

**AILA-EOIR Liaison Meeting Agenda
November 15, 2012**

EOIR Welcome:

Director Juan Osuna's opening remarks and introduction of Acting General Counsel, Jean King. Director Osuna states that it is useful and helpful to hear from the practitioner side. In addition, EOIR is committed to listening and keeping communication open, and always welcomes input from AILA.

Introductions

All attendees introduce themselves.

Questions and Answers

OCAHO

1) Update on Action Items from the Spring 2010 AILA-OCAHO Liaison meeting.

AILA recommended a number of steps that OCAHO could take to improve transparency and accessibility to OCAHO materials, policies, and decisions:

- a. Redesign of OCAHO Website.** AILA recommended that the agency website be updated to permit electronic searches of OCAHO dockets, decisions, and case digests, modeled after the electronic docket and library maintained by the U.S. Department of Labor, Office of Administrative Law Judges. AILA provided OCAHO with copies of the DOL/OALJ home page, case dockets, bench book digests, and library search engine and urged OCAHO to support revision of the webpage after the DOL/OALJ model. Since 2010, has EOIR submitted a budget request to DOJ calling for the re-design of the OCAHO website to include features comparable to those contained on the DOL/OALJ website?

OCAHO Response: OCAHO publishes (and has recently updated) a Cumulative Topical Index of all precedent decisions on its website. This index lists OCAHO cases by topics and subtopics addressed in each decision. It provides a helpful and easy method for locating OCAHO cases discussing specific legal issues.

Additionally, once OCAHO decisions (or the Topical Index itself) are opened in PDF format from OCAHO's website, they are searchable within the document using the "Find" function on the top menu bar in Adobe Reader. This methodology allows for thorough and efficient research of OCAHO cases and legal issues and does not require a subscription to a legal research service. Nonetheless, all published OCAHO decisions are also available on Westlaw (in the "FIM-OCAHO" database) and Lexis, and are searchable by keyword, party name, etc.

Therefore, OCAHO has not submitted a budget request to DOJ for a re-design of the OCAHO website. Such a request would not be justifiable under the circumstances in these tight budget times.

AILA Question: AILA is primarily concerned with the index, which is not current at all times.

OCAHO Response: As previously mentioned, OCAHO recently updated its Topical Index. We will monitor the timing of future updates. We also welcome further input.

b. Release of OCAHO Orders and Decisions to AILA. Years ago, all substantive ALJ decisions (including interlocutory orders) were made available for publication in Westlaw once they became final. This practice was discontinued in recent years without explanation. In 2010, we were informed that only final decisions are published on the OCAHO website and only after EOIR has completed a Privacy Act Review, which generally takes 60 days. We recommended then that the practice of releasing all substantive decisions and orders should be continued, including the release of decisions involving preliminary orders of dismissal and discovery disputes. We further argued that Privacy Act review was unnecessary since OCAHO proceedings are conducted pursuant to the APA and all hearings must be open to the public. Lastly, we argued that these practices provided ICE and OSC with an unfair advantage in OCAHO proceedings because ICE and OSC have immediate access to all ALJ orders and decisions – but the defense bar does not. In response to these concerns, OCAHO announced at the 2010 AILA Spring Conference that OCAHO would grant public access to all OCAHO decisions without the need to first file a FOIA request. AILA was further informed that the CAHO would institute an amicus process for input on important questions of law arising under IRCA Section 274A. What actions have been taken to implement these commitments?

OCAHO Response: At the 2010 AILA Spring Conference, OCAHO agreed that it would look into granting public access to all OCAHO decisions. OCAHO's current practice is to publish only those decisions and orders that it considers to be precedential – that is, those decisions that address a new legal question or a set of facts materially different from previous cases. This is consistent with EOIR practice and provides all litigants with fair notice of the applicable law and standards in OCAHO cases. In making decisions and orders publicly available, OCAHO must balance the requirements of the Privacy Act with the desire for greater openness and disclosure. To this end, OCAHO will make more decisions, including interlocutory orders, publicly available without the need to file a FOIA request. Indeed, pursuant to this effort toward greater transparency, OCAHO has just recently released for publication a number of additional decisions, including interlocutory orders. Moreover, going forward, OCAHO will look more closely at decisions and orders that previously would not have been published because they do not break any new legal ground, in order to evaluate whether the decisions should be published.

Additionally, under OCAHO regulations, amicus curiae may file a brief in a pending case by leave of the ALJ upon motion or petition of the amicus curiae. 28 C.F.R. § 68.17. OCAHO is generally receptive to amicus curiae briefs, but must be mindful of rules and regulations governing *ex parte* communications (*i.e.*, rules of professional responsibility and judicial conduct, as well as OCAHO's own regulations at 28 C.F.R. § 68.36) in attempting to actively solicit amicus briefs. OCAHO is willing to solicit amicus briefs from appropriate organizational entities, including AILA, along with the parties, on certain contested issues of law in such a

way that would provide both parties with notice of such an invitation to a non-party. AILA may also wish to consider an internal process among its members whereby members involved in cases before OCAHO could inform AILA of contested questions of law and opportunities to request filing amicus briefs in OCAHO cases.

AILA Question: Can precedent and non-precedent decisions be published on OCAHO's website?

OCAHO Response: OCAHO has revised its precedent decision publication policy and now publishes all decisions deemed precedential, i.e., containing substantive legal determinations. OCAHO applies a presumption in favor of publication to ensure transparency and guidance to all litigants. This includes interlocutory orders with precedential value. Pursuant to this policy, OCAHO recently approved five new decisions for publication.

AILA Question: Can we file amicus briefs?

OCAHO Response: OCAHO is receptive to amicus briefs, and is willing to solicit them from outside organizations, including AILA, within the confines of the rules against *ex parte* communications, and when deemed necessary. AILA may also wish to have its members alert it to specific issues it may be interested in briefing in particular cases, after filing a motion under the regulations.

c. Publication of OCAHO Case Digests. During Judge Morse's tenure, OCAHO routinely published case digests containing reviews of all ALJ decisions. At the AILA 2010 Spring Conference, OCAHO agreed to post a digest of major cases on its website. Have plans been made to publish case digests?

OCAHO Response: At the AILA 2010 Spring Conference, OCAHO said it would look into resuming its past practice of publishing case digests; OCAHO looked at resuming drafting and publishing case digests and determined it lacked the resources to do so. Furthermore, OCAHO's cases are fairly short, and they are already sorted by applicable legal issues and sub-issues in our Cumulative Topical Index (available on OCAHO's website). Therefore, in our view, publishing case digests would not be an efficient use of OCAHO's limited resources.

d. Review: Since the Chief Administrative Hearing Officer possesses legal authority to review the decisions of the administrative law judges in Section 1324a cases, what are the procedures for exercising this authority? Must a party request review, or does the CAHO have *sua sponte* authority to review decisions? What are the applicable standards for review? Since 2010, have there been any occasions when the CAHO has exercised this authority? As a result of the exercise of the CAHO's review authority, what if any changes were made to the ALJ's decision(s)?

