U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

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The 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 the 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.

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.usdoj.gov/eoir. We encourage you to share the Practice Manual with any individuals or organizations that may benefit from it.

Brian M. O'Leary

Chief Immigration Judge

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Immigration Court Practice Manual

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

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

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TABLE OF CONTENTS

Chapter 1 **The Immigration Court**

Chapter 2 **Appearances before the Immigration Court**

Chapter 3 **Filing with the Immigration Court**

Chapter 4 **Hearings before Immigration Judges**

Chapter 5 **Motions before the Immigration Court**

Chapter 6 **Appeals of Immigration Judge Decisions**

Chapter 7 **Other Proceedings before Immigration Judges**

Chapter 8 **Stays**

Chapter 9 **Detention and Bond**

Chapter 10 **Discipline of Practitioners**

Chapter 11 **Forms**

Chapter 12 **Freedom of Information Act (FOIA)**

Chapter 13 **Other Information**

Appendices

Glossary

Word Index

Citation Index

TABLE OF CONTENTS

Chapter 1 The Immigration Court
1.1 Scope of the Practice Manual 1
1.2 Function of the Office of the Chief Immigration Judge 1
1.3 Composition of the Office of the Chief Immigration Judge 3
1.4 Other EOIR Components 5
1.5 Jurisdiction and Authority 7
1.6 Public Access 10
1.7 Inquiries 12

Chapter 2 Appearances before the Immigration Court
2.1 Representation Generally 15
2.2 Unrepresented Aliens (“Pro se” Appearances) 17
2.3 Attorneys 19
2.4 Accredited Representatives 26
2.5 Law Students and Law Graduates 28
2.6 Paralegals 29
2.7 Immigration Specialists 30
2.8 Family Members 30
2.9 Others 30

Chapter 3 Filing with the Immigration Court
3.1 Delivery and Receipt 33
3.2 Service on the Opposing Party 41
3.3 Documents 43
3.4 Filing Fees 52

Chapter 4 Hearings before Immigration Judges
4.1 Types of Proceedings 57
4.2 Commencement of Removal Proceedings 57
4.3 References to Parties and the Immigration Judge 58
4.4 Representation 59
4.5 Hearing and Filing Location 60
4.6 Form of the Proceedings 60
4.7 Hearings by Video or Telephone Conference 60
4.8 Attendance 61
4.9 Public Access 62
4.10 Record 63
4.11 Interpreters 64

Chapter 4 Hearings before Immigration Judges (cont.)
4.12 Courtroom Decorum 64
4.13 Electronic Devices 65
4.14 Access to Court 66
4.15 Master Calendar Hearing 67
4.16 Individual Calendar Hearing 79
4.17 In Absentia Hearing 82
4.18 Pre-Hearing Conferences and Statements 82
4.19 Pre-Hearing Briefs 83
4.20 Subpoenas 86
4.21 Combining and Separating Cases 87
4.22 Juveniles 88

Chapter 5 Motions before the Immigration Court
5.1 Who May File 89
5.2 Filing a Motion 90
5.3 Motion Limits 93
5.4 Multiple Motions 93
5.5 Motion Briefs 93
5.6 Transcript Requests 94
5.7 Motions to Reopen 94
5.8 Motions to Reconsider 97
5.9 Motions to Reopen In Absentia Orders 98
5.10 Other Motions 100
5.11 Decisions 103
5.12 Response to Motion 104

Chapter 6 Appeals of Immigration Judge Decisions
6.1 Appeals Generally 105
6.2 Process 105
6.3 Jurisdiction 106
6.4 Waiver of Appeal 106
6.5 Certification 106
6.6 Additional Information 107

Chapter 7 Other Proceedings before Immigration Judges
7.1 Overview 109
7.2 Deportation Proceedings and Exclusion Proceedings 109
7.3 Rescission Proceedings 111
7.4 Limited Proceedings 112

Chapter 8 Stays
8.1 In General 123
8.2 Automatic Stays 123
8.3 Discretionary Stays 124

Chapter 9 Detention and Bond
9.1 Detention 125
9.2 Detained Juveniles 126
9.3 Bond Proceedings 127
9.4 Continued Detention Review 131

Chapter 10 Discipline of Practitioners
10.1 Practitioner Discipline Generally 135
10.2 Definition of Practitioner 135
10.3 Jurisdiction 135
10.4 Conduct 136
10.5 Filing a Complaint 138
10.6 Duty to Report 139
10.7 Disciplinary Proceedings 139
10.8 Notice to Public 144
10.9 Effect on Practitioner's Pending Immigration Cases 144
10.10 Reinstatement 144

Chapter 11 Forms
11.1 Forms Generally 147
11.2 Obtaining Blank Forms 147
11.3 Submitting Completed Forms 149
11.4 Additional Information 149

Chapter 12 Freedom of Information Act (FOIA)
12.1 Generally 151
12.2 Requests 151
12.3 Denials 153

Chapter 13 Other Information
13.1 Reproduction of the Practice Manual 155
13.2 Online Access to the Practice Manual 155
13.3 Updates to the Practice Manual 155
13.4 Public Input 155

Appendices

A Immigration Court Addresses..... A-1
B EOIR Directory..... B-1
C Practice Manual Organizational Chart..... C-1
D Deadlines..... D-1
E Forms..... E-1
F Sample Cover Page..... F-1
G Sample Proof of Service..... G-1
H Sample Certificate of Translation..... H-1
I Telephonic Information..... I- 1
J Citation Guidelines..... J-1
K Where to File..... K-1
L Sample Written Pleading..... L- 1
M Sample Oral Pleading..... M-1
N Sample Subpoena..... N-1
O Sample Criminal History Chart..... O-1
P Sample Table of Contents..... P-1
Q Sample Proposed Order..... Q-1

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.

(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).

In addition, the Board is responsible for the recognition of organizations and the accreditation of representatives wishing to appear before the Immigration Courts, DHS, and the Board. 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).

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).

(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).

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.

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 Program. — The Executive Office for Immigration Review (EOIR) Fraud Program was created to protect the integrity of immigration proceedings by reducing immigration fraud and abuse. The EOIR Fraud 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 Program. Where appropriate, the EOIR Fraud Program refers cases to other authorities for further investigation.

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

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

(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:

- 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).

(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.

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).

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. Smoking is prohibited.

(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).

(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 Legislative and Public Affairs. For contact information, see Appendix B (EOIR Directory).

(c) ASQ. — The Automated Status Query system or "ASQ" (pronounced "ask") provides information about the status of cases before an Immigration Court or the Board of Immigration Appeals. See Appendices B (EOIR Directory), I (Telephonic Information). ASQ 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 34 678). 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, ASQ 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

ASQ does not contain information regarding:

- bond proceedings
- motions

Inquiries that cannot be answered by ASQ 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 Status Query System, or "ASQ." 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).

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) E-filing. – Immigration Courts accept 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).

(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.

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.

***(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.

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).

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.

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).

(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.

***(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.

***(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*. —** The filing of a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) constitutes entrance of appearance for all proceedings, including removal and bond. 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).

(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 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 EOIR–33/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.
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> ***(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).

***(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:

- 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.

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:

- 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

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.

(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

An accredited representative is a person who is approved by the Board of Immigration Appeals to represent aliens before the Board, the Immigration Courts, and the Department of Homeland Security. He or she must be a person of good moral character who works for a specific nonprofit religious, charitable, social service, or similar organization which has been recognized by the Board to represent aliens. Accreditation is valid for a period of up to three years and can be renewed. See 8 C.F.R. §§ 1292.1(a)(4), 1292.2(d). Before representing an individual before the Immigration Court, an 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) Qualifying organizations. — The Board of Immigration Appeals officially recognizes certain nonprofit religious, charitable, social service, and similar organizations as legal service providers. See 8 C.F.R. § 1292.2(a), Chapter 2.2(b) (Legal Service

Providers). To be recognized by the Board, an organization must affirmatively apply for that recognition. Such an organization must establish to the satisfaction of the Board that its fees are only nominal, that it does not assess excessive membership dues for persons given assistance, and that it has at its disposal adequate knowledge, information, and experience in immigration law and procedure. The qualifications and procedures for organizations seeking Board recognition are set forth in the regulations. 8 C.F.R. § 1292.2(a), (b). Questions regarding recognition may be directed to the Executive Office for Immigration Review, Board of Immigration Appeals. See Appendix B (EOIR Directory).

***(b) Qualifying representatives*. —** The Board of Immigration Appeals accredits persons of good moral character as representatives of qualifying organizations. See 8 C.F.R. § 1292.2(d). Representatives of the recognized organizations are not automatically accredited by the Board. Rather, the recognized organization must affirmatively apply for accreditation on each representative's behalf. See 8 C.F.R. § 1292.2(d). No individual may apply on his or her own behalf. 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) (Qualifications), 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 Board of Immigration Appeals and must be employed by a nonprofit institution specifically recognized by the Board.

***(d) Verification*. —** To verify that an individual has been accredited by the Board of Immigration Appeals, the public can either:

- consult the listing at www.justice.gov/eoir, or
- contact the Executive Office for Immigration Review, Board of Immigration Appeals (see Appendix B (EOIR Directory))

***(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.

***(h) Request to be removed from list of accredited representatives*. —** An accredited representative who no longer wishes to represent aliens should write to the Chairman of the Board of Immigration Appeals and request to be removed from the list. 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.

***(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.

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 Program. See Chapter 1.4(b) (EOIR Fraud 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:

- 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.

(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).

3 Filing with the Immigration Court

3.1 Delivery and Receipt

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

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

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

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

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

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

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

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

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

***(vii) Faxes 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). "Day" is constructed as described in subsection (c), below.

(i) Master calendar hearings. —

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

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

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

(ii) Individual calendar hearings. —

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

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

(iii) Asylum applications. — Asylum applications are categorized as either "defensive" or "affirmative." A defensive asylum application is filed with the Immigration Court by an alien already in proceedings. An affirmative asylum

application is filed with the Department of Homeland Security (DHS) Asylum Office by an alien not in removal proceedings. If the DHS Asylum Office declines to grant an affirmative asylum application, removal proceedings may be initiated. In that case, the asylum application is referred to an Immigration Judge, who may grant or deny the application. See 8 C.F.R. § 1208.4.

