

AILA/OCAHO Agenda and Minutes
April 7, 2016

ALJ Dockets

1. Please provide the number of pending cases each judge has in the following categories:

a. 1324a, including:

- Number of cases involving paperwork violations only; and
- Number of cases involving knowing hire/continue to hire violations.

OCAHO Response: As of 3/22/16, OCAHO had 20 pending cases involving alleged paperwork violations only, and 7 cases involving alleged knowing hire/continuing to employ violations.

b. 1324b, including:

- Number of cases initiated by OSC and private litigants; and,
- Number of document abuse cases.

OCAHO Response: As of 3/22/16, OCAHO had 2 pending cases initiated by OSC, 16 cases initiated by private litigants, and 7 document abuse cases.

c. 1324c.

OCAHO Response: 0 (zero)

Staffing

2. Have any staffing changes been implemented, or are there any planned staffing changes for the next 6 months (e.g. administrative law judges (ALJs), law clerks, paralegals, etc.)?

OCAHO Response: A new volunteer legal intern replaced OCAHO's fall volunteer legal intern in February. No other staffing changes have been implemented recently. OCAHO is currently in the process of hiring a legal assistant to assist with case management and administration of OCAHO's e-filing pilot program. In addition, OCAHO will welcome a new Attorney General Honors Program Summer Legal Intern this summer. Finally, after more than 20 years of exemplary service to OCAHO and the Department of Justice, Administrative Law Judge Ellen K. Thomas plans to retire at the end of April. OCAHO will continue to evaluate its caseload and office staffing needs, and will pursue any additional staffing changes as necessary and appropriate.

AILA: No active search to replace ALJ Thomas?

OCAHO: ALJ Paddock will assume all of ALJ Thomas' cases.

AILA: Have you been seeing your caseload slowing down?

OCAHO: Yes, we have seen a slight decrease in our caseload recently.

E-Filing

3. We commend OCAHO for indefinitely extending the electronic filing pilot program. Is there an update on the timing for implementation of a permanent e-filing system?

OIT Response: EOIR is working internally to assess the feasibility of including this effort within current IT priorities.

AILA: Is there a timeframe?

OIT: There is no specific timeframe available at this moment, but we are currently evaluating priorities and should be moving forward relatively soon.

Settlement Judges

4. Please provide an update on the use of settlement judges in OCAHO proceedings. Has the CAHO commenced mediations on 1324b cases?

OCAHO Response: OCAHO is in the final stages of developing and implementing its settlement judge initiative. OCAHO conducted a stakeholder webinar and teleconference on the settlement judge initiative in December and received helpful input on the program from various stakeholders. We have considered and incorporated this input where appropriate, and plan to have the framework for the program in place fairly soon.

Alternative Dispute Resolution (ADR)

5. Please provide an update on ADR usage, benefits and training.

OCAHO Response: OCAHO's ALJs and Chief Administrative Hearing Officer (CAHO) have all attended mediation training. We are hopeful that, once implemented, OCAHO's settlement judge initiative will prove useful and beneficial to the parties and to OCAHO. OCAHO continues to facilitate alternative dispute resolution and negotiated settlements by the parties under OCAHO's current rules of procedure. See 28 C.F.R. §§ 68.13 (Conferences), 68.14 (Consent findings or dismissal). I am also scheduled to take advanced mediation training in August.

AILA: Does Judge Paddock like the idea of ADR (Alternative Dispute Resolution)?

OCAHO: OCAHO is very supportive of ADR and believes that it will not only be beneficial to the process, but to the parties as well.

AILA: Is there any way we can help?

OCAHO: We have consulted with the Department of Justice’s Office of Dispute Resolution and have received helpful guidance. We are always open to further input from the public, AILA and other stakeholders.

Program/Procedural Changes

6. Have there been or are there any anticipated changes or updates by the CAHO to any of the following:
 - a. Overall program direction; policies and procedures, priorities;
 - b. The administration of the hearing process presided over by ALJs; and/or
 - c. Standards or approach to review of employer sanctions decisions by ALJs?