OCAHO Response: In 8 U.S.C. section 1324a cases, OCAHO regulations provide that a party may file a written request for review with the Chief Administrative Hearing Officer (CAHO) within 10 days of the date of entry of the ALJ's final order. The CAHO also may conduct a review on her own initiative by issuing a notification of review within 10 days of the date of entry of the ALJ's final order.

Under Section 557 of the Administrative Procedure Act (APA), the CAHO reviews ALJ decisions and orders de novo. *See Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Mfg. Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990); *see also United States v. Karnival Fashion*, 5 OCAHO no. 783, 477, 478 (1995); *United States v. Remileh*, 5 OCAHO no. 724, 15, 17 (1995). However, there is some authority to the effect that the CAHO reviews credibility determinations made by the ALJ on the basis of live testimony under the substantial evidence standard. *See Maka*, 904 F.2d at 1355. Since 2010, the CAHO has issued two decisions after exercising review authority, including a recent, published decision in *United States v. Jabil Circuit, Inc.*, 10 OCAHO no. 1146 (2012). In the *Jabil Circuit* case, the CAHO issued an order vacating the ALJ's final decision and order of dismissal, finding that the complaint in the case should not be deemed abandoned. The case was then remanded to the ALJ for further proceedings.

2) Caseload Procedure, Trends and Statistics: Over the past five years, have there been any significant changes in the number and composition of the cases on the OCAHO docket? Has there been an appreciable increase in the number of document abuse cases being prosecuted by OSC compared with the prior five year period? Likewise, has the number of paperwork-only cases filed by ICE increased significantly in the most recent five year period compared with the prior five year period?

OCAHO Response: Over the past five years, there have been significant changes in the number and composition of OCAHO cases. Cases filed under Section 1324a have increased from five in FY08 to 70 in FY12, a 1300% increase.

Individual complainants (as well as organizational complainants, such as labor unions and professional associations) continue to file the vast majority of 1324b cases. There has been no appreciable increase in the number of document abuse cases being prosecuted by OSC compared with the prior five year period.

The number of employment eligibility verification (paperwork)-only cases filed by ICE has increased over the most recent five year period, when there were 177 paperwork-only cases filed; in the previous five year period, there were no paperwork-only cases filed.

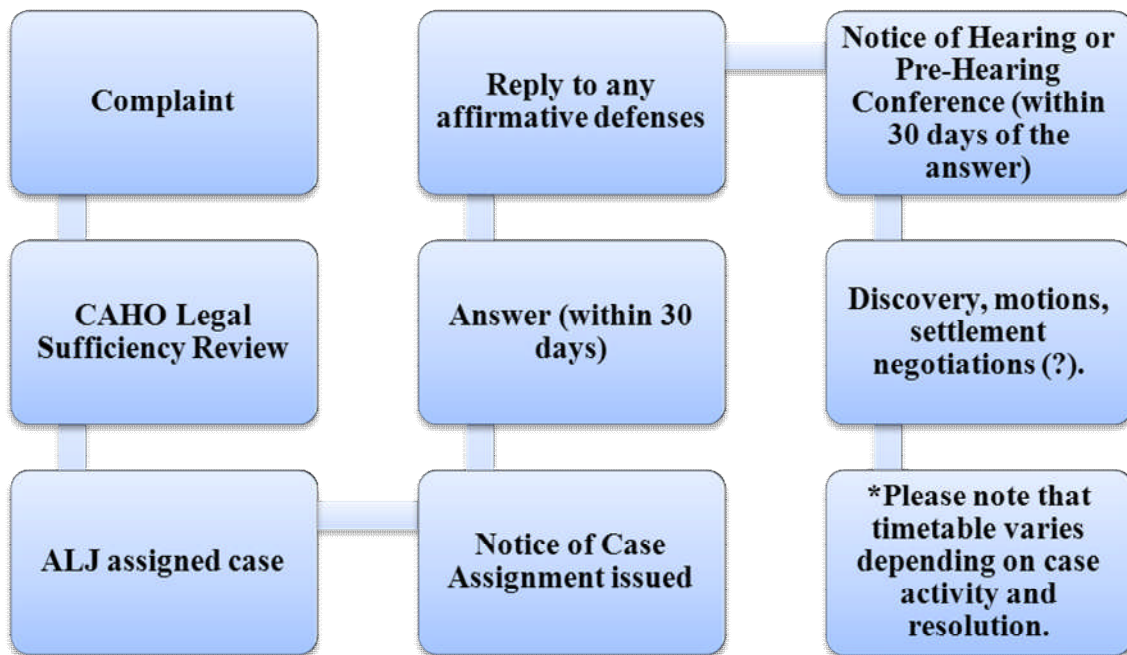
More detailed information about OCAHO's caseload and trends will be discussed in the response to Question 4 below.

3) In order to gain a better understanding of OCAHO 274B proceedings, please describe the steps taken and relevant timetable commencing with the filing of a complaint.

OCAHO Response: The 274B (or section 1324b) adjudication process starts with the filing of a complaint by either OSC or the individual (or organizational) Complainant. Once the submission is reviewed for legal sufficiency, the case is assigned to the ALJ, and a Notice of Case Assignment is served on both parties. The Respondent has 30 days from service of the Notice of Case Assignment in which to file an answer, and the Complainant may subsequently file a reply to each affirmative defense asserted in the answer. Within 30 days of receipt of the Respondent’s answer, the ALJ will notify the parties of a date and time for a hearing or prehearing conference.

From this point on, the timeline varies from case to case. Depending on the circumstances of the case, a prehearing conference may be held, motions may be filed, discovery may be conducted, and parties may enter into settlement negotiations. The ALJ also has discretion to grant continuances upon a showing of good cause. Thus, it is difficult to fix an exact timetable for culmination of 274B proceedings.

274B Case Procedures



4) Please provide case filing statistics for FY 2006 through FY 2012 in the following categories:

- a. Total number of cases filed in each fiscal year under Sections 1324A, B and C of Title 8 of the U.S. Code.

8 U.S.C.	FY06	FY07	FY08	FY09	FY10	FY11	FY12
1324A	--	--	5	13	54	58	70
1324B	10	39	18	18	36	26	26
1324C	--	--	--	--	--	--	--

b. Total number of cases filed in each fiscal year by ICE, OSC, Individual Complainants.

	FY06	FY07	FY08	FY09	FY10	FY11	FY12
DHS	--	--	5	13	54	58	70
OSC	--	--	2	--	3	2	4
Individual complainants	10	39	16	18	33	24	22

c. Of the Section 1324A cases filed in each fiscal year, the total number of cases asserting Knowing Hire Violations Only, Paperwork Violations Only, Both Knowing Hire and Paperwork Violations.

