

**AILA/OCAHO Meeting Agenda and Minutes**  
October 22, 2015

1. **E-Filing System.** On April 16, 2015, OCAHO informed AILA that its e-filing pilot had been extended until May 29, 2015. Can OCAHO please comment on findings from the pilot program and provide an update on the development of a permanent e-filing program?

*EOIR Response:* The Office of the Chief Administrative Hearing Officer’s (OCAHO) e-filing pilot has resulted in increased efficiencies, such as the more rapid submission and transmission of pleadings, orders and decisions; cost savings in reduced mailings; and a significant increase in enrollment in the pilot. Consequently, OCAHO extended its e-filing pilot program indefinitely upon expiration of the previous pilot period in May 2015, pending implementation of a permanent electronic filing system. OCAHO continues to work with the Executive Office for Immigration Review’s (EOIR) Office of Information Technology (OIT) to explore options for a permanent electronic filing system. While OCAHO does not have a definite date for implementation of such a system, OCAHO is moving forward on this initiative as expeditiously as possible within agency budgetary and logistical constraints. OIT is hopeful that priorities regarding when an e-filing system will be set by the first quarter of FY 2017.

2. **Caseloads of ALJ Thomas and ALJ Paddack<sup>1</sup>**

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

- i. 1324a, including:

1. Number of cases involving paperwork violations only; and,

*EOIR Response:* 21

2. Number of cases involving knowing hire/continue to hire violations.

*EOIR Response:* 7

- ii. 1324b, including:

1. Number of cases initiated by OSC and private litigants; and,

*EOIR Response:* 2 initiated by OSC; 16 initiated by private litigants.

2. Number of document abuse cases.

*EOIR Response:* 4

- iii. 1324c

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<sup>1</sup> Please note that the numbers provided are in the aggregate – not broken down by Administrative Law Judge (ALJ) assigned.

*EOIR Response:* 0

- b. During our April 16, 2015 liaison meeting OCAHO stated that new cases are assigned by rotation. Are the types of cases assigned randomly, by region, or subject matter (e.g. 1324a, 1324b, etc.)?

*EOIR Response:* As previously discussed at our April 2015 liaison meeting, new cases are assigned to the ALJs by rotation, except where there may be conflicts of interest or other business reasons, such as subsequently filed related cases or a need to balance the caseload. Cases are not divided between judges by case type.

### **3. Staffing**

- a. Have any staffing changes been implemented or are there any planned staffing changes for the next 6 months (e.g. law clerks, paralegals, FOIA administrators, etc.)?

*EOIR Response:* Two new Attorney General Honors Program judicial law clerks entered on duty in September, 2015, replacing OCAHO's two previous judicial law clerks, whose clerkships ended. A new volunteer legal intern also replaced OCAHO's Attorney General Honors Program Summer Legal Intern. No other staffing changes have been implemented recently. OCAHO continually evaluates its office staffing needs and will pursue staffing changes as necessary and appropriate. Inquiries regarding additional FOIA administrators should be directed to EOIR's Office of the General Counsel.

- b. Are there any plans to add a third ALJ?

*EOIR Response:* Not at this time.

**3. Alternative Dispute Resolution (ADR), Settlement Conferences and Mediation.** AILA and the CAHO began discussing ADR alternatives in October of 2014. Since then, AILA has provided some examples used by other agencies and the CAHO has initiated mediation training and has begun to explore the implementation of settlement procedures.

- a. Please provide an update on the status of the new settlement conference process discussed at our last meeting.

*EOIR Response:* Since our last meeting, OCAHO has been conducting extensive research into the use of settlement judges by other federal adjudicatory agencies. OCAHO thanks AILA for providing several examples that aided in that research. OCAHO has nearly completed its research and plans to draft procedures for implementation of a settlement judge process in OCAHO cases. Currently, both OCAHO ALJs have completed mediation training, and the Chief Administrative Hearing Officer (CAHO) is scheduled to complete mediation training in early November, 2015. The CAHO would only mediate 1324b cases, as she reviews 1324a cases. OCAHO is also planning to host a stakeholder teleconference on this topic in the near future to solicit further input and feedback from a wide cohort of our stakeholders before finalizing the procedures for the program. OCAHO encourages AILA members to attend the stakeholder teleconference and provide further input.

- b. What is the time frame for when the new settlement process will be available to parties in OCAHO litigation?