OCAHO Response: As previously mentioned, OCAHO continues to develop its settlement judge initiative and work toward implementation of a permanent e-filing system in conjunction with the agency’s overall technological enhancement efforts. OCAHO also recently released its revised unfair immigration-related employment practices complaint form. The form was improved and streamlined to make it more user-friendly, and is available as a fillable PDF on the EOIR website. Furthermore, we are in the process of having a Spanish translation of the form instructions posted on the EOIR website and available for dissemination to complainants along with the complaint form. We just received approval for the Spanish-language translation and hope to post those instructions soon. OCAHO continues to welcome input and suggestions from its stakeholders on potential improvements to OCAHO’s adjudicatory procedures.

AILA: Do you anticipate any issue with the change to one judge?

OCAHO: We may have a little less flexibility on the settlement judge initiative in 274A cases, as I can only mediate in 274B cases.

AILA: Has there been any change to the standard or approach to the review of employer sanctions decisions?

OCAHO: Our ALJs are independent adjudicators who review issues on a case-by-case basis, following the relevant provisions of the statute and regulations.

Privacy

7. Protecting the privacy of employer and employee data in the digital age is an issue that is not only challenging but concerning to all. In prior meetings we have discussed Personal Identifiable Information (PII) as it relates to FOIA requests. Increasingly, privacy of employer and employee records arises in the OCAHO context in requests by ICE and OSC for documents. The scope of document production in OCAHO cases has increased over the years. The matter is further complicated when staffing companies and/or joint employers are involved, as the traditional employment model evolves in novel ways. While the employer can request a subpoena and attempt to limit production to what is relevant, please advise of

any other limitations on document scope or relevancy placed on the government (by DOJ, OCAHO, etc.) or third parties, for example:

- a. Does DOJ or OCAHO have any rules, guidelines, policies, and/or procedures for ALJs to follow which limit the scope of an inquiry by ICE or OSC? (OCAHO)

AILA: The context of this question stems from broad requests for documents by OSC in the pre-adjudicatory process. Questions are arising about who is the employer, how different divisions/branches are handled, changes in the corporate structure (for instance, where one division is responsible for I-9s in E-Verify, but report to a larger corporate entity for tax purposes). We are seeing mass documentation requests and it can get expensive, complicated and confusing.

OCAHO Response: Under OCAHO’s rules of practice and procedure, parties may generally obtain discovery regarding all matters relevant to the subject of the proceeding which are not privileged. 28 C.F.R. § 68.18(b). Parties from whom discovery is sought in an OCAHO proceeding may request a protective order, and the presiding ALJ may issue a protective order as necessary to protect a party or person from “annoyance, harassment, embarrassment, oppression, or undue burden or expense.” 28 C.F.R. § 68.18(c). The ALJ may also limit discovery or introduction of evidence as may be necessary to protect privileged communications and “data and other material the disclosure of which would unreasonably prejudice a party, witness, or third party.” 28 C.F.R. § 68.42(a). Where necessary and appropriate, the ALJ may order that certain documents containing personally identifiable information (or other sensitive information) be filed or placed under seal. See 28 C.F.R. § 68.51 (providing that the ALJ may direct that there be restricted access to portions of the record).

Furthermore, a person or entity served with a subpoena issued by an OCAHO ALJ may petition to revoke or modify the subpoena within ten days of the date of service of that subpoena. 28 C.F.R. § 68.25(c). A number of published OCAHO cases offer additional guidance on the interpretation and application of these rules of procedure. See OCAHO’s Cumulative Topical Index of all published cases, available at <https://www.justice.gov/sites/default/files/pages/attachments/2016/03/18/cumulativetopicaindex.pdf>, for more information.

AILA: Are you seeing issues where these procedures are not enough? Do we need to have training? A lot of the dates OSC is asking for are not relevant. The scope should be limited.

OCAHO: These issues are decided on a case-by-case basis. You can move to quash a subpoena if you believe it is overbroad.

- b. Does Exemption 7 of DOJ’s Guide to the Freedom of Information Act apply to OCAHO?

OGC Response: The EOIR Freedom of Information Act (FOIA) Service Center applies all applicable FOIA exemptions on a case-by-case basis. To the extent that information

originates from records or information compiled for law enforcement purposes, which meet one of the provisions of exemption 7, the exemption will apply.

- c. If a private party or government entity seeks a subpoena of unpublished OCAHO documentation, what rules, guidelines, policies, and/or procedures does OCAHO follow in such matters?

OCAHO Response: Requests for unpublished OCAHO documentation are processed through EOIR's FOIA office in the Office of the General Counsel.