	FY06	FY07	FY08	FY09	FY10	FY11	FY12
KH	--	--	--	--	2	1	7
PW	--	--	5	10	49	53	60
KH/PW	--	--	--	3	3	4	3

d. Of the Section 1324B cases filed in FY2006-FY2012 by OSC, the total number of cases asserting Citizenship Status Discrimination (CSD) Only, Document Abuse

Discrimination (DAD) Only, Pattern and Practice Discrimination (PPD) Only, Combination of CSD, DAD, PPD.

OCAHO Response: OCAHO does not track this information.

- e. Of the Section 1324B cases filed in FY2006-FY2012 by Individual Complainants, the total number of cases filed by Pro Se litigants.

FY06	FY07	FY08	FY09	FY10	FY11	FY12
<i>10</i>	<i>37</i>	<i>9</i>	<i>12</i>	<i>11</i>	<i>8</i>	<i>11</i>

- f. Of the Section 1324A cases filed in FY2006-FY2012, the average number of days between filing and final disposition.

FY06	FY07	FY08	FY09	FY10	FY11	FY12
<i>--</i>	<i>--</i>	<i>103</i>	<i>161</i>	<i>226</i>	<i>206</i>	<i>221</i>

- g. Of the Section 1324B cases FY2006-FY2012, the average number of days between filing and final disposition.

FY06	FY07	FY08	FY09	FY10	FY11	FY12
<i>225</i>	<i>131</i>	<i>193</i>	<i>238</i>	<i>215</i>	<i>202</i>	<i>235</i>

- h. Of the Section 1324A cases filed in FY 2006-FY 2012, the total number of cases disposed of by summary decision, recommended decision and order following a hearing on the merits, and consent findings.

OCAHO Response: OCAHO does not track this information.

- i. Of the Section 1324B cases filed in FY 2006-FY 2012, the total number of cases disposed of by summary decision, recommended decision and order following a hearing on the merits, and consent findings.

OCAHO Response: OCAHO does not track this information.

- j. Of the Section 1324A cases filed in FY 2006-FY2012, the average civil money penalty imposed per paperwork violation.

OCAHO Response: OCAHO does not track this information.

5) **Administrative Law Judge Positions.** For the first ten years of its existence, the Office of the Chief Administrative Hearing Officer employed four or more Administrative Law Judges full-time. For the past several years, OCAHO has employed only one ALJ. Based on the increased number and complexity of cases handled by Judge Thomas in the past several budget cycles, and the need to ensure proper coverage, are the resources sufficient?

OCAHO Response: Although OCAHO's caseload has increased in size and complexity, OCAHO has continued to meet its case completion goals. OCAHO continually reviews its budget and resources to ensure sufficient coverage of its cases and the need to make necessary resource requests through appropriate channels. OCAHO is also open to exploring the use of mediation to expedite resolution of its cases.

6) **Office Operations:** Can you please outline the structure of the staff positions and operations within the Office of the Chief Administrative Hearing Officer, including job titles, duties/responsibilities and contact information? Similar to the earlier question, where and how can this information with regard to staff names, duties and contact information, be secured on a reliable, regular basis?

OCAHO Response: OCAHO has updated its website, including phone number and address. The structure of OCAHO includes: CAHO, Deputy CAHO (on detail), Judicial Law Clerk to the CAHO, Administrative Law Judge, Paralegal, Judicial Law Clerk to the ALJ, Administrative Specialist, Staff Assistant, Student, Management Analyst, Program Analyst (Clerk). Additional staff names and titles can be secured, as needed, by contacting the Office at 703-305-0864.

7) **OCAHO Contact Information for Docketing Purposes:** Who is the clerk of the Office of the Chief Administrative Hearing Officer for purposes of serving and/or communicating with this office? What are the address, phone number, fax and email of the Clerk? Is the Clerk's contact information made available on OCAHO webpage? If the information is not currently posted to the webpage, can it be added? Would you consider publishing this information in alternative directories, such as the Yellow Book, the Congressional Directory, etc.?

OCAHO Response: OCAHO's Program Analyst serves as the OCAHO clerk for filing and docketing purposes. Contact information for the office has been added to EOIR's website in response to your request. Because this information is now easily accessible on EOIR's website, we do not plan to publish it in alternative directories.

General EOIR Topics

I. Immigration Court Practice Manual (ICPM) and Court Practices

AILA Background: In past meetings, AILA has discussed the inconsistent application of the ICPM and the difficulties of unpublished local rules of procedure. *See* AILA-EOIR minutes from March 2012, November 2011, and November 2010 liaison meetings. (AILA InfoNet Doc. Nos. 12092654, 11121349, 10122237)

The AILA Liaison Committee has recently conducted a survey of AILA practitioners regarding court practices. We received responses from practitioners located throughout the United States. Over half of those who responded indicated that the court they regularly practice before has local rules or requirements beyond the ICPM, yet very few of them reported that the local practice requirements were available on the court website. While many courts were lauded for maintaining an even playing field, the majority of those who responded to the survey indicated that the ICPM is applied to the private bar more stringently than it is applied to DHS.

While AILA supports measures to increase court efficiency, such measures should not interfere with due process, an applicant's right to counsel, an applicant's ability to meet his or her burden of proof, or an applicant's access to a just determination. The creation of rules and requirements that are not published or the institution of rules that are only applied to select parties interferes with due process, access to counsel, and access to a fair and impartial determination.

For example, a number of immigration judges and courts nationwide will not allow counsel for respondents to appear by telephone under any circumstances. Given the rural nature of much of the nation and the fact that a significant percentage of attorneys may be located more than 100 miles away from a court, the enforcement of this local rule limits a noncitizen's access to counsel and right to counsel. AILA members also report that a number of judges refuse to grant joint motions for administrative closure, which interferes with a just determination. In addition, unreasonable limitations on the submission of evidence can interfere with an applicant's ability to meet the burden of proof; for example, a Department of State country conditions report alone may be 50 to 60 pages. AILA members also report that certain immigration judges have adopted the practice of terminating or denying applications for Cancellation of Removal for Certain Non-Permanent Residents on the issue of exceptional and extreme hardship based on the documentary record before an individual hearing is conducted, which interferes with the applicant's right to a fair hearing.

In previous meetings, EOIR has responded that AILA members should bring the conduct of an individual immigration judge or court to the attention of the relevant ACIJ. While AILA appreciates the open line of communication, most practitioners will not utilize this procedure for fear of creating a hostile environment in a court before which they must appear on a regular basis. Practitioners report local rules or requirements beyond the ICPM in Atlanta, Arlington, Bloomington, Charlotte, Cleveland, Dallas, Denver, Detroit,

Guaynabo, Honolulu, Memphis, Miami, New York, Omaha, Los Angeles, San Diego, St. Louis, and Seattle.