*EOIR Response:* OCAHO plans to finalize and implement the process within a reasonable time after it conducts the stakeholder teleconference and considers the input gleaned therefrom.

- c. In the meantime, should parties continue to request a settlement conference by making a motion to the ALJ?

*EOIR Response:* Yes. Until a new settlement judge process is implemented, parties should continue to follow OCAHO's current rules of practice and procedure regarding motions and requests (28 C.F.R. § 68.11) and conferences (28 C.F.R. § 68.13).

- d. How many settlement conferences have been requested by a party in litigation before OCAHO, and has this process shortened the timeframe for litigation?

*EOIR Response:* OCAHO does not currently track this information. However, one of the goals of the settlement conference process is to expedite resolution of disputes and shorten the time for completion of cases.

- e. Now that the ALJs have had mediation training, has a process been developed to implement mediation?

*EOIR Response:* As mentioned above, OCAHO is in the process of developing the procedures necessary to implement a settlement judge process. Additionally, once the CAHO completes mediation training, she will be able to serve as a mediator in cases under 8 U.S.C. section 1324b.<sup>2</sup>

#### **4. Process of Litigation from Complaint through Adjudication or Resolution.**

- a. Does the CAHO recommend that parties and attorneys review any rules or practices governing proceedings before OCAHO, other than Part 68, Title 28 of the Code of Federal Regulations and the Frequently Asked Questions that are on the website?

*EOIR Response:* OCAHO recommends that parties familiarize themselves with relevant statutory provisions under 8 U.S.C. sections 1324a, 1324b and 1324c; OCAHO's rules of practice and procedure (28 C.F.R. Part 68); the Federal Rules of Civil Procedure and Evidence; and the Frequently Asked Questions document on OCAHO's Internet page. Many of OCAHO's published decisions also contain helpful information on the application of OCAHO's rules of practice. Parties should also note that the Federal Rules differ from OCAHO rules and procedures in some ways.

- b. What are the most common mistakes observed by the CAHO in OCAHO proceedings? Does the CAHO have any "best practice" tips for proceedings before OCAHO?

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<sup>2</sup> As mentioned previously, because the CAHO reviews ALJ decisions under 8 U.S.C. sections 1324a and 1324c, she will not serve as a mediator in those cases.

*EOIR Response:* Some of the common mistakes seen in OCAHO cases are: failing to file an answer to the complaint; failing to file a notice of appearance; failing to respond to a motion filed by the opposing party; untimely filing of or noncompliance with requisite filing procedures for a request for administrative review; and/or failing to respond to orders issued by the ALJs. These failures may lead to dismissal of a case based on abandonment; granting of a motion by default; or denial of a request for review. Parties should ensure that they comply with all filing deadlines established by the CAHO, the ALJ, or OCAHO's rules, even if they are proceeding pro se or engaged in settlement discussions with the opposing party (unless a stay has been granted).

Furthermore, parties should take care to familiarize themselves with OCAHO's procedural rules, especially as they may differ from the Federal Rules of Civil Procedure, and should consult OCAHO case law for further information on the application of the relevant procedural rules. The statute does not contain a time limit on when ICE may file a complaint, so OCAHO's rules do not either. However, complaints filed by the government should still be filed in a reasonable amount of time, and the statute of limitations or other equitable principles may apply.

- c. Would the CAHO provide us with a copy of the current Notice of Case Assignment which explains the procedural requirements for answering the complaint and the potential consequences of failure to timely answer?

*EOIR Response:* Yes, we distributed copies of the current templates for the Notice of Case Assignment in sections 1324a and 1324b cases, respectively, at the meeting. OCAHO recently modified the Notices to emphasize the requirement for attorneys to file a Notice of Appearance. The requirements for filing an answer to the complaint are in paragraph number four of the Notice, which explains that an answer must be filed within thirty (30) days of receipt of the complaint, and that failure to file a timely answer may result in entry of a judgment by default.

5. **Appeals.** Does the Equal Employment Opportunity Commission (EEOC) have any role in the appeal of OSC cases to OCAHO?

