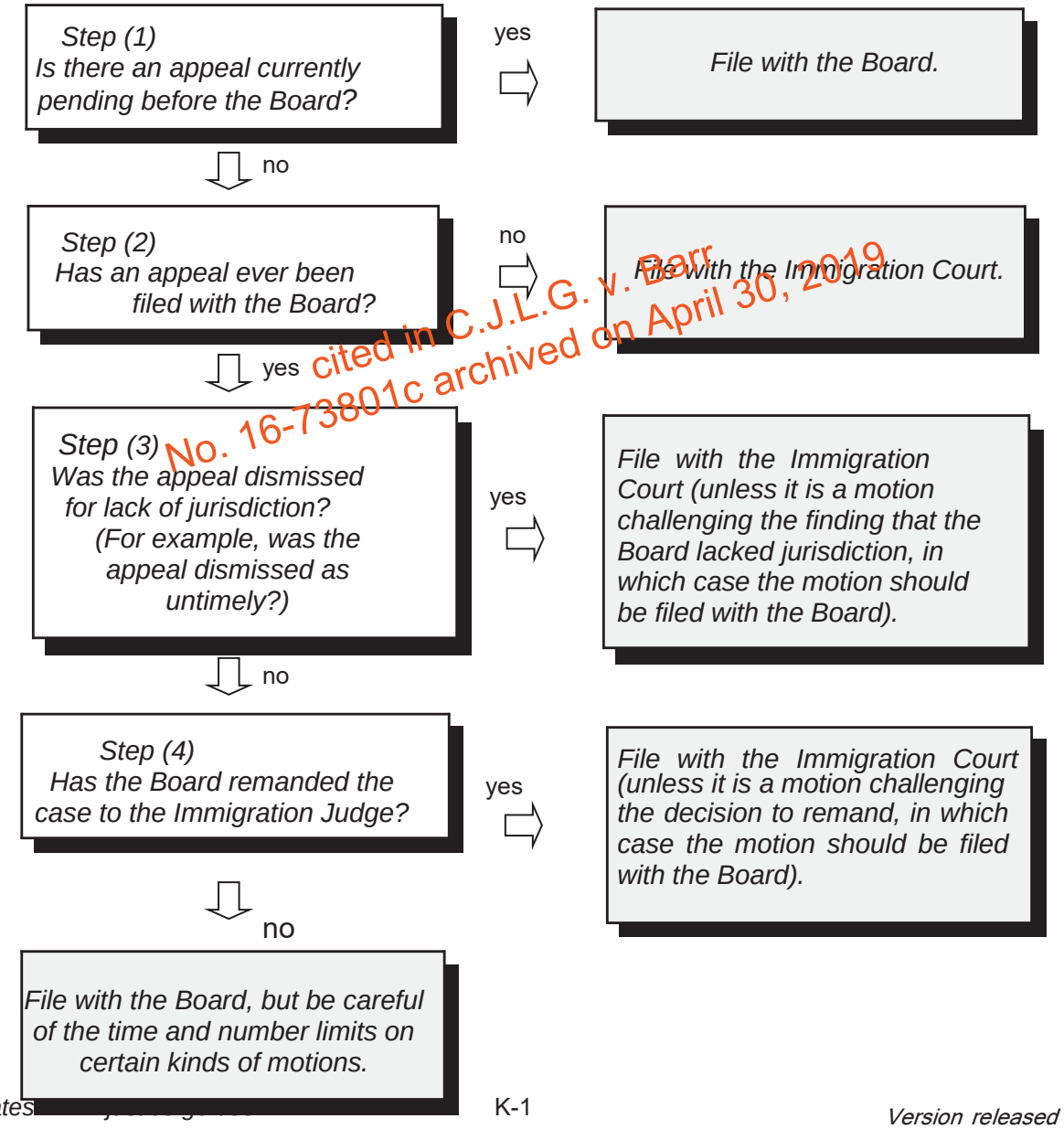
APPENDIX K
Where to File

This Appendix provides guidance on where to file documents in removal proceedings. Parties should still review the pertinent regulations and must be careful to observe the rules regarding filings, especially the time and number limits on motions. See Chapters 3 (Filing with the Immigration Court), 5.2 (Filing a Motion), 5.3 (Motion Limits). In cases in which the Immigration Court has jurisdiction, documents must be filed with the Immigration Court having administrative control over the Record of Proceedings. See Chapter 3.1 (Delivery and Receipt). For information on how to file documents with the Board of Immigration Appeals, parties should consult the Board of Immigration Appeals Practice Manual.



cited in C.J.L.G. v. Barr
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APPENDIX L
Sample Written Pleading

Prior to entering a pleading, parties are expected to have reviewed the pertinent regulations, as well as Chapter 4 of the Immigration Court Practice Manual (Hearings before Immigration Judges).

[name and address of attorney or representative]

United States Department of Justice
Executive Office for Immigration
Review Immigration Court
[the court's location (city or town) and state]

In the Matter of:	)	
	)	**File No.: [the respondent's A**
number] [the respondent's name]	)	
	)	
In removal proceedings	)	
	)	

cited in C.J.L.G. v. Barr
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RESPONDENT'S WRITTEN PLEADING

On behalf of my client, I make the following representations:

1. The respondent concedes proper service of the Notice to Appear, dated _____.

2. I have explained to the respondent (through an interpreter, if necessary):

   a. the rights set forth in 8 C.F.R. § 1240.10(a);
   b. the consequences of failing to appear in court as set forth in INA § 240(b)(5);
   c. the limitation on discretionary relief for failure to appear set forth in INA § 240(b)(7);
   d. the consequences of knowingly filing or making a frivolous application as set forth in INA § 208(d)(6);
   e. the requirement to notify the court within five days of any change of address or telephone number, using Form EOIR-33/IC pursuant to 8 C.F.R. § 1003.15(d).

3. The respondent concedes the following allegation(s) _____ , and denies the following allegation(s) _____.

4. The respondent concedes the following charge(s) of removability _____, and denies the following charge(s) of removability _____.

5. In the event of removal, the respondent;

☐ names _____ as the country to which removal should be directed;

OR

☐ declines to designate a country of removal.

6. The respondent will be applying for the following forms of relief from removal:

☐ Termination of Proceedings
☐ Asylum
☐ Withholding of Removal (Restriction on Removal)
☐ Adjustment of Status
☐ Cancellation of Removal pursuant to INA § _____
☐ Waiver of Inadmissibility pursuant to INA § _____
☐ Voluntary Departure
☐ Other (specify) _____
☐ None

cited in C.J.L.G. v. Barr
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7. If the relief from removal requires an application, the respondent will file the application (other than asylum), no later than fifteen (15) days before the date of the individual calendar hearing, unless otherwise directed by the court. The respondent acknowledges that, if the application(s) are not timely filed, the application(s) will be deemed waived and abandoned under 8 C.F.R. § 1003.31(c).

If the respondent is filing a defensive asylum application, the asylum application will be filed in open court at the next master calendar hearing.

8. If background and security investigations are required, the respondent has received the DHS biometrics instructions and will timely comply with the instructions. I have explained the instructions to the respondent (through an interpreter, if necessary). In addition, I have explained to the respondent (through an interpreter, if necessary), that, under 8 C.F.R. § 1003.47(d), failure to provide biometrics or other biographical information within the time allowed will constitute abandonment of the application unless the respondent demonstrates that such failure was the result of good cause.

9. The respondent estimates hours will be required for the respondent to present the case. that

10. ☐ It is requested that the Immigration Court order an interpreter proficient in the _____ language, _____ dialect;

OR

Date _____ Attorney or Representative for the Respondent

RESPONDENT'S PLEADING DECLARATION

cited in C.J.L.G. v. Barr
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I, _____, have been advised of my rights in these proceedings by my attorney or representative. I understand those rights. I waive a further explanation of those rights by this court.

I have been advised by my attorney or representative of the consequences of failing to appear for a hearing. I have also been advised by my attorney of the consequences of failing to appear for a scheduled date of departure or deportation. I understand those consequences.

I have been advised by my attorney or representative of the consequences of knowingly filing a frivolous asylum application. I understand those consequences.

I have been advised by my attorney or representative of the consequences of failing to follow the DHS biometrics instructions within the time allowed. I understand those consequences.

I understand that if my mailing address changes I must notify the court within 5 days of such change by completing an Alien's Change of Address Form (Form EOIR-33/IC) and filing it with this court.

Finally, my attorney or representative has explained to me what this Written Pleading says. I understand it, I agree with it, and I request that the court accept it as my pleading.

_____ _____

Date Respondent

CERTIFICATE OF INTERPRETATION

I, _____, am competent to translate and interpret from
(name of interpreter)

_____ into English, and I certify that I have read this entire document to the
(name of language)

respondent in _____, and that the respondent stated that he or she understood
(name of language)

the document before he or she signed the Pleading Declaration above.

_____

(signature of interpreter)

_____

(typed/printed name of interpreter)

cited in C.J.L.G. v. Barr
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OR

I, _____, certify that _____, a telephonic
(name of attorney or representative) (name of interpreter)

interpreter who is competent to translate and interpret from _____into English, read
(name of language)

this entire document to the respondent in _____and that the respondent stated
(name of language)

that he or she understood the document before he or she signed the Pleading Declaration above.

_____

(signature of attorney or representative)

_____

(typed/printed name of attorney or representative)

APPENDIX M
Sample Oral Pleading

Prior to entering a pleading, attorneys and representatives are expected to have thoroughly reviewed all pertinent laws, regulations, and cases, as well as the Immigration Court Practice Manual.

* * *

I, [*state your name*], on behalf of [*state the name of your client*], do concede proper service of the Notice to Appear dated [*state date of the NTA*], and waive a formal reading thereof.

I represent to the court that I have discussed with my client the nature and purpose of these proceedings, discussed specifically the allegations of facts and the charge(s) of removability, and further advised my client of his or her legal rights in removal proceedings.

I further represent to the court that I have fully explained to my client the consequences of failing to appear for a removal hearing or a scheduled date of departure as well as the consequences under section 208(d)(6) of the Act of knowingly filing or making a frivolous asylum application. My client knowingly and voluntarily waives the oral notice required by section 240(b)(7) of the Act.

cited in C.L.G. v. Barr
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As to each of these points, I am satisfied my client understands fully. On behalf of my client, I enter the following plea before this court:

One, [*he or she*] admits allegation(s) #_____to _____.

– And/Or –

[*he or she*] denies allegation(s) # _____to _____.

Two, [*he or she*] concedes the charge(s) of removability.

– Or –

[*he or she*] denies the charge(s) of removability.

Three, [*he or she*] seeks the following applications for relief from removal: [*state all applications, including termination of proceedings, if applicable*].

My client acknowledges that, if any applications are not timely filed, the applications will be deemed waived and abandoned under 8 C.F.R. § 1003.31(c). [*He or she*] acknowledges receipt of the DHS biometrics instructions, and understands that, under 8 C.F.R. § 1003.47(d), failure to timely comply with the biometrics instructions will constitute abandonment of the applications.

I request until [*state date to be filed*] to submit such applications to the court with proper service on the Department of Homeland Security.

I represent to the court that my client is prima facie eligible for the relief stated herein.

I request [*time/hours*] to present my client's case in chief.

cited in C.J.L.G. v. Barr
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I request an interpreter proficient in the [*state name of language*] language, [*state name of any applicable dialect*] dialect.

– Or –

I represent that my client is proficient in English and will not require the services of an interpreter. If any witnesses require an interpreter, I will notify the court no later than fifteen days prior to the Individual Calendar hearing.

My client designates [*state name of country*] as his/her country of choice for removal if removal becomes necessary.

– Or –

My client declines to designate a country of removal.

* * *

APPENDIX N
Sample Subpoena

Subpoenas are issued to require that witnesses attend a hearing or that documents be produced. Prior to requesting a subpoena, parties are expected to have reviewed the pertinent regulations, as well as Chapter 4 of the Immigration Court Practice Manual (Hearings before Immigration Judges).

United States Department of Justice
Executive Office for Immigration Review
Immigration Court
[the court's location (city or town) and state]

SUBPOENA

In the Matter of :[the respondent's name and A number] Date: _____

To: [the name and address of the individual being subpoenaed]

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[If testifying in court]

Pursuant to 8 C.F.R. § 1003.35(b), you are hereby commanded to appear before Immigration Judge
[name] at [the court's address] on [the date and time of the hearing] to give testimony in connection with the [removal, deportation, etc.] proceedings being conducted under the authority of the Immigration and Nationality Act, relating to [the respondent's name], concerning [the topic(s) of testimony].

[If testifying by telephone]

Pursuant to 8 C.F.R. § 1003.35(b), you are hereby commanded to give telephonic testimony before Immigration Judge [name] on [the date and time of hearing] in connection with the [removal, deportation, etc.] proceedings being conducted under the authority of the Immigration and Nationality Act, relating to [the respondent's name], concerning [the topic(s) of testimony].

[If necessary]

You are further commanded to bring with you the following items: [books, papers, documents, etc.].

_____
[name]
Immigration Judge

Page 1 of 2

RETURN ON SERVICE OF SUBPOENA

I hereby certify that on the _____day of _____, 20___, I served the above subpoena on

the witness named above by _____
(specify type of service)

_____.

_____
(Name)

_____
(Title)

cited in C.J.L.G. v. Barr
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APPENDIX O
Sample Criminal History Chart

The following sample criminal history chart is provided for general guidance. A party submitting a criminal history chart should attach all pertinent documentation. Prior to submitting any filings, parties are expected to have reviewed the pertinent regulations, as well as Chapter 3 of the Immigration Court Practice Manual (Filing with the Immigration Court).

RESPONDENT'S CRIMINAL HISTORY CHART

Respondent's name: Jane Smith
Respondent's A number: A012 345 678

Tab A, pp. 1-5	Rap Sheet	Federal Bureau of Investigation
Tab B, pp. 6-11	Rap Sheet	California Department of Justice

Tab, Page s	**Arrest Date & Court Docket No.**	**Charges**	**Disposition**	**Immigration Consequences**
C, 12-14	01/22/89 CO901583A	HS 11350 Possession of a controlled substance.	Pleaded not guilty. Prosecution diverted. Dismissed	No conviction because diverted without entry of any plea. Diversion neither completed nor terminated because charge dismissed by DA.
D, 15-18	07/27/91 SCO42665A	PC 496.1 Misd: receipt of stolen property. PC 466 Possession	Pleaded guilty. 90 days in jail. Expunged in 2000. Dismissed.	CIMT. None.
E, 19-20	10/07/95 CO11475A	PC 490.5 Misd: petty theft.	Pleaded not guilty. Dismissed.	None.

cited in C.J.L.G. v. Barr
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APPENDIX P

Sample Table of Contents

This sample table of contents is provided for general guidance regarding organization and layout. The documents submitted in Immigration Court proceedings vary depending on the type of proceeding, the form of relief requested, if any, and the circumstances of the particular case. Prior to making any submissions, parties are expected to have reviewed the pertinent regulations, as well as Chapter 3 of the Immigration Court Practice Manual (Filing with the Immigration Court).

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APPENDIX Q

Sample Proposed Order

A proposed order is submitted with every motion filed. Prior to filing a motion, parties are expected to have reviewed the pertinent regulations, as well as Chapter 5 of the Immigration Court Practice Manual (Motions before the Immigration Court).

United States Department of Justice
Executive Office for Immigration Review
Immigration Court
[the court's location (city or town) and state]

In the Matter of: [the respondent's name] A Number: [the respondent's A number]

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of ["the respondent's" or "DHS's"] [title of motion], it is HEREBY ORDERED that the motion be ☐ **GRANTED** ☐ **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☐ Other:

No. 16-73801 cited in C.J.L.G. v. Barr
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Deadlines:

- ☐ The application(s) for relief must be filed by _____
- ☐ The respondent must comply with DHS biometrics instructions by ..

_____ _____
Date [name]
Immigration Judge

Certificate of Service
This document was served by: [ ] Mail [ ] Personal Service
To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Alien's Atty/Rep [ ] DHS
Date: _____

By: Court Staff_____

GLOSSARY

The following are brief explanations of some words and abbreviations commonly used in Immigration Court proceedings.

Accredited Representative

A person who is approved by the Director of the Office of Legal Access Programs to represent aliens before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security, or the Department of Homeland Security only. He or she must work for, or be a volunteer of, a recognized organization.