AILA Questions:

- (a) Given the national scope of the variation from the practice manual, will EOIR revisit its policy and direct individual immigration judges and courts to abide by the ICPM?
- (b) If EOIR supports local rules, can the local rules and requirements of the individual judges and courts be widely and easily available through the EOIR website and/or as an addendum to the ICPM?
- (c) AILA also requests that EOIR evaluate any permitted local rules and requirements for reasonableness and fairness.

EOIR Response: The publication of the Practice Manual replaced Local Operating Procedures, and parties are expected to follow the Practice Manual. In addition, the provisions in the Practice Manual are to be applied in a uniform manner nationwide. Therefore, local practices which contradict the Practice Manual's provisions are not permitted, including local practices that are expressed through "standing orders" or "local operating procedures."

Please remember, however, that the provisions set forth in the Practice Manual are binding on the parties who appear before the Immigration Court, unless the Immigration Judge directs otherwise in a particular case. That is, Immigration Judges retain the authority to set specific requirements on a case-by-case basis. If an AILA member believes that an Immigration Judge is imposing an across-the-board requirement that is in variance with the Practice Manual, the member is welcome to raise this issue with the appropriate Assistant Chief Immigration Judge. In addition, AILA is welcome to bring to the attention of the Practice Manual Committee any "local rules" or "requirements beyond the ICPM" that the Immigration Courts listed in this question are using.

Follow-up comments: AILA: What about telephonic hearings? Should differences in procedure be brought to the attention of the local chapter?

EOIR Comment: There is an OPPM (No. 08-04) that addresses telephonic hearings. Please contact the appropriate Assistant Chief Immigration Judge (ACIJ).

AILA Comment: What about joint motions?

EOIR Comment: We are interested in instances when joint motions are denied, but need more information. Please contact the appropriate Assistant Chief Immigration Judge (ACIJ).

II. Bond Issues

AILA Background: (a) In the November 2010 liaison meeting, we discussed the issue of obtaining speedy bond hearings for detainees who may be moved from one location to another due to DHS bed-space issues. In the AILA EOIR Liaison Committee survey referenced above, over half of the practitioners indicated that the court will never hold a bond hearing for an individual who is in transit to another court's jurisdiction. Over two-thirds of practitioners indicated that the court will not hear a bond hearing while an alien is in transit under any circumstance. Practitioners report that the policies of the courts regarding bond hearings for aliens in transit result in aliens facing significant delays in bond hearings – ranging from 11 to 45 days.

AILA Question: Given that most bond issues will moot out before any bond appeal is decided and that the delay in bond hearings is essentially a non-appealable issue, would EOIR address this issue through the issuance of an OPPM or other guidance?

EOIR Response: Immigration Judges make determinations regarding jurisdiction over a bond proceeding case by case in accordance with applicable law. Accordingly, EOIR does not plan to issue an OPPM regarding this matter.

AILA Background: (b) DHS, in accordance with its policies and procedures, will frequently detain aliens with high or no bond, even if there is no statutory bar to release. In a high percentage of these cases, the detainee is male, the father figure in a relationship, and the main provider to the family. Accordingly, prompt redetermination of a custody situation by the immigration court is urgently needed. In normal criminal court cases, such a determination is made the day of the arrest, or the next business day. However, in a recent survey of AILA members, around a third of the respondents indicated a wait of 6 to 10 calendar days between the request and the bond hearing, with another third reporting waits of 11 calendar days or longer. Chapter 9.3(d) of the ICPM says that bond hearings should be scheduled for the "earliest possible date." At the November 2011 liaison meeting, EOIR indicated that the detained docket was the highest priority.

AILA Question: What steps has EOIR taken to devote resources to expedite bond hearings? Although the ICPM states first preference for a bond hearing is in the jurisdiction of the detainee, could EOIR allow other judges to hear redetermination cases, detail judges to assist with the backlog, or designate special judges at EOIR headquarters to hear bond redetermination requests?

EOIR Response: Detained hearings, including bond, are EOIR's highest priority. EOIR constantly reviews its dockets to determine the best approach to allocate resources to its highest priority cases, including bond. In fact, EOIR's non-detained courts have increasingly become courts with mixed dockets, in response to caseload fluctuations in volume and location. For example, the Charlotte Immigration Court, which conducts non-detained hearings, conducts bond proceedings regularly in its area. Similarly, the Cleveland, Arlington and Los Angeles Immigration Courts, which were established as

non-detained court locations, have increasingly entertained detained cases by conducting detained hearings, including bond, in new hearing locations by video-teleconferencing.

Initial delays could be due to the fact EOIR may not have jurisdiction over the person, but rather DHS may have jurisdiction. EOIR obtains jurisdiction with the issuance and service of the NTA. In order to increase efficiency, private attorneys need to speak with DHS in order to narrow the issues before appearing before the judge.

AILA Question: Has EOIR set goals for the scheduling of bond hearings such as the maximum number of days between the date of the request and the bond hearing? If yes, can these be provided to AILA?

EOIR Response: Yes. EOIR has a case completion goal of completing 85% of all bond proceedings within 21 days. This is an internal, aspirational agency goal, and does not require the completion of any given bond proceeding by any given date. Expectations for scheduling are consistent with this goal, meaning that bond proceedings must be scheduled at the earliest practicable hearing date.

AILA Question: Has EOIR seen any changes on the detained docket (in relation to bond, master calendar, and individual hearings) since the last liaison meeting and since the announcement of DACA?

EOIR Response: No major changes. Some relevant statistics include the following: bond proceedings completions are down 10%, detained master calendar hearings are down 13%, and detained individual hearings are down 10%.

III. Asylum Filing Issues

AILA Background: Backlogs in certain immigration courts can cause respondents to wait many months for an initial or reset master calendar hearing to be held. These delays can prejudice a respondent's ability to timely file an application for asylum because OPPM No.00-01 establishes the general rule that defensive asylum applications can only be filed in open court. OPPM No.00-01 at 15. Though OPPM 00-01 does allow out of court filings in certain instances, these filings are the exception.

The 9th Circuit has held that filing I-589s by mail is permissible. *See Toj-Culpatan v. Holder*, 612 F.3d 1088, (9th Cir. 2010). In addition, at least three Circuit Courts of Appeals (*Pavlov v. Holder*, 7th Cir. 10/1/12; *Cheema v. Holder*, 9th Cir. 9/6/12; *Ribas v. Mukasey*, 545 F.3d 922, (10th Cir. 2008) have held that the written warnings provided on the asylum application are sufficient to invoke the penalty for a frivolous finding, undermining previous justifications for the "filed at Master Calendar Hearing" rule.

AILA requests that EOIR amend OPPM 00-01 to permit liberal court clerk window counter filing and mail-filing of defensive asylum applications. Counter-filing or mail-filing will have the effect of eliminating the risk of erroneous deprivation of a respondent's right to file a defensive asylum application due to delayed hearings. AILA

notes that the window- or mail-filing of I-589 applications could reduce the court's docket and promote court efficiency.

AILA Questions: Will EOIR consider rescinding or amending OPPM 00-01? If not, what is the basis of EOIR's refusal to do so?