*EOIR Response:* No, the EEOC does not play any role in OCAHO cases. Section 1324b provides, inter alia, that no charge may be filed respecting discrimination on the basis of national origin if a charge with respect to that practice based on the same set of facts has been filed with the EEOC under Title VII of the Civil Rights Act of 1964. There is longstanding precedent that Title VII jurisprudence provides valuable guidance in 274B cases. Additionally, please note that cases filed with OCAHO under section 1324b are not "appeals"; instead, they are de novo proceedings. Though filing a charge with OSC is a condition precedent to filing a complaint with OCAHO, OSC's determination itself has no bearing on the outcome of an OCAHO case and is not on review before the ALJ.

6. **FOIAs.** OCAHO and AILA have had several discussions regarding the publication of OCAHO pleadings. OCAHO requires pleadings to be requested through FOIA to protect privacy interests. DHS CBP has implemented the FOIAonline system to receive FOIA submissions through an electronic portal. USCIS piloted a program that ended in April 2015 where FOIAonline requests that did not contain Personally Identifiable Information (PII) could be submitted electronically. Other agencies also utilize FOIAonline, including the Environmental Protection Agency, the Department of Commerce (except the U.S. Patent and

Trademark Office), the Office of General Counsel of the National Archives and Records Administration, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Pension Benefit Guaranty Corporation, and the Department of the Navy. Has OCAHO considered piloting or implementing FOIAonline?

*EOIR Response:* EOIR does not intend to utilize a FOIA online portal at this time. Moreover, it is unlikely that requests for OCAHO records would be proper candidates for such a system since they contain personally identifiable information. However, EOIR does accept FOIA requests electronically at: EOIR.FOIARequests@usdoj.gov. We received 32,000 FOIA requests last year and all but 100 were for individual case files, so we do not believe that the FOIA online system fits our business process at this time.

7. **Communications between ICE and OCAHO.** Do ICE and OCAHO have any general discussions regarding issues which are common in cases, such as ICE's fine matrix and the five statutory factors?

*EOIR Response:* No. OCAHO is careful not to discuss with Immigration and Customs Enforcement (ICE) (or any other potential party) specific substantive legal issues that could arise in OCAHO cases, in order to avoid any ex parte communications or the appearance thereof. Substantive legal issues, such as those pertaining to ICE's fine matrix or application of the five statutory civil penalty enhancement/mitigation factors in cases involving alleged employment eligibility verification violations, are addressed by OCAHO solely through its written decisions on a case-by-case basis. Pursuant to longstanding precedent, OCAHO is not bound by ICE's fine matrix. OCAHO reviews and assesses fines *de novo*. On occasion, an OCAHO decision is modified or vacated, and if so, it is published.

## **AILA/EOIR Meeting Agenda and Minutes** October 22, 2015

### **Use of Smartphones and Equal Internet Access in Courtrooms**

1. In immigration courtrooms across the country, attorneys for the Department of Homeland Security (DHS) in both detained and non-detained settings are provided with wired Internet access in EOIR space, which includes federal and commercial facilities.<sup>3</sup> Attorneys representing respondents are not provided with wired Internet access. Although the EOIR Security Directive 01-2015: Public Use of Electronic Devices in EOIR ("2015 EOIR Security Directive") states that attorneys and representatives of record are permitted to use electronic devices in EOIR space, portable mobile hotspot devices that produce wireless signals are notoriously unreliable inside courtrooms. As a result, attorneys representing respondents often have either inferior Internet access or no Internet access at all.

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<sup>3</sup>See EOIR Security Directive 01-2015: Public Use of Electronic Devices in EOIR Space, AILA Doc. No. 15082102, available at <http://www.aila.org/infonet/eoir-security-directive-use-of-electronic-devices>.

Unequal access to the Internet can affect the course of removal proceedings and prejudice clients. AILA members report that DHS attorneys sometimes use their superior Internet access to the disadvantage of respondents by, for example, searching the Internet during direct testimony to find information that could be used to impeach testimony or rebut evidence on country conditions.

AILA respectfully requests that EOIR take immediate steps to provide equal Internet access to all parties appearing before the Immigration Courts, and work with DHS to provide internet access where the space is owned by DHS.<sup>4</sup>

*EOIR Response:* EOIR is studying the issue. To assist with this process, AILA members with specific examples of clients prejudiced due to the current internet set up are asked to bring those cases to the attention of EOIR's Office of General Counsel.

AILA noted that while attorneys have hot spots on their phones, internet access from them is inconsistent. AILA pointed out the fact that DHS has reliable internet access through an ethernet connection that gives DHS a strong advantage, which is unfair. AILA would be willing to pay for ethernet if it is an issue of due process. Stewart, Dilly, and detention centers in central Texas were pointed out as examples of places where internet access has been a concern.