AEDPA

An abbreviation for the Antiterrorism and Effective Death Penalty Act.

Affidavit

A document in which a person states facts, swearing that the facts are true and accurate. The person should sign the affidavit under oath and the signature should be witnessed by an official, such as a notary public.

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"A Number"

The alien registration number, which the Department of Homeland Security assigns to each alien. It is an "A" followed by eight numbers. For example: A12 345 678. Some recently-issued A numbers consist of an "A" followed by nine digits. For example: A 200 345 678. Cases before the Immigration Courts and the Board of Immigration Appeals are tracked by A number.

Administrative Closing

An order by an Immigration Judge removing a case from the Immigration Court's calendar. Once a case has been administratively closed, the court will not take any action on the case until a request to recalendar is filed by one of the parties.

Affirmative Asylum Application

An asylum application filed with the Department of Homeland Security Asylum Office by an alien not in removal proceedings. If the Department of Homeland Security 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 Court for a hearing.

Alien

A person who is not a citizen or national of the United States.

Applicant

A person in exclusion proceedings.

Assistant Chief Counsel

The attorney representing the Department of Homeland Security in Immigration Court proceedings. Though the "Assistant Chief Counsel" is the attorney's official title, he or she is sometimes referred to as the "DHS attorney," the "government attorney," or the "trial attorney."

Asylum Clock

The number of days elapsed since the filing of an asylum application, not including any delays in the proceeding caused by the alien. Certain asylum applicants are eligible to receive employment authorization from the Department of Homeland Security after the asylum clock reaches 180 days.

No. 16-73801 cited in C.J.L.G. v. Barr archived on April 30, 2019

Asylum-Only Proceedings

Immigration Court proceedings in which an alien is limited to applying for asylum, withholding of removal ("restriction on removal") under the INA and protection under CAT. Asylum-only proceedings involve aliens who are not entitled to be placed in removal proceedings.

Attorney of Record

An attorney who has properly entered an appearance with the Immigration Court in a particular case and is held responsible as an attorney for the respondent.

Beneficiary

An alien who is sponsored by a relative or a business, or otherwise benefits from a visa petition.

BIA

An abbreviation for the Board of Immigration Appeals.

Biometrics Instructions

The term often used to refer to the Department of Homeland Security "*Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services*." The biometrics instructions inform aliens how to comply with the background and security investigation requirements for certain forms of relief from removal, such as asylum, adjustment of status, and cancellation of removal. The biometrics instructions also inform aliens how to pay the fees for those applications.

Board

An abbreviation for the Board of Immigration Appeals.

Board of Immigration Appeals

The part of the Executive Office for Immigration Review that is authorized to review most decisions of Immigration Judges and some types of decisions of Department of Homeland Security officers.

Bond

The amount of money set by the Department of Homeland Security or an Immigration Judge as a condition to release a person from detention for an Immigration Court hearing at a later date.

cited in C.J.L.G. v. Barr
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Bond Proceedings

An Immigration Court hearing on a request to redetermine a bond set by the Department of Homeland Security. Bond proceedings are separate from other Immigration Court proceedings.

CA

An abbreviation for Court Administrator.

CAT

An abbreviation for the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

CBP

An abbreviation for U.S. Customs and Border Protection, a part of the Department of Homeland Security.

Certificate of Translation

A formal statement in which a translator shows that he or she has accurately translated a foreign-language document into English.

C.F.R.

An abbreviation for the Code of Federal Regulations.

Charging Document

The document that orders an alien to appear before an Immigration Judge. Immigration Court proceedings begin when the Department of Homeland Security mails or delivers the charging document to the alien and files it with the Immigration Court. In general, the charging document states why the Department of Homeland Security believes the alien should be deported from the United States. The charging document in removal proceedings is called the Notice to Appear (Form I-862).

Claimed Status Review

Immigration Court proceedings involving aliens subject to expedited removal under INA § 235(b)(1) who claim to be United States citizens, or lawful permanent residents, or to have been granted refugee or asylee status.

cited in C.J.L.G. v. Barr
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Code of Federal Regulations

The official interpretations of laws passed by Congress. These interpretations are known as "regulations." Regulations are first published in a government publication called the *Federal Register*. After publication in the *Federal Register*, regulations can be found in the Code of Federal Regulations. Most immigration regulations are in Title 8, Aliens and Nationality.

Convention Against Torture

An abbreviation for the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Credible Fear Proceedings

Immigration Court proceedings in which an Immigration Judge reviews a finding by a Department of Homeland Security asylum officer that a stowaway or an alien subject to expedited removal under INA § 235(b)(1) does not have a credible fear of persecution or torture.

DAR

An abbreviation for digital audio recording.

Declaration under Penalty of Perjury

A statement by a person, in which the person states that the information is true, to support his or her request or application. For example, a declaration may list the facts and then state: "I declare under penalty of perjury (under the laws of the United States of America) that the foregoing is true and correct." This statement should be followed by the date, signature, and printed name of the person signing.

Defensive Asylum Application

An asylum application filed with an Immigration Judge by an alien already in removal proceedings.

Deportation Proceedings

An Immigration Court proceeding begun before April 1, 1997, against a person believed to be in the United States without legal status, to determine whether the person should be deported from the United States.

DHS

An abbreviation for the Department of Homeland Security.

cited in C.J.L.G. v. Barr
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DHS Attorney

A term sometimes used to refer to an Assistant Chief Counsel in Immigration Court.

DOJ

An abbreviation for the United States Department of Justice.

EOIR

An abbreviation for the Executive Office for Immigration Review.

eRegistry

An online registry of attorneys and fully accredited representatives. In order to practice before the Immigration Court or the Board, all attorneys and fully accredited representatives must register with EOIR's eRegistry. Registrants receive an EOIR UserID number.

Ex Parte Communication

Any communication about a case between a party and an Immigration Judge which does not include the other party. Ex parte communications are generally prohibited. A party cannot speak about a case with the Immigration Judge when the other party is not present. In addition, all written communications about a case must be served on the opposing party.

Exclusion Proceedings

An Immigration Court proceeding begun before April 1, 1997, to determine whether a person should be allowed to legally enter the United States.

Executive Office for Immigration Review

The part of the United States Department of Justice that is responsible for the Immigration Courts and the Board of Immigration Appeals.

FOIA

An abbreviation for the Freedom of Information Act.

ICE

An abbreviation for the U.S. Immigration and Customs Enforcement, a part of the Department of Homeland Security.

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Immigration Court

Any of the more than 30 courts nationwide administered by the Executive Office for Immigration Review. In general, proceedings in Immigration Court involve aliens charged as present in the United States in violation of the immigration laws.

Immigration Court Proceedings

In general, proceedings in Immigration Court involve aliens charged as present in the United States in violation of the immigration laws. Several types of proceedings are held in Immigration Court, including removal proceedings (begun on or after April 1, 1997), deportation proceedings (begun prior to April 1, 1997), exclusion proceedings (begun prior to April 1, 1997), bond proceedings, rescission proceedings, credible fear proceedings, reasonable fear proceedings, claimed status review, asylum-only proceedings, and withholding-only proceedings.

Immigration Judge

The official who presides over proceedings in Immigration Court. In general, Immigration Judges determine removability and adjudicate applications for relief from removal.

INA

An abbreviation for the Immigration and Nationality Act.

INS

An abbreviation for the Immigration and Naturalization Service. INS has been abolished and its functions have been transferred to the Department of Homeland Security.

In Absentia Hearing

A hearing conducted without the alien's presence after the alien failed to appear as required.

Individual Calendar Hearing

Hearings scheduled by the Immigration Court for testimony and evidence. These hearings are also known as "merits hearings."

cited in C.J.L.G. v. Barr
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IJ

An abbreviation for Immigration Judge.

IRCA

An abbreviation for the Immigration Reform and Control Act of 1986.

IIRIRA

An abbreviation for the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

LIFE

An abbreviation for Legal Immigration and Family Equity Act.

Lodged Asylum Application

A defensive asylum application that is submitted at the Immigration Court filing window outside of a hearing for the purpose of employment authorization. The lodged date is not the filing date and a lodged asylum application is not considered

filed. A respondent who lodges an asylum application must still file an asylum application before an Immigration Judge at a master calendar hearing.

LPR

An abbreviation for lawful permanent resident.

Master Calendar Hearing

Hearings held for pleadings, scheduling, and other similar matters. A respondent's first appearance before an Immigration Judge in removal proceedings is at a master calendar hearing.

Merits Hearing

A term sometimes used to refer to an individual calendar hearing.

NACARA

An abbreviation for the Nicaraguan Adjustment and Central American Relief Act.

Notice Attorney

A term sometimes used in Immigration Court to refer to the primary attorney.

Notice to Appear

The charging document (Form I-862) used by the Department of Homeland Security to begin removal proceedings.

cited in C.J.L.G. v. Barr
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NTA

An abbreviation for Notice to Appear.

OCIJ

An abbreviation for the Office of the Chief Immigration Judge.

Office of the Chief Immigration Judge

The part of the Executive Office for Immigration Review that oversees the Immigration Courts.

OIL

The abbreviation for the Office of Immigration Litigation, a part of the United States Department of Justice.

Order to Show Cause

The charging document (Form I-221) used by the Department of Homeland Security before April 1, 1997, to begin deportation proceedings.

OSC

An abbreviation for Order to Show Cause.

Party

The term used to refer to the alien or the Department of Homeland Security in Immigration Court.

Petitioner

A person who files a visa petition.

Practitioner

A person who is authorized to represent aliens before the Immigration Courts and the Board of Immigration Appeals.

Pre-Decision Motion

A motion filed before the conclusion of Immigration Court proceedings.

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Primary Attorney

An attorney who has properly entered an appearance with the Immigration Court and is designated to receive mailings from the court, including notices of hearings. If more than one attorney represents an alien in a proceeding, one of the attorneys must be designated as the primary attorney for that proceeding. Only the primary attorney, also known as the "notice attorney," will receive mailings from the Immigration Court related to that proceeding.

Pro Se

A term used to refer to an alien who does not have an attorney or representative in Immigration Court.

Proof of Service

A formal statement in which a party shows that he or she has provided a copy of a document to the other party.

REAL ID

An abbreviation for the REAL ID Act of 2005.

Reasonable Fear Proceedings

Immigration Court proceedings in which an Immigration Judge reviews a finding by a Department of Homeland Security asylum officer that an alien subject to expedited removal under INA §§ 238(b) or 241(a)(5) does not have a reasonable fear of persecution or torture.

Recognized Organization

A non-profit, federal tax-exempt, religious, charitable, social service, or similar organization established in the United States that is recognized by the Director of the Office of Legal Access Programs to provide representation through accredited representatives who appear on behalf of clients before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security, or the Department of Homeland Security alone.

Record of Proceedings

The official file containing documents relating to an alien's case.

Removal Proceedings

An Immigration Court proceeding begun on or after April 1, 1997, to determine whether a person can be admitted to the United States or removed from the United States.

cited in C.J.L.G. v. Barr
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Reputable Individual

An individual who possesses good moral character and meets certain other requirements. In appropriate circumstances, an Immigration Judge may allow a reputable individual to represent an alien in Immigration Court proceedings.

Respondent

A person in removal or deportation proceedings.

ROP

An abbreviation for Record of Proceedings.

Serve

To give, deliver, or mail a document to the opposing party. For an alien, the opposing party is the Department of Homeland Security.

Stay

An order by an Immigration Judge, or a rule of law, that stops the Department of Homeland Security from removing an alien.

Transcript

A printed copy of the recording of a hearing before an Immigration Judge.

Trial Attorney

A term sometimes used to refer to an Assistant Chief Counsel.

USCIS

An abbreviation for U.S. Citizenship and Immigration Services, a part of the Department of Homeland Security.

Visa Petition

A form asking the Department of Homeland Security to determine if an alien is qualified to become a lawful permanent resident. Filing the visa petition is the first step in obtaining lawful permanent resident status (a "green card").

Withholding-Only Proceedings

Immigration Court proceedings in which an alien is limited to applying for withholding of removal ("restriction on removal") under the INA and protection under CAT. Withholding-only proceedings involve certain aliens who are not entitled to be placed in removal proceedings.

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Table of Changes

This Practice Manual is updated periodically. The tables below are arranged by most recent date of change, and contain within each table the section amended and nature of the change made to the Practice Manual. Page numbers throughout the Practice Manual may have changed as the result of updates.

July 9, 2018

Section amended	Nature of change
Introduction	Updated names and titles
4.18	Technical change – replace omitted text
Chapter 8	Replaced with new chapter 8

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November 2, 2017

Section amended	Nature of change
3.1(b), 3.1(b)(iv), 5.12	Updated information regarding rulings on motions before the close of the response period
5.10(c)	Updated language regarding motions to change venue

October 20, 2017

Section amended	Nature of change
Introduction	Updated names and titles
3.1(b)(5), 5.7(c), 5.8(c), 5.9(d)(ii)(C)	Updated information regarding response period for post-decision motions

May 15, 2017

Section amended	Nature of change
Introduction	Updated Deputy Chief Immigration Judge and Assistant Chief Immigration Judge names
1.4(b)	Technical Change - changed the name of OGC's Fraud and Abuse Prevention Program
1.4(c)	Updated information regarding EOIR's Office of Legal Access Programs (OLAP)
2.4	Updated information related to the recognition and accreditation program
3.3(a)	Updated information related to certification of translations

cited in C.J.L.G. v. Barr
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7.4(b)(i)(A)	Updated section on expedited removal to reflect changes to the policy for Cuban arrivals
Chapter 10	Updated information related to the recognition and accreditation program.
App. A	Technical Change - changed the Las Vegas Immigration Court mailing address
App. B	Technical Change - changed the name of OGC's Fraud and Abuse Prevention Program
App. B	Technical Change - added the Office of Legal Access Programs
App. E	Technical change - added Office of Legal Access Programs (OLAP) and Forms 31 and 31A
Glossary	Updated information related to the recognition and accreditation program

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April 4, 2017

Section amended	Nature of change
3.1(b)(iii)(A)	Updated defensive asylum application provision
4.15(l)(i)	Updated lodged asylum applications provision

App. D	Updated guidelines for filing asylum applications

January 31, 2017

Section amended	Nature of change
App. A	Technical change – changed the Krome Immigration Court mailing address
A-2, A-3	Technical change – corrected a pagination error
1.6(b)(1)	Technical change – Removed a sentence referring to the prohibition on smoking in the library

cited in C.J.L.G. v. Barr
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JUSTICE NEWS

Attorney General Sessions Delivers Remarks to the Executive Office for Immigration Review Legal Training Program

Washington, DC ~ Monday, June 11, 2018

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Thank you, James, for that introduction, and thank you for your years of superb service to the Department as an SAUSA, at Main Justice, and now here at EOIR. James has been doing a fabulous job. He understands these issues, knows exactly what our challenges are, and is working steadfastly every day to meet them.

Thank you also to Katherine Reilly, Kate Sheehy, Chris Santoro, Edward So, David Neal, Chief Judge Keller, Lisa Ward, Jean King, Robin Sutman, and all of the leadership team.

cited in C.J.L.G. v. Barr
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It is good to be with you today.

Each one of you plays an important role in the administration of our immigration laws. Immigration judges are critical to ensuring that the Department of Justice carries out its responsibilities under the INA. You have an obligation to decide cases efficiently and to keep our federal laws functioning effectively, fairly, and consistently. As the statute states, Immigration Judges conduct designated proceedings "subject to such supervision and shall perform such duties as the Attorney General shall prescribe".

This responsibility seeks to ensure that our immigration system operates in a manner that is consistent with the laws enacted by Congress. As you know, the INA was established to ensure a rational system of immigration in the national interest.

Of course there are provisions in the INA, consent decrees, regulations, and court decisions where the commonsense enforceability of the plain intent of the INA has been made more difficult. That's what you wrestle with frequently.

President Trump is correct: Congress needs to clarify a number of these matters. Without Congressional action, clarity and consistency for us is much more difficult.

Let's be clear: we have a firm goal, and that is to end the lawlessness that now exists in our immigration system. This Department of Justice is committed to using every available resource to meet that goal. We will act strategically with our colleagues at DHS and across the government, and we will not hesitate to redeploy resources and alter policies to meet new challenges as they arise.