EOIR Response: EOIR will defer comment on asylum application filing due to ongoing asylum clock litigation.

IV. Access to EOIR Information

AILA Background: In the March 2009 liaison meeting, we discussed the possibility of access to paper copies of computer docket sheets that contain call-up dates and other information not available through the EOIR information number. (AILA InfoNet Doc. No. 09060360.) Private attorneys still do not have access to either a paper or computer docket, but it is apparent that ICE counsel, as well as ICE officers, do have this information. Courts throughout the country, both federal and state, allow BOTH plaintiffs and defense counsel to access an electronic docket. Additionally, allowing private counsel to access the immigration court electronic docket would reduce the need for counsel to contact court clerks and would allow for more efficient use of court staff time.

AILA Question: Please describe the level of access ICE/DHS has to EOIR databases, dockets, or other data and what information is provided to ICE/DHS by EOIR through means other than court orders or decisions.

EOIR Response: DHS/ICE can obtain information about individual cases through electronic means. This is the same basic information that is available through the 1-800 number. Under the Memorandum of Agreement (MOA) between EOIR and DHS issued on October 29, 2012 governing the electronic exchange of data, DHS agrees not to remove aliens based on electronic receipt of EOIR's decision in a case, and agrees to forestall such action until DHS receives the decision in the manner in which it otherwise would receive it as a party to the immigration proceedings.

DHS/ICE can also obtain docket information through a web service. Using a date range, DHS/ICE can obtain the docket information for a certain hearing location. In addition, there are MOAs in certain cities between the immigration court and the ICE Chief Counsel's Office to provide electronic daily court calendars to ICE. Paper versions of the daily calendars are provided to DHS in those courts not receiving them electronically. The information posted is the same information as on the 1-800 number.

AILA Comment: Can AILA get a copy of the MOU?

EOIR Comment: EOIR will check into that.

AILA Question: Assuming that ICE/DHS has access to EOIR databases, dockets, or other data or that ICE/DHS is provided information through means other than court orders or decisions, why is this information not available to the private bar?

EOIR Response: Case-related information is available to the private bar through the EOIR 1-800 number. EOIR is in the final stages of preparing to launch an electronic registration tool for attorneys and fully accredited representatives. This project lays the foundation for any future electronic access to EOIR information.

AILA Question: This situation provides a distinct procedural advantage to DHS, and it implicates fundamental fairness and issues of ex-parte communication. Does EOIR have any plans to address this due process concern?

EOIR Response: EOIR has finalized an MOA with DHS, as mentioned in the response to (a), and case-related information is available to the private bar through the EOIR 1-800 number. EOIR has thus put into place official information-sharing procedures with DHS regarding immigration court matters, but also provides similar information to the private bar. We invite suggestions from AILA regarding how to handle perceived due process matters.

AILA Background: Almost half of the AILA members surveyed reported at least one case in which DHS counsel or ICE Deportation Officers received a decision e-mailed or faxed by the immigration court or the BIA on the day the decision was issued. Yet, the same decision is merely mailed to the respondent or counsel for the respondent via regular U.S. Postal Service mail, which is subject to weather-related delays and human error in its delivery. This provides a distinct procedural advantage to DHS, implicating fundamental fairness, and has resulted in prejudice, including, in some cases, physical removal of clients from the U.S. before counsel has even become aware that a decision has been issued. Particularly in jurisdictions that have not yet overruled the BIA's precedent regarding the departure bar and motions to reopen, removal before counsel and the respondent have received and reviewed the order of removal potentially eliminates a respondent's ability to seek a motion to reopen or reconsider. Even where this is not the case, service of the decision upon DHS counsel by faster or other means than is provided to respondent's counsel often results in respondents having less time to consult with counsel than they would otherwise have. It also creates an appearance of unfairness in the proceedings (which respondents have commented upon to their counsel). AILA believes that sending a decision by fax or e-mail to DHS gives DHS an unfair advantage, and could be seen as improper ex parte communication between the courts or the Board and DHS.

AILA Question: Please address whether, and under what circumstances, Board and court staff has been authorized to serve DHS with decisions by fax or e-mail?

EOIR Response: To address issues presented by AILA in the past regarding DHS obtaining the Board's decision in advance of the regular mail process, the Board implemented the following process. Within the first five (5) days of issuance of the

decision, Clerk's Office policy is not to fax or e-mail a copy of the decision to DHS unless they are likewise able to provide it to respondent's counsel. After the fifth day, the Clerk's Office may provide a copy via fax to the requestor, since it is assumed that both parties would have already received the paper copy by mail. In either case, the Clerk's Office may provide fax copies when extenuating circumstances exist and as resources permit.

By regulation, if an Immigration Judge's decision is in writing, the decision is to be served on the parties by first class mail to the most recent address contained in the record of proceedings or by personal service. 8 C.F.R. §1003.37 (a). If AILA believes this is an ongoing issue that requires attention, then specific examples, with A numbers, should be provided to the Court Administrator in those courts where this is a concern.

AILA Question: Why has the same courtesy not been extended to defense counsel?

EOIR Response: The same courtesy is extended to respondent's counsel as provided to DHS. The faxing or e-mailing of the Board's decision is done by the Clerk's Office, on rare occasions when extenuating circumstances exist, and as resources permit.

AILA Question: What steps, if any, has the Board taken to ensure that respondents are not prejudiced by this practice?

EOIR Response: The purpose for not providing the decision by fax or e-mail to DHS within the first 5 days of issuance unless we are likewise able to provide it to respondent's counsel is to ensure that respondents are not disadvantaged.

AILA Question: Will the Board issue guidance to Board clerks and court staff that decisions should not be issued expeditiously only to DHS?

EOIR Response: The procedures have been in place within the Board for several years. The Board is currently not considering any additional measures. The Board invites AILA to provide specific A numbers to see if a pattern or practice can be detected to better address the perceived problem.

V. Correspondence from the Board

AILA Background: The majority of the survey respondents reported receiving correspondence from the BIA more than one week after the date of issuance by the BIA. Anecdotally, some members on the west coast report that they received briefing schedules and trial transcripts more than two weeks after the date of issuance by the BIA.

In cases where briefing schedules and large transcripts are sent by the U.S. Postal Service regular mail delivery, AILA is concerned that some of these packets may be too thick or too heavy for the specifications of first class mail delivery and that the U.S. Postal Service may be downgrading the items to parcel post or media mail.

AILA Question: Will EOIR verify with the BIA that procedures are in place in the BIA mailroom to ensure that all mail sent from the BIA to respondents and representatives satisfies first-class mail specifications?

In the same survey, the majority of the respondents reported that the BIA granted deadline extensions or leave to late file motions in an effort to cure problems related to postal delays. AILA commends the BIA for generously granting extensions and leave to late file when these postal issues arise.

EOIR Response: EOIR was not aware of this issue and appreciates AILA informing us. If AILA can provide specific incidents in which this has occurred (A# and item mailed), that information would help us diagnose the problem.