2. The EOIR Security Directive makes it clear that attorneys can use their smartphones for Internet use while in court to research, calendar, and perform other business-related activities. What steps are being taken to ensure that the policy is being implemented reasonably and uniformly across the country?

*EOIR Response:* The Security Directive largely speaks for itself. Nothing in it is meant to impede the appropriate use of technology in the courtroom by counsel so long as it is consistent with the orderly conduct of hearings and the dignity of the Court. To that end, EOIR does not see a substantive change in the manner technology is currently being used. The Security Directive regarding non-attorneys was distributed to all court administrators. If there are questions regarding the Security Directive, they should be raised to the court administrator, and then to the appropriate ACIJ.

### **Representation at Credible Fear Reviews**

3. Chapter 7.4(d)(iv)(C) of the Immigration Court Practice Manual (ICPM) reads: “[i]n the discretion of the Immigration and Judge, persons consulted may be present during the credible fear review. However, the alien is not represented at the credible fear review.” The presence of counsel at a credible fear review proceeding is important for several reasons, including to ensure the accuracy of translations, to ensure the asylum officer has properly developed and forwarded the entire record, and to properly summarize the testimony and claim, among others. Because credible fear reviews by IJs are not subject

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<sup>4</sup>The AILA South Florida and Colorado chapters have submitted letters to the Assistant Chief Immigration Judge (ACIJ) presiding over their respective jurisdictions and/or EOIR Headquarters requesting that EOIR expand access to the Internet to all parties before its courts.

to appeal, it is particularly important that an attorney can help bring transparency and fairness to the hearing.

The regulations governing the credible fear review process at 8 CFR §1003.42, do not prohibit the presence of counsel at the review proceeding. In addition, the Practice Manual itself allows for representation of individuals appearing for IJ reviews of negative reasonable fear determinations. ICP 7.4(e)(iv)(C) reads “[s]ubject to the Immigration Judge’s discretion, the alien may be represented during the reasonable fear review at no expense to the government.” AILA respectfully requests that EOIR modify Section 7.4(d)(iv)(C) of the ICPM to read:

*Subject to the Immigration Judge’s discretion, the alien may be represented during the credible fear review at no expense to the government.*

*EOIR Response:* EOIR does not plan to modify the Immigration Court Practice Manual at this time regarding representation at credible fear reviews before an immigration judge. Chapter 7.4(d)(iv)(C) of the Practice Manual is consistent with the relevant regulations, which allow a respondent to consult with a person of his or her choosing prior to the credible fear review. Specifically, 8 C.F.R. § 1003.42(c) provides, “The alien may consult with a person or persons of the alien’s choosing prior to the [credible fear] review.” The Practice Manual also provides that a person consulted by a respondent may be present at the credible fear review, at the discretion of the immigration judge.

### **Immigration Court Backlog Preventing Timely Filing of Defensive Asylum Applications**

4. Under INA §208(a)(2)(B) and 8 CFR §§208.4(a)(2) and 1208.4, absent extraordinary or changed circumstances, an individual seeking to apply for asylum must submit their application within one-year of entering the United States. The rationale for the one-year filing deadline was to prevent individuals from submitting frivolous asylum applications as a defense to removal many years after entry. The ICPM requires the respondent to file the I-589 application in open court at a master calendar hearing. In light of limited resources around the country, many hearings are set out years into the future. The effect is that many respondents are unable to have a hearing scheduled in time to comply with the one-year filing rule. This is a significant concern for both *pro se* respondents and respondents represented by counsel. The lack of available court dates is preventing bona fide asylum applicants from meeting their statutory obligations under INA §208(a)(2)(B), prejudicing them from consideration for asylum relief, and limiting potential relief to withholding of removal or relief under the Convention Against Torture (CAT) through no fault of their own.

Could EOIR issue guidance that makes it clear that this administrative delay constitutes a de facto “extraordinary circumstance” within the meaning of INA §208(a)(2)(B), and confirming that respondents who are unable to file their I-589 application within one-year of entry due to immigration court delays can meet the statutory filing deadline by filing the I-589 Application with the court at the next master calendar hearing regardless of

whether the master calendar hearing is more than one-year after the respondent's entry date?