Last month, the Department of Homeland Security announced that it will begin to refer as close to 100 percent of illegal Southwest Border crossers as possible to the Department of Justice for prosecution. The Department of Justice will take up those cases.

I have put in place a "zero tolerance" policy for illegal entry on our Southwest border. If you cross the Southwest border unlawfully, then we will prosecute you. It's that simple.

If someone is smuggling illegal aliens across our Southwest border, then we will prosecute them. Period.

I have sent 35 prosecutors to the Southwest and moved 18 immigration judges to detention centers near the border. That is about a 50 percent increase in the number of immigration judges who will be handling cases at the border."

All of us should agree that, by definition, we ought to have zero illegal immigration in this country.

Each of us is a part of the Executive Branch, and it is our duty to "take care that the laws be faithfully executed."

Ours is a public trust.

And the United States of America is not a vague idea. It is not just a landmass or an economy. Ours is a sovereign nation state with a constitution, laws, elections, and borders.

As you all well know, one of our major difficulties today is the asylum process.

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The asylum system is being abused to the detriment of the rule of law, sound public policy, and public safety— and to the detriment of people with just claims. Saying a few simple words—claiming a fear of return—is now transforming a straightforward arrest for illegal entry and immediate return into a prolonged legal process, where an alien may be released from custody into the United States and possibly never show up for an immigration hearing. This is a large part of what has been accurately called, "catch and release".

Beginning in 2009, more and more aliens who passed an initial USCIS credible fear review were released from custody into the United States pending a full hearing. Powerful incentives were created for aliens to come here illegally and claim a fear of return. In effect, word spread that by asserting this fear, they could remain in the United States one way or the other. Far too often, that rumor proved to be true.

The results are just what one would expect. The number of illegal entrants has surged. Credible fear claims have skyrocketed, and the percentage of asylum claims found meritorious by our judges declined.

That's because the vast majority of the current asylum claims are not valid. For the last five years, only 20 percent of claims have been found to be meritorious after a hearing before an Immigration Judge. In addition, some fifteen percent are found invalid by USCIS as a part of their initial screening.

Further illustrating this point, in 2009, DHS conducted more than 5,000 credible fear reviews. By 2016, only seven years later, that number had increased to 94,000. The number of these aliens placed in immigration court proceedings went from fewer than 4,000 to more than 73,000 by 2016—nearly a 19-fold increase—overwhelming the system and leaving legitimate claims buried.

Now we all know that many of those crossing our border illegally are leaving difficult and dangerous situations. And we understand all are due proper respect and the proper legal process. But we cannot abandon legal discipline and sound legal concepts.

Under the INA, asylum is available for those who leave their home country because of persecution or fear on account of race, religion, nationality, or membership in a particular social group or political opinion. Asylum was never meant to alleviate all problems— even all serious problems— that people face every day all over the world.

Today, exercising the responsibility given to me under the INA, I will be issuing a decision that restores sound principles of asylum and long standing principles of immigration law.

We have not acted hastily, but carefully. In my judgment, this is a correct interpretation of the law. It advances the original intent and purpose of the INA, and it will be your duty to carry out this ruling.

This decision will provide more clarity for you. It will help you to rule consistently and fairly.

The fact is we have a backlog of about 700,000 immigration cases, and it's still growing. That's more than triple what it was in 2009. This is not acceptable. We cannot allow it to continue.

At this time, when our immigration system and our immigration judges are under great stress, I am calling on you to use your best efforts and proper policies to enhance our effectiveness. To end the lawlessness and move to the virtuous cycle, we have to be very productive. Volume is critical. It just is. We ask you to evaluate your processes and disposition rates.

We ask each one of you to complete at least 700 cases a year. It's about the average. We are all accountable. Setting this expectation is a rational management policy to ensure consistency, accountability, and efficiency in our immigration court system. Thank you for working every day to meet and exceed this goal. You can be sure that this administration and this Department of Justice supports you in this critically important and historic effort.

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That's why we are hiring more than 100 new immigration judges this calendar year. And we are actively working with our partners at DHS to ensure that we can deploy judges electronically and by video-teleconference where needed and to obtain appropriate courtroom facilities.

Let's be clear. These actions will not end or reduce legal immigration. These actions will be directed at reducing illegal immigration. Only Congress can change legal immigration.

This is a great nation—the greatest in the history of the world. It is no surprise that people want to come here. But they must do so according to law.

When we lose clarity or have decisions that hold out hope where a fair reading of the law gives none, we have cruelly hurt many people. As we resolutely strive to consistently and fairly enforce the law, we will be doing the right thing.

The world will know what our rules are, and great numbers will no longer undertake this dangerous journey. The number of illegal aliens and the number of baseless claims will fall. A virtuous cycle will be created, rather than a vicious cycle of expanding illegality.

The American people have spoken. They have spoken in our laws and they have spoken in our elections. They want a safe, secure border and a lawful system of immigration that actually works. Let's deliver it for them.

Speaker:
Attorney General Jeff Sessions

Component(s):
Executive Office for Immigration Review
Office of the Attorney General

Topic(s):
Immigration

Updated June 11, 2018

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Obtaining Derivative Refugee or Asylee Status for Children

If you entered the United States as a refugee within the past two years or were granted asylee status within the past two years, you may petition for your child to obtain derivative refugee or asylee status.

Yes	*$0*
CAN APPLY FOR WORK PERMIT	FORM FILING FEE(S)

Who is eligible?

cited in C.J.L.G. v. Barr
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A child of a refugee or asylee can get derivative refugee or asylee status in two ways:

1. "**Accompanying the Principal Refugee or Asylee Parent**": The child is **included in the original application for refugee or asylee status** filed by the principal refugee/asylee; the child is approved for derivative status as part of his or her parent's case; and if living abroad, the child is admitted to the United States at the same time as the principal refugee or within four months of the principal refugee's admission to the United States.

2. "**Following to Join the Principal Refugee or Asylee Parent**": The principal refugee/asylee **petitions for his or her child within the two year period** immediately following the principal's admission to the United States as a refugee or grant of asylum status. The petition is Form I-730, Refugee/Asylee Relative Petition. **Note:** USCIS can waive the two year filing period for humanitarian reasons.

A child must meet the eligibility requirements for derivative refugee or derivative asylee status, whichever is applicable.

The child of a principal refugee or asylee, however, does not need to show that he or she was persecuted. Also, the bar to status because of firm resettlement in another country does not apply to derivative refugee/asylee children.

The requirements for derivative refugee or asylee status for a child include, but are not limited to, the following:

- The child must be under age 21, unmarried, and meet any other requirements under the definition of "child." For example, there are specific requirements that apply to adopted children, stepchildren, and legitimated children.
- The principal refugee/asylee's relationship to the child must have existed before the principal refugee/asylee was admitted to the United States as a refugee or granted asylum. **Note:** A child of the principal refugee/asylee must have been born or conceived (i.e., the mother was already pregnant) before the principal refugee/asylee entered the United States as a refugee or was granted asylum.
- The principal refugee/asylee's relationship to the child also must exist at the time a petition for derivative status is filed and, if your child is currently abroad, when the child is admitted.
- If seeking derivative refugee status, the child must not be inadmissible under any of the grounds that apply to refugees and must not be (or have been) a persecutor of others.
- If seeking derivative asylum status, the child must not be subject to one of the mandatory asylum bars, which include not being a persecutor of others among other grounds.

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See the Family of Refugees & Asylees (http://www.uscis.gov/family/family-refugees-asylees) page for additional information.

How to Petition for your Child

The petitioner must:

- **Complete a Form I-730, Refugee/Asylee Relative Petition.** Review the form instructions for directions on completing the Form I-730.
- **Filing Fee(s).** There are no filing fees for the Form I-730.
- **Submit Copies.** Submit proof of status as a refugee or asylee and proof of your relationship to the child along with copies of any marriage certificates and/or divorce decrees, death certificates or annulment decrees if you (the petitioner), or your child, have ever been married.
- **Submit Photographs.** Include a passport-style photograph of your child with the petition.

- **Sign and File Form I-730.** File the petition at the correct filing location according to the Form I-730 instructions.

Additional Evidence

In addition to the steps and evidence noted above, a petitioner should submit documents to prove status and familial relationship. Examples of documents to show the principal refugee/asylee's status and family relationship to the child can include, but are not limited to, the following:

- **Biological Mother**
  - A copy of the child's birth certificate showing the principal refugee/asylee's (mother) name and the name of the child (if available).
- **Biological Father**
  - A copy of the child's birth certificate showing the name of both parents (if available).
  - A copy of the principal refugee/asylee's (father) marriage certificate if the father is or was married to the child's mother (if available).
  - If the principal refugee/asylee (father) was never married to the child's mother, proof that the child was legitimated by civil authorities or evidence that a parent-child relationship exists or existed.
- **Step-Parent**
  - Copy of the step-child's birth certificate (if available).
  - Copy of the marriage certificate for the principal refugee/asylee (step-parent) and the step-child's natural parent.
- **Adoptive Parent**
  - Certified copy of the adoption decree.
  - Proof that the principal refugee/asylee (adoptive parent) had legal custody of the child for at least two years (legal custody may have been granted prior to final adoption).
  - Proof that the adopted child lived with the principal refugee/asylee (adoptive parent) for at least two years.

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Note: A child who receives derivative refugee or asylum status cannot file a Form I-730 petition on behalf of any other relatives.

More information can be found in How Do I Help My Relative Get Refugee or Asylee Status in the United States? (http://www.uscis.gov/sites/default/files/USCIS/Resources/D1en.pdf) and How Do I Get a Refugee Travel Document? (http://www.uscis.gov/sites/default/files/USCIS/Resources/D4en.pdf)

What Happens After You Apply

Once USCIS receives the principal refugee/asylee's ("petitioner") Form I-730, we will process the petition, collect biometrics (if applicable) and may interview your child and you, if necessary, and then send:

- A receipt notice for your Form I-730 and
- A written notice of decision.

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Note: If you receive an approval of your petition and your child currently lives abroad, he or she will be interviewed before travel documentation can be issued. In a few cases, a child may be found ineligible to travel as a derivative refugee or asylee, and the petitioner is sent a notice of intent to deny with an opportunity to respond.

If your petition is deniable, you will receive a notice of intent to deny and an opportunity to respond before USCIS issues a final decision on your petition. There is no appeal of a decision on a Form I-730.

You can check your case status online. All you need is the receipt number that we mailed you after you filed your application. Start here: uscis.gov/casestatus (https://egov.uscis.gov/casestatus/landing.do).

Forms and Fees

Form I-730, Refugee/Asylee Relative Petition (http://www.uscis.gov/i-730), $0, No fees are required to submit Form I-730.

This page was last updated or reviewed on **January 28, 2019**

Related Options

Obtain Employment Authorization Document
(https://my.uscis.gov/exploremyoptions/obtain_employment_authorization_document)

Becoming a U.S. Citizen Through Naturalization
(https://my.uscis.gov/exploremyoptions/us_citizen_through_naturalization)

Citizenship Through Parents
(https://my.uscis.gov/exploremyoptions/citizenship_through_parents)

Renew or Replace My Green Card
(https://my.uscis.gov/exploremyoptions/renew_green_card)

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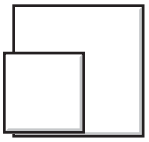
American Bar Association Logo



July 19, 2018

About Notario Fraud

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About Notario Fraud

Individuals who represent themselves as qualified to offer legal advice or services concerning immigration or other matters of law, who have no such qualification, routinely victimize members of immigration communities. Such representations can include false statements that

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- The individual is an attorney, or *abogado*;
- The individual is authorized to represent immigrants before the United States Citizenship and Immigration Service ("USCIS"), or before immigration courts;
- The individual is qualified to assist in preparing a will, corporate document or other legal paperwork;
- The individual is a legal assistant;
- The individual has a court license; or
- The individual is a *notario publico*.

Misrepresentations as to an individual's qualification to offer legal advice can have severe implications for immigrants. In many cases the work performed by such individuals results in missed deadlines, the filing of incorrect or incomplete forms, or the filing of false claims with the government. As a result of the advice or actions of such individuals an immigrant can miss opportunities to obtain legal residency, can be unnecessarily deported, or can be subject to civil and/or criminal liability for the filing

of false claims. In addition, immigrants often spend hundreds, thousands, or tens of thousands of dollars in payment for what they believe are the services of a licensed attorney.

The term "notario publico" is particularly problematic in that it creates a unique opportunity for deception. The literal translation of "notario publico" is "notary public." While a notary public in the United States is authorized only to witness the signature of forms, a notary public in many Latin American (and European) countries refers to an individual who has received the equivalent of a law license and who is authorized to represent others before the government.

The problem arises when individuals obtain a notary public license in the United States, and use that license to substantiate representations that they are a "notario publico" to immigrant populations that ascribe a vastly different meaning to the term.

Example of Notario Advertising

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Photo by JoNel Newman

ABA Resources

ABA Journal

ABA-Approved Law Schools

Law School Accreditation

Bar Services

Legal Resources for the Public

ABA Career Center

Model Rules of Professional Conduct

The ABA

About the ABA

ABA Member Benefits

Office of the President

ABA Newsroom

Join the ABA

Connect

Contact Us

Contact Media Relations

Web Staff Portal

Website Feedback

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Terms of Use

Code of Conduct

Privacy Policy

Your California Privacy Rights

Copyright & IP Policy

Advertising & Sponsorship

Office of Legal Policy Home
About the Office
Meet the Assistant Attorney General
DOJ Regulations
Judicial Nominations
Forensic Science
Access to Justice
Legal Aid Interagency Roundtable
Presidential Memorandum
Civil Legal Aid 101
Case Studies
Federal Agency Resources
Select Publications and Research
Alternative Dispute Resolution
State Capital Counsel Mechanism Certification
OLP FOIA
Employment
Contact the Office

FEDERAL AGENCY RESOURCES

This resource page identifies examples of grants, training and technical assistance, and other Federal resources of particular interest to non-profit organizations and government agencies working to enhance civil legal aid for underserved populations. Please contact the issuing entity for more information about all resources. This page includes grants that legal aid programs can apply for directly, or indirectly as a sub-grantee partner to local and State governments or other social services providers and universities. The list is not intended to be comprehensive of all Federal resources that can be used to support or engage civil legal aid. Suggestions for additions can be sent to: LAIR@usdoj.gov

To read about currently open Department of Justice grants, and training and technical assistance, of particular interest to entities working to enhance both civil legal aid and indigent defense, please visit the Access to Justice Initiative's Grant Information page. This page occasionally also features relevant grants from other federal agencies. For a comprehensive listing of all federal grants, please visit www.grants.gov.

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- Consumer Financial Protection Bureau
- Corporation for National & Community Service
- Federal Trade Commission
- Legal Services Corporation (LSC)
- National Science Foundation
- Social Security Administration
- United States Agency for International Development (USAID)
- Department of Agriculture
- Department of Education
- Department of Health & Human Services
- Department of Homeland Security
- Department of Housing & Urban Development
- Department of the Interior – Bureau of Indian Affairs
- Department of Justice
- Department of Labor
- Department of the Treasury
- Department of Veterans Affairs

GENERAL INFORMATION
OFFICE OF LEGAL POLICY

LEADERSHIP

Beth A. Williams
Assistant Attorney General

CONTACT

Office of Legal Policy
(202) 514-4601

INTERAGENCY ALTERNATIVE DISPUTE RESOLUTION WORKING GROUP

Tips on Finding and Applying for Federal Grants

= Federal Agency information/resource relevant to civil legal aid providers

= Federal grant that expressly includes or allows for civil legal aid

CONSUMER FINANCIAL PROTECTION BUREAU

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Financial Coaching Project

The CFPB's financial coaching project, launched in 2015, co-locates financial coaches in organizations and agencies that serve veterans and low-income and economically vulnerable consumers. Of the 20 sites that serve the low-income and vulnerable populations, five are legal aid or volunteer lawyer organizations. The coaches are helping clients address their financial challenges and issues through one-on-one, client-directed financial coaching.

Your Money, Your Goals: A Financial Empowerment Toolkit

In April 2015, the CFPB launched *Your Money, Your Goals: A financial empowerment toolkit for legal aid organizations*, with four legal aid partner organizations from across the country. In 2016, the CFPB is working with an additional six legal aid organizations to integrate the toolkit into their work. The toolkit includes actionable information and tools for front-line staff to help clients identify financial challenges and goals, understand their consumer financial protection rights, and access relevant resources. More than 450 legal aid attorneys and staff have participated through the train-the-trainer format via in-person and webinar trainings. For more information, please visit www.consumerfinance.gov/empowerment.