OGC Response: Requests for information by private parties are processed through the EOIR FOIA Service Center where all Privacy Act and FOIA provisions are applied. Requests from government entities are evaluated on a case-by-case basis and information is provided if there is a legal basis with a need to know.

De Novo Review

8. AILA notes an increase in issues related to joint employers, staffing companies, and contracted employees as a result of changes to the traditional employment model, as mentioned above. Does the CAHO have any cases involving de novo review of OSC decisions on the subject of citizenship discrimination arising from the termination of U.S. workers and replacing them with nonimmigrant contract workers? Are there any other related cases involving de novo review in the queue?

OCAHO Response: OCAHO recently published a precedent decision addressing an allegation of citizenship status discrimination based on rejection of a qualified U.S. citizen in favor of hiring temporary foreign workers. *See United States v. Jerry Estopy & Manuel Bortoni, d/b/a Estopy Farms*, 11 OCAHO no. 1252 (2015). Several previous OCAHO cases have addressed similar claims. *See, e.g., Barone v. Superior Washer & Gasket Corp.*, 10 OCAHO no. 1176 (2013); *Sefic v. Marconi Wireless*, 9 OCAHO no. 1125 (2007). I currently do not have any such cases before me.

Freedom of Information Act (FOIA) Requests

9. Please provide an update on numbers, timeframes, and any changes in procedures for FOIA requests.

OGC Response: OGC has received 15,700 requests in FY16. We have closed 15,377 since the beginning of the fiscal year and currently have approximately 2,870 cases pending. On average it takes the FOIA office 23 days to complete a request. We do not have any changes in procedures for FOIA requests at this time.

AILA: It is important that parties are on the same playing field and FOIA is a major part of that and we appreciate your effort in continuing to work on the process.

OGC: If you have any other information or feedback, please let us know.

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BIA Amicus Solicitation

1. AILA greatly appreciates the BIA’s initiative to launch a pilot program to solicit amicus curiae briefs from interested parties.¹ However, we are concerned that some of the program’s procedures may inadvertently limit the efficiency and overall effectiveness of the program.
 - a. Currently, the BIA posts amicus invitations to its [website](#) and provides interested parties with very limited time to respond.² Would the BIA consider providing interested parties with a longer initial period of time to respond to amicus invitations (for example, 90 days), and consider requests for extensions of time (which are currently disfavored)?

EOIR Response: EOIR appreciates the constructive feedback that it has received from interested parties in response to the six amicus invitations that have been posted to its website thus far. In order to adjudicate cases in a timely manner, the Board is not inclined to increase the initial amicus filing period. The Board would rather the amicus attorney request an extension on briefing. While the guidelines state that such requests are disfavored, the Board will be reasonable in granting such requests provided the attorney articulates “compelling circumstances,” including the reason for delay.

- b. The BIA’s amicus invitations do not provide interested parties with the underlying facts of the case or the name and contact information of counsel. This information is particularly important in the context of asylum cases where the BIA has emphasized the importance of case-by-case adjudications. Would the BIA consider providing counsel’s contact information in its invitations?

EOIR Response: The Board wishes to protect the parties’ privacy interests. If an interested amicus party would like the contact information for the respondent’s counsel, he or she should contact the Court Clerk. Provided that the respondent’s counsel signed a waiver agreeing to be contacted, the Court Clerk will provide the interested amicus party with counsel’s contact information.

EOIR E-Registry

2. During our meeting on October 23, 2014, EOIR explained that attorneys experiencing problems with a deactivated E-Registry³ account can request assistance by contacting eregistration.info@usdoj.gov.⁴ AILA has received reports that attorneys are not receiving responses to inquiries sent to eregistration.info@usdoj.gov.

¹ *BIA Launches Pilot Program to Solicit Amicus Curiae Briefs*, June 19, 2015, AILA Doc No. 15062230, available at <http://www.aila.org/infonet/bia-launches-pilot-program-amicus-curiae-briefs>.

² See <https://www.justice.gov/eoir/amicus-briefs>.

³ See <https://www.justice.gov/eoir/eregistry-program>.

⁴ AILA/EOIR/OCAHO Liaison Meeting Minutes (10/23/14), AILA Doc. No. 15022663, available at <http://www.aila.org/infonet/eoir-ocaho-liaison-minutes-10-23-14>.