*EOIR Response:* EOIR 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. The guidance with respect to this issue, provided on page 6 of OPPM 13-03, clearly states, "Legal determinations regarding the effect of lodging an asylum application are within the province of the presiding Immigration Judge. For example, judges may consider the legal effect of lodging an asylum application when considering whether an exception to the one-year bar applies." In cases where an asylum application is untimely filed, judges decide whether the "extraordinary circumstances" exception to the filing deadline applies on a case-by-case basis.

### **EOIR Technology Updates**

5. Please provide an update on EOIR technological initiatives currently in process or scheduled for FY2016. We are particularly interested in the following:
  - a. Does EOIR plan to provide attorneys with the option of e-filing motions and documents? If so, what is the timeline for this availability?

*EOIR Response:* EOIR continues to complete the modernization of nearly all components of its infrastructure from the data center to the desktop. We expect to complete these modernization efforts by 4Q FY 16. And yes, it is EOIR's intention to ultimately provide attorneys with the option of e-filing motions and other legal documents. We have recently begun the initial activities of a major initiative named EOIR Courts and Appeals System (ECAS) to initiate, file, share, and issue legal documents in support of EOIR's mission.

Significant first steps require EOIR to determine the priority of providing this functionality (e-filing) along with other very important priorities that will prepare EOIR to properly support this and other capabilities. The order in which e-filing will be available will depend on the priorities at the time that these changes are set to be made; EOIR is not ready to discuss those priorities at this time. As an example, it is one thing to provide the e-filing capability to attorneys, but EOIR must be able to efficiently and effectively store, modify, and analyze all documents, which begs the question of whether or not we should have a comprehensive document management system before we enable attorneys to file electronic documents.

These are the types of discussions we embarked upon starting 3Q FY 15. We continue our efforts this fiscal year and look forward to an approved high level priority list by 1QFY17 that will lead to an associated timeline.

- b. Would EOIR be amenable to accepting audio-visual materials, such as video stored on DVD-ROMs or flash drives, as record evidence?

*EOIR Response:* Immigration Judges determine whether to accept audio-visual materials as record evidence on a case-by-case basis. If admissible, judges will also address any technical limitations on viewing such evidence on a case-by-case basis. Please remember that if audio-visual materials are utilized in immigration court, it is best to have audio materials transcribed should they be needed on appeal. The Board is not set up to handle e-records; it cannot accept records outside of paper documents on account of IT security.

## **EOIR Registration for U.S. Attorneys Living Abroad**

6. Chapter 2.1(a) of the ICPM provides that “[a]ttorneys and accredited representatives must register with EOIR in order to practice before the Immigration Court.” This rule cites 8 CFR §1292.1 which provides the following:

*A person entitled to representation may be represented by ... (1) Attorneys in the United States. Any attorney as defined in § 1001.1(f) of this chapter and who, once the registration requirements in paragraph (f) of this section have taken effect, is registered to practice with the Executive Office for Immigration Review....*

According to 1001.1(f),

*“[t]he term attorney means **any person** who is eligible to practice law in and is a member in good standing of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law.” (emphasis added).*

The EOIR e-Registry system appears to require a U.S. address for attorneys, even though attorneys who live outside of the United States can meet the definition “attorney” set forth in 8 CFR §1001.1(f). Please confirm that an attorney licensed to practice law in the U.S. does not need an address in the U.S. to practice before EOIR. How should U.S. attorneys living abroad complete EOIR registration using eRegistry?

*EOIR Response:* The EOIR e-Registry system cannot handle the format of foreign addresses at this time. EOIR recommends that attorneys living abroad use a U.S. P.O. Box address for service of immigration court and Board documents. The burden is on the attorney to ensure he or she has an address in the U.S., such as a P.O. Box, where service can be perfected. Attorneys living abroad may call the EOIR automated hotline to receive information about their cases.

## **Priority Dockets**

7. On July 9, 2014, EOIR issued a press release announcing expedited dockets for recent border crossers.<sup>5</sup> An accompanying fact sheet noted that the expedited docket would include unaccompanied children (UACs), families held in detention, families who are on

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<sup>5</sup>EOIR Announcement of New Priorities to Address Surge of Migrants Crossing into the U.S., AILA Doc. No. 14070941, available at <http://www.aila.org/infonet/eoir-new-priorities-to-address-migrants-sw-border>.