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CORPORATION FOR NATIONAL & COMMUNITY SERVICE

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LSC Funds as Matching Funds for Grants Funded by the Corporation for National and Community Service

In a December 2, 2014 letter, LSC clarified that its grantees may use LSC funds as matching funds in AmeriCorps grants and other grants funded by the Corporation for National and Community Service.

Guide to the AmeriCorps State and National Program for Legal Services Organizations

The U.S. Department of Justice Office for Access to Justice and the Corporation for National and Community Service, published a Guide to the AmeriCorps State and National Program for Legal Services Organizations. The Guide is designed to introduce the AmeriCorps program to legal services organizations that are not familiar with the program; demonstrate how AmeriCorps can work effectively in the context of legal services to expand the organization's reach and provide more direct legal services; and

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provide additional resources for organizations interested in using national service to advance their mission. Thanks to contributions by 10 current or recent AmeriCorps legal services program grantees, the Appendix contains a variety of position descriptions and other illustrative documents.

Guide to the AmeriCorps VISTA Program for Legal Services Organizations

The U.S. Department of Justice Office for Access to Justice and the Corporation for National and Community Service, published a Guide to the AmeriCorps VISTA Program for Legal Services Organizations. The *Guide* is designed to introduce the VISTA program to legal services organizations that are not familiar with it program; demonstrate how the VISTA program can work effectively in the context of legal services; and provide additional resources for organizations that are interested in sponsoring a VISTA project at their site. Thanks to contributions by 10 current or recent VISTA legal services program sponsors, the Appendix contains more than two dozen sample project descriptions to illustrate the range of ways VISTA members can benefit a legal aid program.

AmeriCorps State and National Grants

In the FY 2016 AmeriCorps competition, CNCS seeks to prioritize the investment of national service resources in economic opportunity, education, veterans and military families, environment, disaster services, Elder Justice AmeriCorps, Governor and Mayor Initiatives, and programming that supports My Brother's Keeper. CNCS will continue to focus on national service programs that seek to improve academic outcomes for children, youth, and young adults. CNCS will also focus investment in programs that increase safer communities through activities that focus on public safety and preventing and mitigating civil unrest, as well as investment in programs that primarily serve communities with limited resources and organizational infrastructure.

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Eligible Grantees: Native American tribal organizations; public and state controlled institutions of higher education; nonprofits that do not have 501(c)(3) status with the IRS, other than institutions of higher education; city or township governments; nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education; public housing authorities and Indian housing authorities; independent school districts; special district governments; county governments; state governments; and private institutions of higher education.

Prior Deadline: 01/20/2016

Social Innovation Fund – Corporation for National & Community Service

The 2015 Social Innovation Fund grant competition provides up to $51 million to eligible grant-making institutions seeking to grow innovative, evidence-based solutions to challenges facing low-income communities nationwide. Its purpose is to grow the impact of innovative community-based solutions that have compelling evidence of improving the lives of people in low-income communities throughout the United States. The Fund

directs resources toward increasing the evidence-based capacity and scale of the organizations it funds in order to improve the lives of people served by those organizations. The Innovation Fund also generates broader impact by leveraging grant funding to improve philanthropies, federal government departments and agencies, state and local government, and community-based organizations to deploy funds to address social challenges. Additionally, it enhances the ability of the nonprofit sector to support the growth of innovative, high-impact organizations.

Funding Source: Corporation for National & Community Service

Eligible Grantees: Existing grant making institutions or eligible partnerships.

Prior Deadline: 3/17/2015

AmeriCorps VISTA

AmeriCorps VISTA is committed to its mission of bringing individuals and communities out of poverty. AmeriCorps VISTA members make a year-long, full-time commitment to serve on a specific project at a nonprofit organization or public agency, and focus their efforts to build the organizational, administrative, and financial capacity of organizations that fight illiteracy, improve health services, foster economic development, and otherwise assist low-income communities.

Eligible Grantees: Public, private, or faith-based nonprofit organizations, as well as local, state, or federal agencies.

Prior Deadline: Ongoing

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FEDERAL TRADE COMMISSION

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Legal Services Collaboration

The FTC organized a nationwide team of its lawyers into a Legal Services Collaboration to identify consumer protection issues affecting low income communities and to develop partnerships focusing on law enforcement and consumer education strategies. The FTC meets regularly with legal aid lawyers around the country to share information, hold informal brownbags and teleconferences, and conduct webinars hosted by the Legal Services Corporation. Information from legal services partners has concretely benefitted the agency's law enforcement and policy activities, as well as spurring the creation of www.consumer.gov, a consumer education resource for clients of legal services organizations. For more information, see WH-LAIR's publication on FTC's Legal Services Collaboration: Enhancing Enforcement Through Collaboration with Civil Legal Aid.

Webinar

The FTC invites legal services offices to join its listserv, which announces and provides links to participate in the quarterly FTC webinars hosted by the Legal Services Corporation. The webinars inform participants about consumer protection law enforcement and policy developments of common

concern, and to disseminate resources for them and their clients. To join the listserv, legal aid providers should email mvaca@ftc.gov.

Webinar

FTC and LSC partnered to produce a series of webinars about consumer issues including scams involving money and credit, online privacy and security, and more. Geared towards legal aid organizations, these webinars include 'Unauthorized Billing and Charges on Consumers Accounts: What Can You and Your Clients Do to Fight Back?'and 'New Resources to Prevent and Recover from Identity Theft' and can be found here under the "Consumer" heading.

Raise awareness of Know Your Rights materials

The FTC collaborates with Pro Bono Net (nonprofit providing resources for pro bono and legal aid attorneys and others working to assist low income or disadvantaged clients) to add the FTC's Know Your Rights materials to websites for the general public such as the www.lawhelp.org, and related websites for service providers including a primary portal for pro bono volunteers, http://www.probono.net/.

LEGAL SERVICES CORPORATION (LSC)

Basic Field Grants

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LSC provides funding to 134 independent non-profit legal aid programs in every state, the District of Columbia, and in U.S. territories. LSC provides Basic Field Grants through a competitive bidding process and awards funding for up to three years to qualified attorneys, legal aid organizations, and entities as a means of improving access to justice for low-income people.

Applications are accepted for specified service areas. The three types of service areas are:

1. General: To provide legal services to the general low-income population living in a specific geographical area.
2. Native American: To provide legal services to Native Americans living in a specific geographical area, related to their status as Native Americans.
3. Migrant: To provide legal services to Migrant and other Agricultural Workers living in a specific geographical area, related to their status as Agricultural Workers.

The Basic Field Grants are awarded annually, but different service areas may be in competition at different times during the year.

Eligible Grantees: Current recipients; nonprofit organizations that have, as a purpose, the provision of legal help to eligible clients; private attorneys or group of attorneys or law firms (either as a non-incorporated body or as a nonprofit); state or local governments; and sub-state regional planning or coordination agencies that are composed of sub-state areas whose governing boards are controlled by locally-elected officials.

Emergency Relief Grants

The Emergency Relief Grants provide funding to LSC grantees in service areas with government-declared emergencies. The funding is offered to mitigate damage sustained by the grantee and to provide legal help to low-income people affected by the disaster.

Eligible Grantees: Current LSC basic field grant recipients who provide service in an area where there has been a government-declared emergency.

Leadership Development Program

The G. Duane Vieth Leadership Development Program is a national grant initiative to support leadership training and development for LSC grantee directors. By creating a dedicated pool of funds specifically for leadership development, grants awarded through this program will provide civil legal aid leaders with targeted support to improve their effectiveness.
Eligible Grantees: Current LSC basic field grant recipients.

Prior Deadline: 7/15/2016

Pro Bono Innovation Fund

The Pro Bono Innovation Fund is designed to support the development of new and robust pro bono efforts and partnerships that will effectively serve more low-income people. The Fund offers grants for new pro bono initiatives, collaborations, and partnerships to engage more lawyers and other professionals in pro bono service, address gaps in legal services, and address persistent challenges in pro bono delivery systems. This grant program is awarded on an annual cycle. To apply, an organization must submit a letter of intent in March and a full application in July.

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Eligible Grantees: Current LSC basic field grant recipients.

Prior Deadline: 7/18/2016

Technology Initiative Grant Program

Technology Initiative Grants (TIG) seek to improve legal services delivery to the low-income population and to increase access by low-income persons to high quality legal services, to the judicial system, and to legal information. TIG funding has provided LSC with a remarkable opportunity to explore new ways to serve eligible persons, to help build legal aid programs' capacities, and to support the efforts of pro bono attorneys. These projects use a broad range of technologies -- including mobile, cloud computing, data analysis, and automated document assembly -- to make the delivery of legal services in the United States more efficient and effective. This grant program is awarded on an annual cycle. To apply, an organization must submit a letter of intent in February and a full application in May.

Eligible Grantees: Current LSC basic field grant recipients.

Prior Deadline: 5/31/2016

Veterans Appeals Pro Bono Grant Program

The Veterans Appeals Pro Bono Grant facilitates the provision of high-quality legal and other assistance, without charge, to veterans and other individuals who are unable to afford the cost of legal representation in connection with decisions of, or other proceedings in, the U.S. Court of Appeals for Veterans Claims. This grant program is awarded on a three-year cycle.

Eligible Grantees: Non-profit organizations that have as a purpose the provision of free legal assistance to low-income individuals or the provision of free services to veterans; or private attorneys or law firms that seek to establish such a non-profit for these purposes.

Prior Deadline: 12/11/2015

Rural Legal Summer Corps

The Rural Legal Summer Corps (RSLC) Program places law students with rural legal aid programs for the summer. The goals of the program include increasing availability of legal services to low-income people in rural areas, developing students' skills in serving low-income clients, increasing rural legal services programs' ability to recruit highly qualified law students and new attorneys, and increasing collaboration between law schools and rural legal services programs. The program was developed by LSC and Equal Justice Works and is funded by private donations through LSC's Campaign for Justice. The program operates from May to August, and awards are made annually.

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Eligible Applicants: All applicants must attend an Equal Justice Works member law school; complete their first or second year of law school by the start of their summer placement; be a U.S. citizen, U.S. national or lawful permanent resident (e.g., green card); pass a criminal background check; and possess a valid driver's license and access to adequate transportation during summer placement.

Prior Deadline: 02/29/2016

Civil Legal Outcomes Toolkit

The Civil Legal Outcomes Toolkit is designed to help legal aid programs with defining, collecting and reporting on metrics that describe their effectiveness—specifically, on outcomes for clients in extended service cases. This toolkit includes detailed instructions, eLearning modules, examples and additional resources for implementing an outcomes management system. The Toolkit can be accessed at http://clo.lsc.gov/.

NATIONAL SCIENCE FOUNDATION

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Practitioner-Scholar Research Agenda Workshop

The National Science Foundation funded a 2012 American Bar Foundation

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workshop to address the legal aid "research gap," convening scholars and practitioners to develop and begin work on a new research agenda for access to civil justice. A follow-up workshop in 2013 included presentations of practitioner-scholar proposed research initiatives.

Dear Colleague Letter – Stimulating Research Related to the Use and Functioning of the Civil Justice System

The National Science Foundation Law & Social Sciences program invites research on how people and organizations define legal claims, whether and how they mobilize the law on their behalf, and how legal institutions respond to questions about civil justice. Proposals concerning civil justice are invited to consider problems involving and not limited to the following: 1) Individual decisions to engage legal institutions and assistance, and the institutional, cultural, social and economic factors that shape those decisions; 2) Mediating institutions that define, mobilize or manage legal claims, and the differences they make in process and outcomes; and 3) The process and outcomes of decision-making in courts, both trial and appellate.
Eligible Grantees: Except where a program solicitation establishes more restrictive eligibility criteria, individuals and organizations in the following categories may submit proposals: universities and colleges; non-profit, non-academic organizations; for-profit organizations; state and local governments; and certain unaffiliated individuals. More information about eligible proposers may be found in GPG Chapter I.
Prior Deadline: On-going

US Ignite: Networking Research and Application Prototypes Leading to Smart & Connected Communities

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In June 2012, NSF, in partnership with the White House Office of Science and Technology Policy (OSTP) and other Federal agencies, announced US Ignite, an initiative seeking to promote US leadership in the development and deployment of next-generation gigabit applications with the potential for significant societal impact. This solicitation builds on the experience and community infrastructure established through previous US Ignite investments, encouraging the US academic research community, non-profits, and local governments to explore the fundamental challenges of piloting and eventually transitioning into practice next-generation networking. In 2016, NSF also worked with the U.S. Department of Justice (DOJ) Office for Access to Justice (ATJ) to identify additional application ideas and prototypes and basic research directions that may serve national priority areas of mutual interest.

Each US Ignite application should address one or more national priority areas, including but not limited to advanced manufacturing, education and workforce, energy, transportation, health, and public safety/emergency preparedness. Among these priority areas are those identified by the White House Legal Aid Interagency Roundtable (WH-LAIR), to which both NSF and the Department of Justice (DOJ) are members. Therefore, potential US Ignite applications that could demonstrate a networking technology advancement that improves access to justice, and informs a research agenda and/or identifies technology priorities for civil legal aid, would be of interest.

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Who May Submit Proposals: The categories of proposers eligible to submit US Ignite proposals to the National Science Foundation are identified in the NSF Grant Proposal Guide, Chapter I, Section E.

Prior Deadline: 6/14/2016

SOCIAL SECURITY ADMINISTRATION

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Protection and Advocacy

SSA's Protection and Advocacy of Beneficiaries of Social Security (PABSS) Program serves individuals with disabilities who receive Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits by providing information and advice about obtaining vocational rehabilitation and employment services. PABSS advocate for or represent beneficiaries in an effort to remove obstacles to attaining employment. The PABSS grantees offer information, support or other services that beneficiaries with disabilities may need to secure, maintain, or regain gainful employment. Services offered under the PABSS Program include, but are not limited to:

- Helping clients to secure services from community agencies, including employment networks that provide services under the Ticket to Work program;
- Helping beneficiaries understand issues and problems related to their disability benefits;
- Protecting beneficiaries' rights regarding conditions of employment including minimum wage issues;
- Helping beneficiaries understand and protect their employment rights, responsibilities and reasonable accommodations under the Americans with Disabilities Act and other applicable laws;
- Protecting rights to transportation related to employment; and
- Obtaining vocational rehabilitation and employment related services and supports.

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SSA awarded a contract to the National Disability Rights Network (NDRN) in 2015 to provide technical assistance and training, including employment law training to PABSS staff. NDRN also provides training and technical assistance on administrative systems, management issues, and other operational topics to improve and enhance PABSS services. The NDRN contract is also responsible for the PABSS data collection system.

Working Interdisciplinary Networks of Guardianship Stakeholders

Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) networks are "court-community partnerships that drive changes that affect the way courts and guardians practice, and improve the lives of people who need help in decision making." SSA has regional representatives who serve on the WINGS groups to enhance coordination between State courts with guardianship jurisdiction and the Representative Payee program. SSA also worked with WINGS groups to develop a training guide that outlines agency programs, representative payee issues, information about preventing elder abuse, and best practices to enhance

guardianship coordination. This guide will continue to be refined as needed. SSA's partnership with WINGS helps the agency to identify ways to strengthen its working relationship with the aging community and with State courts that oversee guardianship proceedings.

Pre-Hearing Conference Pilot Program

Under the Pre-Hearing Conference Pilot Program, SSA conducts pre-hearing conferences with self-represented individuals to explain the hearing process and right to a representative and obtain updated records information in preparation for the formal hearing. The goals for the pre-hearing conference are to (1) reduce hearing no shows and postponements based on a claimant choosing to seek representation, (2) improve the quality and completeness of the record at the time of the hearing, and (3) decrease the need for post-hearing development, and improve the hearings experience for self-represented claimants.

Disability Research Consortium

The Disability Research Consortium (DRC) consists of two co-operatively funded research centers: Mathematica Policy Research's Center for Studying Disability Policy and the National Bureau of Economic Research's Disability Research Center. SSA funds the centers through five-year cooperative agreements from fiscal year FY 2012 through FY 2017.