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

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

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

***(iv) Reopening and reconsideration*. —** Deadlines for filing motions to reopen and motions to reconsider with the Immigration Court are governed by statute and regulation. See Chapter 5 (Motions). Responses to such motions are due within fifteen (15) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

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

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

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

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

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

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

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

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

***(D) Deadlines following Immigration Judges' decisions*. —** Pursuant to statute or regulation, a filing may be due within a specific period of time following an Immigration Judge's decision. For example, appeals, motions to reopen, and motions to reconsider must be filed within such deadlines. See 8 C.F.R. §§ 1003.38(b), 1003.23. In such cases, the day the Immigration Judge renders an oral decision or mails a written decision counts

as "day 0." The following day counts as "day 1." Statutory and regulatory deadlines are calculated using calendar days. Therefore, Saturdays, Sundays, and legal holidays are counted. If, however, a statutory or regulatory deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

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

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

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

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

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

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

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

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

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

- if a fee is required, failure to submit a fee receipt or fee waiver request
- failure to include a proof of service upon the opposing party
- failure to comply with the language, signature, and format requirements
- illegibility of the filing

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

***(ii) Untimely filings*. —** The untimely submission of a filing may have serious consequences. The Immigration Judge retains the authority to determine how to treat an untimely filing. Accordingly, parties should be mindful of the requirements

regarding timely filings. See Chapters 3.1(b) (Timing of submissions), 3.1(c) (Must be "timely").

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

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

***(iii) Motions to accept untimely filings*. —** If a party wishes the Immigration Judge to consider a filing despite its untimeliness, the party must make an oral or written motion to accept the untimely filing. A motion to accept an untimely filing must explain the reasons for the late filing and show good cause for acceptance of the filing. In addition, parties are strongly encouraged to support the motion with documentary evidence, such as affidavits and declarations under the penalty of perjury. The Immigration Judge retains the authority to determine how to treat an untimely filing.

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

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

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

3.2 Service on the Opposing Party

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

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

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

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

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

Where service on the opposing party is accomplished by U.S. Postal Service or commercial courier, service is complete when the filing is deposited with the U.S. Postal Service or the commercial courier. Note that this rule differs from the rule for filings–filings

with the Immigration Court are deemed complete when documents are received by the court, not when documents are mailed. See Chapter 3.1(a)(iii) (Receipt Rule).

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

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

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

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

- the name or title of the party served
- the precise and complete address of the party served
- the date of service
- the means of service (e.g., hand delivery, regular mail, overnight mail, commercial courier, etc.)
- the document or documents being served

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

(ii) Certificates of Service on applications. — Certain forms, such as the Application for Cancellation of Removal for Certain Permanent Residents (Form EOIR-42A), contain a Certificate of Service, which functions as a Proof of Service. Such a Certificate of Service only functions as a Proof of Service for the

form on which it appears, not for any supporting documents filed with the form. If supporting documents are filed with an application containing a Certificate of Service, a separate Proof of Service for the entire submission must be included.

(f) Representatives and service. —

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

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

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

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.

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).

***(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).

***(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

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

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.

***(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

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), 11.3 (Submitting completed forms). In certain instances, forms must be signed in the presence of the Immigration Judge.

(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.

***(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

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)

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

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.

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.

(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).

4 Hearings before 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).

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.

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

***(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(i)(i) (Substitution of counsel).

***(c) Multiple representation*. —** Parties are limited to one primary attorney (notice attorney) or accredited representative. For guidance on the limited circumstances in which parties may be represented by more than one representative, see Chapter 2 (Appearances before the Immigration Court).

(d) Motions to withdraw. — 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

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.

***(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.

(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 Legislative and Public Affairs and the Court Administrator before attending a hearing. See Appendix B (EOIR Directory).

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(o) (Other requests).

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).

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.

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).

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

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

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

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

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

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

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

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

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

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

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

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

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

- to concede or deny service of the Notice to Appear (Form I-862)
- to request or waive a formal reading of the Notice to Appear (Form I-862)
- to request or waive an explanation of the respondent's rights and obligations in removal proceedings

- to admit or deny the charges and factual allegations in the Notice to Appear (Form I-862)
- to designate or decline to designate a country of removal
- to state what 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.

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

- to state DHS's position on all legal and factual issues, including eligibility for relief
- to designate a country of removal
- to file with the Immigration Court and serve on the opposing party all documents that support the charges and factual allegations in the Notice to Appear (Form I-862)
- to serve on the respondent the DHS biometrics instructions, if appropriate

***(j) Written pleadings*. —** In lieu of oral pleadings, the Immigration Judge may permit represented parties to file written pleadings, if the party concedes proper service of the

Notice to Appear (Form I-862). See Appendix L (Sample Written Pleading). The written pleadings must be signed by the respondent and the respondent's representative.

The written pleading should contain the following:

- a concession that the Notice to Appear (Form I-862) was properly served on the respondent
- a representation that the hearing rights set forth in 8 C.F.R. § 1240.10 have been explained to the respondent
- a representation that the consequences of failing to appear in Immigration Court have been explained to the respondent
- an admission or denial of the factual allegations in the Notice to Appear (Form I-862)
- a concession or denial of the charge(s) in the Notice to Appear (Form I-862)
- a designation of, or refusal to designate, a country of removal
- an identification of the application(s) for relief from removal, if any, the respondent intends to file
- a representation that any application(s) for relief (other than asylum) will be filed no later than fifteen (15) days before the individual calendar hearing, unless otherwise directed by the Immigration Judge
- an estimate of the number of hours required for the individual calendar hearing
- a request for an interpreter, if needed, that follows the guidelines in subsection (n), below
- if background and security investigations are required, a representation that:
    - the respondent has been provided Department of Homeland Security (DHS) biometrics instructions

- the DHS biometrics instructions have been explained to the respondent
- the respondent will timely comply with the DHS biometrics instructions prior to the individual calendar hearing
- the consequences of failing to comply with the DHS biometrics instructions have been explained to the respondent

○ a representation by the respondent that he or she:

- understands the rights set forth in 8 C.F.R. § 1240.10 and waives a further explanation of those rights by the Immigration Judge
- if applying for asylum, understands the consequences under INA § 208(d)(6) of knowingly filing or making a frivolous asylum application
- understands the consequences of failing to appear in Immigration Court or for a scheduled departure
- understands the consequences of failing to comply with the DHS biometrics instructions
- knowingly and voluntarily waives the oral notice required by INA § 240(b)(7) regarding limitations on discretionary relief following an in absentia removal order, or authorizes his or her representative to waive such notice
- understands the requirement in 8 C.F.R. § 1003.15(d) to file an Alien's Change of Address Form (Form EOIR-33/IC) with the Immigration Court within five (5) days of moving or changing a telephone number.

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

(k) Background checks and security investigations. — For certain applications for relief from removal, the Department of Homeland Security (DHS) is required to

complete background and security investigations. See 8 C.F.R. § 1003.47. Questions regarding background checks and security investigations should be addressed to DHS.

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

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

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

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

Where a respondent has applied for asylum, the Immigration Judge determines during the master calendar hearing whether the case is an expedited asylum case. If so, the Immigration Judge asks on the record whether the applicant wants an “expedited asylum hearing date,” meaning an asylum hearing scheduled for completion within 180 days of the filing. If the case is being adjourned for an alien-related reason, the asylum clock will stop until the next hearing.

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

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

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

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

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

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

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

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

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

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

- the application is not accompanied by a self-addressed stamped envelope or comparable return delivery packaging; or
- The application is not accompanied by a cover page or does not include a prominent annotation on the top of the front page of the form stating that it is being submitted for the purpose of lodging.

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

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

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

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

***(iii) Limitations on waivers of appearances*. —**

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

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

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

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

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

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

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

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

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

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

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

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

***(i) Interpreters*. —** If a party anticipates that an interpreter will be needed at the individual calendar hearing, the party should request an interpreter, either by oral motion at a master calendar hearing, by written motion, or in a written pleading.

Parties are strongly encouraged to submit requests for interpreters at the master calendar hearing rather than following the hearing. A written motion to request an interpreter should be filed with a cover page labeled "MOTION TO REQUEST AN INTERPRETER," and comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

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

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

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

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

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

***(iii) Telephonic testimony*. —** In certain instances, witnesses may testify by telephone, at the Immigration Judge's discretion. If a party wishes to have witnesses testify by telephone at the individual calendar hearing, this may be

requested by oral motion at the master calendar hearing or by written motion. If telephonic testimony is permitted, the court specifies the time and manner under which the testimony is taken. For more information, parties should contact the Immigration Court.

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

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

- an explanation of why the witness cannot appear in person
- the witness's telephone number and the location from which the witness will testify

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

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

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

4.16 Individual Calendar Hearing

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

***(b) Filings*. —** The following documents should be filed in preparation for the individual calendar hearing, as necessary. Parties should note that, since Records of

Proceedings in removal proceedings are kept separate from Records of Proceeding in bond redetermination proceedings, documents already filed in bond redetermination proceedings must be re-filed for removal proceedings. See Chapter 9.3 (Bond Proceedings).

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

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

***(iii) Criminal history chart*. —** When submitting documents relating to a respondent's criminal arrests, prosecutions, or convictions, parties are encouraged to use a criminal history chart and attach all pertinent documentation, such as arrest and conviction records. For guidance on submitting a criminal history chart, see Chapter 3.3(f) (Criminal conviction documents). For a sample, see Appendix O (Sample Criminal History Chart). Parties submitting a criminal history chart should comply with the deadlines and requirements for filing. See Chapter 3 (Filing with the Immigration Court).

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

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

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

- make an opening statement
- raise any objections to the other party's evidence

- present witnesses and evidence on all issues
- cross-examine opposing witnesses and object to testimony
- make a closing statement

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

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

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

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

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

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

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

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

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

4.17 In Absentia Hearing

(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.

***(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).

***(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

***(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*. —** 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.

***(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 ("A 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

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).

(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).

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).
>
> ***(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*. —**

***(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 a proposed order for the Immigration Judge's signature. See Chapter 3.3(c)(i) (Order of documents), 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.

***(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).

***(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

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).

(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 fifteen (15) 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.

***(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).

***(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.

(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 fifteen (15) 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).

***(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).

***(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).

***(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 fifteen (15) 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.

(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
- the address and telephone number of the location at which respondent will be residing if the motion is granted
- 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.

The motion should be filed with a cover page labeled "MOTION TO CHANGE 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).

***(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).

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.

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

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.

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.

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

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.

***(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*. —** 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.

***(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.

***(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
- Cuban nationals arriving by air at a port of entry
- 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:

- 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.

(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).

"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.

(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.

(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 "reasonable 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).

(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.

***(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).

***(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).

***(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).

***(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.

(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.

8 Stays

8.1 In General

A stay prevents the Department of Homeland Security 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 stays. For particular cases, parties 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), 1003.23(b)(4)(ii).

For cases under the jurisdiction of the Board of Immigration Appeals, parties should consult the Board of Immigration Appeals Practice Manual. The Board of Immigration Appeals Practice Manual is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

8.2 Automatic Stays

(a) Removal proceedings.— There are limited circumstances in which an order of removal is automatically stayed:

- during the 30-day period for filing the direct appeal of an Immigration Judge's decision on the merits, unless the right to appeal has been waived
- during the direct appeal of an Immigration Judge's decision on the merits of the case (not including bond and custody determinations)
- during the period in which a case is certified to the Board of Immigration Appeals
- during the period between the filing of a motion to reopen to rescind an in absentia order and the Immigration Judge's ruling on that motion
- pending the final disposition, including appeal, of certain motions to reopen by battered spouses, children, and parents

An appeal or motion must be timely and properly filed for an automatic stay to take effect.