- a. Please provide an update on the proper procedure attorneys should follow to reactivate their E-Registry accounts.

EOIR Response: Attorneys should continue sending emails to the e-registration email box and include their name, date of birth, EOIR ID number, and the telephone number linked to the eRegistry account. Typically, EOIR responds to these emails within 24 hours. If you do not receive a response within 2-3 days, EOIR advises attorneys to call the main EOIR phone number and provide his or her EOIR ID number and date of birth. The office will follow-up with the attorney directly.

- b. Additionally, some members have identified errors in the system pertaining to specific cases, including incorrect hearing dates. How often is the online system updated? What is the mechanism for fixing typographical errors in the E-Registry system?

EOIR Response: The E-registry system pulls data directly from the main case database in real time. Because information in the E-registry system is consistent with the court case database, if there is a typographical error, the error appears in both the case information database and the E-registry system. EOIR will check with the IT team regarding the appropriate mechanism for correcting typographical errors.

Regarding account reactivation, attorneys should still submit their requests to eRegistration.info@usdoj.gov. It is important for the requestor to include in this submission his or her birthdate and EOIR ID and/or User ID, if available. If this identifying information is not included, EOIR will promptly send a reply email requesting it. Typically, EOIR provides requestors with instructions to reactivate and access their account within 2-3 business days of receiving the initial request.

Professionalism

3. AILA congratulates EOIR on the overall professionalism of immigration judges (IJs) across the country. However, we have received reports from members that there is a small number of IJs that appear to have acted contrary to the provisions outlined in the Ethics and Professionalism Guide for Immigration Judges.⁵ In some instances, following a disagreement with an attorney, the IJ has threatened to file or has actually filed a retaliatory complaint with the state bar. Aside from the formal complaint process,⁶ does EOIR have recommendations as to how an attorney should handle a situation where the attorney feels that a state bar complaint is inappropriate and possibly retaliatory in nature?

EOIR Response: Attorneys who encounter difficulties with a specific immigration judge should bring the issue to the attention of the appropriate Assistant Chief Immigration Judge. If the problem cannot be resolved, the issue can be escalated to the appropriate Regional Deputy Chief Immigration Judge. OCII has added two Regional Deputy Chief Immigration

⁵ See EOIR website "Immigration Judge Conduct and Professionalism," available at <https://www.justice.gov/sites/default/files/eoir/legacy/2013/05/23/EthicsandProfessionalismGuideforIJs.pdf>.

⁶ See EOIR website "Submit a Complaint," available at <https://www.justice.gov/eoir/submit-complaint>.

Judge positions: A Deputy Chief Immigration Judge for the West (covering courts from the Pacific to the Mississippi) and a Deputy Chief Immigration Judge for the East (covering courts from the Mississippi to the Atlantic). Judge Maggard, who sits in the San Francisco Immigration Court, is the Deputy Chief Immigration Judge for the West as well as the Acting Deputy Chief Immigration Judge for the East. Please note that immigration judges are to contact EOIR's Office of General Counsel in order to initiate an EOIR bar complaint against attorneys.

Information in regards to raising a concern about an immigration judge's conduct that is not appropriate for a motion or appeal is available in Chapter 1.3(c) of the Immigration Court Practice Manual and on EOIR's website at <https://www.justice.gov/eoir/instructions-filing-complaint-regarding-immigration-judges-conduct>.

Publication of Televideo Court Procedures

4. Members report an increase in immigration court hearings conducted by televideo for both detained and non-detained cases across the country, included hearings that are conducted by courts in separate jurisdictions.
 - a. Please confirm that, pursuant to ICMP 4.7(b), attorneys and/or witnesses can appear at either location.⁷

EOIR Response: The immigration judge determines the proper location for appearances on a case-by-case basis.

- b. Would EOIR publish on its website a list of immigration courts that are currently conducting televideo hearings?

EOIR Response: All courts are currently equipped to conduct video hearings.

- c. Is video technology being used by some courts to assist with cases in other jurisdictions where there are IJ vacancies, and if so, are these assignments temporary? For example, we understand that IJs in San Juan, Puerto Rico are currently hearing cases for individuals detained at the Stewart Detention Center in Georgia.

EOIR Response: EOIR's use of video technology is always changing.