The DRC's main goals are to:

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- Research and evaluate a wide array of topics related to Social Security's Disability Insurance and Supplemental Security Income programs and other federal disability policies;
- Disseminate information on disability issues relevant to policymakers, researchers, stakeholder organizations, and the general public;
- Better understand the intersection and interaction between SSA and other federal disability-related programs to address the broader social and economic contexts of their administration and operation; and
- Provide training, education, and opportunities to scholars and practitioners in research areas relevant to Social Security and disability issues.

Disability Determination Process Small Grant Program

SSA administers the Disability Determination Process Small Grant Program. This program provides stipends to graduate-level students to conduct research on improving the efficiency and reducing the complexity of the disability determination process. Since 2012, over 20 students have completed projects, and several of these projects address the role of legal services in assisting claimants with the disability application process.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID)

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Human Rights Grants Program (HRGP)

The Human Rights Grants Program (HRGP) supports the development of human rights programs, including innovative projects that respond to urgent or unanticipated human rights needs. This entails encouraging cooperation with local and regional organizations, and enabling USAID Missions to respond to urgent needs and challenges through stand-alone human rights programs or by integrating human rights objectives into current programs and those under design, regardless of sector. Since its inception in 2012, roughly 100 grants have been made to strengthen human rights institutions and increasing access to justice for vulnerable populations around the globe.

Eligible Grantees: U.S. or non-U.S. entities, such as private, non-profit organizations including private voluntary organizations, universities, research organizations, professional associations, and relevant special interest associations. Interested and qualified organizations must apply for this funding directly through USAID Missions.

USAID Access to Justice and Rule of Law Programming

USAID's global programming strengthens access to justice and rule of law in more than 50 countries around the world. Many of these programs, such as those in Bangladesh, Colombia, Georgia, Kenya, Timor Leste, and Uganda, undertake a holistic and comprehensive approach that integrates strengthening and modernization of formal justice system institutions and actors with components focused on improving rights protections, legal aid, and customary justice and dispute resolution for all members of society, including women.

No. 16-73801c archived on April 30, 2019
cited in C.J.L.G. v. Barr

Guide to Rule of Law Analysis

The *Guide to Rule of Law Country* Analysis presents a strategic framework for conceptualizing the rule of law, analyzing a country's strengths and weaknesses with regard to rule of law, and designing strategic programs to address rule of law challenges, including those involving access to justice. It also focuses on how USAID rule of law programs can contribute to the broader goals of democratic and economic development, with particular attention to the empowerment of the poor and vulnerable groups.

Guide to Integrating Rule of Law and Development: Food Security, Climate Change, and Public Health

This publication is a practical resource for rule of law practitioners, development actors, local stakeholders, and donors for better understanding how rule of law promotion can effectively address issues of food security, public health, and climate change through national strategies, access to justice and legal empowerment, law reform, claims and dispute resolution mechanisms, and anti-corruption programming. It also describes core principles for rule of law and access to justice programming i.e. active participation of affected communities, substantive gender equality, non-discrimination, attention to vulnerable groups, and accountability.

Legal Empowerment of the Poor: From Concepts to Assessment

Legal Empowerment of the Poor (LEP) is a concept that is increasingly used in development discourse and one inextricably linked to access to justice and rule of law programming. This resource examines the fundamental components of LEP—Rights Enhancement, Rights Awareness, Rights Enablement, and Rights Enforcement—and their interconnections. It also identifies opportunities for USAID programming in this area and examines possibilities for assessing progress toward realizing legal empowerment of the poor.

Development Experience Clearing House (DEC)

USAID's Development Experience Clearinghouse, the largest searchable online resource for USAID-funded technical and project materials, including access to justice, makes nearly 200,000 items available for review or download, and continuously grows with more than 1000 items added each month. The DEC collects research reports, evaluations and assessments, contract information, tutorials, policy and planning documents, activity information sheets, and training material, including those on access to justice activities and issues.

U.S. DEPARTMENT OF AGRICULTURE

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Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program ("2501 Program")

The 2501 Program provides resources to assist socially disadvantaged and veteran farmers and ranchers in owning and operating farms and ranches while increasing their participation in agricultural programs and services provided by USDA. This program assists eligible community-based and non-profit organizations, higher education institutions, and tribal entities in providing outreach and technical assistance to socially disadvantaged and veteran farmers and ranchers.

Eligible Grantees: Applications may be submitted by community-based organizations, networks, or coalition of community-based organizations; 1890 or 1994 institutions of higher education; anAmerican Indian tribal community college or an Alaska Native cooperative college; a Hispanic-Serving Institution of higher education (as defined in 7 U.S.C. § 3103); any other institution of higher education (as defined in 20 U.S.C. § 1001) that has demonstrated experience in providing agricultural education or other agricultural-related services to socially disadvantaged farmers and ranchers; and an Indian tribe (as defined in 25 U.S.C. § 450b) or a National tribal organization that has demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers and ranchers.

Prior Deadline: 7/29/2016

Prior Grantees: http://www.outreach.usda.gov/grants/index.htm

Farm Service Agency (FSA)'s Cooperative Agreements

FSA's cooperative agreements are designed to further support and expand FSA's existing outreach and education efforts. There is an emphasis on proposals that propose to address producers who are ethnic minorities, women, new and beginning, veterans, urban, or who grow non-commodity crops

Eligible Grantees: Qualified universities and university-based organizations, and qualified non-governmental organizations or educational institutions who provide outreach and technical assistance.

Prior Deadline: July 11, 2016

Prior Grantees: https://www.fsa.usda.gov/programs-and-services/outreach-and-education/outreach-technical-assistance-cooperative-agreements/index

*note: In the most recent round of funding, two civil legal aid organizations received funding: Legal Aid of Nebraska and the Farmers Legal Action Group.

Beginning Farmer Rancher Development Program

The Beginning Farmer Rancher Development Program provides resources to support the development of educational outreach curricula, workshops, educational teams, training, and technical assistance programs to assist beginning farmers and ranchers in the U.S. with entering, establishing, building, and managing successful farm and ranch enterprises.

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Eligible Grantees: Applications may be submitted by a collaborative state, local, or regionally-based network or partnership of qualified public and/or private entities. These collaborations may include the following entities: State Cooperative Extension Services; Federal, State, or tribal agencies; community based organizations; nongovernmental organizations; junior and four-year colleges or universities or foundations maintained by a college or university; private for-profit organizations; and other appropriate partners.

Prior Deadline: 1/21/2016

U.S. DEPARTMENT OF EDUCATION

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OFFICE OF INNOVATION AND IMPROVEMENT

Promise Neighborhoods Program – Implementation Grant Competition

The purpose of the Promise Neighborhoods program is to significantly improve the educational and developmental outcomes of children and youth in our most distressed communities and to transform those communities by —(1) Identifying and increasing the capacity of eligible organizations that

are focused on achieving results for children and youth throughout an entire neighborhood; (2) Building a complete continuum of cradle-through-college-to-career solutions (continuum of solutions) of both education programs and family and community supports, with great schools at the center. All strategies in the continuum of solutions must be accessible to children with disabilities (CWD) and English learners (ELs); (3) Integrating programs and breaking down agency "silos" so that solutions are implemented effectively and efficiently across agencies; (4) Developing the local infrastructure of systems and resources needed to develop, implement, and sustain effective interventions to improve education outcomes and enhance family and community well-being across the broader region beyond the initial neighborhood; and (5) Learning about the overall impact of the Promise Neighborhoods program and about the relationship between particular strategies in Promise Neighborhoods and student outcomes, including through an evaluation of the program, particular elements within the continuum of solutions, or both.

Eligible Grantees: An eligible organization for this grant is one that: (1) Is representative of the geographic area proposed to be served; (2) Is one of the following: (a) A nonprofit organization that meets the definition of a nonprofit under 34 CFR 77.1(c), which may include a faith-based nonprofit organization. (b) An institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended. (c) An Indian tribe; (3) Currently provides at least one of the solutions from the applicant's proposed continuum of solutions in the geographic area proposed to be served; and (4) Operates or proposes to work with and involve in carrying out its proposed project, in coordination with the school's LEA, at least one public elementary or secondary school that is located within the identified geographic area that the grant will serve.

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Prior Deadline: 9/6/2016

Prior Grantees: See the program website at http://www2.ed.gov/programs/promiseneighborhoods/awards.html

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Client Assistance Program

The purpose of this program is to advise and inform clients, client applicants, and other individuals with disabilities of all the available services and benefits under the Rehabilitation Act of 1973, as amended, and of the services and benefits available to them under Title I of the Americans with Disabilities Act (ADA). In addition, grantees may assist and advocate for clients and client applicants in relation to projects, programs, and services provided under the Rehabilitation Act. In providing assistance and advocacy under Title I of the Rehabilitation Act, a CAP agency may provide assistance and advocacy with respect to services that are directly related to employment for the client or client applicant.

Eligible Grantees: Only designated protection and advocacy agencies in each State and Territory may apply. The Governor designates the protection and advocacy agency.

Prior Deadline: Ongoing

Prior Grantees: See the program website at https://rsa.ed.gov/programs.cfm?pc=cap&sub=awards

Independent Living Services for Older Blind Individuals Program

The Independent Living Services for Older Individuals who are Blind Program supports services to assist individuals aged 55 or older whose recent severe visual impairment makes competitive employment extremely difficult to obtain, but for whom independent living goals are feasible. Funds are used to provide independent living services, conduct activities that will improve or expand services for these individuals and conduct activities to improve public understanding of the problems of these individuals. Services are designed to help persons served under this program to adjust to their blindness by increasing their ability to care for their individual needs.

Eligible Grantees: Only separate State vocational rehabilitation agencies or combined State vocational rehabilitation agencies serving persons who are blind and visually impaired are eligible to apply.

Prior Deadline: Ongoing

Prior Grantees: See the program website at https://rsa.ed.gov/programs.cfm?pc=oib&sub=awards

Parent Information Centers Program

cited in C.J.L.G. v. Barr
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The purpose of this priority is to fund 41 Parent Training and Information Centers (PTIs) designed to meet the information and training needs of parents of infants, toddlers, children and youth with disabilities, ages birth through 26 (collectively, "children with disabilities"), and the information and training needs of youth with disabilities living in the States, regions of the States, or areas served by the centers. More than 35 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by strengthening the ability of parents to participate fully in the education of their children at school and at home (see section 601(c)(5)(B) of IDEA). Since the Department first funded PTIs over 35 years ago, it has helped parents set high expectations for their children with disabilities and provided parents with the information and training they need to help their children meet those expectations. The following Web site provides further information on the work of currently funded PTIs: *www.parentcenterhub.org.*

Eligible Grantees: Parent organizations. **Note:** Section 671(a)(2) of IDEA defines a "parent organization" as a private nonprofit organization (other than an institution of higher education) that— (a) Has a board of directors— (1) The majority of whom are parents of children with disabilities ages birth through 26; (2) That includes— (i) Individuals working in the fields of special education, related services, and early intervention; and (ii) Individuals with disabilities; and (3) The parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and (b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in

section 602(3) of IDEA.

Prior Deadline: 2/9/2015

Prior Grantees: See the program website at http://www2.ed.gov/programs/oseppic/awards.html

Parent Information and Training Program

The purpose of the Parent Information and Training Program is to support projects that provide training and information to enable individuals with disabilities, and the parents, family members, guardians, advocates, or other authorized representatives of the individuals (hereafter collectively referred to as "individuals with disabilities and their families"), to participate more effectively with professionals in meeting the vocational, independent living, and rehabilitation needs of individuals with disabilities. These grants are designed to meet the unique training and information needs of those individuals who live in the area to be served, particularly those who are members of populations that have been unserved or underserved by programs under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Eligible Grantees: Private nonprofit organizations that meet the requirements in section 303(c)(4) of the Rehabilitation Act are eligible to apply.

Prior Deadline: August 11, 2014

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Program of Protection and Advocacy of Individual Rights

The PAIR program supports the protection and advocacy system in each State to protect the legal and human rights of individuals with disabilities. In order to be eligible for advocacy services from the PAIR program, an individual with a disability must meet specific criteria. Each PAIR program must set annual priorities and objectives to meet the needs of individuals with disabilities in each State. Although the objectives and priorities vary from state to state to meet the needs of individuals with disabilities in each state, most PAIR programs set priorities and objectives aimed at reducing barriers to education, employment, transportation, and housing. In addition, PAIR programs advocate on behalf of individuals with significant disabilities to promote community integration and full participation in society.

Eligible Grantees: Only designated protection and advocacy agencies in each State and Territory may apply. The Governor designates the protection and advocacy agency.
Prior Deadline: Ongoing

Prior Grantees: See the program website at https://rsa.ed.gov/programs.cfm?pc=pair&sub=awards

Convening and Community of Practice

The Department of Education, with the support of the Department of Justice's Bureau of Justice Assistance held an all-day convening for the

Second Chance Pell Pilot program on July 19, 2016. Part of the focus of this convening is creating a community of practice among participating institutions to share information, knowledge, and resources. This community of practice included links to WH-LAIR and resources available for participating educational institutions. Institutions which contain law schools were encouraged to leverage legal aid clinics and other legal resources to assist Second Chance Pell participants as they reintegrate into society.

Publication – Reentry Mythbuster

The Department of Education, as part of the Federal Interagency Reentry Council, published a reentry mythbuster around student loan rehabilitation. This mythbuster factsheet is aimed at many community agencies and organizations, including the legal services community, and seeks to clarify existing federal policies pertaining to student financial aid and loan servicing. This mythbuster as well as other mythbusters relevant to the legal aid community are available at: https://csgjusticecenter.org/nrrc/projects/mythbusters/.

Website

The Department of Education made available a website of Educational Resources for Immigrants, Refugees, Asylees and other New Americans. The website contains resources that support a number of immigrant populations, including immigrant children (e.g. unaccompanied youth) and the children of immigrants, Deferred Action for Childhood Arrivals (DACA) children and youth, immigrant families, adult immigrants (e.g. refugees, asylees), foreign-born professionals, migrant students, teachers of English learners and foreign languages, and receiving communities. The website is geared toward learners, teachers, schools and communities support all three pillars of immigrant integration: civic, economic, and linguistic integration. The link to the website is available at http://www2.ed.gov/print/about/overview/focus/immigration-resources.html.

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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

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ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF)

Services for Survivors of Torture Program: Direct Services for Survivors of Torture

While legal services are an allowable expense in this FOA, please note that this FOA is not expressly dedicated to funding legal aid. The main purpose of the Direct Services grant program is to increase survivors' access to holistic, strengths-based, and trauma-informed services to assist them in the healing and recovery process. Under this grant program, direct services are provided to refugees, asylum seekers, asylees, certain immigrant classes, and United States citizens who have been tortured on foreign soil. The program requires a holistic approach to service delivery that involves providing medical, psychological, legal, and social work services to promote healing from the effects of torture.

Eligible Grantees: Open to all entities subject to exceptions as specified in the grant announcement.

Prior Deadline: 6/24/2015

Home Study and Post Release Services for Unaccompanied Children (UC)

While legal services are an allowable expense in this FOA, please note that this FOA is not expressly dedicated to funding legal aid. This grant allows providers to coordinate and administer home studies and post release services for select unaccompanied children in Office of Refugee Resettlement custody. Post release service providers assist the sponsor in accessing applicable legal service resources, and monitor and help facilitate the sponsor's plan in an effort to ensure the UC's attendance at all immigration court proceedings and compliance with DHS requirements.

Eligible Grantees: Open to all entities subject to exceptions as specified in the grant announcement.

Deadline: 7/25/2016

Residential Services for Unaccompanied Alien Children

The Office of Refugee Resettlement/Division of Children's Services (ORR/DCS) provides temporary shelter care and other child welfare related services to Unaccompanied Children (UC) in ORR custody. Residential care services begin once ORR accepts a UC for placement and ends when the minor is released from ORR custody, turns 18 years of age, or the minor's immigration case results in a final disposition. Care providers are required to inform UC of the availability of free legal assistance, the right to be represented by counsel at no expense to the federal government, and the rights victims of trafficking have under the Trafficking Victims Protection Reauthorization Act of 2008.

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Eligible Grantees: Open to all entities subject to exceptions as specified in the grant announcement.