The Board's procedure is to attach a priority sticker to all mailings that weigh more than 13 oz. to ensure the post office gives priority handling to the mail piece. Anything 13 oz. or less does not get designated as priority mail, but should be treated as first class mail by the postal service. According to the USPS Domestic Mail Manual, we are not required to mark packages that are mailed at the First Class rate. Subclasses of mail, such as parcel post or media mail, do require markings, but we do not use those classes of mail. The vast majority of our briefing schedules are mailed as priority mail due to the weight of the transcripts. The remainders are mailed at the first class rate. The postal service should not be treating our mailings as parcel post, as we apply first class postage and the package is not marked for parcel post. Nonetheless, the Board will review its mailroom procedures to ensure that our process does not invite postal error.

VI. Cancellation of Removal for Non-Permanent Residents – Annual Cap on Grants for the Fiscal Year

AILA Question: AILA recognizes that implementation of the Suspension/Cancellation Cap is governed by 8 C.F.R. § 1240.21(c) and OPPM 11-01. The OPPM states that as of the "cut-off" date for cases subject to the annual cap, immigration judges must reserve their decisions and the procedure for allocating the remaining numbers for the fiscal year are governed by OPPM 11-01 II(B). It appears the cap may be reached once again prior to the end of this fiscal year. Please provide us with the current number of cases granted at the beginning of Fiscal Year 2013.

EOIR Response: As of November 15, 2012, 2,943 cases subject to the cancellation cap have been granted for FY 2013.

AILA Questions: Additionally, we understand that EOIR recently (in August 2012) instructed immigration judges to adjudicate a number of cases subject to the cap, even though EOIR had announced several months earlier that all numbers for the fiscal year had been used. Did EOIR lift the cap in August 2012, or were the cases granted at that time being allocated based on the OPPM? If cases previously thought to have been used were found to still be available, how many cases were involved? Were judges told to adjudicate cases which were heard through a certain date? If so, what is that date?

If the cap is reached again prior to the end of this fiscal year, will EOIR follow the same process? Is it possible to provide notice to AILA that cases on hold are being adjudicated in accordance with the OPPM? Will EOIR consider publishing a cut-off date for these cases, similar to the State Department visa bulletin or the cut-off numbers published for DV lottery applications?

EOIR Response: As provided in OPPM 12-01, the Chief Immigration Judge will notify the Immigration Courts when 3,500 suspension/cancellation cases have been granted in a fiscal year. The date of this notification will be referred to as the cut-off date. As of the cut-off date, Immigration Judges must reserve their decisions in any non-detained suspension/cancellation cases subject to the cap. The cap is the annual limitation on the number of suspension/cancellation cases that can be granted in any fiscal year (4,000 cases).

On February 3, 2012, approximately 3,500 had been used in FY 2012, and OCIJ instructed the courts to follow the procedures set forth in OPPM 12-01 for non-detained cases (i.e., reserve decision in all non-detained cases involving suspension/cancellation subject to the cap.) As provided in the OPPM, these procedures did not apply to detained cases involving suspension/cancellation applications. The detained cases would continue to be adjudicated and decisions issued in the normal course of business.

After the cut-off date (February 3), there remained 500 numbers for the remainder of FY 2012. In August 2012, EOIR released some of these remaining numbers to the non-detained cases in accordance with the OPPM, i.e., based on the date and time of the reserved decision. In terms of projections, 3,500 will most likely be reached by the end of December.

If the cap is reached again prior to the end of this fiscal year, will EOIR follow the same process? *YES*. Is it possible to provide notice to AILA that cases on hold are being adjudicated in accordance with the OPPM? *No*. Only the parties to the proceedings are provided such notice. If a decision is reserved pursuant to the OPPM, the parties are notified by the issuance of the decision. Will EOIR consider publishing a cut-off date for these cases, similar to the State Department visa bulletin or the cut-off numbers published for DV lottery applications? *No*, as the situation is distinct from a visa petition approval. Suspension/cancellation cases in which decisions are reserved because there are no longer any numbers available are still pending with the court. Unlike visa petitions, these cases are not simply waiting for a number. A decision still needs to be rendered. Also, in some cases (detained), the matter is fully adjudicated and final decisions are issued.

EOIR Comment: Does AILA have any suggestions?

AILA Comment: Judges should be able to issue denials as that would enable the judge to get the case off the docket. Ultimately this needs statutory reform.

VII. Attorney Change of Address

AILA Background: Attorneys are experiencing difficulty around the country when they change firms or move addresses. There does not appear to be uniformity for changing an attorney's address at the local level. In some instances, an attorney may have to file a letter and EOIR-28 in every case in which he or she is counsel of record. In other instances, attorneys have been permitted to file a blanket letter for all cases at an immigration court. If cases have been administratively closed for a long period of time, it may be difficult to file a change of address in every case. For practitioners who do not limit their practice to one court, it can be difficult or impossible to comply with the requirements of each court, or to even determine the requirements. When an attorney changes their contact information with the BIA, they must look up every open case that they have before the BIA and notify the BIA individually of the change by filing a revised EOIR-27 in each case.

AILA Question: Due to the various difficulties that attorneys encounter in notifying courts of changes of address (even where properly filed EOIR-28s have the correct contact information), has DOJ considered the implementation of a national, centralized EOIR database for attorney contact information (both for local immigration courts and the BIA)?

EOIR Response: EOIR is in the final stages of preparing to launch an electronic registration tool for attorneys and fully accredited representatives. In early 2013, the system may be ready for launch. This electronic registration will individually and uniquely identify each registered attorney or fully accredited representative and associate the information provided during registration with that attorney or accredited representative. Electronic registration will increase efficiency by reducing system errors in scheduling matters and providing improved notice to attorneys and accredited representatives. Further, electronic registration will ultimately enable an electronic filing system that will reduce the time and expense presently incurred with paper filings.

As part of the new electronic registration, once an attorney is registered, she will be able to file the EOIR-27 and EOIR-28 electronically. If an attorney changes her address, she will be able to update that in the registration system and also file new 27/28s in her cases to reflect the changed address.

AILA Question: In the alternative, would EOIR consider elaborating on the change of address section in the ICPM, in order to advise attorneys (and immigration court staff) on how to change their contact information before the local courts?

EOIR Response: Chapter 2.3(h) (Address obligations of counsel) of the Immigration Court Practice Manual provides guidelines regarding how an attorney keeps the Immigration Court apprised of his or her change of address or telephone number. AILA is welcome to submit comments to the Practice Manual Committee regarding this provision. For information regarding the submission of comments to the Committee, see Chapter 13 (Other Information).

AILA Question: Further, what is the best method to ensure that immigration court staff is fully trained to compare information on incoming Forms EOIR-28 with the database, so as to guarantee that the system is and remains current?