When a stay is automatic, the Immigration Judge does not issue an order staying removal.

***(b) Deportation and exclusion proceedings*. —** There are important differences between the automatic stay provisions in deportation and exclusion proceedings and the automatic stay provisions in removal 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.

8.3 Discretionary Stays

An Immigration Judge is authorized to grant stays as a matter of discretion, but only for matters within the Immigration Judge's jurisdiction. See Chapters 1.5 (Jurisdiction and Authority), 6.3 (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.

***(a) Motion required*. —** A request for a discretionary stay should be made by written motion. The motion should be filed with a cover page labeled "MOTION TO STAY REMOVAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

If the execution of an order is imminent, the motion should be filed with a cover page labeled "EMERGENCY MOTION TO STAY REMOVAL" and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page).

***(b) Contents*. —** A motion for a discretionary stay should state 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).

***(c) Pending motions*. —** The mere filing of a motion for a discretionary stay of an order does not prevent the execution of the order. Therefore, the order may be executed unless and until the motion is granted.

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.

> ***(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.

***(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. See generally 8 C.F.R. §§ 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.

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

***(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).

***(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.

***(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

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

***(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.

***(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.

***(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.

***(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.

10 Discipline of Practitioners

10.1 Practitioner Discipline Generally

The Executive Office for Immigration Review has the authority to impose disciplinary sanctions on attorneys or 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),1003.101-106, 292.3. See also *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

Generally, discipline of practitioners 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.

10.2 Definition of Practitioner

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), 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).

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) 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.

***(d) 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 Program. See Chapter 1.4(b) (EOIR Fraud 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

The following conduct by practitioners may result in discipline. See 8 C.F.R. § 1003.102. For a full explanation of each ground for discipline, the regulation should be consulted. These examples do not constitute the only grounds for which disciplinary sanctions may be imposed.

- 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
- 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
    - 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)
- repeatedly filing boilerplate submission

10.5 Filing a Complaint

***(a) Who may file*. —** Anyone may file a complaint against a practitioner, 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).

***(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 should be filed with the Executive Office for Immigration Review disciplinary counsel. 8 C.F.R.§ 1003.104(a)(1). 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 20530
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). 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

A practitioner who practices before the Immigration Courts, the Board of Immigration Appeals, or the Department of Homeland Security 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 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 is filed with the Executive Office for Immigration Review disciplinary counsel, or a practitioner 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 is filed, or a practitioner 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

***(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.

***(d) Answer*. —** A practitioner 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 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 requests a hearing. If a hearing is not requested, the opportunity to request a hearing is deemed waived.

***(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 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.

***(iv) Motion to set aside default order*. —** A practitioner may file a written motion with the Board of Immigration Appeals to set aside a default order. The motion must be filed within 15 days of service of the default order. 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.

In the motion, the practitioner must show that the failure to file a timely answer was caused by exceptional circumstances beyond the practitioner's control, such as his or her serious illness or the death of an immediate relative, but not including less compelling circumstances.

***(e) Adjudication*. —** Except as described in subsection (g) below, if a practitioner 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 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 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 and the convenience of witnesses.

The practitioner is afforded adequate time to prepare his or her case in advance of the hearing.

***(B) Representation*. —** The practitioner 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 answer, pleadings, briefs, evidence, any supporting documents, and any other materials.

***(iv) Sanctions authorized*. —** A broad range of sanctions are authorized, including expulsion from immigration practice, suspension from immigration practice, and public or private censure.

***(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.

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 20530
Attn: Chief Clerk of the Immigration Court

***(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 expelled, 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 who 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 he or she 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.

***(d) Filing deadlines*. —** An order of practitioner 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. To be reinstated following a suspension, a practitioner must:

- file a motion with the Board of Immigration Appeals requesting to be reinstated; and

- 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

8 C.F.R. § 1003.107(a).

***(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:

- 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 for immigration practice; 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 expelled*. —** A practitioner who has been expelled 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) Cases pending at reinstatement*. —** Suspension or expulsion 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 attorney at the time that discipline was imposed. See Chapter 2.3(c) (Appearances).

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)

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 Appendices A (Immigration Court Addresses), 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.

***(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)

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).

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. —

(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.

(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.

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.

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 20530

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*.

APPENDIX A

Immigration Court Addresses

Arizona			
Eloy	1705 E. Hanna Rd., Suite 366 Eloy, AZ 85131 (520) 466-3671	***Phoenix***	200 East Mitchell Drive, Suite 200 Phoenix, AZ 85012 (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	***Los Angeles***	606 S. Olive St., 15th Floor Los Angeles, CA 90014 (213) 894-2811
East Mesa	East Mesa CCA 446 Alta Rd. San Diego, CA 92158 (619) 661-3327	***San Diego***	401 West "A" St., Suite 800 San Diego, CA 92101 (619) 557-6052
El Centro	1115 North Imperial Ave. El Centro, CA 92243 (760) 353-2328	***San Francisco***	120 Montgomery St., Suite 800 San Francisco, CA 94104 (415) 705-4415
Imperial	2409 La Brucherie Rd. Imperial, CA 92251 (760) 355-0070		

Colorado			
Denver	1961 Stout Street, Suite 3103 Denver, CO 80294 (303) 844-5815	***Aurora Hearing Location***	3130 N. Oakland Street Aurora, CO 80010 (303) 361-0488

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
Miami Krome	Krome North Processing Center 18201 SW 12th St., Bldg. #1, Suite C Miami, FL 33194 (786) 422-8700 Mailing Address: P.O. Box 940998 Miami, FL 33194		

Georgia			
Atlanta	180 Spring Street 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

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	7850 Metro Parkway, Suite 320 Bloomington, MN 55425 (612) 725-3765

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	3365 Pepper Lane, Suite 200 Las Vegas, NV 89120 (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 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

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

Tennessee	
Memphis	Clifford B. Davis Federal Bldg. 167 North Main, Room 460 Memphis, TN 38103 (901) 544-3818

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
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		

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	***Headquarters***	1901 South Bell Street, Suite 200 Arlington, VA 22202 (703) 603-1350

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

ASQ
Automated Status Query System
(800) 898-7180
(204) 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 20530
(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 20530

Concerns/Complaints about Immigration Judge Conduct www.justice.gov/eoir

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

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 20530
(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 20530
Attn: Disciplinary Counsel

EOIR Fraud Program
United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 20530
Attn: Fraud Program

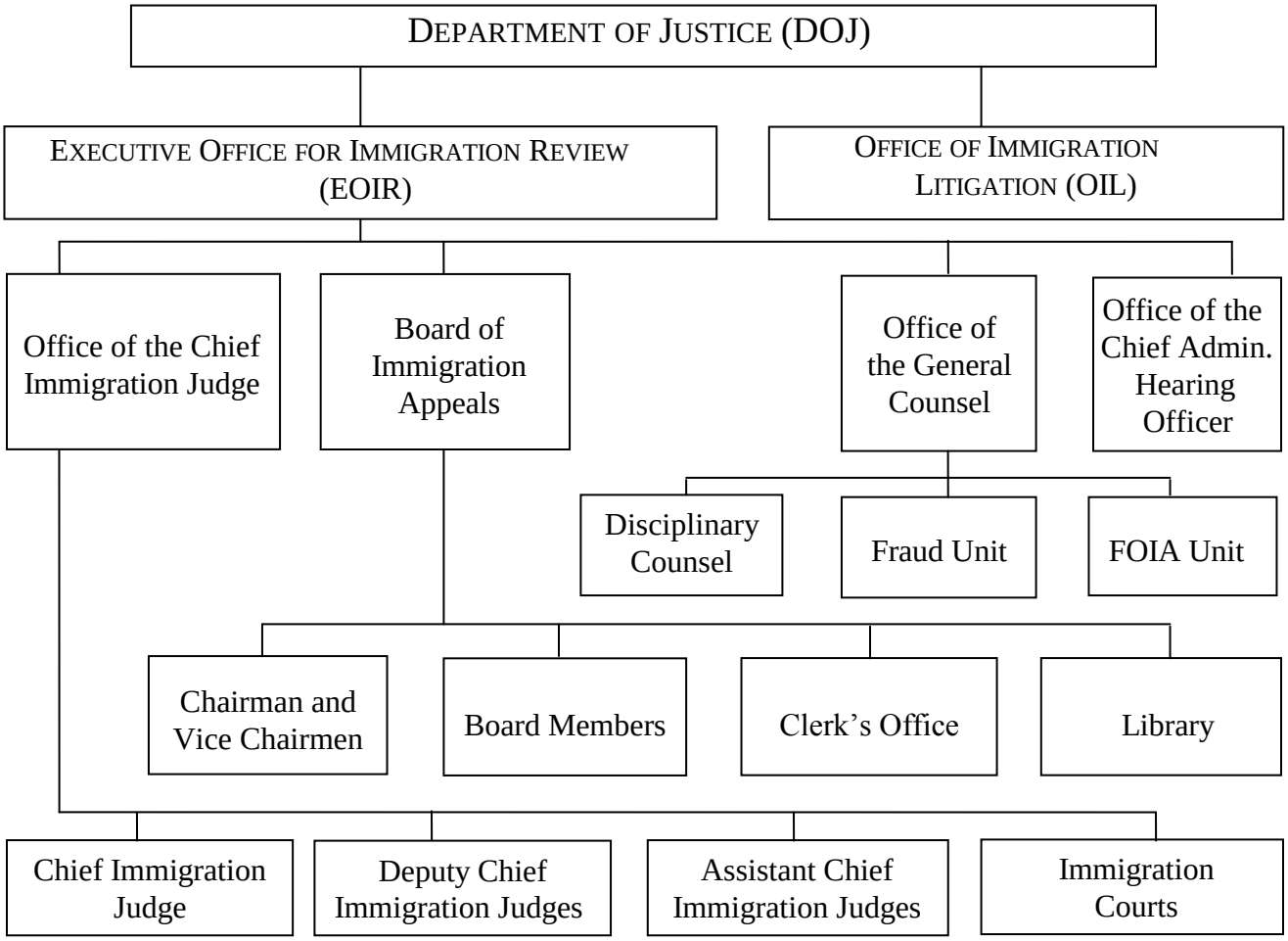
Freedom of Information Act Requests (FOIA)
United States Department of Justice
Executive Office for Immigration Review
Office of the General Counsel–FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 2600
Falls Church, VA 20530
(703) 605-297

Office of Legislative and Public Affairs
United States Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1902
Falls Church, VA 20530
(703) 305-289
9:00 a.m. to 5:00 p.m., Monday - Friday, except holidays

Law Library and Immigration Research Center
5201 Leesburg Pike, Suite 1200
Falls Church, VA 20530
(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



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.