Deadline: 8/1/2016

Community Services Block Grant

While legal services are an allowable expense in this FOA, please note that this FOA is not expressly dedicated to funding legal aid. The Community Services Block Grant provides funds to alleviate the causes and conditions of poverty in communities. CSBG funding supports projects that lessen poverty in communities; address the needs of low-income individuals including the homeless, migrants, and the elderly; and provides services and activities addressing employment, education, better use of available income, housing, nutrition, emergency services, and/or health. CSBG hopes to achieve for low-income individuals increased self-sufficiency, improved living conditions, ownership of and pride in their communities, and strong family and support systems.

Eligible Grantees: States; the District of Columbia; the Commonwealth of

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Puerto Rico; U.S. territories; federally and state-recognized Indian Tribes and tribal organizations; community action agencies; migrant and seasonal farm workers; and other organizations specifically designated by the states.

Prior Deadline: Ongoing

Community-Based Grants for the Prevention of Child Abuse and Neglect

While legal services are an allowable expense in this FOA, please note that this FOA is not expressly dedicated to funding legal aid. The formula grant program provides funding to States to develop, operate, expand, and enhance community-based, prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect. Some of the core features of the program include: an emphasis on promoting parent leadership and participation in the planning, implementation and evaluation of prevention programs; interagency collaborations with public and private entities in the State to form a child abuse prevention network to promote a greater coordination of resources; and support programs such as voluntary home visiting programs, parenting programs, family resource centers, respite and crisis care, parent mutual support, and other family support programs.

Eligible Grantees: Eligibility is determined by the lead agency in every State.

Prior Deadline: Ongoing

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Temporary Assistance for Needy Families (TANF)

While legal services are an allowable expense in this FOA, please note that this FOA is not expressly dedicated to funding legal aid. TANF is designed to help needy families achieve self-sufficiency. The purposes of TANF are to: provide assistance to needy families so that children can be cared for in their own homes; reduce the dependency of needy parents by promoting job preparation, work, and marriage; prevent and reduce unplanned pregnancies among single young adults; and encourage the formation and maintenance of two-parent families. TANF provides for a Family Violence Option, enabling states to certify that they will screen to identify domestic violence victims while maintaining their confidentiality, refer those victims to supportive services, and waive program requirements such as time limits on the receipt of benefits, work requirements, or cooperation with child support enforcement if those requirements make it more difficult to escape the violence or would unfairly penalize the victim.

Prior Deadline: Ongoing

Social Services Block Grant Program

While legal services are an allowable expense in this FOA, please note that this FOA is not expressly dedicated to funding legal aid. Social Services Block Grants enable each State or Territory to meet their residents' needs through locally relevant social services. The grants support programs that allow communities to achieve or maintain economic self-sufficiency and to

prevent, reduce, or eliminate dependency on social services. Some of the funded initiatives include: daycare; protective services; special services to persons with disabilities; adoption; transportation; substance abuse; housing; and employment services. Legal services are included under the uniform definition of services, and applicable legal services or activities may include receiving and preparing cases for trial; provision of legal advice; representation at hearings; and counseling.

Eligible Grantees: Funds are awarded directly to States. Each State has the flexibility to determine what services will be provided, who is eligible to receive services, and how funds are distributed among various services within the State. States and/or local agencies (i.e., county, city, regional offices) may provide services directly or purchase them from qualified providers.

Prior Deadline: Ongoing

Family Violence Prevention and Services Program Grants

While legal services are an allowable expense in this FOA, please note that this FOA is not expressly dedicated to funding legal aid. The Family Violence Prevention and Services Program administers the Family Violence Prevention and Services Act (FVPSA), the primary federal funding stream dedicated to the support of emergency shelter and related assistance for victims of domestic violence and their children. Family Violence Prevention and Services Grant Programs include: Family Violence Prevention and Services Formula Grants to States and Territories; Family Violence Prevention and Services Grants to Tribes; State Domestic Violence Coalitions; Discretionary Programs; Resource Centers; National Domestic Violence Hotline.

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Eligible Grantees: To accomplish this work the FVPSA Program provides grants to states, territories, tribes, state domestic violence coalitions and national resource centers.

Prior Deadline: Ongoing

ADMINISTRATION FOR COMMUNITY LIVING/ ADMINISTRATION ON AGING (AOA)

National Center on Law and Elder Rights

Under a new contract awarded effective 8/1/16 the *National Center on Law and Elder Rights (NCLER)*empowers professionals in aging/disability and legal networks with the tools and resources necessary to provide older clients and consumers with high quality legal assistance in areas of critical importance to their independence, health, and financial security. As a streamlined and accessible point of entry, the NCLER will support the leadership, knowledge, and systems capacity of legal and aging provider organizations in order to enhance the quality, cost effectiveness, and accessibility of legal assistance and elder rights protections available to older persons with social or economic needs.

The NCLER provides resource support to aging/disability, legal, and elder rights networks through a strategic combination of Case Consultation, Legal

Training, and Technical Assistance on a broad range of priority legal issues and systems development issues. Types of pervasive legal issues to be addressed by the NCLER include preventing the loss of seniors' homes through foreclosure, protecting against consumer scams and debt collection harassment, addressing elder abuse in the community and in long-term care facilities, and asserting the rights of elders to public benefits to which they are entitled that preserve financial security, independence, and health. The NCLER provides Technical Assistance on the efficient, cost effective, and targeted provision of state-wide legal and elder rights advocacy services.

Eligible Vendors: National nonprofit organizations experienced in providing support and technical assistance on a nationwide basis to States, area agencies on aging, legal assistance providers, ombudsmen, elder abuse prevention programs, and other organizations interested in the legal rights of older individuals.

Prior Deadline: 8/1/2016

National Elder Abuse and Neglect Prevention/Adult Protective Services (APS) Resource Center

The purpose of this Resource Center is to provide current and relevant information and support to enhance the quality, consistency, and effectiveness of elder abuse prevention activities conducted by Adult Protective Services programs across the country. In addition to casework services, APS may provide or arrange for the provision of medical, social, economic, legal, housing, law enforcement or other protective or emergency support services.

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Eligible Grantees: Domestic public or private non-profit entities including state and local governments, Indian tribal governments and organizations (American Indian/Alaskan Native/Native American), faith-based organizations, community-based organizations, hospitals, and intuitions of higher education.

Prior Deadline: 9/16/2013

Legal Assistance – Title III-B Providers

Legal assistance provided under Title III-B is part of the essential core of AoA's legal assistance and elder rights programs. The Title III-B legal services network can provide important assistance for older persons in accessing long-term care options and other community-based services. Legal services under Title III-B also protect older persons against direct challenges to their independence, choice, and financial security. These legal services are specifically targeted to "older individuals with economic or social needs."

Eligible Grantees: State and local agencies.

Prior Deadline: Ongoing

Model Approach to Statewide Legal Assistance Systems – Phase II

Model Approaches to Statewide Legal Assistance Systems - Phase II (Model

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Approaches - Phase II), the Administration for Community Living (ACL) continues and expands its support for state leadership efforts in implementing well integrated and cost effective legal service delivery systems that maximize the impact of limited legal resources targeted to older adults in greatest need. The ultimate goal of this grant is to promote and support the continued evolution of legal service delivery systems created through Model Approaches to Statewide Legal Assistance Systems - Phase I (Model Approaches - Phase I) towards higher levels of capacity, performance, and service delivery impact. Model Approaches - Phase II will move statewide legal service delivery systems towards greater accessibility for older adults presenting legal issues; seamless systemic integration of vital low cost legal service delivery mechanisms; precise targeting and outreach to older adults in the greatest social or economic need; improved responsiveness to legal issues that emerge from elder abuse, neglect, and financial exploitation; expanded knowledge and expertise of aging and legal service providers; implementation of legal service delivery standards/guidelines, and data collection and reporting systems that measure legal program results and demonstrate tangible impact on the independence, health, and financial security of older adults.

Eligible Grantees: The 28 eligible states that have previously received Model Approaches – Phase I funding, either through state units on aging or other eligible entities.

Prior Deadline: 8/1/2016

Pension Counseling & Information Program - National Pension Assistance Resource Center

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Through this funding opportunity announcement, the Administration on Aging awarded one cooperative agreement for a Technical Resource and Assistance Center to support the Pension Counseling and Information Program's grantees and others, and to encourage coordination among projects, State and Areas Agencies on Aging, legal services providers, and other potential providers of pension assistance by providing substantive legal training, technical assistance programmatic coordination, and nationwide outreach, information and referral.

Eligible Grantees: Domestic public or private nonprofit entities including state and local governments, Indian tribal governments and organizations (American Indian/Alaskan Native/Native American), faith-based organizations, community-based organizations, hospitals, and institutions of higher education, with a proven record of advising and representing individuals who have been denied employer or union-sponsored retirement income benefits, and which have the capacity to provide services under the program on a national basis.

Prior Deadline: 4/29/2013

Protection and Advocacy State Systems

ACL provides four annual grant awards to the designated Protection and Advocacy agencies (P&A) in each state and territory to support advocacy on behalf of individuals with disabilities. These grants are the Protection and Advocacy for Individuals with Developmental Disabilities and Protection

and Advocacy for Individuals with Traumatic Brain Injury grants, which fund assistance to individuals with designated disabilities, and the Protection and Advocacy for Assistive Technology and Protection and Advocacy for Voting Access grants, which fund advocacy for individuals with any disability. P&As also receive funding for advocacy from HHS' Substance Abuse and Mental Health Administration (SAMHSA), the Department of Education and the Social Security Administration. Together, these federal grants fund comprehensive legal advocacy for individuals with all types of disabilities. P&As are authorized by federal law to protect and advance the civil rights of people with disabilities through legal representation, investigation of abuse and neglect, and systemic advocacy. Each P&A offers individuals with disabilities free legal services as well as information and referral, training to support of self-advocacy and civil rights education.

Eligible Grantees: Domestic public or private nonprofit entities including state and local governments designated by the Governor or the State or Territory

Prior Deadline: Ongoing

Pension Counseling & Information Program: National Pension Assistance Resource Center

Through this funding opportunity announcement, the Administration on Aging awarded one cooperative agreement for a Technical Resource and Assistance Center to support the Pension Counseling and Information Program's grantees and others, and to encourage coordination among projects, State and Areas Agencies on Aging, legal services providers, and other potential providers of pension assistance by providing substantive legal training, technical assistance programmatic coordination, and nationwide outreach, information and referral.

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Eligible Grantees: Domestic public or private nonprofit entities including state and local governments, Indian tribal governments and organizations (American Indian/Alaskan Native/Native American), faith-based organizations, community-based organizations, hospitals, and institutions of higher education, with a proven record of advising and representing individuals who have been denied employer or union-sponsored retirement income benefits, and which have the capacity to provide services under the program on a national basis.

Prior Deadline: 4/29/2013

CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)

Factsheet about legal aid and healthcare outreach

As millions of Americans become eligible for new, affordable health insurance options in 2014, HHS CMS recognized that legal aid programs can play a vital role in making sure people learn how to get coverage and get help applying. Legal aid takes its place alongside other outreach and enrollment partners with a fact sheet outlining "Ten Ways Legal Aid can Promote New Health Insurance Opportunities".

Connecting Kids to Coverage Outreach and Enrollment (Cycle IV)

These funds support targeted strategies needed to enroll eligible, but uninsured, children into Medicaid or CHIP. Grant funding supports 38 community organizations in 27 states with providing activities, including application assistance, that emphasize increasing enrollment in Medicaid and CHIP in areas where access to health coverage has been lagging and in subgroups of children with lower than average health coverage rates (i.e., teens, Hispanics, American Indians,, and children in rural areas) . These grants build upon successful strategies facilitated by previous grant funding initiatives. These grants will support participation in key outreach initiatives coordinated by the Connecting Kids to Coverage National Campaign.

Eligible Grantees: States with an approved child health plan; local governments; Indian tribes or tribal consortium; tribal organizations and urban Indian organizations; Federal health safety net organizations; national, state, local, or community-based public or nonprofit private organizations including organizations that use community health workers or community-based doula programs; faith based organizations or consortia; and elementary or secondary schools.

CMS intends to release a separate funding opportunity announcement for outreach and enrollment of American Indian/Alaska Native (AI/AN) applicants at the end of 2016. Potential applicants should look for updates regarding this future FOA on www.insurekidsnow.gov

Prior Deadline: 1/20/2016 (See note above for the AI/AN FOA)

cited in C.L.L.G. v. Barr
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Consumer Assistance Program Grants

The Consumer Assistance Program Grants provide the resources necessary to help educate and provide accurate information to consumers who are making difficult health care decisions. These programs empower consumers by providing direct services to answer health care questions, and expand consumer assistance efforts on the state level, including: helping consumers enroll in health coverage; helping consumers file complaints and appeals against health plans; educating consumers about their rights and empowering them to take action; and tracking consumer complaints to help identify problems and strengthen enforcement.

Eligible Grantees: State insurance departments, state attorneys general offices, independent state consumer assistance agencies, or other state agencies. States and territories may also partner with nonprofit organizations that have a track record of working with consumers.

Prior Deadline: 07/09/2012

Navigator Grant

The Affordable Care Act requires Marketplaces to establish a Navigator program to help consumers understand new coverage options and find the most affordable coverage that meets their health care needs. Each Marketplace will have at least two types of entities serving as Navigators,

and at least one type of entity will be a community and consumer-focused nonprofit organization. Navigators have expertise in eligibility and enrollment rules and procedures; the range of qualified health plan options and insurance affordability programs; the needs of underserved and vulnerable populations (such as rural populations and individuals with limited English proficiency); and privacy and security standards.

Eligible Grantees: Self-employed individuals and private and public entities proposing to operate as Marketplace Navigators in states with a Federally-facilitated and State Partnership Marketplace. At least two types of entities will serve in each Marketplace, and at least one type of Navigator entity will be a community and consumer-focused nonprofit. Other entities may include, but are not limited to, trade, industry and professional associations; commercial fishing industry organizations; ranching and farming organizations; chambers of commerce; unions; resource partners of the Small Business Administration; licensed insurance agents and brokers; Indian tribes, tribal organizations, and urban Indian organizations; State or local human services agencies; and other public or private entities.

Prior Deadline: 06/15/2015

HEALTH RESOURCES AND SERVICES ADMINISTRATION (HRSA)

Maternal and Child Health Services Block Grant Program

The Federal Title V Maternal and Child health program provides a foundation for ensuring the health of the Nation's mothers, women, children, and youth, including children and youth with special health care needs, and their families. The program seeks to ensure access to quality care, especially for low-income individuals; to provide and ensure access to preventive care; to implement family-centered, community-based, systems of coordinated care for children with special healthcare needs; and to increase the number of children receiving health assessments and follow-up diagnostic and treatment services.

cited in C.J.L. G. v. Barr
No. 16-73801c archived on April 30, 2019

Eligible Grantees: State Maternal and Child Health agencies, which are usually located within a State health department.
Prior Deadline: Ongoing

Training and Technical Assistance for Medical-Legal Partnerships

The Health Resources and Services Administration funds a National Training and Technical Assistance Cooperative Agreement with the National Center for Medical Legal Partnership (NCMLP) to support the integration of civil legal aid services into the health care setting to address social determinants that negatively impact patients' health. As part of the three-year award, the NCMLP serves as a technical assistance center developing resources, toolkits and providing trainings for health centers. They have developed a resource page which provides materials to help develop and maintain a medical-legal partnership at a health center. The resource page is available at: http://medical-legalpartnership.org/healthcenters/.
Resources include:

- "Medical-Legal Partnership and Health Centers: Addressing Patients' Health-Harming Civil Legal Needs as Part of Primary Care" available

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at: http://medical-legalpartnership.org/hc-issue-brief/ This issue brief shares how medical-legal partnerships operate at health centers and how integrated legal care can help health centers meet their mission.

- "Using Health Center Needs Assessments to Address Legal Needs" available at: http://medical-legalpartnership.org/needs-assessment-fact-sheet/ This fact sheet outlines how health centers can use needs assessments to understand and meet their patients' health-harming civil legal needs.
- "Civil Legal Aid 101 for Health Care" available at: http://medical-legalpartnership.org/new-resource-civil-legal-aid-101-health-care/ This tool provides an overview of the composition, role, limitations, and impact of civil legal aid for health care partners. There is also an accompanying messaging guide to help HRSA-funded health centers understand medical-legal partnership.