EOIR Response: If AILA believes this is an ongoing issue in a particular court that requires attention, specific examples, with A numbers, should be provided to the Court Administrator.

AILA Question: What about cases that were submitted prior to the implementation of the electronic system?

EOIR Response: EOIR still has to enter those cases in the database. In general, we will have one foot in the paper world and one foot in the electronic world. Even after the system is operational, attorneys will have to follow-up with a paper submission of the E-27s and E-28s. Hopefully, this system will enable EOIR to more quickly improve the registration process. EOIR is committed to improving the infrastructure. Please reach out to EOIR as we move forward with the electronic initiatives, as we want to ensure that we have a good system for all.

VIII. Model Hearing Program

AILA Question: What progress are attorneys, legal representatives, and legal affiliates/associates having within the Model Hearing Program (MHP), in terms of pro-bono representation of indigent immigrants, the increase in knowledge about immigration court procedures, and their competency in following/challenging them? What feedback has EOIR received on the MHP? How many of these programs have taken place to date? Are there other professional development opportunities provided for participants in the MHP, outside of the MHP, and if not, how can these be made more accessible?

EOIR Response: The Office of Legal Access Programs (OLAP), which oversees the Model Hearing Program (MHP), does not currently measure the MHP for its impact in these areas. Past evaluations of MHP participants (conducted soon after the MHP was created in 2001) showed positive results regarding increased knowledge about immigration court procedures. Over 50 MHPs have been held since 2001. The first was in San Diego.

The purpose of this program is to assist the local chapters to train *pro bono* attorneys. It is important for the participants to receive *pro bono* training before they go before the judge. There is no charge for this program. Training materials are posted on the website. The training manuals have samples and hypotheticals that may be helpful. If anyone has any questions, they may contact Steven Lang, Program Director, Office of the Legal Access Program, Office of the Director, (703) 305-1295.

There are no other professional development opportunities provided for participants in the MHP. The Office of Legal Access Programs (which oversees the MHP) welcomes AILA's ideas for expanding and improving the MHP.

IX. Remote Evaluation Process and Methodology

AILA Background: AILA is aware that EOIR used to conduct court evaluations in person, but that a new, remote evaluation process has been implemented. Moreover, it is AILA's understanding that the former process was overseen by the OCIJ's Chief Clerk, and that the current process is overseen by the OCIJ's Organizational Results Unit (ORU). It is our further understanding that the new remote process will include anonymous online surveys for IJs, supervisors, court staff, AILA attorneys, the private bar, nonprofit organizations, and DHS. Later, it will also include separate one-hour VTC group interviews with AILA attorneys and DHS, among others.

AILA Question: Has the new remote evaluation process been implemented yet? If yes, when is the targeted completion date? What courts are included in the evaluation?

EOIR Response: Yes. The new procedures were used to evaluate the York Immigration Court in 2011. Evaluations began in 2012 for the following Immigration Courts: San Diego and East Mesa, January; Miami, March; Omaha, July; Seattle, August; San Antonio, September; Tucson, October; and the Buffalo and Batavia Immigration Courts, November. These courts are currently in various stages of the evaluation process. In January 2013, the Boston Immigration Court will be evaluated. The ORU anticipates conducting 9 to 12 court evaluations a year.

AILA Question: When and how can AILA attorneys expect to participate in the anonymous online surveys and subsequent video teleconference interview groups? How is EOIR selecting and contacting AILA attorneys to participate in the process?

EOIR Response: AILA members and other Private Bar attorneys have participated in the evaluation process under the new procedures. Generally, six to eight weeks before a scheduled court evaluation, the ORU contacts the Court Administrator (CA) and requests the contact information (name, telephone number, and e-mail address, if available) of the local/regional AILA Liaison to that Court. The ORU then contacts the AILA Liaison. The AILA Liaison is informed about the upcoming evaluation, and briefed on the various aspects of the program (anonymous on-line surveys, VTC group interviews, etc.). The Liaison is asked to provide e-mail addresses for AILA attorneys appearing before the court.

If the AILA Liaison provides only a few attorney names/e-mail addresses, then each attorney receives an anonymous on-line survey.

If the AILA Liaison provides several hundred names/e-mails, the ORU will compare the AILA list with CASE to ensure each of the attorneys has submitted a Form EOIR-28 to the court during the 12 month period being evaluated. Following this search, if the list still contains hundreds of names, the ORU again queries CASE to determine which of those attorneys have submitted multiple Form EOIR-28s during the evaluation period (e.g., five or more). The ORU may run additional such queries until there is a manageable number of attorneys. Once the list is complete, the anonymous on-line surveys are e-

mailed to these attorneys (generally four to five weeks in advance of the beginning of the evaluation).

AILA Question: Can AILA, as an organization, participate to ensure that the input and suggestions of our members are included in the evaluations?

EOIR Response: The local AILA Liaison is urged to participate in both the anonymous on-line survey and AILA/Private Bar VTC group meeting. In addition, the local AILA Liaison is asked to encourage all AILA members to also participate in both the anonymous on-line survey and VTC group meetings. The local AILA Liaison may also present issues on behalf of AILA members who did not receive the anonymous on-line survey and/or are unable to attend the group VTC session. AILA's major concerns are included in the court draft action plan presented to the Chief Immigration Judge.

AILA Question: When will results be made public?

EOIR Response: The evaluations are an internal management tool and, as such, the results are not publicized. However, as a result of the process, the Chief Immigration Judge issues a Final Action Plan to the court, which may address some or all of AILA's concerns. The Final Action Plans are also an internal management tool and, as such, are not publicized. In order for the court to implement some of the items in the Chief Immigration Judge's Action Plan, the court may be required to meet with the local AILA Liaison and other outside parties to formulate an effective implementation plan. There will not be a formal report because this survey is not conducted by an independent body. The purpose of this survey is for OCIJ to spot problems. Also there maybe FOIA and privacy concerns.

AILA Comment: Can AILA submit questions for the survey?

EOIR Response: If you have any questions or concerns about the survey, you may contact Joey Egozcue, Chief of Organizational Results, (703) 305-0099.

X. Upper Management Changes at EOIR, Hiring Plans

AILA Background: AILA commends EOIR for its work in hiring qualified individuals and filling immigration judge positions where necessary throughout the United States. However, AILA is aware that on January 21, 2011, a targeted hiring freeze was announced which has curtailed EOIR's hiring plans, especially in light of the backlog that EOIR is trying to address.

AILA Question: Is the hiring freeze that was announced on January 21, 2011 still in effect? If the targeted hiring freeze is still in effect, how is EOIR addressing attrition and filling any vacancies in immigration judge positions that arise?

EOIR Response: Yes. However, while the freeze is in effect, certain waivers may be granted. In addition, EOIR has reached the point where we can anticipate that

immigration judge positions that are vacated in the future by retirement or other attrition may be backfilled for a period of time. Due to the different hiring needs in the 59 courts, however, positions vacated in a given court location may be reallocated to other locations.