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)*	

Filing		Deadline *(the construction of "day" is discussed in Practice Manual Chapter 3.1(c)(i))*	Practice Manual Chapter
*Asylum applications **	defensive applications	at a master calendar hearing	3.1(b)(iii)(A)
	affirmative applications	referred to Immigration Court by DHS	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

***** *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).

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

PURPOSE	FORM	NAME	GET FROM
accredited representative application	Form EOIR-31	Request for Recognition as a Nonprofit Religious, Charitable, Social Service, or Similar Organization Established in the United States	BIA
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

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
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

APPENDIX F
Sample Cover Page

A. Tourney, Esquire
1234 Center Street
Anytown, ST 99999

DETAINED

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.

*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.

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.

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)

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.

_____ _____
(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

ASQ

(800) 898-7180
(204) 314-1500

The Automated Status Query System 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.

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

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

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.

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:

> *Bratco 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

□ □ □ □ □

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

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).

□ □ □ □ □

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.

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

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

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

□ □ □ □ □

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

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)

□ □ □ □ □

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

□ □ □ □ □

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:

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

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

□ □ □ □ □

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.

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:

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, title, page number(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:

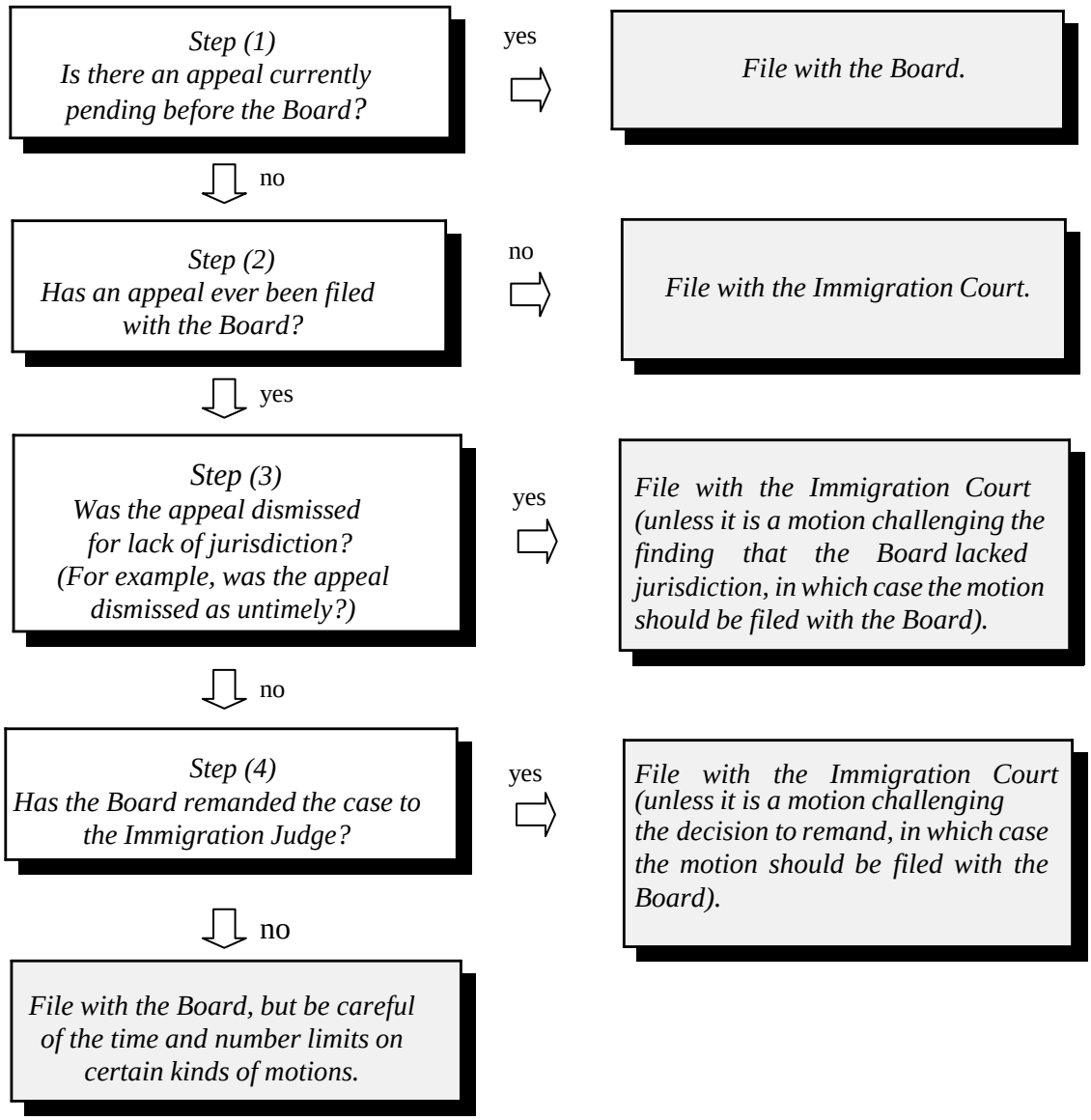
full: 2A Singer, *Sutherland Statutory Construction* § 47.11, at 144 (4th ed. 1984)

short: 2A *Sutherland* § 47.11, at 144

□ □ □ □ □

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.



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	)	
	)	

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

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 that _____ hours will be required for the respondent to present the case.

10. ☐ It is requested that the Immigration Court order an interpreter proficient in the _____ language, _____ dialect;

OR

☐ The respondent speaks English and does not require the services of an interpreter.

_____ _____

Date Attorney or Representative for the Respondent

RESPONDENT'S PLEADING DECLARATION

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)

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.

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.

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]

[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)

Page 2 of 2

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, Pages	**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 04/25/89 on motion of DA.	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 of burglary tools.	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.

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).

TABLE OF CONTENTS

TAB **PAGES**

A **Hardship**

Medical letter and file from Dr. Mathews re Jane Smith, Respondent's USC child 1-2
Allergy evaluation of Jane Smith by Dr. James 3
Letter from Jane Smith's teacher 4
Letter from social worker regarding Jane Smith 5

B **Physical Presence**

1996 6
1997 7
1998 8
1999 9
2000 10
2001 11-12
2002 13-14
2003 15
2004 16
2005 17
2006 18-20
2007 21-22

TAB **PAGES**

C **Good Moral Character**

Letter from Respondent's employer 23
Letter from Respondent's pastor 24

D **Biographical Information**

Respondent's Birth Certificate, and certified translation 25-26
Respondent's identity documents 27
Jane Smith's Birth Certificate 28
Jane Smith's identity documents 29

E **State and Federal Tax Returns**

1996 30-31
1997 32-34
1998 35-37
1999 38-40
2000 41-43
2001 44-45
2002 46-48
2003 49-51
2004 52-54
2005 55-57
2006 58-60
2007 61-63

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:

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 Board of Immigration Appeals to represent aliens before the Immigration Courts and the Board. He or she must work for a specific nonprofit, religious, charitable, social service, or similar organization. The organization must be authorized by the Board to represent aliens.

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.

"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.

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.

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.

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.

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.

Immigration Court

Any of the more than 50 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."

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.

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.

Primary Attorney

An attorney who has properly entered an appearance with the Immigration Court in a particular case and is designated to receive mailings from the court, including notices of hearings. If, at any time, more than one attorney represents an alien, one of the attorneys must be designated as the primary attorney. Only the primary attorney, also known as the "notice attorney," will receive mailings from the Immigration Court.

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.

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.

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.

WORD INDEX

A separate Citation Index – containing cases, statutes and regulations - follows this Index.

A

A numbers .....12, 13, 49, 52, Glossary
accredited officials.....*see* foreign government officials
accredited representatives
accreditation.....2, 26
attorneys, same rules as.....27
BIA, accredited by.....2, 26
definition.....26, Glossary
discipline .....*see* discipline
entry of appearance ..*see* entry of appearance
filing..... *see* filing
immigration specialists, compared to.....27
list of.....27
qualifying organizations.....26
qualifying representatives 27
registry requirement 26
removal from list of 28
signatures ..... *see* signatures
verification.....27
ACIJs.... *see* Assistant Chief Immigration Judges
address obligations
aliens..18, 23, 68, 72, 80, 94, 97, 99, 101, 103
aliens, detained.....19, 125
attorneys 23
compound changes of address.....23
consolidated cases 23
Form EOIR-33/IC 18, 149
motions generally.....18
motions to reconsider.....97
motions to reopen 94
motions to reopen in absentia orders.....99
representatives 23
addresses..... *see* EOIR, Immigration Courts
adjudicating officials .....*see* discipline
administrative closure..... *see* motions
Administrative Control Courts.....*see* Immigration Courts
Administrative Law Judges.....*see* discipline
adverse legal authority, failure to disclose .....*see* discipline
advisory opinions.....51
AEDPA .....Glossary
affidavits
definition .....Glossary
English language, in 43
penalty of perjury, under 91
translation of 43
affirmative asylum applications .....*see* asylum
agreement in lieu of discipline..... *see* discipline
alien.....Glossary
appeals
asylum-only proceedings .....*see* asylum-only
BIA jurisdiction 2, 9, 105, 106
bond proceedings .....*see* bond proceedings
certification, distinct from 81, 106
continued detention ...*see* continued detention
deadlines 36, 105
deportation.....*see* deportation proceedings
disciplinary proceedings ..... *see* discipline
exclusion..... *see* exclusion proceedings
forms, use of required.....147
how to appeal 105
motions, relationship to..... *see* motions
Notice of Appeal 105
rescission..... *see* rescission proceedings
right to appeal.....81
stays .....*see* stays
waiver of appeal.....81, 106
who may appeal.....105
withholding-only .....*see* withholding-only
Assistant Chief Immigration Judges (ACIJs)..4, 5
asylum
affirmative applications .....36, Glossary
asylum clock .....73, Glossary
asylum-only proceedings .....*see* asylum-only
benefits and responsibilities.....82
changed circumstances.....95
deadlines 35
defensive applications .....36, 47, Glossary
employment authorization.....73
frivolous applications 72
lodged applications .....74, Glossary
number of copies 47
withholding-only .....*see* withholding-only