Eligible Grantees: Community Health Centers funded under the Health Center Program

Prior Deadline: Ongoing

Webinar

The Health Resources and Services Administration convened the webinar, "From Zero to 60: Medical-Legal Partnership Fundamentals & Strategies", to help participants understand: 1) the medical-legal partnership approach and alignment with health center priorities and enabling services; 2) the skills, resources and capacity of the civil legal aid community; and 3) the opportunities for multi-sector engagement across all health centers and civil legal aid offices.

cited in C.L.L.G. v. Barr No. 16-73801c archived on April 30, 2019

Addressing patients' health-harming civil legal needs as part of primary care has emerged as a critical strategy for HRSA-funded Community Health Centers seeking to address the social determinants of health. Health centers can incorporate civil legal aid as part of the healthcare team to help meet the housing, income, education and other needs of low-income populations. Core components of a successful medical-legal partnership feature strong integration of the health and legal partners, shared priorities, funding and mission, and shared communication and training strategies.

The March 2016 webinar is archived here.

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

Joint Adult Drug Court Solicitation to Enhance Services, Coordination, and Treatment

This joint SAMHSA/Department of Justice Bureau of Justice Assistance (BJA) program supports a court program managed by a non-adversarial and multidisciplinary team that responds to the offenses and treatment needs of offenders who have a substance use disorder (SUD). Eligible drug court models include Tribal Healing to Wellness Courts, Driving While Intoxicated (DWI)/Driving Under the Influence (DUI) Courts, Co-Occurring Courts where those participants possess a substance abuse-related charge

and substance abuse diagnosis, and Veterans Courts, that adhere to the Drug Court 10 key components in "Defining Drug Courts: The Key Components" and serve substance-abusing adults in the respective problem-solving court.

Eligible grantees: states or state courts applying on behalf of a single jurisdiction; local courts; counties; other units of local government; or federally recognized Indian tribal governments (as determined by the Secretary of the Interior).

Prior deadline: 6/1/2015

U.S. DEPARTMENT OF HOMELAND SECURITY

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U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Citizenship and Integration Grant Program (Citizenship Instruction and Naturalization Application Services)

The goal of this program is to expand the availability of high quality citizenship preparation services for lawful permanent residents in communities across the nation. Additional activities that support this goal include: 1) Making citizenship instruction and naturalization application services accessible to low-income and other underserved lawful permanent resident populations; 2) Developing, identifying, and sharing promising practices in citizenship preparation; 3) Supporting innovative and creative solutions to barriers faced by those seeking naturalization; 4) increasing the use of and access to technology in citizenship preparation programs; and 5) Incorporating strategies to foster welcoming communities. In recognition of the role that legal services can play in meeting the objectives of the grant, nonprofit legal aid organizations are among those eligible to apply for funding either as lead applicant or as a sub-awardee. The Notice of Funding Opportunity further states: "[The primary legal service provider]...must have at least one attorney on staff as a paid employee with experience providing clients with naturalization representation at the applicant organization or at a sub-awardee organization. Pro bono or volunteer attorneys may be used to supplement the program."

cited in C.J.L.G. v. Barr
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Eligible Grantees: City or township governments, county governments, independent school districts, Native American tribal governments, Native American tribal organizations (other than federally recognized tribal governments), nonprofits with 501(c)(3) IRS status (other than institutions of higher education), private institutions of higher education, public and state controlled institutions of higher education, special district governments and state governments.

Prior Deadlines: 4/22/2016; 5/15/2015; 5/20/2014

Prior Grantees: Since it began in 2009, the Citizenship and Integration Grant Program has been part of a multifaceted effort to provide citizenship preparation resources, support, and information to lawful permanent residents and immigrant-serving organizations. The grant program has awarded 262 competitive grants to numerous organizations among 35 states.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Disaster Legal Services

FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.

Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 1974, when the President declares a disaster, FEMA, through an agreement with the Young Lawyers Division of the American Bar Association, provides free legal help for survivors of that disaster through the request of the state, local, tribal, and territories. Disaster Legal Services (DLS) provides legal assistance to low-income individuals who, prior to or because of the disaster, are unable to secure legal services adequate to meet their disaster-related needs.

DLS is provided for survivors of presidentially declared major disasters only. Disaster legal advice is limited to cases that will not produce a fee. Cases that may generate a fee are turned over to the local lawyer referral service. The following are the types of disaster legal assistance that local lawyers typically provide:

- Help with insurance claims for doctor and hospital bills, loss of property, loss of life, etc.
- Drawing up new wills and other legal papers lost in the disaster
- Help with home repair contracts and contractors
- Advice on problems with landlords
- Help with disaster assistance claims including appeals and recovery actions

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More information on DLS can be found at:
http://www.benefits.gov/benefits/benefit-details/431

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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Continuum of Care Program

The Continuum of Care Program is designed to promote a community-wide commitment to the goal of ending homelessness; to provide funding for efforts by nonprofit providers, States, and local governments to quickly re-house homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; to promote access to and effective utilization of mainstream programs by homeless individuals and families; and to optimize self-sufficiency among individuals and families experiencing homelessness.

Eligible Grantees: Private nonprofit organizations, states, local governments, and instrumentalities of state and local governments are eligible to apply if they have been selected by the Continuum of Care for the geographic area in which they operate.

Prior Deadline: 2/3/2014

Community Development Block Grant Program

The Community Development Block Grant program is a flexible program that provides communities with resources to address a wide range of unique community development needs. The CDBG program works to ensure decent affordable housing, to provide public services to the most vulnerable in our communities, and to create jobs through the expansion and retention of businesses. Legal services are among the allowable uses of CDBG funds.

Eligible Grantees: General units of local government and States. Legal service organizations may apply for funds through local government grantees or in partnership with local governments applying to State grantees.

Prior Deadline: Ongoing

Emergency Solutions Grant

The Emergency Solutions Grant (ESG) program assists individuals and families in quickly regaining stability in permanent housing after experiencing a housing crisis or homelessness. The funds are available for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and data collection. Legal services are among the allowable uses of ESG funds.

Eligible Grantees: State governments, large cities, urban counties, and U.S. territories, who can make the funds available to eligible subrecipients, which can be either local government agencies or private nonprofit organizations.

cited in C.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

Prior Deadline: Ongoing

Housing Opportunities for Persons with AIDS

The Housing Opportunities for Persons with AIDS (HOPWA) program, managed by HUD's Office of HIV/AIDS Housing, was established to provide housing assistance and related supportive services for low-income persons living with HIV/AIDS and their families. Two types of grants are made under the HOPWA program. HOPWA formula grants are awarded to eligible States and cities on behalf of their metropolitan areas upon submission and HUD approval of a Consolidated Plan pursuant to the Code of Federal Regulations (24 CFR Part 91), which is published by the Office of the Federal Register. HOPWA competitive program grants are awarded to eligible applicants through the NOFA process, although in some years, funds are available only for renewal projects. HOPWA funds may be used for a wide range of housing, social services, program planning, and development costs. These include, but are not limited to, the acquisition; rehabilitation; or new construction of housing units; costs for facility operations; rental assistance; and short-term payments to prevent homelessness. An essential component in providing housing assistance for this targeted special needs population is the coordination and delivery of support services. Consequently, HOPWA funds also may be used for supportive services including (but not limited to) assessment and case management, substance abuse treatment, mental health treatment,

nutritional services, job training and placement assistance, and assistance with daily living.

Eligible Grantees: See specific HOPWA grant.

Prior Deadline: Ongoing

Indian Housing Block Grant Program

The Indian Housing Block Grant (IHBG) Program provides annual block grants to Indian tribes and tribally designated housing entities to provide affordable housing to low-income Native American families. Grant funds may be used for affordable housing development activities, crime prevention and safety activities, housing services, model activities, and more. Housing services activities include legal services to low-income residents of affordable housing, and persons seeking affordable housing assistance.

Eligible Grantees: Indian tribes and tribally designated housing entities.

Prior Deadline: Ongoing

Jobs Plus Program

The Jobs Plus program develops locally-based approaches to increase earnings and advance employment outcomes such as work readiness, employer linkages, job placement, educational advancement and financial literacy. The place-based Jobs Plus program addresses entrenched poverty among public housing residents by offering targeted developments with various incentives and supports including income disregards for working families, employer linkages, job placement and counseling, educational advancement, and financial counseling. Examples of the types of services that may be provided by grant funds include child care services and/or after school programs, transportation assistance, financial literacy workshops, legal services (e.g., expungement), domestic violence prevention services, services for formerly incarcerated/returning citizens, life skills, and other applicable local business support.

cited in C.J.L.G. v. Barr
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Eligible Grantees: Public housing authorities (PHA) that operate one or more public housing developments (as designated for asset management purposes) that meet the criteria outlined in the Notice of Funding Availability.

Prior Deadline: 6/13/2016

Juvenile Reentry Assistance Program (JRAP)

The Juvenile Reentry Assistance Program seeks to alleviate collateral consequences associated with a juvenile or criminal record by assisting youth up to age 24 residing in public housing, or who would be residing with a family member in public housing but for their record, with (1) expunging, sealing, and/or correcting juvenile or adult records as permitted by State law, and (2) coordinating supportive services to assist target individuals in mitigating/preventing collateral consequences, for example, reinstating revoked or suspended drivers' licenses; counseling regarding

legal rights and obligations in searching for employment; providing guidance for readmission to school; providing advocacy to occupational licensing agencies; creating or modifying child support orders and other family law services, and more. In this program, expunging/sealing/correcting and other supportive services are not allowed for criminal records of makers of methamphetamine on public housing property, for criminal records of sex offenders on the lifetime sex offender registry, and for criminal records where the crime was domestic violence or a Part I Violent Crime.

Eligible Grantees: Public Housing Authorities (PHAs) who have established a partnership with a legal aid organization, university legal center, public defender's office, or other legal service organization that is a non-profit and has experience providing legal services to juveniles.

Prior Deadline: 1/4/2016

Prior Grantees: See the program website at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-056

Fair Housing Initiatives Program

The Fair Housing Initiatives Program (FHIP) provides funding to fair housing enforcement organizations and other eligible non-profits to assist people who believe they have been victims of housing discrimination. FHIP organizations partner with HUD to help people identify government agencies that handle complaints of housing discrimination. They also conduct preliminary investigation of claims, including sending "testers" to properties suspected of practicing housing discrimination. Matched testers are for persons with protected characteristics, such as race, national origin, or presence of children in the household and persons without those protected characteristics with the same financial qualifications who evaluate whether housing providers treat equally-qualified people differently. In addition to funding organizations that provide direct assistance to individuals who feel they have been discriminated against while attempting to purchase or rent housing, FHIP also has initiatives that promote fair housing laws and equal housing opportunity awareness.

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Eligible Grantees: Depends on FHIP initiative.

Prior Deadline: 6/23/2016

National Foreclosure Mitigation Counseling Program

The National Foreclosure Mitigation Counseling (NFMC) program was launched in December 2007 with funds appropriated by Congress to address the nationwide foreclosure crisis by dramatically increasing the availability of housing counseling for families at risk of foreclosure. NeighborWorks America distributes funds to competitively selected grantee organizations, which in turn provide the counseling services, either directly or through sub-grantees. These grantees include HUD-approved housing counseling intermediaries, state housing finance agencies and NeighborWorks organizations. Grants also fund legal assistance for homeowners and the training of foreclosure counselors. More than 1,700

counseling agencies participate in the program.

Eligible Grantees: State Housing Finance Agencies, HUD-Approved Housing Counseling Intermediaries, and NeighborWorks organizations with demonstrated experience in foreclosure counseling.

Prior Deadline: 11/18/2013

U.S. DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN AFFAIRS

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Training

The U.S. Department of the Interior's Bureau of Indian Affairs, Office of Justice Services, Office of Tribal Justice Support (OTJS), with the support of the U.S. Department of Justice's Access to Justice Initiative, launched the Tribal Court Trial Advocacy Training program. This three-day trial advocacy course is designed to improve the trial skills of public defenders – including legal aid providers, judges, and prosecutors who appear in tribal courts. Trainings have been held in Rapid City, S.D.; Phoenix, Ariz.; Duluth, Minn.; Ignacio, Co.; Great Falls, Mont.; Chinle, Navajo Nation (Ariz.); Seattle, Wash; Albuquerque, N.M.; Flagstaff, Ariz.; Missoula, Mont.; Grand Forks, N.D.; Reno, Nev.; and Philadelphia, Miss., and additional trainings are being scheduled for the coming year. All trainings are free and are staffed by attorneys from the Initiative, Assistant United States Attorneys who practice in Indian Country, the Executive Office for U.S. Attorneys' Native American Issues Coordinator, Assistant Federal Public Defenders, and tribal prosecutors, public defenders, and judges.

cited in C.J.L.G. v. Barr
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Tiwahe Initiative

Starting in FY 2015, the Bureau of Indian Affairs distributes program funding to six pilot programs under the Tiwahe Initiative, a program to address family welfare and poverty issues, invests in education, economic development, and sustainable stewardship of natural resources, and advances a strategy to reduce incarceration in Indian Country. A focus of the Tiwahe Initiative is to provide legal representation in civil matters and BIA's funding is intended, in part, to strengthen access to legal assistance for tribal members. Because the Tiwahe Initiative is a holistic, family focused project to improve access to tribal services, child protection and juvenile justice representation is a primary goal in the pilot program Tribes' tribal court plans and all six have included plans to use funding to enhance access to civil representation in their courts.

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BUREAU OF JUSTICE ASSISTANCE (BJA)

Guidance regarding allowability of legal services for Second Chance Act grants

Signed into law in 2008, the Second Chance Act (SCA) is designed to improve outcomes for people returning to communities from prisons and jails. U.S. Department of Justice Bureau of Justice Assistance issued

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guidance informing SCA grant recipients that a wide range of legal services may be an appropriate use of funds where such services further the Second Chance Act's purpose. The guidance is available here.

Second Chance Act Reentry Program for Adults with Co-Occurring Substance Abuse and Mental Health Disorders

The goal of this program is to reduce recidivism by improving functional outcomes for individuals with co-occurring substance use and mental disorders, both pre and post release. The objectives of this program are to: 1) increase the screening and assessment that takes place during incarceration; 2) improve the provision of integrated treatment to adults with co-occurring substance use and mental disorders pre and post release from incarceration; and 3) develop reentry plans that are informed by risk and needs assessment. Allowable use of funds under this solicitation includes referral to and payment of legal services related to the purpose of the grant, such as: securing a driver's license, expunging criminal records, litigating inappropriate denials of housing or employment and violation of the Fair Credit Reporting Act, creating and/or modifying child support orders, and other family law services that help stabilize individuals and families.

Eligible Grantees: States, units of local government, and federally recognized Indian tribal government (as determined by the Secretary of the Interior).

Prior Deadline: 3/30/2016

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Second Chance Act Comprehensive Statewide Adult Recidivism Reduction Planning Program

The objectives for this Program are to fund, at the State level, effective strategies for reducing recidivism and enhancing public safety which incorporate the following principles: Focus on the offenders most likely to recidivate; Use evidenced-based programs proven to work and ensure the delivery of services is high quality; Deploy supervision policies and practices that balance sanctions and treatment; and Target places where crime and recidivism rates are the highest. Civil legal services are an allowable use of grant funds: "Civil legal assistance can often play a critical role in addressing barriers to successful reintegration. An allowable use of Second Chance Act funds for juvenile reentry services includes referral to and payment of legal services related to the purpose of the grant, such as securing a driver's license, expunging criminal records, litigating inappropriate denials of housing or employment and violations of the Fair Credit Reporting Act, creating and/or modifying child support orders, and other family law services that help stabilize individuals and families."

Eligible Grantees: Eligible applicants are limited to a state correctional agency (the state department of corrections or department of community corrections), or the State Administering Agency (SAA). Grantees who have current Second Chance Act Recidivism Reduction grants may apply.

Prior Deadline: 6/28/2013

Second Chance Act Technology Careers Training Demonstration Projects for Incarcerated Adults and Juveniles

The Bureau of Justice Assistance seeks applications for funding to support the Second Chance Act Technology Careers Training Demonstration Projects for Incarcerated Adults and Juveniles. The goals of this program are to: 1) Increase the post-release employability of offenders in related technology based jobs and career fields; and 2) Establish and provide technology career training programs to train incarcerated adults and juveniles during the 3-year period before release from a prison, jail or juvenile facility.