“alternatives to detention,” and other detained cases involving individuals who recently crossed the southwest border.<sup>6</sup> On March 24, 2015, EOIR issued a memorandum to IJs addressing concerns related to EOIR’s prioritization of these cases.<sup>7</sup>

- a. During the October 23, 2014 liaison meeting, EOIR stated that DHS defines a “recent border crosser” as anyone who crossed the U.S. border without inspection on or after May 1, 2014.<sup>8</sup> Is this still the definition of a “recent border crosser?”

Yes.

- b. Are “recent border crossers” who meet the above criteria are still being treated as priority cases?

Yes. DHS indicates that an individual is a recent border crosser by marking the upper right hand corner of the Notice to Appear. Cases identified by DHS as involving recent border crossers are detained cases. Detained cases are a priority.

- c. Are all respondents who meet these criteria placed on the expedited docket or only cases selected by DHS?

See the above response.

- d. Across the country, a large number of judges are assigned solely to unaccompanied minor and adults-with-children dockets. Certain courts are carrying the burden of these dockets (for example, Miami). In those courts, due to transfers to a new IJ, some cases are significantly delayed. AILA encourages EOIR HQ institute a system where the “children's docket” is rotated among the judges, so that justice before the immigration court is not contingent on the random assignment of a person's case to one particular judge who has since been reassigned to children.

Judges presiding over juvenile dockets have received special training on handling juvenile cases; thus, EOIR does not intend to implement a system in which juvenile cases are rotated among the judges. EOIR is in the process of hiring new immigration judges to assist with the volume of cases.

- e. Do the priorities also apply to the BIA, such that appeals and motions for the priority groups described above will be adjudicated in an expedited manner?

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<sup>6</sup>EOIR Factsheet on New Priorities to Address Migrants Crossing into the U.S., AILA Doc. No. 14070942, available at <http://www.aila.org/infonet/eoir-fact-sheet-priorities-addressing-border-surge>.

<sup>7</sup>Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention in Light of the New Priorities, AILA Doc. No. 15032702, available at <http://www.aila.org/infonet/eoir-releases-memo-on-uac-fam-docketing-practices>.

<sup>8</sup> AILA/EOIR/OCAHO Liaison Meeting Minutes (10/23/2014), AILA Doc. No. 15022663, available at <http://www.aila.org/infonet/eoir-ocaho-liaison-minutes-10-23-14>.

Yes, the Board adjudicates the priority appeals and motions in an expedited manner. Staff is instructed to give those cases the same priority as they do to other RUSH cases.

### **IJ Authority to Render Bond Redeterminations**

8. In some jurisdictions DHS-ICE does not have long-term bed space and routinely transports detainees to out-of-state locations with available bed space. Often, DHS-ICE transports the detainee outside an IJ's assigned geographical location *after* the filing of a request for a bond redetermination but *before* the IJ conducts the hearing. Initially, DHS-ICE argued the IJ did not have jurisdiction. The BIA put that argument to rest in *Matter of Cerda Reyes*, 26 I&N Dec. 528 (BIA 2015) where the Board concluded the regulation regarding the exercise of bond re-determinations was not jurisdictional in nature. The Board stated, “[a]lthough the regulations suggest that a bond hearing will usually be held in the location where the alien is detained, policies related to the scheduling of bond hearings, including determining the location of the hearing, are properly within the province of the OCIJ.” *Id.* at 530-531.

Since the designation of *Cerda Reyes* as precedent, IJs will sometimes choose to hear a bond motion and other times refuse. Members report having to file as many as three requests for bond hearings before three different Immigration Courts, based on the movement of the detainee. Would the OCIJ ensure that consistent with 8 CFR §1003.19, that Immigration Judges 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?

*EOIR Response:* Immigration Judges interpret and apply the bond regulations in the context of individual cases. Accordingly, EOIR does not intend to issue special guidance regarding the application of 8 C.F.R. § 1003.19. Moreover, the transfer of detainees is entirely within the control and purview of DHS. Accordingly, concerns over the transfer of a detained respondent to another location after the respondent’s attorney has filed a request for a bond redetermination hearing is best addressed to DHS.