asylum clock ..... *see* asylum
Asylum Office ..... *see* Department of Homeland Security
asylum-only proceedings
appeals 121
conduct of proceedings.....121
cooperating witnesses 114, 120
crewmembers 114, 120
D visa applicants.....114, 120
detention 114, 128
generally.....114, 120, Glossary
S visa applicants 114, 120
scope 121
security grounds, removable under....114, 121
stowaways.....115, 120
visa waiver applicants 114, 120
visa waiver overstays 114, 120
attendance at hearings.....*see* removal proceedings
attire ..... *see* Immigration Courts
Attorney General 9
attorneys (*see also* representation, discipline)
absence at hearing 61
administrative suspension.....20
adverse legal authority, failure to disclose ..... …*see* discipline
attire ..... *see* Immigration Courts
attorney of record.....Glossary
automatic stays .....*see* stays
bar information 21
boilerplate submissions, repeatedly filing…… ..... …*see* discipline
bribery .....*see* discipline
change of address .....*see* address obligations
client's decisions, failure to abide by.....*see* discipline
communication with client, failure to maintain .....*see* discipline
competent representation, failure to provide .....*see* discipline
complaints.....*see* discipline
contempt .....*see* discipline
disbarment .....*see* discipline
discipline .....*see* discipline
entry of appearance ..*see* entry of appearance
EOIR ID number 21
false certification .....*see* discipline
false evidence .....*see* discipline
false statements.....*see* discipline
Form EOIR-28, failure to file .....*see* discipline
free legal services .....*see* representation
attorneys (cont.)
frivolous behavior..... *see* discipline
grossly excessive fees..... *see* discipline
hearings, failure to attend ..... *see* discipline
improperly soliciting clients ..... *see* discipline
ineffective assistance of counsel ..... .*see* discipline
law firms 22, 44
misrepresentations ..... *see* discipline
multiple representatives..... *see* representation
notice attorney ..... *see* representation
primary attorney..... *see* representation
pro bono.....*see* pro bono representation
qualifications 19
reasonable diligence and promptness, failure to act with..... *see* discipline
references to.....59
registration requirement.....20
release of counsel ..... *see* representation
representation, scope of .... *see* representation
resignation from bar..... *see* discipline
sanctions..... *see* discipline
serious crimes ..... *see* discipline
substitution of counsel ..... *see* representation
suspension from bar ..... *see* discipline
telephonic appearances.. *see* master calendar
unauthorized practice of law ..... *see* discipline
waivers of appearances.....*see* waivers
withdrawal of counsel ..... *see* representation
Automated Status Query (ASQ) system ....12, App. I

B

background and security investigations ....*see* DHS
beneficiary.....Glossary
biometrics instructions .....*see* DHS
Board of Immigration Appeals (BIA)
appeals to .....*see* appeals
disciplinary authority ..... *see* discipline
generally .....Glossary
Immigration Courts, relationship to.....2, 9
jurisdiction.....2, 9
Practice Manual 2, 63, 105, 106, 108, 123, 131, 140
boilerplate submissions, repeatedly filing..... *see* discipline
bond proceedings
appeals 131
decision.....131
definition of "bond" .....Glossary

bond proceedings (cont.)
evidence....130
hearings....128–31
jurisdiction....127, 128
mootness....127
recorded, generally not....130
removal proceedings, compared to....129
representation....130
testimony....131
witnesses....131
bribery....*see* discipline
briefs....*see* pre-hearing briefs

C

CAT....Glossary
CBP....Glossary
cellular telephones....*see* electronic devices
Certificate of Service....*see* service
certification....81, 106, 123
certified translations....*see* documents
CFR....Glossary, Citation Index
change of venue....*see* motions
charging document....Glossary
Chief Immigration Judge....4
citation....App. J
claimed status review
detention....114, 128
expedited removal....113, 118
generally....118, Glossary
hearing....119
location....119
no appeal....120
representation....119
timing....119
client's decisions, failure to abide by....*see* discipline
closing statements....*see* removal proceedings
Code of Federal Regulations....Glossary
coercion....*see* discipline
communication with client, failure to maintain….. ....*see* discipline
competent representation, failure to provide..*see* discipline
complaints....*see* discipline
conferences....*see* pre-hearing conferences
conformed copies....*see* documents
consolidated cases
address obligations....*see* address obligations
fees....55
filing....48
pre-hearing briefs....*see* pre-hearing briefs
consolidated cases (cont.)
requests....87
standards....87
contempt of court....*see* discipline
continuance....100
continued detention review
appeals....133, 134
DHS determination....131
merits hearing....133
periodic review....134
reasonable cause hearing....132, 133
representation....132, 133
Convention Against Torture (CAT)....Glossary
cooperating witnesses....*see* asylum-only proceedings
copies....*see* photocopies
country of removal....*see* removal proceedings
Country Reports....*see* Department of State
courier services
delays in delivery....34, 38
encouraged....34
mailbox rule not observed....33
service by....*see* service
Court Administrators....4, 13, 63
Court Analysis Unit....4
Court Evaluation Team....4
cover page....*see* documents
credible fear proceedings
detention....114, 128
expedited removal....112–15
generally....114, Glossary
location....115
no appeal....116
redetermination by DHS....117
representation....115
review by DHS....114, 115
review by Immigration Judge....115, 116
stowaways....115–17
timing....115
crewmembers....*see* asylum-only proceedings
criminal history chart....52, 80, App. O
cross-examination....*see* witnesses

D

D visa applicants...*see* asylum-only proceedings
date stamp....*see* deadlines
deadlines
"day," construction of....35, 37
appeals....*see* appeals
asylum....35, 36
date stamp....37

deadlines (cont.)
delays in delivery.....38
detained aliens.....35
discipline proceedings, in..... *see* discipline
effect of discipline on ..... *see* discipline
extensions.....38
filing receipts.....40
generally.....App. D
Immigration Judges can specify 34
individual calendar hearings.....35
master calendar hearings 35, 68
motions ..... *see* motions
receipt, deemed "filed" at.....33
responses 35
time, computation of 37, 38
untimely filings.....39, 40
declarations
English language, in.....43
penalty of perjury, under .....91, Glossary
translation of 43
defective filings..... *see* filing
defensive asylum applications..... *see* asylum
Department of Homeland Security (DHS)
Administrative Appeals Office (AAO).....3
Assistant Chief Counsel.....Glossary
asylum clock ..... *see* asylum
Asylum Office.....36
background and security investigations.70–73
biometrics instructions .....54, 55, 70–73, Glossary
continued detention... *see* continued detention
credible fear review..... *see* credible fear
detention of aliens.....*see* detained aliens
DHS forms .....*see* forms
discipline of DHS attorneys..... *see* discipline
employment authorization..... *see* asylum
EOIR, separate from.....2, 9, 59
fees paid to 52, 54, 55, 91, 92
Forensics Document Laboratory.....50
Immigration and Customs Enforcement (ICE) .....2, 9, Glossary
INS, replaced 3
motions filed by..... *see* motions
party in proceedings.....58
post-order instructions 82
reasonable fear review.....*see* reasonable fear
Department of Justice (DOJ)
Board of Immigration Appeals ..... *see* BIA
Executive Office for Immigration Review…… ..... ….*see* EOIR
Office of Immigration Litigation (OIL) .. *see* OIL
Department of State (DOS)
Country Reports.....51
publications as evidence.....*see* evidence
Report on International Religious Freedom.51
Visa Bulletin 92
deportation proceedings
appeals 111
charging document 58, 110
DHS motions to reconsider.....97
generally .....110, Glossary
grounds of deportability 110
hearing notification.....110
in absentia hearings.....82
motions to reopen in absentia orders 99
Order to Show Cause (OSC).....58, 110, Glossary
relief available.....110
removal proceedings, compared with.....110
stays of deportation .....*see* stays
Deputy Chief Immigration Judges.....4
detained aliens
address obligations.... *see* address obligations
appearance at hearings.....125
background and security investigations..... *see* DHS
bond.....*see* bond proceedings
continued detention ...*see* continued detention
deadlines .....*see* deadlines
detained minors ..... *see* minors
hearings.....125
limited proceedings.... *see* limited proceedings
location 125
orientation.....126
release.....125
transfers.....125
venue.....125
detention facilities.....*see* Immigration Courts
DHS.....*see* Department of Homeland Security
digital audio recordings 11
disbarment ..... *see* discipline
disciplinary counsel..... *see* discipline
discipline
accredited representatives 28, 135
adjudicating officials 141–43
Administrative Law Judges as adjudicating officials.....141
adverse legal authority, failure to disclose.137
agreement in lieu of dicipline 139
answer 140, 141
appeals 142, 143
attorneys.....135

discipline (cont.)
authority to discipline.....26, 135
boilerplate submissions, repeatedly filing ..137
bribery 136
client's decisions, failure to abide by.....137
coercion 136
communication with client, failure to maintain.. 137
competent representation, failure to provide.. 137
complaints.....138
contempt of court 137
deadlines in discipline proceedings 142
deadlines, effect of discipline on 144
default order.....141, 143
DHS attorneys.....136
DHS motion to join 140
disbarment 136, 139, 140
disciplinary counsel 138–40, 145
disciplinary proceedings.....139–43
disclosure to public 144
duty to advise clients.....144
duty to report 139
evidence.....142
extension of time to answer, motion for 140
false certification 137
false evidence 136
false statements.....136
Form EOIR-28, failure to file 137
frivolous behavior.....137
grossly excessive fees 136
hearings, repeated failure to attend 137
Immigration Judges as adjudicating officials 141
Immigration Judges' authority to file complaints.....135
Immigration Practitioner Complaint Form ..138
immigration specialists.....136
improperly soliciting clients 136
ineffective assistance of counsel 137, 138, 144
law graduates.....29
law students 29
list of disciplined practitioners 144, 145
misrepresentations.....137
non-practitioners 136
notarios 136
Notice of Intent to Discipline (NID)....140, 141, 143
pending cases, effect on 144, 145
Petition for Immediate Suspension 140
practitioners 135

discipline (cont.)
pre-hearing conferences.....142
prejudicial conduct 137
preliminary investigations 139
reasonable diligence and promptness, failure to act with.....137
reinstatement to practice 144, 145
representation in disciplinary proceedings. 142
resignation from bar.....136, 139, 140
sanctions for misconduct 142
self-reporting of misconduct 139
serious crimes 137, 139, 140
set aside default order, motion to 141
summary, disciplinary proceedings...139, 140, 143
suspension from bar 136, 139, 140
unauthorized practice of law 136
visa consultants 136
warning letter 139
where to file documents.....143
witnesses 142
discretionary stays .....*see* stays
documents
advisory opinions 51
binding of 49
certificate of translation.....Glossary
certified translations.... *see* translations, *below*
conformed copies 41
consolidated cases .... *see* consolidated cases
cover page ..... 45–47, 49, 90, App. F
date stamp .....*see* deadlines
Department of State publications 51
filing locations .....*see* filing
font and spacing 49
foreign-language documents 43
format, generally 45
forms.....*see* forms
government memoranda 51
internet publications.....51
legal opinions.....51
legibility 45, 48
newspaper articles.....51
number of copies 47
order of documents.....45–47, 90
original documents 50
pagination 48
paper size and quality.....48
photocopies 47, 50, 91, 92, 94, 101, 103
photographs.....50
Proof of Service .....*see* service
proposed exhibits.....45, 47, 48
publications.....51

documents (cont.)
service of..... *see* service
source materials.....51
supporting documents.....50
table of contents.....45–48, App. P
tabs 48
translations.....43, App. H
witness list.....*see* witnesses