EOIR constantly monitors its caseload nationwide and shifts resources to meet needs in the most efficient manner. This includes detailing immigration judges and staff, and using video conferencing, as appropriate. Video conferencing allows maximum flexibility to address caseload demands that are frequently changing nationwide.

Revised Docketing Practices Relating to Certain EOIR Priority Cases

⁷ ICMP 4.7(b) reads: "(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."

5. According to a March 24, 2015 [memorandum](#),⁸ individuals identified by DHS as adults with children released on alternatives to detention (AWC/ATD) were to be considered a priority for docketing purposes and have their cases adjudicated in an expeditious manner. However, in a February 3, 2016 [memorandum](#),⁹ EOIR states that many individuals previously designated as AWC/ATD by DHS were never actually enrolled in the ATD program. EOIR states that “DHS has begun a monthly reconciliation program with EOIR” to accurately reflect whether or not these respondents have been enrolled in the ATD program. Those respondents who were not enrolled in ATDs will no longer be designated as AWC/ATD, and therefore will no longer be a priority for docketing.

- a. Please provide a general update on the monthly reconciliation process that EOIR is undertaking with DHS, including the number of cases that have been removed from the priority docket thus far and how long EOIR anticipates the monthly reconciliation process will continue.

EOIR Response: While EOIR and DHS will continue to work together to confirm the integrity of the data, the initial data reconciliation was finalized last week. Consequently, EOIR is now in the process of compiling the number of cases that have been removed from the priority docket thus far. EOIR can again provide AWC/ATD data upon request. Requests should be sent to the Office of Communications and Legislative Affairs.

- b. How can respondents and their attorneys confirm whether the case continues to carry the AWC/ATD designation and remains on the priority docket?

EOIR Response: DHS determines whether a case continues to carry the AWC/ATD designation because DHS informs EOIR whether the respondent is enrolled in the ATD program. Attorneys should contact DHS in order to confirm the respondent’s designation.

- c. How can a respondent who is not on ATD challenge his or her AWC/ATD designation?

EOIR Response: Attorneys should contact DHS in order to challenge an AWC/ATD designation.

- d. AILA has received reports of IJs administratively closing cases over respondents’ objections, when the respondent has declined an offer of prosecutorial discretion to pursue statutorily available relief in court. While a respondent in this situation can appeal the decision to administratively close the case, or move to recalendar, the refusal of the court to allow the respondent to proceed with an application for relief raises serious due process concerns. Moreover, the appeal process can cause excessive delays and result in hardship due to prolonged family separation. While *Matter of Avetisyan*¹⁰ allows IJs to

⁸ *EOIR Releases Memo on UAC and Family Docketing Practices*, AILA Doc No. 15032702, available at <http://www.aila.org/infonet/eoir-releases-memo-on-uac-fam-docketing-practices>.

⁹ *EOIR Revises Docketing Practices Related to Certain Priority Cases*, AILA Doc No. 16020406, available at <http://www.aila.org/infonet/eoir-released-memo-revised-docketing-practices>.

¹⁰ 25 I&N Dec. 688 (BIA 2012).

administratively close proceedings over the objections of one party, the BIA also directed IJs to consider the basis for the party's opposition, as well as the likelihood of the applicant qualifying for relief. Is this trend among some IJ's in line with the spirit of the revised docketing practices?

EOIR Response: In 2013, the OCIJ issued general guidance to immigration judges in OPPM 13-01, Continuances and Administrative Closure.¹¹ The decision to administratively close a case is within the discretion of the immigration judge and is made on a case-by-case basis. If an attorney disagrees with the judge's decision, the attorney can appeal the decision to the Board of Immigration Appeals.

Equal Access to Technology

6. During the fall 2015 liaison [meeting](#), AILA asked EOIR to take steps to provide equal internet access to all parties appearing in immigration courts and to work with DHS to provide internet access where the space is owned by DHS.¹² Please provide an update on any progress that has been made towards providing all parties with equal access to technology in the courtroom.

EOIR Response: Due to security concerns, EOIR cannot provide non-government entities with access to its network. At this time, EOIR does not have the technology to provide respondents or private counsel with internet access. EOIR is open to receiving specific case examples where the attorney believes that a lack of access to the internet has prejudiced the respondent.

AILA Note: If AILA members have specific case examples, please share these examples with the Chair and Vice Chair of [AILA's EOIR Liaison Committee](#).