### **Motions in Administratively Closed Cases**

9. As noted in the AILA spring liaison minutes,<sup>9</sup> EOIR requires recalendaring of administratively closed cases before the court may consider any notice or motion. This is unduly burdensome and appears to be wasteful of the courts’ limited resources. For example, if an attorney wishes to withdraw from representation or assume representation (with the respondent’s consent), the attorney must file: (1) a motion to re-calendar; (2) a motion to withdraw and/or substitute; and (3) another motion to administratively close the case. Notifying the court of a respondent’s or an attorney’s change of address is another example of a clerical task that would require multiple motions. Will EOIR

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<sup>9</sup>Question 5, *AILA EOIR/OCAHO Liaison Meeting Minutes (4/16/15)*, AILA Doc No. 15072203, available at <http://www.aila.org/infonet/eoir-ocaho-liaison-meeting-minutes-04-16-15>.

consider implementing more efficient procedures for accepting limited types of motions on administratively closed proceedings?

*EOIR Response:* EOIR does not plan to implement new procedures for accepting motions in administratively closed proceedings at this time. As EOIR noted in the response to question 5 in the spring liaison minutes:

In order for EOIR to take action on a motion, the case must be active on the court's docket. Without an active case, EOIR has no mechanism for a court to rule on a motion. Withdrawing from an administratively closed case would require three motions: (1) motion to recalendar; (2) motion to withdraw; and (3) a *pro se* motion to administratively close the case again.

10. In addition, the recalendar requirements present a number of logistical difficulties when the respondent obtains new counsel to continue representation. For example, will the court consider a motion to recalendar filed by the new attorney who is not yet the attorney of record? How can service of process upon the departing attorney be properly achieved (if his or her departure has already occurred), when the departing attorney is not able to file an EOIR-28 to provide a current address until the matter has been re-calendared?

*EOIR Response:* Substitution of counsel requires three motions, which can all be filed at one time: (1) a motion to substitute counsel, *see* Chapter 2.3(i) of the Immigration Court Practice Manual, (2) a motion to recalendar, (3) a motion to administratively close the case again. The title of the filing should be clearly identified on the cover page of the motion.

11. In cases in which counsel wishes to withdraw but no new attorney will enter an appearance, EOIR provides that the respondent should file a *pro se* motion to administratively close the case again. Can the departing attorney prepare that motion despite 8 CFR §1003.102(t)?<sup>10</sup>

*EOIR Response:* The drafting of a *pro se* motion to administratively close constitutes "preparation" as defined in 8 C.F.R. §§ 1001.1(i) and (k). Thus, the attorney that prepared the motion would need to remain the attorney of record at the time that the document is filed with the court. (However, it cannot be properly captioned as a "*pro se* motion" if drafted by an attorney.)

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<sup>10</sup> 8 CFR. §1003.102(t) states that attorneys may be subject to disciplinary actions if he or she "[f]ails to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative in compliance with applicable rules and regulations when the practitioner: (1) Has engaged in practice or preparation as those terms are defined in §§ 1001.1(i) and (k), and (2) Has been deemed to have engaged in a pattern or practice of failing to submit such forms, in compliance with applicable rules and regulations. Notwithstanding the foregoing, in each case where the respondent is represented, every pleading, application, motion, or other filing shall be signed by the practitioner of record in his or her individual name...."

If the attorney withdraws after the motion is filed, that is not a problem. However, once the departing attorney has withdrawn from the case, he or she cannot do anything more on the case whatsoever, including helping the alien prepare motions.

### **Non-LPR Cancellation of Removal Age-out of the Qualifying Relative Child**

12. Under *Matter of Isidro*, 25 I&N Dec. 829 (BIA 2012), a child who ages out may no longer serve as a qualifying relative for cancellation purposes. As a result, in some cases, particularly those where the child is the only qualifying relative, relief will be completely eliminated. Unlike situations where the qualifying relative suddenly dies, the date a child will age out is known and can be predicted well in advance of the age-out date. During the October 23, 2014 and the April 16, 2015 AILA/EOIR liaison meetings, we asked whether EOIR would consider revising OPPM 12-01 to allow judges to prioritize cases where it is clear that the qualifying relative will age-out if the case is put into the queue pending issuance of a visa number.<sup>11</sup> EOIR indicated that it would take AILA's comments under consideration and expected to provide AILA with a response in the near future. Does EOIR have any updates on this issue?

*EOIR Response:* This matter remains under consideration. The party may file a motion to expedite.