E

e-filing
Form EOIR-28, instructions 16
generally.....34
notice to opposing party.....17
electronic devices
cellular telephones 65, 77, 79
detention facilities, in.....66
electronic calendars 65
Immigration Court, in.....65
laptop computers 65
possession of during hearings 65
recording devices, use of 65
e-mails.....14, 34
employment authorization ..... *see* asylum
entry of appearance
accredited representative.....26
appearances "on behalf of".....25
bar information.....21
change in address.....23
change in firm 22
change in representation 59
change of address 16
change of telephone number 16
disciplinary information 21
first appearance 16, 59
foreign government officials.....31
Form EOIR-28, electronic 15
Form EOIR-28, failure to file ..... *see* discipline
Form EOIR-28, must file 16, 17, 20, 147
Form G-28 not accepted.....16
forms.....15, 17, 147
general rules for 15, 20
law graduates.....29
law students 28
master calendar, at 69
motions ..... *see* motions
multiple representatives 22
reinstatement 16
remand.....16
reputable individuals .....31, Glossary
scope of representation 21
entry of appearance (cont.)
service 17, 43, 69
substitution of counsel 23, 59
EOIR .....*see* Executive Office for Immigration Review
eRegistry.....Glossary
Accredited Representatives, registration of… 26
attorneys, registration of 20
EOIR ID number 21
generally 20
registration requirement.....15
evidence
bond proceedings .....*see* bond proceedings
criminal convictions .....*see* criminal history chart
Department of State publications as.....51
impeachment evidence.....35
motions ..... *see* motions
newspaper articles.....51
publications as evidence.....51
rebuttal evidence 35
right to examine 68
right to object to 68, 80, 81
right to present.....67, 81
subpoenas .....*see* subpoenas
ex parte communication.....13, Glossary
exclusion proceedings
appeals 111
applicant .....Glossary
charging document 58, 111
DHS motions to reconsider.....97
generally .....111, Glossary
grounds of excludability 111
hearing notification.....111
in absentia hearings.....82
motions to reopen in absentia orders 99
Notice to Applicant for Admission Detained for Hearing 58, 111
public, closed to 111
relief available.....111
removal proceedings, compared with 110, 111
stays of exclusion .....*see* stays
Executive Office for Immigration Review (EOIR)
addresses ..... App. B
Board of Immigration Appeals ..... *see* BIA
disciplinary authority ..... *see* discipline
EOIR forms.....*see* forms
FOIA requests .... *see* Freedom of Information Act
Fraud Program 6, 30, 136

Executive Office for Immigration Review (cont.)
generally.....1–7, Glossary
Law Library.....7, 10, 155
Legal Orientation Program.....6, 126
Office of Legislative and Public Affairs 7, 63
Office of the Chief Immigration Judge (OCIJ) 1–5, 10
Office of the General Counsel (OGC)...5, 138, 139, 151
organizational chart.....App. C
telephone numbers .....App. B
Virtual Law Library 7, 11
website.....14
expedited removal under INA § 235(b)(1)
aliens subject to 112
claimed status review.....*see* claimed status
credible fear proceedings.....*see* credible fear
exceptions.....113
expedited removal under INA § 238(b) .....*see* reasonable fear, withholding-only

F

failure to prosecute..... *see* removal proceedings
false certification.....*see* discipline
false evidence .....*see* discipline
false statements .....*see* discipline
family members.....30, 45
faxes.....14, 34, 61
federal courts.....9
Federal Register.....156
fees
amount.....55
application fees 54, 55
biometrics fees.....55
consolidated cases .... *see* consolidated cases
defective or missing 56
DHS, paid to.....52, 54, 91, 92
FOIA.....*see* Freedom of Information Act
form of payment.....56
grossly excessive..... *see* discipline
Immigration Court, not paid to.....52
motions ..... *see* motions
paid in advance.....53, 54
receipts 54
visa petitions 92
waivers.....54, 91
filing
ACCO fastners.....50
attorneys, by.....43, 89
conformed copies ..... *see* documents
consolidated cases .... *see* consolidated cases
filing (cont.)
courier services .....*see* courier services
date stamp.....*see* deadlines
deadlines .....*see* deadlines
defective filings 39
disciplinary proceedings, in..... *see* discipline
documents ..... *see* documents
e-filing 34
e-mail.....34
fax.....34, 61
filing receipts.....40
forms.....*see* forms
hole-punched.....49
improper filings 39
locations..... 33, 60, 61, 90, App. K
mailbox rule not observed 33
motions ..... *see* motions
number of copies ..... *see* documents
paper clips 49
postage problems 33
proposed exhibits..... *see* documents
public window, delivered to.....34
receipt, deemed "filed" at.....33
rejected filings.....39, 40, 48
representatives, by 43, 59, 89
required filings 79
separate envelopes 34
signatures .....*see* signatures
stapling 49
street address, sent to 34
supporting documents ..... *see* documents
telephonic hearings, filing at 61
untimely filings 39, 40
video hearings, filing at.....61
filing deadlines .....*see* deadlines
FOIA..... *see* Freedom of Information Act
fonts and spacing..... *see* documents
food and drink .....*see* Immigration Courts
foreign government officials.....31
foreign student advisors.....32
foreign-language documents ..... *see* documents
Forensic Document Laboratory.....*see* DHS
Form EOIR-
26..... App. E
26A ..... App. E
27..... App. E
28..... *see* entry of appearance
33/IC ..... *see* address obligations
Form G-28..... *see* entry of appearance
Form I-862 .....*see* Notice to Appear (NTA)
former DOJ employees.....32

forms
colors 149
completed forms 149
computer-generated.....148
list of.....App. E
obtaining forms 148
photocopies.....50, 148
recommended.....138, 147
required.....147
signatures ..... *see* signatures
Fraud Program ..... *see* EOIR
free legal services .....*see* representation
Freedom of Information Act (FOIA)
consent of subject.....153
copies of the record 151
deadlines, effect on.....152
denials.....153
exempt from release 152
fees 152
inspecting the record.....151
limitations 152, 153
Office of Information and Privacy.....153
processing times.....152
requests 151–53
frivolous asylum applications..... *see* asylum
frivolous behavior ..... *see* discipline

G

grossly excessive fees ..... *see* discipline

H

hearings, repeated failure to attend.....
..... *see* discipline
Homeland Security..... *see* DHS

I

ICE .....…*see* Immigration and Customs Enforcement
IIRIRA.....Glossary
Immigration and Customs Enforcement (ICE) .....
..... *see* DHS
Immigration and Naturalization Service (INS) 3
Immigration Courts
addresses .....34, App. A
Administrative Control Courts 10, 11, 33
administrative offices, no access to 66
arrival at court 67
attire in court 64
decorum 64
designated detail cities.....10
detention facilities, in.....10, 62, 65, 66, 126
Immigration Courts (cont.)
electronic devices .....*see* electronic devices
food and drink.....64
generally .....4, 10, Glossary
hours of operation.....34
Liaison Judges.....5
locations.....5, 10, 60, *See* App. A
public windows.....34
public, when closed to 62, 111
security screening.....61, 66, 67
shared administrative control.....33
telephone numbers..... App. A
Immigration Judges
conduct and professionalism 5
deadlines, can specify 34
decisions.....8
discretion 1
generally .....4, 7, 8, Glossary
inquiries to 13
practitioner discipline proceedings..... *see* discipline
references to.....59, 64
Immigration Practitioner Complaint Form ..... *see* discipline
immigration specialists.....6, 30, 136
improper filings.....*see* filing
improperly solicited clients ..... *see* discipline
in absentia hearings
deportation proceedings 82
exclusion proceedings 82
generally .....61, 82, Glossary
no appeal 82
reopening...*see* motions to reopen in absentia
INA .....Glossary, Citation Index
individual calendar hearings
conduct of hearing 80
conferences .....*see* pre-hearing conferences
deadlines .....*see* deadlines
in absentia hearings..*see* in absentia hearings
interpreters.....*see* interpreters
objections to evidence .....*see* evidence
opening statements 80
oral decisions.....81
post-order instructions .....*see* DHS
pre-hearing briefs .....*see* pre-hearing briefs
purpose of hearing.....79, Glossary
recording..... *see* recording of hearings
required filings .....*see* filing
statements .....*see* pre-hearing statements
stipulations.....*see* pre-hearing statements
telephonic hearings..*see* removal proceedings

individual calendar hearings (cont.)
telephonic testimony ..... .*see* removal proceedings
testimony..... *see* witnesses
video hearings..... *see* removal proceedings
video testimony ..... *see* removal proceedings
witnesses ..... *see* witnesses
written decisions 81
ineffective assistance of counsel.... *see* discipline
inquiries
e-filing 14
e-mail 14
emergencies 14
fax 14
FOIA..... *see* Freedom of Information Act
generally.....12
Immigration Courts staff, to.....13
Immigration Judges, to 13
press 12
telephone, by..... 12, App. I
INS ..... *see* Immigration and Nationality Service
internet publications ..... *see* documents
interpreters
contract interpreters 64
Language Services Unit.....4
requests for interpreters.....70, 71, 77
staff interpreters 64
telephonic.....64
when needed.....70, 71, 77
when provided.....64, 68
IRCA.....Glossary

J

joint motions ..... *see* motions
Justice Department ....*see* Department of Justice
juveniles .....*see* minors

L

Language Services Unit 4
laptop computers..... *see* electronic devices
law firms 22, 44
law graduates 29, 135
Law Library.....*see* EOIR
law students 28, 29, 135
Legal Orientation Program (LOP) .....*see* EOIR
Liaison Judges ..... *see* Immigration Judges
LIFE Act.....Glossary
limited proceedings
asylum-only.....*see* asylum-only
claimed status.....*see* claimed status
credible fear .....*see* credible fear
limited proceedings (cont.)
detention 114, 128
generally 112–14
reasonable fear..... *see* reasonable fear
withholding-only .....*see* withholding-only
lodged asylum applications. .....*see* asylum, Glossary
LPR .....Glossary