AILA Question: Please provide the criteria for new hires in immigration judge positions.

EOIR Response: OCIJ selects immigration judges on the basis of six criteria:

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

AILA Question: How many new positions are expected to be filled in the next year and which courts are targeted to have openings for immigration judges?

EOIR Response: Due to the hiring freeze, it is not clear how many positions will be filled in the next year. EOIR has identified about 300 vacancies.

AILA Question: Please advise us an update to any upper management changes at EOIR during the past year.

EOIR Response: EOIR's key personnel are listed on the EOIR Website. This past year, EOIR appointed five Assistant Chief Immigration Judges: Print Maggard (SR), John Davis (DEN), Bob Weisel (NYC), Rico Bartolomei (SND), and Chris Santoro (HQ). For biographical summaries and date of appointment for these ACIJs, see EOIR's website at <http://www.justice.gov/eoir/fs/ocijbio.htm>.

EOIR has pending job announcements for the following positions: Deputy Director, General Counsel, Vice Chairman of the Board, Deputy Chief Immigration Judge, and Assistant Director for Administration.

AILA Comment: Can temporary judges be used?

EOIR Response: This is under discussion. OCIJ's authority is different than the Board's authority for appointing temporary members.

XI. Regulatory Update

AILA Question: EOIR has been working on a number of regulations which, as of our last meeting, were in various stages of drafting and review. *See* AILA-EOIR minutes from March 2012. (AILA InfoNet Doc. No. 12092654.) Please provide an update.

EOIR Response: EOIR is committed to meeting with AILA and other public stakeholders to discuss regulatory issues. As discussed at the March 29, 2012, AILA-EOIR Liaison Meeting, EOIR is currently working on several regulatory matters, including those addressing ineffective assistance of counsel, the “departure bar,” mental competency issues in proceedings before EOIR, recognition and accreditation, and regulatory review pursuant to Executive Order 13563.

Ineffective Assistance of Counsel

EOIR continues to push within its limits for publication of the proposed regulation in response to *Matter of Compean, Bangaly & J-E-C-*, 25 I&N Dec. 1 (A.G. 2009) addressing ineffective assistance of counsel. This regulation continues to be one of EOIR’s highest priorities. As noted during the Spring 2012 meeting, publication of a regulation can be a lengthy process because EOIR does not control the internal timelines of Departmental components and other agencies which must also review and provide input on the regulation. The regulation is currently under review at the Department of Homeland Security. Upon publication of the proposed regulation in the Federal Register, stakeholders will have an opportunity to provide comments during the notice and comment period.

Departure Bar

In June 2012, EOIR provided a response to the petition for rulemaking filed by the American Immigration Council requesting amendment of the regulatory provision known as the “departure bar.”¹ In particular, EOIR partially granted the petition, committing to initiating a rulemaking proceeding to amend the departure bar regulatory provisions, without committing to any particular outcome for this rulemaking. EOIR is working with both Departmental components and other agencies in order to draft a proposed regulation. Upon publication of the proposed regulation in the Federal Register, stakeholders will have an opportunity to provide comments during the notice and comment period.

¹ The “departure bar” is the regulatory provision at 8 C.F.R. sections 1003.2(d) and 1003.23(b)(1) that prohibits aliens from filing a motion to reopen or reconsider with the Board of Immigration Appeals (Board) or immigration courts after their departure from the United States. This regulatory provision also renders a motion to reopen or reconsider withdrawn if the alien departs the United States while the motion is pending.

Mental Competency

EOIR drafted an Advance Notice of Proposed Rulemaking (ANPRM) to solicit input from the public regarding mental competency issues in immigration proceedings before EOIR. The ANPRM is currently under review at the Department and, following Department clearance, will be submitted to the Office of Management and Budget for review. A proposed regulation addressing these issues continues to be a priority for EOIR and the agency is moving as quickly as it can within the time constraints imposed by the regulatory process.

Recognition and Accreditation

As noted during the Spring 2012 meeting, EOIR hosted two open public meetings in March 2012 to discuss potential amendments to the EOIR regulations governing the recognition of organizations and accreditation of representatives who appear before EOIR. EOIR is pleased that more than 150 participants from all over the country, including AILA members, participated in each meeting, either in person or on the phone. EOIR has prioritized amending these regulations because we want to alleviate immigration fraud and enhance the ability of legitimate organizations to assist individuals in proceedings before EOIR. EOIR is an active partner in the inter-agency unauthorized practice of immigration law initiative, and encourages legitimate organizations to provide authorized representatives.

Regulatory Review

On September 28, 2012, EOIR published an ANPRM soliciting comments from the public about regulatory amendments that the Department is considering pursuant to the Department's Regulatory Review Plan and the objectives of Executive Order 13563. This round of review will focus on reviewing and amending the selected EOIR regulations to eliminate duplication, ensure consistency with the Department of Homeland Security's (DHS) regulations, and delineate clearly the authority and jurisdiction of each agency. The ANPRM provided for a 60-day comment period. EOIR is currently working on a draft of a proposed regulation, which will address any comments received. Upon publication of the proposed regulation in the Federal Register, stakeholders will have an opportunity to provide comments during the notice and comment period.

List of Free Legal Service Providers:

EOIR is working with the Department to draft a regulation making improvements to the List of Free Legal Service Providers.

Other Regulatory Priorities

EOIR continues to work with Departmental components and DHS on other regulatory priorities, including William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, P.L. 110-457, 122 Stat. 5074 (TVPRA).

As part of its eWorld Initiative, EOIR is prioritizing publication of a final regulation establishing electronic registration of attorneys and representatives practicing before the Board and immigration courts. Due to the time that has elapsed since publication of the proposed rule, EOIR intends to solicit public comments on this regulation. On June 26, 2012, the Office of Management and Budget (OMB) waived its review of the rule; the rule is with the Department for final clearance before publication. EOIR will also publish a notice in the Federal Register prior to implementing the electronic registration process.

In addition, EOIR will be publishing a final rule addressing the procedure by which EOIR forwards asylum applications for consideration by the Department of State. On October 19, 2012, the Office of Management and Budget (OMB) waived its review of the rule; the rule is with the Department for final clearance before publication. EOIR will also be publishing a final rule making technical amendments to EOIR's regulations governing the discipline of immigration practitioners.

Information regarding EOIR's pending rulemakings can be found on the Unified Agenda, which is available online at <http://www.reginfo.gov>. EOIR welcomes and encourages AILA to continue to provide comments on EOIR's pending rulemakings.

Additional Questions/Comments

EOIR Question: Will EOIR receive a copy of AILA's survey?

AILA Response: We will ask. The results are not percentages of the entire membership, but rather estimated percentages of the members that responded. As a result, the survey reflects only anecdotal evidence.

AILA Question: What is going on with the Board?

EOIR Response: The Board does not currently have any vacancies due to low turnover.

Closing

Director Osuna thanks everyone for the cooperation among the courts, staff and AILA.