Cap-Subject Cancellation of Removal Matters

7. Members report difficulty in renewing employment authorization and refreshing biometrics for cap-subject cancellation cases, where a decision has been reserved but no formal notice has been provided by the court. Would EOIR consider issuing orders, or some other form of written notice, that the case remains pending and is awaiting availability of a number?

EOIR Response: EOIR is not considering issuing orders or providing any other type of written notice at this time. EOIR will review this issue.

AILA Note: ICE issued FAQs concerning Fingerprint Check Refresh Requests on 5/19/2016.¹³

¹¹ EOIR Memo on Continuances and Administrative Closure (March 7, 2013), AILA Doc No. 13031143, available at <http://www.aila.org/infonet/eoir-memo-continuances-and-administrative-closure>.

¹² AILA EOIR/OCAHO Liaison Meeting Minutes (10/22/15), Q1, AILA Doc. No. 15122107, available at <http://www.aila.org/infonet/eoir-ocaho-liaison-meeting-minutes-10-22-15>.

¹³ ICE FAQs on Agreement Between USCIS and ICE on Fingerprint Check Refresh Requests, AILA Doc. No. 16052303, available at <http://www.aila.org/infonet/ice-faq-uscis-ice-on-fingerprint-refresh-request>.

8. During the fall 2015 liaison [meeting](#), EOIR noted that OPPM 12-01 sets forth the procedures for applications for suspension of deportation/cancellation of removal in non-detained cases when numbers are no longer available in a fiscal year.¹⁴ Cases in which decisions are reserved pending the availability of a number are placed in a queue according to the date and time of the decision.

a. Please provide an update on the current backlog.

EOIR Response: EOIR is reviewing its internal practices and procedures related to the administration of the cap. EOIR's goal is to have compiled data on the current backlog by summer 2016.

b. Would EOIR consider publishing the filing dates of cap-subject cases that are in the queue and an approximation as to when EOIR anticipates cases will be finalized, without disclosing personally identifiable information?

EOIR Response: In an effort to promote transparency, EOIR's goal is to provide the filing dates of cases that are in the queue by summer of 2016.

Asylum One-Year Filing Deadline (OYFD) at a Master Calendar Hearing

9. During our last [meeting](#),¹⁵ AILA asked EOIR to issue guidance confirming that when a respondent cannot meet the One Year Filing Deadline (OYFD) for asylum applications under INA §208(a)(2)(B) and 8 CFR §208.4(a)(2) due to court backlogs and the lack of an available hearing, the applicant will be deemed to have established “extraordinary circumstances” for purposes of the OYFD exception. EOIR stated that it “does not intend to issue additional guidance at this time regarding the effect of timely lodging an asylum application on the one-year filing deadline for such applications.”

AILA recognizes that the effect of “lodging” an asylum application with the court may be relevant to an IJ’s determination of whether the extraordinary circumstances exception has been met. However, we are concerned that EOIR’s response from our last meeting ignores the larger problem of the current administrative delays preventing respondents from complying with a statutory obligation and jeopardizing their right to apply for asylum. Moreover, pro se respondents are less likely than represented respondents to be aware of the OYFD, much less the availability of “lodging” as a method to preserve relief. Thus, *pro se* respondents are particularly vulnerable to the problems that may result from administrative delays.

Since our last meeting, AILA has received reports of inconsistent treatment of respondents who have failed to meet the OYFD due to a lack of available hearing dates. In one case, the

¹⁴ AILA EOIR/OCAHO Liaison Meeting Minutes (10/22/15), Q14, AILA Doc. No. 15122107, available at <http://www.aila.org/infonet/eoir-ocaho-liaison-meeting-minutes-10-22-15>.

¹⁵ AILA EOIR/OCAHO Liaison Meeting Minutes (10/22/15), Q4, AILA Doc. No. 15122107, available at <http://www.aila.org/infonet/eoir-ocaho-liaison-meeting-minutes-10-22-15>.

IJ found the respondent ineligible to apply for asylum where her first master calendar hearing was set three months after the OYFD. In another case, the IJ found the respondent ineligible where the application was lodged, but the attorney failed to also file a Motion to Advance the Master Calendar Hearing. Moreover, some courts have stated that an asylum application that was “lodged” satisfies the OYFD. In other courts, some IJs treat “lodged” applications as “filed” for purposes of the OYFD, while others do not. The disparate treatment of asylum applicants who are unable to meet the OYFD due to a lack of judicial resources is leading to inconsistent outcomes and due process concerns around the country.