Eligible Grantees: Applicants are limited to states, units of local government, territories, and federally recognized Indian tribes.

Prior Deadline: 3/17/2014

Second Chance Act Adult Mentoring and Transitional Services for Successful Reentry Program

The purpose of this program is to promote more effective and successful reentry for offenders through the establishment and maintenance of pre- and post-release mentoring relationships. Its objective is to recruit and train individuals as mentors and match them with participants in pre- and post-release services. Second Chance Act funds for reentry services includes referral to and payment of legal services related to the purpose of the grant such as: securing a driver's license, expunging criminal records, litigating inappropriate denials of housing or employment and violations of the Fair Credit Reporting Act, creating and/or modifying child support orders, and other family law services that help stabilize individuals and families.

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Eligible Grantees: Eligible applicants are limited to a state correctional agency (the state department of corrections or department of community corrections), or the State Administering Agency (SAA). Grantees who have current Second Chance Act Recidivism Reduction grants may apply.

Prior Deadline: 6/28/2013

Justice and Mental Health Collaboration Program

This program seeks to increase public safety through innovative cross-system collaboration for individuals with mental illnesses or co-occurring mental health and substance abuse disorders who come into contact with the justice system. BJA seeks applications that demonstrate a collaborative project between criminal justice and mental health partners to plan, implement, or expand a justice and mental health collaboration program. Grant funds may be used to: 1) Plan, create, or expand programs that promote public safety and public health by providing appropriate services for multisystem-involved individuals with mental illnesses or co-occurring mental health and substance abuse disorders; and 2) Promote and provide mental health and co-occurring disorders treatment and transitional services for those incarcerated or transitional reentry programs for those released from a correctional institution.

Eligible Grantees: States, units of local government, federally recognized Indian tribes and tribal organizations.

Prior Deadline: 3/25/2013

Tribal Law & Policy Institute

The Tribal Law and Policy Institute (TLPI) is a 100% Native American-owned and operated nonprofit organization that develops and delivers educational, research, training, and technical assistance programs that promote the enhancement of justice in Indian Country and the health, well-being, and culture of Native peoples. TLPI provides a wide array of training, technical assistance, and evaluation services for Tribal Healing to Wellness Courts through a grant from the Bureau of Justice Assistance.

Eligible Grantees: Tribal jurisdictions.

Prior Deadline: Ongoing

Second Chance Act Adult Offender Reentry Program for Planning and Demonstration Projects

The Second Chance Act provides a comprehensive response to the increasing number of incarcerated adults and juveniles who are released from prison, jail, and juvenile residential facilities and returning to communities. This program is designed to help communities develop and implement comprehensive and collaborative strategies that address the challenges posed by offender reentry and recidivism reduction. "Reentry" is not a specific program, but rather an evidence-based process that starts when an offender is initially incarcerated and ends when the offender has been successfully reintegrated in his or her community as a law-abiding citizen. The reentry process includes the delivery of a variety of evidence-based program services for every program participant in both a pre- and post-release setting. This process should provide the offender with appropriate evidence-based servicesâ including addressing individual criminogenic needsâ based on a reentry plan that relies on a risk/needs assessment that reflects the risk of recidivism for that offender.

cited in C.J.L.G. v. Barr
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Eligible Grantees: State and local government agencies and federally recognized Indian tribes.

Prior Deadline: 6/20/2013

Tribal Civil and Criminal Legal Assistance Grants, Training, and Technical Assistance

The TCCLA program helps enhance the opportunities of tribal justice systems and improves access to those systems. TCCLA provides grants to organizations to provide legal services in civil and criminal proceedings for indigent defendants and respondents in tribal justice systems. The goals of this program are to: 1) Enhance the operations of tribal justice systems and improve access to those systems, and 2) Provide training and technical assistance for development and enhancement of tribal justice systems. Related objectives are to provide quality technical and legal assistance and to encourage collaboration among grantees Indian tribes and the tribal

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justice community to enhance the provision of legal services in tribal justice systems.

Eligible Grantees: Category 1 & 2: Non-profit tribal and non-tribal organizations, including tribal enterprises and educational institutions (public, private, and tribal colleges and universities) that provide legal assistance services for federally recognized Indian tribes, or tribal justice systems. Category 3: National or regional membership organizations and associations whose membership or membership section consists of judicial system personnel within tribal justice systems.

Prior Deadline: 4/4/2013

Executive Office for Immigration Review (EOIR)

Legal Orientation Program (LOP)

The Executive Office for Immigration Review (EOIR), through its LOP, has been providing in-person orientations, self-help assistance, and pro bono referrals to individuals detained by Immigration and Customs Enforcement (ICE) since 2002. One of the LOP's primary objectives is to provider group and individual orientations prior to a detainee's first hearing before the immigration court. The group orientations provide an overview of the immigration court process and procedures as well as available legal options. The LOP also provides self-help workshops and written materials to self-represented detainees on specific forms of relief and discrete topics in immigration removal proceedings. Where pro bono representation resources are available, the LOP provides referrals and case placement with local pro bono attorneys. Using contracted non-profit legal service providers, the LOP currently operates in 36 of the largest or most actively utilized ICE detention facilities and 2 pilot programs at 2 non-detained immigration courts.

cited in C.J.L.G. v. Barr
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Legal Orientation Program for Custodians of Unaccompanied Minor Children (LOPC)

EOIR, through its LOPC, has been providing in-person orientations, self-help assistance, and pro bono referrals to custodians of unaccompanied minor children released from the custody of the Department of Health and Human Service's Office of Refugee Resettlement since 2011. Similar to the LOP, the LOPC's primary purpose is to provide group and individual orientations prior to unaccompanied minors' first hearing before the immigration court. The LOPC also provides self-help workshops and screenings for pro bono case referral and placement. The LOPC uses contracted non-profit legal service providers to deliver LOPC services at 15 geographic areas across the country where most unaccompanied children released from Department of Health & Human Services custody are in removal proceedings before an immigration court. The LOPC also operates a national call center to serve those custodians who are not located near one of the 15 sites physically served by an LOPC contractor.

Immigration Court Helpdesk (ICH)

For Fiscal Year 2016, Congress provided EOIR with funding to create

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information helpdesks at the immigration courts with the largest pending caseloads. The primary goals of the ICH are to orient non-detained individuals appearing before the immigration court on the removal hearing process and to provide information to those individuals regarding possible remedies and legal resources. The ICH will provide in-person orientations, self-help assistance to unrepresented parties, and information on available pro bono resources to individuals without counsel. In early August 2016, EOIR launched the ICH at 5 immigration courts across the country.

Pilot Innovation Programs

National Qualified Representative Program (NQRP)

EOIR's Office of Legal Access Programs (OLAP) has overseen the NQRP since 2014. The NQRP provides representation to unrepresented individuals detained by ICE who are found by an immigration judge to be mentally incompetent to represent themselves in immigration proceedings. When an immigration judge finds an individual mentally incompetent to represent him- or herself in immigration proceedings, the immigration judge orders the provision of legal representation to the individual. Upon the immigration judge's order, OLAP places the case with contracted counsel. EOIR contracts with non-profit legal services providers, federal public defender organizations, and private immigration law practices with experience working with mentally incompetent clients. The NQRP is currently providing representation to respondents appearing in immigration courts in California, Arizona, Washington, Texas, Florida and Colorado, with plans to continue roll-out to other court locations nationwide in the future.

cited in C.J.L.G. v. Barr
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Baltimore Representation Initiative for Unaccompanied Children

The Baltimore Representation Initiative for Unaccompanied Children (BRIUC) funds direct representation in immigration proceedings at the Baltimore Immigration Court for unaccompanied children who are under the age of 16 and whose cases are not joined with an adult's (regardless of the child's eligibility for immigration relief). Established in 2014, BRIUC aims to prevent mistreatment, exploitation, and trafficking of unaccompanied children.

Justice AmeriCorps

EOIR funds and provides technical assistance on the justice AmeriCorps program, a complementary program overseen by the Corporation for National and Community Service. The justice AmeriCorps program provides direct representation through a grant model to certain unaccompanied minors in immigration removal proceedings before 20 immigration courts across the country. Through August 2016, justice AmeriCorps members have accepted 2,314 children's cases.

Board of Immigration Appeals (BIA) Pro Bono Project

In 2001, EOIR and non-profit organizations partnered to develop the BIA Pro Bono Project, which identifies certain cases for placement with pro bono representatives. EOIR assists immigration legal service providers in

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identifying certain cases pending before the BIA that are appropriate for pro bono representation based upon pre-determined criteria. Once cases are identified and reviewed by private volunteer attorneys, their summaries are then distributed by a non-profit agency to pro bono representatives throughout the United States. Volunteers who accept a case under the Project receive a copy of the file, as well as additional time to file the appeal brief.

Model Hearing Program (MHP)

Through OLAP, EOIR facilitates the MHP, an educational program developed to improve the quality of advocacy before the court and to increase levels of pro bono representation. MHPs consist of small-scale "mock" trial training sessions held in immigration court. Partnering bar associations and pro bono organizations, provide practical and relevant "hands-on" immigration court training to small groups of attorneys and law students with an emphasis on practice, procedure and advocacy skills. Participants receive training materials, may obtain Continuing Legal Education credit from the partnering organization, and commit to providing some pro bono representation.

List of Pro Bono Legal Service Providers (Pro Bono List)

The Pro Bono List is provided to individuals in immigration proceedings. The Pro Bono List is central to EOIR's efforts to improve the amount and quality of representation before its immigration judges, and it is an essential tool to inform individuals in proceedings before EOIR of available pro bono legal services. OLAP administers the Pro Bono List and publishes it quarterly in January, April, July, and October. The Pro Bono List contains information on non-profit organizations and attorneys who have committed to providing at least 50 hours per year of pro bono legal services before the immigration court location(s) where they appear on the Pro Bono List. The Pro Bono List also contains information on pro bono referral services that refer individuals in immigration court proceedings to pro bono counsel.

cited in C.J.L.G. v. Barr
No. 16-73801c archived on April 30, 2019

OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP)

Smart on Juvenile Justice: Enhancing Youth Access to Justice State Reform Initiative

The purpose of this program is to fund efforts that reduce recidivism and ensure that children receive the guarantees of due process and equal protection by improving the quality of indigent defense services in the United States. Under Category One of this Fiscal Year 2015 initiative, OJJDP competitively awarded four states – *Delaware, Indiana, Kentucky, and Washington* –planning grants to develop statewide juvenile defense reform strategic plans with standards of practice and policies for the management of those systems.

The National Juvenile Defender Center (NJDC), a training and technical assistance (TTA) provider, was competitively selected under Category Two of the Initiative to assist the planning states to assess their current juvenile defense delivery systems and develop their strategic plans for system-wide

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reform. Also under this award, NJDC hired, trained, and placed Reentry Legal Fellows in four locales – *Baltimore, MD, Columbia, SC, Lincoln, NE, Martinez, CA, and St. Louis County, MO* – to help youth, through direct civil legal services, community partnerships, and special projects, to address collateral consequences of justice-system involvement and successfully transition back into society and their communities.

Under Category Three of this Initiative, Georgetown University and the Colorado Juvenile Defender Center (CJDC) were each competitively funded to operate regional juvenile defender resource centers. Georgetown's center serves Maryland, Virginia, West Virginia, D.C., and Puerto Rico, and CJDC's center serves Colorado, Utah, Arizona, Texas, Oklahoma, and New Mexico.

Eligible Grantees: Category 1: Youth Access to Justice State Reform Planning Grants applicants were limited to states (including territories and the District of Columbia) and federally recognized tribal governments (as determined by the Secretary of the Interior). Category 2: Youth Access to Justice Training and Technical Assistance applicants were limited to nonprofit and for-profit organizations (including tribal nonprofit and for-profit organizations) and institutions of higher education (including tribal institutions of higher education). For-profit organizations were required to forgo any profit or management fee. Category 3: Youth Access to Justice State and Tribal Juvenile Defender Resource Center applicants were limited to nonprofit and for-profit organizations (including tribal nonprofit and for-profit organizations) and institutions of higher education (including tribal institutions of higher education). For-profit organizations were required to forgo any profit or management fee.

cited in C.J.L.G. v. Barr
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Prior Deadline: 6/25/15

Smart on Juvenile Justice: Enhancing Youth Access to Justice State Reform Implementation Program

The purpose of this program is to fund efforts that reduce recidivism and ensure that children receive the guarantees of due process and equal protection. Under the Fiscal Year 2016 Enhancing Youth Access to Justice State Reform Implementation Program, OJJDP anticipates competitively selecting two states to receive implementation grants to operationalize statewide juvenile defense reform strategic plans with standards of practice and policies for the management of those systems.

Eligible Grantees: Eligibility was limited to the four recipients of OJJDP's Fiscal Year 2015 Enhancing Youth Access to Justice Initiative: Category One State Reform Planning Grants (Delaware Criminal Justice Council, Indiana Public Defender Council, Kentucky Department of Public Advocacy, and Washington State Office of Public Defense).

Prior Deadline: 7/5/16

Second Chance Act Juvenile Reentry (Legal) Assistance Program

In Fiscal Year 2015, funded under the Second Chance Act, OJJDP established a formal interagency partnership with the U.S. Department of Housing and Urban Development (HUD) and transferred $1.75M to HUD. The purpose was to fund a series of Juvenile Reentry Assistance Program

(JRAP) demonstration projects across the country to support young people's successful transition back to their families and communities, following confinement, by helping them to overcome an array of collateral consequences of justice-system involvement through direct legal services to the youth. HUD awarded eighteen JRAP grants to public housing authorities in partnership with legal aid providers around the country. Available legal services include records expungement and sealing, and actions to eliminate barriers to employment, housing, and education.

Eligible Grantees: Not-for-profit legal services providers in partnership with public housing authorities.

Prior Deadline: 1/4/2016

Juvenile Indigent Defense National Clearinghouse

The purpose of this program is to improve indigent defense representation and the overall level of systemic advocacy nationally. In Fiscal Year 2013, the National Juvenile Defender Center (NJDC) was competitively awarded a cooperative agreement to provide the juvenile defense bar with ongoing training, technical support, capacity-building assistance, tools, resources, and leadership opportunities. The program received continuation funding through Fiscal Year 2015.

Eligible Grantees: Nonprofit and for-profit organizations (including tribal nonprofit and for-profit organizations), and institutions of higher education (including tribal institutions of higher education).

Prior Deadline: 5/15/2013

cited in C.J.L.G. v. Barr
No. 16-73801 archived on April 30, 2019

OFFICE ON VIOLENCE AGAINST WOMEN (OVW)

Legal Assistance for Victims Grant Program

The Legal Assistance for Victims (LAV) Grant Program is intended to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, at minimum or no cost to the victims. The objective of the LAV Grant Program is to develop innovative, collaborative projects that provide quality representation to victims of sexual assault, domestic violence, dating violence, and stalking.

Eligible Grantees: Eligible entities for this program are: Private nonprofit entities; Publicly funded organizations not acting in a governmental capacity, such as law schools; Territorial organizations; Indian tribal governments; Indian tribal organizations; or Indian tribal consortia.

Prior Deadline: 3/11/2015

Enhanced Training and Services to End Violence against and Abuse of Women Later in Life Program

This grant funds projects that will support a comprehensive approach to addressing elder abuse in their communities. These projects will provide

training to criminal justice professionals to enhance their ability to address elder abuse, neglect and exploitation in their communities; provide cross training opportunities to professionals working with older victims; establish or support a coordinated community response to elder abuse; and provide or enhance services for victims who are 50 years of age or older.
Eligible Grantees: Applicants are limited to states, units of local government, tribal governments or tribal organizations, population specific organizations with demonstrated experience in assisting individuals over 50 years of age, victim service providers with demonstrated experience in addressing domestic violence, dating violence, sexual assault, and stalking, and state, tribal, or territorial domestic violence or sexual assault coalitions.
Prior Deadline: 3/18/2015

Updated October 24, 2018

Was this page helpful?
Yes No

U.S. Department of Justice
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No. 16-73801c archived on April 30, 2019

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)
Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ► A material point of fact or law was overlooked in the decision;
  - ► A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ► An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ► Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ► The proceeding involves a question of exceptional importance; or
- ► The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ► Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ► and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form10instructions.pdf

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature **Date**

(use "s/[typed name]" to sign electronically-filed documents)

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