### **BIA Zip Code**

13. EOIR issued a press release on July 20, 2015 stating that, effective July 27, 2015, all mail addressed to EOIR Headquarters in Falls Church, VA should be addressed using the 22041 zip code.<sup>12</sup> This zip code is now to be used on any correspondence to EOIR, the Office of the Chief Administrative Hearing Officer (OCAHO), and the BIA. This is the second change of zip code in the last two years. If members encounter filing difficulties due to the change in zip code, what is the mechanism available to remedy any late filings?

*EOIR Response:* The 22041 Zip Code is the official Zip Code for this address; mailers should experience no difficulty using this Zip Code. If there are mailing delays due to the change in Zip Code, they should file a motion asking the Board to accept the untimely filing and provide documentary evidence to support the motion. The Board will consider each motion on a case-by-case basis. See Chapter 3 of the Board's Practice Manual.

Similarly, if parties experience mailing delays due to the change in Zip Code in cases before OCAHO, they should file a motion asking the presiding Administrative Law

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<sup>11</sup> AILA/EOIR/OCAHO Liaison Meeting Minutes (10/23/2014), AILA Doc. No. 15022663, available at <http://www.aila.org/infonet/eoir-ocaho-liaison-minutes-10-23-14>; AILA EOIR/OCAHO Liaison Meeting Minutes (4/15/2015), AILA Doc. No. 15072203, available at <http://www.aila.org/infonet/eoir-ocaho-liaison-meeting-minutes-04-16-15>; *Procedures on Handling Applications for Suspension/Cancellation in Non-Detained Cases Once Numbers are no Longer Available in a Fiscal Year* (February 3, 2012), available at <http://www.aila.org/infonet/eoir-memo-select-applications-suspension-cancel>.

<sup>12</sup> EOIR Headquarters Announces Return to 22041 Zip Code, AILA Doc. No. 15072001, available at <http://www.aila.org/infonet/eoir-headquarters-return-to-22041-zip>.

Judge (ALJ) to accept the untimely filing and provide documentary evidence to support the motion. The presiding ALJ will consider each motion on a case-by-case basis. *See* 28 C.F.R. § 68.11. A party may also contact the BIA, OCAHO, or EOIR's Office of the General Counsel if this issue arises.

### **Cancellation of Removal Visa Numbers**

14. Will EOIR consider publishing visa numbers allocated for cancellation of removal cases? IJs and ACCs are encouraging attorneys to administratively close cases pending a date uncertain, even though EOIR visa numbers might become available.

*EOIR Response:* There are no visa numbers. Rather, INA § 240A(e)(1) provides that no more than 4,000 respondents can be granted Non-LPR cancellation of removal or suspension of deportation in any fiscal year. 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. *See* OPPM 12-01. This list is an operational document that is used to manage the process set forth in OPPM 12-01. EOIR does not plan to publish this list for the following reasons: the list contains personally identifiable information (names and alien numbers); and, the list includes information about whether a grant or denial is contemplated in a particular case.

### **Update on IJ Assignment and Hiring**

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

*EOIR Response:* We are in the process of hiring 72 immigration judges to fill positions in the following locations: Adelanto, Baltimore, Bloomington, Boston, Buffalo, Chicago, Dallas, Denver, Detroit, El Paso, Harlingen, Houston, Imperial, Kansas City, Las Vegas, Los Angeles, Miami, New York, Newark, Omaha, Pearsall, Philadelphia, Portland, Port Isabel, Salt Lake City, San Antonio, San Francisco, Stewart, and York.

Of these positions, the following three positions are expected to be filled before the end of the current calendar year:

Las Vegas (1)  
Newark (1)  
San Francisco (1)

An additional 18 positions (of the 72 mentioned above) are expected to be filled in the 2<sup>nd</sup> quarter of FY 2016 in the following courts: Buffalo (2), Dallas (2), Detroit (2), Houston (1), Los Angeles (1), New York (1), Newark (1), Pearsall (3), Philadelphia (1), Port Isabel (2), San Antonio (1), and San Francisco (1).

The remaining 51 vacancies are at various stages of the immigration judge hiring process.

**Additional Questions submitted by AILA via email on August 3, 2015**

1. What is the correct procedure to follow to make a formal complaint regarding a local Court Administrator? Is it filed with local ACIJ? If local efforts are unsuccessful, what is the procedure to escalate the complaint to a district or national level?

*EOIR Response:* A complaint is filed with the local ACIJ, and then with the Deputy Chief Immigration Judge.