Echoing requests made by the American Immigration Council (AIC) and Human Rights First, we ask EOIR to reconsider the request posed during our last meeting and issue guidance in the form of an Operating Policies and Procedures Memorandum (OPPM) that instructs IJs across the country to recognize the “exceptional circumstances” exception to the OYFD where an asylum applicant has not been given the opportunity to file the I-589 asylum application in court within one year of entry due to administrative delays in scheduling a master calendar hearing.

EOIR Response: This matter remains under consideration.¹⁶ The determination of whether the one-year filing deadline has been met or whether an exception applies is determined by the immigration judge on a case-by-case basis.

IJ Authority to Consider Bond Redeterminations

10. During the fall liaison [meeting](#),¹⁷ EOIR stated that it “does not intend to issue special guidance regarding the application of 8 C.F.R. §1003.19” and suggested that AILA take its concerns over detainee transfers to DHS. Our members continue to see varying approaches across IJs within the same immigration court. Multiple members report arguing whether a detainee is within the administrative control of the court when DHS has purportedly placed the individual on a bus bound for another jurisdiction minutes prior to the hearing, but the bus has not reached its destination and the ICE online detainee locator places the detainee within the administrative control of the originating court. DHS has demonstrated it will not make any changes to its transportation schedule to accommodate the detainee or the immigration court or in the interests of administrative efficiency. However, the court maintains the ability to adjudicate “applications for the exercise of authority to review bond determinations” if the detainee was within the “jurisdiction over the place of detention” at the time the “application” was properly filed with the court. We respectfully request EOIR to provide guidance to IJs confirming that they have jurisdiction to consider bond redeterminations in cases where ICE is transferring a detainee for whom a hearing is set and commencement is imminent.

¹⁶ On September 14, 2016, EOIR issued Operating Policies and Procedures Memorandum (OPPM) 16-01: Filing Applications for Asylum, *available at* https://www.justice.gov/sites/default/files/pages/attachments/2016/09/14/oppm_16-01.pdf. Among other matters, section V addresses the one-year filing deadline: “An application for asylum filed at the window or by mail will be considered filed on the date of the receipt for the purpose of the one-year filing deadline.”

¹⁷ AILA EOIR/OCAHO Liaison Meeting Minutes (10/22/15), Q8, AILA Doc. No. 15122107, *available at* <http://www.aila.org/infonet/eoir-ocaho-liaison-meeting-minutes-10-22-15>.

EOIR Response: EOIR does not intend to issue special guidance to the immigration judges on this issue at this time. Immigration judges determine their authority under 8 C.F.R. §1003.19 to conduct bond redetermination hearings under these circumstances on a case-by-case basis. If a party does not agree with the immigration judge's decision, the party may appeal that decision to the Board of Immigration Appeals. As AILA is aware, the transfer of detainees to another location is entirely under the control and purview of DHS. Therefore, concerns over such transfers should continue to be directed to DHS.

Duration of Dilley Docket

11. On April 14, 2015, EOIR [announced](#) that cases originating at the Dilley hearing location would be assigned to the Miami immigration court.¹⁸ Based on past and current data, and barring another border surge or other significant crisis, can EOIR provide an estimated timeline on how long the Dilley dockets will continue to be in Miami?

EOIR Response: There are no plans to change the Dilley dockets at this time.

Motions Regarding Representation in Administratively Closed Cases

12. As noted in the spring 2015 and fall 2015 liaison minutes,¹⁹ EOIR requires administratively closed cases to be recalendared before the court will consider *any* notice or motion. In essence, to effectuate withdrawal of counsel, substitution of counsel, or notification of counsel's new address, the case would need to be recalendared before a ruling could be made on the underlying motion. Thereafter, the case would remain on the calendar unless a new motion to administratively close was submitted. To further complicate matters, a pro se respondent cannot reasonably rely on the departing attorney to prepare a motion to administratively close the case a second time. This procedure may penalize respondents that are unable or otherwise fail to personally draft such motions, thus keeping their previously closed case on an active docket. Would EOIR consider adopting a form similar to Form EOIR-28 that would allow counsel to withdraw from or substitute into administratively closed cases with the consent of the respondent?