M

mailings
courier services .....*see* courier services
delays in delivery 38
mailbox rule not observed 33
postage problems 33
service by mailings 41–42
street address, mailed to 34
master calendar hearings
arrival at court 67
background and security investigations..... *see* DHS
biometrics instructions.....*see* DHS
briefs.....*see* pre-hearing briefs
conferences ..... *see* pre-hearing conferences
deadlines .....*see* deadlines
entry of appearance.. *see* entry of appearance
in absentia .....*see* in absentia hearings
interpreters.....*see* interpreters
objections to evidence .....*see* evidence
opening the hearing 68
pleadings .....*see* pleadings
purpose of hearing.....67
recording..... *see* recording of hearings
request for a prompt hearing 67
statements ..... *see* pre-hearing statements
stipulations..... *see* pre-hearing statements
telephonic appearances.....76
telephonic testimony ..... .*see* removal proceedings
video hearings .....*see* removal proceedings
video testimony.....*see* removal proceedings
waivers.....*see* waivers of appearance
merits hearings. ..... .*see* individual calendar hearings, Glossary
minors
courtroom modifications 88
courtroom orientation.....88
detention 126
disruptions by.....65
must attend hearings 65
must be supervised 65

minors (cont.)
unaccompanied....88
misrepresentation.... *see* discipline
motions
accept untimely filings....40
address obligations.... *see* address obligations
administrative closure....96, 103, Glossary
advance hearing date....101
amend filing....103
appeals, relationship to....90, 96, 98
application for relief....91, 94, 95, 101
briefs.... *see* pre-hearing briefs
change of venue....101, 125
close hearing....63
compound motions....93
consolidation....87
copy of order....91
cover page....90, App. F
criminal convictions....96, 98
deadlines....36, 91, 97, 99, App. D
decisions....103
DHS motions....53, 95, 97
disciplinary proceedings, in.... *see* discipline
entry of appearance....89, 94, 97, 99
evidence....91
extension of deadline....38
fees....53, 52–55, 91, 92, 94, 97, 99
joint motions....42, 53, 95
motion package....46
number limits....93, 95, 100
opposing party's position....92
opposition to....93
oral argument....92
order of documents.... *see* documents
post-decision motions....89, 91, 93, App. D
pre-decision motions....89, 91, 93, Glossary
proposed order....90, App. Q
recalendar....53, 96, 103
reconsider.... *see* motions to reconsider
reopen.... *see* motions to reopen
reopen in absentia.... *see* motions to reopen in absentia
request an interpreter....78
responses....36, 95, 97, 100, 104
severance....87
signatures.... *see* signatures
stays....53, 124
subpoena....86
substitution of counsel....23, 60
telephonic appearance....77
telephonic testimony....79
transcriptions.... *see* records
motions (cont.)
video testimony....78
visa petitions....92, Glossary
waive appearance....75, 76
where to file....90
withdrawal of counsel....24, 60
motions to reconsider
address obligations.... *see* address obligations
appeals deadlines, prior to....98
appeals pending....98
copy of order....91
criminal convictions....98
deadlines....36, 91, 93, 95, 97
DHS motions....97
entry of appearance....15, 89, 97
fees....52–55, 97
identification of error....98
motions packages....46
no automatic stays....98
number limits....93, 97
order of documents.... *see* documents
pre-7/1/1996 cases....97
pre-7/1/1996 motions....97
responses....36, 97
where to file....90
motions to reopen
address obligations.... *see* address obligations
appeal pending....96
appeals deadline, prior to....96
applications for relief....94, 95
battered spouses, children, and parents....96
changed circumstances....95
content....94
copy of order....91
criminal convictions....96
deadlines....36, 91, 93, 95
DHS motions....95
entry of appearance....15, 89
evidence....94, 96
fees....52–55, 94
in absentia.... *see* motions to reopen in absentia orders
joint motions....95
motions packages....46
no automatic stays....96
number limits....93, 95
order of documents.... *see* documents
pre-9/30/1996 motions....96
responses....36, 95
where to file....90
motions to reopen in absentia orders
address obligations.... *see* address obligations

motions to reopen in absentia orders (cont.)
automatic stay....100
content....98, 99
copy of order....91
deadlines....36, 91, 93, 95, 99
deportation proceedings....99
entry of appearance....15, 89, 98
exclusion proceedings....99
fees....52–55, 99
number limits....93, 100
responses....36, 100
where to file....90
multiple representation....*see* representation

N

NACARA....Glossary
newspaper articles....*see* documents
notarios....6, 31, 136
Notice of Appeal....*see* appeals
Notice of Intent to Discipline (NID)....*see* discipline
Notice to Appear (NTA)....*see* removal proceedings
Notice to Applicant Detained for Hearing....*see* exclusion proceedings

O

Office of Immigration Litigation (OIL)....3
Office of Information and Privacy....*see* FOIA
Office of Legislative and Public Affairs....*see* EOIR
Office of the Chief Administrative Hearing Officer....3, *see* EOIR
Office of the Chief Immigration Judge..*see* EOIR
Office of the General Counsel....5, *see* EOIR
opening statements....*see* removal proceedings
oral pleadings....*see* pleadings
order of documents....*see* documents
Order to Show Cause....*see* deportation proceedings
organizational chart....*see* EOIR
overnight delivery services...*see* courier services

P

paper size and quality....*see* documents
paralegals....29, 44
party....Glossary
Petition for Immediate Suspension *see* discipline
petitioner....Glossary
photocopies....*see* documents
photographs....*see* documents
pleadings
contents of....69–72
master calendar, taken at....68, 69
oral pleadings....70, App. M
written pleadings....70, App. L
postage problems....*see* mailings
post-decision motions....*see* motions
post-order instructions....*see* DHS
Practice Manual
authority....1
available online....14, 155
BIA Practice Manual....*see* BIA
public input....155, 156
purpose....1
reproduction of....155
revisions....1
updates....155
practitioners....*see* representation
pre-decision motions....*see* motions
pre-hearing briefs
citations in....84, 85, 86, App. J
consolidated cases....85
contents....84
encouraged....84
motions briefs....93
responses....85
signatures....*see* signatures
pre-hearing conferences
disciplinary proceedings, in....*see* discipline
Immigration Judge, initiated by....82
purpose....82
requests for....82
pre-hearing statements
contents....83
purpose....83
stipulations in....83
prejudicial conduct....*see* discipline
press....12, 63, 65
primary attorney (notice attorney)....*see* representation, Glossary
pro bono representation
Legal Orientation Program....*see* EOIR
unaccompanied juveniles, for....88
pro se....*see* representation, Glossary
Proof of Service....*see* service
proposed exhibits....*see* documents
proposed order....*see* motions

R

REAL ID Act....Glossary

reasonable cause hearings ..... *see* continued detention review
reasonable diligence and promptness, failure to act with ..... *see* discipline
reasonable fear proceedings
conduct of hearing 118
detention 114, 128
expedited removal.....113, 116
generally.....117, Glossary
location.....117
no appeal 118
reinstatement of prior order 113, 117
representation 118
review by DHS 117
review by Immigration Judge 117, 118
timing 117
Record of Proceedings (ROP) .....*see* records
recording of hearings
bond proceedings ..... *see* bond proceedings
digital audio recording.....11
off-the-record discussions.....63, 80
restrictions on.....65
rules for 63, 80
records
confidentiality 12
copies for parties.....11
non-parties' access to 11, 12
parties' access to 11
Record of Proceeding (ROP) .63, 80, Glossary
requests for ... *see* Freedom of Information Act
transcriptions.....63, 94, Glossary
registration.....*see* eRegistry
regulations.....156, Citation Index
reinstatement of prior order .*see* reasonable fear, withholding-only
reinstatement to practice ..... *see* discipline
rejected filing ..... *see* filing
release from detention .....*see* detained aliens
release of counsel .....*see* representation
removal proceedings
absence of representative.....61
aliens, references to.....58
appeals ..... *see* appeals
arrival at court ..... *see* Immigration Courts
asylum clock ..... *see* asylum
attendance required 61
background and security investigations .....*see* DHS
behavior in court ..... *see* Immigration Courts
biometrics instructions ..... *see* DHS
briefs .....*see* pre-hearing briefs
removal proceedings (cont.)
charging document .....…….57, 60, 67, 68, 69, 71, 101
closed hearings.....62
closing statements.....81
communication between parties 64
conferences .....*see* pre-hearing conferences
consolidated cases .... *see* consolidated cases
country of removal 70, 71, 101
deadlines .....*see* deadlines
definition .....Glossary
detained aliens.....*see* detained aliens
DHS attorneys, references to 59
electronic devices .....*see* electronic devices
employment authorization.....*see* asylum
entry of appearance .. *see* entry of appearance
failure to prosecute 58
filing locations .....*see* filing
hearing locations.....60, 61
in absentia .....*see* in absentia hearings
interpreters.....*see* interpreters
master calendar ..... *see* master calendar
minors ..... *see* minors
Notice to Appear (NTA) .... ..57, 58, 60, 67, 68, 69, 71, 101, Glossary
objections to evidence .....*see* evidence
opening statements 80
parties, references to.....58
pleadings .....*see* pleadings
post-order instructions .....*see* DHS
Record of Proceedings (ROP) ..... *see* records
recording..... *see* recording of hearings
representation..... *see* representation
severance .....*see* severance of cases
statements .....*see* pre-hearing statements
stays of removal.....*see* stays
stipulations.....*see* pre-hearing statements
subpoenas .....*see* subpoenas
telephonic appearances.. *see* master calendar hearings
telephonic hearings.....60, 61
telephonic testimony 78
timeliness.....61, 66
video hearings 60, 61
video testimony.....78
waivers.....*see* waivers of appearance
witnesses ..... *see* witnesses
representation
absence of representative 61
adverse legal authority, failure to disclose….. .....…*see* discipline

representation (cont.)
appearances "on behalf of" 25
attire ..... *see* Immigration Courts
attorneys, references to 59
boilerplate submissions, repeatedly filing .. *see* discipline
bond proceedings ..... *see* bond proceedings
bribery ..... *see* discipline
changes of address.... *see* address obligations
claimed status review..... *see* claimed status review
client's decisions, failure to abide by..... *see* discipline
communication with client, failure to maintain ..... *see* discipline
competent representation, failure to provide ..... *see* discipline
contempt of court ..... *see* discipline
continued detention... *see* continued detention
credible fear proceedings..... *see* credible fear
disbarment ..... *see* discipline
disciplinary proceedings, in ..... *see* discipline
entry of appearance .. *see* entry of appearance
eRegistry ..... *see* eRegistry
false certification ..... *see* discipline
false evidence ..... *see* discipline
false statements..... *see* discipline
family members 30, 45
foreign government officials 31
foreign student advisors 32
Form EOIR-28, failure to file ..... *see* discipline
former DOJ employees 32
free legal services 17, 27, 67
frivolous behavior ..... *see* discipline
grossly excessive fees ..... *see* discipline
hearings, failure to attend ..... *see* discipline
immigration specialists 30
improperly soliciting clients ..... *see* discipline
ineffective assistance of counsel. ..... *see* discipline
inmates 31
law firms 22, 44
law graduates 29, 135
law students 28, 135
misconduct ..... *see* discipline
misrepresentations..... *see* discipline
multiple representatives 22, 59
notice attorney..... *see* primary attorney, *below*
paralegals 29, 44
practitioners ..... 135, Glossary
prejudicial conduct ..... *see* discipline

representation (cont.)
primary attorney ..... 22, 59, Glossary
pro bono..... *see* pro bono representation
pro se ..... 17, 59, 69, 81, Glossary
reasonable diligence and promptness, failure to act with..... *see* discipline
reasonable fear proceedings .. *see* reasonable fear
registration ..... *see* eRegistry
release of counsel 25
representatives, references to 59
reputable individuals ..... 30, 31, 135, Glossary
resignation from bar..... *see* discipline
right to representation 19, 59, 67, 69
scope of 21
serious crimes ..... *see* discipline
signatures ..... *see* signatures
substitution of counsel 23, 60
suspension from bar ..... *see* discipline
telephonic appearances.. *see* master calendar
types of representatives 15
unauthorized practice of law ..... *see* discipline
withdrawal of counsel 60
reputable individuals ..... 30, 31, 135, Glossary
request for a prompt hearing..... *see* master calendar
rescission proceedings
appeal 112
hearing 112
Notice of Intent to Rescind 112
resignation from bar ..... *see* discipline
respondent ..... Glossary