EOIR Response: EOIR is not contemplating creating such a new form at this time. Withdrawal or substitution of counsel in an administratively closed case requires three motions: (1) motion to recalendar, (2) motion to withdraw or substitute counsel, and (3) motion to administratively close the proceedings. As indicated at the fall liaison meeting (10/25/2015), if a case is administratively closed, parties may combine these requests and file one motion. The title on the cover page of the motion should accurately and clearly describe the motion. See Chapter 5.2(b) of the Immigration Court Practice Manual. EOIR will

¹⁸ EOIR Announces Change to Immigration Judges Hearing Cases Out of Dilley, AILA Doc No. 15041403, available at <http://www.aila.org/infonet/eoir-announces-change-to-immigration-judges-dilley>.

¹⁹ AILA EOIR/OCAHO Liaison Meeting Minutes (4/16/15), Q5, AILA Doc. No. 15072203, available at <http://www.aila.org/infonet/eoir-ocaho-liaison-meeting-minutes-04-16-15>; AILA EOIR/OCAHO Liaison Meeting Minutes (10/22/15), Q. 9, AILA Doc. No. 15122107, available at <http://www.aila.org/infonet/eoir-ocaho-liaison-meeting-minutes-10-22-15>.

remind its Assistant Chief Immigration Judges that this format is acceptable and clerks should not reject compound motions in this situation.

Staffing

13. Please provide a current time line for the hiring of new IJs, both permanent and temporary. At which immigration courts will the new judges be posted?

EOIR Response: As of April 4, 2016, there are 261 immigration judges on board. Since the beginning of FY15, EOIR has brought aboard 41 immigration judges. EOIR is authorized to hire a total of 374 Immigration Judges and has been engaged in a robust hiring program to fill all of these positions. The process for designating temporary immigration judges is under review.

14. Please provide an update as to major staffing changes.

EOIR Response: In March 2016, Michael C. McGoings was appointed Acting Chief Immigration Judge. In addition, EOIR has added two Regional Deputy Chief Immigration Judge positions: A Deputy Chief Immigration Judge for the West (covering courts from the Pacific to the Mississippi) and a Deputy Chief Immigration Judge for the East (covering courts from the Mississippi to the Atlantic). Judge Maggard, who sits in the San Francisco Immigration Court, is the Deputy Chief Immigration Judge for the West as well as the Acting Deputy Chief Immigration Judge for the East.

The BIA is authorized 17 Board Members and currently has 15, which includes the recent appointment of 3 new Members. The BIA plans on filling the remaining open positions.

Recent IJ Hiring Trends

15. During a 2012 liaison [meeting](#), EOIR stated that it selects immigration judges on the basis of the following criteria:²⁰

1. Ability to demonstrate the appropriate temperament to serve as a judge
 2. Knowledge of immigration laws and procedures
 3. Substantial litigation experience, preferably in a high volume context
 4. Experience handling complex legal issues
 5. Experience conducting administrative hearings
 6. Knowledge of judicial practices and procedures
- a. Please provide the current criteria for new hires in immigration judge positions or confirm that the above criteria remain the same.

EOIR Response: EOIR seeks highly qualified individuals to fill immigration judge positions. EOIR posts announcements for immigration judge vacancies on [USA Jobs](#) and

²⁰ AILA/EOIR Liaison Meeting Minutes (11/15/12), Q10, AILA Doc No. 13032643, available at <http://www.aila.org/infonet/eoir-liaison-minutes-11-15-12>.

[DOJ Legal Careers](#). The jobs are also advertised through the [Office of Attorney Recruitment and Management](#), which in turn notifies more than 100 legal organizations.

- b. AILA has noted that a number of new immigration judges have been added to the bench. It appears that an overwhelming majority of the appointees come from an enforcement background. What steps does EOIR take in the hiring process to ensure that a diverse group of immigration judges are hired with backgrounds not only in the public sector, but also in private practice, academia, and the nonprofit sectors?

EOIR Response: EOIR is interested in attracting the most qualified candidates, regardless of whether their background is from the private sector or government sector. A number of immigration judges recently added to the bench have a government background. A government background usually makes background checks faster since the candidates previously went through the process in order to be hired as a government lawyer. However, EOIR is in the process of hiring more immigration judges, and these include a number of private bar attorneys.