S

S visa applicants ... *see* asylum-only proceedings
sanctions for misconduct ..... *see* discipline
security grounds, removable under...*see* asylum-only
self-reporting of misconduct..... *see* discipline
serious crimes..... *see* discipline
service
attorneys, by 43
attorneys, on 22, 43
Certificate of Service 41, 42
courier, by 41–42
definition ..... 41, Glossary
hand delivery, by 41–42
Notice of Entry of Appearance 17, 69
Proof of Service ..... 41–43, App. G, Glossary
representatives, by 43, 69
representatives, on 22, 43

service (cont.)
requirements 41
signatures ..... *see* signatures
subpoenas, service of ..... *see* subpoenas
when completed 41–42
whom to serve 41
severance of cases 87
signatures
accredited representatives 27, 44
computer generated 44
electronic 44
family members 45
forms 50
generally 44
law firms 44
motions 50
paralegals 44
photocopies 50
pre-hearing briefs 50, 84
Proof of Service 42, 44
signature stamps 44
simulated signatures 44
third parties 42, 44, 45
solicitation, improper ..... *see* discipline
source materials ..... *see* documents
State Department ..... *see* Department of State
stays
appeals, during 123
automatic stays 123
certification, during 123
deportation proceedings 124
discretionary stays 124
exclusion proceedings 124
generally ..... 123, Glossary
motions to reconsider ..... *see* motions to reconsider
motions to reopen ..... *see* motions to reopen
motions to reopen in absentia orders ..... *see* motions to reopen in absentia orders
requests for stays 124
stipulations ..... *see* pre-hearing statements
stowaways ..... *see* credible fear, asylum-only
subpoenas
contents ..... 86, App. N
service 87
witnesses, for 86, 87
substitution of counsel ..... *see* representation
summary disciplinary proceedings . *see* discipline
supporting documents ..... *see* documents
suspension from bar ..... *see* discipline

T

table of contents ..... *see* documents
tabs ..... *see* documents
telephone numbers ..... *see* EOIR, Immigration Courts
telephonic appearances ..... *see* master calendar
telephonic hearings ..... *see* removal proceedings
telephonic testimony .... *see* removal proceedings
televideo hearings ..... *see* video hearings
televideo testimony ..... *see* video testimony
transcriptions ..... *see* records
translations ..... *see* documents
Trial Attorney ..... Glossary

U

unauthorized practice of law ..... *see* discipline
untimely filings ..... *see* filing
USCIS ..... Glossary

V

venue, change of ..... *see* motions
video hearings ..... *see* removal proceedings
video testimony ..... *see* removal proceedings
Virtual Law Library ..... 11, *see* EOIR
Visa Bulletin ..... *see* Department of State
visa consultants 6, 31, 136
visa petitions ..... *see* motions
visa waiver applicants ..... *see* asylum-only proceedings
visa waiver overstays ..... *see* asylum-only proceedings
waivers of appearances
aliens 76, 77
representatives 76
warning letter ..... *see* discipline
withdrawal of counsel ..... *see* representation
withholding-only proceedings
appeals 122
conduct of proceeding 122
detention 114, 128
expedited removal 121
generally ..... 121, Glossary
reinstatement of prior order 121
witness lists ..... *see* witnesses
witnesses
bond proceedings, in .... *see* bond proceedings
cross-examination of 68, 81
disciplinary proceedings, in ..... *see* discipline
interpreters ..... *see* interpreters

witnesses (cont.)
oath, placed under 81
right to present.....81
subpoenas ..... *see* subpoenas
testimony, objections to 81
witness list required 80
witness list requirements.....46, 52
written pleadings ..... *see* pleadings

CITATION INDEX

A separate Word Index precedes this Index.

Statutes

Immigration and Nationality Act
(8 U.S.C. § 1101 et seq.)

208(d)(2) 73
208(d)(5)(A)(iii) 73
208(d)(6) 72
212 111
212(d)(5) 8
235(a)(2) 114
235(b)(1) 112, 113, 115, 116, 118
235(b)(1)(B) 114, 115
235(c) 114, 121
237 110
238(b) 113, 117, 121
239 110
239(b)(1) 67
240 ..... 57, 110
240(b)(1) 81
240(b)(2) 60, 61
240(b)(4) 68
240(b)(5) 68
240(b)(5)(C) 99, 100, 123
240(b)(5)(C)(ii) 54
240(b)(7) 72
240(c)(7)(C)(iv) 96, 123
240(e)(1) 99
241 (former) 110
241(a)(5) 113, 117, 121
241(a)(6) 131
241(b)(3) 114-118, 120, 121, 122
241(b)(3)(B) 117
242(b) 111
242B(a)(1) 110
242B(c)(3)(B) 54
246(a) 112

Freedom of Information / Privacy Act
(5 U.S.C. § 552 et seq.)

552 151
552(b) 152

Cases

Matter of

Gadda, 23 I&N Dec. 645 (BIA 2003) 135, 142
H-A-, 22 I&N Dec. 728 (BIA 1999) 92
Nafi, 19 I&N Dec. 430 (BIA 1987) 111
Patino, 23 I&N Dec. 74 (BIA 2001) 106
Rahman, 20 I&N Dec. 480 (BIA 1992) 101
Shih, 20 I&N Dec. 697 (BIA 1993) 106
Velarde, 23 I&N Dec. 253 (BIA 2002) 92

Regulations

8 C.F.R

103.2 8

103.7 ....55, 56

208.16 114

208.17 114

208.30(e)(2)....114
208.30(e)(3)....114
208.30(f)....115, 120
208.30(g)....115

208.31(e)....117, 121
208.31(f)....117

235.3(e)....125

292.3 135

299.4(a)....148

1001.1(f)....19, 135, 144, 145
1001.1(g)....145
1001.1(j)....135, 144

1003.0(a)....2

1003.1 105
1003.1(b)....9
1003.1(b)(4)....9
1003.1(b)(5)....9
1003.1(c)....106
1003.1(d)(1)....2, 9
1003.1(d)(2)(i)(G)....106
1003.1(d)(2)(iii)....135
1003.1(d)(5)....135

1003.2(f)....123

1003.3 105
1003.3(a)(1)....106
1003.3(d)....106

1003.6 123
1003.6(c)....131

1003.7 106

1003.12 110

1003.13 ....33, 57, 58

1003.14 57

1003.15(d)....72
1003.15(d)(2)....18, 23

1003.17(a)....15, 20, 41, 42
1003.17(b)....23, 24

1003.19 ....125, 127
1003.19(c)....129
1003.19(d)....131
1003.19(e)....129
1003.19(g)....19, 125
1003.19(h)(2)(i)....127
1003.19(i)....131

1003.20 101

1003.21(a)....82
1003.21(b)....83

1003.22 64

1003.23 37
1003.23(a)....104
1003.23(b)(1)....53, 54, 95, 96, 97
1003.23(b)(1)(i)....43
1003.23(b)(1)(ii)....15, 20, 42, 43, 93
1003.23(b)(1)(v)....123
1003.23(b)(3)....91, 94, 95
1003.23(b)(4)....95
1003.23(b)(4)(i)....95
1003.23(b)(4)(ii)....99, 100, 123
1003.23(b)(4)(iii)....99
1003.23(b)(4)(iv)....95

1003.24 ....52, 53, 54
1003.24(b)(2)....99

1003.25(a)....76
1003.25(c)....60, 61

1003.26 ....61, 82
1003.26(c)....82

Regulations

8 C.F.R. (cont.)

1003.27 62
1003.27(b) 62, 63

1003.28 65

1003.31 33
1003.31(d) 62

1003.32(a) 41, 42
1003.32(b) 48

1003.33 43

1003.35 86
1003.35(b)(3) 87
1003.35(b)(4) 87
1003.35(b)(5) 87

1003.38 ..... 36, 105
1003.38(b) 37

1003.41 51

1003.42 115
1003.42(d) 114
1003.42(f) 116
1003.42(h) 8

1003.46 62

1003.47 73
1003.47(d) 55, 73

1003.61(a) 17

1003.101 ..... 28, 29, 135

1003.102 ..... 135, 136
1003.102(h) 139
1003.102(j) 137
1003.102(j)(1) 44
1003.102(k) 138
1003.102(m) 136

1003.103 135
1003.103(c) 139

1003.104 135

1003.104(a)(1) 138
1003.104(b) 138

1003.105 135

1003.106 135

1003.107(a) 145
1003.107(b) 145

1003.108(c) 144

1103.7 52-55
1103.7(b)(1) 55
1103.7(b)(2) 55

1208.2(c)(1)(i) 120
1208.2(c)(1)(ii) 120
1208.2(c)(1)(iii) 120
1208.2(c)(1)(iv) 120
1208.2(c)(1)(v) 121
1208.2(c)(1)(vi) 121
1208.2(c)(2) 121
1208.2(c)(3) 121, 122
1208.2(c)(3)(i) 121, 122

1208.4 36
1208.4(a)(2) 36

1208.5(b)(1)(ii) 120

1208.6 62

1208.7 73

1208.30(g)(2)(iv)(A) 117
1208.30(g)(2)(iv)(B) 116
1208.30(g)(2)(iv)(C) 116, 120

1208.31 117
1208.31(c) 117
1208.31(g)(1) 118
1208.31(g)(2) 118, 121

1235.3(b)(5) 118

1235.8 121

Regulations

8 C.F.R. (cont.)

1236.1 127

1236.3 126

1240.1 110
1240.1(a) 7

1240.9 63

1240.10 .....68, 71
1240.10(b) 62

1240.11(c)(3)(i) 62

1241.13 132

1241.14 .....132, 133
1241.14(f) 131, 132

1240.15 68

1240.30 111

1240.31 7

1240.40 110

1240.41 7

1246.1 111

1287.4(a)(2)(ii) 86

1292.1 .....15, 59
1292.1(a) 135
1292.1(a)(1) 19
1292.1(a)(2) 28, 29
1292.1(a)(3) 30, 31
1292.1(a)(4) 26
1292.1(a)(5) 31
1292.1(b) 135
1292.1(c) 32
1292.1(f) 15, 19, 20

1292.2(a) 17, 26, 27
1292.2(b) 27
1292.2(d) 26, 27

1292.5(a) 17, 22, 43

1299.1 148

28 C.F.R.

16.1 152
16.3(c) 152
16.9 153
68